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PROTECTING THE HOMELAND: THE PRESIDENT'S PROPOSAL FOR REORGANIZING OUR HOMELAND SECURITY INFRASTRUCTURE

HEARING

BEFORE THE

SUBCOMMITTEE ON TECHNOLOGY, TERRORISM, AND GOVERNMENT INFORMATION

OF THE

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PROTECTING THE HOMELAND: THE PRESIDENT'S PROPOSAL FOR REORGANIZING OUR HOMELAND SECURITY INFRASTRUCTURE

TUESDAY, JUNE 25, 2002

U.S. SENATE, SUBCOMMITTEE ON TECHNOLOGY,
TERRORISM, AND GOVERNMENT INFORMATION,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Subcommittee met, pursuant to notice, at 10:10 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Dianne Feinstein, Chairman of the subcommittee, presiding.

Present: Senators Feinstein, Hatch, Specter, DeWine, and Sessions.

OPENING STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Chairperson FEINSTEIN. I would like to call this hearing to order. The ranking member, Senator Kyl, should be here in about 5 minutes, but I thought we might start in the interim, and I think other members are going to drift in from time to time.

It is really my pleasure to be able to welcome everyone to this hearing this morning. This is the Subcommittee on Technology, Terrorism and Government Information, and the hearing this morning is to give this aspect of the Judiciary Committee the opportunity to take a good look at the President's proposal for a reconstituted merger of several departments into a Department of Homeland Security.

This subcommittee has held a number of hearings on the need for more consolidation and coordination in the agencies that combat terrorism. For example, we held a hearing on the report of the United States Commission on National Security in the 21st Century, more popularly known as the Hart-Rudman report, and I am delighted to see that the Co-Chair of that Commission, Senator Rudman, is here today.

We also held a hearing on the second annual report of the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction. That Commission was known simply as the Gilmore Commission, and I am pleased that the Chairman of that Commission, Mr. Gilmore, will testify also today.

It is good to see the Comptroller General, David Walker, here this morning, as well.

As we all know, President Bush has proposed a new Department of Homeland Security, and this agency would consist of some 22 Federal agencies and a total of 170,000 Federal employees. this would make it one of the very biggest in all of the Federal Government. The department's initial annual budget would be $37.5 billion.

As we consider this proposal, I think it is important that we look at some issues. First, we need to take a good hard look at what agencies the President has proposed to include in the new department and what agencies are left out.

Senator Rudman, in his March 2001 report, recommended that Customs, Coast Guard, Border Patrol and FEMA be included in a single, consolidated agency. But the President's proposal includes much more, including agencies concerned with disease control, eradicating boll weevils from cotton crops, issuing flood insurance, cleaning up oil spills, and trade inspection. Other agencies, including those that specifically protect us from terrorism, are not included. Those, in the main, are the intelligence agencies—CIA, FBI, NSA, and so on. So we need to take a good look at that.

Some questions have been raised about the Coast Guard. The Coast Guard conducts search and rescue. What would happen with that? As part of its mission, the Coast Guard has been very effective in intercepting the go-fast boats which bring narcotics into this country through the Gulf and up the Pacific corridor. What would happen with that?

The Immigration Department, and certainly Border Patrol, is suitable agency for inclusion, but what the service aspects of INS, naturalization and other aspects? Would that create a kind of mixed mission for the department similar to what some of us, including myself, have been critical of Customs about?

Customs is both a law enforcement agency as well as a trade expedition agency, and many of us have said in the past that lax customs on the borders of our country have allowed for more narcotics to come into the country. Part of the problem was because the agency had a mixed mission. You can't stop the trucks from coming in adequately to search them because it creates an economic disadvantage and the economy would suffer. That is the kind of mixed mission I am talking about. So moving agencies out of their current homes into a new department can result in some confusion and some dislocation that could take years to sort out.

We need to take a look at the collection, analysis, and dissemination of intelligence and its impact on homeland security. Does the clearinghouse part of this bill help or hinder data collection and analysis, now done primarily by the CIA?

Some have suggested that the department would be destined for failure if it could not gain access to all relevant raw intelligence and law enforcement data. One of the things I have learned as a member of the Intelligence Committee is that all-source analysis is really critical to the intelligence function; in other words, the ability take the bits and pieces and have very skilled people be able to interpolate, collate, and put those bits and pieces together so that they become meaningful and corroborated pieces of intelligence.

We also know we have major problems with the so-called stovepipe aspects of many agencies, the inability of State, INS, CIA, NSA, and FBI to coordinate their intelligence data so that it gets from one place to another.

We held a very interesting hearing in this subcommittee with Ms. Burns, who is head of the Division of Consular Affairs at the State Department, on the granting of visas to the hijackers. One of the things she pointed out to us was that they didn't have intelligence data on which to really base a denial of the visa applications in Saudi Arabia.

So these are all real questions, and I am delighted that we have people who are seasoned in this area, who have worked with these issues, and who have considered them, and we look forward to their testimony.

I think I will interrupt you, Senator Rudman, because you are going to be first up, when Senator Kyl comes and allow him to make his basic remarks, but let me begin by introducing you.

During his 12 years in the Senate, very accomplished years, Senator Rudman served on a number of committees, including the Senate Select Committee on Intelligence, the Appropriations Committee, and Governmental Affairs.

He has maintained a very active career since leaving the Senate, including serving as the Chairman of the President's Foreign Intelligence Advisory Board and as Vice Chairman of the Commission on Roles and Capabilities of the United States Intelligence Community. He is the recipient of numerous awards in honor of his years of devoted public service, including the Department of Defense' Distinguished Service Medal, which is the agency's highest civilian award.

So if we could begin with you, Senator Warren Rudman, welcome to the subcommittee.

STATEMENT OF HON. WARREN B. RUDMAN, CO-CHAIR, UNITED STATES COMMISSION ON NATIONAL SECURITY IN THE 21ST CENTURY, WASHINGTON, D.C.

Mr. RUDMAN. Senator Feinstein, thank you very much. I am very pleased to be here again and pleased to be here with the gentlemen sitting to my right. I have great respect for what they have both done. In particular, I have been a student of what the Gilmore Commission did.

All of these efforts came coincidentally at the right time. They were conceived of some time ago. In our case, the idea was to replicate Truman's Marshall Commission of 1947, which totally reorganized the U.S. Government and created DOD, the Joint Chiefs of Staff, the CIA, and the United States Air Force. It was a major undertaking to look at the security challenges of the last half of the 20th century.

This was precisely our charge, to look at the first 25 years of the 21st century. Congress mandated that we do this. The reports started in 1998. This report is the third of three, one in 1999, one in 2000, and one in 2001.

The Commission, as some of you may know, was blessed with an extraordinary array of people including Jim Schlesinger, Norm Ornstein, Don Rice, Les Gelb; people from the media; people from

Congress, Newt Gingrich, Lee Hamilton, Gary Hart, and myself; two former CINCs, Jack Galvin from NATO, and Harry Trane. So, we had a pretty experienced group of folks.

The most striking thing we did was at the end of about a year-and-a-half. We came to the conclusion that of all the security challenges to the United States, the most serious security challenge is precisely what happened on September 11. In fact, we laid out a scenario similar to what occured on Sept. 11 in some detail. We believed that thousands of Americans would be killed on American soil by acts of terrorism. Unfortunately, our prediction came true too soon.

Thus, our report contains 50 recommendations covering the entire Government. Seven of those recommendations pertain to the subject of your hearing this morning, and one in particular. We said that the President should propose to Congress that the Customs Service, the Border Patrol, the Coast Guard, and FEMA be transfered to the National Homeland Security Agency, while also being preserved as distinct entities.

I want to pause there because I think there is some confusion, and this is the third hearing at which I have testified. Although the stovepipe nature of these agencies has to be changed, the Coast Guard will remain the United States Coast Guard, the Customs Service the Customs Service, et cetera.

The difference is that right now, as we discovered in our three-and-a-half years these agencies in many ways will take umbrage at this, and did during our hearings. But, I will be blunt with you; they are orphans where they are. They don't get the kind of attention that they should.

For instance, all of a sudden earlier this year we discovered that the United States Coast Guard, one of the most extraordinary and able parts of our Government, has been underfunded and undercapitalized for years. It shouldn't have taken September 11 to prove that, but it did. We believe that in a department devoted to border security and homeland security, the Coast Guard will be getting the attention it needs. The same goes for Customs in Treasury, the Border Patrol and INS in Justice.

The difference between our proposal and the President's proposal, which includes additional agencies, is that we determined whether the overwhelming task of the agency was border security. If that was their task, then they belonged there.

We also thought that in addition to prevention, we had to have response as well as protection. Therefore, FEMA, an extraordinarily able Government agency, small, but very good—and most people who have dealt with them will tell you they do a good job in natural disasters—was the proper response team. We saw Joe Albaugh bring his agency to bear and be of tremendous help during the Sept. 11 crisis, particularly in the area of the World Trade Center. So, that was what we proposed.

Now, how do we feel about this proposal? We support it. I think your opening statement reveals a few just concerns, and you are going to have to sort those things out. For instance, we had said in our report that you might retain the so-called trade and revenue aspects of the Customs Department at Treasury and move the law enforcement sector over.

We are told by many people now that that probably would not work as well, that there is a lot of connectivity there as well as in Border Patrol and INS. That is why the President decided to go the way he went. They are probably right. They probably deserve to be brought in toto, preserving their identity. The one big difference from where they are now is that they will have a common mission. They will have a common command and control and a common chain of command. That is very important.

In terms of information exchange, it is no wonder that an agency in Transportation, Coast Guard——

Chairperson FEINSTEIN. Excuse me. I see this light blinking and I neglected to say that if it is possible to get the bulk of what you would like to say in 5 minutes said, that is great. I am going to be very liberal with this, so don't worry about it.

Mr. RUDMAN. Well, I only need a couple more, actually.

In terms of Customs and the other agencies, they don't belong where they are. They are there for historic reasons. They have a common border security function, that is where they belong.

Now, just two other comments. Madam Chairman, this is not going to solve the intelligence problem. I can tell you from being on the committee you now serve on and having chaired the PFIAB for four years and been on it for 8 years, this will not solve the intelligence problem. That is a separate problem. It is being addressed by the Select Committee and hopefully they will come up with answers.

What is proposed for this agency is not a collection, but an analysis unit. That is probably a good idea, but let me say at the outset that it will be several years before that unit will be up to speed. It takes time to get people.

Second, on the FBI, people say, well, maybe the FBI should be here. Well, that would be a terrible mistake. The FBI has literally hundreds, if not thousands, of congressionally mandated responsibilities to enforce the United States Code. Homeland security is now a major part of that, but you could not take that away from Justice, in my view, and have anything but chaos.

Some have proposed creating an MI5, a British type of a unit, and separating that from the Bureau. But, that will take a lot of study. I would not be ready to endorse that this morning.

So by and large—and I am happy to take your questions. We believe that this is a sound proposal. It has a common thread of homeland security and border security. It ought to be enacted, but obviously it can be improved by the Congress and it probably will be.

Chairperson FEINSTEIN. Thank you very much, Senator. I appreciate it.

Mr. Gilmore, let me make a little formal introduction here.

James Gilmore, III, is the former Governor of Virginia. As Governor, he created the Nation's first Secretariat of Technology, established a statewide technology commission, and signed into law the Nation's first comprehensive State Internet policy.

Governor Gilmore is also the Chairman of the Congressional Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction. This national panel was established by Congress in 1999, and its purpose was to assess

Federal, State and local governments' capability to respond to the consequences of a terrorist act, and this was essential in developing the Office of Homeland Security.

We are delighted to welcome you, Governor Gilmore.

STATEMENT OF HON. JAMES S. GILMORE, III, FORMER GOVERNOR OF THE COMMONWEALTH OF VIRGINIA, AND CHAIRMAN, ADVISORY PANEL TO ASSESS DOMESTIC RESPONSE CAPABILITIES FOR TERRORISM INVOLVING WEAPONS OF MASS DESTRUCTION, RICHMOND, VIRGINIA

Mr. GILMORE. Madam Chairman, I want to thank you for the chance to be here today in my capacity as Chairman of the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction. I have submitted a written submission which is quite comprehensive. Let me give you some summary remarks, hopefully as close to the 5-minutes as possible.

Congress created this Panel in 1999 as part of the National Defense Authorization Act. It was clear then, and remains so today, that our national efforts to deter and prevent and respond and recover from terrorist acts, while up to this point have been considerable and laudable and well-meaning, we still need a cogent focus to ensure a higher level of safety and security for our citizens. That is still true today. In the aftermath of the September 11 attacks, Congress extended the work of our Panel for an additional 2 years.

Senator this past week we met in Indianapolis and spent the majority of our meeting time hearing from a lot of the key stakeholder groups representing State and local officials who are working around the clock in partnership with Federal agencies to make the Nation more secure.

Our Panel has benefited from a unique composition. The same disciplines at the local, State and Federal levels that are now wrestling with homeland security issues have been represented around our table for the past three-and-a-half years. I think this is critical in terms of input and the reports themselves.

The challenges that we face are not Federal issues, simply. Beginning with the first annual report that we did in 1999, the Panel noted that the nature of the threat we faced and how it would be manifested against our citizens and how as a Nation would respond required a national approach. And by "national," we mean the combined efforts of local, State, Federal and private sector organizations working toward this common end.

So the perspective of our members, I think, is even more salient today, as many of us are directly engaged with actions in communities, States, and businesses. So the perspective of what is happening on the front lines, combined with the 3-year experience of our Panel, I think, is going to give us some insight that will be of benefit to the Senate.

As you have stated, you have invited me to address this issue of the Department of Homeland Security. This type of major restructuring was not what our Panel recommended. We recognize the issue that you raised in your opening remarks regarding mixed missions of all the different agencies, which is why we did not adopt this model.

Our recommendation provided for the creation of an office in the Executive Office of the President to better strategically integrate the activities of a wide range of agencies with responsibilities in this area. This recommendation was informed, in part, by a recognition that attacks on the Nation could cause profound strategic, economic, and health and safety problems. It could take the form of conventional or weapons of mass destruction or cyber attacks.

The plethora of scenarios and the needed focus on prevention and deterrence was not within the single mandate of any one Federal agency or level of government. Our Panel, Senator, viewed the issue as one of management and organization, which is different from the issue today, which is, of course, structure.

We believe that the needed coordination could be more effectively done at a higher level than Cabinet agencies to minimize the potential for turf wars that are inevitable when it comes to competition for resources, human and financial, and even prestige within the Government.

Now, this is not to say that what the administration is proposing now isn't the right answer. Clearly, as a nation, we now have the benefit of the September 11 experience. Our Panel, the Hart-Rudman Commission, and the National Commission on Terrorism made our recommendations without the benefit of this painful knowledge that we gained from September 11, and I think that the experience will allow us to be stronger in our conclusions.

Now, let me offer several points very quickly. First, the proposal to create the Department of Homeland Security has been described as the largest reorganization since World War II. But the proposal you have before you today has implications beyond the Federal Government.

In local communities and States across America, public officials and the private sector are engaged in securing the homeland and protecting against the lawlessness of terrorists who would seek to do our citizens harm. A major reorganization at the Federal level will have to be very carefully implemented. I can't stress this enough. There is a real concern here in the local communities that the whole idea of the reorganization could break the momentum on program delivery that is just beginning to catch full speed right now.

Second, we need to have a clear understanding of what problems reorganization is attempting to solve. Our Panel noted a wide range of problems with national preparedness efforts, and I say national, not Federal. The Federal Government must play a leadership role, but solving the problems is going to need integration of local, State, Federal and private. As a Nation, we have to be clear in defining what those problems are.

We noted in our second and third annual reports the problem with the ability to collect, analyze, and disseminate critical intelligence. You have noted in your opening statement that there was a stovepipe problem.

Senator it is a horizontal stovepipe, not a vertical stovepipe. You were addressing the issues of CIA, FBI, DEA, NSA. The issue is beyond that. It is Federal, State, and local, and how that information goes up and down in the vertical stovepipe, not just the horizontal one.

Third, there are issues about the role of State and local governments in defining the problem. The administration's proposal provides for State and local coordination with the new entity, but it is critical that the State and local partners are engaged in the design and implementation phases, the need for communication back and forth with the Senate and the Governors, for example, not to mention the key local people around the country.

One of our local members that has served on our commission suggested that we leave the Federal business to the Federal authorities from time to time. This may not be the best model at this point in time. It may be that the States and the locals must participate.

Local responders, it must be remembered, are not helping the feds out. They are taking on the front-line responsibility in this war on terrorism. They are helping out the feds; it is not the feds that are necessarily helping out the locals.

The fourth part concerns the continuing need for a clear national strategy that continually articulates what we as a Nation are seeking to accomplish. The proposed department is not the national strategy, but will become the engine to implement the national strategy once it is developed.

So we can't afford an exclusive focus on discussions about the new department and not address the large strategic needs that will define the long-term national and international success in countering this terrorist threat. The national strategy is key to the efforts in determining how the proposal for the Department of Homeland Security can best be structured.

We have confidence, of course, that the U.S. Congress, though the budget and the legislative process, will take a considerable role in this structure, and the States and the locals must also be a part of that process.

Thank you, Senator.

[The prepared statement of Mr. Gilmore appears as a submission for the record.]

Chairperson FEINSTEIN. Thanks very much, Governor.

Now, I would like to introduce David Walker, the Comptroller General of the United States and head of the General Accounting Office. Mr. Walker is head of the premier agency dedicated to improving the performance and ensuring the accountability of the Federal Government.

The GAO has done really a fine job helping the Judiciary Committee, and in particular this subcommittee, and I want him to know I am very grateful. Mr. Walker began his 15-year term in 1998, following extensive executive-level experience in both government and private industry.

Welcome, Mr. Walker.

STATEMENT OF HON. DAVID WALKER, COMPTROLLER GENERAL, UNITED STATES GENERAL ACCOUNTING OFFICE, WASHINGTON, D.C.

Mr. WALKER. Thank you, Madam Chair, members of the subcommittee. I am pleased to be here this morning to testify on the President's proposal to establish a new Department of Homeland Security.

As you know, Madam Chair, last Friday afternoon we were asked to testify before this subcommittee. As a result, while time was limited, a number of GAO professionals have worked very hard to prepare a comprehensive statement that we believe will be of interest to this subcommittee and the Congress as a whole. I would respectfully request that that entire statement be entered into the record.

Chairperson FEINSTEIN. That is this statement of June 25?

Mr. WALKER. It is.

Chairperson FEINSTEIN. Thank you very much. It will be.

Mr. WALKER. Thank you. I will now move to summarize the major points.

The President's proposal represents the largest proposed restructuring of the Federal Government since 1947. His proposal is in some ways consistent with other homeland security-related legislative proposals, such as Senator Lieberman's, and past homeland security-related recommendations by various commissions, including those of the two Chairs seated to my left, and the GAO. It is, however, more comprehensive than most people expected.

While most people will probably agree that the establishment of some new Department of Homeland Security has merit, reasonable people can and will disagree regarding which entities and functions should be consolidated into the new department.

The President's proposal is premised, in part, on the notion that it is desirable to consolidate certain homeland security-related entities and functions in order to improve efficiency and effectiveness over time in this critically important area. He also recognizes that a number of other Federal entities and functions that have important roles to play in protecting our homeland will not be consolidated into any new Department of Homeland Security.

As a result, additional steps will be necessary to improve communication and coordination between these entities and with DHS in a number of areas, including knowledge-sharing and operational execution.

Irrespective of which entities and functions Congress ultimately decides to include in any new Department of Homeland Security, there are a number of critical planning and implementation factors that must be addressed in order to maximize the likelihood of success and manage any related risk.

Realistically, any proposal to create a new Department of Homeland Security likely will take a considerable amount of time and will cost significant amounts of money above the status quo baseline.

While consolidation and integration of certain entities and activities into a new Department of Homeland Security can serve to improve economy, increase efficiency, and enhance effectiveness over time, it can have the opposite effect in the short term during the transition and transformation period, which is likely to take a considerable period of time.

One major factor in this regard is the human element. Many employees of the new department will naturally be concerned with how any proposed reorganization will affect them personally. This can cause a reduction in productivity and effectiveness.

Timely and effective communication of both the proposal and related implementation efforts are critical to minimizing any related

adverse effects. We have seen this both in public sector and private sector mergers and consolidations, and I have a fair amount of personal experience with both.

Past large-scale government and private sector reorganizations and consolidations have disclosed a number of important implementation challenges. Effective design, planning and implementation can help to reduce the related costs and risks.

In order to assist the Congress address this important and complex issue, GAO has developed a proposal organizational and accountability framework for considering the President's proposal and addressing key related implementation recommendations.

Specifically, we have identified certain key criteria that Congress may wish to consider in connection with establishing any new department, determining which entities and functions should be consolidated into it, and assuring effective implementation and related reorganization over time, and that starts on page 6 of my testimony.

In my full statement, I have noted a number of key comments and questions that the Congress should consider in connection with the President's proposal and I would like to comment on a few at this time.

For example, GAO previously noted the need for a comprehensive threat and risk assessment and an overall national homeland security strategy. While the administration has committed to perform and provide these, ideally they should have been completed prior to any proposed realignment. In any event, these should be completed as soon as possible and used as a basis for any final design and implementation issues associated with any Department of Homeland Security.

Other key implementation issues will also be of critical importance. For example, short-term priorities must be set, including the need to pull the new department together and focus on a range of common elements from the outset.

For example, clearly defining the department's overall mission, core values, and primary objectives, filling key leadership positions, determining key skills and competencies that will be required, integrating key communications systems, and aligning institutional unit and individual performance measurement systems will be critical to success.

Any related consolidation will take years to implement and involve a range of transformation challenges. In this regard, the new Department of Homeland Security should be subject to all the major management reform legislation such as GPRA, the CFO Act, and Clinger-Cohen, and could benefit from having a chief operating officer who would be appointed on a term basis to focus on the many important planning and implementation issues that will span key players both within and between administrations.

In the final analysis, the key to any successful reorganization will not be the new organization chart, but the quality and commitment of the leadership and the people who must carry out the missions of the department.

While planning, processes, technologies, and environmental factors are important, people, policies, and practices will be the key to success. The creation of this new department provides us with

an opportunity to create a model high-performing organization in this critically important area. In order to achieve this, the new department should be given reasonable management flexibility to be able to reorganize, realign, and transform itself to best achieve its mission.

At the same time, there need to be appropriate safeguards to prevent abuse of Federal employees and adequate transparency and accountability mechanisms in place to monitor progress and assess effectiveness over time. Periodic congressional oversight and independent GAO reviews will play critically important roles in this regard.

Madam Chair, that summarizes my statement and I would be more than happy to answer any questions you may have.

[The prepared statement of Mr. Walker appears as a submission for the record.]

Chairperson FEINSTEIN. Thank you very much, Mr. Walker.

We are joined by Senators DeWine and Sessions, and I trust that they have received a copy of the GAO testimony, dated June 25. It is relatively new—well, it is very new. I would like to ask Senator DeWine and Senator Sessions if they would like to make an opening statement at this time.

Senator DEWINE. No, thank you, Madam Chairman.

Chairperson FEINSTEIN. Senator DeWine does not.

Senator Sessions, would you like to make an opening statement?

Senator SESSIONS. Thank you, Madam Chairman. I will have to slip out. I hope to be able to return, but I would just say a couple of things.

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

When, early on, people began to discuss a homeland security agency, I asked myself how can a new, junior agency expect to order Treasury to do A, B, C, and D, Justice to do this, Defense to do this. I didn't see that they would have the clout.

But President Bush's move here is really historic. He is moving almost everything that is within an agency related to homeland defense to homeland defense, and I had to take a new look at that.

Frankly, as a person who served in the Federal Government, in the Department of Justice, for almost 15 years, I know that in that great agency there are bureaucracies, there are inefficiencies. There are problems of unhealthy competition even within Justice, and certainly between Justice and other agencies. It is just an exceedingly difficult thing to make this huge Government agency function as one.

It is one Government, but it doesn't act that way. Oftentimes, it acts as independent nations. They send emissaries between one another. They cannot communicate, except with memoranda of understanding, and treaties get cut when disagreements occur. So it is very difficult.

Having Mr. Ridge as the President's person, with the President's clout behind him, he has some ability to bend agencies because if they don't agree with his idea he can simply say, Secretary Rumsfeld, why don't you and Secretary Mineta meet with me and the President next week and we will discuss this little disagreement?

And if the President is backing up Mr. Ridge, he can get some things done that way. I am inclined to think this would work.

Mr. Walker, I appreciate your report and insight and commitment to reforming Government. Maybe in the process of making this move, we would not create additional bureaucracies, but if we use our imagination and if we are creative, maybe we can make this one of the best-run agencies in the Government.

Certainly, I have no doubt it would enhance our ability to protect the homeland. I do think there is a concern that we not diminish the other duties these great agencies have, such as the Coast Guard and Customs.

They have other responsibilities, too, Madam Chairman, so we don't want to diminish them and just undermine them excessively. So it will be a challenge. I think it is probably healthy. The American people want to see us do something. The President has boldly proposed a program to make some changes. If we all work together, I believe we can make it work.

Thank you for this hearing.

Chairperson FEINSTEIN. Thank you very much, Mr. Sessions.

I would like to begin with the questions now and I would like to ask each one of you to answer this question. I think the original thrust for the department started because many were concerned about the absence of statutory and budgetary authority for the new homeland security person.

Just putting that individual within the Office of the President created problems. One was he couldn't come and testify before Congress, which kind of took on an expanding role as things went on. Now, I almost wonder if it isn't in the process of being created an agency which is so big that there will be so many mixed missions within it and so many bureaucratic problems that if you take one agency—for example, INS, and I serve on the Immigration Subcommittee of this—many of us have felt that this was an agency with severe mission overload, without the ability of a modern management system which enabled it to make crucial errors; for example, printing up 5 million biometric border-crossing cards, and yet not having the readers in place to read them when they came across the border, or, second, not checking a data base when you sent out visa renewals and actually renew the visas of two dead hijackers.

Now, those may be just small indications, but maybe of us that have watched this agency have become very concerned. Here in this, you transfer the service elements. We have 5,000 unaccompanied alien children a year. Do they belong in a Department of Homeland Security? I don't think so.

What about the naturalization process? Is it best served by being in a Department of Homeland Security?

