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HOMELAND SECURITY ACT OF 2002

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 5005

JUNE 26, 2002

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HOMELAND SECURITY ACT OF 2002

WEDNESDAY, JUNE 26, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to call, at 2:10 p.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

Chairman SENSENBRENNER. The Committee will be in order and without objection, the Chair will be given permission to recess the Committee at any time because we do expect votes between 3 and 3:30. Without objection, all Members may insert opening statements in the record before Governor Ridge testifies, and Mr. Conyers and I will give 5 minute opening statements.

The events of September 11 forever altered our collective sense of invulnerability to terrorist attacks on American soil. In the months following the attacks, the President and Congress have taken several important steps to help secure the American homeland against future threats. This Committee has responded to these threats by crafting legislation such as the "PATRIOT Act," the "Border Security and Enhancement Act," the "Antiterrorism Explosives Act," the "Terrorist Bombing Conventional Implementation Act," the "Cyber Security Enhancement Act" and the "Homeland Security Information Act," which passed the House today. These measures make Americans less vulnerable to terrorism, but the work of Congress is far from complete.

The protection of the American people from foreign and domestic threats is the most important priority of Government, and the Committee on the Judiciary has a special responsibility to ensure our safety. Today we examine H.R. 5005, the "Homeland Security Act of 2002." This measure offered by the President and introduced by Majority Leader Armey, would establish a new Federal department dedicated to assessing, preventing and responding to homeland security threats.

Currently this mission is disbursed throughout more than 20 Federal departments and agencies. H.R. 5005 builds upon homeland security proposals offered by a number of blue ribbon panels, including the Hart-Rudman and Gilmore Commissions as well as important work by Members of Congress. It reflects the product of thoughtful consideration and intensive deliberation by the Bush administration. However, the constitutional role of Congress is not to endorse legislation without scrutiny, but to carefully appraise and improve upon legislation to which it may ultimately assent.

Chairman SENSENBRENNER. H.R. 5005 would transfer several existing law enforcement agencies, such as the Secret Service, Coast Guard, Customs Service, and Transportation Security Administration into a new department with nearly 170,000 employees. The Judiciary Committee has jurisdiction over the criminal code and all laws affecting the internal security of the United States. The purpose of this new department is to help secure America's internal security, and this Committee has an important responsibility to ensure the new department's law enforcement and crime prevention functions are realized in an effective, efficient, and affordable manner.

The bill also shifts antiterrorism-related prevention and emergency management offices within the Department of Justice to the proposed agency. These include the National Infrastructure Protection Center, the Office for Domestic Preparedness and the National Domestic Preparedness Office. Significantly, the Immigration and Naturalization Service, whose organizational limitations and deficiencies have long been the source of concern, would be absorbed by the proposed department.

The Judiciary Committee was the first to respond to the need to address systemic problems within the INS, and our INS restructuring legislation passed the House by a vote of 405 to 9. This Committee will rigorously examine how this legislation addresses the role, structure, and integration of the INS within the new department. Many have observed that the creation of the Department of Homeland Security represents the most ambitious reorganization of the Federal Government in a half a century.

As we consider this proposal, we would be wise to consider the words of President Dwight Eisenhower, who observed "organization cannot make a genius out of an incompetent, but disorganization can scarcely fail to result in inefficiency and can easily lead to disaster. And we must also not lose sight of a more fundamental and overriding purpose, the security and protection of the American people.

Finally, while America is forever changed by the events of September 11, we must not allow these attacks to alter the principle central to the American identity, a passion for liberty, a devotion to equal protection under the law, and a commitment to preserving cherished civil liberties. With a lot of hard work and a little bit of luck, we will be able to move this proposal to the President's desk in a deliberative but expeditious manner.

Before we begin, I would like to thank Director Ridge for his steadfast leadership and patriotic resolve during this time of crisis and for his tireless efforts to help ensure the security of the American homeland, and we look forward to his testimony today.

[The prepared statement of Mr. Sensenbrenner follows:]

PREPARED STATEMENT OF THE HONORABLE F. JAMES SENSENBRENNER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

The events of September 11th forever altered our collective sense of invulnerability to terrorist attacks on American soil.

In the months following the attacks, the President and Congress have taken several important steps to help secure the American homeland against future threats. This Committee has responded to these threats by crafting legislation such as the PATRIOT Act, the Border Security and Enhancement Act, the Antiterrorism Explosives Act, the Terrorist Bombing Convention Implementation Act, the Cybersecurity

Enhancement Act, and the Homeland Security Information Act, which passed the House today. These measures make Americans less vulnerable to terrorism; but the work of Congress is far from complete. The protection of the American people from foreign and domestic threats is the most important priority of government, and the Committee on the Judiciary has special responsibility to ensure our safety.

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H.R. 5005 would transfer several existing law enforcement agencies such as the Secret Service, Coast Guard, Customs Service, and the Transportation Security Administration, into a new Department with nearly 170,000 employees. The Judiciary Committee has jurisdiction over the criminal code and all laws affecting the internal security of the United States. The purpose of this new Department is to help secure America's internal security, and this Committee has an important responsibility to ensure the new Department's law enforcement and crime prevention functions are realized in an effective, efficient, and affordable manner.

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Significantly, the Immigration and Naturalization Service, whose organizational limitations and deficiencies have long been a source of concern, would be absorbed by the proposed Department. The Judiciary Committee was the first to respond to the need to address systemic problems within this Service, and our INS restructuring legislation passed the House overwhelmingly. This Committee will rigorously examine how this legislation addresses the role, structure, and integration of the INS within this new Department.

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Chairman SENSENBRENNER. Gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, very much, Mr. Chairman. Governor Ridge, we welcome you to the Committee, and good to see you again. This is an enormous responsibility that has been put upon you. You start off in a position with lots of duties and no authority, and now we are going about, I guess, the biggest reorganization in the history of the United States of America. I have been in a few reorganizations where we add a Cabinet and those have been very difficult to accommodate the jurisdictional problems and the fund-

ing and the internal quarrels that go on in a company and that sort of thing.

So it is with some amazement and sympathy to you that we find out we are going to do this quick, efficiently, and on the cheek. Good luck. We are here to help. But we want to be as candid as we can about this enormous challenge that has been put forward. I am still trying to figure out all those little boxes, the old boxes and then the new boxes.

In the new setup, I see more new boxes than there were in the old boxes, so one of our standard aides in this business is that you flash a chart on the wall with all the little boxes of what is new and how they are going to be done. I look forward, if not seeing it today, to see it at your earliest convenience.

Chairman Sensenbrenner has talked about the immigration problems. We are very sensitive to that. Another problem is some of the intelligence agencies are in the new system, and some of the intelligence agencies are not in the new system. And that is confusing because quite frankly, I know more about the history of the FBI and the CIA than I would like to know. I wish I knew less. But they bring with them some very complicated baggage.

And how this is all going to work in the circumstances that we find ourselves in today, it is something I want to help you work on. What our Attorney General, and now perhaps you, will be doing with the civil liberties, the Constitution and those rights that we have taken for granted for so long that apply to all people on the shores, not just American citizens, is very important to me. We will be talking with the Attorney General again soon and I will save some of those questions for you—but—for him. But for now, nothing would make me feel more comfortable than to know that you cherish and respect the constitutional rights that make us different from our enemies.

You know, the more we cut off rights and lock up people without an attorney, the more we wiretap attorneys' phones, the more we hide prisoners in our Federal prisons around the country, the less we can believe in this great system that we are trying to perfect. So I want to welcome you here. I know that all the Members here would like to make opening statements, but I am privileged to make one with Chairman Sensenbrenner. And I thank you very much.

Chairman SENSENBRENNER. We now have a vote to adjourn on the House floor. The Chair has noted the order in which all of you have appeared. You will all be protected when you come on back after the adjournment vote and the Committee is recessed, and please come back promptly because Governor Ridge will be sworn in and will testify as soon as we can come back here.

Mr. CONYERS. Let us vote to adjourn.

Chairman SENSENBRENNER. Really? Committee stands in recess.

[Recess.]

Chairman SENSENBRENNER. The Committee will be in order. Tom Ridge was sworn in as the first director of the Office of Homeland Security on October 8, 2001. In this capacity, Director Ridge is responsible for the development and coordination of a comprehensive national strategy to strengthen the protections against terrorist threats or attacks within the United States. Mr. Ridge is a deco-

rated combat veteran, a two-term Governor of the Commonwealth of Pennsylvania, and a former five-term Member of this body. We welcome you to today's hearing, and would you please stand, raise your right hand, and take the oath.

[Witness sworn.]

Chairman SENSENBRENNER. Mr. Ridge, without objection your entire written statement will be placed in the record. We would like to ask you to summarize what you would like to say in about 5 minutes or so and then the Committee will follow the 5-minute rule in asking you questions. So please proceed.

TESTIMONY OF HONORABLE TOM RIDGE, DIRECTOR, OFFICE OF HOMELAND SECURITY

Mr. RIDGE. Thank you Mr. Chairman, first of all, I do truly appreciate the opportunity to appear before your Committee with an operational microphone that works. Thank you, Congressman Gekas, and thank all of you for giving me the opportunity to spend some time with you this afternoon. I want to reiterate personally the President's desire to work with Members of Congress in a bipartisan way and to thank you for the bipartisan support Members have expressed in their commitment to act on this proposal by the end of this session.

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

Since the terrorist attacks of 9/11, all of America has risen to the challenge of improving the security of our homeland. As the President's homeland security advisor, I have had the privilege of seeing this firsthand. Literally hundreds of thousands of Federal civil servants have been working hard, and literally hundreds of thousands of other civil servants at the State and local level, let alone millions of Americans in other capacities, have been working very, very hard to secure the homeland. And in partnership with Congress, with States and localities, with law enforcement and with the private sector and the academic community, America has worked together to assess our Nation's critical infrastructure.

We worked together to seal our borders, airports, and seaports from terrorists and their deadly cargo, to strengthen the enforcement of immigration laws, to share information about threats, and to prepare for and prevent attacks involving weapons of mass destruction. Mr. Chairman and Members of the Committee, I believe that Americans are working harder, they are working smarter, and they are working together. But they need a structure that rewards that attitude and encourages others to adopt it as well.

That is why the President believes our Nation must now take the next critical step by unifying our efforts under a single Department of Homeland Security. Only Congress can create such a department, and I am here today to convey the President's deep desire to work with Members of Congress to accomplish this goal. The President believes that the creation of a single department with a single clear line of authority would not only improve our prepared-

ness for a future attack, but help prevent attacks before they happen.

Let me talk about the proposal in general, and then perhaps I will conclude my remarks and we can get into the specific questions that you and your colleagues would like to ask. As you mentioned, Mr. Chairman, responsibility for homeland security is currently dispersed within 100 different Government organizations and through 20 departments and agencies. There is no single agency, there is no single department that has primary responsibility for homeland security such—the absence of such a structure increases both the potential for mistakes and the opportunities for abuse, and it certainly does not help this country reach its full potential in utilizing all the assets we have, public and private, to prevent and prepare for and respond to a terrorist attack.

The present system is horribly inadequate. The President's proposal would transform this confusing patchwork into a single department whose primary mission is to protect our way of life and to protect our citizens; a single department to secure our borders and integrate and analyze intelligence, to combat bioterrorism and weapons of mass destruction and to direct emergency response activities; a single department to bring homeland security responsibilities under one roof working toward one goal, moving the executive branch in partnership with State and local governments in the private sector in one direction, toward enhancing and improving our security.

And there will be a clear single line of authority through to the secretary of the new department. To paraphrase Harry Truman, the buck will stop there. As you know, this would be the largest reorganization of the Government since the Truman presidency. Then the problem was the divided military. Years before he became President, Truman saw the problem as a Senator tasked with identifying duplication as well as inefficiency in the Armed Forces. He saw a solution, a coordinated defense organization.

After he became President, he acted upon his experiences and reorganized the various agencies into now what is considered to be the strongest military organization in the world, the Department of Defense, the intelligence organization around the CIA, and the National Security Council. Some in Government told Truman it couldn't be done. He reminded them that it had to be done. We too must act on lessons we learned from 9/11 and on our war against terrorism, and we too must build a sound homeland security structure for the future.

You mentioned before, Mr. Chairman, the Department of Homeland Security will be built on four strong components, border and transportation security, emergency preparedness and response, biological and chemical, radiological and nuclear weapon countermeasures, and information analysis and infrastructure protection. It is around these four pillars that this new agency will evolve and it is working together with this Committee and Members of other Committees in both Chambers that I believe we can accomplish our goal. The need is real. The threat is real, the sense of urgency and commitment to getting the job done, I think, is shared in both the executive and the legislative branch.

It will be my job in the weeks and months ahead to work with you to accomplish this mutual goal, and that is, to work with you to see to it that the President's initiative takes the form of law and that we finally merge into a single agency whose primary function is homeland security, a variety of these other departments and agencies who heretofore worked very hard and very well, but not as effectively and efficiently as they could and would and should under a new department.

So I thank you, Mr. Chairman. I will be anxious to respond to any of the questions that you and your colleagues might have.

Chairman SENSENBRENNER. Thank you, Governor.

[The prepared statement of Mr. Ridge follows:]

PREPARED STATEMENT OF GOVERNOR TOM RIDGE

INTRODUCTION

Chairman Sensenbrenner, Congressman Conyers, and other distinguished members of the Committee on the Judiciary. It is an honor to be here today to explain why I believe the U.S. House should support the President's proposal to establish a Department of Homeland Security. I also look forward to responding to your questions and listening to your views.

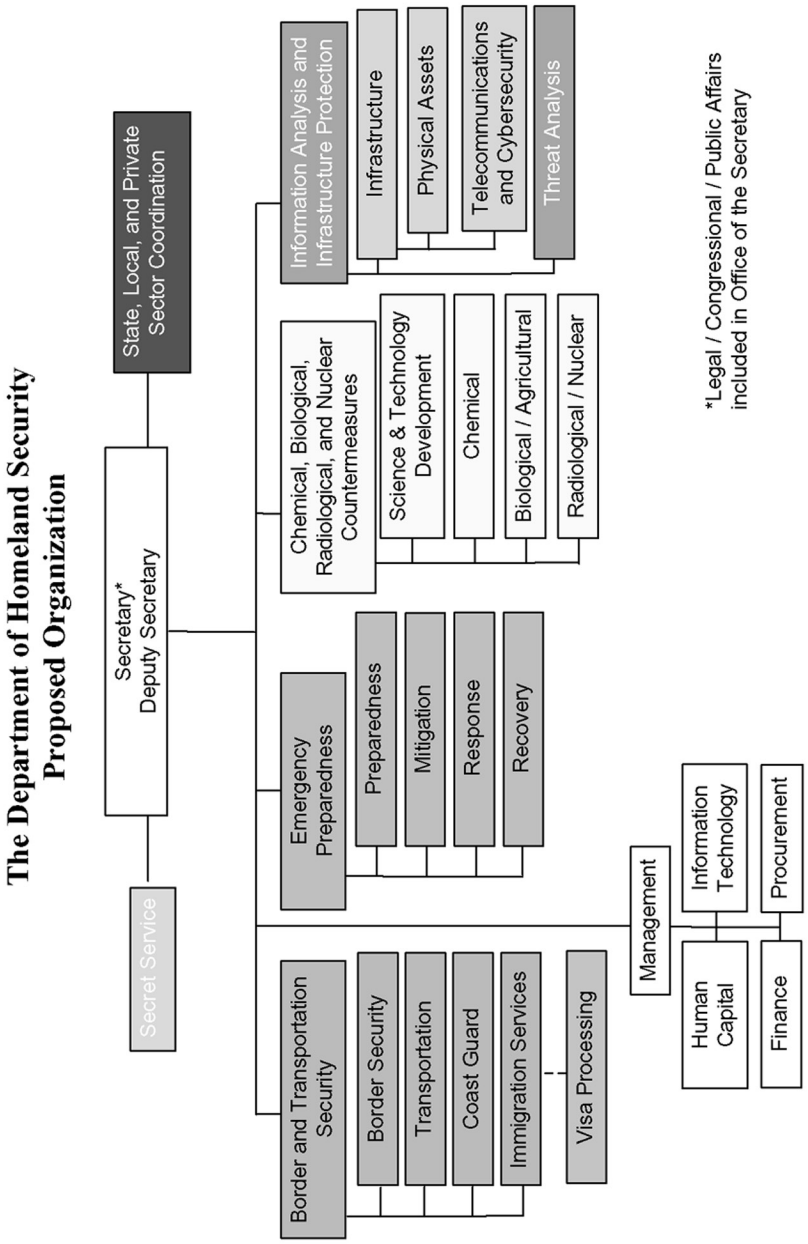
THE PRESIDENT'S PROPOSAL

On June 6, 2002, President Bush addressed the nation and put forth his vision to create a permanent Cabinet-level Department of Homeland Security. On June 18, 2002, I delivered to the Congress the President's proposed legislation for establishing the new Department. This is an historic proposal. It would be the most significant transformation of the U.S. government in over a half-century. It would transform and largely realign the government's confusing patchwork of homeland security activities into a single department whose primary mission is to protect our homeland. The proposal to create a Department of Homeland Security is one more key step in the President's national strategy for homeland security.

