AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. Hrg. 108–760

THE 9/11 COMMISSION HUMAN CAPITAL RECOMMENDATIONS: A CRITICAL ELEMENT OF REFORM

HEARING

BEFORE THE

OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

SEPTEMBER 14, 2004

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE

97–045 PDF WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON GOVERNMENTAL AFFAIRS

SUSAN M. COLLINS, Maine, *Chairman*

TED STEVENS, Alaska
GEORGE V. VOINOVICH, Ohio
NORM COLEMAN, Minnesota
ARLEN SPECTER, Pennsylvania
ROBERT F. BENNETT, Utah
PETER G. FITZGERALD, Illinois
JOHN E. SUNUNU, New Hampshire
RICHARD C. SHELBY, Alabama

JOSEPH I. LIEBERMAN, Connecticut
CARL LEVIN, Michigan
DANIEL K. AKAKA, Hawaii
RICHARD J. DURBIN, Illinois
THOMAS R. CARPER, Delaware
MARK DAYTON, Minnesota
FRANK LAUTENBERG, New Jersey
MARK PRYOR, Arkansas

MICHAEL D. BOPP, *Staff Director and Chief Counsel*
JOYCE A. RECHTSCHAFFEN, *Minority Staff Director and Counsel*
AMY B. NEWHOUSE, *Chief Clerk*

OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA SUBCOMMITTEE

GEORGE V. VOINOVICH, Ohio, *Chairman*

TED STEVENS, Alaska
NORM COLEMAN, Minnesota
ROBERT F. BENNETT, Utah
PETER G. FITZGERALD, Illinois
JOHN E. SUNUNU, New Hampshire

RICHARD J. DURBIN, Illinois
DANIEL K. AKAKA, Hawaii
THOMAS R. CARPER, Delaware
FRANK LAUTENBERG, New Jersey
MARK PRYOR, Arkansas

ANDREW RICHARDSON, *Staff Director*
MARIANNE CLIFFORD UPTON, *Minority Staff Director and Chief Counsel*
KEVIN R. DORAN, *Chief Clerk*

CONTENTS

	Page
Opening statements:	
Senator Voinovich	1
Senator Coleman	4
Senator Pryor	15
Senator Collins	19
Prepared statements:	
Senator Akaka	4
Senator Durbin	5

WITNESSES

TUESDAY, SEPTEMBER 14, 2004

Jamie S. Gorelick, Esq., Commissioner, National Commission on Terrorist Attacks Upon the United States	7
Fred Fielding, Commissioner, National Commission on Terrorist Attacks Upon the United States	10
Mark Steven Bullock, Assistant Director, Administrative Services Division, Federal Bureau of Investigation	21
John Turnicky, Special Assistant to the DCI for Security, Central Intelligence Agency	23
J. Christopher Mihm, Managing Director of Strategic Issues, U.S. Government Accountability Office	25
Paul C. Light, Ph.D., Senior Fellow, The Brookings Institution	35
C. Morgan Kinghorn, President, National Academy of Public Administration	37
Doug Wagoner, Chairman, ITAA Intelligence/Security Clearances Task Group	39
Max Stier, CEO, Partnership for Public Service	41

ALPHABETICAL LIST OF WITNESSES

Bullock, Mark Steven:	
Testimony	21
Prepared statement	58
Fielding, Fred:	
Testimony	10
Joint prepared statement	51
Gorelick, Jamie S., Esq.:	
Testimony	7
Joint prepared statement	51
Kinghorn, C. Morgan:	
Testimony	35
Prepared statement	98
Light, Paul C., Ph.D.:	
Testimony	35
Prepared statement	88
Mihm, J. Christopher:	
Testimony	25
Prepared statement	68
Stier, Max:	
Testimony	41
Prepared statement	130
Turnicky, John:	
Testimony	23
Prepared statement	63

Page

Wagoner, Doug:
Testimony 39
Prepared statement with an attachment 106

APPENDIX

Responses to questions for the Record from:
Mr. Gorelick 139
Mr. Fielding 141
Mr. Bullock 143
Mr. Mihm 159
Mr. Kinghorn 164
Mr. Wagoner 166

THE 9/11 COMMISSION HUMAN CAPITAL RECOMMENDATIONS: A CRITICAL ELEMENT OF REFORM

TUESDAY, SEPTEMBER 14, 2004

U.S. SENATE,
OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA SUBCOMMITTEE,
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:30 a.m., in room SD–342, Dirksen Senate Office Building, Hon. George V. Voinovich, Chairman of the Subcommittee, presiding.

Present: Senators Voinovich, Collins, Coleman, Pryor, and Carper.

Senator VOINOVICH. Good morning. I am confident that this Subcommittee will rise to the challenge before it to report legislation which will enhance the security of the United States of America. I know some say we have spent a very short time contemplating reforms. I would like to say that our Chairman has done a beautiful job of vetting this issue and hearing from everyone. There are more hearings scheduled which will allow us to move forward in implementing recommendations of the 9/11 Commission.

I want to congratulate Senator Collins and Senator Lieberman for the work that they have done.

I am honored that Senator Collins has asked me to Chair the hearing today. I am hopeful that the proposals we discuss today eventually will be included in the Committee's legislation.

On March 29, 2001, this Subcommittee held a hearing entitled "The National Security Implications of a Human Capital Crisis." The panel of distinguished witnesses that day included former Defense Secretary James Slessinger, a member of the U.S. Commission on National Security in the 21st Century.

At the end of Secretary Schlesinger's testimony, he said this, "As it enters the 21st Century, the United States finds itself on the brink of an unprecedented crisis of competence in government. The maintenance of American power and the world depends on the quality of the U.S. Government's personnel, civil and military, at all levels. We must take immediate action in the personnel area to ensure that the United States can meet future challenges. Fixing the personnel problem is a precondition for fixing virtually everything else that needs repair in the institutional edifice of U.S. national security policy."

When September 11 occurred, the first thing that came to my mind is we didn't have the right people with the right knowledge and skills at the right place at the right time. If you survey government, you will find where you have problems, this usually is the reason why we have those problems.

Secretary Schlesinger's insightful comments were reinforced by the 9/11 Commission. On page 399 of the report, the Commission recommended significant changes in the organization of the government. The Commission went on to say: "We know the quality of the people is more important than the quality of the wiring diagrams. Some of the saddest aspects of the 9/11 story are the outstanding efforts of so many individual officials straining, often without success, against the boundaries of the possible. Good people can overcome bad structures. They should not have to." They should not have to.

The 9/11 Commission specifically noted several areas for Federal personnel reform, including improving the Presidential appointments process for national security positions and establishing a single agency to conduct security clearance background investigations. As we know, there are multiple agencies that investigate clearances, and it takes too long. I will never forget hearing from people that had transferred agencies and said that the new agency would not accept the security clearance from any other agency. This meant that they had to start all over again.

A third recommendation from the Commission is to provide some additional personnel flexibilities to the Federal Bureau of Investigation to reflect its increased counterterrorism intelligence responsibilities. This is another thing that we have been working on for a long time trying to understand if the FBI has the personnel flexibilities to get the job done. For a dozen years, they have been asking for more personnel flexibilities and have never been responded to.

Normally, the Subcommittee would hold individual hearings on each of these topics; however, the Senate's tight legislative schedule precludes this. So we are addressing all three recommendations today.

First, the 9/11 Commission recommends streamlining the Presidential appointments process. This is a problem that I have been examining for years. When Senator Fred Thompson left the Senate, I told him I would continue to push for appointments reform. I think most of us know that once a President is elected, everybody throws up their hands and says, this appointment process is awful. Once individuals are confirmed, somehow it kind of takes a lower priority and just kind of fizzles out, and then you have a new President and they come in and they complain about the appointment process.

It now takes an average of 8 months to confirm an appointee, up from 2 months during the Kennedy Administration. We can do better than this. In addition, there are now approximately five times the number of political appointees as there were in 1960. Secretary of Defense Rumsfeld has stated that he did not have his entire team in place on 9/11, almost 8 months after taking office. This process must be improved.

Second, the 9/11 Commission also recommended establishing a single agency to provide and maintain security clearances. The process for investigating, adjudicating, and maintaining records of security clearances is disjointed and decentralized. There is no doubt that this system leads to delays in hiring and transferring employees in sensitive national security positions, which in turn is damaging to our national security. We must find a better way of managing security clearances.

Finally, the Commission recommended that the FBI develop a specialized and integrated security work force consisting of agents, analysts, linguists, and surveillance specialists who are recruited, trained, rewarded, and retained to ensure the development of an institutional culture imbued with a deep expertise, and I quote, "imbued with a deep expertise, in intelligence and security."

There is another area that I have been examining in part because of my concerns with the FBI personnel system. I sponsored legislation last fall that required the Office of Personnel Management to issue a report on ways to eliminate the classification pay and benefit disparity within the Federal law enforcement community. As you may or may not know, the Department of Homeland Security is now trying to harmonize all of the law enforcement employees in their agencies. My thought is if you are going to do that in the Department of Homeland Security, we cannot ignore all of the other law enforcement entities outside of the Department of Homeland Security.

The FBI is on the front lines of the war on terror. Counterterrorism should be the most important mission of the FBI, and it must have the personnel, resources, and flexibility to get the job done. Congress must do all it can to make this happen.

Commissioners Gorelick and Fielding will discuss their findings in greater detail, and the other witnesses will comment on their recommendations. There is probably widespread agreement that improvements in these and many other areas related to personnel can be made, but this discussion in no way diminishes the excellent work that is being done today by thousands of employees in the Intelligence Community. In many instances, they are putting their lives on the line for our Nation, and we owe them our heart-felt gratitude.

Working with Senator Collins and other Members of this Subcommittee, I have been drafting proposals to address these challenges in addition to other legislation designed to enhance the work force of the Intelligence Community. It is essential that our Intelligence Community agencies have all the tools necessary to recruit, hire, retain, and promote individuals with the right competencies.

I look forward to today's important discussion, and since we have so many witnesses today, I have decided to follow the recommendation of the Chairman, to restrict the opening statements of Senators, but since I only have one other Senator today, I would be glad to qualify my colleague.

Senator COLEMAN. Thank you, Mr. Chairman.

OPENING STATEMENT OF SENATOR COLEMAN

I will be very brief. We have heard a lot. This is our eighth hearing, and there is more to hear and we have a number of witnesses. So I just have two observations.

One, despite all the criticism about how difficult it is to get things through our Congress, I think we ought to make some progress here, and it is not that we are acting in haste. These have been extraordinary hearings over the summer. We have learned a lot. So I am very confident that we will move forward. We have talked a lot about structure, but structure in itself is meaningless without people, and I think we have to understand the whole human capital aspect of it.

So I am looking forward to today's hearing. I am looking forward to getting something done, and I am looking forward to America being a safer place. So thank you, Mr. Chairman.

Senator VOINOVICH. Thank you, Senator Coleman. One of the great things about Senator Coleman is that he was a mayor for many years, and it seems that people who have had some administrative experience have a little deeper appreciation on how important personnel is to one's success.

I would also like to state that Senator Akaka's statement will be entered into the record, and any of the other Senators that would like their statements entered into the record, will be accepted.

[The prepared statements follow:]

OPENING STATEMENT OF SENATOR AKAKA

Mr. Chairman, thank you for holding today's hearing to discuss the human capital issues related to reforming the Intelligence Community. You and I have worked together over the past 6 years to ensure that the Federal Government has the right people with the right skills in the right place at the right time. It is in this light that we hold today's hearing to discuss the gaps in our human capital resources identified by the 9/11 Commission: understaffed counterterrorism centers, the long delay in training employees, and problems in recruiting employees with the requisite skills.

Unfortunately, the need to address these gaps is not new. Discussions on how to reform the Intelligence Community personnel system has been going on for years. Since 1989, various commissions, studies, think-tanks, and outside experts have called for changes to the Intelligence Community's personnel management systems. Recommendations include greater personnel flexibility, stronger personnel management coordination, an integrated personnel and training system for the Intelligence Community, common standards for adjudications, standardized background investigations, improved performance appraisal and management systems, systematic career planning and professional development, and promotion of a sense of community among the agencies. More recently, in 2001, the National Commission on National Security/21st Century, also known as the Hart-Rudman Commission, called for personnel reforms including rotational assignments for national security personnel and programs to recruit skilled individuals by paying educational costs in exchange for government service.

While some of these recommendations have been adopted, the 9/11 Commission report asks for further action. It is clear that first and foremost, the management of human capital in the Intelligence Community must be improved. The Comptroller General recommends there be a Chief Operating Officer under the National Intelligence Director (NID) to handle daily agency management. Depending on where the NID is placed in the executive branch, I recommend we consider this proposal to ensure that effective human capital management, the key to any successful organization, is a high priority. Such an individual could also have responsibility over issues related to information security and financial management.

Moreover, I believe that a Chief Human Capital Officers Council, similar to that created in 2002 which focuses almost exclusively on policies pertaining to competitive service Federal employees covered under title 5, United States Code, should be created for the Intelligence Community. Based on recommendations made by the

National Academy for Public Administration in the 1989 report, "The Intelligence Workforce for the 1990s: A Review of Personnel and Compensation Systems to Meet Current and Future Missions," such an organization would be responsible for identifying, developing, and sharing best practices in recruitment and retention efforts and coordinating legislative requests for personnel flexibilities.

Mr. Chairman, as you know, there is already legislation pending before Congress to improve the recruitment and retention of Federal workers with critical skills. In both the 107th and 108th Congress, I, along with several of my colleagues on the Committee, introduced the Homeland Security Federal Workforce Act. Although the Senate passed the most recent version of our legislation, S. 589, last November, the House has not taken action on the measure. S. 589 would permit the payment of an employee's educational costs in areas of critical national security importance—such as foreign language, science, mathematics, and technology—in exchange for government service. This approach, along with advanced planning and skills assessments by Federal agencies, would allow a National Intelligence Director to hire employees with skills tailored to meet agencies' national security needs. Although the FBI and the CIA have both testified before this Committee that they are receiving a record number of employment applicants, one of our priorities is to ensure that there is a large and highly qualified applicant pool from which to select employees possessing critical language, technical, and scientific skills, especially those possessing a combination of these skills.

It is also critical that national security professionals have a breadth of experience in the interagency process and strong knowledge of substantive policy issues. Both elements are crucial to ensuring crosscutting policy formulation and analysis. To address this need, S. 589 creates incentivized rotational programs within the Intelligence Community aimed at breaking down cultural and artificial barriers to information sharing, building a cadre of highly knowledgeable professionals, and ensuring cooperation among national security agencies.

Lastly, the majority of the Intelligence Community currently operates under a non-statutory internal appeals system for performance and conduct cases. Although I would not change this internal appeals system, as a strong supporter of employee rights and protections, I believe that there are certain elements that every appeals system should contain: notice, an opportunity to respond, employee representation, and a decision by an independent adjudicator. Any entity that oversees the Intelligence Community must ensure that these reasonable elements are included in an employee appeals system.

Furthermore, as a leader on strengthening Federal whistleblower laws, I am concerned by the myriad of laws governing employees in the Intelligence Community: The Intelligence Whistleblower Protection Act, the Whistleblower Protection Act, the Military Whistleblower Protection Act, the FBI Whistleblower Protection Act, and the authority given to Inspectors General to investigate and report allegations of retaliation for whistleblowing. In light of the heightened need to encourage Federal employees to come forward with information vital to preserving our national security and protecting those who make such disclosures, there must be strong oversight and emphasis on investigating disclosures and protecting those making disclosures. As such, I recommend that there be a designated officer in the Office of the Inspector General of the National Intelligence Directorate to handle whistleblower reprisal complaints. Similar to the Civilian Reprisal Investigations Office in the Department of Defense, this office would serve as the key contact point for whistleblowers. The office would have whistleblower affairs officers who would conduct investigations, coordinate personnel management remedies, and provide outreach to Federal and non-Federal agencies involved with whistleblower affairs.

Mr. Chairman, each of my recommendations would improve human capital management within the Intelligence Community, in turn, which would strengthen our national security. Again, I thank you for holding today's hearing, and I thank our witnesses for sharing their views with us.

PREPARED OPENING STATEMENT OF SENATOR DURBIN

Thank you, Chairman Voinovich, for holding this very important hearing on the 9/11 Commission's recommendations regarding their suggested changes in the Intelligence Community's personnel structure. You have been a stalwart leader on human capital issues for many years, and I thank you for giving us the opportunity to hear from these excellent witnesses today.

This hearing focuses on three main recommendations of the 9/11 Commission, namely improving the Presidential appointments process for national security officials, establishing one agency to conduct security clearance background checks, and

providing additional personnel flexibilities to the Federal Bureau of Investigation that will reflect its increased responsibilities in the areas of counterterrorism and other intelligence gathering.

Presidential nominations.

I agree that we need to ensure that Presidential nominees for members of the administration's security team are approved by the Senate in a timely fashion, but I do have some reservations about how to go about this without diminishing the important role of the Senate in the confirmation process. I am concerned about putting an arbitrary time limit, in this case 30 days, on the Senate to hold an up or down vote on a nominee. This takes away power from the committee chairpersons and the minority party in the Senate to subject nominations to appropriate scrutiny.

Also, I am concerned about why this group of nominees—as opposed to judicial nominees or some other subset of administration nominees—should receive preferential treatment.

It is useful to consider the August 30 CRS analysis of the actions of the Clinton and Bush administrations on the topic of Senate confirmation of the president's security team. That report showed that confirmation of this group of nominees was rarely delayed more than 30 days. The report shows that only 14 of the 49 nominees that would have fallen under this category were delayed longer than 30 days.

Security clearance.

The committee is drafting a proposal that would encompass the 9/11 Commission's recommendation to centralize responsibility for security clearances in one agency, and I applaud those efforts. However, I think the problems that have arisen in recent months as the Department of Defense and the Office of Personnel Management have tried to coordinate their efforts needs to be carefully considered since the DOD handles about 80 percent of the background checks needed in this country. Talks between these two entitles broke down in May over OPM's concern about taking on too much financial risk.

There are about 188,000 people waiting for clearance, according to DOD's files, and it takes about 375 days for a security clearance to make it through the background check and adjudication process, according to a recent investigation by the House Government Reform Committee. This is far too long and deserves further exploration as to the reasons.

FBI personnel reforms.

While the FBI has already begun to overhaul itself in an effort to create a smarter, more flexible workforce, more could be done in terms of coordination among existing staff. The 9/11 commission report found, among many other things, that FBI analysts were often untrained and therefore were not used to great capacity by the agency's agents. It would be interesting to learn more about how the bureau will be improving opportunities for agents and analysts to work together.

Other legislative proposals.

I understand the committee may be contemplating legislative reform regarding improving and encouraging intelligence personnel to continue their education by enabling Intelligence Community personnel to receive non-taxable student loan repayments from the agency that employs them.

I would hope serious consideration could also be given to legislation I have proposed that would authorize partnerships between local school districts and foreign language departments to provide intensive development for K through 12 foreign language teachers and incentives for students to major in math, science, or foreign languages. It is well-documented that the United States Government needs to bring personnel with a high proficiency in less commonly taught languages, such as Arabic, Farsi, and Thai. *The Homeland Security Education Act* would go a long way toward preparing our intelligence workforce for the linguistic challenges ahead.

Thank you and I look forward to hearing from today's witnesses.

Senator VOINOVICH. I now would like to hear from our witnesses, and we will start with Ms. Gorelick.

TESTIMONY OF JAMIE S. GORELICK, ESQ.,[1] COMMISSIONER, NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

Ms. GORELICK. Thank you, Mr. Chairman, for having us here today, and thank you, Senator Coleman for joining us as well. I agree with the Chairman's observation. You ran a very well-run city. We worked together at the time.

Mr. Chairman, we are honored to appear before you today. We want to thank you and we want to thank the leadership of the Senate for the prompt consideration of our recommendations, and we want to thank you for the support that you have shown to our Commission.

The Commission's findings and recommendations were strongly endorsed by all ten Commissioners, five Republicans and five Democrats. We share a unity of purpose, and we have called upon Congress and the administration to display the same bipartisan spirit as we collectively seek to make our country and all Americans safer.

I would like to first address the issue of personnel reform and the FBI, and then my colleague, Fred Fielding, will address the remainder of the topics before us today.

The FBI has been a major force and a major focus for intelligence reform since the 9/11 attacks. Building on the work of a Congressional Joint Inquiry, the Commission found that the FBI fell far short of the mark in adequately carrying out its domestic counterterrorism mission. It was the lead agency in investigating foreign terrorist groups but it did not have the capability to link the collective knowledge of thousands of agents in the field to national priorities. As a result, crucial information did not find its way up the chain of command to those who could act upon it.

One of the startling examples of this was that the Acting Director of the FBI did not learn about the Bureau's hunt for two possible al Qaeda operatives in the United States or the Bureau's arrest of an Islamic extremist trying to learn to fly until after September 11, and that was too late.

We believe that institutional change to improve the FBI's intelligence capabilities and to focus on the Bureau's counterterrorism mission is of utmost importance to the country's national security. We have not recommended the creation of a new domestic intelligence agency, a MI5 type of structure, because we believe that creating a domestic intelligence collection agency is too risky for civil liberties, it would take too long, it would cost too much money, and it would sever the highly useful link between the criminal and counterterrorism work of the FBI and the work that the FBI does with State and local law enforcement.

We considered other structural changes, but we decided that the broader changes would not be necessary if our other recommendations were adopted. As you know, as part of our recommendations, we proposed a National Counterterrorism Center. We recommend a strong center overseeing all of the foreign and domestic counterterrorism work, bringing it all together in one place, and we

[1] The joint prepared statement of Ms. Gorelick and Mr. Fielding appears in the Appendix on page 00.

also recommend creating a National Intelligence Director who can set and enforce standards for collection, processing, and reporting of information; but I would note that if you did not have a strong National Counterterrorism Center or a strong Intelligence Director, we might well have come out with a different set of recommendations with regard to the FBI.

We are encouraged by the direction in which Director Mueller has taken the FBI, and that he has created some new structures within the Bureau to keep its role focused. He has made progress, but he has a long way to go. He has established the Office of Intelligence overseen as the top tier of FBI management. He has created field intelligence groups in all the field offices to make sure that the FBI priorities and the emphasis on intelligence are put into practice. Improvements in information technology systems, connectivity, and information-sharing with the rest of the Intelligence Community are planned, but progress has been slow.

These kinds of structural and technological changes, as you, Mr. Chairman, point out, only take you so far. Without the development of an institutional culture within the Bureau that appreciates that counterterrorism mission and grows strong intelligence officers to support it, all of the structural improvements that we suggest will only be half measures at best. They have to have the right people in place if they are to carry out this important mission. This means establishing an intelligence cadre at the FBI, a specialized integrated national security work force made up of agents and analysts with the necessary training and the necessary skills.

We believe that Director Mueller understands the human resources aspect of institutional change and he understands that the FBI needs to recruit more broadly and that working on national security issues requires specialized training for both analysts and agents. He is currently establishing a program to certify agents as intelligence officers, a certification that will be a prerequisite for promotion to the senior ranks of the FBI. New training programs have been instituted for intelligence-related subjects. Director Mueller has also proposed creating an intelligence directorate to include units for intelligence planning and policy and for the direction of the analysts and linguists.

Now, some of these changes have been slow in coming, and I would say to you all bear oversight and scrutiny by Congress in order to monitor their implementation. We think that Director Mueller is moving in the right direction. He has begun the difficult effort to shift the FBI into a new preventive counterterrorism posture, and we have to ensure that he succeeds.

The Commission's findings in this regard have not been entirely reassuring. The field offices that we visited showed that there was slow progress. Change so far is from the top down, and we are concerned that without sustained support and dedicated resources at the highest levels, the management in the field offices may return to focusing on local concerns over the national security mission. I would say, parenthetically, having been at the Department of Justice, you could see this as you visited field offices—that there was just enormous pressure on them locally to address whatever the local law enforcement priority was. We have to make sure that the national security mission remains strong.

To support the Director's reform efforts and to institutionalize sustained reform within the FBI that will last beyond Director Mueller's tenure, the Commission recommends that the President direct the FBI to develop this intelligence cadre. To ensure that this work force is focused on the counterterrorism mission, we need personnel reform in the areas of recruitment, in the areas of hiring, training, and career development.

So, first, the FBI should fully implement a selection process that centers on the need for agents and analysts with backgrounds and skills appropriate for intelligence work. This would include knowledge well beyond the traditional law enforcement background of most FBI agents in the areas of intelligence, international relations, language technology, and so on.

Second, the FBI should establish basic training for new agents and analysts in both the criminal justice and national security disciplines. These agents should begin their careers with meaningful assignments in both areas so that each of them understands both disciplines.

Third, the FBI agents and analysts should have the opportunity to specialize and follow a career track in either criminal justice or national security. Certain advance training courses and assignments to other intelligence agencies should be prerequisites for advancements along the national security track.

Fourth, all senior FBI managers should be certified intelligence officers. This includes those managers working on law enforcement cases.

Fifth, each field office should have an official at the deputy level for national security matters with management oversight to ensure that national priorities are carried out in the field.

Finally, a dedicated team approach needs to be brought to bear on national security intelligence operations. The FBI should institute the integration of analysts, agents, linguists, and surveillance personnel in the field as well.

Mr. Chairman, we understand that without dedicated resources, these personnel reforms at the FBI cannot succeed. To support these reforms, the Commission also recommends that the FBI align its budget structure to protect the intelligence program, making sure that the resources are managed according to national priorities. Congress has a critical role to play in monitoring these reforms.

The FBI has 28,000 employees, 56 field offices, 400 satellite offices, 47 legal attache offices, and countless other resources. It is a massive institution and it has a massive job to perform.

The Director has announced plans and programs to move the Bureau toward enhanced national security priority, but we believe he needs to have the full support and oversight of Congress. The President and Congress have the obligation to make sure that these essential reforms do not receive only transitory attention, but become institutionalized in the creation of a better, stronger FBI.

Senator VOINOVICH. Thank you very much. Mr. Fielding.

TESTIMONY OF FRED FIELDING,[1] COMMISSIONER, NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

Mr. FIELDING. Thank you, Mr. Chairman, Senator Coleman, and Senator Pryor. I would like to join also in a word of appreciation for the work this Subcommittee has done. It has been very rewarding to those of us on the Commission to know that people have grasped what we were hoping they would grasp and are taking the ball and running with it so expeditiously.

I would like to focus my remarks on the issue of transitions and improvement of transitions between administrations. Mr. Chairman, last year you put forward a bill that would streamline and improve the Presidential appointment process, and we commend you for that leadership and must tell you we studied that as part of our deliberations as well, and we found it to be very thoughtful and instructive and important. And, as a personal side and aside from the Commission work, having labored in the vineyards of transitions and seen all the problems, I must say that your Section 202 contains an awful lot of ideas and captures a lot of the wishes of people that work on the transition and have to work through this, and we hope that this goes further.

We see a clear convergence of the Commission's recommendations with your proposal in the following areas: First, encouraging Presidential candidates to begin choosing appointed officials in high-level positions for the new administration even before the election to expedite the ultimate confirmation process, to encourage and institutionalize them to not be afraid to show that they are planning, because planning is so important.

The second thing is to reduce the number of Presidential appointed positions in national security agencies that would require Senate confirmation, which will alleviate the strain of the current appointment and confirmation system.

And, third, to streamline and consolidate the procedures such as financial disclosure, reporting requirements to streamline the overall Presidential appointment process. Both you and we clearly find that the status quo needs change.

We must recognize that the time of a transition is a time of great vulnerability for our country. I mean, as we know that terrorists study and look for our mistakes, this is a prime time to do something, because it is a period where there are basically people going out and people coming in, but nobody is in charge in certain areas unless everyone is vigilant and realizes the vulnerabilities this creates. The 9/11 story informed us of the understanding and importance of reforming this process.

The 2000–2001 transition between administrations occurred at what we now can see was a crucial point. In the lead-up to 9/11, the *USSC Cole* had been attacked less than a month before the Presidential election. Almost all of those involved in the investigations told us that they strongly suspected the hand of al Qaeda—and perhaps Bin Laden—were involved in that attack, but no action was taken to retaliate for the attack on the *USSC Cole* in the

[1] The joint prepared statement of Ms. Gorelick and Mr. Fielding appears in the Appendix on page 00.

months before 9/11. Senior Clinton Administration officials told us that they didn't have a definite answer on the question of responsibility. Senior Department of Defense officials with the incoming administration said that by the time they were in place and the whole Pentagon team was in place, it was stale. President Bush told us that he was not told and did not know that the Clinton Administration had issued an ultimatum to Taliban.

Now we know that Bin Laden expected the United States to retaliate and expected that there would be some action, but we can observe how in this particular case the transition process didn't serve well in the briefing and the handing over of important national security decisions from one administration to another. Each incoming administration crafts its own transition. It can ask the outgoing administration for whatever it likes, but the latter has no affirmative obligation. The Clinton Administration did make substantial efforts to brief its successors, but information was not transferred with the consistency that was necessary.

The dispute over the 2000 election resulted, to be sure, in a far shorter transition period than we would have normally been able to enjoy, but we don't consider the problems that have been highlighted to be unique to that particular transition.

Jamie and I both have had considerable experience in transition and the transition process, that it is never a seamless one, but the difficulties have been exacerbated by the growing number of political appointees and positions that require Senate confirmation, both within the national security arena and otherwise. Appointees require security clearances that involve background investigations, security questionnaires, and sometimes polygraphs. The growing number of political appointees involve a vast amount of manpower and a huge effort and a consequent increase amounts of time needed to complete the clearance process itself.

The delay in the confirmation in 2001 was in some cases considerable, as was mentioned by the Chairman. Deputy Secretary Wolfowitz wasn't confirmed until March 2001. The Undersecretary for Defense for Policy wasn't confirmed until July. Basically, Secretary Rumsfeld has told us, as he told you, he didn't have a team in place, and he gave considerable credit to the expertise of the holdover appointees from the previous administration who helped him, but he observed that there was no real initiative that was possible until the new team was in place.

National security policy-making is too important to be disrupted by transition between administrations or delay by an overburdened system. It is just too important. We need to make clear and complete communication of national security policy information to a new President. We need to make that a requirement, and the practice of confirming and obtaining security clearances for a new administration has to be streamlined as much as possible.

Our 9/11 Commission recommended reforms in a number of areas to make sure that the transitions would work more smoothly and efficiently. First, even before the election, Presidential candidates should submit names of selected members of their transition teams to the FBI or whoever is the agency that is conducting the clearances so that they can obtain their security clearances im-

mediately so that once the election is over, they are getting out there and they can commence that transition on the day after.

Second, immediately after the election, the President-elect should submit lists to fill the vacancies of his national security candidates, and these people can then begin getting their clearances so, hopefully, by January 20, those that need to be in place will be in place.

Next, we recommended a single Federal agency should be responsible for providing and maintaining the security clearances. This would ensure uniform standards. It would ensure efficiencies, and it would also ensure one questionnaire, one financial reporting requirement sheet, anything that can streamline it, and you have to have a single data base. The agency that we are proposing should be responsible for administering polygraph tests on behalf of the organizations that require them.

The next recommendation was that during the transition periods and no later than January 20, the President-elect should submit the nominations of his entire new national security team up through the level of at least undersecretary on all cabinet departments, and the Senate should adopt, we would suggest, special rules that require hearings and require a vote within 30 days of submission of these names, at least for the national security positions, and that the Senate should not require confirmation of executive appointees below executive level three.

Last, as soon as possible after election day, the outgoing administration should provide the President-elect with a classified compartmental list that catalogs specific operational threats around the world and to our national security. That list should include major military or covert operations that are ongoing and pending decisions on possible use of force. Such a document would provide notice and a checklist inviting the President-elect to inquire and to learn more, and each party has responsibility in that task.

So, Mr. Chairman, we thank you again for the opportunity to testify before you. The recommendations we have discussed before this Subcommittee today on personnel reform at the FBI and reform of transition between administrations comes directly from our studies, and we believe they are imperative to ensuring that our country is safer and more secure. We should seize the moment. We should move forward with this reform and with the other reforms that we suggested, but with your counsel and your direction, we believe the Nation can and will make wise choices.

And we would be pleased to respond to any of your questions at this point. Thank you.

Senator VOINOVICH. Thank you very much for your testimony.

I would like to welcome Chairman Collins to this hearing. Would you like to make any statements before we start to ask the witnesses questions?

Chairman COLLINS. No, Mr. Chairman. I just want to thank you for all the work you have done in the area of human capital and thank you for chairing today's hearing.

Senator VOINOVICH. Thank you.

If Congress creates a National Intelligence Director, how much authority should this individual have over personnel matters, for example transferring people from one agency to another agency? Along with that, I would like to quote from the DHS Inspector Gen-

eral. He issued a report entitled "DHS Challenges in Consolidating Terrorist Watch List Information." He said: "In the report, the IG mentions the staffing problems associated with a terrorist screening center and a terrorist threat integration center." Specifically, the report says, "in the absence of a strategy and central leadership, there has been no effective means of coordinating among Federal agencies to ensure that the TTIC and the TSC obtain the personnel resources they need."

Does the 9/11 Commission have a similar view on this issue? Do you think that a chief human capital officer could fulfill an important strategic personnel role for the Intelligence Community? In other words, we are going to have a new Director and they are going to have to be evaluate the personnel in all these various agencies, and I would just like your reaction to whether or not that individual should have working for them a chief human capital officer, as we have mandated in other agencies.

Ms. GORELICK. Mr. Chairman, I would like to make a couple of comments. We recommended that there be four responsibilities of the National Intelligence Director, and one of them is personnel. The reason for that is that building an intelligence cadre across the various intelligence agencies—which could cross-pollinate and they could get to know each other and they could have common standards—would be enormously helpful. We didn't address precisely about the ability to move people around, but the other authority that the National Intelligence Director would have, in our view, is budget authority, and that would make a National Counterterrorism Center, for example, much more effective than the Terrorist Threat Integration Center currently is or the Terrorist Screening Center, because it is borrowing people. It doesn't have its own resources. It has no centralized direction to draw upon other agencies.

So if you combine the personnel authority and the budget authority that we contemplate, I think both of the issues that you have raised would be addressed. I, frankly, was unaware and we did not precisely talk about a position of the sort you describe, but if I were the National Intelligence Director, I would certainly want one, because I would want to have someone to turn to on all of these personnel issues across this vast array of agencies.

Senator VOINOVICH. This Subcommittee, as part of our human capital reform agenda, required a chief human capital officer in all CFO agencies, it was interesting that when agencies prepared their GPRA, so many of them never talked about the personnel that they needed to get the job done. One of the first things that the new intelligence director must do is determine whether the Intelligence Community has the employees that are needed to get the job done.

Following up on that, certain agencies have more personnel flexibility than others. For example, the FBI does not have the flexibilities that others do. Would either one of you want to comment on that? And I will mention they do have some flexibilities that have been given to them under the previous law and under the new law that we passed, but in addition to those, do you think that they ought to have more flexibility?

Mr. FIELDING. Well, Mr. Chairman, I think that it is very important that we understand what we are proposing, because it fits

right into what you are saying. There has to be flexibility. There are a couple of things that are problems that we kept seeing. One of them was—I don't know how to call it. I guess I would say there is a need to break down subcultures within our Intelligence Community where everyone develops their own little niche and they don't talk to each other, as we have seen. The training has to be consistent. There has to be somebody who oversees and understands what training there are across the Intelligence Community.

For instance, language proficiency is a horribly embarrassing situation for us right now. We just don't have it.

Senator VOINOVICH. I hate to interrupt you, but one of the things that really drove me right up the wall after 9/11 was we put out a clarion call, can anybody speak Arabic and Farsi. I could not believe that our government was not in a position after we had fought Desert Storm to have those people on board.

Mr. FIELDING. That is exactly what I am suggesting, and if you have a limited number of people, there has to be some way to make sure that they are at the right place at the right time, and there has to be a development of training and recruitment that is consistent so that—this is not going to be an easy task to get the people that we need. The problem that we have, candidly, with TTIC, for instance, right now is that, as Jamie says, they are coming from different agencies, but all they are doing is filling slots. That doesn't mean that the person coming from that agency has the expertise that is needed. Somebody has to figure out what is needed across our Intelligence Community, and this is a personnel issue.

Ms. GORELICK. If I might just add very quickly in response to your comment, Mr. Chairman, about the hiring of linguists and others, it is important to understand that the FBI for decades had as its model of who to hire an experienced cop. It would try to hire the best local law enforcement people it could find, but it did not have a model for an analyst. It did not have a model for a linguist. It did not have in its hiring criteria or its flexibilities an effort to bring in that type of person.

So even when there was this outpouring of support and people coming forward with language skills, the Bureau was not able to digest and accept many of the people who volunteered because of the requirements that it had on the books.

Senator VOINOVICH. Thank you.

Just one last issue: The security clearance process. Do you think with the different cultures of all these agencies, that we will ever be able to get one agency to assume the process?

Mr. FIELDING. I think that agencies are sometimes responsive to congressional directives.

Ms. GORELICK. This is an imperative. I have had clearances from the DOD, the Department of Energy, the CIA, and the Justice Department, and all of them started afresh, and that is frankly ridiculous. I think that is a common experience. It makes us inflexible, because it is harder to move people around. It takes a horrificly long time to get clearances. We impose tremendous burdens on people.

One of the suggestions that was made to the Commission was that the Federal Government be more welcoming to people from the private sector who might come in for a period of time and go

back out. If you impose transaction costs that are so high on people coming in and out, they are just not going to do it. Once you get in, you are just never going to go back out again, or it is too high a burden to come in in the first place, and that is a tragic loss.