So I guess my question is this: Would it not be more efficient and effective just to take those functions of an agency, like from INS Border Patrol, and place it into an agency and leave the other aspects of the agencies that deal with the non-security-related issues to function?

The same thing would go for FEMA; you know, leave out the flood, the earthquake kinds of activities of that agency, and yet

transfer those elements which you might want in a border security type of situation into homeland defense.

That is my first question and I would like you to answer it. My second involves several very serious personnel issues, but let's begin with you, Senator Rudman.

Mr. RUDMAN. You raise probably the most vexing issue when you handle any government reorganization. Let me say to you that you probably, in some cases, would cause more harm than good by splitting them. That was our conclusion.

Now, there is a reason why our proposal was as limited as it was. Our proposal, and we have testified on it before, took Customs, Border Patrol, and Coast Guard. We split Border Patrol from INS, for the very reasons that you mentioned. The President has decided, and probably with good reason, that it needs reform and it can be reformed with a new agency as well as where it is. In fact, it might get more attention in a smaller Cabinet agency with a particular mission.

Now, take the Coast Guard. It is probably the best example I can give you of why the splitting probably won't work. It is an extraordinarily able organization. I have had a lot of personal experience with it on the New England coast. They do a wonderful job of water safety, of inspection of buoys, and of channel-marking. They do drug interdiction, and they are now going to do homeland security.

But the same people that do many of those functions will do all of those functions. A Coast Guard cutter that is working on a drug intercept tomorrow may be working on an intercept of a vessel that is suspicious off the coast of New England. So the same people are going to do the same thing.

If you tried to split it and say; you are going to do harbor safety; you are going to do boating safety; you are going to do drug interception; you are going to do something else, you would end up with a terrible mess. So, after talking to all of the people involved, and we did have three-and-a-half years to look at it, we came to the conclusion that if they had an overwhelming border security mission, then you ought to put it in this agency and the other missions would be carried out as they are.

The words "separate entity" are important in our report. The Coast Guard, in our view, would be transferred as the Coast Guard. It would then be reorganized within the new department however they decided to reorganize it, but it would still be the same entity.

Now, let me make one last comment. When you look at these various agencies, Customs does a wonderful job at what they do. I have had a lot of experience both here and in the private sector with Customs. FEMA is outstanding. The Coast Guard is a very good agency. They are three of the best small Government agencies that we have being transferred.

INS you have got some big problems with, and you know you have got big problems with them. Merely transferring them won't fix those problems, but we think that splitting them could cause problems.

Now, for some of the other things, animal and vegetable, I don't know about those. We haven't recommended those. We didn't rec-

ommend the Secret Service. The President must have a reason for that. If you split the agencies that we recommended, you might be getting more problems resulting than you would anticipate.

Chairperson FEINSTEIN. Thanks, Senator.

Governor Gilmore?

Mr. GILMORE. Senator Feinstein, our proposal in our report was for the national coordinating office in the Office of the President, the current Ridge office—our thought was that the goal here was to achieve management and coordination between the different agencies with a person who was, if anything, elevated a little above the Cabinet to avoid some of the conflicts and turf wars.

I thought that Senator Sessions laid out the philosophy of this very eloquently a few moments ago with respect to the way that that office could work.

We also recommended that it have congressional authority and congressional approval, Senatorial approval of the position so that there would be more interdiction and more buy-in from the Senate; and, second, that there be budget certification authority in order to provide that office with greater tools.

This proposal addresses the issue of the split function issue. This was actually what we were trying to avoid, but the split function issue has been addressed. I am aware that Attorney Richard Davis submitted a different memo to a different committee, I believe, in which he suggested that there be split functions in order to make this happen. That would divide the bureaucracy in two so that you have homeland security concentrated in one place and non-homeland security remaining where they are now, and I think that theoretically that could work.

Other than that, it will be a management challenge which is still achievable if, in fact, the agencies go all together into one unit. As Senator Rudman says, it is probably achievable, but it will require an enormous management challenge to do that.

One more point that I would make, Senator Feinstein, is let us not lose sight of the fact that what we are really talking about here is the creation of the national strategy and coordination of the different organizations. When the times comes to deal with the actual response itself, that is an entirely different model. That goes to the issue of coordinating the Federal, State, and local people, because the people who are actually going to respond are by and large going to be the local responders, and only the local responders in the first hours.

Then after that, there can be a partnership between FEMA within this organization and the State emergency operation centers, which probably should be in charge, as a partnership coordinating with the locals. But this is an entirely different function that the Congress should not lose sight of as they work on the organizational and coordination functions of this new department.

Chairperson FEINSTEIN. Thank you very much.

I would like to acknowledge that we have been joined by the distinguished ranking member of the overall committee, Senator Hatch.

Senator prior to Mr. Walker answering the question, would you like to make an opening statement?

Senator HATCH. No. I will just put my statement in the record and welcome our three witnesses. All three of them are good friends and very important people in my eyes.

Chairperson FEINSTEIN. Thank you very much.

Mr. Walker?

Mr. WALKER. Senator, I would recommend that you consider doing the following: first, start with the Hart-Rudman Commission proposal which was more focused, compare the differences between the Hart-Rudman Commission proposal with regard to those entities and functions that it recommended to consolidate versus the President's proposal, which is much more comprehensive, as Senator Sessions mentioned, and use the GAO's proposed criteria as a way to evaluate those differences.

I also think that no matter what the Congress ultimately decides to do, the implementation elements that we have outlined in our testimony will be critical to success.

Chairperson FEINSTEIN. That is on pages 6, 7, and 8?

Mr. WALKER. Right, 6, 7, and 8.

Furthermore, I also would respectfully suggest that in the final analysis the Congress may decide that you not only need a secretary of a new Department of Homeland Security, but also a Presidentially appointed, Senate-confirmed head of the Office of Homeland Security who will end up being focused on coordinating those activities that go beyond the Department of Homeland Security.

It has already been acknowledged that there are a number of activities that are not going to be addressed by this Department of Homeland Security. This is to a great extent focused more on the operational aspects, trying to pull together a lot of the operational aspects at the Federal level, at least. I totally agree with Governor Gilmore that it is a national effort, which is Federal, State, local, public sector, private sector, not just Federal.

Thank you.

Mr. RUDMAN. Senator, if I could just add just 30 seconds——

Chairperson FEINSTEIN. Go ahead, Senator Rudman.

Mr. RUDMAN. We totally agree with the Gilmore Commission's recommendation that there ought to be somebody in the White House who heads up the office. We said it would be more like the National Security Advisor, not confirmed by the Senate, because it would be a Presidential aide. However, if you decided to do it the other way, it does the same thing.

We fully agree that this does not supplant the need for the national strategy to be developed in the White House by an Office of Homeland Security. This is precisely what we say in our report.

Chairperson FEINSTEIN. Thank you very much. I think my time is up.

Senator Hatch, do you have questions?

Senator HATCH. Thank you, Madam Chairperson.

Welcome to all three of you here, and the other witnesses as well. This is an important hearing and I appreciate having you all here. I might say that certainly, Senator Rudman, and you and Governor Gilmore and your commissions have certainly proven to be very accurate and very, very persuasive and very helpful to this administration, and I think all of us up here on Capitol Hill.

Although some thought the Hart-Rudman report was a little too much at the time, you have certainly been vindicated, it seems to me, with what you decided and what you recommended to us. Both of you have done excellent work and I really appreciate it. Of course, I appreciate Mr. Walker and the continual service he gives to our country.

Senator Rudman, I believe that in your testimony before the Governmental Affairs Committee last week you suggested that separating the Immigration and Naturalization Service's various functions could reduce its effectiveness in enforcing our immigration laws and facilitating immigration services.

Do you believe that this administration's proposal to transfer INS in its entirety—I don't know if the distinguished Senator from California has asked this question, but I wonder if transferring it in its entirety and including it under the umbrella of the Border and Transportation Security Division is the proper approach.

Could you see any benefit to transferring INS in its entirety as a separate fifth division rather than making it part of the Border and Transportation Security Division in the new Department of Homeland Security?

Mr. RUDMAN. Senator Hatch, it is a pleasure to see you this morning. We did a lot of work together over the years.

Senator HATCH. That we have.

Mr. RUDMAN. I must tell you that we labored over that particular issue for some time, and you will note our proposal does not include the INS. That is not to say it shouldn't be included. I will tell you that we decided, for a lot of reasons, that we would take the Border Patrol, which is, if you will, the uniformed part of INS, and we would move that to a purely law enforcement function. We came to the conclusion that we would try to keep our recommendation very focused, as Mr. Walker has said.

Now, having said that, I think, listening to Governor Ridge and his testimony before ours last week, before the Governmental Affairs Committee, that he makes a strong case. In order to secure the border, you have got to have the people who oversee immigration report to the same person and have the same intelligence and the same information technology.

It may well be that part of it ought to be left where it is. I just don't know the answer to that question, but I can tell you that our Commission, after three-and-a-half years, decided not to transfer it. We just thought it would probably better be left where it is. But I would hasten to add, Senator Hatch, that it surely needs reform. It needs reform to be brought into not only the 21st century, but also into the 20th century in terms of technology.

Senator HATCH. Well, you have suggested that the collection and analysis of intelligence information should be kept separate from the policy decisionmaking process that results from the collection and analysis of intelligence information.

Do you believe that the administration's current proposal would achieve the separation you recommend?

Mr. RUDMAN. I believe so, because my understanding is that there is no collection in this new agency, nor should there be. I mean, to set up a collection regimen, as the Chairman or anyone

else who serves on the Intelligence Committee knows, is enormously complex.

We already have very good collection. What we probably need is a very good analysis unit that can work with other analysis coming out of all-source analysis at the agency and the FBI. By the way, we did not recommend quite what the President did in terms of an intelligence analysis unit, but I think it probably is a very sound idea.

The other interesting idea—you may have read in the paper that one of the foremost scientific organizations in the country has proposed that there be a homeland defense institute of technology to work on the technology that must be developed to protect our borders—a very interesting proposal. Query: Where does that belong?

So you have got your plate full. In addition to the President's proposal, you have got our proposal, others that are being made, and, of course, the work that the Gilmore Commission did.

Senator HATCH. Your Commission emphasized the importance of including the National Guard.

Mr. RUDMAN. We did, but not in the Homeland Security Agency. What we said, Senator Hatch, was that——

Senator HATCH. Can you tell us a little bit of how you think it would function under the administration's proposal?

Mr. RUDMAN. They are doing the Guard separately. Our proposal is that the National Guard be duly trained as a first local responder in the event of a major disaster in a major area. They are first-rate people. They are highly motivated, and they do a great job. They have a combat support role, but we believe they ought to have a secondary role. My understanding is, that is under active consideration.

Incidentally, Senator Hatch, we also recommended the creation of a commander-in-chief for homeland security at the Pentagon, CINC North, if you will, which Secretary Rumsfeld has now implemented.

Senator HATCH. Governor Gilmore, I believe we all agree that in fashioning an overall national security strategy that we have to tap into the resources and expertise of the private sector. Private businesses own and operate most of our infrastructure, our telecommunications, energy, financial systems. So input from the private sector is essential to arm our agencies with the best technologies available.

You mentioned in your written testimony that your Advisory Panel intends to consider ways to better integrate America's private sector. Recognizing that this is an issue you have just recently begun to consider in depth, do you have any immediate suggestions as to how we can further this goal as we consider the administration's proposal?

Mr. GILMORE. Senator Hatch, the challenge, it seems to me, is to find the right model to make sure that the private sector is appropriately at the table in terms of planning and coordination of the national strategy.

This is not easy. The design of a national strategy is difficult enough as it is. We have great confidence that the Ridge office is going to bring forward a good national strategy, but then the question is what mechanisms can get the private sector involved.

It is very challenging because there is really not a market solution to this. It is very difficult in defense preparation to use market forces, but there are two that I can think of.

One is that there is a frenzy right now to sell products, and people want to offer their products and offer their systems as part of the national homeland security strategy and they are dying to find ways to make their case as to why this would fit into the national strategy. So that is a market force that actually might work to our benefit as people have the opportunity to make their case, and a mechanism needs to be found to do that.

The second is that there is a defensive position for the private sector that is a very serious one, and that is that they themselves must do something to protect their critical infrastructure and their continuing operations and their information technology systems. Failure to do that exposes them under the civil liability system, and creates therefore serious market and legal reasons why they must, in fact, come to the table and cooperate.

The challenge, though, is not so much the creation of those market forces which I have just articulated; they are there. The interesting question is how do we put into place the ability to coordinate them with a Government operation which is entirely different from the private sector. Probably the best way to do that is to create some councils and some strategic thinking types of organizations. But this is a real management challenge and a serious issue.

By the way, in terms of the actual homeland organization itself, one of the management challenges is the ability to get information through a large bureaucracy like the one that is being suggested, and that will require very careful implementation and structuring as the Congress goes forward.

Senator Feinstein, you raised the issue in your opening remarks about how INS didn't get the word and sent out visa approvals very late in the game after the incident had already occurred. There is no blame here, it seems to me. This is simply the process that occurs of large bureaucracies set up in large, difficult structures. The management challenge here is to find a way to make sure that this is streamlined in a way and managed in a way to maximize the passage of information up and down the line.

Senator HATCH. Madam Chairperson, I know my time is up, but could I ask one question of Mr. Walker?

Chairperson FEINSTEIN. Certainly. If Senator DeWine doesn't mind, I certainly don't.

Senator HATCH. Do you mind, Senator DeWine?

Senator DEWINE. No.

Chairperson FEINSTEIN. Go ahead.

Senator HATCH. Thank you, and I also want to thank you very much for this hearing. I am going to be watching and reading all of the record here today.

I just have one question for you, Mr. Walker. Your testimony contains an in-depth discussion of the Federal Government's role in preventing and protecting against terrorism. Could you elaborate a little bit more on the role you believe the Federal Government should assume in interacting with and supplementing efforts of State and local governments, non-governmental organizations, and the private sector?

Mr. WALKER. As Governor Gilmore has mentioned, in order for us to be successful in this effort to try to protect our homeland, it is going to take the combined efforts of a variety of Federal Government entities, State and local government entities, as well as the private sector and NGO's.

We have found in the dealings that GAO has had in doing work in the area of homeland security over the last several years, including the last year, that there has been a fair amount of frustration on behalf of State and local government officials and private sector officials at not being able to play as interactive and constructive a role as they would like to in trying to help define the national strategy and in trying to understand what the appropriate division of responsibilities would be.

So that is why I think it is important that we not just focus on this Department of Homeland Security, which is to a great extent more the operational aspects of it, but also focus on this national strategy which is going to come out of Governor Ridge's office, I would imagine, in the near future, and making sure that all the key stakeholders are buying into that national strategy in order to be able to effectively implement it.

Senator HATCH. Thank you.

Chairperson FEINSTEIN. Thank you.

Senator DeWine?

Senator DEWINE. Thank you, Madam Chairman.

Let me thank all of you for being here. Mr. Gilmore and Senator Rudman, your reports are certainly very, very helpful. Mr. Walker, I look forward to having the chance to fully read your recommendations and, your warnings about the perils that lie ahead of us.

Senator Rudman, you pointed out in your testimony that while the President's proposal to some extent mirrors what you recommended, there are some differences. But you also pointed out that this does not solve all of our intelligence problems.

It seems to me that we face a very difficult job here in this Congress and in our country—how to move forward with the homeland security proposal, while at the same time trying to deal with our intelligence issues, our FBI issues, our CIA issues.

I just would like to know, in the 4-minutes that you have remaining, if you would give us a little advice on how we can proceed and do this. You have really a unique perspective and background because of your former positions here in the U.S. Senate and we would welcome your comments.

Mr. RUDMAN. Senator DeWine, I think it is a daunting problem. Let me describe the problem and then what I think is the potential solution.

I am convinced after serving on the Senate Intelligence Committee, chairing the PFIAB and serving there for 8 years, having almost daily contact with the intelligence community, that the problem is not that we don't have enough information. We have too much information.

Our collection modalities are extraordinary. We have both human intelligence and electronic intelligence, as well as the various mapping agencies and other covert operations we run to gather intelligence. The challenge is how do you analyze it and how do you get it in the right place in a timely fashion.

We are a huge country. When you look at the intelligence agencies of other countries, they are so much smaller and they have so much less to deal with. Even they have enormous problems preventing—Shin Vet, which is the civilian part of Mosad in Israel, is having an incredibly difficult time pinpointing terrorist activities and where they will take place.

I believe that the two committees now studying this in closed and soon to be open session are going to have to find a way to establish extraordinarily technical linkage between these agencies in a way that we have never done it before.

For instance, as you know, without getting into classified areas, the National Security Agency has computers that have what is called an artificial intelligence. This automatically detects certain things in which we are interested. Now, we are going to have to do that, both with the FBI counterterrorism department, which is a whole new division being expanded by Director Mueller, as well as at the CIA. We are going to have to turn a giant search light onto some of these issues, so that when information arises, such as the information that arose the FBI about certain activities at flight training schools, it immediately gets on somebody's screen who is responsible for looking at it and can put the pieces together. The challenge is finding the technology to put the pieces together.

Having said that, they have been trying at the agency to do that. The FBI has been vastly underfunded in terms of—or what technology reason, I don't know. They are in 1970's technology in some of their field offices and in their headquarters.

Having said all of that, I want to just make one other statement. I really worry when I hear people saying that if we just have better intelligence, we are going to solve the problem. We are not going to solve the problem with better intelligence. We are facing, as the President says, a war against a group of people that want to do us grave harm. It is not the physical damage they want; it is the terror they want to strike in the hearts of Americans. We are going to have to find a way to deal with that, but intelligence alone is not going to solve the problem.

I have developed a line lately that I guess explains it. What I have been saying is that if you batted .500 in baseball, you would be in the Hall of Fame. If you bat .750 in intelligence, you are a loser. You are not, through intelligence, going to be able to detect all of the bad things that are going to happen, but that doesn't mean we can't try.

The first thing we have to do is to find a solid way to exchange information that deals with terrorist activities both here and abroad. I certainly hope that that is the result that the congressional committees will finally reach.

Senator DEWINE. Thank you, Madam Chairman. Thank you, Senator.

Chairperson FEINSTEIN. Thank you very much.

Just for one quick second round—and I want to move on, but I have to ask you this question. I frankly don't see how we avoid just creating one massive bureaucracy which makes the chain of command even more convoluted than it already is.

The more I think about it, the more I think the way to really go is along the lines that you propose, Senator Rudman, of limited

agencies that come together where the main mission revolves around enforcement or homeland defense kinds of issues; in other words, maybe adding to Border Patrol; whether it is Coast Guard or National Guard, having a military adjunct certainly involving Customs, and maybe taking certain precise parts of a few other agencies.

One of the things that gives me the greatest concern in terms of the morale issue that Mr. Walker alluded to in his comments is that the President's proposal would really give the administration extraordinary and unprecedented powers to terminate unilaterally existing labor agreements and do away with civil service and whistleblower protections for employees in this new department. It seems to me that that is going to create the very morale problem that Mr. Walker indicated we should try to avoid.

Could each of you comment briefly on that?

Mr. RUDMAN. Madam Chairman, I am very supportive of the President's proposal. I understand it is very complex. We thought we submitted an extraordinarily major proposal with the one that we did. In fact, we were told so back before September 11.

I believe that Customs, the Border Patrol, the Coast Guard, and FEMA could keep their identities, could have a single command and control, and could be very effective in a homeland security agency. I cannot speak for the others because we did not study them in any great depth, but I will say this: when I quickly looked at the submission, there is one thing that concerned me, and I am sure it will concern Members of Congress.

I think there were too many assistant secretaries and too many under secretaries, if you look at the organizational chart. I think Mr. Walker's point really plays into this. I think this has got to be lean and tough. I think if you have too many layers of accountability, you end up with no accountability.

I hope that the organizational structure, whatever it is, is modeled after a good management structure, without all of the layers of reporting which will frustrate both accountability, reporting to Congress, and budgetary considerations.

So I do support the President's proposal. Ours is easier to implement, but that is a decision that you will all have to make.

Chairperson FEINSTEIN. Mr. Gilmore, do you have a comment on that, particularly the personnel aspects of it?

Mr. GILMORE. Senator Feinstein, I think it is a real challenge. I think that within the agencies, if the agencies go over in their entireties and stay together, that probably helps the issues of personnel and morale instead of hurts them, would be my first reaction.

I think, and I believe our Commission believes that we need to really be focused on perhaps a little different issue, which is the issue of civil liberties in the country and making absolutely sure that no changes that we make in any way impinge upon the civil liberties of the people of the United States. That is, I think, something that we focused in on very carefully.

As far as our Commission, we believe that the national strategy is the touchstone and that points the direction, and then at that point you examine the question of what management model you really want to implement. We don't come to the table today in op-

position to the President's plan at all, but we obviously recognize many of these challenges.

In our meeting in Indianapolis, we concluded that accepting that the administration and the Congress are going to do an agency like this, we want to be as helpful as we can in terms of thinking about these issues. We solicited this data from our commission members as to what they see as the challenges and what potential solutions are. And if it is constructive, we may very well put it into a document for this committee in the very near future.

I think the logical conclusion is if you are going to transfer the whole agencies, however, which is under discussion right now before the committee, you are going to need some additional assistant secretaries to handle homeland security issues and non-homeland security issues. But perhaps that would be the solution of the managerial challenge that you are facing.

Chairperson FEINSTEIN. Mr. Walker?

Mr. WALKER. My sense is if you started with the Hart-Rudman Commission and you looked at those elements that were proposed by the President that were not in Hart-Rudman, you may find that a lot of those elements make sense to be incorporated and some may not make sense.

Chairperson FEINSTEIN. Like taking the nuclear aspects of Energy, for example, and putting them into——

Mr. WALKER. There are a number of different ones. As was mentioned before, there are 22 different entities that are proposing to be consolidated. It is clearly a very comprehensive proposal, and so to be able to look at the more focused approach was, or targeted, versus the President and to analyze the differences based upon some clearly defined and reasonably applied criteria.

Second, with regard to management issues, I think you absolutely need to minimize the number of layers and levels, minimize the number of entities that you have got to deal with. The more of those you have, the more problem you are going to have in effectuating the transformation over a reasonable period of time, the more problem you are going to have in empowering people and having adequate accountability.

I think you also have to focus that this new organization is focused more horizontally rather than vertically, other Federal, State, and local, and externally, which will be part of the State, local, and private sector. It has got to be focused horizontally and externally in order to be successful.

Last, I would say I think this new entity will need additional human capital flexibilities for hiring, especially in areas of critical skills and occupations, and additional authorities for potentially being able to offer targeted early outs and buy-outs to realign the agency.

Obviously, one of the issues that you raised was the representation issue. I think there are some areas where there could be bona fide national security concerns that would have to come to bear, but I think hopefully those will be minimized because I think part of the problem we have right now is in the absence of more clarity and in the absence of more communication with regard to some of the details about this proposal, people speculate the worst. And when they speculate the worst, by that I mean unions speculate

they are going to be cut out. Employees speculate they may not be able to be handled in the way that they would like to be handled.

Part of the key of any consolidation and transformation—public sector, private sector, not-for-profit sector—is communication, communication, communication. You want to absolutely minimize any expectation gaps and minimize speculation that can undermine achieving your ultimate objective, and that is getting the job done and getting it done as quickly and effectively as possible.

Mr. GILMORE. Senator, would you object if I just added 30 seconds' worth of analysis on that?

Chairperson FEINSTEIN. Not at all.

Mr. GILMORE. What is being talked about here is shaving this down and making it clearer and smaller. That is really what we have been talking about for the last three or 4 minutes. That raises a different issue, however, I just thought I would point out, and that is if you have agencies that are involved with homeland security—take the Coast Guard, for example, which has a major non-homeland security function. What if you don't put them in? Then what happens if an incident occurs that is part and parcel of the responsibilities and duties of the Coast Guard and they are not in?

Chairperson FEINSTEIN. I think that is why Mr. Rudman's commission recommended the National Guard.

Mr. GILMORE. Sure, but the point is that no matter what agency—Coast Guard, National Guard, INS, or anything else—if you have an incident that involves that agency and it wasn't put in, then the question is what kind of challenge does that create for us post-attack?

Chairperson FEINSTEIN. Do either of you have additional questions?

Senator HATCH. No.

Senator DEWINE. No.

Chairperson FEINSTEIN. If not, then let me say thank you very much. This has been very useful and we are very appreciative.

I would ask the next panel to come forward and hopefully we will be able to move on from here. I will introduce the three panelists seriatim here and then call on each of you, and then perhaps we can have kind of an open discussion.

Mr. Paul Light, of the Brookings Institution, is the Vice President and Director of Governmental Studies at Brookings. He currently teaches at Harvard University's Kennedy School of Government and he has written 13 books on government and public service. He is currently directing four major studies efforts at Brookings, including studies on organizational effectiveness and the Federal Government's greatest achievements.

Mr. Ivo Daalder, of the Brookings Institution, is a Senior Fellow in foreign policy studies. He holds the Sidney Stein Chair in International Security. He is a specialist in national security affairs. He has written extensively on the subject and is a frequent commentator on current affairs.

Mr. Ivan Eland is the Director of Defense Policy Studies at the Cato Institute. In that capacity, he has written reports and articles on numerous topics, such as terrorism and homeland defense. Before coming to Cato, he developed a strong career in the public sector, as well, serving as a principal defense analyst at the Congres-

sional Budget Office, an investigator for the GAO in national security and intelligence, and as an investigator on the House Foreign Affairs Committee.

I would like to begin, if I can, with Mr. Light and then just go right across the spectrum. If we could kind of take up where we left off, obviously the major point of reference here is whether the mission would be better served by a smaller, leaner, tougher, less bureaucratic entity than the one proposed by the President.

Mr. Light, would you like to begin?

STATEMENT OF PAUL C. LIGHT, VICE PRESIDENT AND DIRECTOR OF GOVERNMENTAL STUDIES, THE BROOKINGS INSTITUTION, WASHINGTON, D.C.

Mr. LIGHT. Absolutely. I appreciate the invitation to testify. You have my statement. I will focus on that question, as well as the waiver authorities embedded in this legislation.

This is an extraordinarily bold proposal. I am told by sources at the White House that they wanted it to be shorter, only 20 pages rather than 35, but there is an awful lot in it by implication.

