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

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

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

WEDNESDAY, JUNE 26, 2002

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, Pursuant to notice, at 9:40 a.m., in room SD–106, Dirksen Senate Office Building, Hon Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Feingold, Specter, Sessions, Kohl, Hatch, Grassley, DeWine, Schumer, Feinstein, Biden, and Edwards.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. I know Senator Hatch is on his way, but we will begin. Senator Specter and Senator Feingold are here, and, of course, with this witness, we will dispense with any swearing-in.

We know Governor Ridge well, and most of us served with him before when he was with the other body, and, of course, you are always welcome here, Governor.

Director RIDGE. Thank you, Senator.

Chairman LEAHY. Before the terrorist attacks on September 11th, we had been focusing on improving the effectiveness of the U.S. Department of Justice, which is the lead Federal agency with responsibility for domestic security. We have had oversight hearings with the FBI and INS as well as hearings on legislative proposals to improve the legal tools that are available to detect, to investigate and prosecute those who threaten Americans here and abroad.

Director Ridge has transmitted a specific legislative proposal for a new Homeland Security Department. He sent us that last week, and I think it is fair to say that we all thank him for his hard work and also for all he has done for this country, from his military service, to the Governors, to the task that he has taken on now.

There is bipartisan support for the concept of a Cabinet-level officer to coordinate homeland security. We wanted to include such a provision in the USA PATRIOT Act last year, but the White House back then asked us not to. But we hope we can work with you, Director, on that.

Now, one thing we should do, though, is to acknowledge what the President's proposal does not do. It does not address the problems inside agencies like the FBI or the INS, problems like outdated computers or hostility to employees who report problems or lapses in intelligence sharing, lack of translation—for example, all of the documents that were in the Department of Justice were never translated—or analytical capabilities, and also a lot of people called it the cultural problems within the Department of Justice and the FBI. So we are going to have to work together, the Congress and the administration, to solve these problems.

This committee unanimously reported the FBI Reform Act in 1974 to improve the FBI. That came out of here with a bipartisan unanimous vote. I hope the President will work with us in trying to accomplish moving that through Congress.

Putting together a new agency by itself does not fix existing problems, and, Governor Ridge, you have been very frank in pointing that out both in your public statements and in a number of the private meetings that we have had with you. So we have to be careful we don't generate new management problems.

I am concerned that the administration's proposal would exempt the new Department from many of the legal requirements that apply to other agencies, and here are my concerns. The Freedom of Information Act would not apply. Conflict-of-interest and accountability rules for agency advisors would not apply. The new Department head would have the power to suspend the Whistleblower Protection Act, the normal procurement rules, and even to intervene in the independent investigations of the Inspector General.

So, really, what this does is put them above the law. That is very troubling to me, Director. We go on the assumption that everybody has to follow the law, the President, the Congress, the administration, and to put this agency above the law on questions of conflict of interest, the whistleblower, FOIA and all that, that is not a good signal to send.

I know it is a proposal borne in secrecy and rushed to the stage even before the legislation was ready. It is somewhat troublesome when we find the whistleblower laws exempted when this was announced on the day that there was very powerful whistleblower testimony before this committee pointing out some real problems and mistakes in the Department of Justice and the FBI.

So we don't want to exempt the new Department from laws that ensure accountability to the Congress, but more especially to the American people.

By bolstering our defenses against terrorists, we don't want to do damage to other important national interests. Many of the agencies proposed for transfer performed vital duties in addition to their responsibility for security against terrorism, and as agencies are moved to the new Department, we need to make sure this does not force duplication of efforts or downgrading of important missions.

For example, for 8 years, crime went down in this country. In the last year, it started coming back up. Even though each administration wants to have their own way of doing it, and that is appropriate, I would hope that you don't start throwing the baby out with the bath water.

During the Clinton administration, the COPS programs and other things were part of the reason crime went down. The administration proposes doing away with it, with that program. Crime is coming back up. What I am saying is we all want to focus on fighting terrorists, of course. There isn't a person in here, Republican or Democrat, who disagrees with that, but if you are living in a street or living in a neighborhood somewhere and there is a rapist or a murderer or a mugger praying in that neighborhood, that is a terrorist. You are terrified, you are worried, and we don't want to expose our neighborhoods or our rural communities to rising crime based on traffic in crack or heroin or whatever else it might be. So I would hope that this isn't going to be an excuse for the cost of this to do away with these programs. These local law enforcement programs have helped bring the crime rate down. If you have got a murderer in your neighborhood, you are as frightened as if you lived new the Pentagon or the Trade Towers in New York City.

Now, the President's proposal centralizes many important functions, and we had a solid start by being able to workout the blueprint provided by legislation originally introduced by Senator Specter and others and by the work of Senator Feinstein, the committee's Terrorism Subcommittee.

Our former colleague, Senator Warren Rudman has urged that we fix the FBI and not slice and dice it, and considering the problems with the FBI, I am interested in hearing from Governor Ridge whether separating the Federal agencies responsible for investigating terrorism in a separate agency from the FBI would be better or would it be worse. Would it be better to spin off the FBI's counterterrorism agents into some new organization, or should we work with the current FBI to make sure they have the tools necessary?

Now, the Majority Leader and all of us want the Senate to produce a thoughtful and workable charter for the new Department as quickly as possible. What we don't want to do is slow things down by cobbling together a collection of unrelated political items in the bill under the heading of management flexibility, and I would mention four.

These are the things that could slow it down. Creating an ill-considered and overly broad new exemption to the Freedom of Information Act, encouraging Government complicity with private firms and definitely keep secrets about information and critical infrastructure, vulnerabilities may reduce the incentive to fix the problems. I know we all want to trust our major corporations to do everything right, and there is no reason why we should suspect they don't, unless, of course, you read the front page of today's paper or yesterday's paper or the day before or the day before or the day before. So I don't want to shield unnecessarily what might be wrongdoing.

I don't think we should weaken whistleblower protection. Senator Grassley and I made sure that the FBI Reform Act would end the FBI special exemptions from whistleblower protection. I hope the administration is not going to insist on moving backward on whistleblower protection as they have in this proposal. I don't think either Senator Grassley or I would take kindly to that.

Third, weakening safeguards for the gathering and handling of sensitive law enforcement information. While the Department's role on domestic surveillance remains unclear, it is more important than ever that there be strong protection to ensure such information is not gathered or used improperly. We do not want to go back to the excesses of the days of J. Edgar Hoover and things like that.

The American people want to be protected against terrorist. They also want to make sure they are protected in the security of their own privacy from their own Government, and that is not a liberal or a conservative philosophy. That is an American philosophy. That is why we began this country in the first place.

Fourth, I don't want to threaten job security for hard-working Government employees. We wouldn't want to use this transition as an excuse to suddenly cut the wages of those who have been defending our country. That is not going to encourage retention and recruitment of the vital human resources.

Director Ridge, as I said before, I do welcome you. I think that you have done the country a good service, and the President, by taking on this job.

[The prepared statement of Senator Leahy appears as a submission for the record.]

Chairman LEAHY. I am delighted to have Senator Hatch, who got the memo on gray suits. Senator Hatch.

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Thank you, Mr. Chairman.

First, I want to commend you for holding these hearings and focusing this committee's attention on the most critical issue facing our Nation today, and that is securing our homeland to protect America from further terrorist attacks.

I join with you, Mr. Chairman, in the spirit of bipartisanship, which Congress has demonstrated since the horrific attacks of September 11th, to consider the President's proposed Homeland Security Department.

This committee has much to offer in this area. After the tragic events of September 11th, members of this committee and Congress worked tirelessly to provide the Attorney General with the tools necessary to fight terrorism worldwide and protect our country.

Specifically, we had passed the PATRIOT Act, a critical set of reforms needed to unleash our Government's ability to detect and prevent terrorist attacks. Since then, we have examined other issues of significance in our country's work against terrorism. We have reviewed the FBI's reorganization plan. We have presented and considered a workable plan for restructuring the INS. We have reviewed other significant organizational and operational issues that have arisen. Against this backdrop, we must now turn our attention together to consider carefully the creation of the new Department of Homeland Security.

At the outset, I want to welcome Governor Tom Ridge, President Bush's homeland security advisor. Since your swearing-in on October 8, 2001, less than 1 month after the terrorist attacks on our

country, you, Governor Ridge, have worked with an unwavering determination to protect our homeland.

I want to commend you on your efforts to improve our Nation's security and your dedication and courage in tackling these most difficult issues in this time of crisis. You have accomplished a great deal, and while there is much more to do to ensure the safety of our country, I personally am comforted by the leadership that you have shown thus far.

You and the President, I think, have both been a steady set of beacons of hope for all Americans, and I want to thank you again for your accomplishments.

We were privileged to hear your views when you came here in May to brief the Senators on your proposals to consolidate border control. The proposed creation of the new Homeland Security Department is a massive task. Not since 1947 when President Truman reorganized our defense and security agencies has this country faced a reorganization of this scale, but today we face a significant new threat, one far different than post-World War II communism.

Today we face the danger of numerous well-financed terrorist groups, not just Al-Qaeda, but many others, who will stop at nothing to cross our borders and attack our institutions. Our infrastructures are people and freedoms with weapons of all types.

The administration's proposal to create a new Homeland Security Department is the next logical step in our country's war against terrorism, and while the President's proposal to create a new Homeland Security Department is certainly a necessary first step, it is not the end of our country's mission.

No one expects to achieve this end goal of an efficiently operating Homeland Security Department overnight. There may well be areas of debate or issues that we in Congress need to save for another day.

Certainly, however, there are areas where we share a common view. First, in the aftermath of September 11th, we recognize that it is essential that we improve our intelligence gathering and analytical capabilities within and among our Federal, State, and local agencies.

The administration's proposal makes it clear that the Secretary of the new Homeland Security Department will have the primary, but not sole, responsibility for coordinating terrorist-related threat information.

The Secretary will be responsible for analyzing threat information from various agencies, assessing the vulnerability of our Nation's infrastructures, and developing a long-term plan to protect those infrastructures.

Second, regardless of the final structure of the new Department, we all agree that it is essential that reforms within the FBI and CIA must continue. Both the FBI and CIA are in the process of making internal changes that will improve their ability to collaborate and coordinate within this new Department.

We are familiar with the substantial reforms that FBI Director Robert Mueller has instituted within the Bureau. Under his able leadership, I am confident that the effectiveness of the FBI and its intelligence capabilities in particular will be much improved.

As a member of the Senate Select Committee on Intelligence, I have to say that our director of Central Intelligence is also doing an excellent job in this area.

Similarly, reforms within the new Department's component agencies must also continue. We are well aware of the role INS plays in enforcing this country's immigration laws and administrating services. Implementing critical reforms at the INS, of course, undoubtedly will improve the overall effectiveness of the new Department.

Finally, we all recognize that the war against terrorism cannot be won simply by reorganizing Government agencies into a new, more effective Department of Homeland Security. It is essential that we tap into the resources and expertise of America's private sector.

I am encouraged personally by Governor Ridge's efforts to enlist the aid and expertise of America's businesses to enhance our Nation's security, and I am committed to making sure that the new Department is able to receive the uninhibited advice and counsel from our various business leaders.

It is private businesses which own and operate most of our infrastructure, our telecommunications, energy and financial systems. Our Government cannot effectively fight this war against terrorism without their support. So we must arm our agencies with the best technologies available and our private sector as a critical player in this process, as has been our national defense and military.

Congress must act, and must do so quickly and carefully, without political gamesmanship. Our task is too important. We cannot afford to sacrifice our country's safety in the process.

The threat of terrorist attacks on our homeland as well as abroad is here to stay. Our response to these threats requires a singleness of focus, and all of us in Government have a duty to do all we can to protect the American people from future terrorist attacks.

I look forward to your testimony today, Governor Ridge. I can't be here the full time because of markup in the Finance Committee, upon which I sit as well, but I look forward to working with you.

I have known you for quite a while. I know what a great job you did in Pennsylvania. I think you have done a superb job since you have been with the President, and I was really, frankly, amazed at how well you kept these things under wraps until you finally were able to get all of the different elements put together so that you could announce this to the world at large.

I think members of this committee, the Senator Governmental Affairs Committee, and our colleagues in both chambers should accomplish this task this year.

We rallied last year in a matter of days, in about 3 weeks—well, it was a little longer than that—to enact the PATRIOT Act, and I am confident that if we continue to work in a bipartisan, bicameral manner, we can do the same here and in this Congress to enact legislation to create this new Department of Homeland Security. If we do, then a great deal of that credit should go to you and those who have worked with you and the President for having done the great work that you have done.

So I am very grateful to you, and I just want to let you know that I am looking forward to both hearing and reading what you have to say.

[The parpared statement of Senator Hatch appears as a submission for the record.]

Chairman LEAHY. As you can see, Governor, this is not the most unfriendly committee that you have probably appeared before, and please go ahead with your testimony, sir.

STATEMENT OF TOM RIDGE, DIRECTOR, TRANSITION PLANNING OFFICE FOR THE DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Director RIDGE. Thank you, Mr. Chairman.

Chairman Leahy, Senator Hatch, and committee members, I truly do appreciate the opportunity to testify in support of the President's historic proposal to unify our homeland security efforts under the new Department of Homeland Security.

I would like to reiterate personally the President's strong desire to work with Members of Congress in a bipartisan way and to thank you for the bipartisan support you have already expressed in the commitment to act on this proposal by the end of this year.

I am here in keeping with the President's directive to me to explain our proposal and its effects. In addition, the President has signed an executive order creating a transition planning office for the new Department, housed within the Office of Management and Budget. I speak before you today as director of this new office, and I certainly look forward to working with you in the future and am grateful for the bipartisan expression of support for that effort this morning.

Since the terrorist attacks of 9/11, all of America has risen to the challenge of improving the security of our homeland, and as the President's Homeland Security Advisor, I fortunately have had the privilege of seeing much of this firsthand.

In partnership with Congress, with the States and localities, with the law enforcement community, the private sector, and the academic world, we have worked to assess our Nation's critical infrastructure to do a better job at sealing our borders, airports, and seaports from terrorists and their deadly cargo, to strengthen enforcement of our immigration laws, to share information about threats and to prepare for and prevent attacks involving weapons of mass destruction.

People, not just people in Government, but people all around this country, are working harder, they are working smarter, and they are working together. But they need a structure that rewards that attitude and encourages others to adopt it as well. That is why the President believes our Nation must now take the next critical step by unifying our efforts under a single Department of Homeland Security. Only Congress can create such a department, and I am here today to convey personally the President's desire to work with members to accomplish this goal.

The President believes the creation of a single department with a single clear line of authority would not only improve our preparedness for a future attack, but also help prevent attacks before they happen.

Let me talk about the proposal, if I might, in general for a moment. As you know, responsibility for homeland security is currently dispersed among more than 100 different governmental organizations. No agency or department calls homeland security its sole, or even its primary, mission. Such a structure increases both the potential for mistakes and the opportunities for abuse. It certainly does not help us reach our full potential to secure this country, its citizens, and our way of life.

The President's proposal would transform much of this confusing patchwork into a single department whose primary mission is to protect our homeland, a single department to secure our borders, to integrate and analyze intelligence in a new and different way, to combat bioterrorism and weapons of mass destruction, and to direct emergency response activities.

The Department of Homeland Security will bring homeland security responsibilities under one roof, working toward one goal, and moving in one direction, forward with a single clear line of authority to get the job done. To paraphrase President Truman, the buck will stop there.

As you know, this would be the largest reorganization of the Government since the Truman Presidency. Then the problem was a divided military. Years before he became President, Truman saw the problem as a Senator, as a Senator that was tasked with identifying duplication and inefficiency in the armed forces, and he saw a solution, a coordinated defense organization.

After he became President, Truman acted upon his experience as a Senator as well as on the lessons learned from Pearl Harbor and World War II. He unified America's military, national security, and intelligence apparatus to meet the emerging threat of the cold war. He said it is now time to discard obsolete organizational forms, Truman told the Nation, and to provide for the future of the soundest, the most effective, and the most economical kind of structure. The Senate and Government told Truman it couldn't be done, and, frankly, I think he told them that it had to be done.

We, too, must act on the lessons we have learned from 9/11 and from our war against terrorism. We, too, must build a sound homeland security structure for the future.

The Department of Homeland Security will be built on four strong components, four individual units, border and transportation security, emergency preparedness and response, chemical, biological, radiological, and nuclear countermeasures, and information, analysis, and infrastructure protection. It would be a key step in the President's emerging national strategy for homeland security.

Like the national security strategy, our national strategy for homeland security will form the intellectual underpinning to guide the decisionmaking of budgeteers and policymakers in t he years to come.

The President's proposal was the result of a full deliberative planning process that began with an effort led by Vice President Cheney in May of 2001 to examine the Government's response to a terrorist threat. It continued, and obviously accelerated, as part of the mission of the Office of Homeland Security created last October.

The President's proposal is drawn on the conclusions of recent blue-ribbon reports on terrorism such as Hart-Rudman, the Bremer Commission, and the Gilmore Commission, on legislative proposals by your colleagues in Congress in both the House and the Senate, Republicans and Democrats, and reports from the various think tanks and analytical groups that have made it their task to take a look at the threat of terrorism to this country over the past several years.

My staff and I have met with thousands of Government officials at the Federal, State, and local levels, and with hundreds of experts and numerous private citizens, and, of course, we spent many, many hours meeting with many of your colleagues on both sides of the aisle, again, in both the House and the Senate. Their counsel has reinforced my belief that if we can protect the hometown, we will protect the homeland.

The heart of Homeland Security, our highest priority must be prevention. Because terrorism is a global threat, we must have complete control over who and what enters the United States. We are working with Canada and Mexico to create smart borders that prevent terrorists and their weapons of terror from entering, while at the same time facilitating the legal flow of people and goods in which our economies depend.

Protecting our borders and controlling entry to the United States is the responsibility of the Federal Government, but it has currently dispersed more than five major governmental organizations in five different Departments.

The new Department would unify authority over the Coast Guard, Customs Service, Immigration and Naturalization Service and Border Patrol, and the recently created Transportation Security Administration. All aspects of border control, including the issuance of visas would be frankly improved and certainly enhanced by a central information-sharing clearinghouse.

Our borders include our international airports, seaports, and coastlines, and our 21st-century rapid transportation systems. The new Department would unify Government's efforts to secure them all.

The new Department can also help strengthen the qualities that define us as Americans. Allow me to illustrate. America is a nation built on, and built by, immigrants. We have traditionally been an open and warm and welcoming country to the entire world.

President Bush has carried on that tradition in several ways. He used as an illustration, work to reduce the backlog of legal immigrants awaiting citizenship. After 9/11, he repeatedly stressed the message of tolerance to the entire Nation, and his proposal would place the duties of the INS under the leadership of the Secretary of Homeland Security. We need to know that the guests of our country have the right to be in our country. We need to know who is playing by the rules and who is trying to play the system to ultimately do us harm.

America, whose immigration laws are fully enforced, is an America that is more tolerant, trusting, and welcoming to legal immigrants. We will better our state-of-the art entry/exit visa tracking system, wisely advocated by Congress several years ago, several years ago, but never fully implemented. That is why we do not pro-

pose to separate the administrative and enforcement functions of the INS. To make the system work, the right hand of enforcement must know what the left hand of visa application and processing is doing at all times.

The President's bill contains language for a human resources management system that is flexible, contemporary, with public employment principles of merit and fairness. We ask for the ability to use common-sense tools such as providing merit pay for top performers or lifting the pay cap to attract quality IT workers from the private sector. We want to offer the best worker incentives for exceptional contributions and ensure accountability for individual performance, and we want to hire good people for critical positions immediately.

Finally, one of the Department's most important missions will be to protect our Nation's critical infrastructure. To do so, the Department must collect information, identifying key assets and components of that infrastructure, evaluate vulnerabilities, and match threat assessments against those vulnerabilities.

We can only accomplish this if the Department can gather information comprehensively and freely from the private sector, which all of you know owns 80 to 90 percent of that critical infrastructure. The private sector has knowledge and expertise not readily available to the Government, expertise we believe we can use to develop and recommend appropriate protective measures.

Under current law, all of the information collected from the private sector could easily become public. I acknowledge the chairman's concerns about the limited exemption that is provided for in the President's proposal, and I am anxious to work with the chairman and other members of the committee to assure that the concerns that you have raised are properly addressed. It would not be in the best interest of American businessmen or -women or any other American, frankly, to draw a road map of critical infrastructure vulnerabilities for those who would do us harm, but there are also considerations that you have raised, Mr. Chairman, that we must deal with in this legislation as well, and we look forward to the opportunity to do that with you.

The only answer we believe is a limited statutory exemption to the Freedom of Information Act, such exemptions where Congress has deemed that the public interest requires protection of information submitted to the Government. We believe homeland security deserves such treatment.

We want to ensure that information, voluntarily provided for the purpose of securing our critical infrastructure as well as the American people, is protected. We also want to help mayors and Governors receive threat information and intelligence from the Federal Government without having it become public. The President is looking forward to working with the House and the Senate to create an exemption appropriate to the need of the new agency.

Finally, the President appreciates again the extraordinarily enthusiastic response from Members of Congress to this initiative, and he frankly is gratified by the optimism about how quickly the bill might be passed. This administration is ready to work together with you in partnership to get the job done. This is our priority, and I believe it is yours as well.

We know the threats are real. We know the need is urgent, and we also know that working together, we can succeed in this endeavor.

President Truman did not live to see the end of the cold war, but the war did end, and historians agree that the consolidation of Federal resources was critical to our ultimate success.

Ladies and gentlemen, we have that opportunity to provide the same leadership and create the same kind of legacy, and I certainly look forward to working with you to seize that opportunity.

Thank you, Mr. Chairman.

[The prepared statement of Director Ridge appears as a submission for the record.]

Chairman LEAHY. Thank you, Director, and I appreciate your comments on FOIA. We will work together on that. Of course, as you know, there are some very significant protections under FOIA even today with people protecting trade secrets especially for the high-tech industry, provisions that protect releasing their vulnerabilities, but as the moment, the feeling—and it is not what you are suggesting, but the feeling that may come across in some of the legislation, to trust private industry to do all the right things, especially in telecommunications and other areas, it is not necessarily a time when that call might ring on receptive ears.

Again, just looking at the headlines today, there are an awful lot of people who find themselves broke today who wish that somebody had done a better job of finding out what was going on, whether it is WorldCom or anywhere else.

Let me ask you this. FBI Director Mueller is trying to reform an organization, in this case, the FBI. It is easy to change, and do you really think, when you look back over the years at the FBI, the FBI can overcome its problems, or should we create a new and separate agency to investigate terrorism, one that is not as bureaucratic or technologically backward?

Director RIDGE. Senator, I have had the real pleasure and privilege to get to know Director Mueller who came on the scene probably about 6 weeks before I did and 1 week before September 11th. We have the opportunity to interact on a daily basis, an opportunity to observe and witness the interaction between the FBI director, the CIA director, and other members of the administration on a daily basis, sharing information and talking about the kind of structural, organizational, and technological changes to which you referred.

I think the President believes very strongly that the reorganization efforts undertaken by Director Mueller are very appropriate under the circumstances. As you know, he inherited an agency that was technologically deficient. We are all concerned about creating the capacity within the FBI to share relevant information within the Federal Government, including the new Department of Homeland Security who will be a recipient of that information, but for whatever reason, over the past couple of years, in spite of the investment by Congress of substantial dollars in information technology, at least appropriations—

Chairman LEAHY. Billions of dollars.

Director RIDGE. Billions of dollars. It just didn't happen, and so the work that he has undertaken, again with strong supplemental

support that the Congress gave him last fall, to bring the kind of digital competency to the agency is a much-needed improvement to develop the kind of reporting and analytical capacity that will be necessary to share information with the new Department of Homeland Security is something that he has undertaken. By agreement with the CIA Director, they will be providing 25 CIA agents, so they can begin to develop that capacity within the FBI.

So, in response to your question, Mr. Chairman, I believe Director Mueller is making very aggressive and very positive steps to reorganize not just the personnel and the technology, but to change the culture.

Remember, of course, there is still going to be the investigative arm of the Attorney General to deal with the traditional mission of the Department of Justice, but they also need to develop the new capacity to take a look at terrorist-related information, distill it in a form and report and analysis to be conveyed with the CIA and with the new Department of Homeland Security, and I think he is on the right path.

Chairman LEAHY. So we don't need to create this new and separate agency to investigate terrorism?

Director RIDGE. Well, I think what we have within the Federal Government, Mr. Chairman, as you commented, we have the CIA and we have the FBI. There is much better information sharing. Of course, my witness to that is as of October 8th that they have done some unprecedented work together, at least in this administration. I can't speak to previous administrations.

But the unique aspect of the new Department, Mr. Chairman, is that there will be a different kind of threat analysis that will enable us to harden targets, to make it progressively more difficult for the terrorists to bring the same level of destruction. So I don't believe you need a new separate agency to do that. I think the CIA and the FBI are moving in the right direction together.

Chairman LEAHY. This committee has given strong support to Director Mueller, as you know, and is trying to help him in overcoming what are some real problems, not the least of which in technology, but also in personnel.

Government secrecy, going back to the FOIA, is necessary, I think in limited circumstances, to protect our national security. I think we all agree on that. As one who helped to write the most recent FOIA law, I was very much attuned to that.

We also know, going back to the days of Watergate, that secrecy can often lead to serious management problems that could be very costly for Americans, not just monetarily, but if you undermine the trust that we want to have in our Government, that is a cost that can sometimes be unbearable. Sunlight and openness, that is the best way to make sure you have the accountability.

When Government agencies do things right, we are going to hear about that because they are going to have a hundred press releases out immediately to tell us this, but when things go wrong, we usually don't hear about it, and we only hear about it when we pick up the paper and find some enterprising reporter found out about it.

I think about a very powerful letter—and you should take a look it; in fact, I will put it in the record, if I could have her permis-

sion—that Senator Feinstein just sent to the FBI about the FBI's activities in the 1950's and 1960's, their effort to get the president to the University of California fired and actually to lie in the background check on him. When a former President of the United States wanted to appoint him to the Cabinet, the FBI did the background report, lied in it, so he didn't get the Cabinet position.

Now, the reason I mention this, it took a San Francisco Chronicle reporter 17 years to get the FOIA request answered to turn out what was really outrageous, and some would even say criminal, conduct on the part of the FBI 17 years ago.

We are being asked to spend $37 billion of taxpayers' dollars in the first year in this new Department. I think we ought to make sure that we know not just when it is doing things right because I am sure we will find out about that. We want to make sure that we know when things are wrong.

I mention that not so much as a question, Director, but on the issue of FOIA, I think it would be rise if your staff and ours spend some time together to talk about that.

