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LEGISLATION TO ESTABLISH A DEPARTMENT OF NATIONAL HOMELAND SECURITY AND A WHITE HOUSE OFFICE TO COMBAT TERRORISM

HEARING

BEFORE THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

APRIL 11, 2002

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LEGISLATION TO ESTABLISH A DEPARTMENT OF NATIONAL HOMELAND SECURITY AND A WHITE HOUSE OFFICE TO COMBAT TERRORISM

THURSDAY, APRIL 11, 2002

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

The Committee met, pursuant to notice, at 9:01 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Thompson, Collins, Voinovich, Akaka, and Levin.

OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. The hearing will come to order. Good morning and thanks to all of you, including, of course, my colleagues from the Senate and the House for being here today.

This Governmental Affairs Committee hearing will consider legislation introduced by Senator Specter, Senator Graham, and myself to organize the Federal Government so that it can better prevent, effectively prepare for, and quickly respond to terrorist attacks made against American citizens on American territory. This is a follow-up to two hearings we held last fall on whether the Government and specifically the Executive Branch is adequately organized to meet the type of security threats we must, unfortunately, expect after September 11.

Given President Bush's decision last fall to establish an Office of Homeland Security and appoint former Governor Tom Ridge to head it, it seems to me that it is clear that proper structures and mechanisms were not in place on September 11 to adequately protect our homeland, and the President's action since then makes that clear.

But today, we have got to ask—6 months after Governor Ridge's appointment—whether we are adequately positioned to defend ourselves against another terrorist attack within our borders. Are the gaps in our security policies closing? Are dozens of agencies with a role in protecting the American people against terrorism better coordinating their activities? Has duplication of efforts diminished?

Governor Ridge, I am confident, has done everything within his power to make this Nation safer. For example, he has helped to boost the administration's homeland security budget and he has implemented a new warning system. But from my point of view,

this is not enough, and the reason is that Governor Ridge and the office he heads lack the necessary authority to overcome the bureaucratic obstacles that always get in the way of major change in how the government conducts its business.

I will say also in this regard that the administration's refusal to allow Governor Ridge to testify publicly before this and other Congressional committees on his activities makes our work this morning more difficult than it should be, and incidentally, we did request Governor Ridge's appearance here and got the same kind of letter that Senator Byrd and Senator Stevens got. The governor is on the House side today, although speaking behind closed doors with the Government Reform Committee.

But given the effect his work has on the lives of every man, woman, and child living within our borders, it seems to me that Governor Ridge needs to work with Congress and the public in the way government officials with the authority he has have been doing for decades, indeed, for centuries, which is to come before a public hearing and testify and have a transcript available for Congressional and public review to describe what he is doing, to flesh out his successes, to speak to his difficulties, in short, to be accountable, and he must do this from a position of strength and authority. America's war against terrorism cannot be allowed to get mired in domestic wars over bureaucratic turf.

So the bottom line, as I see it, is that if statutory and budget authority are not conferred upon a Director of Homeland Security, the homeland defense of this Nation will be less than it must be. Governor Ridge and his successors need to centralize their authority so our anti-terrorism policies are clear, consistent, and comprehensive. They need the power, frankly, to knock heads, to overcome bureaucratic resistance, to eliminate wasteful duplication of effort, and to target precious resources, and they need control over the budgets of agencies they are charged with overseeing so those agencies will do what the director concludes in the national interest needs to be done. Together, that kind of authority will give a new agency the muscle necessary to compete with thousands of other demands for public money and attention.

Last October, Senator Specter and I introduced legislation to establish such a cabinet-level Department of National Homeland Security led by a presidentially appointed, Senate confirmed secretary who would be a member of the National Security Council, accountable not just to the President but to Congress and to the public.

We recognize that no matter how robust a department of this kind may be, it will not include every agency that plays a role in homeland security. But the bill we will discuss today does contain a number of improvements over our earlier version. The most significant changes are a requirement for a national strategy to combat terrorism and the establishment of a White House office to coordinate that strategy, as originally proposed by our colleague, Senator Bob Graham of Florida.

These key improvements underscore the seriousness with which we regard the job of protecting the American public and they speak to the public's desire, indeed, the public's need for the best protection we can provide them. On an operational level, these improvements also allow for the government to coordinate anti-terrorism

activities of the military and intelligence communities, which would be beyond the purview of the cabinet-level department that we are talking about.

With this combined approach, I think we address the need to permanently restructure homeland security functions under a cabinet-level secretary who has operational authority and the ability to personally direct the government-wide plan. At the same time, we provide for the level of coordination with other Federal agencies and budget certification authority that can most effectively be implemented from the White House.

Now, the formation of a Department of Homeland Security obviously requires a major restructuring of the Federal Government's public safety-related responsibilities. I know this will not be easy. History tells us that. There will be resistance, and it seems somehow appropriate—I hope no one takes offense—that I quote Machiavelli here, who said—Senator Rudman, it is just coincidental I raised my head when I mentioned Machiavelli—— [Laughter.]

Chairman LIEBERMAN [continuing]. Because you carry some of his wisdom. Anyway, he once said, "There is nothing more difficult to plan, more doubtful of success, nor more dangerous to manage than the creation of a new system," and so it is.

But a restructuring of the kind we envision here is now critically necessary. In fact, in previous periods of crisis, such as the one we are in now, we have undertaken bold organizational change. I think of General Marshall's transformation of the Army, which helped win World War II, or the National Security Act of 1947 that created the CIA and the Department of Defense at the outset of the Cold War, and more recently the Goldwater-Nickles Act of 1986 in streamlining the military command helped us to prosecute the Persian Gulf War and so much else we have done militarily since the 1990's. We need such a change now to help us fight and win the war against terrorism at home and abroad.

I thank the distinguished group of witnesses who will come before us today and I look very much to their help and their testimony. Senator Thompson.

OPENING STATEMENT OF SENATOR THOMPSON

Senator THOMPSON. Thank you, Mr. Chairman. I suppose we know now when we hear that question about who is your favorite political philosopher.

Chairman LIEBERMAN. Usually, I say it is either Machiavelli or Fred Thompson. [Laughter.]

Senator THOMPSON. The hearing today is an important one, Mr. Chairman, and I appreciate your leadership in this area. This issue is of concern to all of us, as well as the leadership of our panelists today, all of whom have made substantial contributions toward trying to address the leading problem facing our country today.

Just to frame the issues a little bit as I see it, it looks to me like we are going to address the question of whether or not, essentially, we need a new entity of some kind—a new lead entity as opposed to a coordinating function. Frankly, I think there can be cases made on both sides. I think a new entity such as you suggest makes a lot of sense in a lot of ways, but as you pointed out, there are going to be some very important terrorist fighting entities that

will not be under this umbrella. What we do with Justice and the CIA and the FBI and all of that is a big question.

I think that is why it should be understandable that the administration is taking some time to come up with its own plan. As I understand it, its strategic plan is going to be forthcoming this summer. I am reminded of Barry McCaffrey. When General McCaffrey was here testifying some months ago, he said—I forget the number of years he used now, but he said it would be several years, as I recall, in his opinion, before we had a good feel on exactly what we needed and which direction that we needed to go in. He suggested we be careful as we proceed and not assume that we have the answers to all the questions. I think today will help us get a better understanding of what those answers are.

We are faced with the question of whether or not it ought to be statutory. I think the administration has and will make its case today with regard to that issue. I must say that it appears that the job that Governor Ridge has is turning into more of an operational one and certainly more of a public one than some of the other entities, comparable entities, such as the NSC.

A separate question is the reorganization, consolidation and integration of the various agencies. As we know, we have 40 or 50 agencies now involved. I think most people realize that we cannot continue on with Customs being in Treasury, INS being in Justice, the Coast Guard being in Transportation.

It is extremely difficult to make modest changes and get them through Congress when jurisdiction is involved. We, in Congress, have not much to be proud about in terms of our own situation. We have 10 committees now involved conducting oversight on this issue. How do we expect this to all come about smoothly when we have that kind of situation? We have got jurisdiction anomalies out our ears. The Banking Committee now has the Export Administration Authority. The consideration of dual-use items that can be used for military purposes is considered by that committee. About the only committee that does not have national security implications has that particular piece.

So we have a lot of work to do on our side. It occurs to me that reorganization is essentially a Congressional problem. The President cannot do this by executive order if he wanted to. We must be the ones that do it. If it is done, it is a challenge before us. But nothing is going to get done unless we have strong Presidential leadership. I think it is going to take everybody pulling together to make even modest changes in terms of reorganization. It is a massive job and probably much more of an important one than the particular title we give the person who brings all this together.

It occurs to me that how we change this set-up, if we change it, when we change it, is very important, but unfortunately, like so many other areas, Presidential leadership is the vital part of any change that we make. Without it, it does not matter what we do. With it, it almost does not matter what we do, quite frankly. It is rightly at his doorstep and he is going to have to provide the leadership and take the responsibility and have the accountability, and I think he is doing that.

Can it be done in a better way? Perhaps, but I think we need to face up to the fact that to have any changes, we are going to

have to work together with the White House to get them done. To have any real results, we are going to have to do it under the President's leadership.

I have been of the mind that we should keep open minds about how we should proceed and what we need to wind up with ultimately. I still feel that way. The national strategy is due, I believe, in July. I would like to see what the administration comes up with.

I believe that because the job is so important, is so complex, as General McCaffrey pointed out, that we need to give the administration a fair shot at coming forth with how they feel it ought to be done and see how that flies, what it looks like, and, to the extent we can, see how it is working before we launch off into anything that would be extremely specific in the reorganizing or the reshuffling of the boxes. I am still of that mind, but I definitely think that we have got to continue to take a look at this as we go along. Just as we do not have all the answers, the administration should acknowledge that it does not necessarily have all the answers, either.

We just need to continue down this road together and I think that this hearing today is a good first step in that direction. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator Thompson. I agree totally with you that this is only going to get done if Congress is working together with the White House. We start off from different positions. This is not a partisan matter, as the range of our colleagues before us indicates very clearly.

I think, as maybe Senator Rudman said earlier on in one of our discussions, that time will show the necessity of coordination in this critical governmental function. In fact, in some ways, it is already happening. In some ways, it has already begun with some recommendations Governor Ridge has made. Of course, I feel the sooner the better, and hopefully, we can work together to make that happen.

Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you very much, Mr. Chairman. I appreciate your holding this hearing to evaluate legislative options to strengthen our homeland security. It is my judgment that we do need to have a statutory basis for the office to clarify the lines of authority. I am very interested in not only the legislation that you and Senator Specter have introduced, but also the other proposals before us, and in particular, the legislation that Senator Graham has introduced.

I look forward to hearing from all of our witnesses on the best way to ensure that the Director of Homeland Security has adequate authority, budget resources, and the clear authority to accomplish this overwhelmingly important mission. Thank you.

[The prepared statement of Senator Collins follows:]

OPENING STATEMENT OF SENATOR COLLINS

Mr. Chairman, thank you for convening this hearing. Our purpose—to examine legislative options to strengthen homeland security—is of utmost importance, and we have a range of distinguished witnesses to help us in this critical endeavor.

Since September 11, much has been done. This Committee alone has held 17 related hearings, and other committees have held scores more. Congress has authorized the expenditure of tens of billions of dollars, and the administration has created an Office of Homeland Security and proposed tens of billions of dollars in additional spending.

But much more needs to be done. Seven months have passed—to the day—and we still have not made our Nation as secure as it can and should be. We have not, for example, provided much-needed resources to our first line of defense—the first responders in our States and localities. To make our Nation more secure by strengthening our first line of defense, I introduced on Tuesday the Securing Our States—or S.O.S.—Act.

Spread across the Nation are nearly two million "soldiers" in the battle against terrorism who are always on the front lines when disaster strikes. Properly trained and equipped, these State and local police, firefighters, emergency medical professionals and others have the greatest potential to save lives and limit casualties after a terrorist attack. Even the best prepared States and localities do not possess adequate resources to respond to the full range of terrorist threats we face.

The S.O.S. Act, which is consistent with the "First Responders" proposal in President Bush's 2003 Budget, will help by providing $4 billion in critically needed funding—an increase of more than 1,000 percent in Federal resources. This bill is designed to achieve four objectives: (1) provide adequate resources; (2) ensure flexibility for States and localities; (3) enhance simplicity and speed in dispersing Federal assistance; and (4) improve cooperation across the Nation so that the local, State, Federal, and volunteer network can operate together effectively. The benefits of the Securing Our States Act are immediate and widespread—making the Nation safer from terrorist attacks while also bolstering everyday response capabilities.

Seven months after the tragic attacks, and 6 months after the anthrax attacks on the office complex in which we sit, Congress still has not acted with sufficient urgency to protect our Nation against bioterrorism and threats to the safety of the food we eat. I am encouraged by the Senate's unanimous passage in December of the Bioterrorism Preparedness Act of 2001 (S. 1765). That bill, which I cosponsored, calls for improving food safety and protecting against agricultural bioterrorism; upgrading Federal capacities to respond to bioterrorism; providing grants to hospitals, and State and local officials for first-line response; and developing new treatments, vaccines, and diagnostic tools. I am hopeful that it will soon come out of the Conference Committee.

These and other unmet needs tell me that there is still much work to be done. But probably the most important work yet to be done is in re-organizing the Federal Government to provide the best possible security for our homeland. This is a large and complex task. We must improve coordination between Federal, State, and local governments, as well as the private sector. We must have adequate funding. We must avoid wasteful duplication. We must have realistic plans and effective training and exercises. We must also ensure that appropriate information about the presence of terrorists and potential threats is shared by Federal law enforcement agencies with their State and local counterparts.

Still, the magnitude and complexity of the task ought not cause us to avoid it. The Nation could not and should not permit Congress for any reason to shirk its responsibilities to re-organize the Federal Government promptly. Nevertheless, the importance of the task is so great that we cannot be permitted to rush to a judgment we will later regret. We must get this one right. We must carefully examine whether the bills that are the focus of this hearing do that. In this regard, this hearing and the testimony of our distinguished witnesses will be very helpful, and I look forward to hearing from them. We have a lot of work to do—together.

Chairman LIEBERMAN. Thank you, Senator Collins. Senator Voinovich.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. Thank you, Mr. Chairman. I would like to thank you for holding this hearing to discuss establishing a Department of Homeland Security and a National Office for Combating Terrorism. I would also like to thank our witnesses for being here today.

Mr. Chairman, it is clear to me that our country must examine the organization of our Federal Government from a new perspec-

tive following September 11. We must make certain that the Nation has effective, accountable organizations and systems in place to protect Americans from future terrorist attacks.

We began this effort in the immediate aftermath of the attacks, and I believe it is productive that we continue these discussions today. We had a hearing, 5 or 6 months ago on the same subject.

Recently, FEMA Director Joe Allbaugh appeared before the Environment and Public Works Committee to discuss the President's budget for the First Responder Initiative, which he is going to be charged with. I mentioned to him that I was worried about some of the news relayed to me by local officials in Dayton, Ohio who were part of a first responder team at Ground Zero. They were unable to get information about the environmental hazards that they encountered there and also the fact that they were unable to get the paperwork that they needed to make an application to take advantage of the Federal Workers' Compensation Program.

The issue today before us is: How do we best solve these problems? There have been serious discussions about making long overdue improvements in our governmental institutions across the country, from the White House, and Federal agencies in Washington, DC, to State houses and city councils across America. The point I am making here, Mr. Chairman, is we need to understand that there are a lot of challenges that we have out there, and we are talking about a new agency and we are talking about coordination. But the fact of the matter is that the agencies that are charged with important responsibilities do not have the personnel and the quality of people to accomplish their missions. I think that has to be something that we need to concentrate our attention on. These problems are a direct result of the Federal Government's human capital challenges.

As a recent article in *The Washington Post* highlighted, at the Immigration and Naturalization Service, there are only 2,000 agents to enforce the immigration laws inside the U.S. Borders.

I mentioned Joe Allbaugh and FEMA. I asked him about the condition of his workforce and I think his response is indicative of a widespread problem in the Federal Government. He said, and I think this is really important, "I have been in this position about a year, and it was clear to me right up front that we have not been spending enough time internally on our employees. Retention was a problem, and there was essentially no recruitment. I think over the next 18 months, somewhere between 45 and 50 percent of our agency is eligible for retirement. That is just a lot of gray matter to be walking out the door. Since September 11, the retirements have accelerated. People have come to my office with a different perspective on life, which I cannot fault them for, wanting to spend more time with their kids, grandkids, their spouses."

"FEMA suffers from its own successes in that if you want a job done, you give it to FEMA, and oftentimes we are given tasks to perform but not necessarily the resources to complete the task. So as a result, many of our people in not only the Washington headquarters but in our 10 regional offices wear two, three, four, and five hats at the same time and I think it puts an inordinate amount of stress on those individuals, on their families, who I

think make the ultimate sacrifices because those individuals are kept away from home more than necessary."

So what I am saying, Mr. Chairman, is that I think improving the Federal Government's strategic management of human capital is the most important action we can take to better prepare our Nation against future threats to our national and homeland security and it is critical that we address the problem as we consider legislation before the Committee today.

You can coordinate all you want to, but if the agencies you are coordinating don't have sufficient personnel, they are not going to be able to get the job done, and I think too often we concentrate on form and procedure and neglect the most important thing that we need to have in the Federal Government and that is people. You win with people.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator Voinovich. Right on.

We are very grateful for the presence of this group of Members of both chambers, both parties here today, who have been involved in this and we look forward to your testimony.

I think Senator Specter has an engagement he has to go to. I think he is also, if I am looking for an excuse to call on him first, he is clearly the most senior member before the Committee, so I would call on Senator Specter now.

TESTIMONY OF HON. ARLEN SPECTER,[1] A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

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

Chairman LIEBERMAN. Excuse me. Senator Akaka, do you have an opening statement? You snuck in behind me quickly.

Senator AKAKA. I will do it afterward.

Chairman LIEBERMAN. OK, fine. Go ahead, Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman. The Appropriations Committee is in the midst of 2 days of hearings on homeland security and I am due there shortly, so I appreciate your calling on me at this time.

I believe that it is very important for this Committee to move as promptly as possible to structure a bill. The hearing on S. 1534 was on October 12 and this is a matter of considerable urgency.

I think that Senator Thompson is correct that there has to be input from the White House. It has to be an agreed-upon format. But I believe that is likely to come once the legislative process moves forward.

I served on this Committee for 4 years and I know its capability to take the legislation which has been introduced in a variety of sources and to move it into a bill, and when that starts to happen, there is going to be input from the White House. But I think we have no time to spare to do everything we can to structure homeland security in the most effective way possible.

I am glad to see Senator Graham's addition to the bill on a counterterrorism czar. I know from my service as chairman of the Intelligence Committee in the 104th Congress that there needs to be a revision in intelligence gathering, reporting, and coordination.

[1] The prepared statement of Senator Specter appears in the Appendix on page 59.

I am glad to hear the reference to Machiavelli, Mr. Chairman. I am glad to see one more cosponsor on the list. It should materially improve chances of passage. When you said Senator Thompson and Machiavelli were your two favorite political philosophers, I expected Senator Thompson to reply he did not see much difference in making alternative——

Senator THOMPSON. I am sorry I brought this up.

Senator SPECTER [continuing]. Alternative choices.

The job which Governor Ridge faces is a very daunting responsibility and he is a man of terrific ability, which I know, having worked with him very closely for more than two decades, 12 years in the House and 6½ years as governor. When he says that he can walk down the hall and get matters resolved with the President and no one will say no to the President, I agree, no one is going to say no to the President. But it is pretty hard to walk down the hall every time there is a controversy, and we are talking about an institution. It may be that the next Director of Homeland Security will not have the very close relationship which Governor Ridge enjoys with the President.

We are now seeing a battle of separation of powers with the position taken by the administration on having Governor Ridge not testify before the Congress, and I believe that dispute would be obviated if the Congress acts to create a cabinet-level position. Then there would be no doubt about it.

My own view is that when you have as much responsibility as the Director of Homeland Security has and you have a say on $37 billion, that you really have a *de facto* cabinet officer. This is not like the National Security Adviser, who was created by statute and by Congressional enactment in 1947, so that the analogy to Dr. Condoleeza Rice, I think is not apt. The sooner we move on to have a structure here, I think the better off we will be.

My yellow light is on and you have a long list of witnesses and I am going to observe the time meticulously, but in closing, I would emphasize the need for early action. September 11 has had a 6-month anniversary. S. 1534, which you and I introduced months ago, had a hearing on October 12. In my view, the sooner this Committee acts, the sooner we will get the ball rolling and I think we can work out an accommodation with the White House. Thank you very much.

Chairman LIEBERMAN. Thank you very much, Senator Specter. I agree with you, and as soon as we feel we can bring it to markup, we will, and I hope that is real soon. Senator Graham.

TESTIMONY OF HON. BOB GRAHAM,[1] A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator GRAHAM. Thank you, Mr. Chairman. I, too, appreciate your holding this hearing on an important topic and I believe that this is the time to begin serious consideration of the role of Congress in the Office of Homeland Security.

As you know, much of this bill that is before us today is a product of legislation that was introduced in the fall of last year. We were asked by the President to defer pursuing that legislation in

[1] The prepared statement of Senator Graham appears in the Appendix on page 66.

order to allow Governor Ridge to gain control of his responsibilities and to deal with some of the immediate issues that were facing him after September 11. Now, 6 months plus have passed. I think it is time to begin the process of looking to the future for this important initiative.

The legislation which Senator Feinstein and others and I introduced last fall was S. 1449, and in substantial part it has now been incorporated as Title II in the legislation that is before us. This legislation has as its purpose to institutionalize the Office of Homeland Security and assure its accountability to the American people.

To do that, the legislation would provide that the director of the office be appointed by the President with the advice and consent of the Senate. The director would develop a national strategy for the prevention and response to terrorism. The director would be required to certify all portions of the Federal budget relating to terrorism.

Last November, with Paul Light, Director of Governmental Studies at The Brookings Institute, I co-authored an op-ed in *The Washington Post* in which we set out seven benchmarks against which the American people and the members of Congress could measure the effectiveness of the current executive order, Office of Homeland Security, and help us to determine if a more formal statutory authority was warranted. I would like to use my remaining time just to briefly comment on those benchmark standards and hope that they might be helpful to this Committee as it attempts to answer that question.

The benchmarks that we identified were, first, that Governor Ridge needs to be first in line for information. This is particularly true as it relates to sensitive intelligence information that would require action which had as its objective to avoid a terrorist attack. We do not want to be in the position of constantly picking up the pieces after an assault, but rather to be able to avoid attacks against our people.

Second, Governor Ridge needs to have access to the principals who will make the operational decisions for the appropriate agencies and he needs to have that access on a timely basis.

Third, Governor Ridge needs to be a gatekeeper in the budget and personnel processes.

Fourth, Governor Ridge needs a permanent staff that owes its loyalty to him and to him alone. This recognizes the fact that there are inevitably going to be conflicts between this Office of Homeland Security and the line agencies which have parts of the responsibility for implementing the plan against terrorism.

Fifth, Governor Ridge needs a staff which is close to him, that is, not only close in terms of its loyalty but in terms of its physical proximity.

Sixth, Governor Ridge needs a say in the selection of appointees at the agencies which will have significant responsibility for antiterrorism and response to terrorism.

And finally, seventh, Governor Ridge needs to be involved in all management reviews of the homeland defense establishment.

Six months after listing these criteria, Mr. Light and I would define the results as being mixed in terms of how well the operation of the office stands up against these criteria. He clearly has access

to the information needed to do his job, but much of the information is still muddy, its sources diverse, and its usefulness often mixed. Evidence of this is the color-coded system of vague threat warnings which the office has developed.

Governor Ridge also enjoys access to key decisionmakers, from the President to the Vice President and Attorney General, which is our second criteria. But what he has not had, at least not yet, it appears, is success in making his case on the need for the kinds of changes that will be necessary to give America an organized homeland security presence.

He appears to have had his greatest success in the budget and personnel process, our third criteria, but the governor has continued to argue against making his case even for this area of success before the Congress and he has said that he has no power to spend, obligate, or audit money, and for that reason has no obligation to come before the Congress.

As for his staff, executive office space, and role in selecting key Presidential appointees, again, mixed success. He is still running a minimalist operation, still looking for office space which is proximate to his own space in the Old Executive Office Building. It is not clear that he has had a role in selecting key personnel. As an example, two appointments were announced recently, the nominee to be the Surgeon General and the Director of the Institute of Health. Both of these will be essential players in the fight against bioterrorism.

Governor Ridge does not appear to have had much to say over the operations and management of the homeland security establishment, which was our seventh and final criteria. As the recent events in the INS suggest, homeland security continues to depend on agencies that are properly structured, staffed, and led, and when those criteria are not present, then we expose ourselves to the kind of tragedies that occurred on September 11.

Mr. Chairman, I would like to ask that the balance of my statement be printed in the record as if read. I applaud the President and Governor Ridge for the progress that they have made, particularly under extremely challenging, difficult circumstances. I do not believe that what we are about here is a clash between the Executive and the Legislative Branches. What we are trying to do is to provide to the American people what they have every right to expect their National Government to do. If you read the first lines of the Constitution, it clearly outlines that protecting the homeland is one of the fundamental reasons this government was established. That is the importance of the business that we are about today and I commend you for doing so.

Chairman LIEBERMAN. Thank you, Senator Graham. That was very helpful testimony and thanks so much for working with us to bring our two approaches to this together. It is an honor to be working with you.

Senator GRAHAM. Thank you.

Chairman LIEBERMAN. Senator Gregg, thanks for being here this morning.

TESTIMONY OF HON. JUDD GREGG, A U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Senator GREGG. Thank you, Mr. Chairman. It is a pleasure to be here also. I also am participating in the Appropriations Committee hearing on homeland security which is going on.

I think it is appropriate to raise that, not only because Senator Specter headed off to it and I will be heading off to it soon, but because the first major witness called to that committee by Senator Byrd was a professor of government from Pennsylvania, I believe his name was Glover, and his basic theorem was that centralizing the decision process in the Homeland Security Office at the White House at a cabinet level was probably not the best approach to take, interestingly enough.

The reasons he pointed out were the same as concerns raised by Senator Thompson, which are that the Centers for Excellence in our government for addressing terrorism are already pretty well established in agencies which have a line of authority which is never going to be able to be pulled into a central cabinet-level position, specifically the FBI, CIA, State Department, and Departments of Defense and Justice. I am not sure that I am fully attracted to that idea. I do think that there is a role for an individual who has the authority of the homeland security portfolio, but the question becomes what should that authority be and what should that individual's role be.

I have spent a fair amount of time on this issue. In fact, as chairman of the Commerce, Science, and Transportation Committee for the last 4 years prior to the changeover, I held a number of hearings on this specific issue, which was the interrelationship of the different departments, and came to the conclusion that we do need some sort of reorganization to put structure into what we are doing.

But rather than going the full step of creating a cabinet-level position which tries to pull in homeland security but cannot accomplish it fully because some of the players simply will not be pulled in, such as the FBI, the Justice Department, State Department, CIA, and the Department of Defense, my suggestion is that we take a lesser step but one which would produce an efficient response to a known problem, and that is our borders.

Probably no element of this entire exercise has less effective coordination now than the management of our borders in the area of protecting ourselves from terrorist actions. We have seen consistently breakdowns in the INS and the Border Patrol. We have seen overlapping responsibility and ineffectiveness from Customs and INS trying to work together. We know that agencies such as the agricultural quarantine efforts and the Coast Guard, which have huge responsibility in this area, are not being coordinated in a systematic manner with the other agencies, such as the Border Patrol.

So I would like to suggest that rather than pursuing the course that is maybe the full effort, which has reservations to it, which have been outlined, that we take a look at resolving a problem that we know we can resolve, which is to take all the different Border Patrol elements of our government and put it into one agency and then give that cabinet status.

Specifically, I proposed this in a bill, S. 2020, which takes the elements of INS, which include Border Patrol and visa activity and immigration activity, the full element of the Coast Guard, the elements of the DEA which are covered by the Border Patrol, the elements of the Agriculture Department which involve making sure that foods coming into our country are safe, put them under one management structure and under one leadership coming out of the administration which would have a cabinet-level status.

I believe the practical effect of this approach would be that at least in one part of the question of how we protect our Nation, which is determining who is coming into the country and what they are doing when they are in the country, what products are coming into the country and what sort of threat is coming as a result of those products, at least in that one specific element, we would have structure and we would have coordination and we would have a responsible approach.

Today, we do not have that. Unfortunately, our borders are porous. Our management of those borders is inefficient and the lines of authority are overlapping and confusing.

So I would like to suggest that this Committee take a look, as it proceeds down the road of looking at your broader bill here, which I am sure you are going to want to mark up and report out, that I would like to suggest it as a parallel effort, that you consider taking a look at marking up a bill which would resolve the issue of our borders and managing the issue of who is coming into our country and what is coming into our country.

Chairman LIEBERMAN. Thanks very much, Senator Gregg, for a thoughtful statement, and I promise you we will consider that. It obviously omits some agencies that we are bringing into the larger proposal, but it is a very serious proposal that you are making and it touches an area of critical need and relationship to the problem of homeland security, so I look forward to working with you on it. Thanks for your time.

I welcome three colleagues, a distinguished bipartisan group from the House. Thank you for being here and thank you for working along with us. Obviously, not only do we have to work with the White House to get this done, we have got to work with the House to get it done.

Congresswoman Jane Harman.

TESTIMONY OF HON. JANE HARMAN,[1] A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. HARMAN. Thank you, Mr. Chairman. It is an honor to be back testifying before your Committee. Hello to Members of this Committee. I have a formal statement for the record and hope I can submit it and just summarize in six quick points, because many good points have already been made and I am sure you do not need to hear them again.

First point, I doubt that even Machiavelli could overcome the turf disputes in the Executive Branch and in Congress. With all of his skills, I still think they might even defeat him. In the current

[1] The prepared statement of Ms. Harman with an attachment appears in the Appendix on page 70.

language, I have been saying that turf disputes have become aerosolized. You inhale them and you die. Governor Ridge, I think, is on life support because his office is inadequately funded and has inadequate tools to do the job that we all need him to do.

Second point, I believe that your new legislative thrust that we are discussing today, the combination of two ideas, combines the best bipartisan ideas that we have been able to come up with in the House and in the Senate. I know that the three of us over here from the lower body have worked together, are prepared to work together, and eagerly want to work with you to fashion the best possible legislation and introduce a companion bill in the House at the same time that you introduce this bill, so that, hopefully, that will expedite its consideration in both bodies and its becoming law, because I do think we need a statute to settle these issues.

Third point, this is the issue, not whether Governor Ridge should testify. That is a side show. The main show is who is responsible for developing and explaining the $38 billion homeland security budget. Whose strategy is it? Who can explain to Congress why we should authorize and appropriate that money? That is the issue. We should not be authorizing and appropriating money that is not justified by the Executive Branch and somebody needs to come up here and explain that, and my candidate for that would be Governor Ridge, but Governor Ridge with a real day job.

Fourth point, and I am surprised this was not mentioned yet, but I think it is the touchstone and we should keep focused on it, and that is certainly those of us who serve on the Intelligence committees know this, and I know you know it as well—our country is still vulnerable to a second wave of major terrorist attacks. We are still vulnerable. Even though we have had considerable success in Afghanistan and around the world in rounding up terrorists, we are still vulnerable. Everybody understands that there are sleeper cells with al Qaeda members and followers in the United States, Canada, Europe, and so forth. We are still vulnerable. There is no more time left before we come up with an adequate focused homeland security strategy, and it is, as everyone has pointed out, already 7 months since September 11. It is almost 6 months since your first hearing of October 12 on this issue.

Fifth point, I would just like to draw your attention to the chart over here.[1] This chart was put together by the subcommittee on which I am ranking member, the House Intelligence Subcommittee on Terrorism and Homeland Security. It is the chart that Tom Ridge held up as his organization chart when he took office. I would call that the "Where's Waldo" chart. Waldo is the Office of Homeland Security near the top, but I bet you can barely see it. The blue lines are around the most major players in the Executive Branch, but there are a hundred little boxes on this chart. This is the current organization or the current disorganization that the Director of Homeland Security is supervising, and even if we reorganize our border agencies, which I support, that just takes a few boxes out of here. There is still the rest of it.

So I would argue, and I am not sure whether I am agreeing with Senator Gregg or not, I was not quite sure what his view is, but

[1] Chart referred to by Ms. Harman appears in the Appendix on page 72.

I think I agree with everyone else up here that while we need to reorganize our border capacity, we also need, at minimum, an architect or orchestra conductor for the rest of it. So I think the combination of a bigger, better border agency, FEMA, consequence management capacity is good, but then look at this chart. We need the rest. And so combining these functions, I think is critical.