Mr. FIELDING. Yes. That is really the problem with the whole security clearance and the whole clearance process—we make it so difficult for people to come into government, that the very laws that are supposed to carry out the will of the people become the very instruments to inhibit the people from having their very best come in. And I hate to paraphrase, badly, Plato, but, "the penalty of wise men who decline to participate in their government is to be ruled by unwise men," and we must not let that happen.

Senator VOINOVICH. Thank you. Chairman Collins.

Chairman COLLINS. I will defer to Senator Pryor.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. Thank you. Let me follow up with what you are saying there. So as I understand your recommendation, right now we have about seven or so departments that are doing these security clearances, but your recommendation is to centralize that and put it into one office. I think there are some here on the Subcommittee and in the Senate that would like to see that responsibility be put under the National Intelligence Director. Would that be agreeable to you all? Is that consistent with your recommendation?

Mr. FIELDING. The recommendation, it is more important to us that it is in one place, whether it is directly in the NID's control or whether it is a designated agency. The key is to have uniformity in the process and also consistency in the process and consistency in the clearing goals, the timing goals.

Senator PRYOR. Some of this right now, as I understand it, has been contracted out to the private sector. Does that concern you that some of these functions are contracted out?

Ms. GORELICK. Well, all of us, I think, have had contact with individuals who are in the contracting community who perform these services, and many of the services could easily be contracted out because they are simply verifying very mundane facts.

Senator PRYOR. Just mundane facts?

Ms. GORELICK. Mundane facts. At the level of judgment, you would want to have issues determined by government personnel, but we didn't discuss this as a Commission, so in answering your question, we are drawing on our own experience, but I don't personally have an objection to having some of the services provided external to the Federal employee base.

Mr. FIELDING. No. I wouldn't object to that as long as you had the consistency and standardization.

Senator PRYOR. I think that is the key, yes.

Mr. FIELDING. That is the key.

Senator PRYOR. Yes. Because if you do contract out, you may lose consistency. You may get different quality of product back. Do you agree with that? We are giving very serious thought to the Commission's recommendations and we are just trying to work our way through some of these.

Let me move onto a different subject, and that is the 9/11 Commission has recommended that we remove the executive level three appointees from Senate confirmation. What led the Commission to draw the line at that level? Give us some insight on how you arrived at that conclusion.

Ms. GORELICK. Well, we just looked at the numbers, really, and decided that if you were going to try to have the national security team in place, and I would note that our recommendations are only for the national security team, and you wanted to have everyone in place 30 days of the inauguration, we just looked at what we thought the Senate's system for confirmation could handle and drew the line that way. There is no magic to it. What we were trying to do is put our government in a position where no later than 30 days after inauguration, there would be an up-and-running functioning government.

Mr. FIELDING. And, Senator, if I may add to that just a bit, as Jamie said, there is no magic to this. We were trying to become efficient, especially in the national security positions, so that we don't have this very dangerous hiatus that we made reference to earlier.

The other thing that you have to acknowledge is that it also imposes the requirement on the integrity of the Executive Branch. When they are appointing people, if there is a problem that develops within their FBI clearance, for instance, they must deal with it responsibly if you would do away with the confirmation hearing, because part of the process of the confirmation is to deal with that sort of issue.

Senator PRYOR. Let me ask, if I can, on this confirmation issue and the dangerous hiatus that you referred to when one administration passes the baton to other administration, did you all get into when there is a party change, if it is worse during the time of a party change, or is it just inherent in changing administrations that you might fumble that baton?

Ms. GORELICK. It is worse when the transaction is between parties, as you can imagine.

Senator PRYOR. That is what I would assume.

Ms. GORELICK. Intra-party, there have been issues. I mean, between the Reagan and Bush Administrations, it wasn't completely smooth, for example, and Fred can speak to that, but it is a bigger problem between parties because basically the government empties out. You have one holdover in each department, but the White House is vacant. You come in the first day, and there is nothing, and that is an actually fairly scary scenario that we both have seen since we have probably, between the two of us, done more vetting for our respective parties than maybe anybody else, and we have worked, both of us, on transitions. To arrive in an office with nothing there is not a comforting picture.

Mr. FIELDING. Clearly, to confirm your suspicions, it is much more difficult when there is a change in party just because ordinarily you have more than one person staying over, holding over or even desiring to hold over if it is the same party, but there is none. And what Jamie says, people don't seem to realize when you go into a White House, for instance, and the policy shop of other departments as well, you open the file drawers and they are empty,

and there is no little book left behind saying this is it. So it, again, requires the integrity of both parties to this thing to make sure that everybody hands off and understands what is going on.

Senator PRYOR. Thank you, Mr. Chairman.

Senator VOINOVICH. Thank you. Senator Coleman.

Senator COLEMAN. Thank you, Mr. Chairman. It is interesting to note that all the folks at the table here have been involved in running operations at a local level, State level. I was involved in a transition as a mayor. I walked in and there was nothing in the file, nothing there, and obviously we can't afford to do that.

I would note with interest and I would suspect that the transition recommendations are relevant even if there is a continuation of an administration. In other words, folks move on. There is a lot of discussion today of who is in, who is out. I would suspect that the timeliness of these things, the streamlining of process, are just as relevant. It may not be as much a conflict, but just as relevant in the transition of one administration into a second term.

Ms. GORELICK. You are unlikely to have everyone at the State Department walking out the door at the same time. The President would be in a position, presumably, to ask his appointees to stay until their successors are in place.

Senator COLEMAN. I am just looking at our end in terms of speeding up clearances and some of the things that we would need to do just to make it easier to move in so folks can keep moving at the same pace.

Mr. FIELDING. Well, actually, some of the things that are proposed, especially the pending bill, are needed regardless of transitions. It is needed for the efficiency of government, for getting people in. Again, as I said, we must be sure we are getting people in and not making the price of entry so prohibitive that they don't want to come into public service.

Senator COLEMAN. I would also compliment you for your boldness in the recommendation to encourage candidates to begin choosing appointed officials in high-level positions before the election. I presume you have got one candidate out there looking—what is the message today. You have another candidate trying to get control of the message, and no matter what we do, it is very political. So if you put forth the name of anyone and that gets out, that runs the risk of getting off the message of creating an issue.

Prospects of realistically getting that done, how would you rate that?

Mr. FIELDING. As I said earlier, I think that the big problem is, from my experience, a candidate doesn't want to acknowledge that he or she is so sure that they are going to win that they are picking their cabinet, and so you have to force them to do it, because if it is publicly known that they are forced to do something, then it is easy for them to do what they would otherwise logically do.

Ms. GORELICK. We would like to make it be, and appear to be, irresponsible not to begin thinking about the next steps even when the election is pending and, at the very least, to identify those who would be responsible for a transition.

Senator COLEMAN. If there was a way that you could assure that would not get caught up in the political debate, that would be helpful. I am not sure how that is done. Again, I support the rec-

ommendation, but the reality is you put forth any name in any position and it becomes a subject of discussion at a time when you want to discuss something else, perhaps, so a great challenge.

One of the issues that has come up in the course of these hearings has been the question of accountability. A number of my colleagues have said we have read the 9/11 Commission Report; there were some things that were not done; there was follow-through that didn't happen. And yet there is the question of accountability. We are talking about making change and changing systems here, but do we need to have kind of a public accounting of who is responsible, who messed up before we go forward? That issue still hangs out there and I am just not sure it has been resolved.

Ms. GORELICK. We talked about this. We decided that for purposes and our charter, the best thing we could do is lay out all the facts. If we, ourselves, tried to decide who should remain in government and who should lose their jobs, it would be a morass from which we might not ever re-emerge, and it would detract from our efforts to do the things that we thought were more important. But if I were running any one of the executive agencies whose conduct is the subject of our very detailed findings, I would review them and determine whether there should be accountability on the part of anyone who continues to work for me. I just think that is basic management, and that material is there for everyone to see.

Senator COLEMAN. Looking at the changes, one of the concerns with regard to the FBI, the Commission noted the concern about the sustainability of the change. Right now, it appears Director Mueller is moving in the right direction, right attitude, right approach, but there is concern about the long-term sustainability, and the issue then comes about all this bears oversight.

Do you have any suggestions about how we do a better job on oversight? I think we are moving forward on a lot of these recommendations, but the one area that is probably going to take a little more time is on our end. With all that we have to do and the demands on time, can you just talk a little bit about the type of oversight that you would like to see? What should we be doing that we are not doing now?

Mr. FIELDING. Our experience with the intelligence oversight in particular was that everyone, when the door was closed and the cameras were off, acknowledged to us that the system was inefficient and was ineffective. We made what were considered to be bold recommendations, in all due respect, to how Congress should reform itself, and maybe they were bold and maybe they were unattainable, people would tell us, but given the background and given the subject matter that we were discussing, if we couldn't make such bold recommendations out of September 11, when would we ever make such bold recommendations?

So just to wrap up, there is a need to reform. There is a need to take the politics out of oversight, and we hope that you will study it and come up with a solution.

Ms. GORELICK. If I might add to Fred's comments, one of the reasons that we were so prescriptive in our suggestions and recommendations with regard to the FBI is that we were quite conflicted given the performance we saw there. We concluded if the FBI moves in these very clear directions and there is pressure from

Congress to do so, then it can get where it needs to go. We have outlined what we think oversight of the FBI and its progress should look like in the near-term; we were very specific. In general, our observation with regard to congressional oversight is that oversight committees should ask of each agency, "What is your biggest challenge?" "What is your strategy to meet that challenge?" and "What are the obstacles to your achieving that strategy?" What happens too often is that members and staff try to mimic what the Executive Branch is doing and try to oversee particular programs and activities. At the same time, no one is looking more strategically at the overarching obstacles.

I would suggest that you look at the larger picture, force the agencies to tell you what their strategies are and hold them to it.

Mr. FIELDING. If I could just add one more thought to that, the problem too often is that oversight means "come tell us when you did something wrong," and I think oversight has to be more than that.

Senator COLEMAN. Thank you. Thank you, Mr. Chairman.

Senator VOINOVICH. Madam Chairman.

OPENING STATEMENT OF CHAIRMAN COLLINS

Chairman COLLINS. Thank you, Mr. Chairman. Let me begin again by commending you for all the work that you have done on human capital. There is no one in the U.S. Senate who understands better than Senator Voinovich that the people are the key.

I was struck in the 9/11 Commission's Report by many phrases, but one that stuck in my mind was the phrase "good people can overcome bad structures; they should not have to." I am hoping that the work that this Subcommittee and others have done in the past 6 weeks will produce the kind of good structure that enhances the ability of good people, and I want to thank both of you for all of your efforts and all of your contributions to the Commission's work. It really is critical. I think there is nothing that is more important that we will do before we adjourn than the reform of our Intelligence Community, and I really appreciate your being here today.

Earlier this year, I visited what is known as TTIC, the Terrorist Threat Integration Center. In many ways, the National Counterterrorism Center is a beefed up, more robust version of TTIC. I was struck when I visited TTIC by the fact that with the exception of the director and a few of his deputies, everyone else that I saw, everyone else who briefed me, was so young, and what had occurred to me that what the agencies that were supporting TTIC were doing is they were sending very bright eager-beaver young people, but people who had very little experience, and as we know, it takes a great deal of experience to develop the judgment, the intuition, and the ability to be effective.

So one of my concerns is making sure that the NCTC gets the best people. How will we bring that about? Should we give the director of the center direct personnel authority he does not have right now? At present, John Brennan has to rely on the goodwill of the CIA and the FBI and all the agencies that support him. If I were the CIA director, why would I want to send my best people over to this agency? I need them.

So how will we ensure that the National Counterterrorism Center has the high quality analysts? I don't mean to in any way disparage of the ability of the people now working at TTIC, but how can we assure that we get the kind of experienced analysts that is necessary, in my view, to really bring the center to that next level?

Ms. GORELICK. Senator Collins, your having visited TTIC and looked at this ensures that you have the same perspective on TTIC that we did. We came to the same conclusion. It is not what it needs to be. You can ensure that it will be what it needs to be when it is the National Counterterrorism Center, first, by making sure the person who runs it is of a very senior level. We recommend that it is headed by someone at the deputy secretary level person, not someone buried in the bureaucracy. Second, it has to have its own dedicated personnel, and you can ensure that it gets the best personnel because if, as we recommend, the National Counterterrorism Center reports directly to the National Intelligence Director and he or she has budget authority. That is a pretty good lever for getting the very best people.

Third, one of our observations was that there are too many different fusions centers all over town. So if you are in the Defense Department, you are building a fusion center and bringing in people from everywhere else, and the same is true at the State Department, at the FBI, the CIA, the NSA, and it is a bewildering alphabet soup of fusion centers. Well, everyone who wants those personnel wants the very best, and everyone who has the personnel doesn't want to give the very best to a different agency's center. If you can eliminate the other fusion centers, you could save those precious experienced analysts for the National Counterterrorism Center.

Chairman COLLINS. Mr. Fielding.

Mr. FIELDING. And there again, just by giving the authority to one person and having uniform procedures set up and uniform policies, you enhance the chances that you are going to get the people. As I said earlier, unfortunately, and I don't mean to disparage anybody that is at TTIC now either, but some of them are brought there simply to get the numbers in, and as somebody observed, you are not going to send your best person if you can keep them by your side. You are going to send somebody else.

The other thing that may help this is if the National Intelligence Director also has the authority to establish across the Intelligence Community a single senior intelligence service so that this is a career and these people can move where they are needed, if you will, across the government. And I think that would make some sense too.

Chairman COLLINS. Thank you.

Senator VOINOVICH. Thank you very much. We could have you stay here for another half hour, but we have two other panels. We really appreciate your being here today, and I was really impressed with your testimony. Thank you very much for the great service you have given your country, the hours and hours that you have spent. Thank God we have people like you.

Ms. GORELICK. Thank you, Mr. Chairman.

Mr. FIELDING. Thank you, and thank you for your support.

Senator VOINOVICH. The second panel will come forward, and it consists of Mark Bullock. He is the Assistant Director of Administrative Services Division at the Federal Bureau of Investigation.

Mr. Bullock, I understand that you were in my home town.

Mr. BULLOCK. Yes, I was.

Senator VOINOVICH. He took over after Van Harp, and I thought to myself isn't it wonderful that we have somebody that is in administrative services that has actually had some real work experience.

Mr. BULLOCK. Absolutely.

Senator VOINOVICH. Our other witnesses are John Turnicky, a Special Assistant to the Director of the Central Intelligence Agency for Security, and Christopher Mihm, the Managing Director of Strategic Issues for the Government Accountability Office, who I have worked with for the last 5½ years, since I came to the Senate.

Mr. MIHM. Yes, sir. It has been an honor.

Senator VOINOVICH. Thank you for all of your efforts and the great help that GAO has given me in this Subcommittee.

Mr. MIHM. Thank you, sir.

Senator VOINOVICH. Thank you for being here, and we will begin testimony with Mr. Bullock. I would ask you to keep your statements to 5 minutes. We will continue with 6-minute rounds of questioning for the Members of the Subcommittee.

Mr. Bullock, thank you.

TESTIMONY OF MARK STEVEN BULLOCK,[1] ASSISTANT DIRECTOR, ADMINISTRATIVE SERVICES DIVISION, FEDERAL BUREAU OF INVESTIGATION

Mr. BULLOCK. Thank you, Mr. Chairman. It is a pleasure to be here, and thank you to, although Madam Chairman has departed, to the other Senators for having me.

Again, as you stated, I am Mark Bullock. I am Assistant Director for Administrative Services with the FBI.

And, also, I am the Human Capital Officer for the FBI. I am responsible for recruiting and hiring.

Senator VOINOVICH. Pardon me. You are the Chief Human Capital Officer at the FBI?

Mr. BULLOCK. Yes.

Senator VOINOVICH. OK.

Mr. BULLOCK. I am responsible for recruiting, hiring, personnel policy administration, our career development program, and our background investigations, be they FBI employees or executive appointments from the White House. Again, I am pleased to have the opportunity to address this body.

The terrorist attacks of September 11 have brought about profound changes in the FBI, not only in terms of realigning our priorities and resources to prevent another terrorist attack, but also in transforming our work force to carry out our intelligence and investigative missions both in the near term and in the future. The FBI success in preventing terrorists acts and preventing U.S. National

[1] The prepared statement of Mr. Bullock appears in the Appendix on page 00.

security is intrinsically linked to our success in elevating and integrating the role of intelligence in our operational programs.

As stated by Jamie Gorelick, I will extract some of the words from the primary 9/11 human capital recommendation affecting the FBI. Basically, we have to establish a specialized and integrated national security work force, consisting of agents, analysts, linguists, and surveillance specialists who are recruited, trained, and rewarded and retained to ensure the development of an institutional culture with a deep expertise in intelligence and national security.

The Commission's recommendations and implementing actions are fully consistent with the intelligence directorate, the intelligence career service, and newly-formed career tracks of special agents that were announced by Director Mueller in April 2004. These changes reflect the vision and direction that he has set for the FBI in its recently revised FBI strategic plan covering the next 5 years and the Bureau's first ever human capital plan. Additionally, these changes begin to implement the guiding principles that are set out in the FBI's human talent for intelligence, production, and concept of operations.

Underlying the changes in career tracks announced by Director Mueller is the concept of an integrated intelligence career service within the FBI that is fully compatible with the Bureau's investigative mission. From a human capital standpoint, there are three critical elements to building that capacity: Formal career tracks, including intelligence for special agents; formal career tracks for intelligence analysts, linguist, and surveillance specialists; and the intelligence officer certification program. I would like to briefly describe some of the elements of these programs.

For the agent career track, we will have four core tracks. What we envision is four core tracks: Counterterrorism, counterintelligence track, an intelligence track, cyber and criminal track. A candidate would be selected for new agents training. They would go to Quantico, and upon graduating Quantico, they would go to one of our small- to medium-sized offices, which are 41 offices out of our 56 field divisions, and they would serve in those fields divisions for approximately 3 years. They would receive various assignments, becoming a generalist for those 3 years. Then they would be transferred to one of our top 15 offices, where they would be assigned in compliance with their core track designator, be it intelligence, counter-intelligence, cyber, and so forth. They would begin the specialization process. They would receive advanced training and more complex assignments.

For all agents, the new agent training curriculum has been modified to integrate core intelligence objectives, and that is at this point now down at Quantico.

Our analyst track would be very similar to the agent track. We would bring people in, in a centralized fashion, meaning that you would compete on a national basis. They would be selected based upon the skills as deemed needed by program managers. They would go through an interview and assessment process and then the background investigation. Upon being selected, they would go to the College of Analytical Studies for their basic training. I would like to add that at the College of Analytical Studies, the curriculum

was just revised and started with these revised processes this week. After completing the College of Analytical Studies, they would be assigned to a headquarters or field office in a system fashioned to the agents. They would be assigned to one of the four core tracks, just like the agents, and they would have their assignments in line with all-source analyst, a reports officer, or an operations specialist, the all-source analyst being more of a strategic analyst, the reports officer preparing the reports, and the operations specialist being an analyst that is more technical in nature, working on particular cases.

The Office of Intelligence would establish the standards and criteria for professional development opportunities for our analysts. The analyst's career development would include rotations among field offices, headquarters, and our legate offices, and analysts would have to be provided with the proper work environment. We have to staff our offices so our analysts and agents can have the access to the classified materials that they would need. They would have to be provided with the appropriate analytical tools to successfully do their job; and assignments within the Office of Intelligence, agents and analysts at some point would have to become interchangeable. Eventually, that would extend to management and supervisory positions as well.

We envision the special agent career track in intelligence and the intelligence analyst career tracks intersecting at the intelligence officer certification program. The FBI intelligence officer certification program would be a set of formal requirements satisfied through a combination of advanced education and specific intelligence-related disciplines or problem set. The completion of progressively changing and complex assignments in all three of the analytical work areas that I mentioned previously.

The FBI currently is the only Intelligence Community partner that does not have an intelligence officer certification process. We feel in developing this process, which we will have developed by January 2005, that would make the FBI more attractive for members of the Intelligence Community to be detailed to the FBI. It will make our intelligence officers more attractive to be received as detailees in other Intelligence Community organizations.

That completes my opening statement, and I will be happy to answer any questions that you may have, sir.

Senator VOINOVICH. Thank you very much. Mr. Turnicky.

TESTIMONY OF JOHN TURNICKY,[1] SPECIAL ASSISTANT TO THE DCI FOR SECURITY, CENTRAL INTELLIGENCE AGENCY

Mr. TURNICKY. Good morning, Mr. Chairman and distinguished Members of the Subcommittee. I am dual-hatted in my current position, one as the Special Assistant to the DCI for Security, which is the Intelligence Community role, and secondarily, I am the Director of Security for the CIA, which is the internal CIA role.

In my role as the Special Assistant to the Director of Central Intelligence for Security, I would like to share with you ongoing initiatives that have already improved security processes in the Intelligence Community. The war on terrorism has underscored the

[1] The prepared statement of Mr. Turnicky appears in the Appendix on page 00.

need for the Intelligence Community to facilitate the sharing of intelligence information while protecting sources and methods. The Intelligence Community's security professionals play a pivotal role in monitoring the impact of security actions on intelligence operations and analysis. We believe the Intelligence Community had made significant strides in standardizing policies and procedures that provide a much stronger foundation than that which existed prior to September 11, 2001.

In March 2002, the Director of Central Intelligence envisioned the need to centralize the management and oversight of Intelligence Community security policies and procedures, and he endorsed the formation of a Director of Central Intelligence Special Security Center, the DSSC. The center is pursuing initiatives to produce more effective and efficient security practices within the Intelligence Community. The center is working to ensure that existing common security investigative and adjudicative practices are consistently implemented. As facilitated by the DSSC, the Intelligence Community security directors have collaborated on strategies to improve and strengthen common security policies and practices, using the common guidelines for background investigations and adjudications, specifically the Director of Central Intelligence directives, executive orders, and national security directives. The Intelligence Community security directors strive to meet the requirements for consistent security processing while reducing redundant processes and remaining flexible enough for unique requirements.

Some ongoing actions include performing policy review to promote standardization and reciprocity within the Intelligence Community, conducting oversight on the implementation of security policies, standardizing personnel security training to foster uniformity throughout the clearance process, and improving interagency reciprocity and security clearances to reduce adjudicative processing redundancies across the Intelligence Community. In addition to the ongoing actions outlined above, a central security clearance data base repository is in operation at over 100 facilities worldwide and will become the single source for the Intelligence Community's security professionals as the clearance and validation data base. The repository may also support a number of information-sharing activities within the Intelligence Community, including intelligence dissemination, expedited personnel security clearance processing, and our common badge initiative.

In response to the Subcommittee's request for views on its propose legislation to create a centralized investigative service under a national intelligence director, it is premature at this point to provide an official position on legislation until the President presents his proposed intelligence reform legislation which will address many of these issues. The President has already issued an executive order to strengthen the management of the Intelligence Community, which includes the direction to the DCI in its role as the leader of the Intelligence Community to establish common security access standards for managing and handling intelligence systems, information, and products. The President agrees with the 9/11 Commission's recommendations for improving information sharing while protecting national security information.

The Intelligence Community's security directors believe that changes implemented by the security community since September 11, 2001 have significantly improved the use of common standards and practices. We will continue to work together to streamline and improve the security process.

In closing, I thank the Subcommittee for providing the Intelligence Community the opportunity to testify on this important issue, and I will be happy to address any questions as we go on. Thank you.

Senator VOINOVICH. Thank you very much. Mr. Mihm.

TESTIMONY OF J. CHRISTOPHER MIHM,[1] MANAGING DIRECTOR OF STRATEGIC ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. MIHM. Chairman Voinovich, Senator Coleman, and Senator Pryor, it is always an enormous honor to appear before you and today in particular to talk about how strategic human capital management can help drive some of the transformational challenges that the Intelligence Community faces. As you noted in your opening statement, Mr. Chairman, this Subcommittee, and more generally the Senate Governmental Affairs Committee, has had a longstanding interest and concern, certainly predating September 11, in human capital issues and intelligence and homeland security concerns.

As a result of the recommendations of the 9/11 Commission, related legislative proposals, and of course the administration's executive orders and plans, Congress and other decisionmakers confront a series of very difficult technical and policy questions related to intelligence in homeland security; however, as the work of the 9/11 Commission clearly demonstrated, at the center of these questions is the need to fundamentally change the culture of Intelligence Community. As the 9/11 Commission noted, the hard and the important work at issue is not the wiring of the agencies, but the cultures within individual agencies.

Thus, my major point today is that experience has repeatedly shown that in organizations where people are the most important asset, and which is clearly the case with intelligence agencies, people or human capital strategies must be at the center of any serious change management initiative, and that, of course, was exactly the point that Senator Collins was making.

My written statement extensively details our work on the FBI's human capital efforts and issues Congress needs to consider, in our view, in creating a single organization to handle personnel background investigations. In the interest of time, I am going to touch on four key human capital strategies that our work suggests to be critical in more broadly transforming governance, including intelligence and homeland security.

First, key mergers and transformation practices can be used to help guide Intelligence Community reforms. Working with experienced leaders in the public and private sectors, including those that have experience in intelligence and defense-related issues, we identified a set of practices, lessons learned, and key implementation

[1] The prepared statement of Mr. Mihm appears in the Appendix on page 00.

steps that successful mergers, transformations, and large scale change management initiatives go through in order to be successful. It is our belief that this work can also be helpful as we consider changes to the Intelligence Community.

Second, and this relates, Mr. Chairman, directly to your question about a chief human capital officer for the NID, experience also shows that successful change management initiatives in large public and private organizations often take years to accomplish. I have had the opportunity to hear you speak of your experience in Ohio as governor about how it takes a lot of time to turn around an organization that has been in trouble. The appointment of agency chief operating officers is one mechanism that we think should be considered to obtain the sustained and inspired attention to make the needed changes. In addition to individual agencies chief operating officers, Congress may also want to consider having the National Intelligence Director appoint a chief operating officer.

In other words, there are a range of important management and transformation issues, including not only those dealing with human capital, that warrant high level and sustained attention. This executive could serve under term appointment, to institutionalize accountability over extended periods and help ensure that the long-term change management and organizationally change initiatives are successfully implemented.

A major theme of Mr. Fielding's comments earlier this morning was the fact that we have greater vulnerability during periods of transition. In our view, a chief operating officer under a term appointment could be one, but only one, of the vehicles that Congress could consider in order to maintain this continuity.

Third, one of the major challenges facing the Intelligence Community is moving from the culture of the need to know to need to share. An effective performance management system is a vital tool to aligning the organization with desired results and creating what we have often called a line of sight, that is showing how individual, team, unit, and organizational results are all aligned with one another, showing individuals how what they do on a day-to-day basis contributes to larger results outside the organization. The performance management system can send unmistakable messages about behavior the organization values and the relationship of that behavior to achieving results. We have also found in looking at the performance management systems around the world that these systems can be effective tools in maintaining clarity and continuity during periods of political transition.

Fourth and finally, Congress has authorized significant changes in the last 3 years, often under the leadership of this Subcommittee, regarding how the Federal work force is managed. As Congress considers reforms to the Intelligence Community's human capital policies and practices, in our view, it should also consider whether those agencies have the necessary institutional infrastructures in order to effectively implement those changes. Do they have a strategic plan in place? Do they have a human capital plan that is aligned with that strategic plan? Do they have the capabilities to effectively use those flexibilities?

In summary, over the last past several years, we in GAO have conducted, often at the request of this Subcommittee, extensive

work on government transformation and critical management issues that we believe could be helpful to the Intelligence Community as it considers its reforms. We would be more than happy to share that information with them and to continue to assist Congress in its oversight responsibilities.

Thank you. I would obviously be happy to take any questions you may have.

Senator VOINOVICH. I want to thank all of the witnesses for their testimony.

Mr. Mihm, some agencies, like the CIA, operate outside of Title 5, while others, like the FBI, still work within the confines of Title 5. If we create a National Intelligence Director, which I am sure we are going to do, how much authority should that individual have over personnel matters? It gets back to the question I asked the first panel regarding transferring people and making sure they have that strategy that you were just talking about. Do we have the right people to get the job done?

Mr. MIHM. There are a couple of issues, sir. One, as you were mentioning, is the different levels of authorities that agencies within the Intelligence Community already enjoy. It creates an unlevel playing field. Mark was talking about that in his statement.

The second issue, though, and here we think that the model that Congress used for the Department of Homeland Security could be a good one. That is, provide the National Intelligence Director the authority and the responsibility to create a personnel system, Congress should not feel burdened or responsible with legislating specifically what an integrated personnel system would look like for the Intelligence Community; rather, Congress should place that responsibility with the NID, as you did with Department of Homeland Security, with the Secretary of Homeland Security and the Director of OPM to come up with that system and then issue regulations and work with the employees as appropriate to define that system.

Senator VOINOVICH. Would you allow them to have the power to move people, if he thought they were needed, from one agency to another?

Mr. MIHM. We haven't done extensive work on that, but it seems that certainly that is the model that Congress has used and agencies have used in other instances, and it has proven itself very successful. Obviously the way to the top in the defense community is the willingness to move around and accept different billets. Overseas, when we have looked at personnel systems, for example, in the United Kingdom, they have a program called Fast Stream where the way to move up and one of the keys to an individual's success is their willingness and ability to be successful in a variety of different positions, some of them direct service delivery, some of them policy shops, some of them administration. That is both how you tap into the best talent, that is how you develop the best talent, and that is also how you make sure that you have——

Senator VOINOVICH. In other words, when they come into the agency they know they can be transferred, and that would be part of their career plan. They should understand that is what could happen to them?

Mr. MIHM. Yes, sir, and especially if you aspire to the highest levels of leadership. In the case of the U.K., it is an absolute requirement. It was also at least implicitly one of the thoughts behind the creation of the Senior Executive Service here in the Executive Branch—that there would be movement across agencies. Of course, for a variety of reasons, that hasn't played out, but the philosophy is still the same, that we have a tendency here to assume that the only people that can run things or contribute to a certain organization are those that grew up within that organization. Our friends in the Partnership for Public Service have talked often about the need to bring in talent from the outside, but equally important in our view is the need to be able to circulate talent around, to realize that there are certain change management, management competencies that really do work in a variety of different settings, and we need to be able to have the capacity to leverage those.

Senator VOINOVICH. Thank you.

Mr. Bullock, Congressman Frank Wolf, are you familiar with the personnel-related reforms that have been put in the House Subcommittee on Commerce, Justice, State, Judiciary and Related Agencies, of the Appropriations Committee?

Mr. BULLOCK. Yes, I am, sir.

Senator VOINOVICH. Most of those authorities exist in current law or regulation. In addition, immediately following September 11, the Office of Personnel Management granted the Justice Department the authority to re-employ retirees, and I am going to ask you a series of questions. Did the FBI utilize this authority? Is the FBI using the existing authority for retention and relocation bonuses? Has the FBI ever requested critical pay authority from OPM? Is the Bureau using category ranking for hiring, a flexibility that Senator Akaka and I added to the Homeland Security Legislation?

The point I am making is that there are flexibilities that we authorized in the Homeland Security legislation that we expected agencies to use. I am interested in knowing are you using them and what additional flexibilities do you believe that you will need in order to get the job done?

Mr. BULLOCK. Yes, we are using some of these flexibilities with relocation bonuses, retention bonuses, and so forth. We have used them where appropriate. We have brought individuals back on the roles as retired annuitants and so forth and received the appropriate authorization to do that.

Senator VOINOVICH. So you have re-employed retirees?

Mr. BULLOCK. Oh, absolutely, sir. Where we fall short is in our ability to create the career track that we want to create for our intelligence analysts. Under our current performance standards, the OPM performance standards, we can only with our analysts go up to a GS–14. If you go to a GS–15, you have to be a supervisor. We would like to have the ability to go to the equivalent of a SES for our analysts and reward them for additional expertise and demonstrated ability in doing analytical work as opposed to having to become a manager.

Senator VOINOVICH. The Bureau does not have the flexibility to create non-supervisory SES and GS–15 positions for intelligence personnel, and you would like to have that authority?

Mr. BULLOCK. We certainly would.

Senator VOINOVICH. Thank you. If there are any other flexibilities that you would need, I would really be interested to have that.

Mr. BULLOCK. OK. I could get a comprehensive list for you. I know the others that you are aware of, the locality pay, the ability to have locality pay in certain cities. They are looking at that from a governmentwide perspective, but I can get a comprehensive list to you if that would be preferable.

Senator VOINOVICH. Thank you. We are working on this right now and would love to have that.

Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman.

Mr. Turnicky, let me ask you something about your repository that you mentioned. Tell me a little bit more about that.

Mr. TURNICKY. The data base?

Senator PRYOR. Yes.

Mr. TURNICKY. We began back in 1998, 1999 to create a data base that would have in that everyone within the Intelligence Community who possesses a top secret SCI clearance.

Senator PRYOR. OK. Hold on. Stop right there. So does that mean that when you are doing a background check, does that help you do the security check, background check?

Mr. TURNICKY. What that helps me do, sir, is that if I am going to be receiving people into CIA, for example, from NSA, as opposed to having to send paper or make phone calls or do whatever, there are people at NSA, there are people at CIA and throughout the Intelligence Community who can check that data base to make sure that people have the appropriate clearances to come to a given meeting or to see a specific document, whatever it may be.

Senator PRYOR. Let me stop right there, because we just had a couple of 9/11 commissioners, and I think one or both of them said that they had to go through a security clearance with a number of different agencies and it was cumbersome and slow and all this. Are you saying that you already have something in place that would take care of that, for lack of a better term, kind of a one-stop shopping?

Mr. TURNICKY. It is close to a one-stop shop for the Intelligence Community right now, and I think what the commissioners may also have been referring to is the fact that if an individual is cleared, say, by NRO and they are coming into NSA, that their clearance needs to be within a 5-year scope, the background investigation and if a polygraph is required. As long as it meets those requirements, then it can be transferred over.

Senator PRYOR. OK. Now, is your data base open to all intelligence agencies?

Mr. TURNICKY. It is open to personnel, some personnel, not to everyone, again because it is classified data base, but there are people at the various agencies and throughout the Intelligence Community that would have access to that data base.

Senator PRYOR. All right. Well, I guess what I am trying to figure out is, we have a 9/11 Commission recommendation that we pretty much put all the background checks, all the security clearances, in one central location. Is it fair to say that you have the central location already developed?

Mr. TURNICKY. I would say it is fair to say that for the Intelligence Community, but when you go governmentwide, that is not there yet. The military DOD has JPAS.

Senator PRYOR. Well, OK, but I think what we are talking about today is pretty much limited to the Intelligence Community.

And if this Congress, if we decided that this new function, this more centralized function, should be at the National Intelligence Director's office, is your data base, is your system transferable over to the NID?

Mr. TURNICKY. We would be very flexible.

Senator PRYOR. Well, that is good to know. What are your thoughts on that subject, on whether we should have one centralized place to do security clearances? Does that make sense to you?

Mr. TURNICKY. I think, speaking again from the Intelligence Community perspective only, is what we really require is the ability to be agile, the ability to be flexible, and to have the ability to prioritize. These are critical elements throughout the Intelligence Community. The numbers of clearances that we in the Intelligence Community deal with compared to governmentwide are minuscule. So right now, I believe we have that flexibility, and whatever we come up with here, from the Intelligence Community's perspective, I would just like to make sure that we maintain that ability to be agile, to be flexible, and to prioritize.

Senator PRYOR. How long does it take you to do a security clearance on average?

Mr. TURNICKY. It depends on the type of clearance. On an applicant coming into the agency, the security aspect of it will take anywhere from, on average, between 90 and 105 days. On an industrial clearance, it is going to take a little bit longer. The priorities as they are right now are applicants followed by the industrial.

Senator PRYOR. Well, let me ask this: We talked about this with the previous panel. When a new administration comes in and they are putting their national security team together there in the White House, do you prioritize those and try to get those turned around?

Mr. TURNICKY. For the most part, we in the Intelligence Community would not be doing the background investigations on those people. That would be the Bureau.

Mr. BULLOCK. That would be the FBI.

Senator PRYOR. OK. And, Mr. Bullock, how long does it take you to do those background checks?

Mr. BULLOCK. Those background checks are typically done within 30 days, and understand that we have a unit in my division that would coordinate those assignments, and then those leaders are sent out to agents across the field to promptly conduct those investigations.

Senator PRYOR. OK. Mr. Mihm, you have made a recommendation, as I understand it, that the National Intelligence Director should appoint a Chief Operating Officer; is that what you called it?

Mr. MIHM. Yes, sir.

Senator PRYOR. And what would those functions be?

Mr. MIHM. It would be basically to help the NID deal with a series of large scale functional management (personnel, information

technology, financial management, etc.) as well as some of the transformation issues. Typically what we often see, and it is not surprising, political appointees come to town with agendas and experiences and backgrounds in policy and programs. They don't often have as well rounded backgrounds and they don't get as thorough an examination on their management capabilities. That coupled with the long-term changes that are needed in many agencies in the Intelligence Community generally lead us to think that a Chief Operating Officer or some similar vehicle could help sustain change over time.

Senator PRYOR. Would that be a career position? In other words, would that continue from administration to administration?

Mr. MIHM. There are any number of options, sir. For example, it could be a term appointment. This model is used very often in other countries where it is a term appointment with a strict performance contract. If the goals in the contract are met, the performance reward is provided. If the goals in the contract are not met, the euphemism is they are urged to achieve excellence elsewhere. Since we are dealing with functional management, you can hold people accountable. Let us get a good personnel system in place. Let us get a good financial management, IT system in place.