It is crucial that we take this historic step. At the beginning of the Cold War, President Truman recognized the need to reorganize our national security institutions to meet the Soviet threat. We emerged victorious from that dangerous period thanks in part to President Truman's initiative. Today we are fighting a new war against a new enemy. President Bush recognizes that the threat we face from terrorism requires a reorganization of government similar in scale and urgency to the unification of the Defense Department and creation of the CIA and NSC.

Currently, no federal government department has homeland security as its primary mission. In fact, responsibilities for homeland security are dispersed among more than 100 different government organizations. Creating a unified homeland security structure will align the efforts of many of these organizations and ensure that this crucial mission—protecting our homeland—is the top priority and responsibility of one department and one Cabinet secretary.

Immediately after last fall's attack, the President took decisive steps to protect America—from hardening cockpits and stockpiling vaccines to tightening our borders. The President used his legal authority to establish the White House Office of Homeland Security and the Homeland Security Council to ensure that our federal response and protection efforts were coordinated and effective. The President also directed me, as Homeland Security Advisor, to study the federal government as a whole to determine if the current structure allows us to meet the threats of today while anticipating the unknown threats of tomorrow. After careful study of the current structure—coupled with the experience gained since September 11 and new information we have learned about our enemies while fighting a war—the President concluded that our nation needs a more unified homeland security structure.



THE DEPARTMENT OF HOMELAND SECURITY

The creation of the Department of Homeland Security would empower a single Cabinet official whose primary mission is to protect the American homeland from terrorism. The mission of the Department would be to:

- Prevent terrorist attacks within the United States;

- Reduce America's vulnerability to terrorism; and
- Minimize the damage and recover from attacks that do occur.

The Department of Homeland Security would mobilize and focus the resources of the federal government, state and local governments, the private sector, and the American people to accomplish its mission. It would have a clear, efficient organizational structure with four divisions.

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

INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

The Information Analysis and Infrastructure Protection section of the Department of Homeland Security would complement the reforms on intelligence and information-sharing already underway at the FBI and the CIA. The Department would analyze information and intelligence for the purpose of understanding the terrorist threat to the American homeland and foreseeing potential terrorist threats against the homeland.

Furthermore, the Department would comprehensively assess the vulnerability of America's key assets and critical infrastructures, including food and water systems, agriculture, health systems and emergency services, information and telecommunications, banking and finance, energy (electrical, nuclear, gas and oil, dams), transportation (air, road, rail, ports, waterways), the chemical and defense industries, postal and shipping entities, and national monuments and icons. Critically, the Department would integrate its own and others' threat analyses with its comprehensive vulnerability assessment for the purpose of identifying protective priorities and supporting protective steps to be taken by the Department, other federal departments and agencies, state and local agencies, and the private sector. Working closely with state and local officials, other federal agencies, and the private sector, the Department would help ensure that proper steps are taken to protect high-risk potential targets.

In short, the Department would for the first time merge under one roof the capability to identify and assess threats to the homeland, map those threats against our vulnerabilities, issue timely warnings, and organize preventive or protective action to secure the homeland.

CHEMICAL, BIOLOGICAL, RADIOLOGICAL AND NUCLEAR COUNTERMEASURES

The war against terrorism is also a war against the most deadly weapons known to mankind—chemical, biological, radiological and nuclear weapons. If the terrorists acquire these weapons, they will use them with consequences that could be far more devastating than those we suffered on September 11th. Currently, our efforts to counter the threat of these weapons to the homeland are too few and too fragmented. We must launch a systematic national effort against these weapons that is equal to the threat they pose.

The President's proposed legislation would accomplish this goal. It would authorize the Department of Homeland Security to lead the federal government's efforts in preparing for and responding to the full range of terrorist threats involving weapons of mass destruction. To do this, the Department would set national policy and establish guidelines for state and local governments. It would direct exercises and drills for federal, state, and local chemical, biological, radiological, and nuclear (CBRN) attack response teams and plans. The result of this effort would be to consolidate and synchronize the disparate efforts of multiple federal agencies currently scattered across several departments. This would create a single office whose primary mission is the critical task of protecting the United States from catastrophic terrorism.

The Department would serve as a focal point for America's premier centers of excellence in the field. It would manage national efforts to develop diagnostics, vaccines, antibodies, antidotes, and other countermeasures. It would consolidate and prioritize the disparate homeland security related research and development programs currently scattered throughout the Executive Branch. It would also assist state and local public safety agencies by evaluating equipment and setting standards.

BORDER AND TRANSPORTATION SECURITY

Our number one priority is preventing future terrorist attacks. Because terrorism is a global threat, we must attain complete control over whom and what enters the United States in order to achieve this priority. We must prevent foreign terrorists from entering our country and bringing in instruments of terror. At the same time, we must expedite the legal flow of people and goods on which our economy depends.

Protecting our borders and controlling entry to the United States has always been the responsibility of the Federal government. Yet, this responsibility is currently dispersed among more than five major government organizations in five different departments. Therefore, under the President's proposed legislation, the Department of Homeland Security would for the first time unify authority over major federal security operations related to our borders, territorial waters, and transportation systems.

The Department would assume responsibility for operational assets of the United States Coast Guard, the United States Customs Service, the Immigration and Naturalization Service (including the Border Patrol), the Animal and Plant Health Inspection Service, and the Transportation Security Administration. The Secretary of Homeland Security would have the authority to administer and enforce all immigration and nationality laws, including, through the Secretary of State, the visa issuance functions of consular officers. As a result, the Department would have sole responsibility for managing entry into the United States and protecting our transportation infrastructure. It would ensure that all aspects of border control, including the issuing of visas, are informed by a central information-sharing clearinghouse and compatible databases.

EMERGENCY PREPAREDNESS AND RESPONSE

Although our top priority is preventing future attacks, we cannot assume that we will always succeed. Therefore, we must also prepare to minimize the damage and recover from attacks that do occur. The President's proposed legislation would require the Department of Homeland Security to ensure the preparedness of our nation's emergency response professionals, provide the federal government's emergency response to terrorist attacks and natural disasters, and aid America's recovery.

To fulfill these missions, the Department would oversee federal government assistance in the domestic disaster preparedness training of first responders and would coordinate the government's disaster response efforts. The Federal Emergency Management Agency (FEMA) would become a central component of the Department of Homeland Security, and the new Department would administer the grant programs for firefighters, police, emergency personnel, and citizen volunteers currently managed by FEMA, the Department of Justice, and the Department of Health and Human Services. The Department would manage certain crucial elements of the federal government's emergency response assets, such as the Strategic National Stockpile. In the case of an actual or threatened terrorist attack, major disaster, or other emergency, the Secretary of Homeland Security would have the authority to call on other response assets, including Energy's and the EPA's Nuclear Incident Response teams, as organizational units of the Department. Finally, the Department would integrate the federal interagency emergency response plans into a single, comprehensive, government-wide plan, and ensure that all response personnel have the equipment and capability to communicate with each other as necessary.

STATE/LOCAL GOVERNMENT & PRIVATE SECTOR COORDINATION

The Department of Homeland Security would consolidate and streamline relations on homeland security issues with the federal government for America's state and local governments, as well as the private sector. It would contain an intergovernmental affairs office to coordinate federal homeland security programs with state and local officials. It would give state and local officials one primary contact instead of many when it comes to matters related to training, equipment, planning, and other critical needs such as emergency response.

SECRET SERVICE

The Department of Homeland Security would incorporate the Secret Service, which would report directly to the Secretary. The Secret Service would remain intact and its primary mission will remain the protection of the President and other government leaders. The Secret Service would also continue to provide security for designated national events, as it did for the recent Olympics and the Super Bowl.

NON-HOMELAND SECURITY FUNCTIONS

The Department of Homeland Security would have a number of functions that are not directly related to securing the homeland against terrorism. For instance, through FEMA, it would be responsible for mitigating the effects of natural disasters. Through the Coast Guard, it would be responsible for search and rescue, navigation, and other maritime functions. Several other border functions, such as drug interdiction operations and naturalization, and would also be performed by the new Department.

WHITE HOUSE OFFICE OF HOMELAND SECURITY AND HOMELAND SECURITY COUNCIL

The President intends for the White House Office of Homeland Security and the Homeland Security Council to continue to play a key role, advising the President and coordinating a vastly simplified interagency process.

MAKING AMERICANS SAFER

The Department of Homeland Security would make Americans safer because our nation would have:

- One department whose primary mission is to protect the American homeland;
- One department to secure our borders, transportation sector, ports, and critical infrastructure;
- One department to integrate threat analyses and vulnerability assessments;
- One department to coordinate communications with state and local governments, private industry, and the American people about threats and preparedness;
- One department to coordinate our efforts to protect the American people against bioterrorism and other weapons of mass destruction;
- One department to help train and equip for first responders;
- One department to manage federal emergency response activities; and
- More security officers in the field working to stop terrorists and fewer resources in Washington managing duplicative and redundant activities that drain critical homeland security resources.

THE NEW DEPARTMENT WOULD IMPROVE SECURITY WITHOUT GROWING GOVERNMENT

The Department of Homeland Security must be an agile, fast-paced, and responsive organization that takes advantage of 21st-century technology and management techniques to meet a 21st-century threat.

The creation of a Department of Homeland Security would not "grow" government. The new Department would be funded within the total monies requested by the President in his FY 2003 budget already before Congress for the existing components. In fact, the President's FY 2003 budget will increase the resources for the component parts by $14 billion over the FY 2002 budget. We expect that the cost of the new elements (such as the threat analysis unit and the state, local, and private sector coordination functions), as well as department-wide management and administration units, can be funded from savings achieved by eliminating redundancies inherent in the current structure.

In order to respond to rapidly changing conditions, the Secretary would need to have great latitude in re-deploying resources, both human and financial. The Secretary should have broad reorganizational authority in order to enhance operational effectiveness, as needed. Moreover, the President will request for the Department significant flexibility in hiring processes, compensation systems and practices, and performance management to recruit, retain, and develop a motivated, high-performance and accountable workforce. Finally, the new Department should have flexible procurement policies to encourage innovation and rapid development and operation of critical technologies vital to securing the homeland.

WORKING TOGETHER TO CREATE THE DEPARTMENT OF HOMELAND SECURITY

President Bush recognizes that only the Congress can create a new department of government. During his June 6th address to the nation, the President asked Congress to join him in establishing a single, permanent department with an overriding and urgent mission: securing the homeland of America, and protecting the American people. I am here to ask, as the President did, that we move quickly. The need is urgent. Therefore, the President has asked Congress to pass his proposal this year, before the end of the congressional session.

Preliminary planning for the new Department has already begun. The formal transition would begin once Congress acts on the President's proposed legislation and the President signs it into law. Under the President's plan, the new Department would be established by January 1, 2003, with integration of some components occurring over a longer period of time. To avoid gaps in leadership coverage, the President's proposal contemplates that appointees who have already been confirmed by the Senate would be able to transfer to new positions without a second confirmation process.

During this transition period, the Office of Homeland Security will maintain vigilance and continue to coordinate the other federal agencies involved in homeland security. Until the Department of Homeland Security becomes fully operational, the proposed Department's designated components will continue to operate under existing chains of command.

Chairman SENSENBRENNER. I have a couple of questions. As you know, this Committee is deeply concerned with the dysfunctionality of the Immigration Service. It doesn't enforce our immigration laws against those who don't belong here, and it doesn't help provide service to people who do belong here and who wish to get work authorizations, green cards, adjustment of status petitions, adjudications, and the like. The House passed the bill which this Committee wrote 405 to 9 to abolish the current INS and to split it in two parts. And I have noticed the President's proposal transfers the same old same old INS over to the new Department of Homeland Security, which will bring along its dysfunctionality and incompetence and make the United States just as vulnerable as it is with the present INS being in the Justice Department.

This morning in the Senate, I noticed that you testified that you didn't want to have the INS split, and I would like you to clarify what you meant by that, whether you don't want it split in the new department, even though the Administration did support the bill that the House passed 405 to 9, or whether you were opposed to having enforcement in the new department and putting service in another department? Can you answer that question?

Mr. RIDGE. Mr. Chairman, as you appropriately noted, the President talked about separating immigration services from enforcement during the campaign. The Administration worked with you and supported the bifurcation of the two components of the INS. And my comments this morning over in the Senate reflected a point of view that they would not be assigned to different Cabinet agencies. We should still continue to work with your legislation. We think that this configuration of the consolidation of agencies is very consistent with the approach that you took, and which the Administration supported. Separate immigration services from enforcement but have them within one department, and that department would be the Department of Homeland Security and not segregate them and put one in one Cabinet agency and one in another.

Chairman SENSENBRENNER. Will the Administration support striking out the language that is in H.R. 5005 and dropping in the bill that was passed by the House 405 to 9 which would have both services and enforcement split but in the Department of Homeland Security?

Mr. RIDGE. That is the intent of the legislation. I know that there was some interest that the Administration had with working with you if and when the legislation got to conference on some of the other features of the legislation. But the notion that immigration service is separate and apart from the enforcement side of INS

would be divided and be contained within the new Department of Homeland Security is certainly consistent with your intention and the President's intention.

Chairman SENSENBRENNER. Let me say, I would hope that the Administration would not back off on its support of the bill that was passed. And I have one other question in the time I have available. My concern is that the issuance of nonimmigrant visas in the manner proposed in H.R. 5005 will blur the line of distinction because the Homeland Security Department would set the policy on who would get nonimmigrant visas, but the State Department would continue to do the interviews and actually make the decision on issuing nonimmigrant visas based upon valid applications.

Wouldn't it be better if we are talking about a consolidation of functions to transfer that part of the consular section or consular division of the State Department that is responsible for issuing nonimmigrant visas into the Department of Homeland Security and have the people who conduct the interviews and make the decisions at our embassies and consulates overseas be employees of the Department of Homeland Security rather than employees of the State Department?

Mr. RIDGE. Mr. Chairman, we looked at that issue and felt that while the Consular's Office does provide most important services to the INS, they do perform other services. And the notion that the new secretary of the Department of Homeland Security would be the controlling legal authority and direct specifically the Consular Offices in the conduct of their duties through the Secretary of State, we felt addressed the need that you have raised. The prescription as to who is to get the visas and under what directions directed from the Department of Homeland Security through the Secretary of State to the Consular Offices we felt addressed the need.

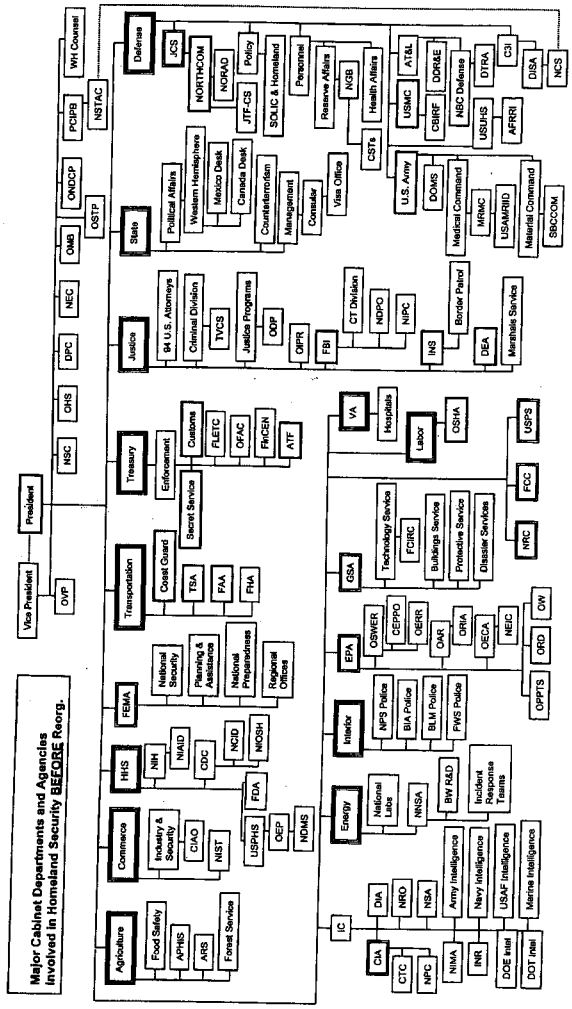
Chairman SENSENBRENNER. I hate to use the word controlling legal authority or no controlling legal authority. We have heard that before. Gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman. I have several considerations in the brief amount of time we have, but I hope we'll be able to work a little bit longer. First of all, I have the before and after boxes for you. This is unofficial, but I'd just like you to look at the problem and the solution and you may find——

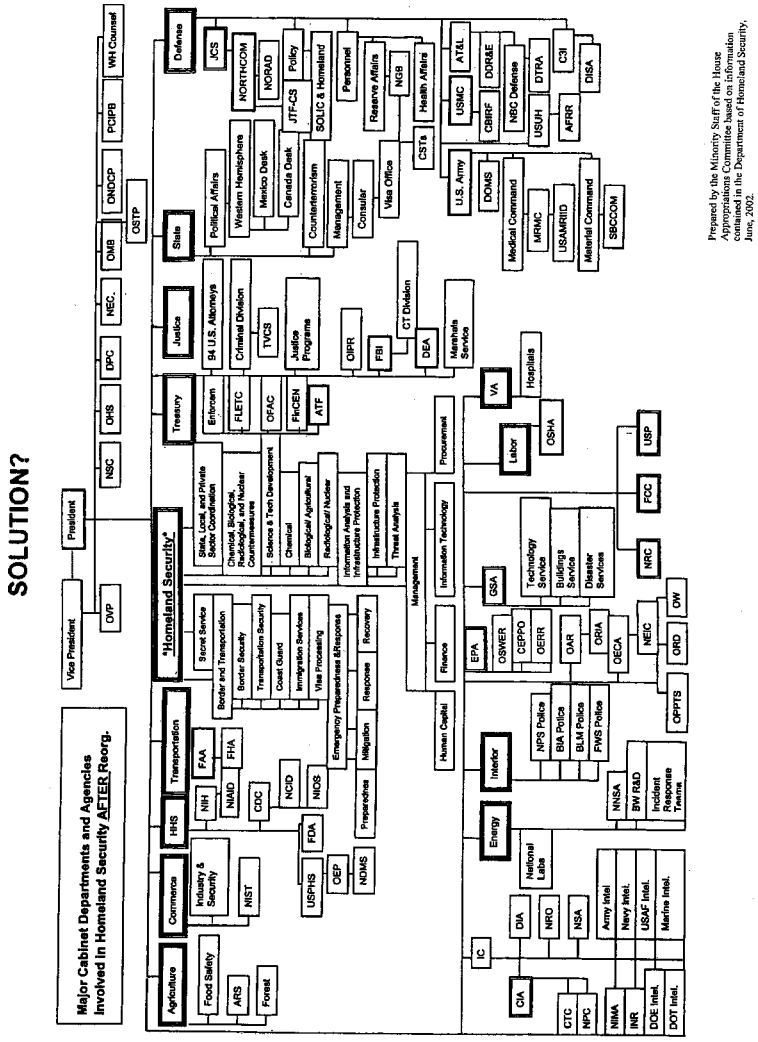
Chairman SENSENBRENNER. Without objection, they'll be placed in the record.