Final point, my candidate for orchestra conductor is Tom Ridge. I think he brings the right skills. The problem is, he has the wrong tools. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Congresswoman Harman, for an excellent statement and very helpful.

I want to ask my two colleagues for their indulgence. I missed calling on Senator Akaka. He now has to leave soon and I want to ask him if he would like to give his opening statement now.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman. I commend the Chairman for calling this hearing and thank our witnesses for being here. The issue of homeland security is one that demands all of our immediate attention.

Homeland security presents challenges to our country in different ways. Our commitment to both national security and civil liberties is tested as we work to develop solutions that not only make a stronger, safer America, but a better one. We need to determine how we can best prevent, protect, and respond to threats on the homeland while preserving the freedoms that define America.

The legislation we are reviewing this morning raises several important issues for me. Whatever strategy we undertake must maximize the talents of those charged with homeland security and provide sufficient resources to address the threat. There are Members on this Committee who have been addressing this. I recently chaired an International Security, Proliferation and Federal Service Subcommittee hearing where representatives across government testified that their agencies need more people with critical skills in math, science, and foreign languages.

Senators Durbin, Thompson, and I have introduced the Homeland Security Federal Workforce Act, S. 1800, and the Homeland Security Education Act, S. 1799, to ensure that agencies have the critical people with the critical skills to guide the Federal agencies in their national security missions in the long term. Senator Voinovich is also working on this with us.

Nor should union representation be a litmus test for patriotism of Federal workers. The administration has already set a precedent by eliminating certain Title 5 rights for Federal workers in national security positions. I am disappointed by the administration's recent action barring union representation for some 500 clerical and support employees at the Department of Justice. We should avoid the unintended consequences of a further erosion of the rights of Federal employees, including collective bargaining arrangements.

Federal employees are already prohibited by statute from striking and their right to union representation does not constitute a national security risk. Union members are no less loyal than other members and Americans to their country. What the attacks of Sep-

tember 11 demonstrate is that we are all soldiers in the war against terrorism. Moreover, we need to be certain that government has enough of the right people and resources to carry out new homeland security missions. The mission and responsibilities of the proposed Department for National Homeland Security is greater than the sum of the individual missions of the agencies that make it up. Like other agencies, the Department of Homeland Security should have enough of the people and resources required to carry out its mission.

The Director of the National Office for Combating Terrorism and the Secretary of the Department of Homeland Security will be charged with domestic security responsibilities. Both should be under civilian control with the heads of both offices subject to Senate confirmation.

We should also remember that future terrorist attacks will affect regions of the country differently. There is no "one type fits all strategy." Geographically distant States like Hawaii and rural areas require different responses and strategies and resources than those in New York City and Washington, DC.

As we review this legislation, Mr. Chairman, we should consider how it can be most effective while preserving the principles that make America great. I wish to express my appreciation to our witnesses and thank them for their patience. Thank you very much, Mr. Chairman.

Chairman LIEBERMAN. Thank you very much, Senator Akaka. I appreciate your being here.

Congresswoman Tauscher, thank you. Good morning.

TESTIMONY OF HON. ELLEN O. TAUSCHER,[1] A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. TAUSCHER. Thank you, Mr. Chairman. I appreciate being before you again. I thank you and Senator Thompson and the Committee for having us here. I also thank Senator Graham for his leadership in harmonizing the two bills that we had, that all have been working on. I thank my colleague, Jane Harman, for her great leadership on the Intelligence Committee, and I especially thank my colleague, Mac Thornberry, for his prescience and his foresight a year ago to introduce a House bill to create a homeland security agency.

Chairman LIEBERMAN. Would you put Mac up there with Machiavelli?

Ms. TAUSCHER. He is our 21st Century version of it.

Chairman LIEBERMAN. Maybe that is what Mac is short for. [Laughter.]

Ms. TAUSCHER. Actually, I should probably defend him on that. He is a much nicer guy.

Senator THOMPSON. He just likes to be called "the Prince" every once in a while. [Laughter.]

Ms. TAUSCHER. I also want to thank Senator Rudman for his help and his friendship and working with us on this issue for so long.

[1] The prepared statement of Ms. Tauscher appears in the Appendix on page 73.

Mr. Chairman, I think that I would like to echo the phraseology of the President on another issue, the tragedy in the Middle East, by saying that enough is enough. I think that a long time has passed since the events of September 11. I think it is time for us to unify the government and to unify the purpose of the American people behind the ability to get something done here.

What I am tremendously concerned about is while there is good work being done here and good work being done at the House, and obviously the President has picked a man of great pedigree in Governor Ridge, who I believe would be unanimously, perhaps, endorsed by the Senate for a cabinet-level position, too much time has gone by where we have not done the right thing for the American people to secure their safety and I think we have to move a bill, both here and in the House, and we have to create a unifying opportunity to do that. I think this Committee's work is going to go a long way to do that.

I am concerned that we get something done on the Senate side and we do not get something done on the House side, and that is going to take the ability of the leadership of all of the different parts of the government, all equal but all interested in moving something, so that we can produce for the American people a harmonized structure that is practical, common sensical, that has real accountability, real budget authority, and the ability to do the things that we all know have to get done so there is no repeat of the September 11 tragedies.

I think it is important that we work together to make sure that we have a robust and muscular department structure that really, I think, is accountable to the American people, and right now we do not have that.

So I thank you for your leadership. I thank my colleagues for working so well. We have got the right bill. We have the ability, I think, to move to compromise. What we really need now is leadership and we need the White House to support us, and the administration to support us. My colleague, Jane Harman, was very right to say that we cannot fritter around the edges here. We cannot allow petty differences of power and partisanship and, frankly, committee chairmanships on one side or the other to make these issues less able to move forward.

So I look for your leadership to continue. I hope that we can do something. I certainly hope we can move a bill in the House if you are successful here, and I hope we get the leadership in the White House to get something done very soon. Thank you.

Chairman LIEBERMAN. Well said. Thank you very much.

Congressman Thornberry, thanks for your patience.

TESTIMONY OF HON. WILLIAM "MAC" THORNBERRY,[1] A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. THORNBERRY. Thank you, Mr. Chairman. I appreciate you and Members of the Committee having me back. I also appreciate the time and effort this Committee has put into looking at the issues of organizational reform. It is not very glamorous work. You

[1] The prepared statement of Mr. Thornberry appears in the Appendix on page 75.

take this chart that Ms. Harman has and rearrange the boxes. It just does not excite a lot of people, and yet I think it is important.

Senator Voinovich is exactly right. It is not a magic answer. We still have to include the money, we still have to have the people, we still have to have the technology to make, for example, border security work. But I think the rest of the story is we can continue to pour money, even double the homeland security budget, and if it is not focused, if it is not integrated, we are not going to get the most out of that money, and organizational reform is very important to making sure that it is focused and it is working the right way.

As has been noted, the last 6 months, we have not seen a lot of progress. Governor Ridge has certainly had his hands full. I worry that we are moving toward some sort of a half-hearted approach, maybe divide INS and take Customs and bring it over with the Border Patrol and say we have done what needs to be done, but we will not, in my view. I really think we need to try to get it right.

As you know, Ms. Tauscher and I introduced a bill last year based on the Hart-Rudman Commission proposals to create a Department of Homeland Security similar to your and Senator Specter's bill. I think it is important to have that sort of department to bring together these various entities which are fractured all over the government. In addition to the border security piece, it brings together the cyber security as well as emergency response, kind of a beefed-up FEMA. So it tries to bring that together.

I think it is also important for us to remember, and I will give him a little build-up before he comes up here, that the Hart-Rudman Commission was a panel of some of the most preeminent Americans dealing with the broad range of challenges the country faces and they spent 3 years studying this problem. This is not a knee-jerk reaction to September 11. This was out way before September 11, and 3 years of work had gone into it before then. So it is well thought out and we can study a problem to death—and I think we have to be careful of that.

I have some improvements, I think, on my original bill, such as bringing in the agriculture inspectors that Senator Gregg talked about and some others. I think it is significant that we are bringing together Ms. Harman's approach with ours. As she said, having an orchestra leader to coordinate on a drug czar kind of model the wide range of government responses, but still having a department where the rubber meets the road, can make sure that the Customs Service radios actually work with the Border Patrol radios, and the details of implementing it is critical. But you have to have that direct chain of command and budget authority to make that happen. So I think bringing the two approaches together makes a lot of sense.

Mr. Chairman, I am a little bit embarrassed to admit that I am familiar with that Machiavelli quote that you mentioned earlier and I know part of the rest of it. It goes on to talk about how the people who have some stake in the present system only see their interest threatened, and the people who may have a stake in the system to come do not see it as realistic enough to fight for the change, and so what you are left with is getting attacked from all

sides and I think that often ends up happening in organizational reform.

But every day that we fail to take on the turf battles in the Executive Branch and in the Legislative Branch, every day that goes by, we have a vulnerability that I think we have an obligation to try to protect, and I think we do have a responsibility to work with the administration, but to move it ahead and not continue to sit around and twiddle our thumbs and say, "Oh my," when something else happens, because something else will happen.

Thanks again for having me.

Chairman LIEBERMAN. Thank you, Congressman Thornberry.

Thank you all for your leadership, and I appreciate the fact that you are working together as we are on this side. I think we have got to try to move these ideas forward and then engage along the way with the White House as best we can and hope we can have a good meeting place. But your sense of urgency is just right and I hope we can conduct our affairs through this Committee in exactly that tone. Thank you very much. I wish you a good day.

We will now call the second panel, The Hon. Warren Rudman, Co-Chair of the U.S. Commission on National Security for the 21st Century, and the Hon. David M. Walker, Comptroller General of the U.S. General Accounting Office. I thank both of you for being here.

Senator Rudman, as Mr. Thornberry said, the truth is that the proposal from the commission you headed with former Senator Gary Hart is the basis and your testimony is the basis for the bill that Senator Specter and I put in and which was put in by our colleagues in the House. I am very grateful that you could be here today and reflect with us now, I suppose almost a year after your proposal was first made and now a little more than a half-year after the events of September 11. Good morning. Thank you.

TESTIMONY OF HON. WARREN B. RUDMAN, CO-CHAIR, U.S. COMMISSION ON NATIONAL SECURITY IN THE 21ST CENTURY

Mr. RUDMAN. Good morning, Mr. Chairman, Senator Thompson, fellow New Englander Senator Collins. I am delighted to be back before this Committee again. I spent many hours in this room over a 12-year period and I am glad to see it is still in good hands.

Chairman LIEBERMAN. Thank you.

Mr. RUDMAN. Rather than go through a number of points that I had prepared, I think it is fair to say that you all have a pretty good understanding of what the Hart-Rudman Commission did. Certainly, you have all been briefed on it. We have had a hearing on it. So rather than do that, I would rather speak very briefly about something that has occurred to me. I purposely got here as early as I could to hear the previous panel and to hear the opening statements because I wanted to reflect on those statements. So let me just comment briefly about how I am viewing this right now and how I think our commission would.

There is no question but that the legislation that you introduced earlier this year, that Mac Thornberry introduced after extensive hearings in the House, and that my fellow New Hampshireman Judd Gregg talked about this morning was the single most critical

thing that we thought had to be done and could be done in fairly short order, and that was the operational side of it.

Now, it is my belief that with a President that has a popularity now of still better than 70 percent and a country that is preoccupied with future terrorist attacks, and with good reason, there is no excuse for not going ahead and at least trying to make our borders secure, which is, I believe, Title I of your bill. I think you have improved on the recommendations that Hart-Rudman made by including some other aspects of government that properly belong there.

Obviously, the entire prevention piece, counterterrorism, the FBI, the CIA, all the other intelligence agencies will remain where they are and will have to have a strong link to what you finally do with the border agencies. But there is no reason, if you wanted to go to a zero-based budget today, to put the Coast Guard in the Transportation Department, to put Customs in Treasury; at least their law enforcement function—they are no longer a big revenue-raiser, which is why they were there in the first place; or to put the various agencies in the Justice Department and also give the Justice Department the crisis management responsibility which they currently have in this government for this kind of an event. It makes no sense and ought to be changed.

For those in those various services that are concerned about their personnel systems, their uniforms, their tradition, we are not saying to change that at all. The Coast Guard will still be the Coast Guard, and that is something that Senator Collins is concerned about from the State of Maine, with good reason. It will still be the U.S. Coast Guard. The only difference will be it will report to a Secretary of Homeland Security instead of a Secretary of Transportation.

I want to urge you, and I have talked to my fellow commissioners about the testimony I would give here this morning, I want to stress to you that nothing is more important than that. If you cannot guard the border, then you cannot have adequate homeland security. The Lord only knows, if you block the Maine Border or the New Hampshire Border, it is difficult enough to keep it secure with what we have, but to have it in the shambles that it is in with these agencies not even talking to each other makes no sense.

Let me also add that although we are spending a huge amount of money—parenthetically, I have been asked to testify before Appropriations this afternoon and I took a look at the budget numbers and they are staggering, what, $36 billion this year, $38 billion next year, and we are spending all this money on airport security, and we probably ought to. Let me submit to you that I think a greater threat right now to the country are the 50,000 containers coming into U.S. ports every single day, less than 1 percent being inspected, not knowing whether they contain biological, chemical, or nuclear devices. I mean, all of our attention is focused on airports and we are going to get maybe hit someplace else.

So when you talk about border security, I do not think there is anything any more important than that and I hope, I would think that in a bipartisan way, it should not be hard to convince the White House that this is in the interest of the country.

Now, the second part is more difficult and that is Title II. I have looked at it at some length. I have gone back and looked at some of the work that we did over the last 3½ years and I asked one of the experts that we had working to look at it—a group of us looked at it—and let me just read to you a paragraph that we put together—it is a short paragraph—looking at Title II. This is not said in a critical way, it is said in a thoughtful way, but I think it will presage some of the problems you may have dealing with the White House and the National Security Council on your Title II. That is why I wanted to call it to your attention.

I think that section may be a mixed blessing. Surely, it puts the Secretary for Homeland Security in the NSC, but it really transforms Ridge's office into a legal Executive Office of the President entity with a focus on counterterrorism that has some overlap with homeland security. People do not understand that there is a little bit of a difference between the two and the way they are defined within the government.

Then you create a National Combating Terrorism and Homeland Security Response Council, and I think that may add a little confusion because, in essence, many of the suggestions from our commission and others said either/or, you know, either department-based or Executive Office of the President-based. You have kind of got both. You have kind of got a foot in each camp and I think you ought to look at that very closely.

I think you fix the operational integration problem in the bill perfectly, but I think you still blur the strategic integration problem.

What we proposed was that the National Homeland Security Agency fix the operational issues and we wanted the secretary or director of that to have membership on the NSC. Once you have that membership on the NSC, then you would integrate the strategic functions with the other agencies. You are doing it very differently.

I would strongly recommend that you look hard at that section. I know it is important to Senator Graham. We talked about it. I am not saying it is wrong, I am simply saying that it could add some blurring to what has to be a much clearer function of how do you develop the strategy, which is what has been talked about by people here this morning.

Finally, I would say that in the rest of the bill you have done a lot of excellent things. It is a monumental effort. When your staff delivered it to my office, I could not believe it. I figured Senator Lieberman was getting paid by the pound lately for legislation.

Chairman LIEBERMAN. I wish.

Mr. RUDMAN. But I did read it. I read every line of it. I sent it out to our staff people. They looked at it. We think it is a terrific piece of legislation. We think that Title I is absolutely essential you get that done soon because there will be a lot of scapegoating the next time something happens and it turns out that Organization A had a watch list or their information technology that somehow Organization B did not have because they were located someplace else.

We have seen it all. We did not make this recommendation lightly. After all, we made this recommendation in 1999. That is the

first time we made the recommendation, as Senator Thompson and I discussed the other day, in 1999, and now we have got September 11 that came up this past year and there is no question time is wasting. I hope you can act on it.

If I can answer any questions, I will be pleased.

Chairman LIEBERMAN. Thanks, Senator Rudman. I guess the highest compliment I can give is that is what I would call Rudman straight talk.

Mr. RUDMAN. Thank you.

Chairman LIEBERMAN. I appreciate it on both points and I look forward to questioning your position about the focus on border control and access. It is a very important one and one I promise you we will consider ourselves.

David Walker, thanks, as always, for being here and we look forward to your testimony.

TESTIMONY OF HON. DAVID M. WALKER,[1] COMPTROLLER GENERAL, U.S. GENERAL ACCOUNTING OFFICE

Mr. WALKER. Thank you, Mr. Chairman, and Senator Thompson. It is a pleasure to be before the Committee again to talk about the important issue of homeland security on what is the 7-month anniversary of September 11. I would ask, Mr. Chairman, if my entire statement could be included in the record and I will now summarize it.

Chairman LIEBERMAN. Without objection.

Mr. WALKER. At the request of the Committee, Mr. Chairman, I will focus primarily on two issues, first, the need for a statutory base to address the homeland security area, and second, the status of our efforts to work with the Office of Homeland Security on the many requests that we have received from Congress.

GAO, as you know, has done quite a bit of work in the past in the area of homeland security, in part based upon our strategic plan that focused on changing security threats in a post-Cold War environment. We had recommended months ago that a statutory Office of Homeland Security be created as a way to institutionalize the important responsibilities that have to be discharged in this area.

In my testimony before the Congress this past fall, we noted and applauded the President's effort to establish the Office of Homeland Security, which he could do by executive order. It was the quickest way to be able to respond. But I think now that we have seen several months go by and heard from Senator Rudman and others, I think we clearly recognize that as the President has articulated, this is a long-term effort which will span years, span administrations, and span individuals, and will involve billions and billions of dollars.

So as a result, I think it is important that we recognize what actions might be necessary to make this effective over the long term and to ensure appropriate accountability to the Congress and to the American people for positive results-oriented outcomes.

GAO has done quite a bit of work over the years demonstrating which type of approaches are more efficient, effective, and economi-

[1] The prepared statement of Mr. Walker appears in the Appendix on page 77.

cal and which enhance accountability to the Congress and the American people. Bottom line, there is a clear correlation that to the extent that there is a significant responsibility that spans administrations and years that involves significant sums of money, that Congress has historically sought to address those with a statutory basis and to head those offices or operations with a Presidential appointee subject to Senate confirmation. History has shown that those lead to a more effective and accountable activity.

You have also, Mr. Chairman, talked about the possibility of consolidating certain existing governmental operations as a means to improve economy, efficiency, as well as effectiveness and accountability, and clearly in that regard border security appears to be the most critical and, arguably, the most dysfunctional operation at the present point in time.

So in summary, Mr. Chairman, our view is there is clearly a need for a statutory basis to address this area in order to assure effectiveness and assure accountability.

With regard to our efforts to work with the Office of Homeland Security, we now have over 60 requests from the Congress, including from this Committee, to do important work in the area of homeland security. In a vast majority of those requests, we are pursuing the necessary information from the various departments and agencies. There is, however, certain information which directly correlates to the activities which the President gave to Governor Ridge in his executive order and certain related matters that we must obtain from the Office of Homeland Security.

We have been trying for a number of months to work in a constructive fashion with that office. In fairness, they have a big job to do and not enough financial and human resources to get it done and we are very, very sensitive to the need for them to focus primarily on their mission and not to inappropriately intrude or undercut their ability to get their job done.

The bottom line, however, is that to date, we have received nothing. However, just within the last 48 hours, I have been informed that the office has decided to engage with GAO, whatever that means. I am, however, hopeful. We have a meeting scheduled for next week, which is our second meeting. The first meeting was attended all by attorneys on the other side, and I have great respect for lawyers, including many here in the room, but I am a student of history and I know that when meetings start off with nothing but lawyers present on the other side, then sometimes you do not end up where you want to be.

But I received a call as recently as yesterday saying that there would be a meeting scheduled for next week that would involve appropriate high-level policy officials and I just want to——

Senator THOMPSON. I suggest you bring Senator Rudman with you to that next meeting.

Mr. WALKER. I think he could be a tremendous help, absolutely. [Laughter.]

But the fact of the matter is is that I think it is important that we receive this information because, after all, Congress counts on GAO for professional, objective, fact-based nonpartisan, non-ideological, fair and balanced analysis, and to publish our findings for the entire Congress and, as appropriate, for the American people,

and I am hopeful we are going to be able to do that with the Office of Homeland Security and I am cautiously optimistic based upon the call that I received yesterday that we will be. But we will let you know if we are having continuing problems.

Mr. Chairman, I look forward to working with you and others in the Congress to address this important area and I am more than happy to answer any questions you might have. Thank you.

Chairman LIEBERMAN. Thanks, Mr. Walker. Please do keep us posted on that. We had sent, or I had sent a letter to Governor Ridge March 19 and just got answers yesterday. These are the kinds of questions about the functioning of the department that I wish he was here so that we could get more information than is contained in the letter, although the letter is an attempt to respond.

Senator Rudman, I want to ask you about the two points you made which are important to me. The first is, just talk a little bit more. If I understand you correctly, you are saying that, and I remember the original proposal from the commission had three functions—I may not have the right word—it was prevent, protect, and respond.

Mr. RUDMAN. Correct.

Chairman LIEBERMAN. OK. What you are saying now is that maybe it would be best—the whole idea is still a good idea and the right goal, but there is such urgency about the border, problems at the border, that we ought to take out that "prevent" part and do it separately, which would leave out some of the critical infrastructure protection and certainly the whole FEMA emergency response——

Mr. RUDMAN. No. I am sorry. You misunderstood me. I am saying that our proposal as amplified by Mac Thornberry and Senator Gregg——

Chairman LIEBERMAN. Yes.

Mr. RUDMAN [continuing]. That ought to be your first priority. That starts to protect the borders.

Chairman LIEBERMAN. Right.

Mr. RUDMAN. So you take and you create a Department of Homeland Security, which you may recall had FEMA in it, which was also response.

Chairman LIEBERMAN. Correct.

Mr. RUDMAN. It is response.

Chairman LIEBERMAN. Absolutely.

Mr. RUDMAN. You have FEMA in it and then you have the border protection in it and a few other things and you get at least the non-strategic, non-intelligence, non-law enforcement operation consolidated, which you can do. I mean, let us face it, if somebody comes up and says, let us put the FBI in the Department of Homeland Security, nobody would be serious, or the CIA. We know they have to be where they are. But we can certainly take a number of these, and it is outlined in our report, further outlined in, I believe, your own legislation originally, as well as Mac Thornberry's. So that is the suggestion.

Chairman LIEBERMAN. OK, I have got it, because I think Senator Gregg is talking about, if I am right, just doing the border control agencies.

Mr. RUDMAN. He may be. I would add FEMA to that. But certainly the Border Patrol is very important, but if you are going to go that far, you ought to put the first responders in, as well.

If I can make just one point, following up, so I can clarify one thing——

Chairman LIEBERMAN. Please.

Mr. RUDMAN. The reason we made our recommendation that the Secretary of Homeland Security, or the director, if you will, have a seat on the National Security Council is to avoid the very kind of thing that we are facing right now.

The Secretary of Defense will come up here about any time you ask him to and he is a member of the National Security Council. He has an obligation to the U.S. Congress, the House and the Senate and its appropriate committees. He is involved in strategy making for U.S. national defense.

The problem, as I see it, with what has been created by executive order, and it had to be, it was the only thing they could do, was if you continue to have a non-confirmed person who has substantial either budget authority or budget veto authority over certain sections of the budget, you have got a real problem with Congress. I mean, there is going to be a problem. There already is a problem.

Chairman LIEBERMAN. That is where we are right now.

Mr. RUDMAN. That is where we are, and we anticipated that. If you go back and look at the supplements to our work, the reason we suggested that a cabinet-level agency have a cabinet officer who is a member of the NSC, then there is no question but that he is accountable to the NSC and the President but totally accountable to the Congress on the kind of questions that the GAO is trying to find out about, and that is why we made that suggestion.

My comment is, I am not sure you fixed it in Title II. That is my comment.

Chairman LIEBERMAN. OK. Talk a little more about that, then. Obviously, Title II is in part as it is in the House now a blending of two different approaches here.

Mr. RUDMAN. Correct.

Chairman LIEBERMAN. Senator Specter and I focused, inspired by your commission, to do the overall department, Senator Graham and others wanted to just make statutory a coordinating office. Our thought is, as reflected in this agreement, they are not inconsistent, so——

Mr. RUDMAN. It is not inconsistent with what you are all trying to do. It is probably inconsistent, from my experience working as chairman of the President's Foreign Intelligence Advisory Board—I do not know if either one of you served on the Intelligence Committee during that time, but there were occasions when we were doing something that was of great interest to the Senate or the House Intelligence Committee. Legal counsel to the White House said, no way can you go up and testify before those committees on the separation of powers. I agreed with that. That was right. So we worked an informal way out of doing it. That was fine.

But here, this is much bigger than that. You cannot have an informal way to work this out, and I am concerned that if you try to have someone who is really in the Executive Office of the President who at the same time is accountable to the Congress, you are

going to get into a problem. You are going to get a separation of powers problem and there is going to be a lot of—you are going to have a lot more lawyers than you need, lawyers instead of people working with the issue.

That was why we made the suggestion we made. There is no question that a cabinet secretary is accountable to Congress, no matter what his role in the NSC.

Chairman LIEBERMAN. I have got it.

Mr. RUDMAN. Now, maybe you can make this work, I do not know, but my sense is the administration will have some problems with this. I do not speak for them, obviously, but knowing how most administrations, Republican or Democrat, feel about separation of powers.

Chairman LIEBERMAN. It is a very interesting point you are making because I think there are some here on the Hill, at least, who feel that maybe the better way to go—a better adjective might be the easier way to go—is to make that coordinating office statutory because it does not involve all the bureaucratic head-knocking that is involved in the proposal that we are making. But it does invoke other constitutional and practical political problems.

Mr. RUDMAN. And I only say, Mr. Chairman and Senator Thompson, I caution you. I think you ought to work those out very carefully, because you have got a terrific piece of legislation here. It is really well thought out. It does need some fine tuning.

Chairman LIEBERMAN. Mr. Walker, do you have an opinion on this question?

Mr. WALKER. Mr. Chairman, I think there are two things here. One is the strategy, setting the priorities, determining who has what roles and responsibilities, how the budget is going to be allocated, how do we measure success, coordinating, and integrating activities. As this chart showed before, there are many, many players on the field. I think it is critically important that it be done by a statutory body headed by a Presidential appointee subject to Senate confirmation because we are talking about years of effort, critically important activities, and billions of dollars.

It could be done in the way that you propose in your legislation, which is a statutory entity affiliated with the White House. I did happen to have a chance to look quickly at Mitch Daniels' testimony. He talks about a possible ONDCP model as a possible model.

Then I think you have the separate issue of operations. You are always going to have a lot more entities involved in this ballgame than you are ever going to consider consolidating, but to the extent that you want to consider consolidating some of the more critical, some of the more dysfunctional, whose missions have changed fundamentally over the last 200 years, whether it be the Customs Service, whether it be the Coast Guard, they are fundamentally different in many ways, it is helpful. I think you need to address the statutory basis first. If you can consolidate where appropriate, then great, but the statutory basis is very critical.

Chairman LIEBERMAN. Thanks. Very helpful.

My time is up. Senator Thompson.

Senator THOMPSON. Excuse me, No. 1 being what?

Mr. WALKER. No. 1 is to make sure that whoever is responsible for setting strategy, determining priorities, signing off on resource

allocation, determining how you measure success and holding people accountable, that is creating a statutory entity, that may or may not be affiliated with the White House, like ONDCP, headed by a Presidential appointee subject to Senate confirmation. So you increase the likelihood that they will be effective, and second, such that you increase the accountability to the Congress and the American people. And then they will get their own budget, as well, with both financial and human resources.

Senator THOMPSON. It looks like we may be headed toward a situation where we in the Congress do what we have the authority to do and that is to engage in some reorganization and some consolidation. I could see perhaps that happening without what you refer to as your No. 1. That would be an interesting hybrid kind of a situation. You would still have, say, Governor Ridge with the status he has got now, but you would have hopefully more efficient and consolidated agencies and so forth. Would you all view that as some improvement over what we have got now but not really where we need to go, I mean, not far enough?

Mr. RUDMAN. If you look at national defense strategy today, national defense strategy is established within the National Security Council by the Secretary of State, the Secretary of Defense, obviously the President and the National Security Advisor, but the majority of people that are involved in that are accountable to the Congress.

I think what Mr. Walker is saying is that you want a statutory agency that has that responsibility of setting strategy, that is, somehow statutorily created but in the White House, and I am not sure of an example of that.

Mr. WALKER. Let me clarify. I think it is critically important that functionally, whoever is on the point, whoever is in charge, whoever is supposed to be making sure that all these are working effectively together and signing off on resource allocation, assuring integration and accountability, wherever they are, whether that be in some entity affiliated with the White House or a Department of Homeland Security, it should be statutorily based, headed by a Presidential appointee subject to Senate confirmation.

Now, under this legislation, you propose two things, one, to create something affiliated with the White House that meets those criteria, maybe like ONDCP, and to consolidate a number of other existing operational activities into a new Department of Homeland Security. You could theoretically have that Department of Homeland Security also be responsible for the strategy, also be on the National Security Council, as Senator Rudman is talking about, and you could do it two and one and just have it in that one.

But you properly point out, it is going to be a lot more challenging, given all the different institutional interests and the turf, to be able to make that consolidation happen. I think it has a lot of intellectual merit, but if you just consolidate the operations and you do not deal with the strategy, I do not think you have gotten the job done.

Senator THOMPSON. You mentioned a couple of times the Office of National Drug Control Policy. That is an interesting analogy to me because it looks to me like it is one that both sides are using. On the one hand, you are saying that Governor Ridge is performing

a function much like that, so why not make him statutory and why not make him confirmable. On the other hand, others point out that the history of that office seems to bear out the point that it has more to do with who heads the office at a particular time and the President's interest in that office than it does the nature of the office or the details of its creation. When you had good, strong leadership, you got results, and when you did not, you did not.

Mr. WALKER. But Senator, that is true in anything, quite frankly. If you do not have the right leader, no matter what it is, you are not going to get positive results.

The concern is that this is a very serious issue which spans years, which involves billions of dollars. It has got to rise above the individuals involved and the personal relationships involved.

Senator THOMPSON. You make a point in your written testimony that I think is one that bears a lot of thought. I have been looking at this. It occurs to me that the Congress' big problem is that they want something to oversee. We are supposed to do oversight, and the question is, under the existing arrangement, who do we oversee, 50 departments or parts of 50 departments?

Some would say the President ultimately under this arrangement is accountable. The President might decide a little bit later on that perhaps that is not such a good idea where every problem is brought right to his doorstep because there is no one else there who is accountable and no entity, no separate entity over which Congress can exercise oversight. That is what you are getting at, I guess.

Mr. WALKER. It is, Senator. In fact, there is one very wise Senator, I think it was Senator Fred Thompson from Tennessee, who one time said you want to try to avoid approaches that by definition potentially lead to over-lawyering.

Senator THOMPSON. Did I say that? That must have been before I decided to leave here. [Laughter.]

Mr. WALKER. There were some issues that were over-lawyered, and I will not go into the details, Senator. I think that is a risk that we run right now with the Office of Homeland Security. It is not only with regard to testimony, it is also with regard to access to records and other issues that are necessary for Congress to discharge its constitutional responsibilities.

Now, frankly, I have some sympathy for Governor Ridge because from a practical standpoint, he has got a job to do and he cannot come up to 10 committees on a recurring basis and he cannot respond to requests from 10 different committees for basically the same information and I would assert that is one of the roles that GAO can play, to help consolidate those things, which is what we have done, to try to disseminate the information broadly.

Senator THOMPSON. Senator Rudman.

Mr. RUDMAN. You might recall the original Hart-Rudman proposal still stands to have a strong homeland security deputy within the NSC. Now, that would be totally different than Title II here.

I would point out to you that, in theory, the National Security Advisor is the coordinator of national defense strategy, with the Secretary of Defense, the Director of the CIA, Secretary of State, not accountable to Congress, not confirmed by Congress, because when the Congress wants to get at those issues, it has three cabi-

net-level secretaries it can call before it to discuss those very issues. Here, you do not have that yet until you start some consolidation, so with that confusing answer——

Senator THOMPSON. No, that is very helpful.

If I could, one more thing. Senator Rudman, in your notion of consolidation in Senator Lieberman's bill, would you also recommend integration of those parts of the agencies that you are bringing together, in other words, taking down all the barriers and just create a totally new entity and call the employees something else?

Mr. RUDMAN. Probably not in several. The Coast Guard, you would certainly leave as the Coast Guard.