Really having some day-to-day thinking about the internal management of the organization is what is needed, freeing up the top leadership to think of the policy and the programs.

Senator PRYOR. OK. Thank you, Mr. Chairman.

Senator VOINOVICH. Senator Coleman.

Senator COLEMAN. Thank you, Mr. Chairman.

I want to follow up with Senator Pryor's comment about the Chief Operating Officer, COO. Is this something that needs congressional action or is this something that the President can do by executive order?

Mr. MIHM. There is any number of models. The President could do a version of this certainly by executive order. The term appointment would probably require some congressional action. But if Congress doesn't want to go that far yet, you could certainly urge the NID to appoint a very senior person that would have the responsibility for integrating functional management, elevating attention to these, and leading the transformation, that would help as well.

Senator COLEMAN. And I turn to Mr. Bullock and Mr. Turnicky. From the Agency's perspective, the FBI's perspective, is there anything like this in place now, and how would you react to that recommendation?

Mr. TURNICKY. At this point, I would not be aware of what is in place at the agency on that, sir.

Mr. BULLOCK. No, we don't have a similar position in the FBI at that point.

Senator COLEMAN. Any reaction to the recommendations? I am not holding you responsible for making policy, but as folks in the field who are going to deal with a lot of stuff.

Mr. BULLOCK. The concern I would have is seeing how that would actually work when you have resources from different departments and different agencies and others in the department with at least partial responsibility that would be redundant with this position. How would it actually work, and would we ultimately

result in just a greater level of bureaucracy if we were to put this in place? So I think it would have to be analyzed and structured properly to avoid that.

Senator COLEMAN. And I think that is always a concern, are we making changes in a way that increase efficiency and capacity or are we creating more bureaucracy? So I think clearly that is the issue.

We have talked a lot about talent and the need to, like Mr. Mihm, you said, circulate talent. Is there enough talent to go around, Mr. Turnicky? Are there enough folks out there with the language skills, the educational skills, the international relation skills to meet the needs of this expanded focus we are having on intelligence?

Mr. TURNICKY. My function, again, is in the security end of it, and I can tell you from the numbers of applicants and contractors who are coming in, there are certainly plenty of people out there that we are processing. I think there is always—just speaking from the security perspective, there is a shortage, I think, government-wide of investigators. There is a shortage of people who are qualified in the adjudicative realm, and we are working towards training programs community-wide to train adjudicators so that they are all using common standards throughout the entire IC.

But this is something we are dealing with not only as the IC. I think that is governmentwide, the shortage of investigators.

Senator COLEMAN. Mr. Bullock.

Mr. BULLOCK. I think as far as the people with the right skills, with our agent position, we hire with the critical skill and diversity. We have been able to meet our objective in both getting enough critical skills and diversity this year. With the intelligence analysts, we have had approximately 57,000 applicants apply since February of this year for our intelligence analyst position. Again, applicants and having the right applicants are two different things, and we are still sorting through those, but it looks like by the end of October, we will have on board approximately 800 intelligence analysts after filtering through those 57,000 applicants and approximately 1,200 agents with the critical skills in most areas.

Where we are having the most difficulty is hiring the agents with the language skills, barring Spanish. Arabic, Urdu, Russian, Chinese, we still have difficulties finding the individuals with those skills that can get through our process and overcome the security issues with having family members that live abroad and so forth. That is an obstacle that is difficult to get around.

Senator COLEMAN. Mr. Mihm, do you want to respond?

Mr. MIHM. Senator Coleman, I take Mark's point that certainly for some specialized competencies, there are in a sense absolute shortages; however, fundamentally, the issue is making sure that we in the Federal Government have hiring and recruiting processes that are agile enough to identify and bring on the people that are out there. Commissioner Gorelick spoke earlier about how the traditional model focused on having people with the law enforcement background. It is a whole different type of recruiting and hiring model when you are going for the diversity of talent that we now need in the Federal Government.

Senator COLEMAN. It may also be worth having a conversation with other educational institutions in terms of what is being taught so as to meet the need.

Mr. MIHM. Yes.

Senator COLEMAN. Let me have one, in the time I have, Mr. Bullock, just one specific question for you. After the Commission issued the report, the FBI agreed, I think with all the Commission's recommendations about the operation save one—I am not sure whether Mr. Fielding or Ms. Gorelick mentioned it, but it had to do with an individual at each field office; you have an official at the field office, a deputy level for national security matters. "Each field office should have an official at field office of deputy level for national security matters. This individual would have management oversight and ensure that the national priorities are carried out."

I believe the FBI response to the recommendation was they promised to look at that closely.

Mr. BULLOCK. Yes.

Senator COLEMAN. Can you tell us where you are on that?

Mr. BULLOCK. We initially were to assign an Assistant Special Agent in Charge in each office to address national security matters. We would step back to look at that and to figure out how you could effectively control the scope of responsibility, because most of our effort is now in the national security arena, and inculcate the intelligence responsibility in that as well. So we are currently still reviewing to see how we can assign these responsibilities at the second level of command in each field office to deal with intelligence and national security matters and the criminal matters and the cyber matters.

Senator COLEMAN. That is very helpful. Thank you.

Thank you, Mr. Chairman.

Senator VOINOVICH. I would like to thank everyone for your testimony. A big issue is the decision of where to put the Director of Intelligence, in the White House or outside of it, and then the other issue is whether or not that individual should have a fixed term.

Mr. Mihm, you talked about the CFO, someone that would have a contract and would be there in these agencies. I would like your opinion on whether or not you think that individual that would be the National Intelligence Director should have a term that would carry into the next administration with some ability that after 2 years, if there was a difference of opinion, that they could be eliminated or ask to leave. A bad word. What is your opinion on that?

Mr. MIHM. Mr. Chairman, as you know, the Controller General couldn't be here today. I know he has some views on that, and so I would like to be able to confer with him and give you his considered position rather than offer something from myself, because that really does get beyond my portfolio.

Senator VOINOVICH. OK. So at this stage, you would rather not——

Mr. MIHM. I just need to——

Senator VOINOVICH. Let us put it in juxtaposition with the CFO. You are talking about having a CFO that would have a contract. So that CFO, say if you went that route, would be there in the department with the intelligence director.

Mr. MIHM. Right.

Senator VOINOVICH. And if that individual would be there, and that individual was termed out when the new President came in, you would still have the CFO. That is the purpose of your concept of the CFO?

Mr. MIHM. The chief operating officer. What has often been added, is that, well, what happens if the new leadership, political leadership team just can't get along with this individual or this individual can't get along with the new leadership team. If we are successful in getting the right people to be COOs, these are the types of people who will have options elsewhere and they will quickly see. If they are not going to be able to integrate with the new political leadership, then they will see the need to move on.

The idea here is just to provide some sort of mechanism where we can have continuity and someone on a day-to-day basis to worry about what are we going to look like as an organization 5, 6, or 7 years out. It is just unrealistic to expect that sort of time horizon consistently from political leadership.

Senator VOINOVICH. At the FBI now, the director is limited to 10 years, but there is no other limit at all in terms of the director who serves at the pleasure of the attorney general.

Mr. BULLOCK. At the pleasure of the attorney general. So, yes, we do operate under that system, and I think beyond that, as Mr. Mihm stated, we do need the consistently at the CFO, COO level. Beyond that, I would like too defer to the director to decide on the—to provide his input on where the position should be.

Senator VOINOVICH. Right. In the case of Mr. Tenet, he worked for President Clinton and President Bush, continued his service, but he had no term. That was at the pleasure of the President.

Mr. BULLOCK. Right. Correct.

Senator VOINOVICH. It does show that if you get someone who is competent, a succeeding President many times retained them because they are top-notch people.

Mr. BULLOCK. Absolutely.

Senator VOINOVICH. Senator Coleman, do you have anything further?

Senator COLEMAN. Nothing further, Mr. Chairman. Thank you.

Senator VOINOVICH. Thanks very much again for your testimony.

Our next panel is composed of Dr. Paul Light, who is a senior fellow at The Brookings Institution and Professor of Public Policy at New York University. C. Morgan Kinghorn is the President of the National Academy of Public Administration. Max Stier is the President and Chief Executive Officer of the Partnership for Public Service. And, finally, Doug Wagoner is the Chairman of the Security Clearances Task Group of the Information Technology Association of America.

And Mr. Wagoner, when you get to your testimony, in the first minute of your testimony, would you explain the mission of your organization?

Mr. WAGONER. Yes, sir. I do in my oral testimony.

Senator VOINOVICH. OK. Thank you.

Dr. Light, you have been with us before, and we appreciate your presence.

Mr. Kinghorn, your predecessor worked very closely with us in the beginning when we were drafting our human capital reforms.

Max Stier is the head of an organization, the Partnership for Public Service, that has been doing an outstanding job of reaching out to try and get the best and brightest people to come to work for the Federal Government.

So we are very happy to have you here today, and I would ask you in your testimony, to comment on anything that you heard from the other witnesses that you agree or disagree with, I would appreciate hearing from you about it.

Dr. Light, we will start with you.

TESTIMONY OF PAUL C. LIGHT,[1] PH.D., SENIOR FELLOW, THE BROOKINGS INSTITUTION

Mr. LIGHT. It is a pleasure to be here. It is kind of like, as Yogi Barra said, deja vu all over again. We have been here repeatedly over the years talking about the management and organizational problems at different departments, different mistakes, events that prompted a flirtation with management reform. It is sad to note that the 9/11 Commission had to devote so much time in its report to our general difficulties getting persistent and deep reform through the Federal Government.

And I applaud this Subcommittee's work on this issue over the years. This Committee as a whole has struggled to change the management and organizational culture in the Federal Government. We have got a real chance here to do some important work, and I encourage this Subcommittee to be bold in attaching to this legislation broader reforms that you believe are necessary. This is a freight train that is leaving the station, and sometimes you have to put governmentwide reform on what you believe is essential, and I believe this is an opportunity to do so as this Subcommittee has been successful in the past.

I am going to reserve most of my comments today for the Presidential appointments process, which is just a disaster. It makes absolutely no sense for us to create a new intelligence directorate with six to twelve new Presidential Senate-confirmed appointees if they have to wait 8, 10 to 12 months to get on the job, which is a persistent problem in the Federal Government more generally.

On September 11, less than half of the 166 jobs that would be engaged in the War on Terrorism were filled with a sworn Presidential appointee. That is a remarkable statistic. Two months before September 11, the number hovered around a third. You cannot direct a government to perform in response to threat if the people aren't there. I have characterized this facetiously too often as not a problem of headless government. We had our secretaries. We had our deputy secretaries in place. What we didn't have were the undersecretaries, the associate undersecretaries, the assistant secretaries, the long list of titles that were open for occupancy at the top of the Federal Government and that transfer the directions down to the agency front lines and that transfer the knowledge and information back up.

We had what I call neckless government, and we had it for a good long time. On average, the Bush Administration appointee was in office 8½ months after inauguration. That is an impossibly

[1] The prepared statement of Mr. Light appears in the Appendix on page 00.

difficult figure. It is not the kind of appointments process that speaks to an agile government. I worked on this issue at the National Academy of Public Administration in 1984. We pounded the shoe on the table about a 4½ month average. We would give our eyeteeth for that average today.

I strongly encourage this Subcommittee to pursue the Presidential Appointment Improvement Act, which the Chairman has introduced which sits before the Committee. I strongly encourage you to pursue meaningful reform and Senate rules regarding the appointments process. We have got to eliminate the use of holds as a device for making political points. I understand that this occurs in both political parties. I understand the dynamics underneath it, but we have got to take action to assure that the Senate and the White House meet their obligations to fill positions promptly.

I also believe that we have to seek a compact with the Executive Branch to assure that appointments are handled in a timely fashion. I mean, the process does not end with the dumping of a nominee's package at the Senate door. Too often, past administrations believed that was all their obligation requires and then it is up to the Senate to discharge its responsibility and wouldn't it be nice if we didn't have all these positions subject to Senate confirmation. Well, I am an Article One person. I believe that the Senate has an obligation to review Presidential appointees, has an obligation to inspect the records of Presidential appointees. that is part of your constitutional obligation.

I do not agree with the 9/11 Commission's broad recommendation that all positions under Executive Level Three should be exempt from Senate review. That would mean that this Committee would no longer have the right or responsibility to look at Inspectors General, for example, to look at Assistant Secretaries, for example, to look at Administrators and to look at General Counsels, CFO, Chief Information Officers. You have an obligation to look at positions that matter to this country and to the government's performance.

So I argue in my testimony here that you should take a look at each of the positions that could be exempted from Senate review on a case-by-case basis and develop a reasonable inventory of positions that could be dropped from the ordinary review process. I also recommend that you undertake a streamlining of the Presidential appointments process and reduce the number of appointees subject not just to confirmation, but actually put in place. We have too many appointees. We have got too many layers of needless management at the top of government. Again, it makes no sense to create a national intelligence directorate if we are just adding new layers to the Federal bureaucracy.

I applaud this Committee and Subcommittee's work. I encourage you to be aggressive in your legislating, and I stand ready to help you in any way that I can.

Senator VOINOVICH. Thank you very much. Mr. Kinghorn.

TESTIMONY OF C. MORGAN KINGHORN,[1] PRESIDENT, NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

Mr. KINGHORN. Thank you, Mr. Chairman, Senator Carper, and Senator Coleman.

As President of the National Academy of Public Administration, an independent non-partisan organization chartered by the Congress to give trusted advice to public leaders, I really am pleased to be here to provide you with my perspective on the recommendations for Federal personnel reforming coming out of the 9/11 Commission. The views presented today are my own and are not necessarily those of the Academy as an institution.

The 9/11 Commission, as we heard this morning highlighted several areas for personnel reform. I would like to focus my comments on the issues of providing some additional flexibilities to the FBI in its personnel practices. However, I will also address certain other related 9/11 Commission recommendations, and my testimony is organized around proposals affecting the FBI, which were considered by a group convened by the Academy in May of this year at the request of Congressman Wolf, Chairman of the House Appropriations Subcommittee on Commerce, Justice, and State.

Together, the group examined six proposals. Two of the six are consistent with the 9/11 Commission recommendations. Four were included in whole or in part in the Appropriation Bill passed by the House on July 8. Two proposals would affect the FBI, but also have implications for other Federal agencies in general and should be considered probably in a broader context. I want to offer some brief comments on each of the proposals.

The first is the establishment of an intelligence career service at the FBI. This proposal would create intelligence career service, including SES and other senior level positions that may be beyond those permissible under the FBI's current Title 5 authorities. Unlike the CIA and other intelligence services that we heard this morning, the FBI does not have authority to create non-supervisory SES and GS–15 positions for intelligence personnel. This does limit their ability to offer competitive pay and career advancement. The creation of these positions would address the FBI's disadvantage when competing for talent to staff its intelligence function.

Although the House appropriations bill did not address the career intelligence service per se, and we believe it should be addressed, it did authorize the FBI to pay critical intelligence positions up to an executive schedule one as a first start.

Second was creating an intelligence decision unit within the FBI's budget. The current FBI budget does not have an intelligence decision unit. The proposed budget structure has a separate decision unit for intelligence, which we proposed. Such a budget decision unit would propose a clear review of funding devoted to intelligence and prevent those funds from being reallocated for other purposes without congressional notification. The proposal to create an intelligence decision unit within the FBI's budget was included in the House appropriations bill. Proposed legislation would collapse the ten budget units used in previous years to four decision units commented by the 9/11 Commission: Intelligence,

[1] The prepared statement of Mr. Kinghorn appears in the Appendix on page 00.

counterterrorism, counterintelligence, criminal and criminal justice services.

The next proposal was to waive the mandatory retirement age beyond 60. The director's current authority to waive the mandatory retirement age at 57 is currently limited to age 60. Mandatory retirement really is intended to promote a work force consistent with the physical demands of law enforcement; however, limiting the director's waiver to 60 denies the FBI the continued services of really highly-skilled employees. The House appropriations bill based on our analysis, again, would extend the authority of the director to waive the mandatory retirement age of agents, allowing him to delay mandatory retirement on a case-by-case basis up to the age of 65.

The next item that was included in the bill was establishing a reserve program within the FBI. As you all know and we all know, in recent years, the FBI has faced a variety of demanding situations that have stretched the organization's personnel capacities. To better enable it to react quickly and effectively to future crises, the FBI proposed creating a reserve program. This program would allow the FBI to draw quickly on a cadre of retired staff who are ready and able to provide assistance. It would provide a streamlined process thereby to tap a large group of retired staff with the targeted skills to accomplish the agency's work on a temporary basis. The precedent exists for such programs in the military and other organizations and waivers are available for dual compensation.

The House appropriations bill would authorize the director to provide for the establishment and training of the FBI reserve service that we believe would facilitate streamlined temporary rehiring from a pre-certified cadre of retired FBI employees.

Finally, the Academy's role in facilitating the review of these proposals complemented our current and ongoing work on the FBI's transformation, performed by a panel chaired by the former Attorney General and NAPA fellow, Dick Thornburg. It has two major components. First, the panel is reviewing the FBI's efforts to structure its counterterrorism security and intelligence components and to implement the programs it has designed in each of these areas; and, second, the panel has examined the FBI's field structure with a goal of developing criteria that might be used to develop possible alternatives in light of the changes in the FBI's strategic focus. We will report out on this earlier next year.

In closing, I wish to emphasize that the Academy would be pleased to assist the Subcommittee in its ongoing deliberations regarding human capital recommendations of the 9/11 Commission. We have significant experience in a variety of agencies and organizations, both at the strategic level in terms of assessing where agencies should be going, as well as the very practical "on the ground, how do you implement it" issues that are really the expertise of our 550 fellows.

This concludes my statement, Mr. Chairman. I would be pleased to respond to any questions.

Senator VOINOVICH. Thank you very much. Mr. Wagoner.

TESTIMONY OF DOUG WAGONER,[1] CHAIRMAN, ITAA INTELLIGENCE/SECURITY CLEARANCES TASK GROUP

Mr. WAGONER. Mr. Chairman, Members of Subcommittee, thank you for inviting the Information Technology Association of America to testify on current challenges industry faces in obtaining security clearances in support of the 9/11 Commission's recommendations. The hearing is a positive step forward in dealing with challenges that have plagued this process for decades, a process that threatens national security by failing to fill critical positions timely and keeps qualified people from working in quality jobs.

My name is Doug Wagoner, and I serve as a Chairman of the ITAA Intelligence Committee. I am also vice president of a small IT services company, and bring the perspective of small business to this issue.

ITAA is one of the Nation's leading and oldest trade associations focused on the IT industry, providing public policy and national leadership to promote its growth. Our members range from very large companies such as Lockheed Martin down to very small companies such as me.

I have included in my full written statement a copy of a detailed white paper that ITAA and seven other industry associations have prepared after about 2 years of study that provides five recommendations on how to improve this vastly complicated process without sacrificing security. While the pressures placed on an already stretched system have been exacerbated by our government's response to 9/11, the challenges we face have been the same for decades. Since 1981, if not earlier, GAO has reported every couple of years our government's inability to quickly and thoroughly clear——

Senator VOINOVICH. Mr. Wagoner, I know we are limiting it to 5 minutes, but you can slow down.

Mr. WAGONER. OK. Sure.

GAO has estimated the annual cost to government and the industry in the billions of dollars, and more worrisome is that GAO and others have pointed to direct risks to national security on critical projects due to a limited pool of cleared people. Since 1981, the affected agencies involved have proposed very few changes and have not been held accountable for their lack of performance. Results of a recent ITAA survey of our membership shows that industry has seen greater than a 12-month average time period for a new top secret clearance to be granted with almost 70 percent saying that it takes over 9 months. This average is for a clean case where the individual has no problems with foreign travel, credit, criminal, or drug history. Clearances requiring more extensive investigation, such as polygraph, are taking 16 months or more.

Senator VOINOVICH. Just so I am clear, these are entities the government contracts with? You have people working for you on classified projects, and before they can work, you have to get a government clearance?

Mr. WAGONER. Yes, sir.

Senator VOINOVICH. And you are saying it is 9 to 12 months?

---

[1] The prepared statement of Mr. Wagoner with an attachment appears in the Appendix on page 00.

Mr. WAGONER. Exactly.

Senator VOINOVICH. OK.

Mr. WAGONER. And this is for a brand new top secret clearance.

Nearly 22 percent of our respondents told us that their companies have more than 500 open positions that require clearance, and 70 percent said that they have seen a significant increase in demand for cleared personnel from the government over the past 5 years.

The 9/11 Commission has made among its recommendations to reform the Intelligence Community several suggestions dealing specifically with the security clearance problem. Today, I would like to focus on four main points of our recommended improvements, many of which mirror those of the Commission. None of our recommendations water down the investigative requirements or processes. Industry believes that we must remain diligent to ensure that only those with a need to know are granted the access to learn.

First, we recommend that agencies work through the procurement process to authorize what we are calling bench strength of cleared personnel. For example, if a contract requires 20 cleared positions, we recommend that the procurement official authorize 25 cleared positions so that industry can quickly back-fill with a new person on that contract. This will ensure critical programs to stay on schedule and do not get bogged down due to clearance shortages.

Investigation standardization is an enormous issue for industry. ITAA has identified more than 20 agencies with distinct clearances across the Federal Government that require unique items of inquiry for clearances at particular agencies. Despite regulations and executive orders that spell out uniform requirements, there is currently no mechanism to enforce such standards. The Industrial Security Oversight Office has done tremendous work in outlining standards all agencies should follow, but they do not have the enforcement capability to ensure compliance.

We agree with the Commission's recommendation to standardize investigations and feel this must be addressed in more detail in legislation. If there are to be new standards, there must be a new mechanism to keep agencies accountable to that standard. We applaud the Commission's call to consolidate responsibility for clearances into a single entity, but we believe that the role should be to coordinate and enforce standard policies and programs across government rather than actually conducting all the investigations for government.

We have concerns about the ability of a single organization to handle the overwhelming volume of clearance investigations that take place each year. OPM's experience has shown that trying to absorb other agency's investigatory responsibilities only increases delays. Furthermore, OPM does not have the culture of meeting the demands of national security, and we know the cultural shifts in large organizations will not occur in time to meet our country's needs.

ITAA proposes that a new security clearance czar be appointed with the National Security Council to both direct the development of and enforcement of uniform standards, that actual investigations

continue to be carried out by agencies requiring clearances. Having a single entity accountable will help drive performance in a distributive process using the same criteria and can hold agencies accountable.

On the issue of reciprocity, it would seem logical, Mr. Chairman, that when one Federal agency grants a top secret clearance, that clearance should be honored by any other government agency to work at the same security level. More often than not, this is not happening because of unique requirements or, worse, a not-approved-here mentality. Ending the multiple investigations of the same person would lower the caseload and approval times. ITAA agrees wholeheartedly with recommendation of the 9/11 Commission that the intelligence agencies accept each other clearances; however, we recommend that this reciprocity, or what is called cross-over, be mandated across all Federal agencies for similar clearance levels and that the legislation specify that no Federal agency will reinvestigate an individual who holds an active clearance from another Federal agency.

Finally, high demand and low supply for cleared people are causing an increase in job hopping which is rapidly raising labor costs on government programs. Over half of ITAA's survey respondents told us that they regularly pay 5 to 25 percent more for a cleared employee who performs the same job as a non-cleared employee. These increased salaries are most often passed along to the Federal Government and unnecessarily drive up costs.

ITAA would also recommend that a statutory performance metric of 120 days be established in this legislation to complete an initial top secret clearance. Ninety-six percent of our survey said that they could better serve government and 85 percent could make the best and brightest people available to government under this 120-day metric. Our experts believe that with proper management, systems, and motivation put in place, this can be accomplished within 2 years.

Industry values its partnership with government. ITAA hopes to work collaboratively to improve the process that is critical to national economic and personal security. Thank you for invitation, and I would be happy to answer your questions.

Senator VOINOVICH. Thank you. Mr. Stier.

TESTIMONY OF MAX STIER,[1] PARTNERSHIP FOR PUBLIC SERVICE

Mr. STIER. Thank you, Mr. Chairman, Senator Coleman, and Senator Carper. I very much appreciate the opportunity to testify on such a critical subject.

I had a little bit of a surprise this weekend. I was expecting a baby 16 days from now, but he decided to arrive on Saturday.

Senator VOINOVICH. Congratulations.

Mr. STIER. Thank you very much. And I must say that it is undoubtedly true that anybody who has a newborn thinks very much about the future. For me, the fact that my newborn came on September 11 only heightens my concern about what we are doing as a Nation to address these problems. I want to think very much

[1] The prepared statement of Mr. Stier appears in the Appendix on page 00.

that we are at a crossroads about how we are addressing a very new threat, and the work that you are doing here is to be commended because it is so vital.

I think the Commission said it best when it said that the quality of the people is more important than the quality of the wiring diagrams. Unfortunately, it is much easier to focus attention on wiring diagrams than people issues, primarily because the people issues are much harder. They take more time. They can't be resolved by a stroke of a pen, and they are sometimes issues of judgment and of simply good management. I think that many of the reforms that you are proposing or considering in the legislation here will go a long ways to improving the Federal Government's capacity to respond to this threat, and I want to take a step back. In my written testimony, I offer some support and information about a variety of things that you are doing, but I think it is worthwhile taking a step back and thinking more comprehensively about what the challenges are that we face.

I would organize these, looking at the way the government addresses talent issues, in three primary ways. The most important is that I think the Federal Government today does not address people issues as a management issue. They see it primarily as a transactional question that Human Resources professionals are going to take care of. That is a real problem, and if there is one thing that we could do ultimately to address the people question, I think that is the thing we need to have happen, to have managers and leaders take ownership of the talent in their organizations.

If you look at top private sector companies, the head of GE recently said that he spends at least 30 days a year of his personal time on trying to get and keep the very best people. Tom Tierney, who turned around Bain Consulting, said that he spent probably half his time on people issues. That is not something that we see very much in the Federal environment. The oversight of this Subcommittee, I think is going to be vital to ensure that you get leaders in government to pay attention to that critical asset.

I also think that the performance management standards that you are considering having the National Intelligence Director be responsible for will be important, and I think, very importantly, the prospect of perhaps a chief human capital officer who would be responsible for talent issues across the Intelligence Community instead of under a single agency would be very valuable.

The second area I think that is important to focus on is the hiring process itself. Obviously, there has been a lot of discussion, particularly of late, of the hiring process, concerns that it is too slow and too difficult. That is all true and something that we need to address, and I think that whether it is security clearance issues or many other concerns or, on the political side, the appointments process, those are very important reforms.

It is also true, though, that the hiring process comprehends a lot more than just the speed of hiring. For example, we will be issuing a report shortly about the assessment processes that the Federal Government uses in determining who to hire. You need to hire fast, but if you don't hire well, it doesn't matter how fast you hire, and that is something that the Federal Government needs to focus on quite extensively.

It is also true that we need to see more incentives for the Intelligence Community and for the government at large to be able to recruit the very best people. I know that, again, you are considering a scholarship program, which I think could be very important, and also, Senator Voinovich, you have proposed government-wide the GOFEDS legislation which would enhance the student loan repayment authority the government has by making it non-taxable, which I think would also go a long ways to increasing the Federal Government's capacity to both recruit and retain top talent.

The final piece that I would focus on is taking a look at the way that government conceives of its own talent. The historical model has been always that public service has been a career, and while that is a wonderful notion and it is terrific to have people who decide to come into government for their entire career, the fact of the matter is that the talent pools have changed and they no longer see themselves going to a single job. They view their likelihood of being in many different jobs. In fact, the average now is 3½ years for any particular job.

We need to see the Federal Government change the way it thinks about talent so that it becomes viewed as a career builder and not only a career, and that is particularly true when you look at the Federal Government's needs for mid-career talent. Again, we issued a research report in the last month that demonstrates that nearly 15 percent of GS–12 and above jobs are being filled externally, and that has significant consequences for some of the issues that the 9/11 Commission report identified in terms of bringing in the kinds of skills and talents that, frankly, you are only going to find if you appeal to the whole range of talent markets, both internally and externally.

It is also true that by creating the kinds of training and development opportunities, again, that you are looking at in this Subcommittee, you are going to be able to not only improve your existing talent pool, but also become a more attractive employer for those who are perhaps contemplating but not yet deciding whether they want to enter into public service.

So with that, thank you for the opportunity to testify. Of course, I am happy to answer questions, and any follow-up that we can do at the Partnership for Public Service, we would be very pleased to take on. Thank you.

Senator VOINOVICH. Thank you. I would like to thank all of the witnesses.

Mr. Light, the Commission has made several recommendations in terms of the Presidential appointments process. You recommend removing positions below Executive Level Three from the confirmation process, which doesn't have very much of a chance of getting through this body. At what level would you draw that line, or would you give the agencies the opportunity to suggest where they don't think they need the approval?

Mr. LIGHT. I believe that you can come up with a list of level four and level five positions that could easily be exempted without much agony by the Senate and the White House working together. My view is that the Assistant Secretaries for Public Affairs, no offense to the profession, that those positions may not need Senate con-

firmation, but an Assistant Secretary for Health at HHS or an Inspector General, I think those positions are very important and ought to be subject to review.

So I think it is just a function of actually laying the positions—there are 500 or so of them—out on the table and saying which ones of these can we streamline and which ones do we need to subject to hearings. We also need to ask the Executive Branch for some ideas on how to reduce the numbers wherever possible. I think we have too many of them. The Senate has agreed with that in the past, but I think you have to look at each position on a case-by-case basis, and it is not such a large number that you can't do it in a relatively short time.

Senator VOINOVICH. Well, part of the problem always is getting agencies to come back and list the positions. We had a little task force, a bipartisan group, and the legislation failed because certain committees in the U.S. Senate didn't want to give up the advise and consent role of certain individuals. My thought was that we might have an opportunity in creating this new agency. I would be interested in knowing from you what criteria you would use in drawing that line in terms of confirmation of the Senate.

What do you think of the recommendation of confirming all national security nominees within 30 days of their submission?

Mr. LIGHT. Well, I think it is a great recommendation. I would settle for 45 or 60 days. I mean, you know the challenges here, but I think that we ought to—we have been going the opposite direction on asking the President to forward nominees. So now we allow vacancies to be held by an acting official for 180 days. So we have upped that over the years, basically saying, OK, you we can't get them up here in 6 months; at that point we will enforce some sort of penalty. And on the Senate side, we have sort of increased the level of delay as well.

I think we ought to say as a general rule that we want these folks to be in office within 120 days of a vacancy. Now, how you sort that out, if it is 30 days in the Senate or 60 days, how you do that between the Executive and the Senate, I think you have to establish a benchmark and hold to it, and if the position can be vacant for 180 days, don't we have a good rationale at that point for abolishing the position because it is irrelevant to have it in the first place? I mean, we could spur a lot of action if we were to impose on ourselves that kind of obligation.

Senator VOINOVICH. So you think we should strive for looking at some level and then institute a 45-day limit on nominations.

Mr. LIGHT. I think Senator Baker and the other Senators that we have talked to over the years in the Presidential appointee initiative, their view is 45 days is a pretty significant leap. I mean, set it wherever you can and push for it and see if you can get some Senate rules changes on the hold and see what you can do.

But I wouldn't restrict it, incidentally, just to national security. It seems to me that we ought to set it as a benchmark for all positions in the Federal Government.

Senator VOINOVICH. With the urgency and the crisis, we might be able to at least make a first crack at it.

Mr. LIGHT. Yes, hopefully.

Senator VOINOVICH. As you know, my legislation would streamline the financial disclosure form for the Executive Branch employees. It also requires that the Office of Personnel Management provide a list of all appointed positions to the major Presidential candidates 15 days after they receive their party's nomination. I think you have already said that you think that this legislation would help a great deal.

Mr. LIGHT. I am absolutely convinced that you should move ahead with that particular bill as an attachment. I don't see any reason not to push for it at this particular point. The National Intelligence Director is going to have to interact with political appointees in all departments to do his or her job. The Secretary of Treasury, the Secretary of HHS, and so forth, I do see the line here to restrict improvements in the appointments process just to intelligence positions. I see no reason not to attach your legislation to whatever emerges from this Subcommittee.

Senator VOINOVICH. As you know, we were able to get significant human capital reforms attached to Homeland Security. We mentioned those to Mr. Bullock today.

Mr. LIGHT. Correct.

Senator VOINOVICH. I am concerned that agencies are not using those flexibilities.

Another issue that has come up in terms of the legislation is the issue of the financial disclosure form.

Mr. LIGHT. Right.

Senator VOINOVICH. Several of my colleagues want the disclosure form to be changed for all the branches of government. My legislation limits it to the disclosure form for Executive Branch only. Would you like to comment on that?

Mr. LIGHT. I share the general and worthy goal of extending this to other positions, but it seems to me that the argument is being made that everybody should remain in an appointee Hades, shall we say, unless everybody gets out. I think we have an opportunity here to do something. It is not the perfect opportunity. I think we should move ahead and create the precedent for action on the Judicial and Legislative Branches at that time. I have long believed that particular objection was not reasonably given our incremental progress in the past. We just have to move forward where we can.

Senator VOINOVICH. So that the bill just deals with the Executive Branch and, again, would be a forward step. You recommend we consider Congressional disclosure separately?

Mr. LIGHT. I say go, go, go on this. I mean, push it forward as you can. It is an opportunity, and with all due respect to your colleagues who raised these issues, I think you just have to push where you can at this particular moment.

Senator VOINOVICH. Thank you.

Senator COLEMAN. Thank you, Mr. Chairman. Thanks for your work in this area.

I hope that 9/11 is a wake-up call. We were just going down a path, like Mr. Light was saying, from 4 months at one point in time to 8½ months now and just the difficulty level and partisanship, political chips being used to put holds on things, and, perhaps, the confluence of the events of 9/11 are forcing us to say we

have to move quicker with the work, Mr. Chairman, that you have been doing.

I was going to ask the question that has been asked about should we focus this on intelligence and should we do this government-wide, and I think the response is we take advantage of this opportunity to make the system work. So I hope that happens. I also just want to note how helpful this hearing has been.

Mr. Light, you have talked a lot about folks on the outside who are doing work, and then typically we are thinking about within the government process, but in order for government to function, we need to work with folks outside the system and they have to go through the same processes, and if we don't think about that and somehow clarify that, accelerate it, and make it work better, we are all in big trouble, and the idea, then, of government being not just a career but a career builder, which really just reflects the nature of what I give in speech after speech, that we don't train people for one job anymore, we don't educate them for one job. That is an expectation. Well, it should be an expectation in government and not just outside government.

So this has been extraordinarily helpful.

We didn't talk much about the process of people, keeping them in government. Maybe it is because there is an election coming up, there is a lot of discussion about who is staying and who is leaving. That whole process of can you incentivize the process and encourage people to stay on, or is there just something about burnout that is kind of a natural process? Would anyone like to respond?

Mr. KINGHORN. Mr. Coleman, I would love to. As you know, I worked in the Federal Government for 25 years and then became a partner in a consulting firm where I ran a practice of about 600 consultants and 20 partners and faced the same issues from a private sector standpoint. I think you have got to look at the retention issues, as Max indicated, and we have done some work on it very differently.

People are not going to stay, as I did, for 25 years in the Federal Government, but I moved around a lot at the SES level. That was one advantage I had. I think what you ought to do is realize they are going to come and go and come back, and I think your whole strategy and what is important about this Subcommittee's work is you are beginning to look at this issue and have looked at the CEO and the human resource issue as a strategic management tool.

For as long as I was in government, human resources was, really to me, seen as a business process and not particularly well run, but we have used the budget for years, decades, as a prioritizing tool. We used organization structure as a prioritizing tool. And now you are looking at using the strategic nature and the operational nature of human resource management as a strategic tool, how do you provide incentives for people to move up the food chain in the FBI, and you are addressing that.

So I think that is part of the answer. I don't think it is pay. I think pay is improving. I think we have got some ways to go. I think it is basically creating an environment where people can easily come and go and gain experience. For me to come back into government now, someday which I would probably love to do, it is going to be very difficult. It is still difficult. So I think the old rule

of how am I going to keep Morgan Kinghorn here for 25 years in the same agency, people are realizing that is not the right question. I think your question is right, and I think the answer is different incentives, different pay mechanisms.

The Academy doesn't speak uniformly on this issue, but I have personally less concern that we have different human resources practices and policies, because I think each agency is different. I think we have to have the underlying Title 5 kinds of protections, because this is government, it is public service; but if you want to set a priority, I don't see there is too much wrong in setting a particular priority in a particular program in the human resources arena. I think that is what you are trying to deal with now.

Senator COLEMAN. Anybody else?

Mr. STIER. Thank you. And, Senator Coleman, my own view is that the retention and recruitment issues are really two sides of the same coin. I mean, ultimately who you need, what kind of talent you need will depend on who you are able to keep, and so that is important, obviously, to be thinking about. I think systemically what you are doing on both sides and if you create a work environment that is going to be attractive for existing employees, that will also be a draw; and likewise, the flip side, if you don't, you can sell all you want and sell very well, but you are not going to get good people in.

The Partnership used data that was collected by the Office of Personnel Management, a hundred thousand employee survey, and put together a "Best Places to Work" ranking of Federal agencies, 189 subcomponents. Across the board, the No. 1 issue that was most important for employees in terms of their own engagement in agencies was the quality of their managers and leaders, and I would say that if you were to do one thing to focus on retention, that would be to develop and train, attract, and keep the very best managers.