[The information referred to follows:]

PROBLEM



From the Department of Homeland Security, President George W. Bush, June, 2002



Prepared by the Minority Staff of the House Appropriations Committee based on information contained in the Department of Homeland Security, June, 2002.

Mr. CONYERS. But Governor Ridge, do you have a page of boxes—do you have yours? That's the one I gave you. What about yours?

Mr. RIDGE. Frankly, Congressman, I like the simplicity of mine better than the complicated.

Mr. CONYERS. That's why we're holding the hearing. We can match up my page of boxes with your page of boxes. So what do you get? Let's look at your boxes first. What makes your boxes better than whoever the author of this page of boxes is? I mean, what's the difference?

Mr. RIDGE. Well, Congressman, there are a couple of differences. First of all, the President has identified four foundations upon which the new department would be constructed. One of them is an integration of quite a few of those, those tasks and those departments in the border consolidation piece. The other is an integration of some of those tasks under the new Under Secretary for Weapons of Mass Destruction Countermeasures. We don't pretend to eliminate all of the departments and agencies and fuse them into the new agency, but we have focused on key missions to enhance homeland security within this department. And within those individual units, you will see consolidations of both agencies and programs.

We are still going to have a maze of agencies and organizations that have some relationship and some responsibility within homeland security. But at least now with a Cabinet level department whose primary mission is homeland security, the intergovernmental relationship between that agency and some of the others will be significantly improved.

Mr. CONYERS. Could you tell me, sir why there isn't more logic in us reforming, examining, finding out the problems in the CIA, the FBI, the INS and then determine the merger rather than to throw problem-plagued agencies all into a new set of boxes and squares?

Mr. RIDGE. The President feels very strongly when we look at, one, the ongoing reform within the CIA and the FBI and always the possibility of future reform, either initiated by the directors themselves or imposed by the Congress of the United States. The President feels very, very strongly that it would be wholly inappropriate and wrong to include the CIA in this reorganizational effort. This is a foreign intelligence gathering agency. It does acquire information relative to domestic terrorist attacks. But as you are well aware, there is a universe of information relating to national security issues and nonterrorist related activity that has historically been their primary focus, and if there is to be a reporting mechanism within the executive branch, the DCI should be reporting not to a Cabinet secretary, but directly to the President of the United States.

Mr. CONYERS. In other words, you are assuring the Committee that the problems that have plagued these organizations are not going to be covered up by this reorganization.

Mr. RIDGE. I am saying to you, Congressman, that the President wanted to develop a new product, a new strategic product in his information analysis and infrastructure protection unit. And within that unit, the strategic product, frankly, will be the direction that the Federal Government gives after it's taken a look at the threats, matched them with the vulnerabilities.

Mr. CONYERS. So the answer is yes.

Mr. RIDGE. The answer is yes.

Mr. CONYERS. I am asking you if the answer is yes.

Mr. RIDGE. There were several questions in your——

Mr. CONYERS. Well, the answer is yes, we are going to continue to investigate the problems of these agencies as we fold them in.

Mr. RIDGE. Well, Congressman, I think that's an eternal quest.

Mr. CONYERS. How about maybe?

Mr. RIDGE. Congressman, Director Tenet and Director Mueller are continuing to review and look at it. Congress is doing that. We continue to work with them to try to improve the relationships.

Mr. CONYERS. Well, maybe the answer is no, how about that?

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. RIDGE. I am going to tell you that both agencies, both principles, the Congress, and the President of the United States, is looking to improve the information gathering capacity of this country.

Chairman SENSENBRENNER. The time of the gentleman has expired. The gentleman from Florida, Mr. Keller.

Mr. KELLER. Thank you, Mr. Chairman. Thank you, Governor, for appearing before us today. I am a cosponsor of the Homeland Security Act, and therefore, support your efforts and President Bush's efforts to create a Cabinet level department. My questions just relate to one section of that department, the information analysis section. And the gist of my understanding is that the CIA and FBI and others will continue to gather the intelligence data relating to threats, and then the Department of Homeland Securities section on information analysis will then perform the threat assessment and alert the appropriate people, whether they be Government agencies or the private sector; is that correct?

Mr. RIDGE. It's fairly correct, Congressman. The new strategic piece in the President's initiative is that one, there is an affirmative obligation in the statute for the CIA and the FBI to share their reports and their analytical work with the new agency. And there may be, to that effect, some complementary review of the threat assessment, another set of experiences and intuition, looking at the same information that the FBI and CIA has done, and I think we all agree another look is not a bad thing to have.

But as importantly and the President's purpose is to take those threats and match them against the critical infrastructure that we have in this country. There has to be a vulnerability assessment. It's something that the Office of Homeland Security is working on. Congress is working on and we need that. If you take a look at the threats and match them against the vulnerabilities, the new strategic piece is Federal Government to potentially affected targets as to the kind of protective measures they should take.

Mr. KELLER. Let me ask you a follow-up and I hope one of those the private sector people that would be alerted if there is a credible threat assessment is the airlines obviously. And let me give you a real life example and you tell me how things would be different. About 19 months before September 11, we have learned through articles published in *Newsweek* and as well as *L.A. Times*, the CIA had certain information that two men, Ahmed Harad al Hamsi had

links to Osama bin Laden. Eighteen months later, they share that information with the INS and FBI, put out a terrorist watch list on these guys, but it's too late. They are already in the country.

And 3 weeks later, the FBI couldn't find them. They went to Dulles Airport and boarded an American flight 77, used their real names, real IDs, guys had their names in the phone book and their plane slammed into the Pentagon and killed 190 people. After that, we in Congress were concerned about it and we passed the PATRIOT Act, and it had the provision in there the Keller amendment says that not later than 120 days after the enactment of this act, the Federal Bureau of Investigation shall study and report to Congress on the feasibility of providing to airlines access via computer to the names and passengers who are suspected of terrorist activities by Federal officials.

In other words, we want to make sure the airlines have this information about terrorists so they can do a check. Well, that time period expired February 24, 2002, over 4 months ago, and we still haven't heard from the Attorney General or the FBI, no communication whatsoever. We have sent them letters, called, nothing and perhaps Mr. Ashcroft can explain tomorrow why that is, but this is a life-and-death matter, and under these facts what would be different under the Department of Homeland Security in terms of sharing information with the airlines and communicating with Congress.

Mr. RIDGE. Well, first of all, I think that under the consolidation of the agencies that have to do with our land ports, seaports. and water ports, the information sharing around the watch list will be affected much more quickly. We have multiple watch lists out there, but we don't connect necessarily to databases. And there is an unnecessary delay from time to time in getting information from one agency to another. Clearly that has to be changed. If a decision is made that somebody needs to be on a watch list and that person—that information needs to be communicated to the private sector immediately. That would be part of the strategic objective of this agency to start with. And I will let the Attorney General and the FBI director answer any questions you might have with regard to the impact or imposition of that new law.

Mr. KELLER. Thank you, Governor. Mr. Chairman, I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Chairman. Welcome, Governor. As I'm listening to you today and to the questions that are being asked by my colleagues, and earlier I sat in on another hearing dealing with the bill in front of the International Relations Committee what seems to me to be the crux of the problem, if it's a problem is the extraction of certain functions from existing agencies and putting them under the ambit of the new department and leaving some of the existing functions—let's take the Coast Guard, for example. There you're taking the entire agency and putting it under the Homeland Security secretary, and I approve of that. I think it actually belongs there. But at the same time, the Coast Guard has multiple missions, drug interdiction, obviously search and rescue issues, et cetera.

And then there are other agencies, for example, the FBI over which this particular Committee has jurisdiction. You're extracting certain functions but not other functions. I think that's what's confusing and that's what's making it awkward in terms of trying to see a perfect set of boxes, if you will. But I guess what you're saying, and I think you alluded to this earlier that this is a work in progress anyhow. I presume that there are consultations going on within the executive branch regarding this legislation once presumably it passes the House and passes the Senate, that there are going to be further discussions about the feasibility of doing some of this stuff. Is that a fair statement? I hope it's a work in progress because I have some serious reservations about as it exists now because I think it's a real stretch.

Mr. RIDGE. Congressman, having sat on the other side of the witness table for 12 years, whenever the President proposes something to the Congress by definition, it's a work in progress because none of this can happen without the imprimatur of the Congress of the United States. As part of the consulting process—that's why I am testifying and why you and our colleagues on this Committee and others will continue to call other members of the Federal Government before you as we work together to create the new department.

I would tell you, Congressman, that some of the units—we tried to look as carefully and scrutinize as closely as possible the different capacities that the agencies or the departments had as they related to homeland security. Just about every agency of Government is multi-tasked or every department. They do many, many things. Some they do better than others. Just as I recall, Committees of jurisdiction are tasked with many, many oversight responsibilities, but you get them all done. You set priorities but you do all that work. The Coast Guard comes over as a complete unit. It's got fishery responsibility, boater safety responsibility, but it is an enhanced responsibility for port security and homeland security. It is that enhanced capacity that has led the President to propose the largest increase in the Coast Guard's budget in his 2003 budget proposal.

Mr. DELAHUNT. Just reclaiming my time I read a report in the newspaper that there's been a—I don't know if commitment's the right term, but an intention to upgrade the Coast Guard in terms of its assets that I would suggest are long overdue to give us, really, a modern fleet as opposed to a fleet that ranks number 39 out of 40 in terms of age. Was that an accurate report?

Mr. RIDGE. I saw the report, Congressman, and I can't tell you that if the numbers with regard to new personnel, new aircraft, new boats are precise, but I do know before Admiral Loy left, he had worked with his successor Commandant Collins on a multiyear plan to build up the capacity.

Mr. DELAHUNT. And that has the support of the Administration.

Mr. RIDGE. I think that is reflected—the initial payment on that is reflected in the President's 2003 budget.

Mr. DELAHUNT. That is significant from where I come from, and probably would secure my support and I don't have—I have a series of other questions, but I'll yield back what time I have.

Chairman SENSENBRENNER. Gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. I thank the Chair. Governor, when you were occupying a residence in my congressional district when you served as Governor, you will recall that we had a constant sense of the security of Three Mile Island. The new Homeland Security Department which you contemplate in the bill does not name the Nuclear Regulatory Commission as an agency involved in the outright transfer; is that correct?

Mr. RIDGE. It is not specifically named, Congressman, but by implication that is a critical piece of this country's infrastructure, by and large, owned and operated by the private sector, and it is within this agency that working with the Nuclear Regulatory Commission on vulnerability assessments and enhanced security where that task would lie.

Mr. GEKAS. That is good news. That means that the credible threats that we hear so much about or incredible threats as they turn out to be, thank God, would emanate within the purview of homeland security once this Cabinet level office takes place.

Mr. RIDGE. Congressman, you're right on point. This goes to the new product that the President seeks within—to be developed within the information analysis and infrastructure protection piece in the new initiative. A lot of threats, we have to determine their credibility. Credibility is determined, we have to take those threats and see if there is a particular focus, a particular focus or object. If there's a consensus on that then we have to assess the vulnerability of that target or that object.

With a credible threat against a vulnerable target, it then becomes the new mission of this and the value added to this department is then if it's a nuclear site or sites, credible threat, this is the information, then we work with the NRC and with the private sector owner operator to enhance the security at that site giving them specific protective conditions and measures they need to undertake to harden the target.

Mr. GEKAS. At one point, I requested and received a briefing from the Air Force general from Florida, who is responsible for air defenses in the east as to specific plans or structures that are in place to defend against an attack on Three Mile Island or other nuclear facilities in the east. Now that's a Pentagon function there, and I was thoroughly satisfied with the briefing. But in view of the homeland security concept which we're contemplating now, again, the Pentagon here would be outside the jurisdiction of homeland security, would it not.

Mr. RIDGE. That's correct, Congressman. But given the direction that the Secretary of Defense has taken, the reorganization under the unified command plan, the creation of a North American command, the creation, I think, of a proposal of new Under Secretary for Homeland Security, again, as it will occur in many other instances, you now have an agency whose primary mission is homeland security working hand in glove candidly with other agencies to deal with particular threats or vulnerabilities.

They are military assets. The Office of Homeland Security in the White House has worked with the Secretary of Defense to deploy air assets, Naval assets and National Guard depending on the need, depending on the occasion. What the Secretary of Defense is

doing with the internal organization, I think, will add great value and really expedite, when appropriate, the use of DOD assets.

Mr. GEKAS. I thank you. One other question a little different in scope. The portion of new homeland security which is devoted to border control et cetera does not contemplate at least from the sketch we have seen the interior enforcement of the immigration laws, for instance, the millions of illegal aliens that are in our country, 300,000 of whom are under court order of deportation. There doesn't seem to be anything in the plan that would cover what we call the interior enforcement of immigration laws. Am I correct in that?

Mr. RIDGE. Congressman, I think with the reorganization that this Committee and the House has directed to be done within the INS and the elevation of that issue to make sure that our laws are enforced, and again with this new agency, hopefully can fill the mandate that Congress directed a couple of years ago with regard to a national security entry exit system, while it doesn't specifically identify as part of the structure, it would be presumably with the support of Congress part of the mission.

Chairman SENSENBRENNER. The time of the gentleman has expired. The gentlewoman from Wisconsin, Ms. Baldwin.

Ms. BALDWIN. Governor Ridge, thank you for coming to testify today. I am generally supportive of the President's plan to create a Department of Homeland Security. I think that coordination of our homeland defense within a single department, if properly organized and structured, will enhance the safety of Americans. As you know, this is a reorganization of massive proportions, and it's very complicated, and I think it requires careful consideration of its components and functions. I have a few questions about the Federal workers who will populate the new agency, and I have been studying the legislation and trying to draw meaning in some of its provisions.

Specifically one of my concerns is the fact that the President's legislation does not apply the Whistleblower Protection Act to the employees of the new department. And I want to know whether this was an oversight or whether the Administration has some sort of justification for not wanting the employees of this department to be covered by the protections of that act.

Mr. RIDGE. The statute—the proposal was drafted with the intent that these employees—this new department would have similar protections under existing whistleblower legislation under the coverage that presently exists. As we set up the new department, we want to make sure that everyone responds to the President's call to do everything we can to enhance security. And we would want to create—the new Secretary undoubtedly would want to create an environment that was open to change, that was constructively critical from time to time, and would want to create an environment where there would be no fear of discrimination or reprisal.

So our lawyers have looked at the legislation and said the whistleblower protection does apply. We have to work with you and your colleagues to make sure that you are convinced of that. But we would want these men and women who have been providing homeland security services to America for years, if not decades, to feel comfortable if they had to come forward to make recommenda-

tions, perhaps in a critical way they would be recognized as patriots, and their views would be taken seriously without reprisal.

Ms. BALDWIN. I think I am heartened by your answer. I had not read the legislation to specifically apply the Whistleblower Protection Act. The section that's dealing with this human resources management system seems a little vague to me, and I hope that the Administration would be willing to work with Members of this Committee to clarify in a very explicit way that the WPA does apply to the Homeland Security Department.

Similarly, we know that it was a century ago that we adopted a civil service system in this country and that Federal employees have the right to exercise their right to organize and collectively bargain over their terms of employment and working conditions. And I believe this balance on balance has served us very, very well. I am concerned about the status of the currently represented employees, which I think number some about 50,000 out of the 170,000 who are being contemplated in this shift and being transferred to the new department. What sort of commitment has the Administration made or can you make that all employees that are currently represented by union contracts will continue to enjoy those protections in the new department.

