

**SAFETY AND SECURITY OVERSIGHT OF THE NEW
NATIONAL NUCLEAR SECURITY ADMINISTRATION**

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER

AND THE

SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS

OF THE

COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES

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SAFETY SECURITY OVERSIGHT OF THE NEW NATIONAL NUCLEAR SECURITY ADMINIS- TRATION

TUESDAY, MARCH 14, 2000

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON ENERGY AND POWER, JOINT WITH
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2123, Rayburn House Office Building, Hon. Fred Upton (chairman, Subcommittee on Oversight and Investigations) presiding.

Members present Subcommittee on Energy and Power: Representatives Stearns, Burr, Whitfield, Shimkus, Wilson, Pickering, Bryant, Markey, and Strickland.

Members present Subcommittee on Oversight and Investigations: Upton, Burr, Whitfield, Bryant, Stupak, and Strickland.

Staff present: Tom DiLenge, majority counsel; Kevin Cook, majority counsel; Anthony Habib, legislative clerk; Sue Sheridan, minority counsel; and Edith Holleman, minority counsel.

Mr. UPTON. Good morning, everyone. The Congress this morning is not yet in session. Welcome to a joint hearing between the Oversight and Investigations Subcommittee and the Energy and Power Subcommittee. The Congress is not going into session until 2 o'clock. I would note that my very good friend, Joe Barton, chairman of the Energy and Power Subcommittee, has an election in Texas today and he will remain in Texas to vote and we do not expect him. Unless this hearing goes terribly long we do not expect him to be here for this hearing. But we have members from both subcommittees that are here and I would make a unanimous consent request that all members will be allowed to enter their opening statement as part of the record. Without objection so ruled.

Today's hearing will explore what impact the implementation of the new National Nuclear Security Administration within the Department of Education may have on the currently centralized and critical functions of security and safety oversight. This committee knows perhaps better than any committee in Congress the extent of the Department's problems in these areas after having a number of hearings this past year. We have worked together in a bipartisan fashion to explore and expose these failings and to urge necessary reforms.

Safety and security oversight has been a consistent and central theme of our work and the focus of many of these hearings and

other activities. I believe that we have prodded the Department toward progress in these areas and I expect that this committee will continue to do so in the future. The newest challenge for the Department comes in the wake of last year's spy scandal which revealed much more about the Department's poor security practices than its failure to prevent one alleged spy in Los Alamos from compromising our national security. That scandal and the resulting scrutiny of DOE's security practices led Congress to create a new semi-autonomous agency within the Department to manage its nuclear weapon and defense-related activities.

The new NNSA was conceived of as a way to streamline the chain of command and improve accountability for security matters—two reforms that numerous independent reviews from the GAO to the President's own Foreign Intelligence Advisory Board, headed by former Senator Rudman, had called for over the years. I think that we can all agree with these objectives and that the Department needed to be reformed. But one important question not addressed in the new law was how semi-autonomy would work with respect to the independent oversight of safety and security.

No agency or administration, whatever it is called or however it is set up, should be immune from independent oversight of such critical functions. The history of poor security and safety practices at these sites, however long it may be, is still recent enough in fact to caution us against letting the NNSA become a self-regulating entity within the Department.

Today's hearing will explore some of the questions raised by the act and the Department's implementation plan, particularly as they relate to this matter of security and safety oversight. Although the NNSA is only 2 weeks old, we may be able to begin exploring whether some of the ambiguities and inherent conflicts evident in the law and the administration's implementation plan are already manifesting themselves in on-the-ground problems in these two areas.

I want to thank all of our witnesses for appearing here today and will now recognize other members for an opening statement. Mr. Stearns from Florida.

Mr. STEARNS. Thank you, Mr. Chairman. This hearing today is one of profound importance to our national security. I don't think this morning you need to go over the allegations of Chinese espionage and security concerns which surfaced last year, but rather we should use this forum to highlight the problem areas that exist and examine all possible solutions.

Last year Congress, as mentioned, passed legislation to establish the National Nuclear Security Administration, a semi-autonomous agency within the Department of Energy. This legislation was designed to streamline and improve security measures and ensure accountability in our national security defense facilities.

Even before the NNSA passed, a number of concerns were expressed by both Congress and the administration. For example, a number of Commerce Committee members voted against the National Defense Authorization Act specifically because of this legislation. So I would hazard to guess something has deeply troubled them about the language.

Our goal here today, Mr. Chairman, is to assess the problems inherent within NNSA as it relates to oversight of safety and security. These are chronic problem areas which have existed since the Department's creation. We have heard both Senator Rudman and the GAO refer to a, "culture," in DOE which seems to espouse a bureaucratic form of elitism and a resistance to substantive change. Despite our concerns, the NNSA language is now law and we have seen a number of reforms set forth by Secretary Richardson to implement the provisions of this new law.

However, some of these actions such as a, "dual hatting," of current DOE officials into corresponding NNSA port positions appear to be contrary to the letter of the law. It is possible though that DOE is finding itself in a Catch-22. DOE appears to be violating the, "semi-autonomous," intent of the NNSA law in order to comply with its implementation. The laboratories themselves are exemplary scientific facilities with some serious security and environment, safety, and health problems.

Mr. Robinson, Director of the Sandia National Labs, has referred to the Department, DOE's loaded bureaucracy and micro-management as a serious problem. But we must remember that responsibility must fall on the frontline contractor who manages these facilities on a daily basis. In fact, Mr. Robinson quoted Senator Rudman's report, which referred to DOE as a, "big Byzantine and bewildering bureaucracy." I think this speaks volumes in terms of addressing the designs of a new NNSA.

Finally, Mr. Chairman, the Commerce Committee has just released a GAO report detailing the shortcomings in security tracking, inconsistent rating criteria and development of corrective actions from security inspections. This hearing is but one more step in the process. We have an extensive public record resulting from a number of hearings on DOE restructuring and lab management practices over the last several years. My responsibility as a member of the Subcommittee on Energy and Power is to work to develop legislative solutions to problems that exist within the agency's and within the committee's jurisdiction.

So, Mr. Chairman, I look forward to the testimony from our witnesses today and I am confident that the information will prove valuable as we move through the process.

Mr. UPTON. Thank you, Mr. Stearns. I would recognize the gentlelady from Albuquerque, New Mexico, Mrs. Wilson.

Mrs. WILSON. Thank you, Mr. Chairman. I thank you for holding this hearing today. As you know, I have worked with the nuclear weapons complex in the past, and Sandia National Laboratory is in my district. I was actively involved in crafting the legislation last year to implement some common sense reforms to protect our Nation's nuclear programs from espionage. Last year the Congress passed both the reorganization of the Department of Energy and measures to strengthen the Department of Energy's counterintelligence program. The legislation creates a semi-autonomous agency within the Department of Energy with responsibility for the Nation's nuclear weapons nonproliferation and nuclear reactors program.

While the Cox report last year and the Rudman report brought a renewed awareness of the problems in the management in the

Department of Energy, what those reports brought forth were not new. The Chiles report in 1999, the Drell report in 1990, the Institute for Defense Analysis 3 years ago, and the Galvin report are only some of the very distinguished and thoughtful groups that have recommended significant organizational change at the Department of Energy. Following the 1999 Cox Report on Chinese espionage, former Senator Warren Rudman and the President's Foreign Intelligence Advisory Board came to similar conclusions.

I won't go through what those reports recommended, but I will include them in my statement in the record. Today a fellow New Mexican and a former member of this committee, recognizing that there are serious problems, has again tried to implement reforms. The fact is that every secretary and assistant secretary recognizing there were serious problems tries to implement reforms, and we have had an ever-increasing number of management overlays within the Department of Energy and more structures on top of more structures to oversee other structures. That resulted in literally having overseers oversee the overseers.

As an example I will cite the review by the Institute for Defense Analysis which found that many DOE and contractor officials described Defense Program's oversight as creating an inverted management pyramid because the number of reviewers exceeds the number of hands-on workers; for example, contractors of cited examples where work done by two or three people becomes the subject of review meetings involving 40 or more defense program's officials. The fact is that this myriad of oversight and review did not improve performance. To the contrary in some cases I would argue that it diminished performance. It is my view that it is frequently easier to be the overseer than to be the responsible party. As the overseers multiplied, the line between oversight and responsibility was blurred and sometimes disappeared and the frequent result was that when mistakes were made everyone thinks they are an overseer and nobody takes responsibility.

I might add, Mr. Chairman, that this duplication of oversight was also tremendously costly and it is the taxpayers of this country that pay that cost. That is why I and some others in the Congress came to the conclusion as a result of input and conversations with many constituents and others who understand these things a lot better than I do that it was time to make some serious management change in the way that the Department of Energy was structured.

Last year the Congress passed legislation to reorganize DOE and create a semi-autonomous agency within the DOE. Where are we now? The DOE initially opposed the implementation of the law and the opposition was reflected in the President's statement on signing the law. The President and the Secretary dual hatted people in the Department of Energy and in the NNSA. Both actions are contrary to the spirit and the letter of the law.

Following its initial resistance to implementing the law, the DOE has made some progress and I particularly commend the Secretary on the nomination of John Gordon to head the NNSA, and I will work hard to make sure that the legislation is there to allow him to have the full 3-year term.

While both of these actions are positive, the implementation plan is inadequate in some respects that deserve highlighting. The plan continues to confuse lines of authority that the law was intended to eliminate. The plan anticipates dual hatting employees. That is clearly in violation of the Reorganization Act and the plan lacks specificity in many important respects.

These deficiencies in the implementation plan and the dual hatting directive tell me—lead me to only one conclusion, and that is we are in a transitional period at the Department of Energy. Some activity will take place over the next 9 months, but the reorganization will be fully implemented by the next President, whoever he may be.

And so now here we are, here we go again. The Department of Energy is here with their first round of what I assume will be many requests to add overseers and undermine the reorganization and the change that was intended by passing the act last year. I will resist that change because I think we did something good last year. We have a national nuclear security that is subject to all of the environment, safety, and health policies that are promulgated by the DOE. What we don't have is bureaucrats in Washington telling a new director of the NNSA and the lab directors how to do their jobs, out there playing on the field until it is time for accountability and then they disappear into the woodwork.

Thank you, Mr. Chairman.

Mr. UPTON. Thank you. The gentleman from Kentucky, Mr. Whitfield.

Mr. WHITFIELD. Mr. Chairman, thank you very much. I am not going to make an opening statement.

Mr. UPTON. Thank you for keeping things on schedule here.

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF MICHIGAN

Mr. Chairman, I support your effort to take a close look at the early implementation of the National Nuclear Security Administration, a "semi-autonomous" agency within the Department of Energy that was established over your and my objections in Title 32 of last year's Defense Authorization. It is perhaps too early to determine whether fears that this law would recreate the discredited old Atomic Energy Commission will bear out. However, it is not too early to witness the fruits of hasty drafting on the part of the Armed Services Committees, who skirted the normal legislative process and as a result have saddled the Department with a poorly conceived reorganization plan.

There is little doubt that safeguards and security at the Department of Energy need improvement, as this committee has observed in a number of hearings over the years, and as events within the weapons complex last year demonstrated.

However, this legitimate concern about security was parlayed into a much more ambitious agenda. In its final form, the FY 2000 Defense Authorization bill undertook a complete reorganization of the Department's nuclear weapons complex—including the national laboratories—in a provision drafted on the last night of the conference, behind closed doors and never subjected to legislative hearings. Moreover, Title 32 was included in the defense bill over objections from Chairman Bliley, myself, the Subcommittee chairman, and a number of other members of this and other committees of jurisdiction. It also was adopted over the strong objections of Secretary Richardson and the Administration. This legislation gives more autonomy and less oversight to the entities within DOE that have caused the greatest environmental disaster in the country's history, major health and safety problems and the security breach that resulted in this legislation. Often they defied directives from headquarters that would have avoided some of these problems.

As is often the case, this departure from normal legislative practice has been achieved at considerable cost. Perhaps the most glaring problem is ambiguity in the

drafting and internal inconsistency within Title 32, which makes implementation of this provision rather difficult. Is the dual appointment of Department personnel to the NNSA permitted? If so, for how many employees and at what levels of seniority? Do the legal interpretations of the Department's General Counsel take precedence over those of the NNSA's own general counsel, or vice versa? I must note that the three laboratory directors who will appear before us today wholeheartedly endorse this new approach. And why shouldn't they? Once again, they are in charge, despite their mediocre—at best—history of dealing with safety, environmental and security crises.

Mr. Chairman, members of this committee raised these same questions, and many others, when our colleagues on the Armed Services Committees rushed to adopt this provision in conference last year. The resulting uncertainty will doubtless continue to plague both DOE and the Congressional committees with responsibility for overseeing its operations for some time to come.

Mr. Chairman, I want to particularly call Members' attention to the testimony of Mr. Miller of the Colorado Attorney General's Office, which highlights the serious adverse consequences that certain provisions of Title 32 may have on the States' ability to enforce environmental laws and oversee cleanup at DOE nuclear weapons facilities. Mr. Miller and 43 State Attorneys General are not alone in calling for legislative changes to protect and preserve existing state authorities. The National Governors Association and the National Conference of State Legislatures have also raised serious concerns about Sections 3261 and 3296 of the National Nuclear Security Agency legislation and these serious deficiencies should be corrected. I ask that correspondence from each of these organizations be inserted at the appropriate place in the record.

Mr. Chairman, I thank you for holding this hearing and look forward to the witnesses' testimony.

Mr. UPTON. Our first panel includes the Honorable T.J. Glauthier, Deputy Secretary of Energy; and will be accompanied by Dr. David Michaels, the Assistant Secretary of the Office of Environment, Safety, and Health; and a frequent member to our subcommittee, Mr. Glenn Podonsky, Director of the Office of Independent Oversight and Performance Assurance of the Department of Energy.

I think as all three of you gentlemen know, it is generally the practice of the Oversight Subcommittee to take testimony under oath. Do you have any objection to that?

Hearing none, we also under committee rules allow you to be advised by counsel. Do you need counsel?

Mr. GLAUTHIER. I think we might.

Mr. UPTON. You might?

Mr. GLAUTHIER. We would like to include our counsel being sworn.

Mr. UPTON. If you might, just indicate their names for the record and then when we swear you in have them stand as well.

Mr. GLAUTHIER. Mr. Eric Fygi, who is the Deputy General Counsel for the Department of Energy. I think we might include David Klaus, who is our Director of Management and Administration and co-chaired the implementation effort within the Department.

Okay. If you all five would stand up and raise your right hand.
[Witnesses sworn.]

Mr. UPTON. Thank you. You are now under oath. Mr. Glauthier, your remarks will be made in their entirety as part of the record. We would like, if we can, to limit your opening statement to about 5 minutes and the time is now yours. Thank you.

TESTIMONY OF THE HON. T.J. GLAUTHIER, DEPUTY SECRETARY OF ENERGY; ACCOMPANIED BY DAVID MICHAELS, ASSISTANT SECRETARY, OFFICE OF ENVIRONMENT, SAFETY, AND HEALTH; GLENN S. PODONSKY, DIRECTOR, OFFICE OF INDEPENDENT OVERSIGHT AND PERFORMANCE ASSURANCE; ERIC FYGI, DEPUTY GENERAL COUNSEL; AND DAVID KLAUS, DIRECTOR, MANAGEMENT AND ADMINISTRATION, U.S. DEPARTMENT OF ENERGY

Mr. GLAUTHIER. Thank you, Mr. Chairman. I will abbreviate my comments, understanding the full comments are in the record. I do appreciate the opportunity to appear before you today to discuss the Department's implementation of the National Nuclear Security Administration Act and in particular how the Department will address safety and security within the NNSA. With me today are Dr. David Michaels, the Assistant Secretary for Environment, Safety and Health, and Glenn Podonsky, the Director of the Office of Independent Oversight and Performance Assurance. They have been involved in developing the Department's implementation plan for the NNSA and can help answer questions in those areas. And as I mentioned a moment ago, Mr. Eric Fygi, our Deputy General Counsel, and David Klaus, who is the Director of our Management Administration, are both with me as well.

As a starting point I would like to report to the subcommittee that the NNSA is now in place and as of March 1 over 2,000 Federal employees and over 37,000 contractor employees have been reassigned to the NNSA. The Offices of Defense Programs, Naval Reactors and Fissile Materials and Disposition and Non-proliferation National Security have been incorporated into the administration. Organization charts, mission and function statements for the new administration are in place. Delegations of authority to the NNSA administration are in place and new positions have been established. The Department is making significant progress in the effort to fill the leadership positions of the new administration.

As you know, President Clinton has announced that he intends to nominate Air Force General John Gordon for the position of Under Secretary and Administrator of the NNSA. We look forward to that and hope that that will proceed rapidly. President Clinton also last week nominated Madelyn Creedon for the position of deputy administrator of the NNSA for defense programs. We hope that she as well as General Gordon will be confirmed by the Senate in the near future. With these positions filled, the leadership of the NNSA will be in place and fully operational.

While we are implementing the law the Secretary still has concerns about how the NNSA was designed in last year's legislation. Secretary Richardson is seeking new language which allows the Secretary of Energy to manage all personnel within the NNSA. This power was provided in the Senate passed version but was dropped in the conference version bill. The President and the Congress hold the Secretary of Energy accountable for his or her actions. At the very least, the law should allow the Secretary to manage personnel at the NNSA in the fashion he determines necessary.

Your committee has expressed a particular interest in how safety and security concerns will be managed at the new administration. Our objective in this regard has been to implement the NNSA Act

in a manner that continues the significant progress that the Department has made in these areas and allows the Department's expertise to be utilized throughout the full Department.

As you know, the NNSA has been established at a time when DOE is in the midst of responding to significant challenges with regard to security. On May 11 last year, Secretary Richardson directed the most far-reaching security reorganization in the DOE's history to address heightened concerns with regard to the security of the nuclear weapons program. These reforms included the establishment of a new Office of Security and Emergency Operations that reports directly to the Secretary and the establishment of a new Counterintelligence Program for the Department that also reports directly to the Secretary.

In addition, the Secretary created the Office of Independent Oversight and Performance assurance, led by Mr. Podonsky, to provide independent oversight of the effectiveness of safeguards and security, cyber security and emergency management policy and to assess the effectiveness of the implementation of these policies in the field. His office also reports directly to the Secretary.

The security reforms have led to significant progress in addressing security issues throughout the Department. We also have an equally important focus on worker safety and health and environmental protection. The Office of Environment, Safety, and Health directly supports the Secretary in the development of internal environmental, safety, and health policy, including the National Environmental Policy Act, the management of corporate programs such as radiation accreditation, implementation of independent environment, safety, and health oversight and enforcement of nuclear safety rules under the Price-Anderson Amendments Act.

The office has led recent initiatives at the Paducah gaseous diffusion plant and other DOE facilities with regard to environment and worker safety. The Department's implementation plan for the NNSA seeks to build upon these initiatives and to continue the progress that has been made in addressing safety and security concerns at all of our facilities.

In this regard I refer also to the principles that guided the Department's implementation plan, two of which were to preserve the Secretary's overarching authority and to protect the environment and health and safety of workers and the public. The overall responsibility and authority on safety and security policy in the Department rests with the Secretary. I can assure you that the Secretary and the entire Department take this responsibility quite seriously.

As for the role of support organizations, it is important to recognize that the establishment of the NNSA does not change the scope of responsibility for the departmental offices that perform independent oversight and have departmentwide responsibilities of overall policy in areas such as environmental compliance, security, and worker safety and health. Independent oversight offices will continue to review all DOE sites and activities and report directly to the Secretary on their findings and recommendations. To be specific, the Assistant Secretary of Environment, Safety, and Health and the Office of Independent Oversight and Performance Assurance will continue to perform their current functions with regard

to all activities in the Department, including those within the NNSA. Responsibility for the implementation of these policies rests within the NNSA and its line management organizations.

Similarly, the primary responsibility for security will be the responsibility of the program offices and the Office of Defense Nuclear Security, the Office of Nuclear Counterintelligence within NNSA. As you may be aware, these are two positions that are filled by dual hatted officials of the Department.

The Department already has recognized world class managers like Ed Curran in counterintelligence and General Gene Habiger in security. They are already leading the effort to implement the departmentwide security reforms we all believe are so essential at this time. These security problems exist across the complex, not only within NNSA. It is essential to have consistent and effective policies in place within and outside the NNSA, the Department's implementation plan dual hats Ed Curran and General Habiger, because it makes no sense to search out other people to perform a function they are already doing so well.

Assistant Secretary Michaels has one dual hat responsibility within the NNSA, so he can initiate shutdown in circumstance where a clear and present safety danger exists. The Assistant Secretary has had such authority throughout the Department since 1986 and it is appropriate that he continue to be able to exercise this authority at the NNSA facilities if needed. That's the only responsibility he has in that dual hatted position.

Let me give you an example of how the restructured DOE will respond to safety and security concerns in the future. This is a real example of how Secretary Richardson and the Department are responding to the discovery of ground water contamination at the Pantex plant near Amarillo, Texas. The Department's initial response to this discovery was taken on March 6, less than a week after the day that the NNSA was established and of course only a week ago. It provides an excellent example of how the Office of Environment, Safety, and Health will be involved at an NNSA facility such as Pantex in a matter that is consistent with the NNSA Act.

Let me tell you what we have done. First, the Department made the determination as to whether the discovery of trichloroethylene in the Ogollala Aquifer presented such a serious threat to health and safety that operations at Pantex should be shut down. This determination, which was made in consultation of officials at the facility, at the Office of Defense Programs, and Assistant Secretary Michaels, was that the facility did not need to be shut down.

Second, Secretary Richardson directed that a team of experts from our Environmental, Safety, and Health Office go to investigate the situation and provide a report to the Secretary. I "emphasize investigate and report" because you should know that ES&H is not going to Pantex to take over the situation and direct and control what is going to happen. They are there to provide expertise and advice to the Defense Program Office and to the Secretary and to the NNSA. We the senior officials need to know the facts and recommendations.

Third, Secretary Richardson directed experts from the Office of Environmental Management who are familiar with TCE contamination to provide Pantex officials the most recent information and

help develop a response plan. Once again those officials were not there to direct and control the response. They were there to help develop a response. The responsibility for the actual corrective action still rests with the Office of Defense Programs within the NNSA. All of these actions are appropriate and entirely within the NNSA Act. They also are the best way to get experts from throughout the Department down to Pantex to help solve the problem. That's what we need to do when we are faced with a situation that threatens health and safety, to help solve the problem.

I appreciate the opportunity to be here today to testify and would be happy to answer any questions.

[The prepared statement of Hon. T.J. Glauthier follows:]

PREPARED STATEMENT OF T.J. GLAUTHIER, DEPUTY SECRETARY OF ENERGY,
DEPARTMENT OF ENERGY

I appreciate the opportunity to appear before you today to discuss the Department of Energy's implementation of the National Nuclear Security Administration Act, and in particular how the Department will address safety and security at the NNSA. With me today are Dr. David Michaels, Assistant Secretary of Environment, Safety and Health, and Glenn Podonsky, the Director of the Office of Independent Oversight and Performance Assurance. They have been involved in developing the Department's implementation plan for the NNSA, and can help answer any questions the Committee may have regarding safety and security throughout the Department, including the NNSA.

ESTABLISHMENT OF THE NATIONAL NUCLEAR SECURITY ADMINISTRATION

As a starting point I would like to report to the Subcommittees that the National Nuclear Security Administration is now in place and, as of March 1, over 2000 federal employees have been reassigned to the NNSA. The Offices of Defense Programs, Naval Reactors, Fissile Materials and Disposition, and Nonproliferation and National Security have been incorporated into the Administration. This means over 37,000 contractor employees are under the purview of the NNSA. Organization charts and mission and function statements for the new Administration are in place. Delegations of authority to the NNSA Administration are in place and new positions have been established.

As required by the NNSA Act, the following contractor-operated national laboratories and nuclear weapons facilities also became part of the NNSA on March 1, 2000. All of these facilities will report to the Deputy Administrator for Defense Programs:

- Los Alamos National Laboratory, Albuquerque, New Mexico;
- Sandia National Laboratories, Albuquerque, New Mexico and Livermore, California;
- Lawrence Livermore National Laboratory, Livermore, California;
- the Kansas City Plant, Kansas City, Missouri;
- the Pantex Plant, Amarillo, Texas;
- the Y-12 Plant, Oak Ridge, Tennessee;
- the tritium operations facilities, Savannah River, South Carolina; and
- the Nevada Test Site, Nevada.

The Offices of Defense Nuclear Security and Defense Counterintelligence also have been established within the NNSA, as well as the positions of NNSA General Counsel and Deputy General Counsel. The Nevada and Albuquerque Field Operations Offices have been transferred into the NNSA, and procedures have been put in place so that the Field Office Managers at the Oakland, Oak Ridge, and Savannah River Operations Offices are reporting to the NNSA programs for NNSA functions.

The Department is making significant progress in the effort to fill leadership positions at the new Administration. President Clinton has announced that he intends to nominate Air Force General John A. Gordon for the position of Undersecretary for Nuclear Security and Administrator of the NNSA. The NNSA Act specified that the Under Secretary have a national security and a technical background. A special search committee appointed by the Secretary to make recommendations for this position found no better-qualified candidate for this position than General Gordon—he was at the top of their list.

We believe it is critical that NNSA Administrator not be limited in focus to the balance of the current Administration, and therefore are seeking a change in the law to specify the sense of the Congress that the first Administrator serve for a minimum term of three years, at the pleasure of the President. This legislative provision would be much like those providing for the appointments of the Joint Chiefs for a specified term, at the pleasure of the President. Key leaders of the Senate Armed Services Committee have indicated that they intend to move expeditiously on this legislation. A three year appointment is a serious commitment to making the NNSA Act work in a way that supports the mission of the Department of Energy. I would like to stress, however, that this provision would only apply to the first Administrator, and that all future Administrators would be appointed in the normal cycles of Presidential appointments as Administrations change.

President Clinton also has announced his intention to nominate Madelyn Creedon for the position of Deputy Administrator of the NNSA for Defense Programs. We hope that she, as well as General Gordon, will be formally nominated and confirmed by the Senate in the near future. With these positions filled, the leadership of the NNSA will be in place and fully operational.

While we are implementing the law, the Secretary still has concerns about how the NNSA was designed in last year's legislation. Secretary Richardson is seeking new language which allows the Secretary of Energy to manage all personnel within the NNSA. This power was provided in the Senate passed version of the bill, but was dropped in conference. The President and Congress hold the Secretary of Energy accountable for his or her actions. At the very least the law should allow the Secretary to manage personnel at the NNSA in the fashion he determines necessary.

SAFETY AND SECURITY AT THE NNSA

Your Committee has expressed a particular interest in how safety and security concerns will be managed at the new Administration. Our objective in this regard has been to implement the NNSA Act in a manner that continues the significant progress that the Department has made in the areas of safety and security, and allows the Department's expertise in these areas to be utilized throughout the Department.

As you know, the National Nuclear Security Administration has been established at a time when the Department of Energy is in the midst of responding to significant challenges with regard to security at the Department's nuclear weapons laboratories and production/test facilities. On May 11, 1999, Secretary Richardson directed the most far-reaching security reorganization in the Department of Energy's history, to address heightened concerns with regard to the security of the Department's nuclear weapons program. These reforms included the establishment of a new Office of Security and Emergency Operations that reports directly to the Secretary, and the establishment of a new counterintelligence program for the Department that reports directly to the Secretary. In addition, the Secretary created the Office of Independent Oversight and Performance Assurance, led by Glenn Podonsky, to provide independent oversight of the effectiveness of safeguards and security, cyber security, and emergency management policy, and to assess the effectiveness of the implementation of these policies by the field. This office also reports directly to the Secretary.

The security reforms have led to significant progress in addressing security issues throughout the Department. The Office of Security and Emergency Operations has implemented a number of new security policies, and additional actions to improve security at the national weapons laboratories and production/test facilities are at various stages of development and implementation. Since the Office of Counterintelligence was established, numerous counterintelligence measures have been implemented and new counterintelligence personnel designated at critical field operations offices and laboratories across the Department. The Office of Independent Oversight and Performance Assurance has conducted numerous independent reviews of field facilities, including all the nuclear weapons laboratories. As a result of these reviews, significant security issues have been identified and security programs have been enhanced.