As I say at the beginning of my statement, history suggests humility as we do these kinds of reorganizations. This is a very large reorganization. It is larger than the President indicated. We are talking about 200,000 employees, probably 210,000, not 170,000. The President's estimates were based on the current work force at Transportation Security of 41,000. Transportation Security is already talking about 70 to 75,000 as their ultimate work force size. We are talking about a very large Federal entity here.

In my testimony, I talk about whether this should be done. I will skip that question.

The second question is, is it too broad? The answer depends entirely on whether it can be managed, I believe. I am going to leave the question of breadth to Ivo. I argue here in my testimony that it might be better to focus more on border security, but I am going to defer to my colleague, who has taught me more about that and can teach all of us a little bit more.

I should note that it is nice to have a Brookings colleague next to me. We have got a Cato colleague. I am assuming that doesn't mean it takes two Brookings fellows to equal one Cato. I am hoping it means we have got twice as much to say, but I will leave that to the subcommittee.

The question I bring to bear here is can this entity be managed. The White House is saying yes and no. The bill itself has an extraordinary number of significant waivers from contemporary statute in order to help the secretary manage this entity. Let me talk about three.

The reorganization authority under Section 733 would give the Secretary of Homeland Security the ability to consolidate, establish, terminate, basically move any entity within the homeland security department, even ones established by statute, with 90 days of notice to the U.S. Congress. That is a far broader reorganization authority than anything we have seen in statute since the Department of Education, and the White House rightly notes that the Department of Education did have this authority.

The Department of Education has less than 500 employees and has a very, very targeted mission, and we saw a lot of its pre-performance as part of the old HEW before we created it.

I am very concerned about this reorganization authority. I would refer the Senator to proposals being discussed in Governmental Affairs, particularly by Senator Thompson, on giving the President reorganization authority, properly circumscribed.

The second issue is on the number of appointees. There is a large number of appointees in this department. As a staff member of Senate Governmental Affairs back in the late 1980's when we elevated the Veterans Administration to Cabinet status, we put a number of caps in the statute to reduce the potential thickening of the department. I would recommend a quick return to that statute, the Department of Veterans Affairs Act, to see how we managed to constrain the number of appointees.

I would also note that there are a number of appointees here in this department that are not subject to Senate advice and consent. There are ten assistant secretaries, for example, that are appointed by the President and serve at the pleasure of the President, and I do not believe the Senate can allow that particular waiver to stand. That would be the first time we have appointed assistant secretaries in history without Senate confirmation.

The third waiver is on civil service. I have great confidence in the Office of Personnel Management, in Kay Coles James and her deputy, Dan Blair. They are deeply committed to improving the civil service system, but I do not believe this waiver can be left in statute. It is extraordinarily vague.

I believe that employees in the new department would spend far too much time trying to interpret just what it means to have a flexible and contemporary personnel system. Congress is fully capable of writing into law the appropriate waivers to allow the Secretary of Homeland Affairs to have the needed flexibility to move quickly in hiring, to have the needed flexibility for critical pay authority, which we gave the Internal Revenue Service in 1998, and to provide for voluntary buy-outs.

Much as I applaud the notion that we should give the secretary maximum flexibilities, I think Congress is fully capable of writing those flexibilities with more precision so that we don't spend the first year of this department trying to sort it all out and so that employees focus on the mission, not on figuring out what kind of personnel system they will, in fact, have.

Thank you very much.

[The prepared statement of Mr. Light appears as a submission for the record.]

Chairperson FEINSTEIN. Thank you very much, Mr. Light.

Prior to going to Mr. Daalder, we would like to welcome Senator Specter. Senator, do you have a statement you would like to make at this time or would you rather wait?

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Well, thank you very much, Madam Chairman. I commend you for convening these hearings. I am not a member

of this subcommittee, although in prior Congresses I had chaired the subcommittee.

I do think it is a matter of enormous importance, and the full committee is going to be hearing from Governor Ridge tomorrow and it is my hope that we will be able to bring within homeland security the analysis functions of all of the intelligence agencies so that in one spot there will be a focus on all of the available intelligence, because as factors are developing it is becoming more and more likely that had everything which was known prior to 9–11 been in one spot and under one focus, that event might well have been prevented.

I commend Senator Feinstein for her work here, as usual. I had wanted to come earlier, but we have many, many competing committees, but my staff and I will be reviewing the transcript.

Thank you for the opportunity to say a word or two.

Chairperson FEINSTEIN. Thanks, Senator Specter.

Mr. Daalder?

STATEMENT OF IVO H. DAALDER, SENIOR FELLOW, FOREIGN POLICY STUDIES, THE BROOKINGS INSTITUTION, WASHINGTON, D.C.

Mr. DAALDER. Thank you very much for inviting me here. Let me sum up the prepared statement that you have before you and focus, in particular, on the question, Senator Feinstein, that you asked at the outset, whether the mission should be narrower and the number of agencies should be narrower than the President has proposed. I would answer that question, yes, for sure.

There are four pillars in the President's proposal. I think one of those ought to be the immediate focus; that is, the border and transportation security function. That is the pillar which everybody agrees needs to be coordinated and consolidated, from the Hart-Rudman Commission to the bill that Senator Lieberman and Senator Specter introduced in late October last year and again reintroduced in May, to the Brookings Institution.

In our study, which came out in April, we proposed the creation of a border agency at the Cabinet level which would combine Customs, the Coast Guard, the enforcement arms of INS, the agriculture quarantine inspection agency, APHIS, as well as the Consular Affairs Bureau of the State Department, which for some inexplicable reason the President has left out of his proposal.

We would support and go further with the President and also include the Transportation Security. After all, borders and transportation are inextricably linked. It is the people and the goods moving over transportation routes that cross borders. So the idea that the President has proposed of linking transportation and border security is a good one. Including the transportation Security Administration is something that I think is exactly the right way to go.

That, by the way, would get you 90 percent of the personnel and two-thirds of the budget of the proposed new department. Border control and transportation security account for virtually every person that is going to be in this new department, 92 percent of the people, and something like 66, 67 percent of the budget.

The other agencies that are to be part of this, the other three pillars—the response pillar, the chemical, biological, radiological and

nuclear countermeasure pillar, and then the information and critical infrastructure analysis pillar—only account for about 8 percent of the people to be put into this department. The question is: Should we move those into this agency? The answer, in most cases is going to be no.

Take, for example, FEMA, which I know the Hart-Rudman Commission——

Chairperson FEINSTEIN. Are you saying you shouldn't move those parts of Energy that you were talking about? I didn't understand.

Mr. DAALDER. The parts of Energy, the parts of HHS, the parts of the Agriculture Department that have some role in homeland security, but also have many other things to do. For example, the Plum Island animal disease facility has a particular role in bioterrorism. They also make sure that zoo animals and circus animals don't have particular diseases.

Putting them all under the Department of Homeland Security brings within that department multiple functions that have nothing to do with homeland security and might as well stay where they are. In fact, moving them over, in general, is probably going to create more problems than it is worth.

Chairperson FEINSTEIN. But you are saying with respect to Energy, take those functions that are related?

Mr. DAALDER. I would leave those where they are.

Chairperson FEINSTEIN. You would not take the nuclear part of this?

Mr. DAALDER. I would not take the nuclear part. I would not take the bioterrorism part out or HHS and split what is now a unified, consolidated whole. These are problems that are larger in some ways than homeland security.

The problem of the proliferation of weapons of mass destruction and the way we are going to prevent those weapons falling in the wrong hands and then dealing with them if they come into our country, if they get stolen and if they get used, are massive problems that I am not convinced ought to be part of the Department of Homeland Security.

Doing border and transportation security is going to take a major, major effort. Getting that one right in the first instance ought to be something that one ought to focus on. If, over time, it turns out that you want to add to this, I think Congress may well want to consider this. But to move in the next months, which is what we are talking about, weeks really, and take 22 very disparate agencies and put them all into this one department without really having gone through what the consequences are, I think, is a bridge too far, and I would stick with the border and transportation security for the moment.

If I may, two other points to add to that. On the information analysis piece, a lot has been said about it. If you are not going to share raw intelligence and law enforcement data, then fusing the intelligence is not going to work.

The proposal that the President has put forward is to give this agency, this new analytical unit, not the raw intelligence data, but analytical product, analytical product that is by definition based on less than all the data that is available.

As Senator Specter, rightly said and as Senator Rudman said earlier, if you are going to get people to look at the whole set of data, they have to look at the whole set of data. And unless you are going to find a way to get these people together and analyze all the data, it may be better not to move——

Chairperson FEINSTEIN. So what would you do in that regard?

Mr. DAALDER. Well, you really need to create a much larger unit than is being considered under the legislation. Some 1,000 people, the President has proposed, are going to come into this pillar, almost all of whom are related to critical infrastructure protection, almost none of whom are the kind of skilled intelligence analysts that you would need.

I think that the CIA and the FBI and the other parts of the intelligence community ought to have the data handed over to a single unit that has all the data, scrubbed for sources and methods of course, and for law enforcement and civil liberties reasons in the way that it needs to be, but raw data, not analytical product, and then allow technology and people to really sift through it and try to connect the dots in the way that hopefully would have happened if we had shared the data. But to share only analytical product, assessments and reports that are in themselves based on incomplete sets of data, is not going to solve our problem.

Finally, if I may, just to concur with what Governor Gilmore said earlier. However big this department is, whether it is as small as I would like to have it or as large as the President is proposing, there are going to be far more agencies dealing with homeland security outside of it than inside.

One hundred agencies in the U.S. Government in some way or other have a role in homeland security. Twenty-two of those are being proposed to be put into the department, which means three-quarters are being left out. Somebody needs to coordinate that. That "somebody" has to sit in the White House. The Office of Homeland Security will maintain and continue to have a role, but for reasons that Governor Gilmore laid out, that person, that office, and indeed the Homeland Security Council ought to have statutory authority so that the person who is drawing up the national strategy, who is putting together the homeland security budget, can come before the Congress and be held accountable and explain to the Congress how all of this is supposed to work.

With that, let me end my statement.

[The prepared statement of Mr. Daalder appears as a submission for the record.]

Chairperson FEINSTEIN. Thank you very much.

Mr. Eland?

STATEMENT OF IVAN ELAND, DIRECTOR, DEFENSE POLICY STUDIES, CATO INSTITUTE, WASHINGTON, D.C.

Mr. ELAND. Thank you for allowing me to have input at this hearing. It is a pleasure to be here.

The short answer to your question of whether a smaller, leaner, less bureaucratic entity is better than the Bush plan—is "yes". I think we are in an age where we face a threat from Al-Qaeda and other terrorist groups that is unlike the threat from nation states.

The advantage that we had when battling nation states such as the Soviet Union and Iraq, was that they had governments that were probably more bureaucratic than ours. Terrorist groups are very agile and nimble. They are on the offensive. They know where, when, and how they will attack. So I think more government is worse than less government in this case. So anything that we can do to increase the agility of our Government and reduce the bureaucracy is good.

The problem with the Bush plan, and history bears this out, is that consolidation of agencies doesn't necessarily mean less government or more efficiency. When you have a large department, you have to build a superstructure on top of all the disparate agencies you are bringing together. The more agencies you put in there and the wider variety of functions, the more bureaucracy you have to have on top to control the cacophony of interests. I think this happened in the 1947 Defense Department restructuring. This was held up by President Bush as a good example. I am not so sure that it is.

Now we have an Office of Secretary of Defense that has a bloated bureaucracy itself. The efficiency of the Defense Department has been compared to Soviet Central Planning by the Secretary of Defense himself. The OSD does not rein in the military services. It is still a very weak bureaucracy but it is a big bureaucracy nonetheless.

So I think the Bush plan has the potential to actually increase government. And when we increase government and the amount of people involved, we of course develop coordination problems, which seem to be the main problem that we have seen so far. I do stress that that is a preliminary determination I think, based on what has been happening in the Intelligence Committees. We are in a rush here to solve a problem which does not seem to be the main problem—that is the intelligence problem.

Now what does the Bush Plan do about the intelligence problem? Well, it creates another bureaucracy within the Department of Homeland Security, which will probably be a rival bureaucracy to the CIA and the FBI. Of course, the new agency is are not getting raw intelligence data, but they will be another competing analysis center.

What we are doing is pasting before cutting, and what we need to do is cut before pasting. When you get the super bureaucracy, you are going to have, as I mentioned before, a super structure on top. You are also going to have a very powerful agency head who has one of the largest departments in the government. He is going to be an advocate more personnel and more funding. Whether that money will be efficiently spent or wise is another matter.

So I think what we need to do is pare layers of bureaucracy. Maybe, perhaps, get some of these 100 agencies out of homeland security. When we have an incident involving weapons of mass destruction, I think we are going to have chaos. God help us if we ever have that, which we hope we do not. I think consolidation of agencies is fine, to a certain extent. I am certainly not opposing that, but I think the President is very coy about the cost of his plan, and I think most analysts would say that it is probably going

to cost more, rather than less—given all of the assistant secretaries, and under secretaries in the bureaucracy.

So, in the President's plan, we may have fewer agencies, but more government. Of course, the more government we have, the more stodgy and nonagile we are going to be in fighting these terrorists.

In intelligence, I think the main problem is not that we do not have the collection resources. We collect huge amounts of data. Someone on the earlier panel said—I think it was Senator Rudman, who has been on the Intelligence Committee—we have too much information. What we need to do is put it in one place, and analyze it, and get it to the people who can do something about this.

The other problem I see with the Bush plan is that it puts an intelligence function in a policy agency. I think there are inherent conflicts of interest there, as we have seen with DIA 's excessive threat assessments justifying Defense Department weapons. Furthermore, we are not getting rid of the White House Office of Homeland Security, the Homeland Security adviser or the Homeland Security Council. We seem to be piling new bureaucracy on top of new bureaucracy.

So, in short, I think the answer to your question is that the leaner and less bureaucratic that we can be, the better. But I think that is going to probably go beyond just creating a smaller department. I think we actively need to ask whether some of these agencies need to be in homeland security and exactly what they are doing, and I think we need to go agency-by-agency to determine whether they need to go into this new department. Some of them, like the Coast Guard, may go in, but keep their other functions. The Coast Guard has a fleet of ships doing multiple missions. Other agencies may have parts that you can take out for the new department. But perhaps we should determine whether some of the agencies need to be in the new department at all doing the homeland security mission.

Thank you.

[The prepared statement of Mr. Eland appears as a submission for the record.]

Chairperson FEINSTEIN. Well, I thank the three of you.

I am beginning to really look at this proposal with a great deal of skepticism as to whether it can really work or not, whether it is not so big that the time it will take to work out the wrinkles is extraordinary, and combined with the personnel issues, kind of sets it up as almost an impossible agency with respect to governance.

I repeat what I said before, and that is that the original thrust of this was to give the Director of Homeland Security the ability to move chessmen across the board and the ability to have some strength to set certain missions, and that was the budgetary and statutory authority that we talked about. Now we have got this huge mega, mega agency, but what really surprises me, Mr. Daalder, is that you do not think that there are elements of the Energy Department that should be in the Agency.

We are going to be transporting high-level nuclear waste all around this country. Our nuclear facilities are a real problem in terms of providing defense against attack, and I, for one, as I look

at this, have a hard time conceiving of a Homeland Defense structure that does not include this part, which obviously it needs defense against some kind of terrorist attack. Why do you come to the conclusion that one should not include this?

Mr. DAALDER. There are many vulnerabilities in our country that terrorists can exploit. If every Government agency that has some responsibility for these vulnerabilities is to be included in the——

Chairperson FEINSTEIN. But I am talking about the nuclear one which has a much greater impact on people.

Mr. DAALDER. But there are many Government agencies, from DOD to DOE to the labs, that have responsibility for nuclear, both weaponry and energy sites, with all of the materials that are there. There are many ones that have responsibility for dangerous pathogens which, if released under the right circumstances, will kill more people than nuclear. There are many, many, many agencies involved in homeland security, and it is wrong to believe that the only way you can get them to work together is by putting them in a single building with a new seal on it.

Coordination is the name of the game—a single national strategy that sets out the clear priorities, one of which will clearly be the safety, and security, and protection of nuclear energy waste sites, and particularly if we are ever going to start moving this stuff around the country, the protection of the transportation routes and the transportation systems that are going to move this stuff, that is going to be a top priority for the country.

It is not clear to me that you have to have a department that takes control of it. I have been a strong supporter from the very beginning of having a Tom Ridge-like organization inside the White House, somebody who sits there, as Governor Gilmore rightly said, who can coordinate the Cabinet people, can use the power of the presidency to get things done. I am distressed, in some sense, that 9 months after September 11th, we still do not have a national strategy. We still do not have clear priorities about where it is that we need to focus our resources, our abilities to deal with threats and vulnerabilities, but now we have this massive reorganization plan completely unrelated to our prioritization, which we have not had, and that is——

Chairperson FEINSTEIN. Let me stop you here and ask each one of you because I think Mr. Daalder has raised a good point. We are supposed to have a strategy. Is this putting the cart before the horse; in other words, are we repositioning departments before we have a strategy? That has not yet been forthcoming, and you are right, it is a substantial period of time.

Could each of you respond to that. Should we have the strategy prior to making these organizational changes.

Mr. Light?

Mr. LIGHT. Well, that is the ideal case. Twenty-five years after creating the Department of Energy to coordinate and deal with the moral equivalent of war for energy independence, we still do not have an energy strategy. We are looking for one. The Vice President spent a good deal of last year apparently looking for one. We would, ideally, have that. That does not mean you cannot get benefits from reorganization, but there is an implied sort of undertow in this statute and in this conversation that if you build it, the

strategy will come. I am not saying that is the cart before the horse. That is more a notion that we have got to get some coordination and that our agencies are not working very well, particularly INS, and that we need to do something about our organizational capacity even before we have the strategy in place.

Chairperson FEINSTEIN. Thank you.

Mr. Daalder and then Mr. Eland.

Mr. DAALDER. Clearly, in the ideal situation, you have a clear strategy with clear priorities and you organize accordingly. That is what we did when we put our study out at the Brookings Institution. We do have a strategy. We have a vulnerability assessment, and we have organizational consequences that flow from that.

I would note that is not how this administration has gone about it. This proposal, which Mr. Ridge told the National Journal just a month ago he would veto or recommend the President to veto, has come very suddenly, very hastily, I believe in response to particular political developments that have very little to do with the organizational questions. Therefore, it is incumbent on all of us, including, in particular, you here on Capitol Hill, to take a very close look at this, whether it really makes sense and at least demand from Mr. Ridge to see the strategy that underlies it. He says there is a strategy. That is what he told the House 10 days ago, but we have not seen it. The President has not seen it. He has not delivered it to the President.

I think, before you can make final judgment about whether this agency or that agency ought to go into a new department, you have to have some sense whether the administration is barking up the right tree or the wrong tree when it comes to its strategy.

Chairperson FEINSTEIN. Thank you.

Mr. Eland?

Mr. ELAND. Well, certainly, in the ideal case you want a national strategy first, and I think we should make this the ideal case. We have been attacked by terrorists and taken mass casualties. If there was ever a time for the government to do the right thing, this is it. Whether we will do the right thing remains in doubt.

I think, as Mr. Daalder just said, they are trying to solve a different problem than the main problem—the coordination within intelligence agencies and between them. I think the government reorganization is designed to divert attention from the real problem that we need to solve first of all, We need to wait until the Intelligence Committees has finished their work before we start proposing grandiose schemes like this.

That said, maybe we do eventually need to consolidate some of the agencies in homeland security. But I think we need to figure out what the main problem is. Naturally, we know that we are being attacked by terrorists, but what was the specific problem that allowed them to surprise us so much? That is what we need to find out. Then we need to develop a national strategy, and I think we need to take it much slower than we are taking it. We may need to eventually address the problem that the Bush administration is addressing—consolidation of the homeland defense sector—but we need to work on the intelligence side first I think.

So the answer to your question is, yes, we do need to know what we are doing before we do it and why we are doing it.

Chairperson FEINSTEIN. See, I am very concerned because we are really creating two additional intelligence-type functions, and the FBI now, in this new department, we have got 12-plus departments that deal with intelligence matters. They are all under the director of so-called DCI, who cannot run the CIA, run all of the intelligence community and be in the Middle East negotiating a peace agreement, it seems to me.

So I think we have got a very fragmented kind of system, with respect to intelligence, and my concern is that we are making it more fragmented, rather than less fragmented, because the bits and pieces a day are in the tens of thousands that have to be looked at. Therefore, if you just add two other agencies—FBI and now Homeland Defense—what is achieved? It seems to me it is just simply a signal that there has not been the communication, and everybody is going to try to get around it by not improving the communication and integration of computer systems, but by doing their own thing. I am not sure the Nation is necessarily benefited by that.

So I think you have raised some very, very good points. I think it is so easy to let a proposal slip by because of the prestige of the President and the fact that we all want to be together, without really taking the kind of look at it that we need to look and letting time settle some of these things down a bit.

Do any of you have any other comments you would like to make before we adjourn?

Mr. LIGHT. I think that the point about legislative time is right on target. I mean, I worked up here, and there is a sense that when a proposal like this comes forward, it just carries a locomotive velocity, and then it gets tied to a date. People start to say it has got to be passed by September 11th because that is the way to honor the victims of that terrible day.

It is hard to resist that pressure, but I think that that is the job of the U.S. Congress, and I often say that that is the particular job of the U.S. Senate. You are responsible in this chamber for confirming all of these people. And it has always been the Senate—and I hate to say this—that has been the place where the buck on reorganization stops. It tends to come over from the House or down Pennsylvania Avenue, and it comes over to you all, and it is a tough one here because of the national visibility attached to it, but once you create one of these things, there is a certain immortality attached to it.

So I applaud you for this hearing and for asking the right questions, I think.

Chairperson FEINSTEIN. I have not had a chance to see your remarks, but do you go into the specifics on the waivers in your remarks?

Mr. LIGHT. Yes.

Chairperson FEINSTEIN. I will pull it and take a look at it. Thank you.

Mr. Daalder, any?

Mr. DAALDER. Let me make two points. One is I think there is widespread agreement, even on Capitol Hill, there certainly is in the outside community, and there is inside the administration, that on the border and transportation side, something needs to be done.

It is what Hart-Rudman came out with, it is what everybody has agreed on, and it might be the element you can move quicker on, than on the whole thing.

One way to resolve the political tension that I think Paul has rightly put before you is say, we are going to move on 90 percent of what you asked, Mr. President, which has to be the border and transportation side. It makes sense. We are going to do it. We are going to make it a Cabinet department, but all of this other stuff, we are going to spend some time thinking about it. On the information side, we are going to wait to see what the Intelligence Committees come up. Some of us still believe we need a national commission to look at this in some great detail before we start making new decisions and pouring new concrete about how to resolve those issues.

The second point is I am concerned, and deeply concerned, about the fact that the White House is right now spending all of its time trying to get you to pass this piece of legislation and none of its time on what is Tom Ridge's day job, which is leading, coordinating, and mobilizing this Government to make sure that this country remains secure.

I think that if Tom Ridge is going to lead the transition effort on convincing Capitol Hill, on convincing the outside world that the proposal that the President put forward on June 6 is the right way to go, somebody else, a senior official at a high level needs to be in charge of the Office of Homeland Security because the terrorists are not going to wait until we have figured out how we are going to rearrange the boxes on an organizational chart. In fact, they may well exploit the opportunity, as we are busily figuring out where to build our new buildings and who should and should not be in it, in order to look at that vulnerability, and we should not lose sight of that. If we are, indeed, in a war, that war is still ongoing. It is not going to wait until we figure out our final decisions and reorganization.

Mr. ELAND. I would echo some of Ivo's comments. I think we cannot get too diverted from the main tasks. I do think the intelligence task is probably the most urgent—to figure out what happened there so we can correct any problems. The other stuff can probably wait, although I think we need to be very vigilant. There is currently a lot of effort in Washington. Whenever the President proposes something like this, all of the attention focuses on moving organizational boxes: but that does not necessarily mean that we are going to have better security or better security quickly.

I do applaud the Congress for looking at this. The urge to be together is certainly high after a tragic event like this, but if we are, I think we may be in great peril.

Some people have to ask questions, for example, is this the right thing to do. We cannot be afraid to ask those questions just because we have had a horrendous event occur. Our country is based on discussion and determining what we should do—both the executive branch and the Congress together debating the issues.

So I think we need to definitely take more time to look at some of these issues. We need to solve the things like intelligence that really matter in the short term, but slow it down a bit on the government reorganization.

Chairperson FEINSTEIN. Right. Well, let me thank you very much. I, for one, am becoming increasingly convinced that we should have at least one alternative proposal, which is smaller, which is more discrete, which is more concentrated, which is doable quickly, which does not have personnel implications that can create the climate that we all know can be created in a bureaucracy that makes the mission more difficult. So I am going to try to work in that direction and would appreciate any advice that you might be able to provide, the three of you, as we approach this.

I think the point is that, to a great extent, parts of INS should go in this, certainly, the enforcement parts, most probably the visa parts. We ought to look certainly at part of the State Department Consular Affairs with respect to visas. If you want to protect the homeland, let us keep hijackers out, if we can. Ergo, perhaps adding that.

Certainly, whether it is National Guard or Coast Guard, there needs to be one element there, and I think you are right about the transportation agencies, certainly Customs. I am still undecided on the nuclear aspects of it because I think protection of reactors, protections of waste, all of those things become vital, maybe even some parts with respect to biological and chemical weapons. I think there has to be some role for this.

So that it is probable that a more discrete, in terms of size, agency might make sense, and I am going to try to see what I can do to work on that and appreciate any input that you could provide.

In the meantime, thank you so much for being here, and the hearing is adjourned.

[Whereupon, at 12:04 p.m., the subcommittee was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

Prepared Statement before
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June 25, 2002

By
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Madame Chairwoman, Senator Kyl, members of the committee, it is a great pleasure to appear before you today to discuss the president's proposal for reorganizing the homeland security effort. This and the many other hearings that are taking place on Capitol Hill are vitally important for making sure that the Congress and the president together reach the right decisions on how to reform our federal government effort. The president earlier this month proposed a massive reorganization effort—larger than any other such effort since Congress passed the National Security Act of 1947 resulting in the Department of Defense, the Central Intelligence Agency, and the National Security Council. The president's proposal, even by its own account, was drawn up hastily and without expert input. It is therefore incumbent on you and the other members of Congress to give the proposal the thorough scrubbing and expert analysis it needs. Doing so, is likely to take some time—months, rather than weeks.