And that is typically what you also see in the private sector. People generally don't leave jobs. They leave managers, and that is something that the Federal Government has truly not focused on, hasn't invested in that management capacity, and that is something I think would be of enormous benefit and consequence.

Senator COLEMAN. Very good. Thank you, gentlemen. This has been a very helpful and very informative panel.

Thanks, Mr. Chairman.

Senator VOINOVICH. Mr. Kinghorn, you have really studied the FBI, you have seen the recommendations of the Commission, and you heard the testimony of Mr. Bullock. Do you believe that there is additional legislation needed at this time to deal with the problems at the FBI?

Mr. KINGHORN. I think we will know more. I mean, the group that the Academy is studying is really under the auspices of Governor Thornburg, and some of that report will be completed later this fall, and I am sure the governor would love to brief the Subcommittee on that.

From what I know from a personal standpoint, I would concur in the recommendations that we worked on with Congressman Wolf's effort on the intelligence career service. I think that is important. I think your concept, the concept that was raised of a

Chief Operating Officer, makes sense to me. I was in a similar position to that back in EPA years ago when the administrative functions, and the management functions, were really much less complex. They are now very complex. There tended to be some balkanization of management functions in the government, the creation of CFOs, the CEOs, CIOs. I think that is healthy because it has raised each of those organizations to a point of importance organizationally.

But I think the concept of a CEO is important because nearly every administrative function you bring up is a new financial system, a new management system, and it is no longer tied into just one of those functions. When I brought up two financial systems at EPA and IRS, I could have done it myself because it was viewed as a very narrow function. We were successful. Now procurement is touched. Human Resources is touched. Program management information is touched.

So the concept of a COO, Chief Operating Officer at the department level even in bureaus or in this new intelligence operation, I think makes sense to tie together short of the Secretary, short of the head of the agency, those functions because they do not interact particularly well. So that concept, I think would be very helpful.

Senator VOINOVICH. Mr. Wagoner, do you think that one agency conducting security clearance investigations would make sense?

Mr. WAGONER. No, sir, we do not for some of the reasons that Mr. Turnicky had mentioned earlier. Each agency has slightly higher priorities at any given time. We also believe that distributing this across multiple agencies with the right management processes, the right systems, and the right oversight would make a much better decision, and that is why we had recommended putting a national security czar at the National Security Council to be able to look across government and enforce these standards.

Senator VOINOVICH. Well, we have had some people looking at that. I just checked how long it took my own two staff members to get clearance from the State Department. It was 8 or 9 months.

Mr. WAGONER. Yes. It is just not getting any better. We are encouraged about looking at—we had not considered having this person report to the NID. One of reasons we did not make that recommendation was we were concerned about the other departments, primarily Defense, what their reaction would be in having their clearances being done under the NID. That is the only reason we did not make that recommendation.

Senator VOINOVICH. Well, if you had somebody working for the NID that would be responsible for cracking the whip, wouldn't that make sense?

Mr. WAGONER. Yes, sir.

Senator VOINOVICH. What do you think about setting a limit in terms of time on some of these things and just forcing people to get the job done?

Mr. WAGONER. That is our primary recommendation, and like I said, we had studied this for 2 years on our panel. We had folks that actually were in leading government security clearance organizations, and again, with the right management systems and motivation, it can be done in 120 days, and we think it is time to codify that because this has been going on since at least 1981 and just

a lot of talking, a lot of meetings, a lot of studying, but we just haven't seen any changes to a process that was really invented in the Eisenhower Administration.

Senator VOINOVICH. Max, you have been doing some studies about what keeps people from coming into the Federal Government. One of the reasons why the John F. Kennedy School of Government made human capital one of their executive sessions is the fact that so many of their people who had ordinarily gone into government service decided to pursue other opportunities. I would like you to comment on the issue of the disclosure forms that one has to go through and the appointment process. Also, in the intelligence area, is the long time that one must wait before they are cleared impacting our ability to attract the best and brightest to the government.

Mr. STIER. There is no question that all those issues that you mentioned are related, and they reinforce a perception that many talented Americans have about government, that is from our research, the primary barrier for their being interested in coming into public service, and that is seeing the government as a bureaucracy, a place that they will get lost and a place where their creativity and their individuality will not be able to express itself and a place in which they themselves are not going to be able to make a difference.

So, fundamentally, I think that what we see is a collection of misperceptions and also realities that reinforce that view of government, both of which need to be changed. The realities, the ones that you have mentioned, disclosure forms, security clearance processes that take very long, the appointments process that means that leadership is not in place, all of those reinforce objectively a view by talented Americans that even if government is an interesting place to go, it is not worth it because of the bureaucratic tangles they are going to have to experience in either getting in or once they arrive.

So what is interesting about our research is that there, in fact, is an enormous reservoir of goodwill towards Federal workers. There is an enormous reservoir that cuts across both party and ideological lines about the value of public servants, but we need to move that into a cohort of talented people that also want to be public servants, and the No. 1 perception and reality we will have to change is that issue of, for lack of a better term, bureaucracy, and that is something that I think all the different recommendations that you have heard from this panel and that you are examining yourself are going to be very important in trying to change.

So in terms of accessing that external talent pool and, likewise, in keeping the talent that you want inside government, these kinds of reforms, I think, will make a very big difference.

Senator VOINOVICH. Thank you very much. I really appreciate all of you being here with us. We will see how responsive we are to some of your good ideas.

Thank you very much. The hearing is adjourned.

[Whereupon, at 12:08 p.m., the Subcommittee was adjourned.]

APPENDIX

Prepared Statement of
former Commissioners Fred Fielding and Jamie Gorelick
National Commission on Terrorist Attacks Upon the United States
before the Senate Government Affairs Committee
Subcommittee on Oversight of Governmental Management,
the Federal Workforce and the District of Columbia
September 14, 2004

Chairman Voinovich, Ranking Member Durbin, distinguished members of the Senate Government Affairs Subcommittee on Oversight of Government Management: We are honored to appear before you today. We want to thank you and the leadership of the United States Senate for the prompt consideration you are giving to the recommendations of the Commission. We thank you for your support.

The Commission's findings and recommendations were strongly endorsed by all Commissioners—five Democrats and five Republicans. We share a unity of purpose. We call upon Congress and the Administration to display the same spirit of bipartisanship as we collectively seek to make our country and all Americans safer and more secure.

Personnel Reform and the FBI

The FBI has been a major focus for intelligence reform since the 9-11 attacks. Building on the work of the Congressional Joint Inquiry, the Commission found that the FBI fell far short of the mark in adequately carrying out its domestic counterterrorism mission.

The FBI was the lead agency for investigating foreign terrorist groups operating inside the U.S. But it did not have the capability to link the collective knowledge of its thousands of agents in the field to national priorities. As a result, crucial information did not find its way up the chain of command to those who could act upon it.

One of the most startling examples of this was that the acting director of the FBI did not learn about the Bureau's hunt for two possible al Qaeda operatives in the United States, or the Bureau's arrest of an Islamic extremist taking flight training, until after September 11—that is, until is was too late.

We believe that institutional change to improve the FBI's intelligence capabilities and to focus the Bureau on its counterterrorism mission is of the utmost importance to this country's national security.

We have not recommended the creation of a new domestic intelligence agency, or American 'MI5.' We believe creating such a domestic intelligence collection agency is too risky to civil liberties, would take too long, cost too much money, and sever the highly useful link between the criminal and counterterrorism work of the FBI.

We considered other structural changes but decided such changes would not be necessary *if* our other recommendations are adopted. As part of our proposed National Counterterrorism Center, we recommend establishing a strong intelligence center overseeing both foreign and domestic counterterrorism intelligence work. We also recommend creating a National Intelligence Director who can set and enforce standards for collection, processing and reporting of information.

Moreover, we are encouraged by the progress Director Mueller has made in creating new structures within the Bureau to keep the FBI's role focused. He has a long way to go – but he has made progress.

He has established an Office of Intelligence overseen by the top tier of FBI management. He has created field intelligence groups in all field offices to make sure that FBI priorities and the emphasis on intelligence are put into practice. Improvements in information technology systems, connectivity and information sharing with the rest of the intelligence community are also planned, though progress has been slow.

However, these kinds of structural and technological changes can only go so far. Without the development of an institutional culture within the Bureau that appreciates the counterterrorism mission and grows strong intelligence officers to support it, all of our improvements will be only half measures. We must have the right people in place if they are to carry out the right mission.

This means establishing an intelligence cadre at the FBI: a specialized and integrated national security workforce, made up of agents and analysts with the necessary training and skills.

We believe that Director Mueller understands the human resources aspect of institutional change, that the FBI needs to recruit more broadly and that working on national security issues requires specialized training for both agents and analysts. He is currently establishing a program to certify agents as intelligence officers, a certification that will be a prerequisite for promotion to the senior ranks of the FBI.

New training programs have been instituted for intelligence-related subjects. Director Mueller has also proposed creating an Intelligence Directorate to include units for intelligence planning and policy and for the direction of analysts and linguists.

Some of these changes have been slow in coming. All bear oversight and scrutiny by the Congress, in order to monitor their implementation.

We think that Director Mueller is moving in the right direction. He has begun the difficult effort to shift the FBI to a new preventive counterterrorism posture. We must ensure that he succeeds.

The Commission's findings have not been entirely reassuring. In the Field Offices, we found that change was slow. Change so far is from the top down. We are concerned that

without sustained support and dedicated resources at the highest levels, management in the FBI's field offices may return to focusing on local concerns over the national security mission.

Developing an intelligence and national security workforce

To support the Director's reform efforts, and to institutionalize sustained reform within the FBI that will last beyond Director Mueller's tenure, the Commission recommends that the President direct the FBI to develop an intelligence cadre.

To ensure this workforce is focused on the counterterrorism mission, we need personnel reform in the areas of recruitment and hiring as well as training and career advancement:

- The FBI should fully implement a selection process that centers on the need for agents and analysts with backgrounds and skills for intelligence work. This would include knowledge – well beyond the traditional law enforcement background of most FBI agents -- in the areas of intelligence, international relations, languages, technology, and so on.

- The FBI should establish basic training for new agents and analysts in both criminal justice and national security disciplines. These agents should begin their careers with meaningful assignments in both areas

- FBI agents and analysts should have the opportunity to specialize and to follow a career track in either criminal justice or national security. Certain advanced training courses and assignments to other intelligence agencies should be requisites for advancement along the national security track.

- All senior FBI managers should be certified intelligence officers. This includes those managers working on law enforcement cases.

- Each field office should have an official at its deputy level for national security matters with management oversight to ensure that national priorities are carried out in the field.

- A dedicated team approach needs to be brought to bear on national security intelligence operations. The FBI should institute the integration of analysts, agents, linguists and surveillance personnel in the field.

Mr. Chairman, we understand that without dedicated resources these personnel reforms at the FBI cannot succeed. To support these reforms, the Commission also recommends that the FBI align its budget structure to protect the intelligence program, making sure that resources are managed according to national priorities. Congress also has a role to play, to monitor these reforms.

Mr. Chairman, the FBI has 28,000 employees, 56 field offices, 400 satellite offices, and 47 legal attaché offices, as well as a laboratory, operations center, and training facilities. This is in addition to an existing network of informants, cooperating defendants, and other sources.

The Bureau is a massive institution, and it has a massive job to perform. Director Mueller has announced plans and begun programs to direct the Bureau toward its enhanced national security mission, but we believe he needs to have the full support of, and oversight by, the Congress.

The President and the Congress have the obligation to make sure that essential reforms do not receive only transitory attention, but become institutionalized in the creation of a better, stronger FBI.

Improving the Transition Between Administrations

Mr. Chairman, last year you put forward a bill to streamline and improve the presidential appointments process, S. 765. We commend you for your leadership. We have studied your suggestions. We found them to be important, thoughtful, and constructive.

We see a clear convergence of the Commission's recommendations with your proposals in the following areas:

-- Encouraging presidential candidates to begin choosing appointed officials in high-level positions for their new administrations even before the election, to expedite the ultimate confirmation process.

-- Reducing the number of presidential appointed positions in national security agencies requiring Senate confirmation, to alleviate strain on the current appointment and confirmation system.

-- Streamlining and consolidating procedures such as financial disclosure reporting requirements, to streamline the overall presidential appointments process.

Both you – and we – clearly find that the status quo needs change.

National Security Implications of the Transition Process

The time of a transition is one of great vulnerability in our political system. The 9-11 story informs our understanding of the importance of reforming the presidential appointments process.

The 2000 to 2001 transition between administrations occurred at what we can now see as a critical juncture in the lead up to 9-11. The U.S.S. *Cole* had been attacked less than a month before the presidential election. Almost all those involved in the investigations told us they strongly suspected the hand of al Qaeda and perhaps Bin Ladin in the assault.

But no action was taken to retaliate for the attack on the *Cole* in the months before 9-11. Senior Clinton administration officials told us they did not have a definitive answer on the question of responsibility. Senior Department of Defense officials with the incoming administration said that by the time the new Pentagon team was in office the Cole attack was "stale." President Bush told us that he did not know that the Clinton Administration had issued an ultimatum to the Taliban.

We now know that Bin Ladin expected the United States to respond military to the Cole bombing, and that the success of the attack galvanized al Qaeda's recruitment efforts.

We can never know how events may have been affected had retaliatory action been taken by the United States. But we can observe how, in this particular case, the transition process did not serve us well in the handing over of an important national security decision from one administration to another.

Each incoming administration crafts its own transition. It can ask the outgoing administration for whatever it likes, but the latter has no affirmative obligations. The Clinton Administration did make substantial efforts to brief its successors. Information is not transferred with the consistency necessary.

The dispute over the 2000 election resulted in a far shorter transition period than is usually the case. Yet we do not consider the problems we have highlighted to be unique to that particular transition.

We both have had considerable experience with the transition process. It is never a seamless one. But the difficulties have been exacerbated by a growing number of politically appointed positions requiring Senate confirmation.

Appointees require security clearances involving background investigations, security questionnaires, and sometimes polygraph tests. A growing number of political appointees involves a vast amount of manpower, and the consequent increased amount of time needed to complete that confirmation process.

The delay in confirmations in 2001 was, in some cases, considerable, as it was for the incoming Clinton Administration in 1993. Deputy Secretary Wolfowitz was not confirmed until March 2001. Under Secretary of Defense for Policy Douglas Feith was not confirmed until July. Secretary Rumsfeld told us how he was virtually alone for the first several months. He gave considerable credit to the expertise of the holdover appointees from the previous Administration who helped him, but he observed that no initiatives were really possible until the new team was in place.

National security policymaking is too important to be disrupted by the transition between administrations or delayed by an overburdened confirmation system.

We need to make the clear communication of national security policy information to the new president a requirement, and the practice of confirming and obtaining security clearances for new administration officials as streamlined as possible.

Recommendations for Better Transitions

The Commission recommends reforms in a number of areas to make sure that transitions can work more effectively.

-- Even before the election, presidential candidates should submit names of selected members of their prospective transition teams to the FBI, so that they can obtain security clearances immediately after the election is over and can commence the transition on the day after an election.

-- Immediately after the election, the president-elect should submit lists of possible candidates for national security positions. These individuals can then begin the process of obtaining security clearances, so that background investigations can be completed before January 20.

-- A single federal agency should be responsible for providing and maintaining security clearances, ensuring uniform standards—including uniform security questionnaires and financial report requirements—and maintaining a single database. This agency should also be responsible for administering polygraph tests on behalf of organizations that require them.

-- During the transition period, and no later than January 20, the president-elect should submit the nominations of the entire new national security team, through the level of under secretary of cabinet departments. The Senate should adopt special rules requiring hearings and votes to confirm or reject national security nominees within 30 days of their submission. The Senate should not require confirmation of such executive appointees below Executive Level 3.

-- As soon as possible after election day, the outgoing administration should provide the president-elect with a classified, compartmented list that catalogues specific, operational threats to national security. The list should include major military or covert operations, and pending decisions on the possible use of force. Such a document could provide both notice and a checklist, inviting a president-elect to inquire and learn more. Each party has a responsibility in this task.

Concluding Remarks

We thank you again for the opportunity to testify before this distinguished panel. The recommendations we have discussed before this Committee today—personnel reform at the FBI and reforms to improve the transition between administrations—come directly from our study of the 9-11 story. We believe they are imperative for ensuring that our country is safer and more secure.

We should seize the moment and move forward on this reform, and the entire package of recommendations the Commission has put forward.

With your counsel and direction, we believe that the nation can, and will, make wise choices. We would be pleased to respond to your questions.

Statement of Mark Steven Bullock
Assistant Director, Administrative Services Division
Federal Bureau of Investigation

Before the
United States Senate Committee on Governmental Affairs
Subcommittee on the Oversight of Government Management, the Federal Workforce, and the District of Columbia

September 14, 2004

Good morning, Chairman Voinovich and members of the Subcommittee.

My name is Mark Steven Bullock. I am the Assistant Director of the FBI's Administrative Services Division. In my current capacity, I serve as the FBI's Human Capital Officer. Among my responsibilities are the recruitment and hiring of all new employees, personnel policy and administration, and the FBI's Career Development Program. I am also responsible for the Special Investigations/Government Background Investigation program, under which the FBI conducts the background investigations for certain executive appointees.

I am pleased to have this opportunity to discuss the human capital recommendations of the 9-11 Commission and their implications on the FBI and its workforce.

The 9-11 Commission Recommendation

The terrorist attacks of September 11, 2001, have brought about profound changes in the FBI, not only in terms of realigning our priorities and resources to prevent another terrorist attack, but also in transforming our workforce to carry out our intelligence and investigative missions both in the near term and in the future. The FBI's success in preventing terrorist acts and protecting U.S. national security is intrinsically linked to our success in elevating and integrating the role of intelligence in all of our operational programs.

The primary 9-11 Commission recommendation for the FBI is that *"(a) specialized and integrated national security workforce should be established at the FBI consisting of agents, analysts, linguists, and surveillance specialists who are recruited, trained, rewarded, and retained to ensure the development of an institutional culture imbued with a deep expertise in intelligence and national security."*

In addition to this recommendation, the Commission outlined a series of actions by which the recommendation should be implemented.

The Commission's recommendation and implementing actions are fully consistent with the Intelligence Directorate, the Intelligence Career Service, and newly formed career tracks for Special Agents that were announced by Director Mueller in April 2004. These changes reflect the vision and direction that he set for the FBI in its recently revised FBI Strategic Plan for 2004 – 2009 and the Bureau's first ever Human Capital Plan. Additionally, these changes begin to implement the guiding principles that are set out in the FBI's Human Talent for Intelligence Production Concepts of Operations.

An Intelligence Career Vision for the FBI

Underlying the changes in career tracks announced by Director Mueller is the concept of an integrated intelligence career service within the FBI that is fully compatible with the Bureau's investigative missions. From a human capital standpoint, there are three key elements to building that capacity: formal career tracks – including intelligence – for Special Agents; formal career tracks for Intelligence Analysts, linguists, and surveillance specialists; and the Intelligence Officer Certification program. I would like to briefly describe for the subcommittee how we envision these integrated intelligence/ investigative career tracks and programs will operate in the FBI.

Special Agent career tracks. The FBI is creating four core career tracks for its Special Agents: counterterrorism/counterintelligence, cyber-crime, criminal investigations, and intelligence. As envisioned, after completing training at the FBI Academy, new agents will be assigned to a small to medium size FBI field office. During this period, the new agent will be assigned a variety of cases that permit the development of basic investigative skills and that allow the new agent to experience work in each of the four core career areas.

After this initial assignment, which is envisioned to cover the first three years of an agent's career, he or she will be transferred to one of our 15 larger field offices. At this time, the agent will begin specialization in a core career track. This will begin a period of more specialized assignments and advanced training in that core area. In addition to subject matter training, the agent will have the opportunity to develop specialized skills, such as becoming a Technically Trained Agent, a Computer Analysis Response Team examiner, a polygrapher, an Intelligence Officer, or a crime scene specialist. An agent may also elect to gain subject matter expertise through exchange programs, interagency details, or continuing education experience. The agent may opt for training in a foreign language to qualify for assignment in an overseas location. Finally, an agent may elect a supervisory and managerial development track.

For all agents, regardless of which track they enter, the new agent training curriculum has been modified to integrate core intelligence objectives.

Intelligence Analyst career tracks. The career tracks and expectations envisioned for FBI Intelligence Analysts mirror, to a great extent, those of the Special Agent workforce and those of other Intelligence Community agencies. Like agents, persons interested in becoming FBI Intelligence Analysts would apply through a centralized pool for selection and processing. Candidates would be selected for processing based upon the skills, abilities, and needs identified by the FBI's operational divisions based upon workforce requirements. Candidates would proceed through a centralized testing and assessment process for actual selection just as agents do.

Like new agents who begin with basic training at the FBI Academy, new analysts would report first for basic training at the Academy's College of Analytical Studies. Just this week, we launched a revised basic curriculum for new analysts. This curriculum reflects changes based on input from previous attendees and the various Intelligence Program concepts of operations.

Upon successful completion of basic training, analysts would be assigned to a field office or headquarters division in one of four core areas: counterterrorism, counterintelligence, cyber crime, or criminal investigations. Additionally, the analyst would concentrate in one of three work roles: all-source analyst, reports officer, or operations specialist.

Under the auspices of the Intelligence Directorate, the Office of Intelligence would establish the standards and criteria for professional development opportunities, to include advanced training in special topics and interest areas, inter-agency exchanges and details, advanced degree and continuing education, foreign language, supervisory and leadership development, and intelligence officer certification would be offered to analysts. The analyst career development program would include rotations among field offices, headquarters, and legal attaché posts to gain different work experiences. The actual delivery of training and development programs based on these standards and criteria would be carried out by the Training and Development Division, the Administrative Services Division, and the divisions in which analysts are assigned.

And, as important is developing the intellectual and analytical capacities of our analytical workforce, an essential element of the Intelligence Career Service is providing these employees with a proper working environment in which to perform their work. Such an environment includes security workspace to protect sensitive documents and information; access to FBI, law enforcement, and intelligence data sources; analytical tools to fully exploit information; and the ability to exchange and collaborate on information and assignments with co-workers within the FBI and other agencies. Without a supporting infrastructure

and working environment, event the most motivated and highly qualified analysts will not be able to do their jobs and contribute to protecting U.S. national security.

For assignments within the Office of Intelligence itself, we need most positions to be interchangeable between Special Agents who are in the Intelligence Career Track and Intelligence Analysts. Over time, we would extend that transferability to dedicated intelligence management and supervisory positions in FBI field offices.

Intelligence Officer Certification. We envision the Special Agent career track in intelligence and the Intelligence Analyst career tracks intersecting in the Intelligence Officer Certification program. The FBI Intelligence Officer certification program will be a set of formal requirements satisfied through a combination of advanced education in a specific intelligence-related discipline or problem set, the completion of progressively challenging and complex assignments in all three of the analytical work roles (all-source analysis, reports officer, and operations), the participation in interagency exchanges and details, and completion of leadership development requirements.

Not all Special Agents who choose the intelligence career track and not all Intelligence Analysts will attain certification as an FBI Intelligence Officer. The distinction is envisioned as a true recognition of career-long commitment to intelligence and the achievement of expert status among his or her peers. The FBI Intelligence Officer Certification program would provide the Intelligence Director with a steady stream of talent for positions within the Office of Intelligence, for Field Intelligence Groups, and for key management and leadership positions in the FBI's operating divisions.

The FBI Intelligence Officer Certification program would be the Bureau's contribution to the larger Intelligence Community Officer program and the Intelligence Community Officer Training Program (ICOT). Our certification program will be completed by January 2005. At the present time, we are the only major Intelligence Community partner that has not established a formal program for certification. We believe that the creation of such a program would make the FBI a more attractive agency for Intelligence Officers in other agencies looking for detail assignments, and it would make FBI employees in the program more attractive candidates for ICOT positions in other agencies.

Progress Toward Achieving the Vision

Later this month, an implementation team composed of agents, analysts, and linguists will begin a 30 day task to build the Intelligence Career Service implementation plan. This plan will establish key implementation milestones that will guide the program and serve as a set of metrics for measuring progress.

Mr. Chairman, this concludes my prepared statement. And I am willing to respond to any questions that you or other members of the subcommittee might have for me.

John A. Turnicky

Special Assistant to the Director of Central Intelligence for Security

Good morning Chairman Voinovich, Senator Durbin and distinguished members of the committee. In my role as the Special Assistant to the Director of Central Intelligence for Security, I would like to share with you ongoing initiatives that have already improved security processes in the Intelligence Community, and after I complete my statement, take questions from the Committee.

The ongoing war on terrorism has underscored the need for the Intelligence Community to facilitate the sharing of intelligence information while protecting intelligence sources and methods. The Community's security professionals play a pivotal role in monitoring the impact of security actions on intelligence operations and analysis. We believe the Community has made significant strides in standardizing policies and procedures that provide a much stronger foundation than that which existed prior to 11 September 2001.

In March 2002, the Director of Central Intelligence (DCI) envisioned the need to centralize the management and oversight of Intelligence Community security policies and procedures, and he endorsed the formation of the Director of Central Intelligence Special Security Center (DSSC). The Center is pursuing initiatives to produce more effective and efficient security practices within the Community. The Center is working to ensure that existing common security investigative and adjudicative practices are consistently implemented.

As facilitated by the DSSC, the Community's Security Directors have collaborated on strategies to improve and strengthen common security policies and practices. Using common guidelines for background investigations and adjudications – specifically the Director of Central Intelligence Directives, Executive Orders, and National Security Directives - the Intelligence Community Security

Directors strive to meet the requirements for consistent security processing, while reducing redundant processes and remaining flexible enough for unique requirements. Ongoing actions include:

- Performing policy review to promote standardization and reciprocity within the Intelligence Community;
- Conducting oversight on the implementation of security policies;
- Standardizing personnel security training to foster uniformity throughout the clearance process; and
- Improving interagency reciprocity in security clearances to reduce adjudicative processing redundancies across the Community.

In addition to the ongoing actions outlined above, a central security clearance database repository is in operation at over 100 facilities worldwide, and will become the single source for the Intelligence Community's security

professionals as the clearance validation database. The repository may also support a number of information sharing activities within the Community, including intelligence dissemination, expedited personnel security clearance processing, and our Common Badge initiative.

In response to the Committee's request for views on its proposed legislation to create a centralized investigative service under a National Intelligence Director, it is premature at this point to comment on legislation until the President presents his proposed Intelligence reform legislation which will address many of these issues. The President has already issued an Executive Order to Strengthen the Management of the Intelligence Community, which includes the direction to the DCI in his role as the leader of the intelligence community to: "Establish common security and access standards for managing and handling intelligence systems, information, and products." The President agrees

with the 9/11 Commission's recommendations for improving information sharing, while protecting sensitive national security information.

The Intelligence Community Security Directors believe that changes implemented by the security community since 11 September 2001 have significantly improved the use of common standards and practices. We will continue to work together to streamline and improve the security process.

In closing, I thank the Committee for providing the Community the opportunity to testify on this important issue. I am happy to address any questions you have regarding my testimony today.

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Government Affairs

For Release on Delivery
Expected at 9:30 a.m. EST
Tuesday, September 14, 2004

INTELLIGENCE REFORM

Human Capital Considerations Critical to 9/11 Commission's Proposed Reforms

J. Christoper Mihm, Managing Director
Strategic Issues

GAO-04-1084T

September 14, 2004

GAO
Accountability·Integrity·Reliability

Highlights

Highlights of GAO-04-1084T, a testimony to Subcommittee, on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Governmental Affairs

INTELLIGENCE REFORM

Human Capital Considerations Critical to 9/11 Commission's Proposed Reforms

Why GAO Did This Study

GAO has performed extensive work and gained experience on government transformation and the critical role that human capital management can play in driving this change. Valuable lessons from these efforts could help guide the proposed reforms in the intelligence community envisioned by the 9/11 Commission.

At the request of this subcommittee, this statement focuses on (1) the lessons GAO has learned from successful mergers and organizational transformations; particularly the need for committed and sustained leadership and the role of performance management systems in these changes; (2) human capital flexibilities that can be used as essential tools to help achieve these reforms; (3) how the Federal Bureau of Investigation (FBI) is using these lessons and human capital flexibilities to transform to meet its evolving mission in the post 9/11 environment, and (4) GAO's findings to date on the factors that must be considered in the approach to the government's security clearance process, as a means to accelerate the process for national security appointments.

www.gao.gov/cgi-bin/getrpt?GAO-04-1084T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact J. Christopher Mihm (202) 512-6806 or mihmj@gao.gov.

What GAO Found

Recognizing that people are the critical element in transformation initiatives is key to a successful transformation of the intelligence community and related homeland security organizations. GAO's work in successful mergers and transformations shows that incorporating strategic human capital management approaches will help sustain any reforms in the intelligence community. Successful major change management initiatives in large public and private sector organizations can often take at least 5 to 7 years to create the accountability needed to ensure this success. As a result, committed and sustained leadership is indispensable to making lasting changes in the intelligence community. Accordingly, the Congress may want to consider lengthening the terms served by the directors of the intelligence agencies, similar to the FBI Director's 10-year term. One of the major challenges facing the intelligence community is moving from a culture of a "need to know" to a "need to share" intelligence information. The experience of leading organizations suggests that performance management systems—that define, align, and integrate institutional, unit, and individual performance with organizational outcomes—can provide incentives and accountability for sharing information to help facilitate this shift.

Significant changes have been underway in the last 3 years regarding how the federal workforce is managed. The Congress passed legislation providing certain governmentwide human capital flexibilities, such as direct hire authority. While many federal agencies have received human capital flexibilities, others may be both needed and appropriate for intelligence agencies, such as providing these agencies with the authority to hire a limited number of term-appointed positions on a noncompetitive basis.

Human capital challenges are especially significant for the intelligence organizations, such as the FBI, that are undergoing a fundamental transformation in the aftermath of September 11, 2001. For the last 3 years, we have been using the lessons learned from successful transformations to monitor the FBI's progress as it transforms itself from its traditional crime enforcement mission to its post 9/11 homeland security priorities—counterterrorism, counterintelligence and cyber crimes. For example, the FBI has undertaken a variety of human capital related initiatives, including major changes in realigning, retraining, and hiring special agents and analysts with critical skills to address its top priorities.

The 9/11 Commission recommended that a single federal security clearance agency should be created to accelerate the government's security clearance process. Several factors must be considered in determining the approach to this process. The large number of requests for security clearances for service members, government employees, and others taxes a process that already is experiencing backlogs and delays. Existing impediments—such as the lack of a governmentwide database of clearance information, a large clearance workload, and too few investigators—hinder efforts to provide timely, high-quality clearance determinations.

Chairman Voinovich, Senator Durbin, and Members of the Subcommittee:

I am pleased to be here today to discuss how strategic human capital management can drive the transformational challenges of the intelligence community. The work of the 9/11 Commission has clearly demonstrated the need to fundamentally change the organization and culture of the intelligence community to enhance its ability to collect, analyze, share, and use critical intelligence information—a crucial mission of the community. In a knowledge-based federal government, including the intelligence community, people—human capital—are the most valuable asset. How these people are organized, incentivized, enabled, empowered, and managed are key to the reform and ultimate effectiveness of the intelligence community and other organizations involved with homeland security.

To this end, we have conducted extensive work on government transformation, and the critical role that human capital management plays in driving this change over the past several years. In August 2004, Comptroller General David M. Walker testified before the Committee on Government Reform, U.S. House of Representatives, on how the valuable lessons we learned from this work can be applied to address the challenges of reform in the intelligence community.[1] He stated that while the intelligence community has historically been addressed separately from the remainder of the federal government, and while it undoubtedly performs some unique missions that present unique issues (e.g. the protection of sources and methods), many of its major transformational challenges are similar, or identical to those that face most government agencies, such as changing their cultures to fit evolving missions. Experience has shown that strategic human capital management must be the centerpiece of any serious change management initiative. As the Comptroller General also recently noted, many of the challenges facing the intelligence community as knowledge-based organizations, are similar to those he faced when he began his tenure at GAO. As a result, GAO has gained valuable experience and knowledge in government transformation that can be shared with the intelligence community. We also stand ready to use the experience and knowledge we have gained to offer GAO's assistance in support of the Congress' legislative and oversight activities for the intelligence community.

[1]GAO, *9/11 Commission Report: Reorganization, Transformation, and Information Sharing*, GAO-04-1033T (Washington, D.C.: Aug. 3, 2004).

As I recently testified before your subcommittee, more progress in addressing human capital challenges has been made in the last 3 years than in the last 20 years; nevertheless, much more needs to be done.[2] Federal human capital strategies are not yet appropriately constituted to meet current and emerging challenges or to drive the needed transformation across the federal government. The basic problem has been the long-standing lack of a consistent approach to marshaling, managing, and maintaining the human capital needed to maximize government performance and ensure accountability because people define the organization's culture, drive its performance, and embody its knowledge base. Human capital (or people) strategy is the critical element to maximizing performance and ensuring accountability. Thus, federal agencies, including our intelligence and homeland security communities, will need the most effective human capital systems to address these challenges and succeed in their transformation efforts during a period of sustained budget constraints.

Under the leadership of this subcommittee and others in Congress, we have seen major efforts to address the human capital challenges involved in transforming these communities, such as the transformation of the Federal Bureau of Investigation (FBI) and the creation of the Department of Homeland Security (DHS). Nevertheless, as the 9/11 Commission and our work indicate, much more needs to be done to ensure that agencies' cultures are results-oriented, customer-focused, and collaborative in nature—characteristics critical to high performing organizations.[3] As agreed, my statement today will cover four major points. First, I will discuss how we can use the lessons we have learned to date from successful private and public sector mergers and transformations to guide the intelligence community's human capital reforms; particularly the need for committed and sustained leadership, and the use of performance management systems to help achieve the necessary change. Second, I will discuss several human capital flexibilities that could be used as essential tools to help achieve these reforms, such as providing agencies with the authority to hire a limited number of term-appointed positions. Third, I will also discuss GAO's prior work on FBI's efforts to use these lessons and

[2]GAO, *Human Capital: Building on the Current Momentum to Transform the Federal Government*, GAO-04-976T (Washington, D.C.: July 20, 2004).

[3]GAO, *Comptroller General's Forum: High-Performing Organizations: Metrics, Means and Mechanisms for Achieving High Performance in the 21st Century Public Management Environment*, GAO-03-343SP (Washington, D.C.: Feb. 13, 2004).

human capital flexibilities as it transforms to meet its evolving mission in the post 9/11 environment. Finally, I will summarize our findings to date on the factors that must be considered in the approach to the government security clearance process, as a means to accelerate the process for national security appointments.

My comments are based on our completed GAO work and our institutional knowledge on organizational transformation and human capital issues, as well as on homeland security. We conducted our work in accordance with generally accepted government auditing standards.

Key Mergers and Transformation Practices Can Be Used to Guide Intelligence Community Reforms

Experience shows that failure to adequately address—and often even consider—a wide variety of people and cultural issues are at the heart of unsuccessful organizational transformations. Recognizing the people element in these initiatives and implementing strategies to help individuals maximize their full potential in the new environment are key to a successful transformation of the intelligence community and related homeland security organizations. Mergers and transformations require more than just changing organizational charts. They require fundamental changes in strategic human capital management approaches, particularly in defining, aligning, and integrating key institutional, unit, and individual performance management and reward systems to achieve desired outcomes.

The 9/11 Commission has recommended several transformational changes, such as the establishment of a National Counterterrorism Center for joint operational planning and intelligence, and the creation of a National Intelligence Director position to oversee national intelligence centers across the federal government. The Director would manage the national intelligence program, oversee agencies that contribute to it, and establish important aspects of a human capital system. Specifically, the Director would be able to set common personnel and information technology policies across the intelligence community. In addition, the Director would have the authority to evaluate the performance of the people assigned to the Center.

The creation of a National Counterterrorism Center and a National Intelligence Director would clearly represent major changes for the intelligence community. Recent structural and management changes have occurred and are continuing to occur in government that provide lessons for the intelligence community's transformation. For example, in

anticipation of the creation of DHS, in September 2002, the Comptroller General convened a forum of private and public sector experts to help identify useful practices and lessons learned from mergers, acquisitions, and transformations that DHS and other federal agencies could use to successfully transform their cultures.[4] In a follow-up report, we also identified specific steps that organizations can adopt to help implement these practices, as seen in table 1.[5] These practices and steps also provide guidance on what must occur to effectively transform the intelligence community.

[4]GAO, *Highlights of a GAO Forum: Mergers and Transformation: Lessons Learned for a Department of Homeland Security and Other Federal Agencies*, GAO-03-292SP (Washington, D.C.: Nov. 14, 2002).

[5]GAO, *Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations*, GAO-03-669 (Washington, D.C.: July 2, 2003).