The Department has an equally important focus on worker safety and health and environmental protection. The Office of Environment, Safety and Health (EH) directly supports the Secretary in the development of internal environment, safety and health policy including the National Environmental Policy Act, the management of corporate programs such as radiation accreditation, implementation of independent environment, safety and health oversight, and enforcement of nuclear safety rules under the Price Anderson Amendments Act. The Office has led recent ini-

tiative at the Paducah Gaseous Diffusion Plan and other DOE facilities with regard to environmental and worker safety.

The Department's implementation plan for the NNSA seeks to build upon these initiatives, and to continue the progress that has been made in addressing safety and security concerns at all DOE facilities. In this regard, I refer you to two of key principles that guided the Department's Implementation Plan for establishing the NNSA:

- **Preserve the Secretary of Energy's overarching authority to establish policy for the Department.** The NNSA Act recognizes the Secretary's responsibility to set policy for the Department, including the NNSA, and provides that the staff of the Department may support the Secretary in the development of such policy. The Department has implemented the Act in a way that preserves the Secretary's ability to draw upon the expertise and experience that exists throughout the Department in the development of such policies.
- **Protect the environment and the health and safety of workers and the public.** Substantial DOE expertise on worker health and safety and environmental protection resides in the Office of Environment, Safety and Health, the Office of Environmental Management and in other program and support offices that are not within the NNSA. The Implementation Plan assures that this expertise, and the capability to provide independent safety oversight and reviews, will still be available with regard to NNSA programs.

The overall responsibility—and authority—on safety and security policy at the Department of Energy rests with the Secretary of Energy. I can assure you that the Secretary, and the entire Department, take this responsibility quite seriously.

As for the role of support organizations, it is important to recognize that the establishment of the NNSA does not change the scope of responsibility of the departmental offices that perform independent oversight and have the department-wide responsibilities for overall policy in areas such as environmental compliance, security, and worker safety and health. Independent oversight offices will continue to review all DOE sites and activities and report directly to the Secretary on their findings and recommendations. To be specific, the Assistant Secretary for Environment, Safety and Health, and the Office of Independent Oversight and Performance Assurance will continue to perform their current functions with regard to all activities of the Department, including those within the NNSA. Responsibility for the implementation of these policies rests within the NNSA and its line management organizations.

Similarly, the primary responsibility for security will be the responsibility of the program offices and the Office of Defense Nuclear Security and Office of Nuclear Counterintelligence within the NNSA. As you may be aware, these are two positions that are filled by "dual hatted" officials of the Department. The Department already has recognized world class managers like Ed Curran in Counterintelligence and General Gene Habiger in Security. They are already leading the effort to implement the Department-wide security reforms that we all believe are so essential at this time. These security problems exist across the DOE complex—not only within the NNSA. It is essential to have consistent and effective policies in place within and outside the NNSA. The Department's implementation plan "dual hats" Ed Curran and General Habiger because it makes no sense to search out other people to perform a function they are already doing so well.

Assistant Secretary Michaels has one "dual-hat" responsibility within the NNSA so that he can initiate shut-down in circumstances where a clear and present safety danger exists. The Assistant Secretary has had such authority throughout the Department since 1986, and it is appropriate that he continue to be able to exercise this authority at NNSA facilities if needed.

Let me give you an example of how the restructured DOE will respond to safety and security concerns in the future. Unfortunately, it is a real example—how Secretary Richardson and the Department are responding to the discovery of groundwater contamination at the Pantex Plant near Amarillo, Texas. The Department's initial response to this discovery was taken on March 6, 2000—less than a week after the date upon which the NNSA was established. It provides an excellent example of how the Office of Environment, Safety and Health will be involved at an NNSA facility such as Pantex in a manner that is consistent with the NNSA Act. Let me tell you exactly what the Department did at Pantex.

First, the Department made a determination as to whether the discovery of trichloroethylene in the Ogallala Aquifer presented such a serious threat to health and safety that operations at Pantex should be shut down. This determination, which was made in consultation with officials at the facility, the Office of Defense Programs and Assistant Secretary Michaels, was that the facility did not need to be shut down.

Second, Secretary Richardson directed that a team of experts from ES&H go *investigate* the situation and provide a *report* to the Secretary. I emphasize “investigate” and “report” because you should know that ES&H is not going to Pantex to take over the situation and direct and control what is going to happen. They are there to provide expertise and advice to the Defense Programs Office and the NNSA, and to report their observations to the Secretary. We, the senior officials of the Department, need to know the facts and the recommendations of our experts on how to proceed.

Third, Secretary Richardson directed experts from the Office of Environmental Management who are familiar with TCE contamination to provide Pantex Plan officials the most recent information and *help* develop a response plan. Once again, the officials at Office of Environmental Management are not there to “direct and control” the response—they are there to help develop a response. Responsibility for corrective action rests with the Office of Defense Programs within the NNSA.

All of these actions are appropriate—and entirely within the NNSA Act. They also are the best way to get experts from throughout the Department down to Pantex to help solve the problem. That is what we need to do when we are faced with a situation that threatens health and safety—solve the problem.

I appreciate the opportunity to testify on the important issues of safety and security at the NNSA. I will conclude my statement and welcome any questions which the Panel may have.

Mr. UPTON. Thank you very much. As you know our usual procedure is that members will be able to limit ourselves to 5 minutes and we will switch back and forth between members as they appear.

Your written testimony asserts that under NNSA the independent oversight offices will continue to review all DOE sites and activities and report directly to the Secretary on their findings and recommendations. But I have a couple of questions that were not necessarily cited in your testimony. Will the oversight offices have the authority to unilaterally decide to initiate an inspection of a site within the NNSA or will they have to get NNSA approval?

Mr. GLAUCHIER. No. They will have the authority to decide when and where to make investigation.

Mr. UPTON. And Mr. Podonsky’s office again I am sure will be conducting a no-notice cyber security penetration test on a regular basis. Will that office be able to do that under NNSA as well?

Mr. GLAUCHIER. Yes, it will.

Mr. UPTON. Because that’s very important and certainly one of the things that we viewed as a number of us went and visited a number of the labs in January.

Mr. Podonsky, one criticism of the oversight function in the past has been its reluctance to make specific findings and get involved in developing or reviewing corrective action plans and validating closure of those findings. Over the past year your security oversight office has been doing more of this hands-on work but a number of us are concerned that under the new NNSA these activities may again be limited by claims of undue interference. Indeed, throughout the written testimony of a number of the witnesses today there seems to be a notion that your office’s role will be more circumscribed, essentially providing advice to the Secretary only. The GAO’s testimony later on raises that exact issue and notes that DOE’s implementation plan for NNSA is silent on the point.

Do you expect a more limited role for oversight under the new structure or will you continue to take a more active role in corrective action planning and follow-up inspections to ensure the adequacy of the reforms?

Mr. PODONSKY. It is our intention, Mr. Chairman, to continue our role as an extension of the Secretary's office in which he established us to go out there and not to control or require, but to report on the activities. To date we have experienced within the existing NNSA mostly cooperation in this new approach that the Secretary has allowed us to take in terms of actually getting involved with corrective action plans and following those through to closure.

Mr. UPTON. So you don't see any problems at all, you think that you will have unfettered—

Mr. PODONSKY. As of right now under this Secretary we feel very comfortable.

Mr. UPTON. Okay. That sort of leads to another question. As you may know, a number of us are planning to introduce legislation today that codifies what the Secretary has embarked upon. Do you know if the administration—I don't know if the exact language has been shared, but does the Department yet have a recommendation as to whether they would support this codification?

Mr. GLAUTHIER. Of course, Mr. Chairman, we don't have the legislation yet so we can't give you our assurance but we would be very interested to see it. Our concern is to be sure that we will be able to carry on the operations in the way that we have put them down. So we will be watching to look and see if your legislation is consistent with that.

Mr. UPTON. One of our strengths is yes, we do agree that we have a Secretary that is embarking on this effort. We are concerned, as I think my colleague from New Mexico has shared in her opening statement, that in fact under the next President and the next Secretary that in fact these reforms are kept in place and not allowed to slip back and therefore the intent of the legislation is to in fact codify what is being done now so that we have assurance in the next administration and the one following that if things don't work out well that we will have the proper oversight.

Mr. GLAUTHIER. We share your objectives. As you may have noted in our implementation plan we put forward several principles at the beginning, many of which had to do with the continuity of the management reforms and establishing more accountability within the whole Department for the same sorts of things.

Mr. UPTON. Thank you very much. My time is about ready to expire. I will let Mr. Stearns—I will yield to Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman. Mr. Secretary, you told us this morning that independent oversight of security and ESH functions will continue as before, including oversight of the elements within the new NNSA. That's good news, I think, to many of us. We agree with you on the need for continued independent oversight. However, I am not so convinced that the Defense Authorization Act lets you do that. Can you explain, please, how this works in light of the language in the law that specifies employees and contractors in the NNSA, "shall not be responsible to or subject to the authority, direction, or control of any other officer, employee, or agent of the Department of Energy"?

Mr. GLAUTHIER. Yes, I would be happy to. I will also give you an initial response and then ask our counsel to add his thoughts as well.

Mr. STEARNS. You are not breaking the law are you?

Mr. GLAUTHIER. We are not. We believe this is well within the statute.

Mr. STEARNS. So you are finessing it.

Mr. GLAUTHIER. The statute gives very explicit authority to the Secretary to review and examine any of the operations in the full Department, to have any of his staff do that. The specific language you cited is a limitation on directing people within the NNSA from positions outside the NNSA. Both Mr. Podonsky and Mr. Michaels are operating from positions outside the NNSA but they have the authority under this legislation to review any of the operations, to examine what is going on, to make recommendations to the Secretary about changes and possible corrective action plans that would be appropriate. We believe there is no limitation that will affect the operations of these offices which are staff offices.

Mr. STEARNS. Let me ask counsel, do you think you are finessing it or do you think you have a legal basis to stand on?

Mr. FYGI. I think my first observation, and I will answer the way I feel necessary, is that the Deputy Secretary's response is correct. We are not finessing anything. We are carrying out a statutory scheme that clearly codifies the Secretary's authority to monitor the entirety of the Department's activities through means of his choosing through policies that he adopts. Those also are statutory elements in the NNSA Act that are equal in dignity to the one that you referred to a moment ago.

Mr. STEARNS. Mr. Podonsky and Dr. Michaels, do you think this has made your job harder? Or maybe to ask you another way, do you think that this law, the language in the law to have independence and safety of security, do you think it should be changed?

Mr. PODONSKY. To answer your question, the first question is yes, I think it does make our job more difficult.

Mr. STEARNS. Because of the language.

Mr. PODONSKY. Because of the lack of specificity of the language. For example, we have already seen some aberration with career civil servants who say "we are now a part of NNSA," we don't know whether we follow advice and counsel in terms of some of the oversight activities. That's an aberration I must say, but we are definitely concerned that that doesn't begin to grow into a wildfire. We do think from an oversight perspective, and I have not talked to the Deputy Secretary in detail about this, that there could be some more clarification to the language. But clearly it is our understanding from the Secretary and the Deputy Secretary, for the safeguards and security oversight, that we will continue to provide and report to the Secretary and the Deputy Secretary on issues and concerns.

Mr. STEARNS. Dr. Michaels?

Mr. MICHAELS. I would concur entirely with Mr. Podonsky. Under the current Secretary and Deputy Secretary, flowing down to General Gioconda, the commitment to environment, safety, and health is unsurpassed. I feel very comfortable that although we have heard the same things that Mr. Podonsky has heard in terms of rumblings that the NNSA is insulated from our oversight, the law is clear on that regard and we have the full support of the leadership. I think what is also clear is this statute can be interpreted different ways and there are obviously people who interpret

differently. My concern is that in the future administrations it may not be interpreted the same way.

Mr. STEARNS. Dr. Michaels, are you saying that you have also incurred resistance like Mr. Podonsky said?

Mr. MICHAELS. We heard rumbling that before March 1 we were told by various career civil servants who said we won't see you after March 1, but we have made it very clear with the Secretary and the Deputy Secretary and the head of DP that that is not the case, that the oversight will continue as planned.

Mr. STEARNS. Do you agree with his word, aberrations is what you said?

Mr. PODONSKY. I called it an aberration, yes.

Mr. MICHAELS. I agree. And I think it will be cleared up shortly.

Mr. STEARNS. Let's get to the heart of it. Is your job easier or harder since this legislation passed?

Mr. MICHAELS. Harder.

Mr. PODONSKY. I echo that.

Mr. UPTON. Thank you, Mr. Chairman.

Mr. UPTON. Mrs. Wilson.

Mrs. WILSON. Thank you, Mr. Chairman. As I understand it from your answers to the previous questions that you continue to have the authority under the act as written to review compliance, to inspect, make reports, to make recommendations to the Secretary without any limitation. Is that correct? Is there any—

Mr. MICHAELS. Yes, ma'am.

Mrs. WILSON. Is there any element of oversight that your—or your definition of oversight that you are in any way precluded from by the act?

Mr. MICHAELS. In terms of compliance, yes. The Price-Anderson program which specifically has orders to contractors of the NNSA to pay fines, for example: I can no longer sign documents calling for that. That would be under the implementation plan. Price-Anderson enforcement actions will be signed by the Administrator of the NNSA.

Mrs. WILSON. But the NNSA still has to comply with Price-Anderson and they have that authority; is that correct?

Mr. MICHAELS. Correct.

Mrs. WILSON. So the mission is achieved with respect to Price-Anderson, it is just no longer your job, right?

Mr. MICHAELS. I hope that continues that way, yes. But it is frankly of concern to me that in the long run we could have two Price-Anderson programs where we have different objectives and different policies. I think the implementation plan is specifically written to ensure that that doesn't happen.

Mrs. WILSON. With respect to the career civil servant that you referred to and the aberration that you referred to, that they are less willing to listen to your advice and counsel, did that civil servant or in those particular cases, did they work for you directly?

Mr. PODONSKY. No, they did not.

Mrs. WILSON. So they worked for somebody else?

Mr. PODONSKY. For the Program Office.

Mrs. WILSON. They were not in your line of command, you don't have any supervisory responsibility for them at all?

Mr. PODONSKY. No.

Mrs. WILSON. They do have a boss, right, presumably within the NNSA?

Mr. PODONSKY. Yes.

Mrs. WILSON. Why should they listen to you if you are not their boss and they are responsible for implementing the same law that you are? Doesn't this get back to the same issue of matrix management that we are trying to get away from?

Mr. PODONSKY. Well, the way the Secretary has allowed us to conduct oversight, ma'am, was to be in a proactive fashion, not just a whistle blower organization of the past where you just raised issues and people had to respond with unfunded mandates. The way the Secretary has allowed us to do oversight is in a way that was helpful, value added, and the individual that I am referring to, when did I take it to General Gioconda, and not in specifics but in generalities, General Gioconda, as the Acting Defense Programs Assistant Secretary, felt that that was totally inappropriate for his staff to act that way because they have found our oversight to be most helpful.

Mrs. WILSON. So we are talking about staff in Washington?

Mr. PODONSKY. Staff in Washington.

Mrs. WILSON. Let me make sure I understand you. You referred to a number of acts and things, NEPA was one of them, the radiation compliance, the environmental safety and health rules. Just so that we clarify for the record, the NNSA still must comply with all of those acts; is that correct?

Mr. GLAUCHIER. Yes, absolutely.

Mrs. WILSON. Thank you, Mr. Chairman.

Mr. UPTON. Mr. Bryant.

Mr. BRYANT. Thank you, Mr. Chairman. If I might just follow up with my colleague, Mrs. Wilson's questions, Dr. Michaels, can you issue a subpoena or notice of violation under the Price-Anderson Act to any NNSA facility or can you only make a recommendation to the NNSA Administrator regarding enforcement action?

Mr. MICHAELS. I can make a recommendation to the Administrator. I can issue subpoenas or enforcement orders to non-NNSA facilities within DOE, but for the NNSA facilities I would have to ask the Administrator to do such a thing.

Mr. BRYANT. Just to follow up on that one, too, do you have the authority to initiate type A accident investigations at NNSA facilities or do you have to operate in a recommendation only mode?

Mr. MICHAELS. Correct, I no longer have that authority to initiate. For example, the Y-12 accident that occurred in December, I was onsite shortly after the accident and I immediately initiated a type A investigation. I could no longer do that under current NNSA implementation plans.

Mr. BRYANT. Thank you.

Mr. Podonsky, some in Congress and others have suggested that your office as a function is best performed within the NNSA itself rather than external to it as the Secretary proposes to continue. Those with a long memory remember when your office reported to the responsible line or program management, the Assistant Secretary for Defense Programs in the 1980's, which I think everyone now agrees was a bad idea and resulted in conflicts of interest. What is your view on whether your office could effectively operate

within and reportable to the NNSA and is that something that you would urge us to consider?

Mr. PODONSKY. Having also served in that "long memory" that you just described where I reported to the Assistant Secretary for Defense Programs, which I equate to the previous NNSA organization, we were competing consistently with production. Safety was competing with production. It was very ineffective. That is not a reflection on the nominee, General Gordon. That is a reflection of priorities of the CEO having to balance between oversight and mission. And so if in fact we are inside the NNSA as opposed to external to the NNSA, we feel we would be very ineffective and history has shown that to be the case.

Mr. BRYANT. Thank you. Mr. Secretary, I have just a few questions for you. If you could describe the relationships of the operations offices, your headquarters, into the laboratories and weapons plants and field sites. The law was supposed to streamline this chain of command and improve accountability but it seems as if all guidance must still be passed through the contracting officials at the operations offices in order to implementing changes in the contractor run lab plants.

Mr. GLAUTHIER. We have tried to streamline the management and make the lines of authority much clearer going back to last spring, the April announcement that we made, in trying to clarify the difference between line and staff organizations within the Department. The offices like Independent Oversight and Environmental Safety and Health are staff offices who develop policy for the various programs. The policy then is to be implemented by the line organizations. So we have tried to make it clear that the line authority and accountability goes from the Secretary and Deputy Secretary down through the organization to Defense Programs, to the field office to the contractor, and that that chain is a necessary chain for accountability, responsibility.

The specific example you mentioned of having guidance go to a laboratory does have to go through the field office because the laboratory is run by a contractor, and the contracting officer, who is the field office manager has the legal power to direct the contractor. We have made sure that those people all have the appropriate authorities and these responsibilities can continue.

Mr. BRYANT. Let me ask you again. Several of our hearings last year and even in the Rudman report itself there was substantial emphasis on the necessity to hold DOE contractors to more accountability. How has the accountability of the contractors been improved under the new NNSA arrangement?

Mr. GLAUTHIER. We certainly agree with the need to hold them accountable and felt that had not been done in the past. Some of the reports cited earlier have characterized the previous experience. The NNSA really does not change this. It sets the accountability clearly. It makes it clear that those sites, for example, within the NNSA are to report specifically there. Los Alamos or Sandia, for example, report into the Albuquerque office and then to the Defense Programs program and the NNSA Under Secretary up to the Secretary. So that accountability chain will continue to function and we will continue to expect results to be reported along those lines.

Mr. BRYANT. Thank you, Mr. Chairman, and the balance of my time I would yield back, what time I have left.

Mr. UPTON. The gentleman's time expired prior to that. I recognize the gentleman from Massachusetts, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman, very much. You may know that I opposed the creation of NNSA because it would not address the environmental health and safety problems experienced at the national laboratory. Obviously the history of this whole area is very, very murky. We once had an agency that was not subject to expert review. It was called the Atomic Energy Commission, and its legacy is still seen in the headlines of today in Paducah, Kentucky, and the Ohio facilities and Hanford, Washington, at the Nevada test site, Rocky Flats, Savannah River in South Carolina, Los Alamos in New Mexico. All of these places still reflect the lack of oversight that the Atomic Energy Commission was subject to, secret experiments on Americans without their knowledge using radioactive materials. The NNSA is a step back to the days of the old Atomic Energy Commission.

Where is the accountability to workers at the labs? Where is the accountability to the environment that the national labs will have responsibility of? In your testimony you indicate that the Office of Environment, Safety, and Health has the responsibility to investigate and report on problems but not correct problems at the laboratories under the auspices of the NNSA. How would this increase the ability of the Department of Energy to improve environment and safety conditions at the national laboratories under NNSA control if the responsibility for corrective action remains with NNSA, semi-autonomous organization within the Department of Energy?

Mr. GLAUTHIER. Congressman, I don't believe it increases the ability to do it. What we are trying to do is avoid any reduction in our authority to do it and it is very important that we keep the Environment Safety and Health Program at a level where it is a staff office that we can look at, examine any of the operations throughout the Department and issue policies that will come down through the Secretary and the directions that will be carried out uniformly across all of the sites. The sites that you mentioned, some of them are within the NNSA, others are not. It is very important that environment, safety, and health issues be managed strongly and consistently at all of those sites.

Mr. MARKEY. I know you did it somewhere in your opening statement, but could you summarize the issues that the Department would like to see corrected?

Mr. GLAUTHIER. Well, the principal recommendation that the Secretary has made and is working on is to have the authority added to the legislation for the Secretary to be able to direct anyone within the NNSA. At this point the statute limits even the Secretary to only directing the Administrator and then, through the Administrator, others within the NNSA. That is a limitation in his authority that does not exist in the other organizations that were cited earlier in one Rudman Report as examples of semi-autonomous agencies, and he has asked for and would like to get that changed.

There are other changes that would make it easier. The primary one is a broader delegation authority which would address some of

the things that you are talking about. But at this point we are not asking for any other changes.

Mr. MARKEY. I agree with you. I think that regardless of who the Secretary of Energy may be, that they should have the ultimate responsibility so there is accountability at the highest level that the public can rely upon to discharge these very important responsibilities.

I thank you, sir. Thank you, Mr. Chairman.

Mr. UPTON. Thank you. Mr. Burr from North Carolina.

Mr. BURR. Thank you, Mr. Chairman, and I thank you and Chairman Barton for this dual hearing. Welcome, and I apologize for the tardiness. Today has already started off as one of those days that we hate up here. I think everybody in the world is here. Glenn, it is good to see you back.

Let me just ask right from the start. Dr. Michaels, you have sort of a dual hat in both, but Mr. Podonsky doesn't. Now, who is best to answer the question why or why not?

Mr. GLAUTHIER. I may be in the best position to give you that answer. The dual hat that you refer to for Dr. Michaels is a very narrow and specific one. It is only for the purposes of exercising shutdown authority over sites. If there is a safety issue that is so serious we feel it is necessary to have the operation shut down, he has the authority to make that kind of direction inside or outside the NNSA. The dual hat gives him that authority within the NNSA. Everything else he does, the oversight, the policy development, the recommendations for corrective actions or changes do not require actually being within the NNSA. So they continue to operate from the staff office position, as is the case with Mr. Podonsky.

Mr. BURR. So tell me, if you will, where our safety net is on the security aspect. If Mr. Podonsky has a concern as it relates to the safety side, but not having a dual hat doesn't provide him the type of access that he needs on one side of this two-part process, then where are we?

Mr. GLAUTHIER. Mr. Podonsky, before the NNSA, did not have that authority either to direct people within the organization. That authority really came from the line organizations. So Mr. Podonsky would investigate and identify problems, identify corrective actions that were needed and make those recommendations to the line organization. If the immediate office is not responsive, then we expect him to raise that concern up the chain, bring it to me, bring it to the Secretary. We do have the authority to direct—

Mr. BURR. Prior to this when Mr. Podonsky went into one of the facilities on a security question he had the authority to have what he requested produced for him, correct?

Mr. GLAUTHIER. When he requested in terms of information or—

Mr. BURR. Yes, sir.

Mr. GLAUTHIER. Yes, information requests, and we expect that still to exist.

Mr. BURR. To expect that still to exist, then why wouldn't he have the dual hat function where the question was taken off the table that I have, which we have now insulated these facilities to where he can make a request but they don't have to respond to it? He could work through the back channels that would lead him

through the Secretary. I know how demanding the Secretary's schedule is because I have seen him in the Arab nations and I have also seen him in back of Vice President Gore at his victory party last week so he has traveled a lot of ground in a very short period of time. But we have to go back through the Secretary to address just a request for information for Mr. Podonsky to make an evaluation on a security concern he might have. Tell me the logic behind that road map we have designed.

Mr. GLAUTHIER. That should not be necessary. We are only 2 weeks into the implementation of this. I think it is understandable there is some confusion in the field about what they do and don't have to respond to. Information requests ought to be something that everyone has to respond to. If they come from Mr. Podonsky, an information request is part of the authority that the Secretary has to have his staff offices investigate any operation within the Department. So we expect that the new Administrator will ensure that all of the operations within the NNSA honor those requests and that we are not going to have to come back on a case-by-case basis and have appeals to the Secretary. The question about direction really comes more in the latter area or, should we hope eventually, than is the corrective action, what are you doing about—

Mr. BURR. At some point in the design you or Secretary Richardson or some individual looked at this process and you have these two bodies and you saw Dr. Michaels, who was a very talented individual who had a responsible job, and you came to a conclusion that he needs two hats because he needs the ability to shut down if he comes to this conclusion. Tell me why you looked at Mr. Podonsky and looked at security and didn't feel that the same type of accommodation is needed? Is security not as big of a concern as safety is?

Mr. GLAUTHIER. If we decide that we need to have that we can put that in place later on. The reason we did it for Dr. Michaels is the safety and health risks, if they do exist in such a severe level that they endanger the workers or the public and we need immediate action, we want to make sure that he has that authority. Mr. Podonsky doesn't really operate in the same mode at this point to my knowledge—

Mr. BURR. Safety does not have the—security does not have the same sense of urgency that safety does?

Mr. GLAUTHIER. We have a safety position that is separate. General Habiger is dual hatted in fact in the Office of Security for the NNSA. He has the responsibility for security policy development and security review of the whole operation in really the same fashion that Dr. Michaels does for environmental, safety, and health. The office that Mr. Podonsky runs is an oversight office that functions in a way more like an audit group that goes out in great detail on a periodic basis and looks at operations at individual facilities but is really—I think the parallel is more the security office that General Habiger has.

Mr. BURR. I realize the separation of the two and clearly under that structure General Habiger has access to both sides of this. I question whether Mr. Podonsky will have the same type of availability to the resources he needs to do his audit and, heaven forbid,

that he find a serious flaw, has a lengthy process to go through to acquire the information to make some final determination.

Mr. GLAUCHIER. Let me give you an initial response and then ask Mr. Podonsky to also add his thoughts. One of the things we wanted to do was to be sure that we didn't end up with two oversight offices, one inside and one outside the NNSA. We wanted to make sure this system worked. The legislation is not ideal from our perspective. There was never a hearing on it, as you know. It was not drafted in a way that we worked collaboratively on it as we hoped to with most legislation. So we are trying to make the best of what we have to be sure that this office can continue in a strong and independent oversight role and to make sure then it will be able to carry that function along.

Mr. PODONSKY. Congressman, as long as the legislation gets further crystallized in clarity as to our ability to inspect, review NNSA without controlling or directing we report back to the Secretary, we feel that will continue to be effective as we have become in the last 11 months because of the committee's interest as well as the Secretary's commitment. Having served under six previous secretaries, unless the CEO of this corporation was interested as Secretary Richardson is today and Secretary Glauthier, it doesn't matter what we found. So we feel very strongly that the way it is set up now there needs to be further clarity in the legislation so that the existing NNSA staff folks won't use that as an excuse as to why not to work with us.

Mr. BURR. Just two general comments. I realize my time has run out. One would be I have some degree of confidence that I believe you will be working under a seventh administration before too long and we can't feel as confident that the next Secretary will take security with the same vigor that our current one has. And it is very legitimate to make some comments that question the process that went through or did not go through with this legislation. By the same token it is justified for us to question the implementation process and that's in fact part of this hearing.

I thank each of you and I yield back.

Mr. UPTON. The gentleman from Illinois, Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman. I am going to follow up with Congressman Burr and also I came in on the last part of Congressman Markey's colloquy with you all, and the last couple of comments that were made deal with the implementation of legislation that you may not have all been fired up about. The conversation with Congressman Markey dealt with, I think, a desire to move some legislation also to correct or move in a more positive direction that you would feel. Am I correct in drawing this analysis and can you tell me if the Secretary wants to change the language of the law to clarify explicitly as such oversight applied to NNSA as well as the rest of the complex?

Mr. GLAUCHIER. Secretary Richardson would like a change in the legislation but he has not asked for that particular change. What he has asked for is clarity that he—and his successors—have the authority that they can direct any employees within the NNSA rather than to only direct them through the Administrator.

Mr. SHIMKUS. When a Secretary makes this request, who is he making this request to?