Senator THOMPSON. Yes, but I am talking about the part you bring into the new entity, the new consolidation.

Mr. RUDMAN. Well, the new consolidation, as we have proposed it—it has been broadened by the bill—would be the Coast Guard, the Border Patrol, there were parts of Customs, and I think we also commented on INS, I believe, and we would integrate those to the extent that they have duplicatory functions.

The one thing we would do, eliminate a lot of overhead because you would not have to duplicate all the human resources, all of the financial, all of the other kinds of controls that each of them have along the way.

Senator THOMPSON. You know how difficult even making small, modest organization change is. Do you think the climate is right now for us to do something this large, because I have never witnessed anything even close to this being accomplished.

Mr. RUDMAN. Senator Thompson, Mr. Chairman, let me just tell you, if after what happened on September 11 is not enough to convince people we have got to secure our borders, I do not know what will be.

I will tell you this. I would not want to be holding public office if something like this happens again and it turns out it happened because somebody slipped across a border that everybody knew was not supposed to, and that is exactly the accident that is waiting to happen right now.

Senator THOMPSON. Thank you very much.

Chairman LIEBERMAN. You are absolutely right, and that sense of urgency in your voice ought to resonate in all of us as we consider these questions, because there is a danger here. As the days pass from September 11, our sense of commitment to change the structure to protect Americans at home will become less intense than the institutional inclination to protect turf and avoid change. What is on the line is just so large.

I want to ask you a last question, which is to both of you, I think to Senator Rudman first. It has been about a half-year since you were last here on this subject. Governor Ridge had just been appointed. I know you have been busy in your own activities, but as you have been watching his activities from where you have been, has it strengthened your feeling about the commission's proposal? Has it altered it in any way? To the best of your ability, I know it is somewhat unfair, but how is he doing, do you think?

Mr. RUDMAN. I think he is doing very well. In fact, not so long ago we went down, Gary Hart and General Boyd were invited down

to meet with Governor Ridge to give him some of our thoughts. He wants that to be a continuing discussion, because we did a lot of the groundwork in this area several years ago, before it was even an issue.

Considering the daunting task he has and all of the turf protection going on, I think he is doing very well. Certainly, there are ways to strengthen his role along by some of the things that are recommended.

The one thing people have to understand here, and there has been some confusion, Governor Ridge's position and what we are talking about in the Department of Homeland Security are quite separate. They are very separate.

Chairman LIEBERMAN. He is actually more like the office created in Senator Graham's bill, isn't he?

Mr. RUDMAN. Exactly. Precisely. So people say, well, we do not want to do that because we do not want to give up Governor Ridge's position. They do not understand your bill. They do not understand our proposal.

Chairman LIEBERMAN. Correct, and obviously, if we are lucky enough and able to adopt a proposal like the one we support, it would then naturally be up to the President where he wanted to put Governor Ridge.

Mr. RUDMAN. Exactly.

Chairman LIEBERMAN. He might, in fact, make him the Secretary of Homeland Security.

Mr. RUDMAN. Exactly.

Chairman LIEBERMAN. Mr. Walker, do you have any first reactions to the——

Mr. WALKER. I think he is doing the best he can given his significant responsibility and some of the challenges that we have talked about here today. I know that they are significantly understaffed. I know that they have got an allocation for about 200 people and they are just a little over 100 right now. I know that they are having real difficulty in trying to do things on a dotted-line basis. It was a fundamental difference between a solid line versus dotted line. If you have got an out box where you can send things out but not an in box where people are responsible and accountable to you, that is kind of problematic.

My personal view is he could be even more effective if some of the changes we are talking about today were made—his office had a statutory basis with its own budget and own people, with clear responsibility with regard to what has to be done, and with increased accountability to the Congress and the American people.

Chairman LIEBERMAN. I appreciate it very much. Please keep us informed, if you would, Mr. Walker, on your communications with Governor Ridge's office because it is critically important to us, because you are our eyes and ears and everything else, and for the American people, that you are getting the information from that office that you need.

Thank you both very much for your continuing service in and out of government.

Senator THOMPSON. Thank you.

Chairman LIEBERMAN. Our next witness, panel three, the Hon. Mitchell Daniels, Jr., Director of the Office of Management and

Budget. Mr. Daniels, good morning. Thanks for being here. We look forward to your testimony now.

TESTIMONY OF HON. MITCHELL E. DANIELS, JR.,[1] DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

Mr. DANIELS. The card says I am honorable. Did you clear that with your colleagues first?

Chairman LIEBERMAN. That is done as an exercise of the Chairman's prerogative.

Mr. DANIELS. Thank you.

Chairman LIEBERMAN. But also after extensive fact finding.

Mr. DANIELS. You have my written testimony and let me just make a few verbal comments to get straight to your questions.

We appreciate the opportunity to be here on behalf of the administration for an important hearing that bears on the best way to manage, if not a new, certainly the most dramatically enlarged responsibility of the Federal Government in quite a long time. It is a very, very appropriate hearing and the bills that you are reviewing get at some very important questions.

I think as the administration sees it, confronted with the sudden events of September 11, the President embarked on this project in the only way that made practical sense and tried to get immediately off the mark, and we would assert that this was successful in a myriad of ways already. Even though there is so much more to do, already, the American public, American borders, American infrastructure is better defended, by far, than it was just 6 or 7 months ago. For this, certainly the support of the Congress has been absolutely indispensable.

As the President has said from the beginning and Governor Ridge has said, the current arrangement might remain the preference of the administration or it might change. The administration is very open to alternative arrangements and they are being looked at actively, as they have been from the outset. The national strategy that Governor Ridge's office is working on, we will speak to this and may well make recommendations to the President about an evolution of the initial organizational structure.

It will look at, clearly, the models that are reflected in the bills that you are convened on this morning, your own bill and similar offerings from the House side, and I think we will all need to examine together the pros and cons of each model. A model that is statutory but, I would say, not operational, that is to say non-cabinet, I think may have very substantial shortcomings.

I would note for one thing that the size and scope of homeland security is already twice that of our National Drug Control Policy Office. I would note second that, at least for many, that the ONDCP model is not well suited to operational responsibility, if it should be decided that that should be consolidated.

On the other hand, a broader, more fundamental change like that represented in your bill could have many positive attributes. One question we would all have to ask each other is whether the jurisdictional territoriality, both in the Executive Branch and also

[1] The prepared statement of Mr. Daniels appears in the Appendix on page 94.

here in Congress, makes such an idea practical, whatever its theoretical merits.

I would observe in passing that in each of the President's first two budgets, we have suggested very modest here and there transfers of authority to try and rationalize some activities and those are not always met with enthusiasm, however sensible they may appear. There is a very important transfer bearing on homeland security, of course, in the 2003 budget submission that has to do with consolidating terrorism preparation assistance for first responders in one place, at FEMA. We think that is an eminently sensible thing, but we have to assure ourselves we can convince a majority of Congress to make even that modest step. I know you are well aware of the hurdles we might eventually face if we went that route.

I would just close by saying that one thing that does appear clear is that under any configuration, there will always be, now that homeland security is so obviously a permanent fixture of the American Federal responsibility, a need for an adviser in the White House to counsel the President about this very important and multi-agency responsibility. So even if, as might be the case, the administration concluded that new arrangements were in order, I would look for the office, the Homeland Security Council, I should say, to remain in some form.

Chairman LIEBERMAN. Mr. Daniels, thanks very much for both the substance and the tone of your comments, which are quite open and made me think back to a meeting that Senator Thompson and I and several others from the House and Senate were at at the White House last fall shortly after Governor Ridge was chosen with the President. I believe you were there. At one point, Governor Ridge said that after some period of time—while they were not for the proposal we were making at that time, after some point of time in office, he might come to Congress and ask for some organizational alteration and your openness to that kind of change is much appreciated.

Of course, I agree with you about the practical difficulties here. I will tell you, and you will not be surprised to hear either, that I have already begun to get calls from people who are clearly calling on behalf of agencies that are consolidated in our proposal and it is fascinating how many feel like they would be drawn down by connection. Everybody feels they would be drawn down by connection with everybody else.

So it takes me to the point that my colleagues both on the Committee and who testified on the first panel made, which is that, one, it is obviously not a partisan matter. It is a question of what we feel is the best way to get this done, and then this critically important job of homeland security and Senator Rudman's typical clarity at the end there, God forbid there is another terrorist attack on the United States and it looks like one of the systems that we could have made better was the porous place through which those terrorists came. So we have got to work together on this.

I want to ask you to think, and I do not need an answer now, but I would like to just seize the moment, if I could, and propose that we think about setting up some kind of informal Executive Branch/Legislative Branch working group on this subject. It is real-

ly that critical. I do not have any yearning to get into a confrontation on this. I think the best thing to do is just see if we can figure out what we can agree on and get it moving, because I think the really fundamental and most important confrontation here ultimately will not be between Republicans and Democrats, and my guess is not between the White House and Congress, but it will be, if I can put it this way, between those who favor organizational change and those who will resist it.

I do not know if you want to respond to that at all, but the tone of your testimony evoked that unprepared response from me.

Mr. DANIELS. My instinctive response is very positive. I think that, and I would guess, but I will not presume to speak for him, I would guess Governor Ridge would feel much the same. I think he is trying to reach out in every way he can to make sure that Congress has the information, the understanding, the facts to do its job, and as we try to explore the organizational question, I would guess that he would be open to any sort of arrangement that allows us to get at the right answers more quickly. Time is important here. I know he feels that urgency and I know you do.

I quite agree with you that if there is to be a step beyond the current arrangement, there will be an unusual alignment, probably, of proponents and adversaries. And it will not be along the typical lines, and there will be a need for advocates of change, whether it is small in scope or very sweeping, to pull together to persuade others that their own currently vested interests need to take second place.

Chairman LIEBERMAN. Good. Thanks. We will continue to talk about that.

In that regard, I gather both from some published reports and just general word around that Governor Ridge, in some sense true to what he said might happen when we were in the meeting at the White House last fall, did put forward a significant proposal to reorganize some of the key border agencies into a unified department. But we have also heard that he ran into exactly the kind of turf battles that we have just referred to and that the Homeland Security Council recently recommended a much more limited proposal, as one of the panelists on the first panel indicated, involving a consolidation of Customs and some INS enforcement functions into a border agency within the Justice Department.

I wondered whether you participated in the Homeland Security Council discussions on that issue and if you, to the extent you are able, could reflect on what the objections were to Governor Ridge's proposal and what lessons you or we should draw from that as we go forward.

Mr. DANIELS. I am a member of the Homeland Security Council, and I did participate in multiple meetings on that subject. Without breaching the confidence of anyone who participated, I think the characterizations are accurate that there have been some reservations and some real practical questions, and I think this is still very much under review. No final recommendation has been made or accepted by the President, and he personally has asked some very tough practical questions, some of which I had not heard asked before. He has a way of doing that. So I think that the gov-

ernor's office is still working and working with agencies who would be affected.

I think the other thing to be said is that it is very possible that just as the initial arrangement, as I mentioned, was from the outset described as potentially not the final one, we may have a steady evolution as we all learn more about homeland security, where the priorities really are, and where the dangers really are. I think even if you proceed the legislation successfully, it probably ought to be done in something of a tentative spirit, understanding that it may not be the last stop or the final end state.

Chairman LIEBERMAN. Thanks very much. My time is up on this round. Senator Thompson.

Senator THOMPSON. Thank you very much. Thank you, Mr. Daniels, for being here today.

When we have these hearings, it forces us to catch up and read and talk to as many people as we can and really focus. Where I come out right now on this is the following: The President and the administration should have an opportunity to carry this ball a long way down the field, the way in which it sees best, for a lot of different reasons. I think that is what the President wants to do. I think it makes some sense. I think analyzing exactly what we need is going to take a longer time than any of us would like to acknowledge. We have waited too long.

Senator Rudman's report is just one. You could not stack all the GAO reports in this room pointing out the problem that was imminent that we saw the culmination of on September 11.

Just because we have not acted legislatively does not mean nothing is being done. I mean, Governor Ridge's operation is obviously up and running. They have got a national strategy coming out in July that I think we ought to take a look at before we do much of anything else and I think a lot of progress is being made in a very tough job that is going to take a long time.

But what concerns me as we go along is that we are going to be squabbling and spending time and energy on less important things. Congress is going to continue to feel a need to have some oversight over something, and they cannot do that with regard to the President and they cannot do that with regard to someone who does not come up here every once in a while and tell them what is going on.

You have got an entity there that is involved, and a person there who is involved in the most critical issue facing this Nation. The office's spending $35 billion. We cannot forever, it does not look to me like, stay where we are right now with regard to that. I mean, this business about coming up and testifying before all these committees is a legitimate concern. What you might do is challenge us, as you address this problem, for us to address some of our problems in the dozen committees, almost, we have got meddling in these areas.

But ultimately, it looks to me like that is the direction that we are headed in. We have been trying to get accountability and to do better oversight government-wide for a long time. I think this is a part of that. What we are seeing here is just a small part of the problem that we see throughout government that you are well aware of. The whole government needs to be organized. It is not

just a matter of homeland security that we are outdated in, it is with regard to so many problems facing us. We have got a framework that is geared to a prior century and it is going to be a monumental task.

So it looks to me like the thing that we really need to concentrate on is the reorganization part, and where the boxes might wind up, what needs to be consolidated and all that. This is what we will have to spend a lot of time on deciding, because clearly, we have got to do a better job there. But that is going to take the efforts. Even a modest effort will run into all kinds of problems. We are the main problem up here.

If I were the administration, I would challenge us to let us work together toward reorganizing. It is going to take Presidential leadership. It is not like Congress comes up with something. We need leadership. Decide what you want to do, and put the challenge to us to do what we ought to be doing, and that is reorganizing not only these national security-related entities but ourselves. And then, as a part of that, be willing to look at some kind of a setup, an entity where we are not squabbling all the time over who is going to testify to whom.

Everybody knows that, I think, eventually, with a position of this importance involving this much money, that we have got to—as time moves on, after you have had an opportunity to look at all of this and keep us from rushing into doing something, perhaps, that we might need to undo later, that somewhere, there is where we are going to need to be.

So as a friend, I suggest that you consider that and take that back and see if we cannot in the future concentrate on the real issue and the real problem. We are going to have leadership. As long as the President is on top of it, as I know he will be, I think we are going to be fine. As long as Mr. Ridge is on the job, I think we are going to be fine. But we need to get that little sideshow, which is a necessary sideshow, we need to get that off the books and concentrate on what we really need to do. We need to reorganize ourselves for the long haul in a way that will be there and be workable regardless of who is President or who is the leader in this effort.

So I merely suggest that to you and thank you for your consideration of that.

Chairman LIEBERMAN. Thanks, Senator Thompson. Senator Levin.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Thank you, Mr. Chairman, and thank you for convening these hearings and welcome to you, Mr. Daniels.

Let me ask some questions about the budget, the homeland defense efforts, the anti-terrorism efforts, and how we get a handle on those. Let me read to you from the GAO report relative to that on page four. "We recognize that the Office of Homeland Security has achieved some early results in suggesting a budgetary framework and emphasizing homeland security priorities in the President's proposed budget."

This is then what the Comptroller General says. "Despite OHS's efforts to date, however, the informal structure and relationship of

that office to the White House and other parts of the Executive Branch may not represent the most effective approach for instituting a permanent entity with sufficient authority to achieve all the important objectives for securing our borders. Without a statutory framework that clarifies OHS's roles and responsibilities, its budget and resources, and its authority to leverage other Federal departments and agencies, the office will likely face persistent obstacles in obtaining fast, effective, and sustainable results across the government and throughout the Nation." He also said that they have had access problems. The Comptroller General says, "I must say, we have experienced some access problems in connection with our OHS-related efforts."

The numbers that we are given on budget are the following, from page five of his report. Congress' allocation of approximately $60 billion in fiscal year 2002, including a $40 billion supplemental request, and the President's request of approximately $38 billion for fiscal year 2003 serve to underscore the importance of the effort that he has described.

Are those numbers given to us in one place in the budget with a description of all of the programs and all of the agencies that are involved in totaling up that number? In other words, in the budget that you have submitted to us—I should know the answer to this, but I do not, so I want to lay that as the predicate—is that a listing of 30 agencies and 200 programs or what is it?

Mr. DANIELS. Yes, the actual number for the 2003 submission is $37.7 billion. We assert that it is fully accurate because it is built up based on a definition that is certified by the Homeland Security Council. I think that definition is very, very important. It will surely be dynamic over time, possibly like the organization we are discussing. But it is important that we have one so that people do not succumb to the human temptation to recharacterize less-important priorities as inherent in homeland security. But that said, $37.7 billion is the right number——

Senator LEVIN. Is there a discrete list of how many programs are involved in that?

Mr. DANIELS. I am sorry?

Senator LEVIN. There is a discrete list in the budget of what——

Mr. DANIELS. That is correct.

Senator LEVIN. How many are there, how many programs, approximately?

Mr. DANIELS. I would like to get back to you with that answer so as not to guess incorrectly. I can tell you that——

NOTE: There are over 100 programs (info provided to Senator Levin's staff at their request).

Senator LEVIN. How about a range?

Mr. DANIELS. One hundred to two hundred.

Senator LEVIN. Two hundred programs, and about how many——

Mr. DANIELS. At least in terms of line items. I am answering that based on having rather regularly looked down an itemized list. They are heavily concentrated. Five departments, by my reckoning, account for 82 percent of the spending, the big five being Defense, interestingly, Justice, HHS, FEMA, and Transportation. But there are already, and undoubtedly there will be more, scores and scores of individual activities.

Senator LEVIN. In total, how many departments might be involved, if you look at all of the——

Mr. DANIELS. Probably 30 or something like that.

Senator LEVIN. Thirty. That is the number that we have been——

Mr. DANIELS. I will count them for you.

Senator LEVIN. Let us assume it is 25 or 30. That is close enough.

Mr. DANIELS. I can count 24 easily.

Senator LEVIN. Twenty-five to 40. Does Governor Ridge provide you with the budget request for all those programs or do they come in from the separate departments?

Mr. DANIELS. Let me speak to this a little, because I think it relates back to some important things you said earlier in your statement and that the GAO report speaks to.

Before you arrived, in my opening comment, I reiterated that the administration remains very open on the question of what the eventual organization for homeland security ought to look like. It may be the arrangement we have today, but possibly some evolution of it.

One problem that was forecast at the beginning that I would claim has not occurred at all was the ability to, I think you said the authority to leverage resources. There is plenty yet to be done and there certainly have been some obstacles and some places where it has been difficult to move quickly.

But one thing that I think has worked pretty well so far is that Governor Ridge, as the President's advisor on this subject, and his office, where they have identified needs, have secured them, either in the supplemental request they have made or in the budget proposal we have made for 2003. He has spoken to this many times himself. He has said, in essence, or literally, anything he has asked for, he has gotten. This was the President's guidance and we have implemented that using the offices of OMB.

So the answer to your question about budgets is that we took the definition of what is homeland security, placed it in front of the agencies, and invited all their suggestions. These were then screened by Governor Ridge's office, staffed in part by the outstanding professionals that I work with at OMB, and he then recommended to the President and certified to the President the adequacy of the requests we have made to date.

Senator LEVIN. OK, so the process now is that you get from 30 to 40 departments requests. He screens them, decides whether or not he recommends them and to what extent he recommends them, and certifies that they are all necessary pursuant to the criteria in the description of homeland defense, so that——

Mr. DANIELS. I should probably also say, I think it is increasingly the governor and his office who are initiating and guiding agencies in terms of what is needed. This was not always like a usual budget exercise. It was not a matter of subtraction. There have been a number of areas, and I know there will be many more in which the governor will be initiating and recommending activity that may or may not have been contemplated by an agency at the time.

Senator LEVIN. It is very clear that his role, then, is not only significant but growing, and we need to know here, it seems to me,

where those recommendations come from, who is responsible for making them, whether or not more has been requested than has been provided, and who is accountable for the funds once they are provided. He is so clearly in the center of it, it seems to me that it is very difficult for us, and more importantly for the public, to have a handle on where they go for funding.

Do they go to Governor Ridge's office to urge that there be a program in the next year's budget? Do they go to one of 40 agencies to urge that? Are they then referred to Governor Ridge saying, well, gee, if he really wanted it, he would have initiated it? Go see Governor Ridge. Governor Ridge then says, well, go see that department, they are the ones that really administer those funds.

It is too mushy from the public accountability perspective. It is not clear. The accountability is not clear. The authority is not clear. And I must say, I do not see any way offhand of clarifying all those things without doing what the GAO has recommended, which is to provide a statutory authority for that office. I do not see how we are going to accomplish those important aims without doing that.

My time is up, and if it is all right, I think maybe we ought to allow a response.

Chairman LIEBERMAN. Yes.

Mr. DANIELS. You may well be right, Senator. Once again, I think the whole matter of the best organizational form is still very much under study. I would say that homeland security will not be different from any other government activity I can think of in terms of its mushiness and the multiplicity of parties who get in the act. We frequently get advice from the public through Congressional offices, for example, about what ought to be spent, so people know to visit various windows to make a case.

But I think under the current arrangement, Governor Ridge should be seen and is seen by most people—his office is—as the central place for advising on the big questions we face now. What should the national strategy for homeland security comprise? What are the biggest threats? Which should be met first, and so forth? I think they are doing a great job of rationalizing all that, working with the departments.

Senator LEVIN. Thank you. Thank you so much.

Chairman LIEBERMAN. Thanks, Senator Levin.

I do not have any further questions. I would just make a final comment, which is listening to Senator Levin ask a series of questions that I was going to ask if he did not, the answers I find to be encouraging but also leading in a different direction, which is encouraging in that I am glad Governor Ridge is playing that central role with OMB in separating out all the requests that are coming in for funding for homeland security.

Your point about defining exactly what is homeland security is a very important point. I heard somewhere that there may have been over a couple hundred billion dollars in requests that actually came in to you.

Mr. DANIELS. That is correct.

Chairman LIEBERMAN. And you got it down to $37.7 billion, which in itself, of course, is a considerable number. It is very important that Governor Ridge was right there with you, and by your testimony now, ultimately had the final say insofar as he certified

to them. But it also clearly shows that he is more than just another advisor to the President, that he is exercising the kind of authority that I would want someone to exercise who has responsibility for homeland security, and clearly, it makes at least two points to me.

One is that we need to give him the statutory authority to, if I can, legitimize or put into law the powers that he is actually, and quite correctly, exercising, and two, that leads me also to make an appeal to the administration through you to figure out a way that he can testify before committees of Congress. This is one of those cases—we have been quoting Machiavelli all morning. I do not have a Machiavelli quote here, but we have all been in situations in public and in private where we have taken a position and then it gets carried down the road to a point where even we begin to doubt it or wonder about its logical consistency, but we certainly are not going to say we made a mistake. At least, I own up to saying I have done that.

It seems here we have gotten to a point where when Governor Ridge was offered to this Committee and the Appropriations Committee to do a public briefing but would not come to testify at a public hearing, there is not much difference and we ought to figure out how to—there is a practical problem, which I think we could work on together, which is we do not want him being called up to every committee of Congress every day. We want him to have the time to do his job. That, we can figure out.

So I hope while we are working on legislation, we can also work our way through the tussle that is going on about whether he testifies, because it is fundamental to the accountability of a person who is exercising, quite correctly, the kind of authority he is exercising.

Mr. DANIELS. The administration does, too, Senator, and I think you characterize it accurately. The governor is doing all he can and he is open to additional ideas about ways to inform and enable the Congress to do its job. At last count, he has had 40 now meetings, and more are scheduled, open, closed, and otherwise, everything other than formal testimony. This does not count the 100-plus formal appearances that individual cabinet members have made.

All, I think, that separates the viewpoints at this point is really an honest difference about a principle of long standing, about Presidential advisors testifying. I know he remains very flexible about trying to achieve the end you are looking at while trying not to walk away from that principle.

Chairman LIEBERMAN. I appreciate that. Obviously, my point is I think he is now happily and correctly, necessarily, more than an advisor.

Thanks very much for being here. I appreciate your testimony very much. I look forward to continuing cooperative work on this important matter.

We will now call the fourth panel, Dr. Philip Anderson, Senior Fellow and Director, Homeland Security Initiative, Center for Strategic and International Studies; I.M. Destler, Center for International and Security Studies, School of Public Affairs, University of Maryland; Stephen M. Gross, the Chair of the Border Trade Alliance; Dr. Elaine Kamarck, John F. Kennedy School of Government,

Harvard University; and Paul C. Light, Vice President and Director of the Governmental Studies Program at The Brookings Institute.

Thanks to all of you for being here. Thanks for your patience. I think it has been a very interesting morning so far and I am sure it will only continue in that productive way with this distinguished panel.

Dr. Anderson, why do you not begin.

TESTIMONY OF DR. PHILIP ANDERSON,[1] SENIOR FELLOW AND DIRECTOR, HOMELAND SECURITY INITIATIVE, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES

Mr. ANDERSON. Good morning, Mr. Chairman, and Senator Thompson. It is an honor to be here this morning to present my views on the proposed legislation. Let me say that my statement represents my views alone and should not be considered the institutional perspective of the Center for Strategic and International Studies.

There is a description in my written testimony of the projects that CSIS has been involved in, both prior to and since the tragic events of September 11.

In my view, in this new and very dangerous environment, the proposed legislation, if enacted, would greatly simplify management processes and unify the efforts of the 46 Federal agencies that to varying degrees have responsibility for homeland security. Effective communication and coordination among these disparate agencies is extremely complicated. In the absence of organizational reform, it will only become more difficult in the years ahead.

With responsibilities spread across so many agencies, it is equally difficult to ensure that no duplication of effort exists between organizational visions, and with the additional requirement for the Federal Government to coordinate and communicate efforts with State and local governments, and further, to develop the means to work with and cooperate with the private sector, it is clear that some organizational reform must be initiated to ensure unity of effort.

The most important question to consider at this juncture is when to initiate organizational reform. Some would argue that there is no time to waste and that well-informed decisions should be acted on immediately in this environment. There are two problems associated with the desire to act now.

First, an ongoing crisis may not be the best time to initiate organizational reform. With nearly every aspect of the national security apparatus focused on the war on terrorism, such broad-reaching change at this point in time could be an unwelcome distraction.

Second, and more importantly, in the absence of a comprehensive national homeland security strategy, there can be no clear understanding of the threat to be assessed or any real sense of priorities from which specific requirements will emerge.

It would seem that to organize in the absence of a strategy would be putting the proverbial cart before the horse. The strategy should serve as the basis to initiate organizational reform and allocate re-

[1] The prepared statement of Mr. Anderson appears in the Appendix on page 98.

sources rather than the other way around. Several things to consider:

First, a comprehensive national strategy should serve as the basis for organizing the Federal Government for homeland security. Organizational reform at any time will not be easy, but will be far more difficult in the absence of a strategy. Without a strategy, no framework exists to base decisions about how to organize the government and spend the taxpayers' money.

In addition, most agencies of government that are focused on homeland security have other primary missions that will have to be accounted for. For example, the Customs Service has a primary mission as a revenue-generating agency, focused on goods and trade, not on security. Last year, the Customs Service collected $23.5 billion in taxes, fees, and penalties, second only to the Internal Revenue Agency in generating government income.

Second, a comprehensive threat assessment should serve as the basis for the national strategy. While we remain extremely vulnerable in many areas, most do not represent critical vulnerabilities simply because they are not likely targets. How many would argue at this point that commercial aviation is a critical vulnerability? On the other hand, private aviation, with 500,000 private pilots, 200,000 private aircraft operating from approximately 18,000 air fields throughout the country could certainly represent a critical vulnerability.

Some would argue that the nuclear power industry is critically vulnerable. I would submit that the nuclear power industry, the most regulated in the United States, is far less vulnerable than other aspects of energy infrastructure, to include liquid natural gas operations, refineries, and petrochemical facilities.

The bottom line is that without an informed assessment of how those that would do us harm might act, the ability to organize and allocate resources effectively is extraordinarily difficult, if not impossible.

Another important point relates to the way in which the current organization of government looks at the threat. FEMA is a good example, with an organizational culture that has, for the most part, addressed natural disasters rather than a thinking enemy.

Third, the means to create public/private partnership must be developed to ensure adequate security of critical infrastructure, and this is critically important. The private sector remains ultimately responsible for securing the infrastructure it owns and operates. This responsibility is complicated by the requirement to generate profits for stockholders and to provide customers with affordable service. Clearly, the Federal Government should share the burden for critical infrastructure protection. While the government cannot always step in and assume full responsibility for critical infrastructure, it must find ways to incentivize the private sector.

It is essential that the private sector should be included in the development of the national homeland security strategy and in its implementation. The strategy and the organizational construct that derives from it must simplify the communication and coordination problem between government and the private sector.

A good example of this problem can be seen in the containerized shipping industry. Approximately 7.5 million containers enter the

United States each year and the contents of these containers originate with approximately 450,000 shippers. This clearly represents an unworkable number. But an interesting statistic is that the contents of 60 percent of the containers that enter the United States originate with about 1,000 shippers globally, and this would seem to be a workable number where public/private partnership might be able to make a difference.

The bottom line is that any organizational reform must formally address the requirement for public/private partnership.

Again, Mr. Chairman, in my view, over the long term in this new and very dangerous environment, organizational reform such as that described in the proposed legislation must be initiated to ensure unity of effort and clear lines of authority, responsibility, and most importantly, accountability. Assigning the bulk of responsibility to a cabinet secretary and a White House directorate the way it is described in the proposed legislation would seem to represent a much improved process for ensuring accountability, rather than the current situation where responsibility is shared across 46 agencies of government, where ensuring accountability is virtually impossible.

The most important question, again, to consider at this point is not whether to initiate organizational reform but when to initiate organizational reform. Assuming the administration can produce a comprehensive strategy this year, and once it is published, the debate can begin on implementation, and that will certainly involve the appropriate organization for homeland security so that every aspect of government can move forward together in a unified and coordinated way to fully address what is surely the most complex problem our government has ever had to face.

Mr. Chairman, the road ahead remains complex and fraught with challenges yet to be addressed. I thank you for the opportunity to testify this morning. The Center for Strategic and International Studies is ready and willing to help. Organizing effectively to secure the American homeland is essential to our country's survival and prosperity. We appreciate the Committee's leadership on this issue and we look forward to helping in any way we can.

Chairman LIEBERMAN. Thank you, Dr. Anderson.

It strikes me that we go from Dr. Anderson of the CSIS to Dr. Destler of the CISS. Thanks for being here.

TESTIMONY OF I.M. (MAC) DESTLER,[1] CENTER FOR INTERNATIONAL AND SECURITY STUDIES AND PROFESSOR, SCHOOL OF PUBLIC AFFAIRS, UNIVERSITY OF MARYLAND

Mr. DESTLER. Thank you, Mr. Chairman, and Senator Thompson. We very much appreciate the opportunity to present our views on organizing for homeland security. I say "we" because this is a statement made jointly with my colleague, Ivo Daalder of The Brookings Institution, who was here earlier but could not stay for the entire hearing.

We are grateful for the work that you and Senator Thompson and your Committee and staff have been devoting to this urgent

[1] The prepared statement of Messrs. Daalder and Destler appears in the Appendix on page 108.

issue, beginning, I think, really days and weeks after September 11, and perhaps even before that to some degree. We are all addressing an unprecedented challenge. We are trying to listen and learn even as we give our best judgment, and so I will state very directly the views that Ivo and I have developed, but we realize that this is a challenge about which we continue to learn and we should be open to changing our views.

Basically, our judgment is that this is an ambitious bill. It contains many desirable features. At the same time, we think maybe it goes too far in some directions and not far enough in others. Let me be specific.

We agree with this Committee that the current U.S. Government organization for homeland security needs to be strengthened. But rather than seek a new department or a new White House office, we believe Congress should build upon what the Bush Administration has established.

Specifically, we favor legislation that would make the Homeland Security Council and Office statutory entities with their director confirmable by the Senate, legislation that would enhance the Homeland Security Director's budget authority, and legislation that would establish an independent Federal border agency including a broad range of current units responsible for monitoring people and goods entering the United States.

The main reason why we think a Department of Homeland Security cannot be the main organizational response is that it cannot include more than a fraction of the agencies and functions involved. Many players—the Departments of Defense, Justice, and Health and Human Services, to take the largest—will necessarily remain outside of this department, not to mention the FBI and the intelligence community. Hence, the predominant need will be effective coordination of separate organizational entities.

The draft legislation acknowledges this fact, but its cure, at least under current circumstances, could be worse than the disease because you would create both a Secretary for Homeland Security and a director of a national office for combating terrorism with attendant confusion as to which one was, in fact, the leading Federal official on this vital issue. And making the two co-chairs of a council charged with overseeing implementation of the national strategy seems to us a recipe with low probability of success and high probability of confusion or conflict.