Mr. RIDGE. I am certainly not prepared to make any commitment on behalf of the new Secretary, and it is the new Secretary who would hopefully be given some flexibility to design a human resources management system based upon the principles of the Pendleton Act, which is merit and in fairness. But I do think that we need to work together to give this new Cabinet Secretary the flexibility and some of the discretion that he or she would need in order to reorganize as quickly and as effectively as possible to—they are transferred in with their bargaining rights.

About 20 or 25 percent of the men and women would be transferred in. They have transferred in as members of a collective bargaining unit. I think the goal of the legislation is to frankly give this new Secretary the opportunity to deal with incentive pay and to make decisions based upon performance and to have a much more agile system than is normally associated with Government organizations.

Ms. BALDWIN. So beyond the current length of the contract, the language is intended to give the Secretary flexibility to not recognize representation beyond that point.

Mr. RIDGE. The purpose of this legislation, there is no guarantee of that, but I would say to you someone who has worked with public service employees and unions in my service as Governor, that I would expect that it is well recognized on both sides of the aisle that these men and women have been working on homeland security for a long time, they have been working on bargaining units, and this is something that is respected as a transfer over. And the flexibility as we address it in this initiative has more to do with being able to assess merit and performance and, frankly, good performance and bad performance, than it has anything to do with the collective bargaining units.

Chairman SENSENBRENNER. The gentlewoman's time has expired. The gentleman from Wisconsin, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman, and welcome Governor Ridge. Thank you for your service. I understand as part of your recommendations to the President, you have recommended a national policy change that would require drivers' licenses granted to temporary immigrants to expire upon the date of expiration of their visas. Could you comment on that, if that's, in fact, the case and what your thoughts are?

Mr. RIDGE. You will not find this particular approach embodied in the President's initiative. However as an assistant to the President for homeland security, that is an issue that we've taken up with the law enforcement community, and Governors, and States attorneys generals, to see if there is an agreement or a consensus that it should be done. There's a lot of interest in making sure that the driver's license which legal immigrants can obviously access, and we want them to access it, but if they are here for a particular period of time, we want to make sure that when that time expires on their visa, it also expires on the license because one of the most immediate and quickest means of identifying ourselves in this country is the drivers license without asking for your visa or anything else. So that is just a matter that the Office of Homeland Security, in conjunction with the States, is presently examining.

Mr. GREEN. Well, Governor, myself and Congressman Flake, who isn't here right now, have introduced legislation to that effect, so we're both very supportive of that concept and would encourage you to pursue it; and we certainly would like to legislatively assist you as you pursue that goal.

Mr. RIDGE. I think it is consistent, Congressman, with another goal that the Congress has had, and that is to create for security reasons an entry-exit system. And the first thing that most people turn to when they're trying to identify an individual is the driver's license. So I think it is consistent with that longer-term goal as well.

Mr. GREEN. It would also seem that structurally and as a matter of process, as you take a look at the new Homeland Security Department, that it would be a valuable tool to that Homeland Security Department. Would you agree?

Mr. RIDGE. I concur. Anything that gives us accurate information with regard to an individual's status in this country for security reasons is a value-added effort.

Mr. GREEN. Great.

I'd like to switch gears. I know that part of the proposed Homeland Security's mission is to minimize risk and assist in recovery from terrorist attacks. Currently ensuring that State and local first responders are properly trained to respond to terrorism is a primary responsibility of the Office of Domestic Preparedness, at the Office of Justice Programs. I think some of us on the Committee are concerned that this crisis management training may be overlooked as the office is transferred into the Homeland Security Department.

How will the Department of Homeland Security ensure that the Office of Domestic Preparedness will continue that critically important function—crisis management training and consequence training, as well, for all first responders? Have you got plans to make sure that that continues to be picked up and managed properly?

Mr. RIDGE. The President believes, and I believe the Congress believes, as well, that the homeland is secure when the hometown is secure; and that we saw on 9/11 the extraordinary courage and heroism of a lot of folks we call our "first responders." We didn't pay much attention to them before 9/11, but now we do.

We're also familiar with the kind of training that is available through the small, but very effective office, the good offices in the Department of Justice. The President believes very strongly that as we build up a national capacity to prepare for and respond to another terrorist event, that we ought to give one agency primacy—that ought to be your goal, the exclusive goal of the agency—and that agency that would be grafted onto the new department, that exists now—and that is the Federal Emergency Management Agency.

In talking to Governors and many mayors, as well, they would like to see that agency also the one-stop shop for all the preparedness grants. There are a lot of training exercises, that have been done in the past. We're going to have to do even more in the future. There's a lot of equipment that has to be purchased as well. That is the reason for the President's initiative in the 2003 budget, the excess of $3 billion for first responders.

So it is the President's belief, you make this agency, bring FEMA into this new agency, make it the muscular agency that has primacy with regard to first responders and preparedness training, drills, exercises and equipment, and you pull this grant program and, potentially, even the personnel into FEMA to continue the work that they are doing; but obviously they will be joined by many others and they will have substantially more dollars in order to do their work.

Mr. GREEN. I see my time has expired. Thank you, Mr. Chairman.

Thank you, Governor Ridge.

Chairman SENSENBRENNER. Yes, the gentleman's time has expired.

The gentleman from California, Mr. Schiff.

Mr. SCHIFF. I thank the Chairman for yielding.

Governor, thank you for your testimony today. We all stand behind your efforts and want to work with you to make sure the department is as effective and cost-effective as it possibly can be.

I have two questions, one organizational, the other fiscal. The organizational question is this:

Two of the four pillars have a considerable overlap, and I'm curious about why they were in separate divisions rather than being consolidated together, and that is the Emergency Preparedness and Response pillar and the Chemical, Biological, Radiological and Nuclear Countermeasure Division.

In the latter division, among the purposes in your written testimony, is preparing for and responding to the full range of terrorist threats involving weapons of mass destruction, establishing guidelines for State and local governments, directing exercise drills for Federal, State, local, chemical, biological, radiological, and nuclear attack response teams and plans; and then the Emergency Preparedness Response Division would require ensuring preparedness of the Nation's emergency response professionals, overseeing Fed-

eral assistance in preparedness training of first responders. They'd have the authority to call on response assets, including Energy's and EPA's nuclear incident response teams.

Finally, it would be responsible for integrating Federal interagency emergency response plans into a single comprehensive Government-wide plan.

Those missions overlap considerably. Certainly part of the Emergency Preparedness Division would be the responsibility for preparing for chemical, biological, or nuclear or radiological attacks. Why would we want to separate that rather than have the weapons of mass destruction preparedness function be a part of the broader Emergency Preparedness Division, rather than having those two separate divisions? That is the first question.

The second question is the cost of the overall restructuring. I know the proposal is intended to be budget-neutral. Is that really even vaguely possible, considering that among other tasks, you have enormous technology demands to allow these new agencies now consolidated under one roof to talk with each other when the technology may not currently allow computers or even phones—phone technologies to be intermingled?

You'll also have the problem when you take an agency out of an existing department and put it in a new department, that it may have difficulties communicating with its former department, as well as massive potential relocation of personnel. The Lieberman proposal, which was similar, but more limited, the CBO estimated a cost of $1.1 billion over 5 years. So is it really plausible that this could be cost-neutral? If it isn't, what's a more realistic appraisal?

Mr. RIDGE. Thank you, Congressman. The Emergency Preparedness unit, which basically is building up FEMA and giving that agency primacy to deal with the preparation and response, is about the deployment and use of technology and physical assets in preparation for and in response to a terrorist event.

We're going to need to train people. We're going to need to educate people. We're going to need to build a national capacity of equipment of all sorts. That is distinguishable, I believe, from the strategic focus that the WMD Countermeasures unit brings to the department, because there the focus is not on deploying people in technology. It's really a research and development, a science and technology focus, that will hopefully, down the road, equip, based on threats and vulnerabilities, as we view them, to this country, will have the agility and the ability to direct research dollars to help these men and women who are our first responders.

So there's overlap in the sense that if the strategic focus we bring to where these public dollars are invested, biodetection, chemical detection equipment, protective gear, communications gear—the list goes on and on—that is the strategic focus. They do their job. Then these men and women are going to be better prepared under the new unit that has absorbed FEMA to do their job.

With regard to the budget-neutral, the $37 million figure is predicated upon the President's 2003 budget initiative. It includes a $14 billion increase over the levels dealing with homeland security in the 2002 budget. So, given this dramatic increase, I'm comfortable in concluding that even during this period of transformation, it can be budget-neutral.

You couple that with—depending on the flexibility and the agility you give the new Secretary, we've got to give them all the tools we possibly can to bring administrative efficiency, technological efficiency, operational efficiency, eliminate some redundancies.

You mentioned a couple—with the IT components in each one of these agencies, we think we can save money there.

And then, finally, if the Congress would give the new Secretary the transfer authority for 5 percent, 5 percent of these dollars are fungible so this new Secretary can meet needs based on threats and vulnerabilities, the President believes we can make our goal of being budget-neutral in 2003.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentlewoman from Pennsylvania, Ms. Hart.

Ms. HART. Thank you, Mr. Chairman.

Thank you, Governor. It's good to see you here before the Committee, and I appreciate your taking the time to answer our questions.

The first question I have is regarding the current authority that has been delegated to the FBI. As the lead agency in dealing with crime involving terrorist activities, do you foresee the creation of the new Department of Homeland Security as changing this, and if so, how?

Mr. RIDGE. No, we do not foresee making any changes to the FBI, because that—number one, jurisdictionally, that is not within the purview of the new Department of Homeland Security. We do view the new department as the beneficiary of a new and better product coming from the FBI because of the reorganizational efforts both in terms of personnel and technology that Director Mueller is going to bring to the FBI. We are the beneficiary of those changes that make—that ensure that we get better and more timely information. So we will have no direct jurisdiction over the FBI.

And I must say, the President believes that the FBI should remain accountable to—as the chief arm of the law enforcement agency of the Attorney General, ought to remain answerable to him through the AG, not through the Department of Homeland Security.

Ms. HART. Thank you for that.

Another question that I have and one that I know you're familiar with from being the Governor of Pennsylvania—and I am from being a State senator—is the somewhat interesting and convoluted nature of local government organizations. We have some police departments that have one police officer. We have other police departments that have hundreds or thousands of police officers, different EMS structures, all over the country, let alone Pennsylvania.

I'm concerned with the coordination being on the Federal level through the Department of Homeland Security. Is there some way that you envision the local structure changing or consolidating in some way as a result?

Mr. RIDGE. That's a very important question, but it also goes to the heart as to how local communities historically have dealt with the Congress of the United States in accessing Federal funds for preparation and response purposes.

What the President envisions in his 2003 budget is that these $3 billion-plus that will go down to the local—to the States and local communities, would only be distributed after a State plan was developed, beginning at the local level, where the small departments that we're talking about would sit down and decide on a more regional basis the kind of assets and equipment that they need and then build that into a statewide plan; so that in the future dollars distributed by the Federal Government to the States and to the local communities are done consistent with a plan that has been reviewed by the new Department of Homeland Security as we go about the process of building up a response capacity around the country.

Heretofore, 18,000 municipalities would very appropriately go to Justice, go to HHS, go to Federal Emergency Management Agency, and all try to carve out a little piece of the—piece of the public dollar pie. We want them to get additional money. We want to drive it down to them, and we're working with the mayors and the Governors to see to it that their interests are protected, but that their equipment purchases and their enhanced capacity is built according to a plan rather than on an ad hoc community-by-community basis. There's a lot of mutual aid and a lot of local reorganization that is going to have to be done to enhance the capacity of the community to respond to an attack.

Ms. HART. And that reorganization, do you expect that it will be directed—like, for example, Pennsylvania has placed someone in charge. Well, how are the States doing with placing someone in charge of that?

Mr. RIDGE. We discovered that all of the Governors in the territories have a counterpart to the Office of Homeland Security, and they've got either the adjutant general, they have somebody from the law enforcement community. And many of these States have begun developing these statewide plans even before—before the President even announced that he had a huge initiative to support that effort.

FEMA recently went out to the States and the local communities and said, we need to build a framework; give us your ideas as to how we ought to do that. They got 700 responses.

Then they'll push out the requests for proposals, and then they will work with the Governors and the mayors as the Office of Homeland Security has been doing to develop mutual aid plans to—you know, we get a lot of extra value for the dollar if people agree to help each other in a time of emergency. We saw it happen at the Pentagon. We saw it happen at the World Trade Center. We just want to make sure that it exists in writing before it happens again.

Ms. HART. Thank you.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from California, Mr. Berman.

Mr. BERMAN. Governor, good to see you. In response to Chairman Sensenbrenner's questions about consular affairs and the issuance of visas, you provided an interesting and, I think, sensible answer and argument, that having the new department establish the guidelines and the rules and the regulations and to implement them through the Secretary of State rather than take the entire

Foreign Service structure that now does the consular duties and transfer them to the Department of Homeland Security is a more effective way of implementing this very important function, this very important security function. And that's partly because consular affairs is involved in dealing with U.S. citizens who are arrested and dealing with American citizens who get desperately ill and a whole series of functions that go beyond that, and there are trained Foreign Service officers who are there.

And if we are moving that whole function to the Department of Homeland Security, are we now replacing those people, and what does that mean in terms of language familiarity and knowledge of the law and how long a start-up period and understanding of the cultures of those countries?

And if—or are we just transferring Foreign Service officers who don't want to simply do some consular affairs, who went into their careers to do a variety of different functions, and consular affairs may only be a part of it, what is happening to their careers?

I'd like you to apply that logic a little bit to Chairman Sensenbrenner's other issue, and that is the question of the INS. And we obviously are very concerned about a combination of effectiveness of management and historically—not any particular director, but historically—the conflicting missions and the mess that we are left with.

By a vote of—what was it, 400-and-something to 9, the House passed this fundamental restructuring. I know the Administration had a few concerns about it. By and large, they agreed with the concept.

Mr. RIDGE. Absolutely.

Mr. BERMAN. I've looked at your boxes and I've looked at your bill—and forget Obey's boxes, just your boxes. I don't see the implementation of that separation that the Chairman referred to, and I thought you sort of, at least conceptually, said the Administration still supports——

Mr. RIDGE. That's correct.

Mr. BERMAN. And why don't I see—if you support it, why isn't it reflected in either the bill you're proposing or at least in the boxes you're drawing?

Mr. RIDGE. Congressman, there are a couple of issues—decisions that had to be made as we pulled together and looked very critically at all the departments that potentially we would put into the new agency.

Number one, there was some question whether the INS should even be included here, taken out of the Department of Justice. We concluded that, yes, it should, because who enters this country, under what circumstances they enter this country, who leaves and under what circumstances they leave, is very much a security issue among——

Mr. BERMAN. Sure it is.

Mr. RIDGE. Many dimensions to that, but it's a sovereignty and security issue. It is with the understanding that since the President proposed during the course of the campaign and the House has spoken overwhelmingly that there would be within the new Department of Homeland Security the entire INS operation, but that we would distinguish between immigration services and enforce-

ment services. Internally, we made that distinction; and if we need to clarify for purposes of the legislation, we need to——

Mr. BERMAN. Where did you make that distinction? Where would I look to see that distinction? And perhaps it's unfair to ask. Maybe you haven't had—maybe you're saying this is a work in progress, we're redrawing the boxes as we speak, we're redrafting the bill as we talk, and this is coming. But I don't see it; I just hear it.

Mr. RIDGE. Well, in the—I don't want to start comparing schematics and diagrams and boxes, but as we conceptualized how this would operate, we viewed the immigration services as separate and apart from enforcement. In our schematic, we have enforcement more under border security because that's entrance and exit.

Mr. BERMAN. Well——

Mr. RIDGE. We'll work with you on the language, because the Administration supported the initiative that was passed overwhelmingly by——

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from Alabama, Mr. Bachus.

Mr. BACHUS. Thank you.

Governor Ridge, following 9/11, the Department of Justice sought to interview 4,800 young men who were in this country. The vast majority of those were from the Middle East. They were never able to locate 1,800 of those young men.

As you know, the vast majority of the hijackers were Saudi citizens. Responding to that—or not responding to that, I guess would be more correct—there have been—between September the 12th and March the 31st, there have been another 50,000 temporary visas issued at our consulates in the Middle East and another 50,000 young—you know, a lot of young men from the Middle East have been admitted to our country.

Now, knowing that and knowing also that 3 months before September 11th we established a new program only in Saudi Arabia called Visa Express, where you could go to a travel agency, not the consulate, but a travel agency, fill out a 2-page application and show your photograph, and you could get a visa. You never saw an American citizen. And not surprisingly, three of the last terrorists who arrived in the United States before September 11th, the hijackers used Visa Express to get here.

Knowing that and knowing the vital role of border security to the war on terrorism, is that Visa Express program, which exists only in Saudi Arabia, is it under review? Is it on the chop—more importantly, is it on the chopping block?

Mr. RIDGE. Well, I can't speak for any review that's been undertaken by the Department of State or the INS, and I respectfully suggest that you would direct your questions to them.