Mr. GLAUTHIER. He has done it in discussions and in testimony, testimony 2 weeks ago before the House Armed Services Committee and in discussions with various leaders of the Congress.

Mr. SHIMKUS. I think it would better serve the process if the Secretary, who is still I think considered somewhat of a favorite son of the committee, that he would draft some legislation and get it up here. I think what we are looking for and—we want to see instead of talk, we want to see some action. We want to talk over and discuss the language of the law and if we can get a legislative proposal then we have a basis. If we are just talking theory, we are not getting down to the work that needs to be done. If you would pass that on to the Secretary, I think I am echoing a lot of the sentiments of probably both committees.

Mr. GLAUTHIER. We appreciate that. We do have specific language and we would be happy to share that with you and appreciate any support that could you provide.

Mr. SHIMKUS. With that I yield back the balance of my time, Mr. Chairman.

Mr. UPTON. Thank you. Just a couple of housekeeping matters and I think we will move to the next panel. First of all, I note that our colleague, John Dingell, wanted to be here very much this morning. We still expect an appearance so I would ask unanimous consent that all members will be able to keep the record open and perhaps provide some questions that you might respond to.

Second, I am told that the Energy and Power Subcommittee is going to have a hearing on this legislation that is going to be introduced today next Wednesday. It is my understanding that the language has been or will be shared with you certainly by close of business today. If you could just—if we could just get a comment on a quick turnaround and get some comments and strengths and weaknesses, preferably the former, by Wednesday of next week. I know my colleague Chairman Barton would be most appreciative of that effort.

Mr. BURR. Mr. Chairman, could I have unanimous consent for a couple of additional questions?

Mr. UPTON. Hearing none, the gentleman is recognized.

Mr. BURR. It is a safe request. I have been told that this was asked but they didn't write the answer down.

Mr. Podonsky, let me ask you, has anything changed with the passage of this legislation relative to your oversight capabilities?

Mr. PODONSKY. Yes. I mentioned to one of your colleagues in a question—I echoed what Dr. Michaels said—is that it has become more difficult. I think it would be better to characterize it as increasingly challenging to do effective oversight.

Mr. BURR. Can you be a little more specific about the term “challenging”? What challenges has it created?

Mr. PODONSKY. Any time we do oversight in the Department it is difficult to be effective if the people receiving the inspection don't feel that it is going to be value added. But now with the legislation there were some aberrations, is the word I used, or where some career folks were debating whether or not they needed to be inspected or receive any advice and counsel from our activity. I mentioned one of the things that this administration has done; Secretary Richardson and Deputy Secretary Glauthier has allowed us

to do oversight with a little more value added. We can discuss with the sites some of the proactive changes that might be taken not with unfunded mandates but to be—we inspect the entire complex. We have found that some of the issues that we have found throughout other sites we can share with the sites that we are inspecting and actually help them find solutions to their problems.

Mr. BURR. If under this new setup in your oversight role you ran into a roadblock, somebody refused to supply what you had requested, what process would you now go through versus what you went through before to find a solution to it?

Mr. PODONSKY. Actually, there are three points in time I would like to answer that question with. Prior to Secretary Richardson when we ran into a roadblock I went to my assistant secretary and hopefully my assistant secretary would take it to the Secretary. The second point in time was when the Secretary Richardson moved us as a direct report to he and Deputy Assistant Secretary Glauthier, if we had any issues whatsoever—which we have had none so far—we would take it directly to either one of them. The third point in time is now within NNSA. It has only been in effect 2 weeks. We only had this one aberration. I immediately had discussions with Acting Assistant Secretary for Defense Programs, General Gioconda. General Gioconda sees us as a very necessary evil, that we provide his organization some value. So we have good support there.

Mr. BURR. I have had more people than that describe you that way. Dr. Michaels, let me just ask you one question. Could you have shut down a facility without the authority given to you in the legislative plan?

Mr. MICHAELS. Previous to March 1, I could. Now, with the implementation plan, I have my double hat within the NNSA in order to do the same thing.

Mr. BURR. But without the dual hat you would not have had the power?

Mr. MICHAELS. Correct.

Mr. FYGI. The distinction, which goes back to your initial question of trying to define how the initial cut was made on dual hats, is that the emergency shutdown authority by its terms involved direct command authority in a very narrow class of circumstances, whereas the Glenn Podonsky oversight function by its terms was never, unlike the emergency shutdown authority, never codified as including direct command authority. I think that is the distinction that was one of the factors that weighed in the Department's judgment how to initially approach the number of double hats employed.

Mr. BURR. Clearly this legislation was the result of, originally, security concerns that arose. I hope nobody takes offense at the questions that try to find the answers as to why security seems to be in the back seat, yet safety was recognized in this process as a front seat issue. I am hopeful that the process will work as smoothly as you see it, and I hope that if we have an opportunity to clarify it through legislation that in fact we will exercise that option. I thank you very much. I thank the chairman.

Mrs. WILSON. Mr. Chairman, if I could ask unanimous consent to ask a few more questions?

Mr. UPTON. Sure, go ahead.

Mrs. WILSON. Thank you, Mr. Chairman. Mr. Deputy Secretary, I want to know whether there was anyone from the national weapons labs included in the implementation task force that was established in October?

Mr. GLAUCHIER. No. There were not any contractors who were in the actual task force. The task force was made up of Federal employees. We actually ran or processed—tried to consult with people in all parts of the operation and had discussions as we got more of the plan together. We have tried to work with the offices in this last 2 months where we have gotten the principals together and our general outlines of the plan that we published the first of January and as we tried to implement that tried to work with the different offices.

Mrs. WILSON. I am not sure—I think that answer was no. Could you clarify it a little bit? Did you consult with or involve the national nuclear weapons labs in the implementation task force?

Mr. GLAUCHIER. You asked first about membership about the task force. They were not members of the task force. In terms of consulting we consulted with them relatively late in the process because we started consulting with the management of the programs, the people who are Federal employees, and then as time went on we worked out more broadly. So they were consulted but later in the process than some others were.

Mrs. WILSON. Has the Director of the FBI or Director of the CIA reviewed your implementation plan?

Mr. GLAUCHIER. We did not send the formal plan, the full text. I don't know that—I don't believe so.

Mrs. WILSON. Thank you, Mr. Chairman.

Mr. UPTON. Well, thank you again, panel, for being here this morning. Again you may see some questions arise from this subcommittee from members that are not here.

Mr. GLAUCHIER. Mr. Chairman, could I clarify one last thing in response to a moment ago about the CIA and the FBI review? Our representative, Ed Curran, who is our Director of Counterintelligence, did review this and he is an FBI employee as you well know; and then the CIA, Larry Sanchez, who is the head of our Intelligence Program and is the connection to the CIA, also reviewed that. Larry is an employee of the CIA. So they were both involved in the review process.

Mr. UPTON. Thank you. You are now formally excused. Thank you.

Panel 2 will consist of Dr. Robert Kuckuck, Deputy Director of Operations for Lawrence Livermore; Dr. Paul Robinson, President and Laboratory Director of Sandia; Dr. Richard Burick, Deputy Director of Los Alamos; and Mr. Robert Van Hook, President of Lockheed Martin Energy Systems.

Gentlemen, as you know, as some of you have been here before, it has been a longstanding practice for us to take testimony under oath. Do any of you have objections to that? Hearing none, the second part of that question is you are also entitled under committee rules to be represented by counsel. Do you have a need to have counsel? Seeing none, if you would stand and raise your right hand.

[Witnesses sworn.]

Mr. UPTON. You are now under oath. As you saw in the previous panel, your testimony is being made part of the record in its entirety. If you could limit your remarks to 5 minutes that would be terrific. Dr. Kuckuck, we will start with you.

TESTIMONY OF ROBERT W. KUCKUCK, DEPUTY DIRECTOR FOR OPERATIONS, LAWRENCE LIVERMORE NATIONAL LABORATORY, UNIVERSITY OF CALIFORNIA; C. PAUL ROBINSON, PRESIDENT AND LABORATORIES DIRECTOR, SANDIA NATIONAL LABORATORIES; RICHARD J. BURICK, DEPUTY DIRECTOR, LOS ALAMOS NATIONAL LABORATORY; AND ROBERT I. VAN HOOK, PRESIDENT, LOCKHEED MARTIN ENERGY SYSTEMS, INC.

Mr. KUCKUCK. Mr. Chairman and members of the committee, I am the Deputy Director of Operations at the Lawrence Livermore National Laboratory. I appreciate the opportunity to address the committee today concerning the National Nuclear Security Administration and safety and security oversight at the laboratories. Our laboratory was founded in 1952 as a nuclear weapons laboratory. National security continues to be our central mission.

Livermore is a principal participant in the Department of Energy stockpile stewardship program, heavily involved in programs to prevent the proliferation of weapons of mass destruction and engage in energy, environmental and bioscience research and development as well as industrial applications of our core technologies. Our scientific and technological achievements in support of our national security mission depend on the conduct of safe and secure and efficient operations of the laboratory.

The laboratory is committed to doing its part to providing every employee and the neighboring community with a safe and healthy environment. Likewise, because of the nature of our work and the intellectual and physical assets at our site, attention to safeguards and security is also of paramount importance. To this end I will very briefly report to you steps we have taken this past year to ensure that our operations are safe and secure. I will also provide the basis for my belief that safety and security for the laboratories will continue to receive this high priority commitment with the establishment of the National Nuclear Security Administration.

With this reorganization there is the potential for more streamlined and integrated management and oversight of safety and security, clear program direction, and strengthened accountability. During 1999, LLNL Director Bruce Tarter testified before this committee on two separate occasions on the issue of laboratory security. He stated Livermore's commitment and described our efforts to provide increased confidence in the security of the laboratory. We have made substantial progress in many areas: Security program management, materials control and accountability, physical security systems, classified material protection and control, cyber security, and personnel security. In particular, we have worked expeditiously to address all of the issues that arose in self-evaluations resulting from the May 1999 inspection by the DOE Office of Security Evaluations, OSE. As an outgrowth of these efforts we re-

ceived an overall satisfactory or green rating from DOE/OSE in their follow-up inspection December 1999.

We are on target to reach the challenging goals we set in 1999. We have implemented a significantly improved strategy to protect Livermore Superblock and the special nuclear materials in it. Our Materials Control and Accountability Program has successfully closed all previous OSE findings and all safeguard measurements are now current. In addition, major improvements have been made in controlling and protecting classified parts. Furthermore, the laboratory is in full compliance on all physical security systems and training issues associated with Livermore's personnel security assurance program have been addressed. We are rapidly implementing our cyber security strategy, including steps to address and identify potential weaknesses in the security of some of our unclassified computer systems.

In the area of safety we are well into the process of implementing DOE's safety management system at Livermore and we are already beginning to experience a reduction in safety incidents. At the laboratory we have in the past tended to focus our attention on special hazards associated with high technology research projects. However, we can and must do better at preventing the more routine accidents connected with day-to-day activities. Our ISMS implementation is based on a set of work standards that were developed in partnership with DOE's Oakland Operations Office and the University of California. These work smart standards were accepted and ISMS implementation began in August 1999. We have set a goal, safety performance comparable to the best of our peers through top management leadership; clear roles, responsibilities, and performance expectations; and accountability.

Training and integrating safety management was completed by all employees in September. Livermore's implementation of ISMS is currently under review by a DOE/OAK-appointed verification team. In December the team completed ISMS verification phase 1A and 2A, a review of documentation and implementation down to the directorate level. The verification team was impressed by laboratory management's enthusiastic support of ISMS and commitment to safety. They also identified a number of noteworthy practices that have been implemented. The laboratory recently completed a short list of items identified in OAK's acceptance review and submitted its ISMS description to OAK for final approval. Final verification of the implementation of ISMS at Livermore will begin this spring.

I briefly reviewed for you the steps we have taken this past year for a particular reason, to illustrate our commitment to safe and secure operations at Livermore. These activities have greatly heightened safety and security awareness among all laboratory employees. More than ever attention to safety and security is ingrained in the way that we operate.

With the establishment of the National Nuclear Security Administration we will continue our strong attention to safety and security. We will still be governed by the same set of laws, orders, rules, regulations, and subject to oversight just as before. These requirements are currently explicitly stated in our contract and will remain so under the NNSA. However, with the reorganization

there is a potential for continued improvement through more effective management and oversight of safety and security at reduced overall costs.

A particularly significant change we face in many laboratory functions, including safety and security, is a continually growing amount of external management and oversight. Effective management and oversight are very important but it is also important to avoid blurring lines of responsibility and accountability. Through different lines of authority we have been at times provided with differing and sometimes conflicting guidance and directions with varying interpretations by our overseers. Add to that the multiplicity of layers of management for each line of authority and a myriad of oversight functions. We are in a situation where we are need to improve the efficiency and cost effectiveness of the efforts spent on management and oversight of safety and security.

The establishment of the National Nuclear Security Administration can potentially improve the situation in three related ways. First of all, with this reorganization there is a potential for more streamlined and integrated management and oversight of safety and security. Second, there is a potential for straightforward direction of safety and security management programs. It is possible to reduce conflicting guidance and establish clear expectations about performance. Finally, with clear performance expectations and a single DOE management team in charge, there is the opportunity for improved accountability. Effective management depends on accountability.

The Secretary's creation of a Field Management Council that approves directives to the field, together with a central point of issuance, the lead program secretarial officer, has already been a major positive step in this direction. The FMC helps ensure the coordination and integrated evaluation of directives and it helps to eliminate overlapping or conflicting requirements. I am greatly encouraged by the FMC's activities and would be pleased to see even greater opportunity for contractors to provide feedback on directors prior to their issue.

These potentially positive results I have just described will of course depend on details on how the new National Nuclear Security Administration will operate as it matures. I can't predict these details, including those related to the working relationships between NNSA and the overseers of safety and security and environmental management. However, streamlined management, clear program direction, and accountability are all attributes hoped for from the new NNSA when it was established by congressional legislation last year. An NNSA with these attributes combined with an oversight approach and appropriate checks and balances on implementation of findings would surely help to strengthen safety and security management at all DOE national laboratories.

Let me close by saying once again safe and secure operations are vitally important to Livermore. They underpin all of our research and development activities and they protect our employees, our neighbors, and some of our Nation's most closely held secrets. Our laboratory's operations came under great scrutiny in 1999. We made upgrades to physical security, cyber security, and our counterintelligence program to strengthen these areas, address identi-

fied issues and deal with perceived weaknesses. Also during 1999 we made great strides in the implementation of DOE's integrated safety management system at the laboratory. These activities have greatly heightened safety and security awareness among all laboratory employees.

More than ever, attention to safety and security is ingrained in the way that we operate. Our attention to safety and security is not diminished with the establishment of the National Nuclear Security Administration. In practical terms we are governed by the same laws, orders, regulations and subject to oversight as before. However, with this reorganization there is a potential for streamlined management and oversight of safety and security, clear program direction, and strengthened accountability. While details about implementation are important and need to be resolved, in principle such changes could have a positive effect on safety and security management and implementation at the laboratory.

Thank you very much.

[The prepared statement of Robert W. Kuckuck follows:]

PREPARED STATEMENT OF ROBERT W. KUCKUCK, DEPUTY DIRECTOR FOR OPERATIONS,
LAWRENCE LIVERMORE NATIONAL LABORATORY

OPENING REMARKS

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Our scientific and technological achievements in support of our national security mission depend on the conduct of safe, secure, and efficient operations at Livermore. The Laboratory is committed to doing its part to provide every employee and the neighboring community with a safe and healthy environment. Likewise, because of the nature of our work and the intellectual and physical assets at our site, attention to safeguards and security is also of paramount importance. To this end, I will very briefly report to you steps we have taken this past year to ensure that our operations are safe and secure. I will also provide the basis for my belief that safety and security at the Laboratory will continue to receive this high priority commitment with the establishment of the National Nuclear Security Administration. With the reorganization, there is the potential for more streamlined and integrated management and oversight of safety and security, clear program direction, and strengthened accountability.

SAFETY AND SECURITY AT THE LABORATORY

Laboratory Security. During 1999, LLNL Director C. Bruce Tarter testified before this committee on two separate occasions on the issue of Laboratory security. He stated Livermore's commitment and described our efforts to provide increased confidence in the security of the Laboratory. We have made substantial progress in many areas: security program management, materials control and accountability, physical security systems, classified material protection and control, cyber security, and personnel security. In particular, we have worked expeditiously to address all issues that arose in self-evaluations or resulted from the May 1999 inspection by the DOE Office of Security Evaluations (OSE). As an outgrowth of these efforts, we received an overall Satisfactory (Green) rating from DOE/OSE in their Follow-up Inspection in December 1999.

We are on target to reach the challenging goals we set in 1999. We have implemented a significantly improved strategy to protect Livermore's Superblock and the special nuclear materials in it. Our Materials Control and Accountability Program has successfully closed all previous OSE findings, and all safeguards measurements are now current. In addition, major improvements have been made in controlling

and protecting classified parts. Furthermore, the Laboratory is in full compliance on all physical security systems, and training issues associated with Livermore's Personnel Security Assurance Program (PSAP) have been addressed. And we are rapidly implementing our cyber security strategy, including steps to address identified potential weaknesses in the security of some of our unclassified computer systems.

Laboratory Safety. We are in the process of implementing DOE's Integrated Safety Management System (ISMS) at Livermore, and we are already beginning to experience a reduction in safety incidents. At the Laboratory, we have in the past tended to focus our attention on special hazards associated with high-technology research projects; however, we can and must do better at preventing the more routine accidents connected with day-to-day activities. Our ISMS implementation is based on a set of work standards that were developed in partnership with DOE's Oakland Operations Office and the University of California. The Work Smart Standards were accepted and ISMS implementation began in August 1999. We have set a goal—safety performance comparable to the best of our peers—through top management leadership; clear roles, responsibilities, and performance expectations; and accountability.

Training in Integrated Safety Management was completed by all employees in September. Livermore's implementation of ISMS is currently under review by a DOE/OAK-appointed Verification Team. In December, the team completed ISMS Verification Phase IA/IIA (a review of documentation and implementation down to the Directorate Level). The Verification Team was impressed by Laboratory management's enthusiastic support of ISMS and commitment to safety. They also identified a number of Noteworthy Practices that have been implemented. The Laboratory recently completed a short list of items identified in OAK's Acceptance Review and submitted its ISMS Description to OAK for final approval. Final verification (Phase IB/IIB) of the implementation of ISMS at Livermore will begin this Spring.

OVERSIGHT BY THE NATIONAL NUCLEAR SECURITY ADMINISTRATION

A Commitment to Safety and Security. I have briefly reviewed for you the steps we have taken this past year for a particular reason: to illustrate our commitment to safe and secure operations at Livermore. The activities have greatly heightened safety and security awareness among all Laboratory employees. More than ever, attention to safety and security is ingrained in the way we operate. With the establishment of the National Nuclear Security Administration, we will continue our attention to safety and security. We are governed by the same set of laws, orders, rules and regulations and subject to oversight as before. These requirements are currently explicitly stated in our contract and remain so under the NNSA. However, with the reorganization, there is the potential for continued improvement through more effective management and oversight of safety and security at reduced overall cost.

Opportunities for Improved Management and Oversight. A particularly significant change we face in many Laboratory functions, including safety and security, is a continually growing amount (as measured over decades) of external management and oversight. Effective management and oversight are very important, but it is also important to avoid blurring lines of responsibility and accountability. Through different lines of authority we have been at times provided with differing—and sometimes conflicting—guidance, rules, regulations, and/or orders together with varying interpretations by our overseers. Add to that a multiplicity of layers of management for each line of authority and a myriad of associated oversight functions. We are in a situation where we need to improve the efficiency and cost effectiveness of the effort spent on management and oversight of safety and security.

The establishment of the National Nuclear Security Administration (NNSA) can potentially improve the situation in three related ways. First of all, with the reorganization, there is the potential for more streamlined and integrated management and oversight of safety and security. Secondly, there is the potential for straightforward direction for safety and security management programs. It is possible to reduce conflicting guidance, rules, regulations, and/or orders and establish clear expectations about performance. Finally, with clear performance expectations and a single DOE management team in charge, there is the opportunity for improved accountability. Effective management depends on accountability.

The Secretary's creation of a Field Management Council (FMC) that approves directives to the field—together with a central point of issuance, the Principal Secretarial Officer—has already been a major positive step in this direction. The FMC helps insure the coordination and integrated evaluation of such directives, and it helps eliminate overlapping or conflicting requirements. I am greatly encouraged by

the FMC's activities and would be pleased to see even greater opportunity for contractors to provide feedback on directives prior to their issue.

Issues in Implementation Details. The potential results I have just described depend on details about how the new National Nuclear Security Administration will operate as it matures. I cannot predict the details, including those related to the working relationships between NNSA and the overseers of safety and security (and environmental management). However, streamlined management, clear program direction, and accountability are all attributes hoped for from the new NNSA when it was established by Congressional legislation last year. An NNSA with these attributes—combined with an oversight approach with appropriate checks and balances on implementation of findings—would surely help to strengthen safety and security management at all DOE national security facilities.

CLOSING REMARKS

I appreciate the opportunity to address the Committee on safety and security oversight of the Laboratory and the new National Nuclear Security Administration. As I have said, safe and secure operations are vitally important to Livermore—they underpin all our research and development activities and they protect our employees, our neighbors, and some of our nation's most closely held secrets. Our Laboratory's operations came under great scrutiny in 1999. We made upgrades to physical security, cyber security, and our counterintelligence program to strengthen these areas, address identified issues, and deal with perceived weaknesses. Also during 1999, we made great strides in the implementation of DOE's Integrated Safety Management System at the Laboratory. These activities have greatly heightened safety and security awareness among all Laboratory employees.

More than ever, attention to safety and security is ingrained in the way we operate. Our attention to safety and security is not diminished with the establishment of the National Nuclear Security Administration. In practical terms, we are governed by the same set of laws, orders, rules and regulations and subject to oversight as before. However, with the reorganization, there is the potential for streamlined management and oversight of safety and security, clear program direction, and strengthened accountability. While details about implementation are important and need to be resolved, in principle such changes could have a positive effect on safety and security management and implementation at the Laboratory.

Mr. UPTON. Thank you. Dr. Robinson, Paul, welcome.

TESTIMONY OF C. PAUL ROBINSON

Mr. ROBINSON. Thank you, Mr. Chairman. I did submit a longer statement. Let me just summarize a few of the key points and perhaps try and summarize some reactions to the previous panel.

I think the central question before us all today is what are the right management principles to invoke for implementing oversight in the new semi-autonomous agency that has been created, the National Nuclear Security Administration. I cited in my testimony a number of major reports that have been carried out by senior people in the country to examine the situation at the laboratories and plants. First, the Galvin Commission in 1995; the 120-day study carried out by members of the Institute for Defense Analysis in response to the national defense authorization request; the President's Foreign Intelligence Advisory Board that completed its work last year; and the Foster panel, which was created to assess reliability and safety of the security of the U.S. nuclear stockpile established by the National Defense Authorization Act in 1999. All of these people, though tasked with specific agendas, all found occasion to remark about the level of bureaucracy that has grown up over time.

Mr. Chairman, I left graduate school and joined one of the national laboratories in 1967, at that time under the Atomic Energy Commission. So I have watched the transition over more than 30 years as we move from the AEC, the Energy Research and Devel-

opment Administration, and on to the Department of Energy. I must say it is easy for me to reflect back on that entire period of time and see the growth of bureaucracy with almost nothing to halt the steady and continuous growth.

That is cited in the words I quoted from those expert panels. I think that the debate we are having here is not as to whether we should have oversight and management of these activities. Of course they should be there and it is a Federal function. But we must come to some agreement on what is excessive oversight and when does management move from good management to micro management. I think that is a central theme and setting the pendulum is a key part of the task you have taken on. When you spend more and more of your work going through bureaucratic procedures there is less time devoted to the mission work. I have seen that expand over time and I think it has gone too far. It is time—and I looked with great hope at the legislation for the NNSA as a chance to do just what was said, of streamlining some of the processes.

Now, I certainly do not want to be put in the position of blaming any of the individuals in the Department today. I see no gain in that, no future in that. In fact, I have seen improvements in recent time as these folks who have come in now have in fact acknowledged the level of bureaucracy. As Mr. Glauthier said this morning, in April of last year they indeed invoked some new procedures to try to cut down on the many lines of accountability and authority which were a labyrinth overlapping the Department. That has been seen as a significant gain. I certainly take no issue with the good gentlemen, Dr. David Michaels or Glenn Podonsky. I think they are very well meaning individuals, they want to help and I believe they want to do more than just write traffic tickets, by analogy, which often turns out with oversight responsibilities. They would like to be part of the solution as well.

Unfortunately, over time a lot of well meaning people have said we want to help and we want to be part of the solution. As the Galvin Commission said, we have all been getting far more help that we can usefully use. That is a central part of the problem. When everybody is in charge no one is in charge. It is crucial to try to define what are those lines of responsibility and accountability and we must hold people accountable for the work.

One other key point I would mention is the history has not been a good one. We have watched the number of audits and oversight visits increase monotonically over time. They only after the Galvin Commission report put the spotlight on it and began to decrease somewhat. At that time we had two major audits or investigations of our lab every single month. The way these were carried out with the management change from headquarters, various offices, to the program offices to the field offices, each one would be worried, gee, what if they should find something derogatory in that inspection or evaluation. I know, we will conduct an inspection early. So we back up 2 or 3 weeks on the calendar before a major inspection by an oversight group, there would be a preinspection and then another group working on the chain would say, well, I wouldn't want my boss to find out that there is a problem, we better conduct an investigation 2 weeks before that. Over time a great number of the

staff, a lot of the expenditures that were carried out were to keep up with these audits and oversight investigations.

A key principle I believe has made an appearance upon the U.S. industrial scene in recent years. One of the most important parts of the quality I think it has brought to American business is that you can't really improve quality simply by inspecting out defects in a product or activity. You have got to take proactive efforts to build in quality from the ground up by the very people who must carry out the work. That's a theme that I think is vitally important for us in the laboratories to take to heart, to emphasize, and that I think comes with streamlining the oversight at the same time. That will pay much better dividends to the American taxpayers for the expenditures they invest with us.

The environmental safety and health responsibilities must be embedded particularly in laboratories with the people who are there to do the work. An early administration actually tried to operate the laboratories as if they were a nuclear power station. Now, there is almost nothing we do that would resemble a nuclear power station. In fact, if we are carrying out leading edge research on behalf of the Nation, we almost never repeat the same activity twice. Research and development requires you to press the frontier and to try new things. It doesn't look like a production activity, and so that overlay never quite worked. But lots and lots of growth and organizations occurred but what we never called to accountability for was, was this working out or was it not working out. That's a key part of what I believe the NNSA was to accomplish, to put accountability in the people who are in charge of the mission and of the program's programs, and that I embraced very thoroughly.

Let me close by mentioning that I attached to this statement a number of the activities that we have taken, not because anyone suggested that they should be taken, but because we knew they were important to carry out our mission in the best way. I have included an appendix of a wide number of activities, both in cyber security, which has been the newest and the major worry within the laboratories, but also security, environment, safety, and health.

I think as you peruse those you will see the list is something that could not have occurred by an external organization at a long distance away making a suggestion of what should be done to better do the work. These are the kinds of things that had to arise by the people responsible for carrying out the work with their own caring about security and safety to take actions which are effective in raising the level of both security and safety to protect the lives of our employees and to protect our communities.

Thank you very much, sir.

[The prepared statement of C. Paul Robinson follows:]

PREPARED STATEMENT OF C. PAUL ROBINSON, DIRECTOR, SANDIA NATIONAL
LABORATORIES

INTRODUCTION

Mr. Chairman and distinguished members of the committee, thank you for the opportunity to testify today. I am Paul Robinson, director of Sandia National Laboratories. Sandia is managed and operated for the U.S. Department of Energy by Sandia Corporation, a subsidiary of the Lockheed Martin Corporation.

Sandia National Laboratories is a multiprogram laboratory of the U.S. Department of Energy (DOE) and is one of the three National Nuclear Security Adminis-

tration (NNSA) laboratories with research and development responsibility for nuclear weapons. Sandia's job is the design, development, and certification of nearly all of the non-nuclear subsystems of nuclear weapons. Our responsibilities include arming, fuzing, and firing systems; safety, security, and use-control systems; engineering support for production and dismantlement of nuclear weapons; and surveillance and support of weapons in stockpile. We perform substantial work in programs closely related to nuclear weapons, such as nuclear intelligence, nonproliferation, and treaty verification technologies. As a multiprogram national laboratory, Sandia also performs research and development for DOE's energy offices, as well as work for other agencies when our unique capabilities can make significant contributions.

