H.R. 5005, THE HOMELAND SECURITY ACT OF 2002, DAYS 1 AND 2

HEARING

BEFORE THE

SELECT COMMITTEE ON HOMELAND SECURITY HOUSE OF REPRESENTATIVES

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H.R. 5005, THE HOMELAND SECURITY ACT OF 2002, DAY 1

MONDAY, JULY 15, 2002

U.S. HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON HOMELAND SECURITY,
Washington, DC.

The committee met, pursuant to call, at 2:05 p.m., in Room 345, Cannon House Office Building, Hon. Richard K. Armey [chairman of the committee] presiding.

Present: Representatives Armey, Watts, Pryce, Portman, Frost, Menendez, and DeLauro.

Chairman ARMEY. The Select Committee is meeting today to hear testimony on H.R. 5005, the Homeland Security Act of 2002. As announced at the last meeting, the Chair will recognize one member from both the majority and the minority for an opening statement so that we can hear from our witness and proceed to questions. Without objection, all members' opening statements will be made a part of the hearing record.

The Chair now recognizes the gentleman from Oklahoma, Mr. Watts, for a brief opening statement.

Mr. WATTS. Thank you, Mr. Chairman, for the opportunity to address my colleagues on the committee and the distinguished guests before us here today. I commend you on your leadership of this Select Committee and thank you for your organization efforts to get us to this point.

During my first year in the House of Representatives, the Oklahoma City bombing created a wake-up call on the need for a plan of action against domestic terrorism. During my last term here in Congress, the attacks on September 11, 2001, have forever changed the world and again demonstrated why the government must change the way we view threats to our homeland. We are about to hear from Governor Ridge, whom I met with in May of this year to discuss ways we can work together, executive branch and legislative branch, and better organize our infrastructure.

I look forward to hearing Governor Ridge's perspective and have confidence at his leadership, in conjunction with the Cabinet secretaries and other members of the administration appearing before this panel, will take into consideration the ideas, concerns and goals voiced by members of the House working on this very important issue.

I was pleased when President Bush called last month for the creation of a Department of Homeland Security, and I am thankful Speaker Hastert had the good judgment to create this committee. As my colleagues know, I have been involved in this issue since the

1995 Oklahoma City bombing and, in fact, introduced legislation 18 months ago to create a Committee on Homeland Security and to look at the way the executive branch is organized to prevent and respond to terrorism.

We have received report after report from the National Commission on Terrorism to the Center for Strategic and International Studies, to the GAO study that I commissioned in 2000 that clearly stated the need for this reorganization. The Select Committee has offered a fair, open and bipartisan process for members to express their views as we discuss the proposal put forth by the President.

George Mason, the Virginian and who made the case for the Bill of Rights to our Constitution, wrote, "government is, or ought to be instituted for the common benefit, protection and security of the people, Nation or community."

Mr. Chairman, we need to secure our borders as we secure our liberty. We must protect our rights as Americans and as our government protects our freedom. But while we think outside the box in order to promote these values each of us holds dear, we must never think outside the parameters of the United States Constitution.

I think the emulation of a past system will serve the Nation well again. To divide responsibilities, such as when our country had one department for war and one for defense, we will create a more logical organizational structure that meets the needs of the 21st Century. Yes, history does repeat itself.

One overlooked reality regarding the creation of this new department is that as America becomes better secured against terrorism, we also become better secured against other mass casualty events as well. A community that is better prepared to address terrorism is also better prepared to address floods, earthquakes, fires or naturally occurring disease outbreaks.

Let me implore the members of this committee, Mr. Chairman, to continue fostering a beneficial dialogue with our colleagues. The creation of the Department of Homeland Security should not be about partisan politics, nor should the debate be anything less than mindful of the fact that we are at war abroad while facing threats here at home. Congress needs to take more—take no more time than is necessary to do the job right.

Finally, I want all members to again reflect on our reason for being here today. The terrorist attacks of September 11 and earlier attacks like the Oklahoma City bombing give us possibly the most vital responsibility of our tenure in this great House. The new department will be charged with safeguarding the lives of our children and grandchildren. We must all work together to assure it is done right. This is not the time or the place for politics to guide our policy making because, if it does, we know who will suffer when our enemies come calling again.

With that, I thank you, Mr. Chairman, and look forward to hearing from my colleague, Mr. Frost, and Governor Ridge, as we continue this open exchange of ideas and thoughts this afternoon.

Chairman ARMEY. Thank you, Mr. Watts. The Chair will now hear the gentleman from Texas, Mr. Frost, for his opening statement.

Mr. FROST. Thank you, Mr. Chairman. Good afternoon, Governor Ridge, our former colleague. It is a pleasure to have you back. Homeland security is a bipartisan priority for this Congress. Democrats have been pushing hard to make it a Cabinet level priority since soon after September 11, and now that the administration has come on board, I have confidence that we can get it done quickly, assuming we continue the open, bipartisan and collaborative process we have followed so far.

The standing committees of the House have gotten us off to a very good start. Working on an extraordinary accelerated schedule and with real substantive bipartisanship, they have reported out a series of recommendations that should accomplish our goal of protecting the American people. It is true that the committees have recommended several important changes to the President's original proposal, changes that we will discuss with Governor Ridge today.

I hope the administration will take these recommendations for what they are, good faith, bipartisan attempts to improve the President's proposal and to create a leaner and more efficient Department of Homeland Security.

As this Select Committee considers all of these issues, I urge that we give added weight to the bipartisan work of the standing committees. They have years and years of experience in these matters and their members are some of the world's experts in their fields. If the Select Committee does not include their recommendations, it is important that the bill be considered under an open, bipartisan process on the floor, that allows the standing committees to have their amendments fairly considered by the full House.

From the beginning, all eight us have assumed that the Chairman and ranking members would have the opportunity to defend their proposals on the House floor. I believe that this is the most significant piece of this process and it is absolutely crucial to the ultimate success of the new Federal Department. After all, our goal is not to establish a big new Federal bureaucracy; it is to ensure that this new structure works in the real world to increase the security of the American people and it will only succeed if all of us work together.

That includes Democrats and Republicans, Congress and the administration, and perhaps more importantly, the 170,000 Federal workers who will actually do the work of setting up the new department and carrying out its functions. To make this work, we must build a bipartisan coalition that is deep and broad. We must ask hard questions and provide honest answers. We must operate in good faith and give each other the benefit of the doubt.

Most importantly, we must resist the temptation to use the urgency of this situation to advance other goals. No matter how sincere they may be. This is not an opportunity to claim new, bureaucratic territory. It is not a chance to dismantle civil service laws, gut whistleblower protections, or rewrite the Freedom of Information Act. This is nothing less than a war on terrorism, and any other partisan, parochial and ideological agenda, poses an obstacle to creating a more effective homeland security structure.

Make no mistake, there are plenty of legitimate substantive questions we need to answer and we will explore these today. Some of the general questions, how large can this new Federal bureauc-

racy be without hindering its effectiveness? How much will it really cost taxpayers and where will we get the money? And there are more specific ones, should the new department include FEMA, and does that threaten FEMA's effectiveness in responding to natural disasters like hurricanes and floods. How will it affect our efforts to reform to the Immigration and Naturalization Service? Do we want security officials at the Department of Homeland Security directing medical research, or should that important responsibility remain with the scientific officials at the Department of Health and Human Services?

We look forward to working with the administration to answer these and other important questions. Together we can provide a smarter, leaner and more effective means of protecting the public. So Governor Ridge, I again welcome you and look forward to hearing your views today.

Thank you.

Chairman ARMEY. Thank you, Mr. Frost.

[Additional statements submitted for the record follow.]

PREPARED STATEMENT OF THE HONORABLE DICK ARMEY

Thank you, Governor Ridge, for appearing before us today. It is always a pleasure to welcome you back to the Hill.

As you know, we had the opportunity last week to hear from Secretaries Powell, O'Neill and Rumsfeld and Attorney General Ashcroft. As they shared their experience in the war we currently face, I couldn't help but be struck by their passion. Each conveyed an understanding of the importance of our work here and the gravity of the threat presented by the enemies of freedom. They laid the foundation for why we must act.

They also demonstrated the high price of inaction.

"History teaches," President Ronald Reagan once said, "that wars begin when governments believe the price of aggression is cheap." We've seen President Bush heed this warning on the international front. He brought swift and decisive action that defeated the warlords and liberated Afghanistan. Al Qaeda is on the run, and bin Laden is in hiding.

Here at home, however, our ability to deal with foreign terrorist threats remains limited. Many of our security resources are scattered. Our technology is outdated and the missions of our agencies on the front lines of terrorism are unfocused. This makes us vulnerable. As long as we are vulnerable, our enemies will believe the price of aggression is one that they can afford.

We cannot allow ourselves to forget just how real the threat has become. Although we may find ourselves safe while terrorist cells are confused and on the run, our short-term success shouldn't inspire complacency. In this battle, time is of the essence. We must not take any more time than is absolutely necessary to do the job right.

Last month, President Bush offered his proposal to transform our government and make, in his words, the "evil ones" think twice before attempting to strike again. He inspired the House of Representatives to take swift and thorough action, showcasing our ability as a great deliberative body. All of the twelve standing committees of jurisdiction have met. They have considered the proposal line-by-line. They've each reported a set of recommendations based upon their individual expertise.

It is this expertise that will be the key to creating a successful final product. That is why we will hear from them-the committee chairmen and ranking members-on Wednesday. They are invited to join us and discuss their views on the details of this legislative proposal. Before that, on Tuesday, a panel of cabinet secretaries will make the specific case for the President's plan.

Clearly, it is going to be a heavy work week. The reward for our diligence, however, will be a bill reflecting an open and deliberative process. Our goal is to produce final legislation that presents a coherent vision of how our government must transform itself to focus its efforts and win the war.

Meeting the threat this country faces will take all the American know-how and creativity that we can muster. We can't be afraid to upset the status quo in the process. We've shown that we're up to the task.

Now it makes sense to kick off our week discussing the details of the President's plan with the President's lead spokesman and top adviser on Homeland Security matters. We welcome the thoughts of Governor Ridge on this topic.

PREPARED STATEMENT OF THE HONORABLE J.C. WATTS, JR.

Thank you, Mister Chairman, for the opportunity to address my colleagues on the committee and the distinguished guest before us today. I commend you on your leadership of this select committee and thank you for your organizational effort to get us to this point.

During my first year in the House of Representatives, the Oklahoma City bombing created a wake-up call on the need for a plan of action against domestic terrorism. During my last term here in Congress, the attacks on September 11, 2001 have forever changed the world and, again, demonstrated why the government must change the way we view threats to our homeland.

We are about to hear from Governor Ridge, whom I met with in May of this year to discuss ways we can work together—executive branch and legislative branch—and better organize our infrastructure. I look forward to hearing Governor Ridge's perspective and have confidence that his leadership, in conjunction with the cabinet secretaries and other members of the administration appearing before this panel, will take into consideration the ideas, concerns and goals voiced by members of the House working on this important issue.

I was pleased when President Bush called last month for the creation of a Department of Homeland Security, and am thankful Speaker Hastert had the good judgment to create this committee. As my colleagues know, I have been involved in this issue since the 1995 Oklahoma City bombing and, in fact, introduced legislation eighteen months ago to create a committee on homeland security and to look at the way the executive branch is organized to prevent and respond to terrorism. We have received report after report—from the National Commission on Terrorism to the Gilmore Commission to the GAO study that I commissioned in 2000—that clearly stated the need for this reorganization.

This select committee has offered a fair, open and bi-partisan process for members to express their views as we discuss the proposal put forth by the president.

George Mason, the Virginian who made the case for the Bill of Rights to our Constitution, wrote: "Government is, or ought to be, instituted for the common benefit, protection and security of the people, nation or community." Mister Chairman, we need to secure our borders as we secure liberty. We must protect our rights as Americans as our government protects our freedom. But while we think outside the box in order to promote these values each one of us holds dear, we must never think outside the parameters of the United States Constitution.

I think the emulation of a past system will serve the nation well again. To divide responsibilities, such as when our country had one department for war and one for defense, we will create a more logical organizational structure that meets the needs of the twenty-first century. Yes, history does repeat itself.

One overlooked reality regarding the creation of this new department is that as America becomes better secured against terrorism we also become better secured against other mass casualty events. A community that is better prepared to address terrorism is also better prepared to address floods, earthquakes, fires or naturally occurring disease outbreaks.

Let me implore the members of this committee, Mister Chairman, to continue fostering a beneficial dialogue with our colleagues in Congress. The creation of the Department of Homeland Security should not be about partisan politics, nor should the debate be anything less than mindful of the fact we are at war abroad while facing threats at home. Congress needs to take no more time than is necessary to do the job right.

Finally, I want all Members of the committee to again reflect on our reason for being here today. The terrorist attacks of September 11th and earlier attacks, like the Oklahoma City bombing, give us possibly the most vital responsibility of our tenure in this great House. The new department will be charged with safeguarding the lives of our children and grandchildren—and we must all work together to ensure it is done right. This is not the time or the place for politics to guide our policy-making because if it does, we know who will suffer when our enemies come calling again.

With that, I thank you, Mister Chairman, and look forward to hearing from Congressman Frost and Governor Ridge as we continue this open exchange of ideas and thoughts this afternoon.

PREPARED STATEMENT OF THE HONORABLE DEBORAH PRYCE

Thank you Mr. Chairman. I would like to begin by thanking our distinguished guest for taking the time to be with us today to share his expertise and insight on the process of creating the Department of Homeland Security. With the committees of jurisdiction in the House having completed their important work on the matter, this second hearing of the Select Committee on Homeland Security will give us an opportunity to begin delving into the President's proposal.

Last week, we began to look at the nature of the threat our nation faces and the need for the new Department. Today, we continue to examine those issues while discussing specific ideas for creating the Department. The witness before us today has dedicated substantial time and effort in his role as Director of the Office of Homeland Security, and I look forward to learning from his experience.

On September 20, 2001, just 9 days after the tragic events that have transformed our nation, President Bush came before a joint session of Congress and outlined the first steps of the United States' response. As part of this historic address, the President announced the creation of an Office of Homeland Security within the White House to coordinate a comprehensive national strategy to safeguard the nation against terrorism.

Thus far, this office has proven to be a success, giving the President a close adviser who focuses exclusively on homeland security. Governor Ridge has made marked progress in improving Federal coordination with State and local governments and law enforcement, as well as strengthening coordination among Federal agencies. In the face of the unique and deadly terrorist enemy that we face, this nationwide coordination, information sharing, and cooperation seems to be at the heart of any successful effort to secure the homeland.

At this time, it has become clear that we must build on the success of the Office of Homeland Security under Governor Ridge by undertaking a more widespread and fundamental reorganization of the government. The creation of the Department of Homeland Security would remake the current patchwork of government homeland security activities into a single department with the primary mission of protecting our homeland. The need for a single Department to organize the homeland security functions that are currently dispersed among more than one hundred different government organizations cannot be overstated.

As we work to craft this new Department, we will rely heavily on the expertise of those, like Governor Ridge, who have been on the frontlines of the effort to secure the homeland. By tapping into their experience, we can maximize the effectiveness of the Department, sharply focus its mission, and offset any associated costs by eliminating unnecessary redundancies and increasing government efficiency.

Today, the Select Committee begins in earnest the historic task of creating a new Federal Department to respond to the threats our nation faces in the 21st Century. I look forward to learning from our distinguished guest about the challenges he has encountered in his current role as Director of the Office of Homeland Security.

PREPARED STATEMENT OF THE HONORABLE ROSA DELAURO

I want to thank Governor Ridge for testifying before the Committee today. As director of the White House Office of Homeland Security, he has done an excellent job under very difficult circumstances.

We all agree that we need a Cabinet-level department to oversee our efforts to guarantee our nation's security. We know that the ongoing threat requires us to act swiftly, and we have made great strides toward that goal.

Since last week's hearing, all twelve standing Committees with jurisdiction over this department have completed their work and given us their recommendations. These recommendations carry with them the expertise and in-depth knowledge of each of their Chairs and Ranking Members, who understand perhaps better than anyone how to ensure that we successfully marshal our efforts to protect the homeland, without harming non-security related duties responsibilities that are equally important. I believe the Select Committee must give the Committee's recommendations serious consideration as we officially begin to draft this legislation.

September 11th changed our world in a way none of us could imagine. To protect the American people, we must change with it. We can't just change the location of these agencies. We must change the way they do business—the way they share intelligence, the way they interact with States and localities, the methods in which they address the very real threats we are facing.

I believe it's possible to make those changes without changing our commitment to open government and to protecting the liberty of the American people. I look forward to working with my colleagues on both sides of the aisle in that effort.

Chairman ARMEY. Well, Governor Ridge, let me just say, for me it is a special delight to welcome you back to the House where you served so well for so many years and where you still have so many good friends. I like to count myself among them.

If you would like to proceed, let me say, without objection, we will put your written formal statement in the record and we would invite you to proceed with your statement as you would like to present it to us.

STATEMENT OF THE HONORABLE TOM RIDGE, DIRECTOR, OFFICE OF HOMELAND SECURITY

Governor RIDGE. Thank you, Mr. Chairman. It is good to be back in the people's House with friends with whom I have served over the years. I want to thank the Select Committee for giving the administration the opportunity to appear before you today.

President Bush has asked me to convey his personal appreciation for the comprehensive, timely and, to your point, Congressman Frost, bipartisan manner in which the House of Representatives has considered his proposal to make America safer by creating a Cabinet level Department of Homeland Security.

As you know, the President has signed an executive order creating a transition planning office for the new department, and it is housed within the Office of Management and Budget. I appear before you today to testify in my capacity as director of that office, and I look forward to working with you this afternoon and in the future.

When President Bush established the Office of Homeland Security last October, the first mission he assigned was, and I quote, "to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks."

It was immediately clear that doing so would require careful study of how the Federal Government is organized for the mission of homeland security. Like many who have examined this question, and Congressman Menendez, you and I have had this discussion before, including many Members of Congress, we concluded that the Federal Government can and should be better organized, could be organized differently. Tomorrow the President will release the Nation's first ever national strategy for homeland security. It is a focused and forward-looking plan to secure the Nation from terrorism. Our execution of this strategy must be equally focused. That is why the President has proposed the Department of Homeland Security.

On June 6, President Bush unveiled his proposal to unite the agencies essential to homeland security. On June 18, we delivered the draft Homeland Security Act of 2002 to Congress. The very next day, the House passed a resolution to create this special Select Committee to consider the bill, a sign that the members need to stay focused on the big picture, the need to reorganize our government to secure the homeland.

More than 10 months have elapsed since September 11. To some, the threat of terrorism may have receded, but our Nation remains at grave risk of terrorist attacks now and for the foreseeable future.

A couple things we have learned about the enemy: Terrorists are strategic actors. They choose their targets deliberately, and they choose them based on the weaknesses they observe in our defenses and in our preparations. They use speed and surprise to terrorize.

Protecting ourselves, therefore, requires that we be flexible and nimble as well with the ability to quickly spot the gaps and move just as quickly to fill them. It requires improved coordination and communication between all levels of government and every sector of society. And it requires something else, a thorough knowledge of our enduring vulnerabilities. Our population is large and diverse and mobile. It allows for sleeper cells to hide within our midst. Our factories, power plants, transportation and other critical infrastructure provide numerous potential targets. Our 21st century global economy and the 21st century technologies on which it relies are vulnerable to new threats of cyber terrorism.

The very freedoms we cherish give terrorists a window on to these vulnerabilities. The more we know about our enemy, the easier it is to defeat him. The more we know about our vulnerabilities, the better we can protect ourselves. The fundamental mission of the Department of Homeland Security would be threefold: To prevent terrorist attacks within the United States, to measure and reduce our vulnerability to terrorism, and to minimize the loss of life and damage and speed recovery from any future attack.

Currently, no Federal Government agency calls homeland security its primary mission. In fact, as many of you have talked and discussed about it publicly, homeland security functions are divided around 100 different departments and agencies. We must align these efforts to ensure that homeland security is the top priority of one department and the top priority of everyone who works in that department.

The current homeland security apparatus grew up around us in a very ad hoc fashion. It grew up over the course of many decades. The President's reorganization with well-planned and well thought out, based on input from every level of government, the private sector, the academic community, and, of course, the Congress of the United States. The President proposed that certain existing agencies be moved to the new department based on their core competencies in homeland security. The President faced a great many choices, and I believe he made the right ones.

Of course, members from both sides of the aisle, as has been noted in opening comments, have offered their support and valuable expertise. Some have offered amendments in a sincere attempt to improve the bill, and at the same time enhance our security. And the administration's views, many of these amendments would strengthen the new department's ability to secure the homeland. Others, in our opinion, would not be helpful to achieving our full potential. But all members deserve a clear explanation of why we believe the President's proposal is best suited to carry out this mission.

For most of our history, America has relied upon two vast oceans and two friendly neighbors to protect us from threats abroad. The mobility of modern terrorism, however, demands that we do much more. The Department of Homeland Security would have sole responsibility for managing the entry of people and goods into the

United States and protecting our entire transportation infrastructure. It would also be responsible for maintaining the careful balance between security and global commerce. The President has proposed that this division include the principal border and transportation security agencies, including the United States Customs Service, the United States Coast Guard, the Transportation Security Administration, the Immigration and Naturalization Service, and the border security functions of the Animal and Plant Health Inspection Service.

I would like to just share with you a couple of observations about each one of these departments or agencies.

The United States Customs Service duties range from the seizure of contraband to the collection of revenue, to the enforcement of consumer protection, and even food safety laws. Many are highly relevant to homeland security. The administration is grateful for the careful consideration given to this issue by Chairman Thomas and the Committee on Ways and Means. The administration does, however, have concerns that their amendment, as currently drafted, would limit the latitude and accountability of the Secretary of Homeland Security and looks forward to further discussion with Chairman Thomas and his committee on this matter.

The United States Coast Guard is our primary defense against terrorists who seek targets at our ports or exploit the international shipping industry to enter the United States. The President understands and the President values the many other non-homeland security-related functions performed by the Coast Guard. These will continue under the reorganization.

Like many, including the blue ribbon Hart-Rudman Commission, the President recognizes the importance of placing the Coast Guard in the new department. Last week, Admiral Tom Collins, commandant of the Coast Guard, and five prior commandants, came to the White House to support this plan. They wrote the following, and I quote: "we believe this major organizational change, if properly done, will enhance the maritime security of the United States and improve the ability of the Coast Guard to do all its missions." one of the commandants remarked to me it is not often they get together and have something it agree on. They certainly agreed on this point.

The Immigration and Naturalization Service is responsible for enforcing our immigration laws and administering immigration services. Consistent with the President's long-standing position, the administration's proposal would reorganize the INS into separate service and enforcement bureaus with both bureaus answering to the Secretary of Homeland Security, a proposal consistent with H.R. 3231 introduced on November 6 by Judiciary Chairman Sensenbrenner, and, I might add, overwhelmingly in concept supported by the House of Representatives by full vote on floor.

Of course, border security does not start at the water's edge, in many instances, it begins where visas are issued, at our overseas consular and diplomatic offices. Representatives Hyde and Lantos, with the administration's full support, have offered an amendment giving the Secretary of Homeland Security the full legal authority needed to oversee issuance of visas and authorizing the assignment of Homeland Security employees to diplomatic and consular posts.

The amendment was approved, with the House International Relations Committee, the House Judiciary Committee, and, with minor adjustments, by the Government Reform and Oversight Committee.

Congress deserves a great deal of credit for acting immediately after September 11 to strengthen airport and aviation security. The newly created Transportation Security Administration is a natural fit in the new department. Its budget, personnel and even statutory responsibility are all directly related to the Department's core mission of protecting our air, land and sea borders and ports from terrorism.

I share the confidence shown by Secretary Mineta and Administrator Magaw that moving TSA will not slow down or interfere with the agency's ability to meet its Congressionally-mandated deadlines. In fact, the administration believes the opposite is true. Matching the TSA's mandate with the Department of Homeland Security's mission will only enhance its ability to accomplish that task.

While focusing on the importation of goods and weapons, we cannot overlook the potential for agri-terrorism, the importation of an animal or plant disease can wreak devastation on an industry on which 1/6th of our gross domestic product depends.

The administration supports the House Agriculture's Committee recommendation to move the specialized border inspection and enforcement functions of the animal and plant health inspection service as well as the Plum Island Animal Disease Center to the new Department.

Even our best efforts to prevent terrorism cannot guarantee that terrorists will not strike again. Therefore, we must improve our response capability as well. In a crisis, the Federal Government augments the primary State and local response roles. There is an artificial decision between consequence management and crisis management hinders and, we believe, dilutes our efforts.

The new Department will consolidate myriad Federal emergency response plans into one genuine all hazard plan covering all potential acts of terrorism, including chemical, biological, radiological or nuclear events. It will coordinate with the Federal Government's disaster response efforts. It will help equip and train our first responders. It will consolidate grant programs for first responders and citizen volunteers now scattered across several agencies, and it will manage critical elements of the Federal Government's emergency response assets such as the national pharmaceutical stockpile.

To accomplish this, we must, as the Hart-Rudman Commission suggested, make the Federal Emergency Management Agency an essential building block for the new Department. FEMA is the lead disaster mitigation providing command and control and funding support. The President's proposal would build on FEMA's all-hazard capabilities and very strong intergovernmental relationships to improve our response to terrorist events. It is absolutely critical that the Federal Emergency Management Agency be housed within the new Department.

Chemical, biological, radiological and nuclear countermeasures are basically our science and technology component within the new Department. The Department will lead the Federal Government's

efforts to prepare for and respond to incidents involving weapons of mass destruction. It will do so by harnessing the creative genius of the Nation's research and development community, particularly the private sector. The President's proposal envisions a national network of laboratories modeled on the National Nuclear Security Administration Laboratories that helped us win the Cold War.

Last week, the House Committee on Science amended the President's proposal to create an under secretary of Homeland Security for science and technology. As with many of the ideas generated by Congress since June 6th, this was a valuable contribution. The administration would support reframing this particular unit, reframing this directive, to reflect this emphasis, as long as the primary focus remains on harnessing science and technology to meet the important homeland security challenges of the 21st century.

We all know that bioterrorism is a real and present danger. Terrorists and terrorist organizations are actively trying to get their hands on biological agents and weapons. Our experience with the anthrax attacks demonstrates how far we have to go to improve our ability to detect the threat and preventing it from being spread to others. The President has proposed a 300 percent increase in spending on biodefense. With the help of Congress earlier this year, we began distributing over $1 billion to States and localities to help their public health systems meet the threat. Last month, the President signed legislation to provide another $4.3 billion to cities and States for training, vaccines, emergency preparedness and food and water security. It is critical that the new Secretary of Homeland Security be able to set goals and priorities for research and development efforts related to bioterrorism.

Under the President's proposal, the new Department will help develop and test new vaccines, diagnostics, antidotes, therapeutics and other measures to counter the threat and reduce the danger these horrific weapons pose to human life. Currently, most of our efforts in this field are conducted by the Department of Health and Human Services where they are stovepiped away from the research to counter other weapons of mass destruction being conducted with other organizations within other departments. The President's plan will consolidate funding and oversight for these programs with other scientific initiatives in order to ensure that the highest priorities and protection receive the most resources.

One of the other units within the Department is assigned to analyze information and infrastructure protection within this country and preventing future attacks requires timely information, a thorough knowledge of our vulnerabilities, and the ability to take action. The new Department will provide all three.

First, it will fuse and integrate intelligence and other information about terrorist threats to the homeland from the FBI, the CIA, and other agencies that collect that kind of information. It will comprehensively assess the vulnerabilities of our Nation's critical infrastructure, physical and cyber. We all know they are really intertwined.

Then the Department will do something unprecedented. It will match or integrate that threat information against our vulnerabilities to determine the appropriate protective actions to take. Some 85 percent of our Nation's critical infrastructure is

owned by the private sector. The Department will work with businesses to learn of our vulnerabilities so we can take steps to reduce them.

Businesses understandably want assurances that they would not be unwittingly drawing a road map for those who would do us harm. The administration believes it would be in the public interest to pass for homeland security purposes another statutory exemption to the Freedom of Information Act. The exemption would also give State and local officials seeking the latest threat information to protect their citizens.

Congressman Davis has been focused on this issue for some time. The administration strongly supports his amendment, since approved by Government Reform and Oversight Committee, to provide an exemption to the Freedom of Information Act while ensuring that the Federal Government's regulatory and enforcement efforts are in no way compromised. When a specific and credible threat arises, the Department will provide one clear voice of warning to our Homeland Security advisory system. Beyond simply countering each individual threat, this capability will build a protective system to provide true long-term nationwide deterrence.

Let me say a few words about another critical security agency, and that is, the United States Secret Service. No one can deny the crucial role in homeland security, both in protecting our national leaders from harm and increasingly in managing security at designated national security special events, such as the Super Bowl and the Winter Olympics. The agency will continue to investigate counterfeiters and other financial crimes, its core protective function is a perfect match for the new Department.

That covers the what and the why. Now let me just say a few words before we get into questions about the how. Creating a new Department of Homeland Security is not the end of our reform efforts, it is the beginning. The new Secretary must have freedom to manage, to attract and retain the very best people from other agencies and the private sector and to reward their best efforts accordingly; to protect the homeland, it is critical that we, as the President has said, get the right people in the right place at the right time with the right pay.

Federal workers should be assured, I am going to say this again, Federal workers should be assured that the Department of Homeland Security will be run according to the principles of the merit system. Fair treatment without regard to political affiliation, equal opportunity, equal pay for equal work, and protection for whistleblowers.

Union members collective bargaining rights will remain with them in the new Department. President Bush is committed to a Federal workplace that is free of discrimination and retaliation. The new Secretary of Homeland Security must also have freedom to move resources in order to fill gaps in our defenses and counter the latest threat. The President has proposed for the new Department a budget of over $37 billion, nearly double what the government spent on homeland security in the previous fiscal year 2002, double the figures that were in that fiscal 2002 budget. Obviously Congress with bipartisan support added substantially to those numbers in the fall.

The President's proposal gives the Secretary latitude to reallocate up to 5 percent of the funds in a given fiscal year, as well as the authority to reorganize the Department to respond to the changing nature of the terrorist threat.

Clearly, as a former colleague, someone who actually aspirated to get on the Appropriations Committee, I am sensitive to the need for congressional oversight. The Appropriations Committee would have 15-day notice before funds could be moved to ensure that the power is not abused. But also as a former member, I well recognize with the budget process, the authorizing committees as well as the appropriations process and the Appropriation Committee, there would be substantial, vigorous oversight of the Secretary's capacity to transfer up to 5 percent.

Change, of course, is never easy, especially this largest change in government in 55 years. So the President and I are thankful and most appreciative of the many good ideas that came out of the various committee markups last week. We also understand that Members may be reluctant to support a proposal that affects the institutions they oversee, because they do have expertise and knowledge and an affiliation with these institutions. We understand why they may be so cautious about change. We believe, nevertheless, that creating a Department of Homeland Security is the right course to take.

It is a vision of our shared future that is greater than the sum of our current parts. This debate has echoes in the past. When President Harry S. Truman suggested uniting the Nation's military under a single Department of Defense, he was not greeted with unanimous support. In fact, there was opposition among his own advisers. One of them favored improved coordination and cooperation, but not unification. Truman disagreed. He believed unification was the key to improved coordination and cooperation, and President Bush agrees.

Again, I thank the members of the Select Committee, as well as your colleagues in the House, for the serious and expeditious action you have taken on this proposal to strengthen our national effort to secure our homeland.

Thank you, Mr. Chairman.

Chairman ARMEY. Thank you, Governor.

[The statement of Mr. Ridge follows:]

PREPARED STATEMENT OF THE HONORABLE TOM RIDGE, ASSISTANT TO THE PRESIDENT FOR HOMELAND SECURITY

I. INTRODUCTION

Chairman Armey, Representative Pelosi, distinguished members of the Select Committee on Homeland Security. President Bush asked me to convey his appreciation for the comprehensive, expeditious, and most importantly, bipartisan manner in which the House of Representatives is considering his proposal to make America safer by creating a Cabinet-level Department of Homeland Security to unite essential agencies that must work more closely together.

In the weeks since the President submitted a detailed legislative proposal to Congress, numerous House committees have conducted hearings to consider different aspects of the draft Homeland Security Act of 2002. In the Administration's view, many of the amendments to the Administration's legislative proposal submitted for the Select Committee's consideration would strengthen the ability of the new Department to provide a unified homeland security structure that will improve protection against today's threats and be flexible enough to help meet the unknown

threats of the future. Some amendments, however, would impair the Department's ability to secure our homeland. I will summarize the Administration's views of these issues in this statement.

Through all of this legislative activity, it is important to stay focused on our goal and the basic reason why this Select Committee on Homeland Security was created. The United States is a nation at risk of terrorist attacks and it will remain so for the foreseeable future. We need to strengthen our efforts to protect America, and the current governmental structure limits our ability to do so. Change is needed now. It is our job—Executive Branch and Legislative Branch working together—to implement this change.

II. The Need for Homeland Security: Threat and Vulnerability

We are today a Nation at risk to terrorist attacks and will remain so for the foreseeable future. The terrorist threat to America takes many forms, has many places to hide, and is often invisible. Yet the need for improved homeland security is not tied solely to today's terrorist threat. It is tied to our enduring vulnerability.

All assessments of the terrorist threat must start with a clear understanding that terrorists are strategic actors. They choose their targets deliberately based on the weaknesses they observe in our defenses and our preparations. They can balance the difficulty in successfully executing a particular attack against the magnitude of loss it might cause. They can monitor our media and listen to our policymakers as our Nation discusses how to protect itself—and adjust their plans accordingly. Where we insulate ourselves from one form of attack, they can shift and focus on another exposed vulnerability.

The United States faces a profound danger of terrorism. We were dealt a grave blow on September 11 and we face today the real possibility of additional attacks of similar or even greater magnitude. Our enemies are working to obtain chemical, biological, radiological, and nuclear weapons for the stated purpose of killing vast numbers of Americans. Terrorists continue to employ conventional means of attack, such as bombs and guns. At the same time, they are gaining expertise in less traditional means, such as cyber attacks. And, as we saw on September 11, our terrorist enemies will use new tactics and exploit surprise to carry out their attacks and magnify their deadly effects.

Our population and way of life are the source of our Nation's great strength, but also a source of inherent vulnerability. Our population is large, diverse, and highly mobile, allowing terrorists to hide within our midst. Americans assemble at schools, sporting arenas, malls, concert halls, office buildings, high-rise residences, and places of worship, presenting targets with the potential for many casualties. Much of America lives in densely populated urban areas, making our major cities conspicuous potential targets. Our factories, power plants, and parts of our transportation system could be attacked to cause systemic disruption. Americans subsist on the produce of farms in rural areas nationwide, making our heartland a potential target for agriterrorism.

The U.S. government has no higher purpose than to ensure the security of our people and preserve our democratic way of life. Terrorism directly threatens the foundations of our Nation—our people, our way of life, and our economic prosperity. In the war on terrorism, as in all wars, the more we know about our enemy, the easier it is to defeat him. Similarly, the more we know about our vulnerabilities, the better we can protect them.

When President Bush established the Office of Homeland Security in October 2001, the first mission he assigned the Office was "to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks." The President recognized that the United States has never had a shared national vision of what must be done to secure the homeland against the full range of terrorist threats we face today and might face in the future.

The National Strategy for Homeland Security will help to prepare our Nation for the work ahead in several ways. It is a comprehensive statement of what needs to be done to secure the homeland to which all Americans can refer. It provides direction to the Federal government departments and agencies that have a role in homeland security. It suggests steps that State and local governments, private companies and organizations, and individual Americans can take to improve our security and offers incentives for them to do so. It recommends certain actions to the Congress. In this way, the Strategy provides a framework for the contributions that we all can make to secure our homeland. The President will release the Strategy tomorrow.

III. Overview of the proposed Department of Homeland Security

When President Bush directed his Administration to develop the National Strategy for Homeland Security, it was immediately clear that doing so would require careful study of how the Federal government is organized for the mission of homeland security. Like many who have examined this question, we quickly concluded that the Federal government can be much better organized than it presently is. Homeland security is, in many respects, a new mission, so it should come as no surprise that our strategic review concluded that the structure of the Federal government must be adapted to meet the challenges before us.

The President proposed the establishment of the Department of Homeland Security on June 6, roughly five weeks prior to the publication of the Strategy. The proposal to create the Department preceded the Strategy because we finished our work on the organizational issue first and because of our wish to deliver the proposal to create the new Department to the Congress in time for action during the current legislative session. As the President said in his June 6 address to the Nation, "we face an urgent need, and we must move quickly, this year, before the end of the congressional session."

Creating the Department of Homeland Security proposed by President Bush would result in the most significant transformation of the U.S. government in over a half-century. It would transform and largely realign the government's confusing patchwork of homeland security activities into a single department whose primary mission is to protect our homeland.

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

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

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

Establishing a new department to meet current and future homeland security challenges is both a vital enterprise and an extraordinarily difficult and complex one. The success of a new department in protecting our country will depend upon two principal factors: (1) ensuring that the new Department has the right building blocks moved into it, and (2) ensuring that the leadership of the new Department is given the right set of tools to work with and manage those blocks to ensure that the benefits of consolidation, in terms of both security and efficiency, can be achieved. There are a variety of issues in both categories, and we have strong views about many of them. Some of what has been done in the markups has been helpful, but some of it would, in our view, be distinctly damaging to the new Department's ability to carry out its mission successfully. I will first discuss the issues relating to the proper building blocks of the new Department, and then I will address the managerial flexibility and authority needed to fashion them into an effective force for protecting the American homeland.

BORDER AND TRANSPORTATION SECURITY

America has historically relied heavily on two vast oceans and two friendly neighbors for border security, and on the private sector for most forms of domestic transportation security. The increasing mobility and destructive potential of modern terrorism requires that we fundamentally rethink and renovate our systems for border and transportation security. We must now conceive of border security and transportation security as fully integrated requirements, because our domestic transportation systems are inextricably intertwined with the global transport infrastructure. Virtually every community in America is connected to the global transportation network by the seaports, airports, highways, pipelines, railroads, and waterways that move people and goods into, within, and out of the Nation. We must therefore promote the efficient and reliable flow of people, goods, and services across borders, while preventing terrorists from using transportation conveyances or systems to deliver implements of destruction.

In the President's proposal, the principal border and transportation security agencies—the U.S. Customs Service, the U.S. Coast Guard, the Immigration and Natu-

ralization Service (INS), the Animal and Plant Health Inspection Service, and the Transportation Security Administration—would be unified within a single, powerful division of the new Department of Homeland Security. The new Department also would control the issuance of visas to foreigners through the Department of State and would coordinate the border-control activities of all Federal agencies that are not incorporated within the new Department. As a result, the Department would have sole responsibility for managing entry of people and goods into the United States and protecting our transportation infrastructure.

U.S. Customs Service.

One of the missions of the new Department will be to improve border security while at the same time facilitating legitimate trade—a delicate balance that the Customs Service has successfully maintained throughout its history. Transferring an intact Customs Service to the new Department will ensure that this balance will continue.

The Customs Service's mission is entirely border-related. The Customs Service is critical to ensuring that goods and persons entering and exiting the United States do so in compliance with U.S. laws and regulations. It is not only responsible for keeping the implements of terrorism, narcotics, and other forms of contraband out of the United States, but also for collecting and safeguarding revenue, enforcing consumer protection and food safety laws, and enforcing U.S. trade and intellectual property laws in connection with all commercial goods entering the United States.

The Customs Service plays very important roles in administering U.S. trade law and in collecting revenue from import duties. These functions of the Customs Service are operationally intertwined with its border security mission but are themselves not directly related to homeland security. It is important that provisions regarding administration of these functions do not limit the Secretary of Homeland Security from building the most effective and efficient border system possible.

U.S. Coast Guard.

Inclusion of the Coast Guard in the new Department is crucial to the President's plan for improving our border and transportation security. To maximize the Coast Guard's effectiveness in the new Department, it is essential that the Coast Guard remain intact, retain essential attributes as a military, multi-mission, and maritime service, and continue to execute the full range of Coast Guard missions.

A large portion of the Coast Guard's current operating budget is directly related to the core missions of the proposed Department. The remainder of its missions contribute indirectly to the overall security and economic viability of the Nation. The Coast Guard is the lead Federal agency for maritime homeland security. The Coast Guard's multi-mission assets, military role as an Armed Force, and maritime presence and authorities bridge security, safety, and response capabilities between Federal, State, local and private organizations as well as other military services.

The President's budget proposal for Fiscal Year 2003—a budget written with homeland security as a primary priority—is a clear indication of the support that the Coast Guard can expect within the new Department. The FY 2003 budget proposed to provide the Coast Guard with $7.1 billion, representing both the largest increase and the highest level of funding in Coast Guard history. I believe that moving the Coast Guard to the Department of Homeland Security will only increase future support for its missions—ensuring that the Coast Guard remains a top priority for this and future Presidents as they continue to prosecute the war on terrorism and safeguard the homeland.

The President understands and values the many Coast Guard functions that are not directly tied to homeland security. He understands the importance of ensuring full support for such Coast Guard functions as search and rescue, fisheries, environmental law enforcement, and marine safety. The President and I are convinced that these functions will continue to receive the attention they require in the new Department. I should point out that even though it is currently in the Department of Transportation, the Coast Guard's non-transportation functions have flourished in recent years—totaling more than 75 percent of its current budget according to Coast Guard estimates. The non-homeland security functions are likely to fare even better within the new Department of Homeland Security than they do today within the Department of Transportation due to security-related budget support. Because the Coast Guard uses the same ships and people to save a capsized sailor as it does to protect our ports, this budget support will improve the Coast Guard's ability to fulfill its non-homeland security functions as well as its homeland security duties.

Many experts have recognized the importance of including the Coast Guard in the Department of Homeland Security. Several of the blue-ribbon commissions and think tank reports related to terrorism—including the seminal Hart-Rudman Com-

mission—have suggested such a move. So too have most of the bills suggested by members of Congress, including bills introduced by Representatives Harman, Tauscher, Thornberry, and Tancredo. Most importantly, the former and current leadership of the Coast Guard itself supports the move. Last week, Admiral Tom Collins, Commandant of the Coast Guard, and five former commandants came to the White House to share with the President their support for this initiative. These are individuals with more than 200 years of Coast Guard experience among them and they all agree that this move would be good for the country and good for the Coast Guard. In a letter to the leadership of the Congress, the Commandants wrote: "We believe this major organizational change, if properly done, will enhance the maritime security of the United States and improve the ability of the Coast Guard to do all its missions." One of the Commandants remarked to me that it is not often that they all agree on something.

Immigration and Naturalization Service.