Table 1: Key Practices and Implementation Steps for Mergers and Transformations

Practice	Implementation Steps
Ensure top leadership drives the transformation.	• Define and articulate a succinct and compelling reason for change. • Balance continued delivery of services with merger and transformation activities.
Establish a coherent mission and integrated strategic goals to guide the transformation.	• Adopt leading practices for results-oriented strategic planning and reporting.
Focus on a key set of principles and priorities at the outset of the transformation.	• Embed core values in every aspect of the organization to reinforce the new culture.
Set implementation goals and a timeline to build momentum and show progress from day one.	• Make public implementation goals and timeline. • Seek and monitor employee attitudes and take appropriate follow-up actions. • Identify cultural features of merging organizations to increase understanding of former work environments. • Attract and retain key talent. • Establish an organizationwide knowledge and skills inventory to exchange knowledge among merging organizations.
Dedicate an implementation team to manage the transformation process.	• Establish networks to support implementation team. • Select high-performing team members.
Use the performance management system to define the responsibility and assure accountability for change.	• Adopt leading practices to implement effective performance management systems with adequate safeguards.
Establish a communication strategy to create shared expectations and report related progress.	• Communicate early and often to build trust. • Ensure consistency of message. • Encourage two-way communication. • Provide information to meet specific needs of employees.
Involve employees to obtain their ideas and gain ownership for the transformation.	• Use employee teams. • Involve employees in planning and sharing performance information. • Incorporate employee feedback into new policies and procedures. • Delegate authority to appropriate organizational levels.
Build a world-class organization.	• Adopt leading practices to build a world-class organization.

Source: GAO.

I would now like to discuss how two of these key practices, providing leadership commitment and using performance management systems, can help guide the intelligence community reforms.

Ensuring Committed and Sustained Leadership Is a Key Practice to Drive Transformation in the Intelligence Community

Committed, sustained, highly qualified, and inspired leadership, and persistent attention by all key parties in the successful implementation of organizational transformations are indispensable to making lasting changes in the intelligence community. Experience shows that successful major change management initiatives in large public and private sector organizations can often take at least 5 to 7 years to help to create the accountability needed to ensure that long-term management and transformation initiatives are successfully completed. This length of time and the frequent turnover of political leadership in the federal government have often made it difficult to obtain the sustained and inspired attention to make the needed changes. For example, while the FBI Director has a 10-year term appointment, most of the intelligence agency heads have shorter term appointments. In his August 2004 testimony on the proposed 9/11 Commission reforms, the Comptroller General suggested that the Congress may want to place attention on lengthening the period of time served by the directors of the other intelligence agencies to provide the continuity and management needed to make the tremendous changes that occur during organizational transformations.

We have also reported that the appointment of agency chief operating officers is one mechanism that should be considered to provide continuity by elevating attention on management issues and transformation, integrating these various initiatives, and institutionalizing accountability for addressing them.[6] We believe that to provide such leadership continuity during reform of the intelligence community, one option that the Congress could consider is for the National Intelligence Director to appoint a Chief Operating Officer. This executive could serve under a term appointment to institutionalize accountability over extended periods and to help ensure that the long-term management and organizational initiatives of the National Counterterrorism Center and the Director are successfully completed. In general, the Chief Operating Officer could be responsible to the National Intelligence Director for the overall direction, operation, and management within the intelligence community to improve its performance. These responsibilities include implementing strategic goals, and assisting the National Intelligence Director in promoting reform, measuring results, and other responsibilities.

[6]GAO, *Highlights of a GAO Roundtable: The Chief Operating Officer Concept: A Potential Strategy to Address Federal Governance Challenges*, GAO-03-192SP (Washington, D.C.: Oct. 4, 2002).

Finally, there are also leadership continuity challenges that occur during transitions between administrations, and in the Presidential appointment process. For example, the 9/11 Commission noted that recent administrations did not have their full leadership teams in place for at least 6 months after the transitions occurred. The Commission recommended that the disruption of national security policymaking during a change of administrations be minimized as much as possible. The Comptroller General suggests that one way to avoid disruption and to provide continuity during transitions is that if the Congress creates Deputy or Assistant National Intelligence Directors, to designate one of them as the Principal Deputy, such as the Director of the Central Intelligence Agency (CIA), whose term appointment, as previously discussed, would not coincide with the term of the National Intelligence Director.

Using Performance Management Systems Is Another Key Practice to Help Transform the Intelligence Community

A central theme of the 9/11 Commission report was that one of the major challenges facing the intelligence community is moving from a culture of a "need to know" to a "need to share." The Congress and the President are separately considering a series of important structural and policy changes that would facilitate this shift. The experiences of leading organizations suggest that a performance management system can also be a part of the solution. Senator Voinovich, at your request and others, we previously identified leading performance management practices that should prove helpful for intelligence agencies seeking to move to a culture of "need to share" and thus improve their performance.[7] The key practices are as follows:

[7]GAO, *Results-Oriented Cultures: Creating a Clear Linkage Between Individual Performance and Organizational Success*, GAO-03-488 (Washington, D.C.: Mar. 14, 2003).

Figure 1: Key Practices for Effective Performance Management

1. Align individual performance expectations with organizational goals. An explicit alignment helps individuals see the connection between their daily activities and organizational goals.

2. Connect performance expectations to crosscutting goals. Placing an emphasis on collaboration, interaction, and teamwork across organizational boundaries helps strengthen accountability for results.

3. Provide and routinely use performance information to track organizational priorities. Individuals use performance information to manage during the year, identify performance gaps, and pinpoint improvement opportunities.

4. Require follow-up actions to address organizational priorities. By requiring and tracking follow-up actions on performance gaps, organizations underscore the importance of holding individuals accountable for making progress on their priorities.

5. Use competencies to provide a fuller assessment of performance. Competencies define the skills and supporting behaviors that individuals need to effectively contribute to organizational results.

6. Link pay to individual and organizational performance. Pay, incentive, and reward systems that link employee knowledge, skills, and contributions to organizational results are based on valid, reliable, and transparent performance management systems with adequate safeguards.

7. Make meaningful distinctions in performance. Effective performance management systems strive to provide candid and constructive feedback and the necessary objective information and documentation to reward top performers and deal with poor performers.

8. Involve employees and stakeholders to gain ownership of performance management systems. Early and direct involvement helps increase employees' and stakeholders' understanding and ownership of the system and belief in its fairness.

9. Maintain continuity during transitions. Because cultural transformations take time, performance management systems reinforce accountability for change management and other organizational goals.

Source: GAO.

An effective performance management system is a vital tool for aligning the organization with desired results and creating a "line of sight" showing how team, unit, and individual performance can contribute to overall organizational results. In addition, to be successful, transformation efforts, such as the one envisioned for the intelligence community, must have leaders, managers, and employees who are capable of integrating and creating synergy among the multiple organizations involved. A performance management system can help send unmistakable messages about the behavior that the organization values and that support the organization's mission and goals, as well as provide a consistent message to employees about how they are expected to achieve results. Thus, as transformation efforts are implemented, individual performance and contributions are evaluated on competencies such as change management,

cultural sensitivity, teamwork, collaboration, and information sharing. Leaders, managers, and employees who demonstrate these competencies are rewarded for their successful contributions to the achievement of the transformation process.

Human Capital Flexibilities Are Also Essential Tools for Intelligence Community Transformation

Significant changes have been underway in the last 3 years regarding how the federal workforce is managed. For example, the Congress passed legislation providing certain governmentwide human capital flexibilities, such as direct hire authority.[8] In addition, individual agencies—such as the National Aeronautical and Space Administration, the Department of Defense (DOD), and DHS—received flexibilities intended to help them manage their human capital strategically to achieve results. While many federal agencies have received additional human capital flexibilities, others may be both needed and appropriate for the intelligence and other selected agencies. For example, the 9/11 Commission recommends rebuilding CIA's analytical capabilities, enhancing the agency's human intelligence capabilities, and developing a stronger language program. Human capital flexibilities can help agencies like the CIA meet these critical human capital needs.

Therefore, to further enable the intelligence agencies to rapidly meet their critical human capital needs and workforce plans, the Comptroller General suggests that Congress could consider, as necessary, legislation granting selected agency heads the authority to hire a limited number of positions for a stated period of time (e.g., up to 3 years) on a noncompetitive basis. The Congress has passed legislation granting this authority to the Comptroller General of the United States and it has helped GAO address a range of critical needs in a timely, effective, and prudent manner over many years. The Comptroller General was also provided the authority to carry out early retirement offers which may be made to any employee or group of employees based on a number of factors including (1) geographic area, organizational unit, or occupational series or level; or (2) skills, knowledge, or performance, which he suggests would further assist intelligence agencies in planning and shaping their future workforces. For GAO, the Comptroller General can deny any requests for early retirement if he determines that granting them would jeopardize GAO's ability to achieve its mission.

[8]GAO, *Human Capital: Increasing Agencies' Use of New Hiring Flexibilities*, GAO-04-959T (Washington, D.C.: July 13, 2004).

As the Congress considers reforms to the intelligence community's human capital policies and practices, it should also consider whether agencies have the necessary institutional infrastructure to effect these changes. At a minimum, this infrastructure includes a human capital planning process that integrates the agency's human capital policies, strategies, and programs with its program goals, mission and desired outcomes; the capabilities to effectively develop and implement a new human capital system; and importantly, a performance management system with a set of appropriate principles and safeguards—including reasonable transparency and appropriate accountability mechanisms—to ensure the fair, effective, credible, nondiscriminatory implementation and application of a new system.

FBI Is Using Strategic Human Capital Management to Transform and Meet Post 9/11 Challenges

Human capital challenges are especially significant for the intelligence organizations, such as the FBI, that are undergoing a fundamental transformation in the aftermath of September 11, 2001. For the last 3 years, we have been monitoring the FBI's progress as it transforms itself from its traditional crime enforcement mission to its post September 11 homeland security priorities—counterterrorism, counterintelligence, and cyber crimes. In terms of human capital, this has meant major changes in recruiting, training, and deploying FBI's staff resources. Specifically, the 9/11 Commission recommends that the FBI create a specialized and integrated national security workforce, consisting of agents, analysts, linguists, and surveillance specialists who are recruited, trained, rewarded, and retained to ensure the development of an institutional culture with expertise in intelligence and national security. While the FBI has made admirable progress on a number of these human capital fronts, substantial challenges remain.[9]

Linchpins of any successful transformation are (1) a strategic plan to guide an organization's mission, vision, and the steps necessary to achieve its long-term goals; and (2) a strategic human capital plan linked to the strategic plan that guides recruitment, hiring, training, and retention decisions for staff with skills critical to the organization's mission and goals. In March 2004, we reported that the FBI had completed both of these

[9]GAO, *FBI Transformation: Human Capital Strategies May Assist the FBI in Its Commitment to Address Its Top Priorities*, GAO-04-817T (Washington, D.C.: June 3, 2004).

plans.[10] With respect to strategic human capital planning, FBI has developed a strategic human capital plan that contains many of the principles that we have laid out for an effective human capital system.[11] For example, it highlights the need for the FBI to fill identified skill gaps, in such areas as language specialists and intelligence analysts, by using various personnel flexibilities including recruiting and retention bonuses.[12]

In addition, in the immediate aftermath of September 11, 2001, the FBI undertook a variety of human capital-related initiatives to align with its transformation efforts. These initiatives included realigning, retraining, and hiring special agents and analysts with critical skills to address its top priorities, and taking initial steps to revamp its performance management system.

In relation to realigning resources to fit the new agency priorities, the FBI has transferred agents from its drug, white-collar crime, and violent crime programs to focus on counterterrorism and counterintelligence priorities. This realignment of resources has permanently shifted 674 field agent positions from drug, white-collar, and violent crime program areas to counterterrorism and counterintelligence since September 11, 2001. About 550 of these positions were drawn from the drug crime area. Yet because of demands in the counterterrorism and counterintelligence programs, the FBI has had a continuing need to temporarily redirect special agent resources from traditional criminal investigative programs to address its top priorities.[13]

In terms of retraining its existing staff, the FBI also revamped its special agent training curriculum to enhance skills in counterterrorism investigation techniques. The revised training for new agents was instituted in April 2003 and by the end of that calendar year, it was expected that

[10]GAO, *FBI Transformation: FBI Continues to Make Progress in Its Efforts to Transform and Address Priorities*, GAO-04-578T (Washington, D.C.: Mar. 23, 2004).

[11]GAO, *A Model of Strategic Human Capital Management*, GAO-02-373SP (Washington, D.C.: March 2002).

[12]GAO, *Human Capital: Effective Use of Flexibilities Can Assist Agencies in Managing Their Workforces*, GAO-03-2 (Washington, D.C.: Dec. 6, 2002).

[13]GAO, *FBI Transformation: Data Inconclusive on Effects of Shift to Counterterrorism-Related Priorities on Traditional Crime Enforcement*, GAO-04-1036 (Washington, D.C.: Aug. 31, 2004).

agents transferring from more traditional crime areas to work in the priority areas would have received specialized training. To enhance the skills and abilities of FBI analysts, the FBI created the College of Analytic Studies at the Quantico training facility in October 2001. This program, with assistance from CIA personnel, provides training to both new and in-service analysts in tools and techniques for both strategic and technical analysis.

The FBI set ambitious goals for hiring in many specialty areas over the last few years. While it has achieved success in some areas, such as increasing the number of special agents hired with intelligence and foreign language proficiency, achieving other hiring goals has been more challenging. Specifically, the FBI has had some difficulty in retaining and competing with other government agencies and the private sector for intelligence analysts. These problems may be related to the truncated career ladder for intelligence analysts at the FBI compared to the career ladders for the same types of positions at other federal agencies. For example, both the CIA and the National Security Agency (NSA) maintain a career ladder for intelligence staff that includes both senior executive (managerial) and senior level (nonmanagerial) positions. Although, the FBI has actively moved towards establishing a GS-15 senior managerial level position for its intelligence staff, this would still not create a level playing field with the rest of the intelligence community that has the authority to provide positions at the Senior Executive Service (SES) level. Should the FBI decide to adopt senior managerial and SES positions for its intelligence staff, the agency will need to develop and implement a carefully crafted plan that includes specific details on how such an intelligence career service would integrate into its strategic plan as well as its strategic human capital plan, the expectations and qualifications for the positions, and how performance would be measured.

As discussed previously, an effective performance management system is a vital tool for aligning the organization with desired results and showing how team, unit, and individual performance can contribute to overall organizational results. As we have previously reported, the current FBI system for rating agents and analysts—a pass/fail system—is inadequate to achieve that needed linkage. A successful performance management system should make meaningful distinctions in performance so that staff can understand their role in relation to agency objectives. It should also map a course of progress to improve performance so that it more closely aligns with agency goals. The FBI has made progress in adjusting its performance management system for senior executives to conform to the

performance management principles that I previously discussed. Although FBI's human capital plan indicates that it is also moving in the direction of changing the performance management system for agents and analysts, a major effort will be needed before it is operational.

As we have highlighted, in recent years, the FBI has used a variety of available human capital flexibilities, such as recruitment bonuses and retention allowances, to help recruit and retain valuable staff resources. As with any organization undergoing transformation and considering the use of additional human capital strategies, the FBI would have to weigh all options that are available to it before implementing a successful human capital strategy, including using existing administrative flexibilities and requesting new legislative alternatives. The FBI would also need to ensure that it has the institutional infrastructure in place so that any human capital flexibilities are used appropriately.

Many Factors Must Be Considered in Approach to Government Security Clearance Process

The 9/11 Commission also raised concerns about minimizing national security policymaking disruptions during the change of administrations by accelerating the process for national security appointments. The Commission recommended that a single federal agency should be responsible for providing and maintaining security clearances and for ensuring uniform security clearance standards, including maintaining a single governmentwide database of clearance information, as a way to address this concern. In prior work, we have found that many factors must be considered in addressing the government security clearance process. These factors include the personnel security clearance criteria and process, recent actions that DOD has taken to consolidate investigative and adjudicative functions, and existing impediments and internal control concerns for security clearance programs.

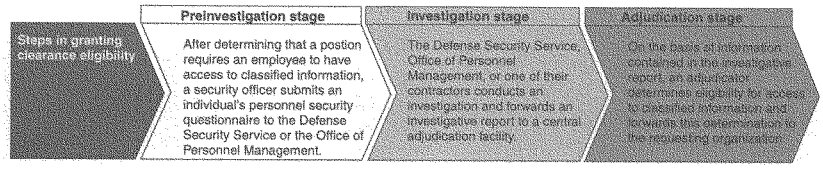
All Security Clearances Are Already Governed by the Same Criteria and General Process

In considering ways in which to approach the government's security clearance process, it is helpful to note that since 1997, all agencies have been subject to a common set of personnel security investigative standards and adjudicative guidelines for determining whether service members, government employees, industry personnel, and others are

eligible to receive a security clearance.[14] Classified information is categorized into three levels—top secret, secret, and confidential.[15] The expected damage to national defense or foreign relations that unauthorized disclosure could reasonably be expected to cause is "exceptionally grave damage" for top secret information, "serious damage" for secret information, and "damage" for confidential information.

In addition, all agencies generally follow a similar clearance process. DOD's process for determining eligibility is used here to illustrate the stages required in making such a determination for federal agencies. We are highlighting DOD's process because, as of September 30, 2003, DOD was responsible for the clearances issued to approximately 2 million personnel, including nearly 700,000 industry personnel who work on contracts issued by DOD and 22 other federal agencies[16] as well as staff in the legislative branch of the federal government. (see fig. 2).

Figure 2: DOD's Personnel Security Clearance Process



Source: DOD.

[14]The White House, "Implementation of Executive Order 12968," Memorandum, (Washington, D.C.: Mar. 24, 1997). This memorandum approves the adjudication guidelines, temporary eligibility standards, and investigative standards required by Executive Order 12968, *Access to Classified Information*, (Aug. 2, 1995).

[15]Classification of National Security Information, 5 C.F. R. §1312.4 (2003).

[16]GAO, *DOD Personnel Clearances: Additional Steps Can Be Taken to Reduce Backlogs and Delays in Determining Security Clearance Eligibility for Industry Personnel*, GAO-04-632 (Washington, D.C.: May 26, 2004) for a listing of the 22 agencies. DOD Regulation 5200.2-R, *DOD Personnel Security Program* (Feb. 23, 1996) describes the clearance process for legislative staff.

Recent Attempts to Consolidate Some Investigative and Adjudicative Functions

In terms of centralizing personnel investigations, The National Defense Authorization Act for Fiscal Year 2004 authorized an action that, if taken, would result in the Office of Personnel Management (OPM) being responsible for an estimated 80 percent of the personnel investigations conducted for the federal government.[17] The Act authorized the transfer of DOD's personnel security investigative functions and 1,855 investigative employees to OPM. OPM indicated that it will not accept the transfer at least during fiscal year 2004 because of concerns about the financial risk associated with the authorized transfer. DOD and OPM have, however, signed a memorandum of understanding that, among other things, results in OPM providing DOD investigative staff with training on OPM's investigative procedures as well as training on and access to OPM's case management system.

As for centralizing the adjudication steps in the clearance process, in May 2004, we reported that DOD's Senior Executive Council was considering the consolidation of the clearance adjudicative functions that two of DOD's 10 central adjudication facilities perform.[18] A DOD official told us that the consolidation would provide greater flexibility in using adjudicators to meet changes in the clearance approval workload and could eliminate some of the time required to transfer cases between adjudication facilities. A wider-ranging adjudicative initiative is also being undertaken in DOD. When fully implemented, the Joint Personnel Adjudication System (JPAS) is supposed to enhance DOD's adjudicative capabilities by—among other things—consolidating information into a DOD-wide security clearance data system (instead of maintaining the data on 10 adjudication facility-specific systems), providing near real-time input and retrieval of clearance-related information, and improving the ability to monitor overdue reinvestigations and estimate the size of that portion of delayed clearances. JPAS, identified as mission critical by the DOD Chief Information Officer, was supposed to be implemented in fiscal year 2001 and is now projected for full implementation sometime in fiscal year 2004. Even though JPAS may consolidate adjudicative data on the approximately 2 million clearances

[17] Pub. L. 108-136 § 906 (Nov. 24, 2003).

[18] GAO-04-632; GAO, *DOD Personnel Clearances: DOD Needs to Overcome Impediments to Eliminating Backlog and Determining Its Size*, GAO-04-344 (Washington, D.C.: Feb. 9, 2004) lists DOD's current 10 central adjudication facilities and the roles that each plays in awarding clearances.

that DOD had on September 30, 2003, other agencies, such as the FBI, maintain their own databases with adjudicative information.

Addressing Existing Impediments and Internal Control Concerns is Important to Any Consolidation Decision

Regardless of the decision about whether or not to consolidate investigative and adjudicative functions governmentwide, existing impediments—such as the lack of a governmentwide database of clearance information— hinder efforts to provide timely, high-quality clearance determinations. I will discuss two of those major impediments—large workloads and too few investigators, and two internal control issues. The remainder of this section relies heavily on work that we conducted on DOD's investigative and adjudicative functions because there is a dearth of reports available on these functions in other federal departments and agencies.

The large number of requests for security clearances for service members, government employees, and industry personnel taxes a process that already is experiencing backlogs and delays. In fiscal year 2004, GAO published reports documenting the numbers of clearance requests and delays in completing investigations by DOD (for service members, government employees and industry personnel), OPM (for DOD and the Federal Air Marshal Service), and the FBI (for state and local law enforcement officials).[19] In fiscal year 2003, DOD submitted over 775,000 requests for investigations. The large number of investigative and adjudicative workload requirements is also found in the form of a growing portion of the requests requiring top secret clearances, in at least one segment of the population. From fiscal year 1995 through fiscal year 2003, the proportion of all requests requiring top secret clearances for industry personnel grew from 17 to 27 percent. According to DOD, top secret clearances take 8 times more investigative effort to complete and 3 times more adjudicative effort to review than do secret clearances. In addition, a top secret clearance must be renewed twice as often as a secret clearance—every 5 years instead of every 10 years. The full effect of

[19]GAO-04-344; GAO-04-632; GAO, *DOD Personnel Clearances: Preliminary Observations Related to Backlogs and Delays in Determining Security Clearance Eligibility for Industry Personnel*, GAO-04-202T (Washington, D.C.: May 6, 2004); GAO, *Aviation Security: Federal Air Marshal Service Is Addressing Challenges of Its Expanded Mission and Workforce, but Additional Actions Needed*, GAO-04-242 (Washington, D.C.: Nov. 19, 2003); and GAO, *Security Clearances: FBI Has Enhanced Its Process for State and Local Law Enforcement Officials*, GAO-04-596 (Washington, D.C.: Apr. 30, 2004).

requesting a top secret, rather than a secret clearance, thus is 16 times the investigative effort and 6 times the adjudicative effort.

The limited number of investigative staff available to process requests hinders efforts to issue timely clearances. According to a senior OPM official, DOD and OPM together need roughly 8,000 full-time-equivalent investigative staff to eliminate the security clearance backlogs and deliver timely investigations to their customers. However, in our February report, GAO estimated that DOD and OPM have around 4,200 full-time-equivalent investigative staff who are either federal employees or contract investigators, slightly more than half as many as needed.[20]

Internal control concerns are also present with regard to personnel security clearances. A 1999 GAO report documented problems with the quality of DOD personnel security clearance investigations. The severity of these problems led DOD to declare its investigations program a systemic weakness under the Federal Managers' Financial Integrity Act.[21] That declaration has continued to be made each year in DOD's annual statement of assurance. We continued to track these issues and in 2001, we recommended DOD establish detailed documentation requirements to support adjudicative decisions as a way to strengthen internal controls.[22] Three years earlier, the DOD Office of the Inspector General stated that no DOD office is assigned the responsibility to ensure that the various adjudication facilities consistently implement adjudicative policies and procedures.

When OPM was privatizing its investigative function in 1996 to create the company that still conducts the vast majority of OPM's investigations for the federal government, we raised an internal control concern, namely that OPM's contract with the newly created company would require the contractor to conduct personnel security clearance investigations on its own employees.[23] This remains one area of concern because OPM officials

[20]GAO-04-344.

[21]GAO, *DOD Personnel: Inadequate Personnel Security Investigations Pose National Security Risks*, GAO/NSIAD-00-12 (Washington, D.C.: Oct. 27, 1999).

[22]GAO, *DOD Personnel: More Consistency Needed in Determining Eligibility for Top Secret Security Clearances*, GAO-01-465 (Washington, D.C.: Apr. 18, 2001).

[23]GAO, *Privatization of OPM's Investigations Service*, GAO/GGD-96-97R (Washington, D.C.: Aug. 22, 1996).

told us in April 2003 that its contractors were still conducting the investigations on its own personnel.

Conclusions

The 9/11 Commission recognized that fundamental changes in the management of human capital in the intelligence and homeland security communities will improve the efforts of these communities to effectively carry out its fundamental mission—to gather and share intelligence that will ultimately help to protect the American people.

Human capital considerations, such as the recruitment and retention of key skills and competencies, performance incentives to share information, and more flexible approaches to the management of human capital, are crucial to the success of the intelligence community reforms envisioned by the 9/11 Commission, and agencies involved with the intelligence community will need the most effective human capital systems to succeed in their transformation efforts. Thus, strategic management of human capital is one such reform critical to maximizing the performance of the intelligence community.

Committed, sustained, highly qualified, and inspired leadership, and persistent attention by all key parties to the successful implementation of these reforms and organizational transformations will be essential, if lasting changes are to be made and the challenges we are discussing today are to be effectively addressed.

Chairman Voinovich and Members of the Subcommittee, this concludes my prepared statement. I would be pleased to answer any questions you may have.

Contacts and Acknowledgments

For further information regarding this statement, please contact J. Christopher Mihm, Managing Director, Strategic Issues, on (202) 512-6806 or at mihmj@gao.gov or Eileen Larence, Acting Director, Strategic Issues, at larencee@gao.gov. Individuals making key contributions to this statement included Carole Cimitile, Dewi Djunaidy, Jack Edwards, Laurie Ekstrand, Charles Johnson, Lisa Shames, Derek Stewart, and Sarah Veale.

THE 9/11 COMMISSION'S HUMAN CAPITAL RECOMMENDATIONS

TESTIMONY BEFORE THE GOVERNMENTAL AFFAIRS SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE AND THE DISTRICT OF COLUMBIA

UNITED STATES SENATE

PAUL C. LIGHT

ROBERT F. WAGNER SCHOOL OF PUBLIC SERVICE
NEW YORK UNIVERSITY

CENTER FOR PUBLIC SERVICE
THE BROOKINGS INSTITUTION

SEPTEMBER 14, 2004

Thank you for inviting me to testify today on the human capital recommendations of the 9/11 Commission. The Commission's report has outlined the essential elements of a more effective intelligence community and homeland security effort. It is now up to Congress and the president to exercise its judgment on whether and how to proceed, whether through reorganization or long-overdue improvements in key human capital systems.

I believe the Commission was quite right to note the heroic work that many federal employees do every day in the effort to illuminate impending threats and address longstanding vulnerabilities. The vast majority of federal employees are dedicated, hard-working, and deeply committed to making a difference. However, we often ask our employees to succeed in spite of their organizations. As we have seen time and again in agency after agency, federal employees face serious shortages of virtually every resource they need to succeed, be it access to training, technology, information, or enough employees to do the job successfully. They are also trapped in personnel systems and bureaucratic towers that were designed for a more leisurely world—one in which the federal government could afford to wait months to classify and fill positions, assess and reward high performance, and discipline poor performers.

The world has changed, of course. We can no longer afford to fight our agile adversaries with turf-conscious agencies, dense thickets of needless bureaucracy, and ancient systems. In bureaucratic terms, this nation cannot defeat the networks of terrorism with the stovepipes of traditional hierarchy As the Commission argues, we have a system in which good people and critical information are trapped in bad systems and redundant bureaucracies. It is time to act.

Doing so would be easier if we were building from scratch, of course. We could erect a new intelligence organization with ease, putting the pipes and windows exactly where we wish. But we are dealing with existing structures, with all the peril that comings from past remodeling, outmoded technologies, creaky stairwells, and a patchwork of top-heavy structures, antiquated personnel systems, competing priorities, and incompatible protocols.

I do not need to remind this committee that the overhaul now proposed would continue the task that began three years ago when Congress created the new Department of Homeland Security, and continued with the Defense Department personnel reform. You worked hard to smooth the bureaucratic boundaries in the new department, and give the senior leadership the tools to build a performance-sensitive personnel system. So have the senior leaders of the new department. They deserve great credit for avoiding the needless layering that plagues so many federal agencies, including many directly affected by this hearing.

As you requested, I am here today to address the three recommendations of the 9/11 Commission regarding human capital reform. I agree wholeheartedly with the spirit of the recommendations, though have my own suggestions for improvement. Before turning to the specifics, however, I must urge this Subcommittee to think beyond the four

corners of the Commission's report to the more general problems facing presidential appointees and civil servants across the entire federal establishment. I simply do not see how we can fix the presidential appointments process for one group of officials without fixing it for all; nor do I believe we can improve the security clearance process for some without fixing it for all. In a sense, every federal employee, political or career, is now responsible for the nation's security. To restrict our efforts to the relatively small numbers involved in intelligence is to deny the reality that the current systems are sapping our agility across the entire hierarchy.

With this broader mission in mind, let me sort the Commission's three human capital into two categories, the first dealing with presidential appointments and security clearances, and the second addressing the FBI's human capital authorities. I will then turn to a third area which was beyond the 9/11 Commission's mandate.

1. Presidential Appointments

In testimony last July before the Senate Governmental Affairs Committee, 9/11 Commission Chairman Tom Kean expressed particular concern about the need to improve the presidential appointments process, which was highlighted by Secretary Rumsfeld as a contributing factor to the 9/11 tragedy.

We know that the presidential appointments process failed the nation in the weeks and months preceding September 11. As of July 11, 2001, just 54 of the 164 positions involved in the war were filled by a duly sworn, Senate-confirmed appointee. The vacancies included the Undersecretaries of the Air Force and Army, the Assistant to the Secretary of Defense for Nuclear, Chemical and Biological Defense Programs, the Director of the National Institutes of Health, the Commissioner of the Food and Drug Administration, the Deputy Director of the Federal Emergency Management Administration, and the Deputy Administrator of the Federal Aviation Administration

I should note that the problems were hardly restricted to the war on terrorism. Although the Bush White House made more nominations in its first six months than any administration in history, it had more nominations to make in the first place. By the time its cabinet and sub-cabinet was finally in place, the average post had remained vacant for roughly eight-and-half months, or three months longer than during the Reagan administration, and six months longer than during the Kennedy administration.

Even if the various intelligence agencies had connected the dots before September 11, it is not clear that the information would have made it to the right person. From late 1998,when Clinton administration officials began the mass exodus out of office, to September 11, 2001, when the attacks occurred, the federal hierarchy was riddled with vacancies that created a kind of "neckless" government in which information was easily lost or misinterpreted.

Of particular concern are the science, technology and engineering positions that are becoming increasing difficult to fill, according to the National Academy of Sciences, this at just the time we may need them most.

The delays come at both ends of Pennsylvania Avenue, and reflect an accumulation of bureaucratic sediment that has grown with each appointee controversy over the past four decades. The process starts with 60 pages of forms that are filled with repetitive, nonsensical questions, almost all of which had to be answered on a typewriter until recently, when our project helped to produce an online version . It continues with a Federal Bureau of Investigation background check that lasts a month or more, a financial disclosure process that requires so much detailed information that the result is tantamount to a net worth statement, and a Senate confirmation process that introduces an entirely new set of questions and forms to the process. Nominees still have to list every foreign trip they have taken over the past fifteen years, for example, give the dates and places of birthday of their parents and in-laws, and provide the name and phone number for a classmate from every school they attended since turning 18 years old, including high school. The McCarthy-era may be over everywhere else in America, but not in the presidential appointments process.

The process has become so burdensome that it favors exactly the wrong kind of candidates for selection. The perfect candidate is no longer a citizen with the kind of qualifications and judgment needed to manage an international crisis like China or an economic upheaval like the recent stock market collapse, but individuals with so little experience that they can slip through the process with relative ease because they have no background to investigate. Although Congress has recently paid more attention to the management qualifications of these individuals during the confirmation process, given the sober scenarios outlined in the failures described by the 9/11 report, leadership and management capabilities are more valuable than ever.

Fixing this problem will take more than the ample dose of ridicule the current process has earned. It will require a long-overdue streamlining of the more than 230 questions every Senate-confirmed appointee must answer, a flattening of what has become a bloated, over-layered political hierarchy, and a commitment from the Senate to speedy action once nominations arrive. This Subcommittee could take a giant leap forward by simply adding the Presidential Appointee Improvement Act to whatever legislation it produces this fall. The act alone could easily trim 2-3 months off the current process.

RECOMMENDATION 1. The Congress should enact legislation to establish a permanent Office of Presidential Personnel in the Executive Office of the President and to authorize staff levels sufficient to recruit the president's appointees efficiently and to provide them with transition assistance and orientation. This should include some career employees who retain appropriate records from one administration to the next and who are experts in the operations of all aspects of the appointments process.

RECOMMENDATION 2. The Congress should require a complete top-to-bottom streamlining of the forms that govern the appointments process toward a simplification and standardization of information-gathering instruments. The Senate

should require its committees to do so as well. All forms should be made available for on-line downloading to assure a paperless, but secure process wherever possible, thereby accelerating the review of nominees.

RECOMMENDATION 3. The Congress should urge the president to issue an executive order reducing the number of positions for which FBI full-field investigations are required and adapting the length and depth of full-field investigations to the legitimate security concerns of each position where they continue to be required. The Congress should also urge the president to issue an executive order streamlining the clearance questionnaire used for all national security positions. *(In addition, I strongly recommend that Congress establish a minimum staffing level for the FBI's investigation unit, which conducts the full-field review to assure timely review of all appointee materials.)*

RECOMMENDATION 4. Congress should undertake a comprehensive review of the ethics requirements currently imposed on political appointees. Its goal should be to strike an appropriate balance between legitimate concerns for the integrity of those who hold these important positions and the need to eliminate unnecessarily intrusive or complex requirements that deter talented Americans from entering public service.

RECOMMENDATION 5. The Congress should amend the Postal Revenue and Federal Salary Act of 1967 to ensure annual changes in executive-level salaries equal to changes in the Consumer Price Index.

RECOMMENDATION 6. The Congress should reduce the number of presidential appointments subject to Senate confirmation.

RECOMMENDATION 7. The Senate should adopt a rule that limits the imposition of "holds" by all Senators to a total of no more than 14 days on any single nominee.

RECOMMENDATION 8. The Senate should adopt a rule that mandates a confirmation vote on every nominee no later than the 45th day after receipt of a nomination. The rule should permit any Senator, at the end of 45 days, to make a point of order calling for a vote on a nomination. A majority of the Senate may postpone the confirmation vote until a subsequent date.

RECOMMENDATION 9. The Senate should adopt a rule that permits nominations to be reported out of committee without a hearing, upon the written concurrence of a majority of committee members of each party.

RECOMMENDATION 10. The Congress should enact legislation requiring each department and agency to develop a plan for reducing the number and layers of political appointees by one-third. Such reductions, wherever feasible, should limit political appointments requiring Senate confirmation to the assistant secretary level and above in each department and to the top three levels only in independent agencies. Schedule C and other non-confirmed political appointees should be

similarly reduced in number. *(It is my understanding, yet to be confirmed through further investigation, that there has been a significant increase in the use of limited-term appointments for political appointees. If true, I strongly recommend that this Subcommittee ask the Government Accountability Office to conduct a study of the practice, methods for appropriate designation of these positions as presidential appointees, and tools for legislative oversight of their use and possible abuse.)*

RECOMMENDATION 11. The Congress should grant the president renewed executive reorganization authority for the limited and specific purpose of de-layering the senior management levels, both career and political, of all executive departments and agencies. *(See my discussion of this authority below.)*

As the Subcommittee will note, several of these recommendations deal with the clearance process for national security positions. While the Presidential Appointee Initiative did not address this issue for non-Senate-confirmed positions, it did make a strong case that the current form is filled with irrelevant questions, and requires needless inspection. I agree with the Commission's proposal for creating a separate unit for security reviews, but urge you to make sure that unit is allowed to streamline the forms it must review.

Let me add that I do not endorse the Commission's blanket recommendation that the Senate exempt all Executive Level IV and V positions from Senate confirmation, and assume that the Commission would have done so with additional time and resources. I believe the decision to remove assistant-secretary and administrator-rank positions from confirmation should be made on a case-by-case basis. There are many EL IV and V posts that demand Senate review, including the assistant secretaries listed earlier in my testimony, as well as general counsels, inspectors general, chief financial officers, and so forth. These positions are too important to exempt through a blanket process.

Thus, I strong encourage Congress to enact legislation requiring the president to submit a list of proposed exemptions for further consideration by this Subcommittee.

2. Human Capital

This Subcommittee clearly understands both the nature and urgency of the human capital crisis in government. You have held hearing after hearing outlining the problems, and developing legislative solutions. Whatever you decide regarding reorganization of the intelligence community, I believe you must give agency directors greater authority to recruit and manage their workforces—authority modeled on the performance-sensitive approach adopted in the recent Defense Department personnel reforms and embedded in the Department of Homeland Security statute.

Although I believe that there is no level of the current human resources system that does not need immediate reform, including the FBI, I am particularly concerned about problems on the front lines of government where non-supervisory personnel bear so much of the burden for the inefficiency. They are the ones who have to wait months for

replacements to work their way through the process, and the ones who must deal with the layer-upon-layer of needless managerial oversight.

The problems are particularly apparent in the international affairs community, government, where dozens of task forces, commissions, and study groups over the last two decades on the need for fundamental public service reform, be it in the Departments of Defense or State, the intelligence agencies, or government as a whole. None have been more blunt in describing the problems than the U.S. Commission on National Security/21st Century, co-chaired by former Senators Gary Hart and Warren Rudman.

