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A REVIEW OF THE RELATIONSHIP BETWEEN A DEPARTMENT OF HOMELAND SECURITY AND THE INTELLIGENCE COMMUNITY

HEARINGS

BEFORE THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

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JUNE 26 and 27, 2002

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A REVIEW OF THE RELATIONSHIP BETWEEN A DEPARTMENT OF HOMELAND SECURITY AND THE INTELLIGENCE COMMUNITY

WEDNESDAY, JUNE 26, 2002

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:33 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Akaka, Cleland, Dayton, Durbin, Carper, Thompson, Stevens, Collins, and Voinovich.

OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. Good morning. The hearing will come to order. I want to welcome our witnesses.

Today, we are going to hold the second of four hearings designed to take an intense look at the Homeland Security reorganization plan proposed by President Bush and how best to merge it with legislation reported out of this Committee a little over a month ago. As we create this new Department of Homeland Security, one of our priorities clearly has to be to address what was the single biggest security shortcoming of our government before September 11, and that was the way in which our government coordinated, or failed to coordinate, intelligence.

Suffice it to say that a few infamous memos and warnings, now notorious, and the picture they may have painted if they had been understood in relationship to one another are now a perplexing part of American history. And so our challenge is to build a more focused, more effective, more coordinated intelligence system that synchronizes information from the field, analyzes it, converts it, and then turns it into action that can prevent future attacks against the American people here at home.

Last week, the Committee was privileged to hear from Governor Ridge on how the administration's plan and proposal would coordinate intelligence gathering, analysis, and implementation. Today, we are going to hear from what might be called a distinguished alumni group from the Intelligence Community and the national security community to get the benefit of their experience and good counsel on the best solution that we can adopt as part of our new Department of Homeland Security or related to it.

Tomorrow, we will hear from the Director of the FBI, Robert Mueller, the Director of the CIA, George Tenet, and Judge William

Webster, who was the former Director of both the CIA and the FBI, but not simultaneously. We will also hear from the Chairman and Vice Chairman of the Senate Intelligence Committee, Senators Graham and Shelby, because their expertise, including that gained from their current investigations, can certainly help us craft the most effective legislation.

Our fourth hearing on Friday will explore the President's proposal to address the problem of weapons of mass destruction and the relevant science, technology, and public health issues associated with detecting, protecting against, and combating these weapons, and particularly the fourth directorate, if I can call it that, or division, that the President establishes in his proposal.

With all that in mind, clearly, the part of this reorganization that has drawn most public attention and most attention and thoughtful concern, I am pleased to say, by Members of the Committee is the question of how to bring the intelligence establishment together with the law enforcement community to avoid the kind of information breakdown that appears to have occurred prior to September 11.

The President's proposal to establish an intelligence analysis clearinghouse within the new Department is a step in the right direction, although I think we still want to understand better what is intended and to see if there is a way we can strengthen the proposal. Under the President's plan, as I understand it, the Department of Homeland Security would provide competing analysis, so to speak, but the FBI, CIA, and a handful of other intelligence agencies would still have primary responsibility to uncover and prevent specific threats or conspiracies against the American people. In other words, no one office would be designated to pull the threads together and the dimensions of that and how we can focus it most effectively is something I would be very eager to hear from our witnesses today.

Our Committee bill proposed a different approach, which I do not argue on its face is adequate to the threat at this point, as we better understand it today, either. Primarily at Senator Graham's urging, we established an anti-terrorism coordinator in the White House with the statutory and budget authority to pull the various elements of the anti-terrorism effort together, and that would include not just the new Department of Homeland Security, but the Intelligence Community, law enforcement, and State and Defense Departments, as well. In short, the coordinator would be in a position to forge the kinds of relationships that would be necessary to get the information needed to connect the dots and have a chance of seeing a picture more clearly.

Today, we welcome the witnesses that are before us to hear their response to these two ideas and hopefully separate ideas that they themselves have.

Several people have suggested the creation of a domestic intelligence agency along the lines of Britain's MI5, which, as many of you know, works closely with both local police, Scotland Yard, etc., and the Foreign Intelligence Agency, MI6, and reports to the Home Secretary. The view of those who advocate this idea is that the FBI's law enforcement mission conflicts with the intelligence-related tasks we are going to increasingly give it, and that it is as-

suming now after September 11, and thus, the counter-terrorism functions of the FBI and CIA would be merged into this new Department. Others have been troubled by suggestions to break up the FBI, of course, but also troubled by the civil liberties implications that are associated with such an agency and we will want to hear from our witnesses about that.

Our colleague from Pennsylvania, Senator Specter, has presented another proposal which, in some sense, builds on the President's proposal, that would create a National Terrorism Assessment Center within the new Department that would have authority to direct the CIA, FBI, and other intelligence agencies to provide it with all information relating to terrorist threats. That center would pull experienced intelligence analysts from across the Federal Government to analyze, coordinate, and disseminate information to law enforcement agencies and it has an interesting requirement in it somewhat like the Goldwater-Nichols proposal, that people in the different intelligence agencies of the government would have to serve a time in this National Terrorism Assessment Center as part of their promotional path up.

We are going to hear other ideas today from a superb group of witnesses. What struck me last week at the first hearing we held with Governor Ridge and Senators Hart and Rudman is the really intense desire of Members of the Committee, certainly across party lines, to figure out the best way to get this job done, and this job meaning both the new Department of Homeland Security and particularly this question of coordinating intelligence and law enforcement. We feel that this is not only a moment of challenge, but a moment of opportunity, and I think most of us have not yet found a comfortable place to conclude our quest, particularly with regard to intelligence and law enforcement coordination.

So I look forward to this hearing today with confidence that this distinguished panel of witnesses will help us in that effort and I thank them very much for being here.

Senator Thompson.

OPENING STATEMENT OF SENATOR THOMPSON

Senator THOMPSON. Thank you, Mr. Chairman. I would ask that my statement be made a part of the record.

Chairman LIEBERMAN. Without objection.

Senator THOMPSON. I think that if we were too comfortable right now in our quest to reach these solutions, we would be premature. That is the very reason, of course, why we have these hearings, and I want to compliment you on this array of witnesses that we have today. I think they are exactly the kind of people we ought to be talking to as we work our way through this.

We are dealing primarily today with the intelligence piece. My own view is that, without a doubt, we will conclude after our Intelligence Committee hearings, which I am a part of, that there are deficiencies and inadequacies. I think we have known that for a long time before September 11. We simply have not kept up to the new world that we are now living in since the end of the Cold War. In terms of human intelligence, in terms of ability to penetrate, we are going to have to do much better. We have seen major defi-

ciencies in terms of collection, analysis, and dissemination of intelligence information.

I think the question for us here is to what extent will this legislation fix that, and to what extent is it designed to? I tend to think, at this stage of the game, "very little" is the answer to both questions. I think, though, that certainly stands on its own two feet in being beneficial to the overall problem.

But the intelligence issue, is it really meshed into the homeland security problem or is it separate? Do we need to do the Homeland Security organization piece, treat Homeland Security as a customer of intelligence with the idea of reforming the Intelligence Communities later so as not to create confusion and gaps at a sensitive time, or exactly how do we handle this? Do we set up a separate entity, as you mentioned, recognizing the distinct nature of the FBI and the law enforcement mandate that it has, and the fact that overnight, its top priorities are now things that they spent relatively very little time on up until now?

So should we keep them in the same Department or put them in the Homeland Security Department, or put part of them in the Homeland Security Department, or create a new MI5? If we create a new MI5, what should it be under, the Justice Department or the DCI or where? And what difference does it make anyway?

We all have ideas that seem logical to us as to where the boxes ought to be and who ought to be under where, but we really need to get down to why. What empirical evidence is there that one way might work better than another? I think that is what people like these gentlemen can help us with.

So thank you for being here with us today and I look forward to their testimony.

Chairman LIEBERMAN. Thanks, Senator Thompson.

[The prepared statement of Senator Thompson follows:]

OPENING PREPARED STATEMENT OF SENATOR THOMPSON

Thank you Mr. Chairman for calling this hearing. I'm glad as we continue our work on the proposal for a new Homeland Security Department that we are going to spend a couple of days looking at intelligence information sharing.

The President's proposal places a great deal of responsibility on the new Department to sift through information, conduct threat assessments and vulnerability assessments, to issue warnings, and to ensure that our critical infrastructure remains safe. This ambitious mission, together with reform of the Intelligence Community, cannot succeed, however, unless the Department receives cooperation and all the information it needs from collection sources such as the FBI and CIA.

Shortcomings in intelligence collection and analysis must be solved if the nation's homeland security is genuinely to improve. Even if we do improve these aspects of intelligence operations, however, we still confront serious obstacles to getting agencies to share relevant information with each other. Indeed, some have questioned whether Congress should reorganize the Intelligence Community as a whole to improve the sharing of information.

The failure to share intelligence is not a new problem. In fact, this Committee has seen some of those difficulties first hand. For example, during the campaign finance investigation, our efforts were hampered by the failure of the FBI to properly disseminate information to Congress, and for that matter to the Campaign Financing Task Force within the Justice Department. This Committee also conducted an investigation of the Wen Ho Lee matter and Senator Lieberman and I released a joint report regarding numerous failures within DOJ and the FBI including some regarding information sharing.

A number of reasons have been given for the problem of information sharing. Some believe that it is simply not possible for law enforcement agents, whose training and promotions revolve around pursuing criminal cases for prosecution, to

switch gears and operate as intelligence analysts. Others believe that because the FBI, CIA, and the military services all have a different focus that they're not inclined to talk to each other. Some also believe that our intelligence agencies are not coordinated very well and often display an inherent tendency to protect their information in order to protect their sources.

Whatever the cause for the information-sharing problems that have existed for many years, we must address them. The good news is that we are doing so. Obviously, this committee is working on the issue this week in conjunction with its legislative jurisdiction. Other committees, most notably the House and Senate Intelligence Committees, are also examining this issue.

I am looking forward to hearing some different ideas today about how the new Department could and should work within the Intelligence Community. I also want to hear the views of our distinguished witnesses about possibly reorganizing the boxes to put pieces of the FBI in the new Department, create a new independent intelligence center, or even an MI5 type model.

I am also looking forward to hearing tomorrow about the ongoing effort at the FBI to reorganize from within to see if that reorganization will provide sufficient support to the new Department and obviate the need to shift portions of the FBI.

While we may act on a Homeland Security Department in the short term, we will need to keep an eye on how information sharing works in practice to determine whether more steps need to be taken in the future. Whatever we do now to create a new Department will not be the last step, but only the first. Continuous and continuing oversight and reevaluation must be the new watchword for Congress, and especially this committee.

We must keep in mind that the establishment of a new Cabinet Department with an intelligence component will not solve the defects we observed in connection with the attacks of September 11. Instead, wholesale reform of our Intelligence Community is desperately needed. We cannot afford to allow the failures in our collection, analysis, and dissemination to continue. Our intelligence agencies are the eyes and ears of this country. If they are malfunctioning, then we will be blind to potential attack. Clearly, September 11 proved to all of us that our Intelligence Community has not functioned properly for some time. Despite numerous warnings, we did not take sufficient action. The investigative efforts of this Committee and others are the first step toward fixing our intelligence agencies. We must follow these hearings with serious reform. This matter is too important to put off any longer.

Mr. Chairman, you have brought together a number of very distinguished observers of the current system whose views will greatly assist Congress in evaluating the strengths and weaknesses of the current system. I look forward to hearing from them.

Chairman LIEBERMAN. Senator Akaka.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman. Good morning to our witnesses and thank you for joining us today.

I want to commend Chairman Lieberman for his leadership and guidance in what we are doing. Since September 11 exposed the strengths and weaknesses of our national security systems, we have been trying to correct mistakes, trying to strengthen our weaknesses, and Chairman Lieberman has stepped out on this issue.

It was appropriate that after hearing from Governor Ridge and Senators Hart and Rudman last week that we discuss how the proposed Department of Homeland Security fits into our Nation's intelligence structure. In hindsight, we must strengthen existing analytical and information sharing structures and avoid duplication at the expense of other national security requirements.

We are facing the most extensive government reorganization in over 50 years. Yet, the administration's proposal fails to articulate a long-term vision to guide this new Department. Moreover, I hope the proposal is not meant to replace the Homeland Security strategy that Governor Ridge is expected to release next month.

The Hart-Rudman Commission found that the United States lacks systems to facilitate timely intelligence sharing. We must ensure full and active coordination between the Intelligence Community and this proposed Department. Currently, representatives from our Intelligence Community serve on the Central Intelligence Counter-Terrorism Center. We should ask whether strengthening the CTC and establishing liaisons between the new Department and the CTC would ensure access to timely information.

The administration's proposed Department would analyze raw data and finished reports from many different agencies. However, the linkage of these previously separate functions could take years to develop and might create unintended vulnerabilities. State and local authorities in Hawaii and throughout the Nation depend on the Federal Government to collect, analyze, and disseminate information that is timely and accurate.

I am concerned that the President's proposal does not include mechanisms for intelligence sharing between the Department and other Federal agencies, with State and local authorities. It is critical to establish and promote standards, intelligence sharing, and to guarantee that the information is reliable and credible.

Regardless of how we organize the Federal Government, we cannot meet our intelligence obligations unless we maximize the talents of those charged with security, and provide sufficient resources to carry out new Homeland Security missions. As an example, we must provide training to improve the foreign language skills of our present Federal workers, and invest in the next generation of employees to ensure a dedicated and capable workforce that will contribute to our national security. We cannot allow the Federal Government to become the "employer of last resort."

Learning from September 11, let us move forward to improve existing structures, coordinate information sharing, and ensure cooperation among agencies. I see these actions as opportunities, not challenges, in strengthening our Nation's security.

Mr. Chairman, I join you in this effort and in thanking our witnesses for being with us this morning.

Chairman LIEBERMAN. Thank you, Senator Akaka. Senator Stevens.

Senator STEVENS. I yield to Senator Collins.

Chairman LIEBERMAN. Thanks. Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman, and thank you, Senator Stevens.

Mr. Chairman, as our hearing last week demonstrated, this Committee, Congress, and the administration still have a lot of work to do to create workable legislation establishing a new Department of Homeland Security. Today, we are considering the relationship between the new Department and the Intelligence Community.

This could well be one of the most important and difficult issues that our Committee wrestles with. If there is not efficient and adequate information sharing between the new Department and the existing intelligence agencies, and if there is not better interagency cooperation, then the reorganization and creation of a new Depart-

ment will not be sufficient to remedy the problems that have been identified as vulnerabilities in our system.

I look forward to hearing the testimony of our witnesses today. Thank you.

Chairman LIEBERMAN. Thanks, Senator Collins.

Senator Cleland, good morning.

OPENING STATEMENT OF SENATOR CLELAND

Senator CLELAND. Thank you very much, Mr. Chairman. Gentlemen, thank you very much for being here.

I feel very strongly about several issues. First of all, the need for a Homeland Security agency to force coordination, cooperation, and communication among basic agencies that are in charge of our homeland defense, like Customs, like the Coast Guard, like the Border Patrol and other agencies. I am an original cosponsor of the Homeland Security Agency bill that came out of this Committee.

I feel strongly about two other issues. First, that the Secretary of the Homeland Security Agency should be a Cabinet-level officer, sit in the Cabinet meetings, and be part of that inner circle.

But the legislation that we reported out has within it a suggestion that I made, and that is that the head of the Homeland Security Agency should also sit on the National Security Council. Why? For access to intelligence, so that Secretary knows what everybody around the table knows. For me, that pretty much solves the problem. I think the Secretary of the Homeland Security agency ought to have access to information, and access to intelligence. I am not quite sure it is proper for that agency to be engaged in intelligence gathering. We are all worried about connecting the dots, but if you sit on the National Security Council and have access to the intelligence and know what everybody else around the table knows, it seems to me that ought to be sufficient.

I would like to get your opinion as we get into the questions here, but that is the way I solve the access to intelligence problems and enable the Homeland Secretary to have the intelligence that he or she needs to do the job.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator Cleland. Senator Voinovich.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. Thank you, Mr. Chairman.

At the last hearing, I mentioned that we can rearrange the chairs in the new Homeland Security Department, but what really counts is who is sitting in the chairs, the quality of the individuals, their skill, their knowledge, and from the point of view of intelligence sharing, their interpersonal skills with each other. I am very pleased that Senator Akaka mentioned the human capital challenges that we have regardless of what we do in this proposed new Department.

The subject of this hearing is intelligence sharing. But Mr. Chairman, at our last hearing, we spent most of our time talking about intelligence sharing and whether it was going to work or not. It seems to me that all of us should be concerned about the rash

of reports that our Intelligence Community is deficient in its information sharing.

Last week in the *Washington Post,* a senior U.S. official stated, "We do not share intelligence among agencies. No one seems to have the authority to make that cooperation happen. We are very much a Third World country in how we are doing this."

This is a devastating assessment made by a senior government official and something, I think, that this Committee should take seriously. The inability of the government to share intelligence effectively seems to be rooted in longstanding and systemic problems, including a history in some agencies to protect turf rather than work together with other agencies toward a common goal. This simply cannot continue.

I ask that the rest of my opening statement be inserted in the record. I am very anxious to hear from our witnesses because they have got the experience to tell us if these observations that I just made are correct, and if they are, what can we do to solve the situation.

Chairman LIEBERMAN. Thanks, Senator Voinovich.

[The prepared statement of Senator Voinovich follows:]

PREPARED STATEMENT OF SENATOR VOINOVICH

Thank you, Mr. Chairman. I applaud your leadership in our Committee to move this issue forward. As you know, the proposed Department of Homeland Security represents the largest government restructuring in 50 years. Paul Light from The Brookings Institution noted that this effort "is by far the most sweeping merger of disparate cultures in American bureaucratic history." This is a massive challenge and the stakes are of the highest order.

Today, however, we are not here to discuss merging the cultures and activities of 22 separate agencies, but rather how this new Department will interact with the agencies that handle the most classified and sensitive national security information and how those agencies can share information appropriately with the new Department of Homeland Security.

I would observe, Mr. Chairman, that this is really the second, not the first, day of hearings on this specific aspect of the proposed reorganization. Last Thursday, most of the Members of this Committee focused almost exclusively on the relationship between the proposed Department and the Intelligence Community. We all seem to agree that this relationship may determine the success or failure of our efforts to secure the American homeland.

According to a rash of recent news reports, our Intelligence Community is deficient in its information sharing. For instance, in last week's (Tuesday, June 18) *Washington Post,* a senior U.S. official stated that " . . . we don't share intelligence among agencies; no one seems to have the authority to make that cooperation happen. We are very much a Third World country in how we are doing this."

This is a devastating assessment made by a senior government official, and something this Committee must take seriously. The Federal Government's inability to share intelligence effectively seems to be rooted in longstanding and systemic problems, including a history in some agencies to protect turf rather than work together with other agencies toward a common goal. This simply cannot continue. As a matter of national security, we cannot afford to continue policies or processes that disrupt the flow of information to the people who need to know and who can make a difference.

Mr. Chairman, countless other Members of Congress have said similar things regarding intelligence sharing and cooperation in the past, yet the problem persists. We must make sure this time that we take all the necessary actions to ensure our security and we will not tolerate petty jurisdictional or turf considerations.

This means that Congress must provide a solid legislative foundation for the Department that clearly sets out its roles, responsibilities, and relationships to the Intelligence Community and other departments and agencies. There must be strong accountability mechanisms.

We also must provide adequate resources, including technology and, above all else, the people needed to get the job done. People who know how to obtain, orga-

nize, analyze and disseminate information collaboratively and effectively. Human capital, at all levels, will be key to the success of this Department.

As we conduct this dialogue over the next 2 days, I look forward to hearing about ways in which we can better organize and manage the FBI, CIA and other intelligence agencies to ensure that life-saving information is made available in a timely manner to the Department of Homeland Security, and not, as we have regrettably seen, days or weeks after it is too late.

Mr. Chairman, thank you again for your leadership on this issue.

Chairman LIEBERMAN. Gentlemen, thanks very much for being here. We end up speaking in technical terms sometimes about this, but as I see the question before all of us, it is to acknowledge that we are now spending an enormous amount of money annually to gather all sorts of intelligence, and the question post-September 11 is how can we most effectively bring that together to prevent further terrorist attacks before they occur? Are there other forms of intelligence that we should be more aggressively collecting now with what we know after September 11 and after, in fact, the anthrax attacks?

So those are the big questions. I am very grateful that you are here. We are going to start with the Hon. Ashton Carter, who was Assistant Secretary of Defense for International Security Policy from 1993 to 1996, is now Co-Director of The Preventive Defense Project at the John F. Kennedy School of Government at Harvard. Thanks, Dr. Carter, very much for being here.

TESTIMONY OF HON. ASHTON B. CARTER,[1] CO-DIRECTOR, PREVENTIVE DEFENSE PROJECT, JOHN F. KENNEDY SCHOOL OF GOVERNMENT, HARVARD UNIVERSITY AND ASSISTANT SECRETARY OF DEFENSE (1993–1996), INTERNATIONAL SECURITY POLICY

Mr. CARTER. Thank you, Senator and Members, for having me today.

Chairman LIEBERMAN. Excuse me a second. We have got the clock set for 5 minutes. Feel free to go a little longer if you have not—this is the only panel we are going to hear today—if you do not feel you have had a chance to say your peace.

Mr. CARTER. Thank you. I will try to be brief, though, Senator.

You just mentioned new types of intelligence in connection with Homeland Security, and that is, in a sense, the theme of what I would like to say today. I have a written statement which I would like to enter into the record, if I may.

Chairman LIEBERMAN. It will, along with the other excellent statements all of you have prepared for us, be entered into the record.

Mr. CARTER. Thank you. The written statement addresses the overall architecture of the Federal Government for Homeland Security, including the respective roles of the White House, OHS, Office of Homeland Security, and the proposed new Department, DHS.

In my oral comments, I want to focus on several new types of intelligence, intelligence with a small "i", which I mean very generally to denote information and analysis necessary to the successful accomplishment of the mission of Homeland Security over time, but which is not necessarily the perpetrator-focused, event-focused

[1] The prepared statement of Mr. Carter appears in the Appendix on page 125.

type of intelligence that we traditionally associate with the FBI and the CIA.

These types of intelligence, which I would argue the Department of Homeland Security can usefully devise or invent or promote and then practice, these are modes of intelligence that the CIA and the FBI, I would judge, are unlikely to practice well by themselves, but for which they can provide useful inputs.

If I may, I would like to take a few moments to recap the main points of the overall argument I made about the architecture and then turn to the intelligence question. Just a few points on the respective missions of the White House and the Department of Homeland Security. I am moved to do this because I think that the foundation of the new Department, if there is a foundation of the new Department, does not make the role of Tom Ridge or the Office of Homeland Security any less important. In fact, it probably makes it more important.

Therefore, it is important that we not think of the DHS as somehow supplanting the Ridge mission. The reason for this is that while, in everybody's version of the Department of Homeland Security, it contains much of the Federal structure that bears upon Homeland Security, it also omits much. Therefore, the problem of interagency coordination does not go away. That is something that can only be done in the White House.

The heart of the Ridge mission, from my point of view, is not what his charter says, which is to coordinate. Coordination implies that the Nation has the capabilities it needs to do Homeland Security. All we need to do is marshal them optimally.

I do not think that is right. I do not think the Nation has the capabilities it needs. And so if all you have is a come-as-you-are party where everybody brings whatever history and tradition and their existing missions happen to have equipped them with, you are not going to have the capabilities the Nation needs.

So to my way of thinking, Governor Ridge ought to see his job far less as one of coordinating what we have than building what we need, that is, an architect, not a coordinator—an architect who conceives the investment plan the Nation needs to make in its own protection over time. That is the heart of his job and the critical product we require of him is a multi-year, multi-agency program plan, precisely the kind of program plan that I think we all wish had informed the preparation of the fiscal year 2003 budget, which instead is essentially a bubble-up product rather than a top-down product.

That investment plan, when he makes it, needs to include—and this is also why this is quintessentially a White House function, not an agency function—attention to how the investments on Homeland Security are to be apportioned between the Federal Government, State and local governments, a question of fiscal federalism as it applies to Homeland Security.

It is a critical issue. Someone needs to share out the responsibilities here. There are clearly things that the Federal Government ought to do in this domain, others that can be done by State and local government but might need support from the Federal Government, and others that they will need to do on their own. And part

of the architecture is to establish a few ground rules for who does what.

That is true also when it comes to the question of public investment versus private investment. Any of the needed investments that need to be made in the private sector, are they to be mandated by government, encouraged by government, supported by government, or are we going to count on the insurance industry or the self-interest of corporations to supply the needed incentives? Once again, that is a whole set of questions that only an architect can address.

So for all these reasons, I think the White House and the Ridge office become more important, not less important, the more serious we get about Homeland Security, and his job is to be the investment architect, not the coordinator, not the czar.

With respect to the Department of Homeland Security, I think that is an important ingredient of the architecture. I do have three concerns about it, though, and let me share them before turning to the intelligence question.

The first, I have already noted, namely that it is a big mistake if we allow the Department of Homeland Security to divert us entirely from the mission of the Office of Homeland Security or imagine somehow that it is a substitute for a functioning Ridge office. It is not.

Second, I have seen a lot of government reorganizations, participated in some in the Department of Defense, and they have a tendency to be half-done, to be poorly done. Unless this reorganization is aggressively pursued and whoever has the job of carrying it out is given the authority to manage it aggressively and creatively, we could end up worse off than we are now. Halfway-done reorganizations are the worst of all possible worlds.

And the third proviso on the Department is I do not think it is enough for us to ask that the new Department just bring together things that we are already doing, focus them, and make them more efficient. I think unless the new Department does new things that are not done anywhere in the Federal system now, it is not adding enough value. I would identify two things, particular things, that are, I would say, to a first order of approximation not being done at all that need to be done.

The first is these new types of intelligence, to which I will turn to in a moment.

The second is the science and technology investments, or inventiveness, as it applies to Homeland Security. We have a lot of weaknesses as a Nation as we face the era of terrorism. We are open. We are a relatively soft target in many ways and we need to look to our strengths. If this Nation has one strength that has served it well in emergencies in the past, it has been our inventiveness, and particularly in science and technology. If we do not bring that to bear on this problem, we are not taking advantage of one of our key national traits.

The other thing the Department of Homeland Security ought to do is intelligence with a small "i", and let me use a few minutes to say what I mean by that. There is a lot of debate going on about whether we should have connected the dots or not before September 11 and I think some useful insights have emerged from this

debate already. One insight is the danger of continuing to separate foreign intelligence and domestic intelligence as rigorously as we have done in the past. Another is the insight that we need to encourage FBI law enforcement officials to prevent terrorism and not just to solve the crime after it has occurred. So these are useful insights.

But most of the debate on intelligence is still what I would call intelligence with a capital "I", that is, intelligence which conceives of the information at issue as perpetrator-focused or event-focused. Who are these guys who might do this to us? What are their intentions? What kind of act might they be planning? This is obviously pertinent information, but I think there are some other concepts of intelligence that are of great potential importance to Homeland Security which, as I said earlier, at first approximation, are not currently accomplished anywhere in the Federal Government.

A clear and valuable role for the Department of Homeland Security would be to develop and practice some of these intelligence techniques. Among them are red-teaming, what I call intelligence of means, counter-surveillance, and risk assessment, and I would like to just define each of those and give you an example.

I will say parenthetically that these are important and effective aspects of the intelligence underlying Homeland Security and they raise very few civil liberties issues by themselves, and that is another advantage.

Let me start with red-teaming. Most Americans were probably not shocked—I certainly was not—on September 12 to learn that we did not have advance information about the dozen or so individuals living in our midst who plotted and took part in the airline suicide bombings. I was deeply disturbed to learn, though, and I think most people I talked to were, that the government was as heedless of the tactic they used as it was of who they were. That is, we inspected the airline system for guns and bombs, not knives, and we thought about people seeking conveyance to Cuba, not seeking conveyance to the upper floors of the World Trade Towers.

So a huge gap existed in our airline security system and they found it before we did. We cannot allow that to happen. We cannot allow that kind of tactical surprise to happen again, and to me, that recommends that the Homeland Security effort do something, red-teaming, which is a standard thing in military organizations, to have competing red and blue teams.

An experience that I am familiar with was the example of the development of stealth. In a red team, you try to project yourself imaginatively into the shoes of the opponent. Think of what the opponent might do to you and then what counters. Then you have a blue team which devises counters.

In the stealth program, when we developed the first stealth aircraft, for example, the Air Force created a red team which tried to figure out how to see, detect, and shoot down stealth aircraft, and I am sure some of the people here remember that well. The blue team was charged to fix the vulnerabilities, and then we could systematically balance the threat of detection against the cost and inconvenience of countermeasures.

A comparable red and blue team effort is, to my way of thinking, a crucial aspect of Homeland Security, as I said, essentially not

done anywhere in the government now except in bits and pieces—intelligence with a small "i".

Another example, intelligence of means. If you think not about catching the people, but catching the wherewithal of terrorism, that is a pretty rich field, as well. Remember all the talk of crop dusters in October? That came from the Atlanta Olympics experience, within which I also participated, or with which I was associated, and that is an example where you surveilled the means of destruction. You do not know who has the intention of using a crop duster to spread biological weapons. You do not presume you have that information, but you are going to watch the crop duster.

We watch fissile material around the world, not well enough, but we do. That is something, presumably, you will be discussing on Friday. It has been just a few years that we have surveilled pathogen cultures. And in the news in the last few weeks, we have learned that we are not surveilling well enough radiological sources, surveillance of means.

Counter-surveillance, another concept——

Chairman LIEBERMAN. Forgive me for doing this, but I am going to ask you to see if you can wind up.

Mr. CARTER. I am done. I have got one more example and I am done, sir.

Chairman LIEBERMAN. Good. Thank you.

Mr. CARTER. Counter-surveillance, the best example of that is what we do at embassies and bases, where, a simplistic version, you stand on the roof and look for people looking for you, people driving by more than once, people taking pictures of architecturally undistinguished aspects of a building. But counter-surveillance, the point of it is to estimate the information that a terrorist would need to attack you and then look for people looking for that information—a very lucrative form of intelligence with a small "i".

And finally, there is risk assessment, which I will not go into but in the course of which one comes out balancing risks, figuring out which threats are most likely, most damaging, and least costly to countermeasure. It is risk assessment that is the crucial input to the architect's budget plan.

So in summary, if you think about forms of intelligence with a small "i", it is easy to think of some. I have given some examples. These are things that need to be done. CIA and FBI information is input to them, but no substitute for them. Thank you.

Chairman LIEBERMAN. Thanks, Dr. Carter, for very fresh and helpful testimony. I look forward to asking you questions about it.

Our next witness is General Patrick Hughes, U.S. Army, Retired, former Director of the Defense Intelligence Agency, and now, I believe, a consultant in the field of security, generally. General Hughes, thank you for being here.

TESTIMONY OF LT. GEN. PATRICK M. HUGHES,[1] U.S. ARMY (RET.), FORMER DIRECTOR (1996–1999), DEFENSE INTELLIGENCE AGENCY (DIA), U.S. DEPARTMENT OF DEFENSE

General HUGHES. Thank you, Mr. Chairman, Senator Thompson, and other distinguished Senators. I would like to read my state-

[1] The prepared statement of General Hughes appears in the Appendix on page 135.

ment because I want to make sure that I make the points clearly and directly to you.

What we do to secure our Nation must be done both internally and externally. We should go abroad in the global context as well as within our Nation's borders and vital territory to seek out those who would strike us and interdict them, stop them, dissuade them, provide alternatives to them, whatever will work short of appeasement, to forestall future attacks. We cannot afford to absorb the blows that are possible in the future. As bad as past attacks have been, those events were not as bad as future attacks may be.

Thus, I am making my comments today with a great sense of urgency, because in my view, the conditions are, indeed, urgent.

We have enlarged the battle space by putting forward the concept of conducting a defensive and sometimes offensive war on terrorism here in our homeland. To ensure an internally secure America, we must continue to attend to traditional threats from nation states and alliances and coalitions and from new groups that may form against us. We have not reduced the mission environment, nor have we reduced the possibility for external conflict merely by preparing for the threat to our homeland from terrorists and other antagonistic groups. Rather, we have expanded our requirements.

As you know, the Department of Homeland Security will require appropriate legislation to give it a charter and authority and responsibility in the context of the U.S. Intelligence Community. In that same context, the Department will require Presidential authorities in writing and detailed written descriptions of its responsibilities and functions. Ideally, these documentary efforts should match and reinforce.

Standing up the intelligence element of the Department of Homeland Security is not a zero-sum effort. Additional people and money must be allocated for this undertaking. The Department of Homeland Security should have a senior official appointed to do the work of intelligence included in its structure. The people who actually do the work of intelligence in the Department of Homeland Security should be the best and we should give them the best tools to work with. This will cost money and will strain limited human and technical resources.

The key to the success of the people that do the work of intelligence is access to information. Intelligence sharing across the Intelligence Community, Federal, State, and local, is vital. Without open and expeditious sharing of intelligence, I believe this endeavor will fail.

The Department of Homeland Security should not separately develop or field sensors, sources, methods, or collection capabilities apart from the existing U.S. Intelligence Community or relevant elements of law enforcement, counterintelligence, and security. However, it should have the power and authority to use existing or developed capabilities in partnership with those who have primary responsibility for the capability.

The Department of Homeland Security should participate directly in Intelligence Community collection management.

The Department of Homeland Security should have the requisite processing, analytic, and production capacity necessary to the task at hand.

In our Intelligence Community, we currently have an inadequate capability to process, analyze, prepare in contextual and technical forms that make sense, and deliver cogent intelligence to users as soon as possible so that the time-dependent operational demands for the intelligence are met. In order to fix this inadequacy, this requires a very advanced set of automation and telecommunications capabilities, the best analytic tools we can acquire, and the best people we can coax to do this demanding work.

Intelligence support for countering terrorism in the context of Homeland Security is akin to searching out criminals who are planning to act and interdicting them before they act, more than it is about the physical kinds of intelligence directed against established nation states or alliance opponents in conventional or even unconventional warfare. Understanding this construct seems critical to the work of intelligence support, since it is much different than the typical military context. This is, indeed, different and requires a different approach to achieve success.

Warning times will be very short. Evidence of an impending act may be slim. The number of people involved can be comparatively small, and clarity is unlikely since extraordinary measures will be taken to conceal what is being planned or attempted. The threat may be so acute that we must act very rapidly.

Invasive human and technical presence inside the planning, decision, action, and support loops of the compartmented opponents we are faced with seems vital. While this reinforces my view of the importance of human intelligence, it also reinforces the fact that technical intelligence of all kinds, appropriately targeted and focused, can provide important assistance and insight.

We have, in my view, failed to do the right things in the past. These failures include an inadequate human intelligence gathering capability, an unwillingness to engage in risky operations, and a flawed set of recruiting, training, supporting, and training systems for intelligence professionals. For the security of our homeland, we have to fix this set of problems.

Every possible type of intelligence endeavor must be applied concurrently and synergistically in an all-source collection and all-source analytic environment so that no stone goes unturned, no opportunity is missed, and no venomous snake is left alive unless it suits our purpose. The Department of Homeland Security must have, internal to its structure, an adequate all-source management and performance capability.

One of the most demanding tasks for the Department of Homeland Security is to warn the citizens of the United States of an impending threat. Setting up an effective, efficient, and dependable Homeland Security warning system is quite different, since the nature of the threat, time, space and place, and tempo of activity are so different. Solving this problem is already challenging and will become more difficult as time passes. The indications and warning system needs our best effort.

We should not allow the open publication and public compromise of vital details of intelligence activities which, when they are compromised, give some advantage to our opponents. On the other hand, appropriate authorities must have full access to the workings of the Homeland Security intelligence structure so that they can

exercise the kind of oversight, policy control, and enforcement and accountability that we all know we need. We need to find some form of balance between these concepts.

When one looks out at the future threat, notably the threat from rogue elements with weapons with mass effects, and adds to it the possibilities embodied in new science and new technology, then I believe we should generate an exceptional and urgent response to these threats.

In speaking to you today, it is my fervent hope that some idea or thought will help to better secure our Nation. Thank you very much.

Chairman LIEBERMAN. Thank you, General. That was a very helpful statement.

Next, we are going to hear from Jeffrey Smith, former General Counsel of the Central Intelligence Agency and now a partner at the law firm of Arnold and Porter.

TESTIMONY OF JEFFREY H. SMITH,[1] FORMER GENERAL COUNSEL (1995–1996), CENTRAL INTELLIGENCE AGENCY (CIA)

Mr. SMITH. Mr. Chairman, thank you. It is a pleasure to be here and appear before this Committee to discuss generally the issue of Homeland Security and in particular one of the most important questions, how to improve the collection, analysis, and dissemination of intelligence.

In my judgment, I agree with Senator Thompson. It is probably premature to reach final conclusions about what went wrong and how to fix it until the Intelligence Committees complete their review, but we can begin to ask some questions now.

Let me talk just for a couple of minutes about intelligence broadly and then focus on some specific issues related to this. In my view, it is an oversimplification to say that the failure to predict to prevent the attack was caused solely by the lack of cooperation between the FBI and the CIA. Intelligence, whether it be domestic or foreign, is far more than just sharing information and connecting the dots. My colleagues have talked about this a bit, but good intelligence depends on many factors—understanding what the consumer of intelligence needs, and what we are able to collect, and what we are not able to collect.

General Hughes mentioned the need to take risk, particularly in the clandestine service. One cannot say too strongly that clandestine officers of the CIA must know that we expect them to take risks and know that we will back them up when the going gets tough, and candidly, we have not done that perhaps as often as we ought to have.

It is also imperative in my judgment that the analyst and the collector work together closely. The collector needs to understand what he is supposed to collect and the analyst needs to understand what the collector can and cannot collect. The analyst also needs to understand the texture in which it was collected to know what kind of weight that ought to be assigned to a particular scrap of information.

[1] The prepared statement of Mr. Smith appears in the Appendix on page 140.

Another fundamental question is whether it is possible to have a single agency responsible for both law enforcement and intelligence. Over time, we have discovered how hard that is, and frankly, I am almost of the view that we should separate the two. I think we need to look very hard at that, and I want to talk about that in a moment. The CIA and FBI have done a much better job of working together in the last few years, but there are still gaps.

Finally on this broad issue, Mr. Chairman, I agree with the comments of General Hughes. I am sure General Odom will talk about this. The imperative to have the very best information technology available to our Intelligence Community. We have discovered that the FBI, particularly, is lagging. NSA has made a major investment. We have a lot of genius in this country in industry and academia, but we need to do a better job of reaching out to them and finding ways for the government to work with them to find the very best information technology.

Let me turn then briefly to some issues particularly raised by the Department of Homeland Security. The administration's proposal would make Homeland Security a customer of the Intelligence Community. I think that is correct. The specifics are still vague and need to be worked out. There are some things that are not clear to me, obviously, but that is one the things this hearing will get at.

In my view, the Homeland Security Department needs an intelligence function. It needs an element within the Department that can perform analysis and can disseminate that analysis to the rest of the government. There are a couple of pretty good examples, I think, of where other departments have an intelligence function embedded within them that carries out this role. INR in the Department of State, for example. Maybe even a better example is the Office of Net Assessment in the Secretary of Defense, whose job it is to take intelligence reports from various parts of the U.S. Government and then line that up with what we are facing, what the opposition has, and then try to reach some sort of net conclusion about how our forces would do in a particular battle or particular conflict with armed forces of that country.

That is essentially what Homeland Security is going to be asked to do, to take intelligence information collected by the Intelligence Community and then produce an analysis that also incorporates what they understand to be the vulnerabilities about the United States.

Having said that, I do not believe it would be a good idea to create within Homeland Security a competing intelligence center to the CIA. In my judgment, the Counter-Terrorist Center at CIA and the FBI should be combined into a single center. I would pull the analytical function out of the Bureau and create a single Counter-Terrorist Center under the DCI. Clearly, FBI officers, officers from other elements of the government need to be there, but I am not in favor of having a lot of competing centers around town.

I also believe the time has come to consider the creation of a domestic security service. We most frequently think of MI5 as an example. They are, in my judgment, a first-rate service. They are able to work, as you said, Mr. Chairman, with MI6, the external service. They are also able to work with Scotland Yard and Special

Branch, not only in London, but scattered around the country, the United Kingdom, and I think we have a great deal to learn from them. They do not have arrest authority. I do not believe that if we were to create a security service, I do not believe they should have arrest authority.

As to where it is housed, Senator Thompson mentioned the two obvious choices, the DCI or the Attorney General. My inclination is to make them under the DCI, but a strong case can be made that they ought to be under the Attorney General.

Regardless of where it is housed, the director of the new service ought to have direct access to the President, and I think that if we were to do this, the director of the security service ought to be a career government civil servant, perhaps with a fixed term like the Chairman of the Joint Chiefs, who also, of course, has direct access to the President.

I am also intrigued with the suggestion that a couple of people have made, including recently Senator Feinstein and others, that we ought to separate the Director of Central Intelligence from his duties as the head of the CIA and to create a true Director of National Intelligence. This is highly controversial, but it does seem to me to have considerable appeal. One way of looking at it would be to think a little bit of the new Director of National Intelligence as analogous to the Secretary of Defense with greater powers and that the various pieces of the Intelligence Community would have a relationship to him in a way similar to that that the military departments have with the Secretary of Defense. As I say, that is controversial, but I think it is worth thinking about.

Clearly, if we were to set up a domestic security service, a great deal of thought would necessarily be given to protecting civil liberties. In my judgment, that is certainly doable, and I have a few particular suggestions to how that might be done.

I do have just one final thought, Mr. Chairman, about the proposal made by the administration and the issue of access by the Secretary of Homeland Security to information. The administration's proposal lays out a fairly complicated structure where there are three different categories of information and the Secretary gets all of this and some of that and a little bit of this, but only if the President agrees. I can envision some of my successors sitting around a table arguing, well, is this in Column A or Column B and does he get it or not get it?

My suggestion is to simply have a statute that says the head of each Federal agency is required by law to keep the Secretary of Homeland Security, "fully and currently informed" on all intelligence or other data in the possession of that agency that is relevant to the Secretary's responsibilities, unless otherwise directed by the President. The "fully and currently informed" language is one that we are all familiar with. It is used in U.S. statutes a number of places. It is the operating principle under which the DCI is supposed to keep the Congress fully and currently informed. I would turn it around and just put the burden on individual agencies to keep the Secretary fully and currently informed unless the President says otherwise.

Thank you, Mr. Chairman. I look forward to your questions.

Chairman LIEBERMAN. Thanks, Mr. Smith. That was very interesting.

There was a lot of discussion with Governor Ridge about the provision in the President's proposal which seemed to require the President to give approval before so-called raw data, raw intelligence, could be given to the Department of Homeland Security. There was some suggestion that might have been to get around an existing legal prohibition. Do you have any understanding of what that might be?

Mr. SMITH. No. The only concern about that, Mr. Chairman, is to protect particularly sensitive, in my judgment, particularly sensitive sources and operations. But my judgment is that, in my experience, in most instances when a Cabinet secretary asks the Director of Central Intelligence those kind of detailed questions, they are answered. So I am not quite sure what the legal basis would be for the administration's proposal.

Chairman LIEBERMAN. OK. Thanks very much.

Now we go to General William Odom, U.S. Army, Retired, former Director of the National Security Agency, now at the Hudson Institute, and I am proud to say, part of the year teaches at Yale University. General Odom.

TESTIMONY OF LT. GEN. WILLIAM E. ODOM,[1] U.S. ARMY (RET.), FORMER DIRECTOR (1985–1988), NATIONAL SECURITY AGENCY (NSA)

General ODOM. Thank you, Mr. Chairman. It is an honor to be here to testify before you. I have decided in the name of time to condense my remarks considerably, particularly in light of the comments that you and others have made on the Committee. I think an interaction directed towards specific questions may be more useful, now that I am better aware of where you are in this process.

As general comments, I would just make the following points: The issue of whether or not we should have the agency, is an open-and-shut argument. If we do not make the changes, we cannot really improve anything. If we make a new Department, we at least create the possibility to make effective changes. Right now, we are organized in ways that prevent progress.

I would also say there is another factor you should keep in mind. It is improper to focus only on terrorism. This Homeland Security agency is very much needed for the drug war, for immigration, for contraband trade and other kind of things. It has uses that have not gotten much attention, but which needs attention. So you should think broader than just dealing with terrorism.

I would also say that terrorism cannot be defeated. It is not an enemy, it is a tactic. We often can be confused, if we do not keep that clear in mind and realize that we are after specific enemies.

To explain why the present organizing arrangement cannot work, I will take an example from my own experience in the Intelligence Community—supporting the drug war. Assume, we receive intelligence that a big drug shipment is coming out of Country X somewhere across the ocean. The first problem I had in distributing the information was deciding to whom do I give it? Do I give it to DEA?

[1] The prepared statement of General Odom appears in the Appendix on page 156.

Do I give it to Customs? Do I give it to the FBI? Do I give it to the Coast Guard? Do I give it to all of them?

The second point, do they have the secure facilities and the trained and cleared people to receive it and not misuse it so that we either lose the sources because the information is disclosed in a way it should not be, or it is used in a way that prevents prosecution after they have taken action on it?

Another problem you have then is the competition among agencies to use intelligence. The DEA will probably want to make the bust in the foreign country. The Coast Guard will want to make it at sea. Customs will want to make it at the port. The FBI will want to make it internally. I have seen that competition lead to no action with very good intelligence. So I do not care what you do to fix intelligence. Until you have somebody who can orchestrate the arrest and preventive operations under one head, rather than across Cabinet departments, I do not see how much progress can be made.

The second example, if you have had experience with procuring modern IT systems within the U.S. Government, you will discover that Cabinet departments cannot even make their own sub-departments by the same IT systems and use the same security systems. But at least in principle, a Cabinet official ought to be able to make his department interoperable. If he is trying to create a common IT system in several small agencies in eight or nine different departments, the prospects of any success on this approach is zero.

So I would just say to Senator Thompson, your questions are right about what we are going to get out of this. I do not have a perfect solution for this, but I do believe you cannot make any significant progress without some major regrouping agencies with responsibilities for border controls.

Let me say in ending, that if you look at the history of these agencies, they go back to the 18th and 19th Centuries. We have not had a restructuring of them the whole of the 20th Century. And when they were established, you could not have expected the people who created them to have anticipated the needs of the 20th Century, much less the 21st Century. So it seems to me it is very compelling that we reorganize as soon as possible, and I do not think you will get it right the first time. They did not get the National Security Act for the Defense Department right the first time. The Congress has amended it several times. I think that will be the case with homeland security, that is the basis for my argument to go ahead, do the best you can, solve as many of these problems now as possible, and later with trial and error and experience you can improve it.

My second point is intelligence. In dealing with that, I do believe that the issue of intelligence reform and the issue of intelligence for Homeland Security have to be separate issues. Intelligence is just not one thing. There are several functions in intelligence. There is the collection. There is the processing and analysis. And then there is the distribution to people who use it, act on it. The model that has developed to some degree in the Intelligence Community, a model which is very deeply rooted in the military organizations, separate collection from analysis. Every commander from a battalion on up has an analysis section on his staff to produce

intelligence particularized for his uses. They all draw collected intelligence from any sources, some from higher echelons, some from organic collection capabilities.

As we have developed more complicated and technical means for collection, we have learned that we can allow every one of those analytic elements to subscribe to the national collection systems, to receive distribution. That model is most advanced in NSA because it had the advantage of having a big communication system. We need a national system of the same kind for imagery and in human intelligence. There is no reason to not give raw intelligence to users at very low levels and let them put it together. I am weary of this talk about central organizations, groups that are going to be clearinghouses and the centers, the real analytic efforts for counterterrorism information. They will ensure that all useful intelligence gets blocked or delayed, that it does not go to people who need it fast enough, and that the particular analysis is not done in a way that is tailored for local use. You can have it both ways—central analysis and local analysis of raw intelligence.

It can have the central analysis, but all of these subunits within the Homeland Security Department will need to be able to subscribe to NSA, to the National Imaging Agency, to our HUMINT services and get particularized delivery instantly. Then, analytic centers can produce intelligence that is not so time sensitive. We have to be organized to do several of those things, so no one particular solution here fully addresses the question.

Chairman LIEBERMAN. I was just going to ask, you would include the new Department of Homeland Security as a recipient immediately of such information?

General ODOM. Absolutely. Let me explain something. There may be problems with classification here, but I think I can say this in the open without much concern. And you might want to get the National Security Agency to brief you on the distribution system.

There are many agencies in this U.S. Government that are getting direct and instant service all the time. They have their own analytical systems within. Jeffrey Smith just mentioned the State Department with its I&R. State's regional bureaus get direct feed from INR, and beyond that, they receive raw intelligence from various agencies.

Now, the Defense Department pays for most of this, and sometimes the military services get upset about whether these national level agencies using soldiers, sailors, airmen, and marines as part of the workforce, give their intelligence away to these non-military uses. But in practice that has not been a problem. It has been very successful. We know how to do that, but we must first be organized and wired properly for it. There are structural issues within the Intelligence Community that prevent it from providing such support as well as it could today.

Now, let me move to another point about intelligence that I see Homeland Security facing. An ordinary infantry battalion, it sends out patrols, gets information about the enemy. These are not "intelligence collectors of intelligence." They are just ordinary combat units, but the information has intelligence value. Police on the street, are not known as "intelligence agents," but they pick up all sorts of information. The Homeland Security Department, with all

its organizations deployed around the borders, will have access to massive amounts of this kind of intelligence. They have got to learn how to report it, analyze it, get it back, and use it. That is a problem the military deals with all the time. It is a problem the State Department should deal with in using its ordinary non-intelligence reporting from embassies properly. Such information may turn out in some cases to be as much or more important than anything the CIA or other agencies can provide. I think that is terribly difficult to achieve. The promise is always great. There is no perfect solution, organizational solution, to making that work well, but there is a big source of intelligence to be gotten there.

The final point. I support what I think you mean by MI5 solution, but the MI5 model is somewhat misleading. MI5 cannot assert itself inside other intelligence agencies. It is by itself, and it ends up in competition with these others agencies. I made a proposal in an intelligence reform study, written in 1997, to create a National Counterintelligence Service and to take the counterintelligence/counterterrorism responsibility, that is intelligence against terrorists, away from the FBI, to put this new organization in the Intelligence Community as a separate agency, and to give it operational authority to look into the counterintelligence operations in Army, Navy, Air Force, also in CIA. At present there is no one in the U.S. Government who can give the President a comprehensive intelligence picture, a counterintelligence picture across the board. What is the overall view of every hostile intelligence service working against us or counterterrorism? The FBI has its view. The services have their view. The CIA has its view. The reason we have been penetrated many times in the past is that foreign intelligence services know how to go through these gaps between these agencies. They are not going to share information across agencies unless you have somebody with responsibility and authority to provide the comprehensive picture, but not necessarily to do the services' counterintelligence job or the CIA's counterintelligence job, or the FBI's criminal intelligence job. But it must put together the whole picture, and it must have a certain amount of operational responsibility for it. It must be the national manager of this particular intelligence discipline.

It should have congressional oversight, and I also think it should have a special court overseeing it. I would have a court because I am very concerned about my rights and the violation of them by such an organization. Perhaps the FISA Court could serve this purpose, but Mr. Smith would know more about the FISA Court.

But let me end my remarks there. Thank you.

Chairman LIEBERMAN. Very interesting testimony. We will come back and ask some questions.

Final witness is Chief William Berger, Chief of Police of North Miami Beach, Florida, President of the International Association of Chiefs of Police. Obviously, as evidenced in our Committee bill, and there is some language similar in the President's bill, the relationship between the Federal Government's new Department of Homeland Security, and State, county and local officials is a very critical factor, certainly in terms of first responders, in the role of first responders.

But the question we raise today is—and General Odom's comments lead right into it—is how can we better take advantage of the hundreds of thousands of police officers, for instance out there across America, who every day are observing or having contact with people or situations that might have significance in a National Homeland Security effort, to make sure it is fed in directly to them and that they receive information back from the Homeland Security Agency as well.

So, Chief Berger, we welcome you and look forward to your testimony now.

TESTIMONY OF WILLIAM B. BERGER,[1] CHIEF OF POLICE, NORTH MIAMI BEACH, FLORIDA AND PRESIDENT, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

Chief BERGER. Thank you, sir. Chairman Lieberman, Senator Thompson, Members of the Committee and a special hello to Senator Max Cleland, who I had the honor of testifying for back in December.

I am honored to be here and represent the International Association of Chiefs of Police, a 20,000 member representing law enforcement executives worldwide, created in 1894. At the onset, I would like to express my thanks to the Committee for recognizing the needs for the views of not only IACP but law enforcement in general. The structure of the proposed Department of Homeland Security and its relationship with State and local law enforcement community is imperative. It is my belief that the ability of the Department of Homeland Security to work effectively with law enforcement agencies around the country is crucial to the ultimate success or failure in its mission in protecting the citizens of this country and its communities. There can be no doubt that cooperation and coordination and information sharing between Federal agencies and State and local counterparts is absolutely critical to the ability to prevent future terrorist attacks.

For these reasons the IACP has gone on record in supporting the creation of the Department of Homeland Security. It is our belief that the proposed Department, by uniting numerous Federal agencies that are tasked with protecting the safety of our Nation into one organization will significantly improve the ability of these agencies to share information and coordinate activities within each other. However, a successful Homeland Security strategy cannot focus solely on the roles, capacities or needs of the Federal agencies. It must also ensure that State and local law enforcement agencies are an integral partner in this effort.

In our society an enormous degree of responsibility and authority for public security is delegated to local government, particularly to police agencies. As the September 11 attacks demonstrated, the local police and other public safety personnel were often the first responders to this terrorist attack. However, the role of State and local law enforcement agencies is not limited to just responding to terrorist attacks. These agencies can play a vital role in the investigation and most importantly the prevention of future terrorist attacks.

[1] The prepared statement of Mr. Berger appears in the Appendix on page 166.

Across the United States there are more than 16,000 law enforcement agencies. These represent and employ 700,000 employees who daily patrol our State highways, the streets of our cities, its towns, and as a result have an intimate knowledge of the communities that they serve and have developed close relationships with the citizens that they protect. These relationships provide State and local law enforcement agencies with the ability to track down information related to possible terrorist information. Often State and local agencies can accomplish these tasks in a more effective and timely fashion than many times their Federal counterparts who may be unfamiliar with that particular community or its citizens.

In addition police officers on every-day patrol making traffic stops, answering calls for service, performing community policing activities and interacting with citizens can, if properly trained, as mentioned, in what to look for and what questions to ask can be a tremendous source of information and intelligence for local, State and Federal Homeland Security personnel.

However, in order to make use of this capacity, it is vital that the Federal, State and local law enforcement agencies develop an effective and comprehensive system for timely sharing, analysis and dissemination of important intelligence information. The IACP believes that failure to develop such a system in the absence of guidance to law enforcement agencies on how intelligence data can be gathered, analyzed, shared, and utilized is a threat to public safety which must be addressed.

Therefore, as the legislation to create the Department of Homeland Security is considered and finalize, the IACP urges Congress to take steps necessary to promote intelligence-led policing and the information exchanged between law enforcement agencies. For example, the IACP has identified several barriers that currently hinder the effective exchange of information between Federal, State and local law enforcement agencies. It is our belief that these critical barriers must be addressed if we are to truly create an agency of intelligence gathering and intelligence sharing. They are:

1. The absence of a nationally coordinated process for intelligence generation and sharing. While substantial information sharing has somewhat occurred in some of the localities, there is no coordinated national process, and therefore much potential useful intelligence is never developed or is not shared. In addition, there is little focus on the local officer that recognizes their role as an intelligence-generating source in sharing, or which trains local officers to be part of this intelligence-sharing system. As a result, much of the Nation's capacity for improved intelligence generation and sharing system goes unused.

2. The structure of law enforcement and Intelligence Communities. Unfortunately, the structure and organization of law enforcement and intelligence agencies, either real or perceived, can lead to organizational incentives against intelligence sharing and even anti-sharing cultures. At best the lack of communications between the number of intelligence agencies means that individuals in one agency may not even imagine that others would find their intelligence data useful. At worst, this diffused intelligence gathering structure creates a "us versus them" mentality that stands in the way of productive collection.

3. Federal, State and local and tribal laws and policies that prevent intelligence gathering is a third area. By specifying who may have access to certain kinds of information, these policies and laws restrict the access to some of the very institutions and individuals who might be best able to use this intelligence for the promotion of public safety. The current laws and policies that guide the classification of intelligence information and an individual's clearance to view data are one example. Others include financial privacy acts, electronic communications policies and of course fraud laws.

4. The inaccessibility and/or incompatibility of technologies to support intelligence sharing. While a variety of systems support intelligence sharing or at least the information sharing, not all law enforcement agencies have access to these systems. Most operate on a membership basis, which means some agencies may find them too expensive to join while others may not see the value to joining the organization. In addition, the systems that do exist such as Regional Information Sharing Systems, the RISS System, the National Law Enforcement Telecommunications System, NLETS, and the Anti Drug Network, and Financial Crimes Enforcement Network, are not well-integrated and relatively archaic in terms of their capacities to provide information.

In addition, addressing these barriers to effective information sharing, it is critically important that the Department of Homeland Security be designed in a manner that will ensure that State and local law enforcement agencies are fully incorporated as an integral partner in all aspects of the Department's operation. This means that the Department must go beyond simple notification and consultation with State and local law enforcement agencies, and instead, it should adopt an organizational culture that views State and local law enforcement officers and other public safety officials as critical and an integral part of this war against terrorism. The Department must ensure that State and local law enforcement agencies have representatives within the Department with the authority to guarantee that capabilities of local law enforcement agencies are accurately represented and their needs are addressed.

In conclusion, as State and local law enforcement agencies modify their traditional crime fighting and crime prevention mission to encompass antiterrorism, they will need assistance from Federal Government to cover the increased burden placed on their agencies by this new training and the equipment needs as well as the cost of assuming these additional Homeland Security duties.

In conclusion, I would just like to state my belief that over the past few months we have had some limited successes in overcoming many of the artificial walls that have sometimes divided us, but there is still a tremendous amount of work that has to be done. It is my belief that the proposed Department of Homeland Security, if designed properly and led in the fashion that emphasizes the critical role of State and local enforcement agencies will dramatically improve the communication and inter-agency and intergovernmental cooperation that is so crucial to the success of our mission of protecting our communities and the citizens that we serve

I thank you and I await your questions.

Chairman LIEBERMAN. Thanks, Chief Berger, for a very constructive forthright statement. I support the tone entirely of what you said.

Each of the Members will have a 7-minute round of questions. Thank you. It has been excellent testimony.

Let me see if I can focus in on what our mission is on this Committee. I do not think it is our mission to, at this point, reorganize the entire intelligence apparatus of the government. In fact, the Intelligence Committees are working on their investigations and they may have some broader recommendations, but clearly it is our responsibility to, as we create this new Department of Homeland Security (and perhaps some office within the White House) to do the best we can to improve the collection, analysis, coordination, and dissemination of information.

So let me see if I can draw from the testimony, am I correct in saying that each of you feels that there should be a division, a section or office within the new Department of Homeland Security that has the right to receive data throughout the intelligence and law enforcement communities and has the capacity to analyze and disseminate it. Is that a baseline that we all——

General ODOM. Absolutely. Anything less is probably inadequate.

Chairman LIEBERMAN. OK. Then the next question is, and just to clarify for me—yes, sir. Go ahead, General.

General ODOM. Not just one point, many points within this agency.

Chairman LIEBERMAN. Why many?

General ODOM. Because you will find time sensitive requirements to have the ability to receive it out in various parts of the country. It will not just be at the Department headquarters.

Chairman LIEBERMAN. But do you not want it coming into one place eventually so that there is not a danger again, to use——

General ODOM. You want it going into all those places simultaneously.

Chairman LIEBERMAN. Then the second question, which is, as I hear you, I do not believe any of you have recommended—you correct me—that the new Department of Homeland Security itself should have the capacity to collect information. I add a caveat to that. Some of the agencies that we are talking about putting into Homeland Security such as Customs, Border Patrol, and Critical Infrastructure Protection Agencies, they themselves will be sources of intelligence. And that is not the CIA, FBI, etc., so they will collect that.

But beyond that, would any of you recommend that the agency itself have the capacity do collection of intelligence as we know it? General Hughes.

General HUGHES. My view is that your question has been answered in a way by your postulation. Some of the agencies that will be included in the Department of Homeland Security, at least in the initial concept, already collect intelligence, and they should continue those missions and activities that they have been given in the past.

An example would be port security intelligence collection by the U.S. Coast Guard, which would continue and become part of the Homeland Security effort. Another example might be police intel-

ligence collected at the very local level as the Chief has mentioned here, and then would be fed into the larger system. That kind of information collection should continue.

I do believe, as I have cited and stated in my testimony, technical collection systems that are already in the hands of responsible authorities should be put to work for this agency. Duplication and redundancy is not appropriate.

Chairman LIEBERMAN. Give me an example what you are thinking about.

General HUGHES. Aerial surveillance done by the Department of Defense, using aircraft in the atmospheric environment, or national technical means being used to surveil a particular place on the earth. Here in the United States, along our contiguous borders, associated islands, and other lands, and the sea. Whatever the requirement is, we should not have a Homeland Security group that goes off to build a new satellite or buy a new airplane. They should use the preexisting capability.

Chairman LIEBERMAN. Absolutely. Dr. Carter.

Mr. CARTER. I agree with everything General Hughes just said about duplication, but I think it would be a mistake to limit the agency to the forms of intelligence information collected already by its constituent parts. One of the purposes of bringing those constituent parts together is to focus them on Homeland Security as opposed to the other missions that they now accomplish. Inevitably that will require refocusing their organic intelligence efforts.

Second, as I tried to indicate, there is information we just do not collect now at all that is germane. Some of it can be pretty mundane, but for example, the culture types for dangerous pathogens for either animals or plants. So to support the intelligence with a small "i" that I was pointing to, we are going to have to develop new kinds of information to support this new mission. It is inevitable this Department will do it. It should not overlap the old stuff, but it will be new stuff. And so to try to limit it at the beginning and say it does not collect or assemble information, I think, is a terrible mistake.

Chairman LIEBERMAN. I guess my question is, maybe to clarify it and perhaps to state it in a caricature, none of you is recommending that the new Department ought to be able to hire agents similar to the CIA or the FBI to go out and infiltrate groups or collect information. Am I correct that no one is recommending that?

Mr. Smith, you want to say something, then General Odom, and then I think my time will be up.

Mr. SMITH. Very briefly. I want to associate with what everybody has said, but add to it one of the keys is to try to find a way to ask people on the street, the Customs official, the local police officer, what is it that the Nation cares about? What is it that we want you to keep your lookout for?

The British have a way of passing down the chain of command to the local bobby-on-the-beat what it is that they ought to be looking for in their neighborhoods, and that ultimately feeds back into MI5 and MI6. We need to find some system here where, as Mr. Carter says, the little "i" is identified so that people will know what it is that is in their domain that is important at the national level that they ought to report up the chain of command.

Chairman LIEBERMAN. General Odom.

General ODOM. I think your point is absolutely right, and I want to underscore that your assumption is right.

Chairman LIEBERMAN. Which is about not hiring——

General ODOM. Acquiring new big collection agencies or systems.

The issues that are being raised here, that Mr. Carter and Jeff Smith have raised, about what they need to collect, can be handled in the present system very effectively. Let me try to explain. The Intelligence Community is designed at the DCI level to respond to these kinds of changes.

Take television. Intelligence is a little like the news business. It has customers; it collects information; it puts on programs and people watch them. If they do not watch, programs are dropped. You will see the changes, depending on markets, patterns, etc. The Intelligence Community has a mechanism, which it sometimes uses poorly in this regard, but which it can use effectively, and it uses effectively in some cases. There is a process of asking for requirements. All the departments of the government are asked what intelligence requirements they have. This Department would have its claim on the Intelligence Community like the State Department, Defense Department, the Energy Department, any other. Then the DCI has to prioritize requirements according to the users' demands, and issue them to the various collection agencies.