The President's Reorganization Proposal

By its own account, the Bush administration only seriously considered the possibility of reorganizing the federal government in late April 2002—more than seven months after the horrible events of September 11. Up to that point, the administration

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believed that the establishment of the Office of Homeland Security (OHS), the Homeland Security Council (HSC), and the appointment of former Pennsylvania Governor Tom Ridge as Director of Homeland Security by executive action in October 2001 met the organizational needs of the federal government. There was some interest in consolidating border security functions—but an effort by Ridge to convince key Cabinet members of the value of merging Immigration and Naturalization Service (INS), the Customs Service, the Coast Guard, and the Animal and Plant Health Inspection Service (APHIS)was rebuffed the Department heads most immediately affected by such a merger.

Worried that Tom Ridge was losing out in internal bureaucratic battles, White House Chief of Staff Andrew Card suggested to the president that he lead a small, secret White House effort to examine reorganization options. That effort started in late April. It was conducted in absolute secrecy, involving only a very few White House aides. It received no input from experts within the administration, the Congress, or outside the government. And it was completed even before the administration had decided on its homeland security strategy, which Ridge promised he would deliver to the president some time this summer. The result of this effort is the proposal that is now before us.

Despite the hasty way in which the president's proposal was developed, the administration now wants Congress to move expeditiously in giving its approval. There are even voices in Congress hoping that legislative action can be completed by the time of the one-year anniversary of the World Trade Center and Pentagon's attacks—now just a few legislative weeks away.

However, it would be a mistake to move without a thorough review of the particulars of the president's proposal. Congress and the president need to get it right the first time. It is unliekly that anyone will get a second chance—and certainly not one that will enable a look at the problem and opportunities in as much detail and as comprehensively as is possible right now. If that means a few months of delay, so be it. The president and his administration waited more than seven months to examine these issues—Congress now needs to take the time to get it right.

Getting Some Things Right Several elements of the president's proposal meet an important need. This is especially true for the proposed consolidation of border security functions—bringing into a single agency six critical tasks that are presently housed in five different government departments. Every other reorganization proposal—from the Hart-Rudman Commission in early 2001 to Tom Ridge last December to legislation introduced by Senator Lieberman, Representative Thornberry, and others last year to the proposal we at the Brookings Institution put forward in April—called for consolidating border security functions in a single agency or department. The need for a "common face at the border," as Governor Ridge has frequently argued, is both widely agreed upon and urgent.

The administration's decision to include critical transportation functions in this mix is also very much to be welcomed. Although borders may be static, the people and goods that cross them use the air, rail, road, and sea transportation routes to move from points abroad to the U.S. interior. Border security is of necessity a dynamic, not a static activity. Take the example of foreign visitors. It clearly makes sense for the new department to decide who should be allowed entry into the United States by determining whether or not a person can get a visa, to control border crossings to make sure only those with a valid visa actually enter, and to make sure that persons having entered the country do not overstay their visas. The committee should therefore revisit the administration's decision not to include the State Department's Bureau of Consular Affairs in its proposed merger, even though consular officers are responsible for administrating the visa issuance process.

On its own, consolidation of the border and transportation functions is already a massive undertaking. Over 90 percent of all the people to be housed in the president's proposed Department of Homeland Security will be responsible for just these two functions. And nearly 65 percent of the proposed department's budget will go to these tasks. If on top of that, the critical infrastructure protection tasks—which are functionally akin to transportation security—were also to be included, then much of what the president has proposed to consolidate will have been accounted for. That, in turn, raises real questions about some of the other components of the president's proposal.

Some Real Questions Remain

It clearly makes sense to consolidate into a single entity those agencies responsible for the security of our borders, transportation routes, and critical infrastructure that are now widely dispersed throughout the federal government. But the president did not stop there. Other key functions related to the terrorist threat at home—from intelligence analysis to training first responders to chemical, biological, and nuclear countermeasures—are also to be included in the new department. And with all these agencies come tasks and functions that have nothing to do with terrorism—fighting counterfeiting, ensuring the health of zoo and circus animals, rescuing mountaineers, responding to national disasters, and researching infectious diseases, to name but a few—all of which are now to become the responsibility of the Secretary for Homeland Security.

Before Congress moves to accept the administration's proposals wholesale, it needs to take a careful look at some of the specifics and the consequences that might flow from them. Three issues in particular stand out: the scope of the department, the information analysis function, and the role of the White House in ensuring government-wide coordination of the homeland security effort.

Should the Department Mix Apples and Oranges? Although the vast bulk of the proposed department's personnel and much of its budget will go to secure the nation's borders and transportation infrastructure, most of the agencies and functions the Bush administration proposes to merge into the new department address other aspects of the homeland security problem. Thus, a second pillar of the proposed department (built around the Federal Emergency Management Agency) deals with responding to attacks that have taken place, a third addresses chemical, biological, radiological, and nuclear (CBR&N) countermeasures, and a fourth responds to the need for integrating analysis of law enforcement and intelligence information.

While each of these pillars are responsible for some aspect of homeland security, it is not immediately obvious that all of them need to be responsive to a single Cabinet secretary. Take FEMA. This is one of the best run federal government agencies. It has excellent record, gained through years of responding to natural disasters, of dealing with state and local government entities and first responders. In its FY2003 budget, the Bush administration proposed that FEMA take central control of all training and grant programs for first responders, providing state and local authorities with the kind of one-stop shopping and integrated training program they have long demanded. Why, then, tear an agency with such a successful record from its roots and integrate into a much larger bureaucracy, with new command and control lines? Much of its day-to-day responsibility has nothing to do with terrorism—and whatever responsibility it does have for this area is fundamentally different from the preventive and protective counter-terrorism functions of other parts of the proposed department. No one proposes to merge the diplomatic functions of the State Department with the military functions of the Pentagon, even though both have a role in national security policy—including in countering terrorism. Might it not be better, then, to leave FEMA be, and coordinate its counter-terrorism role as part of a well-functioning interagency process?

A similar set of questions arises in the case of the proposal to merge various CBR&N countermeasure activities into the department. To be sure, as the anthrax mailings showed, terrorism using weapons of mass destruction is a serious problem demanding our government's highest attention. We need to do much more in making sure terrorists cannot get their hands on such weapons or the materials needed to manufacture them—be it through more intensive non-proliferation measures abroad or tighter controls of dangerous chemicals, pathogens, and radiological/nuclear materials here at home. But none of these efforts is to be the responsibility of the proposed new unit, which is instead to coordinate the research and development of technologies and other measures to counter this threat here at home. In so doing, the proposal at times move in the opposite direction of what is needed—for example, when it proposes to take some of the bioterrorism work being done under the auspices of the Department of Health and Human Services, but not other parts, thus splitting functions that are now bureaucratically consolidated. It may well be the case that the federal government needs to consolidate its many, dispersed activities for dealing with the threat of

weapons of mass destruction. But it is not at all evident that this should be done as part of a new department dealing with homeland security.

These are but two particular areas where the Bush administration proposes to mix different functions within a single department. There are others, notably all the non-homeland security functions that are now part of agencies to be merged. Congress needs to take a careful look at each of these proposals and determine whether the costs of change are worth the supposed benefit of integration.

Can Information be Analyzed without Access to Raw Data? Responding to recent revelations about data sharing problems within the FBI and between it and the CIA, the administration proposed to include in the new department an information analysis unit that would provide the fusion of disparate pieces of intelligence and other information data that until now was so evidently missing. This fusion is a good idea in principle. Today, there is no single entity in the government that has access to all the data collected by the intelligence community through wiretapping, spying, and other means abroad, by the FBI and law enforcement community through interrogation, surveillance, bugging, cybersurfing, etc. at home, and by the various border agencies through visa screening, manifest recording, and various other data gathering activities. The new information analysis unit is supposed to fill that niche.

But will the new unit be able to do its assigned task? As proposed, the answer is no. The new unit will have access only to FBI and CIA "reports, assessments, and analytical information relating to threats of terrorism in the United States," but not to any of the raw intelligence or law enforcement data on which these analyses and assessments are based. But that defeats the whole purpose of the new unit, for the analyses it receives are themselves based on incomplete information—reflecting, in the CIA's case, only the raw intelligence data the intelligence community has collected plus whatever other data the FBI and others may have shared with it and, in the FBI's case, only the law enforcement data it has collected and whatever other data the CIA decides to share with it. In other words, the analyses the information unit will receive and that are to form a major basis of its own assessment may be faulty because the underlying data would not have been adequately shared. The only way in which the data sharing problem can be overcome—and a true fusion of intelligence and law enforcement information can occur—is if the department's proposed unit were to have access to all the data that forms the basis of the assessments and analyses it otherwise is to receive. Recognizing this problem, the administration suggests that the Secretary of the Homeland Security Department can request copies of specific pieces of raw data—but, of course, one cannot ask for information that one doesn't know exists!

Only if the proposed unit has access to all relevant raw intelligence and law enforcement data is there a chance that someone can connect the dots that might otherwise remain unconnected. Given the amount of data that comes into the various intelligence and law enforcement agencies, this is mammoth task that will likely take

many thousands of skilled analysts to get the job done. Yet, according to its own figures, less than 1,000 people will be assigned to the Information Analysis and Infrastructure Protection Agency, and nearly all of those will come from agencies responsible for critical infrastructure protection. In other words, unless the new Secretary decides to hire thousands of new analysts, the proposed department will not have the ability to examine much of the information that will be coming its way—let alone the raw data that should be made available to it.

The questions of data access and available analysts suggest that the larger issue of how best to combine intelligence and law enforcement information collection and analysis efforts is unlikely to be easily resolved. There are critical questions of competencies (with the intelligence community allowed to collect data only abroad and the FBI focused on collecting data on crimes committed at home), questions of imagination (with the need for inventive people to second-guess—"red team"—ways in which the terrorists might choose to attack the next time), and questions of civil liberties (with data collection efforts constricted by the need to ensure the privacy and liberty of law-abiding citizens). These are very serious issues that Congress should debate in detail and with sufficient time. When it does so, it is unlikely to come up with a small information analysis unit that will only have access to work product, but not routinely to raw data, as the appropriate answer. It is, instead, likely to reach well beyond the confines of the proposed new department.

What is the Role of the White House Office of Homeland Security? By the administration's own reckoning, over 100 U.S. government agencies are in some way involved in the homeland security effort. The proposed department merges 22 of these agencies—leaving more than three-quarters of all homeland security agencies outside the new structure. As a result, there will continue to be a need for someone to coordinate the multiple agencies and activities involved in the effort. The Secretary of Homeland Security would presumably want to take on that task, but it is not very likely that his or her counterparts at Defense, Treasury, Justice, HHS, State, and elsewhere would look kindly on seeing their roles and activities coordinated by one of their own. Interagency coordination by Cabinet secretaries has never worked particularly well in the past and it is not likely to do so now.

That means something like the existing White House-based operation must remain in operation. The president would like the existing structure to remain in place. Set up by Executive Order last October, this structure consists of a homeland security council composed of the president and his senior advisers, and a homeland security office and director who advise the president and manage the interagency process (including that of the HSC). It is a process that can, in principle, work effectively, as the national security decision-making process (on which this is modeled) has shown. But so far it hasn't. More than nine months after the terrorist attacks, the OHS still has not delivered the president and the country the national homeland security strategy that according to the Executive Order, is its job one. Tom Ridge proposed a major

border security reorganization over six months ago, only to be shot down by his colleagues at Justice, Treasury, and Transportation. And rather than using the HSC inter-agency process to consider a major reorganization of the homeland security effort, the White House decided to go around it and to shut out the very administration officials who possess the greatest expertise in these matters.

If the president's proposal for a new department becomes a reality, this brief history suggests that the new 800-pound gorilla will be a mighty adversary of the OHS and its director. The president will have to fully back his OHS director and the inter-agency process run by that office, but that may be difficult if this means opposing the very department and secretary his own efforts helped create. (Nor is the record here very encouraging. During the first eight months of its operation, Bush did not adequately support Ridge and the OHS against criticism and attack from within the administration.)

If the Office of Homeland Security is to stand any chance of performing its vital coordinating functions successfully, then Congress may need to step in by giving the homeland security office, council, and director a status in law. There is ample precedent for this. The National Security Council was created by an act of Congress, and numerous other entities within the Executive Office of the President (from the drug czar and OMB to USTR and the Council of Economic Advisors) have statutory authority. Moreover, if the OHS and its director are to continue to have a major role in drawing up an integrated homeland security budget (as was the case for the FY2003 request), it is absolutely critical that the director not only have statutory authority but be accountable and answerable to Congress.

The Way Ahead

The president's proposal for creating a Department of Homeland Security is impressively ambitious. Congress should move with deliberate speed to review the proposal and decide on how best to proceed. There appears to be widespread agreement that parts of the president's proposal are both worthwhile and deserving of support. Merging the border and transportation security agencies (including consular affairs, as well as TSA, the Coast Guard, INS, Customs, and APHIS) with those agencies responsible for protecting the country's critical infrastructure is one such proposal. Creating a Cabinet-level agency composed of just these dozen or so agencies would represent a huge step forward—one Congress can, and probably should, take sooner rather than later.

Other elements of the president's proposal deserve more detailed study and consideration. For now, FEMA is likely to operate and contribute to the terrorist response effort more effectively if it remains outside the new department. The threat of terrorism employing weapons of mass destruction is deserving of a concerted and

vigorous national response, but one that goes well beyond the limited consolidation of R&D tasks that the administration proposes for this department. And while the fusion of international and domestic intelligence and law enforcement information is clearly needed, how best to accomplish this result is something that ought to be considered on the basis of the outcome of ongoing investigations by the intelligence committees on the Hill and an independent commission that still must be appointed.

The urgency of the threat counsels against delaying reorganization efforts—and it is a refrain the president and his supporters keep on repeating. But what good does it do to reorganize quickly if the end result is a government structure no better—and possibly even worse—than that exists today?

Meanwhile, all of us have a job to do, which is to make every effort to make our country more secure against terrorist attack. In the absence of any reorganization, it falls to Tom Ridge and his staff to take the lead in this effort. Unfortunately, the president has appointed Ridge to lead the effort on Capitol Hill and elsewhere to get his proposal turned into reality. But what about Ridge's day job—which is to lead, coordinate and mobilize the U.S. government in the effort to secure our nation against attack? If Ridge is going to focus on the legislative campaign, the president should immediately appoint another senior person with stature to head the Office of Homeland Security. We cannot afford to let down our guard even for one moment. Reorganization is important—but so is the ongoing effort to ensure we do everything possible to prevent another attack.

STATEMENT SUBMITTED BY
RICHARD J. DAVIS

BEFORE THE
SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ON TECHNOLOGY, TERRORISM
AND GOVERNMENT INFORMATION

HEARING ON PROTECTING THE HOMELAND:
THE PRESIDENT'S PROPOSAL FOR REORGANIZING OUR HOMELAND
DEFENSE INFRASTRUCTURE

JUNE 25, 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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Testimony of Ivan Eland,
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Before the Subcommittee on Technology, Terrorism, and Government Information
Senate Judiciary Committee

June 25, 2002

The attacks of September 11, 2001 illustrated dramatically that the U.S. governmental security apparatus has paid too much attention to the defense of other nations and too little to the security of the U.S. homeland. But in the wake of this horrible event, Washington policymakers in the Executive Branch and Congress may feel so much pressure to act that they will make hasty decisions on policies that actually might reduce U.S. homeland security further.

Specifically, I believe that the Bush administration's plan to merge disparate agencies into a new Department of Homeland Security will do nothing to enhance homeland security and may actually reduced it. The threat we face from al Qaeda and other terrorist groups is one of agile, non-bureaucratic adversaries who have the great advantage of being on the offense--knowing where, when and how they will attack. Terrorists take advantage of the sluggishness and poor coordination among military, intelligence, law enforcement, and domestic response bureaucracies to attack gaps in the defenses. Yet the Bush administration has rushed, before the congressional intelligence panels have completed their work to determine the exact nature of the problem prior to September 11, to propose a solution that does not seem to deal with preliminary indications of what the major problem seems to have been—lack of coordination between

and inside the intelligence agencies making up the vast U.S. intelligence bureaucracy. Instead, the president has proposed reorganizing other agencies into a new super bureaucracy, while leaving out the CIA and FBI. Furthermore, although seeming to consolidate federal efforts at homeland defense, the new department may actually reduce U.S. security by adding bureaucracy rather than subtracting it. More bureaucracy means more coordination problems of the kind that seem to have been prevalent in the intelligence community prior to September 11.

The United States Now Faces a Non-Traditional Strategic Threat

The intelligence community and other agencies involved in security have traditionally battled nation-states. Fortunately, those states have governments with bureaucracies that are often more sluggish than our own government's agencies. In contrast, terrorist groups have always been nimble opponents that were difficult to stop, but they were not a strategic threat to the U.S. homeland. As dramatically illustrated by the attack on September 11, terrorists willing to engage in mass slaughter (with conventional weapons or weapons of mass destruction) and commit suicide now pose a strategic threat to the U.S. territory and population.

No security threat to the United States matches this one. To fight this nontraditional threat, we must think outside box and try to be as nimble as the opponent (a difficult task). The Bush administration is correct that the current U.S. government structure—with more than 100 federal entities involved in homeland security—is not optimal for defending the nation against the new strategic threat. Although consolidating

federal efforts is not a bad idea in itself, it does not ensure that the bureaucracy will be more streamlined, experience fewer coordination problems, or be more effective in the fight against terrorism.

Bush's Proposal May Make the Government Less Agile When Fighting Terrorists

The Bush administration's merging of parts of other agencies into a Department of Homeland Security will add yet another layer of bureaucracy to the fight against terrorism. In his message to Congress urging the passage of his proposal to create the new department, the President made a favorable reference to the National Security Act of 1947, which merged the departments of War and the Navy to create the Department of Defense (DoD) and created an Office of the Secretary of Defense (OSD) to oversee the military services. But today, 55 years after the act's passage, OSD is a bloated bureaucracy that exercises comparatively weak oversight of military services whose failure to coordinate and cooperate even during wartime is legion. Even Secretary of Defense Donald Rumsfeld has compared the efficiency and responsiveness of the DoD bureaucracy to Soviet central planning.

Fifty-five years from today, I hope we will not have created another organization like today's Department of Defense. Yet the new proposed department is similar to DoD because it will bring together agencies with very different missions and methods of operation and create a large new departmental bureaucracy to try to rein them all in. As was the case when DoD was created, consolidation of the government's efforts is not a

bad idea, but it may be unhelpful or even counterproductive to establish another layer of bureaucracy without cutting out layers of management from the agencies being merged or removing some agencies entirely from the homeland security arena and giving their functions to existing agencies. Interagency coordination problems may just become intra-agency coordination problems—agencies with each other and with the secretary's office.

A good analogy to use may be the creation of the European Union. Creating a consolidated market for goods, services and financial transactions was a good idea. But a bloated EU bureaucracy has now been superimposed over the already intrusive national governments in Europe. It is yet another layer of bureaucracy for people living in Europe to deal with.

In short, consolidation is fine as long as we cut before pasting rather than paste before cutting. In other words, agencies should be trimmed and reformed (and some totally eliminated) before consolidating them. If the agencies are consolidated with the pledge of cuts or savings to come later, that promise is not likely to be fulfilled. Once the new, large consolidated department is created—it will be one of the largest departments in the government—the new department head will be a powerful advocate for more money and people rather than the opposite. Yet the Bush administration proposes pasting agencies together first, but does not even promise savings. At best, policymakers in the administration have promised that a consolidated department will not increase costs. But it is telling that the president's plan had no cost estimates accompanying it. Historically,

mergers of government agencies have increased costs rather than decreased them. Although some longer term savings by consolidation of payroll and computer systems may occur, creating the new secretary's bureaucracy to ride herd over all of the agencies will likely increase net costs. The president's proposal calls for adding one deputy secretary, five undersecretaries, and up to 16 assistant secretaries.

So the president's plan is likely to cost more rather than less. More importantly, we must follow the money; if costs are not going down, the plan is unlikely to streamline the government's efforts in counterterrorism and homeland defense. With more than 100 federal entities already involved in homeland security, more government is not better than less. With so many agencies involved, in the event of a catastrophic attack with weapons of mass destruction, we are likely to have chaos. With the president's plan, we may get fewer agencies, but probably more government. A stealthy and nimble enemy is at the gates and we do not have much time to put the government on a diet. Instead, the government may be headed to the pastry shop. More bureaucracy means more coordination problems and more opportunities for terrorists.

Bush's Plan Does Not Solve the Problem with Intelligence and May Make It Worse

The president' plan for a new department does not solve what at least preliminarily seems to be the primary problem—the lack of coordination within and between U.S. intelligence agencies, specifically the FBI and CIA. Those agencies are conspicuously missing from the president's plan.

Yet for enhanced homeland security, intelligence is the key ingredient. The U.S. government has infinitely more resources for use against al Qaeda and other terrorist groups than they do against it. If the U.S. government can discover plots or the location of targets and terrorists in time to take action, that overwhelming superiority in military or law enforcement resources can be brought to bear to foil the plot. Mitigating the effects of the attack after it happens is important but, in many cases, the government may only be able to marginally help reduce casualties. Yet, without good intelligence, that may be the government's only role. The United States has an unparalleled ability to collect vast amounts of raw intelligence data—the pieces of the jigsaw puzzle—but the already too numerous agencies in the U.S. intelligence community have had trouble fusing it into a complete picture.

Regrettably, in intelligence, as in his overall homeland security proposal, the president's plan will make the government even less likely to put the jigsaw puzzle together and even more ungainly and sluggish in combating terrorists. A new intelligence analysis center will be created in the new Department of Homeland Security to analyze threats to the U.S. homeland. Yet the FBI and CIA and other intelligence agencies already analyze such threats. Apparently, the new analysis center will not be able to get raw intelligence from those agencies unless the president personally approves it. Thus, the new agency will be analyzing the analysis of other agencies. If the new analysis center is supposed to be fusing the analyses of those agencies, it would seem to be usurping the role of the intelligence community staff under the Director of Central

Intelligence. Furthermore, if the FBI and CIA fail to fully cooperate or coordinate with each other because of turf jealousies, excessive secrecy, or burdensome bureaucratic rules for interagency coordination, the problem is likely to get worse as another competing bureaucracy is added.

If interagency coordination was the main problem prior to September 11 and parts of the FBI and CIA are not folded into the new department (some members of Congress have proposed including them), interagency coordination problems are likely to worsen. Even if parts of the two agencies are included in the reorganization, once again the interagency coordination problems will most likely be turned into intra-agency ones. Again, the only solution is to reduce not only the number of agencies, but also the layers of bureaucracy. To reduce the number of agencies in the intelligence community means getting rid of some, not just folding them into one super agency that will act as an advocate of more funding and personnel. Once again, we need to cut before pasting rather than vice versa. And while we are at it, the plethora of federal law enforcement agencies need to be pruned too.

The Government Already Has the Machinery to Coordinate Homeland Security

The old maxim that a crisis leads to bigger government has never been more true than in the wake of the September 11 attacks. In Washington, the typical response to such an event is to show the public that something is being done by rearranging organizational charts and adding bureaucracies. And after this horrendous incident,

everyone in Washington is racing to fix the problem before we are sure what it is. And, as noted earlier, we seem to be fixing something entirely different (not that it may not need improving) from what the intelligence hearings are preliminarily pointing to as the main problem.

But whether or not lack of coordination among the intelligence agencies turns out to be the major or the only problem, we already have the governmental machinery to fix them. In his message, the president also mentioned that the National Security Act of 1947 also created the National Security Council (NSC), on which sit the heads of the major departments and agencies that are responsible for the nation's security. The president's powerful National Security Advisor officially only coordinates policy among the agencies but in reality is a potent independent voice in the policymaking process. It would seem logical that catastrophic terrorism against the U.S. homeland would affect the national security and thus fit under the purview of the NSC and National Security Advisor. But apparently not.

Before proposing the new Department of Homeland Security, the president created a White Office of Homeland Security (OHS), a Homeland Security Advisor, and a Homeland Security Council (HSC). Yet even with the creation of the new department, all of this bureaucracy will remain. The president maintains that protecting America from terrorism will remain a multi-departmental issue and will continue to require those entities to oversee interagency coordination. But the roles of the Homeland Security Advisor and Homeland Security Council appear to be redundant with the National

Security Advisor and the NSC. For 55 years, the National Security Council existed to provide for the national security, but as soon as the nation is attacked we apparently need a new homeland security bureaucracy to provide national security at home. Both the president's statement and his proposal for a new cabinet department appear to subscribe to the strange notion that the National Security Council should provide for security only overseas.

What Should Be Done

- The whole process to find a "fix" for 9/11 "failures" should be slowed down. This deceleration would allow the main problem (or problems) prior to September 11 to be discovered by Congress. It would also allow cooler heads to prevail so that we do not end up with new bureaucracies piled on top of each other (the new department on top of the OHS, the homeland security advisor, and the HSC) and on top of the old ones (a new secretary's bureaucracy on top of existing agencies).
- The NSC and National Security Advisor could adequately coordinate homeland security without a new department if the intelligence and law enforcement communities were pruned (of agencies and layers of bureaucracy). Senator Richard Shelby, Vice Chairman of the Senate Select Committee on Intelligence, noted that the FBI (and CIA) are not very agile, and GAO has recommended reducing the layers, levels, and units within the FBI. Such a recommendation should apply for all agencies that remain in the homeland security arena. But many of the more than 100 federal entities also need to be ejected from homeland security mission. To reduce

the chances of lapses in intelligence coordination and chaos in domestic crisis response, there needs to be fewer government entities in need of coordination.

- Although reducing the number of people and amount of bureaucracy seems to go against the tide in the present crisis atmosphere, preliminary indications are that coordination among governmental entities is the main problem, not a lack of raw information or insufficient resources.
- Fighting a new stealthy, agile enemy is not like fighting cold or hot wars against nation-states. In the rush to "do something" Congress—by enlarging an already huge and sluggish national security bureaucracy--might make the risk of another successful catastrophic terrorist more likely.
- Even with real improvements to the intelligence and homeland defense machinery (rather than adding bureaucracy), it is probably only a matter of time before the terrorists strike again. Most high-level Bush administration officials say that it will be "when and not if." Of course, in the short-term, we must decisively take down the rest of the al Qaeda terrorist network militarily and with law enforcement but, in the long-term, we might want to take steps to lower our target profile to terrorists. The United States could do this by reducing unneeded interventions, both politically and militarily, in the world--particularly in the Middle East. According to a recent Zogby poll, a majority of the populations of all Islamic states polled liked U.S. culture, including movies and television, but disliked U.S. policies toward the Middle East. Because intelligence and homeland security cannot be perfect, a change in U.S. foreign policy might lessen the chance that terrorist groups would be motivated to launch catastrophic attacks against the U.S. homeland.