But we agree that the homeland security structure needs to be strengthened. The basic organization developed by the Bush Administration is, we think, sound because coordination is the overriding problem. But its credibility has come into question due to Governor Ridge's unwillingness or inability to fight and win some of the tough organizational battles. We believe that his power and the power of the organization would be enhanced by giving the Homeland Security Office, council, and director statutory and budgetary authority.

As a Presidential advisor confirmed by the Senate, Governor Ridge would gain greater stature in general, and would also, by definition, have much greater ability to work effectively with the Congress. We do not think the parallels are perfect between this position and those of the National Security Advisor and the Na-

tional Economic Advisor. We think there is a greater need in this case for this official to be working directly with the Congress.

We do believe that in providing such authority, Congress should eschew any desire to micro-organize and pass a clean bill using the language of the President's executive order.

To strengthen the director's influence over homeland security and the homeland security budget, we strongly support the provision in Senator Lieberman's bill, which I understand will be cosponsored by Senators Graham and Specter, that would give the director power to certify or decertify agency budgets, comparable to the power currently exercised by the drug czar. In addition, we would integrate the homeland security budget effort more formally with the Presidential budget process run by OMB, as we understand it has been informally integrated this year, by designating the chief Office of Homeland Security budget person as the OMB associate director responsible for homeland security.

It would also, as suggested by Senator Thompson, be of enormous benefit if Congress could do more to create its own focal points. Ideally, it would be nice if Appropriations subcommittees for homeland security could be established.

Finally, we support creation of a Federal border agency, such as recommended in Senator Gregg's legislation, incorporating the Customs Service, the Coast Guard, the INS enforcement arm, the Agricultural Inspection Agency, and perhaps also the newly created Transportation Security Agency and possibly the Consular Affairs Bureau in the State Department and the entire INS, including its service division.

The administration's current proposal for merging the Customs and the Border Patrol into a sub-unit within the Justice Department seems to us to fall well short of what is needed. The agency needs to be both larger and independent of any other cabinet official. Border security is clearly an area where we believe organizational consolidation can make a major contribution to securing our homeland.

Thank you very much.

Chairman LIEBERMAN. Thank you, Mr. Destler, very much.

Mr. Gross, I appreciate your presence here. You bring a unique perspective and we look forward to hearing it now.

TESTIMONY OF STEPHEN M. GROSS,[1] CHAIRMAN, BORDER TRADE ALLIANCE

Mr. GROSS. Thank you very much, Chairman Lieberman, Ranking Member Thompson, and Members of the Committee. Good morning. My name is Stephen Gross. I want to thank you for this opportunity to testify this morning on the proposed realignment of Federal agencies that are so important to homeland security. I have submitted a longer written statement for the record.

I am the president and owner of Border Trade Services in San Diego, California. We are a cross-border warehousing logistics company, employing over 100 people in San Diego, California, and Tijuana, Mexico. But what brings me here today is my position as the 2002 Chairman of the Border Trade Alliance, the BTA.

[1] The prepared statement of Mr. Gross appears in the Appendix on page 114.

The BTA is a grassroots organization that was founded in 1986 as a group of individuals, entities, and businesses that conduct legitimate cross-border business in the NAFTA marketplace. As such, we have a unique perspective on the security challenges facing our land borders.

Representing a group that lives and works in border communities, I bring to you today firsthand experience in interacting on a daily basis with the Federal agencies posted along our borders, namely the U.S. Customs Service, the Immigration and Naturalization Service, and the Border Patrol.

The events of September 11 presented all of us with challenges, the likes of which we had never contemplated before. But our organization is hopeful that these terrible events have presented our Nation an opportunity to improve the way we approach security, and that includes examining how the resources of our borders can be better managed to enhance our physical and economic security.

Senators, our land border security and trade facilitation is severely lacking. The various Federal inspection service agencies posted along the U.S.-Mexico and U.S.-Canada Borders are charged with poorly defined and sometimes conflicting missions. Oftentimes, our ports of entry are home to petty squabbles over turf and resources and fall victim to mismanagement.

The land border ports are not home to business's best practices. At each port of entry, Customs and INS personnel are operating with different missions, despite the fact that Customs and INS are cross-trained in the primary inspection lanes. The INS or Customs employee at the port of entry receives incentives to carry out the individual mission of his or her employing agency. There is no incentive to work together or speed legitimate trade and cargo through our ports of entry.

Despite recent talks in this post-September 11 environment of improving lines of communication at the highest levels in INS and Customs, we rarely see the same spirit of cooperation employed at the ports of entry themselves, where it is needed most.

Because of these reasons, we view Senator Lieberman's legislation with great interest. We believe that Senator Lieberman's bill would go far in decreasing government costs, increasing efficiency by placing both Border Patrol and Customs under the same agency head. Realignment of this sort would improve border security by removing a layer of bureaucracy between the ports of entry and the coordinator of all security efforts. Realignment would put one entity in charge, a cabinet-level secretary overseeing the Department of National Homeland Security.

We believe that, among other things, agency realignment would establish accountability for border inspection in a single agency, eliminate overlap and duplication of efforts, prevent the development of redundant support systems, facilitate and streamline the processing of legitimate trade and travel, and improve enforcement of laws at our border.

We do have some concerns with this bill, however. Our organization has always believed that increased security at our borders need not to be achieved at the expense of trade facilitation. Indeed, we believe that the two are one of the same. With the proper resources, our Federal inspection service agencies can quickly weed

out those individuals who would seek to do us harm while processing legitimate trade and travelers with a reduction, or at the very least no increase, in the time the cargo or traveler has spent waiting at the port of entry. With that said, we want to be sure that any new emphasis on security does not hamper legitimate trade and travel, which is so vital to our economy.

Second, we recommend that all enforcement functions of INS, not just the Border Patrol, be transferred to this new agency. Our hope is to put an end to turf battles at the ports of entry and have everyone committed to the same goal. We fear that only shifting Border Patrol to the Department of National Homeland Security and not the other enforcement functions of INS will perpetuate these problems and leave our border security strategy without proper coordination.

Third, while it may seem trivial, we do have some concerns about the message the Department of National Homeland Security conveys to our trade partners, especially our NAFTA neighbors, Canada and Mexico. Perhaps a name along the lines of Department of National Homeland and Economic Security would more accurately convey that ours is a Nation still open to the world market.

There are other proposals for agency realignment circulating on Capitol Hill and we welcome the opportunity to comment on them, as well. We are supportive of any effort that will secure our borders and facilitate the passage of legitimate trade and travel. We do, however, advise that any transfer of INS enforcement functions and Customs not end up in the Department of Justice. The Department of Justice does not have a proven track record in consulting with private industry on a regular basis and we fear that maintaining our country's strong trade position will not be a priority in such an organization.

Improving security at our land borders is a worthy and necessary goal, not only to ensure our physical safety, but also to preserve our economic security. The World Trade Center was targeted on September 11 because those two towers were powerful symbols of our Nation's presence in the global marketplace and our strong domestic economy.

As a result of implementation of the North American Free Trade Agreement, trade between the United States and Canada has grown enormously and all signs indicate that this trade will continue to grow.

There are some that say now is not the time to take on an initiative as bold as that outlined in your bill. They say things are getting better and the agencies responsible for border management are working together now more than ever. We disagree and best answer those claims with a question. What is so great about today's situation at the borders that is worth preserving? To what point will things have to deteriorate before we look at making a bold change?

We also want to assure the Committee and the public that we have little interest in creating another large bureaucracy in Washington that the trade community will have to wrestle with. If anything, we view the proposals contained in this bill as a way to streamline communication between industry and regulators by creating a one-stop-shop on cross-border issues.

In conclusion, no amount of reorganization is going to result in better border management without a commitment by Congress to provide agencies with the tools they need to keep trade flowing and make our borders more secure. But now more than ever is the time to start looking at a significant realignment of agencies posted at the border. If real security and trade efficiency are to be achieved, we must take the first step by consolidating the agencies into one leadership structure. It may take years to change the internal cultures at the individual agencies, but without this first step, our goals will never be achieved. This is a matter of national survival and economic security.

Looking ahead, we believe that, ultimately, we are going to have to look seriously at consolidating all agencies with enforcement duties at the land border ports of entry into one agency with responsibility solely for border administration. This bill is a good first step.

Finally, we do not make these recommendations lightly and we know that the type of changes we are discussing here will not completely insulate us from outside threats or be the ultimate solution for our ports of entry. But years of living and working in border communities in and around ports of entry have brought us to the same conclusion. Bold changes are needed if our national security and economic security are to be preserved.

On behalf of the Border Trade Alliance, I want to thank you again for listening to my comments here today. I will do my best to answer any questions you may have as we all seek an effective way to organize our government for homeland security. Thank you.

Chairman LIEBERMAN. Thanks very much, Mr. Gross, for interesting testimony. Dr. Kamarck, welcome.

Ms. KAMARCK. Thank you very much.

Chairman LIEBERMAN. It is nice to see you. I was tempted to say and I will say that in your work in the last administration, you probably earned the public servant's equivalent of a Medal of Honor for efforts to reorganize the government, so you have an experienced perspective that you bring to this new challenge. Thanks for being here.

TESTIMONY OF DR. ELAINE KAMARCK,[1] JOHN F. KENNEDY SCHOOL OF GOVERNMENT, HARVARD UNIVERSITY

Ms. KAMARCK. Thank you, Senator, and it is nice to see you, Senator Thompson.

Let me start by saying something that I think summarizes what we heard this morning, and I just want to point this out. Homeland defense is not going to happen in the White House. It is not going to happen in the National Security Council, a coordinating council. It will not happen in the cabinet room. Ask any American who needs to know when there is a threat, who do you think will protect you? Some guy who is in the White House or a $45,000-a-year employee who is guarding the border? And they are going to say it is the latter.

I think the real importance of this bill, which you should be commended for, is to tackle the problem of the border, which, as we have heard before, has been long ignored. Let me point out that

[1] The prepared statement of Ms. Kamarck appears in the Appendix on page 120.

these problems at the border are not new, but until September 11, there was never the sense of urgency to overcome all the bureaucratic intransigence to creating effective border patrol.

I would make two friendly suggestions to this bill. I would consider including the Department of Consular Affairs at the State Department in here. Currently, that Department is extremely overworked and understaffed. It tends to be manned by young diplomats who are trained in diplomacy, not trained in law enforcement. They do not have access to real-time intelligence, which they need, and, in fact, as Mary Ryan has testified before the Senate, they had no relationship with the CIA or the FBI on a regular basis before September 11. I do hope they do now.

Chairman LIEBERMAN. Just explain, for the record, what these folks do.

Ms. KAMARCK. Consular Affairs officers hand out visas. They are our first line of defense at the border. They are generally young people, first diplomatic post, who are stationed, say, in Beijing. Sometimes they have to see thousands and thousands of people a month and they have no training in law enforcement, nor do they have the intelligence access that they need. So I think this is worth including here.

Chairman LIEBERMAN. Just for the record, and I will give you some extra time, I do not remember every case, but of the 19 hijacker terrorists who bought the planes in the attacks on September 11, almost all of those came in exactly that—that was their first point of contact, was it not?

Ms. KAMARCK. Of course. Their first point of contact for coming to the United States is getting a visa. That is the first point of contact. So if you are going to talk about really securing the border, you do have to start there. There were actually, of these, by the way, there were two potential hijackers who did not get visas to come to the United States, so something was working, but obviously not enough.

The failures of the INS, I do not need to recount here, but let me just say that they are not new. During the Iranian hostage crisis in 1979, the INS could only track down 9,000 of the 50,000 Iranian students who were in the United States, and here we are many, many years later, more than 20 years later.

Customs has, as we have heard, an enormous role in our economic well-being of this country, and therefore, if you pass nothing else out of this bill, I would urge you to pass the acceleration fund for research and development of homeland security technologies, because it is very clear that in order to keep our trade in good shape and our economy in good shape and simultaneously increase our level of security, we are going to need some substantial new investments in technology, and I think if you could start that right away, it would be great.

And finally, I would make another suggestion to take the newly federalized airline security force out of the Transportation Department and include it, along with the Coast Guard and the other groups, in this new agency. There is absolutely no difference between guarding a land border in terms of what you are looking for in security and guarding an international airport, and I think if

you put these together, you have some real very good synergies and the potential for some very good reorganization.

Two quick points. On cyber security, I think this bill is a wonderful example of putting some things together. I will say, however, that both for your new cyber security agency and for the new homeland security agency, do not use the current civil service law. Write into this bill its own authority to create a new personnel system or, quickly pass Senator Voinovich's civil service reform bill. The worst thing we could do would be to create a new agency and then saddle it with a civil service system that more than 50 percent of the Federal Government has already gotten themselves out of because they find it does not work for their needs.

And then finally, on the National Office for Combating Terrorism, I am very skeptical. Having worked in the White House for 5 years closely with all these agencies, I just do not think Congress can ever legislate the internal workings of the Executive Branch. I just think it is not a good thing to spend your time on, particularly when there are so many other things in this bill that are so important. The way this sets things up, it conflicts with the office of OMB, it conflicts with NSC. I do not think it is good to create a kind of dual-budget process within the White House when, after all, you have to have one budget, the President's budget, for clarity.

So, as for that portion of the bill, I would say that given all the other things that are so important in the bill, I would urge that you concentrate on those, particularly on the border questions and the cyber security questions, which our government is very far behind on, and leave it to each President to figure out how they organize their own White House.

Senator I think that if there had been a little difference in those ballots in Florida a year ago, you might have been on the other side on this one. Thank you very much.

Chairman LIEBERMAN. You make such overwhelming sense in all that you say. [Laughter.]

Mr. Light, thanks for being here.

TESTIMONY OF PAUL C. LIGHT,[1] VICE PRESIDENT AND DIRECTOR, GOVERNMENTAL STUDIES PROGRAM, THE BROOKINGS INSTITUTE

Mr. LIGHT. It is a delight to be here. I was actually sitting up behind you, not you, but Senator Glenn and Senator Roth, in 1988 when the Senate Governmental Affairs Committee last created a cabinet department. We elevated the Veterans' Administration to cabinet status. I do not raise that memory to remind you of what a wonderful job we did. I do not know that it improved the performance of the VA.

I was also sitting over to your left when we created the Deputy Director of OMB for Management, a Senate-confirmed position that we hoped would give greater attention and visibility to this important job, and now it is mid-April. The administration in a vast rapid dash to the finish line has yet to submit a nominee for that critical post.

[1] The prepared statement of Mr. Light appears in the Appendix on page 127.

It is with that kind of sense of sort of the limits of reorganization that I get the last word on this panel and in this hearing, I suppose.

I have heard two things today. No. 1 is that organization matters. That is a nice thing to hear before the Governmental Affairs Committee. Every once in a while, people in Congress and in this town recognize that organization matters to program effectiveness. Our temptation here in town is always to tinker, to exhort, to work with the current system as best we can, to adopt the least common denominator approach.

I am telling you, this is a time for a chain saw on the organizational chart of government, and not just at INS and not just for homeland security. We have got an organization chart that is an utter nightmare, a mess. We have got bill after bill introduced in Congress to realign, reorganization. I think we have all come to the conclusion that organization matters, and it is a very nice thing, given that is what I do for a living, not that I would say that the elevation of the Veterans' Administration suggests that I did it well or that we did it well.

No. 2, I think, important before this Committee, is that accountability matters. That is what we are talking about today. Everybody talks about efficiencies and who reports to whom, but you know what? At the end of the day, if you are an Article I person like I am, you believe that Senate confirmation matters and that being able to call a significant player in the administration to testify matters.

I think Governor Ridge should be called to testify. I think that he is enough like the Director of OMB, enough like the drug czar, enough like the International Trade Representative to be called to testify. I do not see a problem with that. I see all the maneuvering about getting a situation under which he might step into these hallowed halls and sit down before you and give you a public briefing, but he controls a lot of money. He is at a point now where his success, in a sense, confirms the notion that he should be confirmed and invited to testify.

On your legislation, I believe that the rationale for creating a department exists. I think there is plenty of history to demonstrate. I mean, we have created cabinet departments on the basis of many arguments. They all exist here, actually. We can look at the Department of Energy, the Department of Transportation, HUD, we can look at Education, HEW, the Department of Defense. We created them with the same instinct that is on the table here.

And let me say that you do not have to include every last piece of a policy area in order to create a department. That is just not a requirement of past cabinet building. If we did that, we would have exactly one cabinet department in the Federal Government. That is how we would get everything under the same tent.

Second, I believe that statutory authority for the Homeland Security Director, Tom Ridge, or whomever it is, is the *sine qua non* of accountability. I think it should be done.

Third, I argue in my testimony that the organization chart is a mess, that we have a moment here before us where we ought to take that long look at the organization chart of government, take a look at food safety, take a look at bioterrorism, take a look at

homeland security, take a look at intelligence services, take a look at them in a systematic fashion by enacting a bill that has been pending before this Committee for 12 years and is now under the title of the government in the 21st Century Act.

I think we ought to take this look. It can be done quickly. It can be reported back to Congress within a 12-month period, even less. I think if we are going to do a reorganization, let us do it well and let us do it in a fashion that forces Congress to deal with it up or down through some sort of a forced decision mechanism that would require a military base closing type of decision.

I guess that is the last word.

Chairman LIEBERMAN. It is a good word. We are going to ask you a few questions, but thanks, Mr. Light. It is reassuring to know that there are a few Article I people out there. [Laughter.]

I appreciate it very much.

Mr. Gross, let me ask you, if you could from your experience, to share an anecdote or two with us so that we can get a feel, because very few of us, maybe none of us have actually been at the borders to the extent that you have trying to move goods, particularly, back and forth.

Mr. GROSS. Sure. And I invite you, with that opening, to come to the border, come to San Diego.

Chairman LIEBERMAN. I might just do that.

Mr. GROSS. The problem is when we have people of your stature come to the border, the agencies know they are coming so they have their best hat on. They open up all the lines and there is never a problem because they know you are coming. We need you to come undercover, not know you are coming, put a Machiavellian disguise on you and we will show you what really happens on a day-to-day basis going on down there.

The anecdotes are many. You read about some in the press, I think, that are probably more accurate than others, but from the passengers' side, we have experienced mismanagement. Half the lanes are never open. And San Diego is an example. We have land ports. We do not have bridges, so we have infrastructure to be able to get people across more efficiently with better management.

In Otay Mesa, as an example, there are 14 lines at the border at the passenger side. Never more than five or six are open, half staffed by Customs, half staffed by INS. They have a 50/50 responsibility at the primary lanes. Their management has to talk together with each other to make the passenger side efficient. There is never proper coordination. Again, I think the INS guy, because of his training, is looking more for the illegal immigrant coming through, whereas the Customs guy is looking for the contraband coming through. So there is not total cross-training on whether they are looking for contraband or when they are processing people.

Chairman LIEBERMAN. Somebody told me the other day—it was actually one of my superb staff members—that there is some indication that people who are trying to break the system know by the uniform who is going to be looking for what and go to——

Mr. GROSS. I have heard that before, because you can tell. They have distinct uniforms.

Chairman LIEBERMAN. People trying to bring contraband in——

Mr. GROSS. They will want to find an INS line versus the Customs line.

Chairman LIEBERMAN [continuing]. Find an INS line.

Mr. GROSS. Sure. I would not doubt that would be the case. I mean, these are very sophisticated people that are doing bad deeds at the border, with drugs or with illegal immigrants. There is big money involved and they are very sophisticated. They will find a way around the system if it is not secure. If there is a breakdown in the system at the border, they are going to find it.

Chairman LIEBERMAN. I take it, then, and you said this, I believe, or suggested it, anyway, in your testimony, that you would find what the press is reporting, which is that Governor Ridge's original proposal for consolidation of the border agencies, which has now been reduced to the point of putting the Border Patrol and Customs in the Justice Department, not to be enough.

Mr. GROSS. Yes. We think the Justice Department is not, again, from my testimony, not the right department. We have seen at our borders mismanagement issues. I mean, we have seen it. It has been well documented about problems with the Justice Department and INS. We have seen, in my opinion, and let me state this is my opinion, that at least where I am involved, Customs does a much better job of management at the ports than INS does, and that is going out on a bold statement. I am going to hear from them, I am sure. [Laughter.]

That is my opinion.

Chairman LIEBERMAN. I will say, your boldness has been echoed.

Dr. Kamarck, did you want to add something on that?

Ms. KAMARCK. Yes. Can I add, that was very troubling to me when I heard that they were going to put this in the Justice Department.

Chairman LIEBERMAN. Right.

Ms. KAMARCK. That would be such a terrible mistake. It would undermine—if even a piece of this bill ended up in the Justice Department, it would really undermine it. If any version of this ends up in the Justice Department, you run a significant risk that the flawed management structure that has run INS now for several decades would, in fact, then be running a new agency.

Customs has a much better track record in reform, in using technology, etc., and so I would heartily say, put it in Customs if you have to do that, but keep it away from the Justice Department.

Chairman LIEBERMAN. How do you react to Senator Gregg's proposal, which is to say to create a separate, if I understood him correctly, a separate border agency in lieu of both the smaller step that seems to be coming along in the administration and the larger agency that we proposed?

Ms. KAMARCK. I think that would still help, but I think that it is better to go the route you have proposed because I think it gives it more clout. It is more inclusive. You would get more synergies from the technology and from cross-training. Everyone would be trained in one area.

There is a huge problem facing this entire enterprise, which is the economic problem, and I do not think that a sort of subsidiary Border Patrol agency would have the ability to get what it needed

from Congress, etc. So I think you are right in making it a cabinet-level agency.

Chairman LIEBERMAN. Mr. Destler.

Mr. DESTLER. I just wanted to emphasize, to generalize a point that Dr. Kamarck made on border security, that all these units that are to be brought in are not, or have not been before September 11, priority units in their departments. The Coast Guard is not the prime business of the Department of Transportation. The Customs Service is not the prime business of Treasury. INS is not the prime business of the Justice Department, etc. The cabinet members do not pay attention to them. They pay some attention to them now because homeland security is such a big thing, but there is not a strong argument for the status quo based on these agencies' connections to the mainstream of their departments.

Transportation security is slightly different in that it is a new unit and obviously the Secretary of Transportation is paying enormous attention to it and they seem to be doing fairly well. But there is a real tension between having security in an agency whose main job is the promotion of transportation, so we also think it makes sense to put that in a border agency, as well.

Chairman LIEBERMAN. Mr. Light.

Mr. LIGHT. I am spending a lot of time right now looking at the Transportation Security Administration, and I will tell you something, you move that agency right now at this particular moment in time and you set it back 12 to 18 months.

Chairman LIEBERMAN. Why?

Mr. LIGHT. It is just such a hard job. They have some momentum now. They are setting up policies and procedures. The deputy secretary is completely and totally engaged in making that TSA a reality. I just think if you move it someplace else, you lose that momentum. You just do. I mean, just finding the office space and getting the hiring criteria in place, I just think 12, 18 months from now, maybe. But right now, it would disrupt motion, I think, very seriously.

Chairman LIEBERMAN. A final question. What about the law enforcement functions of the Immigration and Naturalization Service? Some have suggested they be brought into this agency. Others have said that it should not be separated out from other functions in the INS. Any opinions on that?

Ms. KAMARCK. I think the naturalization functions should definitely be kept in the Justice Department. I think they are fundamentally different and the administration even has a bill that would simply do that.

I think that then you have to look carefully at the enforcement functions, their relationship to the border, their relationship to security. My guess is probably most of them should go into this new agency, but I do not have a real firm opinion on that, except to say naturalization should definitely stay in the Justice Department.

Chairman LIEBERMAN. Yes, Mr. Gross?

Mr. GROSS. I think I would agree with Dr. Kamarck on that. The enforcement agencies, we believe strongly should be part of this new agency, any enforcement agency, and they should have the same law enforcement status.

One of the practical problems that we have seen at the border is, and I think it is documented, one of the problems is the resources. They are not able to recruit new Border Patrol agents and new INS agents quickly enough and there is a lot of looking around for these people. Once they get hired and trained, which takes 6 to 12 months, they are jumping. They are jumping to where they can get law enforcement status, better pay, and better benefits. They are jumping to the Customs Service. Half of them jumped to the sky marshal program as soon as recruitment was escalated—because it was a much better status for them. Now, they are having to rehire again.

So the retention is a big problem at these agencies, because even though they are all working on the border, there are different pay scales and there are different levels and that is another big problem we have at the ports of entry.

Mr. LIGHT. May I add a word?

Chairman LIEBERMAN. Yes.

Mr. LIGHT. I think if ever there were a reason for taking a chain saw to an agency, INS presents it. You must divide that agency. I mean, the question to you is, how is it doing where it currently is?

Chairman LIEBERMAN. Right.

Mr. LIGHT. How well is that agency running? You have got to do something radical to INS in order to give it the wake-up call. I just think that is one where the argument is quite different from TSA. This is one where this agency just is going nowhere unless you do something radical.

Chairman LIEBERMAN. I think there is a lot of sentiment here on the Hill that agrees with you. We will see about INS, see what happens and how quickly. Senator Thompson.

Senator THOMPSON. Thank you, Mr. Chairman.

I want to get back to ask some of you what you think about a couple of comments that Mr. Destler made about having to do with getting a strategy first. We are talking about what agency goes where, how the boxes should be rearranged. We are never going to get a consensus on that, for sure, and we do not need to endlessly debate this. But on the other hand, we have got supposedly a strategy document coming out.

I know GAO says that it took the Drug Control Office 10 years to come up with a national strategy, and we are not going to wait 10 years, hopefully, or anything close to that. But that just goes to show how difficult it is deciding really what we need to do. I mean, we are looking at all of government. We ought to be looking at all of government. We have got 45 or 50 different entities out there, agencies, what not, participating in all this.

Do we know enough to decide at this point exactly where the boxes ought to go or how we need to reorganize. How significant will this comprehensive national strategy that the administration is putting together be in that?

Dr. Kamarck, do you have any thoughts on that?

Ms. KAMARCK. Yes, I do. I do think that Tom Ridge's role should not be operational. I do not believe White House offices are ever effective if they are operational. I think there is, in fact, a long history of White House disasters when they try to be operational.

Ridge's office should be—and I think they are doing this—should be developing a strategy that is comprehensive, because even the provisions in this bill are only a small piece of what needs to happen overall in the government. We have not even talked about CDC reform or any of the other pieces.

Senator THOMPSON. Or intelligence, as you pointed out.

Ms. KAMARCK. Or intelligence reform——

Senator THOMPSON. Which is a key part.

Ms. KAMARCK. Right, a key part. However, I do think that when things like this happen, there is a coalescence around government problems that everybody has known about for a long time and that is why I think you hear so much unanimity in here about the border. In other words, before September 11, people made the same criticisms of the border problem as they are making now. Now, we have, however, a much more important reason to pursue those.

So while I agree with the need for a national strategy, I do think there are pieces of this that people who have been in government a long time and studied it are ready to go forward with, and hopefully in July, a Border Patrol agency will be part of this national strategy, but hopefully there will be a lot of other things, including some intelligence agency reform, too.

Senator THOMPSON. Perhaps we need to take advantage, frankly, of the political momentum that we ought to be having right now. I assume that the worst national disaster we have ever had will not be sufficient enough to reorganize government. It is going to take something more than that, I assume. [Laughter.]

As you point out, there are some things that we can do that we have known for a long time. It is just a matter of attention and momentum, which perhaps we have now that we have not had before. We can do some things though we may not be able to do everything.

Another kind of corollary to that, I guess, is a question having to do with the fact that regardless of what kind of entity we come up with, it seems that some very important parts are going to be left out of the tent. Intelligence comes to mind. Everything gets back to that. We know how deficient we are there and how much better we have to do.

We have to figure out how we communicate, how the FBI counterintelligence, for example, and the CIA communicates with these entities. They do not like to talk to anybody, even among themselves. So now we are asking them to figure out a way to communicate with governmental entities that have nothing to do traditionally with these other problems.

So how significant is it? I mean, one could make the case, because of that, perhaps we ought to fall back and have this entity just be a coordinator. How significant a problem is it, if you see it a problem, if we create something new, a very important part of the picture is necessarily going to be left out? Did you want to comment further on that?

Mr. DESTLER. Yes. Our sense is that certain things are moving, though they may not be perfect. The Homeland Security Council is not perfect, but Governor Ridge is moving. He has a head of steam. He has a mandate. He has had a budget role. He does have an interagency process working. And so the logical thing to do right

now is to build upon this and to resist the wrong-headed administration desire to deny him a role with Congress. But we do not favor radical change.

The situation is not perfect. There are signs Governor Ridge is losing battles. But he could be reinforced by this Committee along the lines prepared in our testimony.

We also believe that when you look at the border, you have functions that by their logic seem to belong together. They have the same purpose. As Dr. Kamarck suggested, you also have a history of problems. And so there seems to be a very strong sense for pulling these together.

Beyond this, you get into gray areas. For example, most of the homeland security department bills, including yours and including the Hart-Rudman recommendations, include FEMA in a united agency. We would not include FEMA because we think they are basically doing something different, responding to catastrophic events. Now, somebody might do a study here and prove us wrong. They might prove that there are important synergies in putting FEMA together with the border agencies, say.

But our sense from looking at it is that you try to look for groupings with closely-linked functions, and the border agencies are a particularly clear case where the linkage is logical and the current location is not. The Coast Guard, for example, has bounced around in various places, and the Department of Transportation is as comfortable a place as any for a good agency that——

Senator THOMPSON. Did anyone else have any comment on that?

[No response.]

Senator THOMPSON. I guess, finally, I especially took note of your comments about research and development, Ms. Kamarck. That seems to be the first place people cut and the most——

Ms. KAMARCK. I know, and it is——

Senator THOMPSON. Is that your experience?

Ms. KAMARCK. That is my experience. The first place people cut is the development side and we cannot solve this problem without that. We cannot solve this problem at the border without significant new technology. People are talking about biometrics and all of this stuff. Well, you know, we are facing this sort of terrible choice. We can make our borders really secure and stop all trade, right? Nobody wants to do that, so the technology is the only answer to that. So that is why I said in my written testimony and here is that if you do nothing else, I would do that first and try to get some of that technology in development and in testing, etc., so that we can improve the situation.

Senator THOMPSON. Some of these agents are still filling out forms by hand.

Ms. KAMARCK. Well, INS is—going back to my comment about why you cannot put this in the Justice Department, INS has a history of not being able to implement technology that you guys in Congress have given them and funded them.

Senator THOMPSON. That is a government-wide problem, as you probably know, too.

Ms. KAMARCK. That is right.

Senator THOMPSON. We have an abysmal record. We have wasted billions of dollars trying to integrate information technology into

these various departments. IRS is a classic example. They are constantly high-profile. INS has not been that high-profile up until recently.

Mr. LIGHT. May I add a last word of encouragement?

Chairman LIEBERMAN. You are actually going to get the last word.

Mr. LIGHT. If you look back at the 1988 Department of Veterans' Affairs Act, you will see that the final title in the Act, as a price of passage by this Committee and by the Senate—that bill came over from the House—was the creation of a comprehensive look at the overall organization of government. It was enacted by the Senate. It was enacted by the House and signed by the President. It carried a trigger that allowed the——

Senator THOMPSON. The next President to do away with it.

Mr. LIGHT [continuing]. The next President to do away with it, and our colleague, one of Dr. Kamarck's colleagues, Dick Darman, among the very first decisions he made as Budget Director was, no way am I going to have such a thing on my watch. If we had done such a thing on his watch, I will tell you something, we would have the road map right now that we need to do exactly what this Committee wants to do. Maybe that is the last title, maybe that is the fourth title of this legislation.

Chairman LIEBERMAN. That is a nice suggestion to end on. I thank you all. You have been, both in your written testimony and in your oral testimony and response to the questions, you have been very helpful.

This has been, I think, a constructive hearing. I have learned from it and I have a renewed sense of urgency that we should go to markup as quickly as we can and get done what we can, because this is an urgent problem every day and then try to meet up with the administration and actually provide for better homeland security. Thank you very much.

We will keep the record of the hearing open for a week in case you want to add any comments, other Members want to ask you questions. I would ask each of you, because you bring extraordinary experience and knowledge here, to stay tuned to what we are doing and I invite your comments and responses and suggestions as we go on. Thank you very much.

The hearing is adjourned.