I will give you an example of how this works. Back when we discovered a Soviet brigade in Cuba in the Carter Administration, we woke up to the fact that we did not have adequate collection in the Caribbean area. We had essentially neglected that area for the past 20 years. So all kinds of collection capabilities that had once been there, no longer operates. We had to go through a process of changing our capability to supply new intelligence markets. That is going to be the case with Homeland Security. We do not need a reorganization to do that. We need the DCI and the people who use intelligence asking for the right intelligence and issuing the right instructions to get the present system to respond effectively.

Chairman LIEBERMAN. I ask the indulgence of my colleagues. I want to ask a quick question and receive a quick answer, which is: Would you also give the Secretary of Homeland Security the power not just to receive raw data and then analyze material, but to give a task to the active intelligence agency, to say, in other words, "We need to know about Topic B." He has to be able to——

General ODOM. He has to have that. He cannot just be passive. If he becomes a customer in the Intelligence Community, that goes with becoming a customer. He should be able to put his requirements in on a non-time sensitive annual basis. The DCI then justifies his budget based on how the Intelligence Community can collect for these changing requirements.

Then there is another problem here, and that is time sensitive collection requirements. Homeland Security uses need to be looped in so that when they get timely intelligence in a fast-moving situation, so they can override to regular cycle to get rapid intelligence response. These will have problems there. Which department is at the head of the queue? There may be two or three agencies demanding to be at the head of the queue. The President will have to prioritize, and the DCI is the agent to do it. It happens in the

Defense Department all the time. The European Command wants priority over the Central Command. Their officers get all upset, and you have to explain to them that it is not the Intelligence Community's choice. Their quarrel is with the Chairman of the Joint Chiefs and the Secretary of Defense. They say they want Central Command to have priority. There is a system for regulating priorities. It is not always done effectively.

Chairman LIEBERMAN. Thank you. You are a great panel, appreciate it.

Senator Thompson.

Senator THOMPSON. Thank you very much, Mr. Chairman.

General Odom, to follow up on that a little bit, it looks like we are all talking in terms of Homeland Security being a new agency and being a customer and what that involves, but I get the impression that you are always saying basically what we need to do is use the existing system, do a better job of collecting from all the different sources, and do a better job of disseminating it.

I do think that what is envisioned with this new Department is that it is, as far as intelligence and acting on intelligence in order to protect the country, it is viewed as somewhat of a super agency, that it is not just another agency out there, another customer to get in line, whether it is—wherever it is in that line. But the idea is to create something where it all comes together. And we get into the issue of the dot connecting that we all talk about, and we all know that that is rather simplistic because the dots are in a sea of dots before you can even try to connect them, and we realize we need better analysis. But from thinking in terms of what we need to do in this particular piece of legislation and what we need to leave for other endeavors, I am wondering whether—it seems like the issue comes down to who brings all this together? Some might think that this new Department is supposed to be that entity, it is supposed to have its own analytical capabilities. I do not know where they are going to get the analysts, but they are supposed to have their own analytical capabilities and pull all this information from all these different sources that we are talking about.

We have heard some discussion here today by you and others of creating perhaps a new kind of entity, an MI5 type entity that would not be part of Homeland Security, but perhaps as a connector of the dots, perhaps as a repository. Perhaps that would be where all of the information would come together, and then that analysis would be handed over to the new Department. Can we dig in here a little bit deeper in terms of our analysis of how this Department ought to be structured? What should we try to do and not do in this particular piece of legislation? What should the Intelligence Component be with regard to Homeland Security and what should it not be? How does it fit in the overall framework, in the overall scheme of enhancing our intelligence capabilities in order to better protect ourselves?

General ODOM. I think you have raised two questions here and mixed them a bit, and I would like to separate them. Your initial remarks seem to me to be asking the question, if Homeland Security is not being asked to do too much. I think there is a danger in this regard. If you want a single agency in charge of everything about security in the United States, you will have to rewrite the

Constitution. We are a Federal system. And the demand for a central authority to do everything all the time will run into limits caused by federalism. And I am happy they are there. Personally, I would prefer the Federal system the way it is.

There is what I would call a minimum alternative reorganization, and that is not so much a Homeland Security Department as a "border control department." Responsibilities on the border are the most fragmented, and that is where the first problems start.

If you look back in 1979 and 1980, there was a proposal sent to the Hill by the President's Reorganization Project to create a border management agency. This is not a new issue. There were many arguments made for consolidation at the time. It would be a more manageable reorganization if you could shrink it a bit in that regard. The more agencies you throw in, the harder it is going to be to integrate them, the longer it is going to take. But I can see some good arguments for most every function included in the present bill. I am impressed with the comprehension where the administration's analysis.

Senator THOMPSON. Let me get some other views on it. Mr. Smith, is this a question of who connects the dots or how do you see this Department coming together?

Mr. SMITH. In my judgment, Senator, the bill that creates the Department of Homeland Security ought to assign an intelligence function to that Department along the lines that we have been discussing here. I would make it responsible for the production and analysis of intelligence that relates to Homeland Security, and they should be given the primacy for that function within the government. I think it is a separate question as to whether or not there ought to be an MI5, and as I said, I am inclined to do that, but nevertheless, the Department has to have that function. That would not supplant the Counterterrorist Center. The Counterterrorist Center, at least in my mind, would still continue to function in the Intelligence Community and provide analysis, threat analysis to the Department of Homeland Security, which would then take that analysis to do its own analysis on top of that would be focused very much on what does the Mayor of Miami need to worry about based on what we know about the situation in Miami.

Senator THOMPSON. So the Department would be fully and currently informed, to use your words, and there are separate issues out there as to how we might best make sure that they are fully and currently reformed. So we need to make changes within the CIA or the FBI or perhaps consolidate the counterterrorism centers. Perhaps create an MI5 type entity. Those would all be things that would help this new Department become more fully and currently informed. Is that a good way of looking at it analytically?

Mr. SMITH. Yes.

Senator THOMPSON. Let me ask, in the brief time I have here, one more question. Dr. Carter, you mentioned all of these things that you felt, the White House should do. You mentioned the plan that needs to come forth, and the first time I have ever seen anybody get into some of the analysis that you have done there, the things that are going to be needed is very impressive. But I was sitting here wondering, why cannot the new Secretary do prac-

tically all of these things, as opposed to that being done out of the White House?

Mr. CARTER. The new Secretary can do some of the things that Governor Ridge has been trying to do, which presumably is one of the reasons why Governor Ridge wanted to create the new Department. The new Department gathers up some of the pieces of the Federal structure, but there will still be pieces outside of it. We have been talking about some of them—the FBI, and the CIA. There is the Department of Defense, which we have not discussed yet today which is in the area of biological, nuclear, force protection, and so forth, a big player. So there will be big players that will not be underneath this new Cabinet Secretary, and the question remains, how do the departments of the Federal Government—they have been reshuffled, there has been some consolidation—the question remains, who is going to make them all work together? That is a quintessential White House function. We cannot wriggle off that hook.

Senator THOMPSON. Well, I understand that, and that was one of the discussions we had here in the Committee as to whether or not it was a good idea even to have a Department in light of the fact that certain very important players could not be brought inside it, so you are going to need a coordinating function anyway. But you lay out your ideas for an investment plan and infrastructure evaluation of vulnerabilities, countermeasures, intelligence analysis, science and technology, and how new intelligence means and methods should come about. It sounds to me that those responsibilities should be in the domain of the Secretary, and the coordinating function could be left to the White House.

Mr. CARTER. Exactly. The border, the emergency response, the science and technology part, which we have not discussed yet today, but about which the National Academy of Sciences issued a report yesterday I was privileged to be part of the NAS Committee and I commend to your attention. And the intelligence piece, big "I", small "i" we have been discussing today. Those are appropriate parts of the Department. If we set up the Department right and we aggressively put it together, they will do those jobs well, but somebody has still got to sit atop all that and decide where the money goes, so that over 5 years, 10 years, the Nation makes the investments in its own protection that we all know we have got to make.

Senator THOMPSON. Thank you very much.

Chairman LIEBERMAN. Thanks very much, Senator Thompson. Senator Cleland.

Senator CLELAND. Thank you very much, Mr. Chairman.

Two Casey Stengel quotes come to mind. First, in his last year of coaching he coached the New York Mets, a brand new team, and the ball was being dropped in center field and errors were being made, and at one point he got frustrated and stepped out of the dugout and said, "Does anybody here know how to play this game?"

I mean sitting here hearing after hearing, both on the Armed Services Committee and the Governmental Affairs Committee here, I sense a sense of frustration in my own view of this thing. I begin to wonder, does anybody here know how to play this game? The truth of the matter is I know that there are great people in this

business, world class people, which leads to the second Casey Stengel quote, that: "It is easy to get the players, it is tough to get them to play together."

And I think we have got great players. I think we are down to how to get them to play together. And the Homeland Security challenge, the challenge is how to get them to play together. When Sam Nunn headed a mock effort put on by Johns Hopkins with a mock attack of smallpox, he mentioned that he got very frustrated after a few days in this mock attack with, "bureaucracy," people playing together. And then the other thing he said was, "You never know what you do not know." That goes to the intelligence piece it seems to me.

I would like to focus, General Odom, on a quote that you had which I thought was quite interesting in terms of getting people to play together. How at the national level of intelligence gathering do we get people to play together? You said: "There is no one in government who can give the President an overall view of counterintelligence"—I think that was your word—"no comprehensive picture to put it all together, no king of this particular discipline."

Is that what we are searching for here? Are we looking for a king or a czar or a quarterback of national intelligence? Are we looking for a director of national intelligence to relate to all the intelligence, the vast elements of the intelligence team, and to get the team to play together so that data is collected and analyzed properly, and it then comes up to a central point and then properly disseminated to the lowest level that needs to know? What are we looking for here? We are obviously searching for something. In your opinion, what is it?

General ODOM. The quote you just read does not apply to all intelligence. It applies only to counterintelligence. Counterintelligence is information about other people's intelligence activities. That is not all intelligence. It is increasingly including terrorist penetrations and activities too. What I am saying is that part of the Intelligence Community dealing with the counterintelligence, which gives you the intelligence which you use to find spies and keep yourself secure, as opposed to finding enemies that you can attack, that is fragmented, and we do need somebody both to pull it together. My design for it is getting CIA, the services and that organization to play together under a director of counterintelligence. And I think with certain authorities he can be an effective coach.

As far as getting the other parts of the Intelligence Community for many other kinds of intelligence support together, there are problems, but if you look at how fragmented it could be compared to the CIA, the rest of the Intelligence Community is in reasonably good shape. So that would be my answer on that.

And if you are talking about intelligence support for this Homeland Security, the intelligence it needs, then you want to be able to have a comprehensive counterintelligence picture. You also want other kinds of intelligence coming there. They need to be able to subscribe to every intelligence news service available.

Senator CLELAND. There is actual legislation that creates a Homeland Security Agency. It is out of this Committee. We voted for it in a bipartisan way. It is on the floor of the Senate, and the

connectivity or the interface between that Homeland Security Agency and the Intelligence Community, however organized, is that this Committee chose to put the head of the Homeland Security Agency on the National Security Council. Is that a good idea, bad idea, no fix, good fix, or bad fix?

General ODOM. That is a very good idea, and not just the intelligence purposes. Sure, it gives him some access to intelligence. He can get that without NSC membership, but it is important for him to be there for the coordination among all National Security agencies. If you put too many chiefs of coordination around the White House, pretty soon the President cannot manage them all. I think this Homeland Security ought to be a coordination problem for the National Security Council. It is part of security. The Defense Department is part of it. The State Department is part of it. So the coordinating function, to me, lies within the NSC. You have seen the struggle to try to get an NSC equivalent to handle economic policy. You have seen the problem with counter drugs. So I think there is a danger of putting too many big coordinators up there at the White House and not using the one institution that has a lot of experience in this kind of coordination.

Senator CLELAND. And that was another question, that in terms of the recommendation, shall we say, to leave the White House Office of Homeland Security in existence, are we moving in a direction to create the domestic counterpart to the National Security Affairs Advisor? I mean there is a National Security Affairs Advisor. Are we going to create another domestic Security Affairs Advisor that is interfacing with the Cabinet Secretary? You know I begin to wonder. It seems to me that it would be cleaner, since part of the challenge is coordination, cooperation and communication, it would be cleaner to have a Secretary of a Homeland Security Agency that gave us a chance to start doing some things right, getting the players to play together and putting that individual on the National Security Council with access to what everybody else knows. And I think that is basically the posture of this legislation that came out of this Committee.

Yes, sir, Mr. Smith.

Mr. SMITH. Senator, I want to agree with that. In my judgment, there should not be another competing coordinating czar in the White House that is subject to the advice and consent of the Senate for that job. I would leave the President free to structure his arrangements the way he chooses. I think that putting the new Secretary on the National Security Council is a good idea. That machinery is excellent. It works well. I would try to use that machinery and I would not set up a competing Senate advise and consent person in the White House. I know that is Senator Graham's initiative, and I am reluctant to disagree with him, but I think your approach is better.

Senator CLELAND. Yes, sir, Mr. Carter.

Mr. CARTER. The National Security Council is a good model for doing something that is different from what we are looking for from Ridge, and therefore the National Security Council is not the answer. The National Security Council is a policy coordination body. It gets the agencies involved with national security together and they agree on the policy, essentially on a piece of paper.

What we need in this phase of Homeland Security is an architect, somebody who puts an investment plan together. The NSC does not do programs, they do not do budgets. I can tell you from the Department of Defense's point of view that our program, $379 billion worth of it is not touched by the National Security Council. It has been that way since the Eisenhower Administration. The NSC is a policy coordination body. If you go up there, they have lots of gifted people, and I have the highest respect for them, but they are not program people, they are policy people. So to have given, which the President wisely did not do when September 11 occurred, say to the National Security Council, "You do it." He found someone else, and for some period of years we need that someone else. Now, I do not like to call him a czar because you know what they say about czars—the old joke about how the barons ignore them and eventually the peasants kill them. And I do not like to call him a coordinator because I said that is not what he is supposed to do, coordinate what we have. He is supposed to build what we do not have.

But that is different from what the NSC does and one is mistaking an architect for a coordinator if one uses the NSC model.

Senator CLELAND. So who is in charge here? I mean what is going on?

General ODOM. I must say I think Dr. Carter is misleading us here a little. The NSC does have an effect on budgets in the Defense Department, at least they did when I was in that organization, and we did it through OMB. OMB is pulled into the NSC activities and OMB right now ends up being the organization that coordinates the budgets. And, Dr. Carter, I do not think you could say that OMB does not have any influence on the Defense Department's policy.

Mr. CARTER. Yes, but OMB is not the NSC. It is OMB, not the NSC.

General ODOM. If the President wants the OMB to take the guidance that is devised in NSC and implement it in budgets, he can do that. So the kind of coordination you are talking about that transcends this Department, there is machinery to do that in the White House if the President wants to do it. If you can put a czar there and if he does not want him to do it, it will not make any difference.

Senator CLELAND. Mr. Chairman, my time is up. Fascinating panel, and I wish we could just go all afternoon and into the morning.

Chairman LIEBERMAN. I agree.

Senator CLELAND. This is great testimony. Thank you.

Chairman LIEBERMAN. Thank you, Senator Cleland, and I thank the members of the panel. Our search for truth is aided by the gentlemanly cross fire that we have just heard occur.

Mr. SMITH. I have decided that it is better to be a baron than a czar. [Laughter.]

Chairman LIEBERMAN. Senator Voinovich.

Senator VOINOVICH. I am still trying to get this straightened out. The Director of the Central Intelligence Agency is supposed to be coordinating the intelligence situation abroad and at home. Is that

the individual that is supposed to keep track of all of the agencies that are collecting information, both domestically and abroad?

General ODOM. He is responsible for two things. He is responsible for program development. In other words, every activity that is known as part of a national foreign intelligence program has to have its program bill approved through the DCI. He can say, "You get less money or more money in your request to Congress." And then of course OMB has to sign off on it. And the other thing he has the power to do is to task them to collect and disseminate information. So those are his two major powers. And he also has the capability under him to generate nationally coordinated intelligence that is not a mere departmental view.

Senator VOINOVICH. So that individual should know of all the agencies in the government that collect information and ascertain whether or not there is duplication and whether or not there are any holes in terms of gathering this information; is that correct?

General ODOM. The Director of Central Intelligence has that responsibility. The Director of CIA does not. The Director of CIA is a different man, I mean a different hat. Traditionally, we have only had one individual wear both of those hats.

Senator VOINOVICH. Well, the issue is should that responsibility, in your opinion, be transferred to this new Department?

General ODOM. No, it would remain with the Director of Central intelligence. The Defense Department is the major user of intelligence. He does more for the Defense Department than anybody else, but he is not in the Defense Department.

Senator VOINOVICH. Well, then what role would this new Department have in terms of—you all talk about collection management——

General ODOM. It is going to be a user.

Senator VOINOVICH. What is collection management?

General ODOM. Well, collection management means, in jargon inside the Intelligence Community, it means registering requests for collection, and somebody decides what collection agency is assigned to get the answer. So the Homeland Security Department, certainly would be hopeless if it does not have the right to make these demands for intelligence, which then the Director of Central Intelligence tasks the various collection capabilities to get the answers and deliver them back to this Homeland Security Department.

General HUGHES. If I could just comment here, I am very frustrated over this conversation since only part of it is right. The Director of Central Intelligence does have the kind of oversight authority that General Odom has just commented on. But he has difficulty exercising not only the program management but the operational oversight of intelligence gathering activities because there are competitors to him, the director of other intelligence agencies and indeed the heads of departments. For example, we are talking here about making a departmental level, Cabinet level officer, which would be on a par with the Director of Central Intelligence, if not slightly above that person. It depends on the administration and the way that the DCI is viewed. But this is not a line and block chart kind of issue. This is about relationships, presidential authorities, demands that are made and made in light of legal and

procedural constructs. To illustrate this problem, collection management is a common issue across the Intelligence Community, and here it is in a nutshell. I tell appropriate authorities in the government, according to disciplines and responsibilities and functions, what I need in the way of information, and in collection management system that request goes, in a pervasive way, throughout the government and ostensibly information that is asked for is returned.

Senator VOINOVICH. First of all, somebody has to decide what information we need right straight across the board. Somebody has to figure that one out.

General HUGHES. That is right.

Senator VOINOVICH. Then the next issue is who gets it?

General HUGHES. That sort of is figured out. Who is it? There is not one person, nor can there be. Each agency, each function, each group has to decide what it needs for its own responsibilities and requirements, and these will vary from organization to organization, depending upon what it is they want to do. One simple example would be that the military and the civilian side of our government have different requirements.

Senator VOINOVICH. But somebody said earlier, Mr. Carter, I think, you are talking about the issue of foreign intelligence, and domestic intelligence and how foreign intelligence has to have a larger impact today on domestic intelligence because we are dealing with terrorism. From a managerial point of view, somebody has to decide what information we need. Then the intelligence agencies need to collect the information. Once that information is gathered, we need to know what it is and whether or not there is duplication, for example, or a hole in our knowledge.

The issue is: Where is that managed, in this new Department or in the White House?

Mr. CARTER. I think that is a crucial point and the answer is in the Department. The experts on what information is needed are not the Intelligence Community. The Intelligence Community is the expert on supplying the information needed. It is the Department of Defense that decides what we need from intelligence to support operations and acquisition. Likewise, it will be the Department of Homeland Security, which is the expert on what information we need for Homeland Security.

Now, I would contend that at the moment there are no experts in the Federal Government on what we need for Homeland Security. That is why we are setting up a new Department and——

Senator VOINOVICH. But that person on the domestic side would be in the Department of Homeland Security. That would be the person that would look out and say——

Mr. CARTER. And he would say to the Intelligence Community, "This is what I need."

Senator VOINOVICH. And then get that.

The next issue is the analytical aspect. You are saying you need to have that in the Homeland Security Department, some really smart people that can take the information that is coming in and analyze it; is that right, that should be there?

Mr. CARTER. I would say if I may, much of it will be analyzed in the Department of Homeland Security because they will be the

ones who know what the template is that they are trying to fit the dots into, just like it is the military that needs to take information from the Intelligence Community and then interpret it for operational purposes or procurement purposes. But the Intelligence Community will need to do some of its own analysis within its own confines, and so some information will be sent as finished intelligence, and some of it will be sent as inputs to finished intelligence that is produced in the Department rather than in the Intelligence Community.

Senator VOINOVICH. Now, the third issue, information comes in, we analyze it, and then we disseminate it. And you think that is another function that——

Mr. CARTER. Absolutely.

Senator VOINOVICH. How do you get this information out to the right people as quickly as possible?

General HUGHES. If I could just comment, sir, first of all, Mr. Carter had adequately and correctly described these functions. But, it is an important point for me to make. I think it may have been made already. That is why you need the very best people, and you need to start out with very experienced people in the collection management system, in the analytic system and the production system and in the dissemination system for Homeland Security. You cannot begin this process with neophytes or completely new people who do not have an experience level to know where to go to get the right information, how to couch it, how to put it in right context and how to put it out.

We are talking, by the way, about an entirely new dissemination construct because some of this information is going to have to go, if we are to do our job right, to recipients who do not have a historical record of receiving such information. That is especially true at the State and local police level, and I would argue, at the governance level in the towns, municipalities and States around the country. This is different. It is new, but the origins or the grounding of it probably should be set in experience and history, to some degree. So we have kind of got to play off the best of both worlds.

Once, again, my last point to you, sir, the quality of the people here is vital.

Senator VOINOVICH. Am I finished with my time?

Chairman LIEBERMAN. You are, but——

Senator VOINOVICH. We have the president of the chiefs of police association, and we are all talking about the future, but most people are concerned about what is happening now. I have been told by several people in the FBI that these task forces that the FBI has set up on the local level to work with local police departments and sheriffs offices and so forth have been significantly better than anything that anyone has ever seen before. Chief Berger, would you comment on whether or not you have seen any marked difference between before and after September 11, in terms of information sharing and cooperation?

Chief BERGER. Those are mixed reviews. Some communities have had some outstanding efforts, but I would say that the majority have not yet, that it has not filtered down to every community within this country.

Senator VOINOVICH. Who should be in charge of making sure that happens? Would you say that is a function of the new Homeland Security Department?

Chief BERGER. As far as the Bureau, I think that is the Director of the FBI. I think that is his sole responsibility to make sure that these joint task forces dealing with the FBI are, in fact, working cooperatively with every local law enforcement agency in this country, and that includes everyone—sheriffs, State people and local police.

Chairman LIEBERMAN. Thanks, Senator Voinovich. Senator Dayton.

OPENING STATEMENT OF SENATOR DAYTON

Senator DAYTON. Thank you, Mr. Chairman.

Mr. Smith, your comment about preferring to be a baron than a czar reminded me of when I worked in the seventies for then-Senator Walter Mondale of Minnesota. There was the saying then that Northern Senators run for President. Southern Senators are smarter. They become committee chairmen.

Take that admonition to heart, Mr. Chairman.

Chairman LIEBERMAN. Very kind of you. Thank you. [Laughter.]

Senator THOMPSON. But sometimes they do not last very long. [Laughter.]

Senator DAYTON. As I said at the previous hearing, my experience with government reorganization was in the Executive Branch of the State of Minnesota, so much smaller entities and numbers of people, but my experience there has been that reorganization of departments involves a short-term greater dysfunction, and then hopefully out of that a better function for the future, a better organization for the future alignment and better equipped.

So, if that is the case, and given that none of you are sort of overwhelming in your—and I share your view—confidence in government's ability to manage these huge systems efficiently, to be undertaking this task of reorganization at a time of national urgency and another shoe dropping from another national emergency, I think we are moving into necessary, but unchartered, and maybe even some turbulent, conditions. So I think it is essential we do it right.

And you used the word "architect," Mr. Carter, and I think that is a very interesting concept, both from the standpoint of somebody in that role and carrying this out, but also I think in terms of this Committee and Congress because we will not carry this out, but we can, by our design of this, I think facilitate the architect carrying it out or we can I think get in the way.

I am leading to my question. I want us to do it right. I want to see us create the opportunity for a genuine reorganization and not just a reshuffling of the deck and having people who are going to be performing the same tasks, the same functions. I know that all of the institutional forces that will weigh in day after day, once this entity falls out of the front page of the paper, are going to be preserving the status quo and preserving domains, and fiefdoms, and the like.

So how do we do our part to make this, give it the best chance to be true reorganization, rather than reshuffling? I will ask that of each of you.

Mr. CARTER. There is, as I understand it, being prepared by the administration as part of its submission, a management package that goes with its particular concept of the Department, but which could accompany any concept of the Department, including the one that this Committee has considered.

It is a management package which ensures that the Cabinet Secretary in the new Department really has the authority to get the job done. That is a very important package, from my point of view.

Senator DAYTON. What does that authority consist of, in your view?

Mr. CARTER. The ability to move people, to sort sheep from goats in the Federal service, to break ground and build buildings, and sell Federal land and buy Federal land. All of these things sound very mundane, but it is a big deal.

You have a very cogent concern, which is that every department head who 2 months ago was mainly concerned with doing the job of homeland security is now spending half of his or her day figuring out where they fit in the new Department of Homeland Security.

The Office of Homeland Security in the White House is mainly spending its time trying to set up the Department of Homeland Security, rather than being the architect. So we are all getting diverted, and there is a risk there, and we certainly hope the reward is big at the end.

Senator DAYTON. There is a hierarchy of human behavior, Darwinian, that applies in these situations organizationally.

The first is you are concerned about your individual survival. So you have got 170,000 people wondering, "Do I, individually, have a job and the like?"

Second, then, as you say, basic needs, organization, "Do I have a desk? Where am I in the hierarchy?"

And then you get to the realm of possibly interacting effectively with your fellow humans. So it is a big shift.

Mr. CARTER. I commend to your attention this management package, and I hope it is supported and maybe strengthened by this Committee.

Senator DAYTON. Does anybody else want to comment on this? Mr. Smith.

Mr. SMITH. One of the things that struck me, Senator, when I read the administration's proposal was the words they used to describe the functions assigned to the various officers. For one thing, it struck me as odd that the language just says the Secretary is the head of the Department. The specific responsibilities are then assigned to the various under secretaries, and the words that are used are not, as a former government lawyer, not very clear, and they do not give a lot of authority.

The under secretary—who is responsible for what we have been talking about here, intelligence—receives and analyzes, he assesses, he integrates, he develops. You do not get down to any real action verbs until the very last one, which is take or seeking to effect necessary measures. Now I do not know what that means, but when you contrast that to the language that the DCI has, he ap-

proves things, he promotes things, he protects things, he eliminates things, he is the head of the Intelligence Community. Just the tone of language struck me as quite different.

So one thing that one might think about is doing some of the things that we did in the Goldwater-Nichols Act, when I was working up here, was Congress gave very specific authority to individuals and held them accountable. To use a Marine term, they were "designated necks"; that is to say, a neck you get your hands around. I think that this draft submitted by the White House does not do that.

Senator DAYTON. Yes, sir?

General HUGHES. I would just like to add I think it is a very important observation. In my testimony I made the point that the two—the legislative bodies chartering and authorizing of this Department and the executive departments giving it authorities and responsibilities—should be matched and should be, hopefully, synergistic and reinforcing.

That has not, in my experience, always been the case in the past when we have tried these reorganizations. If you can do anything to assist that, I know that the people who do the work, after the documentary effort has been completed, would greatly appreciate it if they do not have built-in frictions and competitions to work with.

My last point is that the intelligence officer in charge of the intelligence function in the Department of Homeland Security is probably going to have to have within the context of the Intelligence Community, because it is different, some separate and distinct authorities and responsibilities. That also requires the same kind of focused attention.

Senator DAYTON. Mr. Odom.

General ODOM. I want to emphasize what Dr. Carter said about having control over personnel, resources, etc., and even organizational structure within. Look at what happened in the National Security Act in 1947. It was supposed to be a unification act, it was a proliferation act. We ended up with four departments instead of one.

This could turn out to be a multiplication of departments if you leave each one of these with authorities that the Secretary cannot really override, force personnel changes, budget changes, and those sorts of things.

Senator DAYTON. That leads me to the next question.

What I hear from local law enforcement and local government people in Minnesota is very much not even mixed; it is that they do not feel they are being communicated with, and they are given these added burdens. They are certainly having added costs imposed on them without being part of this front-line team.

We talk about consolidation with this Department. I am concerned that we are looking at something that is going to be increasing fragmentation, at least at that highest level. I saw today in the *Washington Times* the headline or the story that the Department of Defense now wants an intelligence czar, and that request has been sent to Congress. I still delude myself every day that I am a member of Congress. I have a lot of experience with the Executive Branch telling me otherwise, but even being on the Armed Services Committee I sort of thought that maybe that would be something

that I might be apprised of other than—I could subscribe to the *Washington Times* in the State of Minnesota and get my information.

It seems to me everybody is going to try to grab a bigger role, and they are going to grab theirs, and you have got the CIA and the FBI, these two major players, and others as well, who are not part of this at all.

I will start with you, Chief Berger, from the vantage point of a local government, front-line person. I see an increasingly bewildering array of who is in charge, who do I go to, who do I look to for information, and also who do we look to for accountability.

Chief BERGER. Certainly, from an outsider's standpoint, I do not see a team. I do not see a combination of, as we mentioned before, we have got tremendous people in high places and individual efforts, but I do not see a team effort.

One of the things that used to bother me greatly in my 28 years of experience in law enforcement, when I was a commander of a Robbery Unit in the Miami Police Department, we used to always hear the Federal people say we will get back to you, and that never happened. That needs to happen.

Again, I think that, certainly, at the local level and those sheriffs and police chiefs that are talking to you, I have been in the field. I have been to Tennessee, I have been to Mississippi, I have been to the heartland, and this same type of response is coming, also. Give me a plan, any plan.

So far, we are all anticipating—we are team players—we realize how important this is, but I guess there is just a frustration of when is it going to happen and let us see it happen. And every day goes by, and when I hear statements like we are going to have a terrorist attack, it is not if we are going to, it is when, and it drives us crazy because a lot of the emphasis is in response, and certainly we will be there, God forbid if it ever happens, but we have to be proactive too. Proactive means trying to prevent it from ever happening.

Senator DAYTON. Mr. Chairman, I see my time is up. Does anybody else want to respond briefly on this issue of consolidation versus fragmentation? Any advice?

[No response.]

Senator DAYTON. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks very much, Senator Dayton. Senator Durbin.

OPENING STATEMENT OF SENATOR DURBIN

Senator DURBIN. Thank you, Mr. Chairman, and I thank the panel.

I am a Member of this Committee, as well as the Judiciary Committee, and the Intelligence Committee, so I am getting a steady diet of conversation about this topic and trying to learn. I am humbled by the fact that I am an attorney by education, with a liberal arts background, who scrupulously avoided every course that had the word "management" in its title.

So here I am talking about management of the Federal Government, reorganization of the Federal Government and trying to learn as we go along. But I did take a few history courses, and

some of them have helped me to try to put what we are doing in some historic perspective.

In 1939, our scientists discovered nuclear fission. President Franklin Roosevelt created something called a Uranium Committee to look into the possibility of using this new scientific discovery for military purposes. According to historic reports, it did not get very far until December 7, 1941. Once attacked, a different mentality descended on Washington, DC. In August 1942, the President made an historic decision. He placed a project under the U.S. Army control, totally reorganized the Uranium Committee. It was called the Manhattan Engineer District, the official name. It came to be known as the Manhattan Project.

Here is the point that I find most interesting. The Manhattan Engineer District project's commanding officer, General Leslie R. Groves, was given almost unlimited power to call upon the military, industrial, and scientific resources of the Nation. He organized and spent about $2 billion in those dollars—$20 billion today—to build four bombs that ultimately brought the war to an end, over a period of time working in Tennessee and other States.

The reason I bring this up is that I want to step away from the box charts for a minute and address one particular aspect of intelligence, successful intelligence gathering, processing and sharing. This is a long intro, but there will be a question at the end, I guarantee you.

Six years ago, Congress said to the Immigration and Naturalization Service, we require you, we mandate that you set up a system to record the exit of any visa holder in the United States so that we can try to, at any given time, know the inventory of people with visas in the United States—6 years ago. The Inspector General for the Department of Justice reported to us 2 weeks ago in the Judiciary Committee they are literally years away, years away from being able to do that.

Congress, 3 years ago, said to the INS and the FBI, we notice that you are both collecting fingerprints. Is it possible to merge your databases of fingerprints so there is one common source—3 years ago. Still not done. Still years away.

Three weeks ago, the Department of Justice said, we think there are about 30 million visa holders in this country. We are going to start collecting photographs and fingerprints selectively from these people coming into the United States on visa for the purpose of intelligence gathering.

What do you think the likelihood is that we are going to do that any time soon? I sit here and look at what we have been through and believe that we are deluding ourselves into believing that we have the information technology capability to deal with the war on terrorism, and I see it every day, as the Director of the FBI tells us, that they still have not quite reached the level where they have something called "word search." Do you know any computer that does not have word search anywhere in America? Well, they have got them at the FBI. That is what they have.

So here is what I am getting to. If we are going to combine the intelligence resources and gathering of the Department of Defense, the Department of State, the Department of Justice, and a new Department of Homeland Security, would it not be just common sense

for us to establish a Manhattan Project when it comes to information technology, so that they can all converse with one another, share information and try to make the job more effective so that Chief Berger and his operations at the State and local level can deal with it as well?

I listen to all of this conversation about reorganization, and I still come back to those basic things. If we do not have computers that work at the FBI, and if they cannot communicate with the INS, how is this going to be done? I know some of you have alluded to this information technology in your testimony, and I appreciate any comments or response that you might have.

General HUGHES. I will be happy to start.

First, your characterization of this problem is, in my view, right, but it is not about the technology. The technology to do the things that you are talking about wanting to do is present and available. It is about parochial interests, managing and constructing the technology for their own purposes, as opposed to the synergistic larger effect of mission support across the government.

I, personally, have observed this over many years. I have not only argued—I have made the same argument you are making, but I have written about it and published it inside the government and outside the government.

May I just close by saying that I agree with you that a Manhattan Project for future technologies, especially information technologies, would be a good idea. I support it.

Senator DURBIN. Who would you put in charge of that?

General HUGHES. I, personally, would probably form an organization out of the scientific and technical structures of the National Reconnaissance Agency Office and perhaps a couple of other organizations in academia, the national laboratories and others. I would try to achieve out of this phenomenal expertise that we do have around the country a focused effort, Manhattan Project-style, for a few years to achieve concrete goals applying technology to real problems, one of which is the distribution and interaction of information.

But may I just say, sir, it is not about technology. It is about the management of that technology and the policy in which that technology is applied. We have hamstrung some technological capabilities because we protect turf, we have parochial interests, we do not have a broader vision.

Senator DURBIN. Thank you.

Mr. Chairman, I might say that I am working on legislation with our staff here on the Committee to try to pursue this and to try to determine who should be on top of this Manhattan-type Project. Sadly, as I reflect on it, it could be called the Lower Manhattan Project from the World Trade Center and what we went through. But it just strikes me that we ought to be making this part of our conversation about reorganization.

I do not know if any other members of the panel would like to comment. Mr. Carter.

Mr. CARTER. I just want to second what you said. The state of government information systems is a metaphor for the state of government management, in my opinion. It is not a technical question.

It is related to how poorly we manage in Federal public function compared to private functions.

Without burdening the new head of this agency too much, it would be nice if this new founding—our first new founding of an executive department of substantial scale for 40 years or whatever the right number is—was a poster child of how to do it right and not a poster child of how to do it wrong, and that is not going to happen automatically. This management angle, management package that goes with the who is in what boxes and what are they supposed to do package is absolutely crucial.

Senator THOMPSON. Mr. Chairman, could I comment on that?

Chairman LIEBERMAN. Please.

Senator THOMPSON. I think that is so important what Senator Durbin was getting into, and it is something this Committee over the years has dealt with, and it is something that is important for us all to really understand. It is that we are trying to set up perhaps one of the most important departments in government and to be a well-oiled, efficient, smooth-running machine that gives us information vital to our protection.

In the midst of a management mess, the most crucial things to the success of this legislation are things in which we are abysmal in as a government. They are all on the GAO high-risk list—information technology, financial management, human capital management, overlap, and duplication. All of the things that are so vital to this are things that we are awful at. Unsuccessfully, we have spent billions of dollars in the IRS alone trying to get a workable information technology system. But we think that we are going to pass this bill and solve that problem, which we are not. The stakes are much higher here than they are with the IRS.

Chairman LIEBERMAN. I agree with you, Senator Thompson.

I appreciate, Senator Durbin, the work that you have been doing with the staff. In our Committee bill, we had an Office of Science and Technology, and it may be a very good step forward to broaden that, to strengthen it. It could be on a parallel with DARPA in the Defense Department, which has played such a constructive part in stimulating technological development, incidently, with extraordinary nondefense commercial overlaps or expressions, but also really led to the generation of weapons that won not only the Cold War, but the Gulf War, and most recently the war in Afghanistan.

This is one of our great strengths. And you are absolutely right, we have not organized it and focused it to produce the kind of homeland security in this case that we need.

Thank you.

Senator DURBIN. Thank you very much. I would just say, Mr. Chairman—and I thank Senator Thompson as well—thank God there were no subsequent attacks of that scale since September 11. Had there been attacks on December 11 and March 11, I think the substance and pace of this conversation would be a lot different.

There was a wartime mentality after Pearl Harbor that said stop talking, stop delegating, let's get it done. We are going to give responsibility and extraordinary powers to the people to achieve that.

I hope that we will reach that level soon in this conversation.

Chairman LIEBERMAN. That really is our purpose. It is a very good point, and of course part of that is an expression of the fact

that this is a different kind of war. The troops are not out there visibly on the field contending, confronting one another, although we know, in most unconventional ways, for instance, by the arrest of somebody trying to come into the country or the occasional release of a tape from al Qaeda, that they are very much still out there, and we have to have that same sense of urgency.

Senator DAYTON. I think, again, this is this reconceptualizing of our mission.

Mr. Odom, you made the comment or he made the comment of the fact that terrorism is a tactic, it is not an entity per se, and certainly it is not a country as an enemy.

Your point, Senator Durbin, about INS not being able to tell us when people are leaving, I am told that there are a backlog of 4 million applications in that agency. I understand we have 5 million or maybe more, maybe less, undocumented people in this country, people that are here illegally every day, and we do not do anything about it.

So I think September 11 was the worst catastrophe, but reflecting this massive dysfunction. As you said so very well, pointing back to previous years where this Congress has mandated things, that things are not happening and not even in the realm of happening.

No matter how you want to recast INS as a subdivision of this Department or whatever, how is any of this going to change the fact that they are nonperforming this huge task? We are not going to know anything until they straighten that out or we figure out how to do that differently.

Senator VOINOVICH. Mr. Chairman.

Chairman LIEBERMAN. Senator Voinovich.

Senator VOINOVICH. I would like to follow up on what Senator Dayton has had to say because we are talking about this new agency, but it gets back to the incapacities of various agencies in terms of technology and in terms of human capital.

I began advocating legislation the first year I was here that would give the civilian side of the Defense Department the authority to offer early separation and early retirement to senior employees, and not lose the slots so they could reshape their workforce to reflect the needs that they have. The legislation eventually passed and something is happening.

Congressman Davis has introduced the Digital Tech Corps bill, which would allow private sector information technology professionals, the dot-com folks, to come work in the Federal Government for a couple of years.

If we do not really address ourselves to the technology and human capital problems in these agencies, we are doing our country a great disservice and lulling ourselves into believing that somehow this reorganization we are talking about now is going to solve the problem. It alone is not going to get the job done.

We must understand that we are going to have to spend more money on people than we ever have before, and people have not been given the priority that should have been given to them. For somebody to say, for example, that the Coast Guard is going to be able to get the job done without new people, we have to face things

as they really are and not just gloss over them and think they are going to be taken care.

Senator LIEBERMAN. Senator Carper, you are next.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thanks, Mr. Chairman.

To each of our witnesses, thank you for joining us today. I have just one question, I think a pretty simple one. Senator Voinovich and I are old governors, and we always focus on what is working, and I was never——

Chairman LIEBERMAN. Did you say old governors?

Senator CARPER. Old governors, yes.

Chairman LIEBERMAN. I just wanted to clarify that. No dissent. [Laughter.]

Senator CARPER. Was not so much interested in whether ideas were liberal or conservative, Democrat or Republican, I was just interested in what was working, and I know the same was true with him. I think we will have a pretty good understanding of what is not working out of what we do here with respect to these issues because we will have a repetition of the kind of disaster we experienced in September 11.

My question is, how will we know what we are going to do in this area is working, not whether it is not working? How will we know if it is working?

General HUGHES. I will start. One way we know is by success. We do have successes in the Intelligence Community; some very small ranging from interagency agreements and cooperative mechanisms to very important successes like stopping or interdicting hostile activity directed against us. Without going into the details of that, of course, you as Senators should know about some of that already in some forums. You should know about it in great detail. This is an inappropriate forum to get into some of the specifics but I think success, apparent, obvious success on the face of it is a measure of success itself. It sounds like it is saying the same thing here but you have to look at the event.

There are two other issues, I think, and one is that our country in broad terms, given unfortunate events, is secure, has been secure. One can argue there are many gaps, many shortcomings, many problems. I do not dispute that. But I do think that there are a large group of people and quite a broad array of organizations and functions being applied in the Federal, State and local environment to take care of the people of this country. You can see successful activities each and every day and you could observe those and make your own judgment about them.

The last issue I would make is that I know, and I hope that you know, and I think most citizens do know that there are many attempts, many more attempts to attack us, to strike us, to undermine us, to undercut us, to defeat us, and there have been over many years, that have been unsuccessful. Some of this may be chalked up to good luck, but most of it, in my view, is chalked up to very hard disciplined work by very good people who are dedicated and devoted to their country.

I am not talking just about the uniformed military. I am talking about policemen, intelligence officers, and politicians. I am talking

about all of us who in my view, by the way, do form something of a team, albeit it loosely organized without jerseys and perhaps no coach. But we generally kind of know what we are about here, and it seems to work on a very broad scale.

I would just rest my case that as bad as things are and as serious as the problems have been, and may indeed be in the future, we have to look on the margins at the fact that we are not being defeated broadly across the world. Indeed we are making a difference.

Senator CARPER. Thank you. Yes, sir, General?

General ODOM. I do not think there is a general answer to your question. I think there are some specific answers and I have heard an idea or two expressed by both you and Senator Dayton. Take the exit visas, the entry and exit business. If you finally get that answer you know you have made some progress. In the issue we were just discussing about IT, there are practical tests you could go out and do to show whether or not these agencies can communicate. So you can pick out particular things to test that will indicate some kind of major progress, but I do not see an overall measure.

Senator CARPER. Thanks. Anyone else? Mr. Carter.

Mr. CARTER. It is a very profound question, that is why I am bobbling here. A way of operationalizing it is, how will we measure the success of this Department? We cannot measure it according to whether it eradicates terrorist attempts because I am afraid they are part of our future because technology is putting destructive power into smaller and smaller numbers of hands, and we are all getting more interconnected and complicated and vulnerable. So this is part of the human story as far into the future as you can see.

Al Qaeda will be defeated and pass from the historical scene, but as we sit here today we have another unsolved terrorist attack from the fall, which as far as we know may not have been a foreigner at all but one of our own, maybe even a "cleared" one of our own. So this is sort of a syndrome of life and I think it is too much to expect that any reorganization is going to eradicate it.

I think there are two measures though that one can use. One is the one that General Hughes referred to, which is we ought to be able to break up developing plots and be able to exhibit a pattern of having done that. I think that can be done both domestically and foreign, but not perfectly.

But second, I think that the government needs to be able to explain to the public and exhibit through this Department that it is competent at this job of homeland security in some sort of general way. Remember, the terrorists in Germany of the 1970's, their objective was to discredit government, to show that it could not protect the people. We are kind of on the edge in all these visa fiascoes and so forth of the ability of the function of protecting the public to be discredited.

I think that if we get our act together and the new Secretary can exhibit a program of effort that looks competent, looks robust, looks well-rounded, then if we have another incident you say, OK, it is going to still happen, but we are doing a competent job here. Right now I do not think we can exhibit that competent effort.

Senator CARPER. Mr. Chairman, my time has expired. I again want to thank the witnesses for their responses and for helping us and our country on a real tough challenge. Thank you.

Chairman LIEBERMAN. Thanks, Senator Carper, for your profound questions which undoubtedly are a function of your age. [Laughter.]

If the members of the panel have the patience, I have a couple more questions that I would like to ask and take advantage of your presence.

First, Chief, I wanted to ask you, you gave us some real straight talk here earlier this morning in your opening statement about what you identify as barriers that exist to effective intelligence sharing between local law enforcement and the Federal Government. I want to give you an opportunity to just speak a little bit more about, particularly as we consider this legislation creating a new Homeland Security Department, what your best thoughts are about how to break down those barriers and to provide for a much more constructive and effective role for local law enforcement.

Chief BERGER. As I mentioned before and has been mentioned here, being proactive instead of reactive. Giving us the tools to go ahead and do the job, to go ahead and effectively measure threats, and hopefully eliminate those threats before they ever get to a situation where it is a threat to the actual citizens.

Intelligence gathering is extremely important. I think we do individually—and that is right down to the smallest department—do a good job, but we do not talk to each other. The intelligence that is gathered in Miami is different than is gathered in Minnesota or it is different in Los Angeles, it is different in New York. I think that is extremely important. Even so far as the forms that we collect this data need to be standardized. I think that is extremely important.

I think that, as I mentioned, the ability for notification. Again, within our groups we kind of smile and laugh, but we listen to CNN just as you do to get our notifications. It is still not taking place on a timely basis.

Security clearances—I know the director of the FBI is very adamant about trying to provide that. So far I think we have had about 400 over a couple thousand that were requested. It takes anywhere from 6 to 8 months supposedly to do these. I have suggested to him that we have many of the men and women who serve in law enforcement that are National Academy graduates, that went through this background check, sometimes years ago, but could easily be refreshed, in my opinion, and get these up so that at least if there was some sensitive information then——

And the local police chief or sheriff does not need to know what the military movements of al Qaeda or any group. We just need to know in our community if there is a potential threat, or if there are individuals in our community that need to be surveilled. We need to know that and not be, as I said before, we will get back with you. I think if we could accomplish those two main——

Chairman LIEBERMAN. How about the other end of it, which is obviously hundreds—I think you said 700,000 State and local police officers out there. How do we train them to detect information, activity by people that may in some sense relate to homeland secu-

rity, in a broader sense we are talking of it here, counter-terrorism, and then feed it into the department in Washington?

Chief BERGER. Again, not showing favoritism, but I know my State, Florida, Director Tim Moore of the Florida Department of Law Enforcement came together at the ground level, got together with the police chiefs, got together with the sheriffs. We have set together seven geographic areas. So we have reduced the amount of responsibility from the standpoint that we are all doing the same thing but it is done in a manageable amount, that we can get down to the smaller counties and communities and pass that information on. We need to find out who in fact are the experts that can talk plain talk, and not talk about potentials but actually say, this is what we should be doing. This is how we should be reacting.

We, too, recently had a symposium on smallpox, and unfortunately due to scheduling, whatever, the benefit of that was very minimal because we only had maybe a quarter of the room filled down in the local community. So we need to invigorate that, to say that on a time basis, this is critical, these types of things are critical, and try and get it down as close as we can.

The one area that is extremely—that was touched on here towards the end by, I think, Senator Dayton, the ability to analyze information on a technological basis: Extremely important. I will give you an example. I take great pride, a couple years ago my department was distinguished by *Computing* magazine as 1 of the 10 very best in the entire country. That is private and public sector. The average age of my IT persons is 28 years old. When we went to this meeting up at the NBC building to receive this award there were several large corporations there and we were talking and he said, how many people do you have dedicated to IT, and my IT manager said three. He goes, 300 people, that is amazing. My director says, no, three.

What I am saying is, the people are there, the ability is there. We have just got to think outside the box—I know it is an old cliche—and say, who best can analyze these things? It may be the private sector to come in and help us to put this together. But it is extremely important that the tools are knowledge and training. I have said this publicly, that those responders, many of them—and I know the chief in Boca Raton—he used to be my assistant chief—Andy Scott told me that when they went to the first site, which was the American Media publication house, that the men and women that entered that building, of course they had no idea initially what they——

Chairman LIEBERMAN. That was the anthrax case?

Chief BERGER. Yes. They had no idea what they were encountering. Unfortunately, those men and women need to have the inoculations and the basic training to identify those types of threats to hopefully save their lives or their potential lives down the road.

Chairman LIEBERMAN. We really want to work with the association. If you have any thoughts about how to include at least statements of goals, policy goals, or to help facilitate the interaction, Federal and local, we would welcome them.

Chief BERGER. Thank you, sir.

Chairman LIEBERMAN. Mr. Smith.

Mr. SMITH. Senator, I wanted to add just one thought on the issue of how you get the local policeman on the beat to know what is important to look for. I have given that a little thought. It seems to me that there needs to be—one of the reasons that I am attracted to the idea of creating a domestic security service is that they ought to have a relationship with the State and local police in such a way that there are people at the local level who have security clearances, who have secure communications, who see a certain amount of intelligence that is disseminated to them so that they will have a sense of what is important.

Then there has to be a dialogue in which the Federal Government says to the State and local people, here are the issues that we are worried about. We are worried about certain kinds of pathogens. We are worried about certain kinds of groups. We are worried about certain nations and certain kinds of issues. So that the cop on the beat knows what to look for.

Now it is not suggesting that we want the Miami Police to infiltrate some group that the Federal Government cannot, so there are some safeguards that have to be included in this. But there is really—as the chief said we at the Federal level have done a terrible job of finding a way to work with the State and local police to have this dialogue that goes up and down which would make us all more secure.

Chairman LIEBERMAN. That was very helpful. Thank you. My time is up. That means I am going to have to come back one more time. Senator Thompson.

Senator THOMPSON. Dr. Carter, I think you are the individual who mentioned the management portion of this bill and how important it is. I agree. I think it is very important. Part of what it does is gives the Secretary substantial flexibility to do certain things, including flexibility with regard to Title V involving personnel type issues. There has already been expressions of concern by employees' groups. They want to make sure that their rights are not tampered with, and nobody loses their job.

I take it none of you at the table really have a dog in that fight. I would appreciate your objective analysis of just how important that is because General Hughes mentioned, more than anything else really having the right people there is important? Does that not make this management portion, the one that gives the Secretary flexibility, even flexibility that is going to step on toes, or maybe especially because it gives flexibility to step on toes, is that not important?

No one is suggesting, that I know of, that the civil service system be abrogated, but the way that the bill is drafted now there is some uncertainty because it just simply gives the Secretary substantial discretion. What do you think about that bill in that regard? How important is what this bill is trying to accomplish? Dr. Carter, we will start with you.

Mr. CARTER. I think it is a terribly important, and I have a dog in the fight in the sense that I am a citizen and I would like to see this mission get accomplished right. If it is accomplished like many other Federal reorganizations that I have been closer to and witnessed, it is not going to make me feel safer. There are going to be people who are going to have to either get on board or get

out of the way, as the saying goes. And for some a place will not be found.

So I personally am for a very aggressive form of carrying this out and for giving the person carrying it out, the new Cabinet Secretary, as much authority as one can possibly give, and make this an example of how to manage right in the Federal Government, not an example of how to manage wrong.

Senator THOMPSON. General Hughes.

General HUGHES. I guess I am in general agreement with that, but I am mindful of the problem I have some experience with, commanding an organization made up of civilian and military people from all over the government. There are many variations in the civil service in the government, and indeed in the uniformed services. Not everybody gets paid the same. Not every personnel structure is graded the same. Not everybody has the same benefits, even though they do the same work.

I think that a careful approach needs to be taken to assure that people in the Homeland Security Department are appropriately rewarded and managed for their service there, but that's a we-they competitive environment, especially a negative one, is not somehow the result. So I know that this sounds like I am supporting you and have a different idea from you, and perhaps I do. I would just say, please keep that in your mind; there are differences. It is not all the same between organizations, and even sub-entities in the government.

Senator THOMPSON. We have given some organizations in government greater flexibility. There are flexibilities within Title V itself, and we have given some departments—the IRS, for example, greater flexibilities. When an agency gets in enough trouble, we give them additional flexibility. So it occurred to somebody somewhere along the line, if that is a good idea, maybe we ought to do it before agencies get in trouble.

So what this might turn out to be, I do not know. The question I guess is, in the legislation how much should we try to micromanage that, or say what the Secretary can do or cannot do. I think that balancing you are talking about is what he will have to do.

General HUGHES. Right. I hope you can apply great wisdom to this because I do believe there is a chance to build in reasons for friction.

Senator THOMPSON. Anyone else care to comment on that? Mr. Smith.

Mr. SMITH. Very briefly. To go back to something I said earlier. I was disappointed in the administration's draft, that the language was not more clear in terms of power that is given to the Secretary. I would give the Secretary much more authority to direct and execute than the current language does. I think that would go a long way.

I would encourage the Committee also look at other pieces of government where it has been successful: Goldwater-Nichols, which built in a variety of incentives to try to accomplish the objectives. The authority of the Director of Central Intelligence, some of his extraordinary authorities he has used well in the procurement

realm and in the personnel area, maybe those could be incorporated.

I think you have to give the Secretary—you really have to hand him the field marshal's baton and the support to carry it out.

Senator THOMPSON. Thank you. General Odom.

General ODOM. He has made most of my points. I agree with everything that has been said here and I would just endorse his ability to step on some toes in the personnel area. Also, to step on some toes in procurement areas. He is going to inherit a group of agencies, each with their own internal procurement systems, and their approaches, and their own favorite vendors, and that will be a huge problem to overcome in the IT area, which we discussed earlier. If he does not have the authority to over rule them, then I do not think he will succeed.

Senator THOMPSON. Chief Berger.

Chief BERGER. Senator Thompson, unfortunately I have to leave after this comment because of a plane I have to catch, but I think the emphasis has got to be domestic. Those men that were involved on September 11 lived, played, and communicated within our individual small communities. I think that is so important to remember.

Senator THOMPSON. Thank you very much.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator Thompson.

Chief Berger, thanks for coming up here. Your testimony was very helpful and we look forward to——

Senator THOMPSON. Excuse me, Mr. Chairman. Senator Stevens asked that we submit these five questions for the record addressed to some of these witnesses. If we could get these questions to the witnesses, would they be kind enough to respond to Senator Stevens?

Chairman LIEBERMAN. We definitely will, and we will leave the record of the hearing open for 2 weeks to allow for time for the answers to come in.

Chief, thanks for coming up here and we will look forward to continuing to work with you and the association.

Chief BERGER. Thank you very much.

Chairman LIEBERMAN. Senator Dayton.

Senator DAYTON. Thank you, Mr. Chairman. I would join with others in thanking the panel. This has been a very, very valuable session. I thank you, Mr. Chairman, and the Ranking Member, and your staffs for putting together in 2 weeks, two excellent hearings.

Before you all had the experience of being high-ranking officials in various intelligence agencies of the Federal Government—and I will never be an old governor. I will never be a former member of one of those entities, so my question is going to be, help me as an outsider understand what the mentality or the attitude is that I believe is part of this unwillingness to share information.

I have been appalled, in my limited experience here for a year-and-a-half as a member of the Senate, as a member of the Armed Services Committee, going to so-called classified and top secret and all this stuff, briefings, of what people think their—I really think sincerely, almost as you said, General Hughes, it is their patriotic duty to withhold the most innocuous of information. The informa-

tion that literally if you read the paper that morning or watched the news you would know walking into a meeting.

There is also a view of some I believe, it is almost like they believe in democracy philosophically, they just think that they should be the exception. There is really this, as I say, kind of a hardened attitude that anyone else who is involved in this tangentially is almost—like trying to get the Dallas Cowboys to share their playbook with the Minnesota Vikings. It is abhorrent, the thought.

So can you help me, if we are going to be structuring a system, I agree we should have an integrated, state-of-the-art communications system, information sharing, whatever else involved. But if we do not somehow crack the culture I am afraid we are going to be—we have seen the FBI, the Phoenix office does not communicate with the Minneapolis office. So to expect they are going to communicate with other agencies or communicate across these broad departmental fields, I think, is totally unrealistic, given what we know is current behavior. So if any of you can help give insight, and apply it to how we can, again, reorganize?

General HUGHES. I will start with a brief explanation of the construct. I hope I did not say that someone thought it was their patriotic——

Senator DAYTON. No, you said they were very patriotic individuals, and I agree with you.

General HUGHES. Yes, they are. I think this falls into the category of protecting the information from perceived risk by providing it to others. The more people you give information to, the greater the risk of it expiring or being no longer useful. There is a pretty good reason to believe that is an accurate perception. The more people that get it, the greater the chance of it being compromised.

That is especially true in the sensitive intelligence realm where the sources and methods that are used to collect the information are at risk merely because the information has been compromised. That, to a professional intelligence person, is anathema. We do not want to create that situation. That is part of it.

Another part of it has to do with policy and roles and missions. The Director of Central Intelligence produces intelligence for the President of the United States. The Director of CIA, who has that mantle too, is the same person, as was pointed out by General Odom. The Director of the Defense Intelligence Agency is responsive to the Secretary of Defense. He is a partner with the Director of Central Intelligence in doing the all-around mission of providing intelligence to the uniformed military, and so on. It kind of goes downhill.

At each one of those levels information, and the providing of information, the mechanism to provide it is akin to a power structure. Information indeed is power, and the structure to provide it represents a certain power base. So the black book that goes into the President is not seen by very many people, and it may indeed contain some unique intelligence that very few people get to see, for very good reasons.

Now on the end of an event, when it is discovered that that information was not provided to everybody and their brother or sister, there is a lot of criticism over that. But the truth is that if you pro-

vided to everyone in general form you would not have—the information would not be any good, and the sensors and sources and methods used to acquire it might be forever lost. So you have a Hobbs' choice here. We seem to have chosen to play the information conservation game, for very good reasons, as opposed to just providing it willy-nilly to everybody. I think it makes a certain amount of sense.

Senator DAYTON. Mr. Smith and Mr. Carter——

General HUGHES. I need to make one last point, if you do not mind.

Senator DAYTON. OK.

General HUGHES. That is that policy sets broad guidelines for providing information. The aegis of the information, and the context of it are not always fully accounted for in this broad policy. Without managerial intervention and exceptional activity to make sure the right information gets to the right people, the broad policy guidance that controls the information flow is often inadequate.

So I am laying the blame for mistakes, problems, and inadequacies in the information flow in part at the doorstep of the leaders who should manage the system, change the policy, intervene, and directly apply the information where it is needed, when it is needed. That is a leadership function and it must be done by leaders.

Senator DAYTON. Thank you. Mr. Smith and then——

Mr. SMITH. Very briefly, a comment and a suggestion. A comment: The FBI has particularly difficult problems in this area because it is currently structured as both a law enforcement and an intelligence agency, and for purposes of law enforcement, they must collect and maintain information in a way that ultimately can be used in court. That has roots in the Constitution and protection of the rights of defendants, and we all understand why that information has to be tightly controlled.

I think we can work a little harder at getting access to that for reasons of intelligence, but that it is a very real problem that the Bureau has to face and we need to recognize that.

With respect to a suggestion, it has been my experience that when the system works well when red-blooded American men and women are thrown together with a common cause and from different parts and told, go achieve a mission. We saw that in Grenade where things did not work but we figured out a way to make it work.

When I was at the CIA, John Deutch and Louis Freeh set up a series of task forces, and it was the first time the FBI and the CIA had ever done it. We set up a very small group of, I think, maybe five or six task forces, and we literally put CIA and FBI people in the same room and said, go after that target, go after this target. Suddenly the bureau would say, we have a source in that group. And we would say, tell us the name, but they would not tell us the name.

They finally would say, OK, it is so-and-so. My God, we know so-and-so from over here. But it was the simple step of getting committed officers of the Federal Government focused on a very real task. Not a theoretical task but a real task. People find a way to break through these barriers that have grown up over the years for whatever reason, and get the job done. That is one of the great fea-

tures of the American Government and of the American character, we do get the job done.

My suggestion is that as you structure this bill, try to build in some of those incentives, build in cross-assignments. Goldwater-Nichols, for example, as you know, said that nobody can become a general flag officer unless they have served in a joint assignment. As joint assignment, by the way, is a real joint assignment. So there are things like that that can be done statutorily, and I encourage the Committee to try to find some of those and crank them into the bill.

Senator DAYTON. Thank you.

Mr. CARTER. There is a third reason why intelligence is not shared, other than the two that I think have correctly been pointed out here, which are the need to protect the information for law enforcement or sensitivity purposes and just bureaucratics, and that is that the provider did not know that the other guy needed the information. That is an important point, to my way of thinking.

It gets back to what this Department ought to be. If this Department does not provide a strong customer pull, then it will not be serviced with information. Said differently, if you as a customer of intelligence do not articulate what it is you need to the Intelligence Community, it does not give it to you. That is certainly my personal experience. It is a two-way street. And you need to say this is what I need, and in that way little "i," good little "i" makes good big "I" possible. In other words, if you can paint a template, say this is the template I am looking for, then they can begin to provide the information.

I am from Philadelphia, and we never saw the night sky in Philadelphia. Every once in a while somebody will take me out in the night sky and say, "Do you see that? There is a horse with wings."

And I go, "Jeez, I do not see a horse with wings."

If you know you are looking for a horse with wings, eventually you will see it, but I never would have looked up and seen a horse with wings in the first place. So somebody needs to say we are looking for a horse with wings. Then the dots just might appear.

So we need to know enough about homeland security and the intelligence requirements of homeland security to articulate that to the Intelligence Community. Then maybe we will get something, and that is another job of this Department.

Senator DAYTON. Thank you. Mr. Odom.

General ODOM. Taking the paradigm that Dr. Carter just articulated very clearly, if you look at the user side, there is one thing he can do to make things flow better for him, and that is to flatter the intelligence suppliers. They do not get many kudos. When they get them, they become responsive. So it is not something you can write into legislation, but, a matter of operational practices. That is what will cause intelligence to flow.

Senator DAYTON. That is a good point. Thank you, all. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator Dayton, for some excellent questions and for your commitment to the work that the Committee is doing.

A final question/topic, which is the question of the White House office, and to go back a bit to the debate that you had before, the Committee's bill included a White House office, which we called the White House for Combating Terrorism, because we were concerned that, even after the Department of Homeland Security was created, nationally, and you had all of that effort going on together, there were still going to be parts of the counterterrorism effort, both in terms of homeland security and foreign security from terrorism that would be outside of the Department.

So we created the office in the White House which would include, and frankly in our bill we did not have an effective intelligence section, coordination section within the Department, so part of our vision was that might well occur in the White House office, but it would also bring in the State Department, the Defense Department, obviously, and perhaps have impact on other agencies such as the FAA, which was clearly directly involved in the September 11 matters.

We gave it some power so that, to use your terms, Dr. Carter, it was both a policy and a program office, which is that it was charged with working with the Secretaries who were on it to form a national counterterrorism strategy, but then the Director of this White House office had budget certification authority to try to coordinate budgets across the government related to counterterrorism and to sign-off or reject them.

The White House proposal, post the President's endorsement of a new Department, is not clear to us yet. Clearly, they want to maintain a White House Office of Homeland Security, but at least insofar as I have seen, they have not told us exactly what it would do yet if we create the Department.

So I wanted to invite some reactions, first from you. I know you have testified to this, and your written testimony gets to it, about having heard some of the cross-fire about the proposal and having allowed me to give you this brief history, whether you think, if we do create a strong Department of Homeland Security with an Intelligence Division in it, as we have described, whether we still do need the White House office.

Mr. CARTER. I, as I said earlier, Senator, do believe that we need both. I think your bill had it right. You do not solve the overall problem of architecture by creating a Department of Homeland Security. You do find a home for certain functions. You mentioned the intelligence function, which would not be appropriately done in the White House anyway, and now you give it an appropriate home and a focal point for it, but you cannot get away from the question of the inherently interagency nature of this mission, the inherently intergovernmental nature of this mission. Those are things that can only be resolved in the White House.

I, too, have not been able to get a fix on what the White House intends about its own White House office.

Chairman LIEBERMAN. Right.