I am pleased to comment on the important issue of safety and security oversight of the new National Nuclear Security Administration. Oversight is an essential function for good management, and when it is properly implemented it enhances the ability of an organization or program to perform its mission. The question before us is, What are sound management principles for implementing oversight in the new National Nuclear Security Administration? The implementation of the NNSA presents an opportunity for DOE to correct some of the structural problems with the oversight function as administered in the past.

I will begin my statement with a brief review of a consensus view on DOE management and oversight that highlights a need for change. I will describe some positive trends in how oversight is evolving at DOE, largely as a result of several high-level studies. I will discuss how lessons learned from past oversight experiences should influence how we implement the newest effort—in oversight of cyber-security. I will also comment on the changes in the DOE management structure proposed by the Secretary's Implementation Plan for the National Nuclear Security Administration, including some concerns over "dual-hatting" of various staff functions.

Finally, I have attached an appendix to my statement that lists some of the many improvements and innovations in security and safety implemented by Sandia National Laboratories on its own initiative without directive from DOE oversight offices. It is important for the Congress to appreciate that the NNSA laboratories are vigorously proactive in achieving high levels of security and safety, and not only as a result of DOE oversight.

CONSENSUS ON THE NEED FOR CHANGE

Several high-level studies have been critical of oversight and management at the Department of Energy. In 1995, the influential "Galvin Report," (the Secretary of Energy's Task Force on Alternative Futures for the DOE National Laboratories) found that the GOCO (government-owned, contractor-operated) concept, the model on which the laboratories have operated for the last fifty years, had been irretrievably weakened through unrestrained growth in DOE micromanagement, rule-making, and excessive oversight.

The DOE system of using GOCOs as Management and Operating contractors has served the nation in an exceptional way. The original intent of the GOCO system, from the latter days of the Manhattan Project, was to provide a means for the government to obtain technical management and research expertise that is greater than that available within the federal system itself. A wide variety of reviews, spanning decades, have concluded that the GOCO concept adds exceptional value to the nation, and is a preferred research and development model.

Regrettably, the Galvin Task Force lamented the demise of the GOCO concept in actual DOE practice:

The GOCO system was a promising concept. The Contractors, as contractors, do yeoman work. The system has been employed for decades. But in that time it has followed the natural course of government's proclivity to govern more. The owner wants to take charge more. Most able government personnel aspire to add value. Translation: add more governance. This makes work for more government personnel, increasing the size of the operation, increasing still further need for management, *ad infinitum*. Congressional policy has significantly driven this consequence. (Page 53)

The Galvin report was very direct in its criticism of "excessive oversight and micromanaging" by DOE:

The net effect is that thousands of people are engaged on the government payroll to oversee and prescribe tens of thousands of how-to functions. The laboratories must staff up or reallocate the resources of its people to be responsive to such myriads of directives; more and more of the science-intended resources are having to be redirected to the phenomenon of accountability versus producing science and technology benefits. (Page A-1)

Two years after the Galvin Report, the Institute for Defense Analyses echoed these concerns in their study for Congress (commissioned by the National Defense Authorization Act for Fiscal Year 1997), commonly known as the "120-Day Study":

The current system can best be described as one in which everybody reviews everything until everyone is satisfied. The "process" is ad hoc, and almost defies description... There is no consensus among all these reviewers and checkers and checkers of checkers regarding the desired end-state for a facility. Consequently, each of the organizations that reviews a document, decision, or process does so from its own perspective and insists that the facility meet *its* priority requirements for safety. (Page ES-1)

Last year's report of the President's Foreign Intelligence Advisory Board (PFIAB) entitled, "Science at Its Best; Security at Its Worst," referred to DOE as a "big, byzantine, and bewildering bureaucracy." In regard to security performance, the PFIAB found that "multiple chains of command and standards of performance negated accountability, resulting in pervasive inefficiency, confusion, and mistrust" (page I). It concluded that "real and lasting security and counterintelligence reform at the weapons labs is simply unworkable within DOE's current structure and culture" (page 46). The PFIAB's recommendations, of course, were the basis for the legislation creating the semi-autonomous National Nuclear Security Administration within the Department of Energy.

And most recently, the "Report of the Panel to Assess the Reliability, Safety, and Security of the United States Nuclear Stockpile" (commissioned by the Strom Thurmond National Defense Authorization Act of 1999), commonly known as the "Foster Report," again called for DOE management reform—with a detectable tone of exasperation—stressing the need to integrate safety and security into line management responsibility:

The Department of Energy needs to address the internal management practices that have repeatedly been cited as counterproductive to the weapons program by external review groups, including the Galvin Commission, the 120-Day Study, and the Chiles Commission... The key management principle that has been urged upon the Department is the integration into line management of all significant functional responsibilities, including safety and security. The Department has suffered from the diffusion of these functions across a range of staff and line organizations, leading to clouded lines of authority and blurred responsibility and accountability. (Page 10)

DOE'S OVERSIGHT STRUCTURE NEEDS IMPROVEMENT

Sandia's experience with oversight conducted by DOE over the years leads me to believe that the Department is making an effort in recent years to heed the advice of the review panels. In the past, it was not unusual for various staff offices at multiple levels of the DOE management structure to exercise overlapping and often redundant oversight functions. We often found ourselves responding to the demands of multiple DOE offices on the same or similar issues. Consequently, the impact on programmatic work was far more disruptive than was necessary.

At the peak of the Department's environmental, safety, and health (ES&H) compliance initiative in 1992, we pointed out to DOE that the audit rate was two assessments per month at Sandia. Inspection teams visited us from multiple offices at DOE headquarters and field elements. Inconsistency in results and expectations was a problem. For example, the environmental protection program at our California facility was graded as "excellent" by one set of examiners, but an audit six months later by a different group scored it "marginal," even though the program had been improved in the interim. We had great difficulty dealing with multiple demands and conflicts in prioritization of action items. For a long while, it seemed as though some oversight staff within the DOE were simply playing "gotcha!" with the organizations on the line performing the mission work of DOE. Other individuals undoubtedly saw oversight initiatives as an opportunity to build empires. The record of the Department in those early years was unfortunate because it created a mistrustful environment that was counterproductive to mission work.

The Institute for Defense Analyses in its "120-Day Study" found experiences like this to be a widespread and serious problem:

Because of the large number of DOE and external organizations that have some responsibility for managing ES&H concerns, defense nuclear facilities are subject to a wide range of oversight and audit requirements. Facilities are subject to oversight from their facility representatives, the site or area office, the operations office, the program-sponsoring secretariat, other headquarters activities, the DNFSB, and other federal and state regulators. Often these are uncoordinated, as there is no central authority below the Office of the Secretary that

can discipline the activities of the internal oversight elements... Many DOE and contractor officials describe Defense Programs' oversight as creating an inverted management pyramid, because the number of reviewers exceeds the number of hands-on workers. For example, contractors have cited examples where work done by two or three people becomes the subject of review meetings involving 40 or more Defense Programs officials. (Page II-14)

Fortunately, the situation is significantly better today than it used to be. These findings by the Galvin Task Force and the 120-Day Study helped alert receptive executives in DOE to the problem of oversight abuses and conflicting management responsibilities. The insight of DOE field office staff into these problems was also a catalyst for change, as they pushed back against some of the excesses that had arisen in various parts of DOE. With no real management control over autonomous oversight activities within the headquarters of the Department, serious difficulties had been created for us all—for the DOE field offices, who are closer to the work and who are charged with both execution of mission as well as ES&H oversight, for the laboratories and plants at the end of the chain for DOE orders and directives, and for DOE itself as it struggled to direct oversight in a way that would not frustrate the mission.

In successive oversight campaigns for physical security, nuclear materials control, cyber security, and other issues that gained attention, DOE has tried to do a better job and move away from the old dysfunctional pattern of adversarial, redundant, layered authorities and audit overkill. I believe DOE has learned that successful oversight is much more than just conducting inspections. The Total Quality revolution that swept through American industry beginning almost 20 years ago taught us that the old strategy of "inspecting-out" defects does not work in the long term. Rather, you have to "build-in" quality right from the outset of the program.

Today, DOE management appears to be more aware of the need to conduct oversight in a manner that is constructive for the programs. That means building security and safety directly into program management (through the programmatic budget process) and into the cultures of the line organizations, rather than installing an organizational overlay above line management. Inspections will continue to be an essential element of the oversight model, but they must be part of a balanced program that works with, rather than against, program management. The Institute for Defense Analyses' study cited this as one of six management principles that DOE should adopt:

There is widespread agreement that ES&H responsibilities, in order to be properly executed, must be embedded in line management. Achieving day-to-day safe operations can only be achieved by the people close to the work, and within a well understood safety management system. This means giving line managers the responsibility and authority they need, holding them accountable, and then letting them do their jobs—with, of course, appropriate oversight. (*120-Day Study*, page IV-2)

AN EXAMPLE: PRICE-ANDERSON ADMINISTRATION

The Department's administration of the requirements of the Price-Anderson Amendments Act of 1988 is an example of the evolution in thinking regarding how DOE should perform oversight. Reporting to the Assistant Secretary of Environment, Safety, and Health (EH-1), the Office of the Deputy Assistant Secretary for Nuclear and Facility Safety develops nuclear safety policy for all DOE nuclear facilities other than Navy nuclear propulsion facilities. The Office of Enforcement and Investigation (also reporting to EH-1) reviews potential violations and can assess fines directly against DOE contractors.

The contractors, understandably, are eager to maintain high levels of nuclear facility safety performance in order to minimize the potential for financial penalties. However, in the past, DOE's approach stressed enforcement without integrating requirements into programmatic objectives. There was no coordination or adjudication with DOE program offices. Thus, the Department's policies for nuclear safety performance could be articulated in terms of measurable performance objectives within a program budget and schedule. The contractors had little programmatic guidance and rarely had explicit budget authority for nuclear safety functions.

DOE appears to be moving toward a more effective approach by establishing a mechanism for coordinating policy with programs. The Secretary of Energy's recent action to establish a Field Management Council was an important step to ensure that policies affecting field operations are coordinated with the appropriate Lead Program Secretarial Officers. This process should eventually establish a clearly understood chain of accountability for nuclear facility safety performance (and other policy objectives) through program management hierarchies.

CYBER-SECURITY NEEDS TO BE INTEGRATED WITH THE MISSION'S PROGRAMS

The lessons learned from our experience with Price-Anderson and other oversight areas are useful as the Department considers how to establish both oversight and management structures for cyber security. It would be poor practice to establish a cyber-security enforcement office in DOE that places requirements directly on facilities rather than holding the line management of the nuclear weapons enterprise responsible. More than any other area of security, cyber security must be integrated into the total program. An enterprise-wide solution is required, comprising the laboratories, production plants, field offices, and headquarters. Connections between sites offer potentially exploitable opportunities for foreign nation-state attackers and increased vulnerability to insider threats. The top management for national nuclear security programs—specifically, the NNSA Administrator, the Deputy Administrator for Defense Programs, and the operations managers—are the only officials with the programmatic scope to assure that the nuclear weapons complex has an enterprise-level computer network with both the functionality to support the mission and the cyber security to meet its rigorous requirements for information protection.

My expectation is that an appropriation on the order of \$360 million over three years will be required to implement effective enterprise-wide cyber security. The responsibility and the funding must be placed unequivocally in the hands of the defense programs' management. The oversight function should critique and support the management process that is tasked with meeting those cyber-security objectives, but it must not be allowed to unilaterally usurp the management process.

CHANGING THE DOE STRUCTURE

The Secretary's Implementation Plan for the National Nuclear Security Administration brings together, as mandated, the closely related functions of defense programs, nonproliferation programs, and naval reactors under a single administrator who is an Under Secretary of Energy. Each of these portfolios will be managed by a deputy administrator. This realignment should enhance coordination and communication among these activities. I am also encouraged that the Secretary's implementation plan permits the NNSA laboratories to continue to perform work for the DOE science and energy programs, a relationship that has been of great benefit to the laboratories in the past.

The field office managers for Albuquerque and Nevada operations report to the Deputy Administrator for Defense Programs. The operations managers are the federal management level closest to the actual work performed at the laboratories and plants. Their boss, the Deputy Administrator for Defense Programs, is effectively the chief operating officer of the nuclear weapons complex. The Administrator of the National Nuclear Security Administration may be thought of as the chief executive officer.

There has been some criticism that the operations offices and DOE headquarters have redundant management functions. Recent testimony by GAO complained that the Secretary's implementation plan "still puts the operations office in the chain of command, continuing to blur who is accountable."¹ If confusion exists in the management functions of headquarters and the field offices, it should be resolved using the generally accepted management principle of pushing decision-making to the lowest operational levels possible. The Deputy Administrator for Defense Programs should not be directly managing the laboratories and plants. That is a job for the operations managers in the field. The operations managers are removed from the political distractions of Washington and they can focus effectively on addressing the significant challenges of operating the nuclear weapons complex. These field managers are not autonomous; they are fully accountable to the Deputy Administrator. I believe that all of the weapons design and production facilities should be attached to a single field office that would have day-to-day operating responsibility.

Abolishing the DOE field organizations (as GAO seemed to advocate) would require that day-to-day operational decisions be pushed up the chain of command to a level further removed from direct oversight of the work. That would be a counterproductive approach to fixing the redundancy problem and would result in less effective oversight of operations. If we have redundant management functions in headquarters and the field offices, the presumption should be to remove the duplicate functions from the headquarters level.

¹ Statement of Gary L. Jones, Associate Director, Energy, Resources, And Science Issues; Resources, Community, and Economic Development Division; Government Accounting Office. Testimony before the Special Oversight Panel on DOE Reorganization, House Armed Services Committee, March 2, 2000.

The management structure outlined in the Secretary's implementation plan makes good sense in concept, but a few practical problems remain. The alignment of field elements with the appropriate DOE under secretary should be improved. In particular, Lawrence Livermore National Laboratory, one of the three nuclear weapons laboratories, continues to be managed by the Oakland Operations Office, which does not report to the Deputy Administrator for Defense Programs. This situation, and a few other anomalies, should be easy to remedy.

“DUAL-HATTING” OF OVERSIGHT OFFICES

Many observers have raised concerns about the provisions in the National Nuclear Security Administration Implementation Plan for “dual-hatting” of the support officers for counterintelligence, security, ES&H, and other staff functions. In my opinion, the concurrent appointments of these officers and staff in the NNSA and the Department will tend to perpetuate the earlier problems of confusion and conflict between staff and management functions.

The support offices for security, counterintelligence, and environment, safety, and health assigned to the Under Secretary and Administrator for the National Nuclear Security Administration should be unique and report exclusively to that official. They are above and independent of the Deputy Administrator for Defense Programs (and the other deputy administrators) and his field elements. Assessment information provided by the support offices to the Administrator will permit him to direct his deputy administrators to resolve security and safety issues in their purview in a way that is integrated with mission objectives. This approach is the proven and accepted method for quality assurance activities throughout both the nuclear power industry and the defense industry. This structure is also entirely consistent with the recommendations of the President's Foreign Intelligence Advisory Board as expressed in their Memorandum of Clarification on June 30, 1999:

There clearly must be solid CI, intelligence, and security programs within the new agency. To achieve this, the agency director must have sufficient staff assigned directly to him/her to advise on the implementation of CI, security, and intelligence policy as promulgated by the Secretary.

The Administrator, in turn, will be directly accountable to the Secretary of Energy, and should be held accountable for acceptable performance in security, counterintelligence, and environment, safety, and health. The Secretary may wish to rely on his own separate advisory staff in these areas to advise him on the security and safety performance of the NNSA and report back to the Secretary with any concerns. I believe the PFIAB, in its memorandum, regards this arrangement as proper:

The Secretary is still responsible for developing and promulgating DOE-wide policy on these matters, and it makes sense to us that a Secretary would want advisers on his/her immediate staff to assist in that vein.

The GAO testimony I cited earlier reported that the DOE Office of Independent Oversight and Performance Assurance is attempting to modify DOE orders to ensure that it can place direct requirements on NNSA elements. Such a move is not desirable and would continue the confusion of staff functions exercising line management authority, and would be contrary to the principles outlined by the PFIAB. An audit organization reporting to the Secretary should do just that—report to the Secretary. The proper approach is for the Secretary to hold the Administrator accountable, rather than allowing oversight organizations to bypass him and exert direct executive control. The 120-Day Study regarded this practice as a prevalent and unfortunate problem in DOE:

People throughout Defense Programs confuse the power and influence that comes with being a staff person associated with a powerful line manager, with line management responsibility (page ES-2)

As a laboratory director, I have no objection to independent oversight that is balanced and truly independent. Such oversight can be very helpful, indeed, essential. However, staff oversight organizations that can insert themselves into the program management chain with no accountability or adjudication are no longer truly independent.

It may also be advisable for the Secretary to periodically commission a fresh set of eyes and minds for oversight activities. In the current structure, the inspecting offices are permanent establishments and have a career stake in the status quo. This conflict of interest would not exist with external review entities, such as select panels or a “red team” combined from other technical agencies.

CONCLUSION

The new National Nuclear Security Administration should be implemented on sound management principles, including the concepts of clear lines of management authority, separation of staff and line responsibility, quality built-in to the program, and appropriate internal and external oversight. If properly implemented, the National Nuclear Security Administration can correct the dysfunction caused by confusion of authorities, adversarial oversight, usurpation of operational management by staff organizations, and a self-perpetuating oversight establishment in the Department. The Secretary's Implementation Plan is a significant first step toward realizing the vision of an effective National Nuclear Security Administration.

It is my belief that the circumstances in DOE that have been so strongly criticized by review panels are not the fault of any individuals, certainly not the people who are in charge or occupy key positions in the Department of Energy today. As the President's Foreign Intelligence Advisory Board found, the single most identifiable factor that led to the current state of affairs was the relentless growth of bureaucracy. My definition of bureaucracy is when well-meaning, capable people find it difficult to accomplish their mission responsibilities because of multiple lines of authority and bureaucratic hurdles that must be overcome. Unfortunately, that is the state DOE has come to. The Congressional act to isolate the nuclear weapons, non-proliferation and verification, and naval reactors programs from the rest of the Department is an attempt to break as many bureaucratic lines as possible in order that the new agency can get on with its mission while achieving high levels of security and safety in a fashion that is integrated with its program responsibilities.

APPENDIX

SANDIA NATIONAL LABORATORIES SELF-ORIGINATED SECURITY AND SAFETY IMPROVEMENTS

The following list illustrates some of the many improvements and innovations in security and safety implemented on the initiative of Sandia National Laboratories without directive from DOE oversight offices or the Defense Nuclear Facilities Safety Board.

Computer Security

- Sandia pioneered the **three-level network security architecture** that was accepted as the standard configuration for the nuclear weapons complex in 1999. This architecture includes an unclassified, non-sensitive external network open to the Internet and our university and industrial collaborators; an unclassified internal restricted network accessible only by personnel with authorized access; and an internal classified network secured by personnel clearances, strong authentication systems, encrypted communications, need-to-know groupings, and hardware/ software isolation from unclassified systems.
- At the creation of the Sandia Restricted Network (which contains sensitive unclassified information), Sandia developed a restrictive **firewall** to protect this network from the Internet. The capabilities of the firewall have been enhanced through the years to provide greater utility for Sandia's scientists and engineers while presenting a significant barrier to unauthorized access from the Internet.
- A proxy server for the worldwide web was implemented at Sandia National Laboratories in 1995 with a set of filters developed by Sandia that **strengthened the firewall** by allowing users to access web pages on the Internet while preventing the automatic execution of dangerous file types. Filters installed at the Internet point of connection prevent other sites from masquerading as Sandia addresses and inhibit other common attacks.
- In 1995, Sandia implemented a **network intrusion detection system** using the "NID" software developed at Lawrence Livermore National Laboratory. Sandia is in the process of replacing NID with an improved commercial package, "RealSecure" from Internet Security Systems.
- Sandia has recently **developed another firewall** called "FTP Guard," which runs on an operating system approved by the National Security Agency, to protect against file transfers out of the classified network. FTP Guard is a "diode" filter that, when implemented, will permit users on the Sandia Internal Secure Network to download unclassified files from an unclassified network while preventing file transfers in the opposite direction. FTP Guard has passed multiple independent technical reviews and is the first system of its kind to be accredited by DOE. We expect FTP Guard to be implemented on our production network at an appropriate time in the future.

- Sandia, in cooperation with Lawrence Livermore National Laboratory, Los Alamos National Laboratory, and DOE nuclear weapons production agencies, developed a **secure, high-speed, intersite network** linking the classified networks at each of the nuclear weapon laboratories and the production plants. This wide-area network, called “DOE SecureNet” was conceived and designed by the laboratories.
- Sandia adopted the **Kerberos network authentication protocol** developed at the Massachusetts Institute of Technology. Kerberos provides strong authentication for client/server applications by using secret-key cryptography. Sandia developed an interactive password management system to support our use of Kerberos by assigning randomly generated alphanumeric, mixed-case sequences as passwords. We also developed software to implement Kerberos authentication in the Netscape web browser, providing secure web access to sensitive unclassified information on the Sandia Restricted Network. The draft DOE order on password protection essentially institutionalizes this security feature pioneered by Sandia. Sandia now uses a secure, heterogeneous Distributed Computing Environment from The Open Group, a consortium of vendors, which incorporates the Kerberos authentication system.
- Sandia implemented an **Entrust public key infrastructure** on its unclassified restricted network in 1997, enabling secure exchange of sensitive unclassified documents via encryption and digital signature within the laboratory and with other DOE sites.
- In 1998, Sandia began a **network scanning process** (using ISS/CyberCop) almost a year before the Tri-Lab InfoSec Plan recommended it.
- In 1999, Sandia added **SecurID authentication** to ISDN dial-up access to its unclassified networks. A SecurID card provides strong two-factor authentication.
- Sandia wrote **security configuration guidelines for classified and unclassified desktop systems** in 1999. Desktop security models for PCs (Windows), UNIX, and Macintosh systems provide uniform definition and automated monitoring to reduce vulnerabilities.

Physical Security

- Between 1996 and 1999, Sandia National Laboratories, New Mexico, installed **automated security gates** at 24 portals to control access by pedestrians and vehicles into the laboratory’s technical area. This system improved security by using magnetic-strip badge readers rather than visual inspection by security guards, which can be unreliable, especially during peak traffic times.
- In 1998, Sandia spent \$500,000 on **equipment for technical security countermeasures**, which was not yet required by DOE but which we felt would increase the reliability of the system. It is our understanding that DOE plans to require the new equipment at DOE sites in the next few years.
- Three years ago, Sandia National Laboratories, California, **replaced its alarm system** using laboratory funding rather than line item funding. The California site has installed extensive access control features, allowing owners of limited areas to grant access to rooms and areas based on need to know. We intend to install a similar system at New Mexico as funding permits.

Personnel Security

- In 1997, Sandia established an **Infraction Review Committee** to process and evaluate security infractions. This committee is composed of the manager of the security incident management program, the line manager of the person responsible for the potential infraction, and the manager of the safeguards and security topical area involved in the incident. Incidents from special access programs and sensitive compartmented information facilities are also reviewed by this committee.
- In 1999 Sandia implemented an **electronic Foreign National Request (FNR) System**. Web-based and user-friendly, the system uses a workflow system and parallels the concurrence process to improve data quality, facilitate approvals, eliminate data re-entry, and provide users with on-line access to unclassified data regarding the status of visit requests. Other laboratories in DOE and DoD have asked Sandia to share these programs with them.

Security of Nuclear Materials

- In 1995, Sandia completed a site-wide plan for **disposing excess nuclear material**. Since then, more than 20 metric tons of accountable nuclear material has been shipped from Sandia, either for recycling or disposal as waste. The benefits of this reduction in inventory include reduced vulnerability, lower protective

force costs, and consolidation of material into facilities specially designed to protect nuclear material.

- In 1997, we implemented the **Sandia National Laboratories Local Area Network Materials Accountability System (SNL-LANMAS)** to maintain the laboratory's book inventory of nuclear materials. SNL-LANMAS tracks nuclear materials in storage and transport and calculates the radioactivity and decay rates.

Environment, Safety, and Health (ES&H)

- Sandia National Laboratories was one of the first Department of Energy facilities to institute an **Integrated Safety Management System**, and did so before it was mandated.
- Sandia developed **automated risk management tools** that assist in the identification, evaluation, and control of hazards; generation of safety-basis documentation; maintenance of safety-critical building systems; and tracking of safety and security issues. These tools include the following modules:
 - **Primary Hazard Screen** module is a series of successive question sets that link work hazards to program requirements, recommended work controls, and training guidance in the ES&H Manual covering all work activities.
 - **Hazard Analysis** module contains scenario templates and more detailed analysis question sets related to low-hazard facilities and operations.
 - **NEPA/ADM** module is a checklist for determining actions and project documentation required for compliance with the National Environmental Policy Act.
 - **Maximo** database automatically schedules maintenance of safety-critical building structures, systems, and components in terms of priority and frequency.
 - **Sandia Issues Management System** database supports tracking of safety and security issues and corrective actions, and roll-up for reporting to executive management.
- Sandia developed a **Chemical Information System**, which is a set of networked chemical management databases supported by a field team of inventory specialists. We connected the local fire station on Kirtland Air Force Base to this system so that firefighters can determine what chemicals may reside in Sandia buildings when they respond to emergencies. The Chemical Information System includes the following elements:
 - **Chemical tracking database** allows tracking and inventorying of bar-coded chemical containers from purchase to disposal.
 - **Material safety library** has more than 60,000 Material Safety Data Sheets available on-line for managers and personnel to use in understanding and controlling chemical reactions and exposures.
 - **Chemical exchange service** supports the redistribution of surplus chemicals for reduction of existing inventories and new chemical purchases.
- In 1997, Sandia established a **database for construction safety inspections**. This item was cited as an "area of excellence" in the DOE laboratory appraisal report for that year. In addition, we implemented a safety incentive program which rewards subcontractors for safe performance of job duties.

Education and Training for Security and Safety

- Sandia created a suite of **interactive training courses on the Sandia internal web site** for security and ES&H. This computerized training system provides flexible delivery options and automated record-keeping of training compliance. User-friendly modules with test questions include initial and refresher courses on general security, computer security, classification and document control, ES&H awareness, and general employee radiological training. The Training and Educational Development System database is a course management software application that lets management assign, track, and enforce course completions for all personnel.

Programmatic Security Research and Development

In addition to the security actions listed above, security technologies pioneered by Sandia include a wide range of security concepts, systems, and components proposed and developed in the national interest.

- In 1999, Sandia National Laboratories developed the **world's fastest encryptor chip** called the "SNL Data Encryption Standard (DES) Application Specific Integrated Circuit (ASIC)." It is the fastest known implementation of the DES algorithm, a mathematical transformation commonly used to protect data by cryp-

tographic means. The device encrypts data at more than 6.7 billion bits per second, 10 times faster than any other known encryptor.

- **Activated denial concepts** are used to convert benign operational working environments into unfriendly ones upon detection of an adversary attack. Activated denial technologies developed by Sandia and used throughout the DOE include smoke dispersal systems, aqueous foams, and sticky and rigid foams.
- **Explosives detection** of vapors or particulates is an area where Sandia now holds multiple patents. We are providing licenses to industry to commercialize walk-through detectors of molecules of explosive compounds, suitable for use in airports.
- **Architectural surety** is a concept developed at Sandia as a response to the Oklahoma City bombing in April 1995. It applies multi-level surety principles developed in the nuclear weapons program to the design of civil structures. These principles can be applied to many civilian situations that involve high consequences (e.g., air travel, storage of spent nuclear fuel, critical infrastructures). A graduate course in architectural surety has been taught in cooperation with the University of New Mexico's Civil Engineering Department, and other universities are developing partnerships with Sandia to offer courses in architectural surety.
- Sandia National Laboratories develops **technologies for safely disabling terrorist bombs**. Every year, in cooperation with the FBI, Sandia conducts advanced training for bomb squads of police departments, emphasizing the science, technology, and practice of bomb disablement. We entered this work on our own initiative because our expertise in chemical explosives and detonation systems for nuclear weapons could be applied to this important public safety issue.
- In 1996, Sandia National Laboratories installed a suite of security systems at a high school to demonstrate the application of technologies appropriate for **school security and safety**. The school reported a 90 percent decrease in vandalism and theft and a 75 percent decline in fights on campus. Since then, Sandia has advised administrators at more than 100 schools nationwide. In cooperation with the National Institute of Justice, we have made available, as a public service, a manual entitled, "The Appropriate and Effective Use of Security Technologies in U.S. Schools." This manual is downloadable from the DOE and Department of Justice web sites.