Shortly after the 9/11 attacks, I went down to the FBI's Operations Coordination Center, the SIOC. You have been there, and I think a number of members of the committee have. This brings together every agency's information to evaluate it, respond to a crisis, and so on. The administration bill does not specifically call for the Homeland Security Department to have a coordination center like this. Do you plan to move this SIOC from the FBI to the new Department, or will the new Department have its own coordination center?

Director RIDGE. Mr. Chairman, the unit that we describe as the Information Analysis and Critical Infrastructure Protection Unit will basically be a coordination center having access to reports and the analytical work products not only from the CIA and the FBI, but from the other agencies that have intelligence and information-gathering responsibilities within the Federal Government.

I would also say that the model that the CIA and the FBI have begun to develop as they place individual members from their respective agencies in each other's agencies to work, to share, and to integrate and consolidate that process is a model that I would suspect a new Secretary would follow. It assures the flow of information. It assures that those two agencies are really working side by side to generate certain work products, to facilitate the threat assessment and to get that work product to each other and to the new Department.

Chairman LEAHY. Let me ask you about that. With the field office, suppose you have a field office—I am thinking of something like the Phoenix memo—

Director RIDGE. Right.

Chairman LEAHY [continuing]. And they suspect something is wrong. They send it up to the Department of Justice or headquarters recommending surveillance or court order, arrest, or whatever. Would that have to be coordinated through the Homeland Security Department, or would it still go to the Department of Justice and the FBI?

Director RIDGE. Mr. Chairman, it is our belief the way the legislation is drafted that something like the Phoenix memo would be

categorized as an FBI report, and the information in that report relative to homeland security would be not only forwarded to the FBI, because obviously is it an FBI product, but there is an affirmative obligation on behalf of the FBI to forward that report to the Department of Homeland Security in their Information Analysis Unit.

Chairman LEAHY. The President has proposed exempting the new Department from certain conflict-of-interest laws and procurement regulations, proposed allowing the Department to set up private advisory committees and exempting the Department from the anti-secrecy provisions under the Federal Advisory Committee Act. So you could have secret committees staffed by outside corporate officers with a financial interest in the outcome, giving recommendations to the new Department, if you would, through all the different things, everything from the preservation of offshore fisheries and food safety.

Do we really need this? I mean, I could think of some instances where some would be rubbing their hands in glee to get on those secret advisory committees. Do we really need that?

Director RIDGE. Well, I believe the President's design and desire is to at least give the new Secretary the capacity or the option, if the circumstances warranted, during any time during not only the organizational setup of the new Department, but in the future, to bring together as quickly as possible the kind of professionalism and expertise that may only be available through the private sector.

Chairman LEAHY. In secret?

Director RIDGE. I think depending on the nature of the challenge before the Department of Homeland Security, it is conceivable that that circumstance could arrive.

Chairman LEAHY. Waiving?

Director RIDGE. I think rare—

Chairman LEAHY. Waiving all conflict-of-interest laws?

Director RIDGE. Mr. Chairman, you raise a very interesting question that we have had to deal with in a very real way, even during the operation of the small White House Office of Homeland Security, and that is, that you all know within the private sector and elsewhere, in the academic world—but we are talking primarily about the private sector—there is enormous expertise. There are men and women who spent their lives developing a background of knowledge and experience that I think we would want on occasion to be available as quickly as possible, depending on the urgency, depending on the need of the Federal Government to secure the homeland, but there are enormous reservations for people to come on board as we are looking for solutions because there is always in the back of somebody's mind, they may be coming in to look for solutions, but we anticipate the worst and suggest or infer that they really want to sell products. That is how people are concerned about conflict, and I do—

Chairman LEAHY. But why don't we just work on the overall conflict-of-interest laws to make them a little bit clearer and simpler to handle rather than somebody just having total exemption from them? I mean, that is my issue.

My time is up.

Director RIDGE. I would welcome to work on that with you, Senator, because I have seen it firsthand. I think we want to make sure that the public's interest is protected both from undue influence and any proper relationship with the Federal Government, but also the public and national interest is promoted and enhanced by getting this expertise in when we need it.

Chairman LEAHY. Thank you.

Senator Specter.

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

Senator SPECTER. Thank you, Mr. Chairman.

At the outset, Governor Ridge, I commend the President for coming forward with a legislative proposal for a Secretary of Homeland Defense, and I compliment you on the excellent work which you have done to date in a very, very difficult position.

Last October, Senator Lieberman and I introduced legislation to structure homeland security. There have been very significant developments since that time, which I think require focusing on major deficiencies in the intelligence community in their current operation and also on the need to restructure the intelligence community.

This committee had hearings with Director Mueller of the FBI which disclosed very material shortcomings on the FBI's internal operation on processing reports illustrated by the Phoenix report where there were indicators of suspicious young men taking aeronautical training, having big posters of Osama bin Laden in their rooms, something that should have alerted the FBI last July.

In some detail, Agent Coleen Rowley described the prevails of trying to get a warrant under the Foreign Intelligence Surveillance Act and the obstacles reached in headquarters where the wrong standards were being applied for what was probable cause and even a challenge as to whether Zacarias Moussaoui, who was suspect in Morocco and Paris, was the same Zacarias Moussaoui as if that was a common name. Those pose really big difficulties which candidly this committee ought to be doing more on.

We have found the same problems present on the Foreign Intelligence Surveillance Act standards today which we found when we investigated the Wen Ho Lee case several years ago where it is now conceded that the Attorney General personally did not move for a warrant which could have shed tremendous light on what Dr. Wen Ho Lee was doing.

I suggest to you that the Secretary of Homeland Defense is going to have the responsibility to really superintend this very, very critical area.

With respect to the structure of the operation, I would appreciate it if you would take a look at legislation which my staff and I have prepared, which calls for the creation of a national terrorism assessment center within the Office of Secretary of Homeland Defense, and this is an updated effort to accomplish what many have tried in the past to make a central repository available for all of the intelligence information.

When I chaired the Intelligence Committee in the 104th Congress in 1996, I proposed legislation which would have brought all

intelligence agencies under the direction of the director of Central Intelligence, and that has been fought on many lines on the traditional Washington turf battles, including the Department of Defense, which traditionally says they ought not to have anyone over them, even a coordinator, because of their responsibility to fight wars, which, of course, is the heaviest responsibility of all, but there have been proposals, including that by the present Scowcroft group which would accommodate the Department of Defense's proposals.

The legislation which my staff and I have prepared would centralize analysts from not only the FBI and CIA, but the National Security Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Reconnaissance Office, Intelligence from the Secretary of State, to bring in one spot, finally and irrevocably, the full picture on intelligence.

If we put together all of the information which was available prior to 9/11, there is a very distinct possibility, in fact, even perhaps a probability, that 9/11 could be averted. We all know 20/20 hindsight has perfect vision, but when you put together the pieces of the Phoenix report with the young suspicious men getting aeronautical training, big posters of Osama bin Laden, when you put together what Zacarias Moussaoui had in his computer, practically a blueprint for 9/11, one of the conspirators on the air attacks, if you put together what Merad confessed in 1996, a Pakistani with connections with Al-Qaeda, when you put together what the CIA knew about the two men in Kuala Lumpur, when you add in what the National Security Agency had the day before on a possible attack, September 10th, some notice, that there was a possibility of an attack on September 11th and it was put on a 2-day review, a lot of good a 2-day review does when you have a warning for the very next day. But the point is that on all of these matters, there really is a need to put it in one spot, and homeland security, in my view, is the spot. That is what we are creating now, and as you aptly note, the biggest reorganization of the Federal Government since 1947.

I would ask you to study the proposal in depth, but I would be interested at this point in your thinking on this subject.

Director RIDGE. Thank you, Senator, and I will look forward to exploring it in depth with you as well.

As you know, the President's initiative to a certain extent begins the integration effort that you see is vital for us to enhance our ability to protect this country with the Information Analysis and Critical Structure Center. However, the Department of Homeland Security will not have any collection ability. The President is very sensitive to the fact that the information collection ability has been properly given and regulated and overseen in the CIA and the FBI, but this new Department would have the opportunity to get the work product not only from those agencies, but the work product, the analytical work that has been done, by the other agencies. Many of them are included in your legislation.

The purpose of this unit within the Department, Senator, is really to take those threat assessments, map them against the vulnerabilities we have in this country, and perform the back-end operations, what do we need to do to harden these targets, to re-

duce the vulnerabilities, to make it progressively, year after year, more difficult for terrorists to attack successfully.

The prevention side, which you are obviously very concerned in and is very much at the heart of homeland security, investigate, identify, and intradict, get them before they attack, is something that the Counterterrorism Center that is being substantially enhanced by the CIA and the new work the Center for Intelligence that the FBI director has undertaken I think is a place where the President envisions that kind of amalgamation, aggregation of information, is more appropriately placed.

This center, as designed in this legislation, is really to take the work product of these agencies, map it against and match it against the vulnerabilities, and then make recommendations for either the private sector, for that company, for that community to harden itself against the terrorist attack.

I am anxious to take a look in greater detail at your legislation and continue this conversation.

Senator SPECTER. Well, thank you very much, Governor Ridge. I do not disagree with your articulation of the President's policy that homeland security ought not to be a collector. I don't disagree with that at all, but that does not in any way impede upon the suggestion that I am making that there ought to be analysts from each of these Departments which would have full access to everything collected by those Departments, so it can be put under one uniform microscope.

One concluding comment, Mr. Chairman, and that is on the ability of Congress to do oversight. It is a recurrent theme for many of us that we need to do a great deal more oversight, and tomorrow we will be taking a look in a closed session on what happened on the Foreign Intelligence Surveillance Act on Zacarias Moussaoui and what happened with the FISA court on their reluctance to hear from certain of the FBI agents. That is something we are going to be going into.

I believe it is indispensable for the Congress to maintain vigorous independent oversight, and while it is not directly on point, it is relevant here to comment about having the FBI investigate the Intelligence Agency leaks. My view is that is a colossal mistake. It is just not realistic to have the Intelligence Committee investigating the FBI and having the FBI investigate the Intelligence Committee without the unmistakable inference that somebody is pulling the punches.

On separation of powers, if necessary, there could be independent counsel, as there was on leaks in the Clarence Thomas confirmation hearing where Senators were questioned by independent counsel, not a very pleasant experience. I was one of those who were questioned. Either the Congress ought to investigate itself or through the Ethics Committee, but there should not be a chilling effect on our ability, the congressional ability for oversight, which is so urgently needed to help you in your important job.

Director RIDGE. Thank you, Senator.

Senator SPECTER. Thank you, Governor.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Kohl.

STATEMENT OF HON. HERBERT KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator KOHL. Governor Ridge, when FBI Director Mueller testified before our committee earlier this month, I asked him about the total absence of preboarding screening for passengers on chartered aircraft.

Today, almost anyone with a high-enough credit can charter a 747 airplane, bring whomever they want on board and bring whatever they want on board, including weapons, and potentially repeat the horrific events of September 11th.

Now, after much prodding from my office, the Transportation Security Administration issued a regulation requiring those passengers who charter very large aircraft, those over 95,000-pounds takeoff weight, which is about the size of a DC–9, to undergo preboarding screening, just as passengers on a commercial airline would.

We are happy they took at least this step, but let me ask you a question about chartered aircraft security from the perspective of the administration official who is responsible for homeland security.

Governor Ridge, do you believe that we are at so little risk of a terrorist using a chartered aircraft as a weapon that we do not need any screening of chartered aircraft passengers and their baggage on chartered planes smaller than DC–9's?

Director RIDGE. Senator, I believe that the recently promulgated regulations are a step in the right direction, but as you well know, because you had to be persistent and insistent to get the regulations issued that, prior to your involvement and hopefully the advocacy of others, there was no regulation of private-chartered aircraft at all.

I believe that as we continue to address the question of transportation security, more work needs to be done with the access to chartered aircraft. As I said before, I think you are moving in the right direction. I am not sure we have completed our mission there.

Senator KOHL. Could you give us some indication as to when your office might come up with a more complete policy on chartered aircraft security?

Director RIDGE. I believe that we were working in tandem, unknowingly, at the same time you were encouraging the TSA to come up with some regulations. We were urging them to do the same thing.

I believe that the Congress vested in the Transportation Security Administration, the responsibility to deal with this issue. It is their primary responsibility. We need to ensure that they pay closer attention to this, and as you have alluded to, heretofore there has been no requirement, no regulations related to private aircraft, and we will continue to work with you and the FAA to see that those who charter the aircraft, the baggage put aboard the aircraft, that these are normally done through privately controlled entities, which previously the Government had little or no regulatory authority, we have to visit that with you in order to accomplish that task.

Senator KOHL. Thank you. I hope that you will attach enough urgency to it to come up with a more complete policy, obviously, as

soon as possible because, potentially, we could have, as you know, a disaster tomorrow.

Director RIDGE. We have, Senator, to your point, with your insistence, but we have worked through the FAA. We have worked with the TSA. We have sent out advisories. We have made recommendations. The FBI sent out intellesats to State and local law enforcement to make them aware of the possibility of the use of these privately chartered aircraft for terrorist purposes.

There has been followup within the law enforcement community visiting some of these facilities, but at the end of the day, we still don't have the comprehensive wraparound that I think you believe we need and I think we are all working toward.

Again, prior to 9/11, we didn't think people would turn aircraft into missiles. We now know they do. We also know there is no regulatory underpinning to deal with the privately chartered aircraft. We have made a step in that direction, but we have more steps to take, and we need to take them sooner rather than later.

Senator KOHL. Thank you.

Governor Ridge, all of us have recently been alerted to concerns about dirty bombs, and the arrest of a man in Chicago who was allegedly planning to build one shows that it is not an idle concern.

On considering who would have jurisdiction over the case under the administration's proposed reorganization, it seems likely that the Department of Homeland Security would be involved because of the potential for chemical or biological assault, and yet the ATF is the expert agency in bomb-making and in regulating explosives, and as you know, it is not part of the new Department.

Governor Ridge, it seems odd that ATF, the agency which played a crucial role in domestic terrorism events such as solving the 1993 World Trade Center bombing and linking the Olympics bombing to a suspect, would be left out of the new Department of Homeland Security. Can you comment on why the administration chose to leave the ATF at Treasury, whether you would be amenable to moving it to the new Department of Homeland Security, and whether the administration considered, as we heard, moving ATF to the Department of Justice?

Director RIDGE. Senator, first of all, if the organization, as requested by the President, occurs, I suspect that there will be a great deal of interest both within the executive branch and legislative branch to take a look at the various pieces that remain associated with the Departments to see if they ought to be reconfigured either into this Department or placed elsewhere, No. 1. So I think that would be an undertaking worth both of our time.

Second, the ATF, as we looked at it for purposes of this agency, while it had domestic terrorism roles and potential missions, we felt that at least for the time being, there were more responsibilities not related to domestic terrorism and the kind of intergovernmental work and collaboration that we would need to undertake with the ATF could be done through memorandums of understanding. It could be done through interagency cooperation, like it is done with a lot of other agencies, but they do have multiple missions. They do have a role to play within homeland security dealing with domestic terrorist threats. You have alluded to one perfect example, but their primary missions seem to be outside that venue,

and we would work with them in a structured way, but not as a formal part of this Department.

Senator KOHL. I thank you so much.

Chairman LEAHY. Senator DeWine.

STATEMENT OF HON. MIKE DEWINE, A U.S. SENATOR FROM THE STATE OF OHIO

Senator DEWINE. Governor, thanks for being with us.

Director RIDGE. Good to see you again. Thank you.

Senator DEWINE. Let me first congratulate you and the President on this proposal.

I think it is important that, as we discuss this proposal, we articulate to the American people that the creation of this new Department with this entirely new structure does not negate our obligation to do other things.

This is not an "or" situation. It is an "and" situation, and I think there has been a little confusion in the public debate. You have been criticized. The President has been criticized. Some are saying that this doesn't solve all of our problems. Well, of course, it doesn't solve all of our problems. It will help. It will do some things that need to be done.

It obviously is not going to mean that it doesn't deal with the fact, as you have already articulated this morning, that we need to do a better job with technology in the FBI. We need to get the FBI caught up to the present. We need to give them the same capability that the private sector has. We need to maintain the cooperation that the FBI and CIA directors are clearly demonstrating. We need to speed that cooperation down through the culture of these two institutions, down to people who have been there 15 and 20 years, who have seen the missions of these two organization's as different over the years.

We have to get people who fundamentally speak languages that are very difficult for those of us who have English as our first or only language. These are things that we have to do, and we have to make a long-term commitment to do them year after year after year and to spend the money to support them.

So I would like your comment on that. Maybe this is, Mr. Chairman, more of a statement than a question, but it seems to me that we need to be very clear to the American people that it is not an either/or situation. To me, it is an "and." We have to do more. We can legitimately debate how we restructure homeland security, but at the same time, we need to be moving forward in the other areas that I have articulated as well.

Director RIDGE. Senator, I thank you for sharing that view so publicly. It is very appropriate for us to take a look at this reorganization effort as one of many steps the country needs to take, to enhance its ability to protect itself and its way of life.

One of the interesting features of this reorientation or reorganization is that the structure lends itself to developing stronger partnerships with the State and local governments and stronger partnerships under the right kind of circumstances with the private sector.

The structure lends itself to the development of a new product. There will be a new capacity within the Federal Government, and

that new capacity of that new product will be the recommendations that the Federal Government will make based on the threat assessments it receives mapped against the vulnerabilities that it is aware of. The recommendations and the protective measures and the prescriptive measures that the Federal Government, perhaps working with the State and localities or the private sector, will be encouraged or urged or supported to do.

We don't have a place in the Federal Government now where someone looks at the threats, has done a vulnerability assessment, puts the two together, and then gives some direction to the efforts that should be undertaken by other levels of Government, by the other Federal agencies, or by the private sector to harden targets.

So we need to give some specific direction to people, to organizations, to companies, to sectors in the economy based on the threat and the vulnerability assessment. So there will be a new capacity within the Federal Government, but then in and of itself, we still need a lot of other folks to continue to work as hard and as aggressively as they have since 9/11 to do their job better.

Senator DEWINE. Thank you very much.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Biden was here earlier, the former chairman of this committee. He is also the chairman of the Foreign Relations Committee, and there is a conflicting hearing which he has to go to, but he will have written questions, Governor, and I will make sure those are given to you.

I would also indicate for members of the committee, if there are those who have followup questions—I will have some—we will submit them in writing, something you are well familiar with.

Senator DEWINE. I did that during my 12 years as a Member of the House, Mr. Chairman. We anticipate and expect them and are grateful for them.

Chairman LEAHY. If there is any Member of Congress, present or former, who hasn't submitted questions in writing at some time or another, they didn't go to very many hearings.

Senator DEWINE. They didn't earn their paycheck.

Chairman LEAHY. Senator Feinstein.

As I noted in my opening statement, Senator Feinstein chairs our Terrorism Subcommittee, but has been actively involved in this issue for some time.

Senator Feinstein.

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

Senator FEINSTEIN. Thanks very much, Mr. Chairman.

Good morning, Mr. Ridge.

Director RIDGE. Good morning, Senator.

Senator FEINSTEIN. As you know, because we have talked about it before, I very much wanted you to have both budgetary and statutory authority over the homeland defense area. Now you have it apparently or will possibly have it big time, and maybe too much big time. That is what I wanted to spend a little bit of time with you this morning to discuss.

Yesterday, we had a hearing, and Senator Rudman testified, Governor Gilmore testified, and a couple of people from Brookings and Cato Institute testified on this proposal. As you know—you mentioned the Rudman Commission—they suggested a much smaller agency.

Director RIDGE. Right.

Senator FEINSTEIN. This is really a mega-agency. I am told it is really over 170,000 employees, probably closer to 270,000 employees. It will cost a good deal more, and into it, you have taken nearly whole Departments. I wanted to ask you some questions about the wisdom of doing that.

I also sit on the Immigration Subcommittee, and I wonder about the wisdom of taking all of the Immigration Department into homeland defense. I am not sure you want to be in charge of marriage fraud for newcomers. I am not sure you want to be in charge of the inspection of workplaces for illegal aliens. I am not sure you want to be in charge of the Children's Bureau. We have got 5,000 children who come here unaccompanied in various facilities, some of them detention facilities. It doesn't seem to me that that is an appropriate thing for homeland defense.

I am not sure you want to be in charge of the naturalization processes of INS. It seems to me that what you do want is, as you have said, Border Patrol and immigration inspections, counterterrorism intelligence, terrorist investigations involving document fraud and alien smuggling, and oversight over visa issuance.

I also think you probably want to have the consular services of the State Department. That is the agency that issues the visa. We held hearings in our subcommittee, and Ms. Ryan said one of the reasons they authorized the visas was because they had no intelligence. It seems to me that that aspect ought to go into homeland defense.

I understand why you want the Coast Guard, and although I think the appropriate agency is National Guard, I understand and am sympathetic to the Coast Guard.

On the other hand, the FBI is relinquishing a lot of its narcotics work. The Coast Guard is the primary agency for going after the big go-fast boats that bring in most of the narcotics from South and Central America. They will, I guess, no longer do that.

So, if you have two agencies now relinquishing control over the big shipments of narcotics, that control concerns me very greatly.

I guess my first concern is that, and I am just going to indicate my two other concerns and then let you respond, as you might wish to.

Yesterday, it was brought out that the new Department would have 27 Presidential appointments, only 14 subject to Senate confirmation. You create essentially two tiers of assistant secretaries, and this would be the first time in history that 10 assistant secretaries would have no advice and consent from the Senate. I think that is a concern as well.

Additionally, the personnel changes are really starkly dramatic, and I don't know in this word "flexibility" if you really want to include an across-the-board arbitrary personnel reforms that the President's proposal calls for.

The third area of concern has to do with my service on Intelligence. I am sorry Senator Specter isn't here because I come from where he does in his comments except that I end up at a different place.

We have more than 12 intelligence agencies right now under a DCI. The amount of intelligence that comes in, in bits and pieces, one way or another, is in the tens of thousands a day. So it is huge.

We have the FBI now getting into the intelligence business, and you are getting into the intelligence business. My concern is that rather than improve the communication and interrelationship and expedited movement of data, we are going to slow it down.

I have just proposed a director of National Intelligence. I mean the largest agency, an intelligence agency, is NSA. NSA has 80 percent of the intelligence budget, and yet the DCI runs CIA, runs the entire intelligence community, and also does things in the Middle East. I am not really sure that that is the best way to run our intelligence community. I think you need somebody really at the top over all of the intelligence of our Nation, and to that end, I have introduced this legislation to create a director of National Intelligence appointed by the President with a 10-year term with budget authority to sort of move chessmen across the board based on need in the intelligence community.

I appreciate that you don't want to be an intelligence collection agency, and if I understood what you said to Senator Specter, you said you didn't want to actually do the all-source analysis yourself, meaning your agency, but you would be a recipient of all-source analyzed intelligence, which I think is appropriate, but my concern is that we not spread the intelligence community so thin without the kind of oversight that we have less expedited transference of all-source analyzed intelligence. If you could comment on those three aspects, too big, the personnel aspects, and the intelligence aspects.

Director RIDGE. Senator, the Hart-Rudman proposal, I think when it included the INS and the Customs and the Coast Guard, basically the Border—

Senator FEINSTEIN. The Border Patrol.

Director RIDGE. The Border Patrol. The consolidation of some of these agencies was very consistent with the private conversations you and I had about a comprehensive approach toward the borders, and I believe it is the—it is the President's belief in his initiative that the INS should be included because who comes into the country and what comes into the country has very much to do with the sovereignty of the country and the security of the country.

So, even though in this package, in this proposal, there is a separation between the immigration services, which you have historically been very concerned about and very sensitive to and really helped try to reform and drive the reform of that process, and separated from the enforcement side, it is the President's belief that putting them into the new Department as part of a comprehensive board approach is very appropriate.

They were multi-tasked into the Justice Department, the functions that you are talking about, whether it is adoption or asylum or refugee or those kind of things.

Senator FEINSTEIN. Workplace inspections?

Director RIDGE. Pardon me?

Senator FEINSTEIN. Workplace inspections?

Director RIDGE. Well, but I mean, again, to your point, there are a lot of agencies and departments that would be pulled in, Senator, to the new Department of Homeland Security whose primary mission or importance will be to security, but they will have other very important missions that are not directly related to it.

It is our belief that pulling them in this structure, undergoing reform not only by the present commission, but obviously there is a great deal of discussion about reform in the House and Senate, will make it a better agency, and it needs to be part of a comprehensive border approach.

There is information sharing relative to some of the tasks that you have alluded to that might be relevant to whether a visa should or should not be given or perhaps a visa should be revoked. So we think we need to take a look at the INS, separate the immigration service from the enforcement function, but integrate the sharing of information and understanding that not everything they do, like a lot of other agencies, will be directly related to homeland security, but better to have a comprehensive approach in one agency over which there is controlling legal authority rather than dividing the responsibility between two or more Cabinet agencies.

Senator FEINSTEIN. Let me just stop you here for 1 second because it is important. We have 5,000 children. Take Elian Gonzalez, for example. If Elian Gonzalez didn't have a family in Miami, he could end up in a detention center, and he could sit there month after month and even year after year. He doesn't have access to an attorney. There is no guardian ad litem provided for him under the present system, and we have 5,000 children at any given time in that kind of custody. Now, that is going to go into an office of homeland defense, it just doesn't seem to make sense to me.

I am trying to get a separate children's agency set up so that children that come—I saw one girl who was in a container from China, and her parents died, and she was shackled hand and foot in front of a judge. She couldn't speak English. Her nose was running. She was crying. She couldn't get her hands up to her face because she was shackled to her feet. That is what we are doing today, and I am not sure that homeland defense is the agency to put children into—when they need some other concerns as what is the best placement for them, do they have a family to return home to, if not what are we going to do with them. This is not an inconsequential issue because there are 5,000 of them.

Director RIDGE. Senator, I agree with you, having observed some several dozen children behind a plexiglas partition in El Paso, and you say to yourself, you can understand perhaps why they want to come to this country. You don't know whether they made the effort with parental consent or not, but they are alone. They are frightened, and your interest as well as the commissioner's interest in trying to deal with it I don't think will be undermined by the fact that that portion of the INS focused on these children, in fairness to children and sensitivity to children, would be in an Office of Homeland Security.

Again, as you well know better than most, since it is an issue that you have dealt with during your time in Congress, there are

a lot of issues that are not directly related to who comes into the country, who is given a visa, who is asked to leave the country. There are other very important issues, but I truly believe that the reform that would be undertaken could be undertaken within the INS, within this new Department.

Just as the Coast Guard is going to have an enhanced mission dealing with port security and port security, they will still have maritime fishing responsibilities and boating safety responsibilities. They are multi-tasked organizations. To try to segregate and separate them, I think it would a very difficult, almost impossible task, and not necessarily guarantee the kind of reform or improvement that we would all seek.