Mr. BACHUS. Now——

Mr. RIDGE. The circumstances—as you described it, the matter has been raised. It has been brought to their attention, and again, if we can give this new department the authority to deal with those kinds of questions, it will not only set the policy as to who has the opportunity to enter, but also deal with the logistics of the process that they must go through in order to be admitted; and more importantly to your question, finally deal with the congressional requirement that was imposed several years ago, and the President

supports, developing an entry and exit system, because the face of terrorism will change—is changing. The cells are throughout the world.

Mr. BACHUS. Well, we sort of know the face of this one.

Mr. RIDGE. That's exactly right, but at the end of the day, we're best protected if we apply the same policy across the board and we, frankly, have interviews and biometric identification and a few other things to help us.

Mr. BACHUS. Well, let me say this in regard—a senior official at the Bureau of Consular Affairs, who is in charge of the visa program, one of them called the program an "open door to terrorists," and that was in a national publication.

And I've got two other questions. Howard University just completed a national survey showing only one in five Americans correctly knows our current alert status. I didn't know what it was. I don't know if the audience knows whether it's green, red, yellow, orange. One in five Americans knows it's yellow, right?

Mr. RIDGE. Correct.

Mr. BACHUS. Has the alert system been——

Mr. RIDGE. I'm sure you'd have been upset if I didn't know, but that's correct.

Mr. BACHUS. I wasn't even going to chance that.

Has the alert system been a difficult message to get out, knowing that over 70 percent of the people, when they were polled just a few weeks ago, either didn't know what it was or——

Mr. RIDGE. Well, I think the polling data probably reflects fairly accurately the public's recognition that, for the first time ever, we have a national advisory system geared to threat information that we've received. It is, as you pointed out, a color-coded system.

It's been the subject of quite a few political cartoons, understandably. I'm one who thinks that humor is not a bad way to share information, to get people tuned in to something that's new and unique.

We're going to have to continue to learn as a country how to digest information relative to threats, whether it's the overall threat assessment or it's the reports that the FBI sends out. And I'll conclude real quickly.

The other part of that, Congressman—of that national threat advisory system that was vetted up through the President's Homeland Security Council is that we need over time, and it will take time, to be able to say that depending on the threat level, these protective measures would be employed by States, localities and businesses in order to respond.

We have a lot of work to do, and the poll reflects that.

Mr. BACHUS. And finally you say that part of your executive summary of what the White House is proposing for homeland security will set standards—it says, "assist State and local public safety agencies with setting standards." does that mean that we're going to—the Federal Government is going to start setting standards for city police officers, county police forces?

Mr. RIDGE. First of all, we're going to work with the—if the new Secretary follows the path that FEMA has developed and the model that has been developed and Tommy Thompson developed with HHS, you work with the State and local communities to help build

the capacity to respond to events. Prescriptive in the sense that if we're going to distribute public moneys based upon the reports that we get, the plans we get, there will be a menu of things which can be purchased, many of things for which dollars can be expended.

But we've got to retain flexibility to let them build up their own capacity, because the needs of the communities differ.

Mr. BACHUS. They tell me that——

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from Virginia, Mr. Scott.

Mr. RIDGE. And we would want the standards. Very good point.

What we do not have now, as one of the highest priorities, is communications equipment, and we wouldn't necessarily—the Federal Government shouldn't be prescriptive saying this is the only model of communications equipment you should purchase, but if we set the standard as the kind of equipment we need and let the marketplace, their creativity and—let them go out and offer these communities the best product.

Chairman SENSENBRENNER. The Chair is advised that we are 5 to 10 minutes away from having four votes in a row. Governor Ridge has agreed to be here until 6 o'clock at night. So we'll try to get as many questions in as possible, and the gentleman from Virginia, Mr. Scott, is recognized.

Mr. SCOTT. Thank you, Mr. Chairman, and I can't get in all the questions I have to ask within 5 minutes, but I will pose five questions, Governor, and ask you to respond in writing, if you could.

Mr. RIDGE. Congressman, I'll be more than happy to wait, if you want to ask them now. But we'd be happy to respond either way.

Mr. SCOTT. Thank you.

Chairman SENSENBRENNER. Without objection, all questions and responses will be placed in the record of the hearing.

Mr. SCOTT. First, what happens and why to whistleblower protection—and I'll type these up so you don't have to write them down.

What happens and why to whistleblower protection?

What happens and why to civil service protections generally? And will existing labor agreements be maintained for agreements with agencies that are transferred intact? That is, if an agency transfers intact, that shouldn't be an opportunity to undo a labor agreement.

Third, how do the exemptions in the bill for Freedom of Information Act and Federal Advisory Committee Act compare to the way those acts are treated in the Department of Justice and the Department of Defense, and if they're treated differently, why?

Four, what good is an Inspector General if the office is not totally independent, and how is the IG treated in the bill different from how IGs are treated in the Department of Justice and the Department of Defense?

And, finally, what responsibilities will the National Security Agency have after reorganization?

June 26, 2002

The Honorable Tom Ridge
Director
The Transition Planning Office
for the Department of Homeland Security
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Governor Ridge:

I appreciate your taking the time to come to the House Committee on the Judiciary's hearing on "The Proposal to Create a Department of Homeland Security."

As we discussed, I would appreciate your response to the following questions:

1. What happens and why to whistleblower protection in the new Department?

2. What happens and why to civil service protections generally and will existing labor agreements be maintained for agreements with agencies which are transferred intact?

3. How do the exemptions in the bill for the Freedom of Information Act and the Federal Advisory Committee Act compare to the way those Acts are treated in the Departments of Justice and Defense and if different, why?

4. What good is an Inspector General if the Office is not independent. And how is the IG treated in the bill different from how IGs are treated in the Departments of Justice and Defense?

5. What responsibilities will the National Security Agency have after reorganization?

Sincerely,

Robert C. Scott
Member of Congress

[Director Ridge's answers to Mr. Scott's questions are on file with the full Judiciary Committee.]

Mr. SCOTT. In the time I've got, in your testimony you say that responsibilities for homeland security are dispersed amongst more than 100 different Government agencies now. After reorganization, how many Government organizations will have responsibilities for homeland security?

Mr. RIDGE. Well, depending on the configuration that we work out with the Congress of the United States, it will still be a rather substantial number. I can't tell you, because it really depends on what you would—if we adopt the President's proposal as is, I think the number might be reduced by 25 or 30. That is a guesstimate at this point.

We'll just have to wait and see where the legislation takes us. Basically, 15 major departments, but within those departments there are multiple programs and organizations, but there are basically 15 agencies that have some responsibility for homeland secu-

rity. And there will still be a need, Congressman, for a coordinating role, because——

Mr. SCOTT. Well, on the coordination, I think you answered that the budget will be neutral with the additional money—the money that was appropriated, that $37 million was aimed at something. Will something not get done because of reorganization that we expected to get done with that $37 million?

Mr. RIDGE. The $37 million is the amount that would be directed to the agencies that are part of the President's proposal. So——

Mr. SCOTT. Well, is there any money in there for new computers and phone systems that may be necessary?

Mr. RIDGE. Yes. There are—the agencies that would be affected all have in their 2000—most of them have in their 2003 budget request additional dollars for IT, clearly a place we might be able to see some immediate savings.

Mr. SCOTT. Who's going to staff the Under Secretary of Management? Just find somebody?

Mr. RIDGE. Congressman——

Mr. SCOTT. That is a new——

Mr. RIDGE [continuing]. Didn't I tell you, whomever the President selects and the Congress confirms.

Mr. SCOTT. No. I mean who is going to staff it, not who is going to be it. The Under Secretary—the Under Secretary for Management will have huge responsibilities.

Mr. RIDGE. Yes.

Mr. SCOTT. And will need staff. Where is the staff going to come from?

Mr. RIDGE. Well, out of the 170,000-plus employees, as has been said by many Members of the House on both sides of the aisle, we've got a lot of really talented people out there that—I think we can just probably bring in some people that are already there. At least that is the option the new Secretary would have, and I would suspect that——

Mr. SCOTT. During the transition, after enactment, will people move into—as they move into this department, are you going to have a new building?

I notice that reports are going to have to be sent in from everybody, "all executive agencies shall promptly provide the Secretary all reports" and whatnot. Where will these reports go? Where will the people be after reorganization? Are they going to be in the same building they are in now in various departments, or are you going to move them into one building? How is that going to work?

Mr. RIDGE. Well, for the short term, it will be least disruptive to keep everybody where they are and——

Mr. SCOTT. Is it functional to have people in a—in your Secretariat, half of them in one department, some of them in another department building and another department building over here? Is that functional?

Mr. RIDGE. Well, Congressman, to respond to your question, for the short term, until we identify where the new location would be and what we would merge, we need to keep them exactly where they are.

I will tell you that only about 10 percent of these individuals work or reside in Washington, D.C. The rest of them are out in

field offices, and down the road and months and years ahead, they may be merging those offices—you know, trying to bring some organizational and operational efficiency back in every community where you've got multiple offices scattered all over. But that is something that would have to take—will take some time. And the transition team will be looking at the center of—the location for the new department, but there's been no decision made on that. We don't even have a new department yet.

Chairman SENSENBRENNER. The gentleman's time has expired, and the Committee will recess for the four votes. Members will please be prompt in returning following the votes.

[Recess.]

Mr. SMITH. [Presiding.] The Committee will be in order. We have about 10 minutes before we will have a series of three recorded votes, and we'll need to recess for that, and then we'll come back after those three votes and pick up on the questioning then.

I'm going to recognize myself for a couple of questions, if we can proceed.

The first is this. It seems to me that what we need to do on our physical borders is pretty clear. We need more and better trained Border Patrol agents and Customs officials. We need an entry-exit system as you mentioned earlier. We need to track certain foreign students. We need to give a return-home ticket to more illegal aliens who are in this country—all of which, by the way, was in the 1996 immigration reform law.

But what is less clear to me is how we protect ourselves from cybercrime which, as you know, can be just as deadly, can cost lives, and can also disable the economy.

So my question is, what is the Department of Homeland Security going to do to enable us to detect and deter and apprehend cyberterrorists?

Mr. RIDGE. Congressman, this is the fourth hearing that—fourth or fifth hearing that I've been part of over the past couple of weeks, and it's the first direct question that I've received about cyberterrorism. And I'm grateful for it.

There was a lot of talk about weapons of mass destruction, but cyberterrorism can be as potentially harmful to our economy, even to individuals as well, as a weapon of mass destruction. There are several places within the new Department of Homeland Security where cyberterrorism will be a focal point.

First, within the unit that is part of the President's Information Analysis and Infrastructure Protection unit, that new capacity, part of the critical infrastructure analysis will deal with the integration of the cyber world and the physical world.

As you know, the Internet has created a dynamic relationship between multiple layers of physical infrastructure in this country. If you take out an electric grid, because of its relationship with other aspects of the economy, you can cause a great deal of damage. So it's really a dynamic piece of our infrastructure. That will be a critical piece of the Infrastructure Protection and Analysis unit that we put together.

We'll have to know the location. We'll have to know the vulnerabilities. We'll have to be prepared to make recommendations to, and work with, the private sector. Most of that infrastruc-

ture is owned by the private sector. Most of that infrastructure we're going to have to work in collaboration with the private sector in order to—we're also going to need their expertise not only to ensure that we protect the private sector infrastructure, but we need their expertise to make sure that cyberterrorism doesn't attack the—isn't a means by which the Federal Government is attacked.

We have a lot of—you know the litany of the departments that would be affected by a hacker in that kind of intervention.

So it is throughout the Department of Homeland Security. We bring into the department that piece of the National Infrastructure Protection Center from the FBI that deals with cyberterrorism. We bring in the piece of the GSA that deals with the Internet and the cyber dimension of the Federal Government. So we consolidate a lot of the Federal programs, oversight of the—both the private and the public sector cyber infrastructure as part of the Homeland Security operation.

Long-winded answer. I'm sorry, but you're the first one that brought it up, and we view it as critically important to the mission of Homeland Security.

Mr. SMITH. Thank you, Governor Ridge. As you know, we've been told that it's just as likely that we'll have a cyber attack as it is that we'll have sort of a low-tech flying-fully-fueled-planes-into-tall-buildings attack; and because of that concern, I asked the question and you answered it, and I appreciate the focus you're going to be giving it.

One more question——

Mr. RIDGE. You probably know that Dick Clark is a Special Assistant to the President for Cyber Security. There's a cyber infrastructure board, and there is an office in the White House right now. We're going to formalize that and give it a critical role in the new department.

Mr. SMITH. One more question, Director Ridge, and that is that last March, the director of FEMA stated that FEMA and OPM would not handle crisis management or law enforcement training, technical assistance, exercises, and equipment. The director stated that, "While FEMA will coordinate grants and assistance to first responders, it will not assume any law enforcement functions, nor will FEMA provide law enforcement training, training or investigative techniques, evidence collection techniques, and so forth."

If FEMA runs the first responder program, who will handle crisis management training, technical assistance, and then the equipment questions?

Mr. RIDGE. The Department of Justice has traditionally provided the training and the grant programs to equip law enforcement communities for traditional law enforcement needs and uses. We see FEMA's interaction in this new department with the law enforcement community as being outside the traditional education, training and assistance provided by the Department of Justice.

The piece we see here that FEMA would be in charge of is the integration of the law enforcement community—the first responders, the fire, the emergency medical personnel, and the like—responding immediately to the crisis. The investigative function, the traditional role and the traditional training and traditional programs that support additional law enforcement remain at Justice.

Mr. SMITH. That was my—remain at Justice, okay.

Mr. RIDGE. The Administration is talking about putting two or three of the block grant proposals together into a much broader Justice assistance package which the communities and law enforcement would have access to, depending on their needs.

Mr. SMITH. Thank you, Governor Ridge. The gentleman from New York, Mr. Nadler, is recognized for his questions.

Mr. NADLER. Thank you, Mr. Chairman.

Governor Ridge, I have three questions to ask you; two of them I think may duplicate what Congressman Scott asked, but he asked for written. I'll ask if you can briefly comment.

But my first question is different. My first question is, a month and a half ago, on May 2nd, Senator Lieberman introduced the National Homeland Security and Combatting Terrorism Act of 2002, which proposed the formation of the national Department of Homeland Security, the Cabinet level, to do essentially what we're talking about here. The Bush administration vigorously opposed the proposal and issued a veto threat against any legislation that included such legislation, and I think you testified against it, if I recall my newspapers correctly.

On June 6th the President issued—went on national television and said that the establishment of a Department of Homeland Security was essential and, of course, submitted this bill a week or so later.

What changed between May 2nd and June 6th to make a proposal that elicited a veto suddenly an essential thing to do?

Mr. RIDGE. Congressman, I don't believe anything changed from day one when the Vice President was initially charged by the President in May of 2001 to take a look at how the Federal Government was geared to have to respond to a potential terrorist attack.

He began the process of taking a look at how the executive branch was organized. We were given the responsibility to continue that oversight when the President created the new Office of Homeland Security.

I can recall very specifically, Congressman, at the first meeting that the President had, introducing me to leaders of the House and Senate in the Cabinet room. Recognizing that some of the men and women there wanted to create a new Department of Homeland Security, he asked that they give the new Office of Homeland Security some time to do its own internal assessment, to talk to Members of Congress, to talk to Governors, to review the Hart-Rudman, the Bremmer Commission, the Gilmore Commission. So at no time during my time as Assistant to the President for Homeland Security, even prior to that, did the President ever say to anybody, we won't do it. He always said, give the Vice President and then give the new Director of Homeland Security an opportunity to review it first and make recommendations to me; and that's what we've done.

Mr. NADLER. Okay. Thank you. My second question has to do with the Freedom of Information Act. I'm reading section 204 of the legislation. It seems to indicate a broad exemption from the Freedom of Information Act for the department. How broad do you—do you envision this new department being totally exempt from the

Freedom of Information Act, or only partially exempt, and why and to what extent?

Mr. RIDGE. Congressman, there is a limited exemption to apply to information voluntarily shared by the private sector to the new Department of Homeland Security so we can have as complete and full a picture with regard to infrastructure vulnerability as we possibly can. It has been drafted to that limited exception, information voluntarily provided by the private sector, so that in the new unit, within the Department of Homeland Security, we can have the benefit of the knowledge they possess because of their control over these assets with regard to their vulnerability.

Mr. NADLER. And if someone in the private sector today came to the Department of Transportation or the Coast Guard or the FBI and said, such-and-such is vulnerable, that would be subject to the Freedom of Information Act?

Mr. RIDGE. Possibly, Congressman, depending on the circumstances and the information they're going to share. This recommendation and this limited exemption was based on the experience that the Office of Homeland Security had, because we were trying to develop our own critical infrastructure assessment strategy and model, so we began dealing with the private sector—the energy companies, the utility companies, the telecommunications companies—and there's some information that they are very reluctant to share with us because it's proprietary information.

It may even be good competitive information, but if it's subject to the Freedom of Information Act, not only potentially would the terrorists get it—and we don't want to give them a road map—but potentially for proprietary, competitive reasons, others may get it in the marketplace.

Mr. NADLER. But it has to relate to vulnerabilities?

Mr. RIDGE. Yes.

Mr. NADLER. It has to be information saying, this is a vulnerability? It can't say anything else?

Mr. RIDGE. Yes. That's the design and the intent of the legislation, that limited exception, information volunteered to help us with our vulnerability assessment.