Mr. CARTER. I will offer only one more thought. I have described what it is I think that office needs to do and the ineradicable need for it. The other comment I will offer is that you cannot do what I think it needs to do with a handful of White House staffers, however gifted they are. The program planning job is a substantial, in-

tellectual, and technical, and practical sort of task, so that you cannot do it with a few people out of the hip pocket.

Therefore, I think that, at least for a period of years, the White House Office of Homeland Security needs an attached capability, which I think of as like an FFRDC, the National Academy of Sciences call it a Homeland Security Institute, but something that gives a little analytical heft to this office.

Chairman LIEBERMAN. Yes.

General ODOM. Mr. Smith, General Hughes, have we convinced you at all of the necessity of such a White House office? I am happy to hear your arguments against it.

General ODOM. When you sit over in the NSC and you need analytic capability, what you generally do is get it from the departments, and you have to be skilled at pulling that analysis out of them. They do not necessarily want to give you what you want all of the time, but it can be often.

I would just say I do not think if you create something like this, that you will do a lot of damage, so I would not worry a great deal about trying to stop it, but I have difficulty seeing how the National Security Council and this thing are going to keep from stepping on each other. If it becomes that kind of a contest, which it will, this terrorism office will not be very effective, and the National Security Council will win the struggle.

Chairman LIEBERMAN. Yes.

General ODOM. And this is a national security issue. It is sort of hard to draw the line there. Now a National Academy of Sciences model, if you need an analytic capability, I had not really thought of that. That is entirely different.

Chairman LIEBERMAN. Right. Perhaps the question I want to ask you is whether the National Security Council can play the coordinating role that we have had in mind for the White House office for combating terrorism, which is to say to bring in not just the Department of Homeland Security, but the other departments that, in fact, do sit on the National Security Council that are not——

General ODOM. They do that all of the time. I mean, foreign policy, military policy abroad, intelligence policy abroad, these are as complex as homeland security, and the NSC does that all of the time between State, Defense.

By the way, the National Security Council seldom meets without having several other Cabinet agencies present. The Council can invite any official it wants to attend. Many of these meetings involve the Attorney General, and the FBI Director. As I mentioned earlier, when the issue of the money is in dispute, and the NSC can, but usually does not have much of an effect on the resource flows. But if they want to pull the Director of OMB in, and the NSC can get the President to give new guidance to the Director, then you will start moving resources around.

Chairman LIEBERMAN. Sure.

Dr. Carter, you would be skeptical about whether the NSC would have the kind of implementation capacity to do the things that you have in mind for the White House office and that we did when we put the bill together.

Mr. CARTER. Exactly, and the toes that would be stepped on by OHS, in my conception, would be OMB. Now that has not hap-

pened so far. OMB has worked with OHS, but to the extent it is about resources and capability building and not the policy du jour, which is what the NSC does, it is more like an OMB function.

Chairman LIEBERMAN. Right.

Mr. Smith and General Hughes, I will give you the last words.

Mr. SMITH. Senator, I wish to associate with General Odom on this. My concern is that if the Congress directs the President to create an office, that one President might like it and use it, the next President may not. My strong view is to let each President determine how he or she wishes to organize their Executive Office and line it up in the way that makes the most sense to them, given the personnel that they have, given their own leadership style and so on.

My experience is that Congress, over the years, has helped the President by directing him to create an office, and then it gets set up, and nobody pays any attention to it.

So I counsel, in a sense, they are both right. Mr. Carter is right that you have got to have that function, but I would leave it up to the President.

Second, Mr. Carter mentions the idea of an FFRDC or a national lab providing some analytical support. I happen to know that two or three of the national labs—I visited one of them recently—has focused on this very issue; that is to say, what can they do to provide the kind of analytical support to help the Nation prioritize things, understand what is going on and assign priorities.

There is a lot of exciting work out there, and I think maybe your staff or maybe even the Members might want to talk to some of the national labs about some of the things they are doing.

Chairman LIEBERMAN. Thanks. General Hughes.

General HUGHES. I would just take a slightly different approach in terms of functions. I would call the National Security Council a staff element, and I would say that they should exercise policy, development and oversight; they should exercise general oversight, perhaps; they should exercise National Security Council coordination and interaction; and they should exercise budgetary review.

Chairman LIEBERMAN. Over the various agencies having to do with counterterrorism.

General HUGHES. Yes. Indeed, they do that now, I think, over quite a few different agencies, but fed into the National Security construct selectively. It depends on the circumstances.

Chairman LIEBERMAN. So you would suggest that we might add those statutory responsibilities to the NSC?

General HUGHES. I do say that the NSC might—well, I think they already have several of these, in broad, general terms, in their statute, and I believe that they will apply them to a new Department unless someone stops them. But the reverse of this is the operational leadership construct, which the new Department would automatically assume when it becomes active. That means that it would be in charge of operational activities, and it would be in charge of budgetary development and carrying out the work of the Department.

So I would probably divide the line between leadership and operational activities, which are normal to all departments of the government, as far as I know, and a staff oversight function, a moni-

toring kind of function, for what would arguably be a very complex and difficult set of roles and missions. That is just my view.

My last point on this would be the National Security Council, interesting term, I am not sure that there is a National Security Council that does all of the things we ascribe to it. There are many other committees and groups, and I would point to something called the Principals Committee and the Deputies Committees working in the National Security construct, kind of a larger thought process here, where various heads of departments or deputy heads of departments come together to coordinate and interact on a specific issue for a specific purpose.

That function, with regard to homeland security, should be described and provided for in legislation, in my view. That is a very important issue.

Chairman LIEBERMAN. Very interesting.

General HUGHES. This is not covered by the umbrella term, the National Security Council.

Chairman LIEBERMAN. I thank each and every one of you. You remember the old saying, "there is no substitute for experience." You four have had it, and you brought it to bear in a most helpful and constructive way today for this Committee as we move to create a new Department of Homeland Security and perhaps a White House office.

I thank you very, very much for your time and your input. The reward for your good behavior is that we will probably be bothering you for the next month or so as we construct legislation to send to the floor.

The hearing is adjourned.

[Whereupon, at 12:50 p.m., the Committee was adjourned.]

A REVIEW OF THE RELATIONSHIP BETWEEN A DEPARTMENT OF HOMELAND SECURITY AND THE INTELLIGENCE COMMUNITY

THURSDAY, JUNE 27, 2002

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 1:03 p.m., in room SD–342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Akaka, Cleland, Carper, Carnahan, Dayton, Thompson, Collins, and Voinovich.

OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. The hearing will come to order. Good afternoon and welcome to the third of four hearings this Governmental Affairs Committee has held on the creation of a new Department of Homeland Security since the President endorsed that idea.

Today is the second day of hearings focused specifically on the relationship between the Intelligence Community and the new Department, and I am very grateful that the Director of Central Intelligence and the FBI Director are able to join us to share their knowledge and their insights, which will assist us enormously as we pull this legislation together.

We will also hear, after the first panel, from Judge William Webster, who has had the unique honor of serving as Director of both the FBI and the CIA. Then, finally, we will hear from Senators Bob Graham and Richard Shelby, the Chairman and Vice Chairman of the Senate Intelligence Committee, whose unique perspectives and experience will similarly improve our work.

Plainly put, it does appear that the failure of our intelligence and law enforcement agencies to collect and share and bring together in one place information prior to September 11 was one of our government's more egregious lapses. We are not in this chapter of our Committee's work, I want to say again, going to reorganize the American intelligence and law enforcement communities and fix all of their problems. That will happen in other places, and obviously under the leadership of these two gentlemen within the agencies that they serve.

But on this Committee, we do have a responsibility in designing a new Department of Homeland Security to guarantee as best we can that it has the best intelligence on threats to the American

people here at home so that the new Department can prevent attacks against our people and our homeland.

I am encouraged by Director Mueller's decision to reevaluate and overhaul the FBI's domestic intelligence gathering operations. I know that Director Tenet is also at work in various ways to improve the CIA, and I know that they are both working more closely together and the agencies are working more closely together in an organized way since before September 11. I commend both of you for those efforts.

I want to say that I am increasingly convinced, and the outstanding group of former intelligence and national security officials who appeared before the Committee yesterday confirmed this for me, that a new intelligence structure is needed for this new Department within the Department. The witnesses agreed that the new Department must have the authority not only to receive all terrorism-related information and data, including, on request, unfettered access to raw intelligence data, but also the new Secretary of Homeland Security must have the authority to task the intelligence and law enforcement agencies to collect information to conduct analyses in areas that the new Department and the new Secretary believe are critical to their work of protecting our homeland.

In President Bush's proposal, he does recommend the creation of an Information Analysis Division, or office within one of the divisions. It would be different from the picture that emerged in my mind from the testimony that this Committee has heard. The President's proposal, I think, envisions a more passive intelligence role for the Homeland Secretary through this new Information Analysis Division, focusing predominately, by some descriptions, on critical infrastructure. It does contain language that requires the President's approval before the Secretary of Homeland Security could obtain the raw data from the intelligence and law enforcement communities, which troubled many Members of the Committee at our hearing last week with Governor Ridge.

The President's proposal, leaves the FBI, CIA, and a handful of other intelligence agencies primarily responsible for uncovering and preventing terrorist threats on American soil pretty much as they are, to cooperate with this new agency, I think, is an important and helpful start, and frankly, added to this Committee's bill and its work in this particular area of intelligence gathering.

But I think from what we have learned from the ongoing investigations of the Joint Intelligence Committees, from other Committees of the Congress, even from media disclosures, we now have to move forward to strengthen the administration's proposal with regard to an intelligence section in the new Department of Homeland Security. That includes some very interesting questions about how best to staff the Homeland Department's intelligence unit with the most skilled analysts that would be needed for this kind of work.

So in all of these questions, I know that Director Tenet, Director Mueller, Judge Webster, Senator Graham, and Senator Shelby will be able to help us as we formulate an Intelligence Division within the new Department, particularly one that can work with the CIA and FBI.

I am confident as we go forward, and yesterday's hearing deepened my own belief in this regard, that we can find common legis-

lative ground here. This has not been, at least not yet, a confrontation with the kind of turf protection that many feared when the idea of a new department was first brought out, nor has it been a partisan debate. Thus far, I am very grateful to the Members of the Committee and proud that our pursuit is to try to agree on the best possible Department we can with the strongest powers we can give it to protect the security of the American people at home.

We will find common legislative ground. In fact, I think we must. That is perhaps why the divisions and turf protection that some feared have not happened. I think we must fulfill our constitutional responsibility to provide for the common defense as it has been redefined by the events of September 11.

My optimism for the future course of our Committee's work I base, in no small measure, on the strong cooperative working relationship I have had with the Committee's Ranking Member, Senator Fred Thompson, who I would call upon now.

OPENING STATEMENT OF SENATOR THOMPSON

Senator THOMPSON. Thank you, Mr. Chairman. I must say, as one who will soon be out of here, I think those Congressional turf battles are totally unnecessary and you ought to really resolve those things, next year at the earliest. [Laughter.]

Mr. Chairman, thank you very, very much for those comments and for this hearing today and inviting our distinguished panel here. I would ask that my statement be made a part of the record.

Chairman LIEBERMAN. Without objection.

Senator THOMPSON. I would just observe that you have laid out the issues here. We clearly are about a monumental task here in dealing with this homeland security issue and the new entity, new Department that we will be forming. We have, right off the bat, gotten into the realization that a very important part of what they will be doing is being one of the government's most important customers for intelligence. How they get that, the quality of what they get, and how they use that in order to protect this country is kind of focal to what we are doing.

We do recognize that many of us think we must do better with regard to our intelligence gathering, analysis, dissemination activities and our law enforcement capabilities, and I think we all recognize some shortcomings in that regard. You rightfully point out that dealing with all of that is not part of what we are trying to do, but we must recognize that as we move forward.

So we are dealing with a massive reorganization involving possibly 170,000 employees and 22 different agencies on the one hand. We are recognizing that as we go forward in the future, we need to address our intelligence and law enforcement capabilities on the other hand. In the middle, we are trying to decide how do we bring those two considerations together. So we are sort of skateboarding while trying to juggle, I guess you might say, in this massive endeavor. I am sure that is not beyond the Chairman's capabilities, but I find the prospect a little daunting.

I think we are off on the right footing. I think we will get this done, and although America may be working on it for many years to come and some of its details, I think we are on the verge of mak-

ing a really good first step toward making our Nation a more secure one and I thank you for your efforts in that regard.

Chairman LIEBERMAN. Thanks, Senator Thompson.

[The prepared statement of Senator Thompson follows:]

OPENING STATEMENT OF SENATOR THOMPSON

I want to welcome our witnesses today. Thank you, Mr. Chairman for inviting them. The issue of enhanced intelligence to support homeland security needs is a central one before this Committee. The bill to propose the President's Department of Homeland Security has as its first substantive provision the creation of a new intelligence analysis component.

We discussed the issue of intelligence- information sharing and the FBI and the CIA extensively, not just in the first part of this hearing yesterday, but also while Gov. Ridge was here last week. This discussion obviously could not be complete without hearing from the Directors of the two agencies represented here.

There is no shortage of opinions regarding the future role of the new Homeland Security Department in the Intelligence Community. Complicating this debate is the on-going discussion on how intelligence information should be collected, analyzed, and disseminated in the future. While these are two separate issues, we need to address them both in the near future.

Yesterday, the Committee heard from a number of experts, who discussed various ideas for reorganizing the Intelligence Community by combining part of the FBI and CIA into a joint counterterrorism center or perhaps creating an MI5 type of security service. There has also been some discussion of moving part or all of the FBI into the new Homeland Security Department, although I found it interesting that none of the experts yesterday recommended that course of action, at least at this time.

As I understand the construct of the Administration's proposal, the new Department will be a "customer" of collection services such as the FBI and CIA. That naturally raises some concern given the past dissemination problems in the Federal Government. We are told that the new initiatives in both the CIA and FBI now underway will result in an adequate sharing of information with the new Department, and that some of these other avenues may not be necessary.

Even if we solve the issue of information sharing between agencies, there are many other issues that confront our intelligence services and will confront the new Department as well. From the decay of our human intelligence to the upcoming retirement crisis facing all federal agencies, the difficulties we confront in reshaping our government to address the new threat environment are significant.

At the heart of any reform must be changes to the way the government does business. The President's proposal provides enhanced flexibility in the personnel, procurement, and property management areas. It may seem beside the point to touch on these issues today, but they are as central to what is wrong as intelligence issues. The inadequacy of information technology systems and the inability of them to talk within and across agencies will continue to hamper intelligence operations until we put an end to "stove piping." So I see management challenges and the need for reform as going hand-in-hand with intelligence reform.

Mr. Chairman, I look forward to the testimony of our witnesses today. It would be helpful to the Committee if the witnesses could discuss their efforts to correct the past problems on information-sharing and explain how the new Department of Homeland Security will receive the information that it requires.

I also look forward to the input of Judge Webster from his unique perspective as a past Director of both of these organizations.

Thank you, again, Mr. Chairman for holding this important hearing.

Chairman LIEBERMAN. What was that, skateboarding and juggling at the same time? I think we can do it with your help.

The record should note that part of my optimism about our capacity to bring all this together is that in his previous life, Senator Thompson in various movies played both the Director of the CIA and the Director of the FBI, and he played them with great distinction.

Senator THOMPSON. And with much greater pay, I must say, than here. [Laughter.]

Senator THOMPSON. Than either they or I am receiving at the present moment.

Chairman LIEBERMAN. Right. So he has been able to coordinate the work of those two agencies within his own person, which should give the two of you optimism that you can do it together.

Mr. TENET. Is that a straight line for us, Senator? [Laughter.]

Chairman LIEBERMAN. Senator Carnahan.

OPENING STATEMENT OF SENATOR CARNAHAN

Senator CARNAHAN. Thank you, Mr. Chairman, and thank you, Director Mueller and Director Tenet, for being here with us today. You both have very demanding jobs. When things go well in your agencies, they usually go unnoticed. And when things sometimes go wrong, it is front-page news. So we thank you for your dedicated service day after day, regardless of the circumstances.

This Committee has an important task before it, to create an agency with the mission of protecting our homeland. The task is more difficult in a world now where borders no longer bind our enemies. With new technology has come new threats and new challenges, as well. Trans-national threats require increased levels of intelligence coordination between those who collect information and those who use it, between Federal and local governments, and between the military and law enforcement. With better coordination, we will prevent our enemies from exploiting our vulnerabilities.

Our future also depends on a government with the human capacity and technical systems to identify and analyze terrorist threats and to act swiftly and with precision to eradicate them. To do that, our Intelligence Community must be staffed with the brightest people, equipped with the best technology. It must have the resources to act upon its mission and to think as our enemies do, beyond physical and diplomatic borders.

So with those thoughts in mind, I will later, when the questioning time comes, be addressing some questions to each of you. Thank you.

Chairman LIEBERMAN. Thank you very much, Senator Carnahan.

Senator Akaka, good afternoon.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman. I thank both of our witnesses in advance for your insights and for being with us here today. Your being with us give me greater confidence that we are moving in the right direction. To me, there are lessons to be learned from mistakes in the past, and we must apply these lessons to the future.

I know that your agencies will provide the proposed Homeland Security Department with the access, the participation and the intelligence it will need to carry out its responsibilities. Your service to your country is appreciated. I believe you are doing a great job in refocusing your agencies' efforts and lending your expertise throughout the government.

I want to ask the Chairman to place my full statement in the record.

Chairman LIEBERMAN. Thanks, Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

[The prepared statement of Senator Akaka follows:]

PREPARED OPENING STATEMENT OF SENATOR AKAKA

Timely and accurate intelligence is key to the success of the proposed Department of Homeland Security. A major problem is how to ensure that accurate intelligence is received by decisionmakers in time to do something about it. As we have seen with the investigation of what was known leading up to the attacks of September 11, a great deal of information was known about the attackers and their intent, if not their target. Yet, it was difficult to ensure that intelligence was provided quickly to the appropriate decisionmakers.

There is a worthwhile distinction here between information and intelligence. Information is what is received from various sources, for example human agents or electronic intercepts. Intelligence is what is derived from evaluating the different information bits. What we want to do with this new Department is to ensure that all the relevant information is collated quickly enough that an accurate intelligence assessment can be sent to the people who need to act on it. What we do not want to do with this new Department is to create an additional layer of clearance or interpretation which slows the process of assessing the information.

Several questions have already been raised over the intelligence sharing protocols proposed in the Administration's legislation. One question is the extent of the new Department's access to raw intelligence. Will the Department be a passive recipient of finished intelligence reports or will it have access to the raw information contained in the reports? Certainly sources and methods must be protected and creating a new Department may exacerbate this by expanding the number of intelligence users in the Federal Government. At the same time, the source of information can be useful in its analysis. According to the Administration's bill, the President will determine access to the raw information reports. There are legitimate concerns about whether or not this will ensure timely and adequate receipt of essential information.

According to a General Accounting Office report, there is no standard protocol for the sharing of intelligence information between state, local, and Federal officials. This will be the critical component in guaranteeing the effectiveness of this new Department. Much of the information about threats to our nation will come from local officials who become alert to questionable activities in their area. This new Department will have to ensure adequate training for these officials and provide for a prompt communications link.

It is important to note that the new Department will be a substantial producer of its own intelligence reports. Some of the agencies envisioned in the new Department, for example the Coast Guard, the Immigration and Naturalization Service, and Customs, produce potentially valuable information about potential threats. This information will need to be evaluated and provided to agencies which will be outside the purview of the new Department, especially the FBI and the CIA. This cannot be a one-way street. The Department will generate information helpful to other departments and we must ensure a swift process for evaluation and transmission.

Rather than duplicating existing analytical capabilities in the Department of Homeland Security, we should strengthen the analytical and information-sharing capabilities we now have. We need to identify ways to strengthen the structure and capabilities of the CIA's Counter-Terrorism Center. This includes ensuring that the analytical capabilities of the Intelligence Community can properly address the broad range of current *and future* national security threats.

We need to assess our foreign language and technical skills. Do we have the appropriate expertise for addressing asymmetric threats? Legislation that I and other Senators have introduced, S. 1799, the Homeland Security Education Act, and S. 1800, the Homeland Security Federal Workforce Education Act, seeks to encourage that we have adequately trained Federal employees in national security fields. Governor Ridge has mentioned that we may need to bring intelligence analysts out of retirement or academia. This is a short-term solution to a long-term problem and does not ensure that these workers have backgrounds adequate to meet the challenges posed by new threats. We need to ensure we have the long-term, in-house analytical capabilities to evaluate and interpret current and future national security threats.

I want to thank both CIA Director Tenent and FBI Director Mueller for their service to our country. I am encouraged that we have two such talented individuals who are willing to serve our nation so ably. Their experience and dedication will ensure that the problems which we face will be overcome.

Chairman LIEBERMAN. Again, I thank both of you for being here. Have you tossed a coin to decide who goes first? The senior member of the team?

Mr. MUELLER. The younger member of the team.

Chairman LIEBERMAN. All right. Director Tenet, you go first.

TESTIMONY OF HON. GEORGE J. TENET,[1] DIRECTOR OF CENTRAL INTELLIGENCE, CENTRAL INTELLIGENCE AGENCY (CIA)

Mr. TENET. Senator, I want to touch on two main areas, how the new Department fits into the Nation's approach to terrorism and what the Intelligence Community plans to do to support the new Department.

I strongly support the President's proposal. The Nation very much needs the single focus that this Department will bring to homeland security. We have a foreign Intelligence Community and law enforcement agencies, but we have not had a cohesive body responsible for homeland security. The President's proposal closes that gap while building bridges across all three communities.

It is clear that the new Department will not duplicate the roles of either foreign intelligence or law enforcement. The new Department will merge under one roof the capability to assess threats to the homeland, map those threats against our vulnerabilities, and take action to protect America's key assets and critical infrastructure.

In addition to ensuring that all domestic agencies respond in an integrated manner to tactical situations, ensuring a coherent response to specific threats, the Department will also have a much more strategic mission that will require a different kind of analysis, one that has access to both public and private sector data to ensure that the Nation's infrastructure is protected. There may well be some overlap and even some redundancy in evaluating what the Nation's foreign intelligence and law enforcement communities provide, and this is welcome.

But in the end, the Department's most important role will be to translate assessments about evolving terrorist targeting strategies, training, and doctrine overseas into a system of protection for the infrastructure of the United States. In other words, they will review the intelligence we provide and what Mr. Mueller and the FBI provides and develop an action plan to counter the threat. It is more than just countering each threat as it comes up. It is building a coherent, protective system that provides long-term deterrents.

We often have strategic warning about the imminence of a threat. We work hard but do not always have the tactical warning that identifies the actual date, method, and site of an attack. The new Department will build a protective system based on our strategic warning that serves to deter or defeat attacks when we lack tactical warning. As a result, the Nation will become more systematic, agile, and subtle, matching resources and strategies smartly to vulnerabilities.

We have learned, Mr. Chairman, one very important historic lesson. We can no longer race from threat to threat, resolve it, disrupt

[1] The prepared statement of Mr. Tenet appears in the Appendix on page 175.

it, and then move on. We must also evaluate whether we have put in place security procedures that prevent terrorists from returning to the same target years later. Just because a specific attack does not occur does not mean that category of targets is no longer of interest to terrorists.

Will this be easy? No. Is it necessary? Absolutely. The lesson in fighting terrorism is clear. The strategy must be based on three pillars: First, a continued and relentless effort to penetrate terrorist groups to steal secrets that can result in the tactical warning that is often so difficult to attain, the date, time, place of an attack; second, offensive action around the world—both unilateral and with our allies, to disrupt and destroy the terrorists' operational chain of command and deny them sanctuary anywhere; and third, systematic security improvements to our country's infrastructure directed by the Department of Homeland Security that create a more difficult operating environment for terrorists. The objective is to increase the costs and risks for terrorists to operate in the United States, and over time, make those costs and risks unacceptable to them. If there is no strategic security safety net at the back end, in the homeland, then we will be left in a situation where we and the FBI will have to be operationally flawless, in sports parlance, bat one-thousand every day.

We need to play offense and defense simultaneously. A strategic security plan that is based on integrated data sharing and analysis must close the gap between what we and our law enforcement partners are able to achieve.

Equally important, Mr. Chairman, the Department of Homeland Security, working with the FBI and the Intelligence Community, will provide State and local governments and their law enforcement entities the education and tools to use the resources at their disposal wisely. This means training and education that help them understand terrorist practices and what to look for. This means making priority judgments on what is most important to protect and how.

Let me turn to how the Intelligence Community will support this new Department. I see this support in three principal areas: Information sharing, connectivity, trade-craft development, education, and training.

Information sharing covers a broad spectrum of activity, from people to intelligence. Intelligence community experts in many disciplines already have close working relationships with many of the offices being brought together in this new Department. These will continue and will both expand and deepen.

We are committed to assuring that the new Department receives all of the relevant terrorist-related data that is available. This intelligence falls into two very broad and important categories. Reporting derived from either human or technical sources—these reports provide the basis for analytical assessments and are disseminated today directly to our customers. All-source assessment or finished analyses—these assessments prepared by intelligence analysts at CIA or elsewhere in the community include current reporting of breaking developments as well as longer-range strategic assessments. In addition to receiving these analyses, the new Depart-

ment may, like other customers, commission individual assessments or even participate in drafting the assessments themselves.

Information sharing also means locating key people from any agencies in each other's offices. For example, CIA's Counterterrorism Center already has 52 detailees from 15 organizations. Since 1996, the Deputy Chief of CTC has been a senior FBI agent and the FBI's presence in CTC has increased from 6 to 14 officers since September 11. CIA has sent key officers to FBI to establish a Counterterrorism Analytic Center. In each agency, these officers help steer exactly the right kind of information to their parent agencies. The Department of Homeland Security will have similar access.

In addition to this crucially important sharing of information, here are some other steps that we will take to give our fullest support to the new Department. In every possible case, we will provide intelligence at the lowest permissible level of classification, including sensitive but unclassified. Support to the extended homeland security audience, especially State, local, and private sector entities, will benefit from the release of information in this manner, something we believe should occur.

Databases can also identify and help stop terrorists bent on entering the United States or causing harm once they get here. We are examining how best to create and share multi-agency government-wide database that captures all information relevant to any of the many watch lists that are currently managed by a variety of agencies.

We need to make sure that the Department of Homeland Security and other members of the Intelligence Community are connected electronically. The Intelligence Community already has in place the architecture and multiple channels necessary for sharing intelligence reporting and analysis at all levels of classification. We will provide the new Department with our technology and work with them as they develop compatible systems at their end. This will make it possible for all levels of the broader homeland security community, Federal, State, and local, to share the intelligence they need and to collaborate with one another, as well.

We will help the Department develop the analytical methodologies, the trade craft, and the techniques they need based on our own vast experience in assessing foreign infrastructures. We will help the Department develop training programs for new analysts and users of intelligence through an expansion of our own analytical training programs.

This broad-based and dedicated program of support is founded in large part on work that has been long underway in the Intelligence Community and our greatly increased efforts since September 11.

In closing, let me repeat my pledge, Mr. Chairman, on behalf of the entire community to give our fullest support to the Department of Homeland Security. We see this support not as a change of mission but as an expansion of our mission. Fortunately, we already have underway many of the programs and processes needed to ensure the highest level of intelligence support.

Our counterterrorism mission for years has been to understand, reduce, and disrupt this threat. The new Department's mission will be to understand and reduce the Nation's domestic vulnerability.

This calls for an intimate and dynamic partnership between us, as vital a partnership as any in the U.S. Government. It will not be enough for the Intelligence Community to treat this new Department as an important customer. We are committed to bringing the Intelligence Community into a genuine partnership with the Department of Homeland Security. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Mr. Tenet.

Mr. Mueller, thanks for being here.

TESTIMONY OF HON. ROBERT S. MUELLER, III,[1] DIRECTOR, FEDERAL BUREAU OF INVESTIGATION (FBI)

Mr. MUELLER. Thank you, Chairman Lieberman and Senator Thompson and other Members of the Committee. Thank you for having us here today. The urgency with which this Committee is addressing the critically important issue of homeland security is appreciated by all of us who are engaged in this war against terrorism.

September 11 has transformed the Executive Branch, but most particularly, the FBI. Understanding this basic fact is essential in evaluating how the FBI fits into the President's proposal to establish a Department of Homeland Security and what we will provide to ensure that this new Department gets from the FBI what it needs to succeed. That is our obligation. Or to put it more bluntly, the FBI will provide Homeland Security the access, the participation, and the intelligence necessary for this new Department to achieve its mission.

Let me back up a little bit and go to the immediate aftermath of September 11. We began taking a hard look at ourselves in the FBI to see how we in the FBI could become more collaborative, more flexible, and more agile. Even before September 11, we knew we had to fix our antiquated information infrastructure and also unbridle our agents from overly burdensome bureaucracy.

Much has changed since then and much more is in the offing. While I would be glad to discuss the details of what we are about, our most basic changes complement the homeland security proposal in very fundamental ways.

Simply put, our focus is now one of prevention, and this simple notion reflects itself in new priorities, different resource deployments, a different structure, different hiring and training, different business practices, and a substantially different information architecture. More importantly, it is reflected in how we collect, analyze, and share information.

For example, in the aftermath of the attacks of September 11, more than half our agents were working on identifying the individual attackers, their international sponsors, and along with other agencies, taking steps to prevent the next attack. Today, we are at double the amount of our pre-September 11 commitment. But regardless of what that permanent number ultimately may be, what is important is that we will apply to prevention whatever level of resources—indeed, the entire agency, if necessary—to address the threats at hand, and we will do so in the context of the current multi-agency effort.

[1] The prepared statement of Mr. Mueller appears in the Appendix on page 184.

In addition to committing manpower, September 11 has triggered a wide range of organizational and operational changes within the Bureau. There are three I would like to note, the first of which is the expansion of our Joint Terrorism Task Forces throughout the country. Second is the creation of a National Joint Terrorism Task Force in Washington, DC. The third area that I would like to discuss is the substantial increases in our analytical capacity. All three are designed to promote better information sharing and will directly complement and support the new Department.

The Joint Terrorism Task Forces are chaired in 56 regions of the country by the FBI, and those task forces include members of other Federal agencies, such as INS, Customs, ATF, and CIA, as well as State and local law enforcement. Homeland Security would be included, as well. The importance of these task forces is that they have transformed a Federal counterterrorism effort into a national effort creating a force multiplier effect and, indeed, providing effective real-time information sharing among the participants.

The national complement to these local or regional task forces is to be the National Joint Terrorism Task Force. The National Joint Terrorism Task Force will bring a needed national perspective and focus to the local task forces. It will consist of both the FBI as well as eight other agency detailees and, of course, will include the new Homeland Security Department. The task force will complement both the FBI's and the new Department's analytical efforts and the inclusion of other agencies allows for the real-time sharing of information at the national level with all of those participating agencies.

On the analytical side, to be blunt, pre-September 11, our analyst numbers were woefully inadequate. The effect not only was inadequate operational support, but also an inability to finish and timely disseminate intelligence. Thanks to considerable help from Mr. Tenet and the substantial resources that Congress is providing, our ability to identify, analyze, and finish and share intelligence is becoming much improved. This will very directly help Homeland Security and the CIA, but equally important, it will give us the actionable intelligence we need to support our own investigations.

Of equal importance to the FBI putting its own operational house in order is our relationship with the CIA. Even before September 11, it was much better than it had been 5 years ago, but since September 11, it is much better still, although our challenge is to continually improve, particularly in regard to information sharing. As you may know, Mr. Tenent and I jointly brief the President each morning on pending terrorist threats, and the positive consequences of a more robust relationship between us are found in FBI agents working at Langley and CIA officers at FBI headquarters, as Mr. Tenet has already explained.

We produce a daily threat matrix 7 days a week, jointly. We exchange briefing material each day, all to ensure that we are working off a common knowledge base. I would also say that CIA officers have joined us in several of our Joint Terrorism Task Forces around the country, and that is going to increase. I would also expect them to participate, quite obviously, in the National Joint Terrorism Task Force.

Finally, our legal attaches overseas are working ever more closely with their CIA counterparts in ways that was unimaginable before September 11.

I spent a few moments on the FBI's post-September 11 operational characteristics and our relationship with the CIA for a purpose. My experience since September 11 has only served to cement in my mind the need for a new Department of Homeland Security. And although the FBI and the CIA are operating at higher levels of operational efficiency and connectivity, there still remains a need for an agency that is committed to improving, and in some cases building from scratch, a defensive infrastructure for America and its borders.

Given the daunting challenge that will face Homeland Security, the question naturally arises as to what intelligence capability the new Department requires. The FBI's view on this matter is quite simple: Whatever it needs to properly do its job. It seems the President's formulation in his proposal strikes us as the proper formulation. The new Department as a matter of course will receive all FBI finished intelligence analysis and such raw intelligence as the President deems that it needs. Experience also tells me that the participation of Homeland Security on Joint Terrorism Task Forces, the National Joint Terrorism Task Force, and with us at FBI headquarters will prove to be as valuable as anything else we do to ensuring a common knowledge base.

Further, the proposal complements the reorganization we are well along in implementing at the FBI and vice-versa. So, for example, as part of a changing culture, a senior CIA official participates in my daily case and threat briefings and CIA officials and analysts are included throughout the FBI's counterterrorism structure. The reverse is, likewise, true. We have, as Mr. Tenet pointed out, a number of agents, some in top positions, over at the CIA. This is to ensure that the CIA sees what we see and to ensure all information gets acted upon swiftly. I would expect Homeland Security to be equally integrated and equally participatory.

Discussions of the FBI's relationship with Homeland Security have also raised the issue of whether the Counterterrorism Division of the FBI should be transferred to the new Department. For the reasons laid out more extensively in my statement, my view is, no, that that would not be a wise idea. At the very least, such a move at this critical moment would disrupt our ongoing battle against terrorism, and as we all know, al Qaeda is active both abroad and at home. The FBI's counterterrorism team, intertwined with and supported by the rest of the FBI and in concert with our colleagues in the CIA, has a substantial number of open, ongoing counterterrorism cases that we are working on on a daily basis.

I do believe it would be a mistake to assume that our counterterrorism efforts are in some way discrete from all other criminal and counterintelligence work that we do. Often, plots are disrupted by employing every available Federal criminal statute, such as credit card fraud, smuggling, health care fraud, and the like. It will be even harder to separate that function from our criminal and counterintelligence informant base should there be a shift of responsibility.

Further, even with our focus on prevention, much within our counterterrorism effort will always be somewhat criminal in nature and it is supported by FBI functions, such as its forensics laboratory, surveillance capabilities, technical capabilities, 56 major field offices, 400 regional offices, and 44 offices overseas, and all the information collection and information exploitation that these represent.

We should not forget the FBI's working relationships with over 16,000 police departments and law enforcement agencies not only in the United States but also around the world.

And lastly on this point, I think it perhaps prudent to remember our history and the fact that our domestic intelligence collection must be grounded in an agency that is steeped in the constitutional protections afforded our citizens, and perhaps also it is important to note that it is under the watchful umbrella of the Department of Justice.

In sum, while the fear is that this new Department will not get the information it needs, I believe we are doing that which will ensure that it does and in ways that reflect the practical realities of information collection and law enforcement. Old rivalries and outdated equities went by the wayside on September 11. I believe what we are doing will work, reflects the most practical arrangement, and I have every expectation that the President and Congress will monitor this closely to ensure that it accomplishes that which it is set out to do.

Thank you very much, Mr. Chairman, for the opportunity to make this statement.

Chairman LIEBERMAN. Thank you, Mr. Mueller.

Thank you both for thoughtful, helpful opening statements.

We will now have questions by the Committee and have 7-minute rounds of questions.

I want to thank you, Mr. Mueller, for what you said at the end. It complements, of course, what Director Tenet has said about the extent to which the agencies are cooperating post-September 11. Pre-September 11, whatever lack of communication that existed was unacceptable. It becomes intolerably unacceptable after September 11. The American taxpayers invest billions of dollars, literally, in the agencies that you represent. We have a right to expect that you are sharing information, that you are pooling resources to get the maximum benefit out of the investment we are making to protect our security. So I appreciate the steps that the two of you have taken in that regard since September 11.

I have some other questions that I will come back to, perhaps, in a second round, if we have one, or later in this round, but I want to focus in on the Department of Homeland Security, or whatever we call it, the Intelligence Division of that Department, and talk about what your responsibilities and authorities to it should ideally be.

It is clear that it should at least have analytical capacity with regard to intelligence, and of course, all of this is to provide the Secretary with the intelligence to allow him to take steps with others in our government to prevent terrorist attacks, or other attacks, on our security from occurring, so that the Intelligence Division would have analytical capacity to consider both what you are send-

ing it, the two of you and other agencies, and, in fact, what it gets from within its own agency. It will, if it goes along the lines that we are contemplating now, have within it the Border Patrol, Customs, and all agencies which generate what might be called, and is, intelligence information.

The second question, then, is: Beyond what you choose to send it, what else does it have a right to ask of you? And let me ask you to focus first on this question that perplexed us at the hearing with Governor Ridge last week, which is that it appears in the President's bill, he gives the Secretary the authority to request raw data on certain subjects, but only with the President's permission. So this struck us as odd, that you would go from the Secretary up to the White House over to CIA, FBI, instead of horizontally. Give me your sense of why that is so and whether it should be so?

Mr. TENET. First, Senator, let me start with one of the things you said. It is not a question of what you choose to send, because the way the system works from the intelligence side today is you automatically disseminate, push the button, over 9,000 products every month to this universe of customers who care about terrorism, from reporting to analyses.

Now, to your question——

Chairman LIEBERMAN. OK, that is an important point.

Mr. TENET. There is an automatic——

Chairman LIEBERMAN. General Odom talked about that yesterday from his time at the National Security Agency.

Mr. TENET. There is an automatic flow of information across the government in all of these categories of information today, and indeed, the Office of Homeland Security today is a recipient of this same kind of information.

Chairman LIEBERMAN. And, naturally, a new Department would be on the list.

Mr. TENET. The same——

Chairman LIEBERMAN. Just give us a sense—obviously, I am not asking for details of particular reports, but what kind of information flows in that automatically?

Mr. TENET. Sir, there are, first of all, all your finished reporting, all your reporting regarding what have human sources told you, what technical sources have told you, and then the finished analysis that we basically take all those first two categories and write finished product. That goes to you, in addition to the reporting produced by the Defense Intelligence Agency, the State Department, the regional security offices. So there is a very rich body of information that flows automatically to that.

Chairman LIEBERMAN. Distinguish that, for our benefit, from what we have come to call raw data.

Mr. TENET. In our business, let me help you think about that. The raw piece of this data is who is the source and how did you collect the information. That is the thing you hold on to in the most rigorous and disciplined of terms.

Now, there may be an instance where you walk in and tell the Director of Homeland Security that I can tell you unassailably this is our best reporting source. You can take his information to the bank. We should immediately launch the following set of actions. And the Director may say, or the Secretary will say, "I would really

like to know who the source is." In this instance, this is an issue I would want to talk to the President about because the system, the way it works today, we give you so much texture about the source and their reliability and their access in the context of reporting that going that extra mile and protecting that holy piece of information is something we have to do relentlessly.

Chairman LIEBERMAN. So you would say that the necessity to get Presidential permission only goes to disclosure of the source, not to the content of the report?

Mr. TENET. No, sir, because the content is already in the finished product that the Secretary has received, or in a specific collection method that you want to protect and sometimes you disguise.

Chairman LIEBERMAN. Forgive me for interrupting. This is a point that has come up before at the Committee. There is an assumption, I think, or an interpretation here that what goes to the customers of your two agencies is analysis, in other words, analyzed information rather than the raw information from which the analysis is drawn. And, therefore, the Secretary of Homeland Security might in some case want to see the raw data that was behind the analytical report you sent to him.

Mr. TENET. In fact, what he sees is two categories of information. You see the product from the raw—from the meeting with the asset. You see the product from the transcript of something that is technically collected and it is all in a report. It is the facts and nothing but the facts. And then what you also provide the customer or the Secretary may be a finished analytical assessment that takes that report and a number of other reports and puts them together to give him texture and story about what that single report may mean.

Chairman LIEBERMAN. OK.

Mr. TENET. He will get both categories.

Chairman LIEBERMAN. Let me allow Mr. Mueller to get in here now.

Mr. MUELLER. Let me talk about a different type of raw material. If we are investigating an individual, or a group of individuals, we will get telephone toll records. There will be bank records we will pull in for financial analysis. There may be grand jury transcripts. There may be wire transcripts. All of that, I would consider to be the raw data.

I will tell you that the provisions of the PATRIOT Act that now allow us to provide to others in the Intelligence Community grand jury information has opened up a vast category of information that we now can provide to the Intelligence Community that we could not before. But what we have not had in the FBI previously is that capability of taking this information, extracting the information, and producing reports for the rest of the community.

And what our new analytical capability will do is extract from a grand jury transcript, from a wiretap, from what we call a 302 report of an interview, that information so that we can do what the Intelligence Community does——

Chairman LIEBERMAN. What they have been doing all along.

Mr. MUELLER [continuing]. Which NSA or CIA has been doing and provide that material to not only the CIA, NSA, but also Department of Homeland Security in the form of the report.

Chairman LIEBERMAN. Right. With regard to the necessity for Presidential permission, do you have the same understanding that Director Tenet does, that the permission would only be required if you were asked by the Department of Homeland Security for the source of the information?

Mr. MUELLER. I think we can provide to the Director of Homeland Security 99.9 percent of what they want in terms of reporting. I can extract from a wiretap transcript that which is necessary for Homeland Security to look at. If there is an ongoing operation, for instance, ongoing investigation that is time sensitive and to disclose individuals' names might hinder that, and somebody wanted the name and the specifics of it in a different agency, that is something that I would look at and might have some concern about and that is where it would go over, I believe, to the White House, not necessarily directly up to the President, but to the Homeland Security Advisory.

Chairman LIEBERMAN. Can I ask the indulgence of my fellow Committee Members? One of the points raised yesterday, and I think it is particularly with regard to the Office of Intelligence that you have established, Director Mueller, is to give the Secretary of Homeland Security the authority to task you to do something. What are we thinking about? He has reason to be concerned about X port of entry into the United States, or ABC University, and, therefore, Mr. Director of the FBI, the Secretary of Homeland Security, and I, request that you send your agents out to collect information there. I presume you have no problem with that?

Mr. MUELLER. I would not give a blanket "yes" to everything. There may be areas in which it is contrary to our guidelines, contrary to what we think is constitutional, but generally, cooperatively, if there is a tasking, of course, we would try to provide the information that is necessary.

Chairman LIEBERMAN. We may want to give that authority to this office in the statute, just to make it clear.

Do you want to have a final word?

Mr. TENET. On tasking, in the normal course of our exchanges every morning with the senior policy makers, they will always ask for, "Can I have more data or more analysis on the following subject?" It is a natural occurrence, Senator. It is just the way we do our business.

Now, you raise an important question about, operationally, the direction of assets and people overseas. That direction comes from the President for the national Intelligence Community and the priorities he sets and the guidance he provides us. So on operational matters, there are today, in the way Mr. Mueller and I work this, there are operational matters that get surfaced when people are looking at how we are deploying people, but nine out of ten times, they will leave the operational judgment to us about how to take care of a specific case or instance. They may have a view, and we inform them on a series of things that are sensitive and they should know about, but that operational judgment is usually left to us because it is operational and requires a professional judgment.

Chairman LIEBERMAN. Thanks very much. My time is definitely up. Senator Thompson.

Senator THOMPSON. Thank you, Mr. Chairman.

Gentlemen, we, of course, are not the oversight Committee for either one of your organizations, but as we indicated earlier, what you do is relevant to the new organization, so I would like to discuss with each of you very briefly in the broadest terms a couple of issues that are very broad-based, but I think important.

Director Mueller, one of the issues here that you addressed has to do with whether or not something different should be done with the counterintelligence part of your operation. Some people suggest it ought to be brought within the Department of Homeland Security. Others suggest we need a new MI5-type organization. I understand your feelings and position on that.

But if we leave it where it is now, I am wondering how you address those who point out the obvious difficulties that you have. You are making a major transformation within the FBI. Your three top priorities that you have now were nowhere near the top just a few months ago. You are making massive shifts of personnel from traditional FBI work, such as violent crime, drugs, and things of that nature, into counterterrorism. We all understand that.

We had several witnesses at our hearing yesterday, but one in particular talked about the issue of whether or not the FBI can perform both its old missions of after-the-fact crime solving and its new prioritized mission of before-the-fact activities and whether or not the FBI can perform both missions effectively. The FBI apparently will have to revamp completely its investigative approach and require the retraining of many agents.

Here is what this gentleman said yesterday. Compartmentalization is required in order to do effective law enforcement but is anathema to effective intelligence. The rules that the Bureau must follow for law enforcement investigations are simply inconsistent with good intelligence. Law enforcement looks backward to solve a crime that has been committed. Evidence must be painstakingly gathered and analyzed and protected from disclosure in order to find and arrest criminals. The fewest number of people must be given access to the information, not only to prevent leaks, but also to assure a fair trial for the defendant. The prosecutors must be able to comply with the rules of criminal procedure on issues like discovery and disclosure of information to the defense counsel.

Intelligence, on the other hand, tries to look forward. Its job is to collect as much information as possible, analyze it, try to predict what will happen, and disseminate that analysis to the widest group with a need to know.

So again, you are taking on that burden at a time of massive transformation and you very candidly acknowledge the deficiencies and gaps and difficulties that were present before September 11 within your Department. You are making major efforts to do something about that.

Do you acknowledge this difficulty, and if so, what is your answer to those who make those points?

Mr. MUELLER. I think those points are somewhat overstated. I think what we have out there is 11,500 agents who are very good collectors of information. In the past, 70 percent, not the counterintelligence side or the counterterrorism side, but 70 percent on the criminal side have looked towards taking the information that they

gather and putting it into a courtroom. But they are superb collectors of information that can now go into the intelligence side of the house.

We have had in excess of 6,000 agents immediately after September 11 pulling together every piece of information in this country relative to September 11, but most particularly relevant also to assuring that there would not be a second wave of attacks and working on prevention. We now have 2,000 agents who are doing that.

I do not believe there is an agent in the FBI that does not understand today that part of his or her responsibility is taking up every piece of information and provide it to the centralized intelligence database so that it can be used for a much more predictive approach to prevent the next attack.

Senator THOMPSON. Let us move, then, from the agent in the field, the capabilities of the agent and the training that might be necessary to the organization or the line reporting part of it, and let me give you a hypothetical situation. I will ask you how this is going to work and how it might be different than it would have worked before September 11.

Let us say you have an agent in Phoenix, Arizona, who reports up the fact that there are some suspicious activities with regard to an individual with potential al Qaeda connections. The information is solid, but it is a suspicion. There is no evidence of a crime. You have got that scenario. How would that be handled today, and just so it is not turned into a trick question, I will ask you simultaneously the second part of that hypothetical situation.

Suppose, in addition to that, you have got information that this individual was also a suspect in a bank robbery in Phoenix in order to get money to finance their (al Queda's) operations. You could pick any kind of Federal crime, but let us just say it is a serious one, a bank robbery.

You have a before-the-fact scenario that you are all too familiar with now. Now you have an after-the-fact traditional FBI scenario. How would that be handled? Where and by whom would that be reported? To whom? Where would the lines cross within the agency? How would that be handled?

Mr. MUELLER. I will tell you, before September 11, in Phoenix, what we call electronic communication from Phoenix would come to headquarters and perhaps, depending on the circumstances, go elsewhere. Before September 11, we operated as 56 separate offices.

What we had to do and we are doing, and actually what we have done is put into place enhanced management collection at headquarters so that something like the Phoenix memorandum now would come up through the ranks at headquarters, would go to our new analytical unit as well as being in the operational unit, and that portion of the memorandum that relates to the possibility of terrorists going to flight schools would be extracted, put into a report, and sent around to the community.

Additionally, the analytical capacity that we did not have before would look at that and see if there are any other reports out there relating to flight schools. And as it tasked, depending on the quality of the technology and how soon we put in the bank robbery re-

port, it would have picked up the fact that this individual is also a suspect in the bank robbery.

Senator THOMPSON. Say the bank robbery memo came in a week later. The only commonality, as I understand, would be the name. Would the name do it?

Mr. MUELLER. Our current technology, not unless you went back and made another search for that name 2 weeks later. In the future, when we have the technology where you could put in there, OK, you hit on this name on thus-and-so date. If that name enters the database down the road, that particular agent or somebody has to be notified, then the technology would kick it out.

Senator THOMPSON. My time is up. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator Thompson. Senator Carnahan.

Senator CARNAHAN. Thank you, Mr. Chairman.

I believe Director Tenet mentioned this earlier, that we need to develop better interoperability between the networks of foreign intelligence agencies like the CIA and law enforcement agencies like the FBI. Since the revelations of the breakdown in communications between the FBI and the CIA, what efforts have been made to improve the compatibility of your computer systems between your agencies?

Mr. TENET. On our end, Senator, we have in place, as I mentioned in my statement, we do have a communications architecture with multiple levels of transition—of transmission, the most classified information and then lower levels, and we are hooked up to the FBI and 46 other agencies and a total of 80 subcomponents of those 46 agencies. So at the most highly classified level, we disseminate all of the product I talked to you about to a broad array of individuals and it will get bigger.

This also is based on the principle of obviously creating communities of interest using technology, so rather than get inundated by data, you can carve out of this data stream the things you, as an analyst at FAA or another agency, are most interested.

So we have pushed that information out and we are connected. I think what Bob is building is the connection from his field to his center so that he will be able to transmit in the same way and potentially use the exact same network for all of us to do it in with the same modern technology that connects everybody.

We have worked a long time on this and have made great strides and this all started way before September 11 and it has come to fruition in a very good way for us.

Mr. MUELLER. I think from my perspective, I have spent time over at the CIA. I would say that the CIA is ahead of us in terms of upgrading its information technology. We are in the process of upgrading that information technology to allow us to transmit digitally reports that we would be developing on our intelligence. But we are not where I want to be.

In the meantime, we are doing it with personnel. Having CIA individuals in the FBI seeing our information gives us that connectivity today that I hope to have technologically tomorrow. So we are doing what I believe is necessary to have the interchange of information until such time as we can put into place the technological improvements that are necessary in the Bureau.

Senator CARNAHAN. To what extent does your centralized intelligence database have the capacity to analyze data and to make links and connections and see patterns?

Mr. MUELLER. It does not have any capability for artificial intelligence. You can query it with basic queries. One of the deficiencies is if I put my name in, Mueller, M-u-e-l-l-e-r, you have to put it in explicitly. It will not pull up any variations, M-u-l-l-e-r, that type of search capability.

We have a basic search capability in our major database, but it is not what I would want, and we are migrating that database to a much more modern database that not only will give us the search capabilities, but also will enable us to exchange digitally information between ourselves and the Department of Defense or CIA or the like and we are working on that second stage of connectivity digitally. But the fact of the matter is that I have to build up our own capability before I can reach that second stage.

Senator CARNAHAN. One final question. Certainly, Americans are very concerned about their physical safety now, but I do not think we can ignore some other vulnerabilities we have, as well. We certainly did a good job with Y2K, but cyber security is certainly an ongoing concern.

In your estimation, does the Department of Homeland Security need a special unit that is focused on cyber security, and what other resources does the Department need in order to protect the country from cyber attacks?

Mr. MUELLER. We have what is called National Infrastructure Protection Center, NIPC, which has three components. One of the components is an investigative component. We have agents around the country who are part of that investigative component and that, it is anticipated, will stay with the FBI. And in NIPC are detailees from Department of Defense, Secret Service, the CIA, all of the community.

There are two other components that are proposed to go over to Homeland Security, and they are the warning and alert section as well as the outreach section to private industry.

But in my view, the investigative part of NIPC, that is, that which requires not only the technical investigation, those individuals who are computer specialists and know how to use sniffers to go up the line to determine who has launched a denial of service attack, that technical capability has to be coupled with the agent in the field who can go out and interview the individuals who may have those computers who have been used for the launch of denial of service attack. And, consequently, that integration, that investigative integration, I believe should stay with the FBI. However, the other components should go with Homeland Security.

Senator CARNAHAN. Thank you very much.

Chairman LIEBERMAN. Thanks, Senator Carnahan.

And that, in fact, is the proposal, both in the Committee's bill and the President's bill, I believe, on infrastructure protection, that the so-called outreach parts of NIPC go to the new Department.

Mr. MUELLER. I believe it is, and the legislation proposed by the President, I am not certain in the Committee's bill because originally it was kept together, and I know when the legislation came

up, it did carve out the investigative part of it. So I am not certain whether it is in the Committee's bill that way.

Chairman LIEBERMAN. Thanks. Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman.

Gentlemen, I am pleased that both of you have recognized that we need not only reorganization, but also reform, and that if we have reorganization without reform, we are not going to get the job done.

I am interested in how the new Department would deal with your two agencies on the issue of cyber terrorism. There was a report in the *Washington Post* today that suggests that al Qaeda may be targeting our computer systems, and it goes into some detail about a flaw in a data transmission standard that the FBI concluded could have been exploited to halt "all control information exchange between the ground and aircraft flight control systems."

In the area of a possible cyber attack, how do you see your two agencies interacting with the new Department? One of my concerns is, who is on first? Who has the lead? How are we going to avoid confusion over lines of authority and prime responsibility in areas that are large, complicated vulnerabilities? Director Mueller.

Mr. MUELLER. There is an investigative piece of any cyber attack in which you have to determine the originator of the attack, whether it is an individual or a country or a terrorist or what have you, and it is an investigative piece that requires a variety of investigative capabilities. You need the computer expertise. You also need the investigative expertise because behind every computer is an individual. And I would expect us, the FBI through its NIPC center, to provide that expertise in conjunction with Homeland Security, which would be looking at and have the expertise in looking at the particular networks, whether it be the electrical backbone or power plants or ports or what have you and we would be merged.

One of the items that we contemplate is that when we move portions of NIPC over to Homeland Security, we would move a number of FBI agents. We would have FBI agents detailed over to Homeland Security so that there would be connectivity, as we have agents back and forth with the CIA. And whenever you have something like that in this day and age, because the globe is so small, because it is not just within a State, it is not just within a region, it is not just within the United States, it can be global, you have to work with other partners to accomplish the goal.

I think we would take the investigative lead, but we would do it jointly, understanding what the vulnerabilities are as established by the Office of Homeland Security.

Senator COLLINS. Director Tenet.

Mr. TENET. I think for the foreign Intelligence Community, the range of questions that the Director or the Secretary of Homeland Security would have is what do you understand about the capabilities of this particular group? Is there State sponsorship involved? Can you map back to the point of origin of the attack? What can you tell us about their capabilities, all of which gets fed in. And the critical piece of analysis that gets done by Homeland Security is in concert with working with service providers and companies, what

is the specific vulnerability to the infrastructure of the United States and how do you fix it?

We can inform you about the tools that are being used, the intent of the attack, whether there is someone that is bigger than a terrorist group involved, what the technical capabilities are, and that gives you the road map for somebody doing the analysis here out of Homeland Security about this infrastructure to say, this is how we have to plug the hole.

So, actually, the system works for us quite naturally today and we will pass all that information over to the new Secretary.

Senator COLLINS. Director Mueller, you testified that you thought that the Counterterrorism Division of the FBI should not be transferred to the new Department. One of our witnesses yesterday proposed the consolidation of existing counterterorrism divisions of both the FBI and the CIA into a single National Counterintelligence Center that would not go to the new Department but rather would be under the control of the Director of Central Intelligence. I would like your opinion of that proposal.

Mr. TENET. I think it is a mistake. I think that what we need, that operational and intelligence and law enforcement fusion will have to occur between our organizations. As you operationally work cases and chase people around the world, somebody has to be responsible for aggregating the domestic private sector and public sector data to fix the vulnerabilities that we enunciate or find, and I do not think you want to reside all of that domestic information in an intelligence organization. I just think it is a mistake.

Senator COLLINS. Director Mueller.

Mr. MUELLER. Terrorism is something new in this way. Prior to terrorism, we had intelligence, and the intelligence part of the FBI would look at Russia or other countries and their intelligence officers and try to determine where they are and then the sanction there would be kicking somebody out of the country, persona non gratis, or opening an espionage case. On the other hand, you had the criminal side, which was locking up people who commit crimes.

Terrorism is a hybrid. On the one hand, there are threats against the national security which require the use of the intelligence tools, but for terrorism, you also need a sanction. In other words, what are you going to do with a person that you have in the country who you believe, and you have sufficient evidence to believe, is conspiring to commit a terrorist act? Do you lock them up? You have got to have some sanction.

In my mind, it is a combination of intelligence and law enforcement. The sanction may well be, if the person is out of status, that the person be deported. But then what we have to do and that which we have not done altogether that well in the past is when we have somebody who may be deported who is a potential terrorist, we have to work very closely with the CIA so we have the pass-off, which is what we have since September 11. If somebody leaves the country and we think they are important, whether it be worldwide or in the United States or some particular country, there is a pass-off to the CIA.

Getting back to the original question, I do not believe that separating our collection ability in the United States from the law enforcement option makes a great deal of sense.

Senator COLLINS. Director Mueller, my time has almost expired, but I want to very quickly ask you one final question. I understand that the FBI has established what I refer to as the terrorist watch list. I believe the formal name is the Project Lookout Watch List, which is intended to make sure that agencies have access to the same kinds of information on people who may be seeking access to our country.

In conversations that my staff has had with the State Department, I have been told that the FBI and the State Department are still having trouble sharing information because of database incompatibility. Is that accurate?

Mr. MUELLER. I am not certain which particular watch list we are talking about. I know there is the project for doing record checks before someone is granted their visa and there had been some bumps in the road there.

We have a separate watch list that are individuals whom we wish to be notified if they are picked up, if they are stopped by a police officer or something, which is separate and apart from what is done with the State Department. I believe as of now that the sharing of information between the FBI and the State Department in terms of doing the record checks has been evened out and should not be a problem, but I will check on that.

Senator COLLINS. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator Collins. Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

Director Mueller, the gaps and duplications, that exist within our Intelligence Community are being addressed in part through the creation of a single Homeland Security Department. And as you have testified, the FBI is undergoing a major shift in mission and priorities. Given your agency's new focus, do you believe the FBI should have a seat on the National Security Council along with the Secretaries of State, Treasury, and Defense?

Mr. MUELLER. What in practice happens is to the extent that the National Security Council is addressing a law enforcement issue, particularly one that relates to something overseas, we sit. So I am not certain whether it is necessary to change the Presidential directive. I am not even certain whether it is statutory or the Presidential directive establishing the National Security Council, to assure a seat at the table. The practicalities of it are to the extent that there is something that we can be helpful on, we have a seat at the table.

Senator AKAKA. Then let me ask you, would you change the makeup of NSC to include the Director of the Homeland Security Department?

Mr. MUELLER. I can speak as Director of the FBI. On the National Security Council, I do not think it ought to be changed. There has never been an occasion where I believe that law enforcement, whether it be the Attorney General, the Deputy Attorney General, or myself, has been left out of a meeting in which law enforcement was a substantial topic.

Senator AKAKA. Thank you. Director Tenet, yesterday, the GAO issued a report on efforts to control the smuggling of nuclear and radioactive material in foreign countries. The report noted, "the current multiple agency approach is not the most effective way" for

the United States to monitor and control the movement of materials that could be used in "dirty bombs."

There appears to be agreement since September 11 that the government's reliance on a multiple agency approach for security poses significant weaknesses, which is why I support Senator Lieberman's bill. You note that we need a "coherent protective system," and I agree. Given your broad range of experience, are there traps that Congress should avoid in drafting legislation to create this new Department?

Mr. TENET. It is an interesting question. I think I would like to think about that, Senator. I do not have an answer off the top of my head for that.

Senator AKAKA. Director Mueller, how will the reallocation of the field agents impact State and local law enforcement, especially since the FBI announced last week that the crime index rose for the first time in 12 years? I am curious, because the statistics show that crime in Honolulu rose 4 percent over the past year. Although you have addressed the importance of the Joint Terrorism Task Forces, I remain concerned as to how the FBI will balance its traditional law enforcement functions and its new responsibilities for home security. Would you comment on that?

Mr. MUELLER. Surely. What I proposed is the shifting of 480 agents from other programs to doing counterterrorism after determining that we needed the permanent shift of 480 agents. Of those 480, 400 will come from the drug programs, and where we have 10 or 15 individuals on an OCDETF, Organized Crime Drug Enforcement Task Force, we will be drawing back to fewer agents. Where we overlap with the DEA in investigations of Colombian or Mexican cartels, we will try to eliminate that overlap. For State and locals, to the extent that we in the past have been willing to pick up stand-alone methamphetamine cases, Ecstasy cases, and the like, we probably will not be as willing to do that in the future.

In terms of violent crime, I am suggesting that we move, I think, a total of 59 agents, and again, we participate in violent crime task forces around the country. I believe it is critically important that to the extent that the FBI can bring to the table special skills, capabilities to address violent crime in our communities, we should do so. The 59 agents that are being reassigned will come off of task forces. Where we had five or ten agents on a violent crime task force, we will draw back to maybe five or four, with a lesser number. My expectation is that, hopefully, that will not cause a substantial deterioration in our ability to work with State and locals to address violent crime.

There is one other aspect of it that in my mind is critically important and that is that when we sit and work with State and local law enforcement on violent crime task forces or other task forces, we are developing the relationships that are critically important, not only in addressing violent crime, but also addressing terrorism and other threats to our communities.

Senator AKAKA. Mr. Chairman, my time is almost up. I have one more question. Director Mueller, I agree with your assessment that there needs to be a new level of intelligence awareness among Federal employees and a willingness on their part to come forward with information that may assist in the war against terrorism.

However, as Chairman of the Federal Services Subcommittee and sponsor of legislation to strengthen the Federal whistleblowers statute, I also know that employees fear retaliation when disclosing information they have uncovered.

I would appreciate your insights into how we can ensure that employees are protected from retaliation when reporting intelligence concerns to superiors or to Congress. Do you believe employees in national security positions should be covered under the Federal Whistleblower Protection Act?

Mr. MUELLER. I believe there ought to be strong protection for whistleblowers. On, I think it was November 6, I sent out a memorandum to every FBI, whether it be support or agent, expressing the strong view that whistleblowers will be protected, that there cannot be any retaliation.

One of the things that I do, to the extent that a person believes that he or she is a whistleblower, I alert the Inspector General from the Department of Justice so that is a separate track in terms of monitoring the fact that the whistleblower will not be retaliated against, and I think I have made it clear that in the FBI, we need to embrace criticism, as hurtful as it may be, and to learn from it. I believe the message should be a strong one that goes out from the top to everybody in the organization and that in the Department of Justice, that the Inspector General gives an additional assurance that whistleblowers will be protected.

Senator AKAKA. Thank you very much. My time is expired.

Chairman LIEBERMAN. Thanks, Senator Akaka. Senator Voinovich.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. Thank you, Mr. Chairman. I apologize for not being here for the early part of the testimony.

Director Mueller, former General Electric CEO Jack Welch insisted that if GE businesses were not No. 1 or 2 in global markets, they would not be part of GE. His point was that you have to pick just a few priorities and do them extremely well.

Director, I am concerned that the new FBI has too many top priorities, nine in all, ten if you include the goal of upgrading the FBI's information technology. Simply stated, I do not see how the Bureau can do all of them and do them well, given your workforce and your budget.

As you know from a letter that I sent to you, I have met with the group that represents your employees and they have indicated that for almost a dozen years, they have been looking for a new compensation system that gives them the competitive wherewithal to keep and attract people at the Bureau, deal with the problem of retirement in the near future, with one-third of your people leaving, and then the problem of locational pay, where some of your agents around the country have to go 60 miles outside of metropolitan areas in order to find someplace to rent property and so forth.

So in addition to the top three priorities, which are focused on preventing terrorism and other foreign action against the United States, while the remainder are more traditional law enforcement functions, it seems to me that these functions require different cul-

tures and mindsets. Do you think it makes sense to place such different missions in the same agency?

Mr. MUELLER. I look at our agents as collectors of information. Now, that information can be transformed into evidence that is produced in a trial. That information can be gathered, put in reports, whether it is interviews or wiretap tape and surveillances. It does not make any difference whether it is intelligence or criminal. They are information gatherers, and I think they do a superb job at it.