If I might real quickly to that end, the President has recognized in the 2003 budget—and you alluded to the Coast Guard—the fact that they have an enhanced mission. Therefore, because of the enhanced mission, they need additional support for more personnel, more boats, more aircraft. He is going to buildup that capacity. So I would say to you—

Senator FEINSTEIN. And intradiction—

Director RIDGE. Yes.

Senator FEINSTEIN [continuing]. Of large narcotics trafficking by sea?

Director RIDGE. Yes.

Senator FEINSTEIN. Will they still have that responsibility?

Director RIDGE. I think that must continue to be a goal, objective, part of the mission of the Coast Guard.

I met with the joint task force that the Coast Guard put together out in Key West where they work with the DEA and the FBI and frankly the Department of Defense and others, and I candidly believe that integrating these border agencies, ultimately developing the technology to share information, it will be a lot easier to see that the integration and coordination is done aggressively when you have a command structure that says this is the goal, this is the objective, you are the agencies or departments that must work together to achieve the goal, develop the plan, and get it done.

There is a lot to be said for unitary command structure that puts these people together and directs their mission, but, again, you have raised an issue that a lot of your other colleagues have raised. There are some entities that are pulled in as part of this agency that will be tasked to do things that are not directly related to homeland security. We still think because they have been multi-tasked in other Departments, with the appropriate leadership, they will get it done in this agency as well.

Senator FEINSTEIN. Could you just make a quick comment on the intelligence aspect?

Director RIDGE. Yes. The President's design for the new Department is really to create a new product that has less to do with the tactical operation of investigating terrorists or directly the CIA to do certain things in the field, but we will work with the CIA and the FBI in this agency to take a look at the threat assessments to create the new capacity and the new product which is giving instruction, giving direction, identifying protective measures that we need to harden targets around America. That is the new product. That is the new capacity.

What we don't have in this country, we don't have right now within the Federal Government, the ability to match the vulnerabilities with the threats and then give some specific direction as to what we need to do to protect ourselves. That is the President's intention.

The President is quite aware that you and Senator Specter, Senator Leahy, and many, many others are concerned about centralizing all of the information relative to domestic terrorism, very much aware that the recommendations with regard to CIA and FBI reforms may very well be coming forth. You are going to do some legislation with some of these recommendations, but the President believes that reform involving the CIA and the FBI should be with those entities, but not within this one.

Senator FEINSTEIN. Thank you.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Sessions.

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

Senator SESSIONS. Thank you, Mr. Chairman.

This is an important hearing, and we are glad to have you here, Mr. Ridge, and thank you for your service.

I know as you started out as the President's guide, you had to try to take all of those various agencies that have parts of them that relate to homeland security, and try to make them work together. I think you certainly have, and the President has, energized those agencies.

As I talk to people involved with terrorism matters, they know without any doubt that the President of the United States expects them to make homeland security No. 1. They may have other ideas and problems. They may be investigating drug smugglers or bank robbers or other things, but they know without any doubt that terrorism is No. 1.

Since you have done this and you work with all of these agencies and tried to reach agreements with them to give this priority to homeland security, you obviously, and the President has obviously, reached a conclusion that this is not a long-term solution, that the reorganization is necessary.

Would you just sort of summarize again for me why you have concluded that we can't operate as business as usual, but you need this new agency to carry out the high priority we give the homeland security?

Director RIDGE. Senator, after review of all the commissions that had studied homeland security issues, conversations with Members of Congress, think tanks, the private sector, the President concluded that we could dramatically improve our ability to protect ourselves and our way of life if we created a single agency whose primary mission was to secure the homeland.

The President concluded that there are various aspects of homeland security. One deals with the new integration analysis component that will help us harden targets. I mean, we will finally have the capacity to give very specific directions to address vulnerabilities.

One is to consolidate the effort on the border. There have been discussions about border security and border issues since the 1920's and the 1930's. It has been recommended over and over and over again, but we have never done it. 9/11 gave us a different perspective that we need to control who and what, and we needed to do it in a way that will not impede the flow of goods and commerce between the United States, Mexico, and Canada. We need to take that new model of the border agreement, because we are such an open and welcoming, trusting country, and ultimately that is going to have an international impact on us as well. We are going to have to get our allies to be thinking about the airlines and about container traffic and commercial international shipping just as we do.

The President has also thought that you could build on core competencies of Departments to help communities prepare for the eventuality of the possibility of a terrorist attack. That is why he grafted the Federal Emergency Management Agency that has these core competencies that deals with first responders on a day-to-day basis for natural disasters.

Then, finally, the President took a look at again well-intentioned but disparate agencies and programs that deal with research and development that have an impact on homeland security and said we need a strategic focus. We need a strategic focus to direct these research dollars based on our threat assessments, based on our vulnerability. So, at the end of the day, you create an agency whose primary mission is to enhance security, not the exclusive mission.

This is not an agency—and I am sorry, Senator Feinstein—that will lose its heart. America has a big heart. We are open. We are welcoming. We are trusting. That is one of the qualities that makes us unique. That is also one of the qualities that makes us vulnerable, and we understand that there are some very human personal issues that we involve with some of these agencies such as the children that she is worried about. America is not going to lose its heart. These children aren't going to be lost in a new Department, but the fact of the matter is that, at the end of the day, giving one agency whose primary focus is homeland security, it is at the heart of the President's proposal.

The President and Congress always like to align authority with accountability. Now it is aligned in an apparently straightforward manner, and at the end of the day, the President believes, and I believe Congress will ultimately conclude, hopefully that that is the best way to get things done, hopefully get them done quickly, but also get them done correctly.

Senator SESSIONS. With regard to your affirmation of the need to work with State and local law enforcement, I do appreciate your emphasis on training. I am glad you visited the Center for Domestic Preparedness in Anniston, Alabama.

Are you committed, and will this new agency be committed, to bringing in local law enforcement, who are going to be the first responders in most instances, in making sure they are fully trained and equipped? Will that be one of your goals?

Director RIDGE. We will never have the national capacity to protect and defend ourselves unless we do, and that is, again, very much at the heart of the President's proposal. It is at the heart of his budget recommendation that the Congress will be dealing with,

with the $3.5 billion to make the Federal Emergency Management Agency the centerpiece of that outreach effort with State and local communities, to help train, help exercise, and help equip our first responders.

Senator SESSIONS. It is a critical thing, and we probably have 10 local agents for every one Federal or maybe 9.5 for every one Federal. So, if they are not engaged, we are giving up one of the biggest resources we have available to us.

Director RIDGE. I must tell you, Senator, that in my conversations with many mayors and several Governors, the notion that the State and locals could come to one agency, a one-stop shop, as you will, to apply for these preparedness grants dealing with first responders has a great deal of appeal to our colleagues in public service at other levels of Government.

Senator SESSIONS. Well, I believe it could help to make sure we have a uniform view of this whole matter of training and having some standards that work, and I salute you for that.

I have had a number of people ask about proposals they have for technology that could help us. I know Senator Kit Bond proposed a job fair, but I really believe that the Federal Government should have a good location, a central place where somebody who has the kind of ideas that they think will help us could at least be heard. Do you think we are there yet, or can we do better in providing access for people to present their ideas? Some of them may be wacky, but some of them may be full of insight.

Director RIDGE. Senator, we are not there yet. We are moving in that direction, but we are not where we need to be. Were we moved in the past couple of months is an agreement with the Office of Science and Technology Policy within the White House to set up an infrastructure where we can get some of these wonderful ideas, these potential solutions to a variety of problems. We haven't had them tested to see whether or not they are as good as they say they are, they do what they claim they can do.

Over the long term, we need a mechanism, a place within the Department of Homeland Security to do the evaluation and assessment, and that is one of the features of the unit that would be dealing with the research and development and the countermeasures to weapons of mass destruction, all aspects of homeland security, technology and all the applications of existing technology and the new products down the road. This would be the very appropriate place to vet them and determine whether or not they function as promised, see if they fit into an overall system that we have recommended to the country.

We need that assessment capacity. We don't have it yet. We are working toward it, but we need to make it a permanent part of the infrastructure of homeland security, and the President's initiative does that.

Senator SESSIONS. I appreciate that.

With regard to immigration, you have made some statements I thought were important, such as people need to know that they must play by the rules.

We have very generous immigration rules, which I support. Most of us believe that immigration does help our Nation and strengthen it, but we also believe it needs to be done according to the rules.

We are just not able to open this great country to anybody who wants to come here without any kind of paperwork at all. So I believe you also said that an America, whose laws are fairly enforced, will be safer and more tolerant. I think that is a good line.

Just for example, Mr. Ridge, I just learned yesterday that we have two INS agents in the State of Alabama. One of them is assigned to the President. Only one is available to help all three United States Attorneys deal with conspiracy cases or maybe drug smuggling that may have an immigration component to it.

I met with police chiefs recently, and they told me that they had been told by INS if they arrest people here illegally, if there is not more than 24, not to bother to call them or they will not be able to come to pick them up. So somehow we are saying at this level that we have a legal system that deals with controlling immigration in a rational and fair way, but the reality is we are not there. We are really not there. It is worse than most people realize.

Do you think this reorganization can help us with that? Because I think that we are just going to have to simply do better.

Director RIDGE. Congress tried to effect a change in this several years ago when they recommended an entry/exit system, which the President supports, and clearly, with the border consolidation within the Department of Homeland Security and if the INS remains an integral part of that new Department, I think we will be in a much better position to effect that kind of change, as the Congress directed several years ago and the President has embraced.

We do not have a system to monitor the entry of our guests or the exist of our guests. It is long overdue, and I think that this new agency will enable us to facilitate this a lot quicker.

Senator SESSIONS. Thank you. In many ways, I think that could make the system work much better for those people who are dutifully trying to follow our rules and policies and want to come here on the right conditions. I think we can make life better for them and tougher for those who want to violate the law.

Director RIDGE. And I think Americans understand that we are a nation of immigrants. The immigrants built this country. We want to remain a country with a heart. We want to remain a country that is open, but we also need to enforce our laws, even our immigration laws. Our national sovereignty, and recently our security, depends upon it.

Chairman LEAHY. Thank you.

Senator Cantwell.

STATEMENT OF MARIA CANTWELL, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator CANTWELL. Thank you, Mr. Chairman.

Governor Ridge, good to see you. We have had a chance to talk in some of our briefings with individual members about the overall integration of homeland defense and getting out our key focus of making sure that from intelligence gathering at the FBI that we have a flat organization that disseminates information more rapidly than what this committee heard from Special Agent Rowley had happened in the past events.

One general question I have, and then I have a specific question, is how do we in the compilation of the new agency as well as the

reforms within the FBI make sure that we are really building an organizational response to what are these asymmetrical terrorist attacks which are much smaller organizations, move much more rapidly information flows, and so we are talking about what is going to be our organizational response to that.

When we look at the homeland security efforts and the new efforts within the FBI's intelligence gathering, it looks like an organization that has many layers to it. So how do we attack that goal of having a streamlined information flow so that we can respond more quickly to these attacks and process information more efficiently?

Director RIDGE. Well, I think, Senator, that within both the CIA and the FBI, that kind of restructuring and repositioning of assets is very much a part of an ongoing reform effort under the direction of both Director Mueller and Director Tenet.

As you know, with congressional support, to expedite the flow of information for analytical purposes, you have given the FBI several hundred million dollars to finally bring it into the 21st century, into the digital world. What happened prior to Mueller's tenure, I do not know, but he inherited an organization that had a pretty difficult time communicating internally, let along externally. So I think the organizational changes and the technological changes will facilitate the flow of information and get it to the analysts a lot quicker.

The new Department's piece of that information matrix is really designed not to collect information and deal with particular terrorists, but it is designed to identify vulnerabilities that are threatened and then direct specific action or encourage specific action be taken to harden the targets.

I will give you an example. The Phoenix memo would have been available under the new Department of Homeland Security. There may have been other bits and pieces of information relative to the possible use of aircraft in a terrorist incident. Obviously, there are hijackings in the 1980's and hijackings in the 1990's, but we got that particular information. People talk about Moussaoui. They talk about Phoenix. If that information was available as part of the reporting and analytical data that would come to this new Department, and it would, the FBI and the CIA would continue to identify and to track and to work those issues as hard as they possibly could to identify potential terrorists, but the new Homeland Security Office would then take that threat and take a look at the vulnerability.

The vulnerability is airplanes and airports, and they say what have we done as a country based on this threat that we have received and we are going to get from multiple sources about the potential use of aircraft and people taking flying lessons and the like. What have we done to harden cockpit doors? Have we put air marshals there? I am not saying that this is the conclusion that would have been reached. Hopefully, it would have been reached, but the new product, the new capacity within this Department is really to take advantage of the product given to us by the CIA, the FBI, and the other intelligence-gathering agencies. If there is a stream of information, of intelligence that points to a particular sector of our economy, in this instance it may have led the new Department of

Homeland Security to take a look at aviation, perhaps we would have done something like the Transportation Security Act prior to 9/11 rather than after. So, you see, that is the new product. That is the new capacity within the Department of Homeland Security.

Of course, the CIA and FBI will continue to make internal reforms, and down the road, your colleagues may also legislate some reforms to that end, but that is the President's design and intent with the information gathering and the information analysis within the new Department, to do the hard work at the back end, harden targets, take precautionary measures, protective measures based on threats matched with vulnerabilities.

Senator CANTWELL. I have no objection to the Homeland Security Office from the point of view of redundancy. I think that is very important, a very important strategic goal for us to have, or the hardening of the targets, that is something that I definitely think is what we need to be doing to make sure the American public feels more secure.

But on the front end of the process, I am not even sure with our briefing that we have had with the FBI director in his new office that we will have eliminated the seven layers that Special Agent Rowley talked about because this challenge is—because, again, we are not talking about analyzing the super power and their likely four or five moves. We are talking about lots of different organizations moving in lots of different places and processing that information. So, to me, what you have said, there are some very positive parts of it, but there are also some challenges in how we make sure that information flows in a very rapid fashion back to the people that need to have that information, and I think that is going to be a challenge for us.

I had a particular question. Part of this understanding the new agency is the various organizations that will be part of that system organization. So, when you think about some of the agencies and their involvement, I mean, I am sure there are many of us who have always wished that Customs and INS would work more closely together or information should be shared.

I have a particular concern or interest in the Coast Guard because the Coast Guard plays such a vital role in search and rescue, in fisheries management, in enforcement in our State, in various other areas. So how do we make sure that the core mission that the Coast Guard now has in its financial resources are maintained and focused on that mission?

Director RIDGE. Senator, your concern or reservations about moving into the new Department, agencies that have multiple missions, is one that I have heard in both the House and Senate and Republicans and Democrats alike. So I appreciate that concern.

The President recognizes that as of 9/11, in response to the events of that day—I don't know if there is another agency or department in the Federal Government that ramped up as quickly as possible and did as many things as well and as quickly as the Coast Guard did once the Twin Towers were struck and the Pentagon was struck. They are a very gifted and talented group of men and women.

The President recognizes that the new mission as part of homeland security will be increased emphasis on port security, not just

the vessels in and out, but, frankly, you visit enough ports to know there is a tremendous amount of critical infrastructure in and around all of our ports.

To that end, the President in the $14-billion increase over the 2002 appropriation level embodied in his 2003 budget request gives the Coast Guard the largest single increase they have ever received so that they can begin building this additional capacity with people, boats, and airplanes to take on the added responsibility of homeland security. So they will be multi-tasked. They will still have to be concerned about fisheries and boating safety, but they will also be given additional assets to enhance their capability to provide homeland security assistance as well.

Senator CANTWELL. Thank you very much for that. We may submit a written question in more detail on that.

Director RIDGE. Yes.

Senator CANTWELL. We appreciate your answer on that today.

Director RIDGE. Thank you, Senator.

Senator CANTWELL. I see my time has expired, Mr. Chairman.

Chairman LEAHY. The Senator from New York.

There will be statements and questions, as I have noted, submitted for the record in this hearing, and the senior Senator from New York.

STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Thank you, and I thank you, Mr. Ridge.

We used to play basketball in the House together, Mr. Chairman. He was better than me, which isn't saying very much.

Chairman LEAHY. He is taller.

Senator SCHUMER. Yes. Our high school team's motto was: We may be small, but we are slow. So it is not saying very much.

In any case, I have a couple of questions for you, and I very much appreciate your being here, Tom.

First, just a specific need, we in New York have our unusual circumstances, obviously, since 9/11, and in a sense, we are still at Ground Zero in a whole lot of ways and the way people think in terms of the number of threats that have been directed at particular New York institutions, things like the Statue of Liberty, neighborhoods, and things like that.

The problem we face is there is so much to do in so many ways. So I had made a request that the Homeland Security Office do what the FBI does. The FBI has a special and large office in New York which has special responsibilities. Now, I don't know what you plan is for the rest of the country, but I would like to be able to assure New Yorkers that when this homeland security agency is set up that there would be a special office in New York that might be able to focus on the unique needs that we have in terms of port, in terms of rail, in terms of air, and in terms of seeming to be a target of the terrorists, a variety of different terrorists in a whole lot of ways.

Director RIDGE. Senator, I believe that that recommendation would be very seriously considered by the new Secretary. It makes a lot of sense.

The experience I have had just in the White House Office of Homeland Security is, observing how the agency sometimes integrate their resources and their personnel, so that the CIA and FBI have people working together. In New York, you had the CIA, FBI, FEMA, and multiple other organizations, and I would suspect that that is a recommendation that would be given very serious consideration, not only in New York City, but potentially at other locations around the country. It makes a great deal of sense.

Senator SCHUMER. Right. Well, I thank you.

I mean, we have so many things. Most people don't know, for instance, most of the Internet communication across the Atlantic ends up in two large terminals that arrive in lower Manhattan. There are just so many different aspects of help we need, many of which are unique to our city because it is such a different, in my opinion, beautiful place.

The second question I have relates to the opposite end of my State, which is the northern border. We have the second busiest border with Canada, and people there—and I don't know if Maria addressed this because she has the same problem in Washington State, our Michigan Senator, Senator Leahy from Vermont as well, but one of the great things we are worried about is we, obviously, everyone in America, those along the northern border as well, understand the great need for beefing up our security. The worry is that as we do that, it slows down commerce, which is slow enough as it is, particularly during the summer in the Niagara Falls-Buffalo area, in the Thousand Islands area, near Ogdensburg, and then for so many people traveling via Plattsburg to Montreal, you add the vacation traffic to the normal commerce traffic, and things would grind to a halt even before 9/11. Now with the special security needs we have, it is even worse.

It is my view we can have both. We can have the security and not have commerce slow down to a standstill, but it requires personnel, and this committee, working with the administration under the USA PATRIOT Act, we authorized a tripling of staffing at the northern border. Maria was very active in this. I helped out. There were others on the committee, Senator Leahy concerned, of course, our chairman, concerned with this, but, thus far, that tripling has not been fulfilled in appropriation.

We have gotten some more. I think in New York State, for instance, we have 62 more people on the Border Patrol than we had before, but it is not close to enough to deal with all of our needs, all of our new needs.

Can you tell me what the administration is planning with the new Department, even before we get to the new Department, about beefing up the northern border in terms of actual appropriations of personnel from the three agencies that staff it, INS, Border Patrol, and Customs?

Director RIDGE. Senator, first of all, I believe you are aware of the fact that the administration has been working with our Canadian allies and friends on a smart border accord—

Senator SCHUMER. I will get to that next. Right.

Mr. RIDGE [continuing]. To achieve the objectives that you have identified, enhance security without jeopardizing the flow of goods

and people across the border. We are well on our way in that process.

As you also know, there are, at different locations along the border, National Guard being used, and they will remain there for the next several months.

I know in conversations with the commissioner of the INS—and I haven't had a recent conversation to verify this with Customs, but there dollars in the budget for them to begin hiring people in addition to whatever new appropriations you get, so they can enhance security at the border. As we buildup that capacity, it is going to, unfortunately, take us some time. That is why we are using National Guardsmen as a temporary stop-gap measure at the borders, but, ultimately, the goal is to buildup the capacity and replace them with INS and Customs agents.

Senator SCHUMER. How long do you think it will take to get to the goal we set in the PATRIOT Act, which is really to triple the number of personnel from when we started?

Director RIDGE. Senator, it would be the grossest form of speculation to tell you how and to tell you when. I have no idea.

I do know that there is some extraordinary proportion of individuals interviewed, and those ultimately hired, maybe 50 to 1 or 100 to 1. The men and women that we have employed in Customs and INS have to pass very rigorous background checks and investigations and the very high standards that we apply. So it is a very time-consuming, labor-intensive process. So we will just have to work with you and the INS commissioner and the Customs commissioner to give you a more specific answer on that question.

Senator SCHUMER. The second question I had was related to your meeting with the Canadians in the Buffalo area, I guess it was, 2 weeks ago, 3 weeks ago, something like that, and tell us how that is going, what are the obstacles, how about the problem of U.S. personnel carrying guns in Canada, if we want to do things on one side of the border or the other instead of redundancy on our border. It makes some sense to just move things to one side, and the Canadians seem to have more room than we do on the New York side.

So tell me how all of that is going, and particularly in regards to the relationship between having U.S. personnel work on the Canadian side of the border.

Director RIDGE. Senator, those discussions are moving quite well. In meeting with my counterpart, Deputy Prime Minister John Manley, again, on Friday to continue to move those discussions to a conclusion, we both agree that if we can pre-identify people in cargo, that will certainly facilitate it at the border. We will be in a position to announce some of the pilot programs, Nexus, pre-identifying residents on both sides and when it will take effect in Buffalo, possibly as early as Friday as well.

Senator SCHUMER. Right.

Director RIDGE. Obviously, we will let you know. They are going to talk about it in Washington, too. I think Commissioner Ziglar is going to go up there Thursday for that announcement.

The other challenge, once we have applied that notion of risk management, let's deal with the people and the cargo that we know, so we can focus our resources and our technology on the people and the cargo we don't know.

We are both in agreement that it would serve our interests, both security and economic interests as well, if we could preposition some assets away from the border, and I think we are making great progress and ultimately think we are going to come to a resolution of the cultural differences and some of the constitutional differences between the two democracies with regard to the use of firearms and on representatives from other countries on your soil.

Senator SCHUMER. You don't see this as an insurmountable barrier—

Director RIDGE. No, I do not.

Senator SCHUMER [continuing]. The firearms issue. You are making good progress.

Director RIDGE. I think it will be resolved in the very near term.

Senator SCHUMER. Thank you, Mr. Chairman, and thank you, Mr. Director. I appreciate your hard work on an important job.

Chairman LEAHY. I would be interested in how that goes, too, obviously. I live an hour's drive from the Canadian border. I greatly value the relationships we have had with Canada throughout our history. We want to keep that relationship going. We want to make it work, however.

Senator Grassley has been one of the most active members of this committee in this area, and I would yield to him. I thank him for coming back. I know that he was trying to juggle two or three other committee meetings at the same time, and I appreciate him being here.

STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. We are still in markup on welfare, and that is why I wasn't here during your statement, Governor, and I thank you for coming and appearing.

I did listen in a little bit to what our chairman said about whistleblowers. I want to associate myself with his remarks, and before I ask you questions about that, I will give you my philosophy on it, which isn't any different than Senator Leahy's.

I think whistleblowers are key to exposing dysfunctional bureaucracy and security problems, and I don't think that whistleblowers are an outcast and that they ought to be retaliated against; that they are very valuable. They are an asset to good government and national security.

In all the years that I have done congressional oversight work, when I find someone who opposes whistleblower protection, it means that these people are more worried about being embarrassed than fixing problems. I have heard the talk about the need for flexibility for employees, but that should not mean getting rid of whistleblower protection.

I think there is a certain amount of arrogance about Departments that think they have to be protected against whistleblowers. I am concerned that the bill cuts out whistleblower protection for the Department of Homeland Security. The bill provides the Secretary of the new Department creating an employee management system different from the traditional system, which would include the Whistleblower Protection Act.

It uses language similar to Aviation Transportation Security Act, which created the Transportation Safety Administration. The Office of Special Counsel which administers whistleblower protections interpreted the Transportation Safety Administration language as accepting Federal screeners from established Federal whistleblower protection.

That is why I am introducing a bill to provide whistleblower protection for Federal baggage screeners. I am fearful that the Office of Special Counsel then could come up with the same interpretation with the President's bill on homeland security.

So, Governor Ridge, I would like to know what your opinion is of whistleblowers and whistleblower protection, and, more importantly, I would like you to explain why the bill for Homeland Security Department does not have explicit whistleblower protections.

Director RIDGE. Senator, we believe that the men and women would be working within the new Department of Homeland Security should be afforded the protection to come forward with recommendations, and some might consider it criticism, and so be it, in order to enhance homeland security. Everybody has to be involved. Over a period of time, we would want to create a work environment where there would be no fear of reprisal.

We have had the attorneys look at the legislation. We draw a different conclusion than you do with regard to the application of the whistleblower protection. I know it is something that the chairman is concerned. All members are concerned about it, but I would assure you that the environment in which these men and women should operate, they should operate without fear of discrimination, without fear of reprisal. The notion that they would come forward with candor and honesty to make recommendations that others might consider to be criticisms in order to enhance homeland security is something we ought to protect, and the President very much alluded to that in his national address a couple of weeks ago when he announced the new Department of Homeland Security, when he told the men and women involved in the intelligence community, referring directly to Coleen Rowley. You are patriots all. We value your opinions, even if they are critical. So we will just have to work with you, to assure you that the kind of protection you want to give these men and women exists within the statute. We believe it does, but obviously have more persuasion—

Senator GRASSLEY. Well, then I want the employee in Homeland Security to have exactly the same protection as somebody does in the Department of Justice or the Secretary of Defense. So you are willing to do that?

Director RIDGE. We believe those protections are present, but we—

Senator GRASSLEY. Well, the way to make it sure is to make sure the language is exactly the same. OK?

Director RIDGE. Senator, we will work with you on the language.

Senator GRASSLEY. OK. Well, that clears it up. I mean, that takes care of it.

Now, that doesn't say that existing whistleblower protection language is adequate. It really isn't, but as long as the inadequacy of the present law would still be applied in the same fair way to employees in homeland security that it is in the Department of De-

fense, at least that is the minimum protection that they ought to have.

So I think that is a pretty good answer, isn't it, Mr. Chairman?

Director RIDGE. Senator, we want these men, women, patriots. all to be comfortable with the President's encouragement that they have criticisms, that they can come forward and operate without fear of a reprisal, and that is the language we want to include in this legislation and we will be pleased to work with you on it.

Chairman LEAHY. If I might, I would agree with the Senator from Iowa if we could have basically the same language because then you have got a history. You have got a legislative history and everything else, and we all know we are in the same choir book.