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

APPENDIX

Remarks of Senator Arlen Specter

Senate Committee on Governmental Affairs Hearing on Homeland Security

April 11, 2002

Chairman Lieberman, members of the Committee, thank you for providing me the opportunity to testify on these extremely important issues which address the greatest threat to our national security. I last testified with respect to this issue on October 12, 2001, barely a month after the attacks of September 11, 2001, and only three days before the anthrax attack on Senator Daschle's office. It is hard to imagine two separate attacks that could better exemplify the vulnerability of our homeland. Both represent "asymmetric" attacks on us, using unconventional means to attack us where we were the most vulnerable-here in our homeland at our daily workplaces. Even though both of these attacks, or series of attacks, have been described as "surprise attacks," in one key way they were not. Our vulnerability to asymmetric attacks have been identified in several studies and the vulnerabilities to these attacks were specifically identified-the porousness of our borders and the danger of biological attacks. Unfortunately, these studies, like many studies and commissions, were not given the full consideration they were due. The revised bill Senators Lieberman, Graham, and I will introduce will, like our earlier bill,

implement the recommendations of some of these commissions in order to strengthen the security of our nation.

I am pleased to see that former Senator Warren Rudman, who has served on two of these commissions, is here to testify today. Senator Rudman has continued to serve his country since leaving the Senate, and has made significant contributions by his work on the Hart-Rudman and Brown-Rudman commissions. One of the major recommendations of the Hart-Rudman Commission was the establishment of a cabinet-level National Homeland Security Agency. This recommendation is the cornerstone of the bill Senator Lieberman and I introduced in October, and is still a significant portion of the bill we will reintroduce, though we refer to the Agency as a Department. The need for such a department has been reinforced by the hearings this Committee has conducted.

Our revised bill incorporates another key recommendation of that Commission-the need for enhanced strategic planning in the Office of the President. Our revised bill would establish a Director of the National Office for Combating Terrorism, who, with the Secretary of Homeland Security, would be responsible for preparing a National Strategy for Combating Terrorism and

Homeland Security Response, modeled after the Quadrennial Defense Review.

Before I go any further, as I noted earlier, I had the opportunity to testify in October before this Committee with respect to our original bill, and in order to be brief, I will not repeat the points I made in that testimony, and request that the Committee refer to the record of that hearing.

I am pleased to see that Representatives Thornberry, Tauscher, and Harmon have joined us here today. Representatives Thornberry and Tauscher have introduced a bill very similar to the original bill Senator Lieberman and I introduced. Representative Harmon is co-sponsoring a bill that would "codify" Governor Ridge's current position and require the development of a homeland security strategy. I look forward to working with all of them with the hope of combining their bills in order to develop an overall bill that would serve as a companion bill in the House to the bill Senator Lieberman, Senator Graham, and I are co-sponsoring in the Senate.

The need for a new structure to protect the security of our homeland and to combat terrorism was recognized by President Bush in October. First, he established Governor Ridge's position of Assistant to the President for Homeland Security, or as commonly referred to, the

Director of the Office of Homeland Security. He also appointed retired General Wayne Downing as the Director and Deputy National Security Advisor for Combating Terrorism. Although these were important and necessary first steps, they were not enough.

First, with respect to Governor Ridge's position, there are two major problems. The threat to our homeland and border security is so serious that the United States needs more than a presidential advisor and coordinator to perform this important mission. We need a cabinet-level secretary with the appropriate resources. Our bill would do that by creating a cabinet-level department, with the key agencies responsible for protecting our borders and our national infrastructure assigned to it.

Additionally, Governor Ridge is responsible for over 37 billion dollars in the President's budget, but because he is a presidential advisor, there is an issue as to whether he should testify before Congress. I am second to none in my support of the President's right to receive confidential advice from his close advisors. Some have compared Governor Ridge's position to that of Dr. Condoleezza Rice, the National Security Advisor. However, Governor Ridge's authority over such a large piece of the budget clearly distinguishes his position from that of the

National Security Advisor. When an advisor such as Governor Ridge has significant responsibility for budgetary matters, he should be subject to congressional oversight. Congress's authority to exercise the "power of the purse" is probably its strongest basis for conducting oversight of the Executive branch. In order to avoid this dilemma, Governor Ridge's position should be made into a cabinet-level department, subject to congressional oversight.

Additionally, we need to "codify" Governor Ridge's position. I have known Governor Ridge for a long time, and have had the opportunity to work with him during his time in Congress and as governor of Pennsylvania. The President could not have made a better pick for the position. Governor Ridge has a close relationship with the President, and has said that if he runs into resistance in pursuing the President's mandate, he can simply walk down the hallway and see the President. However, he cannot use this access every time he runs into resistance. Also, that means that the President, and the country, are relying on Governor Ridge and his unique circumstances to ensure that the Office of Homeland Security works. That is too personal; the President established the position by Executive Order. We need to further institutionalize the position with legislation that will guarantee the person holding Governor

Ridge's position has the legal authority to accomplish the critical job he has been given.

With respect to General Downing's position, he does not have the bureaucratic authority to carry out his mandate. Our revised bill would strengthen his authority by giving him the power to certify, or de-certify, a federal agency's budget with respect to addressing terrorism. It is only with this power that he will have the ability to effectively coordinate the efforts of the federal government in combating terrorism and to give teeth to the strategy he and the Secretary of Homeland Security will be required to develop.

Today marks the seven month anniversary of the September 11th attacks. Senator Lieberman and I introduced our bill, S.1534, six months ago today and this is the second hearing we are having on the bill. We need to move on this bill. The United States has been free of a terrorist attack since the last anthrax letter was discovered. However, we only need consider the attempt by Richard Reid, the so-called "shoe bomber," and the wave of suicide bombings in the Middle East, to realize that this may only be a brief respite. We are at war against terrorists around the world. We need to act now to better protect our homeland and to ensure that the full resources of the United States-federal, state, and local-are effectively employed to combat

terrorism. I understand that there are differences of opinion between the Administration and the Congress about the approach we are taking. However, based on my over twenty years of experience in the Senate, I believe that agreement will come as we move forward with this legislation. There is no time to spare.

April 11, 2002 (4:25pm)

United States Senate
WASHINGTON, D.C. 20510

Testimony of Senator Bob Graham, D-Florida, Before the Senate Governmental Affairs Committee April 11, 2002

Mr. Chairman and members of the Committee:

Thank you for allowing me to testify today on my legislation to bolster the President's Office of Homeland Security.

Last fall, with Senator Feinstein and others, I introduced legislation (S. 1449) that would establish within the White House the National Office for Combating Terrorism.

The Director of this office would be appointed by the President with the advice and consent of the Senate. The Director would develop a national strategy for prevention of and response to terrorism, and would be required to certify all portions of the federal budget relating to terrorism.

I believe that this type of statutory authority is required to institutionalize the office and assure accountability to the American people.

Shortly after we introduced this legislation, the President asked us to give him and Governor Tom Ridge some time to establish his Office of Homeland Security and to ramp up the War on Terrorism without legislative interference.

I agreed that it was appropriate to wait, and I applaud President Bush and Governor Ridge for their efforts to date.

At the same time, in November, in an op-ed for The Washington Post that I coauthored with Paul Light, director of governmental studies at the Brookings Institution, I set out seven benchmarks against which the American people and we in Congress could measure the effectiveness of the current structure to help us determine if more formal statutory authority was warranted.

These criteria go to the essential questions of Governor Ridge's ability to get what he needs, and the government's ability to give what he asks.

The benchmarks are:

1. Governor Ridge needs to be first in line for information.

He must be "in the loop" if he is to have any chance of influencing the key decisions. Governor Ridge needs to get one of the first calls from the front lines, not the last. He also needs to have access to all relevant paper moving in and out of the Oval Office.

2. Governor Ridge needs access to the principals.

The Office of Homeland Security cannot succeed if Governor Ridge cannot call meetings with Cabinet members and the heads of the agencies he is supposed to coordinate. He cannot settle for deputies, assistant secretaries or associate assistant deputy secretaries.

3. Governor Ridge needs to be a gatekeeper in the budget and personnel process.

If he is to have any hope of persuading agencies to work together, he must be able to influence the budget process and the allocation of new employees.

4. Governor Ridge needs a permanent staff that owes its loyalty to him, and him alone.

But for a handful of longtime aides who have joined him from Pennsylvania, his staff is largely composed of "detailees" from a variety of federal agencies, including some from the very agencies he has been asked to oversee in his effort to build a strong homeland defense.

5. Governor Ridge needs a staff within shouting distance.

He and a few aides have been given office space close to the Oval Office. But most of his staff is housed in a temporary facility in Northwest Washington, miles from the White House. Governor Ridge's staff could end up being distant players, both literally and figuratively.

6. Governor Ridge needs a say in the selection of appointees at the agencies he oversees.

If he has a hand in their selection, Governor Ridge will hold some extra leverage when those people are involved in subsequent policy debates.

7. Governor Ridge needs to be involved in all management reviews of the homeland defense establishment.

Under the Government Performance and Results Act, every federal agency is required to submit an annual performance plan outlining its agenda. Governor Ridge's office should be asked to approve those plans, and should be given access to all Inspector General audits and reports in any of the agencies he coordinates.

So, six months into his tenure, how is Governor Ridge doing?

He has had both success and frustration. He clearly has access to the information needed to do his job, but much of that information is still muddy, its sources many, and its usefulness often mixed – as evidenced by the color-coded system of vague threat warnings that his office developed.

Governor Ridge also enjoys access to key decision-makers such as the president, vice president and attorney general, which was our second criterion. What he has not had – at least, not yet, it appears – is success in making his case on the need for sweeping restructuring of the nation's disorganized homeland security agencies.

Unfortunately, no one knows for sure just what he believes about the need for reorganization – as a White House staffer, he has not been given permission to testify before the Senate Appropriations Committee.

He appears to have had his greatest success in the budget and personnel process, our third criterion. Homeland security agencies such as the INS and Coast Guard would receive more money and headcount under the President's Fiscal Year 2002 supplemental spending request and his Fiscal Year 2003 budget than they could ever have expected during ordinary times.

But as Governor Ridge has argued in making the case *against* testifying before Congress, he has no power to spend, obligate, or audit money.

As for his staff, executive office space, and role in selecting key presidential appointees, Governor Ridge has had mixed success. He is still running a minimalist operation, and he is still looking for office space within shouting distance of the Old Executive Office Building.

And it is not at all clear that he has had a role in selecting key personnel such as the recent nominees to be Surgeon General or director of the National Institutes of Health, both of whom will be essential players in the fight against bioterrorism.

Governor Ridge also does not appear to have had much say over the operations and management of the homeland security establishment, which was our seventh and final criterion.

As the recent events at INS suggest, homeland security depends on agencies that are properly structured, staffed, and led. He can cajole, advise, influence, and arm-twist, but in the final analysis, he cannot order anyone to do anything.

Governor Ridge may have made the most persuasive case for a stronger Office of Homeland Security in a little- noticed speech just last month. Appearing before an association of state and local emergency management officials, he talked about the need for more coordination, better technology, and simple accountability.

Here is what he told the National Emergency Management Association: "As part of our consideration of the new 21st-century border, we are presently considering a range of options that goes from simply a new technology architecture that puts it all on the same database, to a series of consolidations that could ultimately involve four or five departments. There is no line of accountability. As you take a look at 21st-century borders, you have got to have somebody in charge."

Well, I believe that person should be Governor Ridge. And I am deeply concerned that Governor Ridge cannot do all that the President intends for him to do – and that the nation needs for him to do – under his present authority.

While the governor has a very close relationship with the President, our efforts to defend America should not have to rely on personal friendships. We need institutional foundations that will endure beyond the tenure of our current leaders.

I do not believe that Governor Ridge has the clout he needs to perform his essential tasks without gaining the power that would be granted to him through permanent law. Foremost among these is budget authority, which only Congress can convey.

I also believe the director of the office should be confirmed by the Senate. Confirmation will ensure his accountability to both Congress and the American people. It will also enhance his ability to build support for his initiatives in Congress.

As I said last fall, I have no intention of undermining the President's plans for his Office of Homeland Security. We seek to give the office the authority it needs to carry out its extremely important functions.

I am pleased that we have been able to work with you, Mr. Chairman, to merge our proposals, and I look forward to working with you to ensure that we have the most effective homeland defense for America.

Thank you.

Testimony of the Honorable Jane Harman
Senate Governmental Affairs Committee
April 11, 2002

Thank you Chairman Lieberman, Senator Thompson, and Members of the Committee.

I appreciate the opportunity to appear once again before this Committee to testify on proposals to improve the government's organization for homeland security. I applaud you for your leadership on this important issue.

To put this topic in better context, we need to look at the governments' homeland security accomplishments over the past six months. On October 8, 2001, Governor Tom Ridge was sworn in as the Director of the Office of Homeland Security (OHS). Executive Order 13288 outlined the organization and functions of the new Office and required the development and coordination of a national homeland security strategy.

This strategy today—on April 11—is still absent.

In the past six months, Tom Ridge and OHS have become known principally for two actions. He introduced the Homeland Security Advisory System, assigning colors to five levels of terrorist threat. Ridge reportedly also played a major role in the Administration's budget process, resulting in a homeland security request for $37.7 billion for homeland security.

Note that the threat advisory system has been placed under the jurisdiction of Attorney General John Ashcroft and the Administration has yet to designate someone to testify on the homeland security budget.

As I testified to this Committee in October, the position of the Director of Homeland Security was, and remains, too weak to accomplish its mission. Without Congressional authorization, the Office lacks statutory authority, and is not subject to Congressional oversight. Similar positions—such as the National Security Advisor and the Director of the Office of National Drug Control Policy—were created by Congress and vested with specific statutory authorities.

The Director of Homeland Security cannot be an advisory position, despite the Administration's statements. According to the President's Executive Order, "[t]he mission of the Office shall be to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks."

The Order specifies that "[t]he functions of the Office shall be to coordinate the executive branch's efforts to detect, prepare for, prevent, protect against, respond to, and recover from terrorist attacks within the United States."

To accomplish this mission, the Director of Homeland Security needs the institutional clout to win the bureaucratic turf wars and infighting. To succeed, Governor Ridge must oversee and coordinate the efforts of scores of federal departments and agencies. This will only happen if

Ridge has the authority to direct other Cabinet Secretaries to participate in the larger homeland security mission as his strategy requires, not as they prefer.

The legislation before the Committee today, the National Homeland Security and Combatting Terrorism Act, addresses the shortcomings in current organization and authorities for homeland security. It creates in statute a White House office for policymaking and coordination, led by a Senate-confirmed, Cabinet level Director. These steps are in accord with the recommendations of the Gilmore Commission, and as reflected in two pieces of pending legislation: H.R. 3026 (the Office of Homeland Security Act) which I introduced with Congressman Gibbons of Nevada, and S. 1449, introduced by Senator Graham.

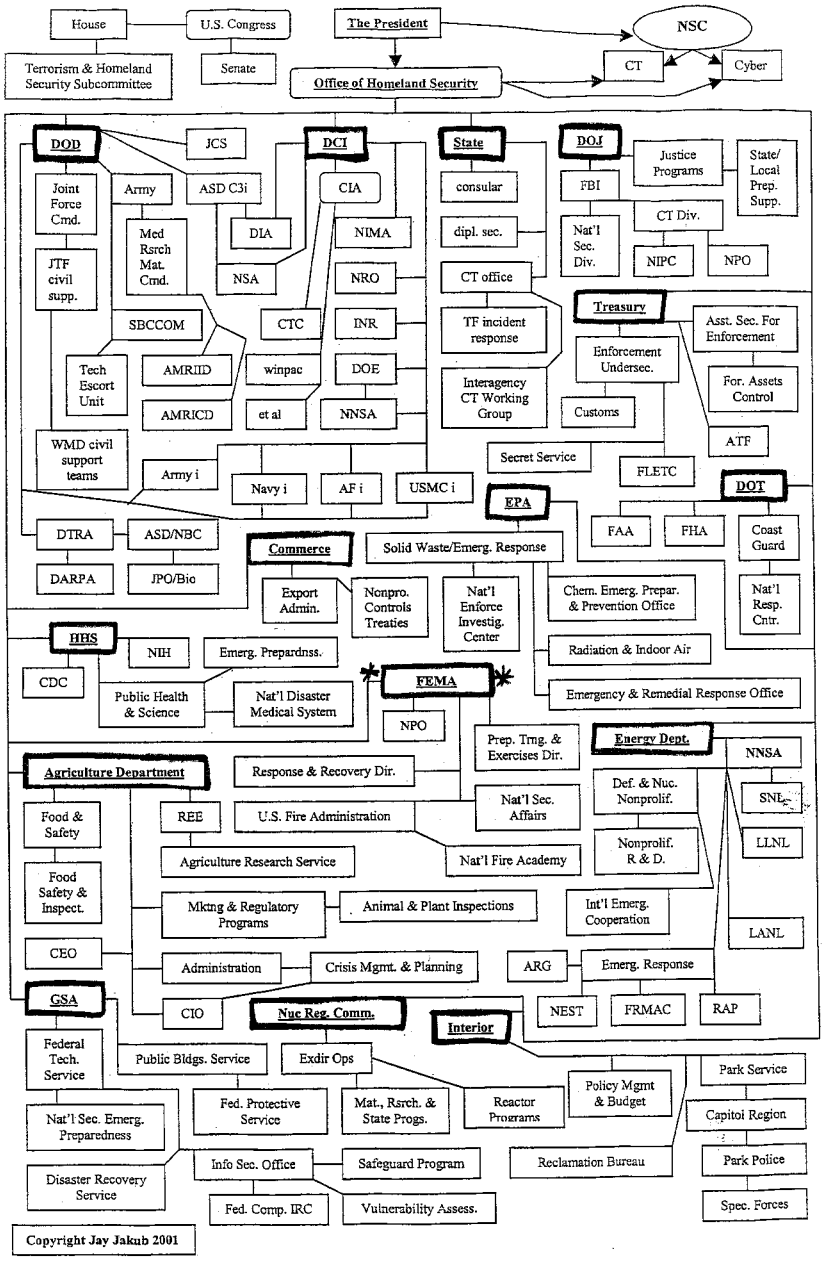
The legislation also consolidates and elevates border control, critical infrastructure, and emergency response agencies into a Homeland Security Department. I would note that Tom Ridge supported a similar concept in November when proposing a far-reaching border protection agency consolidation, but his lack of bureaucratic clout prevented him from prevailing.

The consolidation of these agencies and the elevation to full Cabinet status is necessary to implement U.S. homeland security policy. The Secretary of Homeland Security will give a stronger voice and focus to protecting the nation's borders and critical infrastructure, and to emergency preparedness and response.

However, there is more to homeland security than the functions included in the proposed Department. The efforts of the CDC on bioterrorism, for example, or the WMD remediation done by the EPA will not be part of the Department.

We still need coordination and oversight over the entire enterprise, and an office to lead in developing the strategy and wielding authority over the homeland security budget for the federal government. Legislation needs to be clear in assigning these responsibilities and assigning authority for each task.

Mr. Thornberry, Ms. Tauscher, and a bipartisan group in the House looks forward to working with you on introducing a companion bill and passing this important piece of legislation.


House
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NIPC
NPO
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NSA
NRO
CT office
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CTC
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FOR IMMEDIATE RELEASE
April 11, 2002

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Statement by Congresswoman Ellen Tauscher Before the Senate Governmental Affairs Committee

"Mr. Chairman, I would like to thank you and Senator Thompson for inviting me to testify in support of a critical step Congress must take to improve the security and safety of the United States.

"It is thanks to your strong leadership, Mr. Chairman, and that of your colleagues Senators Graham and Specter, that we developed legislation to create a Department of National Homeland Security with authority over the key components in the federal government dedicated to protecting the nation.

"I am pleased to testify today with my House colleagues, Representatives Mac Thornberry and Jane Harman, with whom I have worked to create the House version of this bill. I especially applaud Mac Thornberry for his tremendous foresight on this issue long before September 11 even happened. My friend, former Senator Rudman, has also worked hard on this issue and his recommendations have been included in our bill.

"We are here because the administration has not given Governor Ridge the right tools to do his job and to protect the American people.

"That's why Congress needs to create a Homeland Security Department that would work in concert with a National Office for Combating Terrorism in the White House. It is the only way to really focus and unify the homeland security efforts in the federal government.

"We need to think boldly about how to protect Americans from the increasing terrorist threat.

"The House and Senate bills are the right way to help the federal government address America's biggest national security challenge because they will give Governor Ridge the resources and authority he needs to protect our homeland.

"It simply doesn't make sense to have more than 40 government agencies responsible for various pieces of counter-terrorism and homeland security like we do today.

(OVER)

"By consolidating FEMA, Customs, the law enforcement portions of the INS, the Coast Guard, and parts of the F.B.I. into a new agency in charge of homeland security, we will focus our counter-terrorism efforts and make them exponentially more effective.

"Another portion of the bill that I believe will make a real difference is the creation of an Office of Science and Technology within the new agency. This office will better channel the wealth of expertise at our nation's defense laboratories to detect and counter the terrorist threat.

"Overall, I believe President Bush took an important first step when he named Governor Ridge to coordinate our nation's homeland security efforts. But it was just that – a first step. If Congress doesn't follow the President's lead, Governor Ridge's efforts are doomed to fail.

"The administration insists that it does not need a legislative mandate from Congress and that the power of Governor Ridge's relationship with the President will overcome all bureaucratic odds. But I would rather 'trust' and 'verify' than depend on a personal relationship that may or may not exist with another president.

"We need to ensure that any future Homeland Security Director does not have to beg for resources from four dozen different bureaucracies.

"There is no room for error when it comes to protecting America.

"We need to give the person in charge of homeland security the tools, authority and money he needs to succeed. And creating a Homeland Security Department is the way to do that.

"Thank you, Mr. Chairman."

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Testimony of Congressman Mac Thornberry
Senate Governmental Affairs Committee Hearing

April 11, 2002

Mr. Chairman, Senator Thompson, Members of the Committee, thank you for inviting me back to discuss how we can improve the ability of the federal government to meet the security challenges of today and tomorrow.

I particularly appreciate the time and effort that this Committee has devoted to organizational reform of the federal government. It is not very glamorous; rearranging boxes on an organizational chart does not catch the imagination of most people. It is hard to prove or to quantify precise benefits. But I am convinced that organizational structure is very important. This kind of reform is not a magic answer to our security concerns, but it is an essential piece of making our country more secure.

Since the last time I appeared before you, there seems to have been little progress on organizational reform related to homeland security. According to press reports and interviews that Governor Ridge has given, he believes that reforms are needed. As a matter of fact, I know of no one who stands up to defend the current diffuse arrangement of homeland security related agencies. No one can defend it.

The only issue is what we do about it.

Reportedly, Governor Ridge has submitted a proposal to the President to merge the Customs Service and Border Patrol and then keep the combined agency within the Department of Justice. It seems to me that such an arrangement may be somewhat better than what we have now, but it is far short of what we should do.

In fact, I worry that the Administration and Congress may take the path of less, if not least, resistance -- splitting the INS in half, bringing Customs over to the Justice Department to be put with the Border Patrol, and pretending we have solved the problems. Now is the time to try to get it right, and we ought to do our best to do so.

I strongly believe that the proposal initiated by the Hart-Rudman Commission, filed by Ms. Tauscher and myself in the House and by Chairman Lieberman and Senator Spector in the Senate, does make us stronger. Bringing those agencies responsible for border security and cyber terrorism and emergency response under one umbrella allows us to have a better coordinated, more strategic, and more coherent approach to homeland security. Installing a clear chain of command and direct budget authority is essential to make our efforts effective.

Since I filed the original homeland security bill in March 2001, I have come to believe that within the border security section, we should also include Department of Agriculture border inspectors and INS inspectors. But even if we do exactly what our bills want to do, there is still a

need to have coordination and accountability in a wider sphere. Using the Drug Czar precedent, it seems reasonable to have a Senate confirmed position within the Executive Office of the President to develop government-wide strategy.

Then, even if a particular issue or question does not fall into the new Department of Homeland Security, Congress has somebody to ask about it. In my view, a Czar or White House coordinator cannot take the place of a cabinet officer with a clear chain of command and direct budget authority, but it can provide an added benefit in overall strategy and budgeting.

And we should also remind ourselves of the need to look in the mirror at Congress' own organizational structure in which at least 15 committees have some responsibility for homeland security. Some sort of select committee with appropriate staff and expertise would help us to focus on these issues.

Mr. Chairman, with all of the turmoil in the world today, organizational reform does not seem like a high priority issue. And the temptation will be to let it slip, to not take on the turf battles in the bureaucracy and in Congress, to just pour more money into the existing fragmented agencies and express our shock when something bad happens.

We cannot fall into that trap. Even if we organize ourselves perfectly, we cannot guarantee that more Americans will not be the victims of terrorists. But if we make a half-hearted effort, then we bear part of the responsibility for failing to do all we can to protect our homeland and the people who inhabit it.

United States General Accounting Office

GAO

Testimony

Before the Committee on Governmental Affairs, U.S. Senate

For Release on Delivery
Expected at 9 a.m.
Thursday, April 11, 2002

HOMELAND SECURITY

Responsibility And Accountability For Achieving National Goals

Statement of David M. Walker,
Comptroller General of the United States

GAO-02-267T

Mr. Chairman and Members of the Committee:

Seven months ago today, terrorist-related events in New York, Washington, D.C. and Pennsylvania profoundly changed the United States and much of the world. As the country has begun to come to terms with the pain and consequences of this tragedy, so, too, has it started to develop a effective response to homeland security challenges.

I appreciate the opportunity to appear before this Committee again to discuss homeland security, one of the most vital issues confronting the nation. I appeared before the Committee on September 21st of last year, just days after the terrorist attacks. I outlined the nature of some of the threats faced by the United States and the need to create a leadership structure and framework for focusing on homeland security. In my testimony today I will discuss: (1) the need for a statutory-based structure for leading, coordinating and evaluating the nation's homeland security to help ensure an effective approach and appropriate accountability to Congress and the American people; (2) the Executive Branch's initial efforts to develop a national strategy for homeland security; (3) the impact of an invigorated homeland security program on budgets and resources; and (4) our efforts to obtain information from with the Office of Homeland Security (OHS).

Introduction

Since the attacks of September 11th, we have seen the nation unite and work to better coordinate preparedness efforts among federal, state, and local agencies, as well as among private businesses, community groups, and individual citizens. Our challenge now is to build upon this commitment and to further improve our preparedness in a manner that can be sustained over time.

It is critical that we have strong and sustained leadership to provide effective security to our nation. President Bush took a number of important steps in the aftermath of the terrorist attacks to strengthen the country's homeland security efforts, including the creation of an Office of Homeland Security (OHS). The creation of such a focal point is consistent with a previous GAO recommendation.[1] At the same time, for reasons noted later

[1] U.S. General Accounting Office, *Combating Terrorism: Selected Challenges and Related Recommendations*, GAO-01-822 (Washington, D.C. September 2001).

in this testimony, GAO had recommended that Congress should establish this coordinating and planning entity by statute.

The success of a homeland security strategy relies on the ability of all levels of government and the private sector to communicate and cooperate effectively with one another. Such a strategy requires that the federal government's role be considered in relation to other levels of government. The appropriate goals and objectives for homeland security must be set, and the the tools and resources must be used to enable government and the private sector to achieve these goals and desired outcomes.[2] Indeed, our ongoing work for Congress indicates that federal agencies, state and local governments, and the private sector are looking for guidance on how to better coordinate their missions and more effectively contribute to a comprehensive homeland security effort. Direction, coordination, and collaboration are critical to effectively implement the homeland security strategy.

Among other things, it is incumbent on the federal government to formulate realistic budget and resource plans to support the implementation of an efficient and effective homeland security program. In this regard, extensive resources that have recently been designated for homeland security, along with those resources proposed for the upcoming fiscal year, clearly reflect a large and rapidly growing federal role involving direct spending and assistance to others. While we believe that a robust homeland security program is critical to the nation's protection and prosperity, it must be developed in a manner that is targeted to areas of greatest need and avoids wasteful, unfocused or "hitchhiker" spending. Moreover, the new commitments will compete with and increase the pressure on other important priorities within the budget. As GAO's long term budget simulation notes, known demographic trends and rising health care costs will place unprecedented pressures on our longer range fiscal position. A fundamental review of existing programs and operations can create much-needed fiscal flexibility to address emerging needs by weeding out programs that are out-dated, poorly targeted, or inefficiently designed and managed.

[2] Another important aspect of enhancing state and local preparedness is risk management. Risk management is an important tool for prioritizing limited resources in the face of uncertain threats. For more information on risk management, see U.S. General Accounting Office, *Homeland Security: Risk Management Can Help Us Defend Against Terrorism*, GAO-02-208T (Washington, D.C.: October 31, 2001).

The obvious and continuing importance of homeland security to all Americans, in conjunction with the expected rapid growth in related program expenditures, creates a vital need to involve both the Executive and Legislative branches of government in ensuring optimum performance and appropriate accountability of our homeland security activities. In fulfilling its Constitutional responsibilities, Congress retains its prerogative to engage in oversight on how the federal government as a whole, and a range of federal entities are preparing to prevent and respond to future terrorist attacks. In its efforts to review the effectiveness of homeland security management and operations, Congress, as with other government programs, has frequently called upon the GAO to conduct professional, objective, fact-based non-partisan, and non-ideological audits, investigations and evaluations. We currently have over 60 congressional requests to conduct reviews in the important area of homeland security. At this point in time, however, I must say that we have experienced some access problems in connection with our OHS related efforts. We are, however, hopeful that we will soon be able to agree on a course of action that will enable us to meet the needs of the Congress while not placing any unnecessary or unrealistic burdens on OHS.

My comments today are based on a body of GAO's existing work on terrorism and emergency preparedness,[3] as well as on our review of many other studies.[4]

Statutory Basis for Homeland Security

In October 2001, the president established OHS as the federal focal point to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist attacks. While this action represents a significant step, the role and effectiveness of OHS in setting priorities, interacting with agencies on program development and implementation, and developing and enforcing overall federal policy in homeland security related activities is in the formative stages.

To this end, it is important to re-emphasize that the leadership in the homeland security area should be national and institutional in nature.

[3] See attached listing of related GAO products.

[4] These studies include the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *Third Annual Report (Arlington, VA: RAND*, Dec. 15, 2001) and the United States Commission on National Security/21st Century, *Road Map for Security: Imperative for Change*, February 15, 2001.

Homeland security is a long-term commitment and should be grounded in the institutional framework of the nation's governmental structure. It must span the terms of various administrations and individuals.

GAO has in the past and continues now to recommend that an Office of Homeland Security be institutionalized in statute to ensure the efficiency and effectiveness of this effort and ensure its accountability to the Congress and the American people. In our September 20, 2001 report on combating terrorism, as mentioned, we recommended the establishment of a single focal point with responsibility and authority for all critical leadership and coordination functions to combat terrorism. We recommended that the focal point be established within the Executive Office of the President. The executive order establishing the OHS follows our recommendation in that regard and also reflects many of our other suggestions. We also recommended that Congress establish the office through legislation to ensure its legitimacy, authority, and sustainability. Equally as important, we recommended that the head of the office be appointed by the President with the advice and consent of the Senate in order to provide appropriate access and accountability to Congress and the American people.

In testimony to Congress in November of last year, I applauded the appointment of Governor Ridge as a positive first step in marshalling the resources necessary to address homeland security requirements. I also noted that statutory underpinnings and effective oversight would be critical to sustaining any related broad-scale initiatives over the long term.

We recognize that OHS has achieved some early results in suggesting a budgetary framework and emphasizing homeland security priorities in the President's proposed budget. Despite OHS' efforts to date, however, the informal structure and relationship of that office to the White House and other parts of the Executive Branch may not represent the most effective approach for instituting a permanent entity with sufficient authority to achieve all of the important objectives for securing our borders. Without a statutory framework that clarifies OHS' roles and responsibilities, its budget and resources, and its authority to leverage other federal departments and agencies, the office will likely face persistent obstacles in obtaining fast, effective, and sustainable results across the government and throughout the nation. Moreover, such efforts need to transcend administrations, individuals and personal relationships, in order to ensure their effectiveness and sustainability in protecting our nation.

Past GAO reports have noted increased effectiveness and accountability in connection with various agencies and activities when the entity involved had a legislative foundation based in congressional consensus and subject to appropriate accountability.[5] Providing a statutory basis for an important function, such as the functions provided by OHS, can help to assure there is reasonable agreement between the executive and legislative branches regarding the purpose and mission of the entity. It serves to provide a basis for a specific allocation of human and financial resources to the entity in support of its mission. It also provides an institutional basis for the entity and its leadership that can span changes in administrations and key personnel. Importantly, it also helps to enhance accountability to the Congress and the American people.