The Immigration and Naturalization Service (INS) is responsible for enforcing the laws regulating the admission of foreign-born persons (i.e., aliens) to the United States and for administering various immigration benefits, including the naturalization of qualified applicants for U.S. citizenship. It is important to put the INS mission and its challenges into context to understand the full meaning and potential benefit of the proposal to include the INS in the same Cabinet department as the Nation's other border-management agencies.

The INS is critical to ensuring the security of our Nation's land borders. Its inspectors stand shoulder to shoulder with Customs inspectors at all our ports of entry, conducting more than 500 million inspections a year. A subordinate agency of the INS, the U.S. Border Patrol, maintains control of U.S. borders between ports of entry. The INS also works to identify and remove people who have no lawful immigration status in the United States.

Consistent with the President's long-standing position, the Administration's proposal would reorganize the INS by separating units for services from enforcement. The Department would build an immigration services organization that would administer our immigration law in an efficient, fair, and humane manner. The Department would make certain that America continues to welcome visitors and those who seek opportunity within our shores while excluding terrorists and their supporters.

The Administration's proposal to separate the administration of citizenship and immigration services from the enforcement of migration laws within a single department is broadly similar to H.R. 3231, introduced on November 6 by House Judiciary Chairman Sensenbrenner. The Administration supported this bill, and it was passed by the House on April 25 by a vote 405-9. The Administration continues discussions with the Committee on the Judiciary to address members' concerns over several aspects of the President's proposal to create the Department of Homeland Security. That being said, let me underscore that the twin missions of the INS are complementary. Splitting them between two departments would make policy coordination, organization, reform, and systems integration more difficult. The Administration is prepared to jointly consider with Congress an alternate organization for the Department of Homeland Security in which immigration services is pulled out of the Border and Transportation Security division and made into its own bureau reporting directly to the Secretary of Homeland Security.

Transportation Security Administration.

On September 11, jet passenger aircraft on routine flights became the weapons of the deadliest terrorist attack in history. These events revealed the high priority that must be given to protecting the transportation sector. It is only natural, therefore, for the newly created Transportation Security Administration (TSA) to become a part of the Department of Homeland Security.

The entirety of TSA's budget, personnel, and focus is directly related to the core missions of the proposed Department—protecting the security of our air, land, and sea borders and the security of our interconnected transportation systems. TSA has the statutory responsibility for security of all modes of transportation and it directly employs transportation security personnel. The organization uses various tools to execute its assigned missions including intelligence, regulations, enforcement, inspection, screening and education of carriers, passengers, and shippers.

At the Department of Homeland Security, TSA will have ready access to the department's intelligence architecture to support our efforts to prevent terrorists from using the transportation system as a target. Combining TSA with established organizations will enable the fledgling agency to benefit from their relevant experience. Also, by merging TSA with fully staffed agencies, the new Department will allow

the leveraging of staff, research capabilities, resources and facilities to address critical vulnerabilities.

Moreover, the continuity of security from our borders throughout our transportation system is extremely important. The protection of this system and the passengers, cargo, and conveyances traveling through it is a responsibility that must be shared by TSA, INS, Customs and other Department of Homeland Security elements. Clearly, these agencies' ability to coordinate will be enhanced if they are part of the same organization and has access to shared systems.

I share Secretary of Transportation Norm Mineta's and TSA Administrator John Magaw's confidence that moving TSA will not slow or interfere with the agency's ability to meet its statutory deadlines. In fact, the Administration strongly believes that moving the TSA into a new department whose sole focus is the protection of the homeland can only enhance its ability to accomplish its crucial mission.

Animal and Plant Health Inspection Service.

One-sixth of the U.S. gross domestic product and one-eighth of all jobs are connected to agriculture, either directly or indirectly. A terrorist attack on crops and/or livestock would have a direct financial impact on growers or breeders, but it would also hurt shippers, stockyards, slaughterhouses, distributors, and so on. Attacks against the Nation's agricultural sector could also impact consumers, threatening not only their pocketbooks, but their confidence in the safety of the food supply as well.

Many biological agents are readily obtainable in countries where animal diseases are endemic, and could be introduced within the United States. Animal diseases like foot-and-mouth, viruses like the West Nile virus, pests like the Mediterranean fruit fly, and plant diseases like Dutch Elm are very difficult to contain once they are established,

This is why the President proposed including the U.S. Department of Agriculture's Animal and Plant Health Inspection Service—the agency that prevents and manages outbreaks of diseases and pests—and the Plum Island Disease Facility in the new Department. In the past few weeks, Administration staff from the White House and the Department of Agriculture have worked with the House Agriculture committee to refine the President's proposal. The result of that work appears in the Committee's amendment which moves the specialized border inspection and enforcement functions of the U.S. Department of Agriculture, as well as the Plum Island Disease Facility, to the new Department. The Administration supports the amendment. We look forward to working with Congress so that the final bill provides the Secretary of Homeland Security the coordinating authorities required to ensure integrated plans to address the threat of agriterrorism.

Visa Issuance Authority.

Border security does not actually start at the borders. Rather, in many instances it begins at the consular and diplomatic offices overseas where visas are issued. Thus, the President proposed to provide the Secretary of Homeland Security with full legal authority for controlling visa issuance. Congressman Hyde and Lantos have built on this proposal and, with the Administration's support, offered an amendment giving the Secretary of Homeland Security the full legal authority needed over visa issuance while at the same time authorizing the assignment of Homeland Security employees to diplomatic and consular posts. The Amendment was approved not only by the House International Relations Committee, but also by the House Judiciary Committee and with minor adjustment by the Government Reform and Oversight Committee. The Administration supports the Hyde/Lantos amendment as it provides the Secretary of Homeland with the control over visa issuance necessary for effective border security.

EMERGENCY PREPAREDNESS AND RESPONSE.

The United States will do everything in its power to prevent future terrorist attacks, but we must not become complacent and assume that all future terrorist plots against us will be prevented. Therefore, we must prepare to minimize the damage and recover from all manner of terrorist attacks as a fundamental part of our Nation's homeland security strategy. Past experience has shown that preparedness is essential to an effective response to major terrorist incidents and natural disasters. America needs a comprehensive national system for bringing together and commanding all necessary response assets quickly and effectively. We must plan, equip, train, and exercise many different response units to mobilize without warning to any emergency. Under the President's proposal, the Department of Homeland Security, building on the strong foundation already laid by the Federal Emergency Man-

agement Agency (FEMA), would lead our national efforts to create and employ a system that will improve our response to all disasters, both manmade and natural.

Under the President's proposal, the Department of Homeland Security would consolidate existing Federal government emergency response plans into one genuinely all-hazard plan—the Federal Incident Management Plan—and thereby eliminating the "crisis management" and "consequence management" distinction. This plan would cover all incidents of national significance, including acts of bioterrorism and agriterrorism, and would clarify roles and expected contributions of various emergency response bodies at different levels of government in the wake of a terrorist attack.

In the event of an attack, the Department of Homeland Security would provide a line of authority from the President through the Secretary of Homeland Security to one on-site Federal coordinator. The single Federal coordinator would be responsible to the President for coordinating the entire Federal response to incidents of national significance. Lead agencies will maintain operational control over their functions (for example, the FBI will remain the lead agency for Federal law enforcement) under the overall coordination of the single Federal official.

The President's proposal assigns the new Department the missions of ensuring the preparedness of our Nation's emergency response professionals, providing the Federal government's emergency response to terrorist attacks and natural disasters, and aiding recovery efforts. In addition to FEMA, proposed components of this division include the Office for Domestic Preparedness of the Office of Justice Programs, the National Domestic Preparedness Office of the FBI, the Domestic Emergency Support Teams of the Department of Justice, the Office of the Assistant Secretary for Public Health Emergency Preparedness (including the Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System) of the Department of Health and Human Services (HHS), and the Strategic National Stockpile of HHS.

Federal Emergency Management Agency.

Under the President's proposal, FEMA will be a central component of the Department of Homeland Security for several reasons. It would provide the new Department with the experience and leadership needed to build the new national emergency response system envisioned in the National Strategy for Homeland Security. The new Department would build on FEMA to consolidate the Federal government's emergency response assets to better prepare all those pieces for all emergencies—both natural and man-made.

FEMA would also play a crucial role in the Department of Homeland Security's efforts to streamline and improve the provision of Federal grants to State and local governments for emergency response purposes. On May 8, 2001, President Bush announced the creation of the Office of National Preparedness within FEMA to "coordinate all Federal programs dealing with weapons of mass destruction consequence management within [Executive Branch Agencies]* * *" The Office of National Preparedness has been working closely with State and local governments to ensure their planning, training, and equipment needs are addressed. The President's FY 2003 budget proposal requested $3.5 billion for FEMA to provide support to State and local first responders. Under the President's proposal, the new Department would build on this grant consolidation effort by incorporating similar homeland security programs located elsewhere in the Executive Branch. FEMA would play an important role in making this consolidated effort work at the new Department.

FEMA also is the principal Federal agency that works with State and local entities to reduce the vulnerability of their communities to disasters. In 2001, FEMA provided $2.7 billion in direct assistance to States, local governments, and individuals stricken by natural disasters and incidents of terrorism, furnished over $589 billion in flood insurance coverage to over 4 million policy-holders, and awarded $177 million in grants to support emergency management preparedness and mitigation capabilities. Building on these past efforts, the new Department would make mitigation efforts against terrorism and natural disasters one of its priorities.

Finally, FEMA's strong relationships with State and local governments would provide the new Department with an extremely important resource for coordinating our Nation's homeland security efforts. As I have learned during my eight months in this job, homeland security is a national mission that requires a national effort. FEMA's strong ties to the State and local entities that secure our hometowns—ties built and maintained through FEMA's ten regional offices and its excellent performance during incidents across the country—would help the new Department provide the best support possible to those entities in the future. As I often say, when every hometown is secure, the homeland will be secure. I would note that a principal rec-

ommendation of the Hart-Rudman Commission was that FEMA should be a core building block for an agency that is focused on homeland security.

The National Pharmaceutical Stockpile

CDC currently manages 12 "push packages" of pharmaceutical and medical supplies and equipment strategically located around the United States; additional lots of pharmaceuticals and caches of medical materiel are maintained by manufacturers under special contractual arrangements with CDC. One of the push packages was dispatched to New York City on September 11 and elements of the stockpile were used to respond to the anthrax attacks.

The President's proposal integrates the stockpile with other national emergency preparedness and response assets at the new Department. The Secretary of Homeland Security will assume responsibility for continued development, maintenance, and deployment of the stockpile—making it an integral part of the larger suite of Federal response assets managed by FEMA and other future DHS components—while the Secretary of Health and Human Services will continue to determine its contents. The arrangement will ensure effective blending of the public health expertise of HHS with the logistical and emergency management expertise of DHS.

CHEMICAL, BIOLOGICAL, RADIOLOGICAL, AND NUCLEAR COUNTERMEASURES

The expertise, technology, and material needed to build the most deadly weapons known to mankind—including chemical, biological, radiological, and nuclear weapons—are spreading inexorably. If our enemies acquire these weapons, they are likely to try to use them. Currently, chemical, biological, radiological, and nuclear detection capabilities are modest and response capabilities are dispersed throughout the country at every level of government. The threat of terrorist attacks using chemical, biological, radiological, and nuclear weapons requires new approaches, a focused strategy, and new organization.

Accordingly, the President's proposed legislation would establish an entire division in the Department of Homeland Security devoted to leading the Federal government's efforts in preparing for and responding to the full range of terrorist threats involving weapons of mass destruction. It proposes the transfer of the select agent registration enforcement programs and activities of HHS, the new National Bio-Weapons Defense Analysis Center of the Department of Defense, the Plum Island Animal Disease Center of the Department of Agriculture, and various programs and activities of the Department of Energy related to the prevention of nuclear smuggling and non-proliferation of CBRN technologies and material.

The Department of Homeland Security will harness the creative genius of the entire research and development community, especially the private sector. Under the President's proposal, the Department of Homeland Security will establish a network of laboratories, modeled on the National Nuclear Security Administration laboratories that provided expertise in nuclear weapon design throughout the Cold War. These laboratories would provide a multidisciplinary environment for developing and demonstrating new technologies for homeland security and would maintain a critical mass of scientific and engineering talent. The Department would establish a central management and research facility with satellite centers of excellence located at various national laboratories.

Last week, the House Committee on Science amended the President's proposal to create an Under Secretary of Homeland Security for Science and Technology. As with many of the ideas generated by Congress and others since the President addressed the Nation on June 6, this proposal is a valuable contribution to the structure of new Department. The intent of the President's proposal is to ensure that the new Department can harness science and technology to confront the full range of terrorist threats to the homeland. We look forward to working with the Congress to develop the best possible bill and to take advantage of the refinements provided by the House Committees.

Department of Energy Research Programs.

A number of programs already exist at our National Laboratories that will benefit homeland security. These programs, most of which grew as part of various national security activities, would be transferred (in terms of budget and FTEs) to the control and sponsorship of the new Department of Homeland Security.

Research and Development to Counter the Chemical, Biological, Nuclear, and Radiological Threat. This Department of Energy-wide program provides research and development for a Department of Homeland Security core mission: detecting and tracking the presence of weapons of mass destruction. This activity includes the development of new technologies and systems for detecting fissile material at border crossings and technologies and systems that monitor the environment for the re-

lease of biological or chemical agents. The transfers to the new Department in this area would include $69 million in the Chemical and Biological National Security research and development program. In addition, the new Department would oversee $10 million in the Combating Nuclear Smuggling activity, which develops applied radiation detection systems for emergency response and law enforcement agencies. This activity provides system modeling, testing, and concept evaluation to monitor and track fissile and weapons grade nuclear materials, and supports training of inspection personnel. Finally, Supporting Activities ($3.5M) is a relatively small account and is responsible for strategic initiatives such as technology road mapping and out-year planning in support of the Chemical and Biological National Security Program and the Nuclear Smuggling Program. The Department of Homeland Security would assume the budget and FTEs associated with all these activities.

Environmental Measurements Laboratory. The Department of Homeland Security would assume control of the Environmental Measurements Laboratory (EML) located in New York City. EML provides program management, technical assistance, and data quality assurance for measurements of radiation and radioactivity relating to environmental restoration, global nuclear non-proliferation, and other priority issues. EML would provide a nucleus for the new Department to conduct research and development activities associated with environmental sampling, facility protection, and standardization protocols for crisis response technologies.

Intelligence Program. The Department of Energy's National Laboratories maintain in-house intelligence capabilities for assessing nuclear weapons and other WMD technologies throughout the world. These capabilities make use of the scientific expertise resident at the laboratories, and are augmented with funding from the intelligence community for their support for national assessments and analyses. One piece of these efforts includes analyses of third world chemical, biological, and nuclear programs, and thus would be invaluable to the Department of Homeland Security for guiding research and development activities to counter the use of these weapons against the homeland. Under the President's proposal, this activity will continue to provide uninterrupted and seamless support to the National intelligence community in this area while providing in-house threat expertise to the Department of Homeland Security.

Advanced Scientific Computing Research. The Advanced Scientific Computing Research program supports researchers in applied mathematics and computer science to achieve optimal efficiencies from large scale computing systems. This activity would provide a nucleus around which to grow Department of Homeland Security programs in, for example, advanced simulation, computer science, and scientific modeling to support such activities as complex nonlinear systems analysis, traffic flow modeling, and information extraction and analysis.

Life Sciences. The Department of Homeland Security would begin to oversee a portion, amounting to $20 million, of the Department of Energy program in the life and environmental sciences. This activity is expected to provide a core around which to grow DHS programs in, for example, identifying and understanding the microbial components that define a pathogen's life cycle, transmission, virulence, and invasiveness; sequencing the genomes of select organisms and strains as well as developing central bioinformatic resources or tools for rapid use of genomic information; and dealing with the threat of engineered pathogens.

Bioterrorism Research Program.

There are few threats that could endanger our national survival. The threat posed by the Soviet Union's vast nuclear arsenal was one such threat. The threat of bioterrorism is another. If properly employed, certain biological agents could cause tens or hundreds of thousands of casualties and wreak huge economic damage. Given the vast quantities of biological weapons that already exist around the world, the risk of terrorists and their supporters obtaining and using these weapons is sufficient to warrant a massive effort to prevent such attacks.

Under the President's proposal, the Department of Homeland Security would unify much of the Federal government's efforts to develop and implement scientific and technological countermeasures against human, animal, and plant diseases that could be used as terrorist weapons. The Department would sponsor and establish national priorities for research, development, and testing to invent new vaccines, antidotes, diagnostics, therapies, and other technologies against bioterrorism; to recognize, identify, and confirm the occurrence of an attack; and to minimize the morbidity and mortality caused by such an attack. In addition, the Federal government will set standards and guidelines for State and local biological preparedness and response efforts.

The President recognizes that all these efforts against bioterrorism must be part of a broader research and development program. Therefore, the President's proposal

would charge the new Department with leading the Federal government's whole range of homeland security science and technology efforts. Currently, the bulk of our scientific efforts against biological terrorism are conducted by the Department of Health and Human Services and are separate from research against other weapons of mass destruction. The President's proposal would consolidate the funding and oversight for these programs with other scientific initiatives in order to ensure that priority threats receive an appropriate percentage of our national research and development investment. This effort would avoid stove-piped approaches to research and development by pursuing priority programs in multipurpose research institutions such as the National Institute of Health. Working within the context of the national priorities established by the Department of Homeland Security, the NIH and others would continue to make decisions on the disbursement of research funding dollars consistent with sound science and expertise.

Select Agent Program.

The recently enacted Public Health Security and Bioterrorism Preparedness and Response Act of 2002 authorized the Department of Human Services (HHS) and the Department of Agriculture (USDA) to promulgate and enforce regulations concerning the possession and use of Select Agents—certain hazardous biological organisms and toxins widely used in over 300 research laboratories across America. Examples include the bacterium that causes anthrax, the bacterium that causes Plague, and the virus that causes Ebola, a lethal hemorrhagic fever. Select Agents are prime candidates for use by would-be bioterrorists and thus, when used in research, must be kept constantly under safe and secure conditions.

The Administration believes that the new Department, with its strong multi-purpose security infrastructure, will be best suited to prevent nefarious or other irresponsible uses of Select Agents. The Administration proposes that the Secretary of Homeland Security would administer the select agents program in consultation with the Secretaries of HHS and USDA with these agencies continuing to make key medical and scientific decisions, such as which biological agents should be included in the select agents list.

INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Currently, the U.S. government has no single entity dedicated to translating assessments about evolving terrorist targeting strategies, training, and doctrine into a system of protection for the infrastructure of the United States. We have a foreign intelligence community and law enforcement agencies, but we have not had a cohesive body responsible for homeland security. The President's proposal closes that gap. The new Department will merge under one roof the capability to assess threats to the homeland, map those threats against our vulnerabilities, and take action to protect America's key assets and critical infrastructure. To ensure that the new Department has access to all the intelligence and information it requires to assess terrorist threats, the draft legislation contains powerful assurances that the Secretary of Homeland Security will be provided such information by the intelligence community and Federal law enforcement agencies.

In addition to ensuring that domestic agencies respond in an integrated manner to tactical situations, the Department will also have a much more strategic mission that will require a different kind of analysis—one that has access to both public and private sector data to ensure that the Nation's infrastructure is protected. It will review intelligence provided by the intelligence and law enforcement communities and develop an action plan to counter the threat. More than just countering each identified threat, the Department will design and implement a long-term comprehensive and nation-wide plan for protecting America's critical infrastructure and key assets. A key mission of the Information Analysis and Infrastructure Protection division will be to understand and reduce the Nation's domestic vulnerability.

The President's proposal would transfer to the new Department the National Infrastructure Protection Center of the FBI, the National Communications System of the Department of Defense, the Critical Infrastructure Assurance Office of the Department of Commerce, the Computer Security Division of the National Institute of Standards and Technology, the National Infrastructure Simulation and Analysis Center of the Department of Energy, and the Federal Computer Incident Response Center of the General Services Administration.

Consistent with longstanding principles, the Department would not engage in the domestic collection of intelligence on United States citizens. The President's proposal creates within the Department the new capabilities that our Nation needs to fight the war on terrorism and also holds true to the belief that government intrusion into the daily lives of our citizens should be strictly limited.

The Department as proposed by the Administration maintains the President's role as the ultimate authority over the control of sensitive intelligence information. The President, as Commander-in-Chief, must have the ability to make decisions about how the Nation's most sensitive intelligence information is handled in order to carry out his sworn duties. The President will be able to exercise his authority in regard to intelligence distribution through such tools as Presidential Decision Directives and Executive Orders.

The President's proposal does not provide the Department with "tasking" authority over other executive branch agencies for numerous reasons. First, it is important that members of our intelligence and law enforcement communities know who they work for. It would be destructive to alter the clear chain of command that currently exists in the executive branch agencies. Second, the Federal intelligence and law enforcement communities have developed tremendous operational expertise, and should be able to apply that expertise without interference. Through the authorities provided under the Administration's proposal, and through its "seat at the table" in interagency processes, the Department of Homeland Security will be able to obtain and direct all the information it needs. Department officials would take part in daily meetings with officials from the White House and members of the intelligence community, and would be able to make whatever requests necessary to carry out the Department's missions.

OTHER ASPECTS OF THE DEPARTMENT OF HOMELAND SECURITY

U.S. Secret Service.

The core mission of the Secret Service aligns with the core competences of the new Department. The Secret Service has two distinct and significant missions: protection and criminal investigations. It is responsible for: the protection of the President, the Vice President, and their families, heads of State, and other designated individuals; the investigation of threats against these protectees; protection of the White House, Vice President's Residence, and other buildings within Washington, D.C.; and security design, planning, and implementation at designated National Special Security Events. The Secret Service is also responsible for the enforcement of laws relating to counterfeiting of obligations and securities of the United States, investigation of financial crimes including, but not limited to access device fraud, financial institution fraud, identity theft, computer fraud, telecommunications fraud, and computer-based attacks on our Nation's financial, banking, and telecommunications infrastructure.

These missions obviously have a critical nexus to the fundamental mission of the new Department: protecting our Nation, its leadership, and its critical infrastructure from terrorist attack. Equally important, however, is the synergy between the institutional culture and mindset of the Secret Service and the institutional culture and mindset we hope to create in the new Department. Alone among major agencies of the Federal government, the Secret Service is, and has been for decades, in the business of assessing vulnerabilities and designing ways to reduce them in advance of an attack. That is to say, it is primarily in the business of prevention, rather than enforcement or response. This is a critical outlook and a critical expertise that the Service has to share with the new Department, and it is our hope and expectation that having the Secret Service in the new Department will greatly assist in creating an overall culture of anticipation, vulnerability assessment, and threat reduction.

The President's proposal transfers the Secret Service intact to the new Department and would have its director report directly to the Secretary of Homeland Security. The Secret Service strongly supports the proposed shift to the new department and believes it has a great deal to contribute to the creation of an effective Homeland Security Department.

State, Local, and Private-Sector Coordination.

Homeland security must be and is a shared responsibility. One of the major reasons for proposing the Department of Homeland Security was to simplify coordination between Federal, State, and local governments as well as the private sector. State and local governments and the private sector have critical roles to play in homeland security.

In our system of government, State governments share power with Federal institutions. Our structure of overlapping Federal, State, and local governance with more than 87,000 different jurisdictions creates unique opportunities and challenges. All of the State and local agencies and private sector organizations have their own expertise in and commitment to protecting America. This expertise needs to be focused in the national effort through complementary systems that avoid duplication and ensure essential requirements are met. To meet the terrorist threat, we must in-

crease collaboration and coordination—in law enforcement and prevention, emergency response and recovery, policy development and implementation—so that public and private resources are better aligned to secure the homeland.

Our proposal seeks to provide governors and mayors a single entry point to address the majority of their homeland security concerns. Thus, we were very pleased last week to receive the support of 46 of the Nation's governors for the proposed Department of Homeland Security as well as statements of support from the U.S. Conference of Mayors, the National Sheriffs' Association, the International Association of Emergency Managers, the Lieutenant Governors Association, the International Association of Chiefs of Police, the Fraternal Order of Police, the American Legislative Exchange Council, and the National Association of Counties.

Freedom to Manage.

The Secretary of the new Department of Homeland Security faces a monumental challenge. Terrorists are determined, opportunistic, and agile, and the Secretary must build a department that can continually adapt to meet this rapidly changing threat. Moreover, even if our adversary were not so devious and nimble, the sheer organizational and management challenge confronting the new Secretary of Homeland Security is enormous. The creation of this new Department is larger and more complex than most corporate mega-mergers. History shows that a governmental reorganization of this magnitude is never easy. Providing the Secretary with the freedom to manage the Department is, therefore, profoundly important to achieving our goal of securing the homeland. Without this authority, an already challenging task will be far more difficult. If the new Department is to be greater than the sum of its parts—if it were not, it would obviously not be worth creating—its leadership must have the flexibility to organize it in the optimal way, create a new institutional culture, motivate and reward an outstanding workforce, and respond quickly to changing circumstances, emerging threats, and emergency situations.

I address many specific components of the Administration's management proposals in the remainder of my testimony. I simply want to emphasize here that the freedom to manage will prove critical to accomplishing the Department's primary mission of homeland security. As this agency assumes a responsibility unique to the 21st century, the Administration believes that the Department must include 21st century approaches to management.

Budgetary Flexibility.

Over the past few weeks, I have often been questioned on the need for the budgetary flexibility proposed in the Administration's legislation. I strongly believe this authority is necessary to get the Department up and running and keep it moving against emerging threats. We must move forward quickly—and responsibly. I believe the requested budgetary flexibility does both.

Let me first make clear what the Administration's proposal requests. The President's proposal provides the Secretary authority to reallocate funds to meet emerging needs, as well as the authority to reorganize the Department to respond to the changing nature of the terrorist threat. Specifically, the legislation allows up to five percent of any appropriation available to the Department in any fiscal year to be transferred between accounts. This provision is subject to a fifteen-day notification requirement to the Appropriations Committees.

The need for this significant authority is in line with the magnitude of the homeland security mission. The new Department will become the focal point of a national effort to ensure that the country is capable of continually adapting to the changing nature of the terrorist threat. To re-emphasize, the threat is continually changing. Thus, the Department will have to respond quickly, and decisively, to adjust to the evolving threats. This will require budgetary flexibility. For example, if intelligence and vulnerability assessments indicate the immediate need to enhance security at a potential target, the Department of Homeland Security must be able to surge and respond quickly. If these targets need to be protected immediately, the new Department requires the resources to enhance protective measures. Congressional oversight—over budget and statutory authority—will ensure that this flexibility is properly used.

Moreover, the complexity of weaving together a multitude of Federal agencies into a cohesive, streamlined department requires some flexibility with respect to operational structures. The new Secretary will need to integrate the Department's now-fragmented functions and identify opportunities to link and streamline the Department's operations. As the operating components are moved into the Department, they must be integrated into a comprehensive, strategic framework—one that ensures that the Department's personnel, systems, and assets begin to work together.

It is difficult for any one of us sitting here today to predict exactly how and where challenges will arise during the transition, but I am certain that we can agree that there will be some logistical hurdles. I submit that providing reorganization flexibility to the new Secretary is an efficient and practical means of getting over these hurdles. Congress has seen the wisdom of granting to a new agency the authority to reorganize based on future demands. For instance, the Department of Energy currently has broad authority to reorganize elements of the Department in order to maximize its efficiency and effectiveness. Again, Congressional oversight will ensure that the authority is properly used.

Personnel Flexibility.

As President Bush said last week when he addressed Federal homeland security workers, "the new department must be able to get the right people in the right place at the right time with the right pay. We need to be able to reward excellence and ensure accountability for individual performance. A lot will be expected of us* * *." That's why the Administration's proposed legislation provides the new Secretary the flexibility to draw from the best practices of the public and private sectors.

Before I talk about the future, let me talk about the present. Presently, the government's human resource system is a complicated thicket of reward, redress, and grievance procedures. The base of that system—the GS 1-15 classification and pay levels- dates back to 1949. The idea that one size fits all—the underlying premise of the GS model—is belied by the fact that Congress has often deviated from this system, for example, with the Federal Aviation Administration, the Internal Revenue Service, the Central Intelligence Agency, and most Federal banking agencies. In asking for a non-traditional personnel system, the Administration is not making an unprecedented request. Rather, the Administration is trying to craft an H.R. system that is at once capable of facilitating the high-level of performance necessary to navigate the largely unchartered territory of this new Department while remaining accountable to the public, to Congress, and to the new Department's employees.

We believe it can be done. We believe we can, and must, empower the workers of this new department. We have every incentive to do so, because an engaged, loyal workforce will prove better able to meet the difficult missions that this Department will undertake. Thus, Federal workers transferring to the Department would bring their same pay and benefits with them. Instead of an H.R. system that would simply be imposed upon workers—whether by legislation or by regulation—the President proposes an H.R. system which will be developed with public notice and comment. The system will be developed in the context of and given the experience of daily operations—not before the agency's creation.

Moreover, the flexibility requested will benefit the workers. Incentives, accountability, pay harmonization—these important issues are better addressed through a flexible H.R. system, able to respond and meet the workers concerns as the issues arise. We have already started a dialogue with the unions to address their concerns; this dialogue will continue into the future.

Congress has recognized the need for flexibility before; the Administration submits that creation of this Department requires similar consideration. Congress and the Administration are trying to create something new—a Federal agency tasked with securing our homeland. If present personnel and pay systems remain in place until some further legislative action, the agency, under the President's proposal, would be forced to operate with at least seven different personnel and pay systems, each with its own level of complexity and conflict with the others. This would saddle the new agency with a significant management burden at a time when additional burdens are least needed.

Finally, let me make clear that the Administration developed its proposal only after in-depth conversation with long-serving career personnel management officials. The observation that inflexible and complex personnel structures can hinder agency performance is not unique. I ask Congress to work with us to establish a system that redounds to the benefit not only of the Department but also, and critically, to its future employees.

Prohibited employment practices. The intent of the personnel provisions in the Homeland Security Act of 2002 is to give the Department tools it needs to fulfill its mission with a flexible, contemporary human resources management (HRM) system that meets its specific needs. The bill also contains two kinds of safeguards to guard against the theoretical creation of an abusive HRM system. First, the bill requires that the regulations establishing the details of the HRM system must be "grounded in the public employment principles of merit and fitness." The nine principles now found in section 2301(b) of title 5, United States Code will govern the creation of the Department-specific personnel rules. One of the principles is that em-

ployees must be protected against reprisal for lawful disclosure of information evidencing illegal or wasteful activities.

Secondly, the regulations establishing a new HRM system must by law be published for public comment before they become final rules. The process of prescribing regulations ensures that the point of view of the Department is counterbalanced by the broader, government-wide viewpoints of the Office of Personnel Management and the Office of Management and Budget. Even before an HRM system is established, indeed before any element of a new HRM system can be published for public comment, it must be agreed to by each of the agencies.

Application of the Whistleblower Protection Act within the new Department. There has been much concern in the past few weeks that the proposed personnel system for the new Department would deny employees whistleblower protections. That is just not so. Let me be very clear on this point. Department of Homeland Security employees will have whistleblower rights and protections. In fact, Department of Homeland Security will have all the protections guaranteed by the merit system principles. The Administration has committed itself to a workplace free of discrimination and retaliatory behavior. These are fundamental and decent values that will serve as the foundation for employment at the Department.

Unionization and Collective Bargaining. Under the President's proposal, the Title 5, U.S. Code laws governing Federal personnel management that now apply to employees who will be transferred to the new Department will continue to apply as they have to date, including union representation. The proposed legislation does not impair employees' collective bargaining rights in any way or change existing authorities. Specifically the legislation proposed by the Administration provides that when the Department is established, employees represented by unions will continue to be represented because their bargaining units will move with them. The Administration would support specific statutory affirmation of the existing rights of Department of Homeland Security employees to union representation, subject to National Security authority.

Veterans' preferences laws. For more than 50 years, veterans' preference has helped hundreds-of-thousands of veterans gain Federal employment, while at the same time assisting the government fill positions that have needed the special skills, training and "can-do" attitude of veterans. The Administration is fully committed to applying veterans' preference laws to the human resources management system of the new Department. We would also support explicit statutory affirmation of veterans' preference laws in the Homeland Security Act of 2002.

Presidential National Security Authorities. Over twenty years ago, Congress gave the President authority to exclude an agency from the coverage of the Federal Labor Management Relations Statute if he determined that an agency's primary function included intelligence, counterintelligence, investigative, or national security work. Every President beginning with Jimmy Carter has used this authority to issue executive orders exempting an agency or agency component from coverage.

The Government Reform and Oversight Committee passed an amendment which would severely limit the President's ability to use this authority. The amendment results in the anomalous situation that a President has the authority, if he deems it appropriate, to exempt agency components in, for instance, the Library of Congress or the Department of State, but he has limited authority to do so in the Department of Homeland Security, a department with a clear mandate to engage in national security work. The Administration strongly opposes this amendment.

Whatever the final composition of the Department of Homeland Security, it is clear that the new agency will have the responsibility to safeguard our country, to secure its people and borders. This new agency's mission, by necessity, will include, in some part, intelligence, counterintelligence, investigative and national security work—the very work that Congress deemed appropriate for an exemption. Restricting the President's powers to safeguard the national security in a new Department dedicated to strengthening our security would be an unfortunate irony.

We—the Congress and the Administration—are working diligently to establish a Department that will respond to the terrorist threat. We are engaged in an effort to better protect Americans from the horrors of terrorism. I submit to you that this effort will be significantly undermined if this Amendment is allowed to stand. The Administration is committed to using the existing statutory authority to exempt units of government from the FLMRA with great care and restraint; however, if it is needed, it must be available. Cutting back on the President's ability to protect the Nation's security and engrafting special statutory protections for public employee unions into this bill is clearly the wrong thing to do.

Acquisition and Contracting Flexibility.

The Secretary of Homeland Security requires an acquisition system and contracting authority which can rapidly adjust to changing threats. Accordingly, the Administration's proposal calls for the new Department to have some of the same acquisition and contracting authorities that have proven beneficial in other Departments, including: non-impairment—the ability to waive acquisition regulations that impair the mission; other transactions authority—the ability to develop prototypes and field them rapidly; and personal services contracts—the ability to quickly hire consultants/contractors for immediate projects.

Freedom of Information.

In order to build a system capable of protecting the Nation's critical infrastructure, the Federal government must be able to gather information related to operational capacities and vulnerabilities and share resulting assessments or analysis with not only the private sector but also State and local officials. This problem is not new. Congressman Davis, along with many of his peers, has been focused on this issue for some time. Last week the Government Reform and Oversight Committee approved an amendment that the Congressman submitted providing a limited exemption for information voluntarily submitted to the government related to critical infrastructure. This amendment recognizes the need for an exemption while ensuring that the Federal government's regulatory and enforcement efforts are in no way undermined. The Administration supports the intent and purpose of this amendment.

Other Important Responsibilities of the new Department.

Many departments perform numerous missions not related to their core mission and do so in an outstanding manner. The Department of Transportation, through the Coast Guard Commandant coordinates all the Federal government's drug interdiction activities. The Department of Defense administers the largest Federal educational program for school-aged children—the Department of Defense Dependents Schools system. The Department of the Treasury manages a large fleet of aircraft—the Customs Service's Air Wing.

The President's proposal was carefully crafted to include in the Department of Homeland Security only those agencies whose principal missions align with the new Department's mission of protecting the homeland. The Administration looks forward to working with Congress to ensure that the Homeland Security Act of 2002 ensures full accountability by the Department's leadership for all its missions, homeland security related or not. I would emphasize, that by creating this Department, the Congress would ensure that a single official—the cabinet-level Secretary of Homeland Security—would be accountable for all statutory responsibilities.

IV. Conclusion

Over the past nine months, the Administration has conducted a thorough review of existing government institutions and systems for providing homeland security, such as law enforcement, public safety, public health, and emergency management. We concluded that the current arrangement was not the best way to organize for homeland security because responsibility is scattered across the government, information is not fully shared, authority is shared by multiple agencies, and numerous redundancies cause inefficiency.

The fragmentation of border security responsibilities is a case in point. In his testimony before this Committee last week, Treasury Secretary Paul O'Neill cited a recent example of overlapping responsibilities. The Customs Service—part of the Department of Treasury—stopped a suspicious boat and searched it for illegal drugs and other contraband. However, the Customs agents found illegal aliens. Customs transferred the aliens to the Coast Guard—currently part of the Department of Transportation. The Coast Guard, upon reaching land, then turned over the aliens to the Immigration and Naturalization Service—currently part of the Department of Justice. In such a fragmented system, a terrorist can easily slip through the bureaucratic maze undetected. Under the President's reorganization proposal, a single department would be responsible for border security.

The Homeland Security Act of 2002 includes twenty-two of the more than one hundred Executive Branch organizations or entities that have significant homeland security responsibilities. The President's proposal includes those agencies whose primary focus is in the areas of preventing terrorist attacks, reducing our Nation's vulnerability to terrorism, and building our recovery capabilities. It includes those agencies whose ability to contribute to homeland security would be improved by

being in a Department whose core competency and single mission was homeland security.

In the weeks since President Bush submitted a concise draft bill to the Congress, the Administration has worked closely with House committees as they have considered our proposal. Our intent is to ensure that the final bill establishes clear and workable lines of authority and accountability, leverages the strengths of the agencies that will compose the Department of Homeland Security, and provides the new Secretary the authorities and management flexibility he or she will need to effect enormous change so that the new Department can adapt to the changing threat of terrorism. The Administration's proposal does not seek to usurp the prerogatives of the Congress or any Committee. We are simply trying to ensure that, on a practical basis, the Department of Homeland Security can get organized and operational—and do the best possible job of protecting Americans.

Again, I thank the members of the Select Committee and the U.S. House of Representatives for the serious and expeditious action you are taking on this proposal to strengthen the Nation's collective effort to secure America.

Chairman ARMEY. Let me say the Chair will now begin to recognize members under the 5-minute rule for questions. Might I recommend to my colleagues on the committee, indeed Governor, to yourself, we have this cute little red light down here. We ought to keep our eye on that. We can probably help to pace ourself. The Chair doesn't want to appear heavy-handed with any of our members, but we want to move along so everybody has a fair time for questioning.

Under its 5-minute rule, the Chair recognizes the gentleman from Oklahoma, Mr. Watts.

Mr. WATTS. Mr. Chairman, thank you. I will jump right into questioning. Governor, everyone in this room agrees that it is vital for Congress and the administration to work together to this new Homeland Security Department. However, I don't think we have done enough to highlight or to detail the non-Homeland Security dual-use benefits of this new department that I mentioned and that we talked about, I guess last May.

For example, first responders, better prepared for terrorism, are also better prepared for floods, forest fires, hurricanes and other natural disasters. Also more secure borders have already resulted in more drug seizures.

I was wondering if you could help us relate to some of the dual-use benefits that you have seen and how the new Department will better secure America from terrorism while growing every-day security?

Governor RIDGE. One of the very specific directions that the President gave the Office of Homeland Security was to, as we looked at the entire country through the lens of security, was to be looking for those kinds of strategic investments that not only enhanced security, but added value in another way. I would just like to illustrate that by pointing out three or four components of the Department of Homeland Security and how it not only enhances security but also makes us a better and stronger and healthier country along the way.

The FEMA initiative is a good one. Obviously, this is the team, the entity, that went through some difficult periods in the 1980s. I am very familiar with the Stafford Act that was written in the late 1980s because I was the primary author over on the House side. We all know there were some difficulties with that, but understood James LeWitt and Joe Alba, there is a feeling in the Congress and around the country that this is a good agency now. They

respond quickly, have the programs to help people and communities, and they basically have an all-hazard capacity.

What we are basically saying in the President's proposal, is you have this agency that has core competencies that deals on a day-to-day basis with the States, with the local governments, deals with first responders across the States and the territories, and why not make this the centerpiece of our emergency response capacity so that as we train and equip and exercise our first responders, whether they train and equip or exercise in response to a terrorist attack or a natural disaster or another man-made disaster, not necessarily a terrorist incident, they will be better equipped and better prepared. To that end, you have double value for that investment.

The $3.5 billion, even if we just spend that in the President's 2003 budget in inter-operative communications, the police, fire, EMTs, everybody that needs to better respond needs inter-operable communications. So there is a good investment with multiple value.

The public health investment that we would make, clearly whether it is working with the Health and Human Services to find antidotes to a potential bioterrorist incident, that kind of research will pay added dividends at medical breakthroughs in the public health community generally.

The borders, the kind of investment we would make at the border, the border consolidation, we can enhance security at the border, but given NAFTA and the economic interdependence of States, communities, people and jobs on the free flow of commerce back and forth across those borders, sure, we do monitor, we must monitor who comes in under what circumstances into this country and what they bring with them. But if we do it right, and we believe we can, with the consolidation of the border and transportation facilities, we not only enhance our security at the border, but we facilitate the economic energy around the three countries as a result of NAFTA.

Mr. WATTS. Mr. Chairman, I see the yellow light is on, so I will yield back the balance of my time.

Chairman ARMEY. Thank you.

Governor RIDGE. I didn't mean to give you a monologue on that. It was a great question.

Chairman ARMEY. The Chair now recognizes the gentleman from Texas, Mr. Frost.

Mr. FROST. Thank you. Governor, I have two rather specific questions. One is we have all, of course, heard about what has happened with creative accounting used in private industry recently with Enron and WorldCom and various other examples. I am concerned about what kind of accounting we are going to use here with the new agency. It is my understanding that the administration does not expect to send us a budget estimate until after this legislation has been passed by the Congress and sent to the Senate. Yet we know certain things thus far.

The Congressional Budget Office said last week in their estimate to cost another $3 billion to create this department, over and above the cost of the current programs. The GAO, General Accounting Office, on June 25 in testimony before the Subcommittee on Technology, Terrorism and Government Information, a committee of the

Judiciary in the U.S. Senate, said realistically, however, in the short-term, the magnitude of the challenges that the new Department faces will clearly require substantial time and effort and take additional resources to make it fully effective. When Secretary O'Neill appeared before our committee last week, I asked him about this, and he said basically, well, we will make it work and it will not cost any more money.

The question is, who is right? You have got CBO saying it is going to cost $3 billion more, the GAO saying it is going to cost more money. What is going to happen here? We do have to account for the Federal budget. This is a time of serious concern about budget spending. Can you devise a scheme where the Department will not cost any more money than it currently does, or inevitably are you going to have some additional cost?

Governor RIDGE. Congressman, I agree. Had the House and Senate Appropriation Committees had a select committee audit the books of WorldCom a couple years ago, they probably would not have been in the mess they are in now given their attention to detail.

I understand the attention that the appropriators and the Congress would have, since you have the constitutional responsibility, to make sure that every dollar is spent appropriately.