> As it enters the 21st century, the United States finds itself on the brink of an unprecedented crisis of competence in government....This problem stems from multiple sources--ample private sector opportunities with good pay and fewer bureaucratic frustrations, rigid governmental personnel procedures, the absence of a single overarching threat like the Cold War to entice service, cynicism about the worthiness of government service and perceptions of government as a plodding bureaucracy falling behind in a technological age of speed and accuracy.[1]

Although many talented Americans have been called to service by the war on terrorism, they still confront a government hiring process that is frustrating at best. And once in government, they often complain of antiquated systems, needless hierarchy, and broken promises. Again, it hardly makes sense to create new coordinating mechanism for handling information if the human capital that produces the information is not given the tools to do its job well.

That means we must have a personnel system that is agile, responsive, and performance-sensitive. That might also mean the creation of a new intelligence service corps that can provide the pay and incentives needed to assure a steady stream of talent as the retirement wave begins to cut into the core capacity of our intelligence community.

Thus, while I believe we should endeavor to give the FBI increased personnel flexibility, I can think of no time better than the present to simply expand this authority government wide. Having already done it at Defense, IRS, Homeland Security, and NASA in a piecemeal fashion, I believe it is time to do it across government using a clear template that would authority every agency of government to convert its personnel system under a set of requirements that would assure a common commitment to merit principles, equal opportunity, collective bargaining, and fair, but speedy review of disciplinary action. I see no reason to continue pecking at this issue one agency at a time.

3. Reorganization Authority

There is an obvious and palpable sense of déjà vu in these hearings for anyone who follows government organization and reform. Strike the word "intelligence" from the

[1] U.S. Commission on National Security/21st Century, *Roadmap for National Security: Imperative for Change*, Phase III Report (U.S. Commission on National Security/21st Century, February 15, 2001), p. xiv.

conversation about duplication and overlap, and we could substitute a hundred other areas of responsibility in which that would ring just as true. We have seen the same problems in foster care, job training, food safety, nuclear security, trade policy, education, children's health care, and so on down a long list of concerns.

As we saw three years ago in the case of homeland security, reorganization offers a significant opportunity to align agencies by mission rather than constituencies. If done well, which I believe has been the case in homeland security, it can strengthen accountability, reduce wasteful duplication and overlap, tighten administrative efficiency, improve employee motivation, and provide the kind of integration that leads to impact.

The question before Congress in the coming weeks is not whether reorganization can provide needed improvements in government performance, however, but whether Congress should give the President of the United States reorganization authority of some kind. This is not a new question, and I believe the answer is absolutely yes.

I am not the first to make this recommendation, however. Senator Kassebaum Baker and Director Raines made the same recommendation on behalf of the Presidential Appointee Initiative advisory board in April 2001 when they urged Congress to "grant the president renewed executive reorganization authority for the limited and specific purpose of de-layering the senior management levels, both career and political, of all executive departments and agencies."[2] They also advised that the "urgency of this task could not be greater."

Former Federal Reserve Board chairman Paul Volcker made the same recommendation on behalf of the second National Commission on the Public Service in January 2003 when he testified before the House Government Reform Committee. Recognizing that reorganization is among the most difficult tasks facing a legislative body, Mr. Volcker and his colleagues urged Congress to create a procedural presumption in favor of reorganization through enacted of a "fast-track" or expedited authority. Such a presumption would not assure that all presidential reorganizations would succeed, but it would certainly give them a fighting chance.

The threshold question in restoring some form of reorganization authority is whether there is any reason to believe that such authority holds the promise of better government performance, whether in the intelligence community or more broadly across government. Based on the historical record, I believe the answer is "yes."

1. *Reorganization can give greater attention to a priority such as homeland security or food safety.* That was certainly the case in the creation of the National Aeronautics and Space Administration following the launch of Sputnik in 1957, and to the creation of the Environmental Protection Agency in 1970.

[2] The Presidential Appointee Initiative, *To Form A Government: A Bipartisan Plan To Improve The Presidential Appointments Process*, (The Brookings Institution, April, 2001) p.4;16.

2. *Reorganization can reduce overlap and duplication among widespread programs, thereby increasing accountability and efficiency.* Consider, for example, the potential impact of finding some way to integrate the 12 agencies currently involved in administering the nation's 35 food safety statutes, the 15 departments and agencies currently involved in administering more than 160 employee and training programs, or the 11 agencies and 20 offices involved in the federal government's roughly 90 childhood programs.

3. *Reorganization can force greater cooperation among large, quasi-independent agencies such as the Coast Guard and Federal Aviation Administration.* That was certainly the goal of the early reorganizations of energy agencies, which eventually spurred creation of the Department of Energy. And it was the goal in creating the Department of Transportation in 1966. This is particularly important given the flaws described in the 9/11 report regarding the FAA failures in communicating with the military on 9/11.

4. *Reorganization can create greater transparency in the delivery of public goods and services to and on behalf of the public?* That was clearly the goal in creating the Department of Health, Education, and Welfare in 1953, which was originally submitted as a reorganization plan before emerging as separate legislation, and is the case in the 9/11 recommendations.

5. *Reorganization can improve employee satisfaction and performance.* Surveys of federal employees suggest that roughly a third (1) cannot easily describe the mission of their organizations, and, therefore, (2) cannot easily describe how their jobs personally contribute to the mission of their organizations.[3] Assuming that employees who know their mission are more satisfied and productive, reorganization can be a source of improved performance.

It is important to note that reorganization cannot compensate for poorly designed programs, inadequate funding, or contradictory statutes. Merely combining similar units will not produce coherent policy, nor will it produce greater performance, increase morale, or raise budgets. It most certainly will not make broken agencies whole.

If an agency is not working in another department, there is no reason to believe that it will work well in the new department. Conversely, if an agency is working well in another department or on its own as an independent agency, there is no reason to believe that it will continue to work well in the new department.

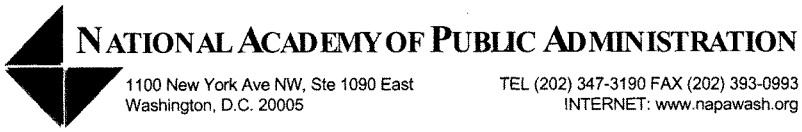
Recognizing the need to place constraints on the president's reorganization authority to assure congressional review, it is imperative that Congress give reorganization plans expedited consideration in the legislative process. Such consideration can be created under several options suggested by the Volcker Commission. It is relatively easy to construct a fast-track mechanism to give Congress enough time to review a reorganization plan, whether through a Base Closure and Realignment Act mechanism

[3] Paul C. Light, *To Restore and Renew*, (The Brookings Institution, November, 2001)

requiring an up-or-down vote on all elements of a plan, or through some kind of "most-favored" status requiring expedited consideration in the legislative process.

Ultimately, reorganization is best seen as merely one of several steps for improving organizational performance. It may create a greater presumption in favor of performance, but can only succeed if this and other committees are successful in helping the executive branch achieve its other management goals. At the same time, the executive branch cannot achieve its other management goals, most notably the strengthening of human capital, if it does not undertake the aggressive restructuring that reorganization authority would encourage.

Management improvement and reorganization are, therefore, two sides of the same coin. It makes no sense to improve recruiting systems if new employees are condemned to work in poorly structured departments with fuzzy missions and needless layers of political and career bureaucracy.



1100 New York Ave NW, Ste 1090 East
Washington, D.C. 20005

TEL (202) 347-3190 FAX (202) 393-0993
INTERNET: www.napawash.org

Statement of

C. Morgan Kinghorn

President

National Academy of Public Administration

Before the

U.S. Senate

Committee on Government Affairs

Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia

September 14, 2004

Testimony of
C. Morgan Kinghorn, Jr.
President
National Academy of Public Administration
Before the U.S. Senate Committee on Government Affairs
Subcommittee on Oversight of Government Management, the
Federal Workforce, and the District of Columbia
September 14, 2002

Mr. Chairman:

As President of the National Academy of Public Administration, an independent, non-partisan organization chartered by Congress to give trusted advice to public leaders, I am pleased to appear before you to provide you with my perspectives on the recommendations for federal personnel reform made by the 9/11 Commission. The views presented today are my own and are not necessarily those of the Academy as an institution.

The 9/11 Commission noted several areas for federal personnel reform. I would like to focus my comments on the issue of providing some additional flexibility to the Federal Bureau of Investigation (FBI) in its personnel practices. However, I will also address certain other 9/11 Commission recommendations relevant to the deliberations of this Subcommittee and the full Committee. I wish to do so by discussing proposals affecting the FBI, which were considered by a group convened by the Academy in May of this year in response to a request by Congressman Wolf, Chairman of the House Appropriations Subcommittee on Commerce, Justice and State.

Together, the group examined six proposals. Five of the six proposals relate to the FBI's personnel and pay authorities, and are intended to enhance the Bureau's ability to recruit

and retain personnel. However, one of these proposals is concerned more broadly with the creation of a career intelligence service, which is recommended by the 9/11 Commission. The other proposal related to changing the FBI's budget structure. This proposal coincides with the 9/11 Commission's recommendation and is relevant to the work of the full Committee on legislation concerning intelligence reorganization. I will offer some brief comments on each proposal.

Waiving the Mandatory Retirement Beyond Age 60

The Director's authority to waive the mandatory retirement of FBI agents at age 57 is currently limited by law to age 60. Mandatory retirement is intended to promote a workforce consistent with the physical demands of law enforcement. However, limiting the Director's waiver to age 60 denies the FBI the continued service of highly skilled employees. For a limited number of skilled personnel in key management and technical positions, a waiver seems reasonable, provided the personnel appointed to or continued in these positions can meet the physical demands of the position. The proposed extension in waiver authority to include employees beyond age 60 would be a positive change. It would provide additional discretion and flexibility to retain senior managers and employees with critical technical skills.

Establishing a Reserve Program within the FBI

In the recent past, the FBI has faced a variety of demanding situations that have stretched the organization's personnel capacities. To better enable it to react quickly and effectively to future crises and extraordinary situations, the FBI's Strategic Human Capital Plan proposes creating a reserve program. This program would allow the FBI to draw quickly on a cadre of retired staff who are ready and able to provide assistance.

The creation of an FBI reserve program would strengthen the FBI's ability to carry out its

mission in crises and other extraordinary situations. It would provide a streamlined process for the FBI to tap a large group of retired staff with the targeted skills to accomplish the agency's work on a temporary basis. This reserve program would provide a "surge capacity" in situations such as in the aftermath of 9/11 when a large number of FBI personnel were diverted to counterterrorism from other criminal investigative activities. Precedent exists for such a program in the military and other organizations, and waivers for dual compensation can be requested from the Office of Personnel Management, or provided through separate authorizing language. Needless to say, the effectiveness of this program will depend on maintaining the readiness, clearances, and competencies of reserve members. The "readiness" of this reserve will depend on investments to maintain it members' skills and knowledge of policy and procedure.

Excluding Performance Awards from the Congressional Pay Cap

The FBI's performance awards for its Senior Executive Service are currently limited by the Congressional pay cap. This proposal would exclude performance-based awards from the pay cap. It is intended to make room for pay increments that provide meaningful rewards for distinguished levels of performance. There is substantial precedent for pay scales extending beyond the pay cap. The National Institutes of Health, the National Institute of Standards and Technology, the National Aeronautics and Space Administration, and the National Science Foundation all currently have authority to pay above the caps.

The pay cap affects many agencies across the board. Therefore, such a change at the FBI should not be considered in isolation. Consideration should be given to broader reform efforts concerned with government-wide performance-based awards.

Establishing an Intelligence Career Service at the FBI Including Senior Executive Service and Senior Level Positions

This proposal provides for the creation of an intelligence career service, including SES and other senior level positions that may be beyond those permissible under the FBI's current Title V authorities. Currently, the FBI is at a disadvantage when competing for talent to staff its intelligence function. Unlike the CIA and the other intelligence services, the FBI does not have authority to create non-supervisory SES and GS-15 positions for intelligence personnel. This limits its ability to offer competitive pay and career advancement at these levels.

GAO believes it may be possible to establish temporary three-year intelligence positions, as a prelude to establishing a career intelligence service. This is a valid approach. It would enable the FBI to attract and retain both the top-level intelligence staff needed to lead its intelligence workforce, as well as those with highly specialized skills.

Substantial work would be required to justify a separate intelligence career system within the FBI, and to understand its relationship to the Title V system that would govern most FBI employees, who are not engaged in intelligence. The disadvantages of creating dual, potentially competitive structures could be significant. The systems' differences and relationships should be carefully considered.

Increased Locality Pay for FBI Personnel in High Cost Areas

The difficulties of adequately compensating agents and support staff in high cost areas, such as New York and San Francisco, are well known and not unique to the FBI. This proposal provides for increasing locality pay for FBI personnel in high cost areas.

While this proposal addresses a real problem, it should be noted that locality pay is an issue for all federal agencies operating in high cost areas. Statutory changes to alleviate

this problem for the FBI should not be considered in isolation. Consideration should be given to broader reform efforts concerned with locality pay in high cost areas.

Creating an Intelligence Decision Unit within the FBI's Budget

The current FBI budget does not have an intelligence decision unit. The proposed budget structure provides for a separate decision unit for intelligence. Such a budget decision unit would provide a clearer view of funding devoted to intelligence, and prevent those funds from being reallocated for other purposes without Congressional notification. Clarification of intelligence funding within the FBI budget is an important step forward.

The alternative budget structure would also combine the non-intelligence aspects of counterterrorism with certain counter-intelligence activities to create a counterterrorism/counterintelligence decision unit. The FBI assures us that that this combination would not diminish transparency of counterterrorism funding. Total funding for counterterrorism would still be made available as required by Congress in the President's Annual Counterterrorism report by adding counterterrorism funding to counterterrorism-related intelligence funding.

* * * *

I am pleased to report that two of these proposals were included, with only minor modifications, in an appropriations bill (HR4564) introduced in the House, by Congressmen, Frank Wolf and Tom Davis, and passed on July 8th. Section 111 would extend the authority of the Director to waive the mandatory retirement age of agents, allowing him to delay mandatory retirement, on a case-by-case basis, up to the age of 65. Section 113, authorizes the Director to provide for the establishment and training of a FBI Reserve Service that would facilitate streamlined, temporary re-hiring from a pre-certified cadre of retired FBI employees who possess the specialized skills required to deal with the demands of crises or other special situations.

Changes to pay authorities included in the other three proposals were not adopted and the broader issue of creating a career intelligence service was not addressed. However, the Subcommittee did include changes to enhance the FBI's ability to recruit and retain talent on a case-by-case basis. Section 114 authorizes the FBI, in conjunction with the Office of Management and Budget and OPM, to pay critical intelligence positions up to an Executive Schedule I salary. Section 112 provides the Director with the authority, after consultation with the Office of Personnel Management (OPM), to provide retention and relocation bonuses to employees with high or unique qualifications who, in the absence of a bonus, would likely leave the FBI. The provision also allows for retention and relocation bonuses for individuals transferred to a different geographic area with a higher cost of living.

The proposal to create an intelligence decision unit within the FBI's budget was adopted. In its funding recommendation, the Subcommittee collapsed the ten budget units used in previous years to four decision units: Intelligence, Counterterrorism and Counterintelligence, Criminal, and Criminal Justice Services.

The Academy's role in facilitating the review of these proposals complemented our current work on the FBI's transformation for the Subcommittee on Commerce, Justice, and State. This ongoing work is being performed by a Panel composed largely of Academy Fellows and chaired by former Attorney General Dick Thornburgh. It has two major components:

> First, the Panel is reviewing the FBI's efforts to structure its counterterrorism, security, and intelligence components and to implement the programs it has designed in each of these areas. These tasks follow up on the Panel's report to the Subcommittee last year on the FBI's progress in refocusing its mission and organization from after-the-fact investigation to preemption and prevention. This year the Panel is looking more deeply into progress in these three critical areas both at headquarters and in the field. We currently plan to report on progress in

these areas at the end of the summer.

Second, the Panel is assessing the FBI's field structure. This is a new task this year. The Panel is looking at the FBI's existing field structure with the goal of developing criteria that might be used to examine it and develop possible alternatives, in light of the changes in the FBI's strategic focus. We plan to report on this early next year.

In closing, I wish to emphasize that the Academy would be pleased to assist the Subcommittee in its ongoing deliberations regarding the human capital recommendations of the 9/11 Commission. This concludes my statement, Mr. Chairman. I would be pleased to respond to any questions you and the Subcommittee members may have.

STATEMENT

OF

Doug Wagoner

**Chairman, ITAA Intelligence/
Security Clearances Task Group**

BEFORE THE

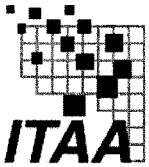
**SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT
MANAGEMENT, THE FEDERAL WORKFORCE, AND THE
DISTRICT OF COLUMBIA**

**CONCERNING THE
HUMAN CAPITAL RECOMMENDATIONS OF THE
SEPTEMBER 11TH COMMISSION RELATING TO
SECURITY CLEARANCES GRANTED BY
THE FEDERAL GOVERNMENT**

ON BEHALF OF

**INFORMATION TECHNOLOGY
ASSOCIATION OF AMERICA**

September 14, 2004



Introduction

Mr. Chairman and Members of the Subcommittee. Thank you for inviting the Information Technology Association of America (ITAA) to testify today on the sweeping human capital recommendations made by the National Commission on Terrorist Attacks Against the United States (the 9/11 Comission) in its landmark report on overhauling our national intelligence system. For decades, both government personnel and industry personnel supporting critical national security programs have fallen victim to grand inefficiencies and territorial battles associated with the security clearance process. It's heartening to know these issues weighed heavily on the minds of the Commission members and that they are now on the radar screen of this Subcommittee as well. We stand ready to assist the Congress in forging a workable solution to this consistent problem.

Backlogs, lack of reciprocity of clearances from one agency to another, and severe delays in the granting of security clearances by the federal government are resulting in average time frames of more than a year to obtain security clearances and get people working on classified government support contracts. In an age of heightened threats of terrorism from a nimble, unpredictable enemy, these results are unacceptable. The national security personnel system must be radically streamlined to ensure critical programs do not falter because our process for putting people to work remains broken. Government's industry partners face increased pressure to deliver cleared personnel on the very day a contract begins. The current delays being experienced by contractors in obtaining security clearances prevents this from happening and as a result, delays performance on critical programs and increases costs to the federal government in the form of higher labor costs and protracted contracts. And these delays ultimate threaten our national security.

ITAA commends the Subcommittee for holding this important hearing on both the Commission's recommendations and the legislation introduced recently by Senators McCain and Lieberman to implement these reforms. We look forward to sharing our comments on the reforms needed to modernize the current clearance system while maintaining the strictest standards of care to protect our national security. The recommendations of 9/11 Commission address both government and industry personnel, but ITAA's testimony today will focus on industry's experience with this process and our recommendations for reform.

My name is Doug Wagoner, and I serve as Vice President and General Manager of Data Systems Analysts, Inc. (DSA), a small IT services company in Fairfax, Virginia. I'm here today, however, in my role as Chair of ITAA's Intelligence Committee, which was established in November 2002 following consistent calls from the ITAA membership for assistance from their trade association in resolving the tremendous burdens and challenges IT contractors face with this vital component of national security.

ITAA is the nation's leading and oldest trade association focused on the diverse information technology (IT) industry, and provides global public policy, business networking, and national leadership to promote the continued rapid growth of the IT industry. ITAA has more than 400 corporate members throughout the United States, and serves as the Secretariat for the World Information Technology and Services Alliance (WITSA), a global network of 50 countries' national IT trade associations. ITAA represents virtually every major federal IT contractor and many other public and private sector contractors, and counts among its membership a wide range of companies from the largest enterprise solutions providers to the smallest IT start-ups.

As you well know, the federal government continues to rely heavily on commercial industry partners to fulfill critical government services. The sheer magnitude of commercial activities in support of the government necessitates that government and industry work together to ensure the best private sector personnel are available to fulfill critical government needs. In order to perform many of these critical services, industry personnel must obtain and renew security clearances. The current security clearance process, rules, and regulations are very important to industry and create a mechanism that we believe must be improved upon in order to better safeguard the national security by permitting industry to hire and clear qualified personnel in a timely fashion.

It's important that we note at the outset that these challenges and concerns are not new. While the pressures placed on an already stretched system because of heightened security demands following the September 11th attacks certainly have exacerbated the problems in the system, the challenges we face have been the same for decades. In fact, since the early 1980s, if not earlier, the issue has been raised in the Congress, the Executive Branch, and oversight bodies such as the Government Accountability Office in the hope that some changes can be made to what is a vastly complicated and highly repetitive process across government. The problem is certainly more pronounced now because of higher demand, but the core challenges remain the same. Industry (and government personnel in need of clearances) is still seeing a more than 12 month time period for the issuance of a new Top Secret DOD clearance – this is the average for a "clean case" where an individual has had limited foreign travel, and has no credit or police problems. Clearances and special accesses requiring more extensive

investigations, including a polygraph, are routinely taking 16 months or more to complete.

The failure of federal agencies and Departments to honor existing regulatory requirements, such as Executive Orders and Administrative Guidelines from the Industrial Security Oversight Office (ISOO), also causes inordinate and unacceptable delays in moving personnel with existing clearances and special accesses from one contract or supported government customer to another. These actions can and should be accomplished in minutes, not months, simply by adhering to existing regulatory requirements and deploying technologies and management practices that are well developed.

Before I detail ITAA's recommendations to reduce the time to clear both government and industry personnel, I cannot emphasize enough that industry in no way wants to diminish our nation's security posture by reducing the important standards that govern who has access to sensitive government information. My committee worked for the better part of the last year to create these recommendations. The time involved was due in large part to constant review by security experts to ensure our recommendations would not negatively impact security. Industry is committed as a trusted partner of government to safeguarding national security information; we believe, however, that much can be done to improve the current process without diminishing this fundamental goal.

When our task force initially convened, we spent the first several meetings sharing "horror" stories about the process. Without exception, members of our task force were able to recount in remarkable detail untold numbers of bad experiences they had with getting their personnel cleared to work on specific programs. As we explored the "horror" stories with our members, we also received startling statistics from our members that drove home just how significant a problem this is for industry; time and time again, we were told that particular companies have several hundred or even thousands of positions open that require clearances for which they cannot find suitable cleared candidates to fill in a timely manner.

We will discuss some more formal statistics in greater detail later in our testimony, but these anecdotal stories are reinforced every day here in Washington on our radio waves and in print and television advertising. This is a human capital crisis: there are literally thousands of job opportunities available here and around the country that cannot be filled because there isn't a large enough population of cleared workers. And one of the major reasons there isn't a large enough population of cleared workers is because there also aren't sufficient investigators available to ensure the timely completion of new background investigations.

A current clearance that can be put to work immediately for a company is worth 10 times its weight in gold. If you go to any job fair here in the Washington area and tell recruiters you have an active clearance, you can probably walk out of that event with multiple job offers. Job seekers with active clearances know this, and we're seeing startling trends where employees move from company to company every 6 months because they're lured away by higher salaries from competing companies. Each time the employee moves around, his or her salary may jump 10%-25%; while this is good news for the employee, it significantly increases costs to the company. These costs are most often passed back to the government in the form of higher labor rates for specific employees working on a contract. The associated turnover when employees jump from one company to another also disrupts critical government programs that become short-staffed upon the departure of key personnel. The movement of people and the delays in staffing critical programs poses a real threat to our national security. Quite simply, vital programs are being delayed and their success curtailed because of these challenges.

While it is unknown what the total current number of cleared contractor job vacancies is across government, it is clear the number of openings from company to company is staggering. ITAA asked its member companies in a recent survey to identify the number of current openings in their company that require security clearances. Nearly 50% of our survey respondents indicated having less than 50 current openings that require clearances, but a staggering 22% of respondents indicated they have 500 or more positions open that require some level of clearance.

On the topic of recruiting methods, the ITAA survey also asked member companies to document how they primarily recruit new talent for work requiring security clearances. Fifty-four percent (54%) of respondents indicate that they regularly recruit individuals with current clearances from other contractors. Another 10% say they recruit employees from government with active clearances, and the remaining 36% say they work to clear existing staff without clearances and deploy them to national security related projects. That means that almost two thirds of employees brought on to programs are ripped from another program they are currently working for another contractor or as a government employee. That statistic clearly defines the need to infuse new cleared talent into the pool, and reinforces that program instability is a very real challenge.

Our survey indicates as well that the time to complete clearances continues to rise. We asked our respondents to tell us how long it takes on average for them to obtain a Top Secret clearance. We asked respondents to take into account both the investigative and adjudicative time periods. Seventy percent (70%) of our respondents noted that it takes on average more than 270 days to obtain this level of clearance. We also asked respondents to answer the same question from a perspective of one and two years ago. Fifty-nine percent (59%) indicated

that the process took more than 270 days a year ago, while 49% told us it took longer than 270 days two years ago.

Our survey results reinforced what we in industry already knew: cleared personnel cost more, there is an increasing need for cleared personnel, and industry hire away cleared personnel from one another with great regularity to decrease the risk that a critical program will miss milestones for lack of adequate staff. Unfortunately, when someone leaves one program to go to another, instability in that former program is created. We believe that the constant movement of employees resulting from inordinate delays threatens national security in a fundamental way.

INDUSTRY WORKING TOGETHER

ITAA has led the formation of a diverse coalition of trade associations to develop joint recommendations on how to improve the current process. This coalition has produced a white paper, which I attach to my testimony today and ask to be included in the official hearing record. Joining ITAA on this industry white paper are seven other prominent trade associations that represent the broad spectrum of the government contracting community:

- The Security Affairs Support Association (SASA);
- The Professional Services Council (PSC);
- The National Defense Industrial Association (NDIA);
- The Contract Services Association (CSA);
- The Northern Virginia Technology Council; (NVTC)
- The Armed Forces Communications and Electronics Association (AFCEA); and
- The Electronic Warfare & Information Operations Association, more commonly known as the Association of Old Crows (AOC).

Together, these organizations represent thousands of companies and tens of thousands of individuals with diverse responsibilities across the security and defense spectrum: from IT services, to manufacturing and engineering, and from complex services offerings, to weapons development and modernization. Working together, these industry associations have developed five specific recommendations to improve the security clearance process, improve the nation's security posture, better enable our members to serve their customers, and lower the cost to government. The changes we recommend in this white paper, we believe, would have a significant impact on the ability of people to obtain, hold, and maintain their clearance status and will ensure that critical government programs do not go unexecuted for lack of available cleared personnel. I will present these recommendations in summary form here, as the

white paper covers these issues and recommendations in much greater detail, and will also cover some additional thoughts ITAA has on potential solutions to the current stove piped process that governs clearances

While we applaud the efforts underway to reform the process, similar initiatives have failed in the past because we are trying to automate a system that needs to be re-engineered to address security realities of today. Similarly, there appears to be a disconnect between procurement functions and security functions when contracts are awarded. Procurement officers generally issue security requirements to contractors, and these requirements generally dictate the number of security "billets" a company is required to hold, and the security level for each of those billets. Part of the reform of the security clearance process, we believe, must include an examination of how security clearance levels are set and approved during the procurement phase of a project. The 9/11 Commission's report acknowledges the startling challenges "over-classification" present to the sharing of intelligence information. This "over-classification" also extends to the levels of clearance required for contractor support. Frankly, many more contracts are requiring cleared personnel now than before September 11th. Industry certainly appreciates the sensitivity to security, but we believe there may be ways within an overall context of reform to revise the ways in which personnel security levels are determined. Some of this high classification may simply be due to the fact that in a time of heightened security awareness, government leaders believe that a classification policy of 'higher is better' is more sensible. This trend, however, has ignored the limited pool of currently cleared people, and prevents important programs from being fully staffed and completed in a timely manner.

COMMENTS ON THE 9/11 COMMISSION'S RECOMMENDATIONS AND SPECIFIC RECOMMENDATIONS FROM ITAA

Much of the debate of late, Mr. Chairman, surrounding the issue of security clearances has focused on the transfer of investigative functions of the Defense Security Service to the Office of Personnel Management that was authorized as part of the FY 2004 Defense Authorization bill. The legislation introduced last week by Senators McCain and Lieberman references this authorization in the section that requires a single entity to handle clearances for the entire government.

Over the past 18 months, many have pointed to this authorized transfer as the prescription to solve the long delays and process challenges inherent to this process. As GAO and others have noted, however, the potential transfer has been slow to proceed. Industry is concerned both with the delays in a potential transfer, and with the notion that this transaction will somehow miraculously improve the current process. ITAA does not believe the problem lies just with

DSS and OPM. The problem is exacerbated by antiquated policy that leadership does not want to address. Moving the responsibility for investigations from one entity to another will do little to fundamentally change the process. The creation of the Department of Homeland Security (DHS) serves as a useful example in this arena. When the Department was created, it lacked statutory authority to carry out its own security clearance investigations and has been using OPM to process investigations. Nearly two years later, significant numbers of positions within DHS still remain open because OPM has not been able to process clearance applications quickly. In the fiscal year 05 DHS appropriations bill approved by the House, DHS would be given its own authority to conduct investigations in the hopes of speeding hiring decisions.

ITAA supports the intent of the 9/11 Commission's recommendation to consolidate responsibility for clearance investigations and reciprocity decisions, but believes that no one single entity can handle all clearances for government. OPM is already overwhelmed, and lumping responsibility on any one agency for all investigations will not fundamentally change the current situation. We do applaud the 9/11 Commission for calling for uniform standards and greater reciprocity of clearances across government.

We believe that instead of consolidating investigative authority within one agency, a new position of "National Director for Security Clearance and Investigative Programs" should be created to report to the National Security Council to develop and enforce the uniform standards the 9/11 Commission recommends, and serve as the final voice on decisions affecting reciprocity of clearances. We also believe that Congress should statutorily require reciprocity for clearances at the same levels across government, and institute performance metrics for the issuance of initial clearances that the National Director appointee would enforce. We believe there would be significant resistance from the Intelligence community to a single entity conducting investigations for all of government. Having a single entity develop and enforce requirements while allowing individual agencies to conduct investigations on their own personnel would work more efficiently and avoid the challenges of overwhelming a single holding point for all clearances. We believe that locating the National Director within the National Security Council will also minimize backlash against a single agency concept from various elements of the Intelligence Community that would be concerned about turning over investigative, polygraph, and reciprocity determinations to an unknown entity.

Similar initiatives to consolidate responsibility for clearances have failed in the past because we they have attempted to fuse a system that fundamentally needs to be re-engineered to address the security realities of today. We believe the approach recommended above will help accomplish this vision. We also agree with the 9/11 Commission's recommendation that a single database be established to track all clearances for government, and will address this issue in more detail later in this statement. Many of our others recommendations to

improve this process are also addressed in the Commission's report and in the McCain-Lieberman legislation. In an ideal world, ITAA recommends:

- That federal agencies examine issues relating to procurements and recommend corrective actions to allow for 'Bench Strength' on contracts requiring security clearances;
- That data requirements and clearance investigation processes be standardized across federal agencies to provide for uniform baseline standards all agencies recognize for like levels of clearances. We also recommend that Congress require the development of an integrated database of all clearances that facilitates both government and industry's ability to query and transfer clearances in a more expedited manner;
- That reciprocity (or crossover) for clearances from agency to agency be dramatically increased so like clearance levels can be applied to any agency in government;
- That agencies work with the private sector to address the current investigative and adjudication backlog by employing a coordinated approach that leverages private sector expertise and information technology to speed investigations and adjudications. Specifically, we recommend that government examine the use of commercially available databases to reduce investigative demands and establish on-going monitoring for adverse events to reduce the need for periodic reinvestigations; and
- That Congress mandate performance metrics and empower the National Director to hold agencies accountable to those metrics for the awarding of initial security clearances.

We believe that these recommendations would significantly improve the ability for people to obtain, hold, and maintain their clearance status. And we believe that an improved process would open new opportunities for people seeking employment in sensitive private sector specialties. We will elaborate on these areas in the remainder of our written statement.

AGENCIES SHOULD ALLOW FOR "BENCH STRENGTH" ON CONTRACTS REQUIRING SECURITY CLEARANCES

The current clearance process across all agencies requires that clearances be granted only to those currently assigned to projects or contracts requiring a clearance. At present, there appears to be a disconnect between the procurement functions and the security functions within federal agencies. Procurement officers generally issue security requirements to contractors, and these requirements generally dictate the number of security "billets" a company is required to hold, and the security level for each of those billets. Part of the reform of the security clearance process, we believe, must include an

examination of how security clearance levels are set and approved during the procurement phase of a project

Industry would recommend that agencies be permitted to clear up to 20% of additional industry personnel. Under most contracts, industry is told how many billets they need to fill by way of the RFP or information received from contracting officers. Many federal security officers report that they are then constrained by the number of billets allocated by a contracting officer to a particular contract. If an individual leaves the company that has that contract, or the company needs to rotate that person to another contract they are working on, a slot opens up on the contract that needs to be filled. Unless the company has a ready staple of cleared personnel who can immediately step in at that particular agency at the correct clearance level, the company is usually forced to start the process for a new employee all over again. ITAA recommends that agencies move toward allowing bench strength by first educating the procurement workforce across the government on the critical issues that arise from the limited cleared slots currently provided for in federal contracts.

Providing for bench strength would bring benefits to government and industry in that the increased supply of cleared people would bring down the cost to government, and industry would be able to ensure the best people are working a project as opposed to only those who simply "hold a clearance." The creation of "bench strength" of cleared people would also enhance national security, as there would be a pool of individuals readily available to address critical missions. We believe this is also a critical requirement to limit the spiraling salaries of employees with clearances, a cost that ultimately is paid by the government.

An additional consideration is the aging government workforce. As these seasoned government workers retire, even more demands will be placed upon contractors to supply cleared quality personnel. Industry would be willing to look into sharing the cost of creating this bench strength, following the precedent of paying for expedited investigations at the National Security Agency (NSA).

Government Should Standardize Data Requirements and Investigative Processes for Like Security Clearances and Establish A Government-wide Database to Share and Transfer Clearances

All security clearance processes ultimately assess a core set of investigative data. For example, most clearance processes examine a subject's identity data, address history, employment history (including military service record), educational achievement, financial status, and personal references, with the additional requirement for a National Agency Check for derogatory information (i.e., criminal history, intelligence or other government data) that would increase risk. The commonality of the data required for clearances creates the opportunity

to standardize collection and assessment of that data across the government.

ITAA envisions that the standardization process would start with identifying data elements and investigation processes common to all clearances to set a "baseline" background investigation. That baseline could then provide the foundation for a tiered structure of security levels to correlate to the level of trust required and consequences of a breach of trust for categories of missions, operations, functions or facilities. The government could accommodate different levels of security by varying the breadth and depth of the investigation or the rigor of the adjudication criteria, as well as assessing additional elements of the applicant's background beyond the baseline.

The baseline, however, would apply as the minimum standard for the lowest level security clearance in the context of any government operation – civilian, defense or intelligence. Higher levels of clearance would require a more intensive inquiry (e.g., longer historical perspective, polygraph) or assessment of additional elements of the subject's background (e.g., "life style" queries). Standardizing data and process requirements at each tier for clearance levels across operations with common risk profiles (i.e., law enforcement, homeland security, defense, intelligence, etc.) across the government would yield tremendous efficiencies to reduce time and cost of administering clearances while increasing the effectiveness in maintaining security.

Establishing a common baseline would also reduce the need for multiple application, investigation and adjudicatory processes, which in turn would minimize requirements for specialized training and certification of investigators and adjudicators. Standardization also would facilitate implementation of a the OMB/OPM e-Clearance initiative and promote centralized administration of clearance information government-wide through the National Director for Security Clearance and Investigative Programs position we recommend above.

Standardization would also facilitate the development and use of the national database called for in the McCain-Lieberman legislation. DoD has recently granted access to its Joint Personnel Adjudication System (JPAS) to contractors so we can inquire about current status of a current or potential employee. Standardizing and maximizing the use of JPAS and OPM's Clearance Verification System (CVS) would also enable industry to make quantum leaps in its ability to quickly and efficiently transfer clearances with little or no cost or delay. Currently, when an employee leaves ABC Company to go to work for XYZ Company it can take over four weeks, as contractors wait for a government agency to transfer for the paperwork between parties. A common database approach like JPAS and CVS will ensure that each agency is able to effectively share clearances in the fastest possible manner. We believe that any proposed consolidated database should also have the functionality to update a company, agency, or applicant on the status of an application for a clearance and provide

more granularity than the "under investigation" status report you receive now when you call for a status check.

In addition to efficiencies in the initial clearance process, standardization would facilitate transferability and ongoing administration of clearances from one agency to another or even across levels of government. Operating from a standard baseline would streamline and expedite the process of adjusting clearance levels or clearing individuals for new missions by enabling investigators to focus only on updating the baseline and/or evaluating additional elements beyond the baseline as opposed to repeating the entire process from scratch. In addition, development of standard structure of security clearance requirements could some day facilitate the expansion of the database described above to monitor the continuing validity of clearances. The government could enroll all individuals holding a specified clearance in a database to monitor available public and government records for changes in status (e.g., arrest, bankruptcy, unexplained affluence, etc.) that might indicate a potential security risk.

DoD has developed and tested such a system, the Automated Continuing Evaluation System (ACES), which is low cost and can be deployed in six months if final funding is approved. The ACES monitoring system, using advanced techniques, will identify and flag specific risk factors as defined in the applicable security rules based on near real-time searches of approximately two-dozen government and commercial databases.

Early deployment of ACES would provide the government with much earlier and cost effective warning of potential security issues than the current reinvestigation process alone, and would also reduce reinvestigation time, thereby freeing up resources to pursue investigative functions on new clearances. Standardizing clearance criteria and processes with an ongoing monitoring process, along with an accurate and reliable clearance database, will enable security officials to have greater confidence in clearances conducted for other agencies, facilitating transfer and acceptance of security clearances across the government.