Senator GRASSLEY. Just so that we know, that there was an exception made for the FBI 13 years ago when we passed the last legislation because somehow there was a rationale, FBI just couldn't have it exactly the same as it was for other Federal employees. There was an exception made for the FBI to come up with their own. Do you know when they finally came up with it?

Director RIDGE. No, sir.

Senator GRASSLEY. About a couple of years ago, after we pushed them to doing it.

I don't accuse you of it, but there is a great deal of peer pressure to go along, to get along in the bureaucracy, and whistleblowers are like skunks at a picnic. That is how much disliked they are. In fact, it is still allowed to have somebody say something nice about a whistleblower. If I didn't have a strong heart, I would have fell off my chair when Director Mueller said that Coleen Rowley was doing a good job and thanked her for the job she was doing to call forth the shortcomings of some things within the FBI.

Well, let's move on, then. Another area where I am not as critical of the legislation, but I want to be very watchful of, is in regard to the Office of Inspector General. I believe we have to have Offices of Inspector General that are very, very strong and very, very independent. It is critical to the proper functioning of an agency.

The President's bill has provisions that allow the Secretary to stop an IG auditor investigation under certain circumstances, as do Justice and Defense Departments. Although I know it is extremely rare for those agencies, meaning Justice and DOD, to exercise that power, I am concerned that this power could be abused.

Governor Ridge, could you assure me that this power will be used carefully and rarely? Can you give me some examples of when you think the Secretary of Homeland Security would have to stop an IG from doing a report or an investigation?

Director RIDGE. Senator, I can't give you a specific example now. I am going to leave it to perhaps the new Cabinet Secretary to answer the hypothetical, but I would tell you this, that the law of an Inspector General is predicated upon, that man or woman being independent of the kind of influence that you are concerned about, and only on the rarest occasions would the Secretary look to circumscribe that independence, and only on those occasions would he not only have to justify it privately, but he would have to justify it to the Congress of the United States because I don't believe that when the Department of Defense or the Attorney General exercised their authority to circumscribe it that they can do so without notice

to Congress. So I don't know what he case would be, but it would have to be a very persuasive case in order to convince the Congress of the United States that they were moving in the right direction.

Senator GRASSLEY. Thank you, Governor.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Grassley.

Senator Feingold.

STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator FEINGOLD. Thank you, Mr. Chairman, for your leadership and for holding this hearing, and I, too, want to welcome you, Governor Ridge.

Director RIDGE. Thank you, Senator.

Senator FEINGOLD. Thank you for your service to our country and for appearing before the committee.

Governor, let me say before I get to my questions that I, too, commend you and the President for recognizing that a major Government reorganization must be considered in light of the tragic events of September 11th, and I am pleased that the President has thrown his support behind congressional efforts to elevate the authority and the status of the Office of Homeland Security.

In hearings before Judiciary Committee this year, we have been exploring the bureaucratic obstacles that limited our capacity to identify and prevent the terrorist attacks last fall, and I think that inquiry has to continue. As we move forward in considering the President's proposal, I would like to see us guided by two simple questions. One, will this reorganization make all of us safer, and, two, will it preserve our cherished liberties as Americans?

I appreciate your testimony this morning, and I look forward to reviewing more of the details of the reorganization and the challenging task of following up on it, but let me begin with a question.

I approached the debate over the new Department of Homeland Security with a lot of questions, but one of the most important ones relates to our Federal budget. We are facing a real budget mess right now, and some suggest that this new Department may just add to our budget problems. In fact, I have heard from a number of folks in Wisconsin who share that concern about it.

Paul Light of the Brookings Institute notes that when the Education Department and the Energy Department were created, they both exceeded their initial budgets by at least 10 percent, and he believes that this will also be the case with the new Department of Homeland Security.

Now, the President has said that by creating this new Cabinet Department, the Government will actually save money. Can you give me some assurance today that the President is correct and that this new Department will not cost any more than the current budgets of the various agencies it will contain.

Director RIDGE. Senator, the $37 billion figure used the $14 billion increase in homeland security line items in the President's 2003 budget. So there is a huge increase in the level of appropriation to support the homeland security budget, and it is within that massive increase that the President feels confident that the costs can be contained.

Second, looking at both organizational and administrative efficiencies that could be brought to bear because of the consolidation of the agencies, clearly there are some additional savings there that could go from the bureaucratic side of the department to the prevention and interdiction and security side of the department.

And then, third, I would tell you that the critical component of this new agency—and, again, we are going to need congressional support to provide it in order to meet the President's goal of not going above the $37 billion-plus, and that is the ability to transfer up to 5 percent of any particular line item.

If you give the new secretary the ability to transfer up to 5 percent of the department's budget, trying to create an agile and flexible department, addressing needs as the threat or vulnerability becomes apparent, again within the restriction of a huge increase in the 2003 budget, with the transfer authority and with many of the organizational and administrative efficiencies we can bring to bear, I believe the President's goal of not costing any more than in his 2003 budget can be met.

Senator FEINGOLD. Thank you. Let me ask a different kind of question. Under the President's proposed Department of Homeland Security, as you have been talking about, there is authority for receiving and analyzing investigative information that relates to terrorism.

Some have characterized the department as being a customer of intelligence and law enforcement information that it would receive from other Federal agencies that would not be part of the new department, such as the FBI and the CIA.

What interagency procedures do you envision to ensure that the new department will be able not only to obtain information, but then, when necessary, request additional followup information from the FBI and the CIA or any other investigative agency?

For example, if the new department received a report from the FBI that a witness suspected terrorists were considering using planes as weapons, how would you be able to find out if the witness was referring to commercial airplanes or a crop duster? Or if a report made reference to power plants, who would the new department staff call to find out if it meant all power plants or just specific ones?

In effect, would you have the authority in the agency here to request that agents of the FBI or the CIA actually do a followup investigation?

Director RIDGE. No. 1, Senator, if you adopt the language within the President's proposal with regard to the requirement that the CIA and the FBI submit the reports, assessments, and their analytical work product to the new agency, this new agency will receive that information. There is an affirmative responsibility, an affirmative obligation contained within this language; there is a statutory mandate that they provide that information.

I don't believe the clarification of the kind of information that you would have alluded to would be any problem whatsoever. As a matter of fact, I think going back and getting that kind of clarification could be done either on an ad hoc basis or certainly clarified by executive order or interdepartmental memorandum of understanding.

But as I have seen the work product from these two agencies on a fairly regular basis, at least once a day, generally that kind of information is included, and, if not, can be clarified quickly with a phone call.

Senator FEINGOLD. Well, I would like to be assured in some way that the actual legislation will provide for that, because these are not agencies that have been shown to have a record for easily responding to this sort of thing if there is not authority for it.

I think specifically what I am interested in is not just whether or not you are going to get a work product. But if you get a work product and you need to ask a followup question, do you have the authority to do it? Do they have the obligation to respond to you and can you ask that an FBI or CIA agent do further investigation at the request of this new department?

Director RIDGE. We can certainly task back. Perhaps even more importantly, Senator, I think it would be certainly the recommendation to the new secretary that homeland security analysts be placed in the CIA and the FBI, and work with them in their counterterrorism centers, work with the FBI in their new Center for Intelligence that Director Mueller is organizing.

So I think you have a variety of ways to deal with the concerns that you have addressed—statutory obligation, the tasking back and the actual day-to-day work together to get that kind of information.

To give you a good example, twice a day the CIA, the FBI, Homeland Security, and multiple other agencies do a teleconference to do precisely the kind of thing that you are talking about. This is the report, this is the assessment, we need a little bit more background information. So there is a process in place now and it will be ratified by the law in a practice that I am confident will continue.

Senator FEINGOLD. Well, I appreciate that and I would like to followup with you to try to find out.

Director RIDGE. Please.

Senator FEINGOLD. I see that my time is up, but I will be submitting questions to you relating to questions having to do with the relationship and role of the National Guard and certain questions about the Secret Service and their role in the new organization.

Director RIDGE. Thank you, Senator.

Senator FEINGOLD. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

To followup on the area that Senator Feingold raised, and a very good area, I am thinking back that on June 6 when this was announced, Director Mueller was up here talking about the FBI reorganization plans and how they would handle information in the future, the feeling being that a lot of information was available prior to September 11, but tragically was overlooked, whether it was in the Department of Justice, the FBI, CIA, or wherever else.

So we are trying to make sure the FBI does a better job of, one, sharing information and, second, of analyzing it. I know that Director Mueller, who is on the front line in that, is doing everything he can. They are the primary agency for collecting domestic intelligence on terrorism or anything else.

I look at the homeland security part where you combine Customs, the Secret Service, Immigration, the Coast Guard, and

Transportation Security. That is about 140,000 people all over the country. To what extent do they get into collecting—and I am not sure I understand fully from your answer—how much do they get into collecting domestic intelligence alongside the FBI?

The reason I ask this is following the excesses of the J. Edgar Hoover era and some of the followup time, we have put in some guidelines and we have put in some oversight of the FBI. To what extent are they going to be able to do this without those same kinds of guidelines and oversight at a time when it is so easy to spy on people and track people with computers every time they make a phone call, every time they purchase something with a credit card at the local grocery store or buy books online?

Now, they even talk about going into public libraries to see what you are reading. I am not trying to be one of those who sees the black helicopters coming at three o'clock in the morning, but you can see where a lot of people are going to be very concerned that the temptation and the ability are going to be there to snoop for the sake of snooping.

That is a long way around of saying how far can they go to collect domestic intelligence?

Director RIDGE. Well, Senator, I think their collection activity is prescribed by law and regulation. You are correct in concluding that they may have information regarding potential terrorist activity that they might accumulate during regular functioning of the department.

The inspector at the border may pick up a potential terrorist based on a watch list, or observe some suspicious activity. Customs agents, based upon lists of crews or origin of cargo, may determine it is necessary to target a particular ship and take action. So there are bits and pieces of information that they have historically gathered and when they have some relevance to homeland security, they would be channeled into this unit within the new department.

But one of the reasons the President has been adamant and very clear and very direct and very precise about this new agency not having any collection capacity or ability, other than that now exists according to the law, is to ensure that it doesn't turn into some kind of domestic spying agency.

The collection capacity of the CIA and the FBI is regulated. There are privacy concerns, there are civil liberties concerns. There is aggressive oversight; there has been, there should be, there must be. But the President is very clear that the purpose of the information analysis and infrastructure protection piece is really to identify the targets that need to be hardened and not to be collecting information on American citizens. They can't do it now.

Chairman LEAHY. But the analysis reports you get—does that include raw analysis?

Director RIDGE. It does not, it does not, Senator.

Chairman LEAHY. Well, for example, the FBI's FD–302, the summary of a witness interview—would those be automatically sent to Homeland Security?

Director RIDGE. You have the 302 reports and occasionally electronic transcripts, and to the extent that it relates to potential terrorist activity, that kind of information could be forwarded. But it would have been gathered lawfully by the FBI and if it related to

a potential domestic terrorist event, it would be shared with the new department.

Chairman LEAHY. Well, take the Phoenix electronic communication, where an agent recommended that they followup on the information that they had about potential terrorists getting flight training. Would that automatically be turned over to the Department of Homeland Security?

Director RIDGE. It is our interpretation of the statute as structured that the report would have gone to the Department of Homeland Security. They would have continued to followup on the individual or individuals associated or taking the flight training courses. That would continue to be the function of the FBI, but this information, in conjunction, I suspect, with other bits and pieces of information that may have been accumulated the same day or over the weeks or the months that suggested that airplanes could be used perhaps as missiles, but perhaps just in anticipation of a more traditional hijacking, would have led hopefully the new Department of Homeland Security to take a look at the threats which were forthcoming with some credibility, look at the vulnerability, what we have done in this country over the past decade or two to screen cargo and passengers or to harden cockpit doors, hopefully to have led to a decision to move before the incident occurred rather than after.

Again, it is purely conjecture on our part, but that would be the intention of having the information analysis and having this new capacity within the new department.

Chairman LEAHY. Well, I am going to want to followup on that. I also want to followup on NIPC, the National Infrastructure Protection Center, and how that may or may not be changed. But that goes into a much longer, more technical thing, but I will have questions on that and you and I may have to chat a little bit further on that.

I know that Senator Schumer had one more question. Did you have another question?

Senator SESSIONS. Two questions.

Chairman LEAHY. Senator Sessions has a couple more questions, and then we can end.

Senator Schumer, and then Senator Sessions.

Senator SCHUMER. Thank you, Mr. Chairman.

Senator SESSIONS. It is not my turn? That is all right.

Senator SCHUMER. I will be brief.

Senator SESSIONS. Fine.

Senator SCHUMER. I don't know if the Director will be brief, but I will.

Chairman LEAHY. He took a lot less time than you did on your questions. As you may recall, I let you have virtually double time.

Senator SESSIONS. I can't complain.

Senator SCHUMER. Thank you, Mr. Chairman.

My question goes to an issue I know you have discussed with Senator Leahy and a little bit with Senator Cantwell, which is the restructuring of how we analyze all of this intelligence.

I guess many of us have doubts about whether the FBI is the right place to do analysis. It has been a great law enforcement agency. Somebody commits a crime and they find out who did it.

They are better than anybody else. They have had a whole lot of weaknesses in terms of analysis.

So as I understand it, and it seems to be a work in progress here, the idea is that the FBI would continue to do analysis, but this new office of intelligence analysis would be a redundant analytic agency. I think that is a good idea, frankly. I think we are in a brave new world. I think it is very, very difficult to say that one agency should do it alone, but I have two questions for you related to that, or one two-part question, to keep my promise to Senator Leahy and Senator Sessions.

A: Where are we going to get these analysts? When I spoke to the Director of the FBI privately, he is having trouble. They only have about 600 in the FBI. He is having trouble finding out where they are, and I read somewhere they might come from INS or some other agency. I forgot the second one that was mentioned.

Well, that doesn't give me too much faith. I don't think the INS has been known to do very good analysis. That is question 1A.

And 1B, related: Since the FBI has been so poor at this—we have had dialog about their computer systems which are just totally, totally backward, and I have been following up on that—why wouldn't it be better just to chop off the 600 or 700 analysts and their sub-workers in the FBI and put that in the homeland security agency and let that be responsible for analysis, let the CIA do its analysis as well, instead of trying to start a third new agency, when the existing agencies have had such a difficult time coming up with the necessary analysts to begin with?

Director RIDGE. Senator, the concern about being able to pull in additional analysts is certainly very much on our minds as we think about reorganizing and creating this new unit.

Clearly, we could anticipate getting some additional support from the CIA. They have been very forthcoming and very helpful, and we could get some people assigned. I believe that depending on the kind of flexibility given the new Cabinet secretary, we might be able to bring some people out of retirement, depending on the pay scales.

I think, third, there are men and women who are presently engaged in analytical work within the various departments. We may be able to bring in a few from there. But it is a process to buildup to the kind of capacity that the new department will need that will obviously take time.

There is a school that the FBI is beginning to put together at Quantico to develop the analytical capability, but as you well know, there is no graduate school for analysts. It is about experience, it is about training, it is about imagination. I think we can create an infrastructure there from these sources and then build that capacity.

Senator SCHUMER. I wanted to correct myself.

Director RIDGE. Sure.

Senator SCHUMER. They hope to get to 600 analysts by 2004. They only have about 200 now. Sorry.

Director RIDGE. Well, the Director is pretty committed to meeting the goal. I wouldn't bet against him. I know he is working very hard with the CIA to ramp up the educational component within the FBI so they can develop that capacity. He understands they

need it, they don't have it yet, and he is working hard to develop it.

Senator the agents within the CIA, the analytical capacity that Director Mueller is building up, will serve really two functions and the new department will be the beneficiary of both functions.

One, those analysts will also be charged with giving additional direction to the field offices in the FBI to followup on the reports and followup on the individuals, potential terrorists, and potential terrorist activities. So you need that analytical capacity to give the field agents specific direction.

These analysts will also be working in conjunction with the CIA as they pull together their resources at their counterterrorism center to bring another set of eyes and ears and intuition and experience to that process.

As a result of the capacity in FBI field offices and coordination with the CIA, I think the work product that the new department will get will be substantially better than it is today, and it is good now and it will be better.

To your point, there is some redundancy within the analytical capacity of the new department looking at their reports and assessments. That is good. We all agree that it is good, but the primary mission of this new department is not to task the FBI or direct the CIA. It is to take those assessments and match them against the vulnerabilities and have for the first time some direction to local governments, to companies, whatever, to harden their targets.

These are the protective measures we think you ought to take. There is a sense of urgency, there is a sense of priority, because we have taken a look at the threat. We have matched it against the vulnerability and you are not protected well enough and these are the things you have got to do.

Senator SCHUMER. I have further questions I will ask in writing, but I thank the chairman.

Director RIDGE. Thank you, Senator.

Chairman LEAHY. Senator Sessions?

Senator SESSIONS. Well, I thank, Mr. Chairman, you and Senator Schumer for this very interesting and important discussion. I think it is a very difficult issue.

I was pleased when the Director told us that he was going to have an intelligence center in the FBI, that every 302 that the FBI prepares that relates to terrorism, as I understand it, would be immediately sent forward, not held in the field until a big file had been completed and then sent forward, as is often the case with routine criminal cases.

Director RIDGE. The Director said yesterday, if I might apologize for interrupting you, Senator, that once they get their technological world sorted out, we like to think that the new Department of Homeland Security would have access virtually any time because of the better use of the technology that will hopefully be available to both agencies.

Senator SESSIONS. Well, I think so, and he indicated that the CIA would be a part of that intelligence center, and actually a former CIA agent would head it. But I certainly think that Homeland Security should be a part of that center. Is that your understanding of where it would be?

Director RIDGE. Yes. In discussions with Directors Tenet and Mueller, they anticipate that the new Secretary of Homeland Security would position some of his people within their organizations, as well, to work side by side with them.

Senator SESSIONS. And Homeland Security will have its center, which would be somewhat duplicative but would have a somewhat different responsibility. Your center would develop a plan to carry out a defensive mechanism to a threat that has been uncovered. Is that correct?

Director RIDGE. Correct. The CIA and the FBI will continue to be the most important offensive part of the operation of investigation and interdiction. This new capacity will be a defensive capacity to prepare for and provide protective measures to make it just progressively more difficult over the years for the terrorists to attack, to harden the targets of America.

Senator SESSIONS. Mr. Ridge, let me ask you this and just sort of ask for a commitment from you or where you are and where the President is in his thinking. This reorganization is a very big deal. It is one of the biggest reorganizations that we have ever had in the history of the country.

It is moving agencies like Customs and the Secret Service that have been a deeply ingrained part of the Treasury Department. It is moving INS and the Border Patrol, deeply ingrained in Justice, and Coast Guard and other agencies. It is really, really large.

All of us that know anything about Government—and I spent 14 or so years with the Federal Government—know that it lacks the efficiency of the private sector. That is why the private sector is more effective in doing things than Government. The very idea that we have to operate the way we do is sometimes maddening.

My question to you is do you see this as an opportunity to think anew about how a Government agency ought to be organized, to encourage some of the ideas like total quality management, and maybe less emphasis on structures and grades and slots and special duties?

You know, businesses call people team members instead of just some complex title everybody has. Do you think that you could do this maybe using the GAO's ideas? They have got some good ideas about improving Government. Could we utilize this as an effective way to prove that we can do better in operating Government, rather than the danger that we would face that we would move these organizations and they really wouldn't be much better than they were before?

I know there will be more focus on homeland security. I know we will achieve that, but can we achieve efficiency in all the other aspects and duties that they will have to face?

Director RIDGE. Senator, if we are not willing to think differently about the administration of this department, if we are not willing to think differently about the organization of the department, and if we are unwilling to think differently about the operational arrangements within the department, we will not have done our duty to do everything possible to maximize the use of these people and the technology and everything associated with the new agency to improve security for America.

If we think we can just cobble together an agency and just realign the boxes and realign flow charts, we will not have done enough. A good organization doesn't guarantee success. A flat organization does guarantee failure, and frankly if we can't make some administrative changes and some organizational changes and operational changes, we will not have done our job for the citizens of this country.

Senator SESSIONS. I hope you will do that. I hope you will maybe set a model for the rest of the Government that can really test some new, innovative ideas for making Government more efficient. Our Government employees are great people.

Director RIDGE. They sure are.

Senator SESSIONS. They are men and women of integrity and ability, but sometimes the way we organize and the way we think reduces the ability of our governmental agencies to be most effective. It would be exciting if you could do that in the course of this.

Director RIDGE. Given the nature of the threat and the purpose for which the President has recommended the reorganization, we need to be as agile and as flexible and as able as our enemies. We do have to rethink how we deliver these services and provide protection for America. This gives us an extraordinary opportunity not only to enhance protection, but perhaps to come up with a new model of governance.

Senator SESSIONS. And there will be those who will object, but I think in the long run all could benefit.

Thank you.

STATEMENT OF HON. JOHN EDWARDS, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator EDWARDS. Governor, the chairman suggested I just go ahead because I know that you have an engagement at 12:30, so I will try to be very brief so that you can get to your appointment.

Director RIDGE. Thank you, Senator.

Senator EDWARDS. Thank you for being here and thank you for the work you are doing. I have looked at this proposal. It seems to me it has good ideas in it. I think my concern about it is that while we are going about the process of reforming these Government agencies, these Government bureaucracies and making them work more effectively and more efficiently that we don't lose sight of another enormous priority, which is the imminent threat that we all know exists on a daily basis.

We all know that this process of reform is going to take time. It is going to take months to probably get it through the Congress and then months to get it implemented. In the meantime, I have some more pressing questions which I won't direct to you because I will have a chance to direct them to the people who are responsible for them on a daily basis.

But I do want to know, in order to protect us, do we know where all the terrorists are within this country? Do we know where the terrorist cells are? Are we monitoring and infiltrating those groups? Do we know what they are planning as we speak? Is the FBI able to recognize foreign intelligence, given their nature and responsibilities and culture over the last few decades? Will they get that infor-

mation, when they get it, into the hands of the people who need it in order to act to protect the American people?

These are obviously very serious issues that confront us as we speak, and this threat, as we all know, and you know better than anybody, is imminent. So if I could take just a minute and ask you a couple of questions about that area, because I know you have been meeting with these agencies, including members of the Intelligence Committee.

We passed the PATRIOT Act, as you well know, and some of us on the Intelligence Committee had actually been working on some of those provisions before 9/11. Let me just direct you to a couple of areas, if I can, to the extent you know about them.

Director RIDGE. Sure.

Senator EDWARDS. One of the provisions of that Act dealt with the DCI having more involvement in the process by which the FBI collects foreign intelligence within our country using FISA, and there is a provision in the Act that addresses that.

Can you tell me what progress has been made since that legislation was passed to get the DCI more involved in that process?

Director RIDGE. Senator, I think both Director Mueller and Director Tenet would be a better source of that kind of information.

Senator EDWARDS. Well, let me ask you a second question.

Director RIDGE. And I appreciate it. I believe they have used the new capacity and the new tools that you have given them, but to give you a more specific answer I think it is more appropriately directed to them.

Senator EDWARDS. That may be your answer to all these questions. If it is, that is fine. I just want to know what you do know about it.

Do you know whether the Attorney General and the DCI have implemented training programs for Federal, State, and local law enforcement agencies so that they can, in fact, recognize foreign intelligence when they see it? Do you know whether anything has been done about that?

Director RIDGE. I believe the Department of Justice and the FBI have begun providing that kind of training, but in what form I can't tell you specifically. One of the challenges—and you raise a good point, Senator—is in the long term we are going to have to do a better job of sharing different kinds of information with State and local law enforcement officials that will empower them and assist them in that effort in recognizing potential terrorist activity.

There is a great deal of concern, and very appropriately, in Washington about the horizontal sharing of information and integration. But we also need to work on a process by which we can empower State and local law enforcement officials with knowledge and information that will help them better do the job that you and I both think they need to do, and that is be a front-line set of eyes and ears, intuition and experience to possibly ferret out potential terrorist activity. So it is a process that is underway. I am confident it is not completed yet.

Senator EDWARDS. Well, these other questions that I had all fall into the same category. I would just say, and I know you are aware of this, but as we go about this process which will take some time in reforming these Government bureaucracies and making sure

they work the way they need to for the American people, I just don't want us to lose sight of the fact that we have a threat in our midst today and we need to find out where these people are, find out what they are doing, get inside them and stop them.

I know you know this, Governor, but that is also an enormous priority, but I appreciate very much the work that you are doing.

Director RIDGE. Senator, you raise a very important point, and I think to reassure you and to reassure the American public, while the administration working with Congress undertakes the reorganization of the new department, the administration and Congress continue to work day after day on enhancing security through the existing departments and through the existing organizations as presently structured.

When President Truman suggested that we needed to merge the Department of War and the Department of Navy, and it took him several years to do it, it didn't mean that the Department of War and the Department of Navy didn't continue to do their work.

So to your point, we have to keep our eye on both objectives: one, to work with Congress to reorganize, if it is the collective will of the Congress to get it done, but at the same time neither the Congress nor the executive branch, I believe, will take its eye off the other important day-to-day responsibility, and that is doing everything we can to improve security in this country.

So I appreciate your raising it and identifying the dual nature of the work we have to do together.

Senator EDWARDS. Thank you, Governor. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

With that, Governor, I extend appreciation for the time you have spent here and the time you have always been willing to spend.

Director RIDGE. Senator, thank you very much.

Chairman LEAHY. I appreciate the conversations we have had, both privately and at the White House on this subject. We will stay in touch, but I thank you very much and we stand in recess, which barely gives you time to grab a sandwich and get over to Chairman Sensenbrenner's committee.

Director RIDGE. Thank you, Senator. I appreciate it.

Chairman LEAHY. Thank you.

[Whereupon, at 12:22 p.m., the committee was adjourned.]

[Questions and submissions for the record follow.]

QUESTIONS

PATRICK J. LEAHY, VERMONT, CHAIRMAN

EDWARD M. KENNEDY, MASSACHUSETTS
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MITCH McCONNELL, KENTUCKY

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

July 9, 2002

The Honorable Tom Ridge
Director, Office of Homeland Security
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500
ATTN: Ms. Ashley Davis

Dear Director Ridge:

Thank you for your presence at the United States Senate Judiciary Committee's hearing entitled "Protecting the Homeland: The President's Proposal for Reorganizing Our Homeland Defense" held on June 26, 2002. Enclosed are written questions from the Committee members. In order to complete the hearing record, please send your written responses no later than July 16, 2002 to Patrick Wheeler, Senate Judiciary Committee, 224 Dirksen Senate Office Building, Washington, D.C., 20510. Please also fax your responses to (202)228-0873 or send an electronic version of your response to Patrick_Wheeler@judiciary.senate.gov.