I will tell you that the $37 billion that we envision to support the first year of this agency is reflected in the President's request for financial support of these departments and agencies in his 2003 budget. The notion that we could achieve the kind of efficiencies that I believe and the President believes we could achieve if we have the requisite transfer authority and personnel flexibility and the like, I think there is a consensus that within that $37 billion, there are ample resources to stand up this new department.

The 2003 budget request is in excess of $13 billion more than its 2002 budget request, if you aggregate the request for all of the departments we include in here, and it is our belief with the management tools we would request, there would be more than enough money to absorb the transition cost.

You also asked a question about transition, and we also admit given the substantial nature of both the number of personnel in the agencies, it is going to take some time to set up, the enabling legislation we asked you to consider gives us a year's transition from the effective date. So we think the dollars are sufficient within the budget, particularly if we get the management freedoms we hope to have.

Mr. FROST. Let me ask you to turn to one other matter, if I may. This has to do with the rights of Federal employees.

On page 21 of your statement, you said that the administration would support specific statutory affirmance of the existing rights of Department of Homeland Security employees to union representation, subject to national security authority.

Are you saying that you support the Morella amendment as was adopted in the Government Operations Committee last week?

Governor RIDGE. No, we are not saying that at all, Mr. Chairman. That amendment— let me tell you what we are saying, first of all. We are saying that the nine principles as enunciated in the Civil Service System based on merit and fairness are very much a

part of this proposal. But we are saying that as it relates to this agency that has intelligence, counterintelligence, investigative and national security authority, to exempt this agency, which meets all the criteria of the law that has existed for 20 years, it at least gives the President the option, depending on the circumstances, to exempt that Department and Agency, or a sub piece of that agency from that authority that has been in existence for, in excess of 20 years would be a move in the right direction, a step in the right direction.

Mr. FROST. So you oppose the Morella amendment?

Governor RIDGE. That is correct. Absolutely.

Chairman ARMEY. Thank you, Mr. Frost. The Chair recognizes the gentlewoman from Ohio.

Ms. PRYCE. Thank you, Mr. Chairman. Governor, it is great to have you with us here today back among us. We are very proud of the work you have done so far and your statement this morning has been very enlightening. To follow up a little bit on some of what Mr. Frost had to ask you about, last Thursday Treasury Secretary O'Neill was here and he took issue with the CBO estimates as a cost of transferring agencies into the new Department.

I have some concerns with that CBO report myself, because it certainly seemed to fail to take into account any of the cost savings that could obviously result from the streamlining and the efficiencies that we all know will happen.

Now, specifically, Secretary O'Neill questioned the need for the physical transfer of offices. He cited the example of the Customs Service. He indicated that he would be happy to continue to be the Customs Service landlord if the Customs Service's physical facilities and personnel were to stay at the current location in the Treasury Department.

My question for you is how important do you believe it is to consolidate these physical facilities, or don't you believe it is important? And do we need a single location, a single headquarters? By not relocating everything under the same roof, do you see any problems with communication and information sharing? Just take me in that direction a little bit, your thoughts.

Governor RIDGE. First of all, I would like to revisit briefly the Secretary O'Neill's belief that the $3 billion estimate was inflated. We obviously share that belief. Just a cursory look at some of the potential savings we would get through a consolidation of information technology suggests that in a very short period of time, we could save several hundred million dollars.

If we have the reprogramming authority, then that savings can be reallocated or redistributed to other places within the Department. So we feel comfortable with the right kind of flexibility. We will not need $3 billion to set up the Department. We will not need anything if we get the right kind of authority to planning it.

Most of the men and women who work for Customs are located outside of Washington, D.C. As a matter of fact, the potential 170,000 men and women who would be involved in the Department, we estimate no more than about 10 percent would remain in different offices around Washington, D.C. So by and large, Customs is at the border where we want them to be. The logistics of the integration of some of these departments and agencies, I doubt very

seriously will ever end up being consolidated in one building. We are going to obviously try to bring as much administrative and fiscal efficiency as we can to their operation. The fact of the matter is about 90 percent of them are outside of Washington, D.C. and that is where they will remain.

Ms. PRYCE. On a completely different note, numerous aspects of the administration's proposal, we have heard concerns that transferring a given agency may result in a withering of its non-homeland security-related functions. I would like you to focus for a moment on one particular aspect of the bill that raises particular concerns for me, and that is title III, which talks about the public health related activities.

Clearly, protecting against bioterrorism attack is a key element in all of this, absolutely hands down, no question. But do you believe that refocusing research priorities or shifting responsibilities out of HHS or CDC could result in the neglect of research on so-called everyday diseases, cancer, heart disease, all the things we have gone down the road spending so much money, and we are so close in many respects? Give us your thoughts, please, Governor.

Governor RIDGE. I believe it is well-recognized that the CDC and the NIH are really the primary focal point of much of this Nation's public research into a wide range of public health issues, not just relating to terrorist events. What the President has suggested, however, is that piece of the research that deals with terrorism be part of an overall strategic research effort that would be overseen by the new Secretary of the Department of Homeland Security, in this instance, in consultation with the Secretary of Health and Human Services. It is also the President's intention and desire that we not set up or even necessarily build new laboratory facilities and capacity within the Department of Homeland Security.

The way it is presently configured, I think the President envisions the time, the notion that with consultation with Secretary Thompson on whoever else it might be, that those dollars flowing through for bioterrorism research, will probably end up being some of them being assigned to the Centers for Disease Control, National Institutes of Health and other great research institutions we have in the academic community around this country.

So I think the President's purpose is to consolidate all those research dollars that deal with homeland security, to set priorities based upon threat and vulnerability to make sure on an annual basis where we have got a sense of the threat or vulnerability, the greatest threat, the greatest vulnerability ultimately receives the largest share of those research dollars. NIH and CDC will continue to enjoy, I think, the very robust funding they have historically enjoyed, and the very strong vigorous bipartisan support they have always had in this Congress.

Ms. PRYCE. Thank you, sir.

Chairman ARMEY. Thank you, Ms. Pryce. The Chair now recognizes the gentleman from New Jersey, Mr. Menendez.

Mr. MENENDEZ. Thank you, Mr. Chairman. Great pronunciation, too.

Chairman ARMEY. I practiced all weekend.

Mr. MENENDEZ. Governor, thank you for your testimony and your insights and your service to the country. I think what we all agree

on is the goal, which is ensuring the safety of the American people. The question is how do we best achieve that?

And it is in that context that, you know, my questions are directed. You know, one of the images that has not left my mind is when the FBI whistleblower Colleen Rowley was detailing how the FBI had failed in some cases, in the case specifically with Zacharias Moussaoui, and she was in the midst of what I thought was very significant information for the Congress to consider in this issue. And then suddenly all of the cameras left the hearing room to go to the announcement of the creation of the Department on Homeland Security.

And I think they missed in essence the critical issue that the simple creation of a department will not necessarily ensure, and that is that at the core of the events and consequences that took place leading to September 11 is the glaring and unacceptable failure of intelligence and law enforcement information sharing that should have taken place. And in that regard, I certainly heard from the Cabinet secretaries here the other day the buzz words of coordination, cooperation, and collaboration. But what I am concerned about is that the President's bill, as proposed, does not ensure, it does not have a mechanism that ensures coordination, cooperation, and collaboration and information sharing.

So my question is, would you favor adding mechanisms to the bill that would ensure—guarantee that such information sharing, coordination, and cooperation would actually occur?

And I even look at the Brookings' analysis of the President's bill, and they describe that effective prevention efforts require the integration of all relevant data—Intelligence Community, the law enforcement community, the border, and Transportation Security Agency—and that the administration's proposal, according to them, for a new information unit is inadequate to the task because it will not have regular or routine access to the raw intelligence and law enforcement information necessary. They suggest, for example, that the new analytical unit within the FBI that is being set up should be transferred to the Department of Homeland Security. You could focus on those issues.

Do you think that a mechanism within this legislation would be something that the administration would look favorably upon? What do you think about transferring that analytical unit that is being proposed by the FBI into this new proposed Department to ensure information sharing?

Governor RIDGE. Congressman, obviously we would welcome the opportunity to sit down with you to review the language that you may have in mind. But I believe the President's notion that the analytical capacity that this Department has and its ultimate use and the guarantees of the affirmative obligation on the CIA and the FBI to share information meets the President's objectives.

And to that point, if I might, the intelligence agency that would be gathering information that can be applied either to an effort to reduce the threat, identify the bad guys, identify the terrorists, prevent the act, intervene, and the intelligence gathering communities, give us information that would help us reduce the vulnerability. And I think the President feels very strongly that the CIA, the FBI, Department of Defense, we have got some agencies that

are working in closer collaboration and coordination than ever before.

That is not to say that you may have to somewhere down the road sometime enhance and mandate even further consolidation and collaboration. But the equipment we have—the agencies and the people we have to reduce the threat are separate and apart from what the President wants this—sees as the strategic mission of this directorate within the Department of Homeland Security: Let the CIA identify the terrorists and the FBI go after them domestically, work with the Department of Defense overseas. But here the purpose of securing that information isn't to go after, in an aggressive way, the people who will do us harm, but to take that information as it relates to domestic threats, match it against vulnerabilities, and then take the action to reduce the vulnerability not to reduce the threat.

So I think there are two very important—they are critical functions within the Federal Government—reducing the threat and reducing the vulnerability. But I think the President believes the mission of this analytical unit is to get that information from the intelligence gathering community, but to use it not to go after the actors but to prevent against potential action.

Chairman ARMEY. Thank you, Mr. Menendez. The Chair now recognizes the gentleman from Ohio, Mr. Portman.

Mr. PORTMAN. Thank you, Mr. Chairman. And, Governor, thank you for your good testimony this afternoon and for your willingness to step up and serve when the President called on you last October. You continue to do a great job in helping not just put this Department together but to protect our citizens. We appreciate it.

I have become a believer in this idea partly because of the work you all have done; but even before that, from the Hart-Rudman work from Senator Lieberman's work, from the work here in the House done by Mac Thornberry, Jane Harman, Ellen Tauscher, Jim Gibbons and others. The right hand often doesn't know what the left hand is doing, does it? And we have, as you know, well over 100 different agencies and departments, none of which has as their primary responsibility protection of the homeland. So the question is how we do it. It won't make us immune, but it will make us safer and it is the right thing to do.

I serve on the Ways and Means Committee, as you know, and one of the issues there was—and this issue was revisited in just about every authorizing committee—how can we be sure that the traditional functions of the agencies that do have a nexus to homeland security but also have other responsibilities will be maintained when brought into the new Department?

I wonder if you could address that with specificity as to the Coast Guard and as to the Immigration Service, particularly their processing function, but in general tell us about how those responsibilities can be maintained within this Homeland Security structure.

Governor RIDGE. I think the fact that the President has in his proposal designated that the entire Coast Guard, all of the Coast Guard be transferred into this Department, first of all recognizes that they are a multitasked organization. And for all of us who have had the opportunity, actually the privilege to get to know how well the Coast Guard functions and maybe even conclude how

underappreciated they are in terms of not only the defense of this country but the variety of different services they provide this country, would well understand why the President wants to keep the unit intact; because the same people, and by and large much of the same equipment they would use for fisheries oversight, for search and rescue, would be the same people and the same equipment you may very well use in the port security.

I think the President has recognized, however, that because of the added requirement within the Coast Guard to an enhanced homeland security mission, that the government has to build up the capacity of the Coast Guard. They are going to need more people. They are going to need more boats. They are going to need more equipment.

And so in the 2003 budget, in recognition of this organization being multitasked, the President has given them I think the largest single increase they have ever received, and I think it is a precursor as we go about making sure that this Department, transferred in full, continues to provide the multitude of services at the highest level, as required by statute, including an enhanced homeland security requirement. But there again, it is added value.

I don't know how many people have had the opportunity to work or spend some time with the Coast Guard, but I was in New Orleans a couple of months ago and we boarded a ship that was registered in Singapore, had an Indian crew, and was taking American grain over to Japan. But these same men and women on this new platform, if they weren't boarding that, may have been involved in a search-and-rescue mission outside in the Gulf if reassignment might have been involved in a fisheries protection mission somewhere else in the Gulf Coast.

So I think you might—one could argue, I think, that as you build up personnel and equipment for the homeland security mission, depending on the circumstances, there will be more people and equipment to deal with some of these other responsibilities as well.

Mr. PORTMAN. Immigration Service, particularly the processing function.

Governor RIDGE. The what function?

Mr. PORTMAN. The Immigration Service. Would those traditional functions of the Immigration Service, the processing particularly, be safe within the Department of Homeland Security?

Governor RIDGE. I think it is pretty clear that the President has said all along that we do need to force a division between the immigration services. The President has been a strong proponent of open and fair and humane immigration and believes strongly that we need to really repair, do some work with the Immigration Service side.

But there is also an enforcement side that is more appropriately involved at the border, and both the President and the House of Representatives have spoken about the need to, while dividing those two pieces of the Immigration and Naturalization Service, put them in one department, so you have one controlling legal authority determining the policy to letting them in and overseeing the enforcement in case they violate any of the rules of their admission.

Mr. PORTMAN. Governor, with regard to managerial flexibility, you touched on it in your testimony. I know that you are concerned about whistleblower rights. Can you touch on how whistleblower rights can be protected within the flexibility you have proposed?

Governor RIDGE. I think whether it is the budget flexibility, the transfer authority, we are at war. One war, two fronts. Now, we are not going to see people moving divisions, but we may determine that they are—the actors are moving toward a different threat, creating a different threat or a different kind of vulnerability. And I think it is critical that under the rigorous oversight—and you have that with the Congress of the United States, the budgetary process, authorization process, the appropriation process—that the new Secretary have some transfer authority. For example, what if the threat was a potential biological bioterrorist incident and that the—based on the intelligence, based on consultation with the Secretary of Health and Human Services and the medical people, the scientific people we bring in, we decided we don't have the antidote, we don't have the vaccines, we don't have the diagnostics. Absent that flexibility, if every single dime is accounted for, I think it is going to be very difficult for that Secretary to respond quickly on behalf of this country, to go to NIH or CDC and say, "This is a threat, you need to come up with the following."

Another example: We see a lot of things going on in the private sector that I think are really rather remarkable, sensor equipment, protection equipment, detection equipment. What if suddenly we see a scientific breakthrough that we decide as a matter of national security/homeland security interest, we want to deploy that technology not a year from now as we go through the budget process, we need to deploy it now because that is where the threat is. Again, I believe that if you—if Congress agrees that we are at war, that the enemy, if you agree they are agile, that they will move and change targets and that we ought to be able to give the Secretary some flexibility to target some of these resources based on the threat, based on the vulnerability, then 5 percent, not only during the transition phase, but in perpetuity is the way to go.

One war, two fronts. This is not a traditional war. Their strategy and tactics are different. Again, in response to your question, we have got this information to protect ourselves against the actions. If we see we are not adequately protected against potential actions, then I think we would want to give that Secretary the ability to go out and either purchase the equipment, push the envelope on R&D. And to wait a year through the budget cycle, I think, might—well, clearly, may not be in the best interest of the country.

And I would say this: My colleagues will make sure that when that department Secretary comes to the Hill, if he or she transfers 1, 2, 3, 4, or up to 5 percent, I don't think there is any doubt in anybody's mind that the Congress of the United States will make sure that that Secretary accounts for every single penny. I would trust the Secretary to move some of these resources.

Chairman ARMEY. Thank you. The Chair now recognizes the gentlewoman from Connecticut, Ms. DeLauro.

Ms. DELAURO. Thank you very much, Mr. Chairman. And welcome and thank you for your public service, Governor. It really is outstanding.

Let me ask, first, if I can, Mr. Chairman, there are a lot of details out there for us to work through in a short period of time. As everyone knows, our colleagues Henry Waxman and David Obey sent a letter to you, Governor, outlining their 10 main areas of concern with the proposal. Mr. Chairman, with your permission I would like to enter the letter into the record.

Chairman ARMEY. Without objection.

[The information follows:]

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC, July 9, 2002.

Hon. TOM RIDGE
Director, Office of Homeland Security, The White House, Washington, D.C.

DEAR GOVERNOR RIDGE: Congress is considering the President's proposal to create a new Department of Homeland Security on an accelerated schedule. But now that Congress has received the legislative language that would implement the President's plan, many issues have arisen about the details of the proposal. We are writing in the hope that you will be able to provide expeditious responses to these concerns.

The issues fall into ten main areas. First, the new Department will inherit a vast array of responsibilities that have nothing to do with homeland security. These include administering the National Flood Insurance Program, cleaning up oil spills at sea, and eradicating pests like the boll weevil. Giving the new Department dozens of responsibilities unrelated to homeland security risks bloating the size of the bureaucracy and diluting the new Department's counterterrorism mission.

Second, the legislation lacks an effective mechanism to coordinate the activities of the many Federal agencies that have major homeland security functions. The President's submission to Congress listed 153 different agencies, departments, and offices involved with homeland security.[1] After the creation of the proposed new Department, this number actually will increase to 160 agencies, departments, or offices with security roles. But the draft bill does not include a mechanism for developing and implementing a unified homeland security strategy across the entire government.

Third, there are inefficiencies and coordination problems that will arise when parts of agencies are removed from their existing departments and moved to the new Department. The goal of the legislation is to make government more efficient, but some of the proposed changes could have exactly the opposite effect. For example, GAO has testified that programs transferred from the Department of Health and Human Services include "essential public health functions that, while important for Homeland Security, are critical to basic public health core capacities."[2]

Fourth, despite prior assurances that the Administration supported reforms of the Immigration and Naturalization Service (INS) that were passed by the House, the President's proposal would import the INS into the new Department of Homeland Security wholly intact and without these needed internal reforms.

Fifth, the legislation includes broad exemptions from our nation's most basic "good government" laws. The legislative language would allow the new Secretary, in conjunction with the Office of Personnel Management, to waive all provisions of our civil service laws. These laws have evolved over many decades to ensure that our government has a professional civil service hired on the basis of merit rather than political favoritism. Yet the proposed legislation would allow the new Department to waive all of these protections, including those that prohibit patronage, protect whistle-blowers, provide for collective bargaining rights, and ensure health and retirement benefits.

A similar approach has been taken with procurement and the management of real property. Under the proposal, the Secretary does not have to comply with cornerstone procurement principles, such as open and competitive bidding. Moreover, basic government in sunshine laws, such as the Freedom of Information Act and the Federal Advisory Committee Act, have been limited in their application to the new Department.

Sixth, the President's proposal would give the new Department extraordinary powers to avoid meaningful congressional oversight. Not only would the new De-

[1] President George W. Bush, *The Department of Homeland Security* (June 2002) (hereinafter "White House Briefing Document") (on line at http://www.whitehouse.gov/deptofhomeland/).

[2] U.S. General Accounting Office, *Homeland Security: New Department Could Improve Coordination but May Complicate Public Health Priority Setting,* 6 (June 25, 2002) (GAO-02-883T).

partment be able to exempt itself from civil service, procurement, and property laws, it would also be able to rearrange functions, eliminate offices, and transfer large amounts of appropriated funds without having to seek prior congressional approval.

Seventh, the proposal does not address the potential for disruption in the nation's war against terrorism. According to David Walker, the Comptroller General of GAO:

> [R]eorganizations of government agencies frequently encounter start up problems and unanticipated consequences that result from the consolidations, are unlikely to fully overcome obstacles and challenges, and may require additional modifications in the future to effectively achieve our collective goals for defending the country against terrorism.[3]

Although Administration officials have compared this restructuring to the formation of the Department of Defense in the 1940s, that reorganization was not attempted until after the war was over, and even then it caused confusion and inefficiencies for decades.

Eighth, there is no comprehensive national strategy for combating terrorism to guide the new Department. Logically, a major bureaucratic reorganization like this should be proposed as part of a comprehensive national strategy for providing homeland security. But in this case, the reorganization is occurring in a vacuum. There is no national strategy that identifies the major threats the nation faces and explains how the new Department will meet them. Nor is there a comprehensive threat and risk assessment that identifies and prioritizes threats in a coherent manner.

Ninth, the costs of this proposal have not been identified. Although the Administration has stated that the creation of this new Department "would not 'grow' government,"[4] this is not credible. According to the nonpartisan Congressional Budget Office, even the less ambitious reorganization proposed by Senator Lieberman will cost taxpayers over $1 billion over the next five years.[5] Costs for the Administration's plan inevitably will be higher.

Finally, the Administration's proposal was developed in secret by a small group of White House advisers, without substantive input from the agencies that handle homeland security. It is being rushed through Congress on an accelerated schedule. This is not normally an approach that produces sound policy. The potential for making grave mistakes as a result of this truncated process should be a serious concern for all Americans.

We need to work together to address the concerns raised in this letter and to make improvements in the legislation. Your response to the issues and questions raised in the body of this letter will be an important step in this process. For this reason—and given the short time frame Congress has for consideration of the legislation—we urge you to respond by July 15, 2002.

I. TRANSFER OF FUNCTIONS NOT RELATED TO HOMELAND SECURITY

According to the White House briefing document issued on June 7, 2002, the Department of Homeland Security "must be an agile, fast-paced, and responsive organization."[6] Transferring functions that do not involve homeland security to the new Department, however, interferes with this goal. Giving the new Department unnecessary responsibilities inevitably will expand the size of its bureaucracy and dilute its counterterrorism mission.

At the same time, giving vital but unrelated government responsibilities to the Department creates the risk that these responsibilities will be neglected and performed poorly. As GAO has concluded, many of the unrelated functions being given to the new Department "represent extremely important functions executed by the Federal government that, absent sufficient attention, could have serious implications for their effective delivery and consequences for sectors of our economy, health and safety, research programs and other significant government functions."[7]

Despite these risks, many important government functions that are not related to homeland security are being transferred to the new Department. In fact, the new Department will have to carry out over three dozen completely unrelated missions under the President's proposal.

Section 402(3) of the President's proposal would transfer the Animal Plant Health Inspection Service (APHIS), which is now currently part of the Department of Agri-

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[3] U.S. General Accounting Office, *Homeland Security: Proposal for Cabinet Agency Has Merit, But Implementation Will Be Pivotal to Success,* 5 (June 25, 2002) (GAO-02-886T).

[4] White House Briefing Document, *supra* note 1, at 17.

[5] Congressional Budget Office, *Cost Estimate: S.2452, National Homeland Security and Combating Terrorism Act of 2002*, 1 (June 17, 2002).

[6] White House Briefing Document, *supra* note 1, at 16.

[7] GAO-02-886T, *supra* note 3, at 19.

culture, into the new Department. APHIS has nearly 8,000 full-time employees (FTEs), but few have responsibility for inspecting plants and animal products at the border. The other APHIS employees perform functions that are critical to various sectors of the economy, but are not related to homeland security. For example, APHIS is responsible for:

• Eradicating pests, such as the boll weevil, the citrus canker, the gypsy moth, and various noxious weeds through detection and control strategies throughout the United States;

• Approving animal drugs that are made from biological materials, such as animal vaccines;

• Approving field trials of genetically modified crops; and

• Maintaining the missing pet network at www.missingpet.net.

Section 502(1) of the President's proposal would transfer the Federal Emergency Management Agency (FEMA) into the new Department. To date, however, FEMA has had a limited role in counterterrorism. According to former FEMA director James Lee Witt, "[o]ver the last decade FEMA has responded to more than 500 emergency and major disaster events. Two of those were related to terrorism (Oklahoma City and New York City)."[8] In Mr. Witt's view, "[f]olding FEMA into a homeland or national security agency will seriously compromise the nation's previously effective response to natural hazards."[9] Major FEMA responsibilities that are unrelated to homeland security include:

• Providing flood insurance and mitigation services (including pre-disaster mitigation, the Hazard Mitigation Grant Program, and flood mapping);

• Conducting various programs to mitigate the effects of natural disasters, such as programs to assist States in preparing for hurricanes and the National Earthquake Hazards Reduction Program;

• Providing temporary housing and food for homeless people; and

• Operating the National Fire Data Center and the National Fire Incident Reporting System to reduce the loss of life from fire-related incidents.

Section 402(4) of the President's proposal would transfer the United States Coast Guard out of the Department of Transportation and into the new Department. The Coast Guard describes itself as a "multi-mission, military, maritime" agency. Although it performs some security-related functions, it also conducts many others unrelated to homeland security. For example, Coast Guard responsibilities include:

• Providing navigational tools to ensure that vessels can navigate the nation's waterways;

• Promulgating and enforcing boating regulations to ensure that oceangoing vessels are safe;

• Protecting the nation's fishery resources, as well as its endangered species, by enforcing prohibitions against illegal and excess fishing;

• Protecting the maritime environment by preventing oil spills in the nation's waters and ensuring that spills are cleaned up expeditiously if they happen; and

• Maintaining a fleet of ships that is capable of breaking ice in order to maintain maritime mobility and monitors the movement of glaciers.

These Coast Guard functions are essential, but they could be jeopardized by the transfer to a new Department focused on homeland security. Indeed, the effects of the shift in the Administration's priorities are already being felt. According to the Administration's homeland security budget justification for fiscal year 2003, "[a]fter September 11, the Coast Guard's port security mission grew from approximately 1-2 percent of daily operations to between 50-60 percent today."[10] Without a sustained commitment to its core marine and fishery functions, the Coast Guard's ability to protect boaters and the marine environment will be jeopardized.

There are many other examples of unrelated functions being transferred to the new Department. The transfer of the Environmental Measurements Laboratory from the Department of Energy (DOE), for example, will make the new Department responsible for maintaining the Human Subjects Research Database, which contains descriptions of all projects involving human subjects that are funded by the DOE, as well as the program that assesses the quality of 149 private laboratories that measure radiation levels. Radiation measurement quality control undoubtedly will seem like a small item to the new Department of Homeland Security, but assuring that the laboratories make accurate measurements is important, as mistakes poten-

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[8] James Lee Witt and Associates, *Department of Homeland Security and FEMA* (white paper) (June 19, 2002).

[9] *Id.*

[10] President George W. Bush, *Securing the Homeland; Strengthening the Nation*, 18 (undated) (hereinafter "FY03 Budget Justification") (on line at http://www.whitehouse.gov/ homeland/ homeland—security—book.html).

tially could affect public health and cause large unnecessary public expenditures at DOE facilities.

Appendix A contains a list of 40 unrelated functions that would be transferred to the new Department by the President's proposal. While it may be impossible to create a new Department without transferring some unrelated functions, there would seem to be serious dangers inherent in the wholesale transfer of unrelated functions as contemplated in the Administration's proposal.

II.LACK OF EFFECTIVE COORDINATING MECHANISMS

At the same time that the Administration's proposal transfers numerous unrelated functions to the new Department, the proposal also fails to include provisions that would ensure the coordination of the more than 100 Federal entities that will continue to have significant homeland security functions.

According to the Administration, "*responsibilities for homeland security are dispersed among more than 100 different government organizations*."[11] Indeed, an organizational chart provided by the White House listed 153 different agencies, departments, and offices with a role in homeland security (see Figure 1). The White House argues that the President's proposal would solve this problem by "transforming and realigning the current confusing patchwork of government activities into a single department."[12]

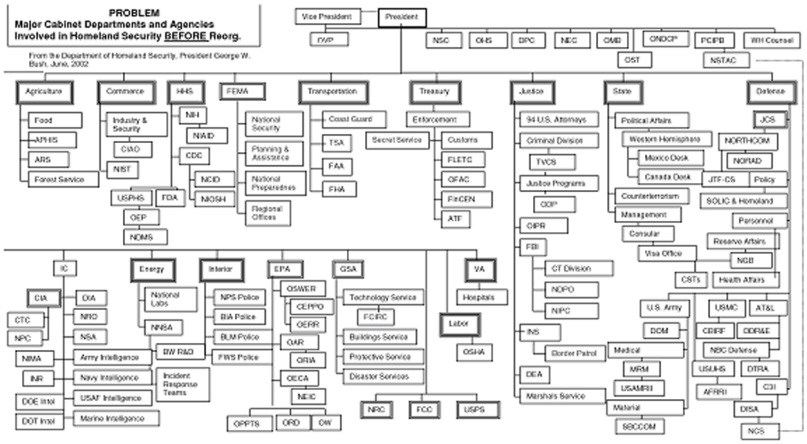

Figure 1

In fact, however, the President's proposal will not simplify this patchwork and may even make it worse. Even after all of the changes proposed in the President's legislative language, the Federal government would continue to have well over 100 agencies, departments, and offices involved in homeland security. According to an analysis by the minority staff of the Appropriations Committee, the total number of departments, agencies, and offices with a role in homeland security actually will grow under the President's proposal, from 153 to 160 (see Figure 2).[13]

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[11] White House Briefing Document, *supra* note 1, at 1 (emphasis in original).

[12] *Id.*

[13] A post-transfer organizational chart provided by the White House Office of Management and Budget shows the number of Federal agencies, departments, and offices dropping to 134. The White House chart, however, lists the new Department of Homeland Security as having only six offices involved in homeland security. The White House chart omits major components of the new Department that will have homeland security functions, including the Coast Guard, the Office of Threat Analysis, and the office responsible for State, local, and private sector coordination.

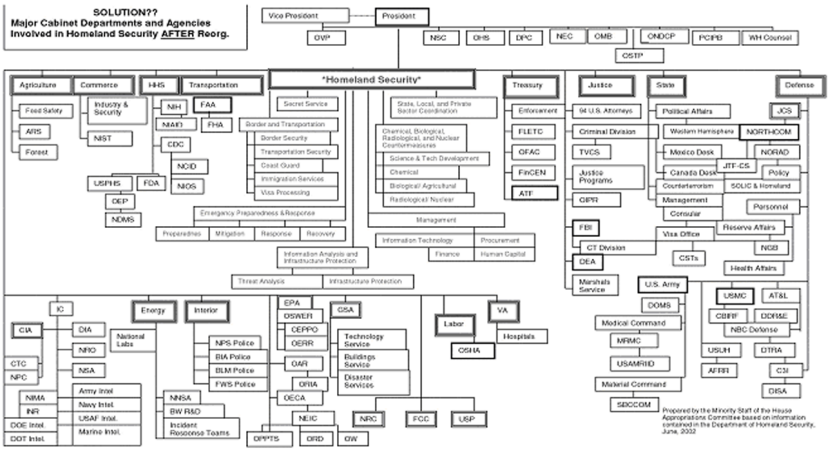

Figure 2

One example of the continued need for coordination across agencies involves providing emergency response. According to the Administration:

Currently, if a chemical or biological attack were to occur, Americans could receive warnings and health care information from a long list of government organizations, including HHS, FEMA, EPA, GSA, DOJ, OSHA, OPM, USPS, DOD, USAMRIID, and the Surgeon General—not to mention a cacophony of local agencies.[14]

But under the President's proposal, all but one of these 11 Federal agencies (FEMA) would continue to exist, and this one agency would be replaced by the new Department. The potential for confusion—and the need for effective coordination—remains as great after the creation of the new Department as before.

In fact, in some cases, the reorganization will actually create confusion. Currently, three separate Federal agencies are in charge of protecting the food supply: the Food and Drug Administration (FDA), which prevents adulteration of fruits, vegetables, processed foods, and seafood; the Environmental Protection Agency (EPA), which regulates environmental contaminants, such as pesticides; and the Department of Agriculture, which regulates the safety of meat and poultry for human consumption, as well as the spread of plant and animal pests through food products. Leading experts, such as the National Academy of Sciences, have called for consolidating these diffuse authorities into a single agency.[15]

The Administration's proposal, however, would further fragment regulation of the food supply by transferring some of Agriculture's responsibilities to the new Department, creating a fourth food safety agency. APHIS, which is charged with inspecting imports to ensure that pests and bugs that could harm crops or livestock do not enter the United States, would become part of the new Department. But the Food Safety Inspection Service of the Department of Agriculture, which inspects domestic and imported meat and poultry for threats to human health, would remain at Agriculture. The nonsensical result, as GAO has observed, is that "the focus appears to be on enhancing protection of livestock and crops from terrorist acts, rather than on protecting the food supply as a whole."[16]

One area in which coordination is urgently needed is among law enforcement and intelligence agencies, in particular the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA). How the new Department would relate to these agencies is not clear, however. One of the primary missions of the new De-

[14] White House Briefing Document, *supra* note 1, at 5.

[15] National Research Council, *Ensuring Safe Food from Production to Consumption*, National Academy Press (1998) (recommending a major overhaul of food safety laws and appointment of a single Federal official to oversee food safety). *See also* U.S. General Accounting Office, *Food Safety and Security: Fundamental Changes Needed to Ensure Safe Food* (Oct. 10, 2001) (GAO-02-47T) (recommending a single food safety agency).

[16] GAO-02-886T, *supra* note 3, at 18.

partment is to "[p]revent terrorist attacks within the United States."[17] The Administration says that a new department with this mission is needed because "[t]oday no one single government agency has homeland security as its primary mission."[18] But the FBI has also just undergone a major reorganization. Now, its primary mission is also "[p]rotecting the United States from terrorist attack"[19]—identical to that of the new Department of Homeland Security. As a result, rather than having no single Federal agency with homeland security as its mission, the Administration seems to be proposing two.

Under the Administration's proposal for a new Department of Homeland Security, there will be a new office for intelligence and threat analysis. This office will assist in "pulling together information and intelligence from a variety of sources."[20] Similarly, under FBI Director Mueller's reorganization proposal, there will be a new office in the FBI called the Office of Intelligence that will also assist in "pulling together bits and pieces of information that often come from separate sources."[21] The Department of Homeland Security's intelligence office would "have the ability to view the dangers facing the homeland comprehensively, ensure that the President is briefed on relevant information, and take necessary protective action."[22] Similarly, the FBI's intelligence office will be charged with "providing analytic products to policy makers and investigators that will allow us to prevent terrorist acts."[23] This does not appear to be a recipe for a unified approach.

The investigation of the September 11 attacks has already revealed serious lapses in the analysis and sharing of intelligence information. In July 2001, an FBI special agent in Phoenix reported to his supervisors that followers of Osama bin Laden might be training at U.S. aviation schools and suggested a nationwide canvass of the schools.[24] But this warning was apparently ignored. As early as January 2001, the CIA obtained information that two of the September 11 assailants—Nawaz al-Hazmi and Khalid al-Midhar—met with al-Qaeda agents in Malaysia. But this information was not provided to the INS until August 2001, by which time al-Hamzi and al-Midhar had already entered the United States.[25]

The Administration's proposed bill, however, does not adequately address these problems. Although the bill gives the Secretary of Homeland Security rights of access to reports, assessments, and analytical information from other agencies that relate to threats and vulnerabilities, the Department remains primarily a "consumer" of intelligence information collected by agencies outside its control after that information is already processed by those agencies. This passive role will not ensure that the new Department obtains access to information that the collecting agencies deem insignificant, such as the warning from the FBI agent about flight schools. Although the Administration's bill allows for the transmittal of "raw" intelligence from outside agencies to the Department of Homeland Security, the Department is not given the resources to cope with the volume and complexity of this information.[26] Moreover, the new Department has no "tasking" authority to direct what intelligence is collected, making it difficult for the new Department to ensure that possible threats it identifies are properly pursued.

Another concern is the potential for confusion and interference in the actual response to bioterrorist incidents. The FBI will bring a law enforcement focus to the scene of a bioterrorist event, while the new Department will be concerned with the emergency response. Under the President's proposal, it is unclear which will prevail.

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[17] White House Briefing Document, *supra* note 1, at 8.

[18] *Id.* at 1.

[19] Statement of Robert S. Mueller, III, before the Senate Committee on the Judiciary (June 6, 2002) (on line at http://judiciary.senate.gov/testimony.cfm?id=279&wit—id=608).

[20] White House Briefing Document, *supra* note 1, at 14.

[21] Mueller Statement, *supra* note 19.

[22] White House Briefing Document, *supra* note 1, at 14.

[23] Mueller Statement, *supra* note 19.

[24] *FBI Whistle-Blower Assails Bloated Bureaucracy*, Washington Post (June 7, 2002).

[25] *Terrorism "Watch List" Was No Match for Hijackers*, Washington Post (Sept. 23, 2001); Can We Stop the Next Attack?, Time.com (March 3, 2002). The CIA has claimed that it provided information on al-Midhar as early as January 2001, but the FBI has asserted that the information provided contained little detail. *Sources: CIA Warned FBI About Hijacker*, CNN.com (June 4, 2001); *FBI and CIA Fight It Out Over Who Was to Blame for September 11 Blunders*, The Guardian (June 5, 2002).

[26] Of the 1,000 people slated to staff the new Information Analysis and Infrastructure Protection Division, 800 reportedly will come from the FBI's National Infrastructure Protection Center (NIPC). These individuals, however, are already fully occupied with their current responsibilities, which involve protecting critical infrastructure, particularly with respect to computer and information technology. If given the new role of processing all raw intelligence information from the FBI, CIA, and other intelligence agencies, the existing NIPC staff would be both overwhelmed and diverted from its current tasks.

Under Presidential Decision Directive 62, which was signed during the previous Administration, the FBI was designated as the lead agency for "crisis management," which included efforts to anticipate, prevent, and resolve terrorist attacks. FEMA was designated the lead agency for "consequence management," which included broader measures to protect public health and safety. The President's proposal seeks to "clarify" these responsibilities by "eliminating the artificial distinction between 'crisis management' and 'consequence management.'"[27] But it does not describe how the new Department and the FBI will handle the scene of a bioterrorist attack if they both arrive at the same time with fundamentally conflicting interests and goals.

There are many other instances of coordination problems that the President's proposal does not address. It is unclear in the President's proposal, for instance, how the Department of Homeland Security would organize and coordinate the various different police forces that exist among Federal agencies. The Administration's proposal would transfer some of those forces (the Federal Protective Service, which protects buildings belonging to the General Services Administration (GSA)), but not others (the security forces protecting Department of Energy, Veterans, and judicial buildings). Moreover, removing the Federal Protective Service from GSA creates its own problems because, as GAO has observed, "security needs to be integrated into the decisions about location, design and operation of Federal facilities."[28]

What is urgently needed is an effective entity at the White House level that can unify the disparate Federal agencies with homeland security functions behind a comprehensive national strategy. This is supposed to be the mission of the White House Office of Homeland Security, which President Bush created in October 2001, and which you head. But the proposal does nothing to give the head of the office the kinds of authority needed to succeed.

III. PROBLEMS WITH EXTRACTING CERTAIN AGENCIES

The sections above have raised concerns with transferring functions unrelated to homeland security and the lack of coordinating mechanisms regardless of whether agencies are inside or outside the structure of the new Department. Also of concern are the potential effects of removing certain functions from their home agencies.

This is a particular problem for the functions being transferred from the Department of Health and Human Services (HHS). Section 502(5) of the President's proposal would move the Office of the Assistant Secretary for Public Health Emergency Preparedness and "the functions of the Secretary of Health and Human Services related thereto" to the new Department of Homeland Security. This provision makes little sense. In the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Congress created the Office of the Assistant Secretary for Public Health Emergency Preparedness in recognition of the need to have a central office in HHS to coordinate how the various agencies within the Department respond to public health emergencies.[29] Moving this office to another department will not eliminate the need for a coordinating office within HHS. It will simply recreate the same problems within HHS that Congress was attempting to fix.

Richard Falkenrath, director of policy at the White House Office of Homeland Security, was asked about this problem during a briefing for staff on July 1, 2002. He answered that the challenge of coordinating emergency preparedness and response activities within HHS could be handled by "a couple of people" in the Secretary's office. Obviously, this cavalier attitude is seriously misinformed.

Section 505 is also problematic. It transfers control over HHS programs to provide assistance for State and local preparedness from HHS to the new Department. These funds, which total over $1 billion, allow States and localities to enhance their surveillance, communication, and laboratory abilities, all of which are essential for responding to numerous public health threats, including threats that are not related to terrorism. As GAO has stated, these programs "include essential public health

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[27] White House Briefing Document, *supra* note 1, at 12.

[28] GAO-02-886T, *supra* note 3, at 18.

[29] According to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. Law 107-588), the Assistant Secretary coordinates all agency interfaces on emergency preparedness between HHS and "other departments, agencies and offices of the United States." This person also "[i]nterfaces between the Department and State and local entities with responsibility for emergency preparedness." As part of this person's duties, he or she also "coordinate[s] the efforts of the Department to bolster State and local emergency preparedness for a bioterrorist attack or other public health emergency."

functions that, while important for homeland security, are critical to basic public health core capacities."[30] As a result, GAO made the following conclusions:

> We are concerned that this approach may disrupt the synergy that exists in these dual-purpose programs. We are also concerned that the separation of control over the programs from their operations could lead to difficulty in balancing priorities. Although the HHS programs are important for homeland security, they are just as important to the day-to-day needs of public health agencies and hospitals, such as reporting on disease outbreaks and providing alerts to the medical community. The current proposal does not clearly provide a structure that ensures that both the goals of homeland security and public health will be met.[31]

Section 403 also creates uncertainties by transferring to the new Department vague authorities over visa processing. Currently, approving and denying visas is an important activity of the State Department, which processes about 400,000 immigrant visas and over six million non-immigrant visas annually. To perform this function, the State Department employs thousands of foreign service officers skilled in hundreds of languages. Section 403(1) transfers to the Secretary of Homeland Security "exclusive authority" over this function, but this authority would be exercised "through" the Secretary of State. As a result, it is unclear whether the State Department must concur in policy decisions, or whether this is merely an administrative function. Additional statements by the Administration have not clarified this provision. The Administration has stated that consular officers will remain employed by the State Department, but that the new Secretary of Homeland Security will delegate back to the Secretary of State some visa functions unrelated to security.

Similar problems affect the provisions transferring portions of the Department of Energy. The provisions in the bill are ambiguous and potentially very broad. For example, section 302(2)(G) of the President's proposal would transfer "the advanced scientific computing research program and activities" at Lawrence Livermore Laboratory to the new Department. Although the exact scope of this provision is unclear, it appears to encompass parts of the Lawrence Livermore Laboratory's Computation Directorate, which supports other programs at the laboratory by providing computing capacity and capability, as well as research, advanced development, and operations and support related to computing, computer science, and information technologies. Such a transfer could harm the laboratory's ability to support its key mission—safeguarding the stockpile of nuclear weapons—as well as other core laboratory activities.

Section 302(2)(E) gives the President authority to transfer from DOE to the new Department any life science activity within the biological and environmental research program that is related to microbial pathogens. The result would be that ongoing DNA sequencing of harmful microbes could be transferred to the new Department, while virtually identical work on microbes with beneficial uses (such as microbes that break down pollution) would stay at DOE. Splitting this highly specialized work risks weakening the effectiveness of both.

IV.LACK OF RECOGNITION OF DISPARATE IMMIGRATION FUNCTIONS

In April, the House passed legislation (H.R. 3231) recognizing the two distinct functions of the INS: an immigration services function and an enforcement function. As part of this reform effort, the bill would split the INS into a Bureau of Citizenship and Immigration Services and a Bureau of Immigration Enforcement, both under the supervision of an Associate Attorney General for Immigration Affairs within the Department of Justice. The legislation aimed to correct longstanding and widely-recognized systemic problems within the INS by separating out its distinct and often conflicting service and enforcement functions.