Mr. NADLER. All right. The information directly related to vulnerabilities, I could see why that should not be public.

Let me ask my last question, and I don't—I was out of the room for a moment, so if you answered it already, forgive me.

The bill seems to indicate that the new department will not be subject—that all the employees will not be subject to Federal whistleblower protection. That seems a little broad.

Mr. RIDGE. You're not the only one that has raised this issue today, Congressman, and I want to assure you that the new department, and I suspect the new Secretary, would want to create—to ensure that the environment was open to constructive suggestion some may consider to be criticism.

Look, we've got to make this department the most agile, the best forward-leaning, forward-thinking entity in the Federal Government, because we are at war; we're combatting terrorists. They're agile and flexible. We need—and we'll work with you on the language to make sure that these men and women are afforded that

coverage, and not be afraid to come forth because of a possible reprisal——

Mr. NADLER. So, in other words, you're not interested in having exemption from all the various Federal whistleblower statutes for the employees of this department?

Mr. RIDGE. We want to make sure that they can come forward with a constructive criticism and not be fearful of reprisal.

Chairman SENSENBRENNER. Thank you, Mr. Nadler.

The gentleman from North Carolina, Mr. Coble, is recognized for his questions.

Mr. COBLE. Thank you, Mr. Director. Good to have you back on the Hill.

Two Members of the House Intelligence Committee appeared before the Judiciary Subcommittee recently, and I asked them what the chances are of having Homeland Security become a freestanding department. Two days after I asked that question, it was announced that that was, in fact, going to happen.

Now, I don't suggest, Mr. Director, that my question accelerated the elevation of Homeland Security to a freestanding department, but I do suggest, and I think it was a good idea, and if you want the assignment, it is my hope that you will be the driver. I think you are eminently qualified to lead that group.

One reason I endorsed the elevation to Cabinet status, I think, as you pointed out in your written statement, that the Department of Homeland Security will not grow Government, and I don't think it should. We ought to be able to remove duplication and use the personnel that are on line now. In other words, unplug the Coast Guard, replug it; unplug INS, replug it. And I think that can be done.

Obviously, Mr. Director, the powers that be, the President and others, apparently felt the CIA and FBI did not belong in this department.

Mr. RIDGE. Right.

Mr. COBLE. I guess you concur with that.

Mr. RIDGE. Correct.

Mr. COBLE. It was my feeling that they probably should, but you and I can talk about that at another time.

Mr. Delahunt, the gentleman from Massachusetts, talked to you a little bit about the Coast Guard, and I believe you said to him that you do not anticipate carving up the Coast Guard with its various assignments, but that the entire Coast Guard will come compacted to Homeland Security.

Is that your——

Mr. RIDGE. As a complete unit, Congressman, absolutely. They still have multiple missions. The President recognizes that they need additional support, and it's provided in its 2003 budget request.

Mr. COBLE. And I think that is a good idea, to keep it compact. I mean, they have varied duties, but when the Coast Guard left the Treasury Department, it was assigned to Transportation 3 or 4 decades ago. Oh, the Coast Guard won't be able to operate under Transportation.

Well, I think some naysayers are saying that about Homeland Security. I'm sure that it won't impair the Coast Guard's expertise at all as far as I'm concerned.

Now, a Neighborhood Watch program, Mr. Director, in my district in Pinehurst, North Carolina, has been nationally recognized as an efficient and an exceptional means for disseminating information on responding to community disasters, et cetera.

Do you foresee a national Neighborhood Watch program as part of the new Homeland Security Department?

Mr. RIDGE. More importantly than what I might foresee, the President's initiative with the USA Freedom Corps speaks specifically to a national effort headed by John Brizon to substantially increase the participation at the local level of men, women, and families in the Neighborhood Watch program.

Mr. COBLE. And I think that works very naturally, too, the ones with which I'm familiar.

I was one of nine Members of the House, Mr. Director, who voted against legislation that would federalize several thousand baggage screeners, and the reason I voted against it, I never saw any connection or correlation between federalizing those employees and enhanced safety.

Now, I presume, these employees will come under the new Homeland Security Department.

Mr. RIDGE. If the Congress honors the President's request to pull the TSA into the new department, that is correct.

Mr. COBLE. Am I missing something, Mr. Director, or do you see any connection between the federalization of these employees and enhanced safety?

Mr. RIDGE. I see the connection, because Congress made the connection. However, I thought the broader issue was who was responsible for ensuring that a higher standard of training, education, and preparation was required before they could take their posts at the airports.

So Congress has made the decision; we operate within that framework. But the broader issue was, were we satisfied with the standards? We weren't. Were we satisfied with the training? We weren't. Now we just have to make sure that, now they are part of the Federal workforce, that the standards of training and education are higher than they were when they were working for the private sector.

Mr. COBLE. Well, as I said at the outset, good to have you back on the Hill. I thank you for being with us today.

Mr. RIDGE. Thank you.

Mr. COBLE. Yield back, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Coble.

The gentlewoman from California, Ms. Lofgren, is recognized for her questions.

Ms. LOFGREN. Thank you, Mr. Chairman, and thank you, Governor Ridge, for being here and spending time with us to explore these issues. Clearly, all of us want to make our country safer, and many of us, if not most of us, believe that it is worthwhile to have a Cabinet-level department to oversee the security, the homeland security.

Some of the details, however, do command our attention, and I am really pleased with the attitude you seem to be displaying here today about sorting through the issues to make sure we get it right.

I was taken by your phrase that you wanted an agile department, and I think that what I foresee as an agile department, that is mission critical to get the job to secure the safety of America here at home. And along those lines I want to explore further the issue of immigration, because I think everybody agrees that the border control clearly belongs in this new department. However, if you move all of immigration over, you're getting foreign infant adoptions, Homeland Security agencies will be asking the new citizen applicants who was Abe Lincoln.

I mean, there is a whole body of work that has absolutely nothing to do with homeland security, and I hope that we can think through whether that's going to deter the department from its mission. Because most of those functions are a mess, as the Chairman has said; I mean, we're years behind in the processing of visa petitions and citizen applications.

The issue of unaccompanied alien children is one that we have a bipartisan bill for in both the Senate and the House to do something, because these children really are not well dealt with in the Department of Justice. There is a new proposal to take those small children and have that function be assumed by the DHS, the Children and Families Division, and maybe that might be an easier thing.

So are you open to sorting through some of those issues with us?

Mr. RIDGE. Well, clearly it is the intent of the President to be as open and as responsive as possible. That is certainly my intent as well. I will tell you, we looked at the facts as you've described them. We understand full well that the INS has other very important functions that one could say, even with the greatest imaginative leap couldn't possibly be connected with homeland security.

But having said that, we still think keeping the reform process that is under way now, being led by this Committee and the House of Representatives, it should—it can continue within the Homeland Security agency. There should continue to be the separation, that the Committee said, between immigration services and enforcement, but it still should continue to be a comprehensive unit within one department.

I'll give you one good example. Someone said earlier today—talked about marriage fraud. By and large, you wouldn't think that marriage fraud had anything to do with homeland security, but if it was a means by which someone would do us harm, gain legal access to this country, then maybe a fraudulent marriage might have, in time, proven to have a terrorist connection. So——

Ms. LOFGREN. If I may, Governor, along those—clearly, everything relates to our security at some arcane level. The issue of foreign infant adoptions, I couldn't actually even imagine a connection for that one, but I——

Mr. RIDGE. I'm at a loss right now, too.

Ms. LOFGREN. I raise this because I am worried that if we shove too much into the department, we'll sink it; and I don't want to see you or whoever is the department head here next year trying to ex-

plain the backlog on these arcane and unrelated immigration issues that drive every Member of Congress screaming—I mean, it's a—so that is the issue.

Can I raise another issue, which is a little bit different? And I know that Mr. Goodlatte has a concern, although he had a conflict in another Committee hearing. And that has to do with section 202 of the bill for the Computer Security Division that is currently in the National Institute of Standards and Technology.

I think there is a bipartisan belief that we finally got this right. After many, many years we've got an agency that is competent. They've done it well. There haven't been any problems, and too—you know, if it's not broken, please can we not fix it?

And so I would commend some attention to that, and I know that Mr. Goodlatte may—if he gets back for the next round, may also have some questions on that, but I think those of us who spent a long time in this area feel pretty strongly that that would be a big mistake for the country.

Finally, I want to get to the consular services, because it's true that consular services are beyond visa issuance. In most of the embassies and consular offices, most of the services and most of the officers are consumed with issuing visas, and in fact, the visa issuance function consumes—there's only, like, 60 to 90 seconds per visa. The officers are overwhelmed. They don't want to do it; they joined the Foreign Service to do something else. It is the least desired position, and for the most part one that I don't think gets the attention it wants, because the people doing it never joined the service to do that job.

So I think the real issue is who is getting into our country, and if terrorists are getting in, we're in trouble. And so I think, to think that we can give policy direction and control that function is a mistake, and I hope that we all look at that again. And I think it's important that it be in the department. And I yield back.

Mr. SMITH. Okay. Thank you, Ms. Lofgren.

The Judiciary Committee will stand in recess for about 25 minutes and that will give Members a chance to go vote, and then we'll return to Director Ridge.

Mr. RIDGE. Okay. Thank you.

[Recess.]

Mr. SMITH OF TEXAS. The Judiciary Committee will reconvene, and the gentleman from Illinois, former Chairman of this Committee, is recognized for his questions.

Mr. HYDE. I thank you for that flowery introduction.

Poor Governor Ridge thought he was through with all of this congressional folderal and here you are right in the middle. I welcome you here and I particularly welcome you into the position that you're in now and hopefully will continue in another direction, but I think the country's the better for your involvement and I wanted to say that.

Governor, I have a very simple question. Somebody provided me upon my request with a listing of all of the police agencies, Federal agencies that employ full-time personnel with authority to make arrests and carry firearms, and I have counted 41 agencies. Just to give you a little flavor, the Amtrak police, Central Intelligence Agency, Security Protective Services, Federal Emergency Manage-

ment Agency, Library of Congress police, Smithsonian National Zoological Park police, Tennessee Valley Authority police, U.S. Environmental Protection Agency, Office of Criminal Enforcement, U.S. General Services Administration, Public Building Service, Federal Protective Service, U.S. Government Printing Office police, U.S. Capitol Police, U.S. Postal Service Inspection, U.S. Supreme Court police. And that's just about a quarter of the page with all of the other listings.

Now with 41, give or take, agencies carrying weapons and able to arrest people and do all the other law enforcement things, I presume, that go with that, is there any contemplated coordination of all of these agencies? I doubt if they talk to each other. Can't we do something to have a central repository of whatever they find, any evidence or suspicions or information, intelligence, some place where it can all go quickly, get analyzed quickly, get acted upon quickly, and have the Bureau of Indian Affairs talk to the Federal Bureau of Prisons or the Bureau of Engraving and Printing police interface with each other and be cooperative rather than adversarial? Is that contemplated in your legislation?

Mr. RIDGE. Congressman, we did take a look at the multitude of law enforcement responsibilities and organizations within the Federal Government and one point even considered trying to aggregate and potentially pull them in. It was decided for a lot of reasons that it was taking on too much at this time. However, I suspect that given the focus of this new department and its need to work with the—all agencies within the Federal Government that have a law enforcement responsibility, that coordination effort would be—and that interdepartmental effort, because they are in Agriculture, they're in, as you pointed out, they are in the Post Office, in EPA, to the extent they have information relating to potential terrorist activities, to the extent that their eyes and ears could lead us or the FBI, we would want to coordinate that information and be a recipient, be a consumer of that kind of information as it relates to potential terrorist acts. There's a lot of work just associated with that process.

Mr. HYDE. I understand, and it involves massive culture changes. It involves all of these people developing a spirit of collegiality, on the same team, as it were. And I know it's a horrendous job, but it would seem to me it wouldn't take too much effort by a few of the right people talking to the heads of these agencies and giving them guidelines and telling them they're going to be enforced and watched, because again, 41 agencies running all over the place, reinventing the wheel, and the cost and resources and duplication, the redundancy, the ineffectiveness, it seemed to me are staggering and it will never get straightened out unless we create an omnibus agency like the one you're talking about with primo authority to do things and knock some heads together. I hope this proliferation of these law enforcement agencies learns to orchestrate that work. I think your job will be easier if they do.

Mr. RIDGE. We talked about it with Members of Congress even during the past couple of months. If we have a substantial reorganization as embodied in the President's initiative, the Congress and the President are going to discover that certain agencies are going to have fewer people and fewer responsibilities and it may be the

next step where Congress and the executive branch look at further reorganization of the executive branch along the lines you have talked about to bring even greater efficiency and more security and more effective service.

I mean I think if this reorganization effort goes off as planned and basically the configuration as presented, it gives rise to the Congress and the executive branch taking a look at other reorganizational efforts to bring the rest of the Government into the 21st century.

Mr. HYDE. We have a responsibility, that is this Committee and Congress, to oversee. We go create these agencies, we fund them, and then we forget about them and they proliferate. And I think we could spend time profitably reviewing all of these multitudinous agencies and what they do in trying to consolidate them and streamline them and effectuate a communication across agency lines.

So, anyway, I've got that off my chest and I feel better. Thank you, Mr. Chairman.

Mr. SMITH OF TEXAS. Thank you, Mr. Hyde.

The gentleman from Massachusetts, Mr. Meehan, is recognized.

Mr. MEEHAN. Thank you, Governor Ridge, for your patience in staying this long, particularly those of us who were late getting here at 2 o'clock and way down on the totem pole.

Mr. RIDGE. Been there, done that, so I am pleased to wait.

Mr. MEEHAN. In the ongoing debate about this whole issue, it seems that everyone's comfortable using the words homeland security but less so with the words domestic intelligence. You yourself have said we don't want to give the impression that we're having this reorganization to be creating a domestic intelligence agency. But I think the Congressional Quarterly probably got it right when they said this week in an article on homeland security, they said this new department would place under one organization billions of searchable records from immigration, law enforcement, Federal surveillance officers. Investigators could tap into airline ticket systems, visa applications, files of local police. It would create something unprecedented in American life, a powerful domestic security apparatus with its eyes turned inward. Now that sounds to me to be the description of a domestic intelligence agency. But in any event, in the legislation that Senator Lieberman, Representatives Thornberry, Harman, and myself and others have sponsored, we did not include an intelligence capability in the proposed reorganization. If the domestic intelligence capability is to be created, I believe it needs to be separate from our policy and law enforcement bodies with its own congressional oversight and report directly to the President.

Director Ridge, I believe that the inclusion of an intelligence shop in the homeland of security is potentially a recipe for abuse. Intelligence and law enforcements usually are a forced marriage put together for expedience rather than effectiveness. When put together in the same organization, the intelligence will inevitably, it seems to me, become subservient to the enforcers and policymakers. A bad policy can easily be supported by intelligence if the policymakers own the intelligence producers. So I also do not believe all of the firewalls in the world can alter the fact that intelligence pro-

ducers and policymakers will be working for the same master. So I want to focus my question on the creation of an intelligence clearinghouse.

Director Ridge, how do we ensure that the intelligence in this new department will not be politicized? In the past the CIA has oftentimes been accused of bending to political pressure, and they're an independent agency. So how will we ensure that this new intelligence capability, which will not be independent, will be able to produce objective intelligence?

Mr. RIDGE. First of all, Congressman, the new department would have no collection ability independent of the ability that presently resides in the agencies that would be sharing information with it; in other words, what the Customs can lawfully collect, that kind of information obviously is now lawfully collected under the new department. The same thing applies to the INS and same thing applies across the board. But in terms of going beyond that gathering of information, this new department, this new agency has no additional authority. The CIA and the FBI continued to reorganize and try to create a better infrastructure to gather information and to share it. They're well under way, making significant reforms in that effort. But I want to assure you that the new strategic product that the President seeks to develop through this agency is based upon information lawfully gathered by existing agencies under the laws and under the regulations and the oversight of the Congress of the United States, and the product is really designed to identify, to match vulnerable infrastructure with credible threats, and then for the agency for the first time to have the capacity to go out there and instruct and give specific direction as the kind of protective things and protective measures that have to be taken. Other than the authority to gather information presently embodied in the statute with all these agencies to be gathered together, there is no independent collection authority within the agency. And the President feels very strongly that those that gather the information, the CIA and FBI, should also be independent of this agency.

Mr. MEEHAN. Do you believe that information derived from intelligence sources and provided to the Department of Homeland Security, for example, should be used in judicial proceedings? Do you think that access to intelligence sources and methods will create a reliance on those tools rather than the more traditional tools of warrants and subpoenas and other things through investigations?

Mr. RIDGE. What Congress did in the PATRIOT Act was give the law enforcement community some new tools to share the kind of information that you might get during a grand jury investigation and the like if it relates to a potential terrorist or terrorist activity, with other agencies of the Federal Government to be preemptive, to be active in our effort to make sure that a terrorist attack doesn't occur. But other than relying on the tools that the Congress of the United States has given to the agencies that are involved in this new department, it seeks none, no additional authority to do any additional information collection work.

Mr. MEEHAN. Thank you, Director.

Mr. SMITH OF TEXAS. Thank you, Mr. Meehan.