If you have any questions, please contact Patrick Wheeler of my staff at (202)224-7703.

Thank you.

Sincerely,

Patrick Leahy

PATRICK LEAHY
Chairman

Senator Charles E. Grassley's Follow-up Questions
"Protecting the Homeland: The President's Proposal for Reorganizing Our Homeland Defense Infrastructure."
June 26, 2002

Inspector General Questions

An agency as huge as the Homeland Security Department will need an Office of Inspector General that is strong and independent. Having a good Office of Inspector General is critical to the proper functioning of an agency. The President's bill has provisions that allow the Secretary to stop an IG audit or investigation under certain circumstances, as do the Justice and Defense Departments. Although, I know that it is extremely rare for those agency heads to exercise that power, I am concerned that this power could be abused.

1. Governor Ridge, can you assure me that this power will be used carefully and rarely? Can you give me some examples of when you think the Secretary of Homeland would have to stop the IG from doing a report or investigation?

2. Also, the bill states that the Secretary of the Department has to notify the Speaker and Senate President if he blocks the IG from conducting an investigation. Why not have the IG notify and inform the relevant committees, instead of just two persons in Congress?

Cyber Security and Information Sharing Questions

The Information Analysis and Infrastructure Protection Division within the new Department will combine such entities as part of the National Infrastructure Protection Center (NIPC) from the FBI, the Critical Infrastructure Assurance Office (CIAO - pronounced CHOW) from Commerce, and the Federal Computer Incident Response Center from GSA, among others.

3. With the exception of the Computer Investigations and Operations Sections of the NIPC, the Warning, Analysis, Response, and Outreach and Development Sections are slated to be moved to the new department. Is this assessment correct, and how does the Administration perceive this Division working with the other federal infrastructure protection concerns not brought under the jurisdiction of the new Department?

4. We must ensure a smooth and complete transition of organizational effectiveness that can be built upon by the new Department. We cannot afford to have the Department of Homeland Security "reinventing the wheel" so to speak at this critical juncture. Agencies that are "giving up" parts of their domain cannot be allowed to be parochial in their approach to the new Department. What provisions have been made to guarantee the critical transfer of institutional knowledge, in addition to employees, hardware, and open cases?

5. Will the current full time employees dedicated to these organizations be moved to the new Department, (i.e. the 795 FBI employees, the 27 Commerce employees, and the 23 GSA employees, in addition to the numerous detailees), or just the functions and responsibilities?

6. What role will the President's Critical Infrastructure Protection Board (CIPB), the office headed by Richard Clarke, play in this new Division?

Intelligence Information Gathering, Analysis, and Sharing

An intelligent compilation and analysis of intelligence data is critical to our nation in this war against terrorism. Sharing this information is important, but what exactly happens to it once it is received is critical. I'm talking about technology, data mining and link analysis, in addition to human intelligence. The application of commercially available software, let alone some proprietary confidential technology, will surely improve our ability to identify trends, patterns of behavior, and the precursors of an imminent attack. Proper handling and appropriate accountability will prevent the mistakes previously made by our intelligence community.

7. Regarding the sharing and analysis of intelligence information, please explain exactly how the FBI, CIA, and other U.S. intelligence gathering agencies will interact with the new Department. Have we gone far enough in this reorganization plan? Should other intelligence organizations be integrated into the Department of Homeland Security?

8. What new techniques does the Department propose to employ that will ensure that intelligence information is handled and analyzed correctly?

Bureau of Consular Affairs Questions

9. I believe the President's proposal fails to address one key transfer: the Bureau of Consular Affairs. As a member of the Immigration Subcommittee, I am concerned with how the President's plan would actually allow the Homeland Security Secretary to use his visa-issuance authority. In Section 403 of the Administration's Bill, the Secretary is given "exclusive authority... to issue regulations with respect to, administer, and enforce the provisions ...relating to the functions of diplomatic and consular officers of the U.S. in connection with the granting or refusal of visas." It seems to me that if the President wants the Secretary of Homeland Security to issue regulations regarding the visa process, the President should transfer the operational unit, – the Bureau of Consular Affairs – to the new Department. Why hasn't the Bureau of Consular Affairs been included in the new Department?

Immigration and Naturalization Service

10. This afternoon, the Subcommittee on Immigration will be going into detail about how the INS should fit into this new Department, if at all. Some are proposing to create a fifth division for immigration services. Some are insisting that we only move the Enforcement function, leaving the Service function with the Department of Justice. Many, like myself, will argue that the two functions should be kept together because they are intimately linked. If not, the end result would be greater confusion and less communication. Applications would surely be lost in the shuffle, and approvals would take much longer to obtain. Do you agree that if we place the two critical components into two separate Departments, *we may actually be threatening service to new residents and visitors*?

11. I am very concerned about the restructuring of the INS itself, and want to make sure that the Commissioner's efforts will not be lost in this potential shuffle. Can you assure us that reforms at the INS will be going forward *at the same time* that this new Department is created?

12. Currently, the INS works with the FBI in tracking foreign terrorists and preventing their entry. By statute, they are given access to the NCIC database. They use the FBI in criminal investigations, so this cooperation may become complicated. How can we make sure that there is inter-department sharing in this case?

Good Government and Fiscal Responsibility Questions

13. The primary mission of the proposed new Department is homeland security, not job security. In the name of good government and fiscal responsibility, has the Administration identified any redundancies in the bureaucracies of the agencies that are to be redirected to the new Department? If so, what are they?

14. With agencies or groups, either coming over in whole or in part, from existing bureaus and departments, to what extent does the Administration foresee the realization of cost efficiencies?

15. I am sure that this plan to create the new Department considered the fact that there will be a multitude of management and organizational methods that will be brought to the table. Has the Administration identified the best and most effective of these diverse, and sometimes competing business methods?

Freedom of Information Act

16. I understand that FOIA is an essential tool for assuring that there is sun shine in the federal government. At the same time, I realize that there must be some protection for information submitted by private industry to the Department in order for companies to feel at ease in the sharing of sensitive corporate information. Would you please explain how Section 204 of the Administration's bill will balance these two interests?

Questions of Senator Joseph R. Biden, Jr.
For The Honorable Tom Ridge
Director of the Transition Planning Office for the
Department of Homeland Security
"Protecting the Homeland: The President's Proposal for Reorganizing
Our Homeland Defense Infrastructure"
June 26, 2002

1) Governor, I applauded the President when he proposed his First Responders Initiative back in January. The Nation needs to focus on the police, firefighters, and emergency medical personnel who are called upon to be our first line of response when disaster strikes. As you know, the Justice Department's Office of Domestic Preparedness ("ODP") currently issues grants to states so that they can plan for and help their cities and towns respond to a terrorist attack. The Justice Department recently announced that Delaware received $826,000 from this program in the most recent fiscal year – these are critical funds that will be used to purchase specialized equipment for emergency response agencies. I understand my state's allotment will increase significantly next year to over $2 million because of increased appropriations given to ODP in the emergency supplemental bill last December.

I never quite understood your proposal to shift this relatively new program into FEMA. FEMA's great at responding to hurricanes, but I still haven't talked to a police chief or a sheriff who even knows their phone number. They're not a law enforcement agency. And now you propose yet another shift – this new Department will be administering the First Responders Initiative.

a) Could you explain to me how these grants will be delivered out to states and communities?

b) You have proposed $3.5 billion for this program, a huge increase from last year's levels – I applaud you for that. Could you expand on the comments you recently made to the U.S. Conference of Mayors where you said the Administration may agree to set aside 10% of these funds as a "block grant within a block grant" to pay for first responder overtime expenses?

2) Governor, last October, the President established the Office of Homeland Security and the Homeland Security Council. Part of your mission, as I understand it, was to develop a homeland security strategy. In April, the White House Chief of Staff convened a secret working group to create the proposal we are considering today. My understanding is that that working group received no input from experts within the administration, the Congress, or outside the government.

I support the creation of this new department, but I want to get it right. The Administration took six weeks or so to fashion its proposal, and we are now being asked

to send a bill to the President for his signature within a few legislative weeks. That is a very short timeframe for us to consider what is clearly the largest government reorganization effort since we passed the National Security Act of 1947, the Act that resulted in the Department of Defense, the Central Intelligence Agency, and the National Security Council. It is interesting to note that we have had to return to the National Security Act five times over the past fifty years to revisit the organization of our defenses. I would hope the bill we begin to consider today does not result in the same need for revisions. This new department will have 14 Senate-confirmed positions. We have a responsibility to study the details, particularly if we're going to be asked to confirm its staff.

I asked the Congressional Budget Office to review your legislation, and they reported to me that $13.7 billion of the $37.4 billion you envision allocated to the department is currently classified as non-homeland security spending in your fiscal year 2003 budget request. I agree with your goals of consolidating border security functions in one agency. But your proposal envisions the Secretary of Homeland Security being responsible for fighting counterfeiting, ensuring the health of zoo and circus animals, responding to natural disasters, and researching infectious diseases.

a) How much thought was given to separating some of these non-homeland security functions out of this proposal and instead addressing solely those functions which everyone seems to agree need immediate consolidation and focus?

b) When do you expect to deliver your proposed homeland security strategy to the President? Would it make any sense for us to wait until we see that strategy before we embark upon such a massive reorganization of the government?

3) I have some concerns over what the White House's role will be in homeland security if we agree to create this new department. Your proposal merges 22 agencies under one roof, but by your own admission there are over 100 U.S. agencies that are in some way involved in the homeland security effort. Someone is going to need to coordinate the three-quarters of all homeland security agencies that are outside of the new structure. The new Secretary can't do it – The Attorney General, the Treasury Secretary, the Secretary of Health and Human Services and others would be his or her equal.

Cabinet secretaries are not able to do interagency coordination. This was one of the primary reasons I wrote the law establishing the Office of National Drug Control Policy. We needed a drug czar – one person in the White House who would coordinate the entire federal drug fighting effort, and who would have authority over the budgets of those agencies participating in that effort. As I understand it, the President would like the current structure to remain in place. This system, set up by Executive Order, consists of a homeland security council (made up of the President and his senior advisers), and a homeland security office and director who can advise the President and manage the interagency process. My fear is that this new department will be so massive that it will overshadow the White House Office of Homeland Security.

a) Shouldn't we be giving the homeland security office, the homeland security council, and the homeland security director statutory authority? You, as Director of that office, had a major role in drawing up the homeland security budget for fiscal year 2003, correct? Shouldn't such a position be accountable and answerable to Congress?

b) Shouldn't we be giving the Director of the Office of Homeland Security the authority to review the entire homeland security budget of the federal government, and to certify that each agency's request meets the homeland security needs of the country? Shouldn't we give the Director the authority to reject agency budgets that in his view are insufficient?

4) You recently said that to secure the homeland, we need to secure the hometown. I couldn't agree more. The people who secure the hometown are the men and women of our police departments. I am deeply concerned that we asking local law enforcement to do too much with too little, particularly when looked at in the context of your budget for state and local law enforcement. The Administration proposes to slash funds for state and local law enforcement by 37% -- from $4.9 billion in funds last year to just over $3 billion in your budget. You propose to end the COPS program, the only initiative in the entire federal government that helps hire police officers. I am particularly troubled by these proposals in light of the statistics recently reported that crime is once again on the rise in America. I know you recently spoke to the U.S. Conference of Mayors and you were asked about these cuts. I am told you responded that COPS was designed as a temporary program, and once the grants ended that was supposed to be the end of the program.

a) Are you aware that, of the 18,000 law enforcement agencies in the country, one-third have never received a COPS grant? COPS currently has $430 million worth of hiring grant applications. They only have $120 million to award. Is it the Administration's view that we have reached the end of the public safety benefits that can accrue if more police are added to the streets?

b) You are right when you say that the 3-year COPS grants are structured so that the federal government leaves once the grant expires. The program has worked as advertised – According to the Justice Department, fully 92 percent of all COPS grantees keep their officers on staff once the grant expires. But how does that justify eliminating the program for the approximately 6,000 police departments who have never received a COPS grant? Isn't that 92% statistic a testament to the effectiveness of the "seed money" concept of the program?

5) In 1995, the Senate approved amendments to the Posse Comitatus Act which would have allowed the military, upon request, to engage in domestic law enforcement responsibilities in response to biological and chemical weapons threats. This provision did not become law. As you know, the Posse Comitatus Act forbids use of the armed forces to perform the tasks of civilian government in this country except where expressly permitted by statute.

a) Since your appointment as Director of the Office of Homeland Security, has the Administration considered whether amendments to the Posse Comitatus Act are warranted in light of the increased threats faced by the Nation today?

b) Since your appointment as Director of the Transition Planning Office for the new Homeland Security Department, has the Administration considered whether amendments to the Posse Comitatus Act would be helpful in the Department's operations?

c) Does the Administration have a position on whether the U.S. military ought to be more actively involved in securing the homeland, and on whether amendments to the Posse Comitatus Act are necessary to effectuate any new military roles?

Senator Cantwell's Questions for the Record for the Senate Committee on the Judiciary "Protecting the Homeland: The President's Proposal for Reorganizing Our Homeland Defense Infrastructure" Wednesday, June 26, 2002

QUESTIONS FOR GOVERNOR RIDGE:

1) Special Agent Colleen Rowley identified a number of problems at the FBI, the President's Foreign Intelligence Advisor Board, congressional commissions and others have outlined a number of critical problems with the capabilities of, and interaction between the intelligence and law enforcement communities; the CIA, FBI and Defense intelligence agencies. Many are perceived as intractable problems of culture and differences between the missions of these agencies. How does the proposal for a new Department address these problems? For example, if the CIA won't share information with the FBI right now, what makes you believe it will share information with new analysts at a new Department?

   a. There are reports in the press that the intelligence agencies will share certain information only with the President, bypassing the new Secretary's desk.
      i. How effective will the new analysis capabilities be if *all* intelligence doesn't get to the new analysts?
      ii. Who will have the entire picture, only the President?
      iii. How will creating a new department improve the sharing of information to protect Americans?

2) Part of the mission of the new department will be to take in and analyze intelligence and law enforcement data – what happens when the analysis team gets the intelligence, puts together pieces A, B and C of the puzzle, but recognizes a piece is missing –

a. Can the Department task an intelligence or law enforcement agency to go get the missing piece? If so, under what authority?

b. Will the Department have any independent intelligence gathering authority?

3) We have heard of enormous problems plaguing the FBI and the intelligence community and wonder if the creation of this new department will address these enormous problems. Let me highlight concerns that I have shared in the past with Director Meuller: The FBI has antiquated technology – Trilogy is intended to bring the internal computer systems up to a level of capability not-even-state-of-the-art, the systems are not even capable of sharing a photograph of a suspect between FBI field agents. The network is not yet high-speed, the computers are old, the systems are not in place for sharing within the Agency. I see nothing in the proposals to acquire the best technology at a more rapid pace; nothing to increase spending on technology for the FBI or for the new Department of Homeland Security.

a. How do you expect the Agency to interface with the new Department – send the volumes of intelligence data -- without even the most basic state-of-the-art high-speed network working in the field?

b. This goes to the broader question: How do you think you can build the new intelligence analysis capability without significant expenditures?

c. Even if all works well technically, how does the Administration plan to handle the large influx of intelligence information that has been gathered to date, and not analyzed in the aggregate? Do you have the personnel to analyze this enormous deluge you can expect?

4) Integrating a border force that is responsible for tracking people and goods on both land and water makes sense and has been recommended by all the Commissions that have looked at Homeland Security. However, the fundamental challenge that still faces agents on our border, particularly the northern border, is that it is understaffed, and that agents do not have the technological tools they need to have confidence that they have access to all available intelligence information people they are admitting do not pose a threat to our security. How would the Homeland Security Agency address these problems of resources and technological tools for border agents?

5) I proposed an idea two weeks ago to Director Meuller at a hearing in this Committee reviewing the FBI's handling of information related to 9/11 and I think it is relevant to the Department of Homeland Security, as well. My thought was, in the case of each agency, information regarding American citizens will be obtained, analyzed and used in various ways. Americans are concerned that these government agencies could violate their privacy and undermine civil liberties. In the private sector, as privacy became an apparent concern, companies created the position of Chief Privacy Officer, a person focused on protecting consumer privacy – they advise the management on policy and comment on product development and implementation during these processes. Would you consider incorporating this concept into the plan for a Department of Homeland Security – a person or office that can advise the Secretary and interface with the public on privacy and other civil liberties?

6) One of the other concerns that has been expressed is that the proposal brings into one department entire agencies that have many responsibilities, some of which are relevant to homeland defense, but many others that have no relation to this important mission. I am very concerned that the Coast Guard will not be supported in its role in fisheries enforcement in my state. Other examples would be the bank fraud investigation responsibility of the Secret Service, the natural disaster functions of FEMA, the rescue function of the Coast Guard,

and most incongruously, the "service" side of the Immigration and Naturalization Service. It may be easier to bring in entire agencies under one banner than dissecting agencies by function, but is this the most appropriate approach to creating a department with the singular mission of protecting our domestic security? Has the Administration considered any more refinements to the proposal in this regard?

Written Questions of Senator Patrick Leahy
Chairman of the Senate Judiciary Committee
to the Honorable Tom Ridge
At the Hearing Before the Senate Judiciary Committee
"Protecting the Homeland:
The President's Proposal for
Reorganizing Our Homeland Defense Infrastructure"
JUNE 26, 2002

Overlapping Domestic Surveillance Responsibilities

1. The proposed Department will combine a number of agencies with significant law enforcement assets, including the U.S. Customs Service, the U.S. Secret Service, and the Immigration and Naturalization Service.

   a. What responsibility will the new Department have for collecting domestic intelligence on terrorism alongside the FBI, but under different guidelines and without the oversight we give to the Bureau?

   b. Will the Homeland Security Department have the authority to task the FBI to open investigations or conduct surveillance or take other legal actions to prevent terrorism that would normally be under the authority of the Attorney General?

   c. If the agencies in the new Department collect any domestic information, will they do so only within the scope of their statutory law enforcement or regulatory responsibilities, unless they are acting jointly with the FBI under the guidelines that apply to the FBI?

Overlapping Analytical Capabilities

2. Competitive analysis can be a good thing in foreign intelligence where the Department of State brings a foreign policy perspective, the Department of Defense brings military experience, and the FBI brings a domestic law enforcement perspective. The Administration's perspective on how the analytical work of the new Department will fit into this analytical matrix is important to understand.

   a. What would be the value added from analysis by a Homeland Security Department, above and beyond what would be produced by the FBI and CIA sharing data with each other for analysis?

   b. What special homeland security expertise would the new Department bring to the table to complement the FBI and CIA's combined law enforcement, foreign intelligence and national security perspective?

Financial Crime Enforcement

3. The Administration proposes moving the U.S. Secret Service and the Customs Service into the new Department, as the President explains in his transmittal letter, to "contribute

its specialized protective expertise to the fulfillment of the Department's core mission." That core mission is prevention of terrorism. The Secret Service and Customs, however, play a significant roles in combating financial crime, from identity theft to duty tax evasion. Nor can the new Department depend on the FBI to pick up the slack for any decreased enforcement. At the same time as the Enron case, and the news of financial irregularities at Tyco, Xerox, WorldCom, Global Crossings and others, the FBI has announced that it is reducing resources from the investigation of economic crime and data assembled by the Transactional Records Access Clearinghouse at Syracuse University ("TRAC") shows that, in the year 2002, the number of white collar referrals from the FBI to federal prosecutors has dipped below 30% for the first time in 15 years. Given the current parade of corporate failures and disclosures of past misrepresentations:

a. What assurance can you provide that the Secret Service will be able to continue this important role in bolstering the integrity of the U.S. financial markets?

b. Do you anticipate that this role or any part of it will be handed off to another federal agency or that federal enforcement of white collar crime will decline?

c. If another agency is taking any current Secret Service responsibility, what specific steps have been taken to ensure that any such other agency is prepared to handle such cases?

Operations Center

4. The FBI's operations coordination center, the "SIOC," brings together every agency's information to evaluate threats, respond to a crisis, and support decisions on fast-moving investigations and actions. The Administration bill does not specifically call for the Homeland Security Department to have a coordination center like this.

   a. Do you plan to move the SIOC from the FBI to the new Department, or will it have its own coordination center?

   b. If an FBI field office suspects someone may be preparing for a terrorist attack and recommends arrest or a court order for surveillance, would that have to be coordinated through the Homeland Security Department?

FOIA Exemption

5. The President proposes, in section 204 of the Administration's draft legislation, to create a new FOIA exemption for information "which is or ever was in the possession" of the new Department relating to "infrastructure vulnerabilities and other vulnerabilities to terrorism" provided by "non-Federal entities."

   a. The FOIA already exempts from disclosure matters that are classified; trade secret and commercial and financial information, which is privileged and confidential; various law enforcement records and information, including confidential source and informant information; and FBI records pertaining to foreign intelligence or counterintelligence, or international

terrorism. In light of the already broad exemptions in the FOIA designed to protect national security and public safety, why is a new secrecy provision needed?

b. The Administration has not defined the terms "infrastructure vulnerabilities and other vulnerabilities to terrorism." Do you intend by those terms to exempt records which if disclosed could reasonably be expected to risk substantial harm to the interstate or foreign commerce of the United States or endanger the life or physical safety of any individual?

National Infrastructure Protection Center

6. The Administration bill proposes transferring to the new Department part of the FBI's National Infrastructure Protection Center (NIPC). NIPC brings together in one place the FBI's investigations to detect cyber attacks, the interagency operations to defeat them, a crisis center to warn military and civilian authorities of immediate and long-term dangers, and an aggressive security outreach program for local governments and private industry. Under the direction of NIPC, FBI agents throughout the country are building a strong, locally-based program called **Infra Guard** to share threat and security information through chapters in each of the FBI's 56 field offices with over 4,000 members from business, academic institutions, and local law enforcement. The President's original proposal was to transfer the entire NIPC to the Homeland Security Department. This was revised so that the Administration's current proposal now would split the NIPC and leave at the FBI its Computer Investigations and Operations Section. This raises practical concerns about how this would work and the impact on the overall effectiveness of the program.

   a. What is supposed to happen to the FBI agents who support the Infra Guard chapters across the country? Will their jobs be transferred to a new field element of the new Department, to the Secret Service Field Offices, or will they stay in the FBI and just receive their program direction from the new Department?

   b. The Administration proposal will separate the analysis, warning and outreach activities of NIPC from the FBI's expert interagency investigative teams who respond immediately to cyber attacks and devise sophisticated operations to defeat them. Would that increase the chance for information to be delayed or fall between the cracks, particular when it comes to warning of an attack on a critical computer system?

   c. Cyber attacks may be launched not just by terrorists. In an international crisis, the greatest strategic threat is from foreign governments and their intelligence services. The one agency responsible for counter-terrorism and counterintelligence is the FBI. Why would it not be better to keep the NIPC in the FBI, especially now that its getting more cooperation from private industry?

National Domestic Preparedness Office

7. The FBI's National Domestic Preparedness Office has, in the past, supported the FBI field offices in training for crisis management in case of a terrorist attack using weapons of mass destruction. Every FBI office has an agent assigned as WMD, or weapons of mass destruction, coordinator who works with local police and first responders to prepare for an attack or a threatened attack,

including many threats that turn out to be hoaxes. The Administration bill would transfer the National Domestic Preparedness Office to the new Homeland Security Department. This raises two practical concerns.

a. What will happen to the WMB coordinators in the FBI field offices? Will their jobs be transferred to the new Department and, if not, where will they turn for direction and support in preparing for crisis management?

b. An interagency Memorandum of Agreement gives the FBI the lead at the federal level for crisis management and gives FEMA the lead for "consequence management." Transferring the National Domestic Preparedness Office suggests that the FBI will no longer be the lead federal agency for crisis management in the case of a terrorist attack or threatened attack. Does the Administration want or plan to scrap the MOU and write a new one that changes the FBI's role?

VISA Issuance

8. One of the key arguments in creating a new Department with the primary mission of protecting homeland security is that there will be clear lines of accountability. Yet, the Administration's proposes splitting up the visa issuing function. The Administration proposes letting the new Department make the policy on visa issuance, but leaving the actual operations of overseas visa issuance in the State Department. If a terrorist who should not be allowed in this country erroneously gets a visa and, as the September 11 hijackers did, commits a terrorist act, who will be accountable – the Homeland Security Department or the State Department, or will both end up blaming the other?

Personnel Rules

9. On September 11 hundreds of policemen and firefighters who were union members rushed into the World Trade Centers and gave their lives to protect our country. In January, on the same day as a Federal Labor Relations Administration hearing in Florida dealing with the collective bargaining rights of Department of Justice law enforcement employees, the President issued an Executive Order banning their right to unionize in the name of "national security." In April, Senator Kennedy and I, among others, wrote to the President asking him to reverse that order, but he refused.

a. At least with respect to *current* union members, can you commit to us that the Administration will not deprive *any current union member* of their collective bargaining rights when they are transferred to the new Department?

b. Is any new Executive Order under consideration to apply the same non-unionization rule that the Administration has applied to law enforcement components of the Justice Department to employees of the new Department?

Information Technology

10. One function of your current office as well as any future Department of Homeland Security is to ensure that there is government-wide computer compatibility in matters

dealing with intelligence. Director Mueller is already redesigning the FBI's computer systems and anticipates that it will take up to three years for the new system to be fully operational.

a. What specific actions do you propose the Administration should take to ensure interagency computer compatibility in those areas where delays in sharing information can be dangerous for our security and safety?

b. Is this an area where legislation is necessary beyond the Administration's proposed legislation to establish the new Homeland Security Department?

Procurement

11. The Administration has requested that the new Department be exempted from many of the government's procurement rules. That may make sense for some of the most pressing anti- terrorism measures. On the other hand, some of the agencies being transferred to the new Department perform many non-terrorism related functions and have a poor track record on efficiency. Do you think it is a good idea, for instance, to loosen management controls on the INS *before* the Administration addresses some of the basic management issues in that agency?

Conflict of Interest Exemptions

12. The Administration proposal would exempt the new Department from certain conflict of interest laws as well as from procurement regulations. The proposal would also allow the new Department to set up private Advisory Committees and exempt the Department from the anti-secrecy provisions under the Federal Advisory Committee Act. This could lead to secret Committees staffed by outside corporate officers with financial interests in the outcome giving recommendations to the new Department on topics like the preservation of offshore fisheries and food safety. Is this combination of relaxed financial controls and lower public scrutiny of potential lobbying an invitation for mischief?