Mr. UPTON. Thank you.
Dr. Burick, welcome.

TESTIMONY OF RICHARD J. BURICK

Mr. BURICK. Thank you, Mr. Chairman. I am Deputy Director of Operations at Los Alamos. I am pleased to have the opportunity to comment on the oversight of the safety and security and the new National Nuclear Security Administration. We share with you a deep interest in the successful implementation of the NNSA.

This morning I have three key points to make and I would like to summarize my written testimony. First, at Los Alamos ES&H and security are important elements of our goal of operational excellence, founded on total organizational commitment rather than on a particular oversight structure. Second, the creation of the NNSA offers an opportunity that should be used by the DOE to create a more effective oversight system, improve the match between requirements and resources, and resolve ambiguities in past arrangements. We support independent oversight. It has been helpful in the past.

However, a real caution: Audit functions should not set policy. That is the responsibility of the line organization. And the third point is the laboratory will cooperate with the Department of Energy and all of its elements, including auditing and oversight functions as the DOE implements the law establishing the NNSA.

And now some points on operational excellence and safety and health. A performance objective of our management and operations

contract with the University of California is to achieve operational excellence. As the Deputy for Operations, I am the institutional champion of this goal. The goal of continued improvement in security in the ESH, as expressed in our laboratory, is our 6 zeros and is espoused by our director John Brown: Zero injuries and illnesses on the job; zero safeguards and security violations; zero injuries and illnesses off the job; zero environmental incidents; zero ethics incidents; and zero people mistreatment incidents. The laboratory is currently responding very well to these clear and simple goals.

Los Alamos is a safe place to work and getting safer all of the time. In 3 years under integrated security management the laboratory rating of OSHA recordable injuries has been reduced by a factor of 2½. By this measure our safety record is approaching world class in our peer group of high tech industries. If we maintain or improve our current OSHA rates, the average worker at Los Alamos during their career will not experience an injury related from work either on or off the job. Under ISM's guiding principles of management, commitment, and worker involvement and safety, we believe that the change to the NNSA will not affect our progress and safety. We will continue to welcome the help of DOE reviewers in improving our ISM system and in doing work safely.

Now, on the environment. The laboratory continues to improve its compliance with environmental rules, remediate contaminated sites, and reduce the environmental impact of our current operations.

Strict observance of Federal and State environmental standards has helped us to reduce the accumulation of legacy waste, accelerate site cleanup, and earn the trust of our neighboring communities. Our environmental efforts recently earned the laboratory three "Green Zia" awards from the State of New Mexico and a satisfactory rating in environmental compliance with the DOE in October 1999.

Assisted by new technology, the laboratory continues to shrink the number of contaminated locations onsite. The laboratory has started to move some legacy waste offsite to permanent disposal with 17 shipments last year to the Waste Isolation Pilot Plant. For this purpose we received DOE and EPA certification of our noninvasive waste characterization system, the first such certification in the DOE complex. Under our waste minimization program we have reduced routine hazardous waste, mixed low level waste and low level waste all by roughly two-thirds. Waste water outfalls of the laboratory had been consolidated from 141 in 1993 to 21 today, facilitating treatment, monitoring, and permitting.

And now on security. In 1999 the laboratory was subjected to unprecedented pressure regarding security. Led by the efforts of recently strengthened security, counterintelligence and cyber security teams, we received a satisfactory grade on the December 1999 security audit by Mr. Podonsky's organization, DOE-OA. In addition, we have started a program to adopt the highly successful principles underlying integrated safety management to our safeguards and security program. The University of California recently appointed Security Chief Terry Owens and a permanent security panel chaired by retired Admiral Tom Brooks to drive security improvements within the laboratory. Under the direction of the DOE's new

security office we have witnessed an unprecedented level of communication and cooperation between the Department and field activities.

The Department also shows better understanding of the connection between security mandates and the overall cost of operations. Los Alamos is predominantly a defense programs facility, but we do a significant amount of classified work for other agencies and DOE offices. Because work would be more effective under uniform policies, consideration could be given to ensuring that common security practices are adopted and implemented across the range of DOE and NNSA activities.

Participation of the Albuquerque field office has been valuable in reviewing and developing our security program. We expect this cooperation with the field office to continue under the new NNSA. We have also seen a corresponding improvement in relation with the Department's oversight program. The reviews conducted last year by the Office of Independent Oversight and Performance Assessment were professional and helpful in meeting our security goals.

Cyber security. The laboratory director has appointed an Internal Information Security Policy Board headed by the principal director of—the deputy director of the laboratory to work with the technical experts, improve—provide a coherent info-set plan based on the best available information. A prototype installation at the laboratory provided key input to the 3-year cyber security plan. For approximately \$60 to \$90 million over 3 years the plan would equip the classified network with computing terminals having no capability for recording on removable media. It would upgrade both classified and unclassified networks and implement the necessary administration activities. A supplemental appropriation would be very helpful for rapid implementation of this plan and we ask for your support.

In conclusion, transfer of DOE's atomic energy defense activities to the new NNSA offers opportunities, challenges and problems. The creation of the NNSA is an opportunity to create a more efficient and effective oversight system. Needed improvements include less micro-management, a smaller regulatory structure, fewer unfunded mandates, fewer conflicting priorities, and better coordination and budget rules between programs. A very unfortunate outcome would be for the NNSA to create more layers of bureaucracy and multiple voices of conflicting oversight.

The NNSA should adopt the principles of integrated management that are proving effective in our laboratory. These include line management responsibility for safety and security, clear and unambiguous roles of responsibility, and balanced priorities among operation, safety, and security. From our perspective the key to effective oversight is the cooperative approach. We intend to be fully responsive to whatever structuring emerges.

Thank you very much.

[The prepared statement of Richard J. Burick follows:]

PREPARED STATEMENT OF RICHARD BURICK, DEPUTY DIRECTOR, LOS ALAMOS
NATIONAL LABORATORY

INTRODUCTION

Mr. Chairman, I am pleased to have the opportunity to testify before this joint hearing of the Subcommittee on Oversight and Investigations and the Subcommittee on Energy and Power of the House Committee on Commerce. We have a deep interest in the successful implementation of the National Nuclear Security Administration (NNSA) and appreciate your interest in the issues associated with this subject.

I have three key points to make today:

- ES&H and security are important elements of our goal of operational excellence founded on total organizational commitment rather than on a particular oversight structure.
- The creation of the NNSA offers an opportunity that should be used by the DOE to create a more effective oversight system, improve the match between requirements and resources, and resolve ambiguities in past arrangements.
- The Laboratory will cooperate with the Department of Energy and all its elements, including auditing and oversight functions, as the DOE implements the law establishing the NNSA. We believe we will be consulted as issues arise and believe such involvement will assist the effectiveness of that implementation.

OPERATIONAL EXCELLENCE

A performance objective in our management and operations (M&O) contract with the University of California (UC) is to achieve operational excellence. This was a strong message from the University when they selected John Browne in 1997 as Laboratory Director, and drove the leadership structure he set up and the people he selected for those posts. As his deputy for operations, I am the institutional champion for this goal.

Performance measures for the Laboratory were formalized in the 1992 M&O contract, breaking new ground in DOE relationships. The message on operational excellence was reinforced in the five-year M&O contract signed in 1997 through a special assessment on Laboratory performance in the areas of safety, environment, and community relations. At the end of two years (October 1999) the Secretary of Energy could elect to terminate the Los Alamos M&O contract for inadequate performance. We worked hard and passed that test.

The goal of continued improvement in security and ES&H is expressed throughout the Laboratory in these terms:

In meeting the moral imperative not to injure people or the environment while accomplishing our mission, and the business imperative to meet the environment, safety, and health requirements of the contract between the University of California and the Department of Energy, the employees, contractors and guests of the Los Alamos National Laboratory will strive to have:

- ZERO injuries and illnesses on the job
- ZERO safeguards and security violations
- ZERO injuries and illnesses off the job
- ZERO environmental incidents
- ZERO ethics incidents
- ZERO people mistreatment incidents

The Laboratory is responding well to these clear and simple goals.

Safety and Health

Los Alamos is a safe place to work, as measured by the OSHA metric of Total Recordable Injuries (TRI). A third-party review confirmed that our implementation of OSHA metrics was consistent with that in use in private industry.

In three years, our TRI rate has been reduced from a rate of 5.88 to 2.34 per 200,000 work hours for all work by our employees and on-site contractors. Less than half of the recordable injuries were serious enough to result in a lost workday. The TRI reduction by a factor of 2.5 is a solid achievement and substantially exceeds contract objectives, but does not represent our desired goal of 2.0 by October of this year. At that point, our TRI will be "world class" in our peer group of high-tech industries.

To put the numbers in perspective, a TRI rate of 3 corresponds approximately to one work-related recordable injury per worker's career. When the goal is reached, a worker will have a reasonable prospect of suffering no work-related lost-day injury or illness over a work lifetime. This is the sense of "zero" incidents. It's the same goal you have in your household: no injuries—a desired endpoint, not always

achieved, but always a goal. From the industry comparison, we know that our target rates are achievable.

Our approach is to engage the Laboratory top-to-bottom through a process we call Integrated Safety Management (ISM). The implementation and associated change in the safety culture of the institution are based on a commitment to improving the safety performance of the Laboratory. In this way we share the safety goal of the best industries in this country.

The first guiding principle of our ISM system is management commitment and worker involvement in safety. The Laboratory Director endorsed ISM in December 1996 and since then the commitment has grown through all layers of management to support the safety of the workers, the public and the environment. What began as a contract objective has grown into a cultural change.

With recent changes in structure and management, the potential existed to disrupt ISM. However, throughout these changes our safety performance continued to improve. ISM is a quality management system focused on safety rather than a response tailored to a particular oversight structure. On this basis we believe that the DOE reorganization will not slow progress, and if handled well, will enhance progress in safety.

Part of keeping the ISM system on the path to improvement is an effective assessment function. Self-assessment focus and results are often featured during the weekly management meetings with division directors, and findings from external audits are discussed whenever received. Thorough self-assessment and cooperative engagement with external reviewers helps improve our safety performance and strengthen line management's responsibility for safety, one of the ISM guiding principles.

We have developed an excellent working relationship the various DOE audit teams. Our sound relationship is evidenced in the excellent interactions with the teams who performed the two-year Special Assessment, ISM Phase I and II verification, and the EH2 assessment of ISM Implementation at LANSCE Division in October 1999. All of the teams found the Lab supportive of their work. After review for factual accuracy, the Lab accepted the observations of the teams and established a formal structure to manage corrective actions. We will continue to welcome the help of DOE reviewers in improving our ISM System and in doing work safely.

Environment

The Laboratory continues to improve its compliance with environmental rules, remediate contaminated sites, and reduce the environmental impact of current operations.

Compliance—To ensure compliance, the Laboratory undergoes assessments, audits, investigations, measurements, and so forth that are both extensive and intensive, much of which is self-conducted and self-reported. Our self-monitoring has been accompanied by increasingly stringent applications of standards by external auditors. For example, treatment, storage, and disposal of hazardous waste is inspected by New Mexico State Environmental Department (NMED) auditors and held to a high standard of labeling and containment.

Strict observance of federal and state environmental standards has helped us to reduce the accumulation of legacy waste, accelerate site cleanup, and earn the trust of our neighboring communities. The federal Environmental Protection Agency (EPA) and the NMED hold us to a high standard and we routinely share our data and self-reported issues with them. This has helped build the belief that we share a common goal of minimizing environmental impact. Our environmental efforts recently earned the Laboratory three "Green Zia" awards from the State of New Mexico and a "satisfactory" Laboratory rating in environmental compliance from the DOE in October 1999.

A regulatory milestone was passed when the DOE issued a Record-Of-Decision (ROD) approving the Laboratory's Site-Wide Environmental Impact Statement. The Laboratory will publish an annual report on compliance with the terms of the ROD.

Environmental remediation—At Los Alamos, the number of potentially contaminated sites is approximately 2,100. Much of the site evaluation work has been completed; as a result, many sites have been found to require no further action. At many of the remaining sites, expedited cleanup has been completed or has begun. A small percentage of sites will require more extensive remediation, lasting through about 2009.

Technological advances continue to make progress toward more cost-effective cleanup. A new in-situ vitrification method is being tested at the Laboratory's old plutonium site (DP—site; TA-21) to immobilize buried waste. Although this technique might provide an economical alternative to excavating and reburial, its applicability may be limited to sites meeting a fairly narrow set of criteria. Another envi-

ronmental restoration project has excavated over 19,000 cubic yards of high explosives and barium contaminated soil and debris from a legacy site using remote/robotic equipment.

The Laboratory has started to move some legacy wastes off-site to permanent disposal. The Laboratory delivered the first waste packages to the Waste Isolation Pilot Plant (WIPP) on March 25, 1999. By the end of the fiscal year, 17 shipments were made to WIPP. For this purpose, we received DOE and EPA certification for our non-invasive, precise characterization system and demonstrating a rigorous Quality Assurance program—the first such certification in the complex.

We have since increased our work in this program to provide assistance to Rocky Flats and Idaho sites to help enable them to ship waste and we have been tasked to lead the DOE Complex in developing a National Transuranic Waste Certification Program.

Prevention—A goal of operational excellence is that facility operations should be sustainable indefinitely with no environmental degradation.

The Lab continues to extend its air and ground water monitoring network to ensure accurate characterization of the Lab's environmental health. As our environmental surveillance becomes more thorough and the technology more advanced, areas of concern continue to be found. Each concern is shared with appropriate regulatory authorities and with neighboring communities that might be affected.

The Laboratory has made substantial documented progress in reducing environmental impacts. For example, since 1993 the Laboratory has reduced routine hazardous waste, mixed low level waste, and low level waste all by roughly two-thirds. Wastewater outfalls have been consolidated from 141 in 1993 to 21 now, facilitating treatment, monitoring, and permitting.

Technology can make key contributions to minimizing future operational impacts. Recently, Los Alamos developed the Advanced Recovery and Integrated Extraction System (ARIES), an environmentally-clean method to reduce "pits" (weapons plutonium cores) from classified form to unclassified storable form. Last year, ARIES successfully demonstrated operation on a variety of excess pits. Development of this and related technologies will be absolutely essential for future nuclear production operations.

Security

In 1999 the Laboratory was subject to unprecedented pressure from security audits, assessments, and evaluations coming in at a rate of about one per week, including 18 DOE-Headquarters team visits, 5 University of California visits, 12 congressional team/committee fact-finding visits, 2 visits of the President's Foreign Intelligence Advisory Board and staff, 9 formal audits, 7 investigations, and 14 force-on-force security exercises. The Laboratory was fortunate to have in place strengthened security, counterintelligence, and cyber security teams started by the Laboratory Director two years ago. We received a "satisfactory" grade (the highest score) on the December 1999 security audit by DOE-OA and were told that our nuclear materials control and accounting program was now the best in the complex.

The Laboratory was successful in meeting the commitment made last year to solve some very complex security problems. Efforts will continue. We are in the midst of an aggressive program to adopt the highly successful principles underlying Integrated Safety Management to the safeguards and security program. We are confident that this approach will make significant strides in reinforcing the accountability of all of our employees in meeting their security responsibilities.

Management and Oversight—The University of California recently appointed Terry Owens, an experienced manager for security; and a permanent security panel headed by retired Admiral Thomas Brooks to provide guidance and advice to the University on all security related activities at UC's National Laboratories. These appointments demonstrate the University's efforts to continue to drive security improvements within the Laboratories.

Much of our recent success has been built on a foundation of collaboration and cooperation with the Department. We are seeing significant and far-reaching signs of improvement in the Department's management and oversight of the security program. Under the direction of the DOE's new security office, we have witnessed an unprecedented level of communication and information sharing between the Department and the field activities. We are being asked for our opinion on policy decisions and it is evident that our input is considered.

Perhaps most important, the Department is putting into place a direct connection between security funding and the policy and requirements that drive much of the cost of carrying out our security responsibilities. We have also seen strong evidence of a more active, hands-on involvement on the part of the DOE Headquarters staff. They are talking with our staff, visiting our facilities, looking closely at our oper-

ations, and gaining a clearer understanding of the scope and complexity of our security challenges. In short, we are working together to solve the issues that have dominated the public debate of the past year, and the result is a much stronger security program that better reflects the demands of our complex operations and the increasingly sophisticated threats we face.

We are encouraged by the recent changes and look forward to continued improvements to correct some of the long-standing management issues that have hindered the development of a “best-in-class” security program within the Department. In the past, these issues have included unreconciled priorities among different elements of the Department and requirements added without resources. Our recent experience indicates that the Department is working to resolve these problems.

While our Laboratory is predominately a Defense Programs facility, we do a significant amount of classified work for other agencies and DOE offices. Since task execution would be more effective under uniform policies, consideration should be given to ensuring that common security (and safety) practices are adopted and implemented across the range of DOE and NNSA activities.

The advent of the NNSA offers the opportunity to review the role of the Operations Offices. Our experience with the Albuquerque Operations Office has been beneficial, their participation in our security program is valuable to us, and we rely on them in vetting new or modified operations and changes to our internal policies and procedures. We expect this cooperation to continue in the NNSA.

We also realize that there have been some concerns raised over the issue of independent oversight of security activities within the NNSA. Along the same lines as the improvements in the security management program I noted earlier, we have also seen a corresponding improvement in the Department’s oversight program. The reviews conducted last year by the Office of Independent Oversight and Performance Assurance were professional and helpful in meeting our security goals. We were invited to share our concerns with them and given the opportunity to explain our policies and procedures. We worked closely with the auditors to ensure our security program was well understood and accurately characterized by the audit team. Based upon their approach, we were largely in agreement with their final report and fully supported the recommended corrective actions. As a result, the respective viewpoints of top managers within the Laboratory and the Department on the status of our security program are largely in harmony. We have a clearer understanding of the expectations the Department has for improving our program, and they have a better understanding of the complexity of our security challenges.

Cyber security—Up until about a year ago, information security depended heavily on individual responsibility from those entrusted with that information. After the vulnerability of classified computer data to compromise by the insider became an issue a year ago, a DOE-wide effort was launched immediately to enhance cyber security. Drivers included security training stand-downs, the Defense Program Laboratories 9-Point Action Plan, the Secretary’s 6 cyber security enhancement mandates, the DOE Office of Independent Oversight and Performance Assurance findings, the DOE Counterintelligence Office findings, and DOE Notice 250.2 on foreign national access to DOE cyber systems. All of the stated or implied requirements were translated into actionable items, prioritized, and implementation started. Classified data is now thoroughly protected against wholesale compromise by the insider as well as from outside. However, some of the measures are temporary or far from state of the art.

The Laboratory Director has appointed an internal Information Security (infosec) Policy Board, headed by the principal deputy director, to work with our internal technical experts as well as external groups such as the Defense Program Lab infosec organizations and provide a coherent infosec plan based on the best information available. The board will be able to negotiate sound standards and to advise the Laboratory on implementation. Our experience with Integrated Safety Management shows that performance standards set with broad involvement of technical experts is important to effectiveness.

A prototype system highly secure against deliberate subversion was installed for evaluation in one area of the Laboratory. The system comprises a central computer in a secure room with secure links to user terminals that have no provision for recording output on removable media. The users say productivity as well as security is enhanced.

This prototype provided key input to the Laboratory’s three-year cyber security plan. For approximately \$60-90M total over three years, the plan would equip the classified Red network with computing terminals having no capability for recording output on removable media, upgrade both classified and unclassified network protection, and implement supporting administrative activities. This is a very basic proposal that provides much of the benefit of more complete solutions.

The urgency to enhance cyber security has driven the Laboratory, the Defense Program complex, the Department, the Administration, and to some extent the Congress (as in the current year authorization legislation) to work in parallel, each with some variation on the threat concept and priorities for response to different challenges such as insider versus outsider attack and protection of classified versus sensitive information. After twelve months of this, it is probably time for a more coordinated government-wide approach. A threat spectrum should be defined (with the understanding that it evolves continuously), plans should be made with the best technical advice to respond to the threat (again, recognizing the rapid pace of change), priorities and budgets should be agreed to, and funds provided.

Given the high priority of improving security advocated by the Administration and Congress, it was disappointing to see so little fiscal year 2000 funding appropriated for enhancements. At the Laboratory, we cannot unilaterally redirect significant program funds for such a purpose. However, we were able to take some funds out of administrative accounts to make some key investments. A supplemental appropriation could be very helpful for rapid implementation, and we ask for your support.

CONCLUDING REMARKS

Transfer of DOE's atomic energy defense activities to the new National Nuclear Security Administration offers opportunities, challenges, and problems.

The creation of the NNSA is an opportunity to create a more efficient and effective oversight system. Many of the observations of the congressionally chartered 1997 study¹ on DOE by the Institute for Defense Analysis are still relevant today. Needed improvements have been told and retold many times and include less micro-management, a simpler regulatory and oversight structure, fewer unfunded mandates, fewer conflicting priorities from headquarters, and better coordination and budget rules between programs. A very unfortunate outcome would be for the creation of the NNSA to lead to simply more layers of bureaucracy and multiple voices of conflicting oversight.

The NNSA should adopt the principles of integrated management that are proving effective in our Laboratory. These include line management responsibility for safety and security, clear and unambiguous roles and responsibilities, and balanced priorities among operations, safety, and security. We understand that an issue of concern is the role of the established DOE oversight functions vis a vis the NNSA, specifically the authority and reporting chain of the safety and security oversight offices. From our perspective, the key is retaining a cooperative approach. We expect to work through the implementation with DOE/NNSA, address the concerns as they are identified, and in the end be fully responsive to the structure as implemented.

Mr. UPTON. Thank you.

Mr. Van Hook.

TESTIMONY OF ROBERT I. VAN HOOK

Mr. VAN HOOK. Mr. Chairman, I appreciate the opportunity. I am responsible to the Department as the M&O contractor for the Y-12 production facility. I want to leave you with two bottom lines messages which I will return to several times. Safety and security are line responsibilities. They not governed by oversight, they are not governed by auditing, they belong to the line.

Second, requirements must be balanced with available resources. In this case I have defined resources as both personnel and funding, and I will touch on those a couple of times. Our mission and support of stockpile stewardship is the manufacture of safe, secure, and reliable components for the nuclear weapons complex. Specifically we process and store highly enriched uranium, lithium, and our specialty materials and we are responsible for the surveillance of secondaries. Ensuring the safety of our work force and the public and maintaining the highest security for the strategic materials and information we utilize are key to our success.

¹*The Organization and Management of the Nuclear Weapons Program*. Institute for Defense Analysis (March 1997)

At Y-12, like the other sites, we are on a continuous process of changing our safety culture from an experience based behavior to a standards based behavior. Again we consider safety to be a line responsibility. In our case we have joined integrated safety management with a labor management initiative called I Care, We Care to drive individual awareness and accountability for safety, including that of surrounding workers.

Security at Y-12 is focused primarily on material production since we are the highly enriched uranium storage facility. However, personnel security, classified information, cyber security and proprietary information are included in our program. At Y-12 we employ a layered approach to security to detect, delay, interrupt and defeat any adversary. We have been tested and evaluated many times in our 58-year history and at no time has this physical security been defeated.

I will comment briefly on our modernization program that includes a fiscal year 2001 line item construction start for the enriched uranium storage facility which when completed will significantly enhance both security and safety of personnel and special nuclear materials. Before March 1 of this year Y-12 executed mission work primarily for Defense Programs. Contract oversight was provided by Oak Ridge Operations Office through the Office of Science with a memorandum of understanding with defense programs. Safety and security oversight was performed by Oak Ridge operations or the specialty inspections you heard about this morning. The Secretary of Energy had also established a process whereby the requirement changes from safety and security as they flowed down to our site would flow through the Assistant Secretary of Defense Security programs thereby assuring that an attempt is made to balance requirements with available resources.

On March 1 of this year, as NNSA was established, while our line responsibilities continued to be largely in support of DP, the Office of Security and Emergency Management and the Office of Environment Safety and Health will now have working relationships that are particularly important to our operations. Those with respect to ES&H remain roughly the same since we have defined relatively clear roles between the line and the staff as it relates to ES&H responsibility.

Prior to implementation of NNSA, Defense Programs worked with Security much in the same way as it did with ES&H. The Office of Security and Emergency Operations developed departmental policy and provided oversight and assessment. Security was a line function of DP. With the implementation of NNSA the picture changes slightly with the Office of Security now setting policy, providing direction as well as funding and conducting oversight assessment.

I believe that it is going to be particularly important to establish the ground rules for the relationships between programmatic DP offices and the Office of Security to ensure one clear message is sent from headquarters and received in the field. Balancing requirements with resources, again funding and personnel, will require very close attention to avoid getting at cross purposes over what work is to be performed. New requirements should be devel-

oped and coordinated with the program offices prior to being implemented in the field.

It is also particularly important to define the safety and security standards, have these clearly communicated so we know the expectations to which we are being measured. Y-12, like other weapons programs sites, is suffering from aging facilities and a severe shortage of highly trained personnel. Consistent direction from DP and the Office of Security for the use of DP resources must allow us to effectively apply limited funding and personnel. We cannot execute requirements coming from these two customers if the requirements are not fully coordinated at headquarters before they are sent to the field. As is generally the case, the devil is in the detail and the success of NNSA is going to depend in large measure of establishing these appropriate working relationships between NNSA and its parent, DOE.

Thank you.

[The prepared statement of Robert I. Van Hook follows:]

PREPARED STATEMENT OF ROBERT I. VAN HOOK, PRESIDENT, LOCKHEED MARTIN ENERGY SYSTEMS, INC.

Mr. Barton, Mr. Upton, and distinguished members of the subcommittees, thank you for the opportunity to testify on the very important topic of Safety and Security Oversight of the newly established National Nuclear Security Administration (NNSA). My name is Bob—Van—Hook and I am President of Lockheed Martin Energy Systems (LMES) which is the M&O contractor for the Department of Energy at the Y-12 Plant in Oak Ridge, Tennessee.

Y-12 supports the Stockpile Stewardship Program through the manufacture of secondaries and other weapons components from uranium, lithium, and other specialty materials for the U.S. Nuclear Weapons Complex. Y-12 is responsible for surveillance of secondaries and serves as the principal U.S. repository for highly enriched uranium. Y-12 also supports DOE's Office of Nonproliferation and Nuclear Security and the Office of Intelligence through our National Security Program Office. In 1997, the Congress established the National Prototype Center at Y12 to provide access to technologies developed in the manufacture of nuclear weapons to other government agencies and the private sector.

Manufacture of SAFE, SECURE, and RELIABLE components for the Nuclear Weapons Complex is the mission of Y-12. Ensuring the safety of our workforce and the public, and maintaining the highest security for the strategic materials and information we utilize are key to our success. The workforce at Y-12 performs thousands of operations daily, many of which are with radioactive and hazardous industrial chemicals, and a rigorous safety program is essential to these operations. DOE has embraced Integrated Safety Management (ISM) as the philosophy for its safety culture, and each DOE site is implementing this process as the preferred approach to work planning and execution. Key to this process is worker involvement in the planning, hazard identification, execution, and feedback components of any task.

Y-12 has developed the ISM program and is in the continuous implementation phase. We, like other DOE sites, are in a culture change process in which we are shifting our workforce behavior from an experience-based behavior to a standards-based behavior. This is a slow and difficult process because it is human nature to behave as you have learned through experience on the floor and not to turn to new processes and outside knowledge to assist you in your daily work practices. Although it happened in a non-nuclear operation, we had a recent unfortunate example at Y-12 where dependence on past experience, and not reaching out for additional assistance, caused a serious accident with worker injuries. As a result of this accident, we are redoubling our efforts to effect ISM implementation in all work at Y12.

In spite of this accident, the safety record at Y-12 has continued to improve over the past few years. In 1999, job related reportable injuries have decreased by 10%, lost workday rates were down 25%, and lost workday away rates were down 12%. Exposure to hazardous chemicals and radioactivity has been minimized through engineered systems to protect the worker. LMES has augmented ISM with a unique management-labor initiative on safety, "I Care—We Care." The I Care—We Care Program provides a process for employees to submit safety and health issues includ-

ing near-misses, suggestions and concerns to management for resolution without fear or retaliation or retribution. It is the teaming between management and labor that is the key to assuring industrial safety. We are utilizing both ISM and the “I Care—We Care” processes to drive for individual awareness and accountability for safety, including that of surrounding workers.