History has shown that areas of major importance have been addressed by statute. This is especially true when the activities involved will be long-term in nature and are likely to require continuing appropriations for an indefinite period of time. In this regard, according to President Bush, our homeland security effort will be long term in nature, and will require the expenditure of significant sums of appropriated funds. Congress' allocation of approximately $60 billion in fiscal 2002, including a $40 billion supplemental request, and the President's request of approximately $38 billion for fiscal 2003, serve to underscore the importance of this effort and the magnitude of the amounts involved.

However, there has been one significant recent effort at the federal level that did not involve a statutory basis or a Presidential appointee subject to Senate confirmation, but which was still successful. That case involved the federal government's Y2K effort that was headed by John Koskinen, a former Deputy Director of OMB. There are, however, some important differences between the homeland security and Y2K efforts. The Y2K effort involved the entire federal government but over a limited and defined period of time. Further, it had a very specific and defined objective. It involved the creation of a special focus by both the Senate and House of Representatives to focus on this issue and significant and ongoing efforts by the GAO to assess related efforts and report to the Congress on an ongoing basis. In addition, John Koskinen testified on numerous occasions as to the status of these efforts. Many of these factors do not exist in connection with OHS, and reinforce the need for a statutory basis.

[5] *Government Reform: Legislation Would Strengthen Federal Management of Information and Technology*, July 25, 1995 (GAO/T-AIMD-95-205).

National Homeland Security Strategy

We have tracked and analyzed various federal programs to combat terrorism for many years and have repeatedly called for the development of a national strategy for preparedness. We have not been alone in this message: the Gilmore Commission, and several national associations, such as the National Emergency Management Association and the National Governors Association, have advocated the establishment of a homeland security strategy. The attorney general's Five-Year Interagency Counterterrorism Crime and Technology Plan, issued in December 1998, represents one attempt to develop a national strategy on combating terrorism. This plan entailed a substantial interagency effort and could potentially serve as a basis for a national preparedness strategy. However, we found it lacking in two critical elements necessary for an effective strategy: (1) identification of measurable outcomes and (2) identification of the appropriate state and local government roles in responding to a terrorist attack. [6]

To more effectively integrate and coordinate the varying roles and responsibilities of all levels of government, GAO has recommended the development of a central management focus and a national strategy to improve homeland security and enhance partnerships between federal, state and local governments, and the private sector, to guard against and respond to terrorist attacks. The establishment of the Office of National Preparedness (ONP) within the Federal Emergency Management Agency (FEMA) and the establishment of OHS under the leadership of Governor Ridge are important and potentially significant initial steps. We recognize that the President, in his proposed 2003 budget, announced that OHS will propose a national strategy later this year. As that strategy is finalized, we believe that OHS should include three key aspects:

- **A definition of "homeland security" and clarification of the appropriate roles and responsibilities of federal, state, and local entities.** A clear definition of homeland security is critical to establishing parameters for structuring homeland security efforts and providing a basis for defining and establishing appropriate roles and missions. Our previous work has found fragmentation and overlap among federal programs. Over 40 federal entities have roles in combating terrorism and, taken as a whole, past federal efforts often

[6] See U.S. General Accounting Office, *Combating Terrorism: Linking Threats to Strategies and Resources*, GAO/T-NSIAD-00-218 (Washington, D.C.: July 26, 2000).

have resulted in a lack of accountability, as well as gaps and duplication among programs. In addition to limitations on effectiveness that this problem could create, state and local officials have noted that it can be difficult to identify and leverage homeland security resources and effectively partner with the federal government. Partnerships not only with state and local governments, but the private sector, will be critical to successful achievement of our national goals. Critical to this process will be a re-examination of organizations and operations to identify the most efficient, economic means to achieve our goals. As a result, organizational re-alignments and consolidations may be warranted.

- **The establishment of goals and performance indicators to guide the nation's homeland security efforts.** The Congress has long recognized the need to objectively assess the results of federal programs. For the nation's homeland security programs, however, we have not yet seen the development of appropriate performance measures or results-oriented outcomes. The Government Performance and Results Act of 1993 (commonly referred to as GPRA or the Results Act) requires that government departments and agencies focus on the performance and results of their programs rather than on program resources and activities, as they had done in the past. To establish and report on such measures, agencies are required to set strategic and annual goals, measure performance, and report on the degree to which goals are met.

- **A careful choice of the most appropriate tools of government to best implement the national strategy and achieve national goals.** The choice and design of policy tools, such as grants, regulations, tax preferences, and partnerships, can enhance government's capacity to (1) target areas of highest risk to better ensure that scarce federal resources address the most pressing needs, (2) promote shared responsibilities by all parties, and (3) track and assess progress toward achieving national goals.

Homeland Security Budget

There has been a growing emphasis over the past decade on improving preparedness for terrorist events through increased funding and resource planning. After the nerve gas attack in the Tokyo subway system on March 20, 1995, and the Oklahoma City bombing on April 19, 1995, the United States initiated a new effort to combat terrorism. In June 1995, Presidential Decision Directive 39 was issued, enumerating responsibilities for federal agencies in combating terrorism, including domestic terrorism.

Recognizing the vulnerability of the United States to various forms of terrorism, the Congress passed the Defense Against Weapons of Mass Destruction Act of 1996 (also known as the Nunn-Lugar-Domenici program) to train and equip state and local emergency services personnel who would likely be the first responders to a domestic terrorist event. Other federal agencies, including those in the Department of Justice, Department of Energy, FEMA and Environmental Protection Agency, have also developed programs to assist state and local governments in preparing for terrorist events.

The attacks of September 11, 2001, as well as the subsequent anthrax episodes, dramatically exposed the nation's vulnerabilities to domestic terrorism and prompted numerous legislative proposals to further strengthen our preparedness and response. During the first session of the 107th Congress, several bills were introduced with provisions relating to state and local preparedness. For instance, H.R. 525, the Preparedness Against Domestic Terrorism Act of 2001 proposed the establishment of a Council on Domestic Terrorism Preparedness to enhance the capabilities of state and local emergency preparedness and response.

Funding for homeland security increased substantially after the September 11th attacks. According to documents supporting the president's fiscal year 2003 budget request, about $19.5 billion in federal funding for homeland security was enacted in fiscal year 2002.[7] The Congress added to this amount by passing an emergency supplemental appropriation of $40 billion dollars.[8] According to the budget request documents, about one-quarter of that amount, nearly $9.8 billion, was dedicated to strengthening our defenses at home, resulting in an increase in total federal funding to homeland security of about 50 percent, to $29.3 billion. The President's FY2003 Budget, if fully funded, would increase funds for homeland security by over 70 percent from FY 2002 enacted levels. Table 1 compares fiscal year 2002 funding for homeland security by major categories with the president's proposal for fiscal year 2003. Not included in the table is a $3.3 billion emergency supplemental request sent to Congress on March 21st.

[7] "*Securing the Homeland, Strengthening the Nation.*" For the complete document, see the Web site: http://www.whitehouse.gov/homeland/homeland_security_book.html

[8] 2001 *Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States*, (P.L. 107-38).

The events of last fall provide an impetus for agencies to rethink approaches and priorities to enable them to better target resources to address the urgent national preparedness needs. In some cases the crisis might prompt attention to long standing problems that have become more pressing. For instance, we have long pointed to overlapping and duplicative food safety programs in the federal government. While such overlap has been responsible for poor coordination and inefficient allocation of resources, they take on new meaning given the potential threat from bioterrorism.

Table 1: Homeland Security by Major Funding Categories for Fiscal Year 2002 and Proposed for Fiscal Year 2003

Dollars in millions

Major funding category	FY2002 enacted	Emergency supplemental	FY2002 total	The Presicent's FY2003 budget request
Supporting first responders	$291	$651	$942	$3,500
Defending against biological terrorism	1,408	3,730	5,138	5,898
Securing America's borders	8,752	1,194	9,946	10,615
Using 21st century technology for homeland security	155	75	230	722
Aviation security	1,543	1,035	2,578	4,800
DOD homeland security	4,201	689	4,890	6,815
Other non-DOD homeland security	3,186	2,384	5,570	5,352
Total	**$19,536**	**$9,758**	**$29,294**	**$37,702**

Source: FY 2003 president's budget document, "Securing the Homeland, Strengthening the Nation."

The events of last fall provide an impetus for agencies to rethink approaches and priorities to enable them to better target resources to address the urgent national preparedness needs. In some cases the crisis might prompt attention to long standing problems that have become more pressing. For instance, we have long pointed to overlapping and duplicative food safety programs in the federal government. While such overlap has been responsible for poor coordination and inefficient allocation of resources, they take on new meaning given the potential threat from bioterrorism.

Efforts to Obtain Information from OHS

Numerous discussions have been held about the need to enhance the nation's preparedness but, to date, we have not yet seen evidence of this administration's national preparedness goals and measurable performance indicators. These are critical components for assessing program results refining strategies and objectives. In addition, our work has shown that the capability of state and local governments to effectively respond to catastrophic terrorist attacks is uncertain.

All of these factors make it increasingly clear that the United States still has a long way to go in meeting homeland security objectives. It is equally clear that both branches of the federal government must perform their respective roles to ensure that the nation's approach to homeland security is effective and its results are accountable to the American people. In the past, Congress, in exercising its legitimate oversight role, has called upon GAO to evaluate the policies, programs, performance and expenditures of a variety of government agencies and authorities. Congress has continued to utilize GAO for this purpose with respect to homeland security. As I mentioned previously, GAO is currently responding to over 60 requests in various homeland security areas like critical infrastructure, border security, public health, non-proliferation, and related overall strategic planning. More than two-thirds of these requests are from either the chairs or ranking members of congressional committees and subcommittees. GAO's reputation and dedication to providing professional, objective, fact-based, non-partisan and non-ideological audits, investigations and evaluations is an integral part of Congress' efforts to exercise its legitimate role in the American governmental framework and to achieve national policy objectives on behalf of the American people.

Indeed, the importance and cost, as well as the long-term success, of homeland security programs require a coordinated effort of the executive and legislative branches of government. The Congress' role in appropriation of funds and oversight of programs is well established. While the Congress has appropriated substantial sums for homeland security, its efforts to engage in effective oversight have been hampered as a result of the homeland security structure established under the executive order. Effective accountability cannot be achieved without adequate Congressional oversight, and effective oversight cannot be achieved without appropriate access to records and other information.

In this regard, our efforts to assist the Congress in obtaining information from the OHS have to date not borne fruit. We have tried to engage the Office both formally and informally. We have provided assurances that we

recognize the magnitude of the effort OHS is undertaking and that we have taken steps to consolidate the many information requests we have received from the Congress. We are committed to minimizing the burden on OHS by requesting relevant information from departments and agencies whenever possible. Nevertheless, there remains a certain core of information that only OHS can provide. Despite a written request, meeting and telephone conversations, to date we have not received this information. Importantly, OHS has recently informed us that they are willing to "engage" with GAO. It is important that we begin to receive information we need. As of now, a meeting is scheduled for next week. We are hopeful that as long as both parties are reasoned and reasonable about our respective needs and obligations that we will be able to obtain access to the information that we need from OHS. However, actions speak louder than words and only time will tell.

Mr. Chairman, in conclusion, it is clear that a long-term effort will be required for the nation to become more secure from, and able to respond to, attacks on our homeland. America's national strategy must be both affordable and sustainable over the years ahead. It is also important to note that the risk for protecting the nation can never be reduced to zero – and our strategies and activities should reflect this important principle as we work to improve the nation's security. In my testimony today, I have emphasized the importance of establishing a statutory framework for homeland security, discussed recommendations for a national homeland security strategy and its impact on the budget. I also raised important issues regarding accountability and access to records. As increasing demands are placed on budgets at all levels of government, it will be necessary to put our longer term fiscal house in order. In particular, agencies will need to revise, reassess and reprioritize their strategic goals and initiatives to better target available resources to address urgent homeland security needs.

This completes my prepared statement. I would be pleased to respond to any questions you or other members of the Committee may have.

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TESTIMONY OF
MITCHELL E. DANIELS, JR.
DIRECTOR
OFFICE OF MANAGEMENT AND BUDGET
BEFORE
COMMITTEE ON GOVERNMENTAL AFFAIRS
U.S. SENATE

APRIL 11, 2002

Mr. Chairman, Mr. Thompson, Members of the Committee, I am pleased to be here this morning to discuss homeland security. The bills under review this morning are meant to improve the way the Federal government is structured regarding homeland security needs. Pursuant to the management responsibilities inherent in my role as the Director of the Office of Management and Budget, I am here to comment on the organizational issues involving a coordinated homeland security effort within the Administration and to ensure they are openly discussed between the Executive Branch and the Congress.

Introduction

Our nation learned a terrible lesson on September 11th. The characteristics of American society that we cherish -- our freedom, our openness, our great cities, our modern transportation systems -- make us vulnerable to terrorism of catastrophic proportions. This vulnerability will exist even after we bring justice to those responsible for the events of September 11th. Indeed, the threat of mass-destruction terrorism has become a reality of life in the 21st Century. It is a permanent condition to which not just America, but the entire world must adjust.

The federal government must have as its top priority securing the homeland from future terrorist attacks. This will involve major new programs and significant reforms by the federal government, several of which are described in the FY 2003 Budget. But it will also involve new or expanded efforts by state and local governments, private industry, non-governmental organizations, and indeed all Americans. The higher priority we all now attach to homeland security has already begun to ripple through the land.

Homeland security is a challenge of monumental scale and complexity. It will not be cheap, easy, or quick. Achieving our homeland security objectives will require vast sums of money, strenuous labor, and many years. Our work has already begun, and it will continue. The American people should have no doubt that ultimately we will succeed in weaving a proper and permanent level of security into the fabric of America.

This President's FY 2003 budget reflects not just our absolute commitment to achieving a much more secure homeland, but also our determination to do so in a manner that preserves liberty and strengthens our economy.

September 11th and Our Immediate Response

The September 11th terrorist attacks on the World Trade Center and the Pentagon have presented an unprecedented challenge to our nation. The response has been, and must continue to

be, equal to that challenge. In the immediate aftermath of the attacks, Congress swiftly appropriated $40 billion to compensate victims, aid reconstruction, wage war against terrorism, and strengthen our defenses at home. In the seven months since September 11th, funding provided for homeland security purposes has helped to:

- increase the number of air marshals on our airlines;
- support the largest criminal investigation in U.S. history;
- acquire enough medicine to treat up to 10 million more people for anthrax or other bacterial infections;
- investigate the sources of terrorist funding, and then freeze the financial assets of more than150 individuals and organizations connected to international terrorism;
- deploy hundreds of Coast Guard cutters, aircraft, and small boats to patrol the approaches to our ports and protect them from internal or external threats;
- acquire equipment for certain major mail sorting facilities to find and destroy anthrax bacteria and other biological agents of terror;
- station 8,000 National Guard troops at baggage-screening checkpoints at 420 major airports; and,
- strengthen our intelligence capabilities, with the objective of detecting terrorist threats before they materialize, so that we can prevent terrorist activities.

Homeland Security Strategy

The Administration is now taking the next step. When the President established a new Office of Homeland Security, under the leadership of Governor Tom Ridge, he directed the Office "to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks." We have been building that strategy on many fronts, and it is our intention to prepare a document this summer that will summarize that strategy in one place. This strategy will meet four key tests:

- The strategy for homeland security will be comprehensive and will integrate the full range of homeland security activities into a single, mutually supporting plan.
- The strategy will be a national strategy, not just a federal government strategy as the threat posed by terrorism does not fall solely within the jurisdiction of the federal government. To defeat terrorism, the federal government must work with states and localities and the private sector.
- The strategy will outline a long-term plan to strengthen homeland security.
- Finally, the strategy will include measures by which we can evaluate progress and allocate resources. These objectives will set the goals for federal departments and agencies. They will also give guidance to state and local governments and the private sector.

At the same time we craft a national strategy, the Administration will begin work immediately on four urgent and essential missions for the defense of our homeland: ensuring state and local first responders (firefighters, police, and rescue workers) are prepared for terrorism; enhancing our defenses against biological attacks; securing our borders; and, sharing information and using information technology to secure the homeland.

These four missions lead our homeland security agenda -- but they are not the whole of it. We must also finish the job of securing our airways. In 2003, the new Transportation Security Administration (TSA) will strive to meet the tight deadlines and rigorous aviation security requirements set by Congress. In addition, we also propose a robust expansion in domestic law enforcement work. The 2003 Budget requests enhancements to the capabilities of the FBI and other law enforcement/intelligence agencies. The President's Budget for 2003 includes total spending for homeland security that would rise to $38 billion in 2003 -- an $18 billion increase over the total for 2002, and a virtual doubling of the pre-September 11th levels.

On March 21st the President submitted a $27.1 billion supplemental budget request to Congress to address the War on Terrorism, Homeland Security and Economic Recovery. Funding for items included in this package meet the following criteria: they are true emergencies; they address an immediate and known requirement, and they cannot be met with existing funds. In most cases, the funds would be required to be obligated this fiscal year. Of this amount, $5.2 billion was provided for additional homeland security needs.

Office of Homeland Security

In developing the FY 2003 Budget, there was an extraordinary level of cooperation between OMB and OHS. OMB has dedicated staff and managers working with OHS, and many more are engaged on homeland security on an issue-by-issue basis. This arrangement has been very productive. OHS is focusing its review and advice on building the capacities we need to fight terrorism in the most effective and efficient way. OMB adds its programmatic and budgetary knowledge to ensure that we are utilizing the right resources and tools to build that capacity. We expect that this arrangement will continue as we develop the national strategy summary, and as the Administration works to develop the FY 2004 Budget, and beyond.

While the Office of Homeland Security coordinates, consults with and provides advice to OMB and agencies throughout the government, Governor Ridge does not have operational authority over any federal agency. The roll-out of the Homeland Security Advisory System is illustrative of how the Governor coordinated with various agencies, but ultimately handed over the operational aspects of the final product to a Department – which, in this case, is the Justice Department.

The Administration recognizes and endorses the legitimate desire of Congress to have full access to the information it needs to make legislative decisions with regard to the nation's homeland security. Through an extensive variety of means, the Administration will act to provide Congress with responsive answers to its information needs. Governor Ridge has regularly met with Members of Congress to provide extensive information on homeland security. In fact, since October 8, Governor Ridge and his staff have held over 100 meetings with Members of Congress and their staff, and they plan to continue these meetings in the weeks ahead. He has also offered to meet with the committees of jurisdiction in a non-testimonial format at their convenience, and he has personally participated in over thirty-five meetings on Capitol Hill. The Governor will continue to work closely with Congress, including the relevant Committees, in a manner consistent with this practice. During the next two weeks, he will be participating in a number of Congressional meetings, including one with the House Government Reform Committee and another with the Chairmen and Ranking Members of the House Appropriations Committee and its subcommittees.

As this record demonstrates, the Administration is committed to keeping Congress appropriately informed about homeland security issues. As to formal testimony, this Administration will adhere to the same policy that Presidents of both parties have long followed -- and that Congress has long respected. As a matter of precedent, the President's immediate White House advisors, such as Governor Ridge, do not testify before Congress.

The President has said from the outset that the structure for organizing and overseeing homeland security may evolve over time as we all learn more and as circumstances change. It is possible that the National Strategy now underway may recommend continuation of the current arrangement; it is also possible that the National Strategy may recommend an arrangement different from the current one. One possibility might include a structure similar to the Office of National Drug Control Policy (ONDCP). It is already clear, however, that such a homeland office would be substantially larger in size and scope. Moreover, many believe the "drug czar" model is not well suited for operational authority.

If it is determined that the Director of Homeland Security should have operational authority, the review could lead to a proposal for extensive restructuring of homeland security functions. Should the review ultimately recommend to the President a different homeland security structure, there is a chance it may resemble Senator Lieberman's bill. A potential obstacle in this case is the uncertainty whether either Executive Branch agencies or the Congress would set aside jurisdictional territoriality enough to embrace such a far-reaching proposal. Our experience to date with minor transfers of responsibility illustrates the difficulty of this approach. Should the President opt for such a course, surely we would need leadership from you and your committee to ensure its success.

Conclusion

In conclusion, Mr. Chairman, the Administration is committed to securing the homeland and keeping Congress appropriately informed on homeland security matters. We are pleased to discuss with Congress alternative ways of organizing Homeland Security that effectively meet the needs of the American people and their legislative representatives.

The Nation faces new kinds of threats from new kinds of enemies. Defeating those threats will be the great challenge and the great achievement of this generation of Americans.

Testimony of

Dr. Philip Anderson

Senior Fellow and Director, Homeland Security Initiative

Center for Strategic and International Studies

Before the

Senate Governmental Affairs Committee

April 11, 2002

I. Introduction.

Good morning Mr. Chairman, Senator Thompson, Members of the Committee. It's an honor to be with you today, to present my views on the proposal to create a Department of National Homeland Security, and a White House Office to Combat Terrorism. Let me begin by saying that the statement I am about to give represents my views and in no way should be taken as the institutional view of CSIS. Before beginning though, let me provide you with some background on the work we are doing at CSIS.

CSIS has completed a number of homeland security projects both prior to - and since the tragic events of September 11. In January 2001, CSIS released a report on the results of an eighteen-month study, *Homeland Defense: A Strategic Approach*. In June 2001, CSIS co-directed *Dark Winter*, a high-level simulation of a smallpox attack originating in Oklahoma City. In the immediate aftermath of September 11, CSIS convened an internal task force on terrorism, the results of which were published in *To Prevail: An American Strategy for the Campaign against Terrorism*.

CSIS is currently working on two projects in the area of Critical Infrastructure Protection:

1. A comprehensive series of events to address the urgent critical infrastructure issues facing the United States in this uncertain domestic security environment that will establish the foundation for a report that will focus on what business and government can accomplish together to meet future threats – pulling together public-private partnerships – with particular focus on leveraging technological innovation.

2. A simulation exercise, patterned after our Dark Winter effort, to focus on the vulnerability of U.S. energy infrastructure. Rather than consequence management, this simulation exercise will focus on the less understood - and explored - scenarios in which policymakers must decide on whether and how to act in the case of a credible threat against critical energy infrastructure.

II. Overview.

In the seven months since the tragic events of September 11, there has been a great deal of momentum, both inside and outside of government - and it would seem that we are all developing a clearer understanding of the Homeland Security problem in all of its complexity - but in this new environment, solutions remain elusive - which should be expected at this point - as we are barely seven months into a much deeper examination of the issue which in many ways represents the most daunting challenge the United States has ever had to address.

I was asked to comment on Senator Lieberman's proposal to create a Department of National Homeland Security and a White House Office to combat terrorism. In this new and very dangerous environment, it appears that the proposed legislation, if enacted, would greatly simplify management processes and unify the efforts of the 46 federal agencies that, to varying degrees, have responsibility for Homeland Security. Effective communication and coordination among these disparate agencies is extremely complicated and in the absence of organizational reform will only become more difficult in the long term. With responsibility spread across so many agencies, it is equally difficult to ensure that no duplication of effort exists between organizational visions - and with the additional requirement for the federal government to coordinate and communicate efforts with state and local governments and further, to develop the means to work with, and cooperate with the private sector, it is clear that some organizational reform must be initiated to ensure unity of effort and clear lines of authority, responsibility and most importantly, accountability.

The most important question to consider at this juncture is: When should the federal government initiate organizational reform in order to address the Homeland Security requirement? Some would argue that there is no time to waste and that well-informed decisions should be acted on immediately in this environment. There are two problems associated with the desire to act now. First, an ongoing crisis may not be the best time to initiate organizational reform. With nearly every aspect of the National Security apparatus focused on the war on terrorism, such broad reaching change at this point in time could be an unwelcome distraction. Second and more importantly, in the absence of a comprehensive National Homeland Security Strategy, there can be no clear

understanding of the threat to be addressed or any real sense of priorities from which specific requirements will emerge. It would seem that to organize in the absence of a strategy would be putting the proverbial cart before the horse. The strategy should serve as the basis to initiate organizational reform and allocate resources rather than the other way around.

The President has given Governor Ridge the task of developing a strategy for National Homeland Security. This is the most important task for the Office of Homeland Security and I am confident that this is exactly what the dedicated men and women there are attempting to do. Assuming they can produce a strategy this year - and once it published - the debate can begin on implementation. If the strategy that emerges is truly comprehensive, the debate that will follow will certainly involve the appropriate organization of government to address the problem. Among the many organizational issues the strategy will have to address, the following would seem most important:

1. Create a foundation for unifying the efforts of the federal government or at least establish the conditions for effective cooperation and coordination.

2. Point the way for those agencies of the federal government, with direct responsibility for Homeland Security, to effectively cooperate, coordinate and communicate with state and local governments.

3. Establish the conditions for every level of government to effectively cooperate with the private sector since they own and operate most of the critical infrastructure in the United States and as such, are ultimately responsible for securing it.

Developing a National Homeland Security strategy that points the way toward effectively addressing these issues is no small task, it is truly a daunting challenge – the likes of which have never been faced at any other point in our Nation's history. It is important to note that despite the criticism in the media and on Capitol Hill - that the Office of Homeland Security is understaffed and has no budget authority or power to make

decisions – the public should understand that the Administration has really not been given enough time to fully address this new challenge. While time is of the essence, this new environment demands some patience to allow a comprehensive strategy to emerge.

III. The Challenges.

There are numerous challenges associated with securing the homeland. The following are a few that should be considered in the development of proposed legislation:

A National Strategy as the for basis organizing the federal government: There have been numerous commissions and studies conducted - the Hart-Rudman Commission, the Gilmore Commission, the Bremer Commission, and the Center for Strategic and International Studies Working Group on Homeland Defense - that addressed the lack of coordination among the 46 federal agencies that have specific responsibilities for Homeland Security. Also, there have been a number of proposals floating around in the Administration and in Congress that call for consolidating some of the agencies responsible for securing the homeland. The Administration's proposal to consolidate Immigration and Naturalization Service, Customs and the Border Patrol in one agency and the National Homeland Security and Combating Terrorism Act of 2002 are just two examples. Governor Ridge's original proposal also included the Coast Guard and border-related parts of the Agriculture Department. In addition, many commissions and studies recommended that Congress develop the means for reviewing the President's policy and budget for Homeland Security. The lines of responsibility are unclear in the Executive branch but they are just as unclear in the Legislative branch given the existing committee structure that further complicates coordination in the Executive branch.

Most importantly, in the absence of a National strategy establishing clear priorities and defining requirements, no framework exists to base decisions about how to organize the government and spend the taxpayers' money. Significant organizational reform cannot happen without all the strategic underpinnings – the strategy in all its interrelated parts - that enables government to make decisions on how best to organize. However, at various points in the development of the strategy, when information exists to support decisions, certain efficiencies could be gained by acting immediately.

Consolidation at any time will not be easy but will be far more difficult in the absence of a National Strategy. In addition, the agencies that will merge must bridge large gaps in missions and culture to unify around the Homeland Security mission. Most agencies that are now focused on Homeland security have other primary missions that will have to be accounted for. The Customs Service is a good example because its mission is as a revenue-generating agency focused on goods and trade, not on security. Last year the Customs Service collected in $23.5 billion in taxes, fees, and penalties, second only to the Internal Revenue Service in generating government income.

Governor Ridge has a daunting task but one thing is certain, once a comprehensive National Strategy emerges, government must move forward as soon as practicable to organize itself appropriately to ensure the effective implementation of the strategy.

A comprehensive threat assessment as the basis for the National Strategy: It would seem that the administration has, since September 11, taken a "vulnerabilities-based" approach to the problem. That is, in the absence of a strategy, they have attempted to identify the Nation's critical vulnerabilities and focus attention and resources accordingly. Unfortunately, at this juncture, this is exactly the condition the public should expect where everything appears to be a critical vulnerability. This situation will not resolve itself until the Nation has a comprehensive Homeland Security strategy.

At the heart of any effort to develop a strategy is the requirement to address the likely threats. The strategy that emerges at the end of the development process will need to be first and foremost, *threat-specific.* However, defining likely threats in this new environment is problematic in that they will likely derive from multiple sources with different objectives and various means to do us harm. Defining the threat is risky but absolutely necessary to developing a coherent National Strategy to fully address the problem. It is hard to develop plans, organize and allocate resources to address the myriad vulnerabilities that exist without taking an informed position on potential threats.

While we remain extremely vulnerable in many areas, most do not represent critical vulnerabilities simply because they are not likely targets. How many people would argue, at this point, that commercial aviation is a critical vulnerability? On the

other hand, private aviation with 500,000 private pilots and 200,000 private aircraft operating from approximately 18,000 airfields could represent a critical vulnerability. Some would argue that the nuclear power industry is critically vulnerable. I would submit that the nuclear power industry, the most regulated in the United States, is far less vulnerable than other aspects of energy infrastructure to include, liquid natural gas operations, refineries and petro-chemical operations. The key point is that, without an informed assessment of how those that would do us harm may act, the ability to organize and allocate resources effectively is extraordinarily difficult, if not impossible.

Public-private partnership to ensure critical infrastructure protection: Much of the Nation's strength rests on its *privately-owned* critical infrastructure. The private sector is more aware than ever that critical infrastructure presents terrorists with a variety of attractive targets that remain vulnerable - but it still possesses limited awareness on how to protect infrastructure at risk. Despite its lack of experience, the private sector remains ultimately responsible for securing the infrastructure it owns and operates. This responsibility is complicated by the requirement to generate profits for stockholders and to provide customers with affordable service. Although the protections put in place by the private sector are essential, they cannot address all of the challenges by themselves. The federal government rightfully should share the burden for critical infrastructure protection. The federal government's role in infrastructure protection is complex and presents a different set of challenges. While the government cannot always assume responsibility for critical infrastructure protection, it must find ways to incentivize the private sector.

Developing public-private partnership is complicated by the need to protect sensitive information and the lack of organized communication and coordination between the numerous agencies of the federal government with responsibility for Homeland Security. The National Homeland Security Strategy must be the vehicle for simplifying the communication and coordination problem within government and between government and the private sector. It is essential that the private sector should be included in its development and implementation.

Simulation exercises and training to ensure readiness: Although expensive and time consuming, the federal government should develop and encourage simulation

exercises and training at every level in the decision making process - that provide for state and local government and private sector participation. The purpose of these exercises should be to identify and improve the readiness of government and the private sector to carry out potential tasks and coordinate an effective response to all incidents, especially those that involve unconventional attack and the use of Chemical, Biological, Radiological, or Nuclear (CBRN) weapons. The response, clean up, and recovery effort that would be required following a CBRN attack - that synchronize decisions at the federal, state, and local levels as well as in the private sector - must be fully thought through.

Simulation exercises and training should be designed to develop greater public awareness and acceptance of risks and to address long-term economic recovery considering the implications of unconventional attack scenarios. While we would all like to believe CBRN attacks are a remote possibility, the evidence points to the contrary. How real the possibility that a terrible event like this could happen remains to be seen, but it is clear that adequate preparation in the form of simulation exercises and training and education for unconventional attack is essential.

IV. Conclusion

Mr. Chairman, over the long term, in this new and very dangerous environment, organizational reform such as that described in the proposed legislation must be initiated to ensure unity of effort and clear lines of authority, responsibility and most importantly, accountability. The most important question to consider at this point is not whether to initiate organizational reform, but when to initiate organizational reform? In the absence of a comprehensive National Homeland Security Strategy, there can be no clear understanding of the threat to be addressed or any real sense of priorities from which specific requirements will emerge. Developing a National Strategy to address this complex problem, under any circumstance, represents a daunting challenge but in the current environment where there is not a minute to spare, the pressures are enormous. Assuming the Administration can produce a strategy this year - and once it published - the debate can begin on implementation. If the strategy that emerges is truly comprehensive, the debate that will follow will certainly involve the appropriate

organization for Homeland Security so that every aspect of government can move forward together in a unified and coordinated way to fully address what is surely the most complex problem our government has ever had to face. I would ask you to consider the four challenges outlined in Part III of this testimony earlier, which I will address again:

A comprehensive National Strategy should serve as the basis for organizing the federal government for Homeland Security. Organizational reform at any time will not be easy but will be far more difficult in the absence of a National Strategy. In the absence of a National strategy that establishes clear priorities and defines requirements, no framework exists to base decisions about how to organize the government and spend the taxpayers' money. In addition, most agencies of government that are focused on Homeland security have other primary missions that will have to be accounted for.

A comprehensive threat assessment should serve as the basis for the National Strategy. Clearly defining likely threats in this new environment is problematic but absolutely necessary to developing a coherent National Strategy to address the problem. Without an informed assessment of how those that would do us harm may act, the ability to organize and allocate resources effectively is extraordinarily difficult, if not impossible.