When the House immigration bill was being considered, the Administration expressed its support. In addition, when the White House issued its briefing document regarding the new Department of Homeland Security, that support was reiterated. The briefing document stated the following:

> The new Department of Homeland Security would include the INS and would, consistent with the President's long-standing position, separate immigration services from immigration law enforcement.[32]

Despite these assurances, however, the legislative language proposed by the President would import the INS into the new Department of Homeland Security intact and unreformed. There are no details whatsoever regarding the structure of the INS

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[30] GAO-02-883T, *supra* note 2, at 6.
[31] *Id.* at 8.
[32] White House Briefing Document, *supra* note 1, at 10.

after it is transferred to the new Department. As a result, the Administration's proposal fails to address internal structural and coordination problems that hamper the effectiveness of the INS.

V.EXEMPTIONS FROM "GOOD GOVERNMENT" LAWS

The Administration's proposal would create broad exemptions to the nation's "good government" laws. It would make the civil service, procurement, and property acquisition and disposal laws essentially optional for the new Department. In addition, the President's proposal would weaken valuable sunshine laws, such as the Freedom of Information Act and the Federal Advisory Committee Act. The bill would also create a weak management and oversight structure by not fully applying the Chief Financial Officers Act, the law governing Chief Information Officers, and the Inspector General Act.

A. Exemption from Civil Service Protections

The nation's civil service laws have evolved over many decades to ensure that the government has a professional civil service hired on the basis of merit rather than political favoritism. Section 730 of the President's proposal, however, would give the Secretary the authority to create an alternative personnel system. The only limitation in the statute is that the system should be "flexible, contemporary, and grounded in the public employment principles of merit and fitness."

Under the President's proposal, employees of the new Department could be exempted from essential provisions of title 5 of the United States Code. No rationale has been offered to explain why affording these basic protections for Federal workers and their families would undermine the mission of the new Department. The civil service provisions that become optional include the following:

- The prohibition on discrimination against employees on the basis of political affiliation and on coercing political activity (anti-patronage protection);
- The prohibition on hiring or promoting a relative (anti-nepotism protection);
- The prohibition on reprisal against employees for the lawful disclosure of information about illegal and wasteful government activity (whistleblower protection);
- The preferences for veterans in hiring and in reductions-in-force;
- The protection from arbitrary dismissal or demotion through due process appeal rights to the Merit Systems Protection Board;
- The right to organize, join unions, and bargain collectively with management over working conditions;
- Sick and annual leave for Federal employees and family and medical leave;
- Retirement benefits, such as the Civil Service Retirement System and the Federal Employees' Retirement System; and
- Health insurance through the Federal Employees' Health Benefits Program.

Moreover, important programs for ensuring diversity in the Federal workforce, such as the requirement to recruit minorities, would also become optional under the proposed legislation.

Another potential threat to the civil service laws is section 732(b), which allows the Secretary to hire an unlimited number of employees through "personal service" contracts rather than through the civil service system. Although the rationale for this provision seems to be to allow the new Department to obtain certain specialized services in an emergency, there do not appear to be any limits on its use. For example, current law requires these types of contracts to be temporary (no longer than one year) and subject to salary caps (no higher than the GS-15 level). The President's proposal would allow these contracts to go on indefinitely and at any rate. In effect, the section provides an alternative vehicle for bypassing the protections and requirements of the civil service system.

B. Exemption from Procurement Rules

Under section 732(c) of the President's proposal, the new Secretary could waive any and all procurement statutes and regulations, and the Secretary would not be required to comply with the cornerstone procurement principles of open and competitive bidding. In a section-by-section analysis provided by the White House, the Administration asserts that "normal procurement operations would be subject to current government-wide procurement statutes and regulations."[33] To the contrary, however, the legislative language would add the new Department to the list of enti-

[33] The White House, Analysis for the Homeland Security Act of 2002, 11 (undated).

ties listed in 40 U.S.C. § 474, such as the Postal Service, which would exempt entirely the Department from the Federal government's normal acquisition laws.

As a result, there is no guarantee that the new Department would be getting the lowest prices, the best quality, or the best deals. Fundamental principles of Federal procurement such as the following would not apply:

- The requirement that acquisitions be publicly advertised;
- The requirement that sufficient notice be given to allow companies to respond;
- The requirement that all responsible bidders be given the chance to compete for a given acquisition; and
- The requirement that all contractors be rated on the same criteria when competing for a given contract.

These bedrock principles have helped to maintain competition in Federal contracting, which history has proven to be the best way to ensure the best quality at the lowest prices while maintaining a system free of favoritism or abuse. In addition, long-standing preferences for small- and minority-owned businesses designed to encourage their development and access to Federal contracts would no longer be guaranteed.

Section 732(a) of the President's proposal would explicitly grant the new Department so-called "other transactions authority" for research and development contracts. This authority was given to the Defense Department to eliminate the open and competitive bidding process in order to attract nontraditional contractors. In fact, however, it has been used mainly by traditional contractors to negotiate contracts that waive the Federal government's rights to review financial management and cost information, as well as its rights to use new inventions discovered through research funded by the Federal taxpayer.[34] In reviewing the use of this authority by the Defense Department, the Inspector General found that these that types of contracts "do not provide the government a number of significant protections, ensure the prudent expenditure of taxpayer dollars, or prevent fraud."[35]

C. Exemption from Property Rules

The new Department will acquire a considerable inventory of Federal property, particularly through the Coast Guard, which owns valuable real estate across the country. Sections 732(d) and (f) of the President's proposal, however, would give the new Department broad authority to acquire and dispose of both real and personal property. Specifically, the Department could acquire replacement real property through exchange or transfer with other agencies or through the sale or long-term lease to the private sector. In addition, the Department would be authorized to retain the proceeds of such transactions.

Currently, under the 1949 Property Act, Federal agencies must determine whether they own "excess" property they no longer need. GSA then screens this excess property for other Federal uses. If there are no Federal uses for the property, GSA declares the property "surplus" and screens it for "homeless" or "public benefit" uses, such as for schools, correctional institutions, airports, and other entities. If no beneficial public use is found for the property, GSA may sell the property through negotiated sales at fair market value without restrictions on use. The property may also be sold to the public through a bidding process if a negotiated sale does not occur. Under the Administration's proposal, however, none of these procedures will apply.

The Government Reform Committee reported a comprehensive reform of Federal property laws earlier this year (H.R. 3947). This reform gave agencies more flexibility to manage their property, but it also included safeguards to ensure that agencies respond to community input, consider local zoning laws, and receive fair market value. None of these safeguards are incorporated into the Administration's proposal.

D. Exemption from Freedom of Information Act

Section 204 of the President's proposal would exempt the new Department from complying fully with the Freedom of Information Act (FOIA). If nonfederal entities or individuals provide information voluntarily to the new Department that relates to infrastructure vulnerabilities or other vulnerabilities to terrorism, that informa-

[34] In general, for intellectual property developed with Federal funding, the government normally retains a nonexclusive, nontransferable, irrevocable, and paid-up (royalty-free) license to use the intellectual property.

[35] Inspector General, Department of Defense, Comments on the Service Acquisition Reform Act (H.R. 3832), 11 (Mar. 12, 2002) (concluding that "other transactions have not attracted a significant number of nontraditional Defense contractors" and that "traditional protections for the public trust do not exist, for the most part, for other transactions").

tion would not be subject to FOIA. This exemption would apply to information that "is or has been in the possession of the Department."

FOIA was designed to preserve openness and accountability in government. In order to protect sensitive information, FOIA already contains sufficient exemptions from disclosure. These exemptions cover critical infrastructure information. FOIA does not require the disclosure of national security information (exemption 1), sensitive law enforcement information (exemption 7), or confidential business information (exemption 4). Therefore, new exemptions to its provisions do not appear necessary.

The danger in creating new exemptions to FOIA is that important information about health and safety issues could be withheld from the public. In fact, the provision is drafted so broadly that it could be used to "launder" embarrassing information through the new Department and thereby prevent public disclosure.

One particular target of the new FOIA exemption appears to be the "Risk Management Plans" that chemical plants are required to file under the Clean Air Act. These plans inform communities about the dangers they would face in the event of an explosion or chemical accident in a nearby plant. Chemical industry officials argued that Congress should restrict public access to this information because the information could be used by terrorists to target facilities.

Congress addressed this issue by carefully balancing the goal of informing emergency responders and the public about potential risks of chemical accidents with the goal of keeping sensitive information away from terrorists. In the Chemical Safety Information Site Security Act of 1999, Congress concluded that information about potential "worst case" scenarios should remain available to the public, but with certain restrictions to prevent a searchable database from being readily posted on the internet. Congress ensured public access to basic information about the risk management plans, preserving the right of Americans to know about chemical accidents that could impact their families and communities. Under the President's proposal, however, chemical companies could now prevent the disclosure of all Risk Management Plans under FOIA simply by sending them to the new Department.

E. Exemption from Federal Advisory Committee Act

Section 731 of the President's proposal would exempt advisory committees established by the Secretary of the new Department from the Federal Advisory Committee Act (FACA). FACA requires that any committee formed to provide advice to the Federal government, and which consists of members who are not Federal employees, must follow certain rules in order to promote good-government values such as openness, accountability, and a balance of viewpoints. Generally, FACA requires that such committees announce their meetings, hold their meetings in public, take minutes of the meetings, and provide the opportunity for divergent viewpoints to be represented.

To protect sensitive information, FACA includes exemptions for information that relates to national security issues or information that is classified. As a result, many agencies with homeland security missions, such as the Department of Justice, the Federal Bureau of Investigation, and the Department of Defense, currently operate under FACA without difficulty. The President's proposal contains no explanation why the new Department could not also comply with FACA. In fact, the only two agencies that are exempt from FACA are the Central Intelligence Agency and the Federal Reserve.

At least 27 advisory committees that currently exist would be transferred to the new Department under the President's proposal. These existing advisory committees, which are currently subject to FACA, include the Navigational Safety Advisory Committee at the Coast Guard, the Advisory Committee of the National Urban Search and Rescue System at FEMA, the Advisory Committee on International Child Labor Enforcement at the Customs Service, and the Advisory Committee on Foreign Animal and Poultry Diseases at APHIS. When rechartered under the Homeland Security Department, none of these advisory committees will be subject to the FACA requirement on balance and openness.

In addition, the President's proposal waives important conflict of interest laws that apply to individuals serving on advisory committees. Under section 731, if an individual serves on an advisory committee, the individual will be exempt from the provisions of sections 203, 205, or 207 of Title 18, United States Code. These sections contain important protections. Section 207, for example, provides that a person who serves on a committee that is advising an agency on a specific matter cannot lobby the agency about the same matter after leaving the advisory committee. No rationale is provided for exempting members of advisory committees from these protections against conflicts of interest.

F. Exemption from Chief Financial Officer Act

Section 103(d)(4) of the President's proposal would authorize the President to appoint the Department's Chief Financial Officer (CFO) without Senate confirmation. Current law requires that a CFO of a cabinet department either be: (1) appointed by the President with Senate confirmation; or (2) designated by the President from among agency officials who are Senate-confirmed.[36] In either case, current law requires that CFOs be Senate-confirmed.

In addition, the President's proposal contains no language making the CFO Act applicable to the new Department. The CFO Act contains core financial management, accountability, and reporting requirements that are at least as important for the new Department as they are for other covered agencies, which include all existing cabinet departments. Moreover, section 602 of the President's proposal provides that the CFO shall report to the Secretary or to another official of the Department as the Secretary may direct. This section is inconsistent with the CFO Act, which requires that the CFO report directly to the agency head regarding financial management matters.[37]

These exemptions from financial management requirements make little sense. According to GAO, "[i]t is important to re-emphasize that the department should be brought under the Chief Financial Officers (CFO) Act and related financial management statutes."[38]

G. Exemption from Chief Information Officer Legislation

The proposal does not appear to give the Chief Information Officer (CIO) of the new Department the same status and responsibilities as CIOs at other agencies. Section 603 of the President's proposal provides that the CIO shall report to the Secretary or to another official of the Department as the Secretary may direct. The Clinger-Cohen Act, however, requires that the CIO report directly to the agency head.[39]

In addition, the Clinger-Cohen Act specifies numerous responsibilities for CIOs. These include developing an accounting, financial, and asset management system that is reliable, consistent, and timely; developing and maintaining information systems; and assessing and reporting on progress made in developing information technology systems. The President's legislative language, however, does not specify any responsibilities for the CIO. In fact, the bill would assign responsibility for information technology systems to an Under Secretary for Management at the new Department, a responsibility assigned to the CIO under the Clinger-Cohen Act.

H. Limits on Access to Information by Inspector General

Section 710 of the President's proposal would subject the Inspector General (IG) of the new Department to the Secretary's control and would authorize the Secretary to prevent the IG from doing work in areas involving certain information. These areas are quite broad and extend to information concerning any "matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to national security." Under the President's proposal, the Secretary could prohibit the IG from doing work "if the Secretary determines that such prohibition is necessary * * * to preserve the national security or to prevent a significant impairment to the interests of the United States."

IGs at certain other agencies (such as the Defense Department and the Justice Department) have similar limitations on access. But in those cases, the IGs are directed to report to Congress if the relevant Secretary impedes their access to necessary information. In the case of the IG for the new Department, this important check on Secretarial interference has been eliminated. Instead, the proposal would give the responsibility of reporting interference with an IG investigation to the Secretary, who would have an obvious conflict of interest in full reporting.

VI. EXEMPTION FROM CONGRESSIONAL OVERSIGHT

In addition to creating exemptions to many of the nation's good government laws, the President's proposal would substantially undercut Congress' ability to conduct oversight of the new Department. Through several broad and sweeping provisions in the President's proposal, the Secretary of the new Department would have new

[36] 31 U.S.C. § 901(a)(1).
[37] 31 U.S.C. §902(a)(1).
[38] GAO-02-886T, *supra* note 3, at 33.
[39] 44 U.S.C. § 3506(a)(2)(A).

powers to rewrite enacted legislation and override budgetary decisions made by Congress.

The President's proposal would give the Secretary of the new Department the equivalent of a lump-sum appropriation of more than $30 billion. In transferring the various existing agencies to the new Department, several provisions of the President's proposal allow the Secretary to transfer agency balances to the new Department. Section 803(e) of the President's proposal allows the new Secretary to allocate those funds as the Secretary sees fit, and it expressly overrides the provision of permanent law that requires funds transferred to be used only for the purposes for which they were originally appropriated. Taken together, these provisions allow the new Secretary to rewrite appropriations relating to both homeland security and all other functions conducted by the new Department.

Section 733(b) creates for the new Secretary a permanent blanket grant of authority to transfer between appropriations accounts up to 5 percent of the appropriations made each year for agencies within the new Department, so long as the Appropriations Committees are given 15 days notice. This provision could allow the Secretary to transfer $2 billion or more per year rather than addressing potential funding misallocations through the annual congressional appropriations process.

In addition, section 733(a) allows the Secretary to "establish, consolidate, alter, or discontinue" any organizational unit in the new Department, including those established by statute, upon 90 days notice to Congress. Although the Coast Guard and the Secret Service are exempt from this provision, all other agencies transferred to the new Department could be abolished entirely with no input from Congress.

VII. POTENTIAL FOR SERIOUS DISRUPTION IN THE WAR ON TERROR

The Administration asserts that the "current components of our homeland security structure will continue to function as normal and there will be no gaps in protection as planning for the new Department moves forward."[40] Unfortunately, this is a difficult goal to achieve, and the proposal submitted to Congress contains no implementation plan that shows how disruptions will be avoided.

In fact, the history of corporate and government reorganizations is not encouraging. As a management professor from Columbia University recently remarked, "[t]o think that a structural solution can bring about a major improvement in performance is a major mistake."[41] In the corporate world, more mergers fail than succeed.[42] According to one expert, "[p]rivate-sector data show that productivity usually drops by 50 percent in the first four to eight months following the initial announcement of a merger, largely because employees are preoccupied with their now uncertain future."[43]

The model most often cited by the Administration is the creation of the Department of Defense in 1947. But that reorganization was not undertaken until after World War II was over. Moreover, the newly created Defense Department was riven with strife for decades after its creation. As recently as 1983, when President Reagan ordered the invasion of Grenada, the Army and the Marines had to split the island in half because they could not figure out how to cooperate.[44] The original 1947 reorganization required four different amendments, the last being the Goldwater-Nichols Act of 1986, before the problems created by the 1947 reorganization were finally addressed.

GAO has closely tracked the history of government reorganizations. According to David Walker, the Comptroller General of GAO:

> Often it has taken years for the consolidated functions in new departments to effectively build on their combined strengths, and it is not uncommon for these structures to remain as management challenges for decades * * * . [R]eorganizations of government agencies frequently encounter start up problems and unanticipated consequences that result from the consolidations, are unlikely to fully overcome obstacles and challenges, and may require additional

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[40] White House Briefing Document, *supra* note 1, at 4.

[41] The Experiment Begins, National Journal (June 15, 2002).

[42] See, e.g., Breaking Up Is Hard, Merging Is Harder, New York Times Week in Review (June 23, 2002) ("Indeed, business history is littered with failed attempts to unite far-flung enterprises that would prosper through sheer scale"); and Stressed Out: Can Workplace Stress Get Worse?, Wall Street Journal (Jan. 16, 2001) ("75 percent of those deals, by several experts' estimates, will fail to achieve expected results").

[43] Max Stier, Homeland Security: Mega Merger, Washington Post (June 25, 2002).

[44] Repeating the Past, National Journal (June 15, 2002).

modifications in the future to effectively achieve our collective goals for defending the country against terrorism.[45]

Given this history, the burden should be on the Administration to show how this bureaucratic reorganization can be accomplished successfully. But virtually no detail has been provided to Congress that addresses these serious implementation issues.

VIII. LACK OF NATIONAL STRATEGY

Most experts recommend three concrete steps for developing an approach to homeland security: First, evaluate the threats posed to the country; second, develop a plan for dealing with those threats; and third, implement that plan through whatever reorganization and realignment of resources is necessary. It appears, however, that the Administration has taken exactly the opposite approach: White House officials proposed the reorganization first; they will come out with a strategy second; and they may eventually do a comprehensive assessment of the threats facing the country.

Experts have consistently criticized the United States for failing to have a comprehensive national strategy for fighting terrorism. GAO has made this finding repeatedly.[46] The U.S. Commission on National Security, the bipartisan group headed by former Senators Warren Rudman and Gary Hart, found that "no overarching strategic framework guides U.S. national security policymaking or resource allocations."[47] Likewise, the independent panel headed by Governor James Gilmore concluded that "the United States has no coherent, functional national strategy for combating terrorism."[48]

Nine months ago, in October 2001, the White House agreed with this assessment. In the executive order creating the White House Office of Homeland Security, President Bush recognized that developing a national strategy was essential in the fight against terrorism. The executive order establishing the Office provided that:

> The mission of the Office shall be to develop and implement the coordination of a comprehensive national strategy to secure the United States from terrorist threats or attacks.[49]

When you assumed your position, you also recognized that developing this strategy was your top assignment, calling it your "main mission"[50] and your "very first mission."[51] In a speech in April, you said, "I take every word of that executive order seriously," and you promised that the strategy would be "guided by an overarching philosophy: risk management—focusing our resources where they will do the most good, and achieve the maximum protection of lives and property."[52]

Since that time, the national strategy has been promised repeatedly. In the budget justification for fiscal year 2003, the Administration made this statement:

> The United States has never had a national blueprint for securing itself from the threat of terrorism. This year, with the publication of the National Strategy for Homeland Security, it will.[53]

Unfortunately, this strategy has not been developed.[54] As a result, Congress still does not have a list of priorities set forth in a clear way and cannot gauge whether

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[45] GAO-02-886T, *supra* note 3, at 5.

[46] See U.S. General Accounting Office, Combating Terrorism: Selected Challenges and Related Recommendations (September 2001) (GAO-01-822); U.S. General Accounting Office, Combating Terrorism: Need for Comprehensive Threat and Risk Assessments of Chemical and Biological Attacks (September 1999) (GAO/NSIAD-99-163); and U.S. General Accounting Office, Combating Terrorism: Threat and Risk Assessments Can Help Prioritize and Target Program Investments (April 1998) (GAO/NSIAD-98-74).

[47] The United States Commission for National Security/21st Century, Road Map for National Security: Imperative for Change (Mar. 15, 2001).

[48] Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, Toward a National Strategy for Combating Terrorism (Second Annual Report) (Dec. 15, 2000).

[49] Executive Order 13228.

[50] Ridge Says Focus is on Expanding Homeland Security Resources, Speech at Homeland Security Conference, U.S. Department of State (Washington, DC) (on line at http://usinfo.state.gov).

[51] Tom Ridge Speaks to the Associated Press Annual Luncheon, Office of the White House Press Secretary (Apr. 29, 2002) (on line at http://www.whitehouse.gov/news/releases/ 2002/04/20020429-3.html).

[52] *Id.*

[53] FY03 Budget Justification, *supra* note 10, at 6. The Administration continued: "The Budget for 2003 is a down payment on a larger set of homeland security initiatives that will be described in the national strategy and reflected in the 2004 and later budgets." *Id.* at 7.

[54] In testimony before the Government Reform Committee on June 20, 2002, you stated that the principles of the national strategy have been evident "ever since the President sent up his 2003 budget initiative." House Committee on Government Reform, Hearing on The Department

your reorganization proposal best serves the nation's security goals. Moreover, the new Department will have no clear strategy to implement after it is created. As John R. Brinkerhoff, civil defense director at FEMA under President Reagan, has stated: "The Bush Administration is doing the wrong thing for the wrong reasons * * * . What worries me the most is that we've put the cart before the horse: We're organizing, and then we're going to figure out what to do."[55]

IX. COST

The Administration has stated that the creation of this new Department "would not 'grow' government."[56] According to the Administration: "The cost of the new elements (such as the threat analysis unit and the State, local, and private sector coordination functions), as well as the department-wide management and administration units, can be funded from savings achieved by eliminating redundancies inherent in the current structure."[57]

This is not a credible statement. CBO has examined the costs of the reorganization proposal put forth by Senator Lieberman (S. 2452). According to CBO, the Lieberman bill "would cost about $1.1 billion over the 2003-2007 period."[58] CBO writes: "[A] new cabinet-level department would require additional resources to perform certain administrative functions, including new positions to staff the offices of the Inspector General, general counsel, budget, and Congressional affairs for the new department."[59] In addition, CBO states that the new Department would require additional funding for "centralized leadership, coordination, and support services," and that "new departmental staff would be hired over the first two years following enactment of the legislation."[60]

The Administration's proposal is significantly more ambitious and costly than Senator Lieberman's. It includes more agencies, such as the Transportation Security Administration with over 40,000 employees. Moreover, it requires the new Department to take on a host of new functions, including:

- A new office for "Intelligence and Threat Analysis" to "fuse and analyze intelligence and other information pertaining to threats to the homeland from multiple sources,"[61] including a new "system for conveying actionable intelligence and other information"[62] and a new system to "consolidate the Federal government's lines of communication with State and local public safety agencies and with the private sector";[63]
- A new "state-of-the-art visa system, one in which visitors are identified by biometric information";[64]
- A new "automated entry-exit system that would verify compliance with entry conditions, student status such as work limitations and duration of stay, for all categories of visas";[65]
- New "interoperable communications," including "equipment and systems" for the "hundreds of offices from across the government and the country" that make up the "emergency response community" (this would be a "top priority" of the new Department);[66] and
- A new "national system for detecting the use of biological agents within the United States," including a new "national public health data surveillance system," and a new "sensor network to detect and report the release of bioterrorist pathogens in densely populated areas."[67]

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of Homeland Security: An Overview of the President's Proposal (June 20, 2002) (stenographic record). This statement is misleading at best. The budget justification for fiscal year 2003 included absolutely no information about the newly proposed Department of Homeland Security, which the Administration now says is the cornerstone of the national strategy. Moreover, the Administration's budget justification for fiscal year 2003 makes clear that no national strategy existed when the budget justification was submitted to Congress. FY03 Budget Justification, *supra* note 10, at 6.

[55] Bush's Homeland Gambit, National Journal (June 15, 2002).

[56] White House Briefing Document, *supra* note 1, at 17.

[57] *Id.*

[58] CBO Cost Estimate, *supra* note 5 (specifically excluding the costs of obtaining a new or leased building and centralizing staff and resources there).

[59] *Id.*

[60] *Id.*

[61] White House Briefing Document, *supra* note 1, at 3.

[62] *Id.* at 14-15.

[63] *Id.* at 14.

[64] *Id.* at 10.

[65] *Id.*

[66] *Id.* at 12.

[67] *Id.* at 13.

In addition to these new functions, the President's proposal would establish an entirely new bureaucracy, complete with a management hierarchy and accompanying staff. According to the President's legislative language, the new Department would have up to 22 Deputy, Under, and Assistant Secretaries. This is more than the number of Deputy, Under, and Assistant Secretaries at the Department of Health and Human Services, which administers a budget about ten times the proposed budget of the new Department of Homeland Security.

Like CBO, GAO has also concluded that the new Department will impose costs on the taxpayer. According to GAO, "[n]umerous complicated issues will need to be resolved in the short term, including a harmonization of information technology systems, human capital systems, the physical location of people and other assets, and many other factors."[68] As a result, GAO concludes that the President's reorganization proposal "will take additional resources to make it fully effective."[69]

Mark Everson, Controller at the Office of Federal Financial Management within the White House Office of Management and Budget, was asked about these costs at a staff briefing on July 1, 2002. He said that the Administration had no estimate of the transition costs of creating the new Department and no estimate of the level of savings to be achieved by combining agencies. The only thing he said he knew was that these unknown costs would exactly equal these unknown savings.

Obviously, Congress needs more concrete information about budget costs before it can legislate intelligently.

X. PROCESS

When the President made his nationally televised address on June 6, 2002, announcing his proposal for a new Department of Homeland Security, it came as a surprise not only to Congress and the American people, but also to the agencies, departments, and offices affected by the proposal. The plan was put together with so much secrecy that "[n]o Cabinet secretary was directly consulted about a plan that would strip 170,000 employees and $37 billion in funding from existing departments."[70] In fact, there was so little communication between the White House and the agencies that at least one major agency had to call the minority staff of the Committee on Government Reform to learn whether it was affected by the reorganization plan.

This closed process utilized by the Administration is ill-suited to ensuring that all potential problems are identified and addressed beforehand. Moreover, the risk of making policy mistakes is compounded by the rushed process being used in Congress to consider the legislation. It is not clear how in this process the time and opportunity will be found to make sure the legislation is done correctly.

XI. CONCLUSION

The issues raised in this letter exemplify the serious questions that should be resolved before Congress completes work on this legislation. For this reason, we urge you to respond in detail and in writing to the concerns raised in this letter by July 15, before the House select committee starts its consideration of this bill.

Sincerely,

HENRY A. WAXMAN,
Ranking Minority Member, Committee on Government Reform
DAVID R. OBEY,
Ranking Minority Member, Committee on Appropriations.

APPENDIX A

TRANSFERRED FUNCTIONS NOT RELATED TO HOMELAND SECURITY

Animal Plant Health Inspection Service

Animal Welfare Act: APHIS enforces the Animal Welfare Act, the act that regulates the exhibition of animals in zoos and circuses and the transportation of animals on commercial airlines.

Biotechnology Regulatory Policy: APHIS regulates the movement, importation, and field testing of genetically engineered plants and microorganisms.

Canadian Geese: APHIS works with State wildlife agencies and local governments to address problems with non-migratory, resident Canadian geese.

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[68] GAO-02-886T, *supra* note 3, at 2.
[69] *Id.*
[70] Bush Plan's Underground Architects; In Silence and Stealth, Group Drafted Huge Security Overhaul, Washington Post (June 9, 2002).

Disease and Pest Detection and Eradication: APHIS is responsible for the detection and eradication of pests and diseases that affect crops and livestock. For example, on September 20, 2001, APHIS implemented the accelerated National Scrapie Eradication Program. A few of the other pests and diseases APHIS monitors for and eradicates include: the boll weevil; the fruit fly; rabies; the Asian Longhorned Beetle; the citrus canker program; and the plum pox virus.

Horse Protection Act: APHIS enforces the Horse Protection Act, the act which prohibits horses subjected to a process called soring from participating in exhibitions, sales, shows, or auctions.

Missing Pets: APHIS maintains the missing pets network at www.missingpet.net.

National Poultry Improvement Plan: This is an industry/State/Federal program that establishes standards for evaluating poultry breeding stock and hatchery products to ensure they are free from hatchery-disseminated and egg-transmitted diseases.

Noxious weeds: APHIS cooperates with Federal, State, and private organizations to detect and respond to infestations of invasive plants, such as branched broomrape and small broomrape.

Screwworm: APHIS is working to ensure that screwworm is not reintroduced into the United States. This eradication program is close to its goal of establishing a permanent sterile screwworm barrier in the eastern third of Panama.

Trade Issue Resolution and Management: APHIS monitors emerging foreign pest and disease threats at their origin before they have an opportunity to reach U.S. ports. APHIS also participates in trade agreements.

Veterinary Biologics: APHIS regulates veterinary biologics including vaccines and diagnostic kits.

Coast Guard

International Ice Patrol: The Coast Guard has a fleet of ships designed to break ice in cold regions to ensure that boats are able to navigate the waterways.

Marine Safety: The Coast Guard enforces regulations to ensure that boats and other marine equipment meet safety standards.

Maritime Drug Interdiction: The Coast Guard interdicts drugs illegally brought into this country on the waterways.

Maritime Law Enforcement: The Coast Guard enforces the laws of the waterways.

Maritime Mobility Missions: The Coast Guard provides aids to navigation and bridge administration to ensure that vessels are able to navigate our waterways.

Oil Spill Cleanup: The Coast Guard helps to prevent oil spills in the nation's waters and assists in their cleanup when they occur.

Protection of Natural Resources: The Coast Guard protects our domestic fishery resources and marine environment.

Search and Rescue: The Coast Guard, as one of its primary missions, rescues troubled vessels and people on the nation's waterways.

Customs

Border Drug Interdiction: The Customs Service fights against drug smuggling at the United States border.

Copyright Protection: The Customs Service helps to enforce the Copyright Acts.

Enforcement of Health and Safety Laws: The Customs Service checks imports to ensure that they comply with health and safety laws.

Fostering of Trade: The Customs Service works with the trade community and identifies and confronts trade issues facing the country.

Child Pornography Prevention: The Customs Service enforces laws protecting against child pornography.

Fair Trade Protection: The Customs Service enforces a variety of fair trade laws such as the Lanham Trade-Mark Act and the Trade Act of 1974.

Protection of Species at Risk: The Customs Service enforces laws protecting threatened species such as the Bald Eagle Protection Act and the African Elephant Conservation Act as well as the Endangered Species Act of 1973.

Revenue Collection: The Customs Service provides the nation with its second largest source of revenue.

Stolen Antiquities and Art: The Art Recovery Team works to recover stolen pieces of art and antiquities.

Tariff Enforcement: The Customs Service ensures that U.S. tariff laws are enforced.

Department of Energy

Energy Emergency Support: The DOE Office of Energy Assurance assesses the potential effects of natural disasters such as earthquakes, hurricanes, tornados, and

floods on energy infrastructure and provides energy emergency support in the case of such disasters.

Human Subjects Research Database: The DOE Environmental Measurements Laboratory (EML) maintains the Human Subjects Research Database, which contains descriptions of all projects involving human subjects that are funded by the DOE, performed by DOE staff, or conducted at DOE facilities. EML also provides direct assistance to the manager of the DOE Protecting Human Subjects Program, such as assisting with production of educational and guidance materials.

Quality Assessment Program for Contractor Labs: EML also runs a quality assessment program for DOE contractor laboratories that measure radiation. The program tests the quality of 149 private laboratories' environmental radiological measurements.

Federal Emergency Management Agency

Emergency Food and Shelter: FEMA gives grants to providers of emergency food and shelter for hungry and homeless people.

Hazards Mitigation Program: FEMA provides grants to States and local governments to implement hazard mitigation measures to reduce the loss of life and property resulting from major natural disasters, such as hurricanes.

National Earthquake Hazards Reduction Program: FEMA is the lead agency on programs to improve the understanding, characterization and predictions of earthquake hazards; to improve model building codes and land use practices; to reduce risk through post-earthquake investigations and education; to develop and improve design and construction techniques; to improve mitigation capacity; and to accelerate the application of research results.

National Flood Insurance Program: FEMA administers the National Flood Insurance Program, which provides insurance coverage for events that are not covered by traditional homeowners' policies.

Reduce Loss from Fire: FEMA runs a number of programs to reduce the loss of life from fire-related incidents, including the National Fire Data Center and the National Fire Incident Reporting Systems.

Secret Service

Prevention of Counterfeiting: The Counterfeit Division of the Secret Service has exclusive jurisdiction to investigate counterfeiting of United States securities and obligations including items such as food stamps and postage stamps.

Safe School Initiative: The Secret Service has partnered with the Department of Education to help prevent violence in schools.

Telecommunications Fraud: The Secret Service has become a recognized expert in helping to prevent telecommunications fraud such as the cloning of cellular telephones.

Ms. DELAURO. Thank you. Let me move to an area to follow up on some of the things that my colleague Ms. Pryce talked about: the issue of public health and the new Agency. Many of CDC's agencies have both the public health and homeland security functions. And some sense that separating those functions could harm the public health system, hinder our response to disaster, whether they are natural or terrorist in nature. The Commerce Committee has recommended that the functions stay with CDC. GAO has testified that "these dual-purpose programs have important synergies that we believe should be maintained," end quote, and that they, quote "do not believe the President's proposal is sufficiently clear on how both the homeland security and the public health objectives would be accomplished.".

Brookings, in their recent publication, and I quote from their review of the public health issues: "the administration has not made a strong case for why a substantial amount of biological research should be taken away from the Department of Health and Human Services, which already does good work related to homeland security in places such as Centers for Disease Control and Prevention and National Institutes of Health."

Would it not make more sense—I have two or three questions here—for the new Secretary to work with the experts at CDC to convey threat assessments rather than to try to take over their work? Let me just—on NIH. NIH has already have begun efforts in biodefense research: NIAID's strategic plan for biodefense research, NIAID's biodefense agenda for CDC category A agents. I mean, this work is being done by agencies that have the resources, they have the technological and scientific expertise to carry these efforts out.

I am concerned about these areas. I just think that we have probably the finest capacity in the world today to deal with these issues, and I would not like to see them have to try to regroup in some ways.

Let me just say, in addition, if you gave the new Secretary the power to set priorities, that could theoretically take funding from the NIH. If you have a new department that is budget-neutral, where is the money going to come from if the Department of Homeland Security Secretary determines that smallpox is a greater threat than something else? Who is going to decide that greater priority with the limited dollars that are available?

I sit on the Labor/HHS Subcommittee, and it has been a trademark of that committee in a very bipartisan way to, if you will, let the scientists work their way, without individuals such as myself, who are not experts in these fields—we do not earmark specific dollar amounts because we think research should take its course and go in the direction that it needs. It is working extremely well. And it would just seem that how are we going to ensure that research in development of the technologies for biodefense is synergistic, that it is not duplicative, that we do not wind up trying to recreate something that we have that is the envy, I might add, of the entire world in this effort?

Governor RIDGE. I agree with your conclusion that the work of the CDC and the NIH has really put us at the forefront of not just public health issues, but general health issues across the board. And to the extent that you and I both realize that they have got the resources, the infrastructure, we also agree on that. I think the President's point is that to avoid—to make best use of the dollars that the administration and Congress would devote to research and development as it relates to homeland security, it would be best provided—that strategic focus would be provided through the Department of Homeland Security in consultation with the Secretary of Health and Human Services, as well as in consultation with some of the other departments. But some of those, most of those programs, are going to be moved into the Department of Homeland Security, the notion being that based on the threat assessment—and I say this respectfully—not so much the threat assessment raised by the scientific community, but the threat assessment raised by the intelligence community, in matching that threat assessment with the knowledge and information we have from the scientific community, we might differ as to where the next level of funding should go for the next R&D project for the CDC or the NIH.

Clearly, it is a matter of trying to set priorities with a strategic focus on enhancing our protection of this country. It is not to re-

place these facilities, they are going to end up getting most of these resources, but to determine where the research—the kind of research that they are going to do. The President believes the intelligence community provide the information, work with the Secretary of Health and Human Services, and then give strategic focus when it comes to bioterrorism-related research.

Chairman ARMEY. Thank the gentlewoman. The Chair now calls upon himself for a generous allocation of time under the 5-minute rule.

Mr. Governor, I have three things I would like to cover. Let's start with the question on whistleblowers. There are folks that are apprehensive about the vision of Homeland Security as it relates to protection of whistleblowers. Would you like to speak to that issue?

Governor RIDGE. Thank you, Mr. Chairman. Better than my speaking to it, I would just remind everyone that when the President announced in his evening speech one night he was creating a Department of Homeland Security, he announced that there would be whistleblower protection. He has reiterated that. We believe that in order to empower this work force, they need to understand that their mission is critical to the defense of their country, to their homeland. If they see something wrong, if they have a better way ahead, they should proceed with all the protections that presently exist in the law, and under the Department of Homeland Security that is exactly what they are going to have.

Chairman ARMEY. Okay, thank you.

There is a big question in the minds of some of our Members about the Secret Service. Should the Secret Service or should it not be in the Department of Homeland Security? And if it should, is it possible to leave a function, such as counterfeiting, with another agency, perhaps the FBI? Do you have any thoughts on that?

Governor RIDGE. Well, again, we—the President's proposal would be to take the Secret Service intact and move it into the new Department. We did not see a comfortable division of labor there, because as I understand, so many of these men and women as part of their training also go through that division. I mean there is a cyber component and a crimes component. And, obviously, as we know, that these terrorist organizations are funded through illicit means. Some of the training they might have working with financial institutions, cyber crime, and the other related aspects of the Secret Service would only enhance their value to the Department of Homeland Security.

Again, if a Member or two felt that there was a way that you could divide some of those responsibilities, we didn't see it; but we are certainly prepared to look at it.

Chairman ARMEY. Thank you.

Now, on the question of flexibility and reprogramming, I understand the President would like to have 5 percent in perpetuity. You have acknowledged your familiarity with the mood and attitudes of the appropriators, and you must be aware that it is not likely that that is going to happen. But shouldn't there be—if you take a look at the transition period, you asked for about a year's transition period. From my point of view, I can see a need for that kind of mag-

nitude of reprogramming just in the business, as it were, of setting up shop, trying to determine.

Is it possible you could work out some kind of a formulation to the confidence of the administration that all that it must needs do in the next few years, by way of beginning with a 5 percent reauthorization and working that down as you go into the outyears? Have you given that any thought at all?

Governor RIDGE. Well, we have. And the President has said that it is his desire to get a department with—that continues to enjoy the bipartisan support of both Chambers and both parties. And to that end, we recognize that Members of the House and the Senate who have responsibility for these dollars are not comfortable with that whole approach.

But, clearly, during a transition period of a year or two, it seems to me to make enormous sense, particularly if everybody is worried about the cost of transition, the initial start-up cost. If you have that transfer authority, I truly believe, the President believes—first of all, we think the $3 billion estimate is absolutely inflated—if you have that transfer authority, you can get it done.

I would still argue as aggressively as I could for the next Secretary that a 1 or 2 percent or 2½ percent—I think the Department of Agriculture has 3 percent, and I appreciate that. I think that the Secretary of Homeland Security, if he is not going to get 5 long term, should at least have as much as the Secretary of Agriculture in one form or another, and I am not saying that in any pejorative way. It is just that flexibility to deal with a nimble, agile enemy gives us the chance to move resources, and potentially people and technology, where we need it.

The other thing I want to underscore is reprogramming. We would like to have that as a permanent part of the —.

Chairman ARMEY. Let me ask you this. If you had the reprogramming authority and the transfer authority, I think I am hearing you say that you could subsume whatever is the transition cost estimated to be as high. Could you subsume that within the 37, if you have that flexibility?

Governor RIDGE. Right.

Chairman ARMEY. Thank you, appreciate that.

The Chair will now recognize Members as they seek recognition for additional time, and I see Mr. Frost and Mr. Menendez, Ms. Pryce—all three of us here? Okay, that being the case, let us go ahead and start with Mr. Frost.

Mr. FROST. Thank you.

Governor—and of course, as we mentioned at the outset, you are a former Member of the House, so you are very familiar with the procedures in the House. Mrs. Pryce and I are members of the Rules Committee, in addition to being members of this select committee. And I wanted to ask you about floor consideration of this legislation. We all want this to be done in a bipartisan way. There is true bipartisan support for the creation of this new Department.

My question is—there are some committees that feel very strongly about their particular views. The Appropriations Committee, as you know, on the 5 percent issue, the Infrastructure Committee on the Coast Guard and some other matters, the Judiciary Committee on the question of how the Immigration and Naturalization Service

is going to be treated, the Government Reform Committee on employees's rights.

Governor, what is your position as to whether those committees should have the right to have individual votes on those issues, assuming that any of those issues are not resolved satisfactorily to their satisfaction by this select committee?

Governor RIDGE. Congressman, I would tell you when I was a Member of the House, I definitely had opinions, particularly when I was a Member of the House. But as a member of the executive branch, the procedures that you choose to follow to determine to resolve your differences and determine the level of debate, I am going to leave that and defer that to the Rules Committee, underscoring that to date, we are gratified that there has been, by and large—not completely, but I think by and large—evidence of bipartisan support, and hopefully the rule can be worked out in a similar fashion. But I will leave that up to the Rules Committee.

The executive branch will offer no suggestions as to how you resolve those potential conflicts.

Mr. FROST. Governor, early in my career, 1979, 1980, the House considered the creation of the new Department of Education, and we considered that under an open procedure in which Members were able to offer amendments on the floor on individual issues that they felt strongly about. And in fact, we were here quite late several nights, as I recall, during the consideration of that bill. But that ultimately permitted the House to work its will and then to pass the bill on final passage, because everyone felt like they had been treated fairly.

And as one member of the House, I think it is very important that all of our colleagues feel they have been treated fairly at the end of this process; that they have the opportunity to be heard; that the House work its will. And then I think we can come together and create the Department in a truly bipartisan fashion.

So I would urge not only you but other members of the administration to take the position that this should be considered in an open process so that the committees—and this is a bipartisan issue in a number of these committees— the committees, the chairman and the ranking member of those committees, will feel at the end of the process that they have been treated fairly, that they have had their day in court on the floor of the House of Representatives. And should that not occur, I think you will have real concern when a matter reaches the floor and you—the administration might have some difficulties that it otherwise could avoid if Members feel like they have been shut out and denied the opportunity to be heard.