Information Sharing

13. Section 203 of the Administration's proposed bill deals with information sharing between existing intelligence agencies, like the FBI, and the new Department. An important purpose of this government reorganization is defeated unless proper information is shared with the new Department in a timely matter.

a. With respect to information that is automatically provided to the new Department without any request being made, would this include "raw" information or just "analysis, reports and assessments"?

b. The Administration proposal calls for the new Department to receive "reports" automatically, but this is not entirely clear. For instance, the FBI's FD- 302, which is probably the single most common form used by the FBI, is a 'report' summarizing a witness interview. Do you intend that such reports would be included for automatic receipt under the current proposal? Was the FBI consulted on this language and, if so,

ahat is their view?

c. The so-called 'Phoenix Electronic Communication' was completed by a field agent. It contained "raw" intelligence information as well as a recommended course of action based on the agent's opinion of that raw information. Is this E.C. the type of item that would be automatically turned over to the Department of Homeland Security, or is it the type or "raw" data that would not be turned over unless requested?

d. Why is it that information which relates to "significant and credible threats of terrorism" would not be automatically provided to the new Department in every case, but only if the President specifically provides so? Is this the precise type of information the Department needs to get without any delay or intermediary?

FBI Counter-Terrorism Division

14. Some have called on the President to split the FBI's counter-terrorism function from the rest of the Bureau and place it in the new Department. Yet, terrorists are criminals, and the FBI has beaten organized criminals before. Terrorists often times are caught when they engage in other criminal activities to further terrorists ends, such as identity fraud, laundering money, or selling drugs to finance their activities. Do you think that having a single agency like the FBI that enforces criminal laws and fights terrorism is important in preventing terrorist acts in the future? Why?

15. FBI agents are trained to provide sworn testimony and affidavits in court. They are trained to work with prosecutors and defense attorneys. They are schooled in the Constitution and legal requirements, and the FBI has learned the hard way that it must be vigilant in monitoring its agents handling counterintelligence matters. Do you think that the FBI's traditional role as a criminal law enforcement agency helps FBI agents to respect civil rights and civil liberties in the investigation of terrorism cases? If so, do you think that this supports the President's decision not to split the FBI?

Whistle blower Protection

16. The President's bill gives the new Secretary the power to exempt the new Department entirely from the Whistle blower Protection Act. The very day that the President announced his plan, FBI Special Agent Coleen Rowley was testifying on Capitol Hill, proving what an immense help to the government a good whistle blower can provide. Would you oppose a provision in the new bill clearly stating that the employees of the new Department enjoy the protections of the WPA?

Inspector General

17. An independent Inspector General is absolutely vital to sound management. Section 710 of the Administration's proposal gives the Secretary of the new Department "authority direction and control" of all investigations relating to counter terrorism or intelligence. This authority is far broader than that of the Attorney General or the Defense Secretary to interfere with the authority of the Inspector General.

a. The Attorney General only has the power to intervene with an IG investigation in matters involving "sensitive" information in order to protect matters such as sources and methods. Under the Administration's proposal, the new head of the new department could intervene to stop an IG investigation of fraud, waste or abuse even if sensitive information is not implicated. Should the Secretary's power to intervene be limited to cases involving "sensitive information"?

b. Whenever the Attorney General exercises the power to intervene in an IG investigation, he or she is required to submit a written report "stating the reasons for such exercise" both to the IG and to Congress. There is no such requirement to explain the "reasons" in the Administration's proposal. In order effective oversight, should we require the Secretary to explain to the IG and Congress any reasons for intervening?

c. In addition to intelligence and counterintelligence matters, which could allow the Attorney General or Secretary of Defense to interfere in an IG matter, the Administration also has included information on "counter terrorism." Since the entire purpose of the new agency is Homeland Security, would this basically cover every matter in the agency? Why is it necessary create such broad power to intervene in IG cases?

Bureau of Alcohol, Tobacco and Firearms

18. The Administration proposal would leave at the Department of the Treasury the Bureau of Alcohol, Tobacco and Firearms. Given the role of the BATF in the enforcement of firearms laws, which is also critical to homeland security, why did the Administration decide not to move BATF to the new Department?

Foreign Terrorist Tracking Task Force

19. The Foreign Terrorist Tracking Task Force was established by the President in his Homeland Security Directive No. 2 last year, and several of its major participants - the INS, the Customs Service, and the Secret Service - would move to the new Homeland Security Department. If the new department is going to have a strong analytic function, should the Foreign Terrorist Tracking Task Force be moved from the Justice Department to the analysis division of the new department?

Grant Making Authority

20. Do you intend that the Department of Homeland Security should administer grants for state and local law enforcement even if those grants are focused not on terrorism but on the prevention of more traditional crime? For such non- terrorism related activities, does the Department of Justice possess more expertise in such matters and the administration of such grants?

Senate Judiciary Committee
Hearing on "Protecting the Homeland:
The President's Proposals for Reorganizing Our Homeland Defense Infrastructure"
June 26, 2002

Questions Submitted by U.S. Senator Russell D. Feingold
to Governor Tom Ridge

1. (a) Please describe the input, if any, you and the President solicited from state and local law enforcement in preparing the plan for a new Department of Homeland Security announced on June 6, 2002.

(b) Please describe the efforts, if any, you are currently undertaking to solicit the input of state and local law enforcement in the development of this new Department.

(c) Please describe the role you envision for state and local law enforcement once legislation is enacted creating this new Department.

2. (a) Please describe the input, if any, you and the President solicited from state and local fire and rescue personnel in preparing the plan for a new Department of Homeland Security announced on June 6, 2002.

(b) Please describe the efforts, if any, you are currently undertaking to solicit the input of state and local fire and rescue personnel in the development of this new Department.

(c) Please describe the role you envision for state and local fire and rescue personnel once legislation is enacted creating this new Department.

3. (a) Please describe the input, if any, you and the President solicited from state, county, and local emergency preparedness directors in preparing the plan for a new Department of Homeland Security announced on June 6, 2002.

(b) Please describe the efforts, if any, you are currently undertaking to solicit the input of state, county, and local emergency preparedness directors in the development of this new Department.

(c) Please describe the role you envision for state, county, and local emergency preparedness directors once legislation is enacted creating this new Department.

4. How long do you believe it will take for the Department of Homeland Security to be fully operational, once legislation is enacted authorizing its creation? What is the time-line and deadlines, if any, for this new Department and its divisions to be fully operational?

5. Paul Light of The Brookings Institution reports that the previous consolidations that resulted in the creation of the Environmental Protection Agency, the Department of Transportation, and the Department of Energy produced 20 to 30 new Senate-confirmed positions. And he speculated that this new Department of Homeland Security will include 300 to 500 new Senior Executive Service and political Schedule C positions not subject to confirmation. What assurances can you provide that the Administration will not just create a new bureaucracy that will result in more government employees than are already in the existing agencies it will encompass?

6. The President proposes that the new Department include the Secret Service. The Secret Service has been based in the Treasury Department and has a number of law enforcement responsibilities in addition to its responsibility to protect the President and other government officials. For example, the Secret Service is the lead law enforcement agency in the nation that investigates the growing problem of credit card fraud and counterfeiting of U.S. currency. In Wisconsin, the Secret Service has been instrumental in investigating an international "advance fee" fraud scheme. Based in Nigeria, the scam artists send letters to businesses and consumers in the U.S. promising millions of dollars to those who pay an advance fee of a few hundred dollars.

(a) How do you and the President envision that the Secret Service's law enforcement functions like investigating credit card fraud, advance fee fraud, and financial institution fraud, other than protecting the President, would be handled?

(b) Would the Secret Service continue to handle these responsibilities? If not, what agency or agencies would assume these responsibilities?

(c) What steps will the Administration take to ensure that these other law enforcement responsibilities get done?

7. While the President's proposal includes the Secret Service, it does not include the Capitol Police or State Department security service. I am not necessarily advocating that the Department include the Capitol Police, as there may be a separation of powers issue between the Executive and Legislative branches. But I am concerned about the continuity of the federal government in the event of a catastrophic attack on the federal government, and so it makes sense for there to be some kind of communication and perhaps

coordination between the Capitol Police and the Department of Homeland Security.

(a) How do you and the President plan to ensure that the new Department communicates and coordinates with the Capitol Police?

(b) Why is the State Department security service not included in the President's proposed new Department?

8. The President's plan would include federal agencies with multiple missions, such as the Secret Service, the Coast Guard, and the Immigration and Naturalization Service, but exclude other agencies with multiple missions, such as the Bureau of Alcohol, Tobacco and Firearms (ATF) and the Federal Bureau of Investigation.

(a) How has the Administration determined that some multi-tasked agencies should be included in the new Department, while other multi-tasked agencies should be excluded?

(b) For example, what is the rationale for including the INS, which helps to secure the borders but also processes citizenship applications, but excluding the ATF, which assisted with the investigation of the 1993 World Trade Center bombing investigation?

9. (a) Does the Administration plan to re-prioritize the missions of those federal agencies included in the new Department to place homeland security as the first priority?

(b) Will the Administration re-prioritize the multiple missions of the Secret Service to place protection of the President and other government officials as its first priority?

(c) Assuming the INS is transferred from the Department of Justice to the Department of Homeland Security, will the Administration re-prioritize the multiple missions of the INS to place border enforcement as its first priority?

(d) Assuming the INS is transferred from the Department of Justice to the Department of Homeland Security, what steps will the Administration take to ensure that the INS's important service functions (such as processing citizenship applications and business, student, and visitor visas) will be given the support and resources necessary to maintain or even improve its current service responsibilities and capacities?

(e) Assuming the Coast Guard is transferred to the Department of Homeland Security, what steps will the Administration take to ensure that, as the Coast Guard's responsibilities and mission have expanded to include the securities of America's waterways, ports, and harbors, the Coast Guard effectively maintains its existing

responsibilities and duties (such as search and rescue missions at sea and drug interdiction efforts)?

10. The President seeks to transfer the Transportation Security Administration (TSA) from the Department of Transportation to the new Department of Homeland Security at a time when the newly created TSA is having trouble meeting its own mandates.

(a) Given these added pressures and, some might say, distractions, what steps will the Administration take to ensure that the TSA will meet its deadlines currently mandated by Congress?

(b) If TSA and the new Department are not able to meet deadlines, will the Administration ask Congress to reevaluate the mandates that were set this past fall for the standards of aviation security, including the ability to put screeners and screening systems in place on schedule?

11. (a) Please describe the role, if any, that you envision for the National Guard within the new Department.

(b) What steps do you plan to take to ensure that the line between domestic security and the military is not blurred by the new Department?

(c) Does the Administration plan to arm the National Guard for purposes of domestic security, including border security? If so, what guidelines would the Administration issue concerning the arming of the National Guard?

(d) Please explain the role of the new Department versus the role of the Defense Department's new Northern Command.

(e) How will they work together to determine the participation of the National Guard in domestic security missions, and who will be responsible for giving the National Guard its orders?

(f) Will the Secretary of the new Department have the power to call up the National Guard for domestic security missions?

12. What steps will be taken to ensure that civil service protections are afforded to federal employees whose jobs may be shifted to the new Department and that the existing civil service procedures are followed by the new Department?

13. How do you propose to ensure continuity of representation for workers currently represented by unions?

14. The Administration's proposal encourages the sharing of information with the Department of Homeland Security by the private sector, state and local governments, and individuals. Specifically, it provides that information voluntarily provided by non-federal parties to the Department of Homeland Security that relates to infrastructure vulnerabilities or other vulnerabilities to terrorism is not subject to public disclosure under the Freedom of Information Act. Also, such information would not lose its protected character if forwarded by the Department of Homeland Security to other federal departments or agencies.

Is it your understanding that this program is not intended to make confidential any information that is currently publicly accessible under existing federal law? For example, is it your understanding that a company that is required to publicly report its toxics releases under EPA's toxics release inventory program would not be able to submit this information to the Department of Homeland Security and thereby prevent its release to the public?

15. What types of information does the Administration hope to solicit that it does not currently collect with this policy?

16. Local law enforcement in my state has expressed concerns about moving or shifting current capacity building grant programs now housed at the Justice Department to the Federal Emergency Management Agency. In their view, the Justice Department best knows state and local law enforcement's needs, over decades of working together, and their interactions with the Justice Department through these grants enhances their relationship on other crime issues. How do you propose to continue that relationship, if, as the Administration proposes, this grant-making authority is now shifted to the Department of Homeland Security?

17. Does the Administration envision any changes to the existing disaster response program for more typical natural disasters, such as floods?

18. One of the major concerns that I have heard from first responders in Wisconsin is the lack of effective coordination between federal agencies that support first responders. A consistent comment I hear from Wisconsin fire and rescue personnel and emergency medical service providers is that too many Federal agencies work with state and local officials to address their needs. For example, six separate Federal agencies support emergency medical service providers, but in very separate ways.

(a) I have proposed creating an advisory council to the federal government comprised of those providing EMS services in our communities. Would you support the creation of a similar panel for first responders to ensure that they can raise any concerns with the Department?

(b) What efforts do you plan to take to ensure that the needs of our first responders are addressed?

19. On June 20th, you testified before Congress that in the area of terrorism prevention when it comes to reviewing information, "redundancy adds value." FBI Special Agent Coleen Rowley, however, testified earlier this month before this Committee that "too many approval levels . . . impede effective decision making." While we know that there needs to be increased sharing of information, what assurances can you give this Committee that the Department will not impede effective decision making in criminal terrorist investigations or prosecutions?

20. How does the Administration propose that the new Department handle any potential for the Department, the FBI, and the CIA to either overstate or understate a terrorist threat for inter-agency competitive reasons?

21. How will the Secretary of Homeland Security and the President change the culture and practice of institutions – like the FBI and CIA – that his own appointees have been unable to change and that legislation alone cannot address or even solve?

22. (a) Do you have any ideas where in Washington the new Department would be physically located?

(b) Do you and the President envision a Department with offices around the country, in addition to a central office here in Washington?

(c) If you envision a Department with offices around the country, what consideration has been given to locating such an office or offices in the Midwest and, specifically, Wisconsin?

23. I am pleased to see that the President's proposal includes an Office of Inspector General. But I am concerned that the proposal would also allow the Department Secretary to have veto power over investigations initiated by the Inspector General. How does the President plan to ensure that this veto power does not hinder the Inspector General's ability to carry out his or her duties to prevent and investigate waste, fraud, and abuse?

U.S. Senator Dianne Feinstein

HEARING ON PROPOSED HOMELAND SECURITY DEPARTMENT
SENATE JUDICIARY COMMITTEE
QUESTIONS FOR GOVERNOR TOM RIDGE

1. Section 303 of the administration's draft legislation gives the Department of Homeland Security primary responsibility for national scientific research related to bioterror threats including the setting of research priorities as well as the funding and conduct of such research.

Some members of the research community argue that the new Department of Homeland Security should not have final authority over medical research related to bioterror threats. They argue that experts at the Department of Health and Human Services (HHS) would be more capable of prioritizing and evaluating research projects.

For example, in a letter sent to me on June 19th (attached), the American Society for Microbiology (ASM), the largest life science society with over 40,000 members, argues that HHS should continue to be responsible for the research programs into infectious diseases and biological agents.

ASM argues in the letter that "HHS has the scientific and institutional knowledge and expertise related to dangerous biological agents, biosafety, and biosecurity in microbiological and biomedical laboratories and ... it is best qualified to achieve the goal of protecting the public health and safety without interfering with research, and clinical and diagnostic laboratory medicine."

- ***Could you respond to the concerns raised in the attached letter from the American Society for Microbiology?***
- ***Would it be better to leave ultimate control over research dollars with HHS?***

2. Section 730 of the administration's proposed legislation authorizes two political appointees, the Secretary of Homeland Security and the Director of the Office of Personnel Management, to decide whether Title 5 of the U.S. Code

would apply to employees once they are transferred to the new department. Title 5 of the U.S. Code sets forth the rules, benefits, and rights that currently apply to federal employees, including whistleblower protection, pay and benefits (*e.g.*, health care and retirement), antidiscrimination rules, the right to join a union, and the merit system rules that prohibit political patronage. Moreover, under the draft legislation, the Secretary of Homeland Security and the Director of the Office of Personnel Management would be free to take away any of these rules, benefits, and rights at any time.

Apparently, the administration's justification for this power is that it would better allow the new department to contribute to homeland security and respond to threats. However, others argue that jeopardizing the job security of federal employees would not help homeland security.

Indeed, some argue that section 730 could even hinder our war against terrorism. The General Accounting Office and others have warned that the federal government faces a massive human capital crisis. Nearly half of the federal workforce is at or near retirement age. Some believe that the new department would have a tough time retaining experienced employees faced with the possibility of losing rights and benefits they have enjoyed their entire career and that it would face an even tougher time attracting the highly skilled employees it needs. If true, we could lose thousands of employees crucial to the war on terrorism at the very time we need them most.

- ***Do you believe that the job security fears of the new department's 200,000 plus employees could have a detrimental impact on their ability to concentrate on their missions?***

- ***How would the department be able to retain its most experienced employees when they would be faced with the possibility of losing the rights and benefits they have enjoyed for their entire career?***

- ***How would the department be able to attract the highly skilled employees it needs when those employees' pay, benefits, and rights would be open to elimination or modification at any time by political appointees that change every few years?***

3. Under the administration's draft legislation, the new department would have 27

presidentially appointed officials. However, only 14 of the positions would be subject to Senate confirmation. The remaining positions include 10 assistant secretaries, who I believe would be the first assistant secretaries in history that would be appointed without Senate review. Moreover, the Secretary of Homeland Security would be completely free to determine the titles, duties, and qualifications for all 16 assistant secretaries. I would also note that, under the administration's bill, the new department would have more than twice as many undersecretaries, assistant secretaries, and deputy assistant secretaries as HHS, even though HHS would have three times the budget.

- ***Why does the president envision so many undersecretaries, assistant secretaries, and deputy assistant secretaries for the new department?***
- ***Why are so many of these positions not subject to Senate confirmation?***
- ***Why is Congress not given a greater role in determining the titles, duties, and qualifications for the assistant secretaries?***

SUBMISSIONS FOR THE RECORD

American Civil Liberties Union
Testimony on the President's Proposal for a Homeland Security Department:
"The Homeland Security Act of 2002"
Before the Technology, Terrorism and Government Information Subcommittee
of the Senate Judiciary Committee
Submitted by Timothy H. Edgar, Legislative Counsel
June 25, 2002

On behalf of the American Civil Liberties Union (ACLU) and its approximately 300,000 members, we welcome this opportunity to provide this testimony for the record on the President's proposed legislation to create a Department of Homeland Security, the Homeland Security Act of 2002 ("HSA"). We commend you for examining these issues in today's hearing.

The ACLU is a non-partisan, non-profit organization dedicated to preserving civil liberties and the principles of our constitutional democracy, including open and accountable government.

The proposed Department of Homeland Security will be a massive Cabinet-level department, containing over 170,000 employees and twenty-two federal agencies.[1] It will have substantial powers, and will include more armed federal agents with arrest power than any other agency. In considering the proposed Department, Congress should ask itself not only whether the proposal represents sound public management, but also whether the Department will have structural and legal safeguards in place that are sufficient to keep the agency open and accountable to the public.

Unfortunately, the draft legislation not only fails to provide such safeguards, it eviscerates many of the safeguards that are available throughout the government and have worked well to safeguard the public interest. As proposed, the plan:

- **Hobbles FOIA** – Any information voluntarily submitted to the department about terrorist threats to the nation's infrastructure are exempt from Freedom of Information Act disclosure, drastically limiting the agency's responsibility to answer public questions about how well it is addressing these threats. (HSA § 204).

- **Limits citizen input** – Advisory committees to the department, which normally include citizen input, hold open meetings and must be balanced in viewpoint would be immune from these safeguards of the Federal Advisory Committee Act, further undercutting the agency's accountability to the public. (HSA § 731).

- **Muzzles whistleblowers** – Employees of the new agency could be stripped of the protections contained in the federal Whistleblower Protection Act. This would eliminate guarantees that -- were the agency to overreach its mandate or

[1] *See* Bob Williams & David Nather, *Homeland Security Debate: Balancing Swift and Sure*, CQ Weekly, June 22, 2002 at 1642.

engage in questionable activities – such abuse would be disclosed and the agency held accountable to Congress and the American public. Protection for the bravery like that displayed by FBI Agent Coleen Rowley would not exist in the new agency. (HSA § 731).

- **Lacks strong oversight** – Given the enormous potential power of the proposed agency, its Inspector General must not be hampered like those in other federal law enforcement agencies. Currently, the cabinet secretary in charge would have veto power over the IG's audits and investigations. (HSA § 710).

- **Threatens personal privacy and constitutional freedoms** – Many of the information sharing provisions in the HSA are vague and do not provide sufficient guarantees to protect privacy or constitutional freedoms.

Finally, we firmly reject proposals to include in the Department of Homeland Security the intelligence gathering functions of the Central Intelligence Agency (CIA), other foreign intelligence agencies, or the Federal Bureau of Investigation (FBI). Intelligence gathering operations abroad are, as a practical matter, largely immune from constitutional constraints. The CIA and other agencies that gather foreign intelligence abroad operate in a largely lawless environment. To bring these agencies into the same organization as the FBI risks further damage to Americans' civil liberties. As a result, Congress should resist any attempt to endow the Department of Homeland Security with new intelligence gathering powers or to fold the FBI and CIA into the new agency. Instead, Congress should put in place clear limits to prevent the Department from permanently retaining files on Americans that relate to First Amendment activities and have no connection to any criminal activity.

I. The Homeland Security Department Must Be Open and Accountable

The President's plan does not contain sufficient structural guarantees to ensure that this vast new Department will be accountable to the public, both to ensure it is doing its job and to ensure against abuse. Instead, the plan eviscerates many of the existing safeguards for government agencies. These provisions should be eliminated, and a strong mechanism should be put in place to ensure against abuse.

Freedom of Information Act (FOIA) Exemption

The ACLU strongly opposes section 204 of the proposed legislation, which creates a broad new exemption to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Section 204 provides that information that companies or others voluntarily provide to the Department about "infrastructure vulnerabilities" and other information said to be relevant to terrorism will be exempt from FOIA. These terms are not defined by the proposed legislation and could potentially cover a host of information. This is a deeply misguided proposal, and it should be rejected.

The FOIA is the bedrock statute designed to preserve openness and accountability in government and new exemptions to its provisions should not be created lightly. As the Supreme Court has made clear, "Disclosure, not secrecy, is the dominant objective of the Act."[2] Open government is a core American value. It should not be set aside for reasons other than genuine necessity.

The FOIA already contains a number of common sense exemptions that would cover critical infrastructure information the disclosure of which could result in harm. The FOIA does not require the disclosure of national security information (exemption 1), sensitive law enforcement information (exemption 7), or confidential business information (exemption 4).

Courts have carefully weighed the public's need for disclosure against the possible harms of disclosure under FOIA's traditional exemptions. In deciding whether to disclose technical information voluntarily submitted by private industry, courts have given substantial – many in the public interest and FOIA requester community would say excessive – deference to industry demands for confidentiality of business information under exemption 4.

Generally, information that a business voluntarily submits to the government on the basis that it be kept confidential is already exempt from disclosure if the company does not customarily release such information to the public and preserving confidentiality is necessary to ensure that the government will continue to receive industry's cooperation. *See, e.g., Critical Mass Energy Project* v. *Nuclear Regulatory Commission*, 975 F.2d 871 (D.C. Cir. 1992). It is difficult to see how any truly sensitive business information that was voluntarily submitted by a company concerning the vulnerabilities of its critical infrastructure could be released under this standard.

Indeed, supporters of a new FOIA exemption for critical infrastructure information have, when pressed, been forthright in admitting that such legislation simply is not needed to protect sensitive information from disclosure. For example,

- Senator Bennett, chief sponsor of legislation creating a new critical infrastructure exemption, has admitted that "[t]he Freedom of Information Act itself" currently allows sensitive information to be protected. "That is, there are provisions in the Act that say information need not be shared" with the public.[3]

- John S. Tritak, Director of the Critical Infrastructure Assurance Office of the U.S. Chamber of Commerce, says "You could say that [in the] current environment, if you're very careful and you watch out, the old existing exemptions will cover any concerns that may arise under FOIA, not to worry."[4]

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[2] *Department of the Air Force* v. *Rose*, 425 U.S. 352 (1976).
[3] *Senate Governmental Affairs Committee Holds Hearing on Private and Public Information Sharing and Infrastructure Security* (FDCH Transcripts), May 8, 2002.
[4] *Id.*

- Ronald L. Dick, Director of the National Infrastructure Protection Center of the Federal Bureau of Investigation (FBI), has said "[M]any legal authorities have agreed that the federal government has the ability to protect information from mandatory disclosure under the current statutory framework."[5]

- VeriSign public policy director Michael Aisenberg has said worries about disclosure were overblown because FOIA already protects sensitive information, and new legislation is simply not needed "substantively."[6]

Rather than put forward evidence that some information about critical infrastructure exists that is not adequately protected, supporters of a new exemption have said "it doesn't matter" whether current law provides adequate protection. Rather, it is said, a new exemption is needed because of a "perception" in private industry that there is some risk, however remote, that information that is voluntarily submitted to the government might be at risk of disclosure under FOIA.

If industry is unwilling to provide information to the government, despite adequate legal protection, the solution is not to change the law but to change the misperception by issuing legal guidance making clear the parameters of the FOIA as it currently exists. If a misperception exists that truly sensitive information that is given to the government cannot be protected from disclosure, it is hard to see how that will change if another exemption is enacted.

Perhaps most importantly, creating an overbroad exemption for "critical infrastructure information" would undermine, rather than enhance, security. Such an exemption would permit private industry and the government to shield from the public the actions they are taking - and, more importantly, the actions they are not taking - to protect the public from attacks on critical infrastructures.

Secrecy can hinder anti-terrorism efforts. Earlier this year in Israel, the media obtained a government report that discussed the potential vulnerability of a fuel depot to terrorists – exactly the sort of information about "infrastructure vulnerabilities" that might be exempt from FOIA under the proposed legislation. Military censors blocked publication of the report, and persuaded the mayor of Tel Aviv not to go public with a campaign to fix the problem. Nothing was done. Terrorists then attacked the fuel depot. In that case, public debate might well have forced action to address the problem.[7] The United States should not make the same mistake.

For the all of the above reasons, ACLU opposes the enactment of a new FOIA exemption for critical infrastructure information. At the very least, however, any new exemption that Congress enacts should be subject to the following responsible limits:

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[5] *Id.*
[6] *Washington Internet Daily*, April 18, 2002
[7] *See* Aviv Lavie, *Media: Sensing the Censor*, Ha'aretz (Tel Aviv, Israel), May 29, 2002.