In four Departments and agencies within the intelligence and defense community that we examined, we found four different standards and processes for clearances. At an absolute minimum, industry would recommend that processes must be reconciled between the organizations that hold the bulk of security clearances like the DoD, NSA, CIA, and NRO.

GOVERNMENT MUST PROVIDE FOR INCREASED RECIPROCITY FOR CLEARANCES ACROSS FEDERAL DEPARTMENTS AND AGENCIES

Much as with the lack of standardization in clearance requirements, there is currently little reciprocity among federal agencies to honor a clearance granted by another federal Department, even when at the same level. ITAA applauds the

legislation for recognizing this and would like to offer additional recommendations on this section. Primarily, we would like to expand reciprocity beyond just the intelligence community and extend it across all of government for similar levels of clearance as defined in the National Industrial Security Program Operating Manual (NISPOM) and previously required under Presidential Decision Directive 63. It would seem rational to argue that when one federal agency grants you a top-secret clearance, that clearance should be honored by any other government agency that requires you to have clearance at the same level, provided the investigation remains current. Sadly, however, this goal is hardly ever realized, despite the existence of Executive Orders from multiple administrations requiring greater standardization of criteria and portability. Even within individual government agencies we've found unique processes for clearances at the same levels. In fact, examples of intra-Departmental battles over clearance levels abound; within the Department of Justice prior to the stand-up of DHS, for example, a clearance held at the Drug Enforcement Administration might not be honored by the Federal Bureau of Investigation, and vice versa, because of different criteria to get those clearances.

ITAA has identified more than 20 distinct processes across the federal government; each process has its own special requirements that go beyond or are unique from other agencies. These requirements prohibit one agency from honoring the same level of clearance from another agency. ITAA would recommend that the National Director lead the effort to create such a baseline requirement to indicate that no federal agency will reinvestigate an individual who holds an active clearance at the required security level from any other federal agency, provided that the investigation is current. While there may be additional criteria to be examined, the baseline level of clearance should be accepted and agencies shouldn't repeat an entire investigation on someone who has undergone the same review for another agency. We envision the National Director serving as the final authority on matters of reciprocity—if an agency refuses to honor a reciprocal clearance, agencies and individuals will have a single authority to appeal to enforce guidelines. This has been missing in past efforts to reform the process.

Industry would also like to have the ability to transfer like clearances of employees with notification to the new central clearance organization and database contemplated in the legislation. This relates to the situation when an employee leaves ABC Company to go to work for XYZ Company and needs the same clearance level for the work at the new company. Member firms of the ITAA coalition have documented that this simple process varies dramatically by agency, and can take over four weeks, as contractors wait for a government agency to transfer the paperwork between parties. A common standard and approach to sharing clearances should be developed to ensure that each agency has the same standards and is able to effectively share clearances in the fastest possible manner.

GOVERNMENT MUST ADDRESS THE CLEARANCE BACKLOG BY PARTNERING WITH INDUSTRY AND LEVERAGING INFORMATION TECHNOLOGY TO IMPROVE PROCESSES AND MANAGEMENT

ITAA certainly applauds the growing use of private sector investigative providers to help conduct background investigations; however, even with the use of the private sector, the increased numbers of clearances being requested is extending the backlog that already exists and resulting in even longer delays at both the investigative and adjudicative ends of the process. Based upon our member's experience, there is an increasing adjudicative backlog as more investigations are being completed and overwhelming the available adjudicative workforce. In its recent report to the Armed Services Committee, GAO pegged the current backlogs at DoD alone at nearly 180,000.

Information technology has transformed government services in countless ways. As we continue the e-Government revolution that has already modernized so many antiquated government programs, ITAA believes that the power of information technology can do much to improve this vital process as well. In addition to recommending support for existing e-Government initiatives, ITAA also would note that reliable commercially available technologies like public records databases can play a vital role in verifying information submitted by applicants for clearances. Several highly respected companies already support major corporations in their employment pre-screening and risk management processes by offering databases that can help verify whether an individual has had financial problems such as liens or judgments, whether the individual has a criminal history that would disqualify them from receiving a clearance, and whether the individual in fact lived at a location they claim on an application. These applications can dramatically reduce the need for field agents to spend valuable time pounding the pavement interviewing friends and co-workers of the individual under investigation. Clearly the role of field investigators cannot be done away with; there is vital information discovered in personal interviews with subjects who know an individual well. We do believe, however, that the power of information technology can vastly improve the length of this process without compromising security. We also believe that additional resources must be dedicated to increasing the size of the investigative work force across government. There are simply far too investigators to handle the rapidly increasing number of clearance investigations requested in a given year.

CONCLUSION

I cannot emphasize enough Mr. Chairman that industry is committed to preserving the strict requirements to obtain security clearances. The coalition's interest is not to minimize current requirements, but rather, to make sensible and

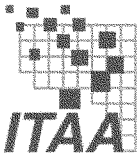
positive changes to an antiquated process and policy that would allow the nation to maintain strong vigilance on who has access to data, while better serving the defense and intelligence communities at the lowest possible total cost. Industry looks forward to working with the government to examine and implement the recommendations we make today to move the average top secret clearance form 12 months to 120 days. We stand ready to devote our experience and significant expertise with best practices to ensure that critical government programs do not go unexecuted for lack of available cleared personnel. Thank you Mr. Chairman for the opportunity to appear before the Subcommittee today. I would be happy to answer any questions from you or other members of the Subcommittee.

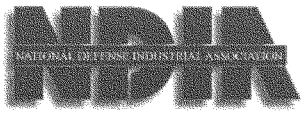
Improving the Security Clearance Process Through Automation and Common Criteria:

A White Paper on Issues Confronting the Government Contractor Community

Prepared by

Information Technology Association of America
Professional Services Council
Security Affairs Support Association
Contract Services Association
Armed Forces Communications and Electronics Association
National Defense Industrial Association
Northern Virginia Technology Council





EXECUTIVE SUMMARY

The federal government continues to rely heavily on commercial industry partners to fulfill critical government services. Recent studies have suggested that as many as 850,000 government jobs are commercial in nature. The magnitude of commercial activities necessitates that government and industry work together to ensure the best private sector personnel are available to fulfill critical government services. In order to perform many critical services, industry personnel must obtain and renew security clearances. The current security clearance process, rules, and regulations are very important to industry and create a mechanism that we believe must be improved upon in order to better safeguard the national security by permitting industry to obtain and clear qualified personnel in a timely fashion. Industry faces increased pressure to deliver cleared personnel on the day a contract begins, and the current delay in obtaining security clearances increases costs to the federal government by delaying the introduction of the best personnel to critical programs.

Elongated clearance processes adversely affect mission accomplishment, keep people from working in a productive and timely manner, and add to the cost of contractor programs to the federal government. Members of several industry associations have developed four specific recommendations to improve the security clearance process, improve the nation's security posture, better serve our customers, and lower the cost to government. The changes recommended here would have a significant impact on the ability of people to obtain, hold, and maintain their clearance status and will ensure that critical government programs do not go unexecuted for lack of available cleared personnel.

With the growing backlogs and investigative delays being experienced by the Intelligence Community, Defense Security Service and the Office of Personnel Management, it can take more than a year to process a new employee for a background investigation and a security clearance. Even new employees with prior investigations and security clearances can wait weeks for their clearance to be converted or reinstated by the government. While all this "lost" time is not completely non-productive, in some cases the employee cannot be of full value to the contract and customer without his or her final security clearance; in most cases, it prevents the hiring of qualified people.

BACKGROUND

The Information Technology Association of America (ITAA) along with partner organizations including the Professional Services Council (PSC), Security Affairs Support Association (SASA), Contract Services Association (CSA), Armed Forces Communications and Electronics Association (AFCEA), and Northern Virginia Technology Council (NVTC) (collectively, "the coalition") present this paper on the current state of the security clearance process for contractors. The collective membership of these organizations is drawn from the leading technology firms in the United States.

These companies develop and deploy the technology products and services that have helped to make the United States' intelligence and war fighting capability the best in the world.

In order to serve their defense and intelligence clients, our members are required to obtain appropriate security clearances for their facilities and employees. The security clearance process, rules, and regulations are of vital interest to industry and create a process that we believe must be improved upon in order to better safeguard the national security. While much has been done since the Eisenhower administration in both policy and procedural areas to try and standardize and simplify the government's personnel security program and promote the notion of clearance reciprocity, in practice it has simply failed to achieve the stated goals and objectives, leaving industry to the mercy of a diverse bureaucracy that is slow to embrace change and eager to protect its "rice bowls." Industry faces increasing pressures to deliver cleared personnel on the day a contract begins, and the current delays in obtaining security clearances limits competition and increases costs to the federal government by delaying the introduction of the best personnel to vital programs and slowing the initiation of critical programs.

As the Bush administration seeks to provide greater competition with the private sector to perform functions inherently commercial in nature, it is critical that the current clearance process be streamlined and improved. The elongated clearance process is delaying missions from being completed in a timely fashion, keeping people from working, and adding to the cost of contractor programs to the federal government. In today's clearance process, it is virtually impossible to share a good idea or leverage an existing team between agencies. It is unknown what the total current number of cleared contractor job vacancies is across government, but one program alone at NSA is said to have more than 400 openings. The current clearance process prevents thousands of vacant positions requiring a security clearance from being filled in a timely manner. Given the critical role that the Intelligence Community agencies play in securing the national security of the United States, we must fill these and other critical positions with cleared, skilled people as soon as possible. The post September 11th increase in the need to clear and hire staff in all agencies has added to the investigative and clearance backlog problem and we must conclude that a considerable amount of important work is not getting done. While the agencies strive to fill these critical positions, programs requiring cleared contractor personnel suffer as a result of growing investigative and clearance backlogs as well as bureaucratic impediments and opposition to implementation of clearance reciprocity policies that were enacted in Executive Order 12968 following the Ames espionage case.

Recent studies conducted under the Federal Activities Inventory Reform (FAIR) Act suggest that as many as 850,000 government jobs are commercial in nature. The magnitude of commercial activities necessitates that government and industry work together to ensure the best private sector personnel are available to fulfill critical government services.

RECOMMENDATIONS

In principle, the coalition supports the Office of Management and Budget's and Office of Personnel Management's e-Clearance initiative as a means to reduce backlogs in issuing clearances. There are also four recommendations that we believe will improve our security posture, better serve our customers, and lower the cost to government. These are:

- That agencies allow for 'Bench Strength';
- That agencies address the current investigative and adjudication backlog,
- That there be increased reciprocity for clearances from agency to agency; and
- That data requirements and clearance processes be standardized across agencies.

We believe that the changes recommended here would have a significant positive impact on the ability for people to obtain, hold, and maintain their clearance status. An improved process would open new opportunities for people seeking employment in sensitive private sector specialties; as recently documented in one *Washington Post* article, a northern Virginia contractor has over 70 openings but can't fill the positions due to a lack of cleared people or the cost to the company of hiring and waiting up to eighteen months for their clearances to come through.

A July 2003 hearing of the House Select Committee on Homeland Security also uncovered significant delays in the granting of security clearances to airport screeners and state and local first responders. The coalition's membership also fulfills critical services for this community and has significant concerns about how delays in granting clearances for contractor personnel affect this unique community. Access to a government-wide clearance database and full implementation of security clearance reciprocity would reduce the time first responders wait to obtain clearances and make it easier for these critical components of our national security to work in better collaboration with the federal government. Faster clearance times would also ensure that contractor personnel supporting critical first responder missions receive timely classified information that is transmitted to the user community.

Since the current process dictates that security clearances can be held only by individuals who have a bona fide need for access and are employed in a job requiring a security clearance, the Government's process is collectively reducing the supply of cleared staff at a time when the need is increasing. This supply and demand effect is resulting in large increases in salaries of people holding clearances and cleared personnel are moving between employers that are anxious to fill agency openings with cleared people. Because of the costs associated with obtaining security clearances, currently cleared personnel command salaries on average 5% to 10% higher than those for non-cleared personnel according to industry estimates. This cost is most often passed on to the government.

The recommendations from the coalition are detailed below to improve processes to greater benefit the missions of our customers and the security of the United States.

One agency CIO recently commented that the current security process has created a "pseudo society" of people: "These people remain employed not because they work hard, bring innovation, or have the most current skills. They are maintained and even bestowed gracious pay and perks because of their clearance. We need to eliminate this pseudo society and make their contribution the most important factor."

ALLOW FOR "BENCH STRENGTH"

The current security process across all agencies requires that clearances be granted only to those currently assigned to projects or contracts requiring a clearance. Industry is recommending that agencies be permitted to clear additional industry personnel, up to 20 percent of their current cleared population. This would bring benefits to government and industry in that the increased supply of cleared people would bring down the cost to government and industry would be able to ensure the best people are working a project as opposed to only those who simply "hold a clearance." The creation of 'bench strength' of cleared people would also enhance national security, as there would be a pool of individuals readily available to address critical missions. We believe this is a critical requirement to limit the spiraling salaries of folks with clearances, a cost that ultimately is paid by the government.

While the coalition understands that increasing currently cleared personnel may increase investigative and adjudication workloads in the short-term, increasing the supply of cleared resources will benefit the government in three ways. First, it will increase supplies and lower costs long term. Second, the ability for a new or expanded project to get underway quickly will be immensely enhanced. Lastly, an increased pool of resources will make it easier to place quality personnel; it will be much easier to replace people in particular and contractors in general if a larger supply of cleared resources exists.

An additional consideration is the aging government workforce. As these seasoned government workers retire, even more demands will be placed upon contractors to supply cleared quality personnel. Industry would be willing to look into sharing the cost of creating this bench strength, following the precedent of paying for expedited investigations at NSA.

ADDRESS THE ADJUDICATION BACKLOG

While the coalition applauds the growing use of private sector investigative providers to help conduct background investigations, we are seeing an increased delay in adjudication timelines. Adjudication, until relatively recently, has been considered an inherently governmental function. Based upon our member's experience, there is an increasing adjudicative backlog as more investigations are being completed and

overwhelming the available adjudicative workforce. Based on successful outsourcing of adjudicative support functions in the Department of State, Department of the Navy and BCIS (former INS) the coalition recommends that the government make greater use of contract adjudicator support functions until backlogs are eliminated and clearances can be issued or reinstated in 30 days or less.

INCREASED RECIPROCITY FOR CLEARANCES

There is currently little reciprocity of security clearances in the federal government. This is one reason why there is little sharing of information and best practice ideas across the community. Lack of sharing clearances prevents the best and brightest serving one agency to quickly move to solve a similar problem at a different agency.

The coalition would like to create a process where they are allowed to easily move people in a shared clearance process. The lack of sharing between agencies causes problems for employee and employer when a project comes to an end. Once a person is 'read off' of an agency and there is no immediate need for him/her to have a clearance then it is likely they will lose this clearance. If they need to go back to the agency or are transferred to work at another agency a few weeks later, the reinstatement or reinvestigation can take months. With greater sharing there is a much better chance the employee could be moved to another cleared project supporting a different agency.

Similarly, industry would like to be able to have authority to transfer clearances between each other. This is the situation when an employee leaves ABC Company to go to work for XYZ Company. Member firms of the coalition have documented that this simple process varies dramatically by agency, and can take over four weeks, as contractors wait for a government agency to transfer for the paperwork between parties. A common standard and approach to sharing clearances should be developed to ensure that each agency has the same standards and is able to effectively share clearances in the fastest possible manner. The benefits of this approach would also improve the ability of our nation's first responders to work with federal agencies.

STANDARDIZE DATA AND PROCESSES FOR LIKE SECURITY CLEARANCES

While security clearance processes vary across the government with different missions, operational, functional and policy requirements, all of the processes ultimately assess a core set of investigative data. For example, most clearance processes examine a subject's identity data, address history, employment history (including military service record), educational achievement, financial status, and personal references with the additional requirement for a National Agency Check for derogatory information (i.e., criminal history, intelligence or other government data) that would increase risk. The commonality of the data foundation for clearances creates the opportunity to standardize collection and assessment of that data across the government.

The standardization process would start with identifying data elements and investigation processes common to all clearances to set a "baseline" background investigation. That baseline would provide the foundation for a tiered structure of security levels to correlate to the level of trust required and consequences of a breach of trust for categories of missions, operations, functions or facilities. The government could accommodate different levels of security by varying the breadth and depth of the investigation or the rigor of the adjudication criteria as well as assessing additional elements of the applicant's background beyond the baseline. For example, the baseline would apply as the minimum standard for the lowest level security clearance in the context of any government operation – civilian, defense or intelligence. Higher levels of clearance would require a more intensive inquiry (e.g., longer historical perspective, polygraph) or assessment of additional elements of the subject's background (e.g., "life style" queries). Standardizing data and process requirements at each tier for clearance levels across operations with common risk profiles (i.e., law enforcement, homeland security, defense, intelligence, etc.) across the government would yield tremendous efficiencies to reduce time and cost of administering clearances while increasing the effectiveness in maintaining security.

Establishing a common baseline would reduce the need for multiple application, investigation and adjudicatory processes, which in turn would minimize requirements for specialized training and certification of investigators and adjudicators. Standardization also would facilitate ongoing initiatives to implement an "e-clearance" process and promote centralized administration of clearance information government-wide, i.e. JPAS/CVS. Increasing sharing of clearance information and reducing the time and resources required to complete low level clearances will enhance security by enabling the government to allocate more of its limited investigations and adjudication resources to clearances with the greatest sensitivity and highest priority.

By granting immediate access to industry to databases like DoD's Joint Personnel Adjudication System (JPAS) and the Office of Personnel Management's Clearance Verification System (CVS) the coalition believes a quantum leap in industry's ability to quickly and efficiently transfer clearances with little or no cost or delay involved will result. Currently, when an employee leaves ABC Company to go to work for XYZ Company it can take over four weeks, as contractors wait for a government agency to transfer for the paperwork between parties. A common database approach like JPAS/CVS will ensure that each agency is able to effectively share clearances in the fastest possible manner. The benefits of this approach would also improve the ability of our nation's first responders to work with federal agencies.

In addition to efficiencies in the initial clearance process, standardization would facilitate transferability and ongoing administration of clearances from one agency to another or even across levels of government. Operating from a standard baseline would streamline and expedite the process of adjusting clearance levels or clearing individuals for new missions by enabling investigators to focus only on updating the baseline and/or evaluating additional elements beyond the baseline as opposed to repeating the entire

process from scratch. In addition, development of standard structure of security clearance requirements could some day facilitate a system to monitor the continuing validity of clearances. The government could enroll all individuals holding a specified clearance in a database to monitor available public and government records for changes in status (e.g., arrest, bankruptcy, unexplained affluence, etc.) that might indicate a potential security risk. In fact, the DoD has developed and tested such a system, the Automated Clearance Evaluation System (ACES), which is low cost and can be deployed in six months if final funding is approved. The ACES monitoring system, using advanced data-mining techniques, will identify and flag specific risk factors as defined in the applicable security rules based on near real-time searches of approximately two dozen government and commercial databases. Early deployment of ACES would provide the government with much earlier and cost effective warning of potential security issues than the current reinvestigation process alone, and would also reduce reinvestigation time, thereby freeing up resources to pursue investigative functions on new clearances. Standardizing clearance criteria and processes with an ongoing monitoring process, along with an accurate and reliable clearance database, will enable security officials to have greater confidence in clearances conducted for other agencies, facilitating transfer and acceptance of security clearances across the government.

In four Departments and agencies examined by the coalition within the intelligence and defense community, we found four different processes for clearances. Given that there are more than 20 agencies and departments that require clearances, there are likely 20 unique processes. Industry would recommend that the process be reconciled between the largest organizations. Industry would propose that, at a minimum, the DOD, NSA, CIA, and NRO work to reconcile their data requirements and processes for investigations and adjudication in line with the recommendations made above.

IMPLEMENT/FUND THE OFFICE OF PERSONNEL MANAGEMENT'S E-CLEARANCE INITIATIVE

The coalition endorses the Office of Personnel Management's (OPM) e-Clearance initiative. The concept of e-Clearance, such as sharing resources on-line, whether for information collection, information review, or adjudication, including sharing among interested agencies, can help transform and speed the clearance process by reconciling and harmonizing the existing disparate clearance procedures. While the automation of standard clearance forms and the establishment of a central database of existing clearances should help the process, the coalition recommends that the e-Clearance initiative also address the shared data and process issues identified in this paper.

CONCLUSION

It cannot be overstated that industry is committed to preserving the strict requirements to obtain security clearances. The coalition's interest is not to minimize current

requirements, but rather, to make changes to an antiquated process that would allow the nation to keep vigilance on who has access to data, while better serving defense and intelligence at the lowest possible cost. Industry looks forward to working with the government to examine and implement the recommendations made in this white paper, and stands ready to devote its experience and significant expertise with best practices to ensure that critical government programs do not go unexecuted for lack of available cleared personnel.

Testimony of

Max Stier
President and CEO
Partnership for Public Service

Before the

Subcommittee on the Oversight of Government Management,
the Federal Workforce and the District of Columbia
Committee on Governmental Affairs
United States Senate

on

The 9/11 Commission Human Capital Recommendations: A Critical Element of Reform

September 14, 2004

Good morning Mr. Chairman, Madame Chairman and Members of the Subcommittee. I am Max Stier, President and CEO of the Partnership for Public Service. I appreciate your invitation to testify today and welcome this opportunity to discuss the workforce challenges involved in implementing the recommendations of the 9/11 Commission.

One of the key findings to come out of the Commission's work is that our failure to "connect the dots" left our country vulnerable to attack.

We must be careful not to have history repeat itself.

The 9/11 Commission laid out a number of missed opportunities or "dots" if you will:

- There were multiple instances where we simply failed to put known terrorists on watch lists.

- There were intercepted communications regarding 9/11 that weren't translated until after the fact due to a lack of Arabic translators.

- There was the failure to follow-up on the now-famous memo by a Phoenix FBI agent warning of a connection between Al Qaeda and Arabs taking flight classes.

- There was the FBI's failure to quickly grant a warrant to examine Zacarias Moussaoui's laptop, because FBI lawyers misinterpreted the Foreign Intelligence

Surveillance Act thinking that the law required the target to be a suspected member of a "recognized" foreign power – a longstanding myth that had no basis in the law.

- There was inadequate analysis at the FBI due to the practice of promoting clerical workers from within to fill key positions.

If you look at the missed opportunities, you will see one dominant continuing theme – people.

But you wouldn't know that from the response thus far to the Commission's report. To the casual observer, it would appear that the only recommendation coming out of the Commission is a structural change – the creation of a National Intelligence Director.

But as important as this recommendation is, we cannot let it cause us to lose sight of what the "dots" are telling us. And what the "dots" are telling us is that getting the right people with the right skills into the right positions in government must be a primary focus of our response to the 9/11 Commission.

Mr. Chairman, today's hearing proves that you understand this key point, and it's our job today to persuade others as well.

Let's be clear about one thing. We are vulnerable to terrorism not because federal employees are doing a bad job. OPM Director Kay Coles James often describes the U.S.

civil service as the envy of the world, and she is right. We are fortunate to have some of the best and brightest minds in the country working to defeat terrorists and meet the many other demands placed on government by the executive branch, Congress and the American people. The point is that an under-trained, understaffed, under-resourced, and under-prioritized workforce cannot hold off determined terrorists indefinitely. The failures of the federal workforce in the weeks and months leading up to September 11th were not simply the failure of individuals, but symptoms of a systemic problem that plagues not just the intelligence community, but the whole of government: that is, the failure to prioritize people.

The 9/11 report says it best: "The quality of the people is more important than the quality of the wiring diagrams." That includes all aspects of how we manage people, from attracting them to government, leading them, supporting their development, and managing their performance.

One problem we face is that focusing on people takes time, energy and a sustained effort, as the Members of this Committee can well attest. In short – these issues are hard. And because they are hard, they are often dealt with at the margins. More effort is devoted to moving boxes and creating new organizational charts because they give a sense of accomplishment – but they must be viewed as a means to an end. The goal of restructuring should and must be to create an environment where people can perform at their best.

We applaud this Committee for your continuing efforts to ensure that the importance of a high-performing federal workforce remains front and center as you work to draft legislation implementing the 9/11 Commission's recommendations. As you go forward, we appreciate this opportunity to suggest and offer support for several high-impact actions to help make sure that we have the right people in place to do the job of protecting our country.

- First, we urge the Committee to use its oversight authority to hold agency leaders accountable for making people management a priority. Managing people should be embraced as a core management function, not a transactional human resources function. In other words, leaders and managers at all levels must take responsibility for recruiting, developing and effectively deploying top talent. This is true across government, not just in the intelligence community. I mention this recommendation first because we believe that getting agency leaders to take ownership of the talent function would do more than any other recommendation to help the federal government compete for and retain talent.

- The first point really ties into the second point which is that we need to fix the federal hiring process. Candidates for federal jobs must routinely wait for six months before receiving an offer, and many wait more than a year. The federal government has to simplify and shorten this process. But the key point about fixing this process is that this is not just about speed. As I suggested earlier, we need to get managers involved in the process. We also need to do a better job of

assessing candidates' skills. Currently, much of government relies on the self-assessment of applicants to determine if they can do the job. There are more effective ways to assess talent, and government should use them.

- The Commission cited a lack of imagination within government and the FBI's tradition of promoting unqualified candidates from within as major problems. The government should seek out talent everywhere it exists, and recruiting more outside candidates for senior jobs may help inject new ideas and different skills at government's managerial levels.

- The appointment process for candidates that require Senate confirmation now takes about eight months. As others on this panel have testified, that is too long. A president-elect should submit lists of possible candidates immediately after the election for security clearances, submit the nomination of the entire national security team before inauguration day and the Senate should confirm or reject within 30 days.

- One disincentive for talented Americans to serve is the extraordinarily long time it takes the federal government to process security clearances. More than 480,000 employees and contractors are currently waiting for their security clearance to be completed, and the clearance process routinely takes more than a year. Many of America's best and brightest will not, or cannot, wait that long and the government loses them to the private sector. To accelerate the process, we

strongly endorse the concept of a single federal agency to perform and maintain security clearances.

- We applaud the Committee for including performance management standards for the intelligence community. Managers must set clear, fair and transparent performance standards, and employees must be a part of that process and have an opportunity for ongoing feedback. To that end, we encourage the Committee to consider regular employee surveys as one way to achieve this. We further suggest that requiring survey results to be reported to Congress and the public would better enable Congress to conduct needed oversight of the organization's performance management.

- The Partnership has long been a strong supporter of efforts to improve the effectiveness of existing tools to help the federal government recruit and retain top talent. We were very pleased to support S. 512, legislation introduced by Chairman Voinovich which provides that federal employees who receive loan repayment assistance from their agencies will not be taxed on that assistance. We think this legislation would dramatically improve the federal loan repayment program as a recruitment and retention tool. While we continue to support its application government-wide, we enthusiastically endorse a version of loan repayment tax relief targeted toward employees in the intelligence community where the need and urgency are highest. We also encourage Congress to use its

oversight authority to ensure that the intelligence community actually uses this authority and other tools available to recruit, train and retain top talent.

- Mr. Chairman, you have long been a proponent of improving training across government, and it is clear from the findings of the 9/11 report that you are on to something. Many of the failures or missed opportunities that led up to the attacks can be traced back to personnel poorly trained and equipped to do their jobs. We are pleased to support proposals to vest in the National Intelligence Director the authority to establish standards for recruiting and training in the intelligence community. As the front line in our war against terror, it is essential that these employees have the tools and the training they need to get the job done. We further suggest that the Committee consider establishing a Chief Human Capital Officer to assist the NID in the performance of these functions. Given the many responsibilities of the NID, we strongly believe that a Chief Human Capital Officer is necessary to provide expertise and to support the NID in his or her standards-setting and oversight responsibilities.

- The Partnership is very pleased to support programs to improve intelligence training and collaboration across agencies and among levels of government. Such provisions recognize that we need not just an organizational change, but a cultural change within the intelligence community if the reforms being considered by the Committee are to succeed. People training together, and training for joint missions with other federal agencies and with other levels of government, will go

a long way toward shifting the intelligence workforce toward the "need to share" mindset that is so critical. We believe that new programs in this area should include the continued development of mid-career personnel for new assignments and the development of new intelligence community leaders through a leadership training program.

- Finally, we applaud the Committee for considering a scholarship program to recruit and prepare students for civilian careers in the intelligence community. The federal government needs every tool available to help it recruit the best and brightest. Scholarship programs are popular with students and we think they are an excellent way to reach a new generation of talent in our nation's colleges and universities.

A main point of the 9/11 commission report was to identify the mistakes that made the attacks possible so that we would never repeat them. That's why it's imperative that we follow where the dots are leading us this time and launch a comprehensive plan to recruit and retain high-caliber talent in the federal government at all levels. Failure to do so is roughly the equivalent of taking the Phoenix memo and ignoring it. We can't let a mistake like that happen again, and with this Committee's leadership, I am confident that we won't.

Thank you.

RESPONSES TO FOLLOW-UP QUESTIONS FROM MR. GORELICK

WILMER CUTLER PICKERING
HALE AND DORR LLP

October 19, 2004

Jamie S. Gorelick

2445 M STREET NW
WASHINGTON, DC 20037
+1 202 663 6500
+1 202 663 6363 fax
jamie.gorelick@wilmerhale.com

Honorable George V. Voinovich
Chairman
Subcommittee on Oversight of Government
Management, the Federal Workforce and the
District of Columbia
United States Senate
Washington, DC 20510-6250

Dear Mr. Chairman:

Thank you for your letter of October 15, 2004. I have enclosed my corrected transcript. Here are the answers to the questions you posed:

1. Q: The 911 Commission includes a recommendation that the Senate has an up or down vote on presidential nominees to the National Security Team within 30 days of their nominations by the President. As you know, this would require the Senate to give up a substantial right under the Constitution to advice and consent on these nominees. According to an August 30 report by the Congressional Research Service, only 14 of the 49 nominees that would have fallen under this category in both the Clinton and the Bush administrations combined were delayed beyond 30 days. If this has not been a problem in the past, what is the rationale for the recommendation? How do we justify treating this set of nominees different from any other nominees?

A: We respect the concern for important Senate prerogatives and the underlying constitutional obligations reflected in your question. The justification for the recommendation is our concern that the national security agencies be adequately staffed in a timely fashion and that there be as small a gap as possible between administrations. Active advance consultation by the President with the relevant Senate committees would help in this regard, as could any number of other procedures, but the goal should be to ensure our readiness.

2. and 3. What benefit do you see in developing a college-level grant program to encourage improved, diverse language instruction, and what benefit do you see in developing incentives for students to major in math, science or foreign languages? What benefit do you see in a program to repay student loans for intelligence personnel in national security positions who pledge to serve for at least three years?

Honorable George V. Voinovich
October 19, 2004
Page Two

A: We did not study whether there is an inadequate supply of or inadequate incentives for properly trained employees, but we did observe that our government is not hiring as many of our nation's best and brightest as it needs to do. There are surely more sophisticated techniques for recruiting, including greater flexibility in lateral hiring from the private sector and academia.

Sincerely,

Jamie S. Gorelick

Jamie S. Gorelick

Thank you for
having us appear —
Jim

Responses to written questions submitted by Sen. Durbin from the Sept. 14, 2004, hearing at which **Mr. Fred Fielding** testified on *"The 9/11 Commission Human Capital Recommendations: A Critical Element of Reform."*

Presidential Nominees

Q. What is the rationale for the Commission's recommendation that the Senate has an up or down vote on presidential nominees to the National Security Team within 30 days of their nominations by the President? How do we justify treating this set of nominees different from any other nominees?

A. The Commission's recommendations to improve the transitions between administrations follow directly from our examination of the 2000 to 2001 transition and its bearing on the 9-11 story.

We saw how this transition period allowed for vulnerabilities in our national security at a critical time. Notably, it took months for key Department of Defense officials with the incoming administration to be confirmed—some were not in place until the summer of 2001.

This problem is not unique to the 2000-2001 transition, nor is it a problem only for national security appointments. The number of political appointees and positions which now require Senate confirmation in all areas of government has been increasing in recent years. This process in turn requires more manpower and resources to process security clearances. The time required to complete this process grows ever longer.

We need to expedite the process of getting the right people in place as soon as possible. There must be a priority given to those positions which involve responsibility for America's safety and security.

We strongly believe that national security policy is far too important to be disrupted by the transition between administrations. Nor should the country's safety be the victim of an overburdened system.

The sooner we get the right people in place to begin working on America's security, the better. That is why the Commission has recommended adopting special rules for national security nominees. We recommend that the president-elect submit the nominations for the entire new national security team, through the level of under secretary of cabinet departments, no later than January 20. We also recommend that the Senate require hearings and votes to confirm or reject these nominees within 30 days of their submission.

Educational Incentives

Q. What benefit do you see in developing a college-level grant program to encourage improved, diverse language instruction, and what benefit do you see in developing incentives for students to major in math, science or foreign languages?

A. Although the Commission did not specifically consider this question, we do recognize that education is key to making sure that we have the right people with the right skills to fulfill all our diverse needs in the war on terror. Confronting the current terrorist requires us to employ the resourcefulness of the American people in a broad range of areas, such as the law, intelligence, education, economics and diplomacy, as well as in the armed services.

Language-learning is, of course, essential for understanding cultures and societies beyond our own. We must do better at communicating to Arab and Muslim people around the world America's message of hope for a brighter future than the one offered by Bin Ladin. If we are to be effective, we cannot simply expect *them* to understand *us*. We need to educate ourselves about their needs and aspirations as well.

We certainly support initiatives in our schools and colleges that will help ensure that we have a well-trained work force to support efforts to keep this country secure.

Retaining Intelligence Personnel

Q. What benefits do you see in a program to repay student loans for intelligence personnel in national security positions who pledge to serve for at least three years?

A. Again, the Commission did not specifically address this question. But the new demands of our focus on counterterrorism clearly requires that we find creative and effective ways to hire, train, and retain the personnel that we need.

Nowhere is this more important than in the field of intelligence. Among our recommendations, for example, we propose establishing an intelligence cadre at the FBI. This would be a specialized and integrated national security workforce, made up of agents and analysts with the necessary training and skills.

Our people are our best resources for tackling the terrorist challenge that confronts us. We are certainly open to creative and innovative ideas for making sure that we encourage these human resources to put their expertise and experience to work for the U.S. government.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 14, 2005

The Honorable George V. Voinovich
Chairman
Subcommittee on Oversight of Government Management,
the Federal Workforce and the District of Columbia
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed please find responses to questions posed to Mr. Mark Steven Bullock, Assistant Director, Administrative Services Division, Federal Bureau of Investigation, following Mr. Bullock's appearance before the Subcommittee on September 14, 2004. The subject of the Subcommittee's hearing was "The 9/11 Commission Human Capital Recommendations: A Critical Element of Success."

We hope that this information will be useful to you. If we may be of additional assistance, we trust that you will not hesitate to call upon us.

Sincerely,

William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable Daniel K. Akaka
Ranking Minority Member

Responses of the Federal Bureau of Investigation Based Upon the September 14, 2004 Hearing Before the Senate Committee on Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia Regarding "The 9/11 Commission Human Capital Recommendations: A Critical Element of Success"

Questions Posed by Senator Akaka

1. In July the Office of the Inspector General of the Justice Department reported on the FBI's Foreign Language Program. The report noted that as of April 2004, FBI had approximately 1,200 linguists consisting of approximately 800 contract linguists and 400 language specialist employees. Could you explain why the FBI has hired only 400 language specialists and has twice as many contract linguists?

Response:

For more than 20 years, the FBI has used a combination of both language specialists (LSs) and contract linguists (CLs) to meet translation requirements. While there is little functional difference between an LS and a CL, an LS is an employee of the FBI, while a CL serves under a performance-based labor hour contract. This structure provides both workforce flexibility and surge capacity. LS positions are used to address the highest priority requirements in languages for which there is high volume and consistent demand. The use of CLs additionally allows the FBI to obtain the services of those proficient in languages for which there is insufficient demand to warrant year-round employment, such as Amharic, Somali, and Thai. Growth in both programs has corresponded with funding enhancements and has occurred at the maximum rate this funding allows.

On 09/11/01, the FBI was funded for 415 LS positions and for $21.5M in CL services. As a result of funding enhancements since that time, the FBI is now funded for 446 linguists and for $33.1M in CL services. Linguist vacancies occur because of natural attrition or the addition of positions, and are most typically filled through the conversion of the most qualified CLs, which is to the FBI's advantage because CLs have security clearances and their employment can, consequently, be expedited. There are no prescribed CL staffing limits, so

objectives established for this program are generally set based upon funding limitations and current and projected supply/demand factors.
Real translation capacity increases in Fiscal Year (FY) 2005 will correspond to the 43 additional LS positions provided in the President's FY 2005 budget.

2. The Inspector General report also noted that nearly 24 percent of ongoing Foreign Intelligence Surveillance Act (FISA) counterintelligence and counterterrorism intercepts are not being monitored and that nearly 500,000 hours of audio have not been reviewed. The FBI responded that it is unable to review 100 percent of all FISA collections due in part to personnel shortages based on competition from other agencies in the Intelligence Community and the private sector. What factors do you believe would improve the FBI's stature as an employer of choice?