Testimony of
James S. Gilmore, III
Chairman,
Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction

Before the
U.S Senate Judiciary Committee
Subcommittee on Technology, Terrorism and Government Information
United States Senate

June 25, 2002

Madame Chairman, Mr. Ranking Member, and Members of the Committees, I am honored to be here today. I come before you as the Chairman of the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction. Thank you for the opportunity to present the views of the Advisory Panel.

The Advisory Panel to be established by Section 1405 of the National Defense Authorization Act for Fiscal Year 1999, Public Law 105–261 (H.R. 3616, 105th Congress, 2nd Session) (October 17, 1998). That Act directed the Advisory Panel to accomplish several specific tasks. It said:

The panel shall--

1. assess Federal agency efforts to enhance domestic preparedness for incidents involving weapons of mass destruction;
2. assess the progress of Federal training programs for local emergency responses to incidents involving weapons of mass destruction;
3. assess deficiencies in programs for response to incidents involving weapons of mass destruction, including a review of unfunded

communications, equipment, and planning requirements, and the needs of maritime regions;

4. recommend strategies for ensuring effective coordination with respect to Federal agency weapons of mass destruction response efforts, and for ensuring fully effective local response capabilities for weapons of mass destruction incidents; and
5. assess the appropriate roles of State and local government in funding effective local response capabilities.

The Act requires the Advisory Panel to report its findings, conclusions, and recommendations for improving Federal, State, and local domestic emergency preparedness to respond to incidents involving weapons of mass destruction to the President and the Congress at three times during the course of the Advisory Panel's deliberations—on December 15 in 1999, 2000, and 2001.

It is likewise testimony to the continuing dedication of this subcommittee and its chair that the Advisory Panel's tenure was extended for two in accordance with Section 1514 of the National Defense Authorization Act for Fiscal Year 2002 (S. 1358, Public Law 107-107, 107th Congress, First Session), which was signed into law by the President on December 28, 2001. By virtue of that legislation, the panel is now required to submit two additional reports—one on December 15 of this year, and one on December 15, 2003.

In Memoriam

Mr. Chairman, the events of September 11 and its aftermath have changed the lives of Americans for generations to come. But those attacks had special meaning for this Advisory Panel.

This Advisory Panel is unique in one very important way. It is not the typical national "blue ribbon" panel, which in most cases historically have been composed almost exclusively of what I will refer to as "Washington Insiders"—

people who have spent most of their professional careers inside the Beltway. This panel has a sprinkling of that kind of experience—a former Member of Congress and Secretary of the Army, a former State Department Ambassador-at-Large for Counterterrorism, a former senior executive from the CIA and the FBI, a former director of the Defense Intelligence Agency, the head of a national academy on public health, two retired flag-rank military officers, the head of a national law enforcement foundation. But what truly makes this panel special and, therefore, causes its pronouncement to carry significantly more weight, is the contribution from the members of the panel from the rest of the country:

- Three directors and one deputy director of state emergency management agencies, from California, Iowa, Indiana and Virginia, two of whom now also serve their Governor's as Homeland Security Advisors of the Deputy
- A state epidemiologist and director of a state public health agency
- A city manager of a mid-size city
- The chief of police of a suburban city in a major metropolitan area
- Senior professional and volunteer fire fighters
- A senior emergency medical services officer of a major metropolitan area

These are representatives of the true "first responders"—those heroic men and women who put their lives on the line every day for the public health and safety of all Americans. Moreover, so many of these panel members are also national leaders in their professions: our EMS member is a past president of the national association of emergency medical technicians; one of our emergency managers is the past president of her national association; our law officer is president-elect of the international association; our epidemiologist is past president of her professional organization.

Read our reports and you will understand what that expertise has meant to the policy recommendations that we have made, especially for the events of September 11.

Those attacks now carry much poignancy for us, because we have an empty seat at our panel table. At a few minutes after 10 o'clock that morning, Ray Downey, Department Deputy Chief and chief in charge of Special Operations Command, Fire Department of the City of New York—the incident commander at the scene—perished in the collapse of the North tower of the New York World Trade Center. Although the impending disaster had to have been obvious to Ray following the prior collapse of the South tower, he knew and those around him knew their duty. With fearless disregard for their own personal safety, focused entirely on saving the lives of others, Ray and his colleagues all stayed at their post, doing their job. The result of that decision, clear now in retrospect, was the rescue of literally thousands of people from those towers. Ray and 342 of his colleagues paid the supreme sacrifice, and all humanity must acknowledge and be eternally grateful for their actions.

Our loss is tempered by the extraordinary opportunity that we had in being informed and counseled by Ray. Ray Downey served as a dedicated member of the Advisory Panel during its initial three-year tenure, bringing insightful first-responders' perspectives and consistently providing invaluable counsel based on his years of training, unequaled leadership, and exceptional experience in the field.

Ray was not only a nationally recognized leader, author, and lecturer on rescue, collapse operations, and terrorism emergency response. He readily responded to the call for help in Oklahoma City, Atlanta, and other disasters outside his home jurisdiction.

Frank Keating is better than I at revealing just how much a hero Ray is to Oklahomans as he is to he own city. Ray was never one to talk about his accomplishments. It has only become more widely publicly known since September that Ray was *the most decorated member* of the FDNY—21 times for valor.

Yet, with all of his professional responsibilities, Ray made time to spend with his family, never missing a major school or sporting event of his five children. To the very end, he continued that amazing record with his grandchildren. Two of his sons are now officers of the Fire Department of the City of New York. All five, as well as two of his grandchildren, spoke passionately and eloquently at Ray's memorial service of his total commitment to his family.

It was with great humility but also with great pride that we dedicated our third report to Ray Downey. That report was issued, totally coincidentally—or perhaps providentially—on the same day that Ray's memorial service was held, December 15, 2001. On that day, thousands of firefighters and other first responders from New York and from all over the United States stood in frigid weather for more than three hours—in formation—outside Ray's small parish church on Long Island, while Ray's children and grandchildren, his colleagues, his commissioner, his mayor, his governor, and his president all paid tribute to this remarkable American hero.

Our memorial epitaph to Ray was simple but never more profound:

Ray Downey

Husband . . . Father . . . Patriot . . . Hero . . .

Friend

And in the final, most courageous moments of his duty-filled life . . .

Brother to all Humanity

Ray, we salute you; we know that you are still with us in spirit. With a renewed sense of profound commitment, we pledge on our honor that you and all the other victims of the attacks will not be forgotten and that the loss we have all suffered will not have been in vain.

Our Continuing Mission

Madame Chairman, our mission is urgent and clear: we must continue to bolster our capability to thwart terrorists wherever and whoever they are. Our collective call is to continue the momentum to secure our homeland and protect our citizens. While there is much more work to be done, I am confident that we will be successful. America's strength is in its people, our leaders, and our collective commitment, especially during times of crisis.

Observations about Terrorism Preparedness

In the course of our deliberations, the Advisory Panel has been guided by several basic observations and assumptions that have helped to inform our conclusions and policy recommendations for improving our preparedness to combat terrorism.

First, all terrorism is "local," our at least will start locally. That fact has a lot to do, in our view, with the emphasis, the priorities, and the allocation of resources to address requirements. September 11 was further proof of that basic assumption.

Second, a major attack anywhere inside our borders will likely be beyond the response capabilities of a local jurisdiction, and will, therefore, require outside help—perhaps from other local jurisdictions, from that jurisdiction's state government or multiple state resources, perhaps from the Federal government, if the attack is significant enough to exhaust other resources. That principle was likewise validated last September.

Given those two factors, our approach to combating terrorism should be from the "bottom up"—with the requirements of State and local response entities foremost in mind.

We note that we have many existing capabilities that we can build on in an "all-hazards" approach, which can include capabilities for combating terrorism.

Our thorough research and deliberations have also led us to observe that there is great apprehension among States and localities that some Federal entity will attempt to come in and take charge of all activities and displace local response efforts and expertise. That was not and likely could not, because of the actual circumstances in New York, been the case in September. But all events may not unfold in that fashion.

Based on a significant amount of analysis and discussion, we have been of the view that few if any major structural or legal changes are required to improve our collective efforts; and that the "first order" challenges are policy and better organization—not simply more money or new technology.

With respect to Federal efforts, two years ago we concluded that, prior to an actual event, no one cabinet department or agency can "supervise" the efforts of other federal departments or agencies. When an event occurs, response will be situational dependent; federal agencies can execute responsibilities within existing authority and expertise, but under established "Lead Federal Agency" coordinating processes.

The chart attached to this testimony is an attempt to depict graphically the magnitude of the problem and the necessary interrelationships that must exist among entities at the local, State, and Federal levels. It shows that integration must exist both vertically and horizontally among various functions and the agencies that have

responsibilities for executing those functions. It also emphasizes our view that simplistic categories such as "crisis management" and "consequence management" do not adequately describe the full spectrum of functions or responsibilities.

Support for Panel Activities and Reports

Madame Chairman, it also says something about the foresight of this committee that you directed in legislation that analytical and other support for the Advisory Panel would be provided by a Federally Funded Research and Development Center. We have been exceptionally fortunate to have that support provided by The RAND Corporation. The breadth and depth of experience at RAND in terrorism and policy issues across a broad spectrum have made possible the panel's success in accomplishing its mandate. Its assessments of federal programs, its case studies and hundreds of interviews across the country and around the world, its seminal work in surveying state and local response entities nationwide, its facilitation of our discussion—leading to near unanimity of members on this broad spectrum of recommendations, its work in drafting reports based on our extensive deliberations, all have combined to make this effort a most effective and meaningful one.

Our Reports

In our first three reports, the advisory panel has through its assessments and recommendations laid a firm foundation for actions that must be taken across a broad spectrum of threats in a number of strategic and functional contexts to address this problem more effectively.

First Report—Assessing the Threat

The Advisory Panel produced a comprehensive assessment in its first report of the terrorist threat inside our borders, with a focus on chemical, biological, radiological, and nuclear (CBRN) weapons. The very thorough analysis in that report can be summarized:

> The Panel concludes that the Nation must be prepared for the entire spectrum of potential terrorist threats – both the unprecedented higher-consequence attack, as well as the historically more frequent, lesser-consequence terrorist attack, which the Panel believes is more likely in the near term. Conventional explosives, traditionally a favorite tool of the terrorist, will likely remain the terrorist weapon of choice in the near term as well. Whether smaller-scale CBRN or conventional, any such lower-consequence event—at least in terms of casualties or destruction—could, nevertheless, accomplish one or more terrorist objectives: exhausting response capabilities, instilling fear, undermining government credibility, or provoking an overreaction by the government. With that in mind, the Panel's report urges a more balanced approach, so that not only higher-consequence scenarios will be considered, but that increasing attention must now also be paid to the historically more frequent, more probable, lesser-consequence attack, especially in terms of policy implications for budget priorities or the allocation of other resources, to optimize local response capabilities. A singular focus on preparing for an event potentially affecting thousands or tens of thousands may result in a smaller, but nevertheless lethal attack involving dozens failing to receive an appropriate response in the first critical minutes and hours.
>
> While noting that the technology currently exists that would allow terrorists to produce one of several lethal CBRN weapons, the report also describes the current difficulties in acquiring or developing and in maintaining, handling, testing, transporting, and delivering a device that truly has the capability to cause "mass casualties."

We suggest that that analysis is still fully valid today.

Second Report—Toward a National Strategy for Combating Terrorism

By the second year, the Advisory Panel shifted its emphasis to specific policy recommendations for the Executive and the Congress and a broad programmatic assessment and functional recommendations for consideration in developing an effective national strategy.

The capstone recommendation in the second report was the need for a comprehensive, coherent, functional national strategy: ***The President should develop and present to the Congress a national strategy for combating terrorism within one year of assuming office.*** As part of that recommendation, the panel identified the essential characteristics for a national strategy:

- It must be truly *national* in scope, not just Federal.
- It must be comprehensive, encompassing the full spectrum of *deterrence, prevention, preparedness, and response* against domestic and international threats.
- For domestic programs, it must be *responsive to* requirements from and fully *coordinated with state and local officials* as partners throughout the development and implementation process.
- It should be *built on existing emergency response systems.*
- It must *include all key functional domains*—intelligence, law enforcement, fire services, emergency medical services, public health, medical care providers, emergency management, and the military.
- It must be *fully resourced* and based on *measurable performance.*

Of course, the Panel recognizes that in light of September 11, 2001 this objective has been difficult to achieve. However, the principles contained within this strategy and their requirements remain the same.

The Second Annual Report included a discussion of more effective Federal structures to address the national efforts to combat terrorism. We determined that the solutions offered by others who have studied the problem provided only partial answers. The Advisory Panel attempted to craft recommendations to address the full spectrum of issues. Therefore, we submitted the following recommendation: ***The President should establish a senior level coordination entity in the Executive Office of the President.*** The characteristics of the office identified in that recommendation included:

- Director appointed by the President, by and with the advice and consent of the Senate, at "cabinet-level" rank
- Located in the Executive Office of the President

- Authority to exercise certain program and budget controls over those agencies with responsibilities for combating terrorism
- Responsibility for intelligence coordination and analysis
- Tasking for strategy formulation and implementation
- Responsibility for reviewing State and local plans and to serve as an information clearinghouse
- An interdisciplinary Advisory Board to assist in strategy development
- Multidisciplinary staff (including Federal, State, and local expertise)
- No operational control

We included a thorough explanation of each characteristic in our Second Annual Report. For instance, we determined that this office should have the authority to direct the creation, modification, or cessation of programs within the Federal Interagency, and that it have authority to direct modifications to agency budgets and the application of resources. We also recommended that the new entity have authority to review State and geographical area strategic plans and, at the request of State entities, to review local plans or programs for combating terrorism for consistency with the national strategy.

Finally, we determined that this entity does not need to be "in charge" of operations to combat terrorism. As the attacks of September 11 have clearly demonstrated, that responsibility will fall, at least initially, to State and local jurisdictions. The Federal Response Plan, which provides for Lead Federal Agency and functional responsibilities, works. That process does not need to be supplanted.

Although not completely structured around our recommendations, the model for the creation of the Office of Homeland Security came from this recommendation.

To complement our recommendations for the federal executive structure, we also included the following recommendation for the Congress: ***The Congress should establish a Special Committee for Combating Terrorism—either a joint committee between the Houses or separate committees in each House—to address authority and***

funding, and to provide congressional oversight, for Federal programs and authority for combating terrorism. The philosophy behind this recommendation is much the same as it is for the creation of the office in the Executive Office of the President. There needs to be a focal point in the Congress for the Administration to present its strategy and supporting plans, programs, and budgets, as well as a legislative "clearinghouse" where relevant measures are considered. We recognize that Congress is still in the process of working towards this objective.

In conjunction with these structural recommendations, the Advisory Panel made a number of recommendations addressing functional requirements for the implementation of an effective strategy for combating terrorism. The recommendation listed below are discussed thoroughly in the Second Annual Report:

Enhance Intelligence/Threat Assessments/Information Sharing

- Improve human intelligence by the rescission of that portion of the 1995 guidelines, promulgated by the Director of Central Intelligence, which prohibits the engagement of certain foreign intelligence informants who may have previously been involved in human rights violations
- Improve Measurement and Signature Intelligence (MASINT) through an expansion in research, development, test, and evaluation (RDT&E) of reliable sensors and rapid readout capability and the subsequent fielding of a new generation of MASINT technology based on enhanced RDT&E efforts
- Review statutory and regulatory authorities in an effort to strengthen investigative and enforcement processes
- Improve forensics capabilities to identify and warn of terrorist use of unconventional weapons
- Expand information sharing and improve threat assessments

Foster Better Planning/Coordination/Operations

- Designate the senior emergency management entity in each State as the *focal point* for that State for coordination with the Federal government for preparedness for terrorism
- Improve collective planning among Federal, State, and local entities
- Enhance coordination of programs and activities
- Improve operational command and control of domestic responses
- The President should always designate a Federal civilian agency other than the Department of Defense (DoD) as the Lead Federal Agency

Enhance Training, Equipping, and Exercising

- Improve training through better coordination with State and local jurisdictions
- Make exercise programs more realistic and responsive

Improve Health and Medical Capabilities

- Establish a national advisory board composed of Federal, State, and local public health officials and representatives of public and private medical care providers as an adjunct to the new office, to ensure that such issues are an important part of the national strategy
- Improve health and medical education and training programs through actions that include licensing and certification requirements
- Establish standards and protocols for treatment facilities, laboratories, and reporting mechanisms
- Clarify authorities and procedures for health and medical response
- Medical entities, such as the Joint Commission on Accreditation of Healthcare Organizations, should conduct periodic assessments of medical facilities and capabilities

Promote Better Research and Development and Create National Standards

- That the new office, in coordination with the Office of Science and Technology Policy, develop a comprehensive plan for RDT&E, as a major component of the national strategy
- That the new office, in coordination with the National Institute for Standards and Technology (NIST) and the National Institute for Occupational Safety and Health (NIOSH) establish a national standards program for combating terrorism, focusing on equipment, training, and laboratory processes

Third Report—For Ray Downey

Our Third Annual Report to the President and the Congress builds on findings and recommendations in our First and Second Annual Reports delivered in 1999 and 2000. It reflects a national strategic perspective that encompasses the needs of all three levels of government and the private sector. It seeks to assist those who are dedicated to making our homeland more secure. Our recommendations fall into five categories:

- ✓ *Empowering state and local response* by ensuring the men and women on the front line of the war against terrorism inside our borders have the tools and resources needed to counter the murderous actions of terrorists;

- ✓ *Enhancing health and medical capacities,* both public and private, to help ensure our collective ability to identify attacks quickly and correctly, and to treat the full scope of potential casualties from all forms of terrorist attacks;
- ✓ *Strengthening Immigration and Border Controls* to enhance our ability to restrict the movement into this country, by all modes of transportation, of potential terrorists and their weapons and to limit severely their ability to operate within our borders;
- ✓ *Improving Security Against Cyber Attacks* and enhancing related critical infrastructure protection to guard essential government, financial, energy, and other critical sector operations against attack; and
- ✓ *Clarifying the Roles and Missions for Use of the Military* for providing critical and appropriate emergency response and law enforcement related support to civilian authorities.

Madame Chairman, I should note that the substance of all of the recommendations contained in the third report were approved by the panel at its regular meeting held on August 27 and 28, 2001—Tuesday the 28th being exactly two weeks prior to the attacks of September 11. Although we thoroughly reviewed those recommendations subsequently, the panel unanimously agreed that all were valid and required no supplementation prior to publication.

The recommendations contained in that report, listed below in summary formed, are discussed in detail in the body of the report, and further supported by material in the report appendices, especially the information on the nationwide survey.

State and Local Response Capabilities

- Increase and accelerate the sharing of terrorism-related intelligence and threat assessments
- Design training and equipment programs for all-hazards preparedness
- Redesign Federal training and equipment grant programs to include sustainment components
- Increase funding to States and localities for combating terrorism
- Consolidate Federal grant program information and application procedures
- Design Federal preparedness programs to ensure first responder participation, especially volunteers
- Establish an information clearinghouse on Federal programs, assets, and agencies
- Configure Federal military response assets to support and reinforce existing structures and systems

Health and Medical Capabilities

- Implement the AMA Recommendations on Medical Preparedness for Terrorism
- Implement the JCAHO Revised Emergency Standards
- Fully resource the CDC Biological and Chemical Terrorism Strategic Plan
- Fully resource the CDC Laboratory Response Network for Bioterrorism
- Fully resource the CDC Secure and Rapid Communications Networks
- Develop standard medical response models for Federal, State, and local levels
- Reestablish a pre-hospital Emergency Medical Service Program Office
- Revise current EMT and PNST training and refresher curricula
- Increase Federal resources for exercises for State and local health and medical entities
- Establish a government-owned, contractor-operated national vaccine and therapeutics facility
- Review and recommend changes to plans for vaccine stockpiles and critical supplies
- Develop a comprehensive plan for research on terrorism-related health and medical issues
- Review MMRS and NDMS authorities, structures, and capabilities
- Develop an education plan on the legal and procedural issues for health and medical response to terrorism
- Develop on-going public education programs on terrorism causes and effects

Immigration and Border Control

- Create an intergovernmental border advisory group
- Fully integrate all affected entities into local or regional "port security committees"
- Ensure that all border agencies are partners in intelligence collection, analysis, and dissemination
- Create, provide resources for, and mandate participation in a "Border Security Awareness" database system
- Require shippers to submit cargo manifest information simultaneously with shipments transiting U.S. borders
- Establish "Trusted Shipper" programs
- Expand Coast Guard search authority to include U.S. owned—not just "flagged"—vessels
- Expand and consolidate research, development, and integration of sensor, detection, and warning systems
- Increase resources for the U.S. Coast Guard for homeland security missions
- Negotiate more comprehensive treaties and agreements for combating terrorism with Canada and Mexico

Cyber Security

- Include private and State and local representatives on the interagency critical infrastructure advisory panel
- Create a commission to assess and make recommendations on programs for cyber security

- Establish a government funded, not-for-profit entity for cyber detection, alert, and warning functions
- Convene a "summit" to address Federal statutory changes that would enhance cyber assurance
- Create a special "Cyber Court" patterned after the court established in FISA
- Develop and implement a comprehensive plan for cyber security research, development, test, and evaluation

Use of the Military

- Establish a homeland security under secretary position in the Department of Defense
- Establish a single unified command and control structure to execute all military support to civil authorities
- Develop detailed plans for the use of the military domestically across the spectrum of potential activities
- Expand training and exercises in relevant military units and with Federal, State, and local responders
- Direct new mission areas for the National Guard to provide support to civil authorities
- Publish a compendium of statutory authorities for using the military domestically to combat terrorism
- Improve the military full-time liaison elements in the ten Federal Emergency Management Agency region

The Road Ahead

Madame Chairman, as the Advisory Panel enters another year and embarks on its fourth report, our focus will be on the essential elements of the Congressional mandate—unchanged in the panel's statutory extension. We have not tried to speculate whether spending on combating terrorism was too little, too much, or just about right. Rather, we have attempted to concentrate on assessing whether resources provided for those purposes by our populations' duly elected representatives—you in the Congress—are being applied effectively. The President and the Congress have now seen fit to increase dramatically the level of those resources and the President has proposed the creation of the Department of Homeland Security. Our continuing mission will be assessing the

application of those decisions, especially as they related to enhancing the capabilities of States and localities.

We have reviewed in a cursory fashion the proposal submitted by the President to the Congress towards the creation of a Department of Homeland Security. Like the Congress we are studying the proposal and will soon be prepared to offer a more detailed analysis. You no doubt invited me in my role as Chairman to convey our thoughts about the President's proposal to create a Department of Homeland Security. This type of major restructuring was not what our Panel had recommended. Our recommendation provided for the creation of an office in the Executive Office of the President to better strategically integrate the activities of the wide range of agencies with responsibilities in this area. This recommendation was informed in part by the recognition that terrorist attacks on our nation could cause profound national security, economic, social and health and safety problems. These attacks could take the form of conventional, Weapons of Mass Destruction or cyber attacks. The plethora of potential scenarios and a needed focus on prevention and deterrence was clearly not within the single mandate of any one federal agency or level of government. Our Panel viewed the issue as one of management and organization versus structure. We believed that the needed coordination could more effectively occur at a level higher than Cabinet agencies to minimize the potential for turf wars that are inevitable when it comes to competition for resources, both human and financial.

This is not to say that what the Administration is proposing is not now the right answer. Clearly as a nation we now have the benefit of our September 11th experience. Our Panel, the Hart-Rudman Commission and the National Commission on Terrorism

made our recommendations without the painful yet valuable knowledge that we gained from the September 11th attacks and subsequent incidents involving Anthrax. This knowledge will strengthen our collective ability to engage in discussions concerning the proposal before the Congress.

To that end we would like to offer several points to assist the Congress in its efforts to partner with the President in working to make American safer and more secure.

First the proposal to create the Department of Homeland Security has been described as " the largest reorganization of the federal government since World War II". The proposal you have before you today has implications beyond the federal government. In communities and states all across America public officials and the private sector are engaged in securing our homeland and protecting against the lawlessness of terrorists who would seek to do our citizens harm. A major reorganization at the federal level will have to be very carefully implemented. I cannot stress this point enough. Local and state officials, experienced in working with their federal partners, see a very real threat in the whole idea of reorganization unless it ensures that the momentum and program delivery that is just beginning continues full speed ahead and uninterrupted. Our collective discussions must focus on both the elements to be put together and minimizing potential disruption of collective local, state and federal partnership efforts for preparedness. This is especially important in light of proposed first responder funding initiatives in the '03 budget that could become victims unless the reorganization is carefully implemented to guarantee success.

Second, we must have a clear understanding of what problems the re-organization is attempting to solve. Our Panel, like others, noted a wide range of problems with our

national preparedness efforts. Note that I say national and not federal. The federal government must play a clear leadership role but solving problems requires an effective integration of local, state, federal and private sector participants and as a nation we must be clear in defining what those problems are. For instance our Panel noted in its Second and Third Annual reports that our ability to collect, analyze and disseminate critical intelligence to all organizations with a need for it was inadequate. We noted problems at the federal level – in terms of horizontal sharing between elements of the intelligence, law enforcement and defense communities and vertically with key local and state officials as well as the private sector. Furthermore, we noted the sharing and analysis of intelligence must be a two-way street when one considers the threat to be against our communities and states. Congress has begun to ask the very relevant question of how will things improve if the two key agencies, the FBI and CIA, are not included in the new Department. Our point is that this and other questions must be asked and adequately answered to ensure we get the best final structure.

Along those lines and thirdly what is the role of state and local government in defining the problem and securing corrective action. The Administration proposal provides for state and local coordination with the new entity. It is critical that the state and local partners are engaged in the design and implementation phases as well as the execution phase. The Administration's proposal has direct implications for a wide array of federal agencies and by extension states and communities. We must ensure that the state and local role is equal to that of the federal government in terms of construction of the new Department and its operation. You are not simply making decision of federal structure but rather a decision that will directly influence state and local government.