The means to create public-private partnership should be developed to ensure adequate security of critical infrastructure. The private sector remains ultimately responsible for securing the infrastructure it owns and operates. This responsibility is complicated by the requirement to generate profits for stockholders and to provide customers with affordable service. The federal government should share the burden for critical infrastructure protection, and while the government cannot always assume responsibility for critical infrastructure protection, it must find ways to incentivize the private sector. The National Homeland Security Strategy should be the vehicle for simplifying the communication and coordination problem between government and the private sector. It is essential that the private sector should be included in its development and implementation.

Simulation exercises and training should be developed to ensure readiness: Although expensive and time consuming, the federal government should develop and encourage simulation exercises and training and education at every level in the decision

making process - that provide for state and local government and private sector participation. The response, clean up, and recovery effort that would be required following a Chemical, Biological, Radiological, or Nuclear (CBRN) attack - that synchronize decisions at the federal, state, and local levels as well as in the private sector - must be fully thought through. Simulation exercises and training should be designed to develop greater public awareness and acceptance of risks and to address long-term economic recovery considering the implications of unconventional attack scenarios.

Mr. Chairman, the road ahead remains complex and fraught with challenges yet to be addressed. The Center for Strategic and International Studies is ready and willing to help. Organizing effectively to secure the American Homeland is essential to our country's prosperity and to the prosperity of our allies. We appreciate the Committee's leadership on this issue, and we look forward to helping in any way we can.

Prepared Statement before
U.S. Senate Committee on Governmental Affairs
for a Hearing on
"Organizing for Homeland Security"
April 11, 2002

By
Ivo H. Daalder and I. M. Destler*

Mr. Chairman, Members of the Committee, we very much appreciate the opportunity to testify before you on how to organize the U.S. government for homeland security. We are grateful for the work you, Mr. Chairman, the committee members, and the committee staff have put into this effort.

Much of this effort is reflected in Senator Lieberman's draft bill, which is the subject of today's hearing. That bill contains many worthwhile ideas. At the same time, we believe it may both be too ambitious in some areas and not sufficiently ambitious in others. In particular, we do not believe a Department of Homeland Security is the most effective way to organize for this effort. It is better to build upon the coordinating mechanisms put in place by the Bush administration.. At the same time, we strongly believe that these arrangements ought be made statutory, that the Office of Homeland Security (OHS) and its Director should have greater budget authority, and that there *is* scope for agency consolidation in certain functional areas, notably border security.

Consolidation or Coordination?

There are two basic approaches to organizing the federal government for homeland security. One is to rely on a lead agency—either an existing agency (like the Justice Department) or a new one (like the Department of Homeland Security proposed by Senator Lieberman and others). The other approach, currently being pursued by the Bush administration, focuses on interagency (and intergovernmental) coordination, with a single White House-based entity tasked with bringing together the myriad of agencies responsible for different aspects of homeland security.

The lead agency approach has clear advantages. Assigning responsibility to a single agency provides a focal point in an otherwise diffuse landscape of interests and capabilities. Accountability should thereby be enhanced. Merging critical functions dealing with frontier security, infrastructure protection, and emergency response into distinct directorates within a lead agency should ease communications and enhance effective implementation of agreed policy both within and probably

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* The authors are, respectively, a senior fellow at the Brookings Institution and a professor at the School of Public Affairs, University of Maryland. They are co-directors of Project on the National Security Council, co-sponsored by Brookings and the Center for International and Security Studies at Maryland. This testimony draws on material in the forthcoming study *Protecting the American Homeland*, to be published by the Brookings Institution later this month, and on "Enhancing Homeland Security: Organizational Options," a co-authored paper prepared for The Century Foundation.

among the directorates. And empowering the new entity with direct budgetary authority and political responsibility should make the agency a major player in the overall homeland security effort.

But the problems of this approach outweigh the benefits. The homeland security mission involves, by definition, many more entities than can be brought under a single roof. Left outside will necessarily be the most important agencies:

- the *Department of Defense*, which has the bulk of federal capabilities for deterring and responding to terrorist attacks (especially involving weapons of mass destruction);
- the *Department of Justice and the FBI*, which are responsible for domestic surveillance and law enforcement;
- the *Department of Health and Human Services* and the *Centers for Disease Control and Prevention*, responsible for detecting and responding to a bioterrorist attack; and
- the *Central Intelligence Agency* and other parts of the intelligence community, responsible for tracking terrorists and the materials they might bring into the country to do us harm.

And a Department of Homeland Security cannot, by definition, include state and local government authorities. Consolidation may better focus some homeland security efforts, but it cannot include most of them, or even the most important of them.

So even if a consolidated agency is created, there will still be a need for effective coordination. But assigning that function to the head of a new homeland security entity, as many propose, would be a mistake—even if that official were given cabinet rank. A Secretary of Homeland Security, with direct authority for some (but not most) relevant governmental activity, would likely be perceived as partial toward the functions she or he supervised. This would create resistance by peers with major authorities of their own (the Attorney General, for example, or the Secretary of Health and Human Services) just as the Secretary of State—repeatedly called upon to exercise government-wide foreign affairs leadership—comes up against the Department of Defense and the intelligence community.

Coordination is difficult to achieve through any arrangement, but it tends to work better when the leader is perceived as an honest broker and/or can evoke the authority of the White House. If the coordinator is seen as a competitor, other agencies whose cooperation is crucial are likely to balk at following its lead, and bureaucratic fights over turf become pervasive.

Senator Lieberman's bill recognizes the drawback of handing full coordination responsibility to a partial player, and therefore proposes the creation of a National Office to Combat Terrorism within the Executive Office of the President. This office and its director are modeled on a similar structure for coordinating U.S. drug policy. However, past experience with the czar model suggests that this approach is unlikely to work. Even the most effective drug czars (including William Bennett under the first President Bush and General Barry McCaffrey under President Clinton) never were able to wrest control over policy and funding from the individual agencies responsible for implementing drug policy. The ability to develop a national drug control strategy helped the drug czar shape overall policy, while his power to decertify agency budgets provided some leverage over programs. But these powers alone did not bring him overall control. The national strategy became

largely aspirational document with only very loose ties to budgetary priorities. The decertification owers proved more effective in theory than in practice (McCaffrey was the only ONDCP head to se it, and then only once). Moreover, the draft legislation would establish *both* a Secretary of Iomeland Security *and* a White House director, with attendant confusion about which one was, in ıct, the leading federal official for this vital issue. That issue is not solved by the legislation's roposal that these two officials co-chair a council charged with overseeing the implementation of ıe national strategy. Such co-chairmanship is a recipe for conflict, paralysis, or both.

Building on Bush Administration Reforms

A better coordinating approach is the one adopted by the Bush administration, which draws ın parallel experience in the national security and economic policy areas. As spelled out in the 'resident's Executive Order, the main coordinating body is the new Homeland Security Council HSC), which is composed of the president, vice president, attorney general, secretaries of treasury, lefense, health and human services, and transportation, and the FEMA, FBI, CIA, and OHS lirectors. As is the case for the NSC and NEC in their spheres, the HSC is "responsible for dvising and assisting the President with respect to all aspects of homeland security. The Council hall serve as the mechanism for ensuring coordination of homeland security-related activities of xecutive departments and agencies and effective development and implementation of homeland ecurity policies."[1] Since its establishment, the HSC has met as often as twice a week, with the resident in attendance.

The HSC process is staffed by Ridge's office, which plays a role akin to that of the NSC staff. And like the NSC, the HSC is supported by an interagency structure that includes the HSC Principals Committee (chaired by Ridge, and composed of all HSC members other than the president and vice president, who are represented by their respective chiefs of staff), the HSC Deputies Committee (chaired by Ridge's deputy and composed of the deputies to the HSC members), and 22 HSC Policy Coordinating Committees (chaired by OHS senior directors) dealing with such issues as detection, surveillance, and intelligence; law enforcement; weapons of mass destruction consequence management; economic consequences; and key assets, borders, territorial waters, and airspace security.

These organizational structures and interagency processes put Ridge in a strong position. As the person designated by the president to lead the government-wide homeland security effort, Ridge has important levers of power within the executive branch that, if employed wisely, can help overcome many of the organizational difficulties inherent in the task—including especially the wide dispersal of authority and capabilities that need to be brought together. By chairing all interagency committees, Ridge and his office have the power to set the agenda, convene meetings, and forge consensus. But wielding that power effectively requires subtlety on Ridge's part. He needs to gain the cooperation of the many cabinet secretaries and agency directors who ultimately will have responsibility for taking the actions that make our homeland safe. Neither Ridge nor anyone on his staff will have the authority to tell others what to do—that must come from the acquiescence, if not support, of Ridge's peers themselves.

[1] "Executive Order Establishing Office of Homeland Security," October 8, 2001, Sec. 5(a), available at: http://www.whitehouse.gov/news/releases/2001/10/20011008-2.html (accessed January 2002).

In our statement to this Committee last October, we detail some of the ways in which Ridge can learn from the NSC and NEC experiences to exercise his power effectively.[2] Ridge must realize that his power in Washington will be ephemeral if not nurtured and protected. Battles will inevitably loom with Cabinet colleagues. He needs to be careful about which ones he chooses to fight—and he must make sure that he wins most of them, particularly during his first year.

Unfortunately, the early returns are not uniformly encouraging. While he worked hard with others to create a national terrorist alert system, the ultimate authority for determining alert levels was vested in the Attorney General, even though the OHS Director was arguably better placed to do so. And whereas Ridge championed the establishment of a new, independent border agency through the consolidation of the Coast Guard, Customs Service, Border Patrol, and Agricultural Quarantine Inspection Agency, he was ultimately forced to join a consensus in favor of something far less, as we discuss below. If such defeats—real and perceived—become a pattern, Ridge will lose credibility. Over time, few will defer to Ridge, and fewer still are likely to follow his lead.

Statutory and Budgetary Authority

Ridge's inability or unwillingness to fight and win some of the tough organizational battles has begun to affect his stature in Washington. The press focuses more on his defeats than on his victories. Pundits are concerned about the slow pace of putting in place a visible homeland security structure and strategy. And politicians both fret about Ridge's refusal to testify on Capitol Hill and worry about his lack of formal authority within the Executive branch. Senator Lieberman's legislation responds to this growing sense that either Ridge is not up to the job or the job is not up to Ridge—either way, organizational reform is necessary.

While statutory authority for White House advisory positions is something presidents naturally tend to shun, such authority is appropriate in Ridge's case. His job by its nature is far more operational and publicly involved than is the norm for those holding parallel positions (like the national security adviser and national economic adviser). He therefore needs to work regularly with Congress, and to use Congressional hearings as a platform for national leadership in the war against terror. In addition, under current circumstances statutory authority may be the best—if not the only—way for Ridge to gain the stature he needs to get the job done.

So rather than creating an entirely new office modeled on the drag czar precedent as Senator Lieberman's bill proposes, the president should seek, and Congress should enact, a bill establishing the Homeland Security Council and the Office of Homeland Security in the Executive Office of the President. Out of deference to presidential authority, it should be a relatively clean bill using the language of the Executive Order and allowing for maximum operating flexibility. It should establish Ridge's job as a confirmable EOP position, with rank and salary at the level of the OMB Director.

Formal establishment for Ridge's position, his Office and the Council should be supplemented with the kind of budgetary authority proposed in Senator Lieberman's bill. That authority, which mirrors the budgetary powers of the drug czar, will help Ridge's office pull together

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[2] Ivo Daalder and Mac Destler, "Prepared Statement before the Senate Committee on Governmental Affairs," Oct. 12, 2001, available at http://www.brookings.edu/views/testimony/daalder/20011012.htm. See also Daalder and Destler, "Organizing for Homeland Security," *National Interest* (forthcoming, Summer 2002).

. comprehensive, integrated homeland security budget. It will also provide Ridge with the :ertification powers to give him some degree of authority over agency budgets. To formalize and trengthen this authority, we would further propose a close integration of the homeland security)udgetary effort with the presidential budget process run by OMB. Specifically, we would propose ıppointing the chief OHS budget person as the OMB associate director responsible for homeland ;ecurity.

Of course, improving control and authority over the executive branch's budget process is)nly half the matter. Without concomitant reform of congressional procedures, strengthening Ridge's hand in the budget process will have only a marginal impact. Thus, even while Ridge worked hard to present a unified homeland security budget to Capitol Hill last February, once it arrived here it was quickly disaggregated and its components distributed among multiple appropriations subcommittees. There they will be weighed not in relation to overall homeland security needs, but within such jurisdictions as: Commerce, Justice and State; Defense; and Labor, HHS and Education. What the executive branch has laboriously pulled together, Congress will quickly pull apart. The obvious remedy, difficult though it may be to implement, is to establish new appropriation subcommittees on homeland security in both Houses. If that proves too large a reform to swallow, a second best alternative would be for the appropriation committees as a whole to take up and pass the integrated homeland security budget.

A Federal Border Agency

While we believe that establishing a Department of Homeland Security represents too ambitious and unworkable a consolidation, we strongly favor merger of agencies that perform similar functions—starting with border security. Today, responsibility for securing and monitoring the people, cargo, and conveyors that cross the 7,500 miles of U.S. land and air border is dispersed among many different agencies housed in no less than six distinct cabinet departments (State, Justice, Treasury, Transportation, Agriculture and Defense). That is why Governor Ridge proposed to merge at least some of them into an independent border agency.

Ridge's proposal met with predictable resistance. None of the departments wanted to give up control over border security functions currently under their purview. And all of the agencies were concerned that their duties not related to terrorism would receive shorter shrift if they are merged into a border agency whose primary task it will be to prevent terrorists and weapons from entering the United States.

As Ridge rightly argued, the current case for the status quo is extraordinarily weak. Not a single one of the entities that would be merged into a federal border agency is central to the mission of its Cabinet-agency home—not the Customs Service, not the INS enforcement arm, not USDA quarantine inspection, not the Coast Guard. The Cabinet secretaries now allegedly threatened gave no serious attention to any of them prior to September 11. It may be turf they are guarding, but for them it is not prime turf. Yet, Ridge proved unable to overcome their resistance and rather than pushing the president to endorse his idea he worked to achieve a consensus for a more modest—and largely ineffectual—reorganization. Last month, the HSC unanimously recommended bringing the Customs Service into the Justice Department and merge it with the enforcement arm of INS into a separate agency.

This proposal is at best a half measure. Not only does the new agency exclude the Coast Guard, but by placing it within the Justice Department the parochialism characterizing border security efforts in the past is likely to be perpetuated. The president would do well to reject the recommendation and instead back Ridge's original proposal to create a larger, independent border agency. In addition to the Coast Guard, Customs, INS's enforcement arm, and the agricultural inspection agency, the president and Congress should also give serious consideration to including the newly created Transportation Security Agency responsible for airport security, the Bureau of Consular Affairs part of State, and possibly the entire INS (including its service division) in the consolidated agency.

Conclusion

In summary, we agree with this committee that current U.S. government organization for homeland security needs to be strengthened. But rather than seek a new department or White House office, we believe you should build upon what the Bush administration has established. Specifically, we favor legislation that would:

- Make the Homeland Security Council (and Office) statutory entities, with their Director confirmable by the Senate;
- Enhance the Homeland Security Director's budget authority; and
- Establish an independent Federal Border Agency including a broad range of agencies responsible for monitoring people and goods entering the United States.

We thank you for the opportunity to share our views on this important subject with you and your committee.

BTA

Border Trade Alliance / Alianza del Comercio Fronterizo
Alliance du Commerce Transfrontalier

TESTIMONY OF THE BORDER TRADE ALLIANCE BEFORE THE SENATE GOVERNMENT AFFAIRS COMMITTEE
PRESENTED BY STEPHEN GROSS, CHAIR
HEARING DATE: APRIL 11, 2002

Chairman Lieberman, Ranking Member Thompson, and members of the committee, good morning. My name is Stephen Gross. I want to thank you for this opportunity to testify this morning on the proposed realignment of Federal Agencies that are so important to homeland security.

I am the president and owner of Border Trade Services in San Diego, California. We are a cross-border warehousing and logistics company employing over 100 people in San Diego, California and Tijuana, Mexico. But what brings me here today is my position as the 2002 chairman of the Border Trade Alliance (BTA). The BTA is a grass-roots organization that was founded in 1986 as a group of individuals, entities, and business that conduct legitimate cross-border business in the NAFTA marketplace. As such, we have a unique perspective on the security challenges facing our land borders. Part of that perspective includes past support of the concept of Unified Port Management, where we sought a more efficient management structure at our land border ports of entry by consolidating leadership in one person, as opposed to our current structure, which employs many bosses throughout the agencies posted at the border.

Representing a group that lives and works in border communities, I bring to you today firsthand experience in interacting on a daily basis with the federal agencies posted along our borders, namely the U.S. Customs Service, the Immigration and Naturalization Service, and the Border Patrol (a division of the INS).

The events of September 11 presented all of us with challenges the likes of which we had never contemplated before. But our organization is hopeful that these terrible events have presented our nation an opportunity to improve the way we approach security, and that includes examining how the resources of our borders can better be managed to enhance our physical and economic security.

The case for realignment

Senators, our land border security and trade facilitation is severely lacking. The various Federal Inspection Service Agencies posted along the U.S.- Mexico and U.S-Canada borders are charged with poorly defined and sometimes conflicting missions. Oftentimes, our ports of entry are home to petty squabbles over turf and resources, and fall victim to mismanagement.

The land border ports are not home to business best practices. At each port of entry, Customs and INS personnel are operating with different missions, despite that fact that Customs and INS are cross-trained in the primary inspection lanes. The INS inspector, because of an ingrained culture in that agency, is more likely to focus on looking for travelers seeking to gain illegal passage to our country. That same ingrained culture is what causes the Customs agent to focus his or her attention more on preventing contraband smuggling. Both missions are important ones. The INS or Customs employee at the port of entry receives incentives to carry out the individual mission of his or her employing agency. There is no incentive to work together or speed legitimate trade and cargo through our ports of entry.

Despite recent talk in this post-September 11 environment of improving lines of communication at the highest levels of INS and Customs, we rarely see that same spirit of cooperation employed at the ports themselves where it is needed most. Remember, our immediate threat to security is at our borders, not in an office in Washington. And the billions of dollars in trade our county engages in happens at the borders, not in an office. If there is any organization that wants to improve management of our borders and the agencies posted there, it is ours.

Because of these reasons, we view Senator Lieberman's legislation, S. 1534, with great interest. We believe that Senator Lieberman's bill would go far in decreasing government costs and increase efficiency by placing both Border Patrol and Customs under the same agency head.

Realignment of this sort would improve border security by removing a layer of bureaucracy between the ports of entry and the coordinator of all security efforts. Realignment would put one entity in charge: A cabinet level Secretary overseeing the Department of National Homeland Security.

As you know, under our current structure, the commissioner of INS reports to the Attorney General while the Commissioner of Customs reports to the Secretary of the Treasury. The security missions of these two agencies are too important to be spread across two large federal agencies.

We believe that, among other things, agency realignment will:

- Establish accountability for border inspection in a single agency
- Eliminate overlap and duplication of efforts
- Prevent the development of redundant support systems
- Facilitate and streamline the processing of legitimate trade and travel
- Improve enforcement of laws at our borders

Concerns

We do have some concerns with this bill, however. Our organization has always believed that increased security at our borders need not be achieved at the expense of trade

facilitation. Indeed, we believe that the two are one in the same. With the proper resources, our Federal Inspection Service Agencies can quickly weed out those individuals who would seek to do us harm while processing legitimate trade and travelers with a reduction, or at the very least no increase, in the time the cargo or traveler is spent waiting at the port of entry. With that said, we want to be sure that any new emphasis on security does not hamper legitimate trade and travel, which is so vital to our economy.

Second, we recommend that all the enforcement functions of INS – not just the Border Patrol – be transferred to this new agency. Our hope is to put an end to turf battles at the ports of entry and get everyone committed to the same goal. We fear that only shifting Border Patrol to the Department of National Homeland Security and not the other enforcement functions of INS will perpetuate these problems and leave our border security strategy without proper coordination.

Third, while it may seem trivial, we do have some concern about what message the name "Department of National Homeland Security" conveys to our trade partners, especially our NAFTA neighbors, Canada and Mexico. Perhaps a name along the lines of "Department of National Homeland and Economic Security" would more accurately convey that ours is a nation still open to the world market.

We also recommend that we not lose sight of the larger picture of all the security functions that take place at a port of entry. The committee may want to consider including the Animal and Plant Health Inspection Service (APHIS) is this legislation. APHIS is critical in securing us against food terrorism.

There are other proposals for agency realignment circulating on Capitol Hill and we welcome the opportunity to consider them as well. We are supportive of any effort that will secure our borders and facilitate the passage of legitimate trade and travel. We do, however, advise that any transfer of INS enforcement functions and Customs not end up in the Department of Justice. That department does not have a proven track record in consulting with private industry on a regular basis, and we fear that maintaining our country's strong trade position will not be a priority in such an organization.

A note on infrastructure

Allow me for just a moment to talk about infrastructure security. At the BTA, we have been consistent advocates of infrastructure improvements along our borders, whether that may mean new bridges and roads connecting our economy to our neighbors to the north or south, or new facilities for the men and women who work day in and day out for the agencies posted at the border.

S. 1534 calls for the Critical Infrastructure Assurance Office and the Institute of Information Infrastructure Protection of the Department of Commerce and the National Infrastructure Protection Center and the National Domestic Preparedness Office of the

Federal Bureau of Investigation to be shifted to the Department of National Homeland Security.

While our familiarity with those offices is not sufficient to comment on their possible transfer, we can say that the protection of our links to the global economy is paramount. Imagine if the Ambassador Bridge, linking the cities of Detroit, Michigan and Windsor, Ontario were to be rendered unusable. The same can be said for the Blue Water Bridge in Port Huron, Michigan, or the Peace Bridge Peace Bridge in Buffalo, or the many bridges linking Texas and Mexico across the Rio Grande.

These critical pieces of infrastructure link our economies, certainly, but they also connect friends, family, and cultures. They deserve any efforts to ensure their security.

What's at stake

Improving security at our land borders is a worthy and necessary goal not only to ensure our physical safety, but also to preserve our economic security. The World Trade Center was targeted on 9/11 because those two towers were powerful symbols of our nation's presence in the global marketplace and our strong domestic economy.

As a result of implementation of the North American Free Trade Agreement, trade has between the U.S., Canada, and Mexico has grown enormously, and all signs indicate that this trade will continue to grow.

In its report, "NAFTA at Seven", a look at the short but successful life of this trade agreement, the U.S. Trade Representative's Office states that:

> ***"U.S. goods exports to NAFTA partners more than doubled between 1993 and 2000, significantly higher than export growth of 52 percent for the rest of the world over that same period."***[1]

In a speech last year to the Council of the Americas, U.S. Trade Representative Robert Zoellick said, **"we trade $1.8 billion a day with our NAFTA partners--that's $1.2 million a minute."**[2]

For those of you who have not visited a U.S. port of entry, I encourage you to take the time and travel to Detroit, or San Diego, or Laredo, Texas and see NAFTA in action. In Laredo, in the pre-NAFTA days of 1990, just over 261,000 trucks headed south from Texas into Mexico. In the year 2000, that number shot all the way up to 1.4 million. [3] Statistics for northbound trucks are equally impressive.

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[1] "NAFTA at Seven." http://www.ustr.gov/naftareport/nafta7_brochure-eng.pdf
[2] U.S. Trade Representative Robert Zoellick, speech to the Council of the Americas, May 7, 2001.
[3] "Truck Crossings into Mexico from Texas, 1990-00"
http://www.tamiu.edu/coba/bti/bridge/trucks/tksthyr.htm

These numbers speak to the unique relationship our nation holds with our neighbors Canada and Mexico. We urge Congress to enter into an open dialogue with our NAFTA partners as we undertake changes as monumental as those proposed in S. 1534 in order to ensure that our NAFTA trade relationship does not fall victim to unintended consequences.

Those numbers also mean jobs for Americans, and a stronger U.S. economy. We cannot afford to risk our quality of life to those who seek to do us harm.

Answering the critics

There are some that say now is not the time to take on an initiative as bold as that outlined in S. 1534. They say that things are getting better and that the agencies responsible for border management are working together now more than ever.

We answer those claims with a question: What is so great about today's situation at the borders that is worth preserving? To what point will things have to deteriorate before we look at making a bold change?

We also want to ensure the committee and the public that we have little interest in creating another large bureaucracy in Washington that the trade community will have wrestle with. If anything, we view the proposals contained in S. 1534 as a way to *streamline* communication between industry and regulators by creating a "one stop shop" on cross-border issues.

Conclusion

No amount of reorganization is going to result in better border management without a commitment from Congress to provide agencies with the tools they need to keep trade flowing and make our borders more secure. But now, more than ever, is the time to start looking at significant realignment of agencies posted at the border.

If real security and trade efficiency are to be achieved, we must take the first step by consolidating the agencies under one leadership structure. It may take years to change the internal cultures at the individual agencies, but without this first step, our goals will never be achieved. This is a matter of national survival and economic security.

Looking ahead, we believe that ultimately we are going to have to look seriously at consolidating all agencies with enforcement duties at the land border ports of entry into one agency with responsibility solely for border administration. S. 1534 is a good first step.

Finally, we do not make these recommendations lightly and we know that the types of changes we are discussing here will not completely insulate us from outside threats or be

the ultimate solution for our ports of entry. But years of living and working in border communities and in and around ports of entry have brought us to the same conclusion: Bold changes are needed if our national security and economic security is to be preserved.

On behalf of the Border Trade Alliance, I want to thank you again for listening to my comments here today. I will do my best to answer any questions you may have as we all seek a way to effectively organize our government for homeland security.

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Testimony on a Bill to National Homeland Security and Combating Terrorism Act of 2002.

Submitted by:
Dr. Elaine Kamarck
John F. Kennedy School of Government, Harvard University
April 9, 2002

Good Morning and thank you for the offer to testify on this very important topic. As some of you may know I spent four and a half years in the Clinton Administration leading the reinventing government project and I am happy to share with you some of the things I learned during that time.

This bill creates a Cabinet level agency to deal with the problem of homeland defense. It contains some very important recommendations for reform - many of which are long overdue - and I support them wholeheartedly. However, let me begin with a caveat - homeland defense cannot be dealt with in a single agency. The problem itself is simply too big. Its spans agencies from the CIA to the CDC; from the FBI to the Portland, Maine police. Therefore we should bear in mind that there are many pieces of homeland defense which are not and should not be dealt with in a single bill. Homeland defense requires reinventing hundreds of federal, state and local agencies by adding new missions to their ongoing missions.

My second caveat deals with the problem of bureaucracy. Twentieth century bureaucracy is ill suited to the new century and we must bear that in mind as we construct new institutions. In the middle of the twentieth century people in government tended to address problems by creating new bureaucracies. But in recent years policy makers have tended to look beyond bureaucracy to solve public problems. Many bureaucracies are too rigid and too slow for modern problems. They cannot compete with the fast changing demands of the global market and they cannot compete with the hide and seek nature of non-state warfare or terrorism. For instance, the intelligence community built a bureaucracy to monitor another colossal bureaucracy - the Soviet Union - and it worked. But that form and structure is clearly inadequate to the monitoring of terrorist networks that may exist in as many as 60 states and change their leadership and mode of operations constantly.

In place of old fashioned bureaucracies we have seen extensive efforts around the world to reform public sector bureaucracies. In addition to reforming existing bureaucracies policy makers have created networks of public and private organizations and they have looked for market based solutions where appropriate. That is why, in thinking about a new agency this Committee should try to avoid saddling it with old fashioned bureaucratic arrangements and in thinking about the problem of homeland defense in general we should not think that one traditional bureaucracy can solve the problem.

The second problem with twentieth century government is that it is organized around borders - part of the government deals with problems inside

our borders and part of the government deals with threats outside our borders. The border problem is both metaphorical and real. The government has to adapt to borderless economies and borderless security threats and yet it is organized into entities that have a hard time re acting to problems that do not respect borders. That is why I wholeheartedly support the core of this bill which deals with the border problem.

Border Patrol

So with that in mind let me say that the most important part of this bill is the creation of what we would have called - prior to September 11 - a Border Patrol Agency. Homeland defense will not happen in the White House or in a coordinating council. It will happen on our borders or before our borders when Consular officers, Customs agents, INS agents, Coast Guard personnel and airport security officers, acting on intelligence gathered here or abroad, manage to stop, deter, or prevent terror. Creating a coherent team out of what are now many disparate organizations, as this bill proposes, is one essential part of the solution. But it will not accomplish the mission if the major international and domestic intelligence agencies are not reformed in ways that allow them to share intelligence in real time with the people at the borders. Intelligence about terrorism is useless here in Washington if it manages to make its way to the border only after ripening in the offices of too many important people. While I realize that this is not in the purview of this Committee or this bill I mention it because reform of the intelligence community in ways that emphasize prevention and real time communication is the indispensable other half of the bill we are considering today.

This bill proposes merging six existing agencies into a new Department of National Homeland Security. I would add to this list an agency that I believe has been overlooked and an agency that is surely the first step in protecting our borders, the Consular Services section of the State Department. Before someone can get into the United States they need a visa. Visas are given out at our embassies around the world where overworked consular officers, generally young diplomats trained in diplomacy, not police work, are given the responsibility of deciding who gets to come to America and who doesn't. In recent years the nearly 2000 employees of the Consular Corps have been under extreme stress. The number of people wanting to come to the United States has increased dramatically and appropriations have tended to starve the entire State Department, including the Consular corps, of funds. According to former State Department official T. Wayne Merry, "...visa work is a low prestige poor relation to the conduct of diplomacy and always low in budget priorities. The professional consular corps is often highly competent but is badly overworked, under financed and so few in number as to staff only supervisory positions." [1]

The current head of the Bureau of Consular Affairs, Mary Ryan, told a Senate Committee recently that "...consular affairs in American embassies and consulates could have stopped some of the terrorists from entering the country if agencies such as the CIA and FBI shared more information with the State

[1] "How Visas Can Perpetrate Terror," by W. Wayne Merry, *The Washington Post,* 9/28/01.

Department."[2] But given the current set up, Consular Affairs is only one of many agencies on the front lines of prevention that did not receive the necessary intelligence. Consular Affairs should be moved into a homeland defense agency. The officers should receive real time intelligence reports and should be trained to spot security problems before they get to the border.

The second step, as outlined in this bill, is to take the Border Patrol portion of the Immigration and Naturalization Service and move it into a new prevention based agency. In the past decade, the INS has been in one crisis after another. Two members of Congress have called it "the most dysfunctional agency in all of government," a sentiment echoed by anyone who has ever had anything to do with the agency.[3] Unlike the Bureau of Consular Affairs, the problems of the INS cannot be blamed on lack of money since Congress has increased their funding in recent years. In spite of this they process applications by hand, having inexplicably failed to put in the electronic systems that would help them. When they do buy new systems such as their anti-smuggling electronic systems, they fail to train employees to use them. They can't keep track of their weapons or their property.

The failures of the INS are not new. During the Iranian hostage crisis in 1979, INS was only able to track down 9,000 of the 50,000 Iranian students in the United States. In 1993 the INS had no idea that Jordanian Eyad Ismoil had violated his student visa until he drove a bomb laden truck into the World Trade Center. And recently, the INS mailed out visa extensions to two of the dead hijackers in the September 11 attacks. The INS has never done a very good job of getting people out of the country who have overstayed their visas. Estimates are that 40% of all illegal immigrants are people who come to the US with visas but don't leave when the visas expire.[4] Of the hundreds of people who have been detained as suspects in the weeks since the September 11 attacks most are being held on immigration charges.

In its 2002 budget the Bush Administration proposed splitting the agency into two parts. This is a good idea and it is long overdue. The naturalization service, which makes legal immigrants into citizens, should be kept in the Justice Department and transformed into an agency respectful of those wanting to become Americans. Border Patrol should be moved to a new agency where, like consular officials, they have access to real time intelligence about who is entering the United States and why. As it now stands, border patrol agents are cut off from real time intelligence, overworked and ill equipped to stop potentially dangerous people from entering the country. We cannot defend the homeland if the agency that screens potential visitors to the US and the agency that inspects them at the borders are overworked, understaffed, badly managed and cut off from essential information.

Keeping bad people out of the country is one problem, keeping bad things

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[2] http://www.govexec.com/dailyfed/1001/101201b2.htm

[3] See remarks by Congressman George Gekas (R. PA) and Congressman F. James Sensenbrenner (R. WI) in "A welcome mat for terrorists; no one is keeping track of visa holders who are supposed to go home," by Douglas Pasternak in *U.S. News and World Report,* 10/8/01.

[4] Ibid.

out of the country another. That's why the Customs Service should be moved to a new homeland defense agency and its protocols and procedures integrated into the new agency. It is only an accident of history that put Customs in the Treasury Department and the INS in the Justice Department. Both agencies guard the borders. When the Clinton Administration began its reinventing government program these two agencies were renowned for their hostility towards each other and for the pettiness that extended even to their respective (and separate) trained dogs.