What we have to do in the Bureau is to give incentives to those individuals who are doing counterintelligence and counterterrorism in new ways. In the past, the measure of success in the Bureau often is how many arrests have you made? How many successful prosecutions have you had a hand in? In the future, that which we have to do to assure that our No. 1 and 2 priorities, counterterorrism and counterintelligence, and the third one, defending against cyber attacks, become the leading priorities is to change our reward system to make certain that those agents who go into those fields understand that it is appreciated and that those individuals are rewarded.

I think, though, at the bottom line, we are collectors of information and I think we do it exceptionally well and I do not believe that, given the priorities, and I think it is a fairly simple list of priorities, that I think we can handle it. I will tell you that every 3 to 6 months, I will be looking at either shifting resources or coming back to Congress and asking for more resources if I thought we could not handle one of the priorities.

Senator VOINOVICH. It has been discussed around here for years: Do you need a compensation system that is tailored to the specific needs of the Federal Bureau of Investigation?

Mr. MUELLER. I think we could benefit by a compensation system that would assist us to obtain some of those individuals that have the skills that are very much appreciated not only in private industry but in government but are paid substantially better on the private side of the house.

I will tell you that one of our problems is, as was pointed out before, is that having people come back to headquarters—and what you want is the best and the brightest, the leaders to come back to headquarters to lead the organization, whether it be in counterterrorism, in counterintelligence, and there is a disincentive to come back to headquarters because of the price of housing here and because of——

Senator VOINOVICH. May I just interrupt you—one of your best people came from Cleveland.

Mr. MUELLER. A number of our best people came from Cleveland. [Laughter.]

Senator VOINOVICH. The Committee Members ought to know that he gets, each month, $26 more in his paycheck since he has moved to Washington. From Cleveland, Ohio, to Washington, that is it.

Mr. MUELLER. He just came back, Mark, yes.

Senator VOINOVICH. It is a big job, and $26 more a month, moving from where he was to Washington, DC, is inadequate.

Mr. Tenet and Mr. Mueller, this government of ours is not facing up to the reality that to get the best and brightest people and hold

them in government, it is going to require a whole new look at the way we manage our personnel system. We cannot continue as we have anymore if we expect to get the talent that we need to get the job done.

Mr. Mueller, we had the President of the International Association of Police from North Miami here yesterday. I asked him about the task forces that you have set up. Now, I have met with some of your agents and they are talking about their task forces and how there is great communication back and forth, and I asked him to give me his appraisal of what was going on. He said that it was not that good, that maybe there were a couple of them around the country that were really working well, but from his perspective, and from his colleagues' perspective, the kind of information sharing and teamwork that is needed is not as good as it should be.

I just wondered, have you tried to evaluate whether or not those task forces that you have set up for the exchange of information are making a difference and whether they are working?

Mr. MUELLER. Yes. I have talked extensively with State and local law enforcement around the country. I think there are some areas when it is not working as well as it should. But I believe that, generally across the country, I have had substantial positive responses on the task forces.

The issue of information sharing is frustrating, and there are two separate issues. The task forces, the joining together to run down leads, to sit at the same table, to exchange information on the task forces, I think is going pretty well. There are spots in the country where it could go better. There are always, when you have 56 offices around the country, you will have one or two or maybe more offices where the relationships are not what they would want to be for a variety of reasons. But generally, I think it is going fairly well.

The information sharing is frustrating because there is so much information, some of which is classified, some of which cannot be shared, and there is always the belief out there that we have more information than I think we, in fact, do. And I think if I have heard it once, I have heard it a number of times, that once we give clearances to a police chief or a captain in a police department and they see what they have, they come back and say, gee, I did not need this clearance. You do not have what I anticipated you had.

But there is a great deal of frustration out there at the State and local level in terms of the information sharing. I would agree with that.

Senator VOINOVICH. The only suggestion I would make is I would certainly do an evaluation around the country and find out which ones are really working and then share that information with the other ones that people feel are not working.

Mr. MUELLER. Good. Will do.

Senator VOINOVICH. Thank you.

[The prepared statement of Senator Voinovich follows:]

PREPARED STATEMENT OF SENATOR VOINOVICH

Thank you, Mr. Chairman. I commend you and Senator Thompson for your cooperation during these important hearings. We are truly fortunate to have two out-

standing Members leading our Committee's examination of the Federal Government's largest restructuring initiative since the Truman Administration.

Today we continue to examine how the relationship should be structured between the new Department of Homeland Security and the Intelligence Community. Yesterday, our Committee received testimony from witnesses whose professional expertise and background gave us much to consider as we work on the President's Homeland Security proposal.

I would like to extend a warm greeting to today's distinguished witnesses, which includes FBI Director Robert Mueller, III, CIA Director George Tenet, Judge William Webster, Senator Bob Graham and Senator Richard Shelby.

I am certain this all-star line-up will provide the Committee with additional insights on what is needed to ensure that the proposed Department of Homeland Security can interact effectively with our Intelligence Community to handle national security information with the utmost care while making sure information is shared with those who need it to provide for our defense.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator Voinovich. Senator Dayton, you are next.

OPENING STATEMENT OF SENATOR DAYTON

Senator DAYTON. Thank you, Mr. Chairman.

First, gentlemen, I would like to express my appreciation to both of you for shouldering a magnitude of responsibilities on behalf of our country. I think only a handful of other people have to bear these responsibilities, so thank you.

Director Tenet, you said at one point, talking about this agency and others, that they need to do their jobs effectively or you have to bat a thousand. You almost have to bat a thousand anyway. One of the areas that is of primary concern, and would be a primary responsibility of this new Department, is immigration and the fact that we have five million, more or less, undocumented individuals in the country. Obviously, it makes both of your jobs enormously more difficult, to assess who is here and who should not be here.

Therefore, do we need this new Department to be doing something different from what it is doing now, something new that no one else in government is doing now, or do we need it to do its existing functions more effectively, or some combination?

Mr. MUELLER. I think we have to do both. In terms of keeping track of individuals that are within the United States, the Attorney General announced an initiative several weeks ago in which we will be keeping better track of certain persons coming into the United States, but also persons that leave.

One of our big problems is we are so open, so broad, such a wide open country that we, unlike other countries, lose track of people once they come within our borders and we are taking steps to try to assure that does not happen in the future, but it is going to take a period of time to do a better job of tracking individuals once they come into the country—these are visitors to the country—as well as identifying when they leave the country.

Senator DAYTON. Director Tenet.

Mr. TENET. The only thing I would say—I am not an immigration expert, but I think this new Department has to look at visa policies, how they are applied, how people come here, the number of countries that you can travel from, to the United States, without a visa. All of these things have to be looked at coherently because you will never get enough manpower to track people around the country.

So it is not an issue that I am an expert in, but you need to think about this in layers from the overseas to the border to who gets in and you need to think through all of those systems in place and you need redundancy in understanding who is here and that is a very difficult question in terms of the number of people who are out of status at any moment in time, the rights that they have under the law, the ability you have to deport people. It is a very complicated picture.

We have always been a country that has accommodated a great many people and it has been very successful for us and generations of immigrants have come here. I think we just have to look at this differently than we ever have to protect ourselves and I think this new Department will undertake that.

Senator DAYTON. I meant the question both specifically and generally. Let me go back to another part of my question. In terms of what, if anything, this agency needs to do that is new or different from before, Director Mueller, you referred to the mission of the Department as the defensive backbone of the country. You talked about its function of being preventative and anticipatory. Is there something outside of what you and others are doing now that needs to be done.

Mr. TENET. Sir, the most important new thing that needs to be done is the systematic assessment of the country's vulnerabilities without regard to the daily tactical "chase the threat." There are all kinds of infrastructure targets in the country, from your air system to your rail system to your water system.

This group of people who populate this office have to have a unique ability to work with the private sector and the public sector to understand what the real vulnerabilities of that infrastructure are and to design smart, agile ways to protect it so that you basically increase the odds that you have been able to deter somebody from conducting a terrorist attack because the protection is smart.

That is what has not been done and what needs to be done and that really is the strength of what this Department will do, in addition to integrating the data and the stream of information that many domestic agencies collect within the Department and disseminate it in a way that we can all make sense out of it.

But the vulnerability assessment and a systemic program of protection is what the country does not have and that is unique and different from what the rest of us do for a living every day.

Senator DAYTON. Thank you. You said it more cogently. We have had excellent hearings, but I do not think I have heard from anyone so far exactly what the distinction is, so I thank you.

Going back to the communication or the flow of information, I am confused. I remember reading or learning in a hearing months ago about the incompatibility of your respective information systems and computer systems. Director Tenet, today you said you push a button and 9,000 customers get disseminated information, 46 at the top level.

One of my questions about this new Department is whether they need a state-of-the-art communications system that integrates their own divisions and can hook into yours or do you already have that with each other?

Mr. TENET. We already can communicate with ease and electronically with all of our national security customers and with the FBI from us to them, and a large amount of product in the specific information link I talked to you about was the most highly classified counterterrorism information that is now on a secure link with communities of interest so we can push it all out.

So the Intelligence Community has done this historically and a Chief Information Officer in the Department of Homeland Security who aggregates this data and meets us and connects us is a very important, fundamental building block of making all of this work.

Senator DAYTON. My own view is that we obviously want to do this right and do it in a way that lays the foundation for a seamless integration of all these functions and sharing of data. Do they need what you already have or do you need something new that is compatible with one another and with them?

Mr. TENET. They will need what we have to be certain, and then we will both need the connections and the data mining tools to rationalize and make all the relationships out of all of this data so that it becomes actionable in one way, shape, or form, and we can be helpful here. We are not Microsoft, but we are moving in the right direction and have a lot of tools at our disposal that could be very helpful to this community.

Senator DAYTON. I hope you will tell us what you need, at least in financial terms, or even in functional terms. Mr. Chairman, I hope that is a key component of what we are going to be providing.

Thank you, Mr. Chairman. My time is up.

Chairman LIEBERMAN. Thank you, Senator Dayton. You are absolutely right.

There is a vote on. Senator Cleland went off to vote. He wants very much to question the two of you. I think we have 20 minutes until I promised Director Mueller we would let you go, so this means I am going to get to ask a few more questions while we wait for Senator Cleland to come back.

One I have is about cooperation with local county and State law enforcement. It seems to me, and to us, that as we have gone along here that not only have we post-September 11 focused new, justifiable, deserved attention on the first responders locally, but I think we have now got to start thinking of them—we had the chief of police yesterday, 700,000 State and local law enforcers around.

So affirmatively, what thoughts do either of you have, and I suppose this comes particularly to you, Director Mueller, about how we can train and use them for intelligence to be provided to the Department of Homeland Security, to you, to prevent terrorism? Obviously, they are seeing a lot every day.

Mr. MUELLER. The principal component in my mind are these Joint Terrorism Task Forces in each of our communities, and to the extent that they are not working well, we have to make them work well because you need a focal point for the leads to come in and you need a focal point for the intelligence to come in and you have to have it come in in some way that is consistent, and if there is word that comes in about a suspicious character, you then have to have somebody go out. It could be a local policeman or a local deputy sheriff to find the person, interview him, do a report, and get

it back to a central location so that you have that intelligence where you need it in case that name comes up again in the future.

So you have to have some network that includes State and locals, and the Joint Terrorism Task Forces are the beginnings of that integration of the Federal Government with the State and locals in a way that will enable us to capture that information.

We also have to set up, and have been setting up at headquarters, liaisons with State and locals. At the Joint Terrorism Task Force at headquarters, we will have State and locals involved. We have currently in the investigation two New York City Police Department detectives who are participatory in it.

We also have established an office to support local law enforcement and I have Louis Quijas, who was the police chief of High Point, North Carolina, as an Assistant Director in charge of that office. His responsibility is not only just to be the point of contact for State and local individuals, including the head of the IACP, Bill Berger, if there are problems, but also when we have an investigation to sit at the table and say, this is how you can enlist State and local law enforcement in your investigation. So both at headquarters and out in the field——

Chairman LIEBERMAN. So you are thinking about it and you are working on it.

Mr. Tenet, did you want to add anything?

Mr. TENET. Yes. It is out of my lane, but one of the things, and I talked to Mr. Mueller a bit about this, one of the things I think you have to do at the National Law Enforcement Center or your training academies is you really have to build training and education for the State and locals. What are you looking for? What are the methodologies? How have they changed their practices?

There is an enormous amount of talent out there and they are basically wanting to know, how do we use our scarce resources to help you? So you have to have an education module someplace, and it will change over time because as your security gets better, their practices will change and you need to constantly update that knowledge.

Chairman LIEBERMAN. Director Mueller, let me ask you a different kind of question. We talked about the change in focus of the FBI, which we are all demanding of you to focus on counterterrorism, and intelligence. Particularly, you have set up the new FBI office and redirected personnel. So I have two kinds of questions:

One is, should we worry, absent additional funding, about the FBI's capacity to carry out its traditional law enforcement functions?

And two, are there any other responsibilities that you have now that really should be done by somebody else? Forgive me, I think one that comes to mind is the extraordinary work you do in interviewing nominees for Federal office. I do not know that that is the most challenging work to give the people you have there or whether that could be done by somebody else.

Mr. MUELLER. We are looking at each of our responsibilities to see whether they could be scrubbed, and actually, if you look at the number of personnel we have doing that, it is very small.

Chairman LIEBERMAN. That is reassuring.

Mr. MUELLER. It is basically Presidential nominees and the rest is done by contractors. So we have contracted a great deal of that out and it really would be minimal impact.

There are a number of the areas where Congress has given the FBI additional jurisdiction. When you look at it, it is very small numbers that we have and would not make that tremendous a difference. As you will see, most of the individuals we are asking to reassign are from the narcotics area into the counterterrorism area and I have had lengthy—not lengthy—I would say discussions with Asa Hutchinson in terms of picking up the slack there and we believe that there will not be a drop in attention. He is making moves to assure that there is not. And also, I think State and local law enforcement will be picking up some of those cases that we in the past had been responsible for.

Chairman LIEBERMAN. Another question about personnel for both of you. Our colleague from Pennsylvania, Arlen Specter, has put in a proposal to create a—I believe he calls it a National Terrorism Intelligence Center, somewhat like the division within DHS we are talking about. But one of the proposals he makes in that, and I will state it generally, is to build on the Goldwater-Nickles model for the military where you have to have served in a joint command to work your way up within the military ranks and stars.

So part of this is that the new Department of Homeland Security would draw its analysts from existing agencies, including your two, and that we would state in statute that service in the new Department would be a condition for promotion within the agencies from which they come. Do you have a reaction to either or both parts of that?

Mr. TENET. I do not think you can uniquely build this institution from our two respective agencies. I think that at the beginning, we are going to have to help build this, but they are going to have to hire and train a new analyst and a different kind of person because of the glaring needs we have in so many different areas. Simply believing you can take a couple of hundred CIA or a couple of hundred FBI analysts and throw them into this, I do not think is the right way to proceed.

I do think Senator Specter's idea of jointness and terms of serving in certain positions before promotions is generally a concept we in the Intelligence Community work on today in terms of advancement to senior rank, but I would do it a little bit differently, sir. I think the kind of analysis that is going to be done at this place is going to be fundamentally different, require a different kind of person, and at the front end, we will have to help, but we are going to have to grow that and migrate people who really are going to develop long-term expertise there. So I would build it a little bit differently.

Chairman LIEBERMAN. Director Mueller.

Mr. MUELLER. I think I would agree pretty much with Mr. Tenet. I think the advanced military has—you always go in a staff position before you take over a regiment. You will be regimental staff, and that works very well in the military.

I do believe, and I am not certain you can transfer that to the FBI, where we have any number of supervisory positions but a relatively limited number of liaison positions to, whether it be CIA or

Homeland Security. So you would not get many people through the ranks if you had to have spent a point in time at one of those places.

What I do think we have to do, though, is give credit and explain to persons through our promotion process that this is a benefit. Spending time in another agency is beneficial to your career, as opposed to being detrimental, and that is critically important to do and that is what we are doing.

Chairman LIEBERMAN. Time is running out. I think I had better go and vote, with apologies to Senator Cleland, who I do not see back yet.

I thank both of you. You have been very helpful.

We are on a schedule in the Committee to go to a markup sometime in the middle of July and we will have drafts early in July. I want to share them with the two of you and your Departments, get your feedback, because we want this to work well. You have helped us a lot today. Thank you very much.

Mr. TENET. Thank you.

Mr. MUELLER. Thank you.

Chairman LIEBERMAN. I am going to recess the hearing. Judge Webster, I will be back in a few moments and we shall proceed.

[Recess.]

Chairman LIEBERMAN. The hearing will come back to order. We have got a smaller but highly select gathering now. The interest of the Committee in learning and doing right by the national security needs will be benefited in these next two panels.

First, Judge William Webster—I am just looking at the dates—former Director of the FBI from 1978 to 1987, and then Director of Central Intelligence from 1987 to 1991, an extraordinary career in public service and a very distinguished career in private service, as well.

Judge Webster, thanks so much for being here. We welcome your testimony now and then we look forward to engaging in dialogue with you.

TESTIMONY OF HON. WILLIAM H. WEBSTER, FORMER DIRECTOR OF CENTRAL INTELLIGENCE (1987–1991), CENTRAL INTELLIGENCE AGENCY (CIA) AND FORMER DIRECTOR (1978–1987), FEDERAL BUREAU OF INVESTIGATION (FBI)

Judge WEBSTER. Thank you very much, Mr. Chairman. I am honored to be here. I think you just heard from the experts and I do not know how much I can add to the insights of the two directors, but I shall certainly try.

I have been out of town and just got in last night and consequently did not file either a summary or a statement. I can in a few sentences, I think, put myself in perspective and then be responsive to any of the questions that you may wish to ask.

Chairman LIEBERMAN. Good.

Judge WEBSTER. As you mentioned, I have had the privilege of serving both as Director of Central Intelligence and as Director of the FBI and I am currently Vice Chairman of the President's Advisory Council on Homeland Security, and I am not sure in which capacity I am supposed to speak, but I do know that in the case of the latter, I am speaking only for myself and not for the Council.

I am very supportive of the approach to homeland security and the creation of a Department for Homeland Security, and I am also supportive of the President's view that the CIA should continue to report to him and that the FBI should continue to serve by reporting through the Department of Justice, for reasons I would be glad to expand on.

The key, it seems to me, is to look at what the Homeland Security Department could achieve, and, of course, I know the Chairman has been active in thinking about those issues. For too long, I have felt that the various smaller agencies have been stepchildren in their departments. Many of them are there by accident, have no real claim to core missions in those departments. Some have been moved from one Department to the other, all performing good service, but with no real relationship to the issue of security and homeland security.

And bringing them together, particularly in the area of border control and transportation security, seems to me to make a great deal of sense, where they can be better supported by resources, better able to coordinate, and better, I think, at receiving intelligence that should come to them in finished form and with an analytical capability. So that seems to me to make a lot of sense.

I have heard various suggestions about carving off various pieces of the FBI or CIA or having a major intelligence operational component in Homeland Security. I think those are neither necessary nor wise. What is needed is to build the capacity of the FBI and the CIA to work in areas where they had not previously been required to work because of the globalization of these threats and the need for intelligence both from abroad and at home.

That brings me to the last thing that I hope we will have a chance to talk about and that is, I think, the FBI's technology served it well as it grew. I recall days when we did fingerprints by manual inspection and now we can do latent fingerprints in a matter of minutes. That kind of thing has been extraordinarily useful to the FBI and they have put it to good use. But today the FBI's electronic equipment is not capable, in my view, of dealing with the monumental amount of intelligence that is coming in, not only of its own creation, but from other agencies.

Until that issue has been fully addressed and supported, the FBI's ability to mine or retrieve data coming into its system in ways that would be specifically useful on a real-time basis to agencies, particularly Homeland Security, that have need to know specific things but certainly not others, will be impeded, and I hope that along with making sure that the agency and the Bureau are adequately staffed and the Homeland Security agency is adopted, you will make sure they have the equipment to keep up with the rapidly changing world.

Chairman LIEBERMAN. Thanks very much for that opening statement.

Somebody recommended to me a book written about Pearl Harbor by a woman named Roberta Wohlstetter, who I have met. I cannot say I have read it, but I understand that one of the conclusions is that in that time, with commissions and Congressional investigations looking back at how could this have happened, one of the answers was the inability of our government to separate out

the relevant information from the static. Of course, we now generate multiples, probably millions of times, of what was available at that point.

How should this new Department (assuming that it does not have operational capacity, but the capacity in its Intelligence Division to receive all the information that Mr. Mueller and Mr. Tenet indicated they would get automatically and the power to task and ask for new information) how does it organize itself to appropriately analyze and filter out new information?

Judge WEBSTER. The bill, as I understand it, mandates certain types of information to be provided to the Department, and that is good. It also makes clear those areas that for reasons of security should not be passed in raw form unless specifically authorized by a higher authority.

I make the analogy, and I am not so sure it is a totally good one, but I think it is worth looking at the INR Division of the Department of State. They do not collect information. They get information from their various field offices that are useful for their purposes that may or may not fall in the specific definition of intelligence, just as I think the Homeland Department would receive, in their relationships with State and local authorities and State and local governments, a substantial amount of information that could be factored into their judgments on vulnerabilities, threats, and remedies. But they have in the State Department an analytical capacity to go over the material that is supplied to them to see how it relates to the State Department's responsibilities, and they do that. I think it is worth looking at as a vehicle.

My understanding is that the Homeland Security Department would received finished intelligence. By that, it would be intelligence that reads out on the basis of preliminary analysis and excluding sources and methods and other things that should not and need not go out. It would exclude all raw material that had not been evaluated or confirmed. One of the problems of the FBI is they have so much information they keep and retrieve that has not been validated, and because we are dealing with U.S. citizens and because it only adds to the burden of finding the needle in the haystack, it should not be transmitted in that form, in my opinion.

So they get material they could work with. They could massage it, add to it, form judgments about it, and more importantly, I think, the legislation would and ought to provide for them to go back for more, maybe even raw material on a specific issue if it was important enough to get a true fix on it.

In that sense, the CIA and the FBI would both be responsible and accountable for providing that information, as well as the follow-up information or any that were needed without a major dump on any particular subject on homeland security.

Chairman LIEBERMAN. That is a helpful answer. Let me ask you a very different kind of question, which we did not get into with our two previous witnesses. In the Committee bill on this subject, we not only created a Department of Homeland Security, but as you may know, we created a White House Office for Combating Terrorism. The thought there was that homeland security, obviously very critical new function for the government to carry out, but it was not all of the counterterrorism effort. Somewhere there

ought to be a place where this all comes together, so we created this office, accountable to the President, of course, which would include a representative of the Defense Department, State Department, and intelligence and law enforcement and perhaps others. What do you think of that idea?

Judge WEBSTER. I do not have a solid judgment on it. I do know that the present intention of the President with respect to the bill that he has offered to you was to retain the advisor to the President on Homeland Security, similar to the National Security Advisor, and that he would have the same kind of access to the other departments of government and the military and could address these issues much as the National Security Council addresses them with outside help. Beyond that, I am not sure how much more detail you have provided or how much the permanent staff has been provided. I would hope it would be lean and mean.

Chairman LIEBERMAN. I am going to come back to a different kind of question here, and I think uniquely from your experience, having headed both agencies, you may have a perspective on it. Obviously, we have heard concerns about the failure of the CIA and the FBI to cooperate with one another. What are the critiques of setting up a new intelligence analysis division of the new Department of Homeland Security?

One of the arguments that is made for it is that it creates competitive analyses, that it may actually contribute to the lack of cooperation, that it may be just one more center and that when you have competitive analyses, perhaps there is an incentive for the component intelligence and law enforcement communities not to share information because they each want to do the best analysis.

I spoke to a friend from the United Kingdom who said that their MI5 really cooperated, and I might say it cooperates because they seem not to have a history of competition between the different component agencies. So I wonder if you might give us a little guidance on that and particularly on whether you think the new Intelligence Division would create more competition and less sharing.

Judge WEBSTER. There are a couple of questions in there. I do not see creating an Intelligence Office in Homeland Security that collects intelligence as adding to the resolution of possible competitive analysis and different points of view. I headed an organization in the Intelligence Community that produced assessments and we had everyone at the table, all the military, all the intelligence components, and we often arrived at different points of view, conclusions, from some of the same evidence itself and those were reported in the assessments in ways that it was clear to the consumer of that intelligence where the differences were and what they might be.

I did not detect in competitive analysis a problem of not telling somebody something that they needed to know. Moreover, I really come back to my view that the CIA has its position with a much broader responsibility than mere homeland security. The FBI has a much broader responsibility than homeland security. But both of them over many, many years—FBI even before there was a CIA—have been working in counterintelligence and in counterintelligence areas. They need to work better together.

I must say that in all the years I have watched it, in the 14 years I was involved and the 10 years afterwards, it has gotten increasingly better. I have heard so much talk about culture, and I think culture is a state of mind. It may reflect an attitude or it may reflect the training or the discipline. There is real commonality here. These are, in my experience, patriotic Americans who love their country, are not interested in fame or fortune, and they want, very simply, a safer and a better world. That is the kind of commonality that ought to produce cooperation in the supplying of information.

Sometimes they simply have not known what is of interest. There is a difference between proactive intelligence gathering and counterintelligence and we work to try to develop that understanding. What would be of interest to CIA, not just spreading everything that came in, but what would be of interest? Tasking devices have been put in place that are very helpful today. The technology for finding it and the technology for getting it back to CIA could be improved radically.

Chairman LIEBERMAN. Judge, excuse me, and I thank you. A vote has gone off. I am going to run over. I am going to yield to Senator Cleland to carry on and I will come right back.

Judge WEBSTER. Thank you, Mr. Chairman.

OPENING STATEMENT OF SENATOR CLELAND

Senator CLELAND [presiding]. Thank you, Mr. Chairman.

I missed the questions of our two previous panelists because we ran out of time here and I had to go vote and when I came back, they were gone. I did not want to get caught this time leaving to vote and missing you. Thank you very much for your time here and for your public service.

May I just say, in terms of the Intelligence Community, I have a powerful sense that no one is in charge, but I do not think I am the only one that has that sense. Yesterday, this Committee received testimony from the former Director of the National Security Agency, NSA, Lieutenant General William Odom, who said there is no one in government who can give the President an overall view of counterintelligence. There is no comprehensive picture, no one to put it all together, no king of this particular discipline.

I think what he was trying to say was that the Intelligence Community is made up of a number of agencies, many of which compete with one another budgetarily. Many have different assignments. They are all called the Intelligence Community, but nobody at the top is pulling together and connecting the dots for a decision.

The Chairman mentioned a book in regard to Pearl Harbor. I think that is the book I read a review of about 8 or 9 months ago, around December of last year, which talked about the intelligence failure that led to Pearl Harbor. My father was stationed at Pearl Harbor after the attack, so I grew up with that whole legacy of Pearl Harbor and the response of this country to the attack.

The book basically alleges that what we have, it seems to me now, is stovepiping of information where one agency has some information, another agency has a piece of information, another agency has a piece of information. It was not that we did not have a sense that there was an impending attack upon Pearl Harbor, we

just did not pull it all together. There was nobody at the top pulling it together for a decision.

You get the same sense here about September 11, that there was an FBI office in Phoenix, there was another FBI office in Minneapolis, and then over here in the NSA there were a couple of things, and then over in the FBI, and in the CIA there was something, but nobody was pulling it together.

As someone who has headed up both of these agencies, the FBI and the CIA, what do you think of Senator Feinstein's proposal that basically creates a Director of National Intelligence who, in effect, pulls all of this information together, has a staff, and is advised also by a National Intelligence Council of senior analysts from the Intelligence Community and that, in effect, that individual answers directly to the President? I just wondered if you felt any need to reorganize somewhat the Intelligence Community in order to not only connect the dots at the bottom of the pile, bottom of the pyramid, but at the top for decisionmakers like the President.

Judge WEBSTER. Senator, I have heard that suggestion before. It is not a new one. It has been considered from time to time, and on paper, it seems to have merit.

As Director of Central Intelligence, when that would be proposed, I would say, what troops will this person have? How will he be able to make things happen? The Director of Central Intelligence currently has troops, but he has no control over the various components of his business outside the CIA. The report cards are written in the Defense Department, and that, as you know from your own experience, makes a big difference on how responsive people are to information.

There is a concerted effort to make sure that information is properly sent in the right direction. NSA has more than it can translate every week. They simply lack the total capacity. The FBI gets a lot of information that it cannot retrieve in an active, meaningful way because of the equipment that they have. We are in an age where we are not lacking information, we are inundated with information.

I am not sure that having a Director of National Intelligence will achieve that objective. It is possible that it might improve it, but I am more and more convinced that the Intelligence Community can, with proper ability to communicate what they know, do a better job of communicating. I do not at all believe that we are any longer the victims of cultural disattachment, rivalry, or distaste.

The two agencies, the FBI and the CIA, like it or not, are becoming more and more alike. The CIA used to be thought of as a place that attracted Ivy Leaguers, especially from Yale, and the FBI was the long gray line at Fordham. Now, both agencies recruit from over 100 colleges and universities. More and more cross-fertilization is taking place. You heard this afternoon the testimony of Director Mueller of the number of CIA analysts that are in place and the efforts that they are making to have people put in all places.

I am not sure that one more layer would assure that it would all come in some neat package that the President would be able to use, but I certainly agree with you that your nightmare is that something is going to fall between chairs.

We had this problem as recently as the Gulf War, in terms of getting the information. Our satellites were downloading into Riyadh and the military services were unable to promptly and immediately communicate the intelligence because they were on different systems. I think that maybe as we get to a more uniform system that protects the "need to know" principle, that may help.

But I have to tell you that the Director of Central Intelligence is supposed to be the President's principal advisor on national intelligence and he ought to be able to perform that function in the job that he has.

Senator CLELAND. In 1947, Harry Truman restructured the Intelligence Community to create the Director of Central Intelligence. Is that a misnomer?

Judge WEBSTER. No, it is not. It is arguably a misnomer, and I know what you are driving at now. His purpose was he did not want to get his intelligence out of a department of government that had an agenda. He wanted a place that looked at intelligence in as neutral a form as it could be and gave the most objective, considered intelligence that could be accomplished, utilizing intelligence from all quarters, all-source intelligence.

His purpose was to try to find one place that was neutral, and I think it was a good purpose. It was a wise move. But there is still difficulty in consolidating the intelligence that comes from the various components, including NSA, and that needs improvement.

In terrorism, you have several sources. You have the SIGINT, the Signals Intelligence with the National Security Agency, which has responsibility for collecting information, plus any cryptology and translations that come from that Signals Intelligence, and that is important. You have the CIA's collecting capabilities from all sources, signals and imagery and human intelligence, coming from around the world, and you have the FBI with its agents in place in various parts of the country attempting to pick up information about threats to our infrastructure and threats to our national security.

I do not know that having one more person is going to make it happen any better—one more layer of government is going to make it any happier. It depends on the President's confidence in the judgment of his Director of Central Intelligence and——

Senator CLELAND. Let us talk about that for a second, though. Before September 11, the President met apparently frequently with the head of the CIA, very understandable. Then when we found that the ball was being dropped big-time between the FBI and the CIA, even within the FBI, and certainly within the government, various agencies of the government that had a piece of the puzzle but nobody at the top was putting it together. Now the President, I understand, meets frequently with the CIA, the head of the CIA and the head of the FBI. Should the President have a class? I mean, should he have the head of the DIA there? Who else should be in the room?

If nobody is connecting the dots at the top, I guess I still wonder if we have overcome the stovepiping of information, the lack of sharing between agencies when there are a lot of people within the Intelligence Community. It just seems to me that we are not aggregating it, pulling it together, collating it, and making sense of it.

Somebody up there at the top is not there. Again, General Odom, that was a pretty powerful statement by the head of the NSA saying there is no one in the government who can give the President an overall view of counterintelligence.

I would like to move on to another question and that is about the FBI, your familiarity with it. Before September 11, counterintelligence dealing with terrorism and so forth was buried pretty much in an agency that was highly law enforcement oriented. Now, I think Senator Thompson was right on the case. It does seem to me that the exigencies, the needs of law enforcement are one thing and the needs of the Intelligence Community gathering people are, quite frankly, another.

I wonder if you like the idea or do not like the idea of taking the counterintelligence, or basically the intelligence functions of the FBI, and separating them out from the FBI, out from under the law enforcement folks, and making that part of the Intelligence Community if you have somebody ultimately at the top that connects the dots and makes that part of the intelligence input.

Judge WEBSTER. My view is that that is not the way to go. I would like to explain. That is a very important question and I think I have had substantial experience in the area and would like to address it.

In 1980, I made terrorism one of the four top priorities of the FBI. Before that, it had been foreign counterintelligence, organized crime, and white collar crime. So it is not a new thing. We were experiencing 100 terrorist incidents a year, not of the size or proportion of what we are now experiencing as of September 11, but serious terrorist incidents, 100 a year.

When we made it our priority and addressed it by gathering intelligence and applying that to effective law enforcement methods, we reduced the number of annual terrorist incidents to about five when I left in 1987, and the next year there were none, as I recall.

Senator CLELAND. May I just interrupt? Unfortunately, our schedule terrorizes us and I have about 60 seconds to go vote, and it is the last vote of the day.

Judge WEBSTER. Please, do not let me hold you back.

Senator CLELAND. But thank you very much for your service to our country. Thank you very much for your testimony.

Judge WEBSTER. Thank you.

Senator CLELAND. The Committee will stand in recess pending the call of the Chair. Thank you.

[Recess.]

Chairman LIEBERMAN [presiding]. The hearing will come back to order.

Judge Webster, thanks so much. Of course, you are a veteran or previous victim of this Senate schedule, but I thank you for your patience.

Judge WEBSTER. I understand.

Chairman LIEBERMAN. Let me ask you for a moment to put on your former hat as the head of the FBI and give us a reaction, if you would, to the priorities that Director Mueller stated, the new priorities, and if there is any reason to be concerned, as I suggested at the end, that they may result in less capacity to carry out the traditional law enforcement functions of the FBI.

Judge WEBSTER. Well, I have them before me and there are some ten of them. I would not be too concerned about the fact that there were ten. There were three when I came to the FBI in 1978, and as I mentioned while you were out of the room, I made terrorism one of the four top priorities in 1980. We were very successful in bringing a focus on that area, reduced the number of terrorist incidents from 100 a year to five by the time I left, not of the size and scale of today's capacity for horror, but very important and serious events that we averted, we prevented. So I felt that three or four top priorities made sense.

Here, the director has his priorities in boldface, so he probably really only has a few more than I did. But No. 10 is "upgrade technology to successfully perform the FBI's mission." If these are ranked in order, I would put it up to No. 4, I think, because I do not think the FBI can manage its responsibilities in the intelligence arena and the law enforcement arena where national security is involved without being sure that its technology is successfully upgraded to perform its mission.

The other ones are all significant. I know less about combating significant violent crime. That was not a top priority when I was there, and if we had to find some areas to draw down on for resources, I would look closely at that one to see what is in that category that could be just as well managed by State and local authorities. This is always a challenge. Abraham Lincoln said that that is the true function of the Federal Government, to do what State and local cannot do as well for themselves or cannot do at all.

So I would look at that one. I think the word "significant" probably is a limiting factor, but violent crime, to me, has been something that belongs to the whole law enforcement community. It is not unique to the FBI's capacities or abilities. Supporting it in terms of the laboratories, the Identification Division, the NCIC indexing system and other matters, behavioral science for serial crimes and so on, are all very important contributions to State and local law enforcement. But I am not sure that we ought to be competing with them at this point.

Beyond that, I do not know that I am really qualified to comment on the other priorities. I think there is a big difference between the amount of resources that are required for individual subjects that are listed in there.

Chairman LIEBERMAN. It is true, is it not, from your experience at the FBI that some of the kinds of work that we are asking the Bureau to do now with regard to terrorism has been done for quite a long time, not only with regard to terrorism, but with regard to other groups, both criminal and politically confrontational or threatening groups, that the Bureau has for quite some time watched or infiltrated, is that not correct?

Judge WEBSTER. That is correct, Mr. Chairman. The Bureau has developed, I think, a remarkable capability to conduct longer-term investigations to get to the top of organizations who are engaging in one form or another acts hostile to our country in violation of our laws or our national security. I think that is all there. They need to keep working at it, but it is not a new thing.

What may be raising the suggestion of newness is that in a time of emergency, there may be more interest in disrupting or preventing a terrorist activity even if it means that the criminal prosecution is somehow disadvantaged by the techniques that are used. That is a little different.

On the other hand, I think it is important that No. 5, protecting civil rights, not be neglected and that this not ever become an excuse for engaging in activities that have been condemned in the past and which we are well beyond.

Chairman LIEBERMAN. Thanks for that answer.

As you probably heard on the first panel, yesterday, we heard from Chief Berger from the International Association of Police Chiefs and we talked with him about how to engage local law enforcement and several hundred thousand additional eyes and ears around the country in the carrying out of this new responsibility, as I mentioned. What advice would you give us about how best to do that?

Judge WEBSTER. I think a Homeland Security Department is a good place to enhance not only the relationships that the Federal authorities have, the Federal law enforcement authorities have, but also in terms of acquainting State and local officials with vulnerabilities that they may or may not be aware of in their areas, infrastructure weaknesses, for example.

I am acutely aware of the fact that State and local authorities are usually the first on the scene. They are the first to respond. Senator Nunn, with whom I was talking recently, of course, introduced the Nunn-Lugar-Domenici bill to help with training for people who have that kind of responsibility. Should we have a weapons of mass destruction incident, if we have another type of airplane missile bombing or other types of major—they are the first ones that are going to be there and there has to be a collaboration, both in providing them with any known threats or risks in their area or their geography and also supporting their efforts as quickly as possible when something of major proportion takes place that may be outside their capacity.

Chairman LIEBERMAN. I know that one of the reasons you have spoken against breaking up the FBI and taking its domestic intelligence function and putting it in this new Department or a separate agency is that the Justice Department oversight does provide a kind of protection against civil liberties violations. Obviously, there are some instances in which the Bureau has been criticized for that, and I am going back now over half a century.

My question is, as the Bureau now moves into this new area with greater devotion of personnel and, in fact, sometimes when you mention the MI5 comparison, incidentally, one of the great concerns expressed is civil liberties. Is there anything additional that we should do to make sure that we are not only protecting our security, which obviously is primary, but that we are also not compromising our liberties?

Judge WEBSTER. As you know, MI5 has had problems in the past on issues of civil liberties.

Chairman LIEBERMAN. Yes.

Judge WEBSTER. I take a certain comfort in the fact that the FBI has always been in the Department of Justice. It was created a

long time ago with a single sentence in a statute that said the Attorney General may have a Bureau of Investigation.

I think that it has served as a shield from oppressive use, assignments that are not sanctioned in the law or the Constitution. It has also been, I think, a healthy relationship because it prevents the possibility of some White House tasking that goes beyond what would be acceptable treatment of American citizens.

We have had experiences, as you know, with telephone calls from the White House saying the White House—I am not talking about the President—from people in the White House saying that they would like this done or that done. It is very difficult for an agency not to be affected by that. I had to deal with the Iran-Contra issue when I got to CIA. But at the FBI, the FBI would not accept that kind of tasking because it was screened through the Department of Justice and the Attorney General would be the person who would have to take the heat for saying we cannot do it that way. That is one of the reasons I like it where it is.

But from an operational sense, terrorism is a continuum. One objective is to get there before the bomb goes off and to take the necessary steps to stop it. I mentioned our success in those years with other different types of a more domestic nature, although we had Serbians, Croatians, Algerians, a whole range of people fighting others, carrying on their European wars in the United States.

But we start with trying to stop it, and that is through intelligence. That intelligence has to go to the operatives. It also comes from the field agents in the field who are picking up on planning operations of that kind. And once it passed the stage of preventing, we have to deal with it through effective law enforcement of it. MI5 makes no arrests. It relies on the local constabulary to do it.

We have a vast resource out in the field of people who have had counterterrorist training, who have had counterintelligence training, who are there to help when the emergency arises. I cannot conceive that the Congress would enact legislation creating another group of that size to be there when they are needed, to be there to detect terrorism and to be there to follow up and minimize the damage and to make the arrests.

So I am more comfortable feeling that is not the way to improve intelligence sharing. If that is the problem, it should be addressed in a different way.

While you were away, I spoke too long, perhaps, on my sense of how cultural differences that may have existed 30 years ago have really largely evaporated as the agencies become more like each other, draw from the same pool of colleges and universities, work more closely together, share in joint centers, provide, as you heard this afternoon, analysts from CIA to the FBI, the FBI, I think the present head of the Counterintelligence Center at the CIA is now headed by an FBI Special Agent. These things are all to the good.

We cannot tell when something will fall between the cracks in hindsight that if we had known and if we had known what it was about, we might have done something about it. I just think that is not a reason for breaking up the FBI's current structure and relationship to CIA.

Chairman LIEBERMAN. Let me ask a final question, which has two parts. The first is personal in sense, which is having had the

extraordinary experience you have had to head both the FBI and CIA, having been involved in these matters, what was your reaction when you first heard of them on September 11 when those events occurred?

And the second part is, putting together all that experience, is there anything that we are not doing post-September 11 to raise our guard that you would suggest we should be doing?

Judge WEBSTER. Well, of course, I was like any other citizen, going to work when it happened. When the first plane crashed, I thought, "Oh, it is another Empire State Building accident." When the second one came as I got to my office, it was pretty clear that something terrible in the way of a terrorist purposeful activity was occurring, and then the Pentagon was hit.

The fact is, as I understand it, there had been some concern for some time that something was in the wind with the al Qaeda organization, but no one had a specific clue, a time or a place or a way, and that is historically the way terrorist succeed, get a victory on the cheap, because they could choose it all, how they are going to do it, where they are going to do it. They operate in cellular form and it is very difficult to get on the inside unless someone who for various reasons decides to go over and sell what he knows or does not agree with the conclusion and wants to head it off, can be found to get a piece of specific information.

But I suppose we all wonder what we could have done to prevent it. I am very proud of the way America responded. I am very proud of the way the President led us, first in compassion and then with determination to know who was responsible and to take appropriate action. I am proud of what went on in New York City, when volunteers and the fire fighters and the police came and did what they did.

And I have just finished my 65th airplane ride since September 11 and I am proud of the way Americans are accepting the burdens of additional security without complaining about it, and trying to be helpful about it, and so those are the good feelings.

I have to say, and I think I should say, that the two pieces of information that are most talked about are the Phoenix report and the efforts of the Minneapolis Special Agents in Minnesota to get an appropriate warrant to pursue their suspicions about an individual. I think close analysis will show that in all probability, neither of those would have pointed to the specific activity and the time and the place in order to be able to prevent it.

Within just a few hours of the explosions, however, the authorities were able to identify all 19 of the people who were on those airplanes and knew a good deal about their background. I am sure that everyone said, why did we not know enough to put this together? Many of those people themselves did not know where their objectives or destinations were. It is a typical, but extraordinarily successful, terrorist undertaking of a dimension we had never known before. Tom Friedman said it was a failure of imagination.

I think we now are a good deal less innocent in our feeling that the homeland is safe and free. We know that will never be the same again and that we all have to take appropriate steps to protect ourselves against threats, not only to our citizens but to our infrastructure. We depend a great deal on electronics, on com-

puters. The things we live by can be penetrated and destroyed. It can create enormous problems for us in the future unless we devote the resources to get a handle on it ahead of time.

I am a great believer in intelligence, but intelligence also requires that we know what the problems are and we focus on where those problems might come from and where they might go. That is why I think a Homeland Security concept is particularly good because that is their job, to go out and look and see. What about the water supplies in various places? How well are they protected? What could be done to affect other things? What do we know about the capacity of those who hate us to come up with weapons of mass destruction and to create another event? That may be a long way away, but it is certainly not out of the question. I think it is very likely that, in time, that will be the kind of attack to make.

We have to be resolute, but I was thinking all along, let us keep our cool here and let us not either engage in activities that would make us like the terrorists. We use our investigative forces and intelligence forces effectively, but we will not engage in torture. We will not invade Americans without a proper, supervised basis for it. We will keep the courts involved. And we will be the kind of people we have always been that make us what we are. Our value system is what we are, and that means that we have to support it with our major skills.

We know a lot about technology. We know how to apply that to the challenges of the future. We know how to improve and we need to improve those Federal agencies that depend on their data systems, their mining systems. The problem with the FBI right now is that it gets more information than it can retrieve and use and supply to other people. So we must not hesitate to be sure that is done. Maybe they need to bring in people who really are experts in this field. But we have to do those things, and at the same time be a government under law that protects democracy and respects human life.

Chairman LIEBERMAN. Thanks very much, Judge. You continue to represent the best of our values and a proud tradition of service to your country and I thank you for the service that you have given this Committee as we try to chart a course for the next phase of our homeland security. Thank you very much.

Judge WEBSTER. Thank you. I am honored to be here.

Chairman LIEBERMAN. We appreciate it a lot.

Senator Shelby and Senator Graham are here. I apologize to my colleagues that perhaps the last vote having occurred has taken a number of other Members of the Committee. Thanks very much.

I would give you the option of not going forward, but I am very anxious to hear your testimony.

Senator SHELBY. Mr. Chairman, we want to go forward.

Chairman LIEBERMAN. Good. That sounds like the two of you. I will circulate your testimony to the Members of the Committee. I want to suggest that I consider it to be significant enough that we may want to, sometime after we get back, just hold a meeting of the Committee at which you come in and share your considerable experience with us. But anyway, I thank you for preparing as you have to be here.

Senator Graham, Chairman of the Intelligence Committee, I call on you now.

TESTIMONY OF HON. BOB GRAHAM,[1] A U.S. SENATOR FROM THE STATE OF FLORIDA AND CHAIRMAN, SELECT COMMITTEE ON INTELLIGENCE, U.S. SENATE

Senator GRAHAM. Thank you very much, Mr. Chairman. I would propose to deliver a somewhat abbreviated version of my remarks and submit the full statement for the record, if that is acceptable.

Chairman LIEBERMAN. Thank you. It will be done.

Senator GRAHAM. We both appreciate the opportunity to come at this late hour before the Governmental Affairs Committee to discuss what we believe to be a critically important subject in our Nation's future domestic security, and that is the relationship between the agencies which make up our Nation's Intelligence Community and the new proposed Department of Homeland Security.

I want to applaud the leadership which you and other Members of this Committee, particularly the Ranking Member, Senator Thompson, for taking up the challenge offered by the President in his proposal, but not just waiting but really anticipating and spending much of last year working on legislation which closely tracks what the President is now proposing.

I would like to confine my remarks to those relating to intelligence and homeland security because I am convinced that sound security policy decisions require timely, relevant intelligence. I am also certain that nowhere will this prove to be more true than in the newly named but historically fundamental area of homeland security. But whatever shape the new Department takes, its success or failure will in large measure depend on the quality of intelligence upon which it can rely.

For now, I would like to focus on three areas where the intersection of intelligence and the functioning of the new Department will be particularly important. First, creating an intelligence analytical capability within the new Department. It is important to recognize in the beginning that the creation of a new Department of the size and power contemplated here will alter the relationship between the Intelligence Community and its totality of consumers. The new Department will rival the Department of Defense as the Intelligence Community's largest and likely most demanding consumer. It is important that the new Department structure enhances its ability to function as a smart consumer.

To that end, I am pleased with my initial review of the second section of the President's proposal, wherein he establishes an Under Secretary in charge of what will be, in essence, the Intelligence Processing Center for the new Department of Homeland Security. It will be this Processing Center that will assure that the Department decisions are made with the benefit of all-source intelligence.

Being a good intelligence consumer, it is important to note, is not limited to knowing how to read finished and, where appropriate, raw intelligence information. To be a smart consumer requires an ability to know what more is needed, what additional intelligence

[1] The prepared statement of Senator Graham appears in the Appendix on page 191.

should be collected, how to articulate the needs of the new Department to those who will be collecting the information for the new Department in the Intelligence Community.

The new Department will need to have a seat at the table when scarce intelligence collection assets are being tasked. One of the most important decisions that an Intelligence Community makes, given the fact that whether it is human intelligence, a particular form of technical collection capability, or a nascent capacity, all of those are at some point finite and decisions have to be made as to how and most effectively to allocate them. This new Department will play an important role in those decisions.

Mr. Chairman, although Senator Shelby and the members of the Intelligence Committees of the House and Senate are in the early stages of our joint inquiry into September 11, after 3 months-plus of staff inquiry and our preliminary closed hearings, there are some factors which have contributed to the failures to anticipate and prevent September 11 which are emerging. Let me mention two of those.

One is inadequate and untimely sharing of information within the Intelligence Community. A notable example of that is the example that Judge Webster just referenced, the Phoenix document, a potentially critical piece of domestically collected foreign intelligence.

Second is the absence of a single set of eyes to have analyzed all the bits and pieces of relevant intelligence information, including open-source material, that which is available to all the public through the newspapers, periodicals, television. Examples of this failure to place before a single set of eyes all of these pieces would again be the Phoenix document and the Moussouai investigation, that is the investigation that was originated by the FBI field office in Minneapolis, and available foreign intelligence in the weeks and months prior to September 11.

These factors support the idea that an all-source analytical unit which will fall under the heading of a smart intelligence consumer is a critical element of this legislation. This smart consumer must be equipped to function like an intelligent recipient, with the ability to sort through large volumes of intelligence information and draw specific conclusions to inform policy decisions, to be able to ask and receive intelligence needed to support their functioning, to be capable of tasking the Intelligence Community to collect specific information needed for this new agency.

The second area of intelligence and the new Department relates to the creation of a White House Office for Combating Terrorism. The creation of the new Department with a scope of responsibility transcending terrorism and encompassing other homeland security threats does not obviate the need for a White House office which is solely focused on terrorism. Such an office, a National Office for Combating Terrorism, was proposed in legislation, S. 1449, which I cosponsored with Senator Feinstein last year and is largely incorporated as Title II of the Chairman's pending legislation establishing a Department of Homeland Security. Our efforts drew on a belief that the fundamental problem was structural. Nobody was in charge and there was no coherent strategy to combat terrorism. The result: Disorientation and fragmentation.

Last year within the Intelligence Community, we established a working group to review all of the reports that had been conducted on the Intelligence Community, particularly with a focus on terrorism. An informal memorandum was prepared, dated June 22, 2001, which offered a prescriptive review of the current terrorism structure, and Mr. Chairman, I would like to submit that memo as part of my remarks.

Chairman LIEBERMAN. Without objection.

[The information of Senator Graham follows:]

Senator GRAHAM. It was our feeling that it was important that there be such a White House Office of Counterterrorism. It would be small, but with a narrow mission, confined to terrorism, which would be necessary to complement the larger missions of the Homeland Security Department. Now, some may argue that such an office already exists, created by Executive Order and occupied by Governor Tom Ridge. I personally do not believe this is adequate and I believe the action of this Committee in reporting out its previous legislation with Title II contained therein supported my belief.

It is important that this office within the White House bring to bear the power and legitimacy that only the Legislative Branch can provide and do so by creating such an office by statute. It is equally important that such an office be subject to the oversight of Congress and invested with real budget authority. Although much smaller in size and scope than the contemplated Department of Homeland Security, a National Office for Combating Terrorism is an essential component of a workable plan to reorganize our homeland security efforts and should be created in the same legislation.

Finally, I believe that the events of September 11 compel a reexamination of the scope, methodology, and limitations governing domestic collection of terrorism-related intelligence. When, where, and under what circumstances should the government collect intelligence about the activities of U.S. citizens or lawful visitors to our Nation? What techniques should they use? What techniques should be prohibited? Is the present government structure in which the FBI is primarily responsible for collection of intelligence, foreign and domestic, within the United States, adequate to our needs? Should we enhance our domestic collection capabilities, and if so, how?

Mr. Chairman, I would suggest that we make no mistake about this third issue. It is a very tough subject. It will require serious consideration of the balance of deeply held principles of civil liberty and privacy in relation to the need to protect our Nation.

Thus, I was pleased that the President's plan and the Chairman's pending bill do not attempt to resolve these issues. Rather, they create new institutions which are designed to effectively lead our Nation as we debate and resolve these fundamental issues of civil rights, privacy, and domestic intelligence collection. By deferring what is likely to be a contentious and challenging debate, we can avoid mixing two apparently similar but quite different issues, how to organize to fight terrorism, and once organized, under what rules should we conduct that fight.

Further, by proceeding first to organizational legislation, the Congress will be in a position to wait, and I hope find informed

judgment from the results of the Joint Inquiry into the events of September 11. Our purpose is to answer the questions of what happened, why it happened, and what could we do to reduce the prospects of it occurring in the future? I would hope that our suggestions on those three questions would help inform this Committee and our colleagues as to the appropriate method and means by which to balance these interests of national security and personal privacy and rights.

Armed with this analysis and aided by what will then be a new Department's ability to focus and drive the debate, I believe we can address such questions consistent with our Nation's traditions and beliefs. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks very much, Senator Graham, for a very thoughtful, very helpful statement.

Senator Shelby, Vice Chair, colleague, welcome.

TESTIMONY OF HON. RICHARD C. SHELBY,[1] A U.S. SENATOR FROM THE STATE OF ALABAMA AND VICE CHAIRMAN, SELECT COMMITTEE ON INTELLIGENCE, U.S. SENATE

Senator SHELBY. Thank you, Mr. Chairman. I hope you will indulge me for a few minutes. I know it is a long day here.

Chairman LIEBERMAN. No, this is very——

Senator SHELBY. I believe, as Senator Graham does—and we have talked with you privately about this—that the intelligence component of homeland security is the key to homeland security.

Chairman LIEBERMAN. Absolutely.

Senator SHELBY. I want to thank you for allowing us to address this Committee today. I believe Senator Graham and I would love to meet with other Members that are not here as we crystallize, or as you crystallize, this legislation.

Chairman LIEBERMAN. Good. We will do that.

Senator SHELBY. As I have pointed out many times, Mr. Chairman, as all of us have pointed out, more Americans were killed by terrorists on September 11, 2001, than died in Japan's infamous sneak attack upon Pearl Harbor on December 7, 1941. I think it is both necessary and fitting that we do everything in our power to ensure that the United States never again suffers such a catastrophe, a third Pearl Harbor. For this reason, I support, Mr. Chairman, the creation of a Department of Homeland Security, as you do.

As in so many important endeavors involving legislation, the devil is always in the details. We also know all too well that legislation alone cannot meet all the challenges that we will face. One of the biggest risks we face in the world of intelligence collection, I believe, is risk aversion. Our intelligence bureaucracies have, over time, become averse for the most part to risk taking, partly because of internal institutional pressures and partly because of external criticisms. No bill, Mr. Chairman, rule, or regulation can reverse that.

What we can do is address an immediate need. To do so, we need to create a new Department, but it is important that we create it

[1] The prepared statement of Senator Shelby appears in the Appendix on page 209.

right—as you said, Mr. Chairman, many times—and that in creating it, that we do not simply replicate the mistakes of the past.

Accordingly, Mr. Chairman, I am grateful for the opportunity to discuss the intelligence aspects of homeland security, a topic with which I have been greatly concerned and closely involved for the past 8 years on the Senate Intelligence Committee, serving as Chairman and currently as Vice Chairman.

In introducing his legislative proposal for a Department of Homeland Security—after yours had been introduced, Mr. Chairman—President Bush declared that the top priority of the Department will be preventing future attacks. This emphasis is picked up in the text of his legislative proposal itself, which stresses in Section 101(b) that the primary mission of the Department of Homeland Security will be to prevent terrorist attacks within the United States.

As the President's proposal recognizes, this fundamental mission highlights the importance of intelligence. First among the list of the new Department's primary responsibilities, according to the proposed legislation, the President's proposal lists the crucial function of conducting information analysis related to terrorist threats. The intelligence function is absolutely central, Mr. Chairman, to the President's proposal and to yours, as it should be. It is, therefore, Mr. Chairman, doubly important that we get, the intelligence aspects of the Department right.

The President in his proposal assigns appropriate emphasis to ensuring that this intelligence function is carried out properly by making the Information Analysis and Infrastructure Protection Office the first of the new Department's key components. If done right, Mr. Chairman, the creation of such a national-level center for true all-source intelligence fusion of terrorist-related threat information would be of huge value.

Most Americans would probably be surprised, Mr. Chairman, to know that even 9 months—yes, 9 months—after the terrorist attacks of September 11, there is today no Federal official, not a single one, Mr. Chairman, to whom the President can turn to ask the simple question, "What do we know about current terrorist threats against our homeland?" No one person or entity has meaningful access to all such information the government possesses. No one really knows what we know, and no one is even in a position to go to find out. This state of affairs is deplorable and must end.

In the wake of a well-publicized series of significant intelligence failures, Mr. Chairman, including the failure to prevent the bombing of the World Trade Center in 1993, the failure to prevent the bombing of Khobar Towers in Saudi Arabia in 1996, the failure to anticipate the Indian nuclear tests in 1998, the failure to prevent the bombing of our embassies in Africa that same year, the accidental bombing of the Chinese embassy in 1999, the failure to prevent the attack on the *U.S.S. Cole,* and, of course, the failure to prevent the attacks of September 11, there has been no shortage, as you know, of proposals to reform the U.S. Intelligence Community.

Most of them have involved, as you know, Mr. Chairman, variations on the theme of empowering the Director of Central Intelligence, the DCI, to exercise more real power within the mostly De-

fense Department-owned Intelligence Community. Other proposals, such as one floated this week, would empower the Pentagon by creating an Under Secretary of Defense for Intelligence. All of them, Mr. Chairman, so far have gone nowhere. When such ideas do not flounder upon the rocks of interdepartmental rivalry and what the military calls rice bowl politics, they simply fail to elicit much interest from an Intelligence Community that even to this day insists that nothing is fundamentally wrong.

Too often, Mr. Chairman, serious reform proposals have been dismissed as a bridge too far by administration after administration and Congress after Congress and have simply fallen by the wayside. While very modest attempts at reform have been enacted, they have been ignored by succeeding administrations and openly defied by our current Director of Central Intelligence.

With this in mind, last year, Senator Graham and I asked our Committee's Technical Advisory Group, or TAG, to undertake its own look at these issues. The TAG Group, the Technical Advisory Group, is a group of prominent scientists and technologists that volunteer their services to advise the Intelligence Committee on very difficult technical and program management issues. We worked with them over several months on these matters and we came to some interesting conclusions. I beg your indulgence for a few minutes more.

Chairman LIEBERMAN. Please.

Senator SHELBY. Rather than rest our hopes for reform upon plans destined to run headlong, Mr. Chairman, into vested interests wedded to the current interdepartmental division of intelligence resources, or to be smothered by pained indifference from holdover bureaucrats satisfied by the status quo, the TAG Group proposed instead that the President create something entirely new: A small, agile, elite organization with the President's personal support dedicated wholly and single-minded to conducting fusion analysis. This organization would draw upon all the information available to the Federal Government and use the resulting knowledge to achieve a single clear goal: Dismantling and destroying terrorist groups that threaten the United States. This, we hoped, might allow meaningful reform to take place without initially, Mr. Chairman, having to upset entrenched bureaucratic apple carts.

We proposed, in effect, an intelligence-related version of the Manhattan Project that would take place, to some extent, outside the traditional chains of command and networks of vested interests. We suggested an approach modeled on the movie catch phrase, "If you build it, they will come." If this new venture were successful, its progress would breed further successes, we thought, by gradually attracting resources and support from elsewhere, and perhaps, Mr. Chairman, by stimulating the intelligence bureaucracies to do more to reform themselves even when faced with the success of an alternative model. The private sector refers to this process as creative destruction.

After the terrorist attacks on September 11, we felt that it was time to present this proposal to the White House. If the mass murder of 3,000 Americans could not drive meaningful reform in our Intelligence Community, we reasoned, what could? Accordingly, Senator Graham, the Chairman, and I brought our TAG team to

meet with Governor Ridge at the White House on November 29 of last year. We met with the Governor with these distinguished scientists for about 90 minutes and talked in detail about our plan for the creation for the first time, Mr. Chairman, of a truly all-source national-level intelligence analytical agency dedicated to knowing and assessing everything that our government knows about terrorist threats.

I think I can speak for Senator Graham as well as for my staff and the distinguished members of our technical advisory group in saying we are pleased that President Bush has seen fit to propose the creation of just such an organization within the Department of Security, a little different from the bill that you initially introduced, which is a working model, but which neglects the intelligence function, and nowhere provides the new Department with a centralized threat assessment entity capable of making up for the Intelligence Community's longstanding failure to provide government-wide one-stop shopping for terrorist threat information and analysis.

The President's proposal puts terrorism-related intelligence front and center, making it the foundation of all other protective measures. I applaud the President's wisdom, Mr. Chairman, in making information analysis such a central focus of the plan. It is central. It is the linchpin.

It is in that vein that I would now like to offer a few constructive criticisms of the President's proposal. Precisely, Mr. Chairman, because the intelligence function is vital to every aspect of interagency coordination and planning for homeland security, we must ensure that these aspects of the President's plan are structured properly and that they do not, as I said earlier, simply replicate past mistakes.

In this regard, I would like to point out that under Section 203 of the President's bill, the Secretary of Homeland Security would have only limited access to information collected by the Intelligence Community and law enforcement agencies. Section 203 provides that the Secretary would be entitled only, "to all finished reports, assessments, and analytical information related to threats of terrorism in the United States." Unlike information relating to infrastructure or other vulnerabilities to terrorist attack, to all of which the Secretary would be given access whether or not such information has been analyzed, information on terrorist threats themselves would be available, Mr. Chairman, only to the Department of Homeland Security in the form of what is known as finished intelligence. That is a very important point here.

Under Section 203, the Secretary may obtain the underlying "raw information" only with other agencies' permission or when the President specifically provides for its transmission to the new Department. This is troubling. To my eyes, these limitations are unacceptable and seem designed to keep the new Office of Information Analysis and Infrastructure Protection dependent, Mr. Chairman, upon the good will of the Intelligence Community and law enforcement agencies and hostage to their perhaps incompletely informed or self-interested judgment about what the Homeland Security analysts really need to know.

Already, we understand that the Director of Central Intelligence, Mr. Tenet, has no intention of providing raw intelligence data to Homeland Security intelligence analysts. As he sees it, they should be content to receive only finished reports, that is, to get no deeper access to Intelligence Community databases than we do in Congress as we receive the community's periodic intelligence products.

To agree to such limitations, Mr. Chairman, would be, in my view, a grave mistake. In the information technology world, we are on the verge of dramatic new breakthroughs in data mining capabilities that are giving ordinary analysts an extraordinary ability not just to search, but to analyze and to understand enormous quantities of data from a vast array of different data sources. The cutting edge of intelligence analysis, Mr. Chairman, in other words, is likely to be in crunching massive amounts of data on a genuinely all-source basis, drawing upon multiple data streams in ways never before possible, and certainly in ways that are not being done today.

However, as long as we have no one in a position to see all the many data streams that exist within the Federal Government today, must less those that may also exist in the State and local arena and in the thriving information economy of the private sector, all of these rapidly advancing analytical tools will be of little use. Already, it has been one of our frustrations at the Senate Select Committee on Intelligence to see the degree to which even agencies that acknowledge the importance of interagency electronic information sharing are each independently pursuing separate answers to this problem. Even their responses to the problem of agency-specific stovepipes are often themselves stovepipe of responses.

The DCI's own initiative to create an Intelligence Community-wide "Intelligence Community System for Information Sharing" depends wholly upon the agencies deciding, Mr. Chairman, what information they think other agencies' analysts need to know. Every agency will be charged with populating its own "shared space" that will be searchable by cleared and accredited online users. No outsider, it seems, would ever have access on an agency's real databases.

Without some modification, Mr. Chairman, to the President's Homeland Security proposal and to the DCI's refusal to consider providing raw information to the new Department, this initiative runs the risk of replicating and institutionalizing these limitations.

The exciting part about the new Department is precisely, Mr. Chairman, that it offers the prospect of getting beyond or above bureaucratic stovepipes in the ways we imagined for the anti-terrorist project we discussed with Governor Ridge last November. Rather than having every agency decide for itself what every other agency needs to know about its own information holdings, we need, I believe, to create an institution that finally has real visibility into all government information on terrorist threats.