My fourth point concerns the continuing need for a clear national strategy that collectively articulates what we as a nation are seeking to accomplish in our preparedness efforts. The proposed Department is not the national strategy but rather will become the engine to implement the strategy once developed. We cannot afford an exclusive focus on discussions about the new Department and not address the larger strategic needs that will define our long-term national and international success in countering the terrorist threat. A national strategy is key to our efforts in determining how the proposed Department of Homeland Security can best be structured to accomplish the mission ahead.

In closing let me note that our Panel continues to review the Administrations proposal. In the near term we expect to have more information by which we can offer specific insights and concurrent with our statutory duty we will provide those to the Congress and the President. Critical to our efforts will be our opportunity to work with the Administration to gain a more detailed understanding of the problems they have identified with national preparedness efforts and how proposed changes in organization, policy and programs will effect improvement. We should not lose sight of two critically important issues.

The proposed new Department of Homeland Security is not the solution. It is simply a mechanism or tool for implementing broad change across program and policy. The debate seems focused on who and what will go into the new Department rather than how the proposed change improves our collective preparedness efforts. We must focus the debate on what problems must be solved and what is the best way to solve them. We must also ensure that the sheer size of the new Department does not become an

impediment to the timely and effective sharing of information. This applies equally to "operational" information as well as program and policy direction. One could probably cite numerous examples of large federal institutions, or for the fact of the matter, state and local government organizations, that do not convey coordinated and consistent flow of information to their constituents. This type of organizational problem can be overcome but only if a focused effort is provided to do so. It would seem that the opportunity with a new Department to address these organizational cultural issues is considerable.

Second, we cannot lose sight of the fact that the enemy has us in a reactive mode. On any given day agencies at the federal, state and local level, in vast segments of the private sectors and among our citizenry are reacting to the latest threat advisory. I believe that keeping the nation informed is critical to thwarting future attacks. At the same time it keeps us in a reactive mode. Our challenge is to make well-informed public policy decisions driven by logic and thoughtful analysis and not by emotional gut reaction. A major reorganization must be structured to first solve the problems identified and second not to contribute to a heightened level of chaos. Our Panel is committed to continuing its advisory role to the Congress and the Administration to ensure the most effective structure for the new Department of Homeland Security is outlined and a corresponding implementation plan is crafted to ensure it begins to operate as effectively as possible.

The President's proposal is but one element, albeit an important one, towards and enhanced level of national preparedness. We will consider along with the proposed reorganization other important issues that must contribute to our overall strategic

approach to a safer and more secure America. We are considering several functional areas for future research and analysis, and subsequent conclusions and policy recommendations. Those areas include but may not be limited to the following.

State, Local, and Private

Standards. We will consider in more detail the progress that has been made in establishing national standards for equipment performance and compatibility, especially the work of the Interagency Board for Equipment Standardization and Interoperability and the National Personal Protection Technology Institute.

Continuity of government and continuity of operations (state and local). The attacks have shown that these issues require more in-depth consideration, especially for programs that require coordination with or assistance to the private sector.

Establishing partnerships with non-governmental entities. We will consider ways for better integration of the private sector—business, industry, and other non-governmental and private volunteer organizations (NGOs and PVOs)--with governmental entities in emergency preparations and response, including better coordination, planning, training and combined exercises.

Government protection of private-sector critical infrastructure. Issues in this area that require further attention include both the appropriate levels of government support to the private sector and methods for delivery of Federal assistance.

Information sharing *from* government *to* the private sector. In the third report, we recommended areas in which the private sector could assist by providing more information already at their disposal to government entities. We now must explore the

reverse of that equation, especially in the transportation, energy, finance, and communications sectors.

Direct appropriations to States. To provide appropriate Federal resources to States more effectively, the panel will consider ways and means of providing direct authorization and appropriations to the States, without the burdensome process of Federal grants.

Health and Medical

Long-term mental health and psychological issues. We have noted, both in the recommendations in the substantive chapters and in the chapter on "perspectives," our concern about these issues. We are especially concerned about the impact of such attacks, and the threat of future ones, on our children, as well as better methods for dealing with the "worried well." We will consider various coping strategies and will likely conduct case studies on systems in Israel and the United Kingdom.

Vaccines. We will consider in more detail the recommendation to create a government-owned, contractor-operated vaccine research, development, and production capability. We will also explore other areas involving vaccines for both humans and livestock. We will consider especially the prospect for the creation of a National Vaccine Authority.

Agriculture and the food and water supply. We have repeatedly raised concerns about threats to agriculture. More consideration of those issues is required, and for possible threats to our food and water supplies.

Medical examiners. Too little attention has been focused on the important roles of government medical examiners and other pathologists. We will consider the need for improvements in forensics and reporting requirements and capabilities in this arena.

Public health reserve corps. We will consider the potential benefits and requirements of establishing a robust reserve of medical and health professionals that can be mobilized to respond to health and medical crises.

Use of the Military

Roles and Missions. We will continue our assessment of progress in defining and clarifying the activities of our Armed Forces inside our borders, especially the roles and missions of the National Guard.

Coordination and Other Security Issues

Positive identification. The Panel will also seek to clarify, within the context of the current national debate, acceptable levels for potential universal identification systems, such electronic methods as palm or eye scans, or other technological capabilities.

Financial tracking. "Following the money" is an important way of discovering and preventing potential terrorist activities. Much is being done in this area following September 11 but the panel will consider other potential measures.

Strategic communications planning. We will explore potential models for providing better information to the public before, during, and after a terrorist incident—threats, hoaxes, and actual attacks.

Airline and airport security measures. The panel may undertake an assessment of the effectiveness of the measures currently being implemented as well as others that may be implemented in the future.

Conclusion

Madame Chairman and committee members, this is not a partisan political issue. It is one that goes to the very heart of public safety and the American way of life. We have members on our panel who identify with each of the major national political parties, and represent views across the entire political spectrum. They represent all levels of government and the key disciplines that are needed to address this issue effectively. We urge Members on both sides of the aisle, in both Houses of the Congress, to work with the Executive Branch to bring some order to this process and to help provide national leadership and direction to address this critical issue. The proposed Department of Homeland Security represents but one part of the issue. We must not let our focus on this one piece preclude our ability to look at the larger strategic picture in making America safer and more secure.

Thank you again for this opportunity.

NEWS RELEASE

ORRIN HATCH

United States Senator for Utah

June 25, 2002

Contact: Margarita Tapia, 202/224-5225

Statement of Senator Orrin G. Hatch
Ranking Republican Member
Before the Senate Committee on the Judiciary
Subcommittee on Technology, Terrorism and Government Information
Hearing on

"Protecting the Homeland: The President's Proposal for Reorganizing Our Homeland Security Infrastructure"

I want to begin by thanking Senator Feinstein for holding this important hearing. She and Senator Kyl have shown great leadership in the areas of terrorism and homeland defense. Well before the attacks of September 11, both Senators focused this Subcommittee's efforts on our nation's internal security. In 2000 and 2001, the Subcommittee held a number of hearings that carefully analyzed reports generated by experts, including those prepared by the Hart-Rudman Commission and the Gilmore Advisory Panel.

I also would like to welcome all of the distinguished guests who are with us here today to review and evaluate the Administration's proposed legislation to establish a new Department of Homeland Security. Senator Rudman and Governor Gilmore, I want to thank you especially for your valuable service in this area. As a result of your hard work and dedication, we have a much greater understanding of the vulnerabilities of the agencies that are charged with protecting our homeland.

There is little question that the comprehensive studies of the Hart-Rudman Commission and the Gilmore Advisory Panel have provided a framework from which more recent proposals have been generated. The Administration has made clear that in fashioning its proposal, it carefully reviewed, and indeed borrowed from, reports prepared by these commissions.

Although the Hart-Rudman and Gilmore Commissions reached different conclusions about how we best attack the threat of terrorism on our homeland, both emphasized that mass-casualty terrorism directed at the United States was a growing and serious concern. And both recognized the deficiencies in our homeland security before the magnitude and immediacy of the threat facing our country was apparent. Indeed, in February 2001, the Hart-Rudman Commission

released a report in which it concluded that a direct attack against U.S. citizens on American soil was likely during the next quarter of a century.

The Bush Administration's proposal to create a new Department of Homeland Security most closely resembles that recommended by the Hart-Rudman Commission, and is the Administration's latest step in fashioning a coherent, functional national strategy for combating terrorism. Like the Hart-Rudman model, the Administration's proposal includes a single national homeland security department, headed by a Cabinet-level secretary, that combines critical homeland security agencies like the Federal Emergency Management Agency, the Coast Guard, the Customs Service and the Border Patrol into a single department. But, without question, important differences between the two remain.

We face a tremendous challenge in attempting to consolidate and redefine the various federal entities that play a role in securing our homeland. To establish the most effective and efficient organizational structure to face continued and growing threats, we need your expertise, and we will consider your recommendations seriously.

While I have the utmost confidence that Congress will act expeditiously to examine the Administration's proposal and reform our homeland defense structure this year, it is an ongoing process that will not occur overnight. As we continue to work in the Judiciary Committee and the Senate, and with the House to refine the organization of our homeland defense structure - this year and in the future - we welcome, indeed invite, your recommendations.

# # # #

ASSESSING THE DEPARTMENT OF HOMELAND SECURITY

TESTIMONY BEFORE THE UNITED STATES SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ON TECHNOLOGY, TERRORISM AND GOVERNMENT
INFORMATION

PAUL C. LIGHT

CENTER FOR PUBLIC SERVICE
THE BROOKINGS INSTITUTION

JUNE 25, 2002

Thank you for inviting me to testify before this Subcommittee regarding the proposed homeland security reorganization. There are many in this city who favor moving forward as quickly as possible on this important legislation, and some who believe that it must be passed before September 11th in honor of the victims of the terrible attacks that make the case for action. However, such legislation can hardly be considered an honor if it is not done well.

Having studied more than a few reorganizations, I can testify that such efforts are rarely complete on signing. Congress often goes back into reorganizations to fine-tune, reconsider, and rearrange its work long after passage. That is certainly the case with the departments of Defense and Health, Education, and Welfare, for example.

Congress has returned to the Defense Department reorganization at least five times over the past fifty years, for example, starting with (1) the 1958 Department of Defense Reorganization Act (PL 85-599), which strengthened coordination among the armed services, (2) the 1980 Defense Officer Personnel Management Act (PL 96-513), which revised military promotion and retirement practices, (3) the 1985 Defense Procurement Improvement Act (PL 99-0145), which was a direct response to the procurement scandals of the early 1980s, (4) the 1985 Goldwater/Nichols Department of Defense Reorganization Act (PL 99-433), which once again sought to strengthen coordination, and (5) the 1989 Base Closure and Realignment Act (PL 100-526).

Congress has also returned to the Health, Education, and Welfare reorganization even more frequently, most notably the Department of Education Organization Act in 1979 (PL 96-88), which set asunder what President Eisenhower had joined together, and the 1994 Social Security Independence and Improvement Act (PL 103-296), which split

the Social Security Administration from what had been renamed the Department of Health and Human Services in 1979.

I raise this bit of history to note government reorganizations are usually a work in progress. I cannot find a single reorganization over the past seventy years that has *not* been changed in some material way at a later point in time. Indeed, the *U.S. Government Manual* provides more than 50 pages of executive organizations, which were terminated, transferred, or changed in name since March 4, 1933, the date of Franklin Roosevelt's inauguration. We create new agencies, then rearrange, downsize, coordinate, and terminate them. Then, more often than not, we create them again.

We will almost certainly begin thinking about how to reorganize the new Department of Homeland Security on the day we create it. Indeed, the president has anticipated just that in Sec. 733 of his proposal, which gives the new secretary authority to "establish, consolidate, alter, or discontinue such organization units within the Department, as he may deem necessary or appropriate." Although the White House rightly notes that this is the same authority granted to the secretary of education under the 1979 statute, one must remember that the Department of Education consists of less than 5,000 employees, while the new department will start with 170,000 employees, if not more.

I do support limited reorganization authority for the president, and believe it is a vital tool for governing the executive branch. However, that authority must be carefully defined so that it is not abused to the detriment of congressional prerogatives.

It seems to me that Congress must ask four basic questions about the proposed reorganization as part of simple due diligence:

1. Should there be a reorganization at all?

The decision to create a new federal entity or reorganize existing agencies is not bound by a hard calculus, however. Rather, it involves a balancing test in which one must ask whether the nation would be better served by a new sorting of responsibilities. Simply asked, if a cabinet-level department or agency is the answer, what is the question? At least five answers come to mind.

- Creating a cabinet-level department can give a particular issue such as homeland security a higher priority inside the federal establishment. That is certainly what Congress intended when it elevated the Veterans Administration to cabinet status in 1988. Although the bill did not originate in this Committee, its members eventually concluded that veterans policy merited the heightened visibility and importance that would come with a statutory seat at the cabinet table, and the perquisites that come with it.
- Creating a cabinet-level department can also integrate, coordinate, or otherwise rationalize existing policy by bringing lower-level organizations together under a single head. That is clearly what Congress intended in creating the Department of Energy in 1977. Congress and the president both agreed that the nation would be better served with a single entity in charge of energy policy than a tangled web of diffuse, often competing agencies. That

is also what Congress tried to accomplish in establishing the Department of Defense in 1947, and the National Aeronautics and Space Administration in 1958. It is useful to note that all three of these examples were in response to perceived threats: the Cold War and communism in 1947, fears of losing the space race in 1958, and the moral equivalent of war for energy independence in 1977.

- Creating a cabinet-level department can provide a platform for a new or rapidly expanding governmental activity. That is what drove Congress to create the Department of Housing and Urban Development in 1965. Although the federal government was involved in housing long before HUD, the new department was built as a base for what was anticipated to be a rapid rise in federal involvement. However, Congress did not place all housing programs within the new department.
- Creating a cabinet-level department can help forge a strategic vision for governing. That is what Congress expected in creating the Department of Transportation in 1966. The federal government had been involved in building roads and bridges for almost two hundred years when Congress created the department, but needed to coordinate its highway programs with its airports, airways, rail, and coastal programs. By pulling all modes of transportation under the same organization, Congress improved the odds that national transportation planning would be better served. Congress expected the same in not disapproving the reorganization plan that created the Environmental Protection Agency in 1970.

- Finally, creating a cabinet-level department can increase accountability to Congress, the president, and the public by making its budget and personnel clearer to all, its presidential appointees subject to Senate confirmation, its spending subject to integrated oversight by Congress and its Office of Inspector General, and its vision plain to see. Although it is tempting to believe that such accountability is only a spreadsheet away, cabinet-status conveys a megaphone that little else in Washington does. One should never discount the impact of perquisites in the political island called Washington, D.C. That is certainly what Congress intended to convey in not disapproving the reorganization plan that created the Department of Health, Education, and Welfare in 1953. It is also what it intended twenty-five years later when it split the Department of Education from that entity.

Even if one can find ample history to support the creation of a department of homeland security, it is important to note that cabinet-making is not a panacea. Merely combining similar units will not produce coherent policy, for example, nor will it produce greater performance, increase morale, or raise budgets. It most certainly will not make broken agencies whole. If an agency is not working in another department, there is no reason to believe that it will work well in the new department. Bluntly put, garbage in, garbage out. Conversely, if an agency is working well in another department or on its own as an independent agency, there is no reason to believe that it will continue to work well in the new department. Again, bluntly put again, if it ain't broke, don't move it.

Caveats noted, I believe the case for a department of homeland security is compelling: (1) homeland security demands the highest possible attention, not just now, but well into the future; (2) there is a desperate need for coordination, integration, and rationalization across the many agencies involved in the endeavor; (3) there is little doubt that the federal response will expand greatly in coming years; (4) there is a clear need for a strategic vision of how best to defend our borders; and (5) there is pressing need for greater transparency and accountability in homeland security policy. A department of homeland security could provide the platform for the integrated policy this nation needs.

2. Does this reorganization go too far?

The president was quite right to note that the proposed department is the largest since 1947, at least, that is, in terms of total employees. Although there have been larger reorganizations measured by dollars, the president's proposal dwarfs all others in total number of employees (170,000+), and number of agencies (22).

Impressive though it is in size and scope, I believe the reorganization goes too far. The general rule of thumb, and it is just a rule of thumb, is that such merger and acquisition reorganizations should only combine agencies that share at least 50 percent of the same mission. That is certainly the case for the Customs Service, Immigration and Naturalization Service, Border Patrol, and Transportation Security Administration, all of which share a common commitment to homeland security. That is not the case for many of the other agencies on the transfer list, including the Agriculture Department's Animal and Plant Health Inspection Service, the Coast Guard, and Federal Emergency

Management Agency (FEMA). The Coast Guard estimates that only 25 percent of its duties involve homeland security, while FEMA began its remarkable transformation to a high-performing agency in the mid-1990s by abolishing its civil defense function to concentrate on natural disasters.

It is hard to know just where to draw the line on a reorganization of this size. Depending upon the headcount estimates, roughly 75 percent of the department's budget and personnel are located in the Border and Transportation Security directorate, which contains Customs, INS, TSA, and the Border Patrol.

My inclination, and it is just that, an inclination, would be to focus the department more directly on border security and information analysis and infrastructure protection. That would mean, for example, that FEMA would remain exactly where it is, that there would be no chemical, biological, radiological, and nuclear countermeasures directorate, meaning that the Animal and Plant Health Inspection Service (APHIS) would also stay where it is. Although Congress could always remove the Coast Guard, FEMA, APHIS, and the other units should the reorganization prove overly broad, my preference is to start with the most logical combinations, then add as needed. In a similar vein, no pun intended, Congress can always decide later to split the national pharmaceutical stockpile from the Public Health Service.

3. Can the proposed department be effectively managed?

The president's proposal provides extraordinary authority to manage the reorganization, so much so, in fact, that one wonders whether the reorganization can be

managed at all. I am concerned about several of the proposed waivers, including the Sec. 733 reorganization authority, which would give Congress just 90 days to consider the consolidation, alteration, or termination of any entity transferred to the Department and established by statute. I think that authority is much too broad, and would urge Congress to consider alternative means of giving the secretary this flexibility, perhaps through a variation of the Base Closure and Realignment Commission of the 1990s.

I am also concerned about two other waivers in the proposed legislation:

- Under the president's draft legislation, the new department would have 27 presidential appointments. The number is not unusual given the department's size and scope, but the president's appointing authority is unprecedented. Of the 27 homeland security positions, only 14 would be subject to Senate advice and consent. The rest, including 10 assistant secretaries would serve at the president's pleasure, becoming the first assistant secretaries in history to enter office without Senate review. Moreover, the secretary of homeland security would have complete freedom to determine the titles, duties, and qualifications for all 16 assistant secretaries. It is freedom that Congress has refused to give in the three most recent department bills.
- The president's proposal would also give the secretary authority to create a personnel system that is "flexible and contemporary." Although the two words are never defined, the implication is obvious: the new department would be free to design a new system from scratch. It is hard to blame the president for making the proposal. The current personnel system is beyond comprehension. It is slow at the hiring, interminable at the firing, permissive

at the promoting, useless at the disciplining, and penurious at the rewarding. The vast majority of federal employees describe the hiring process as slow and confusing, and a surprising quarter do not call it fair. And less than a third say that the federal government does a good job at disciplining poor performers.

I believe Congress should reject these proposals. The Senate cannot allow the president to appoint the first assistant secretaries in history without confirmation, and not just because such action is an affront to constitutional prerogatives. The president's proposal would create two tiers of assistant secretaries within the new department, one with all the prestige that comes from nomination and confirmation, the other a second-class status that comes from entering office through the back door.

Similarly, Congress as a whole cannot give the new secretary the unfettered civil-service waivers imagined in the legislation. The new secretary needs a workforce that hits the ground running, not one that spends its first days asking how the words "flexible" and "contemporary" might affect each worker's future.

Congress has an obligation to do more than just say "no," however. To the contrary, it should bulldoze the bureaucratic prison that holds both appointees and employees captive.

- It could start by passing the Presidential Appointments Improvement Act co-sponsored by Senators Lieberman (D-CT) and Thompson (R-TN), and reported to the Senate floor last spring. The act would slim the government's ridiculously detailed financial disclosure form, and begin cutting down the number of presidential appointments to a more manageable number. It would

also encourage the White House to streamline its own forms by asking whether the nation really needs to worry these days about whether a potential appointee has any traffic tickets over $150 or has ever seen a marriage counselor.

- It could also take up the Federal Workforce Management Improvement Act, introduced last week by Senator George Voinovich (R-OH). The bill would give the federal government desperately needed, and clearly specified authorities for accelerating the hiring process, while paving the way for the large-scale reforms that are sure to come this fall from the National Commission on the Public Service chaired by Paul Volcker. Congress can also cherry pick from past statutes that have given other federal agencies specific authorities, most notably the 1998 Internal Revenue Service reforms, which gave the agency special authority to pay higher salaries and make faster hires.

4. Does the proposal leave anything out?

Although I believe that the president's proposal is too broad, I also believe it fails to address one key transfer: the Bureau of Consular Affairs. I am not an expert on the visa process, nor do I claim to understand the intricacies of embassy operations.

Perhaps that is why I simply do not understand how the secretary would actually use his visa-issuance authority. Under Sec. 403, the secretary is given "exclusive authority, through the secretary of state, to issue regulations with respect to, administer,

and enforce the provisions" of Sec. 104 of the Immigration and National Act and all other immigration and nationality laws. I know of no other statute that gives one secretary of a department such authority over the secretary of another department. What if the secretary of state refuses to issue the secretary of homeland security's order, for example? It seems to me that if the president wants the secretary of homeland security to issue regulations governing the functions of diplomatic and consular officers of the United States in connection with the granting or refusal of visas, the president should transfer the organizational units to the new department. That is precisely what the president proposes for the various units of other departments such as Agriculture, Health and Human Services, Treasury, and Justice.

I also noted with some chagrin that the president decided not to forward his own version of Senator Graham's legislation to create a statutory office of homeland security within the White House. Assuming that the president will continue to employ such an adviser, I believe Congress should give the adviser and his or her office the full statutory authority that it needs.

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Technology, Terrorism and Government Information, Committee on the Judiciary, U.S. Senate

For Release on Delivery
Expected at 10:00 a.m.
Tuesday, June 25, 2002

HOMELAND SECURITY

Proposal for Cabinet Agency Has Merit, But Implementation Will be Pivotal to Success

Statement of David Walker
Comptroller General of the United States

GAO-02-886T

Madame Chair and Members of Subcommittee:

Thank you for the opportunity to appear before the Subcommittee today to discuss one of the most important issues of our time, the reorganization of government agencies and the reorientation of their missions to improve our nation's ability to better protect our homeland. It is important to recognize that this transition to a more effective homeland security approach is part of a larger transformation that our government must make to address emerging fiscal, economic, demographic, scientific, technological and other challenges of the 21st century and to meet the expectations of the American people for timely, quality and cost-effective public services.

In the nine months since the horrible events of September 11th, the President and the Congress have responded with important and aggressive actions to protect the nation – creating an Office of Homeland Security (OHS), passing new laws such as the USA Patriot Act and an emergency supplemental spending bill, establishing a new agency to improve transportation security, and working with unprecedented collaboration with federal, state and local governments, private sector entities, non-governmental organizations and other countries to prevent future terrorist acts and to bring to justice those individuals responsible for such terrible acts.

More recently, the Congress and the President have sought to remedy long-standing issues and concerns in the government's homeland security functions by proposing greater consolidation and coordination of various agencies and activities. Recent proposals include restructuring the Federal Bureau of Investigation (FBI) and splitting the enforcement and service sections of the Immigration and Naturalization Service (INS). Additionally, Senator Joseph I. Lieberman and Representative William M. "Mac" Thornberry have authored legislation designed to consolidate many homeland security functions. On June 6th, the President announced a proposal to establish a Department of Homeland Security (DHS) and on June 18th transmitted draft legislation to the Congress for its consideration.

In my testimony today, I will focus on two major issues that Congress should review in its deliberations on creating a new cabinet department principally dedicated to homeland security: (1) the need for reorganization and the principles and criteria to help evaluate what agencies and missions should be included in or left out of the new DHS; and (2) issues related to the transition, cost and implementation challenges of the new department.

In response to global challenges the government faces in the coming years, we have a unique opportunity to create an extremely effective and performance-based organization that can strengthen the nation's ability to protect its borders and citizens against terrorism. There is likely to be considerable benefit over time from restructuring some of the homeland security functions, including reducing risk and improving the economy, efficiency and effectiveness of these consolidated agencies and programs. Realistically, however, in the short term, the magnitude of the challenges that the new department faces will clearly require substantial time and effort, and will take additional resources to make it fully effective. Numerous complicated issues will need to be resolved in the short term, including a harmonization of information technology systems, human capital systems, the physical location of people and other assets, and many other factors. Implementation of the new department will be an extremely complex task and will ultimately

take years to achieve. Given the magnitude of the endeavor, not everything can be achieved at the same time. As a result, it will be important for the new department to focus on a handful of important things, such as: articulating a clear overarching mission and core values, developing a national strategy, utilizing strategic planning to establish desired outcomes and key priorities, and assuring effective communications systems. Further, effective performance and risk management systems must be established, and work must be completed on threat and vulnerability assessments.

NEED, PRINCIPLES AND CRITERIA FOR REORGANIZATION

Need for Reorganization

GAO and other observers of the federal government's organization, performance and accountability for terrorism and homeland security functions have long recognized the prevalence of gaps, duplication and overlaps driven in large part by the absence of a central policy focal point, fragmented missions, ineffective information sharing, and institutional rivalries. In recent years, GAO has made numerous recommendations related to changes necessary for improving the government's response to combating terrorism. Prior to the establishment of the OHS, GAO found that the federal government lacked overall homeland security leadership and management accountable to both the President and Congress. GAO has also stated that fragmentation exits in both coordination of domestic preparedness programs and in efforts to develop a national strategy.[1] Based on evaluations prior to September 11th, GAO identified the following five actions to improve programs to combat terrorism:[2]

- Create a single high-level federal focal point for policy and coordination,
- Develop a comprehensive threat and risk assessment,
- Develop a national strategy with a defined end state to measure progress against,
- Analyze and prioritize governmentwide programs and budgets to identify gaps and reduce duplication of effort, and
- Coordinate implementation among the different federal agencies.