Response:

Recruitment and retention in the FBI as a whole will benefit from the Federal Workforce Flexibility Act of 2004 (Pub. L. No. 108-411), which provides much-needed flexibilities with respect to recruitment, retention, and relocation bonuses that will assist the FBI in attracting and retaining highly qualified candidates. In addition, flexibilities in determining the amount of annual leave a new employee can earn and enhancement of the amount of leave earned by new Senior Executive Service (SES) employees will assist the FBI in recruiting and retaining candidates who may otherwise not have considered FBI employment.

The FBI continues to face difficulties in filling certain key positions, and is considering various means of addressing these difficulties. For example, relief from the bi-weekly pay cap would assist the FBI in filling GS-15 Special Agent (SA) positions, which offer no financial incentive to GS-14 SAs whose pay is "capped" because of the inclusion of Availability Pay in the pay cap formula. Raising the "carryover" ceiling applicable to accrued annual leave from 240 to 720 hours (the level applied to SES employees), financial incentives for work in certain geographical areas and for certain skills (such as information technology and critical languages), and greater flexibility with respect to reimbursable relocation expenses would also improve the FBI's stature as a desirable employer, and would enable the FBI to recruit for critical positions more effectively by providing the ability individually tailor recruitment packages.

Finally, it is important to note that there is no translation backlog in our highest priority counterterrorism investigations. In fact, all terrorist operational intercepts are reviewed within 24 hours.

3. The Inspector General also reported that the requirements of the Quality Control Program for translated material were generally not being met as a result of operational needs taking precedence over quality control reviews. A lack of quality review may lead to government action based on wrong information. What steps are being taken by the FBI to ensure that personnel expect and will be subject to strict quality control standards?

Response:

The FBI recognizes the vital importance of translation quality control procedures and practices, because FBI linguists serve on the front lines of its intelligence collection and are responsible for reviewing, analyzing, and translating critical national security information. For many years, the FBI has approached translation quality control through language proficiency testing, personnel security reviews, professional development, and quality assurance.

Proficiency Testing. To ensure each linguist has a professional level proficiency in both English and the foreign language, all linguist applicants must pass a comprehensive language test battery prior to employment. Unlike most federal agencies, the FBI tests all language skills (speaking, reading, listening, writing, and translation) in accordance with standards developed by the Interagency Language Roundtable and adopted by the Office of Personnel Management.

Personnel Security. To ensure each linguist is trustworthy and possesses the integrity required to perform a highly sensitive function, each linguist candidate is subject to an exhaustive background investigation process, including a polygraph examination. If the investigation is adjudicated favorably and the candidate is granted FBI employment, the linguist is thereafter subject to the FBI's post-adjudication risk management program that includes periodic security interviews, polygraph examinations, and information system audits.

Professional Development. Upon initial employment, FBI linguists attend a three-day course regarding the FBI and its foreign language program's standards, evaluation programs, and quality assurance. Sophisticated equipment and computer systems used by linguists are demonstrated and special attention is paid to security and ethics. Linguists are thereafter eligible for specialized, language-specific training, which may include training in consecutive or simultaneous interpretation or in advanced translation skills. The FBI has also recently partnered with the National Security Agency's National Cryptologic School, permitting FBI linguists to attend one-day area studies seminars on various topics. While some of these seminars are offered in English, most are offered in the

relevant foreign language.

Quality Assurance. Before January 2003, quality assurance reviews were primarily the responsibility of the field office where the linguist was assigned. In order to standardize these practices, the FBI instituted national quality control procedures and guidelines applicable to translation and interpreting services. This was followed by the release of a Manual of Standards for Translation in October 2004. Unfortunately, because the demand for translation services exceeds translator supply in many languages, operational pressures have often caused field supervisors to maximize productivity by foregoing strict adherence to quality assurance procedures. This deficiency was cited in the Office of Inspector General's (OIG's) report, which offered several recommendations for strengthening quality assurance procedures. For example, the OIG recommended that quality assurance reviews include not only material translated by linguists, but also material deemed by the linguist to be not pertinent and therefore not subject to translation. The FBI agrees with these recommendations in principle and has defined clear milestones for implementing measures to improve the quality assurance program.

4. One of the critical needs cited by the 9/11 Commission is the lack of individuals with foreign language skills within the intelligence community. Over the years, Congress has established programs and granted agencies flexibility to hire individuals with these skills. However, the federal government still faces a shortfall. In June 2004, the Department of Defense hosted the National Language Conference to identify foreign language and cultural awareness needs at multiple levels, identify current best practices, and propose immediate and long-term initiatives to enhance our national capabilities. The Conference, which the FBI attended, primarily found that the United States needs broader and deeper foreign language capabilities and that government agencies, academic institutions, school systems, and private enterprises should develop and implement education and training programs to develop individuals with foreign language skills and an awareness of relevant cultures. Many of the reform ideas — such as early foreign language education; professional development and more resources for language teachers; and a coordinating body for informing the nation's leaders of the seriousness of the foreign language issue, maximizing resources, coordinating cross-sector efforts, and recommending needed initiatives — are embodied in legislation pending before Congress.

Does the FBI agree with the recommendations made by the Conference? What additional suggestions would the FBI make to improve the education and government recruitment and retention of individuals with needed language skills?

Response:

The scarcity of qualified translators available to the FBI and other federal agencies, particularly among Middle Eastern and Asian languages, has been well documented. Several studies have concluded that our government's ability to respond immediately and effectively to critical language requirements is essential to our national security interests, and the National Language Conference white paper has suggested several means of addressing this need. The FBI believes these initiatives will improve linguistic and cultural capabilities within the Intelligence Community and, more generally, the United States, and we believe they are an appropriate part of an overarching national strategy.

The FBI has found that native speakers of a language are best able to interpret both the words used and the cultural context that affects the meaning of those words. For this reason, the FBI has targeted heritage communities for recruitment purposes over the last several years, and the vast majority of the FBI's 1,200+ translators are native speakers of a foreign language who are naturalized citizens of the United States. Their native-level fluencies ensure not only a firm grasp of colloquial and idiomatic speech, but also of religious, cultural, and historical references needed to effectively perform the wide range of services required of an FBI translator. Native English speakers who learn a foreign language often lack these qualities even with several years of intensive study.

In order to identify qualified linguists, the FBI advertises regularly in ethnically centered and mainstream news publications, and partners with ethnic-based organizations and with the Peace Corps, whose volunteers serve in 70 different countries and possess various language skills. In addition, recruiters target foreign language departments within colleges, universities, national foreign language organizations, and military outplacement posts (particularly those with emphasis on intelligence and language components), and strengthen existing ties and build new relationships with heritage émigré communities.

The FBI's use of mostly native speakers as translators does present risk factors, because most have spent a considerable portion of their lives in either their native country or other foreign countries. In order to avoid, monitor, and manage this risk, the FBI thoroughly evaluates each prospective linguist prior to employment or contract, addressing the possibility of divided loyalties during the course of the background investigation through the use of polygraphs and other means. Security adjudications include careful risk analysis performed by area experts, and are fully consistent with adjudicative guidelines promulgated by the Director of

Central Intelligence. Once on the rolls, linguists are subject to rigorous post-adjudication risk management program that includes periodic security interviews, polygraph examinations, and information system audits.

5. What steps are being taken by the FBI to ensure that employees are rewarded for their foreign language skills throughout their careers? Are there additional authorities the FBI needs to accomplish this?

Response:

The FBI is anxious to employ the recent recruitment and retention bonus authority afforded by the Federal Workforce Flexibility Act of 2004 (Pub. L. No. 108-411) and the retention bonus authority provided by the Consolidated Appropriations Act for Fiscal Year 2005 (Pub. L. No. 108-447). Previously, the FBI had few tools to reward foreign language skills. Because of statutory restrictions and funding constraints, the FBI has made limited use of foreign language incentive pay (available under 5 U.S.C. § 4523(a)) in rewarding the 2,000+ FBI employees who have certified foreign language proficiencies at or above the working level. The FBI is currently studying the benefits of expanding this program to improve retention and to encourage employees to develop proficiencies in foreign languages deemed critical. The FBI will continue to work with DOJ to determine whether additional statutory authorities are needed.

6. Could you please identify the personnel flexibilities the FBI has been granted and those flexibilities used by the FBI to improve the recruitment and retention of individuals with needed language skills?

Response:

As indicated above, the FBI uses a combination of LSs and CLs to address language translation requirements. Most of the funding increases necessary to sustain the FBI's growth in linguist capacity have come in the form of non-personnel funding, so the FBI has concentrated its efforts on expanding the CL program. Hourly service rates have been adjusted based on prevailing market conditions to ensure the FBI's competitiveness in that market and to minimize retention problems.

When circumstances warrant, the FBI makes use of recruitment tools currently available under Title 5 of the United States Code, including initial pay at above-minimum rates (that is, pay at a Step higher than Step 1 of the appropriate General

Schedule grade) and recruitment bonuses. In fact, of the 106 LSs hired since September 11, 2001, 65 were approved for above-minimum rates and 25 were approved for recruitment bonuses.

In addition, the FBI has granted testing and processing priority to SA applicants who possess language skills, and will waive work experience requirements for SA applicants who qualify through an oral language test at level 3 or higher in a critical language.

The FBI recognizes that section 205 of the USA PATRIOT Act authorizes the FBI Director to expedite the employment of translators for counterterrorism investigations and operations by providing an exemption from federal personnel requirements. While this provision was well intentioned, the FBI has found that federal personnel requirements have generally not hindered its ability to hire linguists.

7. The 9/11 Commission report, as well as the United States Commission on National Security/21st Century (also known as the Hart-Rudman Commission) report, notes the need for rotational programs or joint programs for employees in the national security/intelligence community. One issue[] raised in response to this proposal is whether agencies will be able to fill the gaps left by those employees detailed or assigned to these joint programs. Do you believe legislation is needed to explicitly exclude such individuals from counting toward personnel ceilings in order for the FBI to carry out its mission?

Response:

The detail of FBI employees to other agencies serves important organizational goals by improving FBI awareness of the activities, methods, and structures of these agencies. In addition to these benefits, the details contemplated by rotational or joint programs for employees in the national security/intelligence community would also provide training critical to the continued development of the FBI intelligence program and the expertise of the program's participants. While such details pose a range of administrative challenges, we look forward to working with the national security/intelligence community to develop options for implementing such detail arrangements. At this point, it is premature to consider any specific legislative changes.

8. In relation to federal employee whistleblower laws, the FBI is covered by the provisions of 5 U.S.C. § 2303, the Inspector General Act, and the Whistleblower Protection Act for the Intelligence Community. Please explain how the FBI applies these three laws, the processes

for investigating whistleblower claims of retaliation, and the protections afforded to FBI whistleblowers. Specifically, please address:

a. To whom employees can make a disclosure.

Response:

The regulations promulgated pursuant to 5 U.S.C. § 2303 provide that FBI employees can make protected disclosures to DOJ's Office of Professional Responsibility (OPR), DOJ's OIG, the FBI's OPR, the Attorney General, the Deputy Attorney General, the Director of the FBI, the Deputy Director of the FBI, or the highest ranking official in any FBI field office. (28 C.F.R. § 27.1(a).) Such a disclosure is then referred to either DOJ's OPR or OIG for investigation. (28C.F.R. § 27.1(b).)

b. The standard of proof/standard of review used.

Response:

In the initial investigation conducted by either OIG or OPR, the standard of review is "whether there are reasonable grounds to believe that there has been or will be a reprisal for a protected disclosure." 28 C.F.R. §27.3(f). If they find such grounds, OPR or the OIG must report its conclusion, together with any findings and recommendations, to the Director, Office of Attorney Recruitment and Management (OARM Director). 28 C.F.R. § 27.4(a). (Employees may also directly present a request for corrective action to OARM within 60 days of a notification of a termination of an investigation by OPR/OIG or 120 days after filing a complaint with OPR/OIG. 28 C.F.R. § 27.4(c)(1).)

The procedure before the OARM Director has two stages. First, jurisdiction must be shown and the employee has the burden of proof with respect to jurisdiction. To establish jurisdiction, the employee must: (1) demonstrate that he/she exhausted his/her Conducting Office remedies under 28 C.F.R. § 27.3; and (2) make non-frivolous allegations that he/she made a protected disclosure under 28 C.F.R. § 27.1(a) and that the protected disclosure was a contributing factor in the FBI's decision to take or fail to take, or threaten to take or fail to take, a personnel action as defined by 28 C.F.R. § 27.2(b).

If jurisdiction is established, the case then moves to the merits of the request for corrective action. On the merits, the employee has the initial burden of proving

by "a preponderance of the evidence" that a disclosure as described under 28 C.F.R. § 27.1 was a contributing factor in the personnel action threatened, taken, or not taken against him/her. The employee may demonstrate that a disclosure was a contributing factor by showing that the employee taking the action knew about the disclosure or that the action occurred within a time period such that a reasonable person would conclude that the disclosure was a contributing factor in the personnel action. 28 C.F.R. § 27.4 (e)(1).

If the employee meets the burden stated above, the burden shifts to the FBI to demonstrate by "clear and convincing evidence" that it would have taken or not taken, or threatened to take or not take, the same personnel action in the absence of such disclosure by the employee.

If the OARM Director's final determination is appealed, "[t]he Deputy Attorney General shall set aside or modify the Director's actions, findings, or conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; obtained without procedures required by law, rule, or regulation having been followed; or unsupported by substantial evidence." 28 C.F.R. §27.5.

c. Whether Merit Systems Protection Board and Federal Circuit Court of Appeals precedent are followed.

Response:

In determining whether corrective action should be ordered, OARM generally follows Merit System Protection Board (MSPB) and Federal Circuit precedent, although they consider such precedent to be instructive rather than controlling. OIG/OPR also consider MSPB and Federal Circuit precedents in their analysis.

d. The resources and number of staff dedicated to whistleblower retaliation investigations.

Response:

At OIG, the number of staff assigned to an investigation varies depending upon the complexity and scope of the allegation. Generally, one or two investigators are assigned to a matter to conduct interviews, review documents, and draft a report of the investigation. A senior official in the front office of the OIG oversees the investigations to ensure that the investigation is thorough and in compliance with the regulatory requirements.

At OPR, an Assistant Counsel serves as the primary contact on all FBI whistleblower matters. Case assignments of whistleblower investigations are made to additional OPR Assistant Counsel, as necessary.

e. The number of whistleblower retaliation cases, the length of time for review of those cases, and the disposition of those cases.

Response:

To date, thirteen Requests for Corrective Action (RCA) have been presented to OARM: one RCA was received in 2000; one in 2001; two in 2002; four in 2003; and five in 2004.

The RCA filed in February 2000 was adjudicated by OARM in January 2001. It was determined that there was no basis for ordering corrective action.

The RCA received by OARM in December 2001 was adjudicated in August 2002. It was determined that there was no basis for ordering corrective action.

One of the two cases filed in 2002 was settled by the parties in June 2004 after a finding of retaliation by OARM.

The remaining 10 cases are in active adjudication before OARM.

One OARM jurisdictional ruling against an employee was appealed to the Deputy Attorney General, who ruled in favor of the employee. The case is now proceeding for a ruling on the merits, as one of the ten active cases before OARM.

f. Who is responsible for deciding if retaliation for whistle blowing has occurred.

Response:

The deciding official is the Director of OARM, subject to an appeal to the Deputy Attorney General. (OIG/OPR may or may not make a finding of retaliation as a result of their investigation, but whether the request for corrective action originates from an OPR/OIG referral after such a finding, or by the employee directly presenting a request for corrective action to OARM, the matter is then adjudicated by OARM subject to a final appeal to the Deputy Attorney General.)

g. Who is responsible for taking corrective action.

Response:

"[I]f the [OARM] Director determines that a protected disclosure was a contributing factor in a personnel action taken or to be taken, the Director shall order corrective action as the Director deems appropriate" (28 C.F.R. § 27.4(e)(1)) unless "the FBI demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure" (28 C.F.R. § (e)(2)).

As noted above, a complainant or the FBI may request review by the Deputy Attorney General of a final determination or corrective action order by the OARM Director.

h. The average length of time between a finding of retaliation and corrective action.

Response:

As noted in response to subsection e, above, three whistleblower matters have been resolved by OARM to date. In two of them, it was determined that there was no basis for corrective action. In the third, a finding of retaliation was made by OARM in January 2004, and the parties settled the matter in June 2004.

Questions Posed by Senator Durbin

9. Before the [9/11] Commission Report was issued, the FBI embarked on a series of efforts to improve intelligence analysis by integrating intelligence into [FBI] operations. However, the [9/11] Commission found continued confusion and misunderstanding among analysts and agents about their roles and duties, and questioned [whether] the new intelligence program has enough staff and resources to fulfill its mission. What is the status of the FBI's efforts on improving cooperation and education between analysts and agents?

Response:

The heart and soul of any Intelligence Program is its people. The FBI has continued to increase its hiring and to develop and train its Intelligence personnel, increasing the number of intelligence analysts (IAs) by 354 in FY 2004 and strengthening the analytic capacity in the field. Currently, 52% of the FBI's IAs

(1630) are assigned to the 56 Field Offices. The Office of Intelligence (OI) has also increased the staffing of the Field Oversight Unit to increase the resources available for training, and created a section devoted to the recruitment, hiring, retention, development, and training of the FBI's Career Intelligence Service (IAs, SAs, Language Analysts, and Surveillance Specialists).

The FBI continues to improve the training of and cooperation among IAs and SAs through various initiatives. IA training now includes blocks of instruction on the roles of SAs and IAs in the intelligence process and on the SA-IA partnership, emphasizing the importance of working as a team. New Agent Training also includes a block of instruction regarding the IA's role in the intelligence process. A joint SA-IA training exercise is also being developed to demonstrate the importance of these concepts.

In the FBI's Field Offices, Field Intelligence Groups (FIGs) consist of both SAs and IAs. IAs also work directly with SAs assigned to operational squads and, as resources allow, are sometimes embedded with the operational squads in accordance with the FBI's belief that intelligence is best when it is fully integrated into operations. The FIGs are working diligently to educate operational squads on the proper role of analytical support and what products to expect from IAs. This transparent working environment enhances the SA/IA partnership and helps to communicate the role of intelligence throughout the FBI.

In FY 2004, the FBI hosted two FIG seminars, which were attended by SAs and IAs assigned to the FIGs, to operational divisions, and to the OI at FBI Headquarters. These seminars provided a forum for the exchange of information regarding best practices in the integration of intelligence and operations, among other relevant topics.

A web-based Intelligence Career Service Community of Interest (COI) is also under development to allow SAs, IAs, Language Specialists, and Surveillance Specialists to share knowledge and to communicate best practices. The COI website will contain information on special events and joint training opportunities, and will provide capabilities for on-line "chatting" and web-casting.

As new initiatives are developed within the FBI's Intelligence Program, the OI makes these updates available to all FBI employees by posting information on the OI's Intranet website. This website contains electronic copies of the Intelligence Program's Concept of Operations (CONOPS), including the Human Talent CONOPS; Intelligence policy documents; IA performance expectations and

promotion procedures; briefings regarding the Intelligence Program; report templates; and training announcements. The website also provides a feedback mechanism for comments, questions, and suggestions about the Intelligence Program.

The FBI has taken steps to improve the cooperation and education of its SAs and IAs, and will continue to enhance its Intelligence Program. While much work remains, we have identified the steps necessary to improve the Program, and we are confident that we are on the right path.

10. Intelligence personnel can benefit from increased emphasis on language education, particularly in the areas of languages that are not commonly taught in school, such as Arabic, Farsi and Thai, among others. What steps are being taken at the FBI and CIA and through other federal agencies to quickly bring in experts or train existing staff in these languages?

Response:

The FBI's need to acquire additional linguist capability has become paramount since 9/11. In his 08/06/03 message to all FBI employees, Director Mueller recognized that "the FBI has a severe shortage of Agents fluent in our most critical languages in our top priority programs, and one of the most effective ways to address this serious investigative handicap is through language training." The ability to communicate in and understand other languages is imperative if we are to prevent future terrorist acts. The FBI's Language Training and Assessment Unit (LTAU) coordinates foreign language training for all FBI personnel who need proficiency in order to perform their jobs. The LTAU contracts with language schools throughout the world to develop curriculum and provide the actual training.

The following table identifies the number of FBI employees trained by language, as well as the number of hours of instruction obtained, by fiscal year:

FY	Language	# of personnel	Hours of Instruction
2004	Arabic	93	11612
	Chinese Mandarin	22	3094
	Dari	3	564
	Farsi	5	876
	Hebrew	1	187.5

	Hindi	1	150
	Hungarian	3	334
	Indonesian	1	150
	Japanese	3	292
	Korean	2	420
	Romanian	1	120
	Russian	28	5094
	Spanish	29	4274
	Thai	1	60
FY	**Language**	**# of personnel**	**Hours of Instruction**
2003	Arabic	364	16531
	Armenian	1	270
	Chinese Mandarin	100	5592
	Dutch	1	80
	Farsi	1	150
	Greek	1	84
	Korean	1	150
	Russian	22	3100
	Spanish	43	5013
FY	**Language**	**# of personnel**	**Hours of Instruction**
2002	Arabic	147	7348
	Cantonese	1	240
	Chinese Mandarin	12	2010
	Greek	1	72
	Polish	1	200
	Russian	9	1712
	Spanish	104	8502

11. What benefit do you see in developing a college-level grant program to encourage improved, diverse language instruction, and what benefit do you see in developing incentives for students to major in math, science or foreign languages?

Response:

The FBI believes we should take steps to encourage postsecondary education students to major in math, science, and foreign languages. It is our understanding that other federal agencies, such as the Department of Education and the National Science Foundation, have developed several programs to encourage students to pursue these majors. For instance, the Department of Education's International Education programs provide support for colleges to develop centers that specialize in area and language studies and also support scholarships for students to study at those centers. In addition, the 2006 President's Budget requests $50 million for a new Presidential Math and Science Scholars Fund. The FBI looks forward to the success of these programs, which will help to ensure that the FBI and other intelligence community partners are able to draw on a pool of highly qualified candidates in the future.

12. What benefits do you see in a program to repay student loans for intelligence personnel in national security positions who pledge to serve for at least three years?

Response:

Many of the FBI's intelligence personnel have advanced degrees, and they have often incurred substantial student loan debt in the process of earning these degrees. Given the investment the FBI has made in these individuals through the recruitment and security clearance processes and the training they receive once on board, the FBI needs these intelligence personnel to remain with us.

Although funding limitations in prior years have limited the FBI's use of the Student Loan Repayment Program, it was used to the maximum extent financially possible during the past two years. In FY 2005, Congress appropriated $30 million for recruitment and retention of FBI personnel. The FBI will use a portion of this funding to expand the student loan repayment program to attract new intelligence analysts. While it is difficult to measure the importance placed on this potential benefit in the recruitment process, since it may be one of many factors, it is clearly an important tool for retaining talented intelligence personnel, because the employee must agree to a period of service as a prerequisite for student loan repayment. In the first two years, 41 Intelligence Specialists have signed three-year service agreements with the FBI in return for repayment of a portion of their student loans.

RESPONSES TO FOLLOW-UP QUESTIONS FROM MR. MIHM

United States Government Accountability Office
Washington, DC 20548

November 10, 2004

The Honorable George Voinovich
Chairman
The Honorable Richard Durbin
Ranking Minority Member
Subcommittee on Oversight of Government Management,
the Federal Workforce and the District of Columbia
Committee on Governmental Affairs
United States Senate

Subject: *Intelligence Reform: Certain Human Capital Issues at the Federal Bureau of Investigation (FBI) and other Intelligence Agencies Related to the 9/11 Commission's Proposed Reforms*

This letter responds to your October 15, 2004, letter, in which Senator Durbin raised several questions as a follow up to GAO's September 14, 2004 testimony before your subcommittee entitled *Intelligence Reform: Human Capital Considerations Critical to 9/11 Commission's Proposed Reforms.*[1] In particular, Senator Durbin posed a series of follow-up questions related to certain human capital issues at the Federal Bureau of Investigation (FBI), the Central Intelligence Agency (CIA) and other agencies. These questions and our responses follow:

(1) Before the 9/11 Commission report was issued, the FBI embarked on a series of efforts to improve intelligence analysis by integrating intelligence into FBI's operations. However, the 9/11 Commission found continued confusion and misunderstanding among analysts and agents about their roles and duties, and questioned whether the new intelligence program has enough staff and resources to fulfill its mission. What is the status of the FBI's efforts to improve cooperation and education between analysts and agents?

In a testimony before the House Appropriations Committee, Subcommittee on Commerce, Justice, State and the Judiciary on June 18, 2003, we reported that the FBI was taking encouraging steps to revise training for new special agents, and for agents transferred to work in counterterrorism, counterintelligence and cyber crime to try to ensure that they have the skills they need to be effective.[2] We also reported

[1] GAO, *Intelligence Reform: Human Capital Considerations Critical to 9/11 Commission's Proposed Reforms*, GAO-04-1084T (Washington, D.C.: Sept. 14, 2004).
[2] GAO, *FBI Reorganization: Progress Made in Efforts to Transform, but Major Challenges Continue*, GAO-03-759T (Washington, D.C.: June 18, 2003).

that the FBI was making progress in establishing the College of Analytic Studies to train analysts in appropriate skills. In fiscal year 2002—the first year of operation—193 analysts completed the training, and for fiscal year 2003 just over 1,000 analysts were scheduled to complete the training program. We did not evaluate the curriculum of the revised training for either special agent or analyst staff.

In a June 2004 testimony, we also reported that the FBI has undertaken steps to enhance its intelligence capability to focus on counterterrorism and counterintelligence.[3] The changes we cited include appointing an Executive Assistant Director for Intelligence and creating an Office of Intelligence, to coordinate the Bureau's intelligence activities. Further, the FBI has worked to fully staff intelligence squads in each of the FBI's 56 field offices. This testimony documented the FBI's continued need to temporarily reassign agents from traditional crime areas, such as drug enforcement work, to meet needs in the counterterrorism and counterintelligence areas. Our testimony also noted that the FBI faces stiff competition for intelligence staff because the career ladder offered by the bureau is not as high as that offered by competing agencies. This limitation has affected the hiring and retention of intelligence staff at the FBI. However, we also noted that the FBI has utilized a number of human capital flexibilities to help build and maintain a quality workforce. In early 2005, the Department of Justice (DOJ), Office of the Inspector General (IG), is planning to issue a report concerning the recent record on hiring and training of intelligence analysts at the FBI.

(2) Intelligence personnel can benefit from increased emphasis on language education, particularly in the language areas not commonly taught in school, such as Arabic, Farsi, and Thai, among others. What steps are being taken at the FBI and CIA and through other federal agencies to quickly bring in experts or train existing staff in these languages?

In January 2002 we issued a report, and in March 2002 we presented testimony, concerning foreign language staffing and proficiency shortfalls at four agencies, including the FBI.[4] (At the time of our review, we requested a briefing from the CIA to learn more about its central coordinating role for foreign language issues in the intelligence community, but the agency declined to meet with us to discuss its coordinating role.) The agencies we reviewed reported using a range of workforce strategies in an attempt to fill their specific foreign language needs. First, the agencies focused on staff development by training staff in foreign languages, providing pay incentives for individuals using those skills, and ensuring an attractive career path for linguists or language-proficient employees. Second, these agencies made use of external resources, which included contracting staff as needed; recruiting native or U.S.-trained language speakers; or drawing on expertise of other agency staff, reservists, or retirees. Third, several of these agencies had begun to use technology to leverage limited staff resources, including developing databases of

[3]GAO, *FBI Transformation: Human Capital Changes May Assist the FBI in Its Commitment to Address Its Top Priorities.* GAO-04-817T (Washington, D.C.: June 3, 2004).
[4]GAO, *Foreign Languages: Human Capital Approach Needed to Correct Staffing and Proficiency Shortfalls,* GAO-02-375 (Washington, D.C.: Jan 31, 2002), and GAO, *Foreign Languages: Workforce Planning Could Help Address Staffing and Proficiency Shortfalls, GAO-02-514T* (Washington, D.C.: Mar. 12, 2002). The four agencies included in this report and testimony were the U.S. Army, the Department of State, the Department of Commerce's Foreign Commercial Service, and the FBI.

contract linguists, and employing language translation software. We concluded that while these assorted efforts have had some success, the agencies' current strategies had not fully met the need for some foreign language skills.

In June 2003, we testified on the FBI's reorganization and transformation efforts and provided information concerning the extent to which the FBI met its hiring goals for agents with foreign language proficiency.[5] We reported that while still short of meeting its foreign language critical skill targets, the FBI has been able to bolster its foreign language capability by increasing the number of contract linguists and language specialists. Before September 11, 2001, there were 405 contract linguists and 379 language specialists, and as of May 2003, there were 712 contract linguists and 421 language specialists. In the priority languages identified to support the FBI's new priorities, 195 contract linguists and 44 language specialists were hired between October 2002 and March 2003.

More recently, the DOJ's IG reported in July 2004 that the FBI has over 1200 linguists (800 contract linguists and 400 language specialists).[6] The report also notes that over 1000 special agents and analysts have linguistic capabilities at a minimum working level or higher. However, despite growth in the number of FBI translators and interpreters, the growth in the collection of materials requiring translation has continued to outpace translation capabilities. Although the data needed to assess the number of hours of backlogged materials for translation is somewhat problematic, the DOJ IG report indicates there are many thousands of hours of material that have not been translated.

Finally, we have also reported that federal agencies can use their available human capital flexibilities to bring in new skills.[7] For example, in July 2003, the Office of Personnel Management (OPM) approved the use of direct-hire authority for agencies to hire individuals fluent in Arabic or other related Middle Eastern languages to positions in support of the Administration's reconstruction efforts in Iraq. Under a provision of the Homeland Security Act of 2002[8], agencies can use such direct-hire appointments in cases where OPM has determined there is a severe hiring shortage of candidates or a critical hiring need exists. When making appointments under direct-hire authority, agencies are not required to numerically rate and rank job applicants nor apply the rule of three or veterans' preference. Under direct-hire appointments, agencies are still required to provide public notice of the vacancies and screen all applicants to ensure they meet the basic qualification requirements of the position.

---

[5] GAO, *FBI Reorganization: Progress Made in Efforts to Transform, but Major Challenges Continue,* GAO-03-759T (Washington, D.C.: June 18, 2003).
[6] The Federal Bureau of Investigation's Foreign Language Program - Translation of Counterterrorism and Counterintelligence Foreign Language Material (Redacted & Unclassified version)., U.S. Department of Justice, Office of the Inspector General Audit Division, Audit Report 04-25, July 2004.
[7] GAO, *Effective Use of Flexibilities Can Assist Agencies in Managing Their Workforces,* GAO-03-2 (Washington, D.C.: Dec. 6, 2002) and GAO, *Human Capital: Additional Collaboration Between OPM and Agencies is Key to Improved Federal Hiring,* GAO-04-797 (Washington, D.C.: June 7, 2004).
[8] 5 U.S.C. section 3304(a)(3).

(3) What benefit do you see in developing a college-level grant program to encourage improved, diverse language instruction, and what benefit do you see in developing incentives for students to major in math, science or foreign languages?

While we have not directly assessed the benefits associated with college-level grant programs to encourage language instruction, or determined the benefits associated with incentives for students to major in math or science, we have issued several reports and a testimony, discussed previously, that address foreign language training. With respect to foreign language training, our January 2002 report on foreign language staffing and proficiency shortfalls discusses the National Security Education Program (NSEP) which provides federal support for advanced language training, and is authorized by the National Security Education Act of 1991.[9] We reported that, according to NSEP's director, at the time, NSEP was the only government program that linked U.S. national security interests with the development of foreign area and language skills. Each year, NSEP surveys federal agencies to identify critical-need languages and distributes college scholarships in line with these needs. Scholarship recipients agree to a term of federal service in national security affairs agencies in return for these funds.

As for the benefits associated with incentives for students to major in math or science, we have recently started work on the federal role in increasing the nation's pool of engineers, mathematicians, and scientists. This work is in response to a request made by the Chairman of the House Committee on Rules. Specifically, we agreed to determine (1) what federal programs, including higher education grants and scholarships, are specifically designed to increase the pool of engineers, mathematicians, and scientists, and what is known about the effectiveness of these programs; (2) how the number of graduates with these degrees (particularly U.S. citizens at the graduate and post-graduate levels) has changed compared to the number of graduates needed in the nation's marketplace over the past 5 years; and (3) what educational barriers exist, if any, that may impede the fulfillment of existing and future needs of these professions in the marketplace, and how can these barriers be overcome. We expect that the results from this work will be available by the fall of 2005.

(4) What benefits do you see in a program to repay student loans for intelligence personnel in national security positions who pledge to serve for at least three years?

At Senator Durbin's request, GAO has recently begun a study of executive branch agency student loan repayment programs, the results of which are expected to be available by the summer of 2005. The study will examine: (1) the reasons selected executive branch agencies are using or not using the loan repayment program, and how the agencies view the benefits of this program compared to other recruitment and retention flexibilities; (2) how the loan repayment program is administered in those selected executive branch agencies that use it, and where agencies see opportunities to administer the program more efficiently; and (3) results and lessons

[9] 50 U.S.C. sections 1901-1911.

learned, if any, and what selected agencies have observed from using the loan repayment programs.

— — —

I appreciate the opportunity to respond to these questions. I look forward to working with the subcommittee on any further areas of inquiry regarding the human capital and transformation issues associated with the 9/11 Commission's proposed reforms.

J. Christopher Mihm
Managing Director
Strategic Issues

(450380)

Question from Senator Durbin:

1. In your testimony, you discuss a NAPA proposal to exclude performance-based awards from the Congressional pay cap for the FBI and other agencies. Can you elaborate further on this?

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION
1100 New York Ave. N.W., Suite 1090 East
Washington, DC 20005-3934
TEL (202) 347-3190 FAX (202) 393-0993
INTERNET: www.napawash.org

Celebrating the 20th Anniversary of Our Congressional Charter

November 4, 2004

The Honorable George Voinovich, Chair
Committee on Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia
442 Hart Senate Office Building
Washington D.C. 20510
Fax (202) 224-3328

Dear Mr. Chairman

As you know, at the request of Congressman Wolf, Chairman of the House Appropriations Subcommittee on Commerce, Justice and State, the Academy convened a series of meetings to consider and review proposals designed to expedite the FBI's transformation. Participants included representatives of the U.S. General Accounting Office, the Congressional Research Service, the National Commission on Terrorist Attacks Upon the United States, the U.S. Department of Justice, and the FBI. During this process, the participants examined six proposals that focused on changes to the FBI's budget structure and its personnel and pay authorities. These proposals were intended to enable near-term improvements in the FBI's intelligence and counterterrorism programs. One proposal was to exclude performance-based awards form the Congressional pay cap for the FBI and other agencies

The FBI's performance awards for its Senior Executive Service are currently limited by the Congressional pay cap. This proposal would exclude performance-based awards from the pay cap. It is intended to make room for pay increments that provide meaningful rewards for distinguished levels of performance. There is substantial precedent for pay scales extending beyond the pay cap. The National Institutes of Health, the National Institute of Standards and Technology, the National Aeronautics and Space Administration, and the National Science Foundation all currently have authority to pay above the caps.

A potential downside to this recommendation is that discretionary pay will require managers to have the fortitude to make tough calls, especially when dealing with pay incentives of this magnitude. In addition, these programs must be funded, and that funding must be transparent to staff for the programs to have credibility.

If this recommendation were adopted the legislature would need to exclude all performance awards (lump sum payments) from the Congressional pay cap, including government-wide, department wide, and internal FBI awards. The FBI would need to

fund these awards and make the funding clear to employees to give the program credibility. In addition, the FBI would need to revisit their management strategy with regard to performance awards, and anticipate issues and develop plan(s) of action. Finally, the FBI will need to ensure that current guidelines are appropriate for real life use and supporting processes are in place.

I thank the Subcommittee for the opportunity to work with them on this important issue. The Academy remains committed to assisting the Subcommittee in its ongoing efforts regarding recommendations of the 9/11 Commission.

Sincerely,

C. Morgan Kinghorn
President

Responses to written questions submitted by Sen. Durbin from the Sept. 14, 2004, hearing at which **Mr. Wagoner** testified on *"The 9/11 Commission Human Capital Recommendations: A Critical Element of Reform."*

Question: In your testimony, you detail the problem of moving one type of security clearance to another and that federal agencies fail to honor existing regulations on these issues, causing inordinate delays. How often do outside information technology personnel need to shift among agencies?

Answer: Both contractor and government personnel are increasingly being required to work in multiple agencies at an amazing rate. There are two primary reasons for this that I will detail below:

Data Sharing - In the post 9/11 world federal agencies are sharing data, practices, systems and personnel like never before. While we are encouraging them to do so the clearance process is creating a major stumbling block. An example would be that an NSA cleared analyst would not have the clearance to access DEA data to see if a terrorist is a known drug dealer. Although cleared at NSA, DEA has its own clearance criterion.

E-Government - The federal government is increasingly trying to purchase information technology systems smarter. This includes multiple agencies using the same system. A real life example that my company has dealt with is the Defense Message System which is a highly secure message system used by high level decision makers. Because DOD interfaces with almost all agencies, they too need access to this system. Although my engineers have held DOD Top secret clearances for many years they had to be reinvestigated before they could work at FBI, then reinvestigated by CIA and still had to go through an investigation at Energy to work on the same system at these agencies. This is by no means an isolated case. Many times it's easier to hire multiple people with the right clearance and charge them to each agency than to leverage one person across several agencies. As government tries to do the right thing for the taxpayer, the clearance process should not impede this progress. This is why reciprocity is very important.

○