One of the principal drivers in the Y-12 Modernization Program is to further engineer safety into the processes required to support the production of nuclear weapon components in order to reduce our dependence on personnel protective equipment. This will significantly reduce the risk of worker and public exposure.

Security at Y-12 is focused primarily on material protection. However, personnel security, classified information, cyber security, and protection of intellectual property (including proprietary information) are included in our security program. Specifically, Y-12 is responsible for reducing site vulnerabilities against the DOE-defined threat and ensuring cost-effective safeguards and security programs for the protection of:

- Category 1B through 4D Special Nuclear Material, measured in metric tons, which are protected from theft, diversion, and the threat of radiological sabotage.
- Classified information, including well over 100,000 classified parts and over a million classified documents.
- Government property including a number of one-of-a-kind, irreplaceable objects, difficult to replace and no longer manufactured machine tooling, as well as a billion dollars worth of other Government property.
- Over 4,000 contractor and government employees.

In addition to the protection of strategic materials and vital government information and property, Y-12 is responsible for safeguarding some of this country’s most sensitive information. Rigorous implementation of the DOE Personnel Security Assurance Program (PSAP), a human reliability program; Special Access Programs (SAP) for particularly sensitive projects, and special program requirements for those with access to compartmented intelligence information, is used to control and protect information related to these high-risk programs.

At the Y-12 site, LMES employs a layered approach to security through a combination of procedures, delay barriers, detection systems, access controls and a highly trained protective force to detect, delay, interrupt and defeat a determined adversary threat. Our security has been tested and evaluated on many occasions through our 58-year history, and at no time has our security been defeated.

Prior to March 1 of this year, Y-12 executed programs primarily for Defense Programs, with programmatic direction through a supporting DP organizational element, the Albuquerque Operations Office. Contract oversight was provided by the Oak Ridge Operations Office, working for the Office of Science through a Memorandum of Understanding with Defense Programs. Safety and security oversight of our performance was performed by ORO on behalf of DOE-HQ offices of Security and Emergency Management and Environment, Safety, and Health.

On March 1, the NNSA was established and it contains the major program sponsors of Y-12 work—Defense Programs, Nonproliferation and National Security, Materials Disposition, and the Office of Intelligence. While our line responsibilities are largely in support of DP, the Office of Security and Emergency Management and the Office of Environment, Safety and Health will have working relationships that are particularly important to the operations of Y-12.

In the ES&H area, the working relationships should remain roughly the same since Defense Programs and Environment, Safety and Health have had relatively clear roles and responsibilities in DOE. Defense Programs has the line responsibility for safety in the operations of its facilities, and ES&H establishes departmental policy and provides oversight and assessment of ES&H issues at the DP sites.

The Secretary of Energy has also established a process whereby ES&H requirement changes flow down to DP sites through the Assistant Secretary for Defense Programs—thereby ensuring that an attempt is made to balance requirements with available funding. This has been particularly important in the recent era of tight budgets and aging facilities where every dollar has multiple demands.

Working with DOE, we have developed risk prioritization techniques to help identify how the annual appropriated budget would be utilized to maintain a high level of commitment to the safety of our workforce as we execute the required work. The process involves identification of both safety and programmatic needs followed by a rank ordering of this integrated listing to determine how far each year’s budget can be stretched. Important safety issues are addressed first, but there are always improvements in infrastructure related to safety that have to be worked incrementally from year to year.

The Office of Security and Emergency Management was established in DOE by the Secretary to increase emphasis on security in the DOE complex following identification of security concerns at several DP sites. During a September 1999 inspection of Y-12 Security conducted by the Department of Energy's Office of Independent Oversight (OSE), the security posture of the site was determined to be in a "marginal" condition, primarily because of our inability to conduct a full inventory of special nuclear material. A full inventory can not occur until the final stages of enriched uranium operations are restarted. We are currently working to a funded resource loaded schedule that provides for full restart in the late spring of 2002.

Since that inspection, a number of corrective actions, improvements, and enhancements have been accomplished. A DOE Special Security Survey completed on March 3, 2000, recognized the improvements and progress that had been made and will issue a site rating later this month. During this Special Survey, a significant number of the findings from the OSE inspection were validated for closure. We are confident that our security posture has improved and that the Special Security Survey rating will reflect that.

Recent security enhancements and improvements that have been put in place at Y12 include:

- Vehicle access to the Y-12 Protected Area has been reduced by more than eighty percent, and vehicle searches have been significantly enhanced.
- Physical access and detection systems have been strengthened and/or improved throughout the Limited and Protected Areas of the plant.
- Protective Forces have been increased nearly twenty-five percent, and many have been more strategically deployed to counter emerging threats.
- An effective partnership has been formed among DOE, LMES, and the recently selected DOE-Oak Ridge security contractor, Wackenhut Services, Inc., who assumed selected major program responsibilities for security at Y-12 on January 10, 2000.
- A Personnel Evaluation Board has been scheduled to review in advance any adverse employment action being considered against any individual in a security sensitive program.
- Foreign National visitors or assignees are strictly controlled in accordance with pre-approved security plans.

The Y-12 Modernization Program currently includes an FY 2001 construction start for the HEU Materials Facility which, when completed, will significantly enhance both the security and safety of Special Nuclear Materials.

Prior to implementation of the NNSA, Defense Programs worked with Security much the same as it did with ES&H. The Office of Security and Emergency Operations (SO) developed departmental policy and provided oversight and assessment. Security at DP sites was a line function. With the implementation of NNSA, the picture changes with SO setting policy, providing direction as well as funding, and conducting oversight and assessment. It is going to be particularly important to establish the ground rules for the relationship between the programmatic security office and SO to ensure one clear message is sent from DOE-HQ and received in the field. I believe the line has to own security just as the line owns safety and program.

Balancing requirements with resources (funding and personnel) will require very close attention to avoid getting at cross-purposes over what work is to be performed. New requirements should be made based on changes in threat, or where significant enhancements in technology have been made. As new requirements are placed on field elements, these requirements should be fully developed and coordinated with the program offices prior to placing in the field. It is also important to clearly define security standards, and communicate to the field so that performance can be measured against these expectations.

Y-12, like other DOE weapons program sites, is suffering from aging facilities and a severe shortage of highly trained personnel. Layoffs and attrition have taken a toll, and lack of funds for new hires has caused a serious critical-skills shortage. Consistent direction from DP and SO for the use of DP resources must allow the weapons complex to efficiently apply limited funding and personnel. We do not have the necessary people with the appropriate skills to execute requirements coming from these two customers if these requirements are not fully coordinated at DOE-HQ before they are sent to the field.

I believe establishing the NNSA is the right thing to do for this country. It separates Defense Programs and related National Security Programs from other unrelated DOE functions. As is generally the case, "the devil is in the detail," and the success of the NNSA will depend in a large measure on establishing appropriate working relationships between NNSA and the parent DOE.

Mr. UPTON. Perfect. Five minutes on the nose. As we did before, members will have 5 minutes to do questions.

Mr. Kuckuck, Dr. Robinson, Dr. Burick, do you all support having Mr. Podonsky's office remain involved in corrective action plan development as it has been lately? Is that a wise thing for us to continue?

Mr. BURICK. We believe it is, Mr. Chairman.

Mr. UPTON. That's the answer that we want to hear—

Mr. BURICK. I say that in all sincerity. As you know, we have had some problems at Los Alamos in past years, particularly in some areas. Mr. Podonsky and his team have made some suggestions that we have followed. Unfortunately, many times the funding that backs up the suggestions isn't there and that has been problematic for us.

Mr. UPTON. I want to get to that in just a moment. Dr. Robinson.

Mr. ROBINSON. Let me say I think it is important the way that it be done. It should not be an independent responsibility, but it must be enjoined with the program office and program responsibility. We at the laboratories stand at the far end of this, often whip-sawed in several directions at once. If Mr. Podonsky's organization comes up with an idea and a positive suggestion, I believe he should get agreement with that with the program offices and then let us have one set of standards by which we will be held accountable.

Mr. UPTON. Mr. Kuckuck.

Mr. KUCKUCK. I would support that. My comments would be along with the latter part of Dr. Robinson's, that I think the moving goal line or the agreed upon standards is probably paramount to us being able to effectively move forward.

Mr. UPTON. One of the things, Dr. Burick, you reference having the funding necessary to react to the problem. I noticed that in the written statements I think both Sandia and Los Alamos talked about cyber security funding. What is your estimate in terms of what each of you are going to need?

Mr. BURICK. Our current estimate, Mr. Chairman, is based on the system that you saw when you were in Los Alamos in January. We believe somewhere between \$60 to \$90 million over a 3-year period would be sufficient for us to take our 2,000 classified computers, put them in a safe and secure environment where there would be no chance of any recordable media being downloaded by a single individual. The central computer system would be housed in a vault which would be subjected to two-man rule. Both of those people would then be enrolled in PSOW.

Mr. UPTON. Dr. Robinson, in your statement you indicated you thought Sandia would need nearly four times as much.

Mr. ROBINSON. We have developed a program working together. Sandia has the responsibility to make the links that operate between each of the sites and to the production plants. That's why our expenditures are somewhat higher. I am happy to say the three laboratories working together have developed a common information security plan together over this period. I think the total among all our labs is \$360 million over 3 to 4 years.

Mr. UPTON. So that's for all, not just—I had the impression that was just for—

Mr. BURICK. What I quoted you, Congressman, was what it would take to do onsite at Los Alamos with our 2,000 computers, not the inner laboratory links that Dr. Robinson is talking about.

Mr. UPTON. I am glad we cleared that up. I thought it was just Mrs. Wilson's district that was looking for such a large infusion of needed dollars for sure.

Who is responsible for dealing with the environmental contamination at your sites and does the answer depend on whether the contamination resulted from past or current activities? This is probably a question that we should have asked the earlier panel with its involvement of NNSA, but whose responsibility is it?

Mr. ROBINSON. The operating contractor for Sandia Laboratory for the first 43 years was AT&T Corporation. When Martin Marietta, now Lockheed Martin, took over from them, there was clear demarcation of problems that occurred before that that fell to the previous arrangement. Problems since then are Lockheed Martin-Sandia Corporation responsibilities.

Mr. UPTON. Mr. Van Hook.

Mr. VAN HOOK. We have an EMI contractor in addition to the M&O contractor that operates Y-12. For the currently generated material the defense program contractor has the responsibility for the legacy material. M&I, in this case Bechtel Jacobs has the responsibility.

Mr. UPTON. Thank you.

Mr. Stupak, are you ready or do you want me to come back?

Mr. STUPAK. Go ahead.

Mr. UPTON. Mrs. Wilson.

Mrs. WILSON. Thank you, Mr. Chairman. This is kind of an administrative matter from the beginning. Did any of you on this panel have to have your testimony cleared by the Department of Energy or the Office of Management and Budget?

Mr. ROBINSON. The tradition for laboratories throughout my history, which is more than 30 years, is we prepare remarks based on our role as laboratory directors and they are not cleared by the Office of Management and Budget or DOE. So no one affected my testimony.

Mrs. WILSON. Thank you.

Mr. VAN HOOK. If I could comment, I at least and I assume the others as well had it scanned for classification issues.

Mrs. WILSON. I understand. Were any of you as lab directors or those of you who are deputy directors, if you have knowledge of your director's involvement, were any of you involved in the task force on the implementation plan for the NNSA?

Mr. BURICK. To my knowledge we were not at Los Alamos.

Mr. ROBINSON. We were not.

Mr. KUCKUCK. We were not to my knowledge at Livermore.

Mrs. WILSON. Thank you. Dr. Burick, I have some questions about cyber security that arises from your testimony and from the chairman's questions. You noted that there is a significant lack of funding for cyber security at Los Alamos. Have you made the case or did you develop the budget to request increases in funding for cyber security and, if so, what was the response for such requests?

Mr. BURICK. Yes, we have. We have developed a budget request for this year's supplemental and I believe it is working its way through both the House and the Senate side.

Mrs. WILSON. Was that supplemental included in the administration request or was it over and above?

Mr. BURICK. I believe it was over and above, Congresswoman.

Mrs. WILSON. Thank you. Paul, I had a couple of questions for you that kind of arose from your testimony. The GAO testified earlier in March about the DOE Office of Independent Oversight and Performance Assurance wanting to modify DOE orders so it could place direct requirements on NNSA elements. I wonder if you would comment on whether you think that is desirable, that change.

Mr. ROBINSON. I believe it is not appropriate for staff organizations to define policy. They can certainly suggest policy, but there needs to be a coming together, a resolution and an agreement as to what policies will be followed instead of getting many sets of policy directions which has been the history in the past.

Mrs. WILSON. There are some folks who want to look at the role of the Nuclear Regulatory Commission with respect to the NNSA and the national laboratories. In your view, particularly you, Paul, since you are the guy at Sandia, would the NRC enforcement of nuclear safety responsibilities positively or negatively impact environment, safety and health at your laboratory?

Mr. ROBINSON. If I could generalize your question a little more, there is also an organization, Defense Nuclear Facility Safety Board, that carries out a similar function as the NRC does over nuclear plants. The Defense Nuclear Facility Safety Board carries that over the nuclear weapon production community. So we have such a role. I think I may be unique among the laboratory directors. For several years I have been in favor of external regulation, both bringing the OSHA, EPA, NRC as appropriate, to carry out regulations of our site. But I made that with one condition, that we would then remove the internal regulation and the very large number of people involved in that activity who are in the Department of Energy today. If that were not to occur, it would only make our life worse and I think we would require much higher expenditures for what would not be an appreciable gain.

Let me give you an example about safety statistics. If you look at the laboratories as a whole, our laboratories in particular, against the National Safety Council statistics of what other industries, comparable industries do, we are far better in performing safety. Fewer incidents, fewer fatalities, fewer days away cases for our employees. If you had external regulation you would measure us against a national yardstick to say how we are doing. What is being done internally by the Department, there is no yardstick. The yardstick is constantly moving. The more you improve the more you should be expected to improve. Now, I embrace the goals of zero incident, zero facilities. But there comes a level of diminishing returns and costs, and we have got to set what is reasonable as standards.

Mrs. WILSON. Thank you, Mr. Chairman.

Mr. UPTON. Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Chairman. I apologize for being late. My plane was late and I got in later than I thought, but I really did want to talk to this panel so I am glad I made it in time for that.

Dr. Burick, if I may, I read your testimony and that of the other witnesses today and, quite frankly, I don't have a clear sense of how this new autonomous agency is going to work and how the Secretary is going to make sure that the DOE's environmental and health and safety standards and legal commitments are being carried out. It took us a long time to get Defense Programs to even admit that there were such problems. The DOE area offices protected the weapons laboratories and production facilities from any effective supervision from headquarters and, frankly, I think they were part of the problem. Not surprisingly in your testimony today the laboratories which have a long history of refusing to take direction from DOE think we should go back to letting some variation of the area offices run things.

Having said that, we were provided a report here, and I would like to make it part of the record, Mr. Chairman, by Mr. Frank Rowsome, DP 45. It is dated February 28, 2000. I just received it late last night. But with unanimous consent I would like to have it—

Mr. UPTON. Without objection.
[The information referred to follows:]

INSERT OFFSET FOLIOS 1 TO 22 HERE

Mr. STUPAK. I want to read a little bit of it and I will ask a question about it. His background to this report, Mr. Rowsome says, "Over a decade ago safety professionals were brought into DOE to change the safety culture and safety requirements by triggering resentments among the weapons professionals. They had the opposite of the intended effect. Line management of the nuclear weapons program as these professionalizing safety assurances, complacency, self-satisfaction, and resistance to questioning; the premises of the program are overriding the systematic search for safety weaknesses."

He goes on to say he recommends follow-up studies and corrective actions are suggested in this report. In addition to a re-appraisal of safety programs, a major overhaul of safety requirements is needed to correct the problems identified.

Mr. Rowsome on page 3 in a section which is entitled "What is going wrong with DP's safety basis documents?"—it is a question he has that is on page 3. I would like you to look at the top of page 4. I believe you have that there in front of you. "A close reading of the report indicates that the deficiencies are so serious and so widespread that the safety bases documents failed to meet their intended purpose. DOE cannot rely upon such safety bases to discover and correct safety problems that might have escaped detection and correction by other means. These safety bases are failures at strengthening the assurance of safety. It is worth noting that all of these safety bases documents have been reviewed and approved by DOE's Albuquerque operations office. Elements for defective safety bases among AL nuclear safety reviewers has been well-known within the circle of competent safety basis professionals who have had occasion to read the documents in question."

On top of the next page it says, "I have yet to find—" this is Mr. Rowsome now—"I have yet to find a culture in any DP line management office at headquarters, AL, or AAO that consistently maintains as a matter of principle what safety issues should be fully aired, analyzed, documented and exposed to the light of day wherever and whenever they are found."

So I think this refers correctly to you on page 2 and 3 to Los Alamos. My question is what is your response? How is this new agency going to handle concerns that Mr. Rowsome pointed out without some type of oversight?

Mr. BURICK. Congressman, I would submit that many of the things you are discussing are what I would refer to as necessary documentation and paperwork. I will say that we have launched an aggressive attempt to update many of the authorization agreements which we have. I would also tell you that about 3 to 4 years ago Los Alamos went through some life altering experiences. We had four very serious accidents at Los Alamos which caused us to launch integrated safety management programs. Safety is not a matter of just having paper in place, it is a matter of having the culture of safety embedded in every worker's mind. We have done that. We feel with our integrated safety management program and the rates that I talked about today of our OSHA requirements shows that we have dramatically increased the awareness of every worker at Los Alamos.

So having a document of authorization to do an experiment is important because it lays out the principles by which you will do your work. But much more important is having each individual worker coming in every morning and thinking to himself, what am I going to do that will either hurt myself, my colleagues, or my surrounding community.

Mr. STUPAK. Do you think this document which I have read quite a bit from is inaccurate? It is dated February 28, which is 2 weeks ago.

Mr. BURICK. I believe the documents that this gentleman was reviewing, and I haven't had a chance to review the entire report, were some dated authorization agreements that we are in the process of updating at the current time.

Mr. STUPAK. The report just down on page 5 there it says, "Even after acknowledging in December," and then the bottom third of the page, the last full paragraph, Mr. Rowsome says, "Even after acknowledging in December 1999 that the hazard analysis report for the W-76 weapons dismantlement and inspection program was too severely flawed to allow it to be approved as it was, first line management in SASDAL insisted upon stripping the W-76 safety evaluation report written by its safety basis review team of the findings of serious scope limitations in the W-76 hazard analysis report and some safety problems in the W-76 operation itself. The participants in the year long review of the safety of the W-76 were removed as authors of the report of their work and the tasks assigned to nonparticipants in the review."

It goes on in here that as you—the final report was released it was so heavily censored and changed that it wasn't even a viable report, according to Mr. Rowsome.

Mr. BURICK. Congressman, I am not familiar with that report. I believe that was put together with our Pantex colleagues on the dismantlement program and I am not intimately involved with that.

Mr. STUPAK. Mr. Chairman, I know my time has expired. We did get this late last night. I think this is one area that we still have

to explore. I think the culture that we are trying to change still exists.

Thank you.

Mr. UPTON. Thank you.

Mr. Burr.

Mr. BURR. I think Mr. Stupak's on to something on this line. Let me just suggest to all of you, I think the question we are here to explore is does it take external oversight to achieve and maintain the internal cultural change that so many have realized there was a need to go through. GAO in their assessments that result in brief talk about this decade and the problems that have existed, specifically at Los Alamos and Lawrence Livermore, and they raise a very valid question, and that is the internal process within DOE was so flawed in their evaluation that in reports on the same item they could range from marginal to excellent and at Lawrence Livermore from marginal to far exceeds expectations, and that there was no systematic way to approach the way that we use to evaluate safety and safeguards. So it facilitated quite a few changes. All three of your facilities were very gracious hosts to various members of this committee, and for that I am thankful.

But let me ask you a few very pointed questions. Yes or no, do you view that Mr. Podonsky's oversight role has changed with the National Nuclear Security Administration or not?

Mr. KUCKUCK. No, sir, I don't.

Mr. ROBINSON. I have not seen the change.

Mr. BURICK. I have not.

Mr. BURR. You haven't seen the change and we are 2 weeks into this. Do you envision his role changing?

Mr. BURICK. I would see a similar role that he has played in the past.

Mr. ROBINSON. I would certainly believe there should be a role of both external oversight as well as strong line management. I think you should have both.

Mr. BURR. Nobody views the NNSA as barring an oversight role?

Mr. ROBINSON. No.

Mr. KUCKUCK. No.

Mr. BURR. Do any of you believe that your labs have the ability to refuse any request that Mr. Podonsky and his team might make of the labs?

Mr. BURICK. I don't believe we do.

Mr. ROBINSON. I probably would rather answer that for the record, but on the face of it nothing obvious.

Mr. KUCKUCK. I would have the same opinion.

Mr. BURR. That would be?

Mr. KUCKUCK. That we would not refuse.

Mr. BURR. Is there anybody that would object to Mr. Podonsky being a dual hat employee like Dr. Michaels?

Mr. ROBINSON. I think my own experience—and we have dual hatted people in the laboratories—dual hatting can be successful but it will not be successful unless there is agreement by the involved parties as to what the roles are.

Mr. BURR. Clearly if there is no belief on your part that NNSA bars oversight or that you would be in a position that you would refuse a request by Mr. Podonsky or his team, then the only thing

the dual hatting does is clarifies or codifies to some degree the belief that there is a security oversight role for NNSA by dual hatting it.

Mr. ROBINSON. But I wouldn't want the dual hatting to lead to unilateral setting of policy by Mr. Podonsky and his group.

Mr. BURR. Clearly the GAO report was very critical of the fact that even once we realized the security and safeguards problem and the oversight teams went in with some degree of responsibility, that their mandate fell short and GAO referred to it as that they did not formally validate or verify the corrective actions and certify closure of the findings. In other words, they had the authority to go in and say here is the problem, here is what we suggest the solution to be, but they didn't even have the power to say what you have adopted will work or that you ever implemented it. Is GAO correct?

Mr. ROBINSON. I think there is a confusion as to what is implemented. If Mr. Podonsky's organization—and I take this theoretically because I don't know that it is happening exactly this way—if he comes in and does the investigation and says, gee, I don't like the way that is going, I suggest that you fix it in the following manner, here is how I want you to fix it, and then comes back later and says, you didn't fix it the way I told you to, I would say that would be an unacceptable procedure under the NNSA, that Mr. Podonsky should have a set of standards that are agreed upon, here are what we are going to all meet.

Mr. Podonsky can assess us with respect to those. I think it appropriate for him to make suggestions but suggestions are different than dictating how the solution will be carried out. There is a role for the people who must operate the site to have their input. There is a role for the line management of the NNSA to decide whether this corrective action is the right one or whether it is the wrong one.

Mr. BURR. I don't think any member would disagree with the participation from the labs on the solution and the implementation. I think that the GAO has pointed out that they are lacking accountability on the part of the oversight body at determining whether this was ever completed and therefore it then falls back into an independent status within the labs. I have got here the 15 largest nuclear safety violations, shared to some degree by Los Alamos and Lawrence Livermore with some big ones. Dr. Burick at Los Alamos, fire at CMR. DOE finally fined Los Alamos in 1998 \$112,000 for the nuclear safety violations as it related to that fire. But I think there also seems to be—or seemed to be—life after the changes we went through—seemed to be a managerial neglect for safety at the CMR facility. I guess I would ask you why so many problems there and are they corrected?

Mr. BURICK. Congressman, that facility is one of the most antiquated, very maintenance intensive, and we have had a number of issues where we have not had the proper resources to correct those problems. We believe that it is safe and operating, but we operate it in what I would call in limited mode and currently have plans for replacing that facility to help with our pit production program, the W88 pit production at Los Alamos. I would say that was a facility that was built in the 1950's to not to today's standards. The

work arrangements, the instrumentation, et cetera, is not adequate to maintain all of the facilities up to the latest requirements.

Mr. BURR. But if you had the authority and the security and the safeguards oversight level, that they couldn't let you stop at some point without solving the problem, in this case an antiquated building, many hurdles, so that if you had a DOE oversight entity that went back to DOE and said we can't sign off on what they are going to do, they can't do what we are requiring them to do or what we have agreed is the answer in the partnership, doesn't that give you another pressure point to make sure that the resources are allocated?

Mr. BURICK. Yes, sir, it does. Resources have to meet requirements we believe very strongly.

Mr. BURR. My point would be that the outside oversight views them the right way and could be a facilitator to the solutions of the common problems that you run into and not always the bogey man that we make it up to be.

Dr. Kuckuck, Lawrence Livermore exposed five workers to radioactivity during a waste processing activity. They found that the radioactive alarms in the building had been turned off. Clearly there is an oversight responsibility that we have to make sure is in place to make sure that the internal culture in your facility or another facility does not allow something as arbitrary as that to happen. Would you agree?

Mr. KUCKUCK. I don't disagree with you at all. We have moved beyond that culture level at the laboratory.

Mr. BURR. You also have suggested that you have no reason to question it. I have reason to believe that we are all headed in the same direction. I think that what we are here today to try to determine is what degree of accountability can we both agree on should stay in place to make sure that this changing culture does not revert to the culture of the 1980's or early 1990's and the horrific problems that we had with security and with worker safety.

I would close with a conclusion of the GAO, Mr. Chairman. It said that the Independent Oversight Office was not formally involved in the corrective actions for the problems found during this inspection in 1990. The Independent Oversight Office began to work with the laboratories during the development of corrective action plans and conducted follow-up reviews, but still does not require and does not formally validate and verify the corrective actions and certify closure of the findings.

I believe that it is important that we both hold the same belief that we have not only identified a problem but found the correct solution and in fact implemented that solution, and in the hopes that we will reach that I look forward to working with the chairman.

I thank you.

Mr. UPTON. Mr. Strickland.

Mr. STRICKLAND. Thank you, Mr. Chairman. In the past defense programs has tried to make the Environmental Management Office responsible for managing waste and decommissioning at some of its facilities. Environmental management with the support of the Secretary's office has tried to stop this practice. My question is this, under the new agency will your facility pay for the costs of man-

aging all of its own waste, the waste that it produces out of your budget? Could you answer yes or no or whether or not you know? We can start with—and go down the table, please.

Mr. KUCKUCK. I believe that that responsibility is coming to the defense programs in the next year or 2 and by definition it will be part of our mission with our budget, I believe.

Mr. ROBINSON. That's my understanding. Currently generated waste is the program responsibility. Legacy wastes are covered by another office in budget.

Mr. BURICK. That is our understanding also, Congressman. Current waste generated under our weapons program would be DP's responsibility or NNSA's responsibility. The legacy waste is the environmental—

Mr. STRICKLAND. So any newly generated waste would be your responsibility and would be paid for from your budget?

Mr. BURICK. Correct.

Mr. STRICKLAND. Now, in the event that you have a facility that is being decommissioned or dismantled or closed, what is your understanding of who has the responsibility to pay for the work that would be involved with that?

Mr. VAN HOOK. At the Y-12 facility, the defense programs has to support the surveillance and maintenance of an abandoned facility until such time that it can be put in a condition that is acceptable to EM. And there is no agreement at the present time on what acceptable really means. So there is a continuing cost associated with surveillance and maintenance of an abandoned facility until that point that you can reach agreement with EM that they will accept it and take it into that budget category.

Mr. STRICKLAND. So in terms of the maintenance—

Mr. VAN HOOK. Continues DP supported until you hit that point at which you could agree.

Mr. STRICKLAND. Would that include cleanup that would be involved in such—

Mr. VAN HOOK. There is a certain level of cleanup that is required by the program, in this case defense programs, prior to it meeting the acceptance criteria of EM.

Mr. STRICKLAND. If you could help me understand, where does the criteria for an acceptable level of cleanup come from?

Mr. VAN HOOK. EM, which is not always agreeable to DP.

Mr. STRICKLAND. I guess perhaps you can't answer this, but a question that is a relevant one and important one, who pays the perhaps billions that it would take to clean up the facility?

Mr. VAN HOOK. There is a defense environmental management fund associated, as you well know, with the nondefense—I am not using the right terms—environmental funds. I don't think that it is practical to expect that the Defense Programs account is going to be able to cover that bill nor for the moment can the EM account cover the bill. It is going to take some creative thinking to deal with these legacies, particularly as we abandon.