Governor RIDGE. Thank you, Congressman.

Mr. FROST. I would follow up on just the question I was asking you when we ran out of time, because I am not sure—and I would ask if you could refer to your statement, page 21, because I am not sure that I understood your answer. This is at the top of the page that I have, on page 21 of the matter before us, where you say, "The administration would support specific statutory affirmation of the existing rights of Department of Homeland Security employees to union representation subject to national security authority."

Now, what type of statutory affirmations are you talking about? It is unclear to me, because either we make a clear statement of

this or we don't. Either we give you a—we create an exception and permit the Secretary to waive all these provisions, or we say that they apply. I don't understand the qualifier in your statement "subject to national security authority." you can't on the one hand say we want to put this in statutory law, and on the other hand say we are going to take it away.

Governor RIDGE. Well, I believe the President has said, and I reiterate, that the men and women who presently have collective bargaining rights would move into the new Department with their rights intact and would retain those rights to organization and to collectively bargain.

There is, however, a statute that goes back to President Carter, as I understand it, that says to this President and to future Presidents that under certain circumstances where there is a national security interest involved, you may, given the exigencies of the time, assert your prerogative and withdraw that approval for whatever time period from the process.

And I think, again, the President has basically stated that men and women are moving in with collective bargaining rights, they have got the benefits ascribed to them as a result of the collective bargaining, they continue to retain that ability to bargain collectively as members of this—I think this President feels very appropriately that this is a prerogative, a discretion, some flexibility, depends on exigent circumstances that his predecessors have had and that his successors should have as well. I don't believe it is in any way contradictory. But I mean, there were a couple of observations made during the introductory remarks that said let's not use the Department of Homeland Security to undo things or to try to—let's not use this time and the interest in the Department of Homeland Security to undo things that have been done in the past. Well, this was done 20 years ago and I think we ought leave it that way.

Chairman ARMEY. Thank you. Mr. Watts.

Mr. WATTS. Mr. Chairman, thank you. Governor, the Transportation Security Administration has conducted tests of airport security at selected airports by sending undercover teams through screening areas to probe the effectiveness of current passenger screening and airport facility protection, and these tests allow TSA to measure the success or failure of its programs and of its airport security employees. Obviously, there are many areas in the proposed Department that allow for internal evaluations, where they can be conducted regularly, and improvements made based on results.

One, do you see this as a part of the administration's proposal? And, two, what are the benchmarks that we will use to judge the new Department's success? Obviously, a lack of future terrorism attacks within the United States will be an indication. But how otherwise will we be able to measure the effectiveness of the new Department?

Governor RIDGE. You know—I think very appropriately asked, Congressman. First of all it is interesting to take a look at the TSA. They took a test. They made up the test. They had their employees take the test. Obviously the results were mixed, and then we publicized them. I think that speaks to the kind of country we are and how we operate and how we do business. I might argue,

under a different set of circumstances, you may not want to advertise those kind of vulnerabilities. But since this is a new and fledgling agency that we want the Congress and the President to maximize their protection, those are—there are performance tests that I think depend on the nature of the mission of the individual agency.

Having said that, I think that we will be able to come up with performance standards as we deal with first responders, the timeliness of the response, the level of cooperation as we go through training exercises and the like. I think if we take a look at measuring performance at the borders, how quickly—and here is one—I think how quickly we are able to integrate our information sharing capacity within this country is certainly measurable. We ought to set up a realistic time frame and get it done within time limits and hold ourselves to those limits.

So I think you can measure time, you can measure quality of performance. You can actually have on-the-scene performance evaluations during these training exercises. But the President feels very strongly as we go about organizing this Department, whether it is the borders or first responders, we have to build, with the input presumably of the Congress of the United States, performance measures so we can test ourselves against the optimum effort to achieve homeland security.

Mr. WATTS. You had mentioned just, oh, I guess, the administration's asking for a 1 year transition period. I think that is going to be tough. What are your thoughts? Obviously, I guess the administration thinks that is adequate if they asked for a 1-year period. But I think that a 1-year transition period is going to be tough. What are your thoughts on that?

Governor RIDGE. It is a very, very aggressive timetable. I believe everyone associated with the initiative believes it is. I believe that the integration of some of the physical and technological and even fiscal capacities of the Department will obviously take a little longer than a year. But getting—if the Congress approves a Department of Homeland Security and has the 22 department agencies, or some variation on that, I think the President believes by the end of 1 full year they ought to be integrated under the Department. Obviously, I think it is going to take a little longer to make sure that we have created the kind of technology architecture, information sharing capacity, and some of the other things that just are going to take us more than a year in order to accomplish. So we distinguish between putting the organizations together from integrating some of the resources.

Chairman ARMEY. Thank you, J.C. Mr. Menendez.

Mr. MENENDEZ. Thank you, Mr. Chairman.

Governor, I want to pick up where I left off with you and your response to my question. I didn't get you to respond specifically to the proposition that the analytical unit that is being proposed for the FBI would transfer to Homeland Security. I guess if you can give me a yes or no, do you support that or do you not support that?

Governor RIDGE. Do not.

Mr. MENENDEZ. Do not support it.

Governor RIDGE. Based on the fact that—again, I thought I did, and I apologize for that. That, very appropriately, if it is to be considered, may go to our ability as a country to reduce the threat to go after the actors. But it doesn't fit appropriately in an agency whose responsibility is to reduce vulnerability to action.

Mr. MENENDEZ. And it is exactly what you just restated and finished stating to my first question that is one of my concerns. First of all, we are asked here to pass judgment on the Department before a strategy has been unveiled. And obviously, you know, in my thinking as a former mayor and whatnot, I always think about, well, what is my strategy? And then I evolve from that a plan of action.

We are being asked here on this committee to go ahead and follow, first, a plan of action without knowing what the strategy is. And in that respect, I noticed on page 3 of your statement, you said "The proposal to create the Department preceded the strategy, because we finished our work on the organizational issue first and we wanted to deliver this to Congress."

My concern is as I listen to this, to your description of the Department, it doesn't have an essential element to it which I think it needs, which is prevention. I hear you talk about protection, but I don't here you speaking in context of prevention.

Now, that doesn't mean I expect the Homeland Security Department to have a military operation abroad. That is not what I am talking about. But certainly prevention by acquiring critical elements of weapons of mass destruction, certainly the context of preventing those from coming into a country in the first instance, certainly the information sharing that will be essential to preventing an attack against the United States, those are all critical elements, in my mind at least, of a Department of Homeland Security. And, again, it is not only in my mind, but again I look at the Brookings' comments on this, and they say that "the mission falls short both of what is needed and what would constitute a coherent, integrated strategy. A sound homeland strategy should focus first and foremost on prevention."

So help me with this context of, you know, what I see as one of the key ingredients. I agree with all of your other ingredients, but I think in the first and foremost instance, just like in public health we want to prevent people from getting sick, well, we want to prevent ourselves from getting attacked. How does this Homeland Security Department engage in that regard when we don't know the strategy?

I understand there is going to be—I think there is going to be strategy unveiled tomorrow, so maybe you can give us a prelude to give us a sense, since we won't have you here after this hearing, how does that strategy that will be unveiled tomorrow relate to this Department that we are being asked to pass judgment on, and where are the prevention aspects of that?

Governor RIDGE. First of all, Congressman, the work on the strategy has been an ongoing effort since the end of last year. And once it is rolled out tomorrow, you will note that emerging pieces of that strategy were included in the President's 2003 budget request which was submitted earlier this year. You will also note that emerging pieces of that strategy are reflected in how the new

Department of Homeland Security is organized. So I don't want to leave you with the impression that we came up with an organization and thought about a strategy. The operation at the Office of Homeland Security has to build and take a look at the existing infrastructure, take a look at the kind of partnerships that we need to create with the other levels of government in the private sector, see if the existing infrastructure within the Federal Government is adequate; and, around what we viewed as priorities, develop both a strategy, and, as an agent to execute the strategy, come up with a Department.

So it has been a process that has been, I think, consistent with the President's directive of October 8. Prevention is very much at the heart of the President's homeland security strategy. The CIA is engaged in preventive work. The Department of Defense is engaged in preventive work. The Federal Bureau of Investigation is engaged in preventive work. But it would also, if you take a look at the need to consolidate—.

Mr. MENENDEZ. Could I just interrupt you on that point, because I just want you to follow through. Yes, they are all involved in prevention, but this is going to be the Department that has the coordination efforts towards, I hope, prevention. How is that going to take place?

Governor RIDGE. Well, perhaps again we have to revisit, one, the, I think, very appropriate division of labor within the Federal Government as to who has primary responsibility to go after the actors and who has primary responsibility to deal with the potential of action. The very fact that you harden a target and you offer protective measures to a particular sector or at a particular target is a preventive action.

Terrorists are strategic actors. If you have hardened this target, you have prevented, conceivably—I mean, there are no guarantees, but they may look to another target.

Prevention involves sharing information at the borders. We want to prevent terrorists from coming in. We want to prevent materials or weapons that could be used against us from coming in. So there is preventive action at the border. There is preventive action inherent in the strategic focus given to some of the research and development that this new Department would be charged with as it relates to homeland security. What are the—do we have some diagnostic capability that enables us to identify a potential terrorist incident? There is a preventive notion within the analytical unit of the Department of Homeland Security. You have got the CIA and the FBI looking at this information, but you also have the Department of Homeland Security. It is not its primary function, but you have another set of eyes and sets of experience that are looking at the same kind of information.

So I think one could argue that, as the President has said, there are three goals and three reasons for this organization to exist: prevent a terrorist attack—sometimes it does it independently, sometimes it does it in collaboration with other agencies of the Federal Government; reduce our vulnerabilities, that is the second goal; and the third, to prepare ourselves to respond as quickly as we possibly can, to minimize life and loss of damage in the event an incident occurs. Prevention is at the top of the list within this Agency.

Chairman ARMEY. Thank you, Governor. Ms. Pryce.

Ms. PRYCE. Thank you, Mr. Chairman. Actually, my question has been asked and answered. But if I may just take a moment to add to what Congressman Frost has been advocating as to an open rule process here. Now, I have no preconceived notion of what this rule should look like. I sit here today with no clue how we should proceed on that level. But to have the Department of Education used as an example of how we should model our activity surrounding this bill, I am not sure that that, just because everybody went away happy in Congress because they got to add their particular fingerprints to the Department of Education, I think is not necessarily a good thing. I mean, I think the Department of Education happens to be one of the most burdensome, top-heavy, inefficient organizations that has ever been created in the history of this country, and I certainly hope we are not going to use that as a model. And I think that this committee can do better, and that this Congress can do much better.

And with that said, if you would like to comment, Governor, you may. But I just couldn't resist making that comment.

Governor RIDGE. This sounds, very appropriately, like a point of view—differing points of view shared by the legislative branch, and I will let the legislative branch work them out.

Ms. PRYCE. Thank you.

Chairman ARMEY. I want to compliment the Governor on his grasp of the notion that discretion is often times the better part of valor. Ms. DeLauro.

Ms. DELAURO. Thank you very much, Mr. Chairman.

And, Governor, let me just—I will be brief in my statements and I will just ask you to do the same in terms of response, so that we get everyone in to ask as many questions as they can, do you agree with the Commerce Department in leaving the CDC functions where they are and not transferring the—.

Governor RIDGE. Agree with the Commerce Department to do what, Congresswoman?

Ms. DELAURO. The Commerce Committee has recommended that the functions of CDC stay where they are and not move.

Governor RIDGE. We would hope that that might be reconsidered, but we also understand in private discussions with the Commerce Committee and others, that there should be, might be, some flexibility on keeping the public health component within CDC, and we continue to entertain those discussions with the folks on the Commerce Committee; because whether they build it up from Commerce or whether they build it from up the Department of Homeland Security, an enhanced public health component is good.

Ms. DELAURO. Thank you, Governor. When will we have a response to the Obey letter? The timetable is to mark this up on Friday. Will we have a response to this question? Can we expect that within the next day or so?

Governor RIDGE. The Obey letter is as long as the legislation we sent to the Hill, and it is a rather exhaustive piece of research, and I think they are going to find many of the answers to their questions in the strategy that will be released tomorrow. We will certainly acknowledge the receipt of that letter and try to answer as many questions in as timely a fashion as we can.

Ms. DELAURO. A third question has to do with the way that the proposal, at least on the face of the wording limits, the access to information by the inspector general. And there again, I would just ask you to comment on this. As I understand it, it said we are subjecting the new Department to the Secretary's control and would authorize the Secretary to prevent the IG from doing work in areas involving certain information, areas quite broad and on a broad basis.

Now, the IGs, again as I understand it, at certain other agencies like Defense and at Justice, have similar limitations on access. But in those cases, the IGs are directed to report to Congress if the relevant Secretary impedes their access to necessary information. This important check has been eliminated in this new Department. The proposal would give the responsibility of reporting interference with an IG investigation to the Secretary, who would have an obvious conflict of interest, if you will, reporting if there were something there.

Can you talk to us about why the difference here than in Defense or Justice?

Governor RIDGE. The President strongly supports the notion of having an empowered and independent Inspector General taking a look at the activities of Homeland Security. It is my understanding that the language is very similar to that that relates to the Secretary of Defense as he executes his responsibilities, as well as the Attorney General, so there is nothing unique about the language. I mean, Congress has approved this kind of language as it relates to existing departments.

Ms. DELAURO. But apparently it has a difference in existing departments, particularly as I mentioned in Defense and Justice. And maybe—if that is not the case, maybe you can clarify that for us, because in the way—the way it currently reads is, it makes it a different set of circumstances than Defense and Justice. So if that is a wrong interpretation, then I would appreciate if we could get some clarification.

Governor RIDGE. Then it would be my job to go back and clarify it for you. Clearly there are some—there is within this Department, conceivably, some very, very sensitive information. That is not to say you shouldn't have an Inspector General. It is just simply to say that, one, the President wants an independent, empowered Inspector General.

We thought we covered both the needs for the Inspector General as well as whatever internal concerns anybody might have by using the same language that we have with the Department of Defense and the AG. And I will just get back with you and clarify the language.

Ms. DELAURO. If you could clarify that language, that would be appreciated.

Governor RIDGE. Sure.

[The Select Committee did not receive the information in time for the printing of this volume. When received, the information will be retained in the Committee's files.]

Ms. DELAURO. Mr. Chairman, I have another question. And it just the—this is about Defense Department coordination. And let me just find out from you about the Department of Defense and

Homeland Security. We have one Department, responsible for fighting terrorism abroad, working with a new Department, responsible for fighting terrorism in the home. What I am particularly interested in here is how are the two Departments going to handle competing demands for the services of the Coast Guard and National Guard? Has the issue been discussed? Is there a process in place for this kind of coordination? And has there been any thought to whether the two Guard services will have the necessary capabilities to meet both the Departments' demands?

Governor RIDGE. The new Department of Homeland Security's ability to respond to fulfill its mission is enhanced by the Unified Command Plan through which Secretary Rumsfeld creates a North American Command. Clearly now that there is someone, a North American Command, who—among other multiple responsibilities, there exists the homeland security function—gives the Secretaries working together, Secretary of Homeland Security with the Secretary of Defense, an opportunity to establish procedures and review these issues long before the need arises to deploy these resources.

I would share with you that in my capacity as Assistant to the President for Homeland Security, that occasionally these issues about coordination came up prior to September 11, and we just sat down with the respective Secretaries and worked them out.

Ms. DELAURO. But we have no method for coordination of the Coast Guard and National Guard right now, before going into the process.

Governor RIDGE. Well, it is the same mechanism that exists anytime you have an interagency challenge. The Secretaries sit down and work it out in the best interest of this country.

Ms. DELAURO. Thank you. Thank you, Mr. Chair.

Chairman ARMEY. Thank you, Ms. DeLauro. Now, Mr. Portman from Ohio.

Mr. PORTMAN. Thank you, Mr. Chairman.

Governor, I have a few questions. I would like to get through all three of them, and the first is with regard to another clarification—I think you clarified the whistleblower protection issue, well, that that will be maintained in the President's proposal.

With regard to freedom of information, there has been also some discussion whether the FOIA standards would apply. There is an exemption I see in section 204 in the legislative recommendations. Can you talk for a moment about how the Freedom of Information Act would work under your proposal?

Governor RIDGE. Yes. The limited exemption requested by the President in his initiative really significantly improves our ability to secure information voluntarily provided by the private sector about their own vulnerabilities of their operations. Clearly, there are critical pieces of infrastructure in this country, energy and telecommunications and financial institutions and the like, that we would all agree are pieces of critical infrastructure. This limited exemption gives them the ability to share that information with the Federal Government and ostensibly—depending on what kind of protective measures might be taken—with the State and local authorities under the right circumstances so that we could take protective measures to protect those sectors of the economy. It is a

limited exemption, and we have heard it over and over again in our discussions with businesses and trade associations, it is proprietary. And, candidly, they don't want—they want to be forthcoming but they don't want to publicize it, necessarily, give a road map for the terrorists.

Too, there may be some competitive implications that we can't appreciate unless we are involved in the sectors themselves, but I think this limited exemption fulfills the purpose of Homeland Security, but also continues to do justice to the Freedom of Information Act's original intent.

Mr. PORTMAN. I notice in your statement you had estimated that 80 percent of the infrastructure that could be vulnerable is in the private sector.

Governor RIDGE. We estimate about 85 percent of the critical infrastructure of this country is owned by the private sector.

Mr. PORTMAN. You assured us early this afternoon that the traditional non-homeland security functions of agencies like the Coast Guard, like the Immigration Service, would be not only maintained but could be strengthened, you indicated, in this new Agency.

Can you touch on another important agency that doesn't have a traditional non-homeland security function but has a new function in the Transportation Department, and that is the Transportation Security Administration, TSA. Why is it important that TSA be part of the homeland security, or is it important?

Governor RIDGE. Well, it is very important because of the globalization of the economy, the globalization of transportation, that we have an agency who, Congress said, your primary mission, your exclusive mission, is to secure transportation. That means working in concert with other border-related organizations—the INS, Customs, Coast Guard, people coming into our airports, other seaports, and across our land ports—having the Transportation Security Administration, its budget, its personnel, and its mission very similar, its mandates very similar to the mission of the new Agency. We think it is a perfect fit.

Mr. PORTMAN. You talked earlier about managerial flexibility. I think you made a good case on your behalf that you need agility to be able to respond to a natural threat. You talked a little bit earlier about some of the personnel flexibilities.

I would like to know if you can tell us how we can be sure that the workers who are on the lines now, on those front lines, will have their views, their concerns, their input, be made part of the managerial flexibility you would like to prepare for Congress.

You talked earlier about the unions. I note that you said that union member collective bargaining rights would be maintained, and you reiterated that in response to a question from the other side. I also wonder about those nonunion members. As I look at it, about a third of the employees in this new Department would be union. Perhaps half of those are not dues-paying members. This leaves a significant number of employees who would not be represented by the union. I think it is very important that the union be brought into it, but how about those are who nonunion members? How would they be represented, in a sense, and how would they have their input included in your managerial flexibility?

Governor RIDGE. Well, first of all, I can't anticipate what the new Secretary would do, but I think that based on my experience as Governor, I suspect many of your own personal experiences, you are setting up a new entity, and as someone—a couple of you have said earlier, you can move lines around on the chart, but if you really want to maximize the protection of America, we have to engage the men and women within this Agency. There has to be a sense of mission, there has to be a sense of purpose, there has to be a sense of connection. They have to feel comfortable that if they come forward with ideas, some of which may be critical to how things have been done in the past, that needs to be embraced and not rejected.

They have to be empowered not only with a sense of mission, they have got to be empowered with technology. One of the things that we know we haven't done a very good job as government generally is empowering these individual men and women with technology. And so I could only imagine that the new Secretaries working to empower these men and women, union or nonunion, involves a very aggressive outreach and continuing engagement of them across the board on all these issues. I don't believe you maximize the effectiveness of this Agency by ignoring the reality that all these men and women are united by a common goal and want to be part of securing America, and it just has to be, I suspect, a program of not only continuous improvement but continuous outreach.

Mr. PORTMAN. Mr. Chairman.

Chairman ARMEY. Thank you. And I want to thank the panel. I want to—Governor, at the outset of today's proceedings, I mentioned that we in the House are very proud of you as being one of our own.

In that regard, I was reflecting throughout today's debate, the President of the United States since September 11 of last year has been in a running gunfight with some of the most insidious forces of evil we have ever seen on this Earth. He has met every exigency that has come to him, every urgency, every possible proposal, with a sense of calm and resolve; and, indeed, on each and every occasion that he has proposed to the Congress of the United States he has done so with a calm and a sure respect for this institution, this legislative branch.

It amazes me sometimes to see a man, who cares so much and must so deeply worry about how things will turn out, still be able to have the patience and the respect to watch this legislative process in all confidence that this democracy will work it out.

I have no doubt that the President has sustained in his very difficult business of watching people legislate his proposal by the confidence that he must take from knowing that you yourself was a member of this body and an example of who we can be at our very best.

So let me thank you, Governor, for what you have meant to this body, what you now mean to this Presidency, and, indeed, to this country and for your testimony today.

Mr. MENENDEZ. Mr. Chairman, if I may, I have an inquiry. I was under the understanding that Governor Ridge was going to be here until 4:00. Has that been altered?

Chairman ARMEY. Does the gentleman have additional questions?

Mr. MENENDEZ. I do. Exactly because of all the great things you said, I want to take advantage of the Governor's being here, if I may.

Chairman ARMEY. Mr. Governor, it is not the Chair's desire to cut anybody off from further questioning. Let me just say that at the conclusion of today's hearing I will pick up on where I am leaving off.

I do want to make one final observation while I am still on my time. We need to remind ourselves that as the President proposed the Department of Homeland Security to us at a joint meeting of our bicameral leadership at the White House, he made the observation I have so many times heard him make: "the President proposes, the Congress disposes." he has always respected that, and he is acutely aware of the fact that the rule under which this bill will be considered on the floor of the House of Representatives is not a decision for him to make, but, indeed, by virtue of the very agreement that created this committee, it is already determined that the rule under which we will consider this legislation on the floor will be that rule recommended to the Rules Committee by the Speaker and the minority leader. So that indeed we can rest with a confidence that the rights of the Members of this body to participate under that rule will be determined by the Speaker and the minority leader, with the President's appreciation, understanding and applause, I have no doubt. So that is something we need no longer concern ourselves with.

To complete my thought on you for the moment, when and if you find yourself in a running gun fight, it is always nice to be able to call upon a deputy that is reliable and will watch your back; and you do that and you do that well. Again, it has been for me today quite a pleasure to watch you working on behalf of this country as a representative of this administration.

With those comments, I will then recognize the gentleman from New Jersey.

Mr. MENENDEZ. I want to thank the Chairman. It is exactly because of the complimentary remarks you made about the Governor that I want to take advantage of picking his brain as we try to get through this.

Governor, a couple of quick questions. On your response to Mr. Portman about FOIA, one of our concerns is an industry representative gives the Department, for example, what chemicals are at their plant. Under the right-to-know provisions for communities, now that would not be FOIAable.

So our concern is, yes, we want you to get the critical infrastructure information from the private sector, but it can be used in a way in which other issues can be affected by the provisions of providing that information to you. So we need to make sure that we safeguard those. That is point number one.

On TSA, the Transportation Committee voted not to not include TSA in the Department of Homeland Security but to delay it until that time in which it meets its mandate, because it feels the transfer at this time would in fact inhibit it meeting its mandate in an appropriate time. I would like you to respond to that.

Thirdly, as I have traveled with my colleagues as the Chair of the Task Force on Homeland Security for House Democrats across the country and my own district and State back in New Jersey, which, of course, was right across from midtown Manhattan and we lost a lot of citizens on September 11, local responders are looking at this creation of this Department and saying, what does this mean to me?

You have so often said, when the hometown is secure, the homeland is secure. Do you foresee this Department and its structure as presented to us by the administration does not speak to that? Do you do you see this being a resource beyond information to local, county and State officials? Do you see it being a funding source to some degree in that regard?

Because, right now, I don't get the sense that local responders have bought in to the idea that this is going to necessarily be helpful in their obligations and our collective desire to have them there.

Then, lastly, do you agree that the new legislation should not alter or diminish the regulatory authority of any other executive agency or establish regulatory authority at the Department of Homeland Security, except to the extent that the functions of another agency that includes such authority are specifically transferred to the new Secretary of Homeland Security?

What I am concerned about here is, you know, questions of the Nuclear Regulatory Commission, the Environmental Protection Agency and other agencies with existing authorities that are not being transferred here but may have something to do with homeland security, should they not continue to exercise these authorities independently from the Department of Homeland Security?

I know it is a lot, but I figured I would put it all out there. So, FOIA, how do we limit to ensure that you meet your goal but we don't prevent other existing laws from being circumvented; what is your view on the delay of the Transportation Committee's decision bipartisanly to not include TSA until their mandate has been met; how do you look at the question of local first responders; beyond providing information, do you see the Department being a vehicle for resources; and, lastly, on that issue of regulatory information?

Governor RIDGE. First of all, Congressman, I believe that the limited purpose for which the Freedom of Information Act exemption has been designed meets your concerns about the public's right to know. Frankly, all the information, we have had so much information out there in the public, I dare say this is probably more prospective rather than retroactive, because it is out there on a hard drive someplace, somebody has access to it. I think this is as much prospective.

There may, however, be some vulnerabilities as it relates to the kind of chemicals that are there or the procedure itself that we need to know. So I will, if need be, visit with you personally about that language, because I understand your concern. Several Members on both sides of the aisle have raised it.

I do believe it is critical that we have a limited exemption so they can be forthcoming to not only the Federal, but this also relates to your first responder question. These are the men and women that are going to show up if it is that petrochemical plant, if it is that utility, if it is that power facility or the like. If there is some vul-

nerability there, they may need to know it, and we have to be able to protect that information and how we get it to the first responders. We will continue to work with you.

The TSA, the amendment, I am a little bit puzzled by it, because I think the congressional mandates, most of them were for the baggage check and to get the personnel up and running, conclude by the end of this year. Now, there may be some mandates, time frames, that take them into next year. But since we have a full year of transition, I cannot imagine any congressional mandate as it relates to TSA that will not be met under the existing time frame. I may have to familiarize myself a little bit more with the mandates, but we have been working with the TSA on ramping up the personnel, getting the screeners in place, getting the technology in place. So I think it can certainly be met within the confines of the existing enabling legislation.

The first responders, frankly, one of the biggest challenges I think we have is figuring out a way to get them the information. That is going to be— that is as high a priority as getting them the money.

If you take a look the President's 2003 budget, there is a first responder initiative of about $3.5 billion that is for equipment, training and practice sessions. We have been working with the mayors and the League of Cities and a lot of the local government organizations, and we have been working with the national chiefs of police and the law enforcement community and the firefighters and the EMTs, so as that money is hopefully allocated at that level by the Congress in the budget, 75 percent of that will go down directly to the first responders, down to the local levels. We think it is very critical.

I say this with great respect as a former governor. It is great and I think it is appropriate that we give 20-25 percent to the governors, because they have disaster assistance centers they may have some flexibility to use to help counties. But we don't want the State legislators nor does anyone else want the State legislators reprogramming that 75 percent, because those dollars will be distributed based on a plan designed by the local government and first responders.

So it is about resources, clearly, not only this year but future years. But, also, you raise a very good point. We need to make sure they have access to certain sensitive information as well and do a better job of sharing that information, particularly with the law enforcement community. So that continues to be a priority of this agency.

Finally, the regulatory authority of the EPA and NRC, with very few exceptions, remains with those agencies, and should.

Chairman ARMEY. Anybody else? Mr. Portman.

Mr. PORTMAN. Just quickly, Mr. Chairman.

In response to the previous question, it is my sense the first responder community is supportive of what we are doing here and that the governors are supportive and that, in fact, the State and local organizations, so-called "big seven" out there, are supportive. Is that your sense?

Governor RIDGE. Thank you for that reminder, Congressman.

One of the characteristics of the Office of Homeland Security within the White House is outreach to the non-Federal Government entities. We work with the governors, and we work with the mayors, and they are very supportive. But there is a caveat. They like the fact they are going to get the money. They just want to make sure it is distributed according to the plan that they helped design, not according to, frankly, the priorities that might be set by a State legislature rather than the mayors and the first responders. So they have been very supportive.

They also like the notion of a one-stop shop, because you have the Department of Justice Office of Preparedness, and FEMA has one, and there are a couple other agencies. They like to see themselves as going to one agency that has control over all those resources for preparedness.

Mr. PORTMAN. Just one quick comment. I am finding when I am back home that is exactly what they are looking for. They want help with equipment, training, communications, certainly the funding that the President has proposed and that the Congress will appropriate, but also this notion that they can go one place in order to get the information they need, including the enhanced warning.

Second, with regard to the private sector, those who have technology that they are willing to lend to this effort, my sense is they, too, are supportive of this. Can you comment on that?

Governor RIDGE. The genius of our enterprise— it is not the genius of the enterprise system but the genius of Americans engaged in the freedom of enterprise I think offers us long-term, significant solutions to a variety of challenges that we have in this country.

The Science and Technology Director, who I think is more appropriately named in the Weapons of Mass Destruction Countermeasures Unit, but I think this science and technology piece I think will give us an opportunity.

If in addition to being able to target and assess existing technology to determine whether or not it meets our needs, that will do us a lot of good. But if there is a piece of technology out there that we need to deploy immediately or a vaccine that we may want to get out there but there is no market for it, there may be some pieces of technology, be it life science, information, whatever, for which there is no market but the country needs, that is one of the reasons that I would like to see the new Secretary have the flexibility to take some of the money, make those acquisitions and deploy them.

So the President feels very strongly that the technology community will be a significant feature of how we secure ourselves in the 21st century.

Mr. PORTMAN. One of the criticisms of our current system is those who do have technology, science and so on to add to this effort don't feel there is a one-stop shop. In other words, there is a difficulty accessing the Federal bureaucracy.

Governor RIDGE. Very difficult. You and your colleagues are besieged by letters and visits, whether here or back home in the district, "this is the technology innovation that I think can help solve this part of the homeland security problem.".

We need a central clearinghouse where not only Members of the House and Senate but the Office of Homeland Security, let's take

advantage of the academic laboratories and the national laboratories. Let us have them assess these pieces of technology and then reach some conclusion as to, if there is an application, how we go about paying for the application.

But they are all over now. We need a centerpiece, and this directorate within the homeland security will be that one-stop shop for evaluation and potential application.

Mr. PORTMAN. Thank you, Mr. Chairman.

Chairman ARMEY. Ms. DeLauro.

Ms. DELAURO. Thank you, Mr. Chairman.

I would just like to follow up on the FOIA question and ask if there would be any willingness to revisit the exemption as it is currently established. Because the bill doesn't define infrastructure vulnerabilities and other vulnerabilities to terrorism. Clearly, no one wants to compromise our vulnerabilities, and we want to make sure that sensitive information is safeguarded, but there is kind of a sweeping nature of this exemption.

Let me just ask you this, Governor. Do you not think that there is exemption for FOIA which already protects from disclosure certain confidential trade secret information that private entities supply to the government? Do you not think that is strong enough?

Governor RIDGE. In our consultation with the private sector, we concluded that it was not. I don't, without suggesting that the language is defective or insufficient in any way. I will be happy to have our lawyers come by and talk with you, but we think it is structured in such a way to give us the limited exemption.

But, as the President has said, go up to the Hill, work with Members of the Congress. If they have got concerns, try to address them. That is not conceding the point. We think the language is good and appropriate, but we will be happy to send our lawyers over to talk to you about it.

Ms. DELAURO. I asked the question because sometime earlier this year the Director of the FBI's National Infrastructure Protection Center was quoted as saying, "We believe that there are sufficient provisions in FOIA now to protect information that is provided to us."

So the FBI believes that the current protections are adequate to what needs to get done in terms of a new entity. If there is a difference of opinion within the agencies or the administration and so forth, we would like to have that. I don't know if you concur with the FBI or if the administration does or what your response is to their view of the protections at the moment.

Governor RIDGE. We believe—my colleague just gave me the language—it is very strictly drawn. It, in fact, is one sentence, and I would like to read it, Section 204 of the President's initiative. "information provided voluntarily by non-Federal entities or individuals that relates to infrastructure vulnerabilities or other vulnerabilities to terrorism and is or has been in the possession of the Department shall not be subject to FOIA."

We think that is limited. We think it is narrow. We think it is appropriately drawn.

Ms. DELAURO. Do you disagree with the FBI?

Governor RIDGE. I can't speak to the FBI's interpretation. All I know is, in discussions with—again, it is a reflection, maybe in the

society and in the world in which we live in, there are a lot of people in the private sector are afraid that this opens them to potential litigation.

Ms. DELAURO. But there is a difference of opinion between the FBI and the private sector, is that correct?

Governor RIDGE. It is a difference in legal interpretation by a group of lawyers—.

Ms. DELAURO. By the FBI and the private sector.

Governor RIDGE. —and based on our experience and discussion with several hundred companies and associations, this was of a particular concern. It is one sentence.

Ms. DELAURO. So that the private sector—in terms of the drafting of this piece, the private sector has prevailed in their view of what this should be after internal discussions?

Governor RIDGE. Congresswoman, I don't know if anybody at the FBI was present during the very specific discussions we were having with certain sectors of the economy about the release of specific kinds of information. So before I conclude that we are even at odds, we have to make sure that we are even talking about the same kind of information disclosure.

Ms. DELAURO. The FBI, the Director made that. That was a public statement.

Governor RIDGE. The terrific Director is a great lawyer, and he is doing a fabulous job. I am just saying I am not sure his conclusion is based on the kind of information around which we saw some reluctance.

Ms. DELAURO. By the private sector.

Governor RIDGE. By their attorneys.

Ms. DELAURO. Thank you very much, Governor.

Chairman ARMEY. Mr. Frost.

Mr. FROST. Mr. Chairman, if I may just make an observation, I think history is instructive. As I mentioned earlier, when the Department of Education was created in 1979, that was done under an open rule; and when the Department of Energy was created in 1977, that was also done under an open rule, where all amendments could be offered.

I have no other comments.

Chairman ARMEY. Mr. Portman.

Mr. PORTMAN. Mr. Chairman, just briefly.

Thank you for indulging us, Governor. I think with regard to FOIA we have the same concern, and we want to come out in the same place.

The language that the Governor read is very narrow. It has to do with infrastructure that is vulnerable to terrorism. The FBI exemption, as I understand it—and I am getting into issues that I am not expert on, and I may miss something—but there are specific exemptions in current law, as you know—I think there are 10 of them—for FOIA. One is law enforcement. So what the FBI is saying with regard to law enforcement information that they receive, they feel as though they currently have an FOIA exemption relating to law enforcement.

Forget what the private sector wants. It is what we want. What we want is to have the infrastructure information so we can harden those vulnerabilities so that our citizens don't get hurt by terror-

ists. I think it is important to make the point. This is not the FBI versus the private sector or even the private sector at all. It is what we want.

Ms. DELAURO. If the gentleman would yield, I would concur with the gentleman. I did not raise the issue of the private sector. I didn't know that that was the basis on which a determination was made. I was moving toward the agencies, what we want. FBI, CIA, State Department, as I understand it have adequate means today.

I am coming from the same place that you are. It was a revelation to me that the private sector had a role in determining how we move toward trying to deal with this information.

Thank you.

Mr. PORTMAN. Reclaiming my time, the important thing, I think we agree, is that we are sure that these infrastructures that all of our citizens depend on—and this includes high technology, it includes gas pipelines, it includes power plants and so on—.

Ms. DELAURO. Absolutely. We are equally concerned about the safety and security of this Nation and its people.

Mr. PORTMAN. That is the key. That is what we ought to end up with in terms of the FOIA exemption.

I thank the Chairman and yield back.

Chairman ARMEY. The gentleman from New Jersey. I knew you were going to get me.

Mr. MENENDEZ. Two out of three isn't bad, Mr. Chairman.

Governor, just let me follow up on your response to Mr. Portman about local responders, that the entities that might represent them, police, firefighters, emergency management personnel, municipalities and others are supportive, as you stated. I guess you mean the National League of Cities, U.S. Council of Mayors. They are all on record as supporting?

Governor RIDGE. Yes.

Mr. MENENDEZ. But they support because they believe in part that they are going to receive resources that will be dedicated at their level, is that not true?

Governor RIDGE. That is correct.

Mr. MENENDEZ. They are hoping, as you described before, that they will get it at their level.

Governor RIDGE. Correct.

Mr. MENENDEZ. And, thirdly, in this regard, how do you see within the Department that effort being undertaken? Is there a specific Under Secretary that you have this focused on? How do you see that taking place for police, firefighter, emergency management, municipalities, counties, States? How do you see that taking place? How is the functioning aspect of that within the proposed Department?

Governor RIDGE. Within the Department there is an Under Secretary for Emergency Preparedness and Response. The critical piece of that unit, if Congress allows for the transfer of FEMA from an independent agency basically to the new Department of Homeland Security, that becomes the critical mass within that particular unit.

It is through that Under Secretary and through the apparatus of FEMA that the dollars would be distributed. This new Under Secretary and his team, ostensibly FEMA, would be the ones respon-

sible for helping plan and prepare the exercises, working on distribution of these resources.

It is through FEMA—and I am glad you raised this point—within the emergency supplemental—and one of these days you are going to work out all of your differences there. I am confident of that. But within the supplemental there is $175 million that would go to FEMA.

Part of the reason that the President requested that kind of money to FEMA now, even in anticipation of the 2003 budget, is the President would like to get FEMA to take that money and then work with the States and locals and first responders to develop State-wide plans for the resources that we hope Congress will approve in the 2003 budget. So there is a plan.

The operation would say that, once the emergency supplemental is passed, the States with some of these resources are going to develop State-wide plans to build up capacity. If Congress supports the President's appropriation in 2003, and, again, during the appropriation process one of the commitments we have made with the local government and first responders is working with them on language to make sure they are not bypassed and money is distributed according to the plan they helped write, they would get the resources directly through FEMA.

Mr. MENENDEZ. Thank you for that response.

Let me ask you one other question. Do you support—does the administration support a statutorily created, similar to the National Security Council, coordinating element within the White House? Because there will still be many agencies that will have some elements that are not being proposed to be transferred into the Department of Homeland Security. Do you support, you on behalf of the administration, support that?

Governor RIDGE. Categorically, I wouldn't say no, we don't support it, but I will tell you there is already an apparatus set up by executive order creating the non-statutory Office of Homeland Security, the position I have right now. There is a Homeland Security Council. It is comprised of several members of the President's Cabinet.

The National Threat Advisory System was a product of consultation with members, principals, members of the Cabinet. Early on, the support for some kind of border consolidation, a modest form of consolidation that the administration proposed several months ago, was a product of that process where you had a Homeland Security Council comprised of members of the Cabinet working with the Office of Homeland Security.

Mr. MENENDEZ. Before my time runs out, you in essence say there is a need for a coordinating function; you just don't believe there is a statutory need?

Governor RIDGE. Correct.

Mr. MENENDEZ. Thank you, Governor, for your answers.

Mr. Chairman, a procedural question to you. Today is Monday already. We are still, I assume, on a schedule that looks toward Friday for a markup. In order for us to mark up on Friday, members of this committee would have to know what we are marking from so that any proposed amendments to deal with some issues we are concerned with could be appropriately drafted.

Could you give us some sense of that process, if you are ready to, today? But, if not, certainly by tomorrow so we could be prepared, looking forward to that Friday markup?

Chairman ARMEY. Thank you, Mr. Menendez. I thank the gentleman from New Jersey. I have a mental block here. I don't know what it is.

The way we plan on proceeding is to have, obviously, our Chairs and ranking members, perhaps the GAO in, before we can complete our hearings. Then we would try to prepare a chairman's mark to be distributed after we hear from our chairmen but in time for you to study it before that.

Our staffs, all of our staffs, are working together in analyzing the work of the committees. So we ought to be able to catch up with the mark very quickly overnight and through the next day. But you should expect to have all day Thursday as a minimum to look at the mark that we would be addressing on Friday.

Mr. MENENDEZ. If the gentleman would allow me just to make sure I understand what he meant. Wednesday evening sometime there would be a mark that we would have available to us so that all day Thursday we could think about does this mark satisfy our concerns; or if it failed in some respect to satisfy our concerns, we would have all day Thursday to prepare amendments to the mark and offer them before this committee?

Chairman ARMEY. Sometime before the sun rises on Thursday morning.

Mr. FROST. If the Chairman would yield on that point, we have nine committees, I believe, that will be testifying before us on Wednesday, the Chair and the ranking members. So Wednesday could be a very lengthy day.

Chairman ARMEY. Very long day. We will try to really stick to our guns on the 5-minute rule.

Mr. FROST. But I think Mr. Menendez's observation is important, not only for members on our side but on your side, to have the time to be able to prepare any amendments that we deem are appropriate.

Chairman ARMEY. I do appreciate that. That is why, Mr. Menendez, I am going to get this again. We think it is so important that we all continue to have, as our staffs work with the committee staffs to prepare for our testimony and then the subsequent mark, that we stay in touch with chapter and verse among ourselves at the staff level.

Mr. MENENDEZ. Mr. Chairman, if I may, one observation: Even though we will wait to hear from committee Chairs and ranking members on Wednesday, their decisions have been cast already, so therefore we know what their decisions are. To some extent, either those of us who serve on some of those committees or our staff has been present or has analyzed why they decided as they did. I would hope that would expedite the Chairman's mark, so we would have the appropriate—creating 170,000 jobs, $38 to $40 billion in budget, I want to make sure, as I said in the first hearing, that Winston Churchill is wrong, that we do the right thing, but not until after we exhaust all the other alternatives.

Chairman ARMEY. You are absolutely right.

I want to thank the witness again. I see no more recognitions sought for time.

Governor Ridge, some members may have questions for you for the record; and, without objection, the hearing record will remain open for 30 days to permit members to submit questions in writing and have the response placed in the record.

Without objection, the Select Committee stands in recess until 10 o'clock tomorrow morning.

Governor RIDGE. Thank you, Mr. Chairman. Thank you, members.

[Additional material submitted for the record follows:]

STATEMENT FOR THE RECORD OF BOBBY L. HARNAGE, SR., NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

INTRODUCTION

My name is Bobby L. Harnage, Sr. and I am the National President of the American Federation of Government Employees, AFL-CIO. On behalf of the 600,000 government workers represented by AFGE, who serve the American people across the nation and around the world, I thank you for this opportunity to offer our views about why we (1) oppose the Bush administration's Department of Homeland Security (DHS) proposal (H.R. 5005) and (2) support the Federal employee provisions recommended by the House Government Reform Committee when it marked up and adopted its version of H.R. 5005 on July 12, 2002.