The President's proposal for a Homeland Security Information Analysis Office has the potential to be that organization and to rise above bureaucratic business as usual, but its access cannot be limited, Mr. Chairman, just to what the agency heads decide it should have. In my view, Mr. Chairman, the President's proposal can and should be improved by giving the Secretary of Homeland Security

access to essentially all information related to terrorist threats, and including raw data that is in the possession of any government agency. Homeland Security intelligence analysts should be free to data-mine agency holdings in order to undertake true all-source intelligence fusion.

Senator Specter has offered an amendment that would help fill this hole in the President's otherwise very promising proposal by creating a National Terrorism Assessment Center with the authority to direct the CIA, FBI, and other Federal agencies to provide it with all intelligence and information relating to threats of terrorism. As I see it, Mr. Chairman, Senator Specter is clearly thinking the right thoughts, although I believe it would be a mistake to duplicate analytical functions by creating a new center within or parallel to the Homeland Security Information Analysis office.

Personally, I think the soundest step would be to apply the concept of unfettered information access to the Department of Homeland Security. Section 203 of the President's proposal should be modified, I believe, to allow for the creation of an information architecture that will enable Department analysts to seek and obtain whatever information they deem necessary to understand and thwart terrorist threats against the United States.

The only qualifier on this authority, I believe, would be to provide that such transmittals must occur pursuant to some kind of agreement or memorandum of understanding with the DCI regarding security procedures for handling classified information, and with the Attorney General with respect to handling "U.S. person" information and protected law enforcement information pursuant to applicable law.

Provided, Mr. Chairman—and I know I am going on, but this, I think, is important—provided that the new Department's intelligence functions——

Chairman LIEBERMAN. You are doing well.

Senator SHELBY. Thank you—were also subjected to appropriate intelligence by Congress, the United States would then be well on the way to creating, Mr. Chairman, for the first time, a genuinely all-source national analysis organization devoted to combating the threat of terrorism in the United States.

Naturally, the Department of Homeland Security, including its intelligence function, will require close Congressional scrutiny and oversight as it is created. Whatever the final information access rules end up providing, it will be necessary, I believe, Mr. Chairman, to ensure that appropriate agreements are worked out between the agencies involved and that personnel are properly trained and equipped to implement them.

In the bureaucracy such as our Intelligence Community, this can be no small task. As you may recall, we put mandatory sharing provisions in Title IX of the USA PATRIOT Act, but today, 8 months after the President signed the Act into law, procedures for implementing such sharing are still being negotiated between the Attorney General and the Director of Central Intelligence. The detailed procedures for information sharing with the new Department of Homeland Security will likely require very close Congressional attention.

Another of my concerns relates to the important of ensuring that the Department's Information Analysis and Infrastructure Protection Office maintains an appropriate balance within its own ranks. Under the President's proposal, that office will require an infrastructure protection constellation from a number of existing Federal agencies whose entities are being transferred en masse to the new Department.

The information analysis side of the office, however, will apparently have to be built up largely from scratch. It will not require specific analytical offices from other agencies within the Federal system but will rather have to be grown within the Department. Mr. Chairman, if this is done right, this could be a great strength, allowing the Department of Homeland Security to build its own elite analytical cadre, largely independent of the institutional biases and bureaucratic mindsets of the existing Intelligence Community. Careful attention over time, not to mention Congressional oversight, will be needed.

This process may involve growing pains, and the fledgling organization may also need to be nurtured and protected against its bureaucratic rivals and others who may not wish it to succeed.

For the most part, I have no other serious concerns about the President's proposal. I would only note that under 710 of the President's bill, the Secretary would have the power to terminate any Inspector General investigation that he felt to be inappropriate, providing only that he provides notice of this termination to the Speaker of the House and the President of the Senate. Given the important role, Mr. Chairman, that Inspectors General play in our system of legal and policy oversight and the important domestic security role of the new Department, I would think this provision to be too limiting and I hope you will take a good look at it. Even if the Secretary could derail investigations, I would think it imperative that notice of such a decision, also be given to the appropriate Congressional committees of jurisdiction.

I would like to emphasize that while I believe, Mr. Chairman, that the President's proposal for a terrorism-focused information analysis function within the Department of Homeland Security is a vital step forward, its creation alone will not solve—will not solve—the intelligence problems affecting our country and which we and our House counterparts are working on today as part of our inquiry. We must not forget, Mr. Chairman, that we will have a large intelligence bureaucracy that will not be part of the new Department and that the Department's important analytical functions will have no chance of succeeding if the information collection system that feeds it remains broken.

Furthermore, the new Department's system will focus upon domestic terrorist threats, leaving the whole universe of foreign intelligence unreformed. The President has noted that his proposal for the Department will "complement the reforms on intelligence gathering and information sharing already underway at the FBI and CIA."

While I believe the FBI is doing a commendable job at this point trying to reform itself, the CIA, I believe, has not yet even considered significant changes. Indeed, as its leadership has repeatedly indicated in testimony before our Committee, the CIA's response to

September 11 has mostly been to insist that it is on the right track and that Congress should simply give it more money and personnel with which to continue doing more of the same. As I have said elsewhere, I think that response is inadequate and that we can do much better.

Finally, I would like to make a brief comment about the analysis of information that already exists in the private sector. This is another area that our TAG group has emphasized in our internal discussions of intelligence reform. The private sector collects and maintains vast amounts of information that would be of enormous use to intelligence analysts seeking to track terrorists.

Mr. Chairman, I appreciate your indulgence here this afternoon and I believe some of these proposals would help improve this legislation.

Chairman LIEBERMAN. Thanks very much, Senator Shelby.

That was very helpful, very interesting, both of you. If you have got a few moments, I would like to ask a few questions——

Senator SHELBY. Absolutely.

Chairman LIEBERMAN [continuing]. Then I would really want to follow up and bring you back to the full Committee because you have clarified some history for me. You have given some texture and focus to some of the parts of the bills that we are considering, and you have raised some questions in my mind.

I am fascinated by that TAG experience. You know, it did strike me as I looked at the proposal in the President's bill for this information analysis section—we will probably give it a bigger title, separate it—and as I have listened to the testimony over the last week—this is the third of four hearings, today—that if we do this right, and I think you said it at the end——

Senator SHELBY. We have got to do it right.

Chairman LIEBERMAN. We will do it right—it will be the one place in the Federal Government where all the information comes together so that, as you said, Senator Shelby, the President can ask the Secretary of Homeland Security what is the threat, what is going on.

Now, it leaves open, obviously, the question of whether there should be another such fusion center or some other kind of reorganization for the rest of the world for the counterterorrism threat, and I presume as I listen to both of you that is a question that your joint investigation may be considering and may be recommending on at the conclusion. Senator Graham.

Senator GRAHAM. Yes. There have been a half-dozen or more reports on the state of the Intelligence Community, several of them specifically, and in some cases almost prophetically, focusing on the threat of terrorism. Almost every one of those reports has recommended some greater centralization of capability over our foreign intelligence collection, analysis, and dissemination function.

What we are talking about here is a different issue, and that is intelligence which is collected to understand activities and threats inside the homeland of the United States. I believe the basic principle of the President's plan, which is not to create a new collection agency but rather to rely on those that already exist with one caveat, but do create a new analytical capability where all of the information that is currently being collected plus, I hope, law enforce-

ment information being collected at the State and local level will flow into this single set of human eyes. As I indicate, it was the failure to get collected information before a single set or at least a coordinated group of eyes which in a preliminary way appears to be one of the major flaws that contributed to September 11.

The caveat that I had is the issue of the domestic collection of domestic intelligence. Right now, that is, to the degree we carry it out, a function of the FBI. I personally would recommend, and I believe this is consistent with the President's proposal and with your earlier legislation, that issue does not have to be resolved in this Department of Homeland Security legislation and would be better held, not forever, but maybe for 6 to 12 months when we could look at that knowing what the structure of the Department of Homeland Security will be, maybe informed by some of the information that our inquiry is going to develop, because it raises the thorniest of issues of civil rights, privacy, where it should be located.

There seems to be an initial feeling that the FBI is the proper place and it may well be, but a number of other countries whose intelligence systems we tend to admire, such as the British, most Europeans, the Israelis, place domestic intelligence collection in a different agency than either their domestic law enforcement or their foreign intelligence collection, and there are some good reasons why so many other nations have separated that particularly sensitive function of domestic intelligence collection.

Chairman LIEBERMAN. I agree with you. Let me just say before I yield to Senator Shelby, that question goes beyond what we should tackle in this chapter. I think we want to set up a Department of Homeland Security. I want to come back and talk to you a little bit about the White House office, and we want to create in it this intelligence analytical capacity. I like the idea of a fusion center.

I take it that at this point, both of you would say that the Intelligence Division of the new Department should not have collection capability or be given operational intelligence capability, right? It is possible that somebody would come back after your work is done and decide that there ought to be a new domestic intelligence center and one of the places one might place it is in the Department of Homeland Security. But that goes beyond what I intend to have our Committee consider at this point.

Senator SHELBY. Mr. Chairman.

Chairman LIEBERMAN. Yes, sir.

Senator SHELBY. If I could just comment on the TAG Group, the Technical Advisory Group that Senator Graham and I know has helped our Committee so much. If you and some of your people on the Committee of jurisdiction here on creating this legislation would like to talk with them about this, I think you would find it very helpful. They were the same group that predicted NSA was going to go down—it was way behind—if we did not really do a lot of things to modernize the NSA. Nobody believed that; everybody was in denial. Sure enough, about a year and a half later, this happened.

They are into what is best for America. They have the processing power, you might say, to understand these issues. I think you

would be impressed with the group, as Senator Graham and I have. They know this issue. What do you think, Senator Graham?

Chairman LIEBERMAN. Yes. It sounds like we could benefit from such a gathering and we will pursue that.

Senator SHELBY. Thank you.

Chairman LIEBERMAN. I appreciated, Senator Shelby, what you said about Section 203. It has troubled us, too. We have been asking questions about it. In some ways, it seems to give more authority in gathering information related to the vulnerability of critical infrastructure than to terrorism generally, which seems to suggest a limited focus, and so certainly my hope and intention is to try to strengthen the language that we put into the bill about the Intelligence Division——

Senator SHELBY. Absolutely.

Chairman LIEBERMAN [continuing]. And as soon as we get some drafts, we would like to share it with you. Have you looked at it?

Senator SHELBY. We would like that.

Chairman LIEBERMAN. Senator Graham, your work clearly inspired and, in fact, expressed the sections of our Committee bill that created the White House Office for Combating Terrorism, and as I understood it, and you have stated it again today, homeland security is one important function but it is not all of combating terrorism. We have got State, Defense, etc.

The White House now, although it has not clearly stated what it wants to do with the office Governor Ridge now occupies, wants to continue it, but with the focus still on homeland security, as I understand it, instead of a broader focus on combating terrorism.

The other criticism that we heard yesterday from some of the witnesses we had, veterans of the national security/Intelligence Community was that, Lord knows, the last thing the White House needs is another office. Perhaps, if anything, well, the National Security Council does this. Maybe you should just put the Secretary of Homeland Security on the NSC, which, in fact, our bill does, and that will do it.

I am still quite interested in this office and still think it has a unique function. I wanted to give you a chance for the record here today to respond to some of those comments or criticisms on our proposal.

Senator GRAHAM. I think it is interesting that you have raised the National Security Council. As you know, the National Security Council is a statutory body created in the National Security Act of 1947, which was the same act or was part of a companion group of acts which collectively created the Department of Defense, created the modern intelligence agency, the CIA and its counterparts. All were results of that legislation.

What the National Security Council and its chief advisor represent is two things. One, an awareness of the fact that in a complex government such as ours, you are unlikely to be able to place in one Department, the singular responsibility for major national issues, such as national security and now such as homeland security.

Ms. Rice told me, Dr. Rice, that she deals primarily with the Department of Defense, the Department of State, the Intelligence Community, and often, but not as frequently, with the Treasury

Department. Those are her main clients. So her first job is to coordinate those clients so that they are all operating in a focused way in America's national security interest.

The section function that she performs is as the principal advisor to the President on national security. If the President wants to know what is the current state of Indian-Pakistani relations, we have had a quiet 30 days, does it look as if this period of tension is over, she is the person that he turns to. She tasks all of these clients that she has to develop her recommendation to the President.

I think those two functions basically describe what this new Office of Counterterrorism would be. Even with the creation of the Department of Homeland Security, there are still important parts of the National Government that will be involved in countering terrorism. The Defense Department, and particularly with the creation of the new Northern Command, which for the first time will put a command of the Defense Department inside the homeland of the United States, the State Department will have important functions. The Department of Justice, certainly FBI, Immigration and Naturalization Service, to mention two, will have a lot to do with Homeland Security, and again, the Treasury Department through its economic and financial controls mechanism will be an important part of a comprehensive counterterrorism program.

So I think we need to have someone on the domestic level who does what Dr. Rice is doing on the foreign policy national security level is still there, and again, a person whom the President has confidence who can be his closest advisor on the panoply of issues and relationships that will be involved in an effective counterterrorism strategy.

Chairman LIEBERMAN. In some ways, your answer fits some pieces of testimony that we had yesterday from Dr. Ash Carter, who very strongly supports an office in the White House but sees it not just as a planning office but as a programming office. As he kept saying: "Not just the architect but the builder to continue to build a national anti-terrorism program, including homeland security." So it is hard to know exactly how the administration will respond at this point because I think they are particularly—let me ask you this specific question.

I know that in the early iteration of the Committee bill, they were particularly troubled about the accountability of the office to the Congress and the need for advice and consent confirmation. I know in the opening statement you said you still thought that was an important part of it. Your feeling about that has not diminished in the context of creating a Department of Homeland Security, I take it.

Senator GRAHAM. If anything, the Department of Homeland Security both as a symbol of the elevated importance of this issue, I think it will be helpful. I mentioned that the person who would head this agency would have a client base of maybe five or six Federal agencies. But for the creation of the Department of Homeland Security, they would have a client base of about 15 to 20 Federal agencies. So the creation of the Department does not obviate, in my judgment, the need for a White House office focused specifically on counterterrorism. It does corral into one big place that is a new cor-

ral and several older corrals the capability of actually conducting an effective counterterrorism activity.

I, just as Dr. Rice does not command any troops or assign ambassadors or conduct economic policy but rather works through the agencies that have that as their responsibility, I would see that as the manner in which the head of the Office of Counterterrorism would operate.

I did indicate in my remarks that I believe that the Director should have some budgetary control, maybe in this point drawing from some of the experience of the Counter-Drug Office, where the Director of that office has the ability to, the word "veto" may be a little too strong, but almost that strong, if he feels that one of those operational agencies is not allocating resources either sufficient or properly directed to carry out the function of counternarcotics. I think this office ought to have some similar budget capability vis-a-vis the various Departments that will be involved in counterterrorism to be certain that the strategic plan is being implemented in terms of resource flows.

Chairman LIEBERMAN. Well said. In fact, we have given the White House Office Director exactly that responsibility, that same budget certification authority.

Senator Shelby, please, and then I have a specific question I want to ask.

Senator SHELBY. I just wanted to comment that I subscribe to everything Senator Graham has been saying here. But I believe, Mr. Chairman, that you and Senator Thompson, the Ranking Republican and former Chairman of the Committee, have an historic opportunity to fashion a piece of legislation that will really help bring security to this country in our fight against terrorism. But the key, I want to point out again—the linchpin, the brain of this whole Homeland Security operation for security—is going to center around the intelligence component, make no mistake about it.

Chairman LIEBERMAN. I agree.

Senator SHELBY. I know you are very involved in it, you understand it, and you will work towards doing that and doing it right.

Chairman LIEBERMAN. I appreciate your saying it. I feel like this is one of the most important things that Senator Thompson——

Senator SHELBY. That you might do while you are here in the Senate.

Chairman LIEBERMAN. Absolutely. Let me ask you a question that came up today in our discussion with Director Tenet and it goes to some of the concerns you expressed about the authority of the Secretary of Homeland Security as proposed to request information, to get raw data, and this, for us, very puzzling requirement that there be approval of the President at different points for the Department to receive that data. It is very unusual, as I said earlier, that the Secretary of Homeland Security should have to go up to the White House to get information over there.

Now, Mr. Tenet said at one point, that he interpreted raw data to mean the disclosure of sources and methods, not content. In other words, in my mind, and I think a lot of the Members of the Committee, both parties, we were seeing raw data as raw data as compared to in an analysis.

Senator SHELBY. Right. I agree with your interpretation of that, but I want to say again, and I have a lot of respect for a lot of the people that toil in the law enforcement agencies and in the Intelligence Community. They have served this country, well overall. But there are just too many obstacles, as Senator Graham talks about, in the way of sharing of information.

If this Homeland Security bill is going to work and is going to be meaningful, they are going to have to have all the intelligence they need, and not just what people want to give them. And if they have a piece of interesting intelligence and say, "Oh, let us look behind that, let us see what is really there," they ought to have the ability to go find out. They ought to have people well trained to do this.

And I think that is what our TAG Group had in mind. Otherwise, we are wasting our time, we are going to waste our money, we are going to waste our effort, and America is not going to be safe.

Chairman LIEBERMAN. Thank you. I agree. Incidentally, I agree with you on the Inspector General—and I appreciate your making the point.

Senator Graham, maybe I will ask you a last question and let both of you go. Help me to understand a little more your third point of the three points.

Senator GRAHAM. Well, the third point is that the question, will we need a different domestic intelligence collection capability than the one we have today through the FBI?

Chairman LIEBERMAN. This is that question, OK.

Senator GRAHAM. That raises the issue of for what purposes will it be different than it is today? Who will be the targets? What will be the methods that will be legally available to this agency? And where should it be housed in the family of Federal agencies?

I personally feel those may end up being some of the most contentious issues that will have to be faced in the full establishment of the Department and its intelligence component, and I do not believe that that is so integral. This is not, to use an analogy to architecture, this is not like installing the heating and air conditioning system in a house, which has to be put in at the time the house is under construction or you are going to have to tear it down to put it in later. This is more like putting the interior decoration into the house. You can do that after all the construction is over. I would suggest, let us get the building completed and then we will come back and have the national debate over domestic intelligence gathering.

Chairman LIEBERMAN. I agree with you. I think that is well said. We do not need to do that now and I also think that it is so controversial that it might delay and obstruct the passage and creation of the new Department.

For now, as I hear both of you, and I think it is very reassuring to hear you. Not only have you sort of filled in some blanks, but encouraged me in the direction that I personally, and I think other Members of the Committee are going, that what we are trying to create here, to use a term that you used somewhere where I was with you, Senator Graham, and I reused it, I must admit, without giving you credit for it——

Senator GRAHAM. Hmm—— [Laughter.]

Chairman LIEBERMAN [continuing]. We want this Intelligence Division or office in the new Department to be an aggressive customer.

Senator SHELBY. Agile, too.

Chairman LIEBERMAN. And agile, right.

Senator GRAHAM. And demanding, too.

Chairman LIEBERMAN. There you go. No, I agree. So for now, we have all agreed it does not require operational or collection capability, and that is for another day, determined by your work and others, and——

Senator SHELBY. Mr. Chairman. I do not mean to interrupt you, and especially not the Chairman of this Committee. It has occurred to me—the Phoenix memo just comes to mind and the Minnesota Moussouai case, which we all know probably too much about—that if you had had an all-source analysis center, it might have picked up that memo from the FBI in Phoenix and then, 4 or 5 weeks later, become aware of the FBI situation at the flying school in Minnesota with the FISA. If they put that together, bells may start to ring——

Chairman LIEBERMAN. Sure.

Senator SHELBY [continuing]. If the information is in the right place.

Chairman LIEBERMAN. Right.

Senator SHELBY. If you were to tie that together with the information regarding a couple of the September 11 terrorists who, I believe, were in Malaysia——

Chairman LIEBERMAN. Yes.

Senator SHELBY. You put all of that together, and you have got more than a little piece of intelligence. This is what has not happened in the past and this is what we are hoping—if we can create, or you can create, the right piece of legislation and it is not choked off by the other agencies—we might be able to do differently in the future.

Chairman LIEBERMAN. Well said. Incidentally, a few times in our hearings, people have analogized what we are trying to do to the INR office at the State Department. I am seeing this as much more independent, much more aggressive, agile, and demanding as a consumer of intelligence information.

Senator GRAHAM. If I could just extend what Senator Shelby just said, we talk about stovepipes. I think of these stovepipes as being three yards long in a vertical sense. The top 36 inches is labeled "collection." The middle 36 inches is labeled "analysis." And the bottom 36 inches is labeled "dissemination." Right now, we have three-yard-long stovepipes. It does not get disseminated until it goes through all three parts of it and then it goes out.

What we essentially are doing is bringing an acetylene torch to this stovepipe and we are cutting it at the 36-inch level. We are keeping the stovepipe for purposes of collection, and there are some, I think, good reasons for doing that. But then once it comes through collection, it then goes to a totally different entity, this newly created analytical capacity in the Department of Homeland Security.

I think that will avoid some of the problems of the three-yard-long stovepipe, which include, first, an attitude that if I collected the information, it is better information than anybody else collected. Second, there is a certain tendency to degrade open source information as compared to secretly collected information. And then third is the tendency to not want to share the information that I have collected and analyzed with other people.

I think if you can separate collection from the analytical and dissemination function, which this legislation does, you will essentially have dealt with all three of those constraints on the current system.

Senator SHELBY. Well said.

Chairman LIEBERMAN. Well said is right. I thank you both. I sometimes surprise people outside of the Senate when I say that I often learn more from my colleagues in the Senate than from anyone else, and I appreciate your testimony.

Senator SHELBY. We also learn from you.

Senator GRAHAM. Yes. Thanks, Mr. Chairman.

Chairman LIEBERMAN. Hear, hear. I am going to ask you—you see, the reward for such a performance is that we are going to ask you back for an encore. We will work with our staffs to arrange an appropriate date to bring the whole Committee together for a meeting the week we come back. In the meantime, I thank you very much. I wish you a good recess.

Senator GRAHAM. Thank you, Mr. Chairman.

Chairman LIEBERMAN. The hearing is adjourned.

[Whereupon, at 5:07 p.m., the Committee was adjourned.]

APPENDIX

TestimonySenateHomelandSecy.doc

Testimony Before
The Committee on Governmental Affairs
United States Senate
Wednesday, June 26, 2002

ROLES FOR THE WHITE HOUSE AND THE NEW DEPARTMENT

Ashton B. Carter
Co-Director, Preventive Defense Project
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Mr. Chairman and members of the Committee on Governmental Affairs, thank you for inviting me to appear before you today. My written statement addresses the overall architecture of the federal government for homeland security, including the respective roles of the White House and the proposed new cabinet department. My oral comments will focus on several new types of "intelligence" – which I mean very generally to denote information and analysis bearing upon the successful accomplishment of the mission of homeland security over time – that the new Department of Homeland Security could usefully devise and then practice. These are modes of intelligence that the CIA and FBI are unlikely to practice well by themselves, but to which they can furnish important inputs.

Still homeless after 9/11. Dealing with homeland security is quintessentially a managerial matter, and it is consequently not surprising that Washington has fumbled it so far. Washington is best at tackling policy problems, not managerial problems. In 2000, I made a judgment in *Foreign Affairs* that I see no reason to amend as yet, two years later and nine months after the disaster of 9/11:

> Today some of the most critical security missions – counterterrorism, combating WMD proliferation, homeland defense (including protection against computer network attacks and biological weapons), information warfare, peacekeeping, civil reconstruction, and conflict prevention (or "preventive defense") – are accomplished in an ad-hoc fashion by unwieldy combinations of departments and agencies designed a half-century ago for a different world. Too many of these missions are institutionally "homeless": nowhere are the authority, resources, and accountability brought together in sharp managerial focus. Although it is widely agreed that the United States needs the means to accomplish these homeless missions (even if debate continues over exactly when and where it should perform them), the U.S. government is not well structured for these jobs.
>
> Many of the homeless missions, although apparently unrelated, have a key element in common: they cut across different cabinet departments and require the coordinated actions of several agencies. This is hardly surprising, since the problems they address do not respect neat distinctions between foreign and domestic threats, military and economic remedies, or states of

> war and states of peace. Such distinctions are outdated and merely reflect what the world was like in the era after World War II, when the American national security establishment was founded. It is due to such distinctions than no one agency is automatically in charge of these missions or responsible for developing and directing the capabilities they require.[1]

The nation is still struggling with the organization and management of the "homeless mission" of homeland security. For eight months we have had an Office of Homeland Security (OHS) in the White House, and for some days a proposed Department of Homeland Security (DHS). Congress has long ago proposed an architecture containing both these ingredients. I would agree that both are needed to make a home for this mission, but each has a distinctive role to play. The main points made below are:

- Creation of a DHS in no way supplants the paramount need for a strong White House OHS.
- The key White House OHS role is that of *architect,* devising an investment program to build *new* homeland defense capabilities, not "coordinating" the inadequate capabilities that already exist.
- Establishment of a DHS will not bring order to the border, transportation, and emergency management functions unless the reorganization is aggressively implemented.
- DHS should not just bring order and focus to existing functions, but should accomplish new functions, especially development and practice of new types of "intelligence" and new technology and techniques for homeland security.
- Several new types of "intelligence" – red teaming, intelligence of means, countersurveillance, and risk assessment – that should be practiced by the department will be the focus of my oral statement.

THE ROLE OF THE OFFICE OF HOMELAND SECURITY

Coordinating the old versus building the new. The announcement of an intention to create a cabinet-level Department of Homeland Security should in no way obscure the paramount need for a strong White House hand over *all* aspects of homeland security. It remains unresolved how this function will be exercised.

Governor Tom Ridge's charter for the Office of Homeland Security uses the word "coordinate" 29 times to describe what its authors imagined was the essence of his managerial task. Much of the commentary on OHS's slow start has focused on the strength of Ridge's power to coordinate and the supposed fallacy that a White House staffer, however close to the President, can effectively do so.

A larger fallacy lies in the idea that "coordination" describes what the nation in fact needs. The nation's capabilities for homeland security, even optimally coordinated, are simply not adequate to cope with 21st century terrorism. What is needed is far less a coordinator of what exists than an *architect* of the capabilities we need to build. All the managerial models advanced and tried over the past decade for counterterrorism – coordinator, czar, lead agency – have made this mistake. The result is a "come as you are

[1] "Keeping America's Military Edge," *Foreign Affairs*, January/February 2001, p.94.

party" in which each agency shows up with whatever capabilities its previous history happens to have bequeathed to it. Tom Ridge needs to position himself as the architect of new capabilities. Only then will his OHS add value and leave a legacy.

As architect, Ridge would first identify needed capabilities and then assign resources to the various agencies to build those capabilities. Where no agency naturally forms the right base to build on, the architect would recommend new agencies. The result, schematically, would be a multi-agency, multi-year investment and management plan that can be arrayed on a spreadsheet as in Figure 1. (Even though the Congress budgets annually, a multi-year program plan is a common and essential tool in procurement management.)

Figure 1 is what we should expect from Tom Ridge. He should create it in collaboration with OMB, take it to the president for approval, and ensure that the president directs his cabinet officers to prepare their budget submissions in accordance with the plan. The Congress has the last word, of course, but experience demonstrates that Congress tends to make only marginal adjustments to a coherent program plan that has presidential backing.

Figure 1. Dimensions of a Homeland Security Program: The Architect's Plan.

	Intelligence & Surveillance	**Prevention**	**Protection**	**Interdiction**	**Response & Recovery**	**Attribution**	**Analysis & Invention**
Justice/FBI							
Defense							
Intelligence							
Health and Human Services							
Border (Coast Guard, Border Patrol, Customs, Immigration, etc.)							
FEMA							
Other (Energy, Transportation, Agriculture, State, etc.)							
New Federal Agencies (DHS) and Nonprofit Institutions (e.g., FFRDCs)							
State and Local Government (supported by federal grants)							
Private Sector (via regulation, subsidy, and indemnification)							

Alas, the money gets appropriated whether there is an architect and plan or not. The FY03 budget provides a clear example, where $38 billion is apportioned largely on the basis of agency and congressional initiatives rather than any overall investment plan emanating from the White House.

Equipping the Office of Homeland Security to do the job. Producing the investment plan represented in Figure 1 is no small job. It cannot conceivably be done by a small White House staff, however talented and focused. To be capable of producing a

plan of the requisite scope and complexity, OHS will need an organic analytical and planning capability like RAND provided to the Air Force in the 1950s, the MITRE Corporation provided to the Sage continental air defense system, and the Aerospace Corporation has provided to the Air Force and NRO for space. Without such a new not-for-profit institutional founding, OHS cannot do the job.

A reasonable approach to the task of investment planning is provided in the forthcoming report of the National Academy of Sciences Committee on Science and Technology for Countering Terrorism. It examines the vulnerabilities associated with each of the following infrastructures:[2]

- *Human, animal, and agricultural health system*;
- *Toxic/explosive materials and food/water storage, production, and distribution systems*;
- *Nuclear and radiological hazards*;
- *Information Technology (IT): Communication, Data, and Identification systems*;
- *Borders, Transportation and Distribution systems*;
- *Energy Systems*;
- *Physical Infrastructure, Cities, Buildings, and Important Events*;
- *Linked Vulnerabilities, Simulation, and Modeling*. This category covers the important interrelationship of different infrastructures which depend upon one another. For example, the energy distribution system depends on an IT system which controls power generation, distribution, and switching. Simulation and modeling are used to analyze and predict the technical response of society's complex and interrelated infrastructures to terrorist attack.
- *People*: This category refers to quality of life and morale, as opposed to physical health and safety, and deserves separate consideration.

The National Academy report then identifies countermeasures that can be taken to alleviate these vulnerabilities throughout all the phases of a hypothetical terrorist attack: intelligence and surveillance, prevention, protection, interdiction, response and recovery,

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[2] Specifically, the examination of each infrastructure covers three aspects:

- Each infrastructure can serve as a *target* for terrorism. For example, the World Trade Center buildings of New York served as the target of the September 11, 2001 airline attacks. The human health system was the target of the anthrax mailing attacks of the same months.
- Some infrastructures can also serve as a *means of attack*. For example, on September 11, 2001 the transportation system – airliners – served as a weapon to attack another infrastructure, the buildings of the city of New York. A system of distributing goods – the mails – served as the means of anthrax attack.
- Other infrastructures serve as a critical part of the *response to attack*. The information technology (IT) system, for example, is vital for coordinating emergency response, law enforcement, and military operations. The IT system is also necessary for informing the public in an emergency. Terrorists might select the infrastructures that are essential to response as part of their attack. For example, spread of a biological warfare agent might be accompanied by a cyber attack on the Internet and 911 systems.

attribution, and analysis and invention.[3] Deploying the countermeasures becomes the basis for the investment program plan of Figure 1. It is clear that this job requires breadth of technical knowledge and independence from interests that might be disadvantaged by its findings, characteristics of a new non-profit institution.

Washington spending versus state and local spending: the theory of fiscal federalism. Many of the investments needed for homeland security that the architect will identify must be made in state and local governments. After all, terrorist incidents affect first and foremost a particular locality in which the target is located, and the police, fire, emergency management, and other public officials there will be the first on the line. It is not practical for each locality to develop its own comprehensive response to the possibility of terrorism or to engineer protective systems, let alone to develop new tactics, techniques, and technology. Creating common solutions to local homeland security challenges is therefore a logical task of the federal government. The federal role in creating common solutions and providing them (with partial funding) to state and local authorities, or to collective bodies such as associations of governors, fire chiefs, and police chiefs, will be a key task for the architect to sort out. In federalism terms, homeland security will end up somewhere in between education, where everyone talks about it and does research on it at the federal level but the real action is local, and national defense, where all the action is at the federal level.

Spending on homeland security by the private sector. The architect also needs to take account of the fact that the critical societal infrastructures that are the target for the terrorist are largely owned and operated by the private sector, not government. Much of the needed investment and adaptation to protect these infrastructures will have to be

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[3] *Intelligence and surveillance* involves surveillance of persons, groups, and motives—a delicate matter—but also surveillance of potential means of destruction such as fissile materials or germ cultures.

Prevention involves addressing the motivations for catastrophic terrorism where possible, but in any case keeping the means of mass destruction out of the hands of potential terrorists. Safeguarding fissile materials and preventing the hijacking of airliners are examples of prevention.

Protection is needed in case detection and prevention fail. In military parlance, protection means "hardening the target" so that destruction or disruption becomes harder for the terrorist. Examples of protection are making borders, buildings, airplanes, and critical infrastructures more difficult to breach, disrupt, or destroy through technical design and procedures. Protection might also mean making people more resilient to disease through vaccination and other public health measures.

Interdiction or "crisis management" seeks to disrupt and destroy potential perpetrators of catastrophic terrorism and their base of support before they can mount an attack, as in the current campaign against al Qaeda in Afghanistan.

Response and recovery or "consequence management" means containing and limiting the level of damage and the number of casualties by organizing emergency response, public health measures, and restoration of critical functions in the aftermath of a terrorist attack.

Attribution refers to the capability to find the perpetrators of an act (e.g., by typing an anthrax culture or performing radiochemical analysis of nuclear bomb debris) and choosing retaliation, prosecution, or other response.

Analysis and invention involves the systematic learning from incidents that do occur, studying terrorist tactics and devising countermeasures through "red team versus blue team" exercises, understanding motivations and modes of deterrence, eliminating vulnerabilities revealed through past attacks, and developing systematic plan for ongoing operations, future investment, and scientific and technological innovation.

made by private companies. The funds for these investments will need to come from some mixture of funds provided by the federal government and funds provided by the companies themselves. The private sector's own investments will arise in several ways, either because they are mandated by law or regulation, or because incentives are provided (e.g., tax relief), or because insurance companies require them, or because competitive business practices recommend them. The experience of the "energy crisis" in the 1970s, when similarly large and pervasive investments were seen as needed, provides a useful caution here: the key will be consultation between the architect and private parties. This is another key role for the White House architect.

Mobilization and sunset. Finally, the architect should attend to the legal foundation of the U.S. counterterrorism effort. In that connection, the concepts of mobilization and sunset should prove useful. Until the mid-twentieth century, successful prosecution of war depended on the ability to mobilize nations and armies. A similar concept can apply in the war on terrorism. In the face of reasonably credible and specific information about actual or imminent mass terrorism, extraordinary measures might be advisable that are undesirable when there are no such warnings. In an emergency, the government will assume special authorities, restrict movement and other freedoms, and impose economic disruptions as the nation hunkers down. It is important to the quality of civil society in the long run that this mobilized state be clearly distinguished in statute and procedures from "normal" times when catastrophic terrorism is an ever-present, but not specifically anticipated, contingency. Experience in the United Kingdom during its century-long struggle against Irish terrorism suggests that even in liberal democracies powers granted to the government in the name of imminent terrorism are seldom rescinded when the threat recedes.[4] It is therefore important to write into any statute or regulation conferring extraordinary powers on the government a sunset clause describing the time and method of demobilization, placing the burden for extending the mobilization squarely on the government's ability to produce credible and specific information of imminent threat.

THE ROLE OF A DEPARTMENT OF HOMELAND SECURITY

Three Provisos. A DHS can be a constructive addition to the federal architecture, but only subject to three provisos.

A Department of Homeland Security is an appropriate ingredient or output of the architect's plan, but not a substitute for the architect. While the proposed DHS contains much, it also omits much – the CIA, DOD, and FBI, in particular. An architect is needed for *all* the agencies involved. The first proviso is that the founding of the DHS not be viewed as supplanting the OHS.

This second proviso is that the administration successfully complete the reorganization of the border, transportation, and emergency management agencies that

[4] Laura K. Donohue, "Civil Liberties, Terrorism, and Liberal Democracy: Lessons from the United Kingdom," BCSIA Discussion Paper 2000-05, ESDP Discussion Paper 2000-01 (Cambridge, Mass.: Belfer Center for Science and International Affairs and Executive Session on Domestic Preparedness, John F. Kennedy School of Government, Harvard University, August 2000).

are supposed to go into DHS, improving their management and focusing them on their new priority. Most reorganizations in the federal government are only partially completed. Agency heads, after first fighting the merger, will next aim to send their weakest performers to the new agency and keep their very best. Temporary inconveniences associated with reorganization – moving people into new office buildings, for instance – will be argued as detracting from day-to-day pursuit of the urgent mission of homeland defense. Government unions, strong in some of the agencies proposed as part of the new DHS, will scrutinize personnel policies. Congress will need to disband influential committees with established relationships to constituencies. All this is necessary but difficult. A reorganization done halfway could make things worse.

The third proviso is that the DHS do truly new things and not merely gather together old functions under one roof. The new department's most important contributions could be in intelligence analysis and science and technology. Indeed, two of the four proposed undersecretary positions in DHS are assigned these functions; the other two undersecretary positions are in charge of aggregating existing border/transportation and emergency management functions, respectively.

Developing and Practicing Alternative Conceptions of "Intelligence". There is considerable debate in Washington over whether the United States could plausibly have "connected the dots" leading to 9/11. Useful insights have emerged from this debate. One insight is the danger of continuing to separate foreign and domestic intelligence related to terrorism, the institutional reflection of which is the separation of the national security and law enforcement functions. Steps are underway to bridge this historical chasm. Another insight, stressed by the Attorney General and FBI Director, is the need to encourage and reward FBI agents to prevent terror crimes from happening in the first place rather than "solving" them after they have occurred.

However, these important insights, and most of the debate over intelligence, conceive of intelligence as perpetrator-centered and event-focused: locating individuals associated with terrorism and uncovering their plots. Debate centers on whether those collecting such intelligence, chiefly the CIA and FBI, are sharing the information. There are, however, other concepts of "intelligence" of great potential importance to homeland security which, at first approximation, are not currently accomplished *anywhere* in the federal government. A clear and valuable role for the new DHS would be to develop and practice some of these "intelligence" techniques, among them red teaming, intelligence of means, countersurveillance, and risk assessment.

RED TEAM/BLUE TEAM. Most Americans were probably not shocked to learn on September 12 that the U.S. government did not have advance information about the dozen or so individuals residing in the country who plotted and took part in the airline suicide bombings of September 11. They probably were deeply disturbed to learn, however, that the government was as heedless of the tactic used as it was of the perpetrators. The airline security system inspected for guns and bombs, not knives; aircrews were trained to deal with hijackers who sought hostages or conveyance to Cuba,

not kamikaze attack. In retrospect, a huge gap existed in the U.S. air safety system. Terrorists detected it before the security system did—and exploited it.

To avoid tactical surprise of this kind, the homeland security effort needs to adopt a standard mechanism of military organizations: competing red and blue teams. The red team projects itself imaginatively into the terrorist's shoes and tries to devise attack tactics. The blue team tries to design countermeasures. When the United States developed the first stealth aircraft, for example, the air force created a red team to try to detect and shoot it down. When the red team identified a weakness in the stealth design, the blue team was charged to fix it, systematically balancing risk of detection against the cost and inconvenience of countermeasures.

A comparable red/blue team mechanism should be the central feature of the program for homeland security. To work, the mechanism must be systematic and institutionalized, not ad hoc. It must be independent of the interests—airlines, for example—that stand to be inconvenienced by its findings. It must have the money to conduct experiments, tests, and inspections, not just paper studies. It must be knowledgeable about the technologies of terrorism and protection. Above all, it must be inventive. These criteria all argue for a new institutional founding outside of, but close to, government – a sort of "national laboratory" for homeland security.

INTELLIGENCE OF MEANS. Surveillance of the *means* that terrorists could employ is potentially more important than surveillance of *persons* who might be terrorists, and raises far fewer civil liberties issues. Placing all Middle Eastern male noncitizens who reside in the United States under surveillance, for example, is both objectionable and impractical. But inquiring after all those who take flying lessons but are not interested in learning to take off or land, who rent crop dusters, or who seek information on the antibiotic resistance of anthrax strains or the layout of a nuclear power plant is feasible and extremely useful.

Likewise, it is undesirable to restrict access by citizens to the Capitol building and congressional office buildings, but there is no fundamental technical barrier to seeding these buildings with sensors that would promptly, and with a low rate of false alarms, detect the presence of anthrax on surfaces and in ventilation systems. Nuclear weapons are much harder to detect, but the streets in the vicinity of the White House could be laced with sensitive detectors that would stand a good chance of detecting a nuclear weapon or radiological weapon. Although these detectors would individually have a high rate of false alarms, when networked so that their outputs are correlated in space and time, they could comprise an effective warning system. Such a system is preferable to registering truck drivers or other methods of surveilling persons in the White House vicinity.

COUNTERSURVEILLANCE. The concept of countersurveillance is illustrated by a tactic that has proved very useful in embassy and force protection. In its crudest form, someone stands on the roof of the embassy and looks for people who seem to be conducting surveillance of the embassy. Does a certain car pass by more than once; is

someone photographing architecturally unnoteworthy features of the compound? "Honey pots" are another example of countersurveillance: label a web site "CIA Director Personal Files" and see who visits. The point of countersurveillance is to estimate the information a terrorist would need to plan an attack, and then to look for people collecting that data.

RISK ASSESSMENT. For the architect to complete his investment program plan, he must decide where additional funds can make the most impact on protecting the homeland. Such risk assessment involves ordering terrorist scenarios according to how destructive they are, how likely they are, and how expensive and disruptive protective countermeasure would be. The gravity of a terrorism scenario is measured both by "hard" variables (loss of life, damage to property) and "soft" variables (disruption of society's key functions, injury to the population's way of life and overall peace of mind). One indicator of likelihood is the ease with which the act of destruction or disruption can be accomplished. Does it require many terrorists acting in concert, or will just one person suffice? Does it require the complicity of an "insider" who is part of the conspiracy – a nuclear reactor operator, say, or a computer network administrator? Do the means entail a large expenditure of funds, a complex organization, or sophisticated technology that only a nation-state or an established terrorist network could assemble, or is the scale of effort such that someone could undertake it in his or her garage? The final risk analysis arrays the scenarios against the countermeasures, technical and procedural, that could be deployed to thwart the terrorists. The result of balancing risk and cost is an investment portfolio in protection.

Marshaling Science and Technology. While the advance of science and technology (S&T) is the reason that terrorism has the potential to be catastrophic in the 21st century, S&T is also America's critical tool for safeguarding society against that threat.

America surely has weaknesses compared to other societies when it comes to facing terrorism. Its vulnerability is connected to many of the characteristics that its people also treasure: openness and mobility, freedom and personal initiative, and an emphasis on economic efficiency that relies on complex and technologically advanced social systems. America likewise has several inherent strengths as it approaches reducing this vulnerability – its immense size and wealth, its high level of education, its political cohesion and values.

But a critical comparative advantage of this country in facing challenges has traditionally been its strength in science and technology. In traditional national security affairs, for example, S&T has long been the key to America's preeminence. During the Cold War, the United States decided that it could not match the Soviet Union and its allies man for man, or tank for tank, in the defense of western Europe. Moreover, Warsaw Pact forces could invade from territory contiguous with western Europe, whereas U.S. forces were separated from the battlefield by an ocean. Finally, neither the United States nor its allies wished to live perpetually on a war footing like the Soviet Union. The solution to these military disadvantages was to offset them with superior U.S.

technology – precision munitions, stealth aircraft, spy satellites, and so on. Since the end of the Cold War, the United States has continued to rely on S&T to give this nation an asymmetric advantage that offsets an opponent's superior number of soldiers, favorable geographic access to the battlefield, and greater willingness to accept casualties and to impose sacrifice in the citizenry – whether Saddam Hussein's Iraq in 1991 or Afghanistan's Taliban in 2002.

In the effort to counter catastrophic terrorism, as in traditional military affairs, S&T can offset the vulnerabilities that unavoidably arise from America's best characteristics of openness, freedom, and economic efficiency. In many cases, S&T provides vital alternatives to other protective measures that, were we forced to adopt them, would alter the quality of American life.

DHS therefore needs to develop a strong contract research program. Much of this program should cover entirely new technology, but it should be coordinated with ongoing research, especially that sponsored by DOD.[5]

Conclusion. The United States is at the beginning of a long process of adapting to the threat of terrorism. Our key objective must be to build new protective capabilities we do not now have. That objective is more important than optimizing the capabilities we do have. It can only be accomplished by an architect in the White House. A Department of Homeland Security can complement but not replace the White House architect. Besides providing managerial focus for the border, transportation, and emergency response functions, the DHS should make entirely new contributions to homeland security through a widened conception of "intelligence" and by harnessing American inventiveness in science and technology.

[5] The Bush administration has so far left the role of DOD in homeland security unclear. While traditional military tools are not appropriate for most aspects of homeland security, the Department of Defense has enormous resources of potential value. These resources arise in the normal course of DOD's principal mission of conducting joint military operations against foreign opponents. Many of these resources are technical. For example, DOD will be developing technology for detection of and protection from chemical and biological threats as a necessary part of its principal mission. Deployed forces are a prime target of terrorists, and DOD's protective efforts (called "force protection" by DOD) have much of the same technical content as homeland security. Many of the industrial and technical projects undertaken for homeland security will probably be awarded to firms that do defense work, since these firms have the large systems engineering capabilities required and they are accustomed to doing government contract work. Given the likely scale of these DOD efforts and the overall size and quality of the DOD technology and industrial base, it is important to find a role that makes best national use of the defense asset for homeland security.

DOD has taken some preliminary steps to adapt its structures to contribute to homeland security. A Northern Command was established to vest responsibility for DOD operational support to homeland security in a single joint Commander in Chief (CINC). At this writing, Northern Command combines two principal entities from DOD. The first is the U.S.-Canadian North American Aerospace Defense Command, responsible for, among other things, shooting down commandeered airliners. The second is the Army's role as executive agent for DOD support to domestic agencies; this has long been DOD's office for coordinating such measures as provision of airlift to convey supplies in disaster relief situations. From these initial ingredients DOD expects to develop Northern Command as the DOD focal point for whatever the executive branch determines is an appropriate operational role for the military in homeland security.

The Department of Homeland Security should carefully coordinate its own technology efforts with such DOD programs as those of the Defense Advanced Research Projects Agency, the Defense Threat Reduction Agency, the Chemical and Biological Defense Program, and the U.S. Army Medical Research Institute of Infectious Diseases -- all of which will be carrying out closely related and large-scale technology efforts.

Prepared Testimony For The Senate Committee on Governmental Affairs
26 June 2002

By Lieutenant General Patrick M. Hughes, U.S. Army, Retired

Senator Lieberman, Senator Thompson, other distinguished Senators:

I have been writing about and talking about intelligence issues affecting Homeland Security for several years. Following are key thoughts, ideas and opinions I have which are offered in the hope they may contribute to the defense of our nation and our people.

Please take my comments in the following context: What we do to secure our nation must be done both internally and externally. We are inextricably linked to the nations and peoples of the world and our collective well-being is interdependent with theirs. We cannot believe that we are alone. We are not. Thus we should seek to act together with others, for the benefit of our nation.

We should go abroad in the global context, as well as within our nation's borders and vital territory, and we should involve ourselves in the political, governmental, diplomatic, informational, technological, criminal and military representations of power, to seek out those who would strike us, and interdict them, stop them, dissuade them, provide alternatives to them, what ever will work, short of appeasement, to avoid future attacks. The reason we should do this is simple: We cannot afford to absorb the blows that are possible in the future. As bad as the attacks of 11 September 2001 were, as bad as the subsequent Anthrax attack was, these events are not as bad as future attacks may be. One can imagine the results of a nuclear explosion in a city or a more complex and dangerous biological or chemical attack on an unwarned and unsuspecting population, or any of the other horrendous but still possible scenarios we know about.

Thus I am making my comments today with a great sense of urgency, because the conditions are urgent. They compel me to believe that we are all now warned and aware, but still unsuspecting and unprepared, because it is in our nature to hope for the best. I too want to hope for the best but I take it as my work to warn you of the worst and to advise you on ways to avoid disaster.

The Department of Homeland Security should not develop and field an intelligence collection capability separate from the existing intelligence community structure. We have difficulty now in avoiding redundancy and duplicative effort and the addition of yet another "collection agency," would not help. However, the new Department could be directly involved in some especially sensitive or purposeful intelligence collection, in cooperation with an existing department or agency. This of course includes law enforcement in all of its manifestations, federal, state and local.

I do believe that Homeland Security should participate in intelligence community (IC), collection management and have tasking and feedback authority and attendant responsibilities.

The Department of Homeland Security should have a senior official appointed to do the work of intelligence included in its structure, reporting directly to the Department Secretary and concurrently "reporting" to the Director of Central Intelligence. This person should be a participating member of the IC senior leadership. This arrangement works in other parts of the IC structure now.

In general, the Department of Homeland Security should not separately develop or field sensors, sources, methods or collection capabilities apart from the existing U.S. IC or relevant elements of law enforcement, counterintelligence and security. Rather, it should have the power and authority to use and benefit from existing or developed capabilities, in partnership with those who have primary authority for the capability. There may be notable exceptions to this general policy but they should be truly exceptional and explained in detail to oversight and partner elements.

In order to work effectively in the existing structure of the United States government, the Department of Homeland Security will require appropriate legislation to give it a charter and authority and responsibility. In the U.S. intelligence community the Department will require Presidential authorities in writing, and detailed written descriptions of its responsibilities and functions. This is no small undertaking and will require careful and dedicated work at the beginning to provide the construct of homeland security with a policy and procedural basis that is both workable and acceptable. I am sure this work is ongoing but I highlight it here because I know how important the details of this are.

The people who do the work of intelligence in the Department of Homeland Security should be accessed, trained and supported as well as we possibly can. They should also be held accountable. They should be the best, and we should give them the best tools to work with. This will cost money and will strain limited human and technical resources. So be it. We cannot afford otherwise.

Standing up the intelligence element of the Department of Homeland Security is not a zero-sum effort. Additional people and money must be allocated for this undertaking. The U.S. intelligence and law enforcement communities are stretched now to the breaking point. Taking resources from them may be possible on the margins but in my view this would only weaken what is already an inadequate resource base.

We have enlarged the battlespace by putting forth the concept of conducting a defensive and sometimes offensive "War against terrorism," here in our homeland. This is not new so much as it is newly appreciated. To develop the mechanisms for an internally secure America we also must continue to attend to more traditional organized and technical threats from nation-states and alliances and coalitions that may form against us. We have not reduced the mission environment nor have we reduced the possibilities for external conflict merely by preparing for the threat to our homeland from terrorists and other antagonistic groups. The perception of the threat is broader and deeper than it was before 9-11. This has generated much patriotic fervor ands much support for the government's

actions. Realistically we must provide additional resources to take on this "new" condition.

We have, in my view, failed to do the right things in the past to forestall the current set of circumstances and consequences we are responding to. This failure includes: our inadequate human intelligence gathering capabilities, hamstrung for years by cutbacks and resource shortfalls; an unwillingness, at the policy level to engage in risky operations; and a flawed set of recruiting, training, supporting and sustaining systems for our human intelligence professionals. I am hopeful that progress is now being made in this vital work but I cannot be sanguine about it because I have heard too many times before that we are fixing a problem that has long been identified and not fixed. This is, in part, a function of our national will to do the right things. The work of human intelligence is dirty, messy, and necessary. Without it we are unlikely to know what our enemies intend.

We have seen the rise of an extraordinary national technical capability to collect information in many realms. We have continued to focus on collection, notably remote collection, in a risk-averse policy climate, while failing to keep up with the requirements of this collected information to be processed, analyzed, prepared in contextual and technical forms that make sense, and delivered to the users as soon as possible so that the time-dependent demands of the intelligence will be addressed. This processing and analysis requires a very advanced set of automation and telecommunications capabilities, the best analytic tools we can acquire, and the best people we can coax to do this demanding work. We have not been able to get the operational and policy leadership of the many involved agencies and departments of government to understand this or to support it, or so it seems to me.

In the context of Homeland Security, I cannot see how a new departmental organization can be stood up and effectively operate without having in it the requisite processing, analytic and production capacity necessary to the tasks at hand.

I have recently written an article for a magazine in which I suggested that intelligence support for countering terrorism, in the context of Homeland Security, is akin to searching out criminals who are planning to act and interdicting them, before they act, more than it is about typical military or civilian intelligence directed against established nation-state or alliance opponents in conventional or even "traditional" unconventional warfare. Understanding this construct seems critical to the work of intelligence support since it is much different than the "typical military" context.

Warning times will be very short, evidence of an impending act may be slim, the number of people involved can be comparatively small, and clarity is unlikely since extraordinary measures will be taken to conceal what is being planned or attempted. Invasive human presence inside the planning, decision, action, and support loops of the compartmented opponents we are faced with…seems vital. While this reinforces my view of the importance of invasive human intelligence it also reinforces the fact that technical

intelligence of all kinds, appropriately targeted and focused, can provide important assistance and insight.

The main point I would like to make here is that merely a single or multiple intelligence discipline approach will not work. Every possible type of intelligence endeavor must be applied concurrently and synergistically in an all-source collection and all-source analytic environment, so that no stone goes unturned, no opportunity is missed, and no venomous snake is left alive, unless it suits our purpose. The Department of Homeland Security must have internal to its structure an adequate all-source analytic capability.

One of the most demanding tasks for the Department of Homeland Security will be to undertake to warn the citizens of the United States of an impending condition that threatens them. This functionally means that the information gathering and analytic processes note indicators that in some way communicate a condition worthy of warning. The mere fact of warning has compound effect and causes the expenditure of resources. There is an interactive dynamic involved here that is challenging in the best of times with the clearest information. When and about what do you warn the population? The "Chicken Little," syndrome will flourish in an environment of too frequent warning. If the public is warned, those who would attack us are warned too. Inadequate warning leads to the disasters we have suffered. The conundrum of whether or not to warn is dependent primarily on good intelligence applied to the circumstances extant, with good judgment. Setting up an effective, efficient and dependable warning system harkens back to the days of Civil Defense in the context of the threat from the former Soviet Union. But, this is quite different since the nature of the threat, time, space, and tempo of activity are so different. Solving this problem is already challenging and will become more difficult as time passes. The Indications and Warning (I&W) system needs our best effort.

A brief word about security. We should not allow, even in the name of freedom of the press, the open publication and public compromise of vital details of intelligence collection and production activities which, when they are compromised, give some advantage to our opponents. This has always been true in a declared state of war and substantial historical precedent exists for some form of control. In the context of the "War against terrorism," it seems that we cannot decide what must be protected and what can be compromised. Further it does not seem that we have an effective mechanism to examine some information ahead of time to determine if it will do harm to our national security. Perhaps the Congress can address this important problem. I don't think we can or should continue on the track we are now on where a terrorist can be informed by a newspaper that his private conversations have been collected, immediately change his mode of conversation, and in so doing deny us the information we need. This simply does not pass the common sense test.

On the other hand, appropriate authorities, especially the Congress, must have full access to the workings of the intelligence community so that they can exercise the kind of oversight, policy control and enforcement and accountability that we all know we need. Our legislative, judicial and executive constitutional check and balance system, working

hand-in-hand with the media and other public interests, seems very capable of protecting the American people and informing them appropriately without damaging our vital capabilities by the unfettered compromise of secrets and activities upon which we depend.

The Homeland Security mission is a complex and demanding set of tasks and requirements, made even more complex by the competing demands of parallel and sister organizations and agencies and by the parochial interests of many different groups. I have come to believe that this sort of challenge can only be met and dealt with by continuing Presidential involvement, assisted by the willing cooperation of the involved heads of the many elements of government, including the Congress of the United States, the courts, and state and local governments.

The National Security Council Staff and the members of appropriate National Security Council elements should exercise policy development, oversight and guidance, but the operational and functional activities of the Department of Homeland Security should be separate and distinct from that oversight. We cannot afford to confuse roles and missions in this new pressing environment

The future can be secure. The new Department of Homeland Security can contribute much to that security. However, when one looks out at the threat, notably the threat from weapons with mass effects and adds to it the possibilities embodied in new science and new technology, then I believe we should generate an exceptional and urgent response to these threats. Complex, difficult, challenging, unpalatable, unacceptable…all the buzzwords apply. Unfortunately these emerging conditions are also real and present dangers, not imagined postulations. The response must be realistic and current too.

My heart is in this testimony as much as my mind. I have warned about these problems before and I have failed to garner adequate support or action. In speaking to you today it is my fervent hope that some idea or thought will help to better secure our nation. Thank you.

Testimony of Jeffrey H. Smith
Arnold & Porter
Senate Governmental Affairs Committee
June 26, 2002

Mr. Chairman, it is a pleasure to appear before the Committee this morning to discuss an issue of great importance, namely the proposal to create a Department of Homeland Security. The issue of how our government is organized – at the federal, state, and local levels – to respond to attacks on our homeland has been examined by many commissions, think-tanks, task forces, scholars, and commentators. Although there is disagreement on the specifics, nearly all agree that some organizational changes are required to meet this threat. In particular, Mr. Chairman, I would like to commend you and your Committee for your leadership on this issue long before the attacks of September 11th.

Indeed, it is the homework done by these commissions and studies and by this Committee and others in the Congress that provides the basis for careful consideration of the proposals made by the President and the various bills pending before this Committee including S.2452 sponsored by Senators Lieberman, Cleland, Durbin, Graham, Reid, and Specter.

Although much work has been done, much lies ahead. These proposals call for nothing less than fundamentally restructuring much of the security apparatus of the United States. The President's program would, for example, combine pieces of many agencies into a new agency of some 170,000 employees with a budget of $37.5 billion.

In evaluating these proposals Congress must ask four basic questions:

1. What is the right configuration of functions and agencies?

2. How can the reorganization be accomplished without creating even greater problems of coordination during the middle of a war?

3. How should Congress oversee the new agency?

4. What can be done to improve the collection, analysis, and dissemination of intelligence related to homeland security?

I would like to briefly address each of these questions.

I. Agency Configuration

First, what is the right configuration of agencies? There seems to be a consensus, with which I agree, that certain agencies should form the core of the new department. These agencies include the Federal Emergency Management Agency, the Customs Service, the Border Patrol, the Immigration and Naturalization Service (INS), and the Coast Guard. In moving these agencies from their traditional homes to a new department, care must be taken to assure that the emphasis on combating terrorism does not put at risk the functions of these agencies that are not directly related to homeland security. For example, will the role of the Coast Guard to do search-and-rescue be diminished? Will the transfer of INS to this new department make it less sensitive to the aspiration of immigrants coming to the United States genuinely to seek a better life? It seems to me these questions can be dealt with by good management within the new department and by adequate Congressional oversight.

Adding other agencies or portions of other agencies – such as the National Labs, parts of the Department of Energy, the Center for Disease Control and Prevention (CDC), and those concerned with cybersecurity, agricultural inspection, and trade sanctions – seems to me to require closer study. It is my experience that an agency works best when its mission is clear and all of its activities relate to that mission and its associated core

competencies. When a department or agency is responsible for some other mission, that mission often becomes an "orphan" and suffers from lack of attention and funding.

Conversely, if the Department of Homeland Security acquires bits of other agencies such as parts of CDC and Energy, I worry that the effectiveness of those "bits" could be diminished by their distance from the agency with the greatest competence in their respective field. I also worry that they might not be able to attract the "best and brightest." Additionally, in the case of nuclear terrorism, Energy and DoD have worked out over the years a good balance in the complex world of nuclear energy, nuclear weapons, and non-proliferation. I worry that pulling part of Energy out and moving it to the new department will create a third agency involved in nuclear policy, thus causing considerable confusion. My inclination, therefore, would be to leave DOE and CDC intact but explore other ways to improve the coordination among the new department and those elements of DOE and CDC, Homeland Security, the Department of Defense, the Intelligence Community, etc., that are necessary to the department's mission.

I also would be inclined to leave the Office of Foreign Assets Control, which supervises trade sanctions, at the Department of the Treasury because it is essentially a tool to achieve foreign policy goals through economic sanctions.

I think it is imperative that the Committee look at each of these "add-on" functions on a case-by-case basis and make an assessment as to whether the objectives of the nation can be better met by moving them to the new department or by leaving them with their "mother agency." I suspect that, in many instances, it will be wiser to leave them where they are and to take steps to improve coordination between them and the new Department of Homeland Security. Improving coordination rather than importing them

into the new department would greatly reduce the confusion associated with the creation of the new department. If subsequent experience shows that the agencies should be moved, that can be done later.

II. Transition

Second, how can the reorganization be accomplished without creating even greater problems of coordination during the middle of a war? It is hard to overstate the dislocation and confusion that will result from this proposed reorganization. Many of these agencies have been part of their current departments for decades. They have acquired unique cultures, personnel systems, information technology systems, pay systems, and so on. Many – indeed, I hope most – have a high esprit de corps, and people are proud to come to work in the morning to say that they work for this or that agency. My own experience in creating a new agency, the National Imagery and Mapping Agency, in 1995 and 1996 – which was a reorganization on a much smaller scale – persuades me that enormous thought and care must be given to the manner in which agencies are separated from their existing homes and integrated into a new department. I was also on the staff of the Senate Armed Services Committee when the Goldwater-Nichols Act was passed in 1986, and I well remember the extraordinary effort required to pass that landmark bill.

On virtually every front – administrative, human, and political – the problems are daunting. It will likely be years before the desired efficiencies are achieved. In the meantime, great care must be taken to ensure that gaps are not created by poor coordination within the new department, between the new department and the rest of government, and between the new department and state and local officials. In war, field

commanders try to attack their opponent in the "seams" between military units or when the enemy is reorganizing. We must make certain that there are no seams between any of the elements of this new department. We can expect that the terrorists – and perhaps hostile states – will seek to take advantage of any seams they can identify.

III. Congressional Oversight

Third, how should Congress oversee the new department? This is, in my judgment, a critically important question. The department must have not only vigorous oversight from Congress but also vigorous support by key members. This Committee fully appreciates the importance of a strong relationship between Congressional oversight committees and the part of government that they oversee.

At the same time, care should be taken to ensure that oversight is not fragmented among many committees on the Hill.

One suggestion that I find appealing is to create a select committee in each house made up of "crossover members" from the key interested committees. In my judgment, the two intelligence committees, which are select committees, serve as a good model for a potential oversight committee. The committees that should be represented on the new select committee include Appropriations, Armed Services, Judiciary, Foreign Relations, Intelligence, and Governmental Affairs. I recognize the great strain on Members' time but urge the Committee to work diligently to structure a Congressional oversight process that assists rather than complicates this enormously difficult task of creating and overseeing a new department of government.

IV. Intelligence Support

Fourth, what can be done to improve the collection, analysis, and dissemination of intelligence on homeland security? Much attention has been rightfully paid to this issue. It is widely believed that if U.S. intelligence and law enforcement communities had been able to "connect the dots," we might have determined that a major attack was being planned. Some have even suggested that we might have been able to determine the specifics of the attack and have prevented it. That question is, of course, being carefully examined by the joint investigation by the two intelligence committees, and we all await their conclusions and recommendations. I believe it is premature to act until we have heard those conclusions and recommendations,[1] but it is not too early to begin thinking about solutions – including possible organizational changes.

A. Discussion

Before discussing possible solutions, it is important to understand the relationship between intelligence, law enforcement, and domestic security. It is clear that we should have done a better job before 9/11. However, it is an oversimplification to say that the failure to predict or prevent the attack was caused solely by the lack of cooperation between the FBI and the CIA. Intelligence – whether it be domestic or foreign – is far more than sharing information and connecting the dots. The production of first-rate intelligence is an enormously sophisticated process that depends on a number of factors, including the collection of raw information from "all-sources," sophisticated analysis by

[1] This is not a new problem. In 210 B.C., Petronius Arbiter is reported to have said, "We trained hard, but it seemed that every time we were beginning to form up into teams, we would be reorganized. I was to learn later in life that we tend to meet any new situation by reorganizing; and a wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency, and demoralization."

individuals who are experienced and independent of the policy process, an understanding of our vulnerabilities and of the capacities of our adversaries, and the timely dissemination of "actionable" intelligence to decisionmakers at all levels of government.

Good intelligence depends very much on first understanding what the consumer of intelligence needs. Next, the system must assure that our intelligence collection assets are properly targeted to collect that information from secret sources and open sources, from foreign governments and other parts of our own government. With respect to the collection of human intelligence, which is the hardest to obtain but usually the best information, one cannot say too strongly that CIA clandestine officers in the field must know that we expect them to take risks – and that we will back them up when the going gets tough.