At Y-12 we are reducing our footprint from 6 million square feet of production space to something barely under 2 million. That means there is 4 million square feet of buildings that are in the process of being abandoned; not in the sense that you are walking

away from them, but you have to conduct surveillance and maintenance to ensure that they are in a safe standby condition.

Mr. STRICKLAND. I guess my response and your answer is independence is fine until we come up against this huge major responsibility for cleanup and then independence may not be so attractive. Is that consistent with your thinking?

Mr. VAN HOOK. It is not clear today. I don't see how the NNSA is going to make it any more clear or less clear.

Mr. ROBINSON. I could comment because there is actually some progress going on in this area. Sandia operates in two major sites, Albuquerque, New Mexico, and Livermore, California. I am pleased to say our laboratory in Livermore this year completed all cleanup activities. We have no facility or spaces that are on an environmental list. This is the first DOE site for that to happen.

We expect the next site within the DOE that will be taken off any environmental watch list is our Albuquerque facility. I am pleased to say that the EM people have continued to provide the funding for us to carry out that work. So in some cases things do work and we are getting it cleaned up.

Mr. STRICKLAND. I guess just one quick final question would be—and I would like your opinion here. Is this an area where there needs to be further specific clarification of responsibility and obligation?

Mr. VAN HOOK. If there is an opportunity that NNSA is going to inherit for a long, long time S&M, then very definitely we need a clarification.

Mr. STRICKLAND. Do the others of you feel that way?

Mr. BURICK. I would agree with Mr. Van Hook's statement.

Mr. ROBINSON. For the complex as a whole I would agree as well.

Mr. STRICKLAND. Thank you, Mr. Chairman. No further questions.

Mr. UPTON. I don't know if—Heather?

Mrs. WILSON. Mr. Chairman, I ask unanimous consent to ask two additional questions.

Mr. UPTON. Without objection.

Mrs. WILSON. It is not unusual for folks to read the same report and see different things in it. I guess maybe I did when I read the GAO report and read it as being critical of the Department of Energy and the oversight functions and a lack of consistent standards, the need to improve closing of findings, the lack of a comprehensive tracking system, none of which has to do with the labs but the Department of Energy.

I just kind of wondered from your perspective as lab directors trying to deal with these inconsistencies. I look at these tables on page 15 of the report where in this particular example they cite you have four different oversight bodies coming in all at the same time year at the same time giving you different conclusions about what is right and wrong.

How do you deal with that as a management perspective when you have got four different groups of guys coming in and saying that this is what you need to do and 2 months later someone else comes in and says you need to do something different?

Mr. ROBINSON. I cited in my testimony in an earlier time, not under this administration, where groups would come in and survey

the same activities. One would find it exceptional and another would find it marginal, coming later in time and after it had improved from the first time. It has been confusing in the least to laboratory management.

Mrs. WILSON. Is that why you don't want to see oversight have direct management responsibilities because of those lack of clear standards and—help me with an English word here—conflicting reports at the same time from different oversight bodies?

Mr. ROBINSON. There needs to be a coming together and an agreement as to what the standards are. The processes to do that have not been working effectively in the Department in the past.

Mrs. WILSON. One final question for—with respect to Los Alamos. Dr. Kuckuck, what would be the effect of making Los Alamos subject to Price-Anderson civil penalties—I'm sorry—

Mr. BURICK. We are both from the University of California, so we could both answer that.

Mrs. WILSON. I apologize.

Mr. KUCKUCK. I was focusing on Los Alamos. I am sorry, would you ask me once again?

Mrs. WILSON. Either of you could answer it. Livermore would be affected by it as well as I understand—the effect of making Los Alamos or Livermore subject to Price-Anderson civil penalties?

Mr. KUCKUCK. That's really a question that the university would have to answer. The university has always operated these laboratories on a no gain, no loss philosophy, not-for-profit. For them to be able to deal with fines there would have to be some accomodation they would have to work out. I wouldn't want to speak to the university and what they would do for them. They might have a different perspective.

Mr. BURICK. I would say, Congresswoman, we would not welcome civil penalties. We are currently exempted from that. Don't forgot the main principle is that we don't want to hurt any of our workers. That's the underlying principle. So the Price-Anderson would be an additional complication to managing the laboratories. The basic premise that we don't want to hurt people when we do our work is what would bother us more than anything, as it does today.

Mrs. WILSON. Thank you, Mr. Chairman.

Mr. BURR [presiding]. The gentlelady's time has expired. Any members seeking additional time? Hearing none, the chair would like to ask one additional question. Chairman Barton will introduce legislation today that—Chairman Bliley I understand will introduce legislation today that would basically codify into law into Mr. Podonsky's office—that's what I get for listening to Mr. Upton as he walked out and was trying to tell me this question. Let me just ask all of you to comment on your feelings as it relates to Mr. Podonsky's oversight role being codified into law.

Mr. KUCKUCK. To the degree that I understand what that means, the role that he has now?

Mr. BURR. The role that he has today.

Mr. KUCKUCK. I am not sure I understand the full consequences of what that means, but does that change the conditions on the university and the laboratory to respond to his findings?

Mr. BURR. I would only make a personal observation, given the answers that all of you have given relative to your comfort level

and cooperative spirit with Mr. Podonsky, I would think that your answers would probably be it shouldn't phase us, that it should be a continuation of what we currently have going on.

Mr. KUCKUCK. We accept the statutes above the contract and so anything that is codified into law would become something that we would comply with. I don't feel like I am answering your question.

Mr. BURR. I guess I was looking for a more personal observation on the part of the representatives of the labs. Are you comfortable with us codifying Glenn Podonsky's current position into law?

Mr. ROBINSON. I am going to quote a statement made earlier: The devil is often in the details. Certainly the inspection and evaluation role, which is the original title of Mr. Podonsky's office, I would not hesitate to say yes, that should exist. If you codify it into law it is acceptable to me. I understand there is a question of members of Mr. Podonsky's organization wanting to have an additional role in defining policy. I think I might have some difficulties with that. I would like to see a coming together in an agreement on a single source rather than having these many multiple sources of policy generation.

Mr. BURR. I believe it would be safe to say that this legislation would not empower them to play a policy role.

Mr. ROBINSON. I would support that.

Mr. BURICK. I would be comfortable with that, Congressman.

Mr. VAN HOOK. I would be comfortable but I would like to offer a comment and that is that in my experience with Mr. Podonsky's activities, including his follow-up which we have experienced, the responsibility for developing the corrective action plan, the responsibility for closing the corrective action plan and in fact fixing the issue is the line responsibility. It is not Mr. Podonsky's responsibility. His is to come back and take a look and see if in fact you did the things that you said you were going to do. We make a commitment to DP that we are going to do the following, whatever that happens to be, and then they come for some observations that Podonsky's organization has given us, but he is not responsible for the closure. He is responsible to just come back and have a look and see if we did in fact do the things you said you were going to do. Belongs to the line.

Mr. BURR. I thank all of you and would remind you that's one of the criticisms that GAO made in that report, is that he is not responsible for closure.

Mr. VAN HOOK. He shouldn't be.

Mr. BURR. I am not lobbying one way or the other, but—

Mr. VAN HOOK. You do not get the accountability if the oversight group is responsible.

Mr. BURR. Clearly we are intending to codify Glenn Podonsky's position and hopefully that legislation will move with the support of not only the laboratories but the Department of Energy. I would like to take this opportunity to thank each one of you and I know that you have come quite a distance. It certainly is good to see all of you again. We look forward to the next encounter.

The Chair would adjourn the second panel and would call up the third panel. In our third panel today we have Mr. Gary Jones, Associate Director of Energy, Resources, and Science Issues of the General Accounting Office; Mr. Dan Miller, First Assistant Attor-

ney General, Natural Resources and Environmental Section of the State of Colorado.

Ms. Jones, I apologize. I introduced you as Mr. Jones.

Ms. JONES. No problem. It happens all the time, Mr. Chairman.

Mr. BURR. It is the custom of the Oversight Committee that all witnesses be sworn in and have the opportunity to have counsel. Do any of you have counsel who will be with you?

Ms. JONES. No, sir.

[Witnesses sworn.]

Mr. BURR. Thank you very much. Ms. Jones, the chair would recognize you for the purposes of an opening statement.

TESTIMONY OF GARY L. JONES, ASSOCIATE DIRECTOR, ENERGY, RESOURCES, AND SCIENCE ISSUES, GENERAL ACCOUNTING OFFICE; AND DANIEL S. MILLER, FIRST ASSISTANT ATTORNEY GENERAL, NATURAL RESOURCES AND ENVIRONMENT SECTION, STATE OF COLORADO, ON BEHALF OF NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Ms. JONES. Thank you, Mr. Chairman. I am pleased to be here today to provide our observations on improving security oversight within DOE and security issues related to the newly established National Nuclear Security Administration, or NNSA. While DOE has made a number of improvements to security oversight, our February report to this committee discussed areas where it could be further strengthened. For example, DOE needs a comprehensive system to track how all safeguards and security problems at its facilities are addressed.

While DOE's Office of Security and Emergency Operations maintains a centralized management information system, it is not comprehensive and it is not directly accessible by the security staff at DOE's area offices and laboratories. Centralizing all information on security problems and their solutions and providing access to area office and laboratory safeguards and security staff would help these staff avoid similar problems and improve their safeguards and security programs.

DOE could also make improvements to its processes for taking corrective actions on security problems to ensure that they are corrected in an economic and efficient manner. DOE's independent security oversight office does not independently validate or verify corrective actions or certify that the action taken has addressed the problem identified. Therefore, that office has no assurance that the problems are adequately corrected and closed.

Finally, ratings of safeguards and securities activities should be consistent among the various organizations within DOE. This has not been the case. For example, in 1998, Los Alamos received ratings that ranged from marginal to excellent. In 1996, Lawrence Livermore received ratings that ranged from marginal to far exceeds expectations. This inconsistency can send a mixed or wrong message to policymakers and managers. This inconsistency results in part from organizations' use of different criteria and the timing of the ratings. DOE has changed the safeguards and security performance rating criteria for the year 2000 contracts for two labs. This could result in more consistent ratings in the future for those laboratories.

How does NNSA fit into the security picture? Although it was established to correct longstanding management and security problems, we have two concerns about how security management and oversight will be implemented for NNSA. First, there may be duplicate and/or overlapping security functions between DOE and NNSA. The Director of NNSA'S Office of Defense Nuclear Security is the same individual that is responsible for DOE's Security Office. It is called dual hatting. We believe that it is contrary to the intent of the law that NNSA be distinct from DOE. Further, it is not clear how officials responsible for both NNSA and DOE activities cooperate. A CRS analysis noted that for counterintelligence, both DOE and NNSA have authority to develop policy and procedures. This raises the possibility that two sets of policies and procedures could be implemented at a DOE facility like Savannah River that perform both DOE and NNSA missions.

Second, significant questions remain about how the security oversight organization will oversee NNSA operations. The implementation plan states this organization will remain in DOE, review all DOE and NNSA security activities, and report its finding and recommendations to the Secretary. How the recommendations are handled, however, is not fully discussed. The independent oversight office has raised concerns that unless directed by the Secretary, NNSA is not required to act on their recommendations. Mandating that NNSA address their recommendations, however, could set up a relationship which would be inconsistent with the provisions of the act that prohibits NNSA personnel from being subject to the authority, direction, or control of DOE staff.

Mr. Chairman, a timely implementation of our recommendations for improving security oversight and clarifying the roles and relationships of security organizations in DOE and NNSA will be important. Changing the culture may be more difficult. NNSA will be made up of DOE and contract employees that have worked in a DOE culture that has led to many security problems. For a newly created NNSA to be more effective, it must break out of the culture and mindset that permeates DOE. Otherwise security problems inherent in DOE may continue at NNSA.

Thank you, Mr. Chairman.

[The prepared statement of Gary L. Jones follows:]

PREPARED STATEMENT OF GARY L. JONES, ASSOCIATE DIRECTOR, ENERGY, RESOURCES, AND SCIENCE ISSUES, RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION, UNITED STATES GENERAL ACCOUNTING OFFICE

Mr. Chairman and Members of the Subcommittees: We are pleased to be here today to provide our observations on the Department of Energy's (DOE) and the National Nuclear Security Administration's (NNSA) security programs to protect against theft, sabotage, espionage, terrorism, and other risks to national security at its facilities. As you know, the Congress established NNSA on March 1, 2000, as a semi-autonomous agency within DOE with responsibility for the nation's nuclear weapons, nuclear nonproliferation activities, and naval reactors programs. NNSA was established to correct long-standing management and security problems at DOE's nuclear facilities. Our testimony today focuses on (1) oversight of safeguards and security programs at DOE and (2) security issues with NNSA. Our testimony is based on our numerous reviews of security at DOE—in particular, our recently issued report to the full Committee entitled "Improvements Needed in DOE's Safeguards and Security Oversight"—and testimony presented earlier this month before

the House Armed Services Special Oversight Panel on Department of Energy Reorganization.¹

In summary, Mr. Chairman, sound management and independent oversight of security at DOE's nuclear facilities is critical to ensure that security problems are identified, raised to the attention of the highest levels in DOE, and corrected. DOE has recently made a number of improvements to its security oversight. However, our February report to the Committee discussed several areas where security oversight could be further strengthened. In particular,

- DOE needs a comprehensive tracking system for safeguards and security findings at its nuclear facilities,
- all security findings and/or problems identified need to be fully analyzed and appropriately closed, and
- safeguards and security ratings should be consistent among the various security organizations within DOE.

In addition, as security responsibilities shift, it is not clear how DOE's oversight at nuclear facilities will relate to the newly created NNSA. Specifically,

- while NNSA was to be distinct from DOE, the security office within NNSA may have duplicative and overlapping functions with DOE's security office, and
- significant questions remain about how the DOE security oversight organization will oversee NNSA operations.

We recognize that NNSA's creation, as outlined by DOE's Implementation Plan for NNSA, is an evolving process. However, we believe the best time to address past problems is when the organization and systems are being laid out for the first time, before commitments to old ways harden. Timely implementation of our prior recommendations for improving security at DOE and clarifying the role of DOE security organizations, such as NNSA, will be important. Changing the culture may be more difficult. NNSA will, at least initially, be made up of DOE and contractor employees that have worked in a DOE culture that has led to many security problems. For the newly created NNSA to be more effective, it must break out of the culture and mindset that permeates DOE. Otherwise, security problems inherent in DOE may continue in NNSA.

BACKGROUND

DOE has numerous contractor-operated facilities and laboratories that carry out various DOE programs and missions. The laboratories conduct some of the nation's most sensitive activities, including designing, producing, and maintaining the nation's nuclear weapons; conducting efforts for other military or national security applications; and performing research and development in advanced technologies for potential defense and commercial applications. Because of these sensitive activities, these facilities—especially the laboratories—are targets of foreign espionage efforts.

Security concerns and problems have existed at many of these facilities since they were created, and recent years have been no different. In 1997, DOE's Office of Security Affairs issued a report that rated safeguards and security at some facilities and laboratories as marginal and identified problem areas that included physical security and accountability for special nuclear material.^{2,3} In April 1999, all computer networks (except for those performing critical safety or security functions) at the laboratories were shut down because of concerns about inadequate security. During that same month, we testified before this Committee on numerous long-standing safeguards and security problems, including ineffective controls over foreign visitors, weaknesses in efforts to control and protect classified and sensitive information, lax physical security controls, ineffective management of personnel security clearance programs, and weaknesses in tracking and controlling nuclear materials.⁴ In December 1999, a scientist at the Los Alamos National Laboratory was indicted on 59 felony counts of mishandling classified information. The scientist was accused of transferring files from Los Alamos' secure computer system to computer tapes, most of which cannot be accounted for. The Secretary of Energy has taken several steps to improve security at DOE's facilities, including restructuring the headquarters safeguards and security organization, appointing a "Security Czar," elevating the secu-

¹ See *Nuclear Security: Improvements Needed in DOE's Safeguards and Security Oversight*, (GAO/RCED-00-62, Feb. 24, 2000) and *Department of Energy: Views on DOE's Plan to Establish the National Nuclear Security Administration*, (GAO/T-RCED-00-113, Mar. 2, 2000).

² See *Status of Safeguards and Security for 1996* (Jan. 27, 1997).

³ The Office of Security Affairs is a DOE headquarters organization whose functions include establishing safeguards and security policies and providing advice and assistance concerning safeguards and security programs.

⁴ See *Department of Energy: Key Factors Underlying Security Problems at DOE Facilities*, (GAO/T-RCED-99-159, Apr. 20, 1999).

rity oversight organization to report directly to the Secretary, upgrading computer security, and instituting counterintelligence measures.

To a larger extent, to resolve organizational and managerial weaknesses that have been identified by ourselves and others as the causes of these security problems, several options for reorganizing DOE have been proposed and studied. For example, in June 1999, the President's Foreign Intelligence Advisory Board proposed a semi-autonomous nuclear agency within DOE with a streamlined management structure and field operations. On October 5, 1999, the President signed the National Nuclear Security Administration Act, which was included in Public Law 106-65. This act created NNSA, a separately organized agency within DOE. In January 2000, DOE issued its Implementation Plan to create NNSA. As envisioned by the law, the Implementation Plan calls for three program offices within NNSA—Defense Programs, Defense Nuclear Nonproliferation, and Naval Reactors. The Plan also sets up a statutorily required security support office—the Office of Defense Nuclear Security. Overall, the Statute and Implementation Plan establish a structure quite similar to DOE's.

DOE has overall responsibility for a security program that effectively protects against theft, sabotage, espionage, terrorism, and other risks to national security at its facilities. DOE has policies and procedures to protect its facilities, classified documents, data stored in computers, nuclear materials, nuclear weapons, and nuclear weapons components. The operating contractors at DOE's facilities are responsible for implementing these safeguards and security policies and procedures. To ensure that these policies and procedures are followed and implemented, DOE's field operations offices and the Office of Independent Oversight and Performance Assurance (the Independent Oversight Office) provide oversight of the effectiveness of safeguards and security policy and its implementation. These offices play a critical role in the early detection of safeguards and security problems and can play a major role in the timely resolution of those problems.

DOE's field operations offices are the line organizations accountable for evaluating the laboratories' safeguards and security activities. The operations offices are required to conduct an annual survey of the adequacy of the operating contractors' safeguards and security programs. The Independent Oversight Office provides oversight of laboratory safeguards and security activities from DOE's headquarters. The Independent Oversight Office is an "independent" oversight organization that is separate from the line management structure and conducts safeguards and security inspections of DOE facilities and issues reports. The Independent Oversight Office reports directly to the Secretary of Energy.

IMPROVEMENTS NEEDED IN DOE'S SECURITY OVERSIGHT

In February 2000, we reported to this Committee that DOE's oversight of security at its national laboratories needs improvements. Specifically, improvements are needed in DOE's security management information system, corrective action process, and performance rating activities.

Security Management Information System

DOE's Office of Security and Emergency Operations—DOE's headquarters safeguards and security policy organization—maintains a centralized management information system to track and monitor safeguards and security findings and the related corrective actions. However, findings developed between 1995 and 1998 by DOE's Independent Oversight Office are not included in this system nor are findings and recommendations developed by us and other outside organizations, such as congressional committees and special review teams. In addition, the system is not directly accessible by security staff at DOE's area offices and the laboratories. Each laboratory has developed its own information system containing data on findings that relate to their laboratory. As a result, information about problems at one location is not available to security staff at other locations. DOE's centralized security management information system would be of more value if it contained information on all security findings. Such information would help them avoid similar problems and improve their safeguards and security.

Corrective Action Processes

DOE requires that the laboratories conduct a risk assessment, a root cause analysis, and a cost-benefit analysis as part of their process to correct safeguards and security problems found by DOE's oversight activities. These analyses help to ensure that safeguards and security problems are corrected in an economic and efficient manner. Despite their importance, these assessments and analyses have not always been conducted. For example, at the Los Alamos National Laboratory, we found that root cause analyses had been performed for only about two-thirds of the

security findings we reviewed. Risk assessments and cost-benefit analyses had not been performed for any of the Los Alamos National Laboratory findings we reviewed. The Los Alamos National Laboratory began requiring root cause analyses in 1998, and, according to laboratory officials, began requiring risk assessments since we completed our review. Formal cost-benefit analyses are still not conducted. As a result, Los Alamos National Laboratory cannot determine whether correcting a security risk is worth the cost of the corrective action.

In addition, the Independent Oversight Office is not required to and, in the past, has generally not worked with the laboratories to develop corrective action plans for its safeguards and security findings. Also, this office is not required to and has not been formally involved in validating the corrective action, verifying that the problem was corrected, and certifying that its findings were closed. During the past year, the Independent Oversight Office has worked with the laboratories to develop corrective action plans and has conducted follow-up reviews of its findings that are being corrected, validated, verified, or closed by the operations offices. However, the Independent Oversight Office still has not become involved in validating and verifying corrective actions and certifying that findings are closed. Therefore, the Independent Oversight Office has no assurance that the problems were adequately corrected and closed.

DOE Performance Ratings Activities

From 1994 through 1999, DOE's nuclear laboratories have received many different assessments of the effectiveness of their safeguards and security programs. For example, in 1998 Los Alamos National Laboratory received ratings ranging from marginal to excellent depending on the DOE organization conducting the assessment. Likewise, in 1996 Lawrence Livermore National Laboratory received ratings ranging from marginal to far exceeds expectations. This inconsistency can send a mixed and/or erroneous message to policy makers and managers. At least partially, this inconsistency results from various organizations' use of different criteria and the timing of the rating. DOE has changed the rating criteria for the year 2000 safeguards and security contract performance rating. These changes could decrease rating inconsistency in future years.

SECURITY ISSUES WITH NNSA

Now I would like to discuss security issues related to NNSA. NNSA was established as a semi-autonomous agency that was to be distinct from DOE. To clearly show the separation of NNSA management from DOE's organization, the Act laid out chains of command in both DOE and NNSA that would insulate NNSA from DOE management and decisionmaking, except at the level of the NNSA Administrator. This is because the Administrator is under the immediate authority of the Secretary. We have two concerns. First, the Implementation Plan fills numerous key positions within NNSA with DOE officials—thus, these officials have DOE and NNSA responsibilities and have been dubbed “dual-hatted.” Second, the relationship of the existing DOE organization that provides safeguards and security oversight to NNSA is unclear.

Dual-hatted Positions

The Implementation Plan calls for dual-hatting of virtually every significant statutory position, including the Deputy Administrators for Defense Programs and Nuclear Nonproliferation. In addition, the Director of NNSA's Office of Defense Nuclear Security will also be a dual-hatted position.⁵ The Implementation Plan explains that the “dual-hatted” positions were established to ensure consistent policy implementation and to ensure seamless DOE and NNSA responses to emergencies. However, in our view, officials holding similar positions concurrently in DOE and NNSA is contrary to the legislative intent behind the creation of NNSA as a separate entity within DOE. Moreover, to reinforce the two separate channels of management, the Act states that no NNSA officer or employee shall be responsible to, or subject to the authority, direction, or control of any DOE officers or employees other than the Secretary and the Administrator.

Whether DOE and NNSA have dual-hatted managers or not, the Implementation Plan does not clearly define how officials that are responsible for both NNSA and DOE activities will operate. Furthermore, whether NNSA security officials will establish their own set of policies and procedures or use existing DOE security policies

⁵ Other dual-hatted positions include the Directors of the Office of Defense Nuclear Counterintelligence, the Office of Emergency Operations, the General Counsel and Deputy General Counsel, and Field Office Managers in charge of the Oak Ridge, Savannah River, and Oakland offices.

and procedures is not clear. A Congressional Research Service memo commented that, in some areas, such as counterintelligence, both DOE and NNSA have authority to develop policy and procedures. This raises the prospect of two different sets of security policy and procedures, DOE's and NNSA's, being implemented at DOE's facilities that perform both DOE and NNSA missions.

SECURITY OVERSIGHT OF NNSA

Significant questions remain in the Implementation Plan's discussion of the role of the Independent Oversight Office. The Implementation Plan states that this oversight organization will remain in DOE. According to the Implementation Plan, the Independent Oversight Office will review all DOE and NNSA sites and activities and will report its findings and recommendations to the Secretary. How the recommendations are to be handled by NNSA, however, is not discussed. The Independent Oversight Office has raised concerns that, unless specifically directed by the Secretary, NNSA is not required to act on oversight findings and recommendations and thus might take no action. The Independent Oversight Office is attempting to change DOE Order 470.2, "Safeguards and Security Independent Oversight Program," to require NNSA to correct safeguards and security problems identified during its inspections. However, depending on how the order is changed, this could set up a relationship which would be inconsistent with the provisions in the Act that prohibit NNSA personnel from being subject to the authority, direction, or control of any DOE staff other than the Secretary and the Administrator. In addition, while amending the order may require NNSA to act on findings and recommendations from the Independent Oversight Office, it will not fix the same problem for other oversight offices, such as the office that oversees environment, safety, and health.

The day-to-day working relationship between the Independent Oversight Office and NNSA is also unclear. For example, the Independent Oversight Office inspects DOE facilities and when safeguards and security problems are found, works with the operating contractor at the facility in developing a corrective action plan. DOE's Implementation Plan provides no guidance on whether such relationships between oversight organizations and NNSA should continue to exist.

In summary, DOE's Implementation Plan establishes a framework for the creation of NNSA and its security program, but it is not really a detailed roadmap and significant questions remain about the relationship between NNSA and DOE's security organizations.

Our work on DOE's oversight of safeguards and security was performed from June through December 1999, and our work on the establishment of NNSA was performed during February 2000 in accordance with generally accepted government auditing standards. Mr. Chairman, this concludes my testimony. We would be happy to respond to any questions that you or Members of the Subcommittees may have.

Mr. BURR. Thank you, Ms. Jones.

Mr. Miller, you are recognized for your opening statement.

TESTIMONY OF DANIEL S. MILLER

Mr. MILLER. Thank you, Mr. Chairman. I am here today on behalf of Ken Salazar, the Colorado Attorney General. Mr. Salazar serves as the cochair of the Environment Committee of the National Association of Attorneys General. Today I would like to address a couple of provisions in the legislation creating NNSA that may impair a state's ability to ensure facilities under the NNSA's jurisdiction comply with State environmental laws. The section that we are particularly concerned about is section 3261. This language in the section states in part, "The Administrator shall ensure the administration complies with all applicable environmental, safety, and health statutes and substantive requirements."

Although this language sounds pretty broad at first blush, States are concerned that Federal courts applying the doctrine of sovereign immunity will construe it very narrowly. To see how that might happen we can look at the Supreme Court in *Hancock v. Train* in a 1976 decision that interpreted the 1970 Clean Air Act's waiver of sovereign immunity. Before 1970 Federal agencies were

encouraged but not required to comply with the Clean Air Act. Congress determined that this voluntary system wasn't working and in 1970 amended the act and to require Federal agencies to comply with the law, and in particular they added the following language, "that each department, agency, and instrumentality of the Federal Government shall comply with Federal, State, interstate and local requirements respecting control and abatement of air pollution to the same extent that any person is subject to such requirements."

The State of Kentucky sought to compel several Federal facilities, including the Department of Energy's Paducah nuclear weapons plant, to obtain the State air quality permit. Under Kentucky's law the permit was the exclusive means to ensure compliance with substantive air quality requirements.

The Supreme Court held that the language that I just quoted did not obligate Federal agencies to obtain State permits. The Court said that section 118 of the Clean Air Act did not provide that Federal agencies must comply with all requirements but merely applicable requirements. The Court also stated that the word "requirements" as used in section 118 meant only substantive, not procedural requirements such as permits or enforcement mechanisms. Consequently, the Court held that Kentucky could not require the Federal agencies to obtain air quality permits.

In reaching this result, the Court read section 118 to include the word "applicable" when it doesn't appear in this statute and it created a distinction not present in the Clean Air Act between procedural and substantive requirements. So now reconsider the language. Under it the Administrator must ensure compliance only with applicable statutes and substantive requirements. In response to a potential State enforcement action the NNSA would certainly argue that only Federal statutes are applicable, not State statutes, that it must comply only with the statutes and provisions themselves and not with any implementing regulations, and that under the decision in *Hancock v. Train* the NNSA does not have to comply with any nonsubstantive requirements, including any permits or administrative orders or other administrative enforcement mechanisms.