President Bush's June 6, 2002, proposal to combine 22 Federal agencies with just under 170,000 employees into one department with a budget of $37.5 billion has effectively ended the debate about whether there will be a DHS. But it has not ended the debate about what its size and scope should be.

Given that the Bush administration is proposing to create what would be the third largest Federal department in personnel terms (after Defense and Veterans Affairs), Congress and the American public need to ask many questions. One question about which we at AFGE are particularly concerned is: "How much flexibility should the Bush administration and the DHS be granted in setting the department's personnel policy?"

It is particularly important that Congress addresses this question before enacting legislation because the Bush proposal received very limited scrutiny within the Executive branch before it was announced. According to the new Brookings Institution report Assessing the Administration's Proposal, "most officials (and outsiders) with expertise in the subject were not consulted on the pros and cons of the choices the administration made."

PROBLEMS WITH BUSH ADMINISTRATION PROPOSAL

Tucked inside the Bush administration 35-page DHS bill is a 68-word sentence that has raised serious concerns among Federal employees and their unions.

It is Section 730 and it is on page 25.

Section 730 says: "Notwithstanding" the civil service law, the Secretary of Homeland Security may propose Federal regulations to establish a personnel management system which "shall" be "flexible," "contemporary," and "grounded in the public employment principles of merit and fitness."

We at AFGE believe this language grants unprecedented flexibility and latitude to the Bush administration in setting the DHS's personnel policy. This language grants authority to the Bush administration to exempt DHS employees from Title 5 civil service protections and collective bargaining rights.

We view the word "flexible" as an attempt to make it easier to arbitrarily demote or dismiss Federal employees.

We view "contemporary" as a code word for a mind-set that would undermine civil service's pay, health insurance, and retirement systems, merit-based hiring, firing appeal rights, whistle-blower protection rights, and rights to organize and bargain collectively.

Given the immense challenges President Bush and the DHS Secretary will face, I guess it is hardly surprising the Bush administration would ask for the fullest possible authority with regard to personnel policy. But Congress should NOT give it

the unfettered power provided in Section 730, as written. It is too vague to ensure protection of Federal employees' rights. It undermines the merit system principles that define and insure the integrity of the Federal civil service. And it would appear to be part of a strategic effort by the Bush administration to restructure labor-management relations in the Federal government by (1) unilaterally expanding management rights and prerogatives and (2) diminishing the rights and involvement of Federal employees and their unions.

In addition, Congress should not provide the Bush administration with such unprecedented personnel policy flexibility because this would conflict with the mission of the new DHS. The DHS secretary needs a workforce that "hits the ground running," not one that spends its first days asking how the words "flexible" and "contemporary" might affect each worker's future.

RECOMMENDATIONS FROM HOUSE GOVERNMENT REFORM COMMITEE

AFGE believes Congress could help the new DHS secretary succeed by adopting the Federal personnel provisions recommended by the House Government Reform Committee.

1. House Government Reform Committee Bill & Title 5 Compensation Packages.

Section 730 of House Government Reform Committee bill deletes the Bush administration bill's Section 730 granting DHS the authority to exempt employees of the new department from Title 5. In its place, Section 730(c) directs the DHS secretary to submit to Congress a proposal for a demonstration project, "the purpose of which shall be to help attain a human resources management system which [would] enable the Department best to carry out its mission."

Thus, the House Government Reform Committee bill basically preserves the existing Title 5 compensation package.

Pay. Most Federal employees who will make up the workforce of the new DHS will be paid under one of the two main Federal government pay systems established under Title 5: the "general schedule" (GS) pay system, which sets specific salary levels for white collar workers, or the "wage grade" pay system, which sets rates for the government's craft and trade (blue collar) workers.

AFGE believes there is no reason to treat employees in this department differently from their counterparts in other Federal agencies, particularly in that inferior compensation would be deleterious to workforce morale and send exactly the wrong signal about the importance of homeland security. In the event management believes it appropriate to increase pay for the new workforce, the existing pay system allows for significant flexibility to reward high performers.

However, in an attempt to rationalize the 80 different pay and compensation systems mixed in and among the agencies that will be transferred into the DHS, Section 730(a) of the House Government Reform Committee bill gives the DHS secretary authority to propose Federal regulations that harmonize pay schedules "as may be necessary to address inequitable pay disparities among employees within the Department performing similar work in similar circumstances."

Health Care. The Federal government provides health insurance to active and retired Federal employees and their dependents through the Federal Employees Health Benefits Program (FEHBP). The right to enroll in an FEHBP plan, as established in Title 5, would be a significant part of the overall compensation package of Federal employees who work in the new DHS.

Retirement. About one-half of the Federal workforce is enrolled in the Civil Service Retirement System (CSRS), which is a defined benefit plan. The other half is covered by the Federal Employees Retirement System (FERS), which includes a small defined benefit, Social Security, and a thrift savings plan similar to a 401(k). CSRS and FERS are established under Title 5, and the new DHS would continue to provide both retirement systems.

Workers Compensation. DHS employees who suffer a disability due to personal illness or injury sustained while in the performance of duty would be eligible for workers compensation benefits, pursuant to Title 5 provisions.

2. House Government Reform Committee Bill & Existing Title 5 Authority To Fire or Demote Federal Employees Who Are Poor Performers or Disciplinary Problems.

The House Government Reform Committee bill preserves existing Title 5 authority to fire or demote Federal employees who are poor performers or disciplinary problems.

The Bush administration argues that the DHS secretary needs significant flexibility in the hiring and firing process because existing Title 5 civil service merit principles, such as due process and appeal rights, make it impossible to fire or demote Federal employees who are poor performers or disciplinary problems. AFGE

believes such flexibility is unnecessary because Federal managers already possess adequate authority under Title 5 to deal with such employees.

• During the one-year probationary period, a Federal employee may be fired for virtually any reason with no notice and no appeal rights.

• Following the one-year probationary period, a Federal employee can be fired or demoted, with 30 days notice. In accordance with basic notions of due process and in order to guard against any attempts to transform the Federal civil service system into a patronage system, that employee can appeal his/her case to the Merit Systems Protection Board (MSPB); if represented by a union, that employee has the option of taking his/her case to arbitration or appealing to the MSPB. However, the Office of Personnel Management reports that only a relatively small number of dismissals and demotions are reversed through such appeals.

3. House Government Reform Committee Bill & Dismissing Federal Employees for National Security Reasons.

Section 730(b) of the House Government Reform Committee bill provides that the DHS secretary shall establish procedures consistent with Title 5 to provide for the suspension and removal of DHS employees when necessary in the interests of national security.

Title 5 provides that, in a situation involving national security, an employee may be suspended without notice and then removed after the Federal agency conducts an "investigation and review" and determines that such action "is necessary or advisable in the interests of national security." In that context, the agency need not provide to the employee the rationale for a dismissal and the agency's decision to dismiss that employee is not subject to appeal.

4. House Government Reform Committee Bill & Right of Federal Employees to Whistleblower Protections.

Section 730(e) of the House Government Reform Committee bill strengthens existing Federal whistleblower protections by giving DHS employees, as well as employees throughout the Federal government, the right to sue for lost wages and benefits, compensatory damages, and "equitable, injunctive, or any other relief that the court considers appropriate."

We at AFGE believe whistleblower protections are essential. Federal employees should be protected against managerial reprisals for lawfully disclosing information they believe demonstrates a violation of law or mismanagement of authority.

That is why we are particularly pleased the House Government Reform Committee approved—by voice vote—the strengthening of whistleblower protections. Currently, the only effective, functional relief for Federal government employees under the Whistleblower Protection Act is through binding arbitration pursuant to collective bargaining agreements. Indeed, the Government Accountability Project (GAP), a highly respected government watchdog organization, now warns whistleblowers not to file cases for administrative hearings before the Merit Systems Protection Board. According to GAP, "after spending thousands of dollars and years of litigation, whistleblowers are virtually guaranteed a formal endorsement of the harassment they are challenging. The Federal Circuit Court of Appeals, which has a monopoly on judicial review [of whistleblower cases] has twisted and gutted the law. Its track record in decisions on the merits is 1-74 against whistleblowers, since Congress in 1994 strengthened the whistleblower law."

We at AFGE also believe whistleblower protections are essential to the new DHS's success. Because if you limit whistleblower protections, you effectively deny yourselves as Members of Congress and the American public essential information on how the new department is functioning.

Let me give you an example from one of AFGE's own councils.

In the aftermath of the September 11 terrorist attacks, two union officers of the National Border Patrol Council—border patrol agents Mark Hall and Bob Lindemann—went on the NBS Today Show and testified before Congress to speak out against law security on the United States' northern border. They said that despite all the talk, no new agents had been placed on the northern border and that agents were not making criminal background checks on people caught entering the United States illegally. These statement prompted their Immigration and Naturalization Service (INS) supervisor to propose summarily firing the agents, stating in internal emails that "[t]he President of the Local [union] deemed it necessary to independently question our readiness in a public forum," that "managers must take a stance which bear no tolerance of dissent" and that managers must "view resistance from rank and file as insubordination."

This is what employees are often up against when they speak out against the "company line" even when the company line involves the security of the United States. Without the knowledge that the union would represent them and that an impartial whistleblower hearing process was in place to review subsequent INS ac-

tions against them, you can be sure they never would have said a word and Congress would never have heard the truth of what was really happening on the United States' northern border. The union responded to the agency's proposed firing of the employees and worked with them in filing a complaint with the Office of Special Council (OSC), which is charged with investigation of whistleblower complaints of reprisal. The OSC recommended a reversal of the agency's decision. Eventually, as a result of that process, the agency agreed to reinstate the employees with back pay.

And, by the way, this was the fourth time in four years that the INS had attempted to muzzle legitimate criticism from employees for talking with investigators, the media, or Members of Congress. If you want to know what is really happening in the new DHS, you must provide employees with whisteblower protection and union representation. That is the bottom line.

5. House Government Reform Committee Bill & Right of Federal Employees to Organize and Bargain Collectively.

Under existing law, the President can strip a department's employees of collective bargaining rights if he determines that the primary function of an agency (or subdivision) is counterintelligence, investigative, or national security work. In fact, on January 7, 2002, President Bush issued Executive Order 13252 taking away the collective bargaining rights held by more than 500 Justice Department employees, many of whom were clerical and had enjoyed their rights for over 20 years. The Bush administration's stated reason for doing so? To prevent these employees from striking—a patently absurd argument since Title 5 clearly prevents Federal employees from striking. Based on the timing, as well as the fact that never before had any concern been raised about the union representation of U.S. Attorneys offices, AFGE would argue that the real reason the administration took away these employees' collective bargaining rights was to stop an organizing drive by workers in an unrepresented Miami field office.

Section 731 of the House Government Reform Committee bill protects the collective bargaining rights of over 50,000 current Federal employees slated to move into the new Department of Homeland Security. It provides that the President can not make such a national security-related determination regarding an agency (or subdivision) transferred into the new Department unless: (a) the mission and responsibilities of such agency (or subdivision) "materially change", and (b) a majority of employees within such agency (or subdivision) have as their "primary duty" intelligence, counterintelligence, or investigative work directly related to terrorism investigation."

AFGE supports Section 731 because the unionized Federal employees who will become part of the new DHS are among our nation's most patriotic, dedicated, and selfless public servants. In fact, many of these employees are law enforcement officers who have worked tirelessly since September 11 to protect our nation's borders.

In addition, AFGE supports Section 731 because the right to organize and bargain collectively is critical to the success of the DHS's overall mission. Union representation allows Federal employees to speak out about problems they see on the job without fear of retribution from their superiors. Such freedom will give Congress and the American people important insight into the new department's effectiveness in making our nation more secure from terrorists.

Union representation also is critical to stemming the tide of attrition that plagues many of the Federal agencies that will be transferred into the new DHS. For example, the Immigration and Naturalization Service is expected to lose 20 percent of its border patrol agents and 15 percent of its immigration inspectors by year's end. Many thousands more are expected to leave the new department if faced with the prospect of losing their union representation.

Congress has the prerogative as it legislates the creation of the new DHS whether to allow the employees to be represented by unions. Given the Bush administration's likelihood of taking away their collective bargaining rights, Congress has the right—and should exercise its right—to decide whether the President's discretion under current law to eliminate collective bargaining rights should apply in this instance.

CONCLUSION

The idea of consolidating Federal agencies into one super department has been compared to a corporate merger—taking companies with different products, expertise and cultures and merging them into one entity. And it has been said of corporate mergers that they often sound good in theory, look good on paper, but utterly fail in practice. Given the rapid and wide consensus that there should be a DHS, we hope this pattern does not carry over.

But if, as the old expression goes, the train has left the station, then it is AFGE's goal to make sure it doesn't run over tens of thousands of Federal employees along

the way. No one is more interested in making their homeland secure than the dedicated men and women of the Federal government who put their lives on the line every day of the year. In order to keep these employees—and recruit and retain others like them—their Title 5 civil service protections and collective bargaining rights need to be preserved in the new DHS.

Thank you for the opportunity to present our views today.

STATEMENT FOR THE RECORD OF COLLEEN M. KELLEY, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

Chairman Armey, Ranking Member Pelosi, distinguished members of the Committee, I would like to thank the Committee for the opportunity to comment on the creation of a proposed Department of Homeland Security and its impact on the Customs Service.

As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union which represents over 12,000 Customs employees who are stationed at 301 ports of entry across the United States. Customs inspectors, canine enforcement officers, and import specialists make up our nation's first line of defense in the wars on terrorism and drugs as well as the facilitation of lawful trade into the United States. In addition, Customs personnel are responsible for ensuring compliance with import laws and regulations for over 40 Federal agencies, as well as stemming the flow of illegal contraband such as child pornography, illegal arms, weapons of mass destruction and laundered money.

With a FY2002 budget of approximately $3.1 billion, the U.S. Customs Service facilitates more trade, and interdicts more drugs than any other agency. The Customs Service collects over $20 billion in revenue on over 25 million entries involving over $1.3 trillion in international trade every year. The Customs Service provides the Federal government with its second largest source of revenue. Last year, the Customs Service deposited over $22.1 billion into the U.S. Treasury.

The President's FY2003 budget requests a funding level of $3.18 billion for the United States Customs Service. This request represents a token increase from last year's appropriations. NTEU feels that this budget is simply inadequate to meet the needs of Customs personnel, especially in light of the incidents surrounding September 11th.

In addition to appropriations, Customs also receives funds from the COBRA account. This user fee account funds all inspectors' and canine enforcement officers' overtime pay as well as approximately 1100 Customs positions across the country. This account is funded with user fees collected from air/sea passengers except from the Caribbean and Mexico, commercial vehicles, commercial vessels/barges and rail cars.

The COBRA fund will expire on September 30, 2003, unless it is reauthorized by Congress before then. However, the President's FY2003 budget does not call for the reauthorization of COBRA. COBRA must be reauthorized or Congress must appropriate additional funds to make up for the loss of the user fees.

In 2001, Customs Service employees seized over 1.7 million pounds of cocaine, heroin, marijuana and other illegal narcotics—including over 9.5 million tablets of Ecstasy, triple the amount seized in 1999. Customs also processed over 500 million travelers last year, including 1 million cars and trucks. These numbers continue to grow annually. Over the last decade trade has increased by 137 percent.

Yet, despite the increased threats of terrorism, the dramatic increases in trade resulting from NAFTA, and new drug smuggling challenges, the Customs Service has confronted its rapidly increasing trade workload and homeland security mission with relatively static staffing levels and resources. In the last ten years, there simply has not been adequate increases in staffing levels for inspectional personnel and import specialists, the employees who process legitimate trade, to successfully conduct their missions. Unfortunately, this situation is not likely to change under the President's Homeland Security proposal. The President has stated that his proposal will not include any additional funding that will enable the Customs Service and its personnel to successfully accomplish their missions of trade facilitation and border security.

For example, traffic volume at U.S. land ports-of-entry has steadily increased as our shared borders with Mexico and Canada have become more open as a result of the NAFTA and other trade initiatives. The steady increase of commercial and noncommercial traffic has led to increased wait times at many land ports-of-entry, particularly those along the Southwest border. Wait times along the Southwest border often extend to 45 minutes or more during peak hours. Such lengthy delays can be both irritating and costly to businesses and the traveling public. The lack of re-

sources at ports-of-entry is also a problem along the Northern Border as well as seaports. The events of September 11 brought attention to the fact that the Northern border, the nations' seaports, and the Southwest border are still in urgent need of additional personnel and resources. In fact, Customs' recent internal review of staffing, known as the Resource Allocation Model or R.A.M., shows that Customs needed over 14,776 new hires just to fulfill its basic mission and that was before September 11.

For instance, with increased funding, modern technologies, such as Vehicle and Cargo Inspection Systems (VACIS), which send gamma rays through the aluminum walls of shipping containers and vehicles to enable Customs inspectors to check for illegal drugs or weapons of mass destruction, as well as decreasing the amount of time shipping containers are out of the supply chain, could be acquired. However, adequate and consistent funding to purchase, operate and maintain these technologies has not been forthcoming. Other technologies, coupled with proper personnel funding, such as portable contraband detectors (a.k.a. Busters), optical fiber scopes and laser range finders can be invaluable to Customs personnel protecting our borders from terrorists and illegal drugs.

Included in the modern technology possibilities for Customs is the Automated Commercial Environment or (ACE). ACE could be an integral element for trade enforcement and in preventing cargo from becoming an instrument of terrorists. The current Automated Commercial System (ACS) is a 17 year old, outdated system that is subject to system crashes and freezes that wreak havoc on trade facilitation and employees' ability to do their jobs. Although a system upgrade is necessary for Customs to meet its modernization efforts, NTEU would oppose funding a new system that shifts funds away from critically important staffing needs.

A number of these resource issues were addressed by the Ways and Means Committee in HR 3129, The Customs Border Security Act of 2002, which is part of the trade package before Congress. This legislation would authorize over $3 billion for a number of Customs priorities such as staffing, commercial and non-commercial operations, narcotics detection equipment, child pornography prevention, the ACE computer system and the air and marine interdiction units.

As for the President's Department of Homeland Security proposal, HR 5005, it seeks to consolidate the Customs Service, INS, Border Patrol, the Animal and Plant Health Inspection Service (APHIS) the Transportation Security Agency (TSA) and the Coast Guard into one division titled, Border and Transportation Security under the jurisdiction of a newly created Department of Homeland Security. I find this proposal to be extremely troubling for a number of reasons, one of which is the fact that the Customs Service would not be maintained as a distinct entity within the proposed Department of Homeland Security. Each of these agencies' missions are unique and should remain as distinct entities in any new agency. Combining each agency's fields of expertise will lead to losing that expertise.

The fact that Customs would not be a distinct entity within the Department of Homeland Security would deal severe blows to three distinct missions in which the Customs Service has world class expertise, trade facilitation, the collection of duty revenue, and drug interdiction at our nation's borders. Each year more than 16 million containers arrive in the United States by ship, truck and rail. In the last five years alone, Customs has witnessed a 60 percent increase in trade entries processed, and this rate is expected to grow an average of 8 to 10 percent a year.

To consolidate the Customs Service with five other agencies, only one of which remains a distinct entity, the Coast Guard, would be a long-term mistake for Customs. Customs' trade facilitation mission would clearly not be the highest priority for the Department of Homeland Security. Keeping Customs as a distinct entity within the Department proposed in both Representative Mac Thornberry's bill, HR 4660, and Senator Lieberman's Homeland Security bill, S 2452 would help retain the emphasis on the importance of Customs' trade related duties.

Other trade issues such as textile transshipment enforcement, trade agreement circumvention, and the use of counterfeit visas to enter inadmissible goods would simply fall farther down the priority list in a newly created Department of Homeland Security. Many of these concerns have been voiced by a number of trade groups such as the National Foreign Trade Council and the Electric Industries Alliance.

The importance of keeping Customs intact as a distinct entity within a new Department of Homeland Security is even more necessary when one looks at the full interaction of Customs employees involved in both the trade facilitation and law enforcement missions of the Customs Service. Trade enforcement functions are carried out by the same Customs personnel who ensure border security. Customs inspectors, import specialists, canine enforcement officers and agents work closely together to enforce trade and anti-smuggling laws. When an inspector makes a large illegal cash seizure at a border crossing, the case is given to an agent for a follow-up inves-

tigation to determine where the illegal funds came from and where they were going. The interaction between the law enforcement and trade facilitation missions of the Customs Service is also useful in the discovery of counterfeit goods and intellectual property piracy.

Customs also relies on the expertise of its trade enforcement personnel to recognize anomalies in their review and processing of commercial transaction information associated with the admissibility and entry of imported goods. This process assists law enforcement in developing targeting criteria as well as targeting suspect shipments and starting investigations. The Customs Service has established partnerships with private industry that are unmatched, enabling them to work together to ensure the efficient flow of goods and services into the United States together with the mission of protecting our border from terrorism and other illegal activities. To separate these two vital missions of the Customs Service would compromise the current effectiveness of all Customs employees.

Both the American public and the trade community expect the borders to be properly defended while at the same time being able to efficiently and safely facilitate trade across that border. The government must show the public that it is serious about protecting the borders and facilitating trade by fully funding agencies such as the Customs Service who are tasked with defending the borders and enforcing the trade laws of the United States. No organizational structure change will be successful, no matter how good it may look on paper, if the government does not provide proper funding for its border agencies.

The Administration has indicated that it wants new "flexibility" in the legislation that will establish the Department of Homeland Security. While it is unclear exactly what is meant by that phrase, I urge Congress not to take away the rights and benefits that are currently available to the employees who may be merged into this new department. Before, during, and after September 11, front line employees have acted heroically to protect our freedom. They do not deserve to lose theirs.

The House Government Reform Committee acted last week to protect the Title 5 rights of Federal employees who will be transferred into the new department under HR 5005 and I would strongly urge this committee and the Senate to do the same.

Other legislative actions that would help to ensure the retention of Customs personnel would be to grant law enforcement status for Customs Inspectors and Canine Enforcement Officers. The U.S. Customs Service Inspectors and Canine Enforcement Officers continue to be the nation's first line of defense against terrorism and the smuggling of illegal drugs and contraband at our borders and in our ports. Customs Service Inspectors have the authority to apprehend and detain those engaged in terrorism, drug smuggling and violations of other civil and criminal laws. Canine Enforcement Officers and Inspectors carry weapons, and at least three times a year they must qualify and maintain proficiency on a firearm range. Yet, they do not have law enforcement officer status. They are being denied the benefits given to other Federal employees who they have been working beside to keep our country safe. Customs employees face real dangers on a daily basis, granting us law enforcement officer status would be an appropriate and long overdue step in recognizing and retaining the Customs personnel who continue to protect our borders from terrorism and drugs. There currently is a bill before the House, HR 1841, which would grant law enforcement status to Customs personnel. Representative Filner introduced this bill. This bill currently has 180 cosponsors. I would ask all members of this committee to cosponsor this very important legislation.

Finally, I have attached to my statement an article from Newsday that features Customs Inspector and NTEU member Diana Dean, who apprehended Millenium Bomber, Ahmed Ressam in Port Angeles, Washington. It makes the case more eloquently than I could, that she is the kind of person we want in a new Department of Homeland Security. But I fear that the "flexibilities" proposed by the President will lead to many fewer such dedicated people willing to work for the new Department. That would be a shame and I hope Congress will not let that happen.

Thank you for the opportunity to share NTEU's thoughts on these very important issues with this committee.

[Whereupon, at 3:25 p.m., the committee recessed, to reconvene at 10:00 a.m. on Tuesday, July 16, 2002.]

H.R. 5005, THE HOMELAND SECURITY ACT OF 2002, DAY 2

TUESDAY, JULY 16, 2002

U.S. HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON HOMELAND SECURITY,
Washington, DC.

The committee met, pursuant to call, at 10 a.m., in Room 345, Cannon House Office Building, Hon. Richard K. Armey [chairman of the committee] presiding.

Present: Representatives Armey, DeLay, Watts, Pryce, Portman, Pelosi, Frost, Menendez, and DeLauro.

Chairman ARMEY. The select committee will come to order. We are meeting today to hear a second day of testimony on H.R. 5005, the Homeland Security Act of 2002. Before we get started this morning, I would like to announce that it is my intention for members of the committee to proceed with testimony and questions for our first panel and then recess the select committee until 2:30 p.m. This afternoon when we will resume with our second panel.

The Chair will also continue its practice of recognizing a member on each side of the aisle for opening statements and then asking the remaining members to put their opening statements in the record so we can get on with the hearing.

The Chair now recognizes the gentlelady from Ohio, Ms. Pryce, for a brief opening statement.

Ms. PRYCE. Thank you very much, Mr. Chairman, members of the select committee, and our witnesses here this morning, thank you very, very much for being here for this important hearing. This is one of the most important things that this or any Congress has ever contemplated, and your input will be invaluable. So thank you very much.

Mr. Chairman, I also would like to take an opportunity to thank you for your steady and bipartisan leadership of this committee. As we get started on our third day of hearings on the creation of the Department of Homeland Security, I would like to begin by thanking you once again. We have before us today three very impressive panels of individuals who have risen to their current post by virtue of their expertise and leadership in their respective fields. The diversity of our witnesses today demonstrates the collaborative and bipartisan nature of the process that we are undertaking. I look forward to your valuable input on the Department and look forward to your statements.

Today, with the benefit of the recently unveiled National Strategy on Homeland Security, the committee continues its in-depth analysis of the administration's proposal. Last week we began our

process by examining the nature of the threat facing our Nation. To be sure, what confronts America is in many ways the most unique and most deadly enemy that we have faced in our entire history, hiding in shadows, crossing our borders with ease, and preying on the open society in which we live. Our response must be smarter, more agile, and ever prepared, but always rooted in the principles that have made our Nation so strong.

As Governor Ridge pointed out to us yesterday, we are fighting a war on two fronts. We fight this war not just abroad with our military, diplomatic, and economic weapons, but at home with every Federal, State and local government tool at our disposal.

During this phase of the committee's work, we will examine specific ideas for consolidating our myriad and unique responses to the threat at home through a new Cabinet-level department. We will hear from a wide range of members from the administration whose departments undertake homeland security tasks and whose diverse functions demonstrate that under the current system, homeland security work of our government is dangerously spread out.

We will hear from a bipartisan group of Members of Congress who have long been staunch advocates for the need of a Department of Homeland Security, and we will also hear first from the committee chairmen and ranking members who have begun the process of crafting the legislation to create this new Department. By tapping into all of their collective expertise, we can maximize the effectiveness of the Department, sharply focus its mission, and offset any associated costs by eliminating unnecessary redundancy and increasing government efficiencies.

The creation of the Department of Homeland Security will unite the current patchwork of government homeland security activities into a single Department with the primary mission of protecting our homeland. The need for a single responsive and agile Department to organize the homeland security functions that are currently disbursed among more than 100 different government organizations cannot be overstated. As President Bush pointed out in his address to the American people announcing the creation of the Department of Homeland Security, we are a different Nation today, sadder and stronger, less innocent and more courageous, more appreciative of life.

As we continue our work on this historic task to create a new Federal department to respond to the threats of our Nation through the 21st century, we must be ever mindful of the spirit, sacrifice, and resolve of the American people who rightfully require us to be persistent, yet judicious and balanced in our task, preserving the freedoms we all enjoy while ensuring the safety of our families, our communities, and our country.

The witnesses before us reflect the strength and the spirit of the American people, and I look forward to hearing from all of you today. Thank you very much Mr. Chairman.

Chairman ARMEY. Thank the gentlelady. The Chair is now happy to recognize the gentleman from New Jersey, Mr. Menendez.

Mr. MENENDEZ. Thank you Mr. Chairman. Mr. Chairman, members of the distinguished administration who are here, let me start off by saying what I hope is obvious to all of us in the work of securing our homeland: There are no Democrats, no Republicans,

there are only patriots. And this work may very well be the most significant work that any of us will do in our public careers.

I want to take this opportunity to outline the three priorities that I have that I believe this legislation must address if we are going to get this ambitious undertaking right in the first place. We recently learned that, in all-too-public spat between two of the most venerated agencies of the Federal Government, that the key problem with the events and circumstances leading to September 11 was a glaring and unacceptable lack of coordination and information sharing within and between intelligence and law enforcement agencies as well as State and local authorities.

Ms. Colleen Rowley of the FBI in her Senate testimony, unlike and probably despite her superiors, informed us of much, in great detail, on the very same day the administration proposed to establish this new Department of Homeland Security.

Since effective coordination and adequate information sharing is the main problem that the establishment of this new Department presumably would address, it is up to us in Congress to make sure that it is not only presumably addressed with verbal assurances, but that it is actually addressed with legislative language. So to make a twist on the words of Teddy Roosevelt: If it is broke, then fix it. And it is broke, so we need to fix it.

Merely combining agencies of like missions into a larger institution setting in and of itself will not suffice. So I suggest to my colleagues that we must include mechanisms in this bill to guarantee that such coordination and information sharing indeed will occur.

Secondly, we must get it right in terms of both focus and balance. As the House Democratic Homeland Security Task Force, which I chair, spelled out in two of our bills, the BioPAct Act and the USA Act, we must be in the business of prevention. We must prevent, not just prepare for and respond to future terrorist attacks. The key challenge to ensuring adequate prevention is to have all the databases that matter integrated and available in real-time to the new Secretary. The minute that this Department goes online, there should be no basis whatsoever for doubting whether the new Secretary will have all of the intelligence and law enforcement information on domestic threats that he or she would require.

At this point, I am not persuaded that the bill will accomplish that. That is something I hope we can work towards.

Mr. Chairman, I would like with your approval to submit for the record the principles adopted by the Democratic Caucus Homeland Security Task Force and by the Democratic Caucus. These principles state that the new Department should be created and operated in an open and fiscally responsible manner to an amended White House budget proposal; that Washington should promptly move resources to local first responders and continue the operation of local programs already proven to be effective, such as the COPS program, the FIRE Act, and assistance to our hospitals and community health care centers; that the proposed Department not jeopardize those functions and agencies that are not specifically related to security; and that as we protect and defend our country, we must also protect and defend the Constitution and our civil liberties, and that we protect the rights and benefits of civil service employees.

Lastly, going back to local communities for a moment, Governor Ridge repeatedly has said if the hometown is secure, the homeland is secure. We have asked the administration whether there are plans, for example, to deal with some of the challenges our communities face; for example, for overtime costs that have gone up after 9/11 and are continuing, and we look forward to seeing that continue in a way that is responsive to these local concerns. Yes, there is burden sharing, but there must also be a sharing of resources in that context.

Now the administration has finally produced a strategy, and I want to salute it. I just came from the White House with my members of the select committee, and that strategy is something I have been looking forward for quite some time, because I believe you need to set out a strategy and then you organize a department in response to a strategy. And I look forward to hearing from our Cabinet Secretaries as to what role they provided in the preparation of this strategy document.

The improved coordination and data sharing this bill seeks must begin with a comprehensive threat assessment, followed by a strategy and plans to implement that strategy. That strategy should outline specific priorities, along with the budget that would allocate the resources necessary to implement it. These are not proposed embellishments. They are basic requirements. Although we must still review the strategy, its completion is clearly a significant step forward, and I salute the administration for producing it.

Lastly, we have heard much about the talk about the need for flexibility for the new Secretary and this Department. And today, this morning, the President made that case again. And I understand the nature of some of what that flexibility needs to be, but I also hope that in the process of providing the flexibility necessary to guarantee the effective and efficient operation of the Nation's security, that we in the process of setting up this new Department—that homeland security should not mean insecurity for the employees for which we will have to call upon their greatest talents, their collective institutional wisdom, their knowledge of the challenges we face, and to unlock their abilities to be able to respond to those challenges in the new role which they are being transferred to.

So life in America has forever changed after September 11. Main Street is now the front line of the new war. American values, however, have not changed and must not change. We continue to value liberty and freedom and justice and fairness. So what we pass here is part of our job, but we need to demand that the will of the people, the people's top priority, keeping their families and our Nation safe, is carried out effectively. Towards that end, we Democrats are continuing to work with you in a bipartisan process in order to ensure that what we produce is ultimately achieving that ultimate goal.

Thank you Mr. Chairman.

Chairman ARMEY. Thank the gentleman, and the gentleman is aware that the record is open for your submission and we appreciate that.

[The information follows:]

Democratic Caucus Homeland Security Task Force
Principles for the Consideration of the President's Homeland Security Proposal

As any new Department of Homeland Security is developed, the United States must make protecting the American homeland from terrorism and fighting terrorism abroad its top priority.

Democrats continue to strongly embrace and support the reform and reorganization of the departments and agencies with responsibilities for homeland defense, while also calling for a thorough review of events and factors that led to the tragic events of 9/11.

Such reform and reorganization, coupled with a comprehensive threat assessment and strategy to address threats to the American homeland, is the best way to improve the safety and security of the American people.

We are glad that the President has come to agree with Democratic proposals that the head of federal homeland security efforts must have the requisite statutory and budget authority to effectively and efficiently protect America from terrorism.

The proposed Department should be created and operated in an open and fiscally responsible manner through an amended White House budget proposal.

As we protect and defend our country, we must also protect and defend the Constitution, the Bill of Rights, our civil liberties, and the protections of civil service employees.

Any development and operation of the proposed Department of Homeland Security must involve a bottom-up process, with the input and recommendations of local first responders and local officials from America's cities, small towns and rural communities.

In the process of reform and reorganization, Washington must promptly move resources to local first responders, and continue the operation of local programs already proven to be effective, such as the COPS program, the FIRE Act and assistance to our hospitals and community health care centers.

The proposed Department of Homeland Security should consist of functions primarily related to domestic security. Reorganization should not jeopardize those functions of departments and agencies that are not specifically related to security, so that those core missions remain intact.

The White House should establish an expedited review process for technology developed for homeland security.

Hometown security equals homeland security.

[Statements submitted for the record follow:]

PREPARED STATEMENT OF THE HONORABLE DICK ARMEY

We are honored to have a very distinguished series of panels come before us today offering their views on the proposal to better prepare our country to defend itself from the enemies of freedom.

I'd like to thank Secretaries Veneman, Thompson, Mineta and Abraham as well as Director James for taking the time to be with us. Each of these cabinet officials has responsibilities for and in-depth knowledge of the agencies involved in this government reorganization plan. In addition, I can think of no one in our government more able to address questions about the personnel issues we face than Director James.

I'd also like to thank the House Members who first articulated the need for transforming our government for appearing before us today. We extend our welcome to Reps. Mac Thornberry, Jane Harman, Jim Gibbons and Ellen Tauscher, each of whom served as lead sponsors of legislation that preceded the President's own proposal.

Finally, because there is a Judiciary Committee markup scheduled for tomorrow, we are happy to accommodate Chairman Sensenbrenner and Ranking Member Conyers today. We look forward to their perspective on the legislation at hand.

Once again, the importance of our work in this Select Committee is demonstrated in the quality of our witnesses. Because their knowledge and expertise is unmatched, their input will be essential throughout our open and deliberative process.

As we proceed with the heavy work load required for this historic government transformation, let us recall the words of our Founders. They remind us that government was established "to provide for the common defense, promote the general welfare and secure the Blessings of Liberty to ourselves and our posterity."

No amount of work is too great to ensure that we live up to this goal. It is our duty to get this job done, taking no more time than is needed to do it right. I look forward to hearing from our distinguished series of witnesses who are here to assist us in that task.

PREPARED STATEMENT OF THE HONORABLE ROSA L. DELAURO

Today marks the third day of hearings regarding consideration of the President's proposal to create the Department of Homeland Security. The standing committees completed their work expeditiously and in an impressively bipartisan fashion, and it now falls to the Select Committee on Homeland Security to finish this task both swiftly and thoughtfully.

While I support the creation of the new Department to oversee our efforts to safeguard American citizens, I have a number of questions and concerns that I hope can be addressed. I continue to be concerned that transferring the public health functions of the Centers for Disease Control and biomedical research efforts underway at the National Institutes of Health would adversely affect our world-class research centers. From a public health standpoint, there is no difference between the response to a naturally occurring outbreak and one that is deliberately caused. And scientists at the National Institutes of Health have already implemented a strategic plan to guide their bioterrorism research. I see no reason for moving these responsibilities to the new department. I look forward to hearing from Secretary Thompson on these issues today.

I also have concerns about how the transfer of the Coast Guard to the new department will affect their non-security duties—such as search and rescue, fisheries enforcement, and aids-to-navigation. These are critical responsibilities, and I look forward to hearing from Secretary Mineta on how they will continue to be carried out.

Finally, I continue to have serious concerns regarding the new FOIA exemption proposed for this department, and what I believe to be an unnecessary check on the Inspector General to investigate and report to Congress on issues that might arise. I believe it is possible to safeguard information relating to our national security without unduly compromising America's tradition of open government.

These are important questions that must be answered before we create the Department of Homeland Security, and many of them have been addressed by the standing committees. I have full confidence in our ability to take those recommendations under advisement and work together to find those answers, to address these valid concerns, and enact this historic legislation.

Chairman ARMEY. Well, let me thank the panel for being here today. I do appreciate the effort. I want to especially thank Secretary Abraham for your late night plane ride that brought you here, Spencer. We do appreciate this extra effort on your part so you could be with us today. Without any objection by the members of the panel, we would put your written statement in the record and ask you to take a few minutes each in your turn to summarize your statement.

Chairman ARMEY. And with that in mind, I would like to begin with Secretary Veneman to give your statement.

STATEMENT OF HON. ANN VENEMAN, SECRETARY, DEPARTMENT OF AGRICULTURE

Secretary VENEMAN. Thank you, Mr. Chairman and members of the committee. I appreciate the opportunity to be here today to discuss the President's proposal for a new Department of Homeland Security. As you discussed in this committee, the President has put forth a bold and historic plan that is aimed at better protecting our Nation from potential terrorist threats in the future.

For the U.S. Department of Agriculture, the events of September 11 changed forever the context in which we do our work, as has been the case with so many of the other Federal agencies. In the past, the focus of most of our efforts has been to prevent and deter the unintentional introduction of pests and diseases from entering our country. Beginning in February of 2001, our systems were put to the test when we saw the devastating impacts of foot-and-mouth disease in the U.K. And other parts of Europe. At that time, USDA initiated an aggressive strategy to prevent foot-and-mouth disease from reaching our country by providing technical support to Great Britain. We increased staffing at our ports around the country by adding new inspectors, additional detector dog teams and port veterinarians. We worked closely with State agricultural departments to strengthen our coordination and our training as well as our contingency plans, and we launched a public information campaign to educate the public about their role in keeping foot-and-mouth disease out of the U.S.

Through the President's 2003 budget proposal and supplemental appropriations by the Congress, we continue those efforts today. Our border protection and personnel levels will be at their highest ever, and investments in the area of research laboratory upgrades in security have enhanced our ability to prepare for the potential threats to American agriculture. These much-needed resources not only help protect against unintentional threats but they are helping as we deal directly with the potential acts of terrorism that we now face in the wake of September 11.

But the potential of intentional threats to agriculture production and our food supply have required us to do even more. We have been working very closely with other Federal agencies, State agriculture departments, academia, the agriculture and food sector, on multiple fronts to secure and strengthen both our planning and preparedness. For example, we expedited work with the U.S. Customs Service to implement an automated inspection targeting system. We have collaborated with research universities and State ag departments to step up the development of rapid detection systems, expand our network of diagnostic laboratories, strengthen pest and disease surveillance, and better secure and strengthen our laboratories and improve emergency preparedness capabilities.

While we have done a great deal of work, the job is far from over and we cannot let down our guard. When it comes to protecting U.S. Agriculture and our food supply, we must continuously improve and strengthen our protection capabilities.

Governor Ridge and I enjoy a strong working relationship, and I can tell you that he clearly understands the importance of USDA's role in homeland security. In the months since he became the President's adviser on these issues, I have grown to appreciate

his knowledge and understanding of the complex issues throughout the Federal Government. And that is why this proposal for a Department of Homeland Security is so critical.

In putting forth the proposal, the President made clear the important role of agriculture in protecting the food supply by including parts of USDA in the plan, the Animal Plant Health Inspection Service, or, as we commonly refer to it, APHIS, and the Plum Island Animal Disease Center. This is a clear recognition of APHIS' vital mission as it relates to homeland security.

There has been considerable discussion about the best way to protect America and the vital role that USDA's APHIS program serves in that regard. Many States and industries and stakeholders have provided input regarding the move of APHIS to the Department of Homeland Security and the ongoing programs with APHIS that are not directly associated with the protection of homeland security. These programs include protecting livestock from predators, eradicating boll weevil, fruit flies, Brucellosis, controlling rabies and wildlife, negotiating with foreign countries on technical requirements for U.S. Imports and exports, regulation of biotechnology, animal welfare, as well as other programs.

In the past few weeks, the House Agriculture Committee has worked with the administration to refine the President's proposal. The result of that work appears in the committee's amendment which would move the specialized border inspection and enforcement functions of the U.S. Department of Agriculture as well as the Plum Island disease facility to the new Department of Homeland Security.

The administration looks forward to working with Congress so that the final bill provides the Secretary of Homeland Security the coordinating authority required to ensure integrated plans to address the threat of agroterrorism. The House Agriculture Committee's amendment is consistent with the President's goal of unifying the border and transportation security functions of many Federal agencies. It affirms the critical role played by inspectors of our agriculture cargo conveyances and international passengers. It acknowledges the close partnerships USDA inspection personnel have developed with the U.S. Customs Service, the Immigration and Naturalization Service, and the U.S. Border Patrol. It also recognizes the importance of USDA's working with the new Department in training Homeland Security inspection personnel involved in examining cargo passengers and trade in food and agriculture products.

Finally, the amendment recognizes that the transfer of the Plum Island Animal Disease Center is integral to the Department of Homeland Security. In short, the transfer of APHIS' agriculture quarantine inspection program and the Plum Island Animal Disease Center to the Department of Homeland Security is the right step to protect our Nation's security and agricultural health.

Mr. Chairman, I thank you for this opportunity to appear today. We appreciate your leadership and that of this committee in addressing the important issues relating to homeland security, particularly as it relates to protection of agriculture and the food supply.

Thank you very much and I look forward to answering your questions.

Chairman ARMEY. Thank you Secretary Veneman.

[The statement of Secretary Veneman follows:]

PREPARED STATEMENT OF THE HONORABLE ANN M. VENEMAN, SECRETARY OF AGRICULTURE

Mr. Chairman and Members of the Committee, thank you for the opportunity to be here today to discuss the President's proposal for a new Department of Homeland Security.

The President has put forth a bold and historic plan aimed at better protecting our nation from potential terrorist threats in the future. The President's approach is to bring together agencies currently with missions related to the protection of our homeland and merge them into a single agency that will better protect, better prepare and better coordinate this critical responsibility.