It is imperative that the analyst and the collector work together closely so that the collector knows what the analyst needs, and the analyst understands what the collector can and cannot collect. The analyst also has to be close to the collector so he or she can evaluate the weight to be given to any particular scrap of information. In the case of terrorism, we frequently get only fragmentary information. As a result, intelligence officers – both the collector and the analyst – must be familiar with the terrorist groups, the region in which they operate, their culture, their language, and their religion and have access to all aspects of the collection programs of the individual intelligence agencies. The analysts must also have access to the flow of day-to-day information on operational matters, for example details on the interaction with the source, reports from foreign governments, and so on, that may contain a snippet of information that could be linked to information from another source, such as a domestic law enforcement agency or non-

intelligence sources like airplane manifests and port activity, to understand what is going on. This means they must be part of a single, well-integrated, and well-managed agency. Diffusing the responsibility among too many agencies is not wise.

Another fundamental question is whether it is possible to have a single agency responsible for both law enforcement and intelligence. Over time, we have discovered how difficult that is. During the last few years, the CIA and FBI have made major efforts to improve relations and coordination between their agencies. Much progress has been made through such steps as frequent meetings between senior leadership, creation of joint task forces, overseas meetings between CIA and FBI officials to coordinate activities, strengthening the counter-terrorist and counter-intelligence centers, and so on.

Very real results were achieved: for example, the early arrest of Harold Nicholson, only about 18 months after he began to spy for the Russians. In addition, improved cooperation produced good results in terms of preventing terrorist attacks associated with the 1996 Olympics and the millenium change in 2000.

But as 9/11 demonstrated, there are still gaps. The Bureau has some particularly difficult challenges. For example, compartmentalization is required in order to do effective law enforcement but is anathema to effective intelligence. The rules that the Bureau must follow for law enforcement investigations are simply inconsistent with good intelligence. Law enforcement looks backwards to solve a crime that had been committed. Evidence must be painstakingly gathered, analyzed, and protected from disclosure in order to find and arrest criminals. The fewest number of people must be given access to the information, not only to prevent leaks but also to assure a fair trial for the defendant. The prosecutors must be able to comply with the rules of criminal

procedure on issues like discovery and disclosure of information to the defense counsel. Intelligence, on the other hand, tries to look forward. Its job is to collect as much information as possible, analyze it, try to predict what will happen, and disseminate that analysis to the widest group with a need to know. As one old hand put it, the FBI plays defense, the CIA plays offense.

B. Specific Proposals

Now let me turn to some of the specific proposals.

1. Department of Homeland Security

The Administration's plan to create the Department of Homeland Security would create an Undersecretary for Information Analysis and Infrastructure Protection. This Undersecretary would be a "customer" of the Intelligence Community and would be responsible for "receiving and analyzing law enforcement information, intelligence and other information . . . comprehensively assessing the vulnerabilities of key resources and critical infrastructures . . . integrating relevant information, intelligence analysis . . . developing a comprehensive national plan for securing key resources and critical infrastructures and . . . taking or seeking to effect necessary measures to protect key resources and critical infrastructures." The specifics are still vague and need to be worked out. For example, it is not clear to me what the meaning of the term "taking or seeking to effect necessary measures to protect key resources and critical infrastructures in the United States" is. Does it mean that the Secretary may direct activities of state and local governments, of other government agencies, of private industry? All of this will need to be worked out very carefully over time.

The department must have an intelligence function, but what elements should it include and how should it do it?

I believe that a couple of good models exist. One is the Bureau of Intelligence and Research of the Department of State (INR). INR is a small but highly effective intelligence unit that has access to all sources of intelligence, participates in such basic decisions as "tasking" U.S. intelligence resources, and provides intelligence analysis of exceptionally high quality to the Secretary of State and other senior department officials. Perhaps an even better example is the Office of Net Assessment in the Office of the Secretary of Defense, which is responsible for taking intelligence data on potentially hostile forces and comparing it to data on U.S. forces to produce a "net assessment" of how our forces would perform in an armed conflict with the opposing forces. This is much the same process that the Department of Homeland Security would have to follow as it combines intelligence data with vulnerability data to prepare a plan to protect our nation. Clearly the responsibilities of the Department of Homeland Security are different from those of the Departments of State and Defense, but the basic idea of an intelligence unit embedded in the Department that would perform the same functions as INR and the Office of Net Assessment is a good one. Having said that, it would not be a good idea to create a large and powerful analytical center that would see itself as a competitor to the existing Counter Terrorist Center (CTC) at the CIA. Some competition is good; rivalry is not.

The Department of Homeland Security should, therefore, not be the Government's primary source for the production of intelligence analysis on the terrorist threat. That should remain where it is – at the DCI's Counter Terrorist Center. The

department should, however, have the responsibility to take intelligence from all sources (including CTC) and be the Government's primary source for producing specific analysis of terrorist threats to the homeland and the appropriate responses. The intelligence element of the department should have representatives from across the Intelligence Community, who are vital by being able to "reach back" into their own home agencies to effect coordination and achieve efficiency.

2. Create a Single National Counter Intelligence Center

A second possible step, and one that I find appealing, is to consolidate the existing counter-terrorist centers of the CIA and the FBI into a single national counter-intelligence center under the control of the Director of Central Intelligence that would be the primary national center to collect and analyze all threats of terrorism. The new center should be closely linked to the intelligence element of the Department of Homeland Security, but I would leave the primacy for analyzing terrorist threats in the Intelligence Community, where it will most efficiently function. Keep in mind that the CTC also has an operational role, that is in the conduct of activities outside the United States to thwart terrorism. Again, that role cannot be separated from the collection and analysis of intelligence that is vital to the performance of any preemptive operations.

3. Create a Domestic Security Service

Third, I believe the time has come to consider the creation of a new intelligence agency focused solely on domestic security. Virtually every democracy in the world has a domestic security service. Probably the most well-known is Britain's legendary MI5. As this Committee knows, the United States has never had a domestic security service. Indeed, we have resisted one for good reasons. However, I believe we should now

seriously explore the establishment of such a service. In brief, such a service would combine elements of the FBI and CIA into a new agency charged with counter-terrorism and counter-intelligence. It would include the current counter-terrorism centers of both CIA and FBI, the National Counterintelligence Executive, parts of the FBI's National Security Division, and the CIA's Counter Intelligence Center. The new service should not have arrest authority but would work closely with the FBI and state and local law enforcement agencies, who would conduct arrests. Similarly, it would need to have very close relationships with the collection agencies such as the Directorate of Operations at CIA, the National Security Agency (NSA), etc. It should probably be under the Director of Central Intelligence, but consideration should also be given to having it report to the Attorney General. I would not put it in the Department of Homeland Security because the new department already will have its hands full. In the future, it may be appropriate to put the new security service in the Department of Homeland Security, but that decision should be deferred until we see how the department functions and whether it is better to have it under the DCI or Attorney General.

Regardless of where it is housed, the director of the new service should have direct access to the President, much as the Chairman of the Joint Chiefs is part of the Department of Defense but has direct access to the President. The head of the new security service might, by statute, be a career civil servant with a fixed term in office – much as the JCS Chairman is always a career military officer with a fixed tenure.

Much thought must be given to the oversight structure. One possibility, suggested by a bill recently introduced by Senator Feinstein, is to create a new position, "The Director of National Intelligence," essentially separating the current responsibilities of

the Director of Central Intelligence, namely as the head of the CIA and the head of the Intelligence Community. Such a change could be patterned after the Secretary of Defense. For example, the powers of the Director of Central Intelligence (or the Director of National Intelligence) could be expanded so that his powers were closer to those of the Secretary of Defense vis-à-vis the military departments. The various intelligence agencies could then be likened to the relationship the military departments have with the Secretary of Defense. One of these agencies could be the new domestic security service. Obviously, the Director of Central Intelligence would need budgetary and execution authority over these agencies in order to make his or her authority effective – and to make certain that the right person was recruited to be the DCI.

Great care would have to be given to the powers of the new agency in order to protect civil liberties. For example, the existing Attorney General guidelines that govern domestic investigations could be codified. Also, consideration could be given to establishing a requirement for a warrant, perhaps issued by the special court established under the Foreign Intelligence Surveillance Act, in order to conduct clandestine investigations of U.S. persons and organizations.

The responsibility for some aspects of infrastructure protection could also be made part of the new agency. In particular, consideration should be given to including cybersecurity as part of this new agency. Cybersecurity, unlike some other aspects of infrastructure protection, is so closely tied to military operations that I believe it is best made part of the Intelligence Community, where it is closest to DoD and NSA.

V. Other Comments on the President's Proposal and S.2452

Mr. Chairman, before concluding I would like to provide a few specific comments about particular sections of the President's proposal and S.2452.

With respect to the President's proposal, I have the following comments:

- I note that the bill would create "not more than six Assistant Secretaries" who are appointed by and with the advice and consent of the Senate (Section 103(a)(7)). Subsection D authorizes the President to appoint "not more than ten Assistant Secretaries." It seems to me that whatever the right number of Assistant Secretaries is, they all ought to be subject to Senate confirmation.
- Section 203 sets forth the procedures under which the Secretary of the Department will have access to information from other parts of the Government. Clearly the Secretary must have access to all information that he requires. I find the current draft to be confusing and potentially counterproductive. It categorizes information in three groups and provides different levels of access by the Secretary to each of those three groups (see Section 203(2)(A)-(D)). This categorization is likely to lead to many questions as to whether a particular piece of information falls into this or that category and may or may not be given to the Secretary. I believe it would be far better, and more in keeping with the President's intentions, that the law should require all Federal Government agencies to keep the Secretary "fully and currently informed" of all information relevant to his responsibilities. The provision should also permit the President to direct that some information –

such as sensitive intelligence sources and methods – may be withheld from the Secretary. There are many such provisions in U.S. law, including the requirement to keep U.S. Chiefs of Mission informed about all activities in their country and the requirement for the DCI to keep the intelligence committees "fully and currently" informed about intelligence activities. Thus, it is a well-known concept and will have meaning and impact in the bureaucracy.

- I believe the Department of Homeland Security should include an Office of Science and Technology such as the one proposed in S.2452. This is a vital function for the Department, and the proposal in the Lieberman bill strikes me as a good idea. Moreover, I commend the President for proposing in Section 732 of his bill that the Secretary have broad authority to waive acquisition statutes and regulations when necessary. It is clear that the Secretary must be able to call upon the genius of the American people whether in industry, National Labs, or academia. To do so, he must have flexibility to negotiate contracts that mirror commercial contracts as closely as possible. I urge the Committee to examine the President's proposal in detail, including whether this authority would permit waiver of statutes that are a barrier to commercial-like operations (such as the patent provisions governing intellectual property produced under a Government contract).

With respect to S.2452 I have the following comments:

- It is imperative that our efforts to combat terrorism be coordinated across the entire Government. Ultimately, that is the responsibility of the President, and

some type of White House position is essential. However, I question whether it is wise to create, as Section 201 would do, a National Office for Combating Terrorism in the Executive Office of the President with a Director who is subject to Senate confirmation. Given that the proposal is to create a Department of Homeland Security with a Senate-confirmed Secretary, I believe that he or she should be the principal officer in the Government for homeland security and report directly to the President. A Senate-confirmed "Director" at the White House strikes me as potentially confusing and adding a layer of government that may be unnecessary. I suggest the President be free to create his or her own management structure to coordinate the Government's counter terrorism efforts.

- I believe the requirements in Title III, e.g., the preparation of a national strategy and the establishment of a National Homeland Security Panel, are good ideas and should be included in the President's proposal and enacted by Congress. To give it the clout needed, I believe it should be chaired by the President.

All of this is a vast amount of work, Mr. Chairman, and I am pleased that the Committee has undertaken the review of these important initiatives. I look forward to working with the Committee and its staff and to answering any questions you might have.

Thank you very much.

TESTIMONY BEFORE THE SENATE GOVERNMENT AFFAIRS COMMMITTEE ON CREATING A DEPARTMENT OF HOMELAND SECURITY

by William E. Odom

Thank you, Mr. Chairman, and members of the committee, for inviting me to appear before you today and to share some thoughts on the plan to create a new department of homeland security.

I will address my comments to three points. First, the general question of creating this new department; second, how intelligence collection needs can best be accomplished; third, how best to deal with intelligence analysis in support of this department.

Why a Consolidation of Border and Security Responsibilities is Imperative

The creation of a cabinet level department with full responsibility for control of US borders is long over due. A "border management agency" was actually proposed by the Carter administration but met great resistance within the executive branch at the time. The issue has been periodically raised since then, especially where it concerns drug trafficking. I wrote a short op-ed piece in US News & World Report in 1988, not long after I retired, calling for such a department because from the point of view of providing intelligence to support the war on drugs, I had seen interagency competition and the lack of secure communications create all kinds of difficulties. Too often we had good intelligence but ineffective action because of fragmented arrangements within the federal government charged with border control responsibilities. There were also serious limits on the capacities of local law enforcement officials for using intelligence. At the time, I likened the drug war to a football game in which the drug traffickers were an NFL team and government a division III college team. The fragmentation of responsibilities among

agencies – at least nine with border responsibilities being spread among five different cabinet departments – made it impossible to defend US federal borders effectively.

Several years later, when the National Guard and the Marine Corps began to supplement the Border Patrol along our border with Mexico to deal with illegal immigration, the fragmentation problem was made worse. Now we face the terrorist threat, giving border control the greatest urgency. Thus the arguments for creating this new department concern not just terrorism but also immigration, drugs, and other contraband in trade. I mention these other purposes because they are too often lost in today's public debate on the matter.

I do not see, therefore, how any serious arguments can be made against a major re-organization of the kind the administration is now proposing. It is long overdue. We are living with organizations that date back to the 18th and 19th centuries when the federal bureaucracy grew haphazardly, often in response to parochial political interest before genuine needs. The resulting potpourri of fragmented bureaucracies is not surprising, but it is astonishing that we have failed for the last half a century to modernize the federal organization for dealing with the plethora of dysfunctions caused by the fragmentation.

Those who warn that reorganization will not fix the problems are right. Reorganization alone cannot insure improvement, but it will make it possible. As the organizational arrangements stand today, the problems cannot be fixed. Do the critics prefer to keep it impossible to improve the situation? I was involved in the reorganization that created FEMA during the Carter administration. The same arguments were made, and for several years, various parts of FEMA did not work together very

well, but over time, it has developed a respectable record of performance, a record that the pre-FEMA organizations could not have matched.

As a final point in favor of reorganization, changing technologies and changing markets have caused more than a few major business firms in the United States to fail. Others have restructured to accommodate the changes and have prospered as a result. Given the dramatic changes in technology for communications and information management over the past several decades, we should assume a priori that we need a major restructuring of both the bureaucracies controlling US borders and of organizational arrangements for domestic security against terrorist attacks. In other words, the burden should be on those who oppose the new department to prove why it is not needed.

Intelligence Collection to Support Homeland Security

In considering intelligence support to this new department, we should break it into two parts: 1) collection of intelligence and 2) analysis of intelligence for decision makers. I shall comment first on collection, then analysis.

The Intelligence Community has been slowly changing toward a system of national managers for the main intelligence collection disciplines, the three being signals (SIGINT), imagery (IMINT), and human intelligence (HUMINT) collection. A fourth, counterintelligence, also needs national management but remains fragmented beyond anyone's control at the national level.

Many cabinet departments and scores of sub-cabinet agencies now receive intelligence from NSA, NIMA, and CIA's Directorate of Operations. If user agencies maintain properly secured communications and storage facilities as well as cleared

personnel to handle SIGINT, they are regularly provided with support. I am not sure how far that kind of distribution system has evolved for IMINT and HUMINT, but the technology for it is has been around for at least two decades. There is no reason, therefore, that the Homeland Security Department cannot receive collected intelligence from all three disciplines directly from the components of the Intelligence Community as it is now constituted. The State Department, for example, depends on this method for meeting its intelligence needs. So do several other departments and agencies.

It is not enough, however, that the SIGINT, IMINT, and HUMINT are delivered to a single office in the headquarters of the Homeland Security Department. Several of its sub-departments and agencies will also need to receive relevant intelligence directly, often on a "time sensitive" basis, for their own analysis and. When the Intelligence Community agencies supply intelligence to a major command within the Department of Defense, for example, the Central Command (CENTCOM), they do not dump it all at CENTCOM headquarters. Much of it is sent directly to tactical units in the field. The new Homeland Security Department will need to develop analogous systems of direct intelligence distribution based on the particular needs of the various organizations within the department. They will have to have secure communications and storage facilities, and they must provide "cleared" personnel to receive and process it at every level of the department where time-sensitive intelligence is used.

To use a familiar metaphor – news services – the Security Department's various subunits will have to subscribe to intelligence collection services just like customers subscribe to AP, UPI, Reuters, CNN, FOX, and others. The Intelligence Community will need to make more progress in getting the CIA/DO and NIMA to act as news services.

NSA is more advanced in this approach for historical and technical reasons, dating back to World War II when distribution of SIGINT (such as "ULTRA") was compartmented and handled in special communications channels. Advances in imagining technologies and broadband communications have made the same approach feasible for IMINT. The technology to distribute HUMINT is simple enough, but the security problems are different. Still, the general approach can be adapted for all three collection disciplines.

Another kind of intelligence collection will be especially important within this new department. It is analogous to what the military calls "reconnaissance" or "tactical" intelligence reporting by non-intelligence units. Rifle platoons, for example, report all kinds of enemy actions and locations as a result of their direct encounters with enemy forces. The results of combat actions immediately become "intelligence" although they are not collected and reported by intelligence personnel. Air force pilots and ship crews at sea do analogous collecting and reporting of enemy activities and capabilities.

In the Homeland Security Department, the same kind of tactical reporting by all subunits and field operators will be extremely important where useful information can be observed. This will be the responsibility of the department's internal intelligence processes. Learning that all intelligence does not come from the Intelligence Community will be critically important for the department's success.

I have not yet mentioned counterintelligence (CI) support, which is terribly important for homeland security. To be clear about CI, it is like ordinary intelligence except that it focuses only on hostile intelligence services, their collection capabilities, agents, knowledge of the United States, etc. Because terrorists have much in common with spies, operating clandestinely, CI must also include counter-terrorism (CT)

intelligence, both domestically and abroad. Until CI is better organized within the Intelligence Community, CI support to homeland security will be poor. If a "National CI Service" were created to provide "national management" for all CI – and counter-terrorist intelligence – removing it from the FBI, then CI/CT could be handled just like SIGINT, IMINT, and HUMINT. Putting the FBI within the new department would not provide better CI/CT, but rather worse. Moreover, it would make CI/CT cooperation with the CIA, Army, Navy, and Air Force virtually impossible.

If such a change were made, relieving the FBI of CI/CT responsibilities, it and all local law enforcement agencies would still need to share and distribute information about all criminal activities that bear on terrorists and their activities. The new National Counterintelligence Service would takeover the task of collecting and producing CI/CT both abroad and within the United States. Coming under the Director of Central Intelligence, it would have the same, perhaps more, oversight than the rest of the Intelligence Community, and its budget and tasking priorities would be provided by the DCI in line with the intelligence requirements that he gathers each year from all agencies within the executive branch needing intelligence support.

Intelligence Analysis for Homeland Security

Thus far I have discussed intelligence collection and distribution. "Analysis" and "production" of so-called "finished" intelligence, or "all-source" intelligence, are different from "collection" of intelligence. Normally done by different people from intelligence "collectors," they consist of the processes of integrating intelligence, making sense of it, and using it to answer questions that users of intelligence have for their particular operational and policy goals. I emphasize this difference between collection and analysis

because the public debate about intelligence support for the new Homeland Security Department often confuses the two as one and the same. They are not.

The new department must have its own analysis and production capabilities. They will have to give their special collection requirements to the Intelligence Community agencies according to the DCI's guidance, and those agencies must collect and sort information to answer the requirements. The Homeland Security intelligence analysts will have to put it all together from the various reports supplied by the collection agencies. Because these analysts will be within the Homeland Security Department, they will be properly located to know its intelligence needs and how to shape them, both to steer collection efforts and to produce answers that are timely and truly needed.

Within the department, there will undoubtedly have to be a decentralized system of analysis in some cases, centralized in others. With modern communications, however, the mix of both approaches is easy to establish. For example, central data bases can be built, allowing dispersed access and use in decentralized analysis units.

What I am suggesting here, of course, is the intelligence analysis model found in the military services. Every operational command has a staff intelligence section, which can request and receive SIGINT, HUMINT, IMINT, and CI. This intelligence staff section is responsible to the operations staff section for finished intelligence analysis. At the joint level, this section is known as the J-2 and the J-3 is the operations section. At the corps and division levels, we find the G-2 supporting the G-3, and so on, down to S-2s and S-3s in brigades and battalions. In the air force and navy, analogous staff intelligence sections are found with different names.

We can call this the "distributed processing" model of intelligence as opposed to the "central processing" model. The latter model is analogous to a big mainframe computer that serves many users who have only "dumb" terminals to provide access to the central processor. The distributed processing model is analogous to small microprocessors in PCs and laptop computers located in many analytic units, widely dispersed with different needs and demands, performing analysis tailored for local use. The distributed processing model removes the queues, the lines in which users may have to wait for responses. And it emphasizes particularizing analysis for the familiar user immediately at hand, not a faceless one far away. Only analysis done locally, where the intelligence officers are in immediate contact with operators who use intelligence to make decisions, can accurately perceive what kinds of intelligence analysis is useful. A large intelligence analysis center far away from the users will never have the sensitivity to local operations to provide effective support. This has always been the weakness of much of the all-source intelligence produced by CIA/DI and DIA. Both can produce useful products for some purposes, but they cannot provide comprehensive and "time sensitive" support to all users within a single department, much less the entire government.

When we understand the difference between 1) intelligence collection and 2) intelligence analysis and production, it becomes clear why it makes no sense to put collection agencies from the Intelligence Community inside of the Homeland Security Department. That will makes things worse, not better, for intelligence support, unless the Intelligence Community agencies work only for that department. In that case, additional and similar agencies would have to be created to prove support to the military services, the State Department, and dozens of other executive branch intelligence users.

Another kind of problem arises, however. How do the intelligence collectors – SIGINT, IMINT, HUMINT, and CI – decide whom to give priority? The Defense Department? The State Department? Homeland Security? Treasury? The President has to set the priorities, and his executive for doing that is the Director of Central Intelligence.

Like any other resource, intelligence is costly and scarce. All users cannot have all they want all the time. Their requirements have to be prioritized, giving some preference over others as situations and needs change. This prioritization task is not new. The Defense Department has dealt with it for a long time, quite successfully in most cases. Among departments, especially its largest users, State and Defense, the DCI has also developed a reasonably effective record of handling the prioritization task according to the demands of the department secretaries and the Joint Chiefs of Staff. The new Homeland Security Department should look to that experience in handling its own internal priorities and learning how to get the most from the Intelligence Community's collection agencies and centralized analysis and data bases.

Conclusion

The complexities surrounding both the practical matter of creating a new Homeland Security Department and of providing it with adequate intelligence support are enormous. In my remarks I have merely sketched the broad outlines, but I hope that they explain these conclusions:

First, the wisdom of creating the new department is beyond doubt. It will not be easy, and mistakes will be made in the process, but they can be ironed out by trial and error. This reorganization process is absolutely essential if there is to be any serious

improvement in the control of our borders and in defense against terrorist operations within the United States.

Second, terrorism is not the only reason for creating this new department. It has long been needed for dealing with immigration, drugs, illegal trade, and several lesser matters. If it is properly organized and tasked, it can help reduce the rising transaction costs these issues are placing on the US economy.

Third, intelligence support for the new department is not a matter of putting the FBI, CIA, or some other intelligence organization within its domain. It is a matter of creating its own intelligence analysis elements and insuring that they have access to the major collection capabilities in the Intelligence Community. That approach works well for the Intelligence Community's support to many cabinet departments and lesser agencies today.

There is one exception. The Intelligence Community is poorly organized to provide "counterintelligence" (CI). CI must also take the lead in providing counter-terrorism intelligence (CT) as well. And its collection and production cannot be the responsibility of criminal law enforcement agencies, not just in the case of the FBI but also in the military services. As the Intelligence Community is now organized, it simply cannot provide a comprehensive CI and CT picture to anyone, not to mention the Homeland Security Department.

Thank you for your attention, and I am prepared to answer questions.

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

TESTIMONY

Statement of

Chief Bill Berger

President
Of the
International Association of Chiefs of Police

Before the
Committee on Governmental Affairs
United States Senate

June 26, 2002

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Good Morning, Chairman Lieberman, Senator Thompson and members of the Committee.

I am pleased to be here today on behalf of the International Association of Chiefs of Police. As you may know, the IACP is the world's oldest and largest organization of law enforcement executives, founded in 1894, and with a current membership exceeding 19,000.

At the outset, I would like to express my thanks to this committee for soliciting the views of the IACP on the structure of the proposed Department of Homeland Security and its relationship to the state and local law enforcement community. It is my belief that the ability of the Department of Homeland Security to work effectively with law enforcement agencies around the country is crucial to the ultimate success or failure of its mission of protecting the citizens and communities of this nation. There can be no doubt that cooperation, coordination and information sharing between federal agencies and their state and local counterparts is absolutely critical to our ability to prevent future terrorist attacks.

For these reasons, the IACP does support the creation of a Department of Homeland Security. It is our belief that the proposed department, by uniting the numerous federal agencies that are tasked with protecting the safety of our nation into one organization, will significantly improve the ability of these agencies to share information and coordinate their activities with one another. However, a successful homeland security strategy cannot focus solely on the roles, capabilities, and needs of the

federal agencies. It must also ensure that state and local law enforcement agencies are integral partners in its efforts.

ROLE OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES

In our society, an enormous degree of responsibility and authority for public security is delegated to local government, particularly to police agencies. As the September 11th attacks demonstrated, the local police and other public safety personnel will often be the first responders to a terrorist attack. However, the role of state and local law enforcement agencies is not limited to responding to terrorist attacks. These agencies can and must play a vital role in the investigation and prevention of future terrorist attacks.

Across the United States, there are more than 16,000 state and local law enforcement agencies. These agencies, and the 700,000 officers they employ, daily patrol our state highways, the streets of our cities and towns and, as a result, have an intimate knowledge of the communities they serve and have developed close relationships with the citizens they protect. These relationships provide state and local law enforcement agencies with the ability to track down information related to terrorists effectively. Often, state and local agencies can accomplish these tasks in a more effective and timely fashion than their federal counterparts, who may be unfamiliar with the community and its citizens. In addition, police officers on everyday patrol, making traffic stops, answering calls for service, performing community policing activities, and interacting with citizens can, if properly trained in what to look for and what questions to

ask, be a tremendous source of information and intelligence for local, state and federal homeland security forces.

INFORMATION SHARING

However, in order to make use of this capability, it is vital that federal, state and local law enforcement agencies develop an efficient and comprehensive system for the timely sharing, analysis and dissemination of important intelligence information. The IACP believes that failure to develop such a system and the absence of guidance to law enforcement agencies on how intelligence data can be gathered, analyzed, shared and utilized is a threat to public safety and must be addressed.

Therefore, as the legislation to create the Department of Homeland Security is considered and finalized, the IACP urges Congress to take the steps necessary to promote intelligence-led policing and the information exchange between law enforcement agencies.

BARRIERS TO EFFECTIVE INTELLIGENCE SHARING

For example, the IACP has identified several barriers that currently hinder the effective exchange of information between federal, state, and local law enforcement agencies. It is our belief that these critical barriers must be addressed if we are to create a truly effective intelligence gathering and intelligence sharing system. They are:

1. ***The absence of a nationally coordinated process for intelligence generation and sharing.***

   While substantial information sharing is occurring in some localities there is no coordinated national process and, therefore, much potentially useful intelligence is never developed or is not shared. In addition, there is little focus on the local officer that recognizes their role in intelligence generation and sharing or which trains local officers to be part of the intelligence sharing system. As a result, much of the nation's capacity for an improved intelligence generation and sharing system goes unused.

2. ***The structure of the law enforcement and intelligence communities.***

   Unfortunately, the structure and organization of law enforcement and intelligence agencies (either real or perceived) can lead to organizational incentives against intelligence sharing and even anti-sharing cultures. At best, the lack of communication between the numerous intelligence agencies means that means that individuals in one agency might not imagine that others would find their intelligence data useful. At worst, this diffuse intelligence gathering structure creates an "us" versus "them" mentality that stands in the way of productive collaboration.

3. ***Federal, state, local and tribal laws and policies that prevent intelligence sharing.***

   By specifying who may have access to certain kinds of information these policies and laws restrict the access of some of the very institutions and

individuals who might be best able to use intelligence for the promotion of public safety. The current laws and policies that guide the classification of intelligence information and individuals' clearance to view data are one example. Others include financial privacy acts, electronic communication policies, and fraud laws

4. ***The inaccessibility and/or incompatibility of technologies to support intelligence sharing.***

While a variety of systems support intelligence sharing (or at least information sharing), not all law enforcement agencies have access to these systems. Most operate on a membership basis, which means some agencies may find them too expensive to join, while others may not see the value to their organization in joining. In addition, the systems that do exist, such as the Regional Information Sharing Systems (RISS), the National Law Enforcement Telecommunications System (NLETS), the Anti Drug Network (ADNET), and the Financial Crimes Enforcement Network (FinCEN) are not well-integrated and relatively archaic in terms of their capacities and capabilities.

STRUCTURE OF THE DEPARTMENT OF HOMELAND SECURITY

In addition to addressing these barriers to effective information sharing, it is critically important that the Department of Homeland Security be designed in a manner that will ensure that state and local law enforcement agencies are fully incorporated as integral partners in all aspects of the Department's operations. This means that the

Department must go beyond simple notification and consultation with state and local law enforcement agencies and instead it should adopt an organizational culture that views state and local law enforcement officers and other public safety officials as critical and indispensable allies in the war against terrorism. The Department must ensure that state and local law enforcement agencies have representatives within the department with the authority to guarantee that capabilities of local police agencies are accurately represented and that their needs are addressed.

The IACP is certainly not alone in this belief. The Department of Justice, Federal Bureau of Investigation and other federal agencies have also realized how crucial collaboration with state and local law enforcement is to the success of their efforts, and they have taken several positive actions to address this situation. For example, the FBI has recently formed a state and local law enforcement advisory committee that is designed to foster cooperation between the bureau and their local counterparts. And perhaps even more significantly, in his recent reorganization of the FBI, Director Mueller created the Office of Law Enforcement Coordination. This is office is tasked specifically with ensuring that the actions of the FBI's various components are coordinated with, and communicated to, state and local law enforcement agencies throughout the nation. The IACP strongly supported this action by Director Mueller and believes that it provides an excellent model for the Department of Homeland Security to follow.

OTHER AREAS OF NEED

In addition to addressing these barriers to effective intelligence and information sharing, there are other steps that the proposed Department of Homeland Security can take to ensure that state and local governments and their law enforcement agencies are active and effective partners in homeland security efforts.

Although the primary mission of law enforcement agencies has always been to ensure public safety, the events of September 11th have dramatically and significantly changed the focus of law enforcement operations. Suddenly, agencies and officers who have been trained and equipped to deal with traditional crimes are now focused on apprehending individuals operating with different motivations, who have different objectives and who use much deadlier weapons than traditional criminals. As a result, law enforcement agencies and officers will need new training and new equipment to meet this new threat.

For example, state and local officers could greatly benefit from training on topics such as:

1. Recognizing possible threats to public safety and terrorist tactics;
2. Field interrogation techniques to better enable them to recognize and respond to terrorist threats;
3. Federal immigration law, sources and documentation; and,
4. How to respond to biological, chemical and nuclear incidents.

As for equipment needs, it has become clear that law enforcement agencies will need to obtain protective clothing and isolation equipment for first responders. In addition, the increased demands being placed on law enforcement agencies for investigations and protective responsibilities means that they will also need to obtain electronic surveillance equipment as well as security equipment for guarding public buildings and critical infrastructure installations.

Finally, the events of September 11th and its aftermath have placed an increased manpower demand on law enforcement agencies. As state and local law enforcement agencies adjust to their new duties and responsibilities, it has become apparent that the need for additional law enforcement personnel, which in some communities existed prior to September 11th, is even more urgent. Departments around the nation are discovering that meeting the increased security needs of their communities has forced them to significantly increase the amount of overtime that their officers are working. As a result of this increase in overtime, budgets have been stretched to the limit with the result that departments do not have the resources to acquire vitally needed training and equipment.

CONCLUSION

In conclusion, I would just like to state my belief that over the past few months, we have had some successes in overcoming many of the artificial walls that sometimes divided us but there is still a tremendous amount of work to be done. It is my belief that the proposed Department of Homeland Security, if designed properly and led in a fashion that emphasizes the critical role of state and local law enforcement agencies, will dramatically improve the communication and inter-agency and intergovernmental cooperation that is so crucial to the success of our mission of protecting our communities and the citizens we serve.

Thank you, I will be glad to answer any questions you may have.

GEORGE J. TENET

Director of Central Intelligence

Testimony of the Director of Central Intelligence
Before the
Government Affairs Subcommittee
27 June 2002

Good afternoon. Mr. Chairman, I am pleased to appear today to discuss how the Intelligence Community plans to support the proposed Department of Homeland Security and all other policy agencies involved in this vital area.

I want to touch on two main areas:

- How the new Department fits into the nation's approach to terrorism, and
- What the Intelligence Community plans to do to support the new Department.

I strongly support the President's proposal; the nation very much needs the single focus that this Department will bring to homeland security. We have a foreign intelligence community and law enforcement agencies, but we have not had a cohesive body responsible for homeland security. The President's proposal closes that gap while building bridges across all three communities.

It is clear that the new Department will not duplicate the roles of either foreign intelligence or law enforcement. The new department will merge under one roof the capability to assess threats to the homeland, map those threats against our vulnerabilities, and take action to protect America's key assets and critical infrastructure.

In addition to ensuring that all domestic agencies respond in an integrated manner to tactical situations – ensuring a coherent response to specific threats – the Department will also have a much more strategic mission that will require a different kind of analysis – one that has access to both public and private sector data to ensure that the nation's infrastructure is protected.

There may well be some overlap and even some redundancy in evaluating what the nation's foreign intelligence and law enforcement communities provide – and this is welcome.

But, in the end, the Department's most important role will be to translate assessments about evolving terrorist targeting strategies, training, and doctrine overseas into a system of protection for the infrastructure of the United States.

In other words, they will review the intelligence we provide and develop an action plan to counter the threat. It is more than just

countering each threat as it comes up. It is building a coherent protective system that provides long-term deterrence.

We often have strategic warning about the imminence of the threat. We work hard to get – but do not always have – the tactical warning that identifies the actual date, method, and site of the attack. The new Department will build a protective system based on our strategic warning that serves to deter or defeat attacks when we lack tactical warning. As a result, the nation will become more systematic, agile, and subtle, matching resources and strategies smartly to vulnerabilities.

We have learned an important historic lesson: we can no longer race from threat to threat, resolve it, disrupt it and then move on. We must also evaluate whether we have put in place security procedures that prevent terrorists from returning to the same target years later. Just because a specific attack does not occur does not mean that a category of targets is no longer of interest to the terrorists.

Will this be easy? No. Is it necessary? Absolutely. The lesson in fighting terrorism is clear. The strategy must be based on three pillars.

1. Continued relentless effort to penetrate terrorist groups, to steal the secrets that can result in the tactical warning that is often so difficult to attain – the date, time, place of an attack.

2. Offensive action around the world – both unilateral and with our allies – to disrupt and destroy the terrorists' operational chain of command and to deny them sanctuary anywhere.

3. Systematic security improvements to our country's infrastructure directed by the Department of Homeland Security that create a more difficult operating environment for terrorists. The objective is to increase the cost and risks for terrorists to operate in the United States and, over time, make those costs and risks unacceptable to them. If there is no strategic security safety net at the back end – in the homeland – then we will be left with a situation where we and the FBI will have to be operationally flawless - in sports parlance - bat 1.000.

We need to play offense and defense simultaneously. A strategic security plan that is based on integrated data sharing and

analysis must close the gap between what we and our law enforcement partners are able to achieve.

Equally important, the Department of Homeland Security, working with the FBI and Intelligence Community, will provide state and local governments and their law enforcement entities the education and tools to use the resources at their disposal wisely. This means, training and education that help them understand terrorist practices and what to look for. This means making priority judgments on what is most important to protect

Let me turn to how the Intelligence Community will support this new Department. I see this support in three main areas:

- Information Sharing
- Connectivity
- Tradecraft Development and Training

Information sharing covers a broad spectrum of activity, from people to intelligence. Intelligence community experts in many disciplines already have close working relationships with many of the offices being brought together in this new Department. These will continue and will both expand and deepen.

I am committed to assuring that the new Department receives all of the relevant terrorist-related intelligence available. This intelligence falls into two broad categories:

- Reporting derived from either human or technical sources. These reports provide the basis for analytical assessments and are disseminated directly to customers.
- All-source intelligence assessments or finished analyses. These assessments, prepared by intelligence analysts at CIA or elsewhere in the Intelligence Community, include current reporting of breaking developments as well as longer range, strategic assessments. In addition to receiving these analyses, the new Department may, like other customers, commission individual assessments, or even participate in drafting the assessments.

Information sharing also means locating key people from many agencies in each other's offices. For example, the Counterterrorist Center already has 52 detailees from 15 organizations. Since 1996, the Deputy Chief of the CTC has been a senior FBI agent, and the FBI's presence in the CTC increased from 6 officers to 14 after September 11th. CIA has sent key officers to FBI to establish a

counter-terrorist analytic center. In each agency these officers help steer exactly the right kind of information to their parent agencies. The Department of Homeland Security will have similar access.

In addition to this crucially important sharing of information, here are some of the other steps we will take to give our fullest support to the new Department:

- In every possible case, we will provide intelligence at the lowest permissible level of classification, including "sensitive, but unclassified." Support to the extended homeland security audience – especially state, local and private sector entities – will benefit from the release of information in this manner, something that I believe should occur.
- Databases can identify and help stop terrorists bent on entering the US or causing harm once they get here. We are examining how best to create and share a multi-agency, government-wide database that captures all information relevant to any of the many watchlists that are currently managed by a variety of agencies.

- We need to make sure that the Department of Homeland Security and the members of the Intelligence Community are connected electronically. The Intelligence Community already has in place the architecture and multiple channels necessary for sharing intelligence reporting and analysis at all levels of classification. We will provide the new Department with our technology and work with them as they develop compatible systems on their end. This will make it possible for all levels of the broader homeland security community – federal, state and local – to share the intelligence they need and to collaborate with one another as well.
- We will help the Department develop the analytical methodologies, tradecraft and techniques they need, based on our own vast experience in assessing foreign infrastructures.
- We will ensure that Homeland Security is a sophisticated customer of all of our products.

- We will help the Department develop training programs for new analysts and users of intelligence through an expansion of our own analytical training programs.

This broad-based and dedicated program of support is founded, in large part, on work that has long been underway in the Intelligence Community and on our greatly increased efforts since September 11th.

In closing, let me repeat my pledge on behalf of the entire U.S. Intelligence Community to give our fullest support to the Department of Homeland Security. We see this support not as a change of mission, but as an expansion of our mission. Fortunately, we already have underway many of the programs and processes needed to ensure the highest level of intelligence support.

Our counterterrorism mission for years has been to understand and reduce the *threat*. The new Department's mission will be to understand and reduce the nation's domestic *vulnerability*. This calls for an intimate and dynamic partnership between us--as vital a partnership as any in the US Government. It will not be enough for the Intelligence Community to treat this new Department as an important customer. We are committed to bringing the Intelligence Community into genuine partnership with the Department of Homeland Security.

Statement of FBI Director Robert S. Mueller
Senate Committee on Governmental Affairs
June 27, 2002

Thank you Chairman Lieberman, Senator Thompson and members of the Committee for having me here today. The urgency with which this Committee is addressing the critically important issue of homeland security is appreciated by all of us engaged in the war against terrorism.

September 11th has transformed the executive branch, including the FBI. Understanding this basic fact is essential to evaluating how the FBI fits into the President's proposal to establish a Department of Homeland Security and what we will provide to ensure this new department gets from the FBI what it needs to succeed. That is our obligation. Or put more bluntly, the FBI will provide Homeland Security the access, the participation, and the intelligence in whatever form and quantity are necessary for this new department to achieve its mission of improving and building domestic preparedness against terrorism in America.

Let me back up a little bit. In the immediate aftermath of 9/11 we began taking a hard look at ourselves to see how we could make a more collaborative, flexible and agile FBI. Even before 9/11, we knew we had to fix our antiquated information infrastructure and unbridle our Agents from overly burdensome bureaucracy.

Much has changed since then and much more is in the offing. And while I would be glad to discuss the details of what we are about, our most basic change complements the homeland security proposal in very fundamental ways.

Simply put, our focus is now one of prevention. This simple notion reflects itself in new priorities, different resource deployments, a different structure, different hiring and training, different business practices, and a substantially different information architecture.

More importantly, it is reflected in how we collect, analyze and share information.

So, for example, in the aftermath of the attacks of 9/11, more than half, or 6,000 of our 11,000 plus Agents were working on identifying the individual attackers, their international sponsors and, along with other agencies, taking steps to prevent the next attack. Today, 9 and ½ months later, the number of FBI Agents committed to counter-terrorism is approximately 2,000, or double the amount of our pre-9/11 commitment. But regardless of what that permanent number ultimately may be, what is important is that we will apply to prevention whatever level of resources, the entire agency if need be, necessary to address the threats at hand and we will do so in the context of the multi-agency effort repeatedly tested in our strategic operations center approach to counter-terrorism and information sharing.

In addition to committing manpower, 9/11 has triggered a wide-range of organizational and operational changes within the Bureau. Three I would like to note are the expansion of the Joint Terrorism Task Forces throughout the country, the creation of a National Joint Terrorism Task Force in Washington, D.C., and the substantial increases in our analytical capacity. All three are designed to promote better information sharing.

The Joint Terrorism Task Forces are chaired in 56 regions of the country by the FBI, and include members of other federal agencies such as INS, Customs, CIA and BATF as well as state and local law enforcement. Homeland Security will be included as well. The importance of these task forces is that they have transformed a federal counter-terrorism effort into a national effort and provide for very effective, real time information

sharing. While there are 11,000 FBI Agents, there are 650,000 state and local law enforcement officials. Working with our federal law enforcement partners and our colleagues at the state and local level in task forces not only substantially increases the resources and scope of the effort to prevent terrorist attacks but also substantially enhances the collection and sharing of information, fundamental to effective intelligence support.

The national complement to these local or regional task forces is the National Joint Terrorism Task Force. The National Joint Terrorism Task Force brings a needed national perspective and focus to the local task forces. The national task force consists of both the FBI and other agency detailees - - and it will include the new department - - and operates out of the FBI's Strategic Information Operations Center. The task force will complement both the FBI's and the new department's analytical efforts and the inclusion of other agencies allows for the real time sharing of information with all the participating agencies.

On the analytical side, pre-9/11 our analytical numbers were woefully inadequate. The effect not only was inadequate operational support but also our ability to "finish" and timely disseminate intelligence was impeded. Thanks to considerable help from George Tenet -- he loaned us 25 experienced analysts and an experienced senior analyst to head up our new Office of Intelligence -- and the substantial resources Congress is providing, our ability to identify, analyze, "finish" and share intelligence is becoming much improved. This will very directly help Homeland Security and the CIA but, equally important, it will give us the actionable intelligence we need to support our own investigations.

Of equal importance to the FBI putting its own operational house in order is our relationship with the CIA. This relationship has a long history, and is the subject of much contemporary comment, most of it critical. But for those commentators, I would counsel caution. The relationship has changed, and is still changing, all for the better.

Even before 9/11 it was much better than it was five years ago. Since 9/11 it is better still, although our challenge is to continually improve, particularly in regard to information sharing. The most important single factor is that both George Tenet and I jointly brief the President every morning on pending terrorist threats against America. The positive consequences of this new relationship are found in FBI Agents working at Langley and CIA officers at FBI Headquarters. Moreover, the daily threat matrix is the joint product of the two agencies and seven days a week, we exchange briefing material, all to ensure we are working off a common knowledge base. Additionally, CIA officers have joined us on our Joint Terrorism Task Forces and the National Joint Terrorism Task Force and our Legal Attaches overseas work very closely with both the CIA and the Department of State.

I have spent a few moments on the FBI's post-9/11 operational characteristics and our relationship with the CIA for a purpose. The experience of the executive branch since 9/11 has only served to cement in my mind the need for a new Department of Homeland Security. Although the FBI and CIA are operating at higher levels of operational efficiency and connectivity, there still remains a need for an agency that is committed to improving, and in some cases, building from scratch, a defensive infrastructure for America. As a domestic law enforcement agency with its top priority the prevention of terrorist attacks, the FBI has, I believe, done an excellent job of responding to emerging threats. But there is much to be done beyond our purview. America's borders, transportation systems, manufacturing base, cities, residential communities, and financial institutions, to just name a few, would all benefit from a systematic upgrade in their defensive posture against not just conventional attacks, but chemical, radiological and

biological attacks. Beyond law enforcement and intelligence gathering, such a structural upgrade requires an ongoing regulatory effort that must also have the capacity to react to new risks from a determined and opportunistic enemy. It must rally and incorporate the combined efforts of the private sector and the general public as well. This is a massive undertaking, which, when coupled with border security, is well beyond the capacity of the FBI.

Given the daunting challenge facing Homeland Security, the question naturally arises as to what intelligence capability the new department requires. The FBI's view on this matter is quite simple: Whatever it needs to properly do its job. The President's formulation in his proposal strikes me as proper. The new department as a matter of course will get all FBI "finished" intelligence analysis, and such "raw" intelligence as the president thinks it needs. But experience also tells me that the participation of Homeland Security on joint task forces, the national task force, and with us at FBI Headquarters, like our colleagues from the CIA do, will prove to be as valuable as anything else we do.

It also is worth stressing that the new department's mission is to provide America with a defensive backbone against terrorist attack. As such, it should be aware of the manifold nature of the threats it faces, but it should not lose sight of its preventive and anticipatory function by duplicating the efforts of the FBI and CIA that have thousands of agents, intelligence officers and analysts relentlessly investigating the items on the daily threat matrix.

That is why I think this proposal complements the reorganization we are implementing at the FBI and vice versa. As part of a changing culture, a senior CIA official participates in my daily case and threat briefings and, as I mentioned, CIA officials and analysts are throughout our counter-terrorism structure. The reverse is

likewise true. This is so to ensure the CIA sees what we see and to ensure it gets acted upon. I would expect Homeland Security to be equally integrated, equally participatory.

Discussions of the FBI's relationship with Homeland Security have also raised the issue of whether the counter-terrorism division of the FBI should be transferred to the new department. My view is no. As a practical matter, such a move at this critical moment would disrupt our ongoing battle against terrorism. Al Qaeda is active both abroad and at home. In fact, given the mobility of the enemy, and its ongoing effort to recruit American citizens to its ranks, such distinctions are beginning to blur. The FBI's counter-terrorism team, intertwined with and supported by the rest of the FBI, and in concert with our colleagues in the CIA, has a substantial number of open and ongoing counter-terrorism cases.

And because I believe that these practical considerations at the moment should override other rationale for such a transfer, I will list certain substantial concerns about such a move.

Moving the FBI into the new Department would detract from the focus of both the new Department and the FBI itself. The FBI, while actively engaged in counter-terrorism duties, also has significant non-counter-terrorism law enforcement responsibilities. These responsibilities are best met through the clear operational management provided under the current system and best overseen by the Department of Justice. And while the FBI's counter-terrorism duties are focused on the prevention of terrorist acts, these duties also have a strong criminal law enforcement component that is critical to both prevention and prosecution, and that also are best served as currently organized.

The increased analytical capability of the FBI will enhance the new Department's analytical abilities as a separate entity. The FBI's analysis, informed by the distinct capabilities of the FBI, has a focus on information with a nexus to law enforcement. The

new Department, as a customer of the FBI, will be able to draw on this information, as well as information from other agencies that will provide their own focus. This is one area where redundancy can be valuable because of distinctly different perspectives.

The FBI has established close working relationships with state, local and foreign law enforcement, and Department of Justice prosecutors, through its day-to-day work on a variety of crime prevention and prosecution matters. These relationships are critical to the FBI's counter-terrorism efforts, its other crime prevention efforts and to information collection across the Nation, and would be disrupted by moving the FBI to the new Department.

In sum, while the fear is that this new department will not get the information it needs, I believe we are doing that which will ensure that it does, and in ways that reflect the practical realities of information collection and law enforcement. Old rivalries and outdated equities went by the wayside on 9/11. I believe what we are doing will work, reflects the most practical arrangement and I have every expectation that the President and Congress will monitor this closely to ensure that it does.

BOB GRAHAM
FLORIDA

United States Senate
WASHINGTON, DC 20510-0903

COMMITTEES:
FINANCE
ENVIRONMENT AND PUBLIC WORKS
VETERANS AFFAIRS
SELECT COMMITTEE ON INTELLIGENCE
ENERGY AND NATURAL RESOURCES

Prepared Testimony Before the Senate Governmental Affairs Committee

June 27, 2002

By Senator Bob Graham, D-Florida
Chairman, Senate Select Committee on Intelligence

Mr. Chairman and members of the Committee:

I thank you for giving me the opportunity to testify before the Governmental Affairs Committee on a critically important subject – the relationship between the agencies which make up our nation's Intelligence Community and the proposed Department of Homeland Security.

I applaud the leadership shown by this Committee, including Chairman Lieberman and Ranking Member Thompson, not only for taking up the challenge offered by the President in his proposal of June 6, but in anticipating it, and spending much of the last year working on legislation which closely tracks the President's proposal.

I will confine my remarks to issues relating to intelligence and Homeland Security.

I am convinced that sound security policy decisions require timely, relevant, intelligence. I am also certain that no where will this prove to be more true than in the newly named, but historically fundamental, area of "homeland security."

Whatever shape the new department takes, its success, or failure, will in large measure depend on the quality of intelligence upon which it can rely.

I would like to make three points about the intelligence aspect of the new agency. However, I would note preliminarily that the President's proposal, and the strikingly similar legislation crafted by our colleague, Chairman Lieberman, are, in my view, wisely and deliberately cautious in proposing an intelligence structure within the new agency. The second section of the President's proposal speaks of creating an intelligence consumer, rather than an intelligence collector or producer, and I believe that is the right thing to do.

It is important to understand what a Department of Homeland Security is not and cannot be: a replacement for the Intelligence Community, or a parallel intelligence entity.

We may need to reform the Intelligence Community, and it is my hope that the results of the ongoing bicameral, bipartisan investigation into the intelligence community's role in the horrific events of September 11 will inform such an effort – but this is not the time, nor the place, to do launch those reforms.

I would also note that the need to review and improve our national organization to protect the homeland, particularly against terrorism, has been well understood, and, to a great extent, accepted, long before the events of September 11 gave added impetus, and a sense of crises, to what had been a somewhat academic inquiry. Numerous commissions, including one headed by our former colleagues Senators Hart and Rudman and another led by Ambassador Bremer, have studied this issue, and all concluded that some type of reorganization was necessary.

During the Spring and Summer of 2001, drawing on these commission reports, and our own experience on the Senate's Select Intelligence Committee, a bipartisan group of Senators – including Senators Feinstein, Kyl, Edwards, Hatch and others – convened an informal working group to attempt to translate the commission ideas into legislation. Our efforts drew on a belief that the fundamental problem was structural: Nobody was in charge, and, as a result, there was no coherent U.S. Government strategy to combat terrorism. Literally dozens of agencies and departments are playing significant roles in the fight against terrorism. The result is disorganization and fragmentation.

Some of the working group's ideas were memorialized in an informal memorandum dated June 22, 2001, which offered a diagnostic and prescriptive review of the current terrorism structure. I offer that memorandum for the Committee's consideration, and will, with the Chairman's permission, provide it for the record.

Based on this work, I co-sponsored, with Senator Feinstein, legislation (S. 1449) to establish a "National Office for Combating Terrorism," which would establish a coordinator within the White House office for our nation's counterterrorism efforts. The legislation would create an office with three fundamental characteristics, and thus differed from Governor Tom Ridge's position, which is established by Executive Order:

(1) By creating the office by statute we sought to ensure that the office was invested with the legitimacy and powers which can come only from the legislative branch; (2) by specifying that the head of the office would be Senate confirmed and subject to Congressional oversight, we sought to ensure that the office was subject to the watchdog powers of the Congress; and (3) by providing the head of the office with meaningful budget authority, we sought to bring order and rationality to a fragmented and disorganized process by which the Executive branch seeks funding for its counterterrorism efforts.

Turning to the issue before us, reorganizing and reforming our Homeland Security organization, I would like to propose to the Committee three areas where the intersection of intelligence and the functioning of a new Department will be particularly important.

I. Creating an intelligence analysis element within the new Department

First, and most important, is to recognize that the creation of a new Department of the size and power contemplated here will alter the relationship between the Intelligence Community and its "customers." The new Department will rival the Department of Defense as the Intelligence Community's largest, and likely most demanding, consumer.

It is important that the new Department's structure enhances its ability to function as a "smart" consumer. To that end I am pleased with my initial review of the second section of the President's proposal, which establishes an Under Secretary in charge of what will be, in essence, the intelligence processing center for the new Department. It will be this center that will ensure that Department decisions are made with the benefit of all-source intelligence. This element, and the Under Secretary who leads it, must ensure that its staffing allows for a professional cadre of experienced all-source intelligence analysts – not so they can replace the central analysis function of the Central Intelligence Agency, but so they can ensure that the new Department effectively uses intelligence.

Being a good intelligence consumer, it is important to note, is not limited to knowing how to read both finished and, where appropriate, raw intelligence. It requires an ability know what more is needed, what additional intelligence should be collected, and how to articulate the needs of the new Department to collectors in the Intelligence Community.

It will not be enough to consume intelligence. The new Department will need to have a seat at the table when scarce intelligence-collection assets are tasked. In sum, this element of the Department will have to know how to use secret information – and also know what additional secrets need to be discovered by our clandestine services.

Although we are in the early stages of our joint investigation into September 11, three months of staff inquiry and preliminary closed hearings have underscored some factors which may have contributed to our failure to anticipate and prevent September 11:

(1) Inadequate and untimely sharing of intelligence within the Intelligence Community – a notable example is the so-called "Phoenix Document," a potentially critical piece of domestically collected foreign intelligence that was never shared by the FBI with the rest of the Intelligence Community; and (2) the absence of a single set of eyes to analyze all of the bits and pieces of relevant intelligence information, including open-source material – examples include the failure to piece together the implications of the Phoenix Document, the Moussaoui investigation and available foreign intelligence in the weeks and months prior to September 11.

These factors support the idea of an all-source analytic unit with three characteristics, all of which fall under the heading of functioning as a "smart intelligence consumer:"

(1) Equipped to function as an intelligence recipient, with the ability to sort through large volumes of intelligence information and draw specific conclusions to inform policy decisions; (2) able to ask for, and receive, the intelligence needed to support their functioning, whether the data be so-called "raw" or "finished" intelligence; and (3) capable of tasking the Intelligence Community to collect specific information needed by the new agency.

Eventually this element should be able to work with state and local officials to assure that relevant intelligence gathered at their level is properly incorporated with other intelligence for analysis and dissemination.

How can this be accomplished? It is too early to answer that question.

This Committee is working to create an architecture for Homeland Security – to build a sound structure which can accommodate competing priorities and allocate scarce resources, and thus protect the citizens of our nation.

The intelligence element of this effort, while critical, is subordinate, and should be constructed only when the overarching structure takes form. As Chairman of the Select Committee on Intelligence, I plan on examining these questions during the remainder of this Congress, incorporating the lessons we are learning from our joint investigation into the events of September 11, and taking into account the work of this Committee and the Congress as a whole as it creates the new Department of Homeland Security.

II. Creating a White House Office for Combating Terrorism

The creation of the new department, with a scope of responsibility transcending terrorism and encompassing other homeland security threats, does not obviate the need for a White House office which is solely focused on terrorism. Such an office, a "National Office for Combating Terrorism," was proposed in the legislation I co-sponsored with Senator Feinstein, and is largely incorporated in Title II of Chairman Lieberman's pending legislation establishing a Department of Homeland Security. I believe that such an office, small but with a narrow mission confined to terrorism, will be a necessary complement to the larger Department of Homeland Security.

Some may argue that such an office already exists, created by Executive Order and occupied by Governor Tom Ridge. I do not believe this is adequate – it is important to bring to bear the power and legitimacy that only the legislative branch can bring to this issue, and create such an office by statute. It is equally important that such an office be subject to the oversight of the Congress, and invested with real budget authority. Although much smaller in size and scope than its companion Department of Homeland Security, a National Office for Combating Terrorism is an essential component of a workable plan to reorganize our homeland security efforts, and I remain convinced that it should be considered and created in the same legislation that establishes the larger Department of Homeland Security.

Such an initiative would not be unprecedented – the National Security Act of 1947 as amended creates the position of Advisor to the President for National Security Affairs, commonly known as the "National Security Advisor," to serve a coordinating and advisory function. Dr. Condoleeza Rice ably fills that position today, and I believe we can learn from, and extend, the lessons learned in the development of her vital position. In her role as National Security Advisor, Dr. Rice does performs two central functions. The first is coordinating decision making when two or more agencies or departments are involved – this often involves mediating between and among the departments of Defense, Treasury, State and the Central Intelligence Agency. The second is serving as the President's trusted advisor for national security matters.

The Director of a National Office for Combating Terrorism could perform similar functions. The coordinating role, which would add the new Department of Homeland Security to the array of agencies concerned with terrorism, will be particularly important; in the area of counterterrorism it will be critical to get all of the responsible agencies and departments into common harness.

III. Domestic Collection and Domestic Intelligence

Finally, I believe that the events of September 11 compel a re-examination of the scope, methodology and limitations governing domestic collection of terrorism-related intelligence. When, where and under what circumstances should the government collect intelligence about the activities of U.S. Citizens? Of lawful visitors to our nation? What techniques should be used, and what techniques prohibited? Is the present government structure, in which the FBI is primarily responsible for collection of intelligence, foreign and domestic, within the United States, adequate? Should we enhance our domestic collection capabilities, and if so, how?

These questions are difficult ones. Make no mistake – this is a thorny subject, in which we must balance deeply-held civil liberty and privacy concerns with the need to protect our nation. This will not be easy.

Thus I was pleased that the President's plan, and Chairman Lieberman's pending bill, do not attempt to resolve these issues. Rather, they create new institutions which, in my view, are designed to effectively lead our nation as we debate and resolve these fundamental questions. By deferring what will likely be a contentious, and challenging, debate, we can avoid mixing two very different issues – how to **organize** to fight terrorism, and once organized, under what **rules** should we conduct that fight.

Further, by proceeding first to organizationally focused legislation, the Congress will be in the position to await, and then rely upon, the finding of the Joint Inquiry into the events of September 11. Armed with that analysis, and aided by what I am confident will be a robust new Department to focus and drive the debate, I believe we can address such questions consistently with our nation's traditions and beliefs.

I would like to leave the Committee with what I believe to be a valuable metaphor to use in thinking about intelligence-related issues. The business of intelligence is much like any free-market business – it is driven, and sometimes pulled, by those who use the product. Senior policymakers are voracious consumers of intelligence, and are best positioned to ask for, to demand, timely and relevant intelligence.

The creation of a new Department focused on Homeland Security will not change the metaphor, but will profoundly influence the metaphorical market. Until now there was no large intelligence consumer with the mission, focus and resources of the proposed Department. If properly structured and staffed, I believe it will have a significant, and positive, effect on our Intelligence Community.

Thank you, Mr. Chairman.

Memorandum

OSCI# 2001 - 2722

June 22, 2001

Subject: Terrorism – Diagnosis and Prescription

By memorandum dated June 7, 2001, I outlined a series of legislative, budgetary and oversight options related to terrorism. Taken as a whole, the memorandum argued for an incremental approach, building on existing structures, strengthening established mechanisms, and realigning resources. That prescriptive outline invites a diagnostic assessment, summarizing what is wrong and why. This memorandum serves that role, integrating the diagnostic and prescriptive elements into a single document.

There have been a number of recent assessments of the U.S. terrorism policy and counterterrorism structures. The *National Commission on Terrorism* focused specifically on terrorism, while the *U.S. Commission on National Security/21st Century* set terrorism within a larger context of redefining concepts of national security. *The Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction*, as its name suggests, focused on domestic, catastrophic, attacks, but in doing so recognized the blurring lines between domestic and international terrorism.

All three reports recognized the fundamental importance of intelligence in any strategy to combat and respond to terrorism – the Bremer Commission titled the second chapter of its report "Good Intelligence is the Best Weapon Against International Terrorism," noting that "no other single policy effort is more important [than intelligence] for preventing, preempting, and responding to attacks." But all three reports also make clear that any effort to improve the government-wide approach to the terrorism problem must take into account every facet of the issue - detection, prevention, consequence management, crises management, and law enforcement, diplomatic and military responses. A counterterrorism intelligence program must be designed within this larger context.

Is this system broken? I do not believe so – there are no fatal flaws, or

systemic sicknesses which would require radical treatments; rather there are areas of chronic, but remediable, problems. The prescriptive package of options outlined below is designed to recalibrate rather than redesign our approach to terrorism, and thus do not propose far-reaching structural changes – it addresses the categories of diagnoses drawn from, among other places, the three Commissions reports. Those reports, as well as hearings on the issue of terrorism, have resulted in general consensus that current U.S. efforts to formulate and execute a coherent anti-terrorism policy are flawed in several respects. Those reports, hearings, as well as numerous staff briefings support the following diagnoses.

- Anti-terrorism policy formulation and execution is fragmented and disjointed, with inadequate mechanism for setting policy, allocating resources and choosing from among conflicting tactical and strategic goals. The Gilmore Commission listed its first and second key findings as "The United States has no coherent, functional national strategy for combating terrorism," and "[t]he organization of the Federal government's program for combating terrorism is fragmented, uncoordinated, and politically unaccountable." The Bremer Commision, in its executive summary, recommended that the "President and Congress should reform the system for reviewing and funding departmental counterterrorism programs to ensure that the activities and programs of various agencies are part of a comprehensive plan." This diagnosis has two components: the first covers the full spectrum of counterterrorism efforts, and is the basis for the recommendation noted below to establish a central coordinating authority; the second is restricted to the area of intelligence, but mirrors the first. Just as there needs to be a central coordinating authority for terrorism policy, there needs to be a central coordinating authority for managing the intelligence component of that policy – the DCI needs to be that person, and many of the recommendations below address that need.

- The relationship between law enforcement and intelligence that has developed, largely on an *ad hoc* basis over the last decade, is better than it ever has been, but requires a statutory framework to institutionalize and rationalize it. Many observers have noted that while law enforcement is, theoretically, only one of a set of "tools" to respond to terrorism, it has often taken a preeminent, and sometimes exclusive role. The Bremer Commision

recognized this, highlighting the "pros and cons of the law enforcement approach" in its treatment of the Pan Am 103 prosecution efforts. A similar theme was echoed in a recent *Washington Post* article by Yale Law School professor, and former Federal prosecutor, Ruth Wedgwood, who wrote, in the aftermath of the Embassy bombing trials, that "[w]hile the American legal system is an important tool, it's not powerful enough to defeat terrorists or prevent another bombing." One of those other tools is intelligence, as well as statecraft, and it is important to create a framework within which these issues can be addressed.

- Effective sharing of information between and among the various components of the government-wide anti-terrorism effort is essential, and is presently hindered by cultural, bureaucratic, resource, training and in some cases, legal, obstacles. The Bremer Commission recognized this issue, noting that "[t]he law enforcement community is neither fully exploiting the growing amount of information it collects during the course of terrorism investigations nor distributing that information effectively to analysts and policymakers."

- There is no commonly understood language to describe the phenomenon of terrorism or the types of possible responses to that phenomenon. This final problem becomes particularly apparent at the Committee Staff level - while the Commissioners and Report-writers have striven to translate Babel of languages they have heard in their interviews, Committee Staff see it first hand. The lack of a shared language to apply to the problem magnifies the problems of coordination and deconfliction noted above.