Without objection, the document referred to by Mr. Hyde when—during his questions will be made a part of the record.

[The information referred to follows:]

Appendix table A. Federal agencies employing full-time personnel with authority to make arrest and carry firearms, June 2000

Agency	Website[a]
Department of Agriculture	
USDA Forest Service, Law Enforcement and Investigations	*www.fs.fed.us*
Department of Commerce	
Bureau of Export Administration, Office of Export Enforcement	*www.bxa.doc.gov/Enforcement*
Technology Administration, National Institute of Standards and Technology	*www.nist.gov*
NOAA, National Marine Fisheries Service, Office of Law Enforcement	*www.nmfs.noaa.gov/ole*
Department of Defense	
Defense Protective Service	*www.dtic.mil/refl/Security/Security.htm*
Department of Energy	
Office of Transportation Safeguards, Transportation Safeguards Division	*www.doeal.gov*
Department of Health and Human Services	
Food and Drug Administration, Office of Regulatory Affairs, Office of Criminal Investigations	*www.fda.gov/ora*
National Institutes of Health, Office of Research Services, Division of Public Safety, Police Branch	*www.nih.gov/odfors/dps/police*
Department of the Interior	
Bureau of Land Management, National Law Enforcement Office	*www.blm.gov/nhp/pubs/brochures/law*
Bureau of Indian Affairs, Office of Law Enforcement Services	*bialaw.fedworld.gov*
Bureau of Reclamation, Hoover Dam Police	*www.lc.usbr.gov*
National Park Service, Division of Ranger Activities	*www.nps.gov*
National Park Service, U.S. Park Police	*www.doi.gov/usparkpolice*
U.S. Fish and Wildlife Service, Division of Law Enforcement	*www.le.fws.gov*
Department of Justice	
Drug Enforcement Administration	*www.usdoj.gov/dea*
Federal Bureau of Investigation	*www.fbi.gov*
Federal Bureau of Prisons	*www.bop.gov*
Immigration and Naturalization Service	*www.ins.usdoj.gov/graphics/lawenfor/index.htm*
U.S. Marshals Service	*www.usdoj.gov/marshals*
Department of State	
Bureau of Diplomatic Security, Diplomatic Security Service	*www.ds.state.gov*
Department of Transportation	
Federal Aviation Administration, Federal Air Marshals	*cas.faa.gov/cas/fam.html*
Department of the Treasury	
Bureau of Alcohol, Tobacco and Firearms	*www.atf.treas.gov*
Bureau of Engraving and Printing, Police	*www.bep.treas.gov*
Internal Revenue Service	*www.ustreas.gov/irs/ci*
U.S. Customs Service	*www.customs.treas.gov*
U.S. Mint, Police	*www.usmint.gov*
U.S. Secret Service	*www.treas.gov/usss*
Department of Veterans Affairs	
Veterans Health Administration, Office of Security and Law Enforcement	*www.va.gov/osle*
Other	
Administrative Office of the U.S. Courts, Federal Corrections and Supervision Division	*www.uscourts.gov/misc/propretrial.htm*
Amtrak, Police	*www.amtrak.com*
Central Intelligence Agency, Security Protective Service	*www.cia.gov*
Federal Emergency Management Agency	*www.fema.gov*
Library of Congress, Police	*www.loc.gov*
Smithsonian National Zoological Park, Police	*www.si.edu/natzoo*
Tennessee Valley Authority, Police	*www.tva.gov/aboutt va/tvap*
U.S. Environmental Protection Agency, Office of Criminal Enforcement	*es.epa.gov/oeca/ocefl/cid*
U.S. General Services Administration, Public Buildings Service, Federal Protective Service	*hydra.gsa.gov/pbs/fps*
U.S. Government Printing Office, Police	*www.gpo.gov*
U.S. Capitol Police	*www.aoc.gov*
U.S. Postal Service, U.S. Postal Inspection Service	*www.usps.gov/websites/depart/inspect*
U.S. Supreme Court, Police	*www.supremecourtus.gov*

Note: Table excludes agencies of the U.S. Armed Forces. See table 6 for offices of inspector general employing personnel with arrest and firearm authority. Links to web sites for offices of inspector general can be found at *www.ignet.gov.*
[a]When a web site or page specific to the law enforcement operation listed at left was not found, a more general organizational web site address is provided.

Mr. SMITH OF TEXAS. And now the gentleman from Indiana, Mr. Hostettler, is recognized for his questions.

Mr. HOSTETTLER. Thank you, Governor Ridge, for being here so late. I have a question with regard to the Secret Service and the transfer of the Secret Service to the department, and that question has to deal with the fact that the role of the Secret Service will be expanding as it moves into this new department. Do you not see the need to substantially increase the ranks of the Secret Service as a result of its expanding role? And if you could comment on what you think the Secret Service would be doing in its new role.

Mr. RIDGE. In our assessment of whether or not we ought to include the Secret Service, we concluded, yes, we could, but we did not need to enhance the men and women other than normally move in and out of this agency. One of the primary purposes of the Secret Service is to protect our President and our Vice President, clearly Homeland Security interests. They have responsibility to oversee national special security events, political conventions, State of the Union addresses, the Super Bowl, those designated as national special security events. They provide the oversight and guidance. They will have an expanded responsibility to do those kinds of things, I believe, in the years ahead because as the Assistant to the President for Homeland Security, we have been talking with the Secret Service to begin to work with organizations in this country who basically sponsor large public events, college football, professional baseball, those kinds of events. And they got the talent and the expertise to work with their security people.

They do also provide many of their agents to work on cyber crime, which may or may not have a direct terrorist link, but there is a capacity there that could be used from time to time. They will continue their mission, and their primary focus is on security, and we felt it would be appropriate for them to be part of the new agency.

Mr. HOSTETTLER. They will have new expanded roles, as you pointed out, in these large gatherings. But on September 11, large gatherings were not what was targeted. So what part of the new department would have jurisdiction over, say, large infrastructure presences like tall buildings, long spans of bridges, anywhere where there could be thousands of people at any one time and could be made a target? I mean there are events and then there are every-day events. Who will be doing that?

Mr. RIDGE. All of the venues that you've talked about, whether they're large NASCAR racing events or NCAA events, they all have their security teams. And one of the reasons we thought it was important to pull the Secret Service in, they are not going to be providing the security, but on an annual or semiannual basis they could go over best practices and procedures with them and let them deal with it. The work we would do to harden the targets you are talking about, the venues will be directed by the Office of Homeland Security depending on the threat information we have, working in collaboration with either the State or local community.

There's another group of places that involve—other venues that involve critical infrastructure. We will need to develop a capacity within the Department of Homeland Security. The next Cabinet Secretary will want to develop the capacity, so we have experts

who know everything that needs to be known about telecommunications infrastructure, energy infrastructure, financial institutions infrastructure, and the list goes on and on, both cyber and physical.

Depending on the threat and depending on our assessment of how vulnerable that potential target may be, this agency can give direction as to the things they need to harden those targets. We are at war and the threat is real, and they use asymmetrical tactics. We know we have critical infrastructure and we have to set priorities and work with the public or private sector to harden those targets.

Mr. HOSTETTLER. One more question regarding intelligence gathering and, as you know, intelligence is the key to success in the process of defending the homeland. Access to information, section 203 of the suggested legislation talks about acquiring information, acquiring intelligence. Will the CIA and the FBI, will those individuals that gather the intelligence and gather the information, will they be the ones that will be determining what information constitutes a credible threat or substantial threat to the homeland security, and will we still be depending on them to determine what information ultimately gets to the Department of Homeland Security?

Mr. RIDGE. You highlight very appropriately section 203. By statute there's imposed upon the CIA and FBI an obligation, an affirmative obligation, to share reports and assessments and analytical products that relate to domestic terrorism with the Department of Homeland Security. It distinguishes that kind of information from the raw data, the uncorroborated data, that reports and assessments and analytical reports would come right to the CIA, FBI, but also to the new Department of Homeland Security.

The Phoenix memo is a good example. That's the kind of report that would not only hopefully get to the desk of the FBI director but should be sent over by statutory obligation to the Department of Homeland Security. And there would be refinement of that. I presume the Secretary would work with memorandums of understanding or even executive orders to clear up any confusion as to what is to be given on a timely basis to the new department.

Mr. SMITH OF TEXAS. Thank you, Mr. Hostettler. I would like to move on so that all Members will have time to ask questions.

The gentlewoman from Texas, Ms. Jackson Lee, is recognized.

Ms. JACKSON LEE. Thank you, Mr. Chairman. I would like to thank the Governor for his patience. We have been together on several occasions before and I appreciate what you are going through, but this is part of the system in order for us to move forward on what I think is a very key element of this Nation's future. What I would offer to say to you as well is that I hope that as you present this back to the President, meaning the issues we've raised, and, of course, we have a very tight time line, that you reinforce an issue that I have a concern with, and I believe you have had a very good experience in the City of Houston. You mentioned it to me and you were appreciative of the structures and procedures that we had put in place.

Let me remind you that on September 11, it was the City of New York that reacted certainly in collaboration. It was the City of Alexandria where Reagan National and the Pentagon, of course, and

nearby areas had to react and, of course, Washington, D.C. And certainly my City of Houston, though far away, had to react as well.

The concern here as we formulate the Homeland Security Department is the recognition in any funding structures, because there will be funding structures, that the city governments are respected and that resources can come directly to city government.

Can I yield to the distinguished Governor for his reflection on that point?

Mr. RIDGE. You and I have had conversation on this as it relates not only to the President's 2003 first responder initiative but future funding streams down to the local government. I think we share the belief that the homeland is secure if we can secure all the hometowns. And the mayor of Houston, in response to natural disasters, started bringing together agencies and departments to build a communitywide capacity to respond. We will need to work together because, after many conversations with Governors and mayors around the country, after the Congress of the United States determines what portion goes to the States and what portion goes to the local communities pursuant to statewide plans, we have to work together to make sure that that funding, whether it's 75 percent or 80 percent, goes directly to the local government, does not stop at the State capital, does not become subject to—as a former Governor I appreciate the fact that the Governors and legislators work together to prioritize resources. But the priorities would already have been set in the plan, would have been set in consultation with mayors, and we have to make sure that the money goes, that 75 or 80 percent, goes right down to the local level.

Ms. JACKSON LEE. I appreciate that. I will tell—Mayor Lee Brown will be very happy with that pronouncement along with many in our city. And I am going to look at the diagram with you for a moment, but I have heard through history books, the controversy around the design or the formation of the Defense Department. I noticed that I said history books, and there was a lot of opposition there. But we would wonder what we would do without the Defense Department today. I support the creation of this department. I realize there will be a lot of questions, but we must work through this in a bipartisan way.

Let me just note for you that the filing of this legislation had a paucity of a very small number of Democrats. I don't want to say it on the record because the number is almost unmentionable. I hope the attitude of the Administration is to function in a bipartisan way as we move forward on the creation of this legislation.

Mr. RIDGE. Thank you for your observation. I, too, would hope we would generate more support in terms of finding cosponsors. That adds momentum to both what the President and the Congress wants to do. At the end of the day we both know it is very important to have bipartisan support on the floor. There are some concerns that people have raised during the course of these hearings and we have to do our best in the weeks and months ahead to address those concerns to ensure we have strong bipartisan support at the end of the day.

Ms. JACKSON LEE. Let me get to the substance of this organization in the Department of Homeland Security and focus in on the

issue of expertise and the area of work that I have been doing now for a couple of terms, and that is on the immigration issue. You have border and transportation security, and I see border security at the top, immigration services and visa processing. My recommendation is that you move border security, Immigration Services and visa processing out of that, and you have a citizenship security and border security section. And the reason why I say this to you, we work very hard to find a way to discipline border security and immigration services together under the restructuring act. You are going to find a difficult time in separating those because there is a synergism. But more importantly, on visa processing, which is done by the State Department, one of the key issues is the documentation or the confirmation of the legitimacy of the documents which you review in order to affirm or to confirm the visa. I offer to say to you, that there are problems here, and the problems that run through here are that these need to be together and you would have a better chance having these together to address the issues of whistleblower, which you have already answered, and the issues of civil liberties. I didn't draw it. It would be moved to the side and it would be called citizenship security and border security and you put those off to the side.

When you mix transportation security and Coast Guard, I believe you have a problem. I would appreciate at least a reflection on that understanding, the fact that you're here to comment on what you may have in front of you, but I would appreciate a comment.

Mr. SMITH OF TEXAS. If you could respond very briefly.

Ms. JACKSON LEE. I thank the Chairman for his indulgence.

Mr. RIDGE. It's a very good question. We believe this configuration provides the comprehensive look that we need to take a look at the borders, recognizing the reform that this Committee led through the House of Representatives, and feel that this is the best way to make sure that we connect the INS and its many tasks, including getting the visas, determining who gets in and under what circumstances, as well as monitoring their presence. We felt that this configuration suited that goal better than any others. But, obviously, Congresswoman, we would want to sit down and better understand why you think your arrangement would improve or enhance security as well.

Ms. JACKSON LEE. I thank you for that answer and I look forward to having a dialogue with you to make what we are trying work effectively for the American people.

Mr. SMITH OF TEXAS. Thank you, Ms. Jackson Lee.

The gentleman from Ohio, Mr. Chabot, is recognized.

Mr. CHABOT. Thank you, Mr. Chairman. And Mr. Ridge, I'd first like to thank you and commend you for coming to Cincinnati and meeting with local law enforcement there. Whether or not you're successful in this endeavor is ultimately going to be largely dependent on how successful we are at the local level. So I commend you for reaching out.

And this has been called the largest restructuring of the Federal Government in more than 50 years, and it's probably accurate. And how successful we are also depends on whether we are able to improve coordination between the various agencies that you will be absorbing. So could you very briefly just tell us how you intend to

improve the coordination and integrate the systems effectively, and whether you anticipate there might be some disruption during the transfer until you actually get the job done?

Mr. RIDGE. I think when you have departments—when you have agencies that heretofore existed in different departments all pulled together in one department, you really go from more of a coordinating role to a command role. I mean you now have a unitary command and direct line of authority. So what may have been required in terms of convincing and advocating and encouraging the departments to do together, you've got somebody in charge who, once a decision is made, is responsible to see that it gets done. So I think just the command structure itself adds great value to the alignment because of aligning responsibility and authority with accountability. You get it done that way.

I also think with this command structure you bring greater efficiencies to the systems. Take a look at the border and transportation security. They all have separate information technology budgets. They all have separate management operations. You can pull together in time the budgets and the operations, bring greater efficiencies, quite obviously, I think, generate some savings, but you don't necessarily put them in the pocket of Government. You just use that to expand security services elsewhere within the same agency.

So I think that along with some flexibility we would want to give the new Secretary in terms of resources and personnel would go a long way in addressing many management challenges that this new department is going to have in the middle of the war on terror.

Mr. CHABOT. Secondly, the Customs Service and Coast Guard have a variety of missions and broad law enforcement authority. Many of these missions are not related to homeland security, yet they represent extremely important functions, such as maritime safety by the Coast Guard and collection of commercial tarriffs by the Customs Service. What is to prevent these missions from taking a back seat to the primary and probably most important now mission of Homeland Security and the potential for them suffering from inadequate funding or attention or support? And might it be better to only transfer the parts of agencies that directly deal with homeland security, or is that even possible?

Mr. RIDGE. You will notice in some of the agencies that would transfer to the new department, we did take pieces of the organization and moved in. But the Coast Guard, for one, and one could argue also Customs, you have people and technology and equipment that is multiple—that have multiple missions. The same crew in the Coast Guard on the same cutter responding to a distress call could be the crew and the cutter that's responding to a port security need. And so, frankly, some of the people and some of the equipment—there's no division in their use. They are tasked and trained to do both. And how you deal with that is how the President has done it with the 2003 budget, you build additional capacity, understanding there has been an enhanced mission.

In the $14 billion additional funding from the 2002 budget of Homeland Security, the President has added about $14 billion to the line items of the 2002 budget that gets us to that $37 billion figure for this new agency. That is enhanced capacity for some of

these organizations that you have talked about, because the President understands and you understand, there's congressional oversight and there's a legislative mandate that they do these missions. You've got congressional oversight and the President recognizes in many instances that even though you can bring some efficiencies, you're probably going to have to build some new capacity, and that new capacity building is in the budget 2003.

Mr. CHABOT. Thank you very much, and I yield back the balance of my time.

Mr. SMITH OF TEXAS. Thank you, Mr. Chabot.

The gentlewoman from California, Ms. Waters, is recognized for her questions.

Ms. WATERS. Thank you very much. I'm sorry that I could not be here earlier to hear all of your testimony, but I will take all of the information in and begin to study it and respond at some point.

But I must ask, as you have been asked 1,000 times and you perhaps have answered this before, not only in this Committee but in other places, about the FBI and the CIA. As you know, they have come under great criticism because many people believe that they fell down on the job, that the $30 billion or so that we have in intelligence that's vested in basically those agencies is there with the CIA to protect us offshore and the FBI domestically. And most people want to know why they are not included in the new design, the proposed Homeland Security Department, and since they are not proposed to be a part of the new department, what is being done to better define and clarify their duties and responsibilities? And beyond that, how do they coordinate? Because clearly out of this, information has emerged that the CIA passed on information to the FBI that never got acted on. How do we—how can we have confidence in these agencies? What are you doing with them and how do they tie into the new plan?