This requires extraordinary vision, new thinking and the ability to look at the much larger issue at hand—and that is again, the protection of our citizens against potential threats. And, I must say, we have appreciated the leadership role of this Committee and Members of both the House and the Senate for the strong role you have played in moving forward with this Legislation.

For the U.S. Department of Agriculture, the events of September 11 changed forever the context in which we do our work, as has been the case in so many other Federal agencies.

In the past, the focus of most of our efforts has been to prevent and deter the unintentional introduction of pests and diseases from entering our country.

In February 2001, our systems were put to the test, when we saw the devastating impacts of foot-and-mouth disease (FMD) in the United Kingdom and other parts of Europe. At the time, USDA initiated an aggressive strategy to prevent FMD from reaching our country by providing technical support to Great Britain, increasing staffing at ports of entry around the country by adding new border officers, detector dog teams, and port veterinarians. We worked closely with State agriculture departments to strengthen our coordination, training, and contingency plans, as well as launching public information campaigns to educate the public about their role in helping keep FMD out of the U.S.

Through the President's FY 2003 budget proposal and supplemental appropriations by the Congress, we continue those efforts today. Our border protection personnel levels will be at their highest levels ever, and investments in the areas of research, laboratory upgrades, security, have enhanced our ability to prepare and respond to potential threats to American agriculture.

These much needed resources not only help protect against unintentional threats, but they are helping as we deal directly with the potential acts of terrorism that we now face in the wake of September 11th.

But the potential of intentional threats to agricultural production and our food supply have required us to do much more. We have been working closely with other Federal agencies, State agriculture departments, academia and the agriculture sector, on many fronts to secure and strengthen planning and preparedness.

For example, we have expedited work with U.S. Customs Service to implement an automated inspection targeting system. We have collaborated with research universities and State agriculture departments to step up the development of rapid detection systems, expand our network of diagnostic laboratories, strengthen pest and disease surveillance, better secure and strengthen laboratories, and improve emergency preparedness capabilities.

While a great deal of work has been done in a very short amount of time, the job is far from over. We cannot let down our guard. When it comes to protecting U.S. agriculture and our food supply, we must continuously improve and strengthen our protection capabilities.

Governor Ridge and I enjoy a strong working relationship and I can tell you he understands clearly the importance of USDA's role in homeland security. In the months since he became the President's advisor on these issues, I have grown to appreciate his knowledge and understanding of the complex issues throughout Federal government.

This is why the President proposed including USDA's Animal and Plant Health Inspection Service (APHIS)—the agency that prevents and manages outbreaks of pests and diseases—and the Plum Island Disease Facility in the new Department. In the past few weeks, the House Agriculture Committee has worked with Administration to refine the President's proposal. The result of that work appears in the

Committee's amendment that moves the specialized border inspection and enforcement functions of the U.S. Department of Agriculture, as well as the Plum Island Disease Facility, to the new Department. The Administration supports the amendment. We look forward to working with Congress so that the final bill provides the Secretary of Homeland Security the coordinating authorities required to ensure integrated plans to address the threat of agro-terrorism.

The House Agriculture Committee's amendment is consistent with the President's goal of unifying the border and transportation security functions of many Federal agencies. It affirms the critical role played by inspections of agricultural cargo, conveyances, and international passengers. It acknowledges the close partnerships USDA inspection personnel have developed with the U.S. Customs Service, the Immigration and Naturalization Service, and the U.S. Border homeland security inspection personnel involved in examining cargo, passengers, and trade in food and agricultural products.

Finally, the amendment recognizes that the transfer of the Plum Island Animal Disease Center is integral to the Department of Homeland Security. In short, the transfer of APHIS' agricultural quarantine inspection program and the Plum Island Animal Disease Center to the Department of Homeland Security is the right step to take to protect our Nation's security and agricultural health.

Mr. Chairman, again, I thank you for this opportunity to appear before you today. I appreciate your leadership, and that of this Committee in addressing the important issues related to homeland security, particularly as it relates to the protection of agriculture and our food supply. I look forward to answering your questions today and a continued dialogue on these and other issues in the future.

Chairman ARMEY. Secretary Mineta, we would love to hear from you now.

STATEMENT OF HON. NORMAN Y. MINETA, SECRETARY, DEPARTMENT OF TRANSPORTATION

Secretary MINETA. Thank you very much, Mr. Chairman, and to Representative Pelosi and members of the select committee, it really is a pleasure for me to have this opportunity to appear before you today and to give you my views on the President's proposal to create the Department of Homeland Security.

First I want to congratulate the leadership of both sides of the aisle for their responsiveness to this legislation and compliment you on the decision to establish this committee. This is an incredibly important issue that responds to the very real danger facing our great Nation. Having served in Congress with all of you, I know that all of you are answering the call.

Now I would like to limit my comments to the impact this Department's creation will have on our Nation's transportation system and whether it is wise to proceed with this sizeable task while we are in the midst of fighting a war.

First of all, the nature of the threats facing America requires a consolidated government structure to protect against invisible enemies that can strike with a wide variety of weapons, and the President's proposal underscores the importance of transportation security as a major part of America's overall homeland security.

I believe that it is impossible to create a Department of Homeland Security and not have agencies like the United States Coast Guard and the Transportation Security Administration at the heart of it. Regardless of a threat, it is a given that our transportation system will be used by the enemy to arrive in our midst or deliver its weapons. That is why the Coast Guard and the Transportation Security Administration will be key components of the new Department of Homeland Security.

The Coast Guard is our Nation's lead maritime security agency and the first line of security on our maritime borders. It has broad military and statutory authorities that are critical to securing our coastline, our economic exclusive zone, and seaports. And nearly 40 percent of the Coast Guard's current operating budget is directly related to the core missions of the new Department. To maximize the Coast Guard's effectiveness in this new Department, it is essential that the United States Coast Guard remain intact, retain its essential attributes as a military multimission and maritime service and be adequately funded to fulfill its missions.

Admiral Collins, the Commandant of the United States Coast Guard, recently testified that the greatest danger to any Coast Guard mission would be to fracture the Coast Guard. Its multimission assets are critical to each of the five fundamental overlapping roles: maritime security, maritime safety, maritime mobility, protection of natural resources, and national defense—missions that will continue to flourish in the new Department. The Coast Guard's multimission assets are critical to each of its roles and are leveraged so that the same cutters, boats, aircraft, and personnel that maintain maritime mobility also provide maritime safety and security as well as protect our natural resources, and I am fully confident that the Coast Guard will be an outstanding part of the new Department of Homeland Security.

Now, another key component of the new Department is the Transportation Security Administration, TSA, and it will be better able to secure the Nation's transportation infrastructure as part of a Department whose principal mission is protecting against terrorist attacks. The entirety of TSA's budget, personnel, and focus is directly related to the core missions of the proposed Department. TSA has the statutory responsibility for security of all modes of transportation and it directly employs transportation security personnel.

At the Department of Homeland Security, TSA will have ready access to the Department's intelligence architecture to support its transportation security efforts. Combining TSA with established organizations will allow TSA to benefit from their relevant experience and will permit the efficient leveraging of security assets.

The continuity of security from our borders throughout our transportation system will also improve as TSA, INS, Customs, and other elements of the DHS become part of the same organization with access to shared systems. I know some have expressed concerns that moving TSA will slow or interfere with the Agency's ability to meet its congressionally mandated deadlines. The concern, while understandable, is without merit. We are going to meet the deadlines that Congress gave us with respect to TSA. When the day comes for TSA to transfer to the new Department, TSA will be ready. And being ready means meeting every deadline asked of it before that day, period.

In closing, let me say as a Member of Congress for over 20 years, I know the challenge before all of you. And as a former Chair of a major committee, I am keenly aware of the jurisdictional questions and the issues that you face. And as a Cabinet member, I am familiar with the various pressures to protect the elements of a

Cabinet member's department that add to one's prestige and budgetary authority.

But having acknowledged all of those factors, I believe this legislation is necessary and a very good idea. It is needed and it is needed now. It is, indeed, timely. We are at war, a real war, and some have suggested that we wait until the current war is over, arguing that President Truman waited until after World War II was over before he reorganized the Department of Defense. I believe that historical comparison fails. Yes, this legislation is similar to President Truman's in boldness and in terms of scope, but it also has the vision and foresight character of the work of President Franklin Roosevelt when he was preparing the country to fight the rise of facism. It is forward-leaning and seeks to prepare us to succeed at goals of prevention and protection. And so I strongly urge support by this committee and its passage by Congress.

Again, let me thank all of you for your leadership and your continued support of the mission that is envisioned by the President and I will look forward to answering your questions. Thank you.

Chairman ARMEY. Thank you Secretary Mineta.

[The statement of Secretary Mineta follows:]

PREPARED STATEMENT OF THE HONORABLE NORMAN Y. MINETA, SECRETARY OF TRANSPORTATION

Mr. Chairman, Representative Pelosi, and members of the Select Committee, it is a pleasure to appear before you today and give you my views on the President's proposal to create the Department of Homeland Security.

First I want to congratulate the leadership of both sides of the aisle for their responsiveness to this legislation. I also compliment you on the decision to establish this Committee and the selection of its members. This is an incredibly important issue that responds to the very real danger faced by our nation. I have served in Congress with most of you, and I know you all of you will answer the call.This Committee has completed a great deal of work reviewing this issue, and it has listened to several members of the President's Cabinet recounting the general issues and the wisdom of establishing this important department.

Therefore, I would like to limit my comments to what the impact of this Department's creation will be on our nation's transportation system, and whether it is wise to proceed with this sizable task while we are in the midst of fighting this war. I would like to frame my remarks within the context of my experience as a member of this House and service as both Secretary of Commerce and now Transportation. The nature of the threats facing America requires a consolidated government structure to protect against invisible enemies that can strike with a wide variety of weapons. The President's proposal-the most significant transformation of the U.S. government in over a half-century-underscores the importance of transportation security as a major part of America's overall homeland security. The President's proposal recognizes the critical importance of protecting airports, seaports, railroads, bridges, highways, and mass transportation facilities against the threat of terrorism. The importance of protecting our transportation and other national assets is echoed in the Office of Homeland Security's National Strategy for Homeland Security, which is being released today.

It is impossible to create a Department of Homeland Security and not have agencies like the Coast Guard and the Transportation Security Administration at the heart of it. To cross our borders one is required to use our transportation. Regardless of the threat, our transportation system will be the means by which the enemy will arrive in our midst or used to deliver the weapons to be used against us. Therefore, in this increasingly global system, our transportation security is the key to the protection against and prevention of terrorist threats. That is why the Coast Guard and the Transportation Security Administration will function as key components of the Department of Homeland Security.

THE U.S. COAST GUARD IS AN INTEGRAL PART OF PRESIDENT'S BORDER SECURITY STRATEGY

The Coast Guard is our Nation's lead maritime security agency and functions as the first line of security on our maritime borders. It has broad military and statutory authorities that are critical to securing our 95,000 miles of coastline, 3.4 million square miles of Exclusive Economic Zone and 361 seaports. Nearly 40 percent of the Coast Guard's current operating budget is directly related to the core missions of the proposed Department and the remainder of its missions contribute indirectly to the overall security and economic viability of the Nation.

To maximize the Coast Guard's effectiveness in the new department, it is essential that the Coast Guard (1) remain intact; (2) retain its essential attributes as a military, multi-mission, and maritime service; (3) retain the range of critical Coast Guard missions; and (4) be adequately funded to fulfill it missions. As Commandant Collins recently testified, the greatest danger to any Coast Guard mission would be to fracture the Coast Guard. Its multi-mission assets are critical to each of its five fundamental, overlapping roles: Maritime Security, Maritime Safety, Maritime Mobility, Protection of Natural Resources, and National Defense. The same cutters, boats, aircraft, and personnel that maintain Maritime Mobility also provide Maritime Safety and Security as well as protect our natural resources.

The Coast Guard will bring critical capabilities to the new department. The Coast Guard possesses extensive regulatory and law enforcement authorities governing ships, boats, personnel, and associated activities in our ports, waterways, and offshore maritime regions. It is a military service with around-the-clock command, communication, and response capability. The Coast Guard maintains a network of coastal and seagoing vessels, aircraft, and expert personnel to prevent and respond to safety and security incidents. It has a geographic presence throughout the country, coasts, rivers, and lakes, both in large ports and small harbors. As a member of the National Intelligence Community, the Coast Guard offers intelligence fusion and dissemination capabilities.

Although it will play a key role in homeland security, the Coast Guard's other missions will continue to flourish in the new department. As I already mentioned, the Coast Guard's multi-mission assets are critical to each of its roles, including drug and migrant interdiction, marine environmental protection, search and rescue, and ice operations. These assets are leveraged so that the same cutters, boats, aircraft, and personnel are used for each of its missions with the result that those missions create a beneficial synergy with its homeland security role.

Being Secretary of the Coast Guard is one of the greatest honors and privileges I have had in my public service career. They are one of the best organizations I have encountered in the Federal Government. I am fully confident that the Coast Guard will be an outstanding part of the new Department of Homeland Security.

THE TRANSPORTATION SECURITY ADMINISTRATION'S ROLE IN THE DEPARTMENT OF HOMELAND SECURITY

The September 11th attacks, which used components of the transportation system as weapons, demonstrated the high priority that must be given to protecting the transportation sector. The Transportation Security Administration (TSA) will be better able to secure the nation's transportation infrastructure as part of a department whose principal mission is protecting Americans from terrorist attacks.

The continuity of security from our borders throughout our transportation system is essential. The protection of this system and the passengers, cargo, and conveyances traveling through it is a responsibility that must be shared by TSA, INS, Customs and other DHS elements. Clearly, these agencies' ability to coordinate will be enhanced if they are part of the same organization and have access to shared systems.

The entirety of TSA's budget, personnel, and focus is directly related to the core missions of the proposed Department—protecting the security of our air, land, and sea borders and the security of our inter-connected transportation systems. TSA has the statutory responsibility for security of all modes of transportation and it directly employs transportation security personnel. The organization uses various tools to execute its assigned missions including intelligence, regulations, enforcement, inspection, screening and education of carriers, passengers, and shippers.

At the Department of Homeland Security, TSA will have ready access to the department's intelligence architecture to support our efforts to prevent terrorists from targeting the transportation system. Combining TSA with established organizations will enable the fledgling agency to benefit from their relevant experience, thereby helping TSA accomplish its goals. Also, by combining TSA with fully staffed agen-

cies, the new department will allow the leveraging of staff, research capabilities, resources and facilities to address critical vulnerabilities.

I know some have expressed concern that moving TSA will slow or interfere with the agency's ability to meet its Congressionally mandated deadlines. The concern while understandable is without merit. We are going to meet the deadlines—any deadlines—Congress gives us with respect to TSA. And by the very act of meeting those deadlines we accomplish the goal of preparing the agency for transition to the new Department. Transitioning this new agency to the new Department is defined as meeting the deadlines. The notion that which department's stationery TSA will use is going to distract TSA staff from the work they are doing now is a disservice to their commitment and professionalism to meet the demands Congress has put on them.

Tom Ridge and I are working together on setting up the Transportation Security Administration. We were before the Department of Homeland Security was announced and we will be until the day it is transferred to this new department. And when that day comes, TSA will be ready. And being ready means meeting every deadline asked of it before that day. Period.

Finally, let me say this. As a Member of Congress for twenty years I know the challenge before you. As a former chair of a major committee I am keenly aware of the jurisdictional questions and turf issues that you face. And as a Cabinet member I am familiar with the various pressures that come with protecting the elements of cabinet member's Department that add to one's prestige and budgetary authority.

Having acknowledged all of those factors, I believe this legislation is necessary and a very good idea. It is needed. And it is needed now. We are in a war—a real war. And as horrible as the tragedies have been, our enemies desire to inflict greater catastrophes upon us.

Some have suggested that we wait until this current war is over—arguing that Truman waited until World War II was over before he re-organized the Defense Department.

I believe that historical comparison fails.

Yes, this legislation is similar to President Truman's legislation in boldness and scope. But it also has the vision and foresight characteristic of the work of Franklin Roosevelt and others during the early rise of fascism. It is designed not to correct the mistakes of the past. It is submitted to meet the ever-growing threat that is before us. It is forward leaning and seeks to prepare us to succeed at goals of prevention and protection.

I strongly urge its support by this Committee and its passage by Congress. Again, let me compliment the Committee and thank you for your continued support of our mission. I would be happy to answer any questions.

Chairman ARMEY. Secretary Thompson, if you would like to make your opening statement, the panel would love to hear from you.

STATEMENT OF HON. TOMMY G. THOMPSON, SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Governor THOMPSON. Thank you very much, Mr. Chairman. Mr. Chairman, Congresswoman Pelosi, members of this bipartisan select committee, thank all of you for giving me this opportunity to appear before you today to discuss the proposed Department of Homeland Security.

Mr. Chairman, our country is in your debt for your many years of visionary leadership in the House of Representatives, and I personally thank you.

Ms. Pelosi, I deeply appreciate what you said in your opening statement at last week's hearing, that the issue of national security cuts across party lines. It was also echoed this morning by Congressman Menendez, and I thank him as well.

And to all the members of this committee, let me say thank for your thoughtfulness in considering this serious matter. I join my colleagues in affirming unequivocally my support for the reorganization initiative that the President has announced. I have

worked and will continue to work to implement his proposals with energy and enthusiasm.

The President is absolutely right to create a Department of Homeland Security to make sure that our Nation is as safe and protected as possible. And if you are going to create an agency that focuses around the clock on protecting the homeland, there clearly needs to be a bioterrorism component in that operation. Since Governor Ridge began as Director of Homeland Security, he and I have worked very closely together on the programs and policies we need to keep America safe. We have coordinated our budget priorities and we have sustained a very close and friendly working relationship. And we at HHS continue to work closely with the White House, Governor Ridge, as well as Congress, to ensure that this new Department has the ability to protect America from a biological attack. HHS will provide DHS with whatever scientific expertise and other technical assistance it may seek to manage this program.

In addition to the substantive changes, certain program-level details in administration choices are still being studied in order to ensure the most seamless transition and to give the greatest possible levels of efficiency and effectiveness to our fight against the threat of biologic and chemical warfare in order to protect the public health.

As with the research and development program, the Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services, will establish preparedness and response programs as well as the priorities. But at the same time, the implementation of the public health components of that program, such as the State and local preparedness grants, will be carried out largely through HHS.

As to the regulation of certain dangerous pathogens known as "select agents," this function would be transferred from the CDC to the new Department of Homeland Security. The newly created Office of Public Health Emergency Preparedness, with its emergency medical functions, would also be transferred, as would maintenance of the strategic national stockpile of medicines and emergency medical equipment.

We have gone from eight "push packages," totaling six tons of medical supplies to 12 push packages. Before September 11, and especially since that day, our Department has worked fervently to build our capabilities to effectively respond to any bioterrorism attack. We have worked closely with State and local governments, with experts in the field, and with public health partners to make sure that we are going to be able to get stronger each and every day, and I am happy to report that we have been able to accomplish that goal. We were also able to disburse nearly all of the $1.1 billion in grants for bioterrorist and preparedness activities to the States and to major cities, and we have done so efficiently and with energy. We have taken our task seriously and we continue to do so. We are extremely proud of how much stronger we built America's preparedness in such a short time. I again thank this committee and Congress as a whole for supporting my Department in this endeavor.

But there is much work to do before our level of public health readiness is where we want it to be. We are committed to getting the job done within HHS and by working with the new Department of Homeland Security. The President's proposal strikes the right balance. It plays to the strengths of HHS and recognizes this Agency's core mission, the protection of our Nation's public health, while at the same time capitalizing on the strategic and logistical strengths of the new Department of Homeland Security. By wisely marshaling and managing our expertise and our resources and by joining together with the same spirit of perseverance and determination of which the President has so elegantly spoken and that the needs of our time demand, we will build a more secure America and we will safeguard our families from the vicious threats of our enemies.

That is our common task. It is one I know that we are all—Democrats, Republicans, Independents—committed to fulfill.

Thank you, Mr. Chairman and members. I will be more than happy to answer your questions and those of all of the colleagues.

Chairman ARMEY. Thank you Governor Thompson.

[The statement of Secretary Thompson follows:]

PREPARED STATEMENT OF THE HONORABLE TOMMY G. THOMPSON, SECRETARY OF HEALTH AND HUMAN SERVICES

Thank you, Mr Chairman and members of the Committee for giving me the opportunity to appear before you today to discuss the proposed Department of Homeland Security. I strongly support the reorganization initiative that the President announced earlier this month.

The threat of terrorism in its myriad forms has become an ever-present part of our daily lives. The new Department will enable us to make further significant advances in protecting the American people from those who are bent upon inflicting death, destruction, and social disorder to achieve their ideological ends. We are pleased that the Congress is giving the President's proposal prompt and thorough attention. I look forward to working with this Select Committee to ensure passage of the legislation for the new Department.

The President's proposal deals with certain terrorism-related activities that currently are the responsibility of the Department of Health and Human Services (HHS). Some of these HHS activities would be transferred to the Department of Homeland Security (DHS). For other relevant public health and medical activities, DHS would assume responsibility for setting goals and providing strategic direction but would rely upon HHS to implement and operate the activities on a day-to-day basis.

I will discuss examples from each group of activities in turn.

EXAMPLES OF ACTIVITIES PROPOSED FOR TRANSFER FROM HHS TO DHS

HHS functions conveyed to the new Department in the President's proposal include:

- The Select Agent registration enforcement program;
- The Office of the Assistant Secretary for Public Health Emergency Preparedness; and
- The Strategic National Stockpile (formerly the National Pharmaceutical Stockpile).

SELECT AGENT REGISTRATION PROGRAM

Within HHS, the Centers for Disease Control and Prevention (CDC) currently regulates the transfer of certain dangerous pathogens and toxins—commonly referred to as "Select Agents"—from one registered facility to another. These agents are used in research laboratories across America. Examples are the bacterium that causes anthrax, the bacterium that causes Plague, and the virus that causes Ebola, a lethal hemorrhagic fever. Select Agents are prime candidates for use by would-be bio-

terrorists and thus, when used in research, must be kept constantly under safe and secure conditions.

The recently enacted Public Health Security and Bioterrorism Preparedness and Response Act of 2002 authorized HHS to promulgate and enforce regulations concerning the possession and use of Select Agents, as well as their transfer. While CDC has done its best to manage the Select Agent program, CDC is a public health agency and not a regulatory body. We believe that the new department, with its strong multi-purpose security and regulatory infrastructure, will be well-suited to prevent nefarious or other irresponsible uses of Select Agents. HHS will be prepared to provide DHS with whatever scientific expertise and other technical assistance it may seek to help it manage the program. Under the Administration bill, the Secretary of Homeland Security would administer the select agents program in consultation with HHS, and HHS would continue to make key medical and scientific decisions, such as which biological agents should be included in the select agents list.

OFFICE OF THE ASSISTANT SECRETARY FOR PUBLIC HEALTH EMERGENCY PREPAREDNESS

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 created the HHS Office of the Assistant Secretary for Public Health Emergency Preparedness. The responsibilities of this new office include the supervision of the Office of Emergency Preparedness, the National Disaster Medical System, the Metropolitan Medical Response Systems, and related HHS emergency management functions. This cluster of activities is a logical and proper candidate for transfer to DHS—thereby enabling seamless integration of national public health and medical emergency management assets with the Nation's new preparedness and response infrastructure at DHS. The Public Health Service Officers and other HHS employees who have faithfully performed disaster relief work over the years have done a wonderful service for our Nation. They are a credit to HHS as they surely will be to the new Department.

STRATEGIC NATIONAL STOCKPILE

CDC currently manages 12 "push packages" of pharmaceutical and medical supplies and equipment strategically located around the United States; additional lots of pharmaceuticals and caches of medical supplies are maintained by manufacturers under special contractual arrangements with CDC. You may recall that one of the push packages was dispatched to New York City on September 11th and that elements of the stockpile were used to respond to the anthrax attacks. I strongly believe that CDC has done an exemplary job managing the Strategic National Stockpile (formerly called the National Pharmaceutical Stockpile) and this fine work has set the stage for integration of the Stockpile with other national emergency preparedness and response assets at DHS.

The President's proposal is designed to achieve this integration by tapping the strengths of DHS and HHS in a precisely coordinated way. Thus, the Secretary of Homeland Security will assume responsibility for continued development, maintenance, and deployment of the Stockpile—making it an integral part of the larger suite of Federal response assets managed by FEMA and other future DHS components—while the [[Secretary of Health and Human Services??]] will continue to determine its contents. The arrangement will ensure effective blending of the public health expertise of HHS with the logistical and emergency management expertise of DHS.

DHS FUNCTIONS TO BE CARRIED OUT THROUGH HHS

The President's proposal clearly designates the following two activity areas that the Secretary of Homeland Security will carry out through the Department of Health and Human Services. However, certain specific program level details and administrative choices are still being studied in order to ensure the most seamless transition, and to give the greatest possible levels of efficiency and effectiveness to our fight against the threat of biological warfare and to protect the public health.

CIVILIAN HUMAN HEALTH-RELATED BIOLOGICAL, BIOMEDICAL AND INFECTIOUS DISEASE DEFENSE RESEARCH AND DEVELOPMENT

The President's proposal provides that the new Department's civilian human health-related biological, biomedical, and infectious disease defense research and development work shall—unless the President otherwise directs—be carried out through HHS. The Department of Homeland Security will work through the HHS,

especially the National Institutes of Health (NIH) to foster research and development that will enhance national capabilities for dealing with bioterrorism and other public health emergencies. As the agency responsible for assessing threats to the homeland, DHS will have the authority to define the policy framework and provide overall strategic direction regarding the Nation's biological and biomedical countermeasure research priorities in consultation with the Secretary of HHS. Working within this guidance, NIH will conduct and fund relevant research and development—striving constantly, as now, to ensure that the program is of the highest quality and engages the foremost scientists and engineers in all pertinent disciplines.

The NIH program will continue to focus on four primary areas:

(a) the creation and maintenance of centers of excellence in bioterrorism related microbiology;

(b) microbial genomics, with a view to identifying targets for new or improved drugs, diagnostics, and vaccines, as well as elucidating the genetic bases for microbial virulence and antibiotic resistance;

(c) initial development of drugs, diagnostics, and vaccines; and

(d) advanced development and initial procurement of vaccines for the Strategic National Stockpile

CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES

The President's proposal provides that the new Department shall—unless otherwise directed by the President—carry out through HHS certain public health related activities (such as programs to enhance the bioterrorism preparedness of State and local governments and non-Federal public and private health care facilities and providers). The object of this provision is to continue the important role that HHS plays in assisting State and local governments and the hospital and public health community in preparing for and responding to large scale public health emergencies, while integrating these activities into the overall mission of DHS.

An example of public health activities that will be integrated into DHS are the State and local bioterrorism preparedness grants that went out earlier this year. As you know, the bill that the President signed into law in January provided for $1.1 billion to 62 States, territories and three major cities (Chicago, Los Angeles, and New York City). Washington, D.C. was counted as a State in the funding formula. And, as of today, virtually all of this money has been distributed. The preparedness funds were divided into two parts. The CDC distributed a total of $918 million to State and local health departments to support bioterrorism, infectious diseases and public health emergency preparedness activities. The Health Resources and Services Administration is providing $125 million to the States to develop regional hospital plans and enhance the ability of hospitals to deal with large numbers of casualties. For both of these programs, we released 20 percent of the funds immediately to enable States to begin their planning without delay. Next, experts throughout my department reviewed each proposal for certain benchmark criteria before releasing the remaining 80 percent.

I was quite impressed by the speed with which the States and municipalities developed their plans. It shows the seriousness with which they are taking the need for preparedness. Now that we have good plans, we will continue to work with the States and municipalities on implementation and strengthening areas of the plans which need more work.

Under the President's proposal, the Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services, will establish the Nation's anti-terrorism preparedness and response program and priorities, including the State and local preparedness grants. However, the implementation of the public health components of that program will be carried out largely through HHS. This structure will allow a seamless transition to ensure that Federal dollars are spent wisely to prepare our communities, throughout the nation, for any type of bioterrorist attack.

CONCLUSION

Mr. Chairman and members of the Committee, our Nation needs a Department of Homeland Security. I strongly support the President's proposal and look forward to doing whatever is necessary to effect a smooth and swift transition of responsibilities and operations. I believe that the President's proposal strikes the right balance: it plays to the strengths of HHS and recognizes this agency's core mission—the protection of our Nation's public health—while capitalizing on the strategic and logistical strengths of the new Department of Homeland Security. We will ensure

that HHS fulfills its obligations to the new Department and provides it with whatever public health, medical, and scientific expertise it may require.

At this time, I would be happy to answer your questions.

Chairman ARMEY. Secretary Abraham, again I want to thank you for flying all night, and we would love to hear your comments.

STATEMENT OF HON. SPENCER ABRAHAM, SECRETARY, DEPARTMENT OF ENERGY

Secretary ABRAHAM. Mr. Chairman, members of the committee, the President's proposal to create and organize a Department of Homeland Security is an important and necessary step to ensuring the security of all Americans, and I want to thank the members of this committee for your leadership and the hard work you are doing to make this vision a reality.

From ensuring the security of our nuclear weapons complex to coming up with creative ideas on how to deal with a variety of threats, our Department, the Department of Energy, has many responsibilities which support the homeland security mission. And, of course, many of those responsibilities will remain after the creation of a Department of Homeland Security. But we feel it makes imminent sense to ensure that certain missions of the Department of Energy are combined in a way that enhances homeland security, and therefore we propose to move some programs and capabilities from the Department of Energy to the new Department of Homeland Security.

Mr. Chairman, probably the most significant proposal affecting the Department of Energy involves how we support the new Department's need for world-class scientific and technical research and development capability. I have often described the national laboratories of our Department, which we manage, as the crown jewels of scientific and technical achievement in America. And in the aftermath of September 11, the ability of our scientists, engineers, and other employees to respond quickly and effectively to the challenges posed by terrorists was well demonstrated.

The President's proposal offers a creative way to leverage these assets in support of the homeland security mission. We propose organizing the Department of Energy's national laboratories and sites in a manner to create a network laboratory system for the purpose of supporting the missions of the Department of Homeland Security. At various appropriate facilities, the DHS would assume responsibility for the management of domestic security research and development. The Department of Homeland Security would control the funding for those homeland security programs and allocate that funding as necessary to meet its goals.

Mr. Chairman, we also propose to transfer certain other programs to the Department of Homeland Security that directly support its homeland security mission. These programs would be transferred entirely to the new DHS. Let me just describe a couple of them.

First, research and development to counter the chemical, biological, nuclear, and radiological threat. This Department of Energy-wide program provides research and development for a DHS core mission: the detection and tracking of the presence of weapons of mass destruction. This activity includes the development of new

technologies and approaches for detecting fissile materials at border crossings and technologies that monitor the environment for the release of biological or chemical agents.

The transfers in this area would include a $69 million program in the chemical and biological security area of R&D and $10 million in combating of the nuclear smuggling programs as well. In addition, we propose that we transfer a portion amounting to about $20 million of the Department of Energy's program in the life and environmental sciences area. These activities consist of rapid DNA sequencing of pathogenic microbes and technological development. DNA sequencing would allow DHS to identify and build defenses against potential terrorist actions. And the technology development activities would allow DHS to use computational tools to compare the gene sequence from an organism against the database of existing gene sequencing; in other words, to be able to better identify possible threats and to neutralize those threats.

I would like to mention another area which we propose to transfer, and that is our energy assurance activities. This program develops and maintains a capability for identifying potential threats to the national energy infrastructure, developing and maintaining a national strategy for energy assurance, and the development of a Federal response plan. Activities in this area also include funding for the National Infrastructure Simulation and Analysis Center, which is a key homeland security research and development activity. It is a computer modeling system that allows us to analyze what impact on the overall national energy infrastructure the breakdown or an attack on any one component of that infrastructure might produce.

Finally, we propose to transfer to DHS the Environmental Measurements Laboratory which is located near New York City. This laboratory provides program management technical assistance and data quality assurance for the measurement of radiation and radioactivity relating to environmental restoration, nuclear nonproliferation, and other nonpriority areas.

In addition to these, we also propose shifting specific programs in the area of advanced computer modeling in the area of nuclear and other weapons of mass destruction threat assessment, and certain intelligence functions, to give core capabilities to the new Department so it could ultimately expand in each of those areas and have the potential to coordinate better the work done there.

Finally, Mr. Chairman, I would like to highlight one other critical proposal regarding my Department. As you know, the Department of Energy maintains the ability to respond immediately anywhere in the world to nuclear radiological incidents and emergencies. We propose that assets supporting this mission stay within the Department of Energy, but that the Department of Homeland Security have the ability to control their deployment as necessary.

There are seven basic teams that make up this so-called NESP response capability which includes nuclear emergency support activities. These include aerial measurement teams, accident response teams, and a radiological assistance program that works closely with local and State agencies. Through these tailored and responsive teams, we are able to marshall highly-trained and unique scientific and technical expertise. There are more than 900

individuals on call to respond in the event of a nuclear incident or emergency, radiological incident or emergency. But only a handful of those 900 people, 70, are full-time. And it is our ability to call upon a broad range of professionals from across the Department's nuclear weapons complex that brings this program its depth and ability to respond to a wide range of crises or emergencies.

Comparisons have been made to volunteer fire departments of the National Guard, because these teams are staffed with nuclear professionals who take this work as an additional duty. While it didn't make sense to propose transferring this capability in total to DHS, we do propose, however, that these teams, when requested by the Department of Homeland Security, be activated and deployed to help manage a crisis. In response to an incident, our teams would deploy under the authority and operational control of DHS.

Mr. Chairman, I believe the President's proposal will ensure greater security for all Americans. Our ability to identify, deter and, if necessary, respond to threats to our security will be enhanced. Our homeland security missions will be executed more quickly and more efficiently. And the Department of Energy will stand ready to assist, as it does today, in any way that we can.

Chairman ARMEY. Thank you Secretary Abraham.

[The statement of Secretary Abraham follows:]

Thank you, Mr. Chainnan for having me here today. The President's proposal to create and organize a new Department of Homeland Security is an ambitious and necessary step toward ensuring the security of all Americans, and I thank you for holding these hearings and moving forward on this important legislation.

The President's proposal recognizes that the responsibilities and authorities to fight the war against terrorism and to ensure our nation's security are today spread among many agencies, including the Department of Energy.

From ensuring the security of our nuclear weapons complex to coming up with creative ideas on how to deal with a variety of threats, our employees and our Department have many responsibilities that support the homeland security mission. And, of course, many of these responsibilities will remain after the creation of a Department of Homeland Security.

But it makes eminent sense to ensure that certain missions are combined in a way that enhances homeland security. And therefore we propose to move some programs and capabilities from the Department of Energy to a new Department of Homeland Security.

I. STRUCTURE

Mr. Chairman, perhaps the most significant proposal affecting the Department of Energy involves how we structure the new Department's need for a world class scientific and technical research and development capability .

I have often described the National Laboratories managed by the Department of Energy as the "crown jewels" of scientific and technical achievement in America. And, in the aftennath of September 11 th, the ability of our scientists, engineers and other employees to respond quickly and effectively to the challenges posed by terrorism was well demonstrated. The President's proposal offers a creative way to leverage our lab assets in support of the homeland security mission.

At each of these facilities a portion of the laboratory would be dedicated to DHS activities, and the DHS would assume responsibility for the management of domestic security R&D through joint sponsorship agreements to include direct tasking authority.

Current contracting relationships between the operating organization and the workforce will not be disrupted. DHS would assume control of its funding for homeland security programs, and allocate it as necessary to meet homeland security goals. It is expected that the associated workforce will be dedicated to DHS activities, but that procedures will be available to allow the workforce from both DHS and DOE activities to easily support each other's efforts. Of course, a wide variety

of functions undertaken at the DOE labs relate indirectly to the mission of Homeland Security. For that reason, the DOE programs would continue to carry out those activities that support the Department's core missions. And we expect that in carrying out those missions, the DOE programs will produce technologies that may be leveraged for homeland security.

II. PROGRAMS

Mr. Chairman, we also propose to transfer certain programs to DHS that directly support its homeland security mission. The programs identified for transfer from the DOE to DHS are as follows: First, Research and Development to Counter the Chemical, Biological, Nuclear, and Radiological Threat. This DOE-wide program provides R&D for a DHS core mission: detecting and tracking the presence of weapons of mass destruction. This activity includes the development of new technologies and approaches for detecting fissile material at border crossings and technologies that monitor the environment for the release of biological or chemical agents.

The transfers in this area include $69 million in the Chemical and Biological National Security R&D program. This program develops and demonstrates chemical and biological detection, identification, and warning systems for use domestically; hand-portable chemical and biological detectors the size of palm pilots for real-time use by first responders in a crisis situation; modeling and simulation capabilities to predict the effects from chemical and biological attacks; and chemical and biological decontamination and restoration techniques for use in civilian settings.

In addition, we propose to transfer the Combating Nuclear Smuggling activity, with a budget of about $10 million. This program develops applied radiation detection systems for emergency response and law enforcement agencies. This activity provides system modeling, testing, and concept evaluation to monitor and track fissile and weapons grade nuclear materialst and supports training of inspection personnel. In addition, other programs and activities directly related to homeland security within the proliferation detection program of the non proliferation R & D program may be designated by the President either for transfer to the new Department or jointly operated by the Departments of Energy and Homeland Security.

Finally, Supporting Activities is a relatively small account—about $3.5 million—and is responsible for strategic initiatives such as technology road-mapping and out-year planning that will be important to carrying out the missions of the Chemical and Biological Naional Security Program and the Nuclear Smuggling Program.

Second, we propose to transfer the Advanced Scientific Computing Research program, with a budget of about $3 million. This program supports researchers in applied mathematics and computer science to achieve optimal efficiencies from our supercomputers. This activity is expected to provide a nucleus around which DHS could conduct the kind of simulations, computer science, and modeling needed to better understand how large systems may react in different circumstances.

Third, some DOE laboratories maintain an in-house intelligence capability for assessing nuclear weapons and other WMD technologies throughout the world, with a budget of $5.5 million. This capability makes use of the laboratory's scientific expertise resident at the laboratories, and is augmented with fwIding from the intelligence community for their support for National assessments and analyses. This capability includes analyses of third world chemical, biological and nuclear programs, and thus is expected to be invaluable to the DHS for guiding research and development activities to counter the use of these weapons against the homeland. Fourth, as a means of establishing within the new Department a critical core competence in several areas of science that will directly support its mission to protect homeland security, we propose to transfer a portion, amounting to $20 million, of the DOE program in the life and environmental sciences. The specific activities within our life and environmental sciences program we propose to transfer consist of:

First, rapid DNA sequencing of pathogenic microbes. This capability will allow DHS to identify and build defenses against potential terrorist actions. Each pathogen has many close genetic relatives that do not cause disease but need to be characterized so that more accurate detection methodologies can be developed that avoid unnecessary and alamling false positives.

Second, Technology Development. Today, we use computational tools to compare the gene sequence from an organism against the database of existing gene sequences. This can tell us which strains are more hannful than others and the source of the strain. Fifth, we propose to transfer the nuclear assessment program, which currently resides within the DOE's and NNSA's Materials Protection, Control, and Accountability Program.

The Nuclear Assessment Program, with a budget of $6 million, leverages the scientific talents and system engineering skills of the laboratories in areas of central

relevance to homeland security by tracking and assessment of nuclear smuggling events; assessment of communicated nuclear threats; and technical assistance and training support.

Sixth, we propose to transfer energy assurance activities, with a budget of$23.4million. This program develops and maintains a capability for assessing vulnerabilities of the national energy infrastructure, and provides technical assistance to State and local governments and the private sector for emergency response planning. Activities include funding for the National Infrastructure Simulation and Analysis Center (NISAC), a key homeland security research and development activity.

Transferring these functions will allow the new department to model the interdependency of the nation's various infrastructures—telecommunications, energy, and transportation, for example—so as to best identify vulnerabilities and establish priorities for infrastructure protection. Finally, we propose to transfer to DHS the Environmental Measurements Laboratory (EML) located in New York City, with a budget of $5 million. This laboratory provides program management, technical assistance and data quality assurance for measurements of radiation and radioactivity relating to environmental restoration, global nuclear non-proliferation, and other priority issues.

EML is expected to provide a nucleus for a DHS capability in conducting research and development activities associated with environmental sampling, facility protection, and standardization protocols for crisis response technologies.

Mr. Chairman, I would like to highlight one other critical part of the President's proposal regarding the Department of Energy. As you know, the Department of Energy maintains the ability to respond immediately, anywhere in the world, to discrete and specific nuclear-radiological incidences and emergencies. We propose that assets supporting this mission stay with the Department of Energy, but that the DHS have the ability to control their deployment as necessary.

There are seven basic teams that make up this nuclear-radiological incident response capability. which includes nuclear emergency support activities. These include aerial measurement teams, accident response groups, and a radiological assistance program that works closely with State and local agencies. Through these tailored and responsive teams, we are able to marshal highly trained and unique scientific and technical expertise.

There are more than 900 individuals on call to respond in the event of a nuclear-radiological incident or emergency. Only a handful of these—about 70—are full time. It is the ability to call upon a broad range of professionals from across the Department of Energy's nuclear weapons complex that brings this program its depth and ability to respond to a wide range of crises or emergencies.

Comparisons to volunteer fire departments or National Guard units have been made because these teams are staffed with nuclear professionals who take this work on as additional duty. Day-to-day, they are the individuals who ensure the safety, the security, and the reliability of our nuclear weapons stockpile.

Thus, it did not make sense to propose transferring this capability to DHS. However, we propose that these teams would, when requested by DHS, be activated and deployed to help manage a crisis. In response to an incident, our teams would deploy under the authority and operational control of the Department of Homeland Security.

Mr. Chairman, I believe the President's proposal will ensure greater security for all Americans. OUf ability to identify, deter, and, if necessary, respond to threats to our security will be enhanced. Our homeland security missions will be executed more quickly and more efficiently. And the Department of Energy will stand ready to assist as it does today in any way we can.

Chairman ARMEY. Director James, I am sure the entire committee would join me in saying it is a pleasure to hear from you today, on the day of your first anniversary on this job. We do appreciate your work and we look forward to your statement.

STATEMENT OF HON. KAY COLES JAMES, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

Ms. JAMES. And thanks for the party.

Mr. Chairman and Congresswoman Pelosi and other distinguished members of the committee, thank you for the opportunity to be here today, and thank you also for the opportunity to have

worked with you and your staffs in the last few days on behalf of the American people.

You have before you the weighty task of creating the legislation that will create a new Cabinet-level department to protect our Country and our people and keep us safe at home.

We all know that the stakes are high. We saw the enemy for what they are on September 11: ruthless murderers, who relish rather than regret the death of innocents, and have made the institutions and people of our country the target for their hatred.