I. **Develop a coherent, centralized mechanism for coordinating terrorism policy**: Create an "Office of National Terrorism Coordination and Policy" (ONTCP), building on mechanisms established in Presidential Decision Directive 62, modeled on the Office of National Drug Control Policy, and expanding the "Committee on Transnational Threats" established pursuant to the Intelligence Authorization Act for FY 1997 (P.L. 104-293). The ONTCP should be structured to enhance, rather than usurp, authority from existing agencies. This key provision is designed to address what may be the

fundamental problem noted above – the lack of a central, coordinating, authority, accountable to Congress, and equipped with enough power to get things done. Legislation establishing the ONTCP should include some, perhaps all, of the following elements:

A. The Director of ONTCP (D/ONTCP) should be appointed by the President and confirmed by the Senate, and should be subject to oversight by all Senate and House committees with jurisdiction over ONTCP functions[1];

B. The D/ONTCP should be the principal advisor to the National Security Council (NSC) on terrorism policy and, subject to the direction of the President, attend and participate in meetings of the NSC;

C. An essential responsibility of the President of the United States, particularly important in the area of terrorism, is that he be prepared to choose from an array of authorized powers, both in preventing and responding to terrorist acts. These include military, diplomatic, economic, law enforcement and covert action authorities. It will be the role of the D/ONTCP to ensure that the President can choose wisely from among these options;

D. With respect to terrorism, there is no single policy, or responsive action, which is best, and the D/ONTCP should make efforts to preserve the President's ability to adopt flexible, and appropriate, strategic and tactical policies on a case-by-case basis. There should be no predetermination that a law enforcement response should take primacy. The D/ONTCP should have, as a core function, ensuring that U.S. terrorism policy, as well as specific responses to terrorist-related incidents or information, should not place undue weight on any particular possible response;

E. The D/ONTCP should chair a Coordinating Sub Group (CSG) of the

[1]These committees could include SSCI, HPSCI, the Senate and House Judiciary Committees.

NSC, with representation from appropriate Federal agencies[2]. In addition to agency representation, there should be one representative to the CSG, appointed by the President, charged with coordinating with representatives of State and Local governments;

1. The D/ONTCP will be charged with establishing a program to ensure that each Governor, or Mayor, in the case of the District of Columbia, appoints one individual to serve as the State coordinator for Terrorism, and that person should work with the State/Local representative described above;

2. The DCI should, after appropriate background investigation, ensure that each of these individuals is issued appropriate security clearances;

F. The D/ONTCP should be charged with formulating government-wide terrorism-related budget guidance to all affected agencies for consideration and incorporation into each agency's budget. The D/ONTCP would then be required to certify those budgets. That aspect of the terrorism budget related to intelligence should be unclassified in aggregate;

G. The D/ONTCP should be responsible for establishing a common set of definitions and terminology, to be used by all elements of the U.S. government involved in terrorism-related efforts. At present there is no common language to allow for the effective discussion of anti-terrorism policy and tactics. A concept as simple as the difference between "domestic" and "international" terrorism turns out to be ambiguous.

Possible Obstacles: The concept of an Office of National Terrorism Coordination and Policy is not a new one, and in part is set forth in PDD-65. Nevertheless, it will likely draw opposition from the Administration, if not on substantive grounds

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[2]To include: Department of Justice (including the Federal Bureau of Investigation), Central Intelligence Agency, Department of State, Department of Defense, Department of Transportation, Center for Disease Control and others as designated by the D/ONTCP.

then on the principle that establishment of such an office is an inappropriate intrusion into the executive func`tion. Earlier efforts to establish similar, if less robust, mechanisms drew some criticism along these lines from President Clinton, who expressed them in his Statement on Signing the FY1997 Appropriations Act. In addition, both FBI and CIA may voice objections, arguing that their efforts, albeit informal, to cooperate and coordinate have been successful, and that the problem can and will be solved without any legislative changes. In sum, creating such a substantial change in the anti-terrorism structure will be relatively hard. The task could be made easier by proceeding incrementally, vesting the already existing PDD-65 entities with greater authority, embodying some of PDD-65 in legislation, or mandating specific actions, such as adoption of common terminology, by Congressionally Directed Actions.

Senate Committee Jurisdiction Issues: The committees with the bulk of overlapping jurisdiction with SSCI on the creation of an ONTCP are Judiciary and Foreign Relations. The Judiciary Subcommittee on Technology, Terrorism, and Government will have the most interest, or disinterest, in creating what some will call a "Terrorism Czar" (a term which should be avoided). SSCI jurisdiction relates primarily to the prevention rather than the response side of the D/ONTCP's mission. Committees with oversight and budget responsibilities for FEMA, HHS, CDC, and other response elements also have pieces of this issue.

II. **Enhance DCI Authorities:** An effective intelligence element of a broader USG anti-terrorism policy requires adherence, and in some cases return, to the fundamental principle upon which the National Security Act of 1947 was based: that there be a central apparatus for the collection, analysis and dissemination of intelligence. The "Intelligence Community" (IC) was not conceived as a loose confederation, but as an integral whole, with the DCI providing leadership, guidance and direction. Despite this intention, the IC, in general, and with respect to terrorism in particular, is fragmented and uncoordinated, with the DCI unable to serve effectively the role which the National Security Act contemplated. This guiding principle could be made manifest in some, or all, of the following legislative proposals:

A. Amend the National Security Act to enhance the DCI's ability to control the Intelligence budget;

B. Amend the National Security Act to state that the DCI is the sole authority in the U.S. government for the collection, analysis and dissemination of intelligence related to terrorism;

C. Amend the National Security Act to place "intelligence related to international terrorism" within the category of "foreign intelligence," rather than "counterintelligence";

D. Amend the National Security Act to include, among the duties of the DCI, the management of all foreign intelligence collected pursuant to the Foreign Intelligence Surveillance Act (FISA);

E. Amend the National Security Act to include, among the authorities of the DCI, coordination of relationships between the IC and foreign governments' intelligence an security services "on all matters related to international terrorism." This will give the DCI clear authority over the FBI interaction with foreign liaison on counterterrorism overseas, and will strengthen the DCI's existing primacy in dealing with foreign liaison;

F. Amend the National Security Act to establish a professional cadre of Intelligence Officers, commissioned by the President, and led by the DCI – this should modeled on the Foreign Service or Commissioned Military Officer systems.

Possible Obstacles: Enhancing DCI authorities should be, at least in principle, not particularly difficult. There is likely to be opposition from the Department of Defense, which will see an increase in the DCI's budget and personnel authority as diminishing DoD control of "their" agencies within the IC. However, given recent conversations with Secretary Rumsfeld, this problem may not be as difficult as in the past. Similar opposition may come from Department of Justice and FBI, which may object to enhancement, perhaps even clarification, of DCI authorities, perceiving the result as impinging on their law enforcement authorities. The difficulties can be somewhat diminished by approaching the problem piecemeal, targeting the easy initiatives first – for instance, creating of a Intelligence Officer cadre is unlikely to draw substantial opposition, but may be a first, if symbolic step towards increasing DCI authorities. Similarly, re-

classifying "international terrorism" as a "foreign intelligence" issue appears to be not only logical, but relatively innocuous.

Senate Committee Jurisdiction Issues: Enhancement of DCI authorities will require amendments to the National Security Act and thus falls squarely within SSCI jurisdiction. There may be some reaction from SASC which likely will view enhancement of DCI authorities as detracting from SecDef's authorities over the IC agencies within DoD, and thus a diminution of SASC authority. We should expect some of the same, perhaps, from the Judiciary Committee to the extent that FBI control over such things as FISA collection and dissemination is affected.

III. **Encourage Information Sharing**: To the extent consistent with Constitutional requirements, and fundamental respect for civil liberties, every effort should be made to ensure that lawfully-acquired information of intelligence value related to terrorism be made available to the DCI for analysis and dissemination, as well as to inform and guide future efforts to collect additional intelligence. This principle should be made manifest in some, or all, of the following legislative proposals:

A. Amend the National Security Act to require the Department of Justice, and its constituent investigative bodies, to provide intelligence information acquired in the course of a criminal investigation to the IC, subject to statutory limitations. This provision would be modeled on existing "crimes reporting" requirements under which the IC must report to Department of Justice "evidence of crimes" discovered by their intelligence collection;

B. Mandate the development, perhaps under the authority of the D/ONTCP, to ensure the timely and reasonable deconfliction of intelligence and law enforcement interests where a intelligence source may be the subject of criminal interest. Under present crimes reporting requirements, Department of Justice receives notification that CIA has a source or potential source who may have committed U.S.crimes. In such cases, the length of time and uncertainty created by the Justice Department review often results in delay or loss of intelligence initiatives.

C. Amend 18 U.S.C. Section 2517 (Title III) to permit, with appropriate judicial oversight, the provision to the IC of information lawfully acquired by wiretap in the course of a criminal investigation;

D. Amend Rule 6(e) of the Federal Rules of Criminal Procedure to permit, with appropriate judicial oversight, the provision to the IC of information acquired by grand jury proceedings;

E. Amend Title III and FISA, if necessary, to make clear that their respective mechanisms authorizing electronic surveillance are not mutually exclusive, and that in some instances a single target electronic communication can be subject to both Title III and FISA surveillance;

F. Direct the establishment of an *Intelligence Community-wide* translation capability, linked through a secure computer network -- a "National Virtual Translation Center." This would allow for the efficient use of critical-language translators nationally, while at the same time creating a computer-based infrastructure for sharing transcripts as well as "raw" audio throughout the community. A first step could be to direct the DCI to develop a plan to accomplish this goal;

G. Appropriate funds to ensure that U.S. government, State and local officials, not ordinarily involved in intelligence collection or dissemination, receive training to allow them to efficiently identify intelligence information revealed in their ordinary duties – this training would be targeted at law enforcement agents and prosecutors;

H. Appropriate funds to ensure that U.S. government, State and local officials, not ordinarily involved in receiving intelligence, get training to allow them to be effective consumers of intelligence – this training would be targeted at law enforcement, emergency services and medical personnel, as well as senior decision makers, such as mayors, who may be called upon in a crises to make those decisions based upon intelligence.

I. Continue to fund the "Foreign Terrorist Asset Tracking Center"

(FTAT), a Department of Treasury initiative designed to bring all-source intelligence concerning the finances of terrorist organizations into one place, where the information can be properly and coherently exploited. Direct that the FTAT be a part of the Intelligence Community, under the supervision of the DCI, and funded through the National Foreign Intelligence Program (NFIP) budget.

Possible Obstacles: While the general concept of information sharing appears benign, each of the particular proposals may be somewhat difficult (with the exception of F and G and H), in that both Department of Justice and civil liberties groups will voice opposition. Department of Justice will likely argue that no changes in Title III or Rule 6(e) are necessary, and civil liberties groups will argue that any such changes breaks down important barriers between law enforcement and intelligence, to the detriment of individual rights. There are also likely to be arguments, perhaps persuasive ones, that there is little intelligence of value that is obtained by Title III wiretaps or grand juries, and that there is no need for such a significant statutory change.

Senate Committee Jurisdiction Issues: Many of the issues in this section are within the purview of both SSCI and Judiciary. To the extent that the IC would be the recipient of more intelligence information already in the hands of the USG, the SSCI has an interest. To the extent that we would be mandating new sharing of information collected in criminal cases, the Judiciary Committee will have an interest.

IV. **Enhance Intelligence Collection Against Terrorism:** In a number of areas there are legal impediments to the effective collection of intelligence. Many of these can be remedied by adoption of some, or all, of the following recommended legislation:

A. Amend the Foreign Intelligence Surveillance Act (FISA), consistent with Fourth Amendment constraints, to make clear that it has domestic applicability only and that its standards need not be applied by the Attorney General to electronic surveillance or physical searches of U.S. Persons overseas, OR, alternatively, amend FISA to make it applicable to U.S. Persons overseas, but establish a lower standard than that which is currently required domestically;

B. Amend FISA to broaden the definition of an "agent of foreign power" to make it easier to target terrorists with informal affiliations with foreign terrorist organizations;

C. Amend FISA's definitions section to except from the definition of a protected communication those communications which involve an individual giving instructions to an electronic device. Thus, electronic communications from an individual to a remote computer owned by another, i.e. "hacking", would not be a protected communication;

D. Amend FISA to keep pace with new communications technology, to allow collection against electronic communications stored in the United States, but set to and from foreign persons in foreign countries;

E. Amend Title III to include terrorism as a predicate crime for the issuance of a domestic criminal wiretap.

Possible Obstacles: Many of these provisions may be difficult, even if proposed singly. A and B will draw opposition from the Department of Justice, as well as from civil liberties groups. C and D present difficult technical issues which will require study. E alone may be relatively easy.

Senate Committee Jurisdiction Issues: Since these proposals deal with intelligence collection, they fall squarely within SSCI jurisdiction. However, amending FISA and Title III will affect the equities of FBI and DoJ and the Judiciary Committee will have an interest in it. Last year Senator Specter proposed several changes to FISA in reaction to the Wen Ho Lee case. SSCI took the bill on sequential, modified it and included it in our Authorization Bill.

V. **Protect Civil Liberties**: Efforts to combat terrorism should not harm fundamental protections of civil liberties. The following legislative proposal are designed to achieve this end:

A. A number of the existing mechanisms, such as FISA, Classified Information Procedures Act (CIPA), and various immigration procedures incorporate *ex parte* judicial proceedings, often

characterized as "secret courts." Establish an independent office of "Devil's Advocate," staffed by cleared USG attorneys charged with representing the interests of individuals who ordinarily would be excluded from, or even unaware of, these secret proceedings.

Possible Obstacles: This proposal will be resisted by the Department of Justice, as well as by a number of "law and order" Republicans. However, it may win over a number of potential opponents, particularly if paired with some of the more intrusive proposals in the proceeding sections. It may be valuable as a palliative to be used when the perhaps inevitable backlash against aggressive anti-terrorism efforts begins to be felt.

Senate Committee Jurisdiction Issues: Creating a new cadre of government lawyers, probably within the DoJ, is within the jurisdiction of the Judiciary Committee, not the SSCI. This proposal is quite dramatic and should get the attention of Senator Leahy and the civil liberties groups (although the civil liberties groups will distrust the government lawyers). It balances out some of the other proposed changes that enhance the ability of the USG to target terrorists, and others, under FISA.

Written Statement for the Record
Senator Richard Shelby
Vice Chairman
Senate Select Committee on Intelligence
June 27, 2002

Chairman Lieberman and Senator Thompson, I thank you for the opportunity to address this Committee today about various proposals to reorganize our government in order to create a Department of Homeland Security (DHS) to take the lead in protecting Americans from terrorist attacks within the United States As I have pointed out many times, more Americans were killed by terrorists on September 11th, 2001 than died in Japan's infamous sneak attack upon Pearl Harbor on December 7th, 1941. It is both necessary and fitting that we do everything in our power to ensure that the United States never again suffers such a catastrophe – a *third* "Pearl Harbor." For this reason, I support the creation of a Department of Homeland Security.

As in so many important endeavors involving legislation; the devil is always in the details. We also know all too well that legislation alone can not meet all the challenges we face. One of the biggest risks we face in the world of intelligence collection is risk aversion. Our intelligence bureaucracies have over time become adverse to risk taking, partly because of internal institutional pressures and partly because of external criticisms. No bill, rule or regulation can reverse that. What we can do is address an immediate need. To do so, we need to create a new Department, but it is important that we create it right – and that in creating it, we do not simply replicate the mistakes of the past. Accordingly, I am grateful for the opportunity to discuss the intelligence aspects of homeland security, a topic with which I have been greatly concerned and closely involved for several years on the Senate Select Committee on Intelligence (SSCI), both as its Chairman and currently as its Vice Chairman.

I. *The Centrality of the Intelligence Function to Homeland Security*

In introducing his legislative proposal for a Department of Homeland Security, President Bush declared that the "top priority" of the Department will be "preventing future attacks." This emphasis is picked up in the text of his legislative

proposal itself, which stresses in § 101(b) that the "primary mission" of the Department of Homeland Security will be to "prevent terrorist attacks within the United States." As the President's proposal recognizes, this fundamental mission highlights the importance of intelligence. First among the list of the new Department's "primary responsibilities," the President's proposal lists the crucial function of conducting "information analysis" related to terrorist threats. The intelligence function is absolutely central to the President's proposal, as it should be. It is therefore doubly important that we get the intelligence aspects of the Department right.

The President, in his proposal, assigns appropriate emphasis upon ensuring that this intelligence function is carried out properly, by making the Information Analysis and Infrastructure Protection office the first of the new Department's key components. If done right, the creation of such a national-level center for true all-source intelligence "fusion" of terrorist related threat information would be of huge value.

Most Americans would probably be surprised to know that even nine months after the terrorist attacks of September 11th, there is no federal official – not a single one – to whom the President can turn to ask the simple question: "What do we know about current terrorist threats against our homeland?" No one person or entity has meaningful access to *all* such information the government possesses, no one really knows "what we know," and no one is even in a position to go find out. This state of affairs is deplorable, and must end.

II. *A Limited, Focused Agenda for Reform*

In the wake of a well-publicized series of significant intelligence failures – including the failure to prevent the bombing of the World Trade Center in 1993, the failure to prevent the bombing of Khobar Towers in 1996, the failure to anticipate the Indian nuclear tests in 1998, the failure to prevent the bombing of our embassies in Africa that same year, the accidental bombing of the Chinese embassy in 1999, the failure to prevent the attack on the *USS Cole* in 2000, and, of course, the failure to prevent the attacks of September 11th – there has been no shortage of proposals to reform the U.S. Intelligence Community. Most of them have involved variations on the theme of empowering the Director of Central Intelligence (DCI) to exercise

more real authority within the mostly Defense Department-owned Intelligence Community. Other proposals, such as one floated this week, would empower the Pentagon by creating an Undersecretary of Defense for Intelligence.

All of them, so far, have gone nowhere. When such ideas do not founder upon the rocks of inter-departmental rivalry and what the military calls "rice bowl" politics, they simply fail to elicit much interest from an Intelligence Community tha even to this day, insists that nothing is fundamentally wrong. Too often, serious reform proposals have been dismissed as "a bridge too far" by Administration after Administration and Congress after Congress, and have simply fallen by the wayside. While very modest attempts at reform have been enacted, they have been ignored by succeeding Administrations and openly defied by our current Director of Central Intelligence.

With this in mind, last year I asked our committee's Technical Advisory Group (TAG) to undertake its own look at these issues. The TAG is a group of prominent scientists and technologists that volunteer their services to advise our committee on very difficult technical and program management issues. We worked with them over several months on these matters, and we came to some interesting conclusions. Rather than rest our hopes for reform upon plans destined to run headlong into vested interests wedded to the current inter-departmental division of intelligence resources or to be smothered by pained indifference from holdover bureaucrats satisfied by the *status quo*, the TAG proposed instead that the President create something entirely new – a small, agile, elite organization with the President's personal support, dedicated wholly and single-mindedly to conducting fusion analysis. This organization would draw upon *all* the information available tc the federal government and use the resulting knowledge to achieve a single clear goal – dismantling and destroying terrorist groups that threaten the United States.

This, we hoped, might allow meaningful reform to take place without initially having to upset entrenched bureaucratic applecarts. We proposed, in effect, an intelligence-related version of the Manhattan Project that would take place to some extent *outside* the traditional chains of command and networks of vested interests. We suggested an approach modeled on the movie catchphrase "If you build it, they will come." If this new venture were successful, its progress would breed further successes by gradually attracting resources and support from elsewhere – and perhaps by stimulating the intelligence bureaucracies to do more to reform

themselves when faced with the success of an alternative model. The private sector refers to this process as "creative destruction."

After the terrorist attacks of September 11th, we felt that it was time to present this proposal to the White House. If the mass murder of approximately 3,000 Americans could not drive meaningful reform in our Intelligence Community, we reasoned, what could? Accordingly, Chairman Bob Graham and I brought our TAG to meet with Governor Tom Ridge in the White House on November 29th of last year. We met with him for about 90 minutes, and talked in detail about our plan for the creation – for the first time – of a truly all-source, national-level intelligence analytical agency dedicated to knowing and assessing everything that our government knows about terrorist threats.

I think I can speak for Senator Graham as well as for myself and the distinguished members of our Technical Advisory Group in saying that I am very pleased to see that President Bush has seen fit to propose the creation of just such an organization within the new Department of Homeland Security. Unlike the Lieberman bill (S.2452) – which neglects the intelligence function and nowhere provides the new Department with a centralized threat-assessment entity capable of making up for the Intelligence Community's longstanding failure to provide government-wide "one stop shopping" for terrorist threat information and analysis, – the President's proposal puts terrorism-related intelligence front and center, making it the foundation for all other protective measures. I applaud the President's wisdom in making information analysis such a central focus of his plan.

III. *The President's Plan for a Homeland Security Department*

It is in that vein that I would like to offer a few constructive criticisms of the President's proposal. Precisely because the intelligence function is vital to every aspect of inter-agency coordination and planning for homeland security, we must ensure that these aspects of the President's plan are structured properly – and that they do not simply replicate past mistakes.

A. *Access to Information*

In this regard, I would like to point out that under § 203 of the President's

bill, the Secretary of Homeland Security would have only limited access to information collected by the Intelligence Community (IC) and Law Enforcement Agencies (LEAs). That section provides that the Secretary would be entitled only to "all finished reports, assessments, and analytical information" related to threats of terrorism in the United States. Unlike information relating to "infrastructure or other vulnerabilities" to terrorist attack, – all of which the Secretary would be given access "whether or not such information has been analyzed" – information on terrorist threats themselves would be available to the Department only in the form of what is known as "finished" intelligence. Under § 203, the Secretary may obtain the underlying "raw" information only "by request" or when the President specifically provides for its transmission to the new Department.

To my eyes, these limitations are unacceptable, and seem designed to keep the new office of Information Analysis and Infrastructure Protection dependent upon the goodwill of the Intelligence Community and Law Enforcement Agencies and hostage to their perhaps incompletely-informed or self-interested judgements about what the Homeland Security analysts really "need to know." Already, we understand that Director of Central Intelligence George Tenet has no intention of providing "raw" intelligence data to Homeland Security intelligence analysts. As he sees it, they should be content to receive only "finished" reports – that is, to get no deeper access to Intelligence Community databases than we do in Congress as we receive the Community's periodic intelligence products.

To agree to such limitations would be, in my view, a grave mistake. In the information-technology world, we are on the verge of dramatic new breakthroughs in data-mining capabilities that are giving ordinary analysts an extraordinary ability not just to search but to analyze and *understand* enormous quantities of data from a vast array of different data sources. The cutting edge of intelligence analysis, in other words, is likely to be in "crunching" massive amounts of data on a genuinely all-source basis, drawing upon multiple data-streams in ways never before possible.

However, as long as we have no one in a position to *see* all the many data-streams that exist within the federal government – much less those that may also exist in the state and local arena, and in the thriving information economy of the private sector – all of these rapidly-advancing analytical tools will be of little use. Already, it has been one of our frustrations at the SSCI to see the degree to which

even agencies that acknowledge the importance of inter-agency electronic information-sharing are each *independently* pursuing separate "answers" to this problem. Even their responses to the problem of agency-specific "stovepipes" are too often *themselves* "stovepiped" responses. The DCI's own initiative to create an Intelligence Community-wide "Intelligence Community System for Information Sharing" (ICSIS) depends wholly upon agencies deciding what information *they* think other agencies' analysts need to know. Every agency will be charged with populating its own "shared space" that will be searchable by cleared and accredited on-line users. No outsider, it seems, would ever have access to an agency's *real* databases.

Without some modification to the President's Homeland Security proposal, and to the DCI's refusal to consider providing "raw" information to the new Department, this initiative runs the risk of replicating and institutionalizing these limitations. The exciting part about the new Department is precisely that it offers the prospect of getting beyond – or above – bureaucratic stovepipes in the ways we imagined for the anti-terrorist "Manhattan Project" we discussed with Governor Ridge last November. Rather than having every agency decide on its own what every *other* agency needs to know about its own information holdings, we need instead to create an institution that finally has real visibility into *all* government information on terrorist threats. The President's proposal for a Homeland Security information analysis office has the potential to be that organization and to rise above bureaucratic "business as usual." But its access cannot be limited just to what the agency chieftains decide it should have.

In my view, the President's proposal can and should be improved by giving the Secretary of Homeland Security access to essentially *all* information related to terrorist threats – including "raw" data – that is in the possession of any government agency. Homeland Security intelligence analysts should be free to data-mine agency holdings in order to undertake true all-source intelligence fusion.

Senator Specter has offered an amendment that would help fill this hole in the President's otherwise very promising proposal by creating a National Terrorism Assessment Center (NTAC) with the authority to "direct" the CIA, FBI, and other federal agencies to provide it with "all intelligence and information relating to threat of terrorism." As I see it, Senator Specter is clearly thinking the right thoughts, although I believe it would be a mistake to duplicate analytical functions by creating

a new Center within or parallel to the Homeland Security information analysis office. Personally, I think the soundest step would be to apply the concept of unfettered information access to the Department of Homeland Security itself. Section 203 of the President's proposal should be modified to allow for the creation of an information architecture that will enable Department analysts to seek and obtain whatever information they deem necessary to understand and thwart terrorist threats against the United States.

The only qualifier on this authority would be to provide that such transmittals must occur pursuant to some kind of agreement or memorandum of understanding (MOU) with the DCI regarding security procedures for handling classified information and with the Attorney General with respect to handling "U.S. person" information and protected law enforcement information pursuant to applicable law. Provided that the new Department's intelligence functions were also subjected to appropriate intelligence oversight by Congress, the United States would then be well on the way to creating, for the first time, a genuinely "all-source" national analysis organization devoted to combating the threat of terrorism in the United States.

B. *Other Issues*

Naturally, the Department of Homeland Security – including its intelligence functions – will require close Congressional scrutiny and oversight as it is created. Whatever the final information-access rules end up providing, it will be necessary to ensure that appropriate agreements are worked out between the agencies involved, and that personnel are properly trained and equipped to implement them. In hidebound bureaucracies such as our Intelligence Community, this can be no small task. As you may recall, we put mandatory sharing provisions in Title 9 of the USA PATRIOT Act, but today – eight months after the President signed that Act into law – procedures for implementing such sharing are still being negotiated between the Attorney General and the DCI. The detailed procedures for information-sharing with the new Department of Homeland Security will likely require close Congressional attention.

Another of my concerns relates to the importance of ensuring that the new Department's Information Analysis and Infrastructure Protection office maintains an appropriate balance within its own ranks. Under the President's proposal, that

office will acquire infrastructure-protection organizations from a number of existing federal agencies, these entities being transferred *en masse* to the new Department. The "information analysis" side of the office, however, will apparently have to be built up largely from scratch. It will not acquire specific analytical offices from other agencies within the federal system, but will rather have to be "grown" within the Department. If done right, this could be a great strength, allowing the Department of Homeland Security to build its own elite analytical cadre largely independent of the institutional biases and bureaucratic mindsets of the existing Intelligence Community. Careful attention over time – not to mention close Congressional oversight – will be needed in order to ensure that the new Department's information analysis functions become large and robust enough to prove useful. This process may involve "growing pains," and the fledgling organization may also need to be nurtured and protected against its bureaucratic rivals and others who may not wish it to succeed.

For the most part, I have no other serious concerns about the President's proposal to create a new Department of Homeland Security. I would only note that under § 710 of the President's bill, the Secretary would have the power to terminate any Inspector General investigation that he felt to be inappropriate, provided only that he provides notice of this termination to the Speaker of the House and to the President of the Senate. Given the important role that Inspectors General play in our system of legal and policy oversight, I would think this provision to be too limiting. Even if the Secretary could derail investigations, I would think it imperative that notice of such a decision be given to the Congressional committees of jurisdiction – which would presumably vary depending upon the subject matter.

IV. *Do not Forget to Reform the Rest of the Intelligence Community*

I would like to emphasize, that while I believe the President's proposal for a terrorism-focused information analysis function within the Department of Homeland Security is a vital step forward, its creation alone will not solve the intelligence problems affecting our country – and which we and our House counterparts are currently studying as part of our inquiry into the intelligence failures that led up to September 11th. We must not forget that we will still have a large intelligence bureaucracy that will *not* be part of the new department, and that the department's important analytical functions will have no chance of succeeding if the information-

collection system that feeds it remains broken. Furthermore, the new Department's system will focus upon *domestic* terrorist threats, leaving the whole universe of foreign intelligence unreformed.

The President has noted that his proposals for the Department will "complement the reforms on intelligence-gathering and information-sharing already underway at the FBI and the CIA." While the FBI is doing a commendable job trying to reform itself, the CIA has yet to even consider significant changes. Indeed, as its leadership has repeatedly indicated in testimony before the Senate Select Committee on Intelligence, the CIA's response to September 11th has mostly been to insist that it is on the right track and that Congress should simply give it more money and personnel with which to continue doing more of the same thing. As I have said elsewhere, I think that response is inadequate, and that we can do much better.

Finally, I would like to make a brief comment about the analysis of information that already exists in the private sector. This is another area that our Technical Advisory Group has emphasized in our internal discussions of intelligence reform at the SSCI. The private sector collects and maintains vast amounts of information that would be of enormous use to intelligence analysts seeking to track terrorists. To the extent that the government can obtain access to such information on the same commercial terms as any member of the public – *e.g.*, through fee-based access to various databases or services – such data presumably constitute "publicly available" information which our intelligence analysts can already freely collect and analyze under current intelligence collection guidelines.

To the extent that current *policy* decisions within the Intelligence Community restrict analysts' ability to use such information for "U.S. person" or other reasons, the new Department of Homeland Security should not tie its own hands in this way. September 11th illustrated that the distinction between "foreign" and "domestic" intelligence is not as bright a line as we once thought. A government agency devoted to the all-source analysis of domestic terrorist threats cannot afford to forswear such private-sector information. I would expect, therefore, that the intelligence oversight rules for the domestic-focused Department of Homeland Security intelligence functions would have to be different in some key respects than those that today govern intelligence work by agencies focused upon threats abroad.

V. *Conclusion*

In summation, I strongly support President Bush's plans for the creation of a Department of Homeland Security, and I urge my colleagues to lend it their support. The terrible events of September 11th have graphically illustrated the need for such an organization, and I am particularly pleased that the President has incorporated in his proposal many of the ideas we at the SSCI discussed with Governor Ridge last November. The terrorism-focused all-source intelligence functions of the new Department's Information Analysis and Infrastructure Protection office will be a major step forward, and ought greatly to increase the federal government's ability to combat terrorist threats in the United States.

I urge my colleagues, however, not to travel this road only half way.

- We should modify the President's proposal in order to ensure that the new Department has full and unfettered access to terrorist threat information in the possession of other federal agencies – whether or not those agencies wish to share it. The Department of Homeland Security cannot provide real homeland security if it remains at the mercy of agency bureaucrats who reserve themselves the right to decide what information the new Department's intelligence analysts need to know in order to protect the United States.

- We should support the development of the Department of Homeland Security's information analysis office into a robust and effective organization capable of holding its own against the bureaucratic rivals it is sure to acquire in the Intelligence Community.

- Finally, we should not forget that intelligence analysis relating to homeland security threats is only part of the picture. Our homeland will not be secure if the intelligence *collection* machinery that provides information to the new Department is dysfunctional. And our national security interests will suffer if our *foreign intelligence* and *counterintelligence* organizations remain unreformed. The FBI is taking steps to bring about

> meaningful internal change, but we should not let other organizations within the Intelligence and Law Enforcement communities escape without similar scrutiny.

I applaud the President for presenting his proposal to Congress, and I thank you, Mr. Chairman, for holding a hearing on this important topic. Together, I hope and expect that we will be able to create a new and highly effective Department of Homeland Security that will better secure the safety and livelihood of all Americans in the years to come.

Thank you.

- Mr. Chairman, as a passing comment on a different subject, I would also like to raise some concerns with the idea of transferring the Coast Guard to the new Department of Homeland Security from the Department of Transportation.

- The Coast Guard has important homeland security functions. Most of its work, however, consists of other duties such as conducting maritime search and rescue, ice breaking, cleaning up oil spills, and protecting our fisheries.

- In its FY2003 budget presentation, in fact, the Coast Guard indicated that some 75 percent of its budget went toward such traditional missions. Only a quarter of the Coast Guard budget is related to homeland and port security.

- I am concerned that the Coast Guard's traditional missions would be neglected if it is subordinated to a Department dedicated to homeland security work. This would be unfortunate, and I urge you to consider the potential consequences of allowing such missions to atrophy.

- Rather than shortchanging the Coast Guard's core missions, it might be better simply to make the its expertise available to the Department of Homeland Security through appropriate coordination and communications channels.

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American Civil Liberties Union

Testimony on the President's Proposal for a Homeland Security Department: "The Homeland Security Act of 2002"

Before

The Senate Committee on Governmental Affairs

Submitted by Timothy H. Edgar, Legislative Counsel

June 26, 2002

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American Civil Liberties Union
Testimony on the President's Proposal for a Homeland Security Department:
"The Homeland Security Act of 2002"
Before the Senate Committee on Governmental Affairs
Submitted by Timothy H. Edgar, Legislative Counsel
June 26, 2002

On behalf of the American Civil Liberties Union (ACLU) and its approximately 300,000 members, we welcome this opportunity to provide this testimony for the record on the President's proposed legislation to create a Department of Homeland Security, the Homeland Security Act of 2002 ("HSA"). We commend you for examining these issues in today's hearing.

The ACLU is a non-partisan, non-profit organization dedicated to preserving civil liberties and the principles of our constitutional democracy, including open and accountable government.

The proposed Department of Homeland Security will be a massive Cabinet-level department, containing over 170,000 employees and twenty-two federal agencies.[1] It will have substantial powers, and will include more armed federal agents with arrest power than any other agency. In considering the proposed Department, Congress should ask itself not only whether the proposal represents sound public management, but also whether the Department will have structural and legal safeguards in place that are sufficient to keep the agency open and accountable to the public.

Unfortunately, the draft legislation not only fails to provide such safeguards, it eviscerates many of the safeguards that are available throughout the government and have worked well to safeguard the public interest. As proposed, the plan:

- **Hobbles FOIA** – Any information voluntarily submitted to the department about terrorist threats to the nation's infrastructure are exempt from Freedom of Information Act disclosure, drastically limiting the agency's responsibility to answer public questions about how well it is addressing these threats. (HSA § 204).

- **Limits citizen input** – Advisory committees to the department, which normally include citizen input, hold open meetings and must be balanced in viewpoint would be immune from these safeguards of the Federal Advisory Committee Act, further undercutting the agency's accountability to the public. (HSA § 731).

- **Muzzles whistleblowers** – Employees of the new agency could be stripped of the protections contained in the federal Whistleblower Protection Act. This would eliminate guarantees that -- were the agency to overreach its mandate or engage in questionable activities – such abuse would be disclosed and the agency

[1] *See* Bob Williams & David Nather, *Homeland Security Debate: Balancing Swift and Sure*, CQ Weekly, June 22, 2002 at 1642.

held accountable to Congress and the American public. Protection for the bravery like that displayed by FBI Agent Coleen Rowley would not exist in the new agency. (HSA § 731).

- **Lacks strong oversight** – Given the enormous potential power of the proposed agency, its Inspector General must not be hampered like those in other federal law enforcement agencies. Currently, the cabinet secretary in charge would have veto power over the IG's audits and investigations. (HSA § 710).

- **Threatens personal privacy and constitutional freedoms** – Many of the information sharing provisions in the HSA are vague and do not provide sufficient guarantees to protect privacy or constitutional freedoms.

Finally, we firmly reject proposals to include in the Department of Homeland Security the intelligence gathering functions of the Central Intelligence Agency (CIA), other foreign intelligence agencies, or the Federal Bureau of Investigation (FBI). Intelligence gathering operations abroad are, as a practical matter, largely immune from constitutional constraints. The CIA and other agencies that gather foreign intelligence abroad operate in a largely lawless environment. To bring these agencies into the same organization as the FBI risks further damage to Americans' civil liberties. As a result, Congress should resist any attempt to endow the Department of Homeland Security with new intelligence gathering powers or to fold the FBI and CIA into the new agency. Instead, Congress should put in place clear limits to prevent the Department from permanently retaining files on Americans that relate to First Amendment activities and have no connection to any criminal activity.

I. The Homeland Security Department Must Be Open and Accountable

The President's plan does not contain sufficient structural guarantees to ensure that this vast new Department will be accountable to the public, both to ensure it is doing its job and to ensure against abuse. Instead, the plan eviscerates many of the existing safeguards for government agencies. These provisions should be eliminated, and a strong mechanism should be put in place to ensure against abuse.

Freedom of Information Act (FOIA) Exemption

The ACLU strongly opposes section 204 of the proposed legislation, which creates a broad new exemption to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Section 204 provides that information that companies or others voluntarily provide to the Department about "infrastructure vulnerabilities" and other information said to be relevant to terrorism will be exempt from FOIA. These terms are not defined by the proposed legislation and could potentially cover a host of information. This is a deeply misguided proposal, and it should be rejected.

The FOIA is the bedrock statute designed to preserve openness and accountability in government and new exemptions to its provisions should not be created lightly. As the

Supreme Court has made clear, "Disclosure, not secrecy, is the dominant objective of the Act."[2] Open government is a core American value. It should not be set aside for reasons other than genuine necessity.

The FOIA already contains a number of common sense exemptions that would cover critical infrastructure information the disclosure of which could result in harm. The FOIA does not require the disclosure of national security information (exemption 1), sensitive law enforcement information (exemption 7), or confidential business information (exemption 4).

Courts have carefully weighed the public's need for disclosure against the possible harms of disclosure under FOIA's traditional exemptions. In deciding whether to disclose technical information voluntarily submitted by private industry, courts have given substantial – many in the public interest and FOIA requester community would say excessive – deference to industry demands for confidentiality of business information under exemption 4.

Generally, information that a business voluntarily submits to the government on the basis that it be kept confidential is already exempt from disclosure if the company does not customarily release such information to the public and preserving confidentiality is necessary to ensure that the government will continue to receive industry's cooperation. *See, e.g., Critical Mass Energy Project* v. *Nuclear Regulatory Commission*, 975 F.2d 871 (D.C. Cir. 1992). It is difficult to see how any truly sensitive business information that was voluntarily submitted by a company concerning the vulnerabilities of its critical infrastructure could be released under this standard.

Indeed, supporters of a new FOIA exemption for critical infrastructure information have, when pressed, been forthright in admitting that such legislation simply is not needed to protect sensitive information from disclosure. For example,

- Senator Bennett, chief sponsor of legislation creating a new critical infrastructure exemption, has admitted that "[t]he Freedom of Information Act itself" currently allows sensitive information to be protected. "That is, there are provisions in the Act that say information need not be shared" with the public.[3]

- John S. Tritak, Director of the Critical Infrastructure Assurance Office of the U.S. Chamber of Commerce, says "You could say that [in the] current environment, if you're very careful and you watch out, the old existing exemptions will cover any concerns that may arise under FOIA, not to worry."[4]

- Ronald L. Dick, Director of the National Infrastructure Protection Center of the Federal Bureau of Investigation (FBI), has said "[M]any legal authorities have

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[2] *Department of the Air Force* v. *Rose*, 425 U.S. 352 (1976).
[3] *Senate Governmental Affairs Committee Holds Hearing on Private and Public Information Sharing and Infrastructure Security* (FDCH Transcripts), May 8, 2002.
[4] *Id.*

agreed that the federal government has the ability to protect information from mandatory disclosure under the current statutory framework."[5]

- VeriSign public policy director Michael Aisenberg has said worries about disclosure were overblown because FOIA already protects sensitive information, and new legislation is simply not needed "substantively."[6]

Rather than put forward evidence that some information about critical infrastructure exists that is not adequately protected, supporters of a new exemption have said "it doesn't matter" whether current law provides adequate protection. Rather, it is said, a new exemption is needed because of a "perception" in private industry that there is some risk, however remote, that information that is voluntarily submitted to the government might be at risk of disclosure under FOIA.

If industry is unwilling to provide information to the government, despite adequate legal protection, the solution is not to change the law but to change the misperception by issuing legal guidance making clear the parameters of the FOIA as it currently exists. If a misperception exists that truly sensitive information that is given to the government cannot be protected from disclosure, it is hard to see how that will change if another exemption is enacted.

Perhaps most importantly, creating an overbroad exemption for "critical infrastructure information" would undermine, rather than enhance, security. Such an exemption would permit private industry and the government to shield from the public the actions they are taking - and, more importantly, the actions they are not taking - to protect the public from attacks on critical infrastructures.

Secrecy can hinder anti-terrorism efforts. Earlier this year in Israel, the media obtained a government report that discussed the potential vulnerability of a fuel depot to terrorists – exactly the sort of information about "infrastructure vulnerabilities" that might be exempt from FOIA under the proposed legislation. Military censors blocked publication of the report, and persuaded the mayor of Tel Aviv not to go public with a campaign to fix the problem. Nothing was done. Terrorists then attacked the fuel depot. In that case, public debate might well have forced action to address the problem.[7] The United States should not make the same mistake.

For the all of the above reasons, ACLU opposes the enactment of a new FOIA exemption for critical infrastructure information. At the very least, however, any new exemption that Congress enacts should be subject to the following responsible limits:

First, any new exemption must be limited to clearly marked cyber-security documents, i.e., reports that describe cyber-attacks on a company's computer systems that have resulted or could result in some harm to its critical infrastructure. It should not apply to

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[5] *Id.*
[6] *Washington Internet Daily*, April 18, 2002
[7] *See* Aviv Lavie, *Media: Sensing the Censor*, Ha'aretz (Tel Aviv, Israel), May 29, 2002.

information about *all* vulnerabilities in critical infrastructure. Proposals to exempt information that is voluntarily shared with the government were developed to deal with the discrete and relatively new problem of cyber-attacks. To expand the scope of information that is exempted to include information about vulnerabilities to traditional physical attacks would interfere with a host of environmental and public safety regulatory regimes that have been developed over decades.

Second, any new exemption must be for written documents only, not "information" of all sorts. It would be virtually impossible to determine if information possessed by the government was the result of some oral conversation with a private sector company, making a FOIA exemption that covered such information unworkable and potentially devastating to the public's right to know.

Third, any new exemption must be limited in time, and should last for months, not years. A company which controls infrastructure that is vital to the public must have an incentive not only to share information, but also to do something to make itself less vulnerable to such attacks. A time limited exemption will give responsible companies and government agencies an incentive to fix their problem with due speed. Without a time limit, companies and the government can simply sit on the problem without any pressure to act.

Fourth, a new exemption should be an alternative to existing FOIA protections, not a new club to wield against FOIA requesters. Companies that wish to take advantage of the new exemption should clearly state on the relevant document they are requesting confidentiality under that exemption. Companies that fail to fix their vulnerabilities within a reasonable time limit, even with the protection of the new exemption, should not be allowed to take advantage of FOIA's other potentially applicable exemptions to cover up their failure to act after that time limit has expired. If companies believe the information they desire to share is protected under another FOIA exemption, they should be required instead to rely on that other exemption at the time of submission.

Finally, strict reporting requirements and a sunset clause should be included in the legislation to determine whether the new regime is working.

Federal Advisory Committee Act (FACA) Exemption

Section 731 of the HSA provides that advisory committees established by the Secretary of the Department of Homeland Security are exempt from the Federal Advisory Committee Act (FACA), and that members of such advisory committees are not subject to certain restrictions on federal employees' conduct.

The FACA was passed in 1972 to promote the values of openness, accountability, and balance of viewpoints, and to ensure administrative efficiency and cost reduction. FACA imposes requirements on agencies[8] when they establish or utilize any advisory committee, which is defined as a group of individuals, including at least one non-federal employee, which provides collective advice or recommendations to the agency. 5 U.S.C.

[8] The FACA does not apply to the CIA or the Federal Reserve System. 5 U.S.C. App. II § 4(b).

App. II, § 3(2). When an agency seeks to obtain such advice or recommendations, it must ensure the advisory committee is "in the public interest," *id.* at § 9(2), is "fairly balanced in terms of points of view represented and the function to be performed," *id.* at § 5(b)(2), and does not contain members with inappropriate special interests. *Id.* at § 5(b)(3). If these criteria are satisfied, the agency must file a charter for the committee. *Id.* at § 9(c).

Once an advisory committee is operating, the agency also must comply with requirements designed to ensure public access and participation. FACA requires an agency to provide adequate public notice that it is establishing an advisory committee, *id.* at § 9(a)(2), conduct open meetings, *id.* at § 10(a), keep minutes of those meetings, *id.* at § 10(c), make available for public inspection and purchase all documents prepared for or by advisory committees, *id.* at §§ 10(b), 11(a), and permit all interested persons to attend, appear before, or file statements with any advisory committee. *Id.* at 10(a)(3). These openness requirements ensure public monitoring of advisory committees and reduce the likelihood that advisory committees can serve as secretive channels for special-interest access to government agencies. FACA's right of access to advisory committee records is subject to the same nine exemptions that apply to access to agency records under the FOIA, which we believe are sufficient to guard against any disclosure of truly sensitive information.

By exempting from FACA requirements *any* advisory committees established by the Secretary of the Department of Homeland Security, the HSA severely undermines the openness and public-access goals of FACA. Although the HSA provides that the Secretary shall publish notice in the Federal Registrar announcing the establishment of an advisory committee and identifying its purpose and membership, the meetings will not be open to the public, formal minutes of committee activity during those meetings will not be kept, and the public will not have access to view or purchase documents prepared for or by those advisory committees. Public access to and participation in advisory committees are essential to guarding against special-interest access to advisory committees and influence upon government decision-making.

In addition, the HSA exempts members of advisory committees established under the Department of Homeland Security from federal laws restricting federal employees and officers (including members of advisory committees) from participating in or advising the government upon matters about which there exists a conflict of interest. *See* 18 U.S.C. §§ 203, 205, 207. Combined with the lack of public access to and participation in advisory committee proceedings, exemption from these laws threatens to erode FACA's requirement that advisory committees' memberships reflect a balance of viewpoints, and undermines the goal of accountability.

Waiver of Whistleblower Protection Act (WPA) and other Title 5 Protections

The federal Whistleblower Protection Act (WPA) was enacted to ensure that federal employees[9] who believe that a violation of law, mismanagement or other abuse has

[9] The WPA does not apply to the CIA, FBI, Defense Intelligence Agency (DIA), the National Imagery and Mapping Agency (NIMA), the National Security Agency (NSA), and, "as determined by the President, any

occurred may come forward and disclose that information without fear of summary dismissal or punitive action. The WPA protects federal employees from adverse action on the basis of a disclosure of information if the employee "reasonably believes [the information] evidences a violation of any law, rule, or regulation or gross mismanagement, gross waste of funds, an abuse of authority or a substantial and specific danger to public health and safety." 5 U.S.C. § 2302(b)(8). An employee is not protected if the disclosure involves classified information or if the disclosure is specifically prohibited by law. *Id.* The Act contains administrative remedies, administered by the Merit System Protections Board, and an employee may also seek judicial review in the United States Court of Appeals for the Federal Circuit. 5 U.S.C. §§ 1221, 7703(b). In this way, the WPA guarantees that federal agencies are held accountable to the American public if they overreach their mandate or engage in questionable activities.

The HSA permits the Secretary to sweep away the Whistleblower Protection Act, and all other protections for federal employees under Title 5, for the purpose of establishing a "Human Resources Management System" (HSA § 730) that is "flexible, contemporary, and grounded in the public employment principles of merit and fitness." By allowing the Secretary to make these personnel rules "[n]otwithstanding any other provision of this title," i.e., Title 5, the HSA does not guarantee employees of the Department of Homeland Security the protections of the WPA. Without such protection, employees who are in the best position to spot problems, violations of the law or dangers to the public are effectively silenced.

The Homeland Security Department's Inspector General May Lack Authority

We are concerned that the Homeland Security Act does not adequately provide for a fully functioning Inspector General (IG). Section 103(b) provides for the creation of an Inspector General pursuant to the Inspector General Act of 1978. However, section 710 of the HSA gives the Secretary of Homeland Security authority to override Inspector General Investigations in several areas including: (1) intelligence, counterintelligence, or counter terrorism matters; (2) ongoing criminal investigations or proceedings; (3) undercover operations; (4) the identity of confidential sources, including protected witnesses; (5) matters that constitute a threat to persons or property protected by the United States Secret Service and (6) other matters that constitute a serious threat to national security. Given the mission of the Homeland Security Agency, it is conceivable that many of the functions performed by this new agency could be said to fall under one of these exempted categories.

Other agencies have similar provisions that require the inspector general to be under the direct authority of the Department Secretary (e.g. Treasury, Department of Justice, Postal Service) when the IG is investigating areas of national security. We understand the need to protect information that if released could pose a danger to national security. However,

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Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities." 5 U.S.C. 2302(a)(2)(C)(ii). However, employees of the FBI are covered by similar whistleblower protections contained at 5 U.S.C. § 2303, but must make their disclosures to an official designated by the Attorney General.

many of the agencies that are going to become a part of the new Homeland Security Act such as FEMA, the INS, the Animal and Plant Health Inspection Service of the Department of Agriculture and the Coast Guard have functions much broader than dealing with national security. We are concerned that transferring these agencies into a Department whose primary function is to protect the United States against terrorism could erroneously be perceived as elevating their regular duties to those of national security, thereby making such currently non-exempt activities exempt from Inspector General oversight.

We recommend further study of this issue before legislation is approved, regular oversight by Congress and a requirement for the Homeland Security Department to report to Congress concerning how often the Inspector General is prevented from performing its duties due to section 710 exemptions, and the standards by which the Secretary exercises such authority.

II. The Homeland Security Department Should Not Invade the Privacy or Constitutional Rights of Americans

Finally, the creation of a new Homeland Security Department naturally leads to concerns that such a large government agency could abuse its authority by invading the privacy or freedoms that Americans hold dear. Common sense protections can ensure against such abuses.

Because a primary function of the new Department is to receive and analyze information, Congress should insist on appropriate safeguards to protect the privacy of the information and to make sure that it is not used inappropriately. For example, there should be procedures to limit the use and disclosure of the collected information; rules that require the information to be secure and confidential; procedures to remove and destroy old data and remedies for the violation of statutory and constitutional rights and penalties for misuse of personal information.

The Intelligence Gathering Functions of the CIA and FBI Should Remain Separate and Outside the Homeland Security Department

We commend the Administration for leaving the intelligence gathering function out of the new Department. The HSA leaves those functions to the Central Intelligence Agency (CIA) and other intelligence agencies and to the Federal Bureau of Investigation (FBI). While the government must do a better job of analyzing the intelligence information it already collects from both foreign and domestic sources, the Congress should not approve new intelligence gathering powers, much less a new intelligence gathering agency, without a showing that such powers are truly needed and do not unnecessarily tread on Americans' civil liberties.

Under our system of government, the CIA and other intelligence agencies are tasked with collecting foreign intelligence abroad. As a practical matter, these foreign activities have been largely immune from constitutional limits and from oversight by the federal courts,

although they are and must remain subject to oversight by the Congress. On the other hand, the FBI collects foreign intelligence in the United States, and also investigates and prevents criminal activity. These domestic activities are clearly constrained by statute and by the Constitution. The FBI's intelligence gathering functions are also subject to oversight by the Foreign Intelligence Surveillance Court.

Blurring of domestic and foreign intelligence gathering functions could have a severe impact on civil liberties, potentially leading to widespread spying on Americans constitutionally-protected political and religious activity. This is already a danger under the relaxed FBI guidelines for domestic investigations recently announced by Attorney General Ashcroft.[10] The Congress should resist any attempt to further erode these protections by including substantial intelligence gathering functions in the new Department of Homeland Security.

The Homeland Security Department Should be Barred from Political Spying

Instead of adding to the Homeland Security Department new intelligence gathering powers that could tread on civil liberties, Congress should consider adding provisions that would prevent the Department from maintaining files on Americans that are not linked to any criminal activity, but instead relate solely to political beliefs and associations. Under the draft legislation, while the Department will not gather intelligence information, it will receive such information in the course of its efforts to prevent terrorism.

Without safeguards, these provisions could lead to abuse. No one wants a repeat of the J. Edgar Hoover era, when the FBI was used to collect information about and disrupt the activities of civil rights leaders and others whose ideas Hoover distained.[11] Moreover, during the Clinton Administration, the "Filegate" matter involving the improper transfer of sensitive information from FBI background checks of prominent Republicans to the White House generated enormous public concern that private security-related information was being used for political purposes. Congress should not provide a future Administration with the temptation to use information available in Homeland Security Department files to the detriment of its political enemies.

One model the Congress could consider is Oregon Revised Statutes § 181.575. It provides that no state law enforcement agency may "collect or maintain information about the political, religious or social views, associations or activities" of a person or group unless such information "directly relates to an investigation of criminal activities" and there are "reasonable grounds to suspect" the subject "is or may be involved in criminal conduct." Such sensible limits would ensure that the Department is focused on

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[10] For a memorandum explaining how these changes threaten constitutional rights, see Interested Persons Memorandum of Marvin J. Johnson, ACLU Legislative Counsel, June 6, 2002, available at <http://www.aclu.org/congress/l060602c.html>

[11] For a discussion of how the FBI engaged in illegal surveillance and harassment of Dr. Martin Luther King, Jr., see Marvin J. Johnson, ACLU Legislative Counsel, *The Dangers of Domestic Spying by Federal Law Enforcement: A Case Study on FBI Surveillance of Dr. Martin Luther King* (January 2002), available at <http://www.aclu.org/congress/mlkreport.PDF>

its mission of preventing unlawful terrorist activity, not on keeping tabs on unorthodox or unusual, but constitutionally protected, political or religious activity.

III. Conclusion

The creation of a new Homeland Security Department is truly a massive undertaking. It requires careful and thoughtful consideration. While Congress understandably wants to respond to the Administration's initiative without undue delay, caution is needed to ensure that the basic principles of our government that ensure public accountability of government activity remain intact.

Instead, the Administration's plan weakens many of the laws that are vital to ensuring an open and accountable government, by creating unnecessary blanket exemptions to the Freedom of Information Act, the Federal Advisory Committees Act, and the Whistleblower Protection Act. The plan also fails to provide for an effective review mechanism, instead proposing an Inspector General that may lack sufficient power to provide an effective check on the powerful new Secretary of Homeland Security. Finally, while the plan should be commended for recognizing the importance of the distinction between foreign and domestic intelligence gathering for the protection of civil liberties, safeguards against political spying must be added to avoid a repeat of the abuses of the Hoover era.

STATEMENT SUBMITTED BY
RICHARD J. DAVIS

BEFORE THE
SENATE GOVERNMENTAL AFFAIRS COMMITTEE

HEARING ON THE DEPARTMENT OF HOMELAND SECURITY
AND THE INTELLIGENCE COMMUNITY

JUNE 26-27, 2002

I am pleased to submit this statement in support of the creation of a Department of Homeland Security as contemplated by bills pending in both the House of Representatives and the Senate, as well as by the President's June 6th proposal.

The creation of such a department is critical to improving coordination of the mass of agencies with some domestic defense responsibilities, as well as to creating an entity with sufficient authority so that it will be fair to hold it accountable for how it performs. Creating such a department also provides more than a short-term solution to an immediate crisis; it creates a structure that can serve our country's long-term need to have a government effectively organized to protect security at home. At the same time, as I will discuss below, it always is important to remember that while organizational change can serve as a critical building block of a domestic defense strategy, it obviously can never be viewed as the entirety of all that must be done as part of such a strategy.

While over the years I have had a variety of law enforcement responsibilities, my views on this legislation largely derive from my experiences during the Carter Administration as Assistant Secretary of the Treasury for Enforcement and Operations, where I dealt with terrorism related issues, as well as Customs, the Secret

Service and the Bureau of Alcohol, Tobacco & Firearms, and my service as one of a panel of experts convened by the Departments of Justice and Treasury to make forward looking recommendations in the aftermath of the disastrous events at Waco in 1993.

The number of discrete agencies that have responsibilities related to domestic security and counter-terrorism efforts is truly extraordinary. The FBI, CIA, Secret Service, Coast Guard, the Marshalls' Service, Customs, INS, the Commerce Department's Export Control Administration, the Agriculture Department, Transportation Security Agency, FAA, the Bureau of Alcohol, Tobacco & Firearms, the Energy Department, Capitol Police, State Department Security, GSA and National Park Police represents only a partial list of those federal agencies that have some homeland security responsibilities. Add to this the thousands of state and local police authorities which might have jurisdiction over particular incidents and the dimensions of the organizational problem becomes apparent.

It would neither be realistic, nor sound policy, to try to put all these agencies in one department. Such a department would be bureaucratically unwieldy, combining too many agencies with too many disparate functions. What is needed is to bring together in one department agencies with core domestic defense functions, and whose missions are sufficiently aligned that they can be effectively managed. At the same time as this criteria is applied to determine what should be in this new department, either that department and/or a White House based office must have the power to

coordinate the manner in which other relevant agencies, as well as state and local governments, are meeting their responsibilities.

Applying these general principles, I suggest that you consider the following as you make the judgments about how to structure this new department:

1. The Customs Service and the Immigration and Naturalization Service should not be transferred in their entirety to the Department of Homeland Security. While it may initially be simpler to make such a wholesale transfer, over the long term I do not believe this is desirable. Both of these agencies contain important functions that either are not central to the domestic defense function and/or more appropriately belong in the departments where they now are located. Customs, for example, is a multifaceted agency with a large number of tariff, international trade and revenue responsibilities that are unrelated to the mission of the new department. Rather than simply transfer Customs as a whole, it would be feasible to transfer the Customs patrol and inspection functions – the functions most relevant to domestic defense -- to the new department and merge them with the Border Patrol and the inspection functions of the Immigration and Naturalization Service (or the somewhat broader grouping of INS functions being moved to the Department of Homeland Security under various of the pending legislative proposals). The rationale for the extensive resources put into the Customs inspection and patrol functions has primarily been to deal with non-revenue related law enforcement priorities, particularly drug enforcement. These responsibilities can, and should, be closely coordinated with the inspection and

patrol functions of the INS. Indeed, by having one department able to coordinate the border protection strategies of the Border Patrol, the Customs Patrol and the Coast Guard -- as all the pending proposals contemplate – enhances not only our ability to deal with terrorism, but also with drug smuggling and illegal immigration. Transferring the remainder of Customs to the new department does not add to this synergy, but rather adds functions that do not relate to domestic defense. These other components of Customs are more revenue and international trade related, and should appropriately remain within the Treasury Department, which has these functions as part of its own core mission.

2. Similarly, INS has a variety of different types of responsibilities. While all of INS arguably is linked to domestic defense in the broadest sense, many of the functions of INS are either adjudicatory or administrative in nature, and more appropriately should remain in the Justice Department. Within that Department these functions, which are in extraordinary need of reform, can better receive needed attention. The Border Patrol and INS inspection function, or the broader category of INS responsibilities described in various pending proposals are the INS functions most related to domestic defense, and these should be transferred to the new department.

3. Airline security is now the province of the Sky Marshall program and the newly created Transportation Security Agency within the Department of Transportation. While there are good reasons to maintain these functions within their current departments, where, particularly the latter, can be integrated with the

needs of broader transportation policy, I suggest transferring them to the new department. They each have core domestic defense roles and operate at a venue – airports – where in many cases the new department, through its INS and Customs related responsibilities, will also have important authority. The President's proposal would transfer the Transportation Security Agency to the new department.

4. As many have said, intelligence obviously is important to the overall domestic security effort. It also raises the most difficult issues in creating the new Department. Among the primary intelligence agencies with a clear role in generating relevant information are the FBI, CIA and NSA. Since each of these agencies have roles that go significantly beyond domestic defense, I do not believe any of these agencies should be transferred in their entirety to the new department. While at some point one might consider transferring the counterterrorism function of the FBI to the Department of Homeland Security (and possibly merging it with the Secret Service), such a change would involve many difficult issues and should not be made now. While the new department thus, at least initially, would not have intelligence gathering responsibilities, it plainly should have the kind of extensive analytical capabilities contemplated in the President's proposal. In addition, however, to assure that the FBI and the CIA are providing necessary intelligence, and that the new department is not in the position simply of being a supplicant for information, the Secretary of Homeland Security should have the authority to mandate that the relevant intelligence

agencies make available any intelligence, or category of intelligence, that the Secretary determines to be relevant to the new department's mission, and have a meaningful role in making certain that securing such intelligence remains a priority over the long term. In this connection, the Secretary could be made Chair of a Domestic Defense Intelligence Council, including at least the CIA, FBI, NSA and the Attorney General.

5. The President's proposal would transfer the Secret Service to the Department of Homeland Security. There is little doubt that the protective function of the Secret Service can be considered a core domestic defense responsibility. While the Service's investigative function does not fall within this category my experience causes me strongly to believe that the personal protection capability of the Secret Service is materially enhanced by that agency's status as an investigative agency. Thus, if any portion of the Secret Service is transferred, it should be transferred in its entirety. At times when the protective responsibilities of the Service are at their height, i.e., when it is protecting Presidential candidates or scores of Heads of State attending a major UN meeting, it traditionally has drawn on the resources of other Treasury law enforcement agencies to supply added personnel. If the Secret Service moves to a new department a mechanism thus needs to be provided to allow the Service to continue to receive such needed assistance. I also believe that the Secret Service should report to a senior official within the new department, but not to the Secretary. Over the long term the Secret Service has the kind of critical functions

where both support and some degree of supervision from the outside is appropriate. The reality is that if the Service reports only to the Secretary it will receive neither in sufficient amounts.

6. The President's proposal would transfer the GSA Protective Service to the new department. This seems appropriate, but for reasons of administrative efficiency consideration should be given to placing this responsibility under the Secret Service, which already manages a Uniformed Division with responsibility for protecting the White House and embassies.

7. State and local governments are critical to dealing with the struggle against terrorism. While various of the pending proposals provide the new department with some state and local government coordination responsibilities, particularly in the emergency preparedness area, there needs to be assurance that there is adequate coordination between state, local and federal law enforcement and prevention efforts, and that State and local entities receive intelligence relevant to their responsibilities. The Committee thus should consider giving the new department more explicit authority in these areas through the creation of an Office of State and Local Government Coordination.

8. A large number of government and quasi government agencies not included within the new department have responsibilities which include ensuring that facilities under their control have appropriate security programs. These agencies include such entities as the Energy Department, the National Park Service, Nuclear Regulatory Commission, the TVA, and many more. While the

primary role in fulfilling these responsibilities should remain with these agencies, there needs to be some agency with responsibility to oversee the effectiveness of their efforts. Given the operational nature of this oversight role and the relatively large number of resources needed if it is to be done right, I suggest that the new Department of National Homeland Security – rather than a White House office – should have the ability to "audit" these security efforts and, where appropriate, to insist that changes be made.

While making the organizational changes contemplated by Congressional proposals and the President are important to our overall domestic defense effort, they are not sufficient. We also need an unyielding commitment, consistent with our democratic values, to do what is necessary to combat terrorism. Whether it be our relations with other countries, national policies relating to international shipping, protecting nuclear power plants, insisting on standards for security at privately owned facilities, maintaining and improving investigative and intelligence efforts and cooperation, the priority must be clear – preventing attacks on our country. This does not mean that in determining the balance between enforcement needs and preserving the rights of individuals that enforcement requirements always prevail. There always should both be a burden on law enforcement to demonstrate the true need for particular powers and a continued understanding of the importance to us as a country of preserving fundamental rights. It does mean, however, that in making often difficult policy choices we must always remember that we are in a veritable war where the threat of attack has all too tragically been demonstrated to be very real.

It is obvious that even the best domestic defense efforts cannot guarantee that we will not be subject to further terrorist attacks. Understanding of this reality does not mean, however, that we can allow cries of inevitability to either dull our efforts or deter us from insisting that those with responsibility do what can be done. For only if we do all that we can legitimately do to prevent such attacks can we preserve the confidence of the public, and maintain what is integral to our ability to remain secure as a democracy – providing for the security of our people.

Respectfully Submitted,

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Questions for June 26 Government Affairs Hearing
Senator Max Cleland
"A Review of the Relationship between a Department of Homeland Security and the Intelligence Community"

Response to Questions for the Record from the Honorable Ashton B. Carter:

Question No. 1: How would you rate Congressional oversight before and after September 11 and what are your suggestions for improving Congressional oversight of intelligence matters?