First, any new exemption must be limited to clearly marked cyber-security documents, i.e., reports that describe cyber-attacks on a company's computer systems that have resulted or could result in some harm to its critical infrastructure. It should not apply to information about *all* vulnerabilities in critical infrastructure. Proposals to exempt information that is voluntarily shared with the government were developed to deal with the discrete and relatively new problem of cyber-attacks. To expand the scope of information that is exempted to include information about vulnerabilities to traditional physical attacks would interfere with a host of environmental and public safety regulatory regimes that have been developed over decades.

Second, any new exemption must be for written documents only, not "information" of all sorts. It would be virtually impossible to determine if information possessed by the government was the result of some oral conversation with a private sector company, making a FOIA exemption that covered such information unworkable and potentially devastating to the public's right to know.

Third, any new exemption must be limited in time, and should last for months, not years. A company which controls infrastructure that is vital to the public must have an incentive not only to share information, but also to do something to make itself less vulnerable to such attacks. A time limited exemption will give responsible companies and government agencies an incentive to fix their problem with due speed. Without a time limit, companies and the government can simply sit on the problem without any pressure to act.

Fourth, a new exemption should be an alternative to existing FOIA protections, not a new club to wield against FOIA requesters. Companies that wish to take advantage of the new exemption should clearly state on the relevant document they are requesting confidentiality under that exemption. Companies that fail to fix their vulnerabilities within a reasonable time limit, even with the protection of the new exemption, should not be allowed to take advantage of FOIA's other potentially applicable exemptions to cover up their failure to act after that time limit has expired. If companies believe the information they desire to share is protected under another FOIA exemption, they should be required instead to rely on that other exemption at the time of submission.

Finally, strict reporting requirements and a sunset clause should be included in the legislation to determine whether the new regime is working.

Federal Advisory Committee Act (FACA) Exemption

Section 731 of the HSA provides that advisory committees established by the Secretary of the Department of Homeland Security are exempt from the Federal Advisory Committee Act (FACA), and that members of such advisory committees are not subject to certain restrictions on federal employees' conduct.

The FACA was passed in 1972 to promote the values of openness, accountability, and balance of viewpoints, and to ensure administrative efficiency and cost reduction. FACA

imposes requirements on agencies[8] when they establish or utilize any advisory committee, which is defined as a group of individuals, including at least one non-federal employee, which provides collective advice or recommendations to the agency. 5 U.S.C. App. II, § 3(2). When an agency seeks to obtain such advice or recommendations, it must ensure the advisory committee is "in the public interest," *id.* at § 9(2), is "fairly balanced in terms of points of view represented and the function to be performed," *id.* at § 5(b)(2), and does not contain members with inappropriate special interests. *Id.* at § 5(b)(3). If these criteria are satisfied, the agency must file a charter for the committee. *Id.* at § 9(c).

Once an advisory committee is operating, the agency also must comply with requirements designed to ensure public access and participation. FACA requires an agency to provide adequate public notice that it is establishing an advisory committee, *id.* at § 9(a)(2), conduct open meetings, *id.* at § 10(a), keep minutes of those meetings, *id.* at § 10(c), make available for public inspection and purchase all documents prepared for or by advisory committees, *id.* at §§ 10(b), 11(a), and permit all interested persons to attend, appear before, or file statements with any advisory committee. *Id.* at 10(a)(3). These openness requirements ensure public monitoring of advisory committees and reduce the likelihood that advisory committees can serve as secretive channels for special-interest access to government agencies. FACA's right of access to advisory committee records is subject to the same nine exemptions that apply to access to agency records under the FOIA, which we believe are sufficient to guard against any disclosure of truly sensitive information.

By exempting from FACA requirements *any* advisory committees established by the Secretary of the Department of Homeland Security, the HSA severely undermines the openness and public-access goals of FACA. Although the HSA provides that the Secretary shall publish notice in the Federal Registrar announcing the establishment of an advisory committee and identifying its purpose and membership, the meetings will not be open to the public, formal minutes of committee activity during those meetings will not be kept, and the public will not have access to view or purchase documents prepared for or by those advisory committees. Public access to and participation in advisory committees are essential to guarding against special-interest access to advisory committees and influence upon government decision-making.

In addition, the HSA exempts members of advisory committees established under the Department of Homeland Security from federal laws restricting federal employees and officers (including members of advisory committees) from participating in or advising the government upon matters about which there exists a conflict of interest. *See* 18 U.S.C. §§ 203, 205, 207. Combined with the lack of public access to and participation in advisory committee proceedings, exemption from these laws threatens to erode FACA's requirement that advisory committees' memberships reflect a balance of viewpoints, and undermines the goal of accountability.

Waiver of Whistleblower Protection Act (WPA) and other Title 5 Protections

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[8] The FACA does not apply to the CIA or the Federal Reserve System. 5 U.S.C. App. II § 4(b).

The federal Whistleblower Protection Act (WPA) was enacted to ensure that federal employees[9] who believe that a violation of law, mismanagement or other abuse has occurred may come forward and disclose that information without fear of summary dismissal or punitive action. The WPA protects federal employees from adverse action on the basis of a disclosure of information if the employee "reasonably believes [the information] evidences a violation of any law, rule, or regulation or gross mismanagement, gross waste of funds, an abuse of authority or a substantial and specific danger to public health and safety." 5 U.S.C. § 2302(b)(8). An employee is not protected if the disclosure involves classified information or if the disclosure is specifically prohibited by law. *Id.* The Act contains administrative remedies, administered by the Merit System Protections Board, and an employee may also seek judicial review in the United States Court of Appeals for the Federal Circuit. 5 U.S.C. §§ 1221, 7703(b). In this way, the WPA guarantees that federal agencies are held accountable to the American public if they overreach their mandate or engage in questionable activities.

The HSA permits the Secretary to sweep away the Whistleblower Protection Act, and all other protections for federal employees under Title 5, for the purpose of establishing a "Human Resources Management System" (HSA § 730) that is "flexible, contemporary, and grounded in the public employment principles of merit and fitness." By allowing the Secretary to make these personnel rules "[n]otwithstanding any other provision of this title," i.e., Title 5, the HSA does not guarantee employees of the Department of Homeland Security the protections of the WPA. Without such protection, employees who are in the best position to spot problems, violations of the law or dangers to the public are effectively silenced.

The Homeland Security Department's Inspector General May Lack Authority

We are concerned that the Homeland Security Act does not adequately provide for a fully functioning Inspector General (IG). Section 103(b) provides for the creation of an Inspector General pursuant to the Inspector General Act of 1978. However, section 710 of the HSA gives the Secretary of Homeland Security authority to override Inspector General Investigations in several areas including: (1) intelligence, counterintelligence, or counter terrorism matters; (2) ongoing criminal investigations or proceedings; (3) undercover operations; (4) the identity of confidential sources, including protected witnesses; (5) matters that constitute a threat to persons or property protected by the United States Secret Service and (6) other matters that constitute a serious threat to national security. Given the mission of the Homeland Security Agency, it is conceivable that many of the functions performed by this new agency could be said to fall under one of these exempted categories.

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[9] The WPA does not apply to the CIA, FBI, Defense Intelligence Agency (DIA), the National Imagery and Mapping Agency (NIMA), the National Security Agency (NSA), and, "as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities." 5 U.S.C. 2302(a)(2)(C)(ii). However, employees of the FBI are covered by similar whistleblower protections contained at 5 U.S.C. § 2303, but must make their disclosures to an official designated by the Attorney General.

Other agencies have similar provisions that require the inspector general to be under the direct authority of the Department Secretary (e.g. Treasury, Department of Justice, Postal Service) when the IG is investigating areas of national security. We understand the need to protect information that if released could pose a danger to national security. However, many of the agencies that are going to become a part of the new Homeland Security Act such as FEMA, the INS, the Animal and Plant Health Inspection Service of the Department of Agriculture and the Coast Guard have functions much broader than dealing with national security. We are concerned that transferring these agencies into a Department whose primary function is to protect the United States against terrorism could erroneously be perceived as elevating their regular duties to those of national security, thereby making such currently non-exempt activities exempt from Inspector General oversight.

We recommend further study of this issue before legislation is approved, regular oversight by Congress and a requirement for the Homeland Security Department to report to Congress concerning how often the Inspector General is prevented from performing its duties due to section 710 exemptions, and the standards by which the Secretary exercises such authority.

II. The Homeland Security Department Should Not Invade the Privacy or Constitutional Rights of Americans

Finally, the creation of a new Homeland Security Department naturally leads to concerns that such a large government agency could abuse its authority by invading the privacy or freedoms that Americans hold dear. Common sense protections can ensure against such abuses.

Because a primary function of the new Department is to receive and analyze information, Congress should insist on appropriate safeguards to protect the privacy of the information and to make sure that it is not used inappropriately. For example, there should be procedures to limit the use and disclosure of the collected information; rules that require the information to be secure and confidential; procedures to remove and destroy old data and remedies for the violation of statutory and constitutional rights and penalties for misuse of personal information.

The Intelligence Gathering Functions of the CIA and FBI Should Remain Separate and Outside the Homeland Security Department

We commend the Administration for leaving the intelligence gathering function out of the new Department. The HSA leaves those functions to the Central Intelligence Agency (CIA) and other intelligence agencies and to the Federal Bureau of Investigation (FBI). While the government must do a better job of analyzing the intelligence information it already collects from both foreign and domestic sources, the Congress should not approve new intelligence gathering powers, much less a new intelligence gathering agency, without a showing that such powers are truly needed and do not unnecessarily tread on Americans' civil liberties.

Under our system of government, the CIA and other intelligence agencies are tasked with collecting foreign intelligence abroad. As a practical matter, these foreign activities have been largely immune from constitutional limits and from oversight by the federal courts, although they are and must remain subject to oversight by the Congress. On the other hand, the FBI collects foreign intelligence in the United States, and also investigates and prevents criminal activity. These domestic activities are clearly constrained by statute and by the Constitution. The FBI's intelligence gathering functions are also subject to oversight by the Foreign Intelligence Surveillance Court.

Blurring of domestic and foreign intelligence gathering functions could have a severe impact on civil liberties, potentially leading to widespread spying on Americans constitutionally-protected political and religious activity. This is already a danger under the relaxed FBI guidelines for domestic investigations recently announced by Attorney General Ashcroft.[10] The Congress should resist any attempt to further erode these protections by including substantial intelligence gathering functions in the new Department of Homeland Security.

The Homeland Security Department Should be Barred from Political Spying

Instead of adding to the Homeland Security Department new intelligence gathering powers that could tread on civil liberties, Congress should consider adding provisions that would prevent the Department from maintaining files on Americans that are not linked to any criminal activity, but instead relate solely to political beliefs and associations. Under the draft legislation, while the Department will not gather intelligence information, it will receive such information in the course of its efforts to prevent terrorism.

Without safeguards, these provisions could lead to abuse. No one wants a repeat of the J. Edgar Hoover era, when the FBI was used to collect information about and disrupt the activities of civil rights leaders and others whose ideas Hoover distained.[11] Moreover, during the Clinton Administration, the "Filegate" matter involving the improper transfer of sensitive information from FBI background checks of prominent Republicans to the White House generated enormous public concern that private security-related information was being used for political purposes. Congress should not provide a future Administration with the temptation to use information available in Homeland Security Department files to the detriment of its political enemies.

One model the Congress could consider is Oregon Revised Statutes § 181.575. It provides that no state law enforcement agency may "collect or maintain information

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[10] For a memorandum explaining how these changes threaten constitutional rights, see Interested Persons Memorandum of Marvin J. Johnson, ACLU Legislative Counsel, June 6, 2002, available at <http://www.aclu.org/congress/l060602c.html>

[11] For a discussion of how the FBI engaged in illegal surveillance and harassment of Dr. Martin Luther King, Jr., see Marvin J. Johnson, ACLU Legislative Counsel, *The Dangers of Domestic Spying by Federal Law Enforcement: A Case Study on FBI Surveillance of Dr. Martin Luther King* (January 2002), available at <http://www.aclu.org/congress/mlkreport.PDF>

about the political, religious or social views, associations or activities" of a person or group unless such information "directly relates to an investigation of criminal activities" and there are "reasonable grounds to suspect" the subject "is or may be involved in criminal conduct." Such sensible limits would ensure that the Department is focused on its mission of preventing unlawful terrorist activity, not on keeping tabs on unorthodox or unusual, but constitutionally protected, political or religious activity.

III. Conclusion

The creation of a new Homeland Security Department is truly a massive undertaking. It requires careful and thoughtful consideration. While Congress understandably wants to respond to the Administration's initiative without undue delay, caution is needed to ensure that the basic principles of our government that ensure public accountability of government activity remain intact.

Instead, the Administration's plan weakens many of the laws that are vital to ensuring an open and accountable government, by creating unnecessary blanket exemptions to the Freedom of Information Act, the Federal Advisory Committees Act, and the Whistleblower Protection Act. The plan also fails to provide for an effective review mechanism, instead proposing an Inspector General that may lack sufficient power to provide an effective check on the powerful new Secretary of Homeland Security. Finally, while the plan should be commended for recognizing the importance of the distinction between foreign and domestic intelligence gathering for the protection of civil liberties, safeguards against political spying must be added to avoid a repeat of the abuses of the Hoover era.

AMERICAN
SOCIETY FOR
MICROBIOLOGY

Office of Public Affairs

June 19, 2002

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Feinstein:

The American Society for Microbiology (ASM) is writing concerning issues related to the proposed Department of Homeland Security (DHS) and the policy implications for the civilian biodefense and infectious disease research programs. The ASM has reviewed the Administration's Bill to establish a Department of Homeland Security and S.2452 to establish a Department of Homeland Security and a National Office for Combating Terrorism, introduced by Senator Lieberman.

The ASM is the largest life science society with over 40,000 members and its principal goal is the promotion of scientific knowledge of microbiology for the benefit of human welfare. The ASM has worked with the Administration, the Congress and federal agencies on measures to protect against biological weapons and bioterrorism. Most recently, ASM provided expert advice on provisions to expand the Biological Weapons Statute in the USA Patriot Act and on Title II of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, which expands controls on certain dangerous biological agents and toxins. ASM members are involved in research and public health initiatives aimed at eradicating the scourge of infectious diseases, which daily end the lives of thousands of Americans and tens of thousands around the world. Infectious diseases remain the major cause of death in the world for those under the age of 45 and particularly for children. They are the third leading cause of death in the United States.

The terrorist events of September 11 and the anthrax biocrime reveal the need and complexity of homeland defense. The ASM, therefore, supports efforts to establish a Department of Homeland Security that can provide oversight, coordination and leadership for biodefense activities. Given that science and technology will play a vital role in the biodefense of the nation, the ASM supports the establishment of an Office of Science and Technology as proposed in S 2452. This office will

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provide the necessary linkage between the Secretary of Homeland Security and all the numerous mission agencies charged with science and technology development.

It is critical that the proposed DHS build upon existing science and technology programs that hold promise in the defense against bioterrorism and in the effort against deadly infectious diseases. The ASM would like to submit the following comments to assist Congress as it deliberates how best to achieve this goal.

Biodefense research is part of the continuum of biomedical research aimed at protecting the nation and the world against infectious diseases. The capability to develop countermeasures and interventions is directly related to information generated by biomedical research on pathogenic microbes and the host response to these microbes. ***Therefore, it is critical that federal research efforts related to civilian human health-related biological, biomedical, and infectious diseases should be prioritized and conducted by, and at the direction of, the Department of Health and Human Services (HHS).*** It is important to distinguish between oversight functions such as policy and planning guidance and coordination, which would well be served by an Office of Science and Technology within a Department of Homeland Security, and the responsibility and authority for the direction, control and conduct of scientific research. **ASM recommends that HHS, a public health and biomedical research agency of unparalleled success, should continue to be responsible for the conduct and direction of scientific research.**

The Administration's Bill recognizes the necessity that HHS conduct the research and development programs related to infectious diseases. Section 303(a)(1) of the Bill provides that the Secretary shall carry out responsibilities related to civilian human health-related biological, biomedical, and infectious diseases through HHS and the Public Health Service "under agreements with the Secretary of Health and Human Services, and may transfer funds to him in connection with such agreements." Section 301(2) of the Administration's Bill, however, gives DHS primary authority and responsibility for the conduct of national scientific research including "directing, funding, and conducting research and development" related to biological threats. Additionally, at Section 303(a)(2), the Bill provides that DHS, in consultation with HHS, "shall have authority to establish the research and development program, including the setting of priorities".

The ASM understands the role envisioned for DHS is to integrate threat analysis and vulnerability assessments and identify priorities for preventive and protective steps to be taken by other federal agencies to protect the American public. The HHS, however, is best qualified to establish biomedical research and development programs and identify scientific opportunities and the research approaches for ensuring that biodefense needs are met in the best way possible. The NIAID is best able to bring together all aspects of biomedical research and the full capability of science to ensure breakthroughs and advances of high quality for biodefense. The proposed restructuring of program authorities in the Administration's bill will create unpredictability for research programs, will divert monies from research and will not be the best approach to achieving the goal of civilian biodefense, which requires the involvement of the best scientific minds and the support of excellent science based on merit review.

We have already seen the ability of HHS to respond to bioterrorism. In the months since September 11, 2001, the National Institute of Allergy and Infectious Diseases (NIAID) within the National Institutes of Health (NIH) has rapidly accelerated work to protect the nation against the threat of bioterrorism. This acceleration has occurred across the spectrum of scientific activities from basic research in microbial biology to the development of vaccines and therapeutics to research related to diagnostic systems. It is critical that this work continue to develop rapidly and efficiently without delay, disruption or loss of momentum.

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ASM agrees that DHS should have an important role in developing the nation's defenses against, and responses to biological threats. The DHS can and should coordinate, review, and evaluate scientific and technical programs related to human, animal, and plant life. However, a scientific health agency, HHS, rather than the nonscientific, nonpublic health DHS should have the principal authority for developing and prioritizing scientific and health related programs. Essentially, therefore, the ASM suggests reversing the responsibilities identified in Section 303(a)(2) of the Administration's Bill. HHS, in consultation and coordination with DHS, should retain responsibility for accelerated research and development programs, including prioritizing such projects.

The ASM is also concerned that we not create a separate public health system for biodefense. ***Therefore, the ASM would leave primary responsibility for planning for public health emergencies arising from biological causes with the Centers for Disease Control and Prevention.*** At the earliest possible moment after the outbreak of a contagion, it is critical to determine the nature of the organism and to distinguish between a bioterrorism attack and a natural event. Then, public authorities must respond rapidly and appropriately to the health threat that either one would present.

The ASM believes CDC should be charged with these tasks. Section 505(a)(2) of the Administration's Bill requires DHS to carry out these functions under agreement with HHS. Again, the ASM believes the important and appropriate role for DHS is to coordinate planning and development of programs and to lend technical assistance to the responsible agency. It is entirely appropriate for HHS to coordinate and consult with DHS. As with the direction and control of research, however, the primary duty and authority should remain with the scientific agency with the existing knowledge, experience, and expertise to fulfill the critical mission.

Because agriculture, the food supply, and the environment along with humans are potential targets of bioterrorism, it is important to integrate and coordinate programs related to human, animal, and plant agents. Section 302(a) of the Administration Bill transfers to DHS the select agent registration and enforcement programs of HHS. However, it does not transfer the select agent registration and enforcement programs of the Department of Agriculture to the DHS. Subtitle C of the Public Health Security and Bioterrorism Preparedness Act of 2002 mandated coordination of activities of HHS and the Secretary of Agriculture regarding "overlap agents" –

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that is, agents that appear on the separate lists prepared by HHS and Agriculture. Without doubt, such coordination must occur. Bioterrorism research extends and applies infectious disease and select agent research. The ASM believes that integration of the select agent registration program inevitably will assist in the creation of an efficient registration process thereby expediting registration.

The proper administration of the select agent program is key to the development of the nation's biodefense capability and response and must balance the concerns for public safety with the need to not unduly encumber legitimate scientific research and laboratory diagnostic testing. **The ASM continues to believe that HHS has the scientific and institutional knowledge and expertise related to dangerous biological agents, biosafety, and biosecurity in microbiological and biomedical laboratories and that it is best qualified to achieve the goal of protecting the public health and safety without interfering with research, and clinical and diagnostic laboratory medicine.** Transferring this program to DHS, a nonregulatory, nonscientific department, raises many questions with regard to the administration of this program which must be carefully considered by Congress, which recently enacted new legislation and additional requirements for select agents. ***The ASM, therefore, requests that a review be done by an interagency group with the involvement of scientific societies to assess the advisability of removing the select agent program from HHS authority.***

Some additional specific measures in the Administration Bill require further consideration and comment by the ASM. The ASM continues to study the Administration Bill to evaluate the best approach to achieving expedited research that advances the defense against bioterrorism but does not dilute the continuing, critical battle against naturally occurring infectious diseases. The ASM suggests expeditious review of the appropriateness of each transfer of a facility or responsibility related to biological organisms from an existing agency.

For example, as noted above, the defense against bioterrorism must be fully integrated into the nation's public health system that is led by the Centers for Disease Control and Prevention. Currently, CDC would use the national pharmaceutical stockpile in response to infectious disease outbreaks—both natural and intentional. Sections 501(3)(B) and 502(6) would transfer the Strategic National Stockpile to DHS. Such transfer should be reviewed carefully during further consideration of the Bill. HHS should be responsible for developing the materials in the stockpile. Therefore, it seems appropriate for HHS to continue management of the stockpile. The ASM, however, understands the coordination and oversight function envisioned for DHS, and the final resolution of the management of the stockpile ultimately must depend upon the resolution of the scope and role of DHS responsibilities and activities.

Similarly, transfer provisions relating to programs and activities of the Department of Energy's microbial genome research appear to be proposed although ASM cannot readily discern from the Bill the portions of the genome program that would be transferred under Section 302(2)(A) of the Bill.

In closing, we reaffirm ASM's commitment to work with the Administration and Congress to achieve the most efficient and effective system in the world for research, control, and response to the threat posed by biological agents.

Sincerely,

Abigail Salyers

Ronald M. Atlas

Office of Public Affairs

Abigail Salyers, Ph.D.
President, ASM

Ronald M. Atlas, Ph.D.
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For the record

Statement of Senator Charles E. Grassley on "Protecting the Homeland: The President's Proposal for Reorganizing Our Homeland Defense Infrastructure." June 26, 2002

Mr. Chairman, thank you for holding this hearing on the President's proposal for a new Department of Homeland Security. Although I have some concerns about his plan, we must take some action to put the government in a better position to prevent and respond to terrorism. The creation of a department to oversee homeland security is a tremendous undertaking for the White House and will face multiple challenges, including overcoming the established agencies' desire for self-preservation and the long-standing interagency turf battles. Regardless of these difficulties, we have no choice but to strengthen our national security, and I appreciate the President's commitment to doing so. If a new Department of Homeland Security is the answer, I'll do everything I can to enhance the effectiveness of this new department.

The new Department will have to improve and coordinate our intelligence analysis and sharing functions, as well as our law enforcement efforts. The recent news reports about what information the FBI and CIA had, but did not share or did not pursue, are quite troubling. Our Nation needs to do everything possible to make sure this type of attack never happens again on American soil. I think that the creation of the Department of Homeland Security can help the United States government look at what happened, identify what we need to do better, and coordinate constructive improvements to our national security.

The new Department will need to identify barriers to effective communication and cooperation between the many entities involved in America's national security. It should identify the underperforming ones, make any recommendations for improvements, and coordinate the remedial action that is taken.

But, I have a number of concerns about the President's proposed legislation. I'm concerned that whistleblowers won't be adequately protected; that the Office of Inspector General won't have sufficient independence to aggressively oversee the department; that the Department will be plagued with redundancies and waste; that information analysis and sharing will be neglected; and that the various infrastructure protection agencies won't have a smooth transition.

Whistleblowers are the key to exposing a dysfunctional bureaucracy. FBI Agent Coleen Rowley is just the most recent in a series of whistleblowers who have revealed bureaucratic inefficiencies and misdeeds in a federal agency. Bureaucracies have an instinct to cover up their mistakes, and that temptation is even greater when they can use a potential security issue as an excuse. This is why it is critical to give adequate whistleblower protections to each and every employee of the new Homeland Security Department, without exception.

I am concerned that the Administration's bill cuts out whistleblower protections for Department of Homeland Security employees. The bill provides that the Secretary of the new Department may create an employee management system different from the traditional federal system, which includes the Whistleblower Protection Act. It uses langaguae similar to that in the Aviation and Transportation Security Act, which created the Transportation Safety Administration (TSA). The Office of Special Counsel, which administers whistleblower protections, interpreted the TSA language as excepting federal screeners from established federal whistleblower protections. That is why I am introducing a bill to provide whistleblower protections for federal baggage screeners.

I am fearful that the Office of Special Counsel will come up with the same interpretation, since the President's bill contains language very similar to that included in the TSA bill.

I will only be able to support a Homeland Security bill that includes strong and specific protections for whistleblowers. Any bill to create a new agency without whistleblower protections is doomed to foster a culture that protects its own reputation rather than the security of the homeland.

The new Department also needs independent oversight. An aggressive, completely independent Inspector General will ensure that agencies will perform their mandated duties in the most efficient and cost-effective manner. They investigate employee abuse and wrongdoing. A strong Inspector General is critical to the success of the new department. That's because some components from the existing agencies that are to be incorporated in the new department have not been performing at an optimal level. For example, the root causes of the ineffectiveness of the Immigration and Naturalization Service will not be rectified by merely

moving it underneath the umbrella of Homeland Security. Those problems are going to have to be fixed. Moving the blocks around is not going to make for an effective Department. After the transition is complete and the department is in place, the Homeland Security Inspector General should conduct audits, and monitor adherence to performance measures and compliance with strategic planning initiatives, among other internal quality control functions.

It is also important that the new department follow principles of good government and fiscal responsibility. This new department cannot expand the size of the federal government. In fact, we need to see significant streamlining of the bureaucracy if this reorganization is going to work. The department doesn't need to retain every single procurement official from every single agency it has absorbed. In the name of good government and fiscal responsibility, the Administration needs to

identify any redundancies in the bureaucracies that are to be redirected to the new department and maximize the efficiencies demonstrated by the most effective programs. The new Department's mission should be homeland security, not job security

Smart compilation, sharing and analysis of intelligence data is critical to our nation in this war against terrorism. However, interagency fighting and turf battles can hinder the war on terrorism. Sharing this information is important, but what action is taken on the information once it is received is crucial.

The new department needs to be characterized by a culture dedicated to the good of the Nation and not the good of the department. The department also needs up to date technology for data mining and link analysis, in addition to human intelligence. The application of commercially available software, let alone proprietary confidential technology, will surely improve our ability to

identify trends, patterns of behavior, and the precursors of an imminent attack. On the sharing and analysis of intelligence information, the Administration must demonstrate how the FBI, CIA, and other U.S. intelligence-gathering agencies will successfully interact with the new department.