Moreover, in a recent report to Congress on initial concerns about organizing for homeland security since September 11th, GAO indicated that a definition of homeland security should be developed, preferably in the context of the Administration's issuance of a national strategy for homeland security, in order to improve the effectiveness and coordination of relevant programs.[3]

The recent and on-going actions of the Administration to strengthen homeland security functions, including the proposal for establishing DHS, should not be considered a substitute for, nor should they supplant, the timely issuance of a national homeland security strategy. Based on our prior work, GAO believes that the consolidation of some homeland security functions makes sense and will, if properly organized and implemented, over time lead to more efficient, effective and coordinated programs, better intelligence sharing, and a more robust

[1] *Combating Terrorism: Comments on Counterterrorism Leadership and National Strategy*, March 27, 2001 (GAO-01-556T).
[2] *Combating Terrorism: Observations on Options to Improve the Federal Response*, April 24, 2001(GAO-01-660T).
[3] *Homeland Security: Key Elements to Unify Efforts are Underway but Uncertainty Remains*, June 7, 2002 (GAO-02-610).

protection of our people, borders and critical infrastructure. At the same time, the proposed cabinet department, even with its multiple missions, will still be just one of many players with important roles and responsibilities for ensuring homeland security. At the federal level, homeland security missions will be require the involvement of the CIA, FBI, the U.S. Marshals Service, the Department of Defense (DOD), and a myriad of other agencies. State and local governments, including law enforcement and first responder personnel, and the private sector all have critical roles to play. If anything, the multiplicity of players only reinforces the recommendations that GAO has made in the past regarding the urgent need for a comprehensive threat, risk and vulnerability assessment and a national homeland security strategy that can provide direction and utility at all levels of government and across all sectors of the country.[4]

The development and implementation of a national strategy for homeland security is vital to effectively leveraging and coordinating the country's assets, at a national rather than federal level, to prevent and defend against future terrorist acts. A national homeland security strategy can help define and establish a clear role and need for homeland security and its operational components, to create specific expectations for performance and accountability, and to build a framework for partnerships that will support the critical role of coordination, communication and collaboration among all relevant parties and stakeholders with homeland security missions. DHS will clearly have a central role in the success of efforts to strengthen homeland security, but it is a role that will be made stronger within the context of a larger, more comprehensive and integrated national homeland security strategy.

A reorganization of the government's homeland security functions along the lines being proposed is a major undertaking and represents one of the largest potential reorganizations and consolidations of government agencies, personnel, programs and operations in recent history. Those involved in this transition should not underestimate the time or effort required to successfully achieve the results the nation seeks. Numerous comparisons have been made between the proposed DHS and other large-scale government reorganizations, including the creation of DOD, the Central Intelligence Agency and the National Security Council as part of the National Security Act of 1947. Other analogies include the 1953 creation of the Department of Health, Education and Welfare, the 1966 establishment of the Department of Transportation (DOT) or the 1977 creation of the Department of Energy (DOE). Each of these cabinet level restructurings involved the transfer and consolidation of disparate functions and the creation of a new cabinet level structure in the Executive Branch.

Often it has taken years for the consolidated functions in new departments to effectively build on their combined strengths, and it is not uncommon for these structures to remain as management challenges for decades. It is instructive to note that the creation of DOD, which arguably already had the most similar and aligned missions and functions among the reorganizations mentioned, still required Congress to make further amendments to its organization in 1949, 1953, 1958 and 1986 in order to improve its structural effectiveness. Despite these and other changes made by DOD, GAO has consistently reported over the years that the department – more than 50 years after the reorganization -- continues to have a number of serious management challenges. In fact, DOD has 6 of 22 government wide high risk areas based on GAO's latest list.[5] This note of caution is not intended to dissuade the

[4] *Combating Terrorism: Selected Challenges and Recommendations*, September, 2001 (GAO-01-822).
[5] *High Risk Series: An Update*, January 2001(GAO-01-263).

Congress from seeking logical and important consolidations in government agencies and programs in order to improve homeland security missions. Rather, it is meant to suggest that reorganizations of government agencies frequently encounter start up problems and unanticipated consequences that result from the consolidations, are unlikely to fully overcome obstacles and challenges, and may require additional modifications in the future to effectively achieve our collective goals for defending the country against terrorism.[6]

Organizational Principles and Criteria

The Congress faces a challenging and complex job in its consideration of DHS. On the one hand, there exists a certain urgency to move rapidly in order to remedy known problems relating to intelligence and information sharing and leveraging like activities that have in the past and even today prevent the United States from exercising as strong a homeland defense as emerging and potential threats warrant. Simultaneously, that same urgency of purpose would suggest that the Congress be extremely careful and deliberate in how it creates a new department for defending the country against terrorism. The urge to "do it quickly" must be balanced by an equal need to "do it right" in order to ensure a consensus on identified problems and needs, and to be sure that the solutions our government legislates and implements can effectively remedy the problems we face in a reasonably timely manner. It is clear that fixing the wrong problems, or even worse, fixing the right problems poorly, could cause more harm than good in our efforts to defend our country against terrorism.

The federal government has engaged in numerous reorganizations of agencies in our nation's history. Reorganizations have occurred at various times and for various reasons, and have been achieved through executive order, through recommendations by landmark commissions subsequently approved by the Congress, such as the Hoover Commission chaired by former President Herbert Hoover in the late 1940s, and by the Congress through its committee structure. The prevailing consensus on organizational management principles changed considerably during the course of the 20th century and through the various approaches to reorganization, but Hoover's Commission clearly articulated that agencies and functions of the executive branch should be grouped together based on their major purposes or missions. The government has not always followed Hoover's lead uniformly, but in recent years most departments except those serving a specific clientele, such as veterans, generally have been organized according to this principle.[7]

GAO's own work on government restructuring and organization over the years has tended to support the overall tendency to emphasize consolidations of agencies as ways to improve the economy, efficiency and effectiveness of government operations. GAO has previously recommended that reorganizations should emphasize an integrated approach, that reorganization plans should be designed to achieve specific, identifiable goals, and that careful attention to fundamental public sector management practices and principles, such as strong financial, technology and human capital management are critical to the successful implementation of government reorganizations.[8] Similarly, GAO has also suggested that reorganizations may be warranted based on the significance of the problems requiring

[6] *Implementation: The Missing Link in Planning Reorganizations*, March 20, 1981(GAO-GGD-81-57).
[7] *Reorganizing the Executive Branch in the 20th Century: Landmark Commissions* (Congressional Research Service, June 10, 2002) and *Principles of Federal Organization* (National Academy of Public Administration, January, 1997)
[8] *Government Reorganization Issues and Principles*, May 17, 1995 (GAO/T-GGD/AIMD-95-166).

resolution, as well as the extent and level of coordination and interaction necessary with other entities in order to resolve problems or achieve overall objectives.[9]

Of course, there are many lessons to be learned from the private sector, which over the past 20 years has experienced an extraordinary degree of consolidation through the merger and acquisition of companies or business units. Among the most important lessons, besides ensuring that synergistic entities can broaden organizational strengths more than limit them, is the need to pay critical attention to the employees impacted by the reorganization, and to align the human capital strategies and core competency components of the organization in order to meet expectations and achieve results.[10] GAO has made similar conclusions and recommendations for the federal government.[11] These observations are particularly apt to the proposed structure of DHS, which would combine an estimated 170,000 employees into a single department, making it the third largest government department in terms of personnel behind DOD and the Department of Veterans Affairs.

GAO, based on its own work as well as a review of other applicable studies of approaches to the organization and structure of entities, has concluded that Congress should consider utilizing specific criteria as a guide to creating and implementing the new department. Specifically, GAO has developed a framework that will help Congress and the Administration create and implement a strong and effective new cabinet department by establishing criteria to be considered for constructing the department itself, determining which agencies should be included and excluded, and leveraging numerous key management and policy elements that, after completion of the revised organizational structure, will be critical to the department's success. The following chart depicts the proposed framework:

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[9] *Environmental Protection: Observations on Elevating the EPA to Cabinet Status*, March 22, 2002 (GAO-02-522T).

[10] R.J. Kramer, *Post Merger Organization Handbook* (The Conference Board, 1999); and A.R. Lajoux, *The Art of M&A Integration* (McGraw Hill, 1998) and James Brian Quinn, *Intelligent Enterprise: A Knowledge and Service Based Paradigm for Industry* (Free Press, 1992).

[11] *Human Capital: A Self-Assessment Checklist for Agency Leaders*, September 2000 (GAO/OCG-00-14G).

Chart 1. Organization and Accountability Criteria

Organization and Accountability Criteria
For the Department of Homeland Security

The New Department
- Definition
- Statutory Basis
- Clear Mission
- Performance-based Organization

Agency Transition: Inclusion/Exclusion
- Mission Relevancy
- Similar Goals and Objectives
- Leverage Effectiveness
- Gains Through Consolidation
- Integrated Information Sharing/Coordination
- Compatible Cultures
- Impact on Excluded Agencies

Cultural Transformation: Implementation and Success Factors
- Strategic Planning
- Organizational Alignment
- Communications
- Building Partnerships
- Performance Management
- Human Capital Strategy
- Information Management and Technology
- Knowledge Management
- Financial Management
- Acquisition Management
- Risk Management

With respect to criteria that Congress should consider for constructing the department itself, the following questions about the overall purpose and structure of the organization should be evaluated:

- **Definition**: Is there a clear and consistently applied definition of homeland security that will be used as a basis for organizing and managing the new department?
- **Statutory Basis**: Are the authorities of the new department clear and complete in how they articulate roles and responsibilities and do they sufficiently describe the department's relationship with other parties?
- **Clear Mission**: What will the primary missions of the new DHS be and how will it define success?
- **Performance-based Organization:** Does the new department have the structure (e.g., COO, etc.) and statutory authorities (e.g., human capital, sourcing) necessary to meet performance expectations, be held accountable for results, and leverage effective management approaches for achieving its mission on a national basis?

Congress should also consider several very specific criteria in its evaluation of whether individual agencies or programs should be included or excluded from the proposed department. Those criteria include the following:

- **Mission Relevancy**: Is homeland security a major part of the agency or program mission? Is it the primary mission of the agency or program?
- **Similar Goals and Objectives:** Does the agency or program being considered for the new department share primary goals and objectives with the other agencies or programs being consolidated?
- **Leverage Effectiveness:** Does the agency or program being considered for the new department create synergy and help to leverage the effectiveness of other agencies and programs or the new department as a whole? In other words, is the whole greater than the sum of the parts?
- **Gains Through Consolidation:** Does the agency or program being considered for the new department improve the efficiency and effectiveness of homeland security missions through eliminating duplications and overlaps, closing gaps and aligning or merging common roles and responsibilities?
- **Integrated Information Sharing/Coordination:** Does the agency or program being considered for the new department contribute to or leverage the ability of the new department to enhance the sharing of critical information or otherwise improve the coordination of missions and activities related to homeland security?
- **Compatible Cultures**: Can the organizational culture of the agency or program being considered for the new department effectively meld with the other entities that will be consolidated? Field structures and approaches to achieving missions vary considerably between agencies.
- **Impact on Excluded Agencies**: What is the impact on departments losing components to DHS? What is the impact on agencies with homeland security missions left out of DHS?

In addition to the criteria that Congress should consider when evaluating what to include and exclude from the proposed DHS, there are certain critical success factors the new department should emphasis in its initial implementation phase. GAO over the years has made observations and recommendations about many of these success factors, based on effective management of people, technology, financial and other issues, especially in its biannual Performance and Accountability Series on major government departments.[12] These factors include the following:

- **Strategic Planning**: Leading results-oriented organizations focus on the process of strategic planning that includes involvement of stakeholders, assessment of internal and external environments, and an alignment of activities, cores processes and resources to support mission-related outcomes.

[12] *Major Management Challenges and Program Risks: A Government wide Perspective*, January 2001 (GAO-01-241).

- **Organizational Alignment**: The organization of the new department should be aligned to be consistent with the goals and objectives established in the strategic plan.
- **Communication**: Effective communication strategies are key to any major consolidation or transformation effort.
- **Building Partnerships:** One of the key challenges of this new department will be the development and maintenance of homeland security partners at all levels of the government and the private sector, both in the United States and overseas.
- **Performance Management:** An effective performance management system fosters institutional, unit and individual accountability.
- **Human Capital Strategy:** The new department must ensure that that its homeland security missions are not adversely impacted by the government's pending human capital crisis, and that it can recruit, retain and reward a talented and motivated workforce, which has required core competencies, to achieve its mission and objectives. The people factor is a critical element in any major consolidation or transformation.
- **Information Management and Technology:** The new department should leverage state-of-the art enabling technology to enhance its ability to transform capabilities and capacities to share and act upon timely, quality information about terrorist threats.
- **Knowledge Management:** The new department must ensure it makes maximum use of the collective body of knowledge that will be brought together in the consolidation.
- **Financial Management:** The new department has a stewardship obligation to prevent fraud, waste and abuse, to use tax dollars appropriately, and to ensure financial accountability to the President, Congress and the American people.
- **Acquisition Management:** Anticipated as one of the largest of new federal departments, the proposed DHS will potentially have one of the most extensive acquisition requirements in government. Early attention to strong systems and controls for acquisition and related business processes will be critical both to ensuring success and maintaining integrity and accountability.
- **Risk Management**: The new department must be able to maintain and enhance current states of homeland security readiness while transitioning and transforming itself into a more effective and efficient structural unit. The proposed DHS will also need to immediately improve the government's overall ability to perform risk management activities that can help to prevent, defend against and respond to terrorist acts.

Homeland Security Reorganization

Prior to the terrorist attacks of September 11th, the United States in recent years had made what must be characterized as limited progress in strengthening its efforts to protect the nation from terrorist attacks. Mainly through the mechanisms of executive orders and presidential decision directives (PDD), the President has sought to provide greater clarity and leadership in homeland security areas. For instance, PDD 39 in June 1995 assigned the Department of Justice, through the FBI, responsibility as the lead federal agency for crisis

management, and FEMA as the lead federal agency for consequence management for domestic terrorist attacks. In May 1998, PDD 62 established the position of national coordinator for terrorism within the National Security Council. PDD 63 emphasized new efforts to protect the nation's critical infrastructure from attack. Through legislation, the federal government increased the availability of grants for first responder training and instituted more regular tabletop training exercises involving state and local governments.

A number of blue ribbon panels or commissions were also convened prior to September 11th and, after studying the government's structure and methods for protecting against terrorism, made many important and timely recommendations for improving our approach. Panels led by former Senators Gary Hart and Warren Rudman, as well as former Virginia Governor James Gilmore, made sweeping recommendations about remedying the gaps, overlaps and coordination problems in the government's ability to detect, prevent, and respond to terrorist attacks in a comprehensive manner across both the public and private sectors. Indeed, the Hart-Rudman Commission recommended the creation of a new department to consolidate many of the government's homeland security functions.

In recent years, GAO has also issued numerous reports and made many recommendations designed to improve the nation's approach to homeland security. We summarized our work in a report completed just prior to the September 11th attacks, in which we found that: (1) overall leadership and coordination needed to be addressed; (2) limited progress had been made in developing a national strategy and related guidance and plans; (3) federal response capabilities had improved but further action was still necessary; (4) federal assistance to state and local governments could be consolidated; and (5) limited progress had been made in implementing a strategy to counter computer-based threats.[13] We have continued to re-iterate that a central focal point such as OHS be established statutorily in order to coordinate and oversee homeland security policy within a national framework.[14] Today, we re-emphasize the need for OHS to be established statutorily in order to effectively coordinate activities beyond the scope of the proposed DHS and to assure reasonable congressional oversight.

As mentioned previously, after the September 11th terrorist attacks, Congress and the Administration took a number of actions designed to improve our ability to combat terrorism and protect the nation. The President created OHS via executive order. Congress passed legislation creating the Transportation Security Administration (TSA) to better secure transportation and the USA Patriot Act to improve our capabilities to detect and prevent terrorist acts. Congress also introduced legislation to restructure a variety of homeland security related functions, and Senator Lieberman and Representative Thornberry proposed legislation to create a new cabinet department to consolidate many homeland security functions.

On June 6th, President Bush announced a new proposal to create a Department of Homeland Security and submitted draft legislation to Congress on June 18th. Like the congressional approaches to creation of a new department, the President's plan also reflected many of the recent commissions' suggestions and GAO's recommendations for improved coordination and consolidation of homeland security functions. As indicated by Governor Ridge is his recent testimony before Congress, the creation of DHS would empower a single

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[13] *Combating Terrorism: Selected Challenges and Recommendations*, September 20, 2001 (GAO-01-822).
[14] *Homeland Security: Responsibility and Accountability for Achieving National Goals*, April 11, 2002 (GAO-02-627T).

cabinet official whose primary mission is to protect the American homeland from terrorism, including: (1) preventing terrorist attacks within the United States; (2) reducing America's vulnerability to terrorism; and (3) minimizing the damage and recovering from attacks that do occur.[15]

In our initial review of the proposed DHS, we have used the President's draft bill of June 18th as the basis of our comments. Nevertheless, we recognize that the proposal has already – and will continue -- to evolve in the coming days and weeks ahead. The President's proposal creates a cabinet department with four divisions, including:

- Information Analysis and Infrastructure Protection
- Chemical, Biological, Radiological and Nuclear Countermeasures
- Border and Transportation Security
- Emergency Preparedness and Response

Additionally, the proposed DHS would be responsible for homeland security coordination with other executive branch agencies, state and local governments, the private sector and other entities. The legislation transfers to the new department intact the U.S. Secret Service and the U.S. Coast Guard. For the organizations transferred to the new department, the proposed DHS would be responsible for managing all of their functions, including non-homeland security functions. In some instances, these other responsibilities are substantial. Finally, the proposal would exempt the new department from certain authorities, including some civil service protections, the Federal Advisory Committee Act, and procurement laws, while providing authority to authorize new rules by regulation and to reprogram portions of departmental appropriations. The new department's Inspector General would be modeled on that office in the Central Intelligence Agency.

Homeland Security Missions

One of the most critical functions that the new department will have is the analysis of information and intelligence to better foresee terrorist threats to the United States. As part of its function, the Information Analysis and Infrastructure Protection division of the department would assess the vulnerability of America's key assets and critical infrastructure, including food and water systems, agriculture, health systems, emergency services, banking and finance, communications and information systems, energy (including electric, nuclear, gas and oil and hydropower), transportation systems, and national monuments.

The President's proposal seeks to transfer to the new department the FBI's National Infrastructure Protection Center (other than the computer investigations and operations center), the National Communications System of DOD, the Commerce Department's Critical Infrastructure Assurance Office, the Computer Security Division of the National Institute of Standards and Technology (NIST), the National Infrastructure Simulation and Analysis Center of DOE, and the General Services Administration's (GSA) Federal Computer Incident Response Center.

The Administration has indicated that this new division would for the first time merge under one roof the capability to identify and assess threats to the homeland, map those threats against our vulnerabilities, issue timely warnings, and organize preventive or protective action to secure the homeland. Considerable debate has ensued in recent weeks with respect to the

[15] *The Department of Homeland Security: Making Americans Safer,* Written Statement of Governor Tom Ridge before the Committee on Governmental Affairs, U.S. Senate, June 20, 2002.

quality and timeliness of intelligence data shared between and among relevant intelligence, law enforcement and other agencies. The proposal would provide for the new department to receive all reports and analysis related to threats of terrorism and vulnerabilities to our infrastructure and, if the President directs, information in the "raw" state that has not been analyzed.

The agencies and programs included in the Administration's proposal to consolidate information analysis functions are clear contributors to the homeland security mission and, if well coordinated or consolidated, could provide greater benefits in incident reporting, analysis and warning, and the identification of critical assets. Such a critical endeavor, however, will still require detailed planning and coordination, including a national critical infrastructure protection strategy, both inside and outside the new department, to ensure that relevant information reaches the right offices and officials who can act upon it. Furthermore, in considering this portion of the legislation, Congress ought to evaluate whether the new division as proposed, despite the provision stipulating access, will have sufficient ability to obtain all necessary information, assistance and guidance to make decisions in a timely, effective manner.

Within this framework, the Congress will likely need to make trade-off decisions between concerns over access and utility of information and the concerns that some Americans may have about civil rights issues associated with any larger consolidation of domestically-oriented intelligence operations. It is also important to note that while certain cyber/critical infrastructure protection functions are proposed for transfer into DHS, a significant number of federal organizations involved in this effort will remain in their existing locations, including the Critical Infrastructure Protection Board, the Joint Task Force for Computer Network Operations, and the Computer Investigations and Operations Section of the FBI. The homeland security proposal is silent on the relationship between those entities that will be consolidated and their role in coordinating with the entities left out of the new department, and Congress should consider addressing this important issue. Ultimately, a greater emphasis on strategic planning and information sharing clearly will be necessary to resolve the significant shortfalls that the government has faced in sharing critical intelligence and infrastructure information in order to better achieve homeland security expectations. The consolidation of some intelligence functions into DHS may help solve these problems.

The division of the new department responsible for chemical, biological, radiological and nuclear countermeasures will consolidate several important scientific, research and development programs, including the select agent registration enforcement programs and activities of the Department of Health and Human Services (HHS), programs at DOE dealing with chemical and biological national security and non-proliferation supporting programs, the nuclear smuggling programs, the nuclear assessment program, energy security and assurance activities, and life science activities of DOE's biological and environmental research program related to microbial pathogens. Also proposed for transfer are the Environmental Measurements Laboratory, portions of the Lawrence Livermore National Laboratory, the Plum Island Animal Diseases Center of the Department of Agriculture (USDA), and DOD's National Bio-Weapons Defense Analysis Center, which is not yet operational.

The proposal seeks to remedy the current fragmented efforts of the government and its private sector partners to counter and protect against the threat of weapons of mass destruction. To the extent that this division would develop or coordinate the development of national policy to strengthen research and development in the areas of countermeasures to chemical,

biological, radiological and nuclear weapons, such a goal conforms to previous recommendations we have made.[16] As with the information analysis division discussed previously, this division would also have extensive needs to coordinate with other similar programs throughout the government – programs which are not included in the new department. For example, there are civilian applications of defense related research and development underway at the Defense Threat Reduction Agency (DTRA) and the National Institutes of Health (NIH) has some on-going responsibility for bioterrorism research. Whether such programs ought to be considered for inclusion in the new department, or whether these issues can be coordinated simply through improved interaction, are also questions that should be considered in the larger context of the legislation. The proposal also calls for transferring elements of the Lawrence Livermore Lab to the new department. At this point, without sufficient additional information, it is not clear what the impact that such a shift would have on the lab's overall research program or the significant contract workforce that is engaged in much of the activities. Congress may also need to further explore whether the relationships the proposal would establish between the new department's secretary and the Secretary of HHS will efficiently and effectively result in the desired outcomes for civilian research, as the nature of the agreements and delegations to implement such functions are not clear. Nevertheless, despite some unresolved ambiguity, it will be important for the Congress to capture the synergy that potentially can be created by combining compatible research and development activities.

One of the larger divisions of the new department would handle Border and Transportation Security, and would include the transfer of the U.S. Customs Service, INS, the Animal and Plant Health Inspection Service (APHIS) of USDA, the Coast Guard and TSA, both from DOT, and GSA's Federal Protective Service. The proposal seeks to bring together under one department all of the border control functions, including authority over the issuance of visas, in order to consolidate operations for border controls, territorial waters and transportation systems. This effort is designed to balance prevention of terrorist activities against people, food and other goods, and transportation systems with the legitimate, rapid movement of people and commerce across borders and around the country. Under the proposed transfer, APHIS and Plum Island (as part of the Infrastructure division) would be moved from USDA, but other units would remain. In addition, no Food and Drug Administration (FDA) food safety functions were identified for transfer. Thus, the focus appears to be on enhancing protection of livestock and crops from terrorist acts, rather than on protecting the food supply as a whole. In previous reports, GAO has described our current fragmented federal food supply safety structure and, in the absence of a single food safety agency, Congress may wish to consider whether the new department would be able to prevent, detect, and quickly respond to acts of terrorism in the food supply. Another issue that Congress may need to consider is the organizational separation of facilities management functions and building security responsibilities contained in the Federal Protective Service's mission. Since the provision of security is a key facilities management function, security needs to be integrated into decisions about the location, design and operation of federal facilities. Moreover, many federal agencies provide their own building security. The proposal does not address the coordination or further consolidation of such functions, and it is also silent on GSA's role in leading the Interagency Security Committee, which develops the

[16] *Combating Terrorism: Selected Challenges and Related Recommendations*, September 20, 2001 (GAO-01-822).

federal government's security policies and oversees the implementation of such policies in federal facilities.

Finally, the last division, Emergency Preparedness and Response, would combine the government's various agencies and programs that provide assistance, grants, training and related help to state and local governments, to first responder personnel and support other federal agencies that may confront terrorist attacks, major disasters and other emergencies. The proposal would transfer to the new department the Federal Emergency Management Agency (FEMA), the Office of Domestic Preparedness and the Domestic Emergency Support Teams of the Justice Department and National Domestic Preparedness Office of the FBI, as well as the Strategic National Stockpile and certain public health preparedness responsibilities of HHS. This consolidation would allow the secretary of the new department to oversee federal government assistance in the domestic disaster preparedness training of first responders and would coordinate the government's disaster response efforts. Although certain other disaster response functions are not specifically included in the proposed department, the DHS secretary would have the authority to call on other response assets, such as DOE's nuclear incident response teams. Additionally, Congress might wish to examine the likely impact of establishing agreements between the DHS and HHS secretaries that retain authority for the conduct of certain public health related activities at DHS but the execution of the activities would be left to HHS.

Impact on Other Functions

The legislation for the new department indicates that DHS, in addition to its homeland security responsibilities, will also be responsible for carrying out all other functions of the agencies and programs that are transferred to it. In fact, quite a number of the agencies proposed to be transferred to DHS have multiple functions – they have missions directly associated with homeland security and missions that are not at all related to homeland security. In our initial review of the impacted agencies, we have not found any missions that would appear to be in fundamental conflict with the department's primary mission of homeland security. However, the Congress will need to consider whether many of the non-homeland security missions of those agencies transferred to DHS will receive adequate funding, attention, visibility and support when subsumed into a department that will be under tremendous pressure to succeed in its primary mission. As important and vital as the homeland security mission is to our nation's future, the other non-homeland security missions transferred to DHS for the most part are not small or trivial responsibilities. Rather, they represent extremely important functions executed by the federal government that, absent sufficient attention, could have serious implications for their effective delivery and consequences for sectors of our economy, health and safety, research programs and other significant government functions. Some of these responsibilities include:

- maritime safety and drug interdiction by the Coast Guard,
- collection of commercial tariffs by the Customs Service,
- regulation of genetically engineered plants by APHIS,
- advanced energy and environmental research by the Lawrence Livermore and Environmental Measurements labs,
- responding to floods and other natural disasters by FEMA, and
- authority over processing visas by the State Department's consular officers.