Customs does not have the troubled history of Consular Affairs or INS. Unlike INS it uses technology effectively, although its Automated Commercial System is in serious need of an upgrade and it has a shortage of high tech scanning machines at airports. Customs can also boast of having the only front line employee to prevent a terror attack. In December 1999, an alert Customs Inspector on the Canadian border stopped and arrested Ahmed Ressam, as he drove off the ferry to Port Angeles, Washington, in a car filled with bomb making supplies. Ressam, an Algerian, was part of a plot to disrupt the millenium celebrations.

But Customs faces another daunting challenge - protecting the country from everything from cocaine, bio terrorist chemicals and nuclear devices while keeping commerce moving at the same time - especially along our Canadian and Mexican borders. It collects $20 billion per year in fees and duties on imports and handles about $1 trillion in imported goods[5]. In the weeks following 9/11 Customs was on high alert along with everyone else, and industry felt the effects as parts from abroad were slow to arrive in American factories.[6]

But, as the memories of September 11 fade, the pressure will increase to – once again - move goods quickly across borders. The solution to this dilemma will be costly. We need a huge increase in sophisticated technology that would be able to detect dangerous chemicals, explosives and other undesirable materials efficiently. If the cost of detecting terrorism turns out to be a decrease in our global economic engagement the terrorists will have won a battle. That is why one of the most important pieces of this legislation is the creation of an Acceleration Fund for Research and Development of Homeland Security Technologies. If you pass nothing else this year you should pass this section of the bill and get the funding out there.

As proposed in this bill a new homeland defense agency would also contain the United States Coast Guard. Even though the Coast Guard is the nation's fifth uniformed military service, its location in the Transportation Department means it is often forgotten. It was moved from the Treasury Department to the newly created Department of Transportation in 1967 in what one author has called "a marriage of inconvenience" -- and they have been unhappy there ever since.[7] While approximately one third of the Coast Guard's

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[5] See, Stephen E. Flynn, "America the Vulnerable," *Foreign Affairs*, January/February, 2001.
[6] "Industry Braces for Logistics Slowdown - Supply Chain Pundits Expect Cost of Global Shipments to Rise," by Jennifer Baljko Shas and Claire Seratt, *Ebn*, (Manhasset, 9/24/01)
[7] "Coast Guard has Outgrown Transportation," by Bruce Stubber, *Proceedings*, (Annapolis, U.S. Naval Institute, October, 2001.)

mission has to do with transportation, most of it has to do with homeland defense.

The Coast Guard has often been a forgotten and ignored piece of the Transportation Department. For instance, a few years ago, increases in military benefits that were supposed to apply to all five services were appropriated only to the Defense Department, forgetting that Transportation needed some extra money if it was to apply the same increases to the Coast Guard. In recent years the active Coast Guard force has fallen to 35,000 - almost the same number as they had in 1967. Their vessels are old and maintenance has decreased by 12% resulting in an overall readiness drop of 20%.[8] With thousands of miles of unprotected coast line, the Coast Guard is the key uniformed service in a newly created agency for Homeland Defense.

The last piece of a new homeland defense agency should also come from the Department of Transportation. As a friendly amendment to this bill I would suggest moving the newly federalized airline security force from the Department of Transportation to this new agency. American "borders" now include every single international airport in the country and the job of screening people and things at those airports is no different than that same job at the borders.

Cyber-Security

I also commend placing the Critical Infrastructure Assurance Office, the Institute of Information Infrastructure Protection, The National Infrastructure Protection Center and the National Domestic Preparedness Office into one agency. Just over ten years ago, a graduate student in Berkeley California identified a computer hacker who was targeting sensitive government military networks. The hacker turned out to be part of a Russian espionage ring. As the grad student, Cliff Stoll, went about trying to do the right thing he found a government wholly unprepared and sometimes unwilling to take responsibility for this new kind of espionage.

Some things have changed since Stoll told his story in his book *The Cuckoo's Egg* – but not as much as needs to. Once again, going back to my original caveats – the cyber security problem cannot be solved with a traditional, closed bureaucracy. Any new organization must be willing to lead and to build trust among the thousands of critical private and public databases that are vulnerable to attack. Just recently we learned that most companies under attack never tell anyone about it. This impedes the ability of law enforcement to learn what it needs to learn in order to solve and deter similar crimes. A great deal of thought needs to go into the design of this new entity. The government needs to offer protection to the private sector such as making corporate information about cyber-vulnerabilities exempt from public disclosure – as has been proposed. In order for this new entity to work it must reverse the cynicism which usually greets the phrase – "We're from the government and we're here to help."

Emergency Response

[8] "Throw the Coast Guard a Life Ring," by Howard B. Thorsen, *Proceedings,* (Annapolis, U.S. Naval Institute, July, 2001.)

The other major element of this new department is the inclusion of FEMA, the Federal Emergency Management Agency. The other pieces of the proposed new department go together well because they are all concerned with pre-empting a terrorist threat. One can see the advantages of putting them under one leader and building a coherent, protective system that uses technology effectively so that it can offer maximum protection with the minimum of economic disruption. There are synergies - of management and of technology - that result from the creation of a coherent border patrol agency.

The challenges in emergency response are different. Disasters on the scale of September 11 could occur as the result of an earth quake in the wrong place at the wrong time or from other natural causes or from human, accidental, non terrorist causes. The federal government's disaster response ability has come a long way since Hurricane Andrew in South Florida more than a decade ago proved that the US disaster agency was itself a disaster. But while FEMA itself has proved to be a success story in terms of federal level reform, too many state and local governments remain totally unprepared to respond to acts of catastrophic terrorism.

FEMA can go into a new Department or stay where it is. That issue is less important that giving FEMA a clear leadership role in emergency preparedness. Whether as part of this department or not, FEMA should be given the legal and budgetary power to conduct training and practice enterprises with all major American cities. We need to create a seamless network of local, state and federal responders that are capable of dealing with terrorist related emergencies as well as with other emergencies. When thinking about the future of emergency preparedness it is useful to borrow a concept from the military – the CINC. As Terrence Kelly originator of this idea, suggests, CINCs are charged with "... developing the plans to met the requirements of the National Security Strategy and National Military Strategy."[9] FEMA should be given the authority to act as CINC in the United States for emergency response.

Staffing a new department

As I said at the outset, this department must avoid the problems of old fashioned bureaucracy. It bears mentioning that over 50% of the United States government has managed, over the years, to get themselves out from under Title V, the Civil Service Law. There is a reason for this. The law is no longer serves today's government well. I shudder at the thought of trying to hire the hot dog computer hackers necessary to staff a first rate cyber security office using the current classification system and the Rule of 3. It will not work. If this new agency is to attract the talent to do its job it must have its own personnel system, one that is consistent with merit principles but that allows for flexibility in hiring and for accountability. It must also have the leeway to pay salaries that are competitive with the private market. All of this means the construction of a new personnel system.

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[9] Terrence Kelly, "An Organizational Framework for Homeland Defense," *Parameters,* Carlisle Barracks, US Army War College, Autumn 2001.

National Office for Combating Terrorism

In closing, allow me to make a short comment on the provision in this bill calling for a National Office for Combating Terrorism. I am very skeptical that Congress can ever guarantee the primacy of a policy within the White House by legislation. Ultimately the Executive Branch needs to speak with one voice – that of the President. In setting up what appears to be a dual budget process this bill complicates the job of the President and removes responsibility from OMB for submitting a coherent budget proposal. A similar provision – decertification – can be found in the legislation that created the Drug Czar's office. It is instructive to note that in 14 years the provision has been invoked exactly one time and then the President and OMB had to broker the dispute. As anyone who has ever spent any time in the White House knows, this is not something you want to force on your president with any regularity.

This office is set up to conflict with the duties and practice of OMB and the NSC – the two powerful offices of the President's Executive Office. I do not think it will accomplish the objectives set out here and it could vastly complicate the President's job.

Conclusion

We should think about homeland defense along a continuum that runs from prevention to pre-emption and protection to response. This bill makes an enormous contribution to the second challenge – pre-emption. But it must have, along the way companion pieces that will strengthen our intelligence capacity and our response capacity. Taken together we can, in fact, increase our security.

Thank you.

PAUL C. LIGHT

THE BROOKINGS INSTITUTION

APRIL 11, 2002

I am delighted to appear before this committee to discuss the creation of a Department of National Homeland Security and the National Office for Combating Terrorism. Before turning to the specifics of this proposal, let me start by noting that this Committee has long taken its responsibilities regarding government organization very seriously. It does not legislate lightly when it creates a new department or agency, and has been the resting place for hundreds, if not thousands, of proposals that would have created new federal entities of one kind or another. But for this Committee's discipline, the federal organization chart would be even more cluttered than it currently is.

Thus, it is in the spirit of your past commitment to due diligence that I present this testimony. Simply summarized, I believe the key question facing this Committee, indeed Congress and the president, is not whether to create a new cabinet-level agency to address homeland security, but when and how. I have no doubt that the federal government will eventually have such a department or agency, and congratulate the Chairman for his willingness to take a highly-credible first cut at the organization chart.

However, I think there is still work to do regarding both the timing of the reorganization and its specific components. That is why I recommend a national commission on executive organization as a first step toward making the hard choices needed to make the tough choices needed to ensure that the new department has all the authorities and units it needs to be successful. Such national commission could complete its work quickly, and could give this Committee the guidance to restructure the federal government's approach not just to homeland security, but to a host of issues facing 21st century government.

My testimony is built around three points. First, I believe a cabinet-level department meets the traditional tests that have been used to judge the merits of creation. Second, I believe such a department should not be created until we have conducted a comprehensive, yet quick, review of the existing executive structure to make sure we have designed the most effective department. And, third, I strongly support the proposal to create a National Office for Combating Terrorism, but do not believe Congress need wait any longer to provide a statutory base for this critically-important unit.

The Case for a Department of National Homeland Security

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

1. Creating a cabinet-level department can give a particular issue such as homeland security a higher priority inside the federal establishment. That is certainly what Congress intended when it elevated the Veterans Administration to cabinet status in 1988. Although the bill did not originate in this Committee, its members eventually concluded that veterans policy merited the heightened visibility and importance that would come with a statutory seat at the cabinet table, and the perquisites that come with it. In a town of tea-leaf readers, creating a cabinet-level department matters.

   It is worth noting in this regard that there is a difference between statutory cabinet status and invitational status. The head of the Veterans Administration was invited to all cabinet meetings throughout the Reagan administration, just as the current administrator of the Environment Protection Agency is invited to all cabinet meetings today. The president is free to invite whomever he pleases to the cabinet meeting. But cabinet status is not something that can be conveyed by the president through executive order or mere invitation. It is confirmed in statute by placement in Title 5 U.S.C.

2. Creating a cabinet-level department can also integrate, coordinate, or otherwise rationalize existing policy by bringing lower-level organizations together under a single head. That is clearly what Congress intended in creating the Department of Energy in 1977. Congress and the president both agreed that the nation would be better served with a single entity in charge of energy policy than a tangled web of diffuse, often competing agencies. That is also what Congress tried to accomplish in establishing the Department of Defense in 1957.

   It is important to recognize that not all Energy agencies and functions were transferred to the new department. Congress saw fit to leave elements of energy policy in the departments of Agriculture, Interior, and Commerce, as well as the Environmental Protection Agency and General Services Administration. A reorganization does not have to combine every last element of existing policy or every last administrative unit.

3. Creating a cabinet-level department can provide a platform for a new or rapidly expanding governmental activity. That is what Congress did in creating the Department of Housing and Urban Development in 1965. Although the federal government was involved in housing long before HUD, the new department was built as a base for what was anticipated to be a rapid rise in federal involvement. Once again, however, Congress did not place all housing programs within the new department.

4. Creating a cabinet-level department can help forge a strategic vision for governing. That is what Congress expected in creating the Department of Transportation in 1966. The federal government had been involved in building roads and bridges for almost two hundred years when Congress created the department, but needed to coordinate its highway programs with its airports, airways, rail, and coastal programs. By pulling all modes of transportation under the same organization, Congress improved the odds that national transportation planning would be better served. Congress expected the same in not disapproving the reorganization plan that created the Environmental Protection Agency in 1970.

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

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

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

An Intermediate Approach

Despite my general support for the Chairman's draft, I am not convinced that this particular proposal offers the right combination of the right agencies at the right time. Should elements of the Immigration and Naturalization Service be included? What about the Transportation Security Administration? Does the Coast Guard really belong? On the one hand, the Immigration and Naturalization Service is so badly damaged that it might well drag down any department into which it was merged. On the other hand, the Transportation Security Administration is developing so effectively within the Department of Transportation that it could be damaged by being moved.

In all candor, the federal organization chart is a mess. The fact that we have nearly 70 agencies that spend money on battling terrorism is but one indication of the steady diffusion of accountability that has occurred over the past half century. Much as I support the basic instinct that underpins Title I of the proposed legislation, I believe the creation of a cabinet-level department of homeland security would be more likely to succeed if it follows, not precedes, a top-to-bottom analysis of the basic structure of the federal hierarchy. It has now been fifty years since we last assessed the overall condition of the hierarchy in anything more than an ad hoc fashion. The result is a federal organization chart that was invented at the dawn of the Cold War for a nation and world that have long ago moved on.

As the Chairman and former Chairman know, proposals for creating a national commission on executive organizations have been introduced in every Congress since the 100th in 1987, and have passed this Committee at least three times. Indeed, an early version of a commission was enacted into law as part of the 1988 Department of Veterans Affairs Act. status. The Committee considered the commission as an essential component for passage, and would have given President George H.W. Bush the analysis needed to reorganize the federal hierarchy. To the Committee's chagrin, the president killed the commission before it was appointed, missing a long-overdue opportunity to bring some common sense to the federal organization chart.

Fourteen years later, the federal hierarchy still defies common sense. It is choked with overlapping jurisdictions, duplicative programs, and redundant agencies, each one no doubt created for a salutary purpose, but notoriously resistant to reform nonetheless. Just as the mouth of the Ulongo-Bora bedeviled Humphrey Bogart and the African Queen, the government's organization chart serves more to exhaust and cultivate leeches than generate competition or innovation.

A national commission on executive organization could give this Committee an up-to-date analysis of the federal organizational chart, thereby providing a guide for potential consolidation. No one knows for sure just how many employment and training programs there really are, nor how many federal employees are laboring in different corners to produce essentially the same goods and services. By mapping the bureaucratic terrain, such a commission would introduce a needed dose of reality into the anecdote-driven debates about organizational reform.

Second, a commission could give this Committee desperately needed criteria for reshaping the existing hierarchy, whether for homeland security, food safety, or defense against bio-terrorism. Although its primary goal would be to reorganize toward strength, such a commission would have that once-in-a-lifetime opportunity to recommend the kind of flattening that might give the federal government a fresh start in both doing its job and recruiting the next generation of public servants. Done with care, the flattening could help agencies create career paths that fit with the much more flexible economy of today, while giving Congress a reason to adjust federal salaries to keep pace with the market.

Commissions are not self-implementing, however. Otherwise, the nation would already have a department of homeland security built upon the recommendations of the Hart-Rudman Commission. That is why any comprehensive assessment of the federal hierarchy should be coupled with an action-forcing mechanism modeled on the type used under the Base Realignment and Closure Commission.

The Case for a National Office for Combating Terrorism

Whatever my reservations about Title I of the draft legislation, I share no such reluctance regarding Title II. Congress should establish a statutory foundation for the White House office of homeland security. Such a foundation is essential for strategy, authority, and, perhaps most importantly, accountability. Contrary to those who see Governor Tom Ridge' s role as merely a domestic version of the National Security Advisor, he has substantial coordinating, policymaking, and planning responsibilities that go well beyond the National Security Advisor' s role. His is an office that behaves much more like the Office of Management and Budget, the International Trade Representative, and the Drug Czar, all of whom are lead by (1) Senate-confirmed appointees who (2) control substantial resources based on (3) statutory authorities.

Late last October, Senator Bob Graham and I set seven basic tests for measuring Governor Ridge's success as the president's Homeland Security chief. Although we were skeptical that he could do his job without statutory authority, we believed that he should be given the benefit of the doubt in carrying out his extraordinary mission.

Almost six months into his task, Governor Ridge has had both success and frustration. He clearly has access to the information needed to do his job, which was our first criterion for evaluating his office. But that information is still muddy, its sources many, and its usefulness often mixed. Ridge may be getting most of the information from inside government that there is, but perhaps not enough of the information he needs.

Governor Ridge has also had access to the principals, our second criterion. What he has not had is success in making his case on the need for sweeping reorganization of the nation's troubled homeland security agencies. No one knows for sure just what he believes about the need for reorganization--as a White House staffer, he has not been given permission to testify before

Congress. But reports are that he wants much more than mere tinkering with the Immigration and Naturalization Service, Border Patrol, and Customs Service. If true, he has not been successful in making his case.

Governor Ridge has had a significant impact on the budget and personnel process, our third criterion. Homeland security agencies received more money and headcount under the new Bush budget than they could ever have expected during ordinary times. But as Governor Ridge has argued in making the case against testifying before Congress, he has no power to spend, obligate, or audit money. At the end of the day, agencies must put their trust in the president's budget office for the dollars and personnel they need.

As for staff, executive office space, and a role in selecting key presidential appointees, our fourth-sixth criteria, Governor Ridge has had mixed success. He is still running a small, if talented, operation, and is still looking for office space within shouting distance of the Old Executive Office Building, which he calls home. But it is not at all clear that he has had a role in selecting key personnel such as the new Surgeon General or the director of the National Institutes of Health.

Governor Ridge may have had his least success on being involved in the management reviews of the homeland security establishment, our seventh and final criterion. As the recent events at the Immigration and Naturalization Service suggest, the problem with homeland security is organizational. Many of the agencies involved in the effort are under-trained, under-resourced, and under-performing.

Despite his own opposition to a legislative base for his White House office, Governor Ridge may have made the most persuasive case for the creation of just such a statutory homeland security agency. Addressing state and local emergency management officials last February, Governor Ridge complained about the need for more coordination, better technology, and simple accountability. "As part of our consideration of the new 21st-century border, we are presently considering a range of options that goes from simply a new technology architecture that puts it all on the same database to a series of consolidations that could ultimately involve four or five departments," he told the National Emergency Management Association (NEMA). There is no line of accountability. As you take a look at 21st-century borders, you have got to have somebody in charge.

The Chairman's current proposal would do just that. It would give Governor Ridge and his successors the authority they need to design, implement, and sustain the investments and strategy needed to protect this nation from foreign threat. It would also give the American public what they clearly desire: on-the-record access to the federal government's most important policy-maker on homeland security.

I believe that Title II should be strengthened in at least two ways. First, the director should be given authority to make determinations regarding personnel needs of homeland security agencies. Under current policy, all federal agencies must submit workforce plans to the Office of Management and Budget. However, there is no policy regarding the use of those plans for shaping personnel budgets,

nor for determining what, if any, positions should be exempted from the Federal Activity Inventory Reform Act job competitions currently underway.

Second, the director should be given authority to review the performance plans that agencies must submit to the Office of Management and Budget under the Government Performance and Results Act. Every federal agency submitted their annual plans just two weeks ago, though there was absolutely no acknowledgment of that fact by either the administration or the media. In theory, those plans contained detailed information on what each agency intends to do in the coming year, as well as the measurements needed to hold each agency accountable. But the plans can hardly have that effect if they are never reviewed, let alone read. I believe the National Office for Combating Terrorism should be given prime responsibility for reviewing and certifying the performance goals, measures, and actual success of each agency engaged in homeland security.

CALIFORNIA INSTITUTE OF TECHNOLOGY

April 11, 2002

The Honorable Joseph I. Lieberman
Chairman
Committee on Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510-6250

Dear Chairman Lieberman:

On behalf of The California Institute of Technology, I wish to express my strong support of the establishment of an Office of Science and Technology and the creation of the Acceleration Fund for Research and Development of Homeland Security Technologies in your bill, S. ___, the National Homeland Security and Combating Terrorism Act of 2002. In the wake of the terrorist attacks of September 11, the university community is more aware than ever of its responsibility to assist Federal, state, and local agencies in whatever way possible to ensure the security of the nation. I believe that S. ___ provides an excellent framework in which we can work to fulfill that responsibility.

Technological superiority is a critical component of homeland security. The nation's universities, with strong support from and in partnership with the federal government, conduct the research and development activities that have established the U.S. as the world's technological leader. From research conducted on biological toxins to developing effective technologies to protect buildings from heavy explosives, universities continue to produce the innovations necessary to address these security concerns.

Your legislation establishes an organization with both the political and funding authority to seek out the best research and development projects being funded by the government's various agencies, determine whether they have applications that could further the cause of homeland security, and then provide booster funding to speed the development and deployment of these new technologies. Not only would the new organization quicken the pace at which technology advancement increases the nation's security capabilities, but the centralized nature of the organization in and of itself would help the federal government become more aware about which scientific areas are receiving sufficient attention and which are being neglected to the possible detriment of the nation's defense.

I look forward to working with you and your colleagues to raise awareness of the important contributions that universities have to make in ensuring the safety and security of the nation, and thank you for your strong leadership in this area.

Sincerely,

Dr. Steve Koonin
Provost
California Institute of Technology

QUESTION DIRECTED TO DR. PHILIP ANDERSON
AND SUBMITTED FOR THE OFFICIAL RECORD BY CHAIRMAN LIEBERMAN

"Legislation to Establish a Department of National Homeland Security
and a White House Office to Combat Terrorism"

April 11, 2002

Question: I have introduced a bill, S. 1764, that would enact incentives to induce biotechnology and pharmaceutical companies to develop countermeasures -- diagnostics, medicines and vaccines -- to treat those who are exposed or infected by these agents or toxins.

My review finds that we have very few countermeasures for the agents and toxins that might be deployed against us. We were fortunate that Cipro had been developed and approved for anthrax, and that it proved to be effective against the strain of anthrax that was deployed as a terror weapon last October, but we need to recognize that we have no vaccines or drugs for most of the other CBN weapons.

My legislation would provide incentives for investors to fund research at biotechnology and pharmaceutical companies for good business reasons. With these incentives we could rely on the entrepreneurship of private companies to develop the countermeasures we need. It proposes a comprehensive plan of tax, procurement, patent, and liability incentives to spur investor funding of this research -- all under the control and direction of the Administration.

Do you believe that incentives like these need to be enacted to induce these companies to undertake this research?

Response: Yes - incentives like tax, purchasing, patent, and liability provisions should be enacted to entice biotechnology and pharmaceutical companies to undertake countermeasures research. In the current environment, shaping policies and programs is essential to ensure that companies will conduct Research and Development in areas of great uncertainty and without any assurance that if successful, their product will be purchased. On the other hand, companies could receive a "wind-fall" if the product of their Research and Development benefited from incentives and also had a significant commercial market.

Intellectual property is probably the single biggest incentive for encouraging companies to engage in Research and Development. Patents are essential to protect a company's ability to sell a product over time. With regard to the issue of liability, the number of vaccine manufacturers has dropped to just four. Liability concerns have moved pharmaceutical companies away from the manufacture of vaccines. For the private

sector, the long-term, unknown consequences of products and the nature of the liability system are critical components of any company's business plan. For bioterrorism products the question is whether the government should assume the liability or whether the liability system should apply at all.

Of concern will be large company positioning to take advantage of incentives. The proposed legislation would also seem to benefit smaller companies with little or no record of accomplishment. In addition, the creation of "disincentives" to universities by providing incentives only to the private sector could be a problem. There may also be an issue on ease of technology transfer from universities and government labs to the private sector. Lastly, the issue of non U.S and non U.S. affiliate and subsidiary access to U.S. subsidized products is a concern that should be addressed.

The CSIS Biotechnology Initiative has assembled a task force of senior leaders from government, academe, industry and non-profit organizations to address a "A National Strategy for Anti-Biothreat Vaccines, Diagnostics, and Therapeutics." In the course of their work the task force has considered the proposed legislation, S.1764. There have been two meetings held (November 16, 2001 and March 19, 2002) to examine national structural, policy and procedural issues associated with acquisition, discovery, development, and production of safe and effective vaccine, diagnostic and therapeutic products, feasible for large-scale public health deployment, for major biological threats to the civilian population. For more information on the CSIS Biotechnology Initiative, please contact Ms. Anne Solomon, Senior Advisor, Technology Policy and Director, Biotechnology and Public Policy Program at 202-775-3256 or **asoloman@csis.org**.

Questions Directed to OMB Director Daniels
Office of Management and Budget
And Submitted for the Official Record by Chairman Lieberman

"Legislation to Establish a Department of National Homeland Security and a White House Office to Combat Terrorism"

April 11, 2002

Question: One of the key functions of the Office of Homeland Security should be to ensure that we are fully prepared for a terror attack with biological, chemical or radiological weapons.

In that regard, I have introduced a bill, S. 1764, that would have the Office manage incentives to induce biotechnology and pharmaceutical companies to develop countermeasures – diagnostics, medicines and vaccines – to treat those who are exposed or infected with agents or toxins.

My review finds that we have very few countermeasures for the agents and toxins that might be deployed against us. We were fortunate that Cipro had been developed and approved for anthrax, and that it proved to be effective against the strain of anthrax that was deployed as a terror weapon last October, but we need to recognize that we have no vaccines or drugs for most of the other CBN weapons.

Does the Administration agree there is a wide and dangerous countermeasures gap?

Answer: Even before the events of September 11th, the Federal government had taken steps to procure a variety of important countermeasures and store them in the National Pharmaceutical Stockpile (NPS) that can be deployed to major cities around the nation within 24 hours. This capability was utilized for the first time on September 11th. Since that time, with the funding requested by the Administration and appropriated by Congress, this resource has been greatly enhanced. By the end of this year, the capacity of the NPS to treat anthrax will be increased to 20 million individuals. Further, the NPS contains supplies that address a wide variety of threats, not just anthrax. These include, but are not limited to: powerful antibiotics that are effective against a number of diseases including plague and tularemia; material and supplies to combat chemical attacks; and potassium iodide to combat the effects of a nuclear attack.

The FY 2003 Budget proposal contains funding for continued maintenance and improvements to the NPS, as well as a significant investment in research and development to make the necessary discoveries to develop more and better countermeasures as soon as possible.

Question: The government has funded basic research regarding countermeasures and it should continue to do so. I do not believe, however, that we should rely on this approach for most of the applied research that needs to be done. Does the Administration agree?

My legislation would provide incentives for investors to fund research at biotechnology and pharmaceutical companies for good business reasons. With these incentives we could rely on the entrepreneurship of private companies to develop the countermeasures we need. It proposes a comprehensive plan of tax, procurement, patent and liability incentives to spur investor funding of this research – all under the control and direction of the Administration.

Does the Administration believe we need to enact incentives to enable the private sector to conduct this research and what is its position on the specific incentives I have proposed be enacted?

Answer: The Federal government should continue to invest considerable resources in basic and applied research to further scientific discovery that will lead to both a greater number of countermeasures, and enhancements to their effectiveness.

There are clearly incentives already in place that will compel private industry to participate in this process. The Administration recognizes the great potential of private industry to make advancements that will bring new countermeasures into existence and into the market, and we must work with them to realize those accomplishments. However, it is also important to recognize that the Federal government must have at least a basic capacity of its own in this regard. In a time of crisis, the Federal government must be able to act swiftly and not be dependent on the choices of other actors.

Question: My legislation also provides incentives for the development of research tools powerful enough so that we could quickly develop and deploy a countermeasure to an agent or toxin we had not anticipated, including an agent generically modified to evade countermeasures. This may be the most important provision of the legislation.

Does the Administration believe that ~~we~~ **the** need to enact incentives for the development of these research tools is an essential element of our preparedness strategy?

Answer: The Administration believes that the need to develop research tools is essential, and that is why the President's FY 2003 Budget request includes $2.1 billion for bioterrorism-related research and development across the Federal government. These funds will be used to swiftly develop next generation vaccines, drugs, therapeutics and other countermeasures with which to respond to present and future threats. Much of this work will be done within the Federal government, but much of this funding will also support research done by extramural grantees such as scientists at universities across the nation.

Question: Does the Administration believe that the management of these incentives should be vested with the Office of Homeland Security?

Answer: The Office of Homeland Security is an office within the White House that serves an advisory role to the President, and as a coordinator among the many Federal agencies that are contributing to the process of ensuring the highest possible level of security within our nation's borders. Under Gov. Ridge's leadership, expertise from within and outside of the Federal government has been quickly consolidated in this office, and it has been effectively serving the President and the American people for several months. The Administration understands that there have been a number of suggestions made regarding the organizational structure of this entity, and we are open to considering a number of models. At this point, we expect that the National Strategy will speak more specifically to the Office's roles and responsibilities.

Response from I.M. Destler, Professor, Maryland School of Public Affairs to Question for the Official Record from Chairman Joseph Lieberman

"Legislation to Establish a Department of National Homeland Security and a White House Office to Combat Terrorism"

April 11, 2002

Question:

Do you believe that incentives [for investors to fund research at biotechnology and pharmaceutical companies. . .to develop countermeasures – diagnostics, medicines and vaccines – to treat those who are exposed or infected (by agents or toxins spread by terrorists)] need to be enacted to induce these companies to undertake this research?"

Response:

I am not expert in this area. I certainly agree that we want biotechnology and pharmaceutical companies to be developing countermeasures against agents or toxins that might be employed in bio-terrorist attacks. The problem is to distinguish between those products that it is in companies' financial interest to develop in any case, and those which are unlikely to prove profitable but which the nation would like to have available to respond to a known biological weapon that terrorists have a plausible shot at employing.

In each of the latter type of cases, government action is clearly called for, but whether it should take the form of research incentives to private firms is less clear. If the need can be explicitly defined, it might be most effective for government to contract directly with firms to develop specific drugs–just as the Department of Defense contracts for specific weapons. We should not assume that the "market" is always the most appropriate or efficient mechanism, especially a market as imperfect and regulated as this one, and especially if there is a need to keep the technical characteristics of the remedy secret (to protect against countermeasures). In any case, choice of whether and how government should inervene would rest on specific analysis of the nature of the threat, the treatments presently available, and the potential for success within a reasonable time period.

My instinct is to proceed with caution: government should be careful to avoid subsidizing product development that is likely to prove in pharmaceutical companies' financial interest, just as government should not subsidize security measures for every building that might plausibly be a target of terrorist attack. There are surely cases, however, where exceptions to these general rules need to be made, but then the proper response might well be to contract directly with one or more companies rather than to develop broad incentives.

I hope that this response is helpful. If you need further insight as this issue evolves, you might wish to contact my colleague at the Maryland School of Public Affairs, Professor (and M.D.) Robert Sprinkle, who knows much more than I do about drug markets and potential remedies.

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FOR THE OFFICIAL RECORD FOR CHAIRMAN LIEBERMAN

RESPONSE FROM PAUL C. LIGHT

"Legislation to Establish a Department of National Homeland Security and a White House Office to Combat Terrorism"

April 11, 2002

Question:

1. I have introduced a bill, S. 1764, that would enact incentives to induce biotechnology and pharmaceutical companies to develop countermeasures--diagnostics, medicines and vaccines--to treat those who are exposed or infected by these agents or toxins.

My review finds that we have very few countermeasure for the agents and toxins that might be deployed against us. We were fortunate that Cipro had been developed and approved for anthrax, and that it proved to be effective against the strain of anthrax that was deployed as a terror weapon last October, but we need to recognize that we have no vaccines or drugs for most of the other CBN weapons.

My legislation would provide incentives for investors to fund research at biotechnology and pharmaceutical companies for good business reasons. With these incentives we could rely on the entrepreneurship of private companies to develop the countermeasures we need. It proposes a comprehensive plan of tax, procurement, patent, and liability incentives to spur investor funding of this research--all under the control and direction of the Administration.

Do you believe that incentives like these need to be enacted to induce these companies to undertake this research?

Response:

I am always in favor of incentives for producing intended outcomes. Your legislation would certainly help produce the hoped-for behaviors in the production of pharmaceutical countermeasures. At the same time, I would encourage the Committee to examine possible contracting mechanisms that might accomplish the same goal through more direct means. Assuming that Congress creates a new cabinet department of homeland security, for example, one could imagine providing fast-track contracting authority to make sure that the nation has adequate supplies of countermeasures such as vaccines and pharmaceuticals to combat specific threats identified by the department. The combination of incentives and direct contracting might be the ideal combination for anticipating the unknown and the known by way of bio-hazards.

Sincerely,

Paul. C. Light
Vice President and Director of Governmental Studies

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