Response: My impression is that oversight works well as measured against the purpose for which it was designed, namely, to prevent abuses. Ensuring the overall performance of the intelligence community, including against terrorism, was not it founding purpose and it has, to my knowledge, little record of action in altering the structure and organization of the intelligence community.

Question No. 2: As you know, there is often a culture developed within Agencies of the federal government that sometimes is ingrained in employees of that Agency. While this culture can be helpful and often create a sense of pride, it also can cause problems and sometimes block change. How do you envision overcoming the negatives of this culture during the transition of thousands of employees from Departments like Treasury, Transportation and others to the new Department?

Response: One intended effect of the reorganization, as explained by the administration, is to focus the consitituent agencies of the Department of Homeland Security on their new prime mission of homeland security. To the extent all the pieces see the new mission as central, they will coalesce around it. To the extent they do not shed their old missions but hang onto them, they will continue to have different cultures that will not mix. So the key to a common culture is a common sense of mission.

Question No. 3: When it comes to the organization of our national defense against bioterrorism, the devil is, as always, in the details. The difficult questions here are the same ones we are asking with respect to the FBI and CIA: Are the activities of a particular agency sufficiently related to homeland security that the entire agency should be transferred to the new Department? If not, should certain functions and personnel that are directly related to homeland security be transferred from the existing agency to the new Department? If so, which ones should be transferred? Are there some functions and personnel that are related to homeland security that should remain with their original agencies but then contract with the new Department on an as-needed basis for reasons having to do with efficiency, synergy, or practicality? Specifically with respect to bioterrorism defense, which functions should be transferred from the CDC to the new Department? Which counter-bioterrorism functions should remain with the CDC?

Response: I am not an expert on this question, but it would seem that functions related to national response in the early phases to a sudden outbreak of disease would naturally fall within the new Department.

Questions for the Record
from Lt. Gen. Patrick Hughes, Retired
from Senator Ted Stevens
U.S. Senate Committee on Governmental Affairs

"A Review of the Relationship Between a Department of Homeland Security and the Intelligence Community"

June 26, 2002

Question 1: You have stated that the new Homeland Security Department should have access to **all sources** of U.S. intelligence data. Given the past problems with information sharing, how specifically would you ensure this access is provided?

Response: A: I think such **all source** access is vital since the term implies that information from any sensor, source or method would be available to the Intelligence element of the Homeland Security Department.

Thus information from the following disciplines: Human Intelligence (HUMINT); Counterintelligence (CI); Technical Intelligence (TI); Open Source Intelligence (OSINT); Measurement & Signature Intelligence (MASINT); Geospatial Intelligence (Imagery, Mapping, Charting, Geodesy, etc.) (IMINT) (GI), and Signals Intelligence (SIGINT), and full access and participation in the national collection management (CM) system, would be included in the Homeland Security Department (HSD) repertoire of capability. This information would come from many different and some non-traditional organizational sources: the U.S. Intelligence Community (IC), primarily the Central Intelligence Agency (CIA); the Defense Intelligence Agency (DIA); the National Security Agency (NSA); the National Imagery & Mapping Agency (NIMA); the various national Counterintelligence activities; Federal Law Enforcement – the Federal Bureau of Investigation (FBI) and numerous other Law Enforcement agencies and elements resident across many governmental agencies and organizations; the specialized elements of the Federal structure such as the Department of Energy (DoE) and the Department of Commerce (DoC); State and Local Law Enforcement & Security activities including State and Local police, fire, EMT, and other responding elements; and from special sources such as the medical and chemical-biological research structure of our country, academia, national and private laboratories, the commercial banking system, think tanks, corporate America, and ultimately from individual citizens who have something to report and a mechanism through which to report.

We should also imagine that commercial contract providers could be tasked to provide information to the HSD.

Organizations internal to the Homeland Security Department – for example, the Immigration & Naturalization Service, the United States Coast Guard, the U.S. Border Police, etc. which are now sources of information, will continue to provide information more directly to the parent HSD and hopefully in a more focused way since they would now be managed by a central intelligence authority, the HLS Intelligence element. This concept seems complex. It is. However, in my view it is the only approach to take. I cannot imagine not allowing any element or activity with information relevant to the security of our nation to not have a well-defined set of collection and reporting requirements.

To directly answer your question, I would specifically direct such collection and reporting. I would specifically place Homeland Security intelligence requirements on all relevant agencies and organizations, and I would put into being a system of collection management to task and monitor and to assess and provide qualitative feedback and corrective guidance, under the mantle of Homeland Security, to the respective "partner" organizations. This would be done under Presidential Decision Directive, Law, and other mechanisms for ensuring specific actions by federal, state, local, private, public, and specialized entities.

Question 2: Do you agree that creating a new department will eliminate the past information sharing problems?

Response: I do not think that by merely creating a new department you will solve anything, especially information sharing problems, in an atmosphere of contention and competition and in an environment in which information unshared is used as an element of organizational and personal power. This is, in my view, a Presidential issue. However, without this new department no other organization is likely to take on the broad and complex responsibilities implied in the term – Homeland Security.

I see the new department as the only answer to the span of control challenges contained in the amalgamation of several pre-existing agencies and elements, in the new set of activities necessary to ensure homeland security, and in the specific case of intelligence I see the HSD as requiring its own "intelligence & security" element to meet the Department's information needs and the Nation's needs. This construct implies sharing and responsive partnership. I do not see any other organization capable of managing this concept except that organization specifically responsible for it.

Question 3: Consolidating agencies and related organizations into one department does not ensure that the "seams" between these entities regarding information sharing and cooperation will go away. How specifically can the new department close these seams?

Response: The answer to this question is similar to that provided in Question 1 above. It is true that the "seams" we know so well will not go away. However, I think we must try to minimize the effect of these seams, to bridge them and to eliminate them if possible. The amalgamation of a number of pre-existing organizations under the single umbrella of the Homeland Security Department would be an example of an organizational attempt to achieve several different kinds of institutional and organizational synergy, including information sharing and cooperation. I imagine that we can achieve some greater degree of "seamlessness" among the numerous other organizations and entities that will not be amalgamated under the HSD umbrella through the imposition of requirements and the publishing of directives requiring such interaction. Experience over time will no doubt lead us to modify these administrative, legal and procedural constructs. In the end, the President of the United States is going to have to hold to account his Departmental heads and their subordinates. If they do not cooperate, if they do not comply, if they do not willingly share, then they should be treated appropriately to the problem. This is really the key element in ensuring that information sharing will ever work between and among disparate organizations and different professional cultures. Congressional oversight and related compliance activities and Judicial action to specify in law what is required, should also be noted here as critical elements in the potential success of the HSD.

Question 4: You are the only witness to directly recommend that additional funding and personnel be provided to the new department. Why do you believe that this consolidation **cannot** yield more efficient performance within existing personnel and funding limits?

Response: I have some recent experience and direct knowledge of the current and future demands that are and will be placed on the existing intelligence and security structures of the United States. I testified before Congress on the shortfalls we were experiencing in the active U.S. military intelligence and security structure and I heard the DCI testify to that same problem across the breadth and depth of the U.S. IC on several occasions. I also hear frequently from current active persons in these communities. My belief, based on what I know, what I see and what I hear, is that the U.S. intelligence and security communities (Federal, State and Local), are under-manned, under-resourced, and under-equipped for the challenges faced by the nation before terrorism came to our shores. We could barely keep up, especially in the foreign intelligence community, with the demands of past conditions. People on active duty now tell me that this same problem exists and in some cases has worsened since we have added missions to the overall intelligence and security requirements of our nation without much improvement in two key areas – people and specialized tools to handle information.

The "new" paradigm of Homeland Security and the intelligence demands implicit in that term, are different. This requires a much different focus – internal to the United States in large part. The nature of the threat is decidedly different, especially with regard to the targets the threat may strike – the civil infrastructure and unwarned unprotected non-combatant citizens of the United States. This requires a much sharper demand to decide on indications and warning and to act. A different, shorter timeline and faster tempo of events and activities must be anticipated. Potential weapons and their effects are "different," and in fact evolving, including Weapons with Mass Effects (WME) and weapons developed out of "new sciences." The relationship to Law Enforcement and to other non-traditional parties that are not often involved in foreign intelligence activities is a critical feature of the HSD intelligence activity. This is different.

I am fearful that we might, in the name of fiscal expediency and conservative resource management, seek to make something new and different out of the inadequate existing structure, thereby further dissipating and distributing the inadequacies of the present structure over an even great range of vital missions and needs. We cannot forget about our critical involvement in the dangerous global condition.

I believe that no pre-existing organizational entities will be able to provide the kind of direct, responsible and focused support that the new Department will require unless they are somehow included – embedded – in the new Department. Manning such entities with loaned persons from other agencies has not worked well in the past.

The HSD needs, deserves, must have, it's own intelligence capability for these reasons.

Question No. 5: You state that the new department should be an equal with other heavy intelligence users (State, DoD) in the process that assigns intelligence collection priorities. Why do you have confidence that this equality will ensure that the appropriate priority is placed on homeland defense requirements?

Response: I don't know if I have confidence in the idea of "equality" or not. I believe it should be the beginning concept, but I fully understand that it has a potential for friction and contention built into it. The current IC collection management process has for years been criticized internally by the IC because it seems to favor the U.S. military and their needs and has not been responsive to the needs of long-term collection for finished intelligence studies and reports, especially those that are focused on non-military issues like economic, agricultural and demographic intelligence. In my view this problem will be exacerbated initially by the advent of a new tasking entity, the DHS. This problem should smooth out and be accommodated professionally and procedurally by the IC and related intelligence and security elements of the

Federal, State and Local levels of government. However, there are some "new" concerns, notably law enforcement and "first responder" needs. There are some "new" conditions, notably collecting information inside the United States, its territories and possessions, and focused intelligence gathering related to embassies, military installations and vital economic and other activities and facilities that the U.S. depends upon, scattered throughout the world.

National and departmental intelligence collection management efforts currently depend upon good judgment, decisions made by leaders, priorities appropriate to time, place and events, and a number of technical and procedural issues that apply to each collection requirement. This will continue to be the case. The additional factor will be the demands made on the system by the HSD. We'll have to see how this works out and adjust and adapt as we gain experience.

Questions for the Record
from Lt. Gen. Patrick Hughes
Submitted by Senator Max Cleland
U.S. Senate Committee on Governmental Affairs

"A Review of the Relationship Between a Department of Homeland Security and the Intelligence Community"

June 26, 2002

Question No. 1: In your opening testimony you state that a new Department of Homeland Security should NOT have an intelligence collection capability apart from that which already exists in the current intelligence community. Do you feel confident, then, that tasking of intelligence requirements and analysis of collected data, with NO inherent collection capability in itself, will be sufficient to allow the new department to function properly in the defense of our homeland?

Response: I never meant to communicate an absolute absence of collection capability or involvement. Indeed, in my written testimony I did provide for the involvement of the HSD in specialized, unique and specific collection activity when appropriate. I fully support that concept. However, what I warned against and spoke against was the possible unnecessary duplication of existing intelligence collection capability or the unnecessarily redundant application of intelligence collection capability under the umbrella of the HSD. I do not believe that, at the start of the HSD, that the intelligence element should build a separate collection capability of any kind. Rather I would ensure that existing capabilities are fully understood and accessed for homeland security needs. As soon as some new and perhaps different capability is required, then I would carefully consider whether or not it should be in the HSD structure or applied by other operational collection entities for HSD needs. Depending on these decisions it may be necessary to begin to build a small and very specific intelligence collection capability with the HSD. I support that but urge careful and deliberate decision-making along the way. We already have too many collection entities and much redundancy and duplication.

Question No. 2: Can you foresee a scenario in which it might be necessary for the new Department to "get involved" in the actual collection of intelligence information? For example, a highly sensitive HUMINT operation in which Homeland Security personnel might have intimate knowledge and should therefore become active in intelligence collection? Or some other scenario which may arise in the future?

Response: Yes. I gave this postulation in my testimony.

In order to provide the context for some of my answers above, the following is a quote taken from the written testimony I submitted to the Committee. I include it here for clarification:

Begin Quote: "The Department of Homeland Security should not develop and field an intelligence collection capability separate from the existing intelligence community structure. We have difficulty now in avoiding redundancy and duplicative effort and the addition of yet another "collection agency," would not help. However, the new Department could be directly involved in some especially sensitive or purposeful intelligence collection, in cooperation with an existing department or agency. This of course includes law enforcement in all of its manifestations, federal, state and local.

I do believe that Homeland Security should participate in intelligence community (IC), collection management and have tasking and feedback authority and attendant responsibilities.

The Department of Homeland Security should have a senior official appointed to do the work of intelligence included in its structure, reporting directly to the Department Secretary and concurrently "reporting" to the Director of Central Intelligence. This person should be a participating member of the IC senior leadership. This arrangement works in other parts of the IC structure now.

In general, the Department of Homeland Security should not separately develop or field sensors, sources, methods or collection capabilities apart from the existing U.S. IC or relevant elements of law enforcement, counterintelligence and security. Rather, it should have the power and authority to use and benefit from existing or developed capabilities, in partnership with those who have primary authority for the capability. There may be notable exceptions to this general policy but they should be truly exceptional and explained in detail to oversight and partner elements." End of Quote.

Question No. 3: As many of you know, the President along with the Joint Chiefs of Staff have proposed the creation of a new Northern Command to be based in Colorado to serve alongside NORAD. As a member of the Senate Armed Services Committee, I am eager to begin work that is necessary to get this command up and running. The Armed Services Committee is in fact conducting a hearing on the nomination of General Ralph Eberhardt to be the CINC of Northcom. As we proceed with this process of creating this new agency, I am eager to see how this new Homeland Security Agency will work with our new Northern Command since the President's proposal is silent on coordination between the new agency and the Department of Defense. I look forward to any thoughts or comments that you might have on this relationship.

Response: I may be out-of-date and uninformed on this matter. If so, please accept the fact that I am giving my opinion based on the information I have at hand.

I have never understood the logic behind giving the predecessor command – United States Space Command (SPACECOM) – and it's international subordinate/partner command, the North American Air Defense Command (NORAD), the mission to be in charge of DoD's Information Operations. This construct has been a topic of discussion at the working level inside the Department of Defense since the oversight of combatant command military matters for DoD in the areas of space and air defense seem somewhat radically different from the demands of national military activity in cyberspace. Even the location of the command, Colorado Springs, seems remote from the Information Operations environment that is mostly centered in Washington, DC and in the major cities, seaports and airports, and in the pervasive ubiquitous realm of cyberspace in the United States. The same is true for Homeland Security. To now convert the SPACECOM/ NORAD and IO institutional entities to NORTHCOM and add to this new command the demands of Homeland Security in the DoD context, seems to me to be stretching things.

My view would be that this decision be reconsidered and that DoD's role in Homeland Security be administered out of an interface office in the Pentagon or in the Washington, DC environs, under the purview of the Office of the Secretary of Defense (OSD) staff or the Joint Chiefs of Staff (JCS), or perhaps both, in a shared and joint effort. All U.S. Combatant Commands would have a role in homeland security, especially those commands resident in the U.S. that have direct involvement in specific applicable missions, force structure, reserve and national guard forces, and specialized "high demand – low density" forces in the U.S. military. The interface office would directly relate to the HSD on a variety of matters and needs, including intelligence support, contingency planning, resource identification and C4. This is different.

I will be happy to provide answers to additional questions as you may have them.

I am including in my response to you the following article that was written for the World Future Society (WFS) magazine, The Futurist, and is currently posted on the WFS web site at http://www.wfs.org/hughes.htm.

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The Dilemmas of Terrorism

By Patrick M. Hughes, Lieutenant General, U.S. Army (Retired)

During the past few years the United States has been struck by several acts of terrorism. The most invasive and devastating attacks on 11 September 2001 were further complicated by the follow-on delivery of anthrax through our government mail system. However, we should not forget earlier attacks against our forces and facilities in Saudi Arabia, the first attack against the World Trade Center, the bombing of the federal building in Oklahoma City, the attacks against our embassies in Tanzania and Kenya, and the strike against the USS Cole while at anchor in Aden Harbor, Yemen. There have been other planned attacks that were successfully interdicted by alert citizens, good police work, accurate intelligence, and sometimes sheer luck. Clearly the trend – an increasing incidence of large-scale terrorist activities specifically targeted against the U.S. -- is alarming. If history is a precursor to the future, we will suffer more terrorist attacks in the months and years ahead. The apparent goal of the terrorists is to achieve larger effect in the future. The terrorist target: unwarned, unprotected U.S. persons and facilities.

There are some clear issues embedded in the post-mortem of all previous attacks: What was known beforehand that might have been indicative of the impending attack? What sort of warning could have been given that might have mitigated the attack or even led to its preclusion? What could have been done that wasn't and why? What can we do to reduce the level of terrorist success to zero? What else should we do to protect ourselves? What should we do now with limited resources and options we have at hand?

In order for citizens to fully answer these questions we need information that is not resident in the public domain. On the friendly side, details are classified or restricted for good intelligence and security reasons, especially the fact that terrorists will learn from any information that is made public and from our knowledge of their actions, if that information is compromised. On the side of those who attack us, everything depends on secrecy. Indeed the central feature of virtually every failure by terrorists is that their operational secrecy was

was taken to interdict them. Every terrorist success is dependent on successful secrecy and on the failure of those who either note or know some piece of information but fail to act on it or fail to be motivated to act. This feature of the problem – secrecy on all sides – complicates not only action against terrorists, but also action to warn against impending terrorism.

There is no easy answer for this conundrum. Secrecy is a necessary element of the fight against those who rely on secrecy to do the work of terrorism. The solution cannot be to lay bare all that is known on either side.

In this atmosphere of secrecy, an informed and alert citizenry would seem to be the best defense against any untoward circumstances, especially those that relate to terrorism. The dilemma is that the "alert citizen" is essentially uncontrolled and can over-react or under-react according to many variables, including bias and misconception. To add another element of complexity to the problem, an increase in information about impending terrorism, especially in the form of warning, begins to loose its credibility if the terror event does not occur. This "Chicken Little" syndrome is already present in our society; the terrorists know it and are taking advantage of it. In their view, they own the clock, and the timing of the next event, as long as their preparation remains secret, is up to them.

Another dilemma is context. In a war zone, or in a hostile foreign environment, uncertainty is a constant, the enemy is usually known and assumed to be present, the level of alert is high, and the expectation is urgent.

In the new conditions we are experiencing we travel and work throughout the world in areas where uncertainty is present but we assume some form of security anyway. In so doing we relax the level of alert, our expectation is for a safe and secure passage and unimpeded activity, and we lack an adequate sense of urgency. Or we stay home because we are uncertain. Recent events in Israel are a microcosm of the "contextual" issue and point up the human element of this problem. People are simply not going to let the threat from terrorists interfere with their right to assemble, even if assembly creates the ideal target.

In the "war zone" of the United States this contextual dilemma is more complex. We do not want to expect uncertainty – just the opposite – even though we have demonstrable examples of why we should be alert to the possibility of terrorist actions. We do not have a sense of urgency. Perhaps we did just after 9-11, but we have now returned to some level of "new normalcy," where we know of the possibility but hope for improbability.

There are variations among us. Some few people have reacted to the terrorist threat in extreme ways, equipping themselves for disaster and reporting everything they see and hear that does not fit their personal belief system. Others have reacted by accepting the inevitability of future terrorist events and hoping against hope that they will not be present when those events occur. The authorities, government leaders, police, intelligence and security officials and first responders, all have variations on the theme of balance. They seek to be ready for an event that they hope will never come, but that they expect nevertheless. They live with contrived certainty in an uncertain environment.

There are only a few persons in positions that give them the full range of knowledge, authority and power to act, and the responsibility to engage in deliberate planning to interdict and carry out offensive activities, to preclude terrorist action. Generally we do not know, we cannot know, what these people are doing or even who they are, because their success depends on viable operational security and secrecy. Thus we are left with depending on those who are appointed to protect us without knowing what they are doing, a condition that embodies uncertainty and conjures up another dilemma that terrorism has brought to us – the potential for the deterioration of our constitutional rights in the context of security.

An illustrative part of this problem is the collection of private communications, the potential abrogation of individual rights-to-privacy, and activities that use "challenging" technologies to gain access to intimate information.

This informational dilemma is not the only erosion of our personal liberties. Barriers outside buildings, armed presence in public places, the requirement to routinely "prove" identity, the nature of association with others, and numerous other facets of "new normal" life have now been included in the larger effort to protect the citizenry by knowing more about them. This is a condition fraught with obvious concerns but the argument favoring these circumstances is powerful: in an age of terrorist activity and the possibility that terrorist can use weapons with mass effects, including nuclear, biological, chemical and "new science" weapons, we simply cannot afford to absorb such attacks. We must do whatever is necessary to preclude them. As direct and clear as that postulation is, one cannot help but be struck by the high potential for protection to become odious.

Countering terrorism should be at the front of every citizen's mind if for no other reason than the security restrictions and challenges to individual rights that have beset us as an outcome from terrorism. The cure is, seemingly, an unhappy and even unpalatable set of impediments and encroachments. But the threat is real.

We have another dilemma. What do we do to sound the alarm and to act once alerting information is present?

The problem of collecting, processing and analyzing, and deciding on dissemination and action with regard to information about terrorism, is different from most other intelligence and security conditions, in part because the information is seldom clear or definitive. This is especially true in the demanding context of the U.S. homeland and our societal order. Without going into the many legal and functional details that are involved, an explanation of parts of the problem may suffice to make the point that discerning indications and issuing warning (I&W), of an impending terrorist attack, are both complex and procedurally difficult, more akin to reporting an impending crime before the event than to alerting the citizenry of an imminent attack from a traditional opponent.

Suppose that a piece of information comes to an appropriate authority from a highly classified source, a source that is dependent on continued secrecy for its viability. The information is not absolute, but it is noteworthy. It indicates that something is happening or will happen soon that may presage a terrorist event. Key details are missing – time, place, and nature of the event – but enough information is present so that a warning can be given. The tradeoff is that if you sound a warning with full disclosure of the information from the source, you will compromise the source. If you don't sound a warning, you risk unacceptable results

Judgment is called for. Analysis and further processing, that takes time, leads to a controlled public release in which the fact of the warning is relatively clear but the basis for it is not. The ensuing uncertainty leads to several different results. Some understand and accept the warning in good faith. Some lose faith in the warning system and criticize it. Others lose faith in the collection system. The "Sky Is Falling," syndrome kicks in. Measuring the effect of the warning is difficult since nothing may happen. The warning action was necessary but the result is unsatisfactory.

Assuming that the warning was public, and even sometimes when it was not, the terrorists were alerted too, and it is their clock. They can usually stop and start activity according to their appraisal of the security situation and their understanding of opportunity. It may not be that simple, but the circumstances of warning in the public domain would seem to favor the terrorist when flexibility and adaptive change are required.

In another example, information comes in pieces to different agencies, organizations, and analysts. Individually the pieces of information, in current context, are not clear and do not

are brought together, using the metaphor of a partially assembled puzzle, the meaning and the pattern of the assembled information becomes more apparent. This is especially true when a clever and knowledgeable analyst examines all the information and places it in appropriate context. The results may be adequate to issue a warning but explaining the nature and details of the warning itself are very difficult to do without damaging the system that produced it. We are often left with a warning attributed to analysis and opinion, a poor substitute for fact and detail.

Unfortunately we know from inquiries after the fact that I&W information has been available in pieces but was not brought together and no warning was given, in part because the mechanisms to do so were not in place. In some cases the information was "analyzed" and a warning was attempted without effect, usually because some part of the "responsibility and authority" chain broke down.

In recent cases this failure has been recognized but without action to address the need for change such recognition solves nothing. The impediments to assembling all the information in one or two places and having the very best analysts examine it continuously are largely parochial and bureaucratic but nonetheless real. The clarity of detail available in the reporting system is occasionally adequate for any thinking person to discern the indicators of an impending event and motivate them to warn. But, without a clear understanding of the indicators by appropriate responsible authorities, lacking the right inquisitive and suspicious mindset, without the necessary operational and informational security to protect the sources, sensors, methods and the information itself, and absent an understandable and dependable mechanism to alert and warn, we will continue to respond to uncertain conditions with uncertain actions.

Much has been made of the concept of asymmetry as a tool of terrorism. It is important to note that terrorism by its very nature embodies the age-old concept of using some unexpected or unconventional approach or some non-traditional capability to achieve success. It is equally important to realize that the asynchronous nature of the terrorist's action, to do something at a time and tempo that is not expected, is a vital element of success. It is asymmetric and asynchronous synergy that makes terrorism such a powerful capability against traditional defensive targets and traditional mindsets.

Part of the response we give lip service to is to "think outside the box," and to imagine and understand the "art of the possible," in order to anticipate or predict and thus warn of the next terrorist event. These are worthy goals, but the fact is that unrestricted terrorist options constitute many possible

[redacted]

circumstances. Invasive insightful intelligence is a much more appropriate goal. This is where we seem to be successful, within the limits of our capabilities, and failing within those same limitations. Some better intelligence gathering approach is needed, especially with regard to human intelligence. This is fraught with difficulty but seems both necessary and worth the cost. According to media reports we are embarking on this very course. Let us hope that personnel selection, training, support, and policy and procedure, will be up to the task.

We are faced with these and other dilemmas that, together, form a distinct and clear danger to individual liberty and to most systems of government. This alone should be motivation enough to act to stop terrorists in their tracks whenever and wherever we can. We must somehow focus on and achieve an acceptable system of protection, prevention, preclusion and reaction to the scourge of terrorism…without losing the ideals and precepts by which we navigate the difficult pathway into our future. This cannot be done by committee or by independent activity by many agencies and organizations acting parochially. Instead, some form of centralized and evenly applied approach must be devised and undertaken by appropriate leaders. In the United States, the President must lead this effort.

What will the future bring? Uncertainty at best. The possibilities are daunting and there seem to be no good solutions to the underlying reasons for terrorism. We can clearly see the need to preclude terrorist attacks. Our dilemma is to figure out how to do that without compromising the values and freedoms we have come to rely upon for our quality of life

Sincerely and Respectfully,

Patrick M. Hughes

Patrick M. Hughes
Lieutenant General, U.S. Army, Retired

Responses to Questions for the Record from Jeffrey Smith
Submitted by Senator Max Cleland

"A Review of the Relationship between a Department of Homeland Security and the Intelligence Community"

June 26, 2002

QUESTION: Given that nearly 70% of the law enforcement personnel which the Federal Law Enforcement Training Center (FLETC) trains for agencies ranging from the Customs Service to the Immigration and Naturalization Service to the Border Patrol will now be working under the new Department of Homeland Security, I believe it is only appropriate for FLETC itself to be moved under the direction of the new Department, as well. Accordingly, I will be introducing an amendment in the near future which will bring FLETC into the Department which shares as its top priority to protect and defend Americans on American soil. Do you believe that such a reorganization would better prepare law enforcement personnel to face the unique challenges presented by our new war on terrorism? Furthermore, by transferring FLETC to the new Homeland Security Department, would it not eliminate a layer of bureaucracy between FLETC and the Department?

ANSWER: I have had very little direct experience with the Federal Law Enforcement Training Center and therefore have only a general reaction to the proposal that it be transferred to the new Department of Homeland Security. However, I do believe, as I said in my testimony, that those functions of the Government which are central to the statutory functions of the new Department should be part of the department. If, as your question suggests, nearly 70% of the law enforcement officers currently being trained by the FLETC are from agencies that will become part of the new Department of Homeland Security, it makes considerable sense that FLETC be transferred to the Department. Clearly, the views of the Secretary of Treasury, which currently houses the FLETC, should be sought, but my inclination is that if the vast bulk of officers being trained by the Center are from those agencies that will be part of the new department, the Center should be part of the Department.

Responses to Questions for the Record from Jeffrey Smith
Submitted by Senator Ted Stevens

"A Review of the Relationship between a Department of Homeland Security and the Intelligence Community"

June 26, 2002

QUESTION 1: You have stated that the new Homeland Security Department should have access to **all sources** of U.S. intelligence data. Given the past problems with information sharing, how specifically would you ensure this access is provided?

ANSWER: I believe that the Department of Homeland Security should have access to "all sources" of U.S. intelligence on the same footing as other major players in the national security community have. By that I mean that the Secretary of Homeland Security should be on the same plane as the Secretaries of State and Defense. I support the effort of the Committee to have the Secretary of Homeland Security be a statutory member of the National Security Council. I believe that step will go a long way to assuring that the Secretary and the Department have access to the intelligence they need.

In addition, I believe that, by statute, the heads of all departments and agencies should be required to keep the Secretary of Homeland Security "fully and currently informed" of all information in their possession that is relevant to his statutory duties. This requirement exists in several places in U.S. statutes and I believe it is appropriate here.

Finally, this is really a matter of leadership for the President, the Vice President, the Director of Central Intelligence, and the Director of the FBI. I have confidence the current incumbents of these offices will assure that the new department has full access to all of the intelligence that it needs.

QUESTION 2: Do you agree that creating a new department will eliminate the past information sharing problems?

ANSWER: I do not agree that merely creating a new department will eliminate problems associated with past information sharing. I believe that many measures, including those outlined in my response to Question (1), are needed to ensure that proper information sharing occurs.

QUESTION 3: Consolidating agencies and related organizations into one department does not ensure that the "seams" between these entities regarding information sharing and cooperation will go away. How specifically can the new department close these seams?

ANSWER: I believe one of the most serious problems associated with creating the new department will be issues of coordination. The only way to minimize the risk created by these "seams" is prior planning and careful implementation. Corporate America has considerable experience in consolidating companies and in integrating actions across many divisions of large corporations. I believe that the new Department of Homeland Security should draw heavily on the expertise in corporate America. There are individuals and companies who specialize in helping corporations integrate their activities and absorb corporations purchased by other corporations. In particular, I believe that the Department should reach out to these individuals for advice on how best to integrate the new agency.

At the same time, I believe that the national security community should be tasked to pay particular attention to the risks and vulnerabilities that might be created – and are thus possible terrorist targets – as this department is being created. In essence, the national security agencies should create a "red team" to look at vulnerabilities that emerge as the department is being created and help prepare contingency plans.

QUESTION 4: You state that the new department should be an equal with other heavy intelligence users (State, DoD) in the process that assigns intelligence collection priorities. Why do you have confidence that this equality will ensure that the appropriate priority is placed on homeland defense requirements?

ANSWER: As I said in my answer to Question (1), I believe this is largely a question of leadership by the President and other senior officials of the national security community. Congress can make it very clear, by such measures as making the Secretary of Homeland Security a member of the National Security Council, by mandating that he be given access to all intelligence, and assigning specific statutory duties to the Secretary and the Department.

Congress can also assist by conducting vigorous oversight of the new department and by providing full and adequate funding. However, in the final analysis this is very much a matter of leadership by the President and other senior members of the national security community including the Vice President, the Assistant to the President for National Security Affairs, the Secretaries of State and Defense, the Director of Central Intelligence, the Attorney General, and the Director of the FBI. Close cooperation among those senior officials is essential for the new department and agency to be able to accomplish the tasks assigned to it.

QUESTIONS FOR THE RECORD
SUBMITTED TO LT. GEN. WILLIAM E. ODOM, RET.
FROM SENATOR MAX CLELAND
GOVERNMENTAL AFFAIRS COMMITTEE HEARING

"A Review of the Relationship Between a Department of Homeland Security and the Intelligence Community"

June 26, 2002

Question 1: In your opening testimony you discuss collection priorities, stating that the Director of Central Intelligence has responsibility for setting ALL collection priorities. Do you believe that new collection requirements submitted by the new Department of Homeland Security will be properly addressed and prioritized by the Intelligence Community, when compared to other existing agencies, which already have an "established" collection system in place?

Response: The prioritization for collection and dissemination of intelligence to support homeland security finally rests with the President. His executive agent for managing this process is the Director of Central Intelligence. Today, all departments and agencies throughout the government that use intelligence make their requests through the DCI system, and a prioritization is established based upon his judgments and the demands of the department heads. If a department head is unhappy about the prioritization, he can raise it with the President, especially if he is a member of the National Security Council. The intelligence needs of the various departments change from time-to-time. So, too, does the urgency of their needs. Intelligence on terrorism is a high priority need today. Eight years from now, it may be low. The present intelligence community system allows for changes in priorities in line with these needs. If the intelligence community cannot be responsive to a high prioritization for homeland security, then that is a serious management matter both for the DCI and the President, one that the Intelligence Oversight Committees of the Congress can bring to the President's attention if he chooses not to address it effectively.

When terrorist activities take on an urgent, fast moving character connected to specific terrorist operations, the intelligence community, particularly the National Security Agency, can override its standing priorities and devote large resources to supporting security measures against the terrorists.

This flexible system for dealing with changing and time sensitive demands is well established within the military services and in support to the State Department and law enforcement in previous cases of airline hijackings dating back to the 1970s.

The most important goal for homeland security, in my judgment, is getting its internal organization and management structure aligned and empowered for effective operations among its many components. Providing intelligence support is a different task. Making sure it's effective is a separate matter, and a very serious one, but needs to be addressed separately even if simultaneously with the organization of the Department of Homeland Security.

Question 2: Given that nearly 70% of the law enforcement personnel which the Federal Law Enforcement Training Center (FLETC) trains for agencies ranging from the Customs Service to the Immigration and Naturalization Service to the Border Patrol will now be working under the new Department of Homeland Security, I believe it is only appropriate for FLETC itself to be moved under the direction of the new Department, as well. Accordingly, I will be introducing an amendment in the near future, which will bring FLETC into the Department, which shares as its top priority to protect and defend Americans on American soil. Do you believe that such a reorganization would better prepare law enforcement personnel to face the unique challenges presented by our new war on terrorism? Furthermore, by transferring FLETC to the new Homeland Security Department, would it not eliminate a layer of bureaucracy between FLETC and the Department?

Response: Although not closely acquainted with FLETC and its activities, I find your rationale for folding it into the new Department of Homeland Security compelling. The army, navy, and air force would be in a mess if their training centers were outside of their departments. The Homeland Security Department will necessarily have to have its organic training capabilities. Without a closer examination of FLETC and all of the other training activities now operated by agencies to be included in the Homeland Security Department, I cannot judge whether or not bureaucracy would be decreased or increased if FLETC is left outside of the department; however, that would seem to create unnecessary bureaucratic arrangements.

Question 3: As many of you know, the President along with the Joint Chiefs of Staff have proposed the creation of a new Northern Command to be based in Colorado to serve alongside NORAD. As a member of the Senate Armed Services Committee, I am eager to begin the work that is necessary to get this command up and running. The Armed Services Committee is in fact conducting a hearing on the nomination of General Ralph Eberhardt to be the CINC of Northcom. As we proceed with this process of creating this new agency, I am eager to see how this new Homeland Security Agency will work with our new Northern Command since the President's proposal is silent on coordination between the new agency and the Department of Defense. I look forward to any thoughts or comments that you might have on this relationship.

Response: The question of how a new Northern Command will relate to the Department of Homeland Security is critically important, as you rightly note. The relationship between the two will be complex and require a period of time to work out. Let me offer some tentative thoughts.

First, the Air Defense Warning Systems, to the degree they are not today, must be integrated within the Civil Air Control System. The interaction between military air defense and civil aviation clearly has to be one of the major issues between these two organizations.

Second, the Department of the Army has traditionally been the executive agent for providing military forces for the maintenance of domestic order. Will this responsibility now be transferred to the Northern Command? If so, it must have an army component. How this would work and what army elements would fall within it is not clear to me. A lot of solid staff work will be required before anyone can know best how to deal with this issue. That also holds if the Department of the Army rather than the Northern Command retains the "maintenance of domestic order" responsibilities.

Third, the connection of the National Guard, particularly the Air Guard's air defense units, will be an important issue between the two. Also, the Army National Guard will require addressing. Since the governors are the peacetime commanders of the guard units, how a federal military command would relate with them is a complicated issue that will also need a lot of staff work before responsible conclusions can be drawn.

These three points obviously can only been illustrative, but I believe they are sufficient to show how complex the relationship between the Northern Command, the Homeland Security Department, the Department of the Army, and states will be. Undoubtedly, there are many other relationships. FEMA must have a central role in the nexus between the two. The National Communications System, which is responsible for management of the electromagnetic spectrum for communications in a crisis, is yet another issue between the two.

This elementary review of only some of the major issues leads me to the general conclusion that the more responsibilities the uniform military are given in homeland security, the more complex, difficult, and politically sensitive the relationship will be. Pushing the boundary, a boundary to lessen the military's direct involvement should make it easier to clarify and coordinate effectively.

Including every agency now listed in the legislation in the Homeland Security Department strikes me as too big a reach. On reflection since the Hearing, I have become inclined to believe that a Border Control Department, which combines five to six or

seven of these agencies, has much greater prospects for success and would be much easier to coordinate with the Northern Command and the Defense Department. Getting the effective intelligence support should also be easier for this small department. FEMA, the Secret Service, elements of the Agriculture Department, elements of the CDC and a few others strikes me as less urgent to include. Moreover, a Border Control Department could later be expanded, if that looks prudent, after it has been created and achieved effective integration of its new components.

Thank you for the opportunity to provide these answers.

QUESTIONS FOR THE RECORD
SUBMITTED TO LT. GEN. WILLIAM E. ODOM, RET.
FROM U.S. SENATOR TED STEVENS,
GOVERNMENTAL AFFAIRS COMMITTEE HEARING

"A Review of the Relationship Between a Department of Homeland Security and the Intelligence Community"

June 26, 2002

Question 1: You have stated that the new Homeland Security Department should have access to all sources of U.S. intelligence data. Given the past problems with information sharing, how specifically would you ensure this access is provided?

Response: Access to all sources of US intelligence data can be assured to the Homeland Security Department the same way it is made available to the Department of State, Department of Defense, and other government agencies. It must have its own analytic units within the department, and it should have a chief intelligence officer for the entire department. That person, and all user elements within the Homeland Security Department, can present intelligence requirements to the Director of Central Intelligence, who, in line with priorities established by the President, directs the CIA, NSA, NIMA, and all other intelligence collection agencies in accordance with those priorities. If the President decides that Homeland Security needs a higher priority, the DCI has no choice but to give it that attention.

This process is standard for non-time sensitive intelligence support throughout all departments. For time sensitive support, there is an override procedure. If the Homeland Security Department requests it, the NSA will place a "national cryptologic representative" (NCR) with a small staff inside the Homeland Security Department. The NCR will establish specially compartmented secure communications from NSA directly to all user elements within that department. Daily time sensitive reporting of signals intelligence will flow into that department.

In a crisis, or based upon an alert warning, NSA can readjust its collection efforts putting much greater collection capabilities onto relevant targets.

Similar arrangements can be made with the National Imagery Agency. How this relatively new organization operates is less clear to me, but unless it is following something close to the NSA model of direct distribution, then it needs to be forced to do so.

A similar approach can be set up with the CIA's Director of Operations. Here the flow of useful information will be much smaller, but occasionally very important. It will be only as effective as the DCI is willing to make it.

Counterintelligence information, and counter terrorism information, presumably comes today from the FBI as well as the CIA, NSA, and NIMA. The FBI, however, has never been willing to act as an intelligence agency the way NSA and other members of the intelligence community operate. I do not believe it ever will because its CI/CT mission constitutes the lesser part of its overall mission, criminal law enforcement. That is why I have recommended in my study, "Modernizing Intelligence: Structure and Change for the 21st Century," that CI be taken away from the FBI and established as a National Counterintelligence Service under the DCI, with operational control of CI within the CIA, Army, Navy, and Air Force. Until this reform is made, the functional weakness of our CI/CT support will remain.

Question 2: Do you agree that creating a new department will eliminate the past information sharing problems?

Response: A new department will not insure intelligence information sharing, but it will make it possible to improve it. More important for preventing terrorist acts is the coordination of policies, information technology, and operations by the numerous agencies with responsibilities for border control. At the present time, Customs, INS, and the Coast Guard are each in different departments. The consular service is in a fourth department and so on. Until at least several of these agencies are put under one executive management structure, I do not see how it will be possible to compel them to integrate their IT systems, operational procedures, and sharing of information. Putting them into a new department at least will make it possible.

Question 3: Consolidating agencies and related organizations into one department does not ensure that the "seams" between these entities regarding information sharing and cooperation will go away. How specifically can the new department close these seams?

Response: In my answer to question number two, I have all ready explained some ways the "seams" between agencies can be closed. Making further useful comments on this matter requires a detailed examination of the new organizational structure. I do have two serious concerns with the Executive Branch's proposed legislation. First, although it makes sense, in principle, to combine most of the functions included in the President's proposal, so many new elements are to be consolidated at one time that the task could overwhelm any leadership of the new department. It might be safer to resort to a more limited unification of fragmented responsibilities, emphasizing those on the border, the weakest link in our homeland security. Merely combining five or six of these agencies could dramatically improve our security.

Given our federal system, there will inevitably be seams in any reorganization, either old ones or new ones. The drafters of the US Constitution intended that it be so, between federal and state, and between the branches of the federal government, even to some degree within the Executive Branch.

Question 4: You stated that the new department should be an equal with other heavy intelligence users (State, DoD) in the process that assigns intelligence collection priorities. Why do you have confidence that this equality will ensure that the appropriate priority is placed on homeland defense requirements?

Response: No one except the incumbent President and Director of Counterintelligence can ensure the new department will always receive priority for intelligence support that it wants and needs. It is their responsibility, however, to take limited intelligence resources and allocate them among the many users in the Defense Department, the State Department, and at least two dozen other executive agencies in an effective manner. Some years hence, terrorism may not have the priority it does today. Surely the DCI should have the flexibility to adjust the priority to a more needy customer, either our diplomats, or military commanders in the field, or some other user.

If one concludes this is unsatisfactory, and that the Homeland Security Department must have its own intelligence capabilities independent of the intelligence community, then it will have to recreate the National Security Agency, the National Imagery Agency, the clandestine service at the CIA, and several other now extant capabilities. We will then have two competing intelligence systems at double the cost. Most likely, Congress will not fund this absurd duplication, and the new department will end up with a third rate intelligence system.

Wm E Odom

Response to Question for the Record
from Chief William B. Berger
Submitted by Senator Max Cleland
Committee on Governmental Affairs

"A Review of the Relationship between a Department of Homeland Security and the Intelligence Community"

June 26, 2002

Question:

Given that nearly 70% of the law enforcement personnel which the Federal Law Enforcement Training Center (FLETC) trains for agencies ranging from the Customs Service to the Immigration and Naturalization Service to the Border Patrol will now be working under the new Department of Homeland Security, I believe it is only appropriate for FLETC itself to be moved under the direction of the new Department, as well. Accordingly, I will be introducing an amendment in the near future which will bring FLETC into the Department which shares as its top priority to protect and defend Americans on American soil. Do you believe that such a reorganization would better prepare law enforcement personnel to face the unique challenges presented by our new war on terrorism? Furthermore, by transferring FLETC to the new Homeland Security Department, would it not eliminate a layer of bureaucracy between FLETC and the Department?

Response:

First, I must state that the IACP membership has not addressed the question of whether or not the Federal Law Enforcement Training Center (FLETC) should be transferred to the new Department of Homeland Security and therefore the IACP, as a matter of policy, has not adopted a formal position on such a proposal.

That being said, I believe that the proposed Department of Homeland Security by consolidating many of the existing homeland security programs into a single department, will help improve the effectiveness and efficiency of the federal government's anti-terrorism efforts and as a result it may make sense to place FLETC in the new department.

However, perhaps even more critical then where FLETC is housed, is the question of how FLETC is funded. If FLETC is to accomplish its mission of ensuring that federal law enforcement officials are well trained and ready to meet the challenges they face, it is critically important that FLETC receive the resources necessary to employ sufficient trainers, purchase the necessary equipment and teaching materials that are necessary to ensure that federal law enforcement officers are equipped to deal with the new reality of combating terrorism.

Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In the course of the Committee's hearing on June 6, 2002, several members inquired as to the search capabilities of the FBI's Automated Case Support (ACS) system. I am writing to clarify the FBI's testimony in this regard.

The ACS system is the FBI's centralized case management system. ACS was implemented in all Field Offices, Resident Agencies, Legal Attache offices and Headquarters on October 16, 1995. ACS was designed as a comprehensive and integrated system that would automate case management and provide computerized access to investigative information throughout the FBI. It serves as the central electronic repository for the FBI's official investigative textual documents. FBI-generated documents such as Electronic Communications, FD-302 reports of interview, and teletypes are uploadable into ACS; photos, images, audio and video are not.

ACS is a menu-driven system which includes a menu screen in the Electronic Case File titled "Search Document Text." (Copy attached for reference). In the first field of this search menu, the user is asked to enter the "word/phrases" to be searched. When entering these words/phrases, the user has five options for further defining the search using "operators." The five operators are as follows:

AND	**bank and weapon**	**Both words are located in the document**
OR	**drugs or narcotics**	**Either word is located in the document**
NOT	**drugs not cocaine**	**First word is in the document but not the second word**
ADJ	**pizza adj parlor**	**Second word immediately follows the first word**
NEAR	**money near laundering**	**Second word immediately follows or precedes the first word**

The operators may be strung together for a more defined search; for example "hijacker **or** terrorist **and** flight **adj** school."

Another option available in searching the ECF is the "wildcard" search. If the correct spelling of a word is unknown, enter the beginning or ending letters of the word followed by an asterisk (e.g., meth*). This search will return all words beginning or ending with those letters.

On the "Command" line of the "Search Document Text" screen, the user may type "VO" for the Vocabulary Menu which provides the capability to view a list of words that are searchable and words that are not searchable. The two selections are "Inverted Words" (searchable) and "Stopwords" (not searchable).

Inverted Words are listed alphabetically and each word selected by the user will appear in the "Words/Phrases" field to be searched. From the Inverted Words window, a number displayed in the "Syn" column indicates the number of synonyms for the selected word. When "Syn" is selected, the synonyms are displayed and may be selected to appear in the "Words/Phrases" field to be searched. The "or" operator will default between the inverted word and the synonyms selected.

Stopwords are listed alphabetically and are not searchable. These are words that, if searched, would generate a voluminous response (e.g., "and," "bureau," "everyone," "interview."

In addition to completing the "Words/Phrases" field, the user may further define his search by completing one or more of the other fields on the "Search Document Text" screen:

Classification	**This field is used to specify the investigative classification number of the documents to be searched (e.g., "91" for Bank Robberies).**
Case ID	**This field is used to identify the case in which the document is to be or has been filed.**
UCFN Local Office	**This field is used to identify which division's or office's copy of the Universal Case File Number is being referenced (blank will reference the office of origin's copy)**
Orig. Office	**This field is used to identify the division or office in which the document originated.**
To	**The recipient of the document**
From	**The originator of the document**
Document Type	**This field is used to specify the type of document (e.g., Electronic Communication, FD302)**
Document Dates	**These fields are used to specify the date range of the documents to be included in the search**

I hope this better explains the FBI's search capabilities with regard to its investigative files. All of this information is available to FBI employees online in ACS as well as in the ACS Reference Guide.

Please feel free to contact me if you have any questions.

Sincerely yours,

John B. Collingwood
Assistant Director
Office of Public and
Congressional Affairs

Enclosure

1 - Honorable Orrin G. Hatch
United States Senate
Washington, DC 20510

U.S. Senator Max Cleland
Questions for Government Affairs Hearing
on Homeland Security and the Intelligence Community

June 27, 2002

The Honorable William Webster:

1. Given that nearly 70% of the law enforcement personnel which the Federal Law Enforcement Training Center (FLETC) trains for agencies ranging from the Customs Service to the Immigration and Naturalization Service to the Border Patrol will not be working under the new Department of Homeland Security, I believe it is only appropriate for FLETC itself to be moved under the direction of the new Department, as well. Accordingly, I will be introducing an amendment in the near future which will bring FLETC into the Department which shares as its top priority to protect and defend Americans on American soil. Do you believe that such a reorganization would better prepare law enforcement personnel to face the unique challenges presented by our new war on terrorism? Furthermore, by transferring FLETC to the new Homeland Security Department, would it not eliminate a layer of bureaucracy between FLETC and the Department?

ANSWER: I have no firm view on whether the Federal Law Enforcement Training Center (FLETC) should be transferred to the new Department of Homeland Security. I believe that the Department of Treasury has provided training for a number of agencies outside the responsibility of the Department. A good argument can be made for transferring this responsibility to the Department of Homeland Security if a substantial majority of the law enforcement personnel which FLETC currently trains resides in the new Department of Homeland Security. An equally good argument can be made for deferring that decision until after the transfers have taken place. Changes in the curriculum to infuse more counterterrorism capability could begin immediately. The new Department will need to address training issues and resources on counterterrorism for state and local law enforcement agencies. A decision should be made whether to provide these services through the National Academy at Quantico under FBI supervision, or at FLETC under Treasury or Homeland Security supervision, or through a series of regional training centers supported by federal funding. Smoothness in transition is important. I think a good analog can be found in the transfer of drug enforcement training to the FBI Academy at Quantico.

2. How can we improve the sharing of information and analysis among the intelligence agencies and with the new Department?

ANSWER: Improvement in sharing of information and analysis can be achieved in a number of important ways:

(a) Information collected by each agency must be managed by an up-to-date computerized data system that permits rapid and accurate mining of the data to develop specific data for leads and analysis on pending terrorist issues. Each system must have sufficient capacity to deal with massive amounts of information coming from public and sensitive sources as well as the ability to query the files in ways most likely to surface useful data in a timely way. The FBI is sadly behind in its aging mainframe architecture and resources should be supplied to correct this impediment.
(b) There should also be the most effective, available architecture for rapid dissemination of current intelligence to agencies having a need to know, as well as for supplying such data to other agencies seeking assistance.
(c) The present use of trained analysts from other agencies should be continued and expanded.
(d) Agencies should exchange wish lists and engage in frequent awareness discussions to encourage analysts to think beyond the box of their own assignments to recognize material of likely value to other missions.
(e) Experience over time has demonstrated that the discipline of analysis and the discipline of investigative work are not the same but that a synergetic affect can be produced if the respective disciplines are not working in a vacuum.
(f) Finished intelligence should be provided to the new Department on an on-going basis; intelligence agencies should be responsive to requests for information by the Department; and access to raw information should be made available to satisfy the legitimate needs of Department analysts. The Department becomes one of the most important consumers of useful intelligence.

3. Do you think that an interagency "center of intelligence" such as the Center for Counterterrorism, is a good idea that could be useful to the new Homeland Security Agency?

ANSWER: The concept of an interagency "center of intelligence" is not a new one. The CIA has long had a counterintelligence center and a counterterrorism center. The FBI has established its own counterterrorism center. There is cross fertilization in the centers of both agencies. The FBI prefers to have its own center close at hand to support the investigative efforts. Consolidating these centers would not be attractive to either agency. The CIA, for example, for reasons of history would not wish to be a repository for domestic intelligence and domestic data. There must, however, be effective coordination and perhaps the responsibility for supervising that coordination can be assigned or rotated. I would support a mechanism or process by which most or all of the departments tasking or follow-up questions could be funneled to a single point of contact.

4. Senator Feinstein introduced a bill lat week proposing the creation of a Director of National Intelligence to be the head of the intelligence community and the principal advisor to the President on national security intelligence matters. The Director would also be assisted by an Office of the Director of National

Intelligence composed of national security experts. I would be interested to know what your thoughts are on such a proposal.

ANSWER: I do not favor the creation of a Director of National Intelligence. The Director of Central Intelligence is currently the principal advisor to the President on national security intelligence matters. He also has at his command a very substantial collection of operating and analytical resources. He has a number of inter-agency organizations to assist him at the present time. More closely focused groups can be established if appropriate. I continue to have grave doubts about the effectiveness of a Director of National Intelligence, physically separated from his principal organizations and lacking any real operational authority. Rather, I would propose to strengthen the DCI's role within the community; giving him more authority to designate or approve the selection of agency heads and to have significant performance appraisal powers to assure greater responsiveness and thus greater accountability for overall performance.

Response of the Director of Central Intelligence
Questions for Official Record Submitted
Homeland Security and the Intelligence Community Hearing
27 June 2002
(submitted by US Senator Max Cleland)

1. In testimony from yesterday's hearing, it was discussed that the Director of Central Intelligence has responsibility for setting all collection priorities. Do you believe that new collection requirements submitted by the new Department of Homeland Security will be properly addressed and prioritized by the Intelligence Community, when compared to other existing agencies that already have an "established" collection system in place?

   As the DCI stated in the testimony, the CIA is committed to assuring that the new Department receives all of the relevant terrorist-related intelligence available. This would not only include participating in the collection process as other consumers of intelligence, but seeking new ways to meet the new collection requirements.

2. In testimony from yesterday's hearing, some mentioned the possibility of forming a new "Director of National Intelligence", separate from the DCI, which would have complete oversight of all intelligence collection priorities. Do you think this type of intelligence structure makes sense, especially since we are in the process of re-organizing the government to make our homelands more secure?

   The DCI, through the Assistant DCI for Collection, today exercises oversight over collection priorities. Any change in the structure of the Intelligence Community that separates the DCI from the day to day management of collection and analysis will diminish his ability to support, not just the new Secretary of Homeland Security, but also his ability to support the entire national security system. Although some restructuring of the Intelligence Community is worth considering it would be better to wait until the initial effort to establish the Department for Homeland Security is completed.

3. In your opinion, if we keep the currently existing intelligence oversight structure, how would the new Department best fit within the existing National Security Council? Does it make sense that the Director of Homeland Security be a member of the National Security Council?

The President recently stated that the White House Office of Homeland Security and the Homeland Security Council will continue to play a key role as the new Department is being established, advising the President and coordinating the interagency process.

4. Do you foresee a role in the new Department for an intelligence "collection" capability? Or, do you advocate merely an analysis and dissemination role, relying instead on the collection requirements process, thus depending on the current intelligence community and its collection mechanisms for access to intelligence information?

The new Department's mission will be to understand and reduce the nation's domestic vulnerability—not merely analysis and dissemination of threat information. The Intelligence Community is already building on a broad-based collection program to meet the expanded intelligence mission and is preparing to work in partnership with the Department.

5. Shortly after September 11th, El Al gave a briefing to members of the Commerce Committee. At that briefing El Al recommended a security model to the U.S. that puts the government in control of a multi-layered security net that relies on the sharing of information all the way up the ladder-from the screener who checks passengers and baggage to the airport operator, all the way up to the top government officials in the Israeli chain of command.

Do you believe the U.S. should take a page from the El Al book and ensure the coordination of intelligence information throughout the layers of our aviation system, including our screeners, law enforcement personnel, federal airport directors, the Transportation Security Administration, the new Homeland Security Department, and our central intelligence agencies? If so, who do you believe should coordinate and disseminate the information?

The CIA provides terrorist-related information to law enforcement and regulating agencies in the aviation industry to strengthen security at all levels. Since the 9/11 incident, the Agency has been working with the Office of Homeland Security and several components across the US Government to improve information sharing at the appropriate classification levels.

6. How can we improve the sharing of information and analysis among the intelligence agencies and with the new Department?

Information sharing covers a broad spectrum of activity, from people to analysis. Intelligence Community experts in many disciplines already have close working relationships with many of the offices being brought in this new Department. These will continue and will both expand and deepen. In addition, the Intelligence Community will provide intelligence at the lowest permissible level to help reach the extended homeland security audience.

The IC is also looking into how best to create and share a multi-agency, government-wide database that captures all information relevant to any of the many watchlists that are currently managed by a variety of agencies.

7. Do you think that an interagency "center of intelligence" such as the Counterterrorist Center, is a good idea that could be useful to the new Homeland Security Agency?

The Department of Homeland Security will focus on translating assessments about evolving terrorist targeting strategies, training, and doctrine overseas into a system of protection for the infrastructure of the United States. It is clear that the new Department will not duplicate the roles of either foreign intelligence or law enforcement and won't have a need to create another center of intelligence.

8. Senator Feinstein introduced a bill last week proposing the creation of a Director of National Intelligence to be the head of the intelligence community and the principal advisor to the President on national security intelligence matters. The Director would also be assisted by an Office of the Director of National Intelligence composed of national security experts. I would be interested to know what your thoughts are on such a proposal.

Senator Feinstein's proposal is one of several for restructuring the Intelligence Community, some of which are under consideration by the Administration. The DCI opposes the Feinstein bill because it puts distance between the Director and the core collection and analytical elements. This would weaken his ability to support the President and both the National Security and Homeland Security systems.

Response of the Director of Central Intelligence
Questions for the Official Record Submitted
Homeland Security and Intelligence Community Hearing
27 June 2002
(submitted by Senator Daniel K. Akaka)

1. Since September 11, 2001, federal agencies are refocusing their missions and priorities to protect life and property, and to restore public confidence, should a terrorist attack occur. Given the CIA's broad responsibilities for intelligence gathering and analysis, how is your agency working with other departments that did not have traditional security functions, pre-9/11?

Before the 11 September attacks, CIA's Counterterrorist Center and other components within the Agency had already established extensive relationships with law enforcement and regulatory agencies in the federal government. Since the terrorist incident and the anthrax attacks, Agency has expanded its contacts to several new domestic agencies including the US Postal Service, HHS, CDC, Department of Interior, Department of Treasury, and Federal Highway Administration. The Agency unilaterally and through the FBI or Office of Homeland Security provides threat briefings and written products on foreign terrorist capabilities, networks, intentions, and possible US targets.

2. The demarcation between CIA and the FBI is blurring. We know that a department's culture is an extension of its career personnel and the agency's core mission. How are your senior managers adjusting, and how are you communicating these changes throughout CIA? What steps are you taking to include your workforce in these changes?

The CIA has repeatedly demonstrated flexibility in meeting national security needs. The leadership in the directorates is taking a proactive approach to supporting the homeland security mission—making available new rotation and training opportunities to the workforce to ensure that Agency expertise matches the changing intelligence needs.

3. Many of the agencies that would be included in the Administration's proposed department of Homeland Security currently collect what can considered intelligence information on threats to the United States. These include the Coast Guard and Customs Service. Does the CIA's Counterterrorist Center (CTC) currently receive intelligence reports from any of the agencies envisioned as being part of the new Department, and if so, from whom do you receive information, is it raw intelligence or processed, and are personnel from these agencies assigned to the CTC?

CTC currently has 52 detailees from 15 organizations including a senior FBI agent as the Deputy Chief and 14 other FBI officers. The detailees facilitate regular exchanges of information, including dissemination of circulars, industry advisories, and assessments from their home components.

4. During the hearing, you made the distinction between the counterterrorism mission of the Intelligence Community—to understand and to reduce the threat of terrorism—and the mission of the new Department—to understand and reduce vulnerabilities to terrorism. In a recent report,

the General Accounting Office noted that there is currently no standard protocol for the sharing of intelligence among federal, state, and local governments. How would both missions, reducing threats and reducing vulnerabilities, be enhanced by establishing a standard protocol for information sharing among federal, state, and local authorities?

The CIA favors a standardized approach, when appropriate, to information sharing at the various levels. In addition to submitting threat information to the FBI for dissemination to federal, state, and local authorities, the ADCI/ Homeland Security has also participated in discussions on information sharing with other deputies.

5. In your testimony, you noted the participation of the FBI in the CIA's Counterterrorist Center and mentioned that the Department of Homeland Security would have similar access to the CTC. How do you foresee the new Department participating with the CTC?

As the DCI mentioned in the testimony, the Department's most important role will be to translate assessments about evolving terrorist targeting strategies, training, and doctrine overseas into a system of protection for the infrastructure of the United States. The CIA is prepared to develop a similar working relationship with the new Department to include exchanges of officers, joint assignments, and training opportunities to familiarize the officers with the emerging homeland security mission.

6. Your written testimony notes that the CIA would provide support to the new Department of Homeland Security to develop databases to identify and help stop terrorists from entering the United States. How should information be shared with other federal agencies and with state and local authorities and are changes you would recommend to our current information sharing mechanisms?

The Intelligence Community is working closely with the FBI to make more database information available to the FBI's Joint Terrorist Task Force offices across the country. A list of suspected and proven terrorist names have been shared with Consular, Immigration and Customs officers for years and is now being shared with the FBI/INS Foreign Terrorist Tracking Center.

7. Both you and FBI Director Mueller noted that the CIA had detailed to the FBI experienced CIA intelligence analysts. According to the administration's proposal, the Department of Homeland Security would analyze both finished and raw intelligence from many different agencies. Do you foresee the CIA assigning intelligence analysts to the proposed Department, and if so, how might this impact CIA's analytical capacity? Moreover, the transition of the new Department may create new intelligence vulnerabilities. Do you believe the Department's transition may create new analytical vulnerabilities, and if so, how could these vulnerabilities be overcome?

Just as it is difficult to predict a specific terrorist attack, it is also hard to anticipate fully the needs and gaps that will arise from establishing the new Department. Since the 9/11 attack, the Agency has been re-examining its analytic resources and their allocation against national security and homeland security issues. We've also been readjusting and expanding our recruiting requirements to ensure that we are bringing in the right skills set to meet the broadening analytical needs of this government.

Senator Richard Shelby
Responses to Questions for the Record from Senator Cleland

As distinguished members of the Senate Intelligence Committee, I'd like to hear your opinion on how the new Department of Homeland Security will fit within the existing intelligence framework, specifically addressing the areas of oversight, guidance, and operations.

I do not believe that all parts of the new Department of Homeland Security (DHS) should fit within the existing system of intelligence oversight. Indeed, it would be inappropriate to subject the operational components of the Customs Service, Immigration and Naturalization Service, Federal Protective Service, and Coast Guard – all of which would be transferred to the new DHS – to Congressional oversight by the intelligence committees. Such components of the new Department would be better overseen by the committees of jurisdiction that currently enjoy this responsibility, or perhaps by some new committee with jurisdiction over homeland security matters.

It is very important, however, that the intelligence-related components of the new Department be subject to thorough oversight by the Congressional intelligence committees. The new office of Information Analysis and Infrastructure Protection, for instance – as well as any intelligence components of constituent agencies (such as that of the Coast Guard, which is currently a statutory member of the U.S. Intelligence Community) – should fall within the oversight jurisdiction and authorization authority of the intelligence committees.

Ensuring Congressional oversight through the existing intelligence committees is necessary for two reasons. First, it is important that oversight of the DHS intelligence function not be separated from oversight of the rest of the U.S. Intelligence Community. If that DHS office is to succeed, it needs to be closely integrated with the rest of the Intelligence Community from which it will receive most of the information it is charged with analyzing. Subjecting the DHS information analysis office and the Intelligence Community to Congressional oversight by different committees would reproduce – and even encourage – the kind of dysfunctional "stovepiping" that it is most vital that homeland security information analysis avoid. Second, th intelligence oversight committees have special expertise and experience in overseeing intelligence functions and a long relationship with the U.S. Intelligence Community, and are uniquely situated to provide the kind of integrated oversight that the DHS intelligence function requires. There is also ample precedent for a portion of an executive branch department to be an element of the intelligence community, e.g. INR within the Department of State.

Is it your opinion that the current intelligence framework is the "correct" one to address homeland security matters, or is it more appropriate to make changes to the existing framework? If changes are needed, what types of changes to you foresee?

As I noted in my testimony before the Governmental Affairs Committee, I believe that with certain modifications – particularly with regard to ensuring access to information by the new DHS information analysis office – the President's proposal for an Information Analysis and Infrastructure Protection of within the new Department of Homeland Security could meet the nation's need for homeland security-related intelligence analysis.

As I also noted in my testimony, however, for real success in the fight against terrorist threats at home and abroad, we will need searchingly to examine – and very likely to adjust – the structure and functions of the U.S. Intelligence Community as a whole. The information analysis function within DHS is only as good as the information it receives from our nation's intelligence collectors, and no comprehensive reform of the Intelligence Community has yet been undertaken.

As you know, the Senate Select Committee on Intelligence, in conjunction with its House counterpart, is currently engaged in an inquiry into the problems in intelligence collection coordination, and management that left the United States unprepared for the terrorist attacks of September 11, 2001. It would be premature for me to suggest sweeping reforms before our inquiry has progressed further, but I would like to emphasize that creating a new DHS intelligence function is only half the battle. Real reform of the Intelligence Community will also be necessary before Americans can rest secure in the knowledge that their government is doing all that it can to prevent a *third* "Pearl Harbor"-style attack upon our homeland.

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