These examples reveal that many non-homeland security missions are likely to be integrated into a cabinet department overwhelmingly dedicated to protecting the nation from terrorism. Congress may wish to consider whether the new department, as proposed, will dedicate sufficient management capacity and accountability to ensure the execution of non-homeland security missions, as well as consider potential alternatives to the current framework for handling these important functions.

Likewise, Congress may wish to consider the impact that the proposed transfer of certain agencies and programs may have on their "home" departments. Both the Department of the Treasury and the DOT will see significant reductions in size and changes to their overall departmental missions, organization, and environments if the legislation is enacted. As a result, these changes provide an opportunity for Congress and the Administration to consider what is the proper role for these and other federal government entities. As the impact of reductions of missions and personnel are contemplated at several cabinet departments, it is appropriate for Congress to reconsider the relevance or fit of federal programs and activities. This process requires that we ask important, yet sometimes tough questions, such as:

- What is the national need?
- How important is it relative to other competing needs and available resources?
- What is the proper federal role, if any?
- Who are the other key players (e.g., state and local government, non-government organizations, private sector)?
- How should we define success (e.g., desired outcomes)?
- What tools of government create the best incentives for strong results – (direct funding, tax incentives, guarantees, regulation, enforcement)?
- What does experience tell us about the effectiveness of any current related government programs?
- Based on the above, what programs should be reduced, terminated, started or expanded?

In fact, given the key trends identified in GAO's recent strategic plan for supporting the Congress and our long range fiscal challenges, now is the time to ask three key questions: (1) what should the federal government do in the 21st century? (2) how should the federal government do business in the 21st century? and (3) who should do the federal government's business the 21st century? These questions are relevant for DHS and every other federal agency and activity.

As the proposal to create DHS indicates, the terrorist events of last fall have provided an impetus for the government to look at the larger picture of how it provides homeland security and how it can best accomplish associated missions. Yet, even for those agencies that are not being integrated into DHS, there remains a very real need and possibly a unique opportunity to rethink approaches and priorities to enable them to better target their resources to address our most urgent needs. In some cases, the new emphasis on homeland security has prompted attention to long-standing problems that have suddenly become more pressing. For example, we've mentioned the overlapping and duplicative food safety programs in the federal government.[17] While such overlap has been responsible for poor coordination and inefficient allocation of resources, these issues assume a new, and potentially more foreboding, meaning

[17] *Food Safety: Fundamental Changes Needed to Ensure Safe Food*, October 10, 2001 (GAO-02-47T).

after September 11th given the threat from bio-terrorism. A consolidated approach can facilitate a concerted and effective response to new threats.

The federal role in law enforcement, especially in connection with securing our borders, is another area that is ripe for re-examination following the events of September 11th. In the past 20 years, the federal government has taken on a larger role in financing criminal justice activities that have traditionally been viewed as the province of the state and local sector. Given the daunting new law enforcement responsibilities, and limited budgetary resources at all levels, it is important to consider whether these additional responsibilities should encourage us to reassess criminal justice roles and responsibilities at the federal, state and local level.

Management Concerns

As Congress considers legislation for a new homeland security department, it is important to note that simply moving agencies into a new government organizational structure will, by itself, be insufficient to create the dynamic environment that will be required to meet performance expectations for protecting and defending the nation against terrorism. It is critical to recognize the important management and implementation challenges the new department will face. These challenges are already being faced at TSA, which is under considerable pressure to build a strong workforce and meet numerous deadlines for integrating technology and security issues. Moreover, Congress should be aware that some fundamental problems currently exist with certain of the agencies that are slated to become part of the new department. DHS will need to pay special attention to these agencies to ensure that they can maintain readiness and confront significant management problems simultaneously.

For example, several of the agencies currently face challenges in administering their programs, managing their human capital, and implementing and securing information technology systems. Absent immediate and sustained attention to long-standing issues, these problems are likely to remain once the transfer is complete. Our past work has demonstrated that these management challenges exist within INS, APHIS, and FEMA. Program management and implementation has been a particular challenge for INS, which has a dual mission of enforcing laws regarding illegal immigration and providing immigration and naturalization services for aliens who enter and reside legally in the U.S. This "mission overload" has impeded INS from succeeding at either of its primary functions. In 1997, the bipartisan Commission on Immigration Reform stated that INS' service and enforcement functions were incompatible and that tasking one agency with carrying out both functions caused problems, such as competition for resources, lack of coordination and cooperation, and personnel practices that created confusion regarding mission and responsibilities. For example, INS does not have procedures in place to coordinate its resources for initiating and managing its programs to combat alien smuggling. In several border areas, multiple antismuggling units exist that operate autonomously, overlap in jurisdiction, and report to different INS officials. In addition, INS field officials lack clear criteria on which antismuggling cases to investigate, resulting in inconsistent decision-making across locations.[18]

Managing human capital also remains a challenge for INS, APHIS, and FEMA. For INS, issues in managing its human capital management have impacted various functions. Because of cut backs or delays in training, a large portion of INS' staff will be relatively inexperienced and inadequately trained for processing visas for specialty occupations. Furthermore, while INS officials believe they need more staff to keep up with the workload, they could not specify the

[18] *Major Management Challenges and Program Risks: Department of Justice*, January 2001 (GAO-01-250).

types of staff needed or where they should be located because of the lack of a staff allocation model and procedures. APHIS, one of the three primary agencies responsible for monitoring the entry of cargo and passengers into the U.S., has struggled to keep pace with its heavy workload at ports of entry.[19] These conditions have led APHIS inspectors to shortcut cargo inspection procedures, thereby jeopardizing the quality of the inspections conducted. In addition, APHIS has little assurance that it is effectively deploying its limited inspection resources because of weaknesses in its staffing models. Likewise, FEMA still struggles with using its disaster relief staff in an effective manner although it has reported progress in improving its Disaster Field Office operations through convening a review council to study its operations and the implementation of corrective actions.[20]

Agencies' management efforts to implement information technology systems, as well as utilize and secure the information within these systems, have also proved challenging. For example, INS lacks an agencywide automated case tracking and management system to help it monitor and coordinate its investigations. Further, INS' antismuggling intelligence efforts have been hampered by an inefficient and cumbersome process for retrieving and analyzing intelligence information and by the lack of clear guidance to INS staff about how to gather, analyze, and disseminate intelligence information. Within APHIS, no central automated system has been implemented to allow for agency-wide access to information on the status of shipments on hold at ports, forcing inspection staff to use a manual record keeping system that does not reliably track this information. For FEMA, material weaknesses in its access controls and program change controls have contributed to deficiencies within its financial information systems.

KEYS TO SUCCESSFUL IMPLEMENTATION

The creation of the Department of Homeland Security will be one of the largest, most complex re-structurings ever under taken. The department and its leaders will face many challenges, including organizational, human capital, process, technology and environmental issues that must be sorted out at the same time that the new department is working to maintain readiness. Strategic planning will be critical to maintaining readiness, managing risk, and balancing priorities, and the department's broad mission will depend on many partners to ensure success. Moreover, sound management systems and practices will be integral to the department's ability to achieve its mission effectively and to be held accountable for results.

Though faced with enormous management challenges, one must also look at the building of a new department as an opportunity to create a high performance organization. As indicated earlier, the President's proposal includes many management flexibilities to allow rapid and fluid responses to events and to obtain sufficient personnel for the new department. Given the enormous management challenges, it is clear that some degree of flexibility will be necessary for the new department to minimize transition problems. However, in providing flexibility, mechanisms must also be established to provide some protections to prevent abuse and appropriate transparency and accountability mechanisms. The government's management laws, such as the Chief Financial Officers Act, the Clinger-Cohen Act, the Inspector General Act, and

[19] *Agricultural Inspection: Improvements Needed to Minimize Threat of Foreign Pests and Disease*, May 5, 1997 (GAO/RED-97-102).
[20] *Federal Emergency Management Agency: Status of Achieving Key Outcomes and Addressing Major Management Challenges*, July 9, 2001 (GAO-01-832).

the Government Performance and Results Act, for instance, provide an effective foundation for the management structure of the new department and a basis for ensuring performance and accountability. These laws, as well as the following management practices, will be critical to the ultimate success of the new department:

Strategic Planning

A strategic plan should be the cornerstone of DHS' planning structure. It should clearly articulate the agency's mission, goals, objectives, and the strategies the department will use to achieve those goals and objectives. It provides a focal point for all planning efforts, and is integral to how an organization structures itself to accomplish its mission. In addition, a comprehensive transition plan that clearly delineates timetables and resource requirements will be vital to managing this re-organization. A consolidation of this magnitude cannot be accomplished in months. As shown by past experience, it will take years to truly consolidate the programs, functions and activities being brought under the umbrella of DHS. The President has taken a significant first step by establishing a transition planning office in the Office of Management and Budget. Congress should consider requiring a comprehensive transition plan and periodic progress reports, as part of its oversight of the consolidation actions.

The magnitude of the challenges that DHS faces calls for comprehensive and rigorous planning to guide decisions about how to make the department work effectively and achieve high performance. Leadership will be needed to establish long-range plans, to direct and coordinate the actions of the department's various interrelated policies and functions, and to achieve its goals and objectives. Management also must develop specific short-range plans to efficiently direct resources among functions and to assist in making decisions regarding day-to-day operations. DHS must define priorities, goals and plans in concert with other agencies, Congress, and outside interest groups, while also leveraging the potential and dynamism of its new units.[21]

Organizational Alignment

Leading organizations start by assessing the extent to which their programs and activities contribute to meeting their mission and intended results. An organization's activities, core processes, and resources must be aligned to support missions and help it achieve its goals. It is not uncommon for new leadership teams to find that their organization structures are obsolete and inadequate to modern demands, or that spans of control and field to headquarters ratios are misaligned, and that changes are required. For example, the agencies proposed to be included in DHS have unique field structures, the integration of which will be a significant challenge given the natural tension between organizational, functional and geographic orientations. Flexibility will be needed to accomplish this difficult management task, as well as many others.

Communication/Building Partnerships

The President's proposal will consolidate many homeland security functions and activities. However, the new department ultimately will be dependent on the relationships it builds both within and outside the department for its ultimate success. As we indicated, the

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[21] *Management Reform: Elements of Successful Improvement Initiatives*, October 15, 1999 (GAO/T-GGD-00-26).

recently reported intelligence sharing challenges provide ample illustration of the need for strong partnerships and full communication among critical stakeholders.

There is a growing understanding that any meaningful results that agencies hope to achieve are accomplished through matrixed relationships or networks of governmental and nongovernmental organizations working together toward a common purpose. These matrixed relationships exist on at least three levels. First, they support the various internal units of an agency. Second, they include the relationships among the components of a parent department as well as those between individual components and the department. Matrixed relationships are also developed externally, including relationships with other federal agencies, domestic and international organizations, for-profit and not-for-profit contractors, and state and local governments, among others.

Internally, leading organizations seek to ensure that managers, teams, and employees at all levels are given the authority they need to accomplish their goals and work collaboratively to achieve organizational outcomes. Communication flows up and down the organization to ensure that line staff has the ability to provide leadership with the perspective and information that the leadership needs to make decisions. Likewise, senior leadership keeps line staff informed of key developments and issues so that the staff can best contribute to achieving the organization's goals. There is no question that effective communication strategies are key to any major consolidation or transformation effort.

Collaboration, coordination, and communication are equally important across agency boundaries. However, our work also has shown that agencies encounter a range of barriers when they attempt coordination.[22] In our past work, we have offered several possible approaches for better managing crosscutting programs – such as improved coordination, integration, and consolidation–to ensure that crosscutting goals are consistent, program efforts are mutually reinforcing, and where appropriate, common or complementary performance measures are used as a basis for management.[23]

The proposed legislation provides for the new department to reach out to state and local governments and the private sector to coordinate and integrate planning, communications, information, and recovery efforts addressing homeland security. This is important recognition of the critical role played by nonfederal entities in protecting the nation from terrorist attacks. State and local governments play primary roles in performing functions that will be essential in effectively addressing our new challenges. Much attention has already been paid to their role as first responders in all disasters, whether caused by terrorist attacks or natural disasters. State and local governments also have roles to play in protecting critical infrastructure and providing public health and law enforcement response capability. The private sector's ownership of energy and telecommunications is but one indicator of the critical role that the corporate sector must play in addressing threats to our homeland.

Achieving national preparedness and response goals hinge on the federal government's ability to form effective partnerships with nonfederal entities. Therefore, federal initiatives should be conceived as national, not federal in nature. The new department needs to gain the full participation and buy-in of partners in both policy formulation and implementation to develop effective partnerships. DHS will need to balance national interests with the unique needs and interests of nonfederal partners. One size will not, nor should it, fit all. It is important to

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[22] *Managing for Results: Barriers to Interagency Coordination*, March 29, 2000 (GAO/GGD-01-106).
[23] *Using the Results Act to Address Mission Fragmentation and Program Overlap*, August 29, 1997 (GAO/AIMD-97-146).

recognize both the opportunities and risks associated with partnerships. While gaining the opportunity to leverage the legal, financial and human capital assets of partners for national preparedness, each of these nonfederal entities has goals and priorities that are independent of the federal government. In designing tools to engage these actors, the department needs to be aware of the potential for goal slippage and resource diversion. For instance, in providing grants to state or local governments for training and equipment, federal officials should be alert to the potential for these governments to use grants to substitute for their own resources in these programs, essentially converting a targeted federal grant into a general revenue sharing initiative. Maintenance of effort provisions can be included to protect against such risk. Designing and managing the tools of public policy to engage and work constructively with third parties has become a new skill required of federal agencies, and one that needs to be addressed by the new department.

A good illustration of the relevance of partnerships involves the protection of the nation's borders against threats arriving aboard shipping cargo. The Customs Service currently inspects only two percent of the cargo arriving in American ports and it is probably unrealistic to expect significant increases in coverage through inspections even with higher numbers of federal inspectors. Rather, a more effective strategy calls for the federal government to work proactively with shipping companies to gain their active buy-in to self-inspections and more rigorous protection of cargo. Partnerships with foreign ports are also critical in preventing the shipping of suspicious items in the first place. Although critical to national security, the protection of our ports illustrates the critical role played by partnerships spanning sectors of the economy and nations.

Performance Management

A performance management system that promotes the alignment of institutional, unit and individual accountability to achieve results will be an essential component for success of the new department. High-performing organizations know how the services and functions they deliver contribute to achieving the results of their organizations. Our work has shown that there are three characteristics for high-performing, results-oriented organizations. These organizations: (1) define clear missions and desired outcomes; (2) measure performance to gauge progress; and (3) use performance information as a basis for decision-making.[24] These characteristics are consistent with the Government Performance and Results Act, and should be the guide to developing a strong performance management system for the new department.

The first step for the department's leadership will be to define its mission and desired outcomes. Activities, core processes and resources will have to be aligned. This will require cascading the department's goals and objectives down through the organization. Further, an effective performance management system will require involvement of stakeholders and a full understanding of the environment in which the department operates.

A good performance management system fosters both institutional, unit and individual accountability. One way to inculcate a culture of excellence or results-orientation is to align individual employees' performance expectations with agency goals and desired outcomes so that individuals understand the connection between their daily activities and their organization's success. High-performing organization have recognized that a key element of a fully successful performance management system is to create a "line of sight" that shows how individual

[24] *Executive Guide: Effectively Implementing the Government Performance and Results Act*, June 1996 (GAO/GGD-96-118).

responsibilities contribute to organizational goals. These organizations align their top leadership's performance expectations with organizational goals and then cascade performance expectations to lower organizational levels.[25]

Human Capital Strategy

An organization's people are its most important asset. People define an organization, affect its capacity to perform, and represent the knowledge-base of the organization. In an effort to help agency leaders integrate human capital considerations into daily decision-making and in the program results they seek to achieve, we have recently released an exposure draft of a model of strategic human capital management that highlights the kinds of thinking that agencies should apply and steps they can take to manage their human capital more strategically.[26] The model focuses on four cornerstones for effective human capital management –leadership; strategic human capital planning; acquiring, developing, and retaining talent; and results-oriented organization culture. The new department may find this model useful in helping guide its efforts.

One of the major challenges DHS faces is the creation of a common organizational culture to support a unified mission, common set of core values, and organization-wide strategic goals, while simultaneously ensuring that the various components have the flexibility and authorities they need to achieve results. When I have discussed the need for government-wide reforms in strategic human capital management, I have often referred to a three-step process that should be used in making needed changes. This process may be helpful to Congress as it considers the human capital and other management authorities it will provide the department. Like other departments, DHS should be encouraged to make appropriate use of all authorities at its disposal. We often find that agencies are not taking full advantage of the tools, incentives, and authorities that Congress and the central management agencies have provided. DHS will also find it beneficial to identify targeted statutory changes that Congress could consider to enhance DHS's efficiency and effectiveness (e.g., additional hiring and compensation flexibility for critical skill areas, targeted early out and buyout authority). In this regard, Congress may wish to consider the approach it used in forming TSA, which included provisions for a progress report and related recommendations for congressional action.

Information Management and Technology

The new department will face tremendous communications and systems and information technology challenges. Programs and agencies will be brought together in the new department from throughout the government. Each will bring their communications and information systems. It will be a tremendous undertaking to integrate these diverse systems to enable effective communication and share information among themselves, as well as those outside the department. Further, considering the sensitivity of the data at the proposed department, securing its information systems and networks will be a major challenge. Since 1996, we have reported that poor information security is a widespread federal government problem with potentially devastating consequences.

Effective leadership and focused management control will be critical to meeting these challenges. We recommend that a CIO management structure as prescribed by the Clinger-

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[25] *Managing for Results: Emerging Benefits From Selected Agencies' Use of Performance Agreements,* October 20, 2000 (GAO-01-115).

[26] *A Model of Strategic Human Capital Management,* March 15, 2002 (GAO-02-373SP).

Cohen Act of 1996 be established to provide the leadership necessary to direct this complex, vital function. Further, it will be critical that an enterprise architecture be developed to guide the integration and modernization of information systems. Enterprise architecture consists of models that describe how the enterprise operates now and how it needs to operate in the future. Without enterprise architecture to guide and constrain IT investments, stovepipe operations and systems can emerge, which in turn lead to needless duplication, incompatibilities, and additional costs. By its very nature, the combining of organizations will result in stovepipes. It will require strong leadership, re-engineering of business processes to meet corporate goals, and effective planning to integrate, modernize and secure the new department's information systems.

Knowledge Management

Effective knowledge management captures the collective body of information and intellect within an organization, treats the resultant knowledge base as a valued asset, and makes relevant parts of the knowledge base available to decisionmakers at all levels of the organization. Knowledge management is closely aligned with enterprise architecture management, because both focus on systematically identifying the information needs of the organization and describing the means for sharing this information among those who need it. The people brought together in the new department will have diverse skills and knowledge. It will be critical for the new department to build an effective knowledge management capability. Elements involved in institutionalizing this function include:

- Deciding with whom (both internally and externally) to share organizational knowledge;
- Deciding what knowledge is to be share, through performing a knowledge audit and creating a knowledge map;
- Deciding how the knowledge is to be share, through creating apprenticeship/mentoring programs and communities of practice for transferring tacit knowledge, identifying best practices and lessons learned, managing knowledge content, and evaluating methods for sharing knowledge; and
- Sharing and using organizational knowledge, through obtaining sustained executive commitment, integrating the knowledge management function across the enterprise and embedding it in business models, communications strategies, and measuring performance and value.

Financial Management

The events of September 11th and the efforts of the Administration and Congress to protect the country from future terrorist attacks have generated enormous demands on resources in a short period of time. The FY2002 appropriations and the nearly simultaneous transmission of an emergency supplement and FY2003 budget request were followed shortly by a second FY2002 supplemental. This rapid growth in spending for homeland security has shifted budget priorities in ways that we are only beginning to understand. As Congress considers the resource implications of the proposed Department, both budget and accountability issues need to be addressed.

It will be important for both OMB and the Congress to develop a process to track the budget authority and outlays associated with homeland security through the President's budget proposals, congressional budget resolution, and the appropriations process.[27] A tracking system

[27] OMB issues an annual report that provides funding and programming information on the federal government's efforts to combat terrorism. However, this report is issued after appropriations occur.

is vital for Congress to address the total spending for homeland security as well as to ensure that the total allocations are in fact implemented subsequently in the authorization and appropriations process. In addition, DHS must also track the spending for the non-homeland security missions of the department.

As we have indicated, many important activities relevant to homeland security will continue to be housed in other agencies outside the department, such as the protection of nuclear power plants and drinking water, and require the new department to work collaboratively. The proposed legislation addresses this challenge in several instances by authorizing the new department to transfer and/or control resources for some of these related programs. For instance, the department is given authority to set priorities for research on bioterrorism by the Department of Health and Human Services, but it is unclear how this will occur.

Although consolidating activities in one department may produce savings over the longer term, there will be certain transition costs in the near term associated with setting up the new agency, acquiring space, providing for new information systems, and other assorted administrative expenses. Some of these costs, such as developing new systems, may be one time in nature, while others, such as the overhead necessary to administer the department will be continuing. Congress may very well decide that these new costs should be absorbed from the appropriations of programs and agencies being consolidated into the department. Indeed, it appears that the Administration's proposal seeks to facilitate this by authorizing the Secretary to draw up to five percent of unobligated balances from accounts to be included in the new department after notification to the Congress. While these transfers may be sufficient to fund the transition, the costs of the transition should be transparent to Congress up front as it considers the proposed new department.

The initial estimated funding for the new department is $37.7 billion. This estimate reportedly includes the total funds, both for homeland and non-homeland security missions of the incoming agencies and programs. Agencies and programs migrating to the new department have different financial systems, as well as financial management challenges. Further, the new department would have numerous financial relationships with other federal departments, as well as state and local government and the private sector. It will be essential that the department have very strong financial stewardship to manage these funds. It is important to re-emphasize that the department should be brought under the Chief Financial Officers (CFO) Act and related financial management statutes. A Chief Financial Officer, as provided by the CFO Act, would be a significant step to ensuring the senior leadership necessary to cut across organizational boundaries to institutionalize sound financial systems and practices and provide good internal controls and accountability for financial resources. Systems that produce reliable financial information will be critical to managing day-to-day operations and holding people accountable.

Acquisition Management

Sound acquisition management is central to accomplishing the department's mission. While the details are still emerging, the new department is expected to spend billions annually to acquire a broad range of products, technologies, and services from private-sector companies. Getting the most from this investment will depend on how well the department manages its acquisition activities. Our reports have shown that that some of the government's largest procurement operations are not always particularly well run. In fact, three agencies with major

procurement operations – DOD, DOE and NASA -- have been on our high-risk list for the last 10 years.[28]

To ensure successful acquisition outcomes, and effectively integrate the diverse organizational elements that will comprise the new department, we believe the department needs to adopt a strategic perspective on acquisition needs, including the establishing a Chief Acquisition Officer. Key elements of a strategic approach involve leadership, sound acquisition strategies, and a highly skilled workforce. Our acquisition best practices work[29] shows that a procurement executive or chief acquisition officer plays a crucial role in implementing a strategic approach to acquisition. At the leading companies we visited, such officials were corporate executives who had authority to influence decisions on acquisitions, implement needed structural process or role changes, and provide the necessary clout to obtain buy-in and acceptance of reengineering and reform efforts. Good acquisition outcomes start with sound acquisition strategies. Before committing substantial resources, the department should look across all of its organizational elements to ensure that requirements are linked to mission needs and costs and alternative solutions have been considered. Finally, having the right people with the right skills to successfully manage acquisitions is critical to achieving the department's mission. Many agencies are experiencing significant skill and experience imbalances. This will be a particular leadership challenge for the acquisition function.

The administration's proposal would allow the department to deviate from the normal federal acquisition rules and laws. Certainly, there could be situations where it might be necessary to expedite or streamline procurement processes so that the department is not handicapped in its ability to protect American citizens against terrorism. We support such flexibilities in these situations. However, it is not clear from our review of the administration's proposal exactly what flexibilities are being requested. Moreover, depending on how far-reaching such flexibilities go, we are concerned about whether the department will have an acquisition workforce with the skills and capabilities to execute the acquisition function outside of the normal procurement structure.

Risk Management

A risk assessment is central to risk management and involves the consideration of several factors. Generally, the risk assessment process is a deliberate, analytical approach to identify which threats can exploit which vulnerabilities in an organization's specific assets. The factors to consider include analyzing the vulnerabilities, identifying and characterizing the threat, assessing the value of the asset, identifying and costing countermeasures, and assessing risks. After these factors are considered, an organization can decide on implementing actions to reduce the risk. It is very difficult to rank threats. However, it is more constructive to consider a range of threats and review the vulnerabilities and criticality of assets when contemplating decisions on resource allocations toward homeland security. As a nation, we must be able to weather a variety of threat-oriented scenarios with prudent planning and execution. Therefore it is very important to ensure that the right resources are applied to the most appropriate areas based on a risk based management approach.

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[28] *High-Risk Series: An Update*, January 1, 2001 (GAO-01-263).
[29] *Best Practices: Taking a Strategic Approach Could Improve DOD's Acquisition of Services*, January 18, 2002 (GAO-02-230).

In summary, I have discussed the reorganization of homeland security functions and some critical factors for success. However, the single most important element of a successful reorganization is the commitment of top leaders. Top leadership involvement and clear lines of accountability for making management improvements are critical to overcoming an organization's natural resistance to change, marshalling the resources needed to improve management, and building and maintaining organization-wide commitment to new ways of doing business. Organizational cultures will not be transformed, and new visions and ways of doing business will not take root without strong and sustained leadership. Strong and visionary leadership will be vital to creating a unified, focused organization, as opposed to a group of separate units under a single roof.

Madame Chair, this concludes my written testimony. I would be pleased to respond to any questions that you or members of the Subcommittee may have at this time.

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