Mr. RIDGE. Well, you're right, I have been asked that question before, and I do anticipate being asked it again, and I think it's very important that we need to continue, and I am happy to respond to your inquiry. You've highlighted in your question that the CIA has an international information and intelligence-gathering responsibility that does include domestic—potential domestic terrorist attacks, but it includes international terrorist attacks. It also includes the work that has historically been done by the CIA vis-a-vis our relationship with other countries, their weapons systems and their ability to harm us as a sovereign state, and their intentions in that regard. So you've got the CIA that has a very, very expansive intelligence-gathering responsibility of which a part is domestic terrorism information.

The President feels very strongly that one person in the executive branch to whom the CIA should report because of its responsibilities is directly to the President of the United States. The President also feels that historically and very appropriately so in the future that the FBI should report to him through the Attorney General, although on a day-to-day basis. Bob Mueller and George Tenet report to the President personally, directly, daily. So I have been witness to the kind of collaboration that Members of the House and the Senate and both parties have expressed a desire to achieve. I see the principals coordinating.

You're probably aware, if I might throw in a couple of the details of the reorganizational efforts that are going on internally with the CIA and the FBI, because by law if you adopt the legislation in section 202 of the President's initiative, this new department will have the benefit of Congress saying to the CIA and FBI, the reports that you issued, the assessments that you have, the analytical products you have, have to be shifted on a timely basis over to the new Department of Homeland Security. The reorganization and the reforms they've undertaken include the CIA providing 25 new agents to FBI Director Mueller as he builds up his analytical capacity internally, as he builds up his center for intelligence. It includes a rather substantial expansion of the people assigned to the counterterrorism center and the CIA. It includes—I can't tell you what existed before, but I know twice daily the CIA, the FBI, and Office of Homeland Security are involved in a teleconference to go over the recent—any of the recent information, any of the recent threats, action or task agencies or departments to do certain things. So a lot of reform under way. There may be reform coming with the CIA and FBI once Congress is done with its hearings, but the President feels very strongly that the new product that this agency would provide and that is giving directions to communities or companies or to America as to the kind of protective measures they take does not require this new agency to have its own information or collection activity within it. So the reforms in the CIA and the reforms of the FBI add value to the product that they send down to the Department of Homeland Security. But the President feels strongly, direct line of communication from CIA. The President has a lot of responsibilities. International and domestic should be directly to the President. FBI should remain an integral part of the Attorney General's operation as the chief law enforcement agency in the country.

Ms. WATERS. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. [Presiding.] Director Ridge, if you could stay for 10 more minutes, we have two more Members who would like to ask questions.

The gentleman from Virginia, Mr. Goodlatte, is recognized for his questions.

Mr. GOODLATTE. Thank you, Governor. We are delighted to have you back and appreciate—Congressman Forbes and I appreciate your long suffering with this Committee and we thank you.

I have a particular interest in the issue of computer security. And I authored legislation several years ago called the Security and Freedom Through Encryption Act or the SAFE Act, which garnered a lot of bipartisan support, about 256 cosponsors. Congresswoman Lofgren was the lead Democrat cosponsor. I think she may have mentioned this to you when she spoke to you earlier. And it basically pushed the last Administration to reverse its policy regarding making encryption available to the public, to industry, and so on in much more prolific ways to protect people's privacy, their security, their copyrighted materials, and so on.

The Judiciary Committee has been very vested in the promotion of strong encryption for those reasons. The use of strong encryption to protect financial transactions and information that prevents criminal theft and unauthorized penetration from occurring. I have

observed with much interest that the President's proposal includes transferring the computer security division of the National Institute of Standards and Technology from the Commerce Department to the Department of Homeland Security, and is that accurate?

Mr. RIDGE. That's correct.

Mr. GOODLATTE. And is it just that portion of NIST that goes over?

Mr. RIDGE. Just that portion.

Mr. GOODLATTE. I have some real concerns about that. Even dealing with NIST, we have found what I consider to be a lack of understanding of how computer security works in conjunction with getting this technology into the marketplace into various products and so on, too much of a bent toward law enforcement which constantly wants to build back doors into products. No other country in the world is promoting these products in such a way that does this. In fact, when the previous Administration had this policy, their whole mindset was such that we created hundreds of encryption software companies around the globe that competed with us because they found a niche in the marketplace that our companies, major companies that dominate the software industry, didn't get involved with. And I have a grave concern that if this portion of NIST goes into this new department that we're going to have, I think, a serious, serious challenge in terms of understanding the relationship between what really protects people's privacy and security and prevents crime on the Internet, and what law enforcement has traditionally done, which is to try to legislate solutions to problems that are at the expense of our ability to get this product out to the public because the public does not trust products which effectively come stamped with a label on the cover "this product has a back door key in the hands of the FBI, the NSA, Federal Government," or whatever label you want to put on, and foreign competition always uses that. And I want you to address that concern that I have that we shouldn't take this one scientific standard-setting entity away from NIST and put it somewhere else.

Mr. RIDGE. Well, we recognize the work that this particular division of the National Institute on Standards and Technology does and the credibility that it has with the private sector. They will continue to do that work, but they will also do that work with the cyber component from the National Infrastructure Protection Center that used to be at the FBI. They will do it with the cyber component of the Critical Infrastructure Assurance Office at Commerce. If you take a look—you may not have the legislation, but section 202 brings together the five agencies that we think are critical to help us not only identify vulnerabilities but also deal with the securitization of the Internet, and bringing in the agency that helps set the encryption standards and works with the private sector, not only to set the standards, but to see that they are effectively used. And we think it is part of the Homeland Security mission because there's a great deal of attention paid to physical security, obviously, with your knowledge of the potential injury and harm that could be caused by a cyber disruption. We felt this aggregation of these new assets was appropriate and would achieve our goal more effectively.

Mr. GOODLATTE. What assurance does Congress and industry and the general public have that if this takes place we're not going to see either a sudden or gradual transformation of the setting of these standards away from something that is acceptable to the public and industry and more a tool of law enforcement that will make these products uncompetitive with the rest of the world, unaccepted by the general public, and so on?

Mr. RIDGE. I think the distinction that you raise is a valid one, or the concern you raise is a valid one if it's—all this was being pulled back into a law enforcement agency. It's being pulled into a Homeland Security agency. And, again, hopefully that would alleviate the fears of the private sector.

I will tell you that we have been working with the technology community and the private sector generally about the best way to put all of these resources together to help them secure not only the private sector infrastructure, but also the public sector infrastructure, and this particular section addresses it.

And I'd like you to take a look at the entire section—I know you don't have the language in front of you—and perhaps we can continue our conversation, and I can give you the assurances that you need that the harm that you're concerned about will not result from this merger of these entities.

Mr. GOODLATTE. Well, I would like to complete that discussion.

Mr. RIDGE. We'll send someone up to talk to you about it. I think we can assure you; but you raised the question, and our job is to try to answer it.

Mr. GOODLATTE. Thank you, Governor.

Mr. SMITH. Thank you, Mr. Goodlatte.

The other gentleman from Virginia, the very patient Mr. Forbes, is recognized for his questions.

Mr. FORBES. Thank you, Mr. Chairman, and thank you, Governor, for enduring this marathon. I'm going to be very quick and limit mine to two questions.

My district is in the southeastern portion of Virginia, and obviously we're very concerned about the vulnerability we have with shipping right now. And just two questions, one relating to the Coast Guard.

Do you intend under this proposal to continue to fully fund the non-homeland security aspects of the organizations you're absorbing, especially the Coast Guard, for example, rescue, fisheries and navigation missions—one question.

And then, secondly, can you give me any specific examples of how you think this new department can help us with security in the shipping area, which we're very concerned about obviously?

Mr. RIDGE. The President recognizes that this extraordinary institution called the Coast Guard—and they are really good, and they are cross-trained, and they do a lot of things, and they do a lot of things very well—that as of 9/11, the security function of the Coast Guard and the mission has been greatly expanded. I think it is in recognition of that reality that the President has recommended to Congress in the 2003 budget, the largest increase they've ever seen, so they can build more boats and hire more men and women, cross-trained to do all the things that the Coast Guard does so well.

So that is a Presidential recognition, and I believe and hope the Congress will support it.

The port issue is a question that—even before this proposal for a new Department of Homeland Security, that Customs in particular was working on very, very hard not only domestically, but internationally, along with the Coast Guard.

My recollection is that Admiral Lloyd, before he left as Commandant of the Coast Guard, began a discussion with the organization of maritime countries to see if we can develop, in time, protocol or procedures to secure these container ships—these containers on these ships before they enter our ports.

I happened to be with the Coast Guard for several hours in New Orleans about a month ago. We boarded a ship that was registered in Singapore. The crew was from India. It was American grain going to Japan. The world community has an interest in securing ports, not just American ports, but their ports.

As we speak, Commissioner Bonner is on his way to Rotterdam. I think it's the largest port in Europe in terms of trans-shipment to the United States. Customs has been working with them on their security procedures, and the Coast Guard now, in response to 9/11, requests and insists on receiving the crew manifests and the cargo manifests and the itinerary of the ship 96 hours before they come into the United States; and through a fairly sophisticated piece of targeting work that they do, can literally board the ships that they may have some questions about.

And so they've already ramped up that capacity. They've made a lot of great strides.

There's more to be done, and I think it can be more effectively done and aggressively done under the leadership and direction of a new Homeland Security Department.

Mr. FORBES. Thank you, Governor.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Forbes.

Director Ridge, we've reached the end of a day, but it's been very, very useful, I think, for Members of the Judiciary Committee to hear your testimony.

We thank you for your comprehensive answers. We look forward to hearing from you again in the near future, and the Judiciary Committee stands adjourned.

Mr. RIDGE. Thank you, Mr. Chairman.

[Whereupon, at 6:09 p.m., the Committee was adjourned.]

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APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE J. RANDY FORBES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Thank you Mr. Chairman; thank you Ranking Member, Mr. Conyers. Thank you Governor Ridge for taking time out of your busy schedule to be with us hear today.

The tragedy of September 11th has brought the issue of homeland security to the forefront of America's priorities. As Congress works with President Bush to enact this comprehensive legislation, it is important to remember that there are over 100 agencies charged with homeland security, but not one single government department whose primary mission is homeland security. The United States has 5,525 miles of borders with Canada and 1,989 miles of border with Mexico. There are over 95,000 miles of shoreline and 3.4 million square miles of maritime exclusive economic zone. Each year, more than 330 million non-citizens cross over these borders into America.

We need to unify the resources that manage these borders. We need to synchronize their responses with the agencies charged with preventing attacks and responding to emergencies. We need to centralize intelligence sharing, planning and response functions in an organization with the ability to execute actions to protect our homeland. We need to put it all under one single entity and give that entity the authority to protect America. I support our President and all the work he has done to counter terrorism.

Congress will still have its oversight role, however, efficient oversight requires being involved. Being involved means being informed, and I am one hundred percent behind efforts by the Administration to keep itself, the Congress, and the public better informed and more secure.

Centralizing control of these hundred agencies' efforts to protect America under a single Cabinet-level position will not only reinforce our commitment to making America secure, but will also synchronize and streamline the processes at our borders. With improvements in efficiency at Customs and INS, we will be both more effective at keeping threats out of the U.S., and more efficient in allowing legitimate commerce into the U.S. more rapidly—to the benefit of the U.S. economy.

If this were easy, it would have been done already. This is the largest restructuring of the Federal government since 1947, and this will certainly cause many to cede their particular interests for the greater good. The bottom line is doing what is best for America's national security and the safety of its citizens. This new cabinet will accomplish that mission, just as President Truman accomplished his mission when he reorganized the government following World War II.

Thank you.

For Governor Ridge:

Could you please give us an example of how the new department would make America safer with regards to shipping in the port of Hampton Roads?

Do you intend to fully budget the non-Homeland Security aspects of the organizations you are absorbing such as the Coast Guard's search and rescue, fisheries and navigation missions?

How will the Homeland Security Department accomplish its information sharing with agencies that are not under the Department of Homeland Security such as FBI and CIA. How will those agencies be able to take advantage of the Homeland Security Department's synchronization of Information Analysis?

American Civil Liberties Union

Testimony on the President's Proposal for a Homeland Security Department:
"The Homeland Security Act of 2002"

Before the

House Committee on the Judiciary

Submitted by Timothy H. Edgar,

Legislative Counsel

June 25-28, 2002

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

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

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

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

- **Hobbles FOIA** Any information voluntarily submitted to the department about terrorist threats to the nation's infrastructure are exempt from Freedom of Information Act disclosure, drastically limiting the agency's responsibility to answer public questions about how well it is addressing these threats. (HSA § 204).
- **Limits citizen input** – Advisory committees to the department, which normally include citizen input, hold open meetings and must be balanced in viewpoint would be immune from these safeguards of the Federal Advisory Committee Act, further undercutting the agency's accountability to the public. (HSA § 731).
- **Muzzles whistleblowers** – Employees of the new agency could be stripped of the protections contained in the federal Whistleblower Protection Act. This would eliminate guarantees that -- were the agency to overreach its mandate or engage in

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

- **Lacks strong oversight** Given the enormous potential power of the proposed agency, its Inspector General must not be hampered like those in other federal law enforcement agencies. Currently, the cabinet secretary in charge would have veto power over the IG's audits and investigations. (HSA § 710).
- **Threatens personal privacy and constitutional freedoms** – Many of the information sharing provisions in the HSA are vague and do not provide sufficient guarantees to protect privacy or constitutional freedoms.

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

I. The Homeland Security Department Must Be Open and Accountable

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

Freedom of Information Act (FOIA) Exemption

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

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

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

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

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

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

- Senator Bennett, chief sponsor of legislation creating a new critical infrastructure exemption, has admitted that "[t]he Freedom

of Information Act itself" currently allows sensitive information to be protected. "That is, there are provisions in the Act that say information need not be shared" with the public.[3]

- John S. Tritak, Director of the Critical Infrastructure Assurance Office of the U.S. Chamber of Commerce, says "You could say that [in the] current environment, if you're very careful and you watch out, the old existing exemptions will cover any concerns that may arise under FOIA, not to worry."[4]
- Ronald L. Dick, Director of the National Infrastructure Protection Center of the Federal Bureau of Investigation (FBI), has said "[M]any legal authorities have agreed that the federal government has the ability to protect information from mandatory disclosure under the current statutory framework."[5]
- VeriSign public policy director Michael Aisenberg has said worries about disclosure were overblown because FOIA already protects sensitive information, and new legislation is simply not needed "substantively."[6]

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

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

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

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

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

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

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

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

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

under another FOIA exemption, they should be required instead to rely on that other exemption at the time of submission.

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

Federal Advisory Committee Act (FACA) Exemption

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

The FACA was passed in 1972 to promote the values of openness, accountability, and balance of viewpoints, and to ensure administrative efficiency and cost reduction. FACA imposes requirements on agencies[8] when they establish or utilize any advisory committee, which is defined as a group of individuals, including at least one non-federal employee, which provides collective advice or recommendations to the agency. 5 U.S.C. App. II, § 3(2). When an agency seeks to obtain such advice or recommendations, it must ensure the advisory committee is "in the public interest," *id.* at § 9(2), is "fairly balanced in terms of points of view represented and the function to be performed," *id.* at § 5(b)(2), and does not contain members with inappropriate special interests. *Id.* at § 5(b)(3). If these criteria are satisfied, the agency must file a charter for the committee. *Id.* at § 9(c).

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

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

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

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

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

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

The Homeland Security Department's Inspector General May Lack Authority

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

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

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

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

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

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

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

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

Under our system of government, the CIA and other intelligence agencies are tasked with collecting foreign intelligence abroad. As a practical matter, these foreign activities have been largely immune from constitutional limits and from oversight by the federal courts, although they are and must remain subject to oversight by the Congress. On the other hand, the FBI collects foreign intelligence in the

United States, and also investigates and prevents criminal activity. These domestic activities are clearly constrained by statute and by the Constitution. The FBI's intelligence gathering functions are also subject to oversight by the Foreign Intelligence Surveillance Court.

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

The Homeland Security Department Should be Barred from Political Spying

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

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

One model the Congress could consider is Oregon Revised Statutes § 181.575. It provides that no state law enforcement agency may "collect or maintain information about the political, religious or social views, associations or activities" of a person or group unless such information "directly relates to an investigation of criminal activities" and there are "reasonable grounds to suspect" the subject "is or may be involved in criminal conduct." Such sensible limits would ensure that the Department is focused on its mission of preventing unlawful terrorist activity, not on keeping tabs on unorthodox or unusual, but constitutionally protected, political or religious activity.

III. Conclusion

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

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

ENDNOTES

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

[2] *Department of the Air Force* v. *Rose*. 425 U.S. 352 (1976).

[3] *Senate Governmental Affairs Committee Holds Hearing on Private and Public Information Sharing and Infrastructure Security* (FDCH Transcripts), May 8, 2002.

[4] *Id.*

[5] *Id.*

[6] *Washington Internet Daily*, April 18, 2002

[7] *See* Aviv Lavie, *Media: Sensing the Censor*, Ha'aretz (Tel Aviv, Israel), May 29, 2002.

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

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

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

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

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