On that note, I add that I don't hold the Director of the FBI responsible for the intelligence failures before September 11th. Mr. Mueller had been in office for only one week when the attacks occurred. I'm willing to give him some slack, but I stress that he's got to clean up the mess. Regarding the establishment of the Homeland Security Department, I don't think the entire FBI should be folded into a new department dealing with domestic security. I add though that the new Secretary needs the authority to analyze the intelligence the FBI has collected and guarantee that it's shared with other agencies as appropriate.

The proposed Information Analysis and Infrastructure Protection Division within the new Department will combine such entities as part of the National Infrastructure Protection Center (NIPC), the Critical Infrastructure Assurance Office (CIAO) from the Commerce Department, and the Federal Computer Incident Response Center from the General Services Administration, among others. We must ensure a smooth and complete transition of organizational effectiveness as we cannot afford to have the new Department of Homeland Security reinventing the wheel at this critical point. We cannot allow agencies that are turning over parts of their former domains to be parochial in their approach to this new department.

There's no place for jurisdictional battles and unnecessary statutory barriers with respect to information sharing amongst our intelligence and law enforcement agencies when America's security is at risk. We need to

identify our security and intelligence shortcomings and resolve them appropriately.

The ultimate goal here before us is to help our intelligence and law enforcement communities at being the best they can be at protecting our nation and the American people. I'm not thoroughly convinced that the establishment of a new department is the comprehensive solution to our problems here. If we don't fix the problems at the various agencies that will become the new department we won't see real homeland security. We can't build a new house with broken blocks. A lot of homework needs to be done, and quickly. If this plan is indeed the answer for effective homeland security, now and for the future, then lets move forward and get it done right.

United States Senate
Committee on the Judiciary

Committee Information Go

Statement of
The Honorable Orrin Hatch
United States Senator
Utah

June 26, 2002

PRINTABLE VERSION

Thank you Mr. Chairman. First, I want to commend you for focusing this Committee's attention on the most critical issue facing our nation today: securing our homeland to protect America from further terrorist attacks. Throughout our country's history, our people, its leaders, and Congress have demonstrated time and time again that when we work together - when we harness the full energy and commitment of our country - we can overcome any adversity or any enemy. The tragic events of September 11 have united this country and challenged our country once again to face down the threat of terrorism.

I join with you, Mr. Chairman, in a spirit of bipartisanship which Congress has demonstrated since the horrific attacks of September 11, to consider the President's proposed Homeland Security Department. Because there appears to be wide agreement, both in the Administration and in Congress, there should be a single, unified Cabinet-level department whose primary mission is to protect our homeland, I am confident that working together we will succeed in enacting legislation to create a new Department of Homeland Security this year.

This Committee has much to offer in this area. After the tragic events of September 11, members of this Committee and Congress worked tirelessly to provide the Attorney General with the tools necessary to fight terrorism worldwide and protect our country; specifically, we passed the PATRIOT Act, a critical set of reforms needed to unleash our government's ability to detect and prevent terrorist attacks. Since then, we have examined other issues of significance in our country's war against terrorism - we have reviewed the FBI's reorganization plan; we have presented and considered a workable plan for restructuring the INS; and we have reviewed other significant organizational and operational issues that have arisen. Against this backdrop, we must now turn our attention together to consider carefully the creation of the new Department of Homeland Security.

At the outset, I want to welcome Governor Tom Ridge, President Bush's Homeland Security Advisor. Since his swearing in on October 8, 2001, less than one month after the terrorist attacks on our country, Governor Ridge has worked with an unwavering determination to protect our homeland. I want to commend you, Governor Ridge, on your efforts to improve our nation's security and your dedication and courage in tackling these most difficult issues in a time of crisis. You have accomplished much. While there is much more to do to ensure the safety of our country, I am comforted by your leadership. You and the President

have been steady beacons of hope for all Americans, and I want to thank you again for your accomplishments. We were privileged to hear your views when you came here in May to brief the Senators on your proposals to consolidate border control.

The proposed creation of the new Homeland Security Department is a massive task. Not since 1947, when President Truman reorganized our defense and security agencies, has this country faced a reorganization of this scale. But today we face a significant new threat, one far different than post-World War II communism; today we face the danger of numerous, well-financed, terrorist groups - not just Al Qaeda, but many others - who will stop at nothing to cross our borders and attack our institutions, infrastructures, people and freedoms with weapons of all types.

The Administration's proposal to create a new Homeland Security Department is the next logical step in our country's war against terrorism. It is apparent in reviewing the Administration's proposed legislation that Governor Ridge and his team conducted a thorough study of various proposals that experts, commissions, academics, and members of Congress have prepared through the years to address deficiencies in our national security.

While the president's proposal to create a new Homeland Security Department is certainly a necessary first step, it is not the end of our country's mission. No one expects to achieve the end goal of an efficiently operating homeland security department overnight. There may well be areas of debate or issues we in Congress need to save for another day. Certainly, however, there are areas where we share a common view.

First, in the aftermath of September 11, we recognize that it is essential that we improve our intelligence gathering and analysis capabilities - within and among our federal, state and local agencies. The Administration's proposal makes it clear that the Secretary of the new Homeland Security Department will have the primary, but not sole, responsibility for coordinating terrorist-related threat information. The Secretary will be responsible for analyzing threat information from various agencies, assessing the vulnerability of our nation's infrastructures, and developing a long-term plan to protect our infrastructures.

As a so-called "consumer" of terrorism intelligence, the new Department will fuse and analyze information from many different sources, including the FBI, CIA, NSA, INS, DEA, and Customs Service, as well as other federal, state and local agencies. A critical responsibility of this new Department will be ensuring interagency sharing and coordination. After all, various federal, state and local agencies are essential players in our country's fight against terrorism. The new Department's responsibility to coordinate with all of these agencies to protect our homeland will be mind-boggling. It is an awesome task, but one which must be tackled. I believe the President's proposal furthers this critical goal.

Second, regardless of the final structure of the new Department, we all agree that it is essential that reforms within the FBI and CIA continue. Both the FBI and the CIA are in the process of making internal changes that will improve their ability

to collaborate and coordinate with the new Department. We are familiar with the substantial reforms FBI Director Robert Mueller has instituted within the Bureau. Under his able leadership, I am confident that the effectiveness of the FBI, and its intelligence capabilities in particular, will be much improved. The process certainly will take time because it hinges on technological improvements that cannot occur overnight.

Similarly, reforms within the new Department's component agencies must also continue. We are well-aware of the role INS plays in enforcing this country's immigration laws and administering services. Implementing critical reforms at the INS undoubtedly will improve the overall effectiveness of the new Department.

Finally, we all recognize that the war against terrorism cannot be won simply by reorganizing government agencies into a new, more effective Department of Homeland Security. It is essential that we tap into the resources and expertise of America's private sector. I am encouraged by Governor Ridge's efforts to enlist the aid and expertise of America's businesses to enhance our nation's security, and I am committed to making sure that the new Department is able to receive the uninhibited advice and counsel from our business leaders. It is private businesses which own and operate most of our infrastructure - our telecommunications, energy and financial systems. Our government cannot effectively fight this war against terrorism without their support. We must arm our agencies with the best technologies available, and our private sector is a critical player in this process, as it has been in our national defense and military.

Congress must act and must do so quickly and carefully without political gamesmanship. Our task is too important; we cannot afford to sacrifice our country's safety in the process. The threat of terrorist attacks on our homeland, as well as abroad, is here to stay. Our response to this threat requires a singleness of focus. All of us in government have a duty to do all we can to protect the American people from future terrorist attacks.

I look forward to your testimony today Governor Ridge, and to working with you, the members of this Committee, the Senate Governmental Affairs Committee, and our colleagues in both chambers to accomplish this task this year. We rallied last year to enact the PATRIOT Act. I am confident that if we continue to work in a bipartisan, bicameral manner, we can do the same here, and in this Congress, enact legislation to create a new Department of Homeland Security.

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Statement of
The Honorable Patrick Leahy
United States Senator
Vermont

June 26, 2002

PRINTABLE VERSION

Even before the tragic terrorist attacks of September 11, this committee has been focused on improving the effectiveness of the U.S. Department of Justice, the lead Federal agency with responsibility for domestic security. This task has involved oversight hearings of the Federal Bureau of Investigation and the Immigration and Naturalization Service, as well as hearings on legislative proposals to enhance the legal tools available to detect, investigate and prosecute those who threaten Americans both here and abroad. In the weeks immediately after the attacks, Committee members worked in partnership with the White House and the House to craft the new anti-terrorism law, the USA PATRIOT Act.

We are delighted that Governor Ridge is with us this morning in his capacity as the Director of the Transition Planning Office for the proposed Department of Homeland Security. Director Ridge transmitted a specific legislative proposal last week, and we thank him for his hard work on this plan, and for all that he has done in service to the nation and its security.

There is bipartisan support for the concept of a cabinet-level officer to coordinate homeland security. Indeed, we were prepared to include such a provision in the USA PATRIOT Act last year, but we did not at the request of the White House. We hope to work with you now, Director Ridge, as we did with Attorney General Ashcroft last year, across party lines, in a bipartisan, bicameral partnership in which the Executive and Legislative branches can offer ideas and come up with the best collective legislative product that we can in the least amount of time.

It is important to begin by acknowledging what the President's proposal does not do. It does not address the problems inside agencies like the FBI or the INS – problems like outdated computers; hostility to employees who report problems; lapses in intelligence sharing; lack of translation and analytical capabilities; along with what many have termed, "cultural problems." Both the Administration and the Congress are going to have to work hard and work together to solve these problems.

To that end, this committee has unanimously reported the FBI Reform Act, S.1974, to improve the FBI, and I hope that the President will assist us in moving that legislation through Congress so that we help make the FBI as effective as it

can be in the war against terrorism.

Knitting together a new agency will not by itself fix existing problems. In writing the charter for this new department, we must be careful not to generate new management problems and accountability issues. I am concerned that the Administration's proposal would exempt the new department from many legal requirements that apply to other agencies. The Freedom of Information Act would not apply; the conflicts of interest and accountability rules for agency advisors would not apply. The new Department head would have the power to suspend the Whistleblower Protection Act, the normal procurement rules and to intervene in Inspector General investigations. In these respects, the Administration is asking us to put this new Department above the law and outside the checks and balances these laws are put there to ensure.

This is a proposal born in secrecy and rushed to the stage before the legislative plans were ready and on the same day this committee was hearing powerful testimony from a whistleblower about intelligence failures. Exempting the new department from laws that ensure accountability to the Congress and to the American people makes for soggy ground and a tenuous start – not the sure footing we all want for the success and endurance of this endeavor.

We must also be careful that in our effort to bolster our defenses against terrorists, we do not do damage to other important national interests. Many of the agencies proposed for transfer perform vital duties in addition to their responsibilities for security against terrorism. As agencies are moved to the new department, we need to make sure this does not force duplication of efforts, the downgrading of other important missions or unnecessary costs.

While the Administration has proposed cutting certain successful grant programs – like the COPS program – the troubling rebound in crime rates, rising last year after eight straight years of decline, shows us that focusing all our resources on fighting international terrorism cannot be our only goal. This committee does not want to hand back to home-grown criminals the hard-earned gains we have made in fighting crime over most of the last decade. We do not want to expose our neighborhoods and rural communities to rising waves of crime based on traffic in crack, heroin or ecstacy or to let down our guard against violent crimes like murder, rape and robbery.

The President's proposal centralizes many important functions. We have had a solid start by being able to work off the blueprint provided by legislation originally introduced by Senator Specter and others, and by the work of Senator Feinstein in the Committee's Terrorism Subcommittee. Today I hope to begin exploring the right balancing point between the general advantages of centralization and the specific benefits of localizing many activities and functions. We also will examine how the new Department intends to work with local law enforcement and grass roots agencies throughout the country to accomplish its goals.

As we begin this process, our former colleague, Senator Warren Rudman, has urged that we fix the FBI, not slice and dice it. The FBI is the only example of an

single agency that has both broad intelligence and criminal jurisdiction all under one roof. Considering the problems with the FBI, however, I am interested in hearing from Governor Ridge whether separating the federal agents responsible for investigating terrorism in a separate agency from the FBI would be better or worse? Would it be better to spin off the FBI's counter-terrorism agents into some new organization or should we work with the current FBI to make sure it has the tools necessary to protect the American people?

Majority Leader Daschle and all of us want the Senate to produce a thoughtful and workable charter for the new department, as quickly as possible. One sure way to slow things down is to cobble together a collection of unrelated political items in the bill, under the heading of "management flexibility." I think most working Americans know enough to be cautious of that term. In particular, there are four things that I hope the Administration will not insist upon:

First, creating an ill-considered and overly broad new exemption to the Freedom of Information Act. Encouraging government complicity with private firms to indefinitely keep secrets about information on critical infrastructure vulnerabilities may reduce the incentive to find solutions and fix the problems. In the end, more secrecy may undermine rather than foster security.

Second, weakening whistle-blower protections. Senator Grassley and I made sure that the FBI Reform Act would end the FBI's special exemptions from whistleblower protections. We learned in the Rowley case that even in the most sensitive matters, national security is strengthened, not diminished, by strong whistleblower protection. I hope the Administration will not insist on moving backward on whistleblower protection.

Third, weakening safeguards for the gathering and handling of sensitive law enforcement information. We are setting up the new Department of Homeland Security to be a central repository for highly sensitive information. While the new department's role in domestic surveillance remains unclear, it is more important than ever that there be strong protections to ensure that such information is not gathered or used improperly.

And fourth, threatening job security for hardworking government employees. Director Ridge heard a lot about this last week in the Government Affairs Committee, but it bears repeating. The Administration should not use this transition as an excuse to cut the wages of the brave employees who have been defending the nation. That is not the way to encourage retention or recruitment of the vital human resources on which we will need to rely, and it is a sure way to destroy the bipartisanship we need.

Director Ridge, we welcome you, and we look forward to working with you in forging a charter that will make the new department all that the American people want and need it to be.

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Written Statement of Governor Tom Ridge
Director of the Transition Planning Office for the Department of Homeland Security
Submitted to the Senate Committee on the Judiciary
June 26, 2002
"The Department of Homeland Security: Making Americans Safer"

Introduction

Chairman Leahy, Senator Hatch, and other distinguished members of the Committee on the Judiciary. It is an honor to be here today to explain why I believe the Senate should support the President's proposal to establish a Department of Homeland Security. I also look forward to responding to your questions and listening to your views.

The President's Proposal

On June 6, 2002, President Bush addressed the nation and put forth his vision to create a permanent Cabinet-level Department of Homeland Security. On June 18, 2002, I delivered to the Congress the President's proposed legislation for establishing the new Department. This is an historic proposal. It would be the most significant transformation of the U.S. government in over a half-century. It would transform and largely realign the government's confusing patchwork of homeland security activities into a single department whose primary mission is to protect our homeland. The proposal to create a Department of Homeland Security is one more key step in the President's national strategy for homeland security.

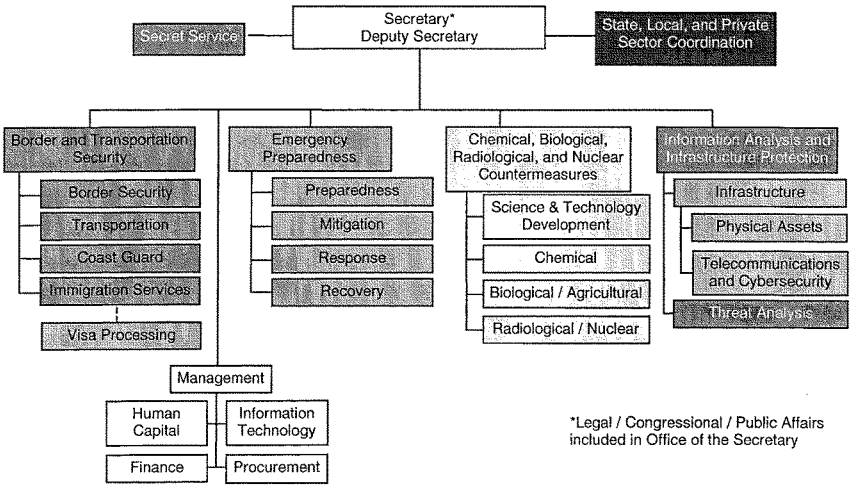
It is crucial that we take this historic step. At the beginning of the Cold War, President Truman recognized the need to reorganize our national security institutions to meet the Soviet threat. We emerged victorious from that dangerous period thanks in part to President Truman's initiative. Today we are fighting a new war against a new enemy. President Bush recognizes that the threat we face from terrorism requires a reorganization of government similar in scale and urgency to the unification of the Defense Department and creation of the CIA and NSC.

Currently, no federal government department has homeland security as its primary mission. In fact, responsibilities for homeland security are dispersed among more than 100 different government organizations. Creating a unified homeland security structure will align the efforts of many of these organizations and ensure that this crucial mission – protecting our homeland – is the top priority and responsibility of one department and one Cabinet secretary.

Immediately after last fall's attack, the President took decisive steps to protect America – from hardening cockpits and stockpiling vaccines to tightening our borders. The President used his legal authority to establish the White House Office of Homeland Security and the Homeland Security Council to ensure that our federal response and protection efforts were coordinated and effective. The President also directed me, as Homeland Security Advisor, to study the federal government as a whole to determine if the current structure allows us to meet the threats of today while anticipating the unknown threats of tomorrow. After careful study of the current structure – coupled with the experience gained since September 11 and new information we have learned about our enemies while fighting a war – the President concluded that our nation needs a more

unified homeland security structure.

The Department of Homeland Security
Proposed Organization



The Department of Homeland Security

The creation of the Department of Homeland Security would empower a single Cabinet official whose primary mission is to protect the American homeland from terrorism. The mission of the Department would be to:

- Prevent terrorist attacks within the United States;
- Reduce America's vulnerability to terrorism; and
- Minimize the damage and recover from attacks that do occur.

The Department of Homeland Security would mobilize and focus the resources of the federal government, state and local governments, the private sector, and the American people to accomplish its mission. It would have a clear, efficient organizational structure with four divisions.

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

Information Analysis and Infrastructure Protection

The Information Analysis and Infrastructure Protection section of the Department of Homeland Security would complement the reforms on intelligence and information-sharing already underway at the FBI and the CIA. The Department would analyze information and intelligence for the purpose of understanding the terrorist threat to the American homeland and foreseeing potential terrorist threats against the homeland.

Furthermore, the Department would comprehensively assess the vulnerability of America's key assets and critical infrastructures, including food and water systems, agriculture, health systems and emergency services, information and telecommunications, banking and finance, energy (electrical, nuclear, gas and oil, dams), transportation (air, road, rail, ports, waterways), the chemical and defense industries, postal and shipping entities, and national monuments and icons. Critically, the Department would integrate its own and others' threat analyses with its comprehensive vulnerability assessment for the purpose of identifying protective priorities and supporting protective steps to be taken by the Department, other federal departments and agencies, state and local agencies, and the private sector. Working closely with state and local officials, other federal agencies, and the private sector, the Department would help ensure that proper steps are taken to protect high-risk potential targets.

In short, the Department 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.

Chemical, Biological, Radiological and Nuclear Countermeasures

The war against terrorism is also a war against the most deadly weapons known to mankind – chemical, biological, radiological and nuclear weapons. If the terrorists acquire these weapons, they will use them with consequences that could be far more devastating than those we suffered on September 11th. Currently, our efforts to counter the threat of these weapons to the homeland are too few and too fragmented. We must launch a systematic national effort against these weapons that is equal to the threat they pose.

The President's proposed legislation would accomplish this goal. It would authorize the Department of Homeland Security to lead the federal government's efforts in preparing for and responding to the full range of terrorist threats involving weapons of mass destruction. To do this, the Department would set national policy and establish guidelines for state and local governments. It would direct exercises and drills for federal, state, and local chemical, biological, radiological, and nuclear (CBRN) attack response teams and plans. The result of this effort would be to consolidate and synchronize the disparate efforts of multiple federal agencies currently scattered across several departments. This would create a single office whose primary mission is the critical task of protecting the United States from catastrophic terrorism.

The Department would serve as a focal point for America's premier centers of excellence in the field. It would manage national efforts to develop diagnostics, vaccines, antibodies, antidotes,

and other countermeasures. It would consolidate and prioritize the disparate homeland security related research and development programs currently scattered throughout the Executive Branch. It would also assist state and local public safety agencies by evaluating equipment and setting standards.

Border and Transportation Security

Our number one priority is preventing future terrorist attacks. Because terrorism is a global threat, we must attain complete control over whom and what enters the United States in order to achieve this priority. We must prevent foreign terrorists from entering our country and bringing in instruments of terror. At the same time, we must expedite the legal flow of people and goods on which our economy depends.

Protecting our borders and controlling entry to the United States has always been the responsibility of the Federal government. Yet, this responsibility is currently dispersed among more than five major government organizations in five different departments. Therefore, under the President's proposed legislation, the Department of Homeland Security would for the first time unify authority over major federal security operations related to our borders, territorial waters, and transportation systems.

The Department would assume responsibility for operational assets of the United States Coast Guard, the United States Customs Service, the Immigration and Naturalization Service (including the Border Patrol), the Animal and Plant Health Inspection Service, and the Transportation Security Administration. The Secretary of Homeland Security would have the authority to administer and enforce all immigration and nationality laws, including, through the Secretary of State, the visa issuance functions of consular officers. As a result, the Department would have sole responsibility for managing entry into the United States and protecting our transportation infrastructure. It would ensure that all aspects of border control, including the issuing of visas, are informed by a central information-sharing clearinghouse and compatible databases.

Emergency Preparedness and Response

Although our top priority is preventing future attacks, we cannot assume that we will always succeed. Therefore, we must also prepare to minimize the damage and recover from attacks that do occur. The President's proposed legislation would require the Department of Homeland Security to ensure the preparedness of our nation's emergency response professionals, provide the federal government's emergency response to terrorist attacks and natural disasters, and aid America's recovery.

To fulfill these missions, the Department would oversee federal government assistance in the domestic disaster preparedness training of first responders and would coordinate the government's disaster response efforts. The Federal Emergency Management Agency (FEMA) would become a central component of the Department of Homeland Security, and the new Department would administer the grant programs for firefighters, police, emergency personnel, and citizen volunteers currently managed by FEMA, the Department of Justice, and the

Department of Health and Human Services. The Department would manage certain crucial elements of the federal government's emergency response assets, such as the Strategic National Stockpile. In the case of an actual or threatened terrorist attack, major disaster, or other emergency, the Secretary of Homeland Security would have the authority to call on other response assets, including Energy's and the EPA's Nuclear Incident Response teams, as organizational units of the Department. Finally, the Department would integrate the federal interagency emergency response plans into a single, comprehensive, government-wide plan, and ensure that all response personnel have the equipment and capability to communicate with each other as necessary.

State/Local Government & Private Sector Coordination

The Department of Homeland Security would consolidate and streamline relations on homeland security issues with the federal government for America's state and local governments, as well as the private sector. It would contain an intergovernmental affairs office to coordinate federal homeland security programs with state and local officials. It would give state and local officials one primary contact instead of many when it comes to matters related to training, equipment, planning, and other critical needs such as emergency response.

Secret Service

The Department of Homeland Security would incorporate the Secret Service, which would report directly to the Secretary. The Secret Service would remain intact and its primary mission will remain the protection of the President and other government leaders. The Secret Service would also continue to provide security for designated national events, as it did for the recent Olympics and the Super Bowl.

Non-Homeland Security Functions

The Department of Homeland Security would have a number of functions that are not directly related to securing the homeland against terrorism. For instance, through FEMA, it would be responsible for mitigating the effects of natural disasters. Through the Coast Guard, it would be responsible for search and rescue, navigation, and other maritime functions. Several other border functions, such as drug interdiction operations and naturalization, and would also be performed by the new Department.

White House Office of Homeland Security and Homeland Security Council

The President intends for the White House Office of Homeland Security and the Homeland Security Council to continue to play a key role, advising the President and coordinating a vastly simplified interagency process.

Making Americans Safer

The Department of Homeland Security would make Americans safer because our nation would have:

- One department whose primary mission is to protect the American homeland;
- One department to secure our borders, transportation sector, ports, and critical infrastructure;
- One department to integrate threat analyses and vulnerability assessments;
- One department to coordinate communications with state and local governments, private industry, and the American people about threats and preparedness;
- One department to coordinate our efforts to protect the American people against bioterrorism and other weapons of mass destruction;
- One department to help train and equip for first responders;
- One department to manage federal emergency response activities; and
- More security officers in the field working to stop terrorists and fewer resources in Washington managing duplicative and redundant activities that drain critical homeland security resources.

The New Department Would Improve Security Without Growing Government

The Department of Homeland Security must be an agile, fast-paced, and responsive organization that takes advantage of 21st-century technology and management techniques to meet a 21st-century threat.

The creation of a Department of Homeland Security would not "grow" government. The new Department would be funded within the total monies requested by the President in his FY 2003 budget already before Congress for the existing components. In fact, the President's FY 2003 budget will increase the resources for the component parts by $14 billion over the FY 2002 budget. We expect that the cost of the new elements (such as the threat analysis unit and the state, local, and private sector coordination functions), as well as department-wide management and administration units, can be funded from savings achieved by eliminating redundancies inherent in the current structure.

In order to respond to rapidly changing conditions, the Secretary would need to have great latitude in re-deploying resources, both human and financial. The Secretary should have broad reorganizational authority in order to enhance operational effectiveness, as needed. Moreover, the President will request for the Department significant flexibility in hiring processes, compensation systems and practices, and performance management to recruit, retain, and develop a motivated, high-performance and accountable workforce. Finally, the new Department should have flexible procurement policies to encourage innovation and rapid development and operation of critical technologies vital to securing the homeland.

Working Together to Create the Department of Homeland Security

President Bush recognizes that only the Congress can create a new department of government. During his June 6th address to the nation, the President asked Congress to join him in establishing a single, permanent department with an overriding and urgent mission: securing the homeland of America, and protecting the American people. I am here to ask, as the President did, that we move quickly. The need is urgent. Therefore, the President has asked Congress to pass his proposal this year, before the end of the congressional session.

Preliminary planning for the new Department has already begun. The formal transition would begin once Congress acts on the President's proposed legislation and the President signs it into law. Under the President's plan, the new Department would be established by January 1, 2003, with integration of some components occurring over a longer period of time. To avoid gaps in leadership coverage, the President's proposal contemplates that appointees who have already been confirmed by the Senate would be able to transfer to new positions without a second confirmation process.

During this transition period, the Office of Homeland Security will maintain vigilance and continue to coordinate the other federal agencies involved in homeland security. Until the Department of Homeland Security becomes fully operational, the proposed Department's designated components will continue to operate under existing chains of command.

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