Our concern that section 3261 would be interpreted to impair existing State authority over NNSA facilities is heightened by a savings clause in the NNSA legislation, section 3296. That section states, "Unless otherwise provided in this title, all provisions of law and regulations in effect immediately before the effect of this title that are applicable to functions of the Department of Energy shall continue to apply to the corresponding functions of the administration."

Because of the introductory phrase "unless otherwise provided in this title" this section could be interpreted to imply that other provisions of Title 32 such as 3261 do limit the application of pre-existing law to the functions of the administration. Otherwise there would be no need for that phrase. States raised these concerns last fall but because of the status of the legislation and the process no amendments were made. There is quite a bit of legislative history indicating that it was not the intent of the sponsors or the drafters

of this legislation to in any way impair State authority. That is reflected in the Florida Base and the Congressional Record.

However, we are still concerned, States are concerned that because of the extreme clarity that Federal courts require in waivers of sovereign immunity, the Federal court in reviewing section 3261 would simply look to the statutory language and not consider the legislative history. Therefore, the only way to address this problem is to amend the legislation to clarify that it does not impair State authority. We have some language that we have drafted and presented to you that we believe would be effective in maintaining the intent of the Congress that facilities under the jurisdiction of the NNSA continue to be responsible to comply with State environmental laws.

[The prepared statement of Daniel S. Miller follows:]

PREPARED STATEMENT OF DANIEL S. MILLER, FIRST ASSISTANT ATTORNEY GENERAL, COLORADO DEPARTMENT OF LAW, ON BEHALF OF KEN SALAZAR, ATTORNEY GENERAL OF COLORADO AND CO-CHAIR, ENVIRONMENT COMMITTEE OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Good morning. My name is Dan Miller. I am a First Assistant Attorney General in the Colorado Department of Law. I am here today on behalf of my Attorney General, Ken Salazar, who serves as co-chair of the Environment Committee of the National Association of Attorneys General (NAAG). NAAG has for many years taken an active role in working with Congress to ensure the safe management and cleanup of the federal facilities, including those managed by the Department of Energy. Today, I want to address provisions in the National Nuclear Security Agency legislation that may impair states' ability to ensure the NNSA facilities comply with environmental laws. I would like to submit for the record several letters, including one signed last fall by 43 Attorneys General, opposing these provisions. I would also like to submit a legal memo analyzing the same provisions.

Five decades of nuclear weapons production have created the worst environmental contamination problem in the United States. DOE estimates that it has contaminated over 600 billion gallons of groundwater, and that over 33 million cubic meters of soil will require remediation. In 1998, DOE estimated that it would cost around \$147 billion to address this environmental legacy. I use the word "address" rather than "clean up" because much of the contamination will not be cleaned up. Instead, the best we can hope for is to contain the contamination. This containment will require careful maintenance and monitoring for hundreds or, in some cases, thousands of years.

The main reason the costs of cleaning up the weapons complex are so high is that there was virtually no external regulation of the weapons complex for over four decades. Even though Congress passed laws as early as 1970 to subject federal agencies, including DOE, to the same environmental requirements as private parties, the federal agencies have been able to avoid or delay having to meet such requirements by exploiting a legal loophole known as "sovereign immunity." Reduced to its basics, this doctrine provides that states may not regulate the federal government unless Congress waives the government's sovereign immunity in legislation. And any legislation waiving the government's immunity is construed *very* narrowly. It was not until 1992, with the passage of the Federal Facility Compliance Act, in which your Commerce Committee played an important leadership role, that states obtained adequate authority to ensure oversight of DOE's hazardous waste management activities.

And that brings us to the problem with the legislation creating the NNSA. Section 3261 of S. 1059 contains language that may be interpreted to narrow existing waivers of sovereign immunity in federal environmental laws. The section states, in part:

The Administrator shall ensure that the Administration complies with all applicable environmental, safety, and health statutes and substantive requirements.

Although this language sounds broad, states are concerned that federal courts, applying the doctrine of sovereign immunity, will construe it very narrowly. To give an example of how this might happen, let's look at the waiver of sovereign immunity in the 1970 Clean Air Act that was the subject of the Supreme Court's 1976 decision in *Hancock v. Train*. Before 1970, federal agencies were encouraged, but not required, to comply with the Clean Air Act. Congress determined that this voluntary

system was not working, and in 1970 amended the act to require federal agencies to comply by adding the following language:

Each department, agency, and instrumentality of...the Federal Government... shall comply with Federal, State, interstate, and local requirements respecting control and abatement of air pollution to the same extent that any person is subject to such requirements.

The state of Kentucky sought to compel several federal facilities—including DOE's Paducah nuclear weapons plant—to obtain a state air quality permit. Under Kentucky's law, the permit was the exclusive means to implement substantive air quality requirements. The federal agencies refused, arguing that section 118 of the Clean Air Act did not obligate them to obtain state permits.

The Supreme Court agreed with the federal agencies. The Court noted that section 118 did not provide that federal agencies must comply with "*all*... requirements to the same extent as any other person." Instead, the court said, "section 118 states only to what extent—the same as any person—federal installations must comply with *applicable* state requirements; it does not identify the applicable requirements."

The Court agreed with the federal agencies' argument that the word "requirements," as used in section 118, meant only substantive requirements, not "procedural" requirements, such as permits or enforcement mechanisms. Consequently, the Court held that Kentucky could not require the federal agencies to obtain air quality permits.

In reaching this result, the Court:

- Read section 118 to include the word "applicable" modifying "requirements," when the word "applicable" did not exist in section 118.
- Created a distinction not present in the Clean Air Act between "procedural" and "substantive" requirements.

Now re-consider the language of section 3261. Under it, the newly created Administrator of the NNSA must ensure compliance only with "applicable" statutes and "substantive" requirements. The NNSA would certainly argue that only *federal* statutes are "applicable"; that it must comply only with the provisions of statutes themselves, not with any implementing regulations; and that, under the decision in *Hancock*, the NNSA does not have to comply with any "non-substantive" requirements, including permits or administrative enforcement mechanisms, such as orders.

Our concern that section 3261 will be interpreted to impair existing state authority over NNSA facilities is heightened by a savings clause in section 3296, which states:

Unless otherwise provided in this title, all provisions of law and regulations in effect immediately before the effective date of this title that are applicable to functions of the Department of Energy specified in section 3291 shall continue to apply to the corresponding functions of the Administration.

Because of the introductory phrase "[u]nless otherwise provided in this title," this section could be interpreted to imply that other provisions of Title 32 do limit the application of pre-existing law to the functions of the Administration. Otherwise, there would be no need for the phrase.

States raised these concerns last fall, but because the NNSA provisions were inserted at the time of conference, there was really no chance to amend them. During the floor debates on the Defense authorization bill, the authors of the NNSA provisions made clear that they did not intend to impair state regulatory authority over NNSA facilities, or to exempt the NNSA from any environmental obligations. While the states appreciate this expression of legislative intent, we remain concerned that, because of the extreme clarity that federal courts require in waivers of immunity, a federal court reviewing section 3261 will simply look to the statutory language, and will not consider the legislative history. Thus, we ask your subcommittees to correct this situation by amending the NNSA legislation to clarify that it does not adversely impact state regulatory authority over federal facilities.

The only way to ensure that existing state authority over NNSA facilities is not impaired is to amend the NNSA legislation. This could be done by striking sections 3261 and 3296, and inserting the following language:

The Administrator shall ensure that the operations and activities of the Administration are executed in full compliance with all provisions of local, state and federal law, including, but not limited to, regulations, rules, orders, permits, licenses, and agreements relating to environmental, safety and health matters. Nothing in this Title shall be construed to limit, modify, affect, or otherwise change any local, state or federal environmental, safety or health law, including any waiver of federal sovereign immunity in any such federal law, or any obligation of the Administration or the Department to comply with any such local, state or federal law.

These amendments would ensure that NNSA facilities remain subject to state environmental oversight. They would effectuate the Congressional intent to require the NNSA to comply with environmental laws. And, they would not expand state authority beyond its existing bounds.

The facilities that will be transferred to the NNSA pose a significant potential for environmental harm. Several are on the National Priorities List under CERCLA, and DOE estimates that cleaning up and decommissioning these sites alone will cost tens of billions of dollars. Additionally, these facilities will continue to generate and manage significant quantities of hazardous and radioactive wastes in the future. Given the existing problems at NNSA facilities, and the potential for additional problems at those facilities in the future, we must ensure that these facilities continue to be subject to state environmental regulation. While we continue to move forward in cleaning up, we need to maintain the nation's momentum—and prevent unintended roadblocks in the path of cleanup. We strongly urge you to enact legislation that makes the amendments described above.

Mr. BURR. Thank you, Mr. Miller. The Chair would recognize Mr. Stupak for questions.

Mr. STUPAK. Thank you, Mr. Chairman. Mr. Chairman, just a couple of questions for Mr. Miller, if I may, and then Ms. Jones if I have time. Mr. Miller, I am sure that the State attorneys general have raised these concerns with the Congress and the DOE. What has the response been to your draft legislation?

Mr. MILLER. At this point I don't believe that we have transmitted our draft legislation to the DOE. The response we got last fall, as I indicated when we initially raised the concerns, not having proposed a solution at that time, was that the language that I referred to here in the statute did not in fact impair State regulatory authority. What we are asking here is to basically eliminate section 3296 and to substitute a couple of different sentences for that current language of 3261 that would clarify that Congressional intent.

Mr. STUPAK. So since last fall that hasn't been to the DOE?

Mr. MILLER. No, it has not.

Mr. STUPAK. Do you plan on doing that to get their comments on it before you submit it?

Mr. MILLER. We certainly could.

Mr. STUPAK. That would be helpful if you are serious about the legislation to help the process along to get their input. You have heard today a lot of promises from DOE about how Secretary Richardson is going to assure that the environment, health, and safety issues will be taken care of. Does that satisfy your concerns, what you heard today?

Mr. MILLER. I believe most of those remarks related to the internal oversight within the Department of Energy, and in a letter that 43 attorneys general sent last fall regarding this legislation they did express concerns about the continued viability of the Department's internal oversight of its nuclear safety issues. Secretary Richardson's reorganization plan addresses some of those concerns but I believe there is still concern that the statutory language limiting his ability to delegate authority and his lack of direct response—oversight of the employees of NNSA still cause some concerns. The testimony earlier today didn't really address our primary concern which was to make sure that the States maintain their existing authority to implement their air quality, water quality, and hazardous waste laws at facilities under the NNSA jurisdiction.

Mr. STUPAK. Have you through any correspondence or communication with DOE that these assurances of both States rights to take look at the health, safety, and welfare and their water and workers, have you had any assurances from DOE or any communication back and forth asking for assurances that these concerns that you have raised will be satisfied when they are reorganized and get this new quasi-agency up?

Mr. MILLER. We have not received any correspondence from DOE on the States as far as I am aware. I have not received any correspondence from DOE regarding—other than the transmittal of the implementation plans.

Mr. STUPAK. But nothing to really address your concerns?

Mr. MILLER. Nothing to address our concerns, no.

Mr. STUPAK. Ms. Jones, how do you guarantee secretarial control of the new agency in this situation?

Ms. JONES. Secretarial control in what situation.

Mr. STUPAK. Well, the Secretary has proposed that the head of this new agency have a 3-year term, which actually gives him more job security than the Secretary. Can you explain why an official with a guaranteed term needs to take direction from a Secretary who can be fired at any time? So my question is how would you guarantee secretarial control that may sort of point out that Mr. Richardson has proposed, Secretary Richardson? How would the secretarial control proposed in the new agency work in this situation?

Ms. JONES. I think the 3-year term for the position was put in so there would be some continuity. That way when you tried to make changes or management reforms—both security as well as other kinds of management issues—you have some kind of continuity. As you pointed out—quite rightly so—the Secretary's term over the past 25 years averages about 2½ years. But I think the legislation is written such that the Secretary does have purview over the Administrator. So even if that Administrator is there for a longer period of time I don't see a disconnect there.

Mr. STUPAK. Can the Administrator be removed for cause or is he free, he or she free from any kind of accountability?

Ms. JONES. I am not sure, Mr. Stupak, of the answer to that. I will be happy to try to provide that for the record.

[The following was received for the record:]

The National Nuclear Security Administration Act provided for the appointment of an Under Secretary of Energy for Nuclear Security. The Under Secretary was designated to serve as the Administrator of the National Nuclear Safety Administration. The President will make the appointment with the advice and consent of the Senate. As an appointed officer in the executive branch, the Under Secretary will serve at the pleasure of the President, and can be removed by the President for unsatisfactory performance or other reasons.

Mr. STUPAK. We have talked a little bit about trying to change the culture of DOE and the labs and to take safety more seriously. How do you do that just by putting a new Secretary in there or I shouldn't say a Secretary—new Administrator to change that culture?

Ms. JONES. To be quite honest I don't think that you can just by changing the organizational structure. You have to have strong leaders. First of all, you have to make a culture change. I am not sure that when we saw the implementation plan, we were im-

pressed that DOE had accepted the fact that they needed to make a culture change. I think that even if you go back to the Rudman report, they were the ones that suggested that you might have this organizational structure change, but they also stated that you cannot legislate a culture change. So you have to follow that with strong management and strong leadership to identify the kind of cultural aspects that have been barriers to accomplishing the mission and then go after those cultural aspects.

Mr. STUPAK. One more if I may. Under the current law, what is there to prevent any employee of the new agency to refuse to take any direction from a DOE employee and demand that the Secretary personally give such direction to the Administrator, who has the option of carrying out or not carrying out a directive?

Ms. JONES. I think we have raised some concerns about the dual hatting as well as the oversight organizations because of the specific wording of the law.

Mr. STUPAK. Dual hatting, we are not talking about that. What is there to make sure that the option of carrying out directives are going to be done?

Ms. JONES. I think the law needs to be clarified in that regard.

Mr. STUPAK. In what way clarified?

Ms. JONES. The part of the law that talks about no DOE person shall have authority, responsibility, direction or control over NNSA staff. I think that, as DOE witnesses said earlier, they were focusing specifically on direction and control. There are other words as part of that too: authority and responsibility. I think that language needs to be clarified to make sure if you have an oversight organization, you know what their roles and responsibilities are.

Mr. STUPAK. Thank you, Mr. Chairman.

Mr. BURR. The gentleman's time has expired. The Chair would recognize the gentlelady, Mrs. Wilson.

Mrs. WILSON. Thank you, Mr. Chairman. Mr. Miller, section 3296 of the NNSA Act states that, "unless otherwise provided in this title, all provisions of law and regulations in effect immediately before the effective date of this title shall continue to apply to the administration."

How much clearer can you get that those are the laws of that apply?

Mr. MILLER. The problem with that section is the introductory phrase, "unless otherwise provided in the title." we are concerned that section 3261, which says that the Administrator shall ensure the administration complies with applicable environmental safety and health statutes and substantive requirements in light of a long line of prior Supreme Court decisions will be interpreted very narrowly, to mean that the administration does not have to comply with permits, regulations, administrative orders or statutes that are deemed not to be applicable. It certainly is counterintuitive reading of the language but that is pretty much the conclusion that I have come to having read the Supreme Court decision in *Hancock v. Train* and the *Department of Energy v. Ohio*. Mrs. WILSON. Let me make sure that I understand this, that it is your view that 3261 read in conjunction with the paragraph that I read to you in 3296 makes different rules for the NNSA than it does for the Department of Energy?

Mr. MILLER. We are concerned that it would be read by the NNSA's attorneys to do that and that there is a reasonable chance that a Federal court hearing a case involving a dispute between the State trying to apply its environmental laws to the NNSA would side with the NNSA's interpretation. I think that section 3296 would be a very different matter if it did not have the introductory language "unless otherwise provided in this title." It seems to me that language only needs to be there if there is another provision in title 32 that somehow does limit the application of existing laws to the NNSA. That is exactly what we are concerned that section 3261 does.

Mrs. WILSON. Let me ask this again so I can get some clarification on this. Is it your view that the Department of Energy—I am not a lawyer, thank goodness—is it your view that the Department of Energy, that it is likely that a Federal court would decide differently if it were under the Department of Energy than it would under the NNSA?

Mr. MILLER. Yes. I think that a State trying to apply State environmental laws at a DOE facility not under the jurisdiction of the NNSA would clearly be subject to those environmental laws to the extent of the existing waivers of immunity and the Clean Air Act, RCRA, and Clean Water Act. But with the NNSA we have this new section, section 3216, that could be read as a specific waiver of immunity applying to facilities under the NNSA's jurisdiction and because of its wording it could be interpreted very narrowly in light of existing Supreme Court case law.

Mrs. WILSON. I am not sure I agree with your interpretation, but I would forgo continuing that line of questioning here. I would like to ask a question—maybe it is really with respect to this issue of the 3-year timeframe. It is something that is just for clarification at this point, less a question than a statement; that if there is a change given a term of service to the first director of the NNSA, that is still subject to the pleasure of the President just like the Chairman of the Joint Chiefs is so that the concept is not that we pass this law and whoever gets that job has it no matter what he does and no matter what happens for the next 3 years, but that there is the same kind of concept for the Chairman of the Joint Chiefs that would be for this first director of the NNSA. And in that sense it is not much different than any other appointees in that respect.

I will yield back the balance of my time.

Mr. BURR. The gentlelady's time has expired. The Chair would recognize Mr. Strickland for questions.

Mr. STRICKLAND. Thank you, Mr. Chairman. Mr. Miller, I was intrigued by your testimony and impressed by the fact that so many attorneys general had expressed their concern, having a large DOE facility in my district and having some awareness that in the past it has been the State that has been the impetus for identifying problems and pushing toward remediation. The language that you are suggesting seems so reasonable and such an accurate way to deal with your concern. But based on your knowledge of the history of environmental problems at DOE facilities, could you just elaborate, if you would, as to why you think it is imperative that the States retain their authority to regulate and enforce?

Mr. MILLER. Certainly. As the committee is no doubt aware, the production of nuclear weapons in this country over the last 50 years has led to the largest environmental contamination problem in the United States. The Department of Energy estimates that it will cost over \$147 billion to address the environmental contamination caused by the last 50 years. We believe that one of the main contributing factors to that stupendous price tag is the fact that there was no external oversight of the Department of Energy and its predecessors during that whole time essentially. Until 1992, with the passage of the Federal Facilities Compliance Act, States really did not have effective oversight of DOE's waste management activities. Unfortunately, it was by that time most of the nuclear weapons production had pretty much been shut down.

We think that clearly external State oversight is going to be beneficial to the environment and to the Department and the government in the long run in terms of making sure that DOE complies with the environmental laws in the first place and, if nothing else, a lesson that we learned is that it is cheaper to do it right the first time.

I might also add that the Department of Energy has long exhibited a reluctance to comply with external State oversight. Even after RCRA was passed in 1980 DOE argued that it didn't apply to its own facilities. It lost that argument in a 1984 decision, *Leaf v. Hodell*. After that we tried to promulgate a rule defining that that would basically exempt all of their mixed radioactive and hazardous wastes from the reach of RCRA jurisdiction and after some pretty extensive comments by States and environmental groups withdrew that rule. Then subsequent to that time they pretty much ignored RCRA's requirements to treat their mixed waste land proposal restriction standards, necessitating some specific statutory amendments that were included in the 1992 Federal Facilities Compliance Act. They have a pretty long history of trying to avoid external regulation. If it came down to an argument between the State and NNSA as to whether the State could apply its environmental laws, we are concerned that that history would be repeated. Certainly from the attorneys' perspective if there is an argument available to you, you pretty much have to make it. I believe that the Federal attorneys would argue that the State environmental law does not apply to the NNSA in light of section 3261.

Mr. STRICKLAND. Thank you. And I agree that this language is essential. I see no reason why we should hesitate to take your concern seriously.

Ms. Jones, I have a question regarding the Administrator. I don't know if you can help me more fully understand or at least understand your perspective, but if my understanding is correct DOE is now suggesting that the first Administrator be given a 3-year term but that that 3-year term not necessarily apply to following Administrators, but only to the first Administrator and then thereafter the appointment would follow the usual normal cycles of Presidential appointments once an administration changes and so on. Is that your understanding and, if so, is that something that you think is a wise approach?

Ms. JONES. Mr. Strickland, I am not sure what the proposal has been. If that is their proposal, I might want to suggest that we look

at the future. In other words, if we are going to have the first term run for 3 years, I am not sure that that should switch back and then go by the administration from then on out. I think one of the things that we have described in the past is the need for change. The need for culture change is a very long process and that a continuity would help in that process. So I think some thought should be given to continuing to have a specific term that maybe would span administrations for the Administrator of the NNSA.

Mr. STRICKLAND. I was not here but I have been told that DOE testified earlier today that the establishment of the NNSA has made their job more difficult. I am interested in your opinion. Do you think you would agree with them on that conclusion or not?

Ms. JONES. I think the two gentlemen that made those comments were the oversight—the leaders of the two oversight organizations, both ES&H as well as Security. I think our testimony raises some concerns about clarities in terms of defining roles and responsibilities.

Mr. STRICKLAND. I am not even sure I understand this question well enough to ask it. I have gotten a little help here, but the question that I have been given is why is it advantageous to have two separate channels of management and do you think this is a wise approach?

Ms. JONES. I would take the question to mean two different channels of management, NNSA and Department of Energy. I think that is what the law has set up. I believe that NNSA was created to try to streamline an organization that was felt to be a little out of control in terms of the amount of bureaucracy. I am not sure that is what NNSA did. It seems that DOE was just cloned and the same organizational structure was moved over to NNSA. So I don't think it really accomplished the objectives it was laid out to do.

Mr. STRICKLAND. One of the concerns that I have and I don't know whether this would be impacted by what is being suggested here or not, but that at my facility in Ohio we currently have an ongoing investigation of health hazards and medical problems that existed and so on. That is under the authority of DOE. I am wondering if having two channels of management, for lack of a better phrase, would at some point in the future interfere with the appropriate cooperation and sharing of information, and so on, that could arise out of such a need for such a thorough and extensive and historical as well as contemporaneous set of medical circumstances that could be harmful to workers. Do you understand what I am saying?

Ms. JONES. Yes, sir, I do. I think that is a very good question. I think as someone else said, the devil is in the details in terms of how the NNSA will be implemented and its relationship with the Department of Energy. I think those are very important issues that need to be decided as it is moved forward and as the structure is more defined.

Mr. STRICKLAND. Thank you. Thank you, Mr. Chairman. No further questions.

Mr. BURR. The gentleman's time has expired. The Chair would recognize himself. Ms. Jones, your answer on DOE cloning them-

selves, I would remind you cloning is illegal. Therefore, that is not what they have done. But certainly it does resemble it.

Ms. JONES. I apologize, Mr. Chairman. I am sorry.

Mr. BURR. Let me ask you under the new structure of NNSA, what assures us now that problems are going to be solved?

Ms. JONES. What assures us now that the problems are going to be solved? I am not sure there is an assurance. I think we have to look forward and see how this is going to be implemented. As I said earlier in response to another question, just setting up a new organization is not going to affect the culture change that I think we have all talked about today.

Mr. BURR. Help me just a minute. How can one person—I will use your terminology—see a cloning of DOE and how can three lab directors look at something and see a streamlined process?

Ms. JONES. I think that is a very good question. You would have to ask them.

Mr. BURR. In GAO's assessment of not only the history that you had seen, the cultural problem, I think we would all agree that we have done a lot to identify some of the problems. There have been some steps that have been taken to change the culture. We are not there yet and I think the lab directors, if they were still here and some of them are—would probably agree with that statement. What in the creation of the NNSA assures us without—if we don't apply the continuing oversight that we have had up to this point assures us the completion of the cultural change, no reversion to the problems that GAO has found in the past? Anything?

Ms. JONES. I think that at this point in terms of the way that the NNSA has been defined, I don't see that assurance being provided.

Mr. BURR. Nothing in the implementation plan that has suggested?

Ms. JONES. It is not all that different from the organization that we saw as DOE.

Mr. BURR. We just call it something different. Let me ask you on the contract evaluation because the GAO made a very specific and I think important observation, and that was that on any given area you could find a rating on a certain site's performance that might be marginal 1 day and above expectations the next day depending upon who did it and that there was a varying degree of I guess parameters that whoever chose. And certainly through some of the security problems that we found, we found Glenn Podonsky doing a report that found marginal, if not unsatisfactory ratings at the same time DOE internally in their contract evaluations gave certain sites exceptional ratings. Is there an opportunity for us to consolidate these evaluations in any way that we are not currently exercising today?

Ms. JONES. I think that is a good question. I think one thing that we have also supported is strong line management as well as a strong independent overseer. So from that standpoint I think that you would want the line management to continue what they are doing to assure security is being met and you would still want Mr. Podonsky in his role as an overseer. What our testimony is and our report talked about, however, is let's look at the criteria that is un-

derlying all of these different evaluations and see if we can't bring that criteria closer together.

For example, you mentioned the contract evaluation on safeguards and securities. Basically the kinds of criteria that we used were very quantifiable, such as the number of corrective action plans were done on time. That doesn't really get at are we really improving safeguard and security programs. I know that at least at Livermore and Los Alamos they have changed the criteria for 2000 and they are, at least for 75 percent of the safeguards and security piece of that contract evaluation, relying on the Operations Office evaluations well as Mr. Podonsky's office. That is not the case in other locations.

Mr. BURR. Okay. I look over here at Dr. Burick, who is still with us, and I think about the site that he talked about and where they had had a safety problem, a fire, and his admission that to solve that problem is a resource problem. We have to build a new facility. No matter what we implement we can't be assured of 100 percent safety. They are doing what they can in the interim stage. And I guess the question is if we all use the same criteria would the likelihood be that the resources would be there sooner to solve the problem? I think what you just said is the answer, is we stand a better chance if we get everybody using the same criteria.

Ms. JONES. I think we stand a better chance but the point that was made earlier too is that resources are finite and the Department is faced with environmental issues, as Mr. Miller has pointed out, as well as security concerns and other problems. So I think there is a better chance, yes.

Mr. BURR. Let me just make one general statement. I think the lab representatives that were here supported what Mr. Podonsky's oversight role has been and would be in the future and stated no difference. I think to some degree they differed a little bit from their testimony. I would take their answers to the question versus their testimony. I would think that GAO sees what Mr. Podonsky does is an important thing to continue based upon your evaluation.

Ms. JONES. Yes, sir, Mr. Burr, we would.

Mr. BURR. Mr. Miller, let me ask you. Forty-three State attorney generals signed a letter. That letter basically said they were concerned as NNSA went through about the environment, safety, and health operations of facilities. Have you read anything in DOE's implementation plan or heard anything in the hearings today that alleviates your concerns?

Mr. MILLER. No, sir, I have not.

Mr. BURR. Okay. Let me take this opportunity to—the Chair would ask unanimous consent to enter a number of documents into the record: The statement of the ranking member, Mr. Dingell, and I think various documents that have been shared with both the majority and minority, National Governors' Association, National Conference of State Legislators, the State of Washington Office of the Governor, as well as Mr. Strickland's statement. Any objections? Hearing none, so ordered.

[The information referred to follows:]

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Mr. BURR. Let me take this opportunity to thank our third panel, to thank GAO for a very thorough report for this committee, to also thank the committee members for their knowledge and willingness. Hopefully next week we will take your concerns under consideration as we move forward with the legislation as we will the concerns that were expressed by the laboratories, by the Department of Energy, and by those who have commented up to this point. I think it is safe to say that the efforts of the committee, the efforts of the Department of Energy and I think the efforts of the labs are all headed in the same direction, and that is to make sure that the cultural changes that have started are continued and that solutions to the problems are not only found and eliminated but that we don't create new ones in the future. It is my hope that we will accomplish this great task. I thank this third panel.

This hearing is adjourned.

[Whereupon, at 1:23 p.m., the joint subcommittee was adjourned.]

[Additional material submitted for the record follows:]

RESPONSE OF THE DEPARTMENT OF ENERGY TO QUESTION FROM THE COMMITTEE ON
COMMERCE

Question 1: Do you have any objection to clarifying the language of the NNSA in the manner set forth in H.R. 4288 so we can be certain that in the future there will be no question about the preservation of state enforcement and oversight authorities?

Answer 1: On June 9, 2000 the Department of Justice provided views to the House Armed Services Committee, which proposed an amendment in the nature of a substitute to H.R. 4288. The Department of Energy concurs with the Department of Justice's proposal and recommends that any legislative action conform to the Department of Justice's proposal. Attached is a copy of the Department of Justice's letter.

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