It is against this backdrop that the President has asked the Congress to create the Department of Homeland Security so our Government will be properly organized and prepared to defend against this new kind of enemy and the changing threats posed to our people. The Department is a key component of the National Strategy for Homeland Security that the President unveiled today, the first-ever strategy for mobilizing the Nation's resources at every level to protect America from terrorist attack.

Now is not the time for timid reforms and halfway measures. We are at war. The enemy has already shown his boldness in pursuing every possible avenue of attack, and we must be equally bold in pursuing every possible defense.

My administration colleagues have addressed the issue of what agencies and responsibilities properly belong in the new Department. My role is to focus on the people we are counting on to secure and protect our homeland: our patriotic public servants. The Department of Homeland Security will bring together more than 170,000 Federal employees from agencies that not only have their own distinct cultures, they operate under seven different payroll systems and 22 personnel systems. Our responsibility to these dedicated public servants is to give them an organization that is as focused and committed to protecting our homeland as they are. The Department of Homeland Security must be world class, with the best possible equipment and the best possible personnel system, not a patchwork of antiquated systems and inflexible, outmoded practices.

The bill that the President sent to Congress creates a broad framework to allow the new Department to retain the best aspects of the Government's existing personnel system and to build on them. Our objective is to ensure a smooth transition of people and functions to the new agency at the outset, and ultimately put in place a 21st century personnel system that meets 21st century needs. OPM will work with the new Department leadership to ensure that employees are not needlessly distracted by concerns about their pay and benefits but these public servants are able to concentrate solely on the Department's critical mission. Federal workers transferring to the Department will come with their current pay and benefits.

The President's legislation allows the Secretary of Homeland Security, working in conjunction with the Director of OPM, to develop a new, agile personnel system. The new Department is being given great flexibility, but not carte blanche. The Department of Homeland Security will be subject to the principles of merit and fitness. These are operating principles that will serve as the foundation for employment in the Department.

Employees can expect to be treated with respect and compensated appropriately. Whistleblowers will be protected when they disclose waste, fraud, and abuse. The veterans' preference law is a longstanding cornerstone of the civil service, and veterans will still receive employment preference in the Department of Homeland Security.

In addition, Department employees will continue to be covered by generally applicable employment laws such as the Civil Rights Act, the Fair Labor Standards Act, the Social Security Act, government ethics standards, and Hatch Act restrictions on political activities.

What tools might this flexibility hypothetically provide to support a culture of urgency in this new Department?

The ability to bring in new talent quickly to fill vacancies in critical positions.

The ability to shift gears in assignments rapidly as new threats or new enemies emerge, or when science or technology opens up new opportunities to protect the American homeland.

The ability to reassign those who cannot adapt to the culture of emergency, for whom the Department of Homeland Security is not the right environment. And for these individuals, given the current needs of the Federal Government, other options will exist as long as they are not poor performers.

With a mission this critical, we cannot afford a personnel system that rewards mediocrity and demoralizes high performers. I understand that change creates uncertainty and overcoming it can be no small challenge, and our focus in the midst of this environment is protecting America. Our commitment is that we will bring everybody to the table, and that includes employee unions and other stakeholders. We will ensure the development of this system will be fair and balanced and objective.

The President of the United States himself afffirmed that when the Department is established, employees represented by unions will continue to be represented, their bargaining units will move with them.

And, let me be as clear as I possibly can be on this issue: the creation of the Department of Homeland Security is not an effort at union busting. There are no hidden agendas here. The flexibility the President envisions for the new Department is aimed at one result and one result only: ensuring the security of our homeland.

We must get our priorities right. More than 3,000 people were killed in the terrorist attacks on the World Trade Center and the Pentagon and in the plane that crashed into the woods in Pennsylvania on September 11. And as you move forward with your deliberations, you will be asked to consider many competing interests and I respectfully request that we keep foremost in our thoughts those victims and the lives of potential victims that may be saved by the actions that we take here.

And, once again, I am grateful for the opportunity to discuss these matters with you and look forward to working with you to answer any questions that you may have.

Chairman ARMEY. Thank you, Director James.

[The statement of Ms. James follows:]

PREPARED STATEMENT OF THE HONORABLE KAY COLES JAMES, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

Mr. Chairman, distinguished Members of the Committee:

Thank you for inviting me here today, and I hope that my testimony will help inform your deliberations.

You have before you the weighty task of crafting the legislation that will create a new cabinet-level department to protect our country and keep our people safe at home.

You know the stakes are high. We saw the enemy for what he is on September 11th—a ruthless murderer who relishes rather than regrets the death of innocents and who has made the institutions and people of our country the target for his fanatic hatred.

It is against this backdrop that the President has asked the Congress to create the Department of Homeland Security so that our government will be properly organized and prepared to defend against this new kind of enemy and the changing threats posed to our people. The Department is a key component of the National Strategy for Homeland Security that the President unveiled today- the first-ever strategy for mobilizing the nation's resources at every level to protect America from terrorist attack.

Now is not the time for timid reforms and halfway measures; we are at war. Wide and varied plots are the subject of our daily concerns—from shoe bombs to dirty bombs; threats involving scuba divers, threats to use petroleum tankers and private planes; threats to our power plants and refineries, to our water supply, and to the very air we breathe.

The enemy has already shown his boldness in pursuing every possible avenue of attack. We must be equally bold in pursuing every possible defense. Nothing less than a unified homeland structure that takes in all the varied dimensions of protecting our borders, our infrastructure, and our citizens will suffice.

My Administration colleagues have addressed the issue of what agencies and responsibilities properly belong in the new department. My role is to focus on the people we are counting on to protect and secure our homeland—our patriotic public servants.

The Department of Homeland Security will bring together more than 170,000 Federal employees. The creation of the Department takes into account enormous challenges and important factors such as:

- The transfer of 22 Cabinet agency or small agency components—each with their own distinct culture and governed by varying personnel systems;
- Employee pay and benefits managed by seven different payroll systems—some with compatible components and some very different; and
- 17 different unions represent employees being transferred to the Department, each with a multitude of different bargaining agreements and negotiated provisions.

Our responsibility to these dedicated public servants—the men and women who secure our borders, protect our transportation systems, investigate terrorist organizations, respond to emergencies, and protect us against biological agents—is to give them an organization that is as focused and committed to protecting our homeland as they are.

The Department of Homeland Security must be World Class, with the best possible equipment and the best possible personnel system—not a patchwork of antiquated systems and inflexible, outmoded, out-of-date practices.

The bill that the President sent to Congress creates a broad framework to allow the new department to retain the best aspects of the government's existing personnel system—and to build on them. Our objective is to ensure a smooth transition of people and functions to the new agency at the outset—and ultimately put in place a 21st Century personnel system that meets 21st Century needs.

OPM is prepared and will work with the new department leadership to ensure that employees are not needlessly distracted by concerns about their pay and benefits—that these public servants are able to concentrate solely on the department's critical mission of protecting our homeland.

Federal workers transferring to the department will come with their current pay and benefits—the same health, retirement, and life insurance benefits, and the new Federal Long-Term Care Insurance Program that are available to them today.

The new department is being given great flexibility, but not carte blanche. The Department of Homeland Security will be subject to the principles of merit and fitness.

Civil service law sets out the nine merit system principles:

(1) Recruit qualified individuals from all segments of society, and select and advance employees on the basis of merit after fair and open competition.

(2) Treat employees and applicants fairly and equitably, without regard to political affiliation, race, color, religion, nation origin, sex, marital status, age, or handicapping condition.

(3) Provide equal pay for equal work and reward excellent performance.

(4) Maintain high standards of integrity, conduct, and concern for the public interest.

(5) Manage employees efficiently and effectively.

(6) Retain or separate employees on the basis of their performance.

(7) Educate and train employees when it will result in better organizational or individual performance.

(8) Protect employees from improper political influence

(9) Protect employees against reprisal for lawful disclosure of information in "Whistleblower" situations (i.e., protect people who report things like illegal and/or wasteful activities).

In addition, the law lists twelve categories of prohibited personnel practices under the merit principles, stating specifically that employees who have the authority to take, direct others to take, recommend, or approve personnel actions shall not:

(1) Discriminate on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation.

(2) Solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics.

(3) Coerce an employee's political activity.

(4) Deceive or willfully obstruct a person's right to compete for employment.

(5) Influence any person to withdraw from competition for any position to improve or injure the employment prospects of any other person.

(6) Give unauthorized preference or advantage to any person to improve or injure the employment prospects of any particular employee or applicant.

(7) Engage in nepotism (hire or promote or advocate the hiring or promotion of relatives within the same agency component).

(8) Retaliate against a whistle blower, whether an employee or an applicant.

(9) Retaliate against employees or applicants who exercise their appeal rights, testify or cooperate with an Inspector General or the Special Counsel, or refuse to break a law.

(10) Discriminate based on personal conduct which is not adverse to on-the job performance of the employee, applicant or others.

(11) Violate any law, rule, or regulation which implements or directly concerns the merit principles.

(12) Knowingly to take or fail to take a personnel action if that action or failure to act would violate a statutory or regulatory veterans' preference requirement

These merit system principles and prohibited personnel practices apply both to regular Federal employees and to many others who are covered by alternative human resources systems (e.g., the Postal Service, CIA, FBI, FAA, and SEC), and are operating principles that will serve as the foundation for employment in the department. Employees can expect to be treated with respect and to be compensated appropriately. Whistleblowers will be protected when they disclose waste, fraud and abuse. And veterans will still receive employment preference in the Department of Homeland Security.

In addition, department employees will continue to be covered by generally applicable employment laws such as the Civil Rights Act, the Fair Labor Standards Act, the Social Security Act, government ethics standards and Hatch Act restrictions on political activities. Keeping in mind the Department's overriding security mission, the President's legislation allows the Secretary of Homeland Security—working in conjunction with the Director of OPM—to develop a new, agile personnel system. Since those who threaten our country are relentless, the systems we develop must be flexible enough to permit us to anticipate and respond to threats one, two or five years down the line.

What tools might this flexibility hypothetically provide to support a Culture of Urgency at the new department?

• The ability to bring in new talent quickly to fill vacancies in critical positions, whether created by retirements or changing missions.

• The ability to shift gears—and assignments—rapidly as new threats or new enemies emerge or when science and technology open up new opportunities to protect the American homeland.

• The ability to reassign those who cannot adapt to the Culture of Urgency, for whom Homeland Security is not the right environment. For these individuals, given the current needs of the Federal government, other options will exist so long as they are not poor performers.

The Department of Homeland Security must have the ability to attract and retain good people, to offer incentives for exceptional contributions in order to get the right people to the right jobs in time to make a difference. The mission of the Department of Homeland Security demands the best of our public servants. With a mission this critical, we cannot afford a personnel system that rewards mediocrity and demoralizes high performers. I understand that change creates uncertainty, and overcoming it can be no small challenge. But our focus must be on protecting America.

We will ensure the development of this system will be fair, balanced and objective. Our commitment is that we will bring everyone to the table, and that includes employee unions and other stakeholders. Indeed, I met with the leaders of some 40 Federal unions and employee associations the day before the President announced his specific proposal for a Department of Homeland Security. We had a candid and very useful discussion about the human capital challenges of merging existing agencies into a single homeland security organization.

I am convinced that the only way to effectively meet the serious tests ahead is through frank, straightforward, two-way communications where ideas and information are openly shared. As Director of OPM, I have made it a priority to encourage and foster open lines of communication and a good working relationship with the unions, and we have been meeting regularly.

At the President's Management Council, I have encouraged the Chief Operating Officers of every agency to work with their unions and to involve them early on when important workplace decisions are made. To reaffirm that message across government, last month I sent a memorandum to all agency and department heads highlighting the importance of labor-management cooperation. It has never been more important for labor and management to work together; we need that cooperative spirit to bolster efforts to establish World Class human resources systems at the new Department of Homeland Security.The President of the United States himself has affirmed that, when the department is established, employees represented by unions will continue to be represented; their bargaining units will move with them. Let me be as clear as I can on this important issue: the creation of the Department of Homeland Security is not an effort at union busting. There are no hidden agendas. The flexibility the President envisions for the new department is aimed at one result and one result only: ensuring the security of our homeland.

For employees transferred to the new Department of Homeland Security, the President has told them that there is tremendous honor—and tremendous responsibility—inherent in their assignments. They will have the personal and professional satisfaction of knowing that their primary mission is to keep America safe. I know that every Federal employee is committed to making the Department of Homeland Security as successful as possible, and they understand that their urgent and compelling mission may require personal sacrifices.

We must get our priorities right. More than 3,000 people were killed in the terrorist attacks on the World Trade Center and the Pentagon and in the plane that crashed in the woods of Pennsylvania on September 11th. As you move forward with your deliberations, you will be asked to consider many competing interests. I respectfully request that you keep foremost in your thoughts these victims and the lives of potential victims that may be saved by the actions you take.

Once again, I am grateful for the opportunity to discuss these matters with you, and would be happy to respond to any questions you may have.

Chairman ARMEY. The Chair will now proceed under the 5-minute rule, and we may direct our questions to any member of the panel. The Chair recognizes the gentleman from Texas, Mr. Delay.

Mr. DELAY. Thank you, Mr. Chairman, and appreciate your testimony. Since I have 5 minutes I have got a lot to talk about, and I want to quickly go to it.

Mr. Mineta, it is great to see you here. And I might say that I served with you on the old Public Works and Transportation Committee, and have had a long relationship with you at that time, and now I serve on the Transportation Subcommittee of Appropriations, so I have dealt with the Coast Guard issue and the issue of the Transportation Security Administration, too.

I don't know what your position is, but I have long understood that in any organization, it is vitally important to have an organization that allows people to do the best job that they can. And in

that organization, the mission statement, or the goal, or whatever you want to call it, of that particular agency, department, or office pretty much lays out how people perceive the mission or the authority or the responsibility of that agency.

I have always worried about Coast Guard being in the Department of Transportation. Every time we tried to appropriate money for the Coast Guard, people considered that a transportation agency instead of a law enforcement/military group. The number one priority to me for the Coast Guard is to protect and defend the borders of these United States. All other issues are important, but not as important as that main mission of the Coast Guard.

The same with the TSA. TSA was put under the Department of Transportation for whatever reason. I had concerns about the Airport Security Act, as you know. It was put there, but it is not a transportation agency, it is a security agency. It is a security office. It is charged with providing for security of passengers that happen to be going on an airplane.

Your testimony sort of alluded to that, but could you speak to the importance of bringing these two agencies under Homeland Security and, finally, focusing on their prime responsibility, and that is protecting and defending not only the citizens of the United States but protecting them through protecting our borders.

Secretary MINETA. Well first of all, the mission of the Coast Guard fits very closely the new mission that is being charged to the Department of Homeland Security in terms of maritime or border protection, in terms of the maritime issues regarding port security; and so there are a number of missions and goals of the Coast Guard that fit very closely and well with the mission and the goals of the Department of Homeland Security.

I think when you look at the history of the Coast Guard, it has always served the Nation well, regardless of what department it has been in. It has been in the Department of Treasury, it has been in the Department of the Navy, and since the formation of the Department of Transportation it has been there. But it is also part of the National Defense Authorization Act. So it is equally treated as an armed force. As with the Navy, the Army, the Air Force, the Commandant of the Coast Guard as a service chief has a role with the Joint Chiefs of Staff on matters involving the Coast Guard.

So the Coast Guard has a military mission as well as a law enforcement mission in terms of interdiction of drugs on the high seas, interdicting illegal immigration and protecting, in that sense, the border. So I think that this mission and the values and the goals that are attached to the Department of Homeland Security fit well with the missions, values, and the of the United States Coast Guard.

Then with the Transportation Security Administration, again, they are a security body. Yes, they have elements of law enforcement, but, again, they are basically a security administration and so, to that extent, since the primary responsibility of this new Department is going to be Homeland Security, I think, again, TSA ought to be moved into the new Department and it fits with the missions and goals and values of the new Department.

Chairman ARMEY. Thank you.

The Chair recognizes Ms. Pelosi.

Ms. PELOSI. Thank you, Mr. Chairman. I would like to yield to the gentleman from Texas.

Chairman ARMEY. Oh, the Chair recognizes the gentleman from Texas, Mr. Frost.

Mr. FROST. Thank you, Mr. Chairman. I have a couple of questions for Director James, if I may.

Director James, under the existing Labor, Management and Employee Relations Act, which was amended by Congress in the late 1970s, the President is the one who has the authority by executive order to waive that act. Under the legislation that is before us, that authority is given to you as the Director of OPM and the new Secretary of this agency, rather than having it exercised by the President by executive active order. Why should this authority be given to the new Secretary and to you when this does not apply to any other agency currently, or other department?

Ms. JAMES. Well, I think that there is a unique mission that this particular agency has, and there is the opportunity to use that particular authority in a very surgical way. I think that the intent is to make sure that employees who are represented by unions maintain the opportunity to do that. But, where it is necessary in the interest of national security to carve out for particular reasons, particular work groups, or it is very imperative for the Secretary in conjunction with OPM, going through a regulatory process where it would be open and for the public and not done in any way that would not be transparent in the interest of national security, to have the ability to do that.

Mr. FROST. Well, if I may follow on that, as you know, there was an amendment adopted in committee last week authored by Congresswoman Morella from Maryland. That amendment narrowed the ability of the President to issue an executive order precluding the rights that are protected under the Civil Service Act. Of course, it didn't even address—it assumed that—the amendment assumed that you and the new Secretary would not have the authority but only the President would have that authority.

I have that amendment in front of me, and it says it should be limited to those instances in which the mission and responsibilities of such unit, bargaining unit, materially change and that a majority of the employees within such unit have as their primary duty intelligence, counterintelligence or investigative work directly related to terrorism.

So there are two elements here. One, that a majority of the employees would be directly related to the fight on terrorism and, second, that the mission and responsibilities of that particular function within the new departments will have materially changed.

Now, I would ask you, what is wrong with the Morella amendment? That seems to be a very reasonable proposition, that a majority of the employees should be directly involved in fighting terrorism and that the mission should have changed, rather than just being a continuation of the existing amendment—mission. What is wrong with the amendment that was adopted by the committee?

Ms. JAMES. Several things. First, I believe that there is one component of the amendment which we can all agree on; and that is that when employees move into this agency they move there in their current bargaining units and with the full protection that

they have. I think it diminishes the President's authority to protect the American people, however, by diminishing his ability to determine and use in a very sparing way the authority that every other President has had to determine that, for national security interests, some of those particular bargaining units may perhaps be better served by not falling under those particular protections.

There have been specific examples throughout the history of our Country where every President, be they Republican or Democrat, has used that authority; and this particular amendment, the Morella amendment, really diminishes the ability of the President of the United States to use the authority that has been granted to him to protect the American people.

Mr. FROST. Even if their mission and responsibilities have not materially changed?

Ms. JAMES. Well, you know, I think even if their mission and responsibilities have not materially changed, then perhaps the environment in which they operate has. We are in a new war, in a new day; and I think that the determination should be left to the President in conjunction with the Secretary to make those kinds of determinations.

Mr. FROST. Of course, the legislation specifically delegates this to the Secretary and doesn't even have the President involved.

Ms. JAMES. Well, right now, we are talking about the Morella amendment which is far more sweeping and truly diminishes the authority of not just this President but of the Presidency.

Mr. DELAY. [Presiding.] The gentleman's time has expired. Mr. Watts.

Mr. WATTS. Mr. Chairman, I want to direct my question to—first, I would like for Secretary Thompson and then Secretary Mineta to answer; and then if we still have time in the 5-minute segment we will go to Secretary Veneman and Mr. Abraham.

But we all know that Homeland Security—when you talk about Homeland Security you are really talking about State and local defenses, State and local security. So, with that in mind, can you detail for the Select Committee how the entities to be transferred from your departments or agencies according to the President's proposal will work with State and local officials and agencies to better secure the homeland?

Governor THOMPSON. Congressman Watts, first off, as far as the Department of health and Human Services, the Congress gave the Department of Health and Human Services $1.1 billion effective January 10 of this year. We had to set up a procedure through which we could get that money to each State, and we asked the States to come up with a comprehensive plan. They had until April 15 to do so.

They came in with their plans. We critiqued those plans through CDC and through HRSA and through the Department and came up with a program. We sent them out templates on how to do their job better as far as securing the local responders, the emergency wards and the hospitals, the communications from CDC, through the State health departments, the local health departments, putting epidemiologists in there, securing the laboratories, improving the laboratories; and we got all that money sent out by June 1st of this year.

Now the States are incorporating that plan. What is going to take place under the new procedure is that it is going to be in consultation with the Homeland Security—the money flows to the Department of Homeland Security, but the Department of Health and Human Services is actually going to do the work in consultation with the new Secretary for Homeland Security. Then they will contract back with the Department of Health and Human Services to continue this program; and this, of course, is to secure on a regional basis a better protection for all the people as relates to public health and also protect the citizens against any bioterrorism agent or any chemicals whatsoever.

Mr. WATTS. Secretary Mineta.

Secretary MINETA. In terms of the mission of the Coast Guard and moving it over, the President's legislative proposal is that there are only two entities that would be kept intact, Secret Service and Coast Guard, in terms of moving to the Department of Homeland Security. I know that there have been—we had a lot of discussion in the Homeland Security Council for a long time as to whether or not there is a clear "tear line" for splitting the Coast Guard into its functions, and there really is not.

When you think about search and rescue or fisheries enforcement, drug interdiction, immigration interdiction, those assignments are interchangeable and that is why the Coast Guard ought to be kept as a distinct unit and it is why that is what we have recommended and why we support this legislation in this form.

Mr. WATTS. Secretary Veneman.

Secretary VENEMAN. We at USDA have a very strong relationship with our State partners, particularly through State Departments of Agriculture, also through universities, in cooperating in many of the things that we do. As we look at the issues of Homeland Security, both on the prevention and preparedness parts of homeland security, our relationship with the States is very important; and we have been strengthening those relationships, as I talked about in my testimony, through the period of time we were under the threat of foot and mouth disease and also since September 11 when we are looking at threats of intentional terrorism as well.

Under the House Ag Committee's proposal, the ag quarantine inspectors that are at our ports of entry would transfer to the Department of Homeland Security. There are some partnerships that we have with the States that enhance that inspection; and we would anticipate that, through contracting authorities, we would continue to have those partnerships both with APHIS and with the Department of Homeland Security. So I would anticipate we are going to continue to have a very strong relationship both on the preparedness side and the prevention side both within the Department of Agriculture and through the Department of Homeland Security.

Chairman ARMEY. [Presiding.] Thank you. Thank you. The gentleman from New Jersey.

Mr. MENENDEZ. Thank you, Mr. Chairman.

I want to thank all the Secretaries and the Director for their testimony.

This is H.R. 5005, President's proposal. Could any one of the Cabinet Secretaries point to me the language that insures that nonsecurity missions of departments transferred in here are preserved? Can you point to me the language in the President's bill that will insure that nonsecurity missions of departments transferred from your respective departments, of agencies from your respective departments transferred into the new Department of Homeland Security, that those nonsecurity missions are preserved?

Secretary MINETA. Well, I am convinced that, in terms of the Coast Guard being moved intact over to DHS, that there are a number of nonsecurity functions of the Coast Guard and that they will remain intact.

Mr. MENENDEZ. And, Mr. Secretary, could you tell me what—the language here that gives us that guarantee?

Secretary MINETA. Well, in the case of the Coast Guard, I believe it is title 14 of the United States Code that moves under this new law. So I assume that as title 14 is moved under with H.R. 5005, that that would be the—.

Mr. MENENDEZ. Well, that will transfer the missions of what exists as the Coast Guard. But my point is that there is no guarantee in the legislation.

For example, Secretary Thompson, the National Institute of Health and other similar agencies, that all of those nonsecurity missions that they so importantly carry out, there is no preservation of that in the Coast Guard. There is no preservation. As a matter of fact, before the Transportation Committee, the Commandant said that about 80 to 85 percent of the Coast Guard's functions are not security related. You described it Mr. Secretary as about 60 percent. So anywhere between 60 and 85 percent of the Coast Guard's missions and budget are not security related.

How do we guarantee that when departments are being transferred, like the Coast Guard in its entirety, that nonsecurity missions are guaranteed which are equally important to the American people? I don't see any language that says that.

Secretary MINETA. I think that is in title I. It doesn't lay out all of the specific functions. It doesn't list them. But I believe in title I the President's legislation does obligate the new Secretary to perform all of the duties of the agencies that are being transferred.

Mr. MENENDEZ. But, Mr. Secretary, those are very broad functions given to the Secretary of the Department for the purposes of operating that Department. The question is—and I think that, you know, my question obviously doesn't have an answer because it does not in the legislation, and that is my point here. We want to preserve nonsecurity missions such as the Coast Guard. Of which the Commandant said 85 percent is nonsecurity, you have described it in your own testimony as 60 percent is nonsecurity. How do we insure that those nonsecurity missions are preserved in a Department whose focus is homeland security?

So I would ask the Secretaries—and all of you have agencies that are being transferred that have multiple missions, and we want to preserve those other missions. We want to make sure we are continuing to pursue Alzheimer's and cancer and AIDS and all those other entities, that research and development is being done. Would you believe that language that would guarantee that the budgets

of departments transferred to the new Homeland Security Department for whose missions are not security related that they be established with this fiscal year as a baseline and that prohibitions would be made against transferring money out of those nonsecurity missions for security purposes? Because, unless we do that, the answer to my question is there are no guarantees.

If we say that 60 percent of the Coast Guard's missions are nonsecurity and somehow we don't insure the budget for that nonsecurity mission, then you can have Coast Guard's operational capacity go primarily for security and leave search and rescue and leave navigational issues and others potentially abandoned.

As a matter of fact, isn't it true, Mr. Secretary, that the Coast Guard has already decreased operations up to 25 percent because of funding shortfalls? And that is before we get into its new focused function.

Secretary MINETA. Well, first of all, there is no question, before September 11 security was probably, I don't know, 5 percent. After September 11, security went up to probably 35 percent. We did very little in terms of drug interdiction, very little in terms of immigration interdiction, fisheries enforcement.

But, again, it seems to me that is also—from a former Member's perspective—the responsibility of the committees in terms of the oversight they are doing, in terms of the Appropriations Committees, of allocating the financial resources. So I think, like a lot of legislation, within the four corners of the legislation there is a lot of delegated authority to the executive branch. The exercise of those powers by the departments, I think, must be in accordance with some of the things that are in this legislation and the practices that Miss James talked about.

The important part is that there be the kind of language that preserves the functions from the various departments or agencies that go to the new Department. But I also think that there is a responsibility on the part of the congressional committees to do their oversight to make sure that the functions and the missions of the agencies that are transferred over are kept, especially those that are moved over intact.

Under this legislation, as I recall, it is only the Secret Service and the U.S. Coast Guard that are moved over in their entirety and to be kept as distinct entities in this legislation.

Chairman ARMEY. The gentleman's time has expired. The gentlelady from Ohio.

Ms. PRYCE of Ohio. Thank you, Mr. Chairman.

Secretary Thompson, would you talk to us a little bit about hospitals? I think that hospitals are just like first responders. They are on the front lines. They will bear a huge brunt of whatever this Nation suffers if we have any kind of bioterrorist attack. And it would just seem to me, off the cuff, that they are woefully unprepared for anything like that currently. What is happening now? What are you encouraging and what changes will we see as this new law is implemented in how our local hospitals are going to be prepared?

Governor THOMPSON. Congresswoman Pryce, first off, this Congress in its wisdom appropriated $135 million last year and the bill was signed into law on January 10 by the President in order to

have the hospitals develop a comprehensive plan as to how they would educate, how they would communicate with first responders, how they would handle the surge capacity, how they would handle problems if in fact there was an epidemic such as smallpox. We sent out that money through HRSA as of June 1st this year, after the hospitals and the State health departments developed a comprehensive plan.

We have also got the hospitals and the local health departments hooked up through our Health Alert Network which is administered by CDC, and this was part of that $1.1 billion of which the hospitals got $135 million.

Now in the upcoming budget for fiscal year 2003, there is an additional $518 million for hospitals to implement those plans that were being planned this year. So that is an additional $518 million to do several things: to strengthen the emergency wards, to have coordination between the first responders and the police and fire departments in a community, to have a regional capacity this year, to have a surge capacity of 500 beds to be upgraded to 1,000 beds next year, to have a place where if there was a smallpox epidemic that would need thousands of beds that they would have some place in a large city or a large area that people could communicate. And we are strengthening the laboratory capacity. We are strengthening the communication and all of that.

Now, that is going to be—the money is going to be transferred over to the new Department of Homeland Security. It is going to be approximately $1.8 billion and—but they are going to contract back to do the work, which we are doing very effectively in the Department of Health and Human Services. But it will be in consultation with the new Secretary of Homeland Security and the Secretary of the Department of Health and Human Services in order to strengthen the hospitals, to strengthen our comprehensive plan that we have already set in motion.

I am very proud of what we have been able to accomplish to date, and I think your question was—further alluded to that you didn't think we were prepared. I want to be able to report that I think we are very prepared. We are getting stronger every single day, and the Department has done an excellent job of getting this country prepared for any bioterrorism, any chemical agents whatsoever. We have got a long ways to go, but we have—.

Ms. PRYCE of Ohio. How about the bricks and mortar? Are we going to need —.

Governor THOMPSON. Bricks and mortar is not part of this. We are putting the money—some of the money goes into bricks and mortar, especially for laboratories. Because what we need, if in fact there is a strange pathogen that comes in—if somebody is sick, comes into the emergency ward and is sick—we don't immediately know that pathogen. That part of that tissue has to be sent into a State laboratory immediately. We are expanding our States' laboratories. We are strengthening the security.

Then if, in fact, there is a strange disease caused by a chemical or a biological pathogen they are in direct communication through the Health Alert Network and the laboratory network to CDC. We have airplanes on standby that we are leasing that we will send doctors immediately to that hospital to work in consultation with

the local doctors for local health departments to determine what is wrong, find out what it is, decide what a cure is.

Then, of course, we will then have all of the Push Packages which are distributed in 12 different locations around America, to send in medical supplies, any antidotes, any antibiotics or whatever is needed. We have to be able to move those within 7 hours, and we have been able to do that.

Ms. PRYCE of Ohio. Thank you. That is a very complete answer and a very encouraging one.

Very quickly, because I think our time is running out—my time is running out. Secretary Mineta, as you know, the House Transportation and Infrastructure Committee adopted an amendment to the administration's proposal that sets floors or minimum percentages on spending for the Coast Guard's Homeland Security missions. Do you believe those floors are necessary? Do you think that they are important? How do you feel about them?

Secretary MINETA. First of all, they did put in their amendments to H.R. 5005 12 percent for search and rescue and 13 percent for drug interdiction; and these are all minimum amounts. But I believe very, very strongly that these floors are really inappropriate because they really restrict the President's flexibility, the Secretary of Homeland Security and the Coast Guard in terms of being able to deal with surges in terms of any kind of activity that may occur. So even if these kinds of floor amendments were put on any bill, I think, that would affect any department, we would find them to be inappropriate.

Ms. PRYCE of Ohio. Thank you. Thank you, Mr. Chairman.

Chairman ARMEY. The gentlelady from Connecticut.

Ms. DELAURO. Thank you very much. Thank you very much, Mr. Chairman; and I want to welcome the Secretaries and thank you for your testimony and thank you for your continued efforts and good public service. You do an incredible job.

Let me just follow up again on my colleague from Ohio, Ms. Pryce, but also, Secretary Thompson, something that you said. You do have an excellent process in place. I say to myself, why do we want to change it? But let me ask a specific set of questions.

Last November, a 90-year-old woman in Oxford, Connecticut, contracted and quickly died from anthrax. Fortunately, local responders, hospitals, the State department of health, labs at our academic centers which I visited with whom CDC now works very, very closely, were well-trained people. They used the skills that they had honed from years of investigating naturally occurring outbreaks such as West Nile virus to investigate the incident. Wouldn't this plan that is being suggested, to separate public health activities related to bioterrorism from those related to naturally occurring events, threaten our ability to respond?

In both cases we used the same labs, investigators, the scientific methods to investigate. Separating the responsibilities seems counterproductive, and how do you avoid a duplication without harming our public health system? Who is then responsible for investigating an outbreak when the source is unknown—meningitis, West Nile virus?

Let me just—I have got a couple of other questions, but let me just address those to you right now.

Governor THOMPSON. First off, I have to agree with you. I think the Department has done a hell of a good job. Far be it for me to say we haven't. We have done so under some very trying situations, and we continue to do so. But that doesn't mean that it cannot be strengthened and improved in the future.

Homeland Security Director, Tom Ridge—Governor Ridge and I have worked very closely—in cooperation in developing the budget for bioterrorism and he was very much involved in developing that budget going up to $4.3 billion in fiscal year 2003. The basic system is going to stay in place, but the dollars are going to be over in Homeland Security in regards to helping make sure that we take care of the security.

But as far as the public health concerns—determining Ebola, West Nile virus, whatever the case may be—that is still a public health issue, and that will be administered and surveyed and researched by the Department of Health and Human Services through CDC and through the National Institutes of Health.

So there is going to be a collaborative area between Homeland Security and Health and Human Services. I do not believe it is going to be repetitive or duplicative. I think it is going to strengthen Homeland Security and will not in any way harm our public health initiatives.

Ms. DELAURO. Follow-up question. What is the likely impact going to be on research if you have got large amounts of money then that are going to be moved and priority setting—it is money and priority setting authority that is going to be transferred to another agency.

Governor THOMPSON. That is right.

Ms. DELAURO. Or shared with several agencies, for that matter. If you are going to take that authority away, if you are going to take the funding away, then how do you then deal with the research that we are doing which is ongoing, which is equally vital in terms of efforts? How is this going to be—.

Governor THOMPSON. It is going to be approximately $4.7 billion transferred over to Homeland Security, with the written language that it will have to contract back to CDC and contract with NIH in consultation with the two Secretaries that are developing the plan for Homeland Security. And that is dealing with bioterrorism, it is dealing with the agents, it is dealing with chemical and so on. So that is where the difference is. It is more of a consultation, but the money actually flows to the Homeland Security but the work still being done by the Department of Health and Human Services.

Ms. DELAURO. Tell me then how are we going to integrate the work and the research that is already under way at the NIH with the new Department?

Governor THOMPSON. Well, the work at NIH, you know, the vast majority of it—.

Ms. DELAURO. They are working on bioterrorism.

Governor THOMPSON. They are working very hard on bioterrorism. The NIH budget dealing with bioterrorism is $1.8 billion. That leaves approximately $25 billion for all the other institutes. It is only that $1.8 billion that is going to be transferred from NIH to the Homeland Security with the understanding and with the written affirmation that that will be contracted back to NIH for the

continuation of the research in consultation, as I mentioned, with the two Secretaries.

Ms. DELAURO. Thank you very much, Mr. Secretary.

Chairman ARMEY. The gentleman from Ohio.

Mr. PORTMAN. Thank you, Mr. Chairman; and I want to thank the Secretaries and the Director for their thoughtful testimony today and for what they are doing every day and what their people are doing to protect all of us from the terrorist threat.

I thought the testimony was very compelling in terms of the need to consolidate functions. Secretary Mineta, perhaps you could follow up a little bit on the Coast Guard issue. You talked in your testimony about the seamless nature of the work of the Coast Guard. Could I ask you to approach it from a little different perspective, not so much the benefits of consolidation, but what if we don't? What if the Coast Guard were not made part of this new agency and what if TSA, Transportation Security Agency, were not made part of this new agency. How would that affect the security of our homeland?

Secretary MINETA. Well, first of all, it seems to me that the critical mission of the Department of Homeland Security is to provide for the security of the American people. And if you have two major elements of that Homeland Security not part of that Department, the United States Coast Guard and Transportation Security Administration, then it seems to me that the DHS will be lacking in its ability to fulfill its missions, whether airport security or the port security or what we call "maritime domain awareness" within the United States Coast Guard. Those are all elements that would fit in and do fit in very nicely with the mission of the Department of Homeland Security.

Mr. PORTMAN. I thought Mr. Menendez made a good point, that we need to make sure that the existing responsibilities that are not security functions continue to be maintained, but we also need to be sure that we are getting the benefits of consolidation, including the synergies which would be involved in having all those organizations working together and, of course, the efficiencies in terms of our government being better able to protect our shores.

There are lots of questions I have for the other Secretaries. I wish I had more time. Maybe we will have a second round. But, Ms. James, if I could ask you a couple of questions. You have a great background both in academia and the private sector of Federal, State and local government; and we appreciate what you bring to the table today.

I want to get back to the flexibility issue. There has been discussion of this agency needing to be lean and mean, and I couldn't agree more. I think one way you insure that is by having the right functions there but having some flexibility to be able to direct those functions properly.

We went through this with the Internal Revenue Service back in 1998. We came up with significant flexibility, actually, more than you are asking for in certain respects. I can tell you the Commissioner is using everyone of those flexibilities; and, as a result, we are getting a little better service, believe it or not, at that agency.

I am encouraging us to move forward with as much flexibility as we can, but we don't want to do anything to hurt people's civil

rights or people's rights under civil service or do things like change the whistle-blower protections or do anything else that would affect the merit system which you talked about.

On whistle-blowers, just a quick yes or no, do you provide whistle-blowers' protections in this proposal?

Ms. JAMES. Yes, we would.

Mr. PORTMAN. And you would support that, full whistle-blower protections?

Ms. JAMES. Absolutely.

Mr. PORTMAN. With regard to the issue which was raised earlier about the President's authority to designate an agency as a national security agency, I have a question. I don't quite understand, maybe, where we have come out on this. But Mr. Frost mentioned the Morella amendment. As I read in the Morella amendment, in that approach it would say, in essence, that this agency, unlike other law enforcement agencies or security agencies, would not be in a position to designate certain employees as national security employees for purposes of collective bargaining and so on, but, rather, the President would have his inherent right to come in really with a rather blunt instrument and say the Department itself, because of national security concerns, would be subject to this general waiver.

Wouldn't it make more sense for the employees themselves who might not be part of an exemption, in other words, might be in a collective bargaining unit, for instance, that the President did not determine was necessary to determine was national—was subject to a national security waiver, wouldn't it make more sense for them not to have just the blunt instrument of saying everyone needs to be included in this but rather the Secretary should be able to pick and choose?

I would think also, in terms of flexibility, some employees, one month or certainly one year to the next might be in that category and then might not be in that category.

I have heard you talk about cross-training. We heard that from the Director yesterday or the Assistant to the President, Governor Ridge. Could you respond to that and talk about how perhaps the President, by having more flexibility, gives workers in a sense more flexibility as well and more rights?

Ms. JAMES. Yes, I would. And, you know, I think one of the more eloquent statements that I heard this morning is that Homeland Security does not mean workplace insecurity for the Federal worker. It cannot, and it will not, and that certainly is not the intention of this legislation.

I think that we are involved in a very delicate balancing act. Earlier in my testimony I talked about the fact that we are operating in a backdrop of a national war. As a result of that, it is imperative that the President and the new Secretary have at their disposal the tools with which to balance national security and the rights of Federal workers. I think that we must provide the opportunity for the President to, not with a blunt instrument but very surgically, address a changing environment.

And, in answer to the question regarding what is different, the environment changes day by day. The threat today may be biological. Tomorrow, it may be something else. As a result of that, I

think that we need to have the flexibility available to say that the President can use that authority. The American people trust the President to use that authority wisely. He has not misused it, nor has any President. But I think it makes more sense to do it in a way that gives more flexibility, allows more people who are currently being served by and are in unions the opportunity to stay that way.

There is no intent to use this authority to deny people the opportunity for collective bargaining or to be in bargaining units. But there is an opportunity to say that that must be, and has to be, balanced against changing threats to our Country and the environment. It is not that an individual union member may become a national risk. That is not what that is about. But with the bargaining unit, if the Secretary has to say we are going to move this unit, we are going to change some authorities, we are going to respond to a threat by changing a mission, then it is imperative that they have the opportunity to do that.

In the interest of the American people, balancing the individual member's rights against national security, the law currently gives that flexibility to the President but does not, and has not historically in any way, diminished the opportunity for a Federal worker to be involved in a union.

Chairman ARMEY. Thank you.

Mr. PORTMAN. Thank you, Mr. Chairman.

Chairman ARMEY. The gentlelady from California, Ms. Pelosi.

Ms. PELOSI. Thank you very much, Mr. Chairman. I want to join you in welcoming our distinguished panel here today.

I want to take special pride in our two Californians, Ann Veneman, Secretary Veneman, who I knew when she was a student—I was not—and we are so proud of her. She comes from a very distinguished Republican family in California. We are proud of her work here.

And Secretary Mineta. I remember when he was mayor of San Jose over 30 years ago. Could you hear all the wonderful things I was saying about you? Welcome.

And we want to welcome the other members of the panel as well. We are used to hearing the excellent testimony of Secretary Thompson and welcome him here as well.

I have a very serious concern about this new Department. Certainly we should have a department of homeland defense. Certainly we should have a very strengthened office of Homeland Security in the White House, and I would hope that we can move to make that statutory rather than just by executive order. Because I think that is in the interest of how to best protect the American people—which is the President's standard—how do we best protect the American people, and that is the right standard.

I am afraid, as I said in my opening comments the other day, that this proposal is old-fashioned in that it is very bureaucratic and that, actually, there are only about 125 municipalities in our country that have a population higher than the number of people who will work in this Department. I could read off a list here of those that are smaller. You would be very surprised at how many great, proud cities in our country have fewer people living in them.

And this will be overseen by the Secretary. I am concerned about certain aspects of it being bloated.

I am concerned, Secretary Thompson, about the $1.8 billion. That is a lot of money, even by Washington standards, now under the discretion of this new Department Secretary. I will take the money any day when it comes to who has the discretion over how it is spent. I think it is bureaucratic to go back and forth with who has the money, who decides.

The priorities for biomedical research, we have always said should be with the scientists. I think it is bureaucratic to talk about some of the other aspects in other departments as well, too numerous to mention here.

One in the Department of Energy, Mr. Secretary, that I have a concern about is a new under secretary concept in terms of a center of excellence, which had been recommended by the Armed Services Committee. Have you established criteria as to whether such a center of excellence might be possible? And, of course, we view it as less bureaucratic. Would you have any suggestions? Would Lawrence Livermore Lab be one that might be considered for that?

Secretary ABRAHAM. Well, our view at this point is we are trying to work this in a way that maximizes the talents of people throughout the complex. When we first started looking at how to best pull together a technology and science support effort for the Department of Homeland Security, we thought perhaps one lab should take the lead and be in charge. Then we realized that we had people throughout—not all the labs necessarily but many of the labs who were already working on very important research and had expertise that should be involved. So that is how we sort of moved into the, as you describe it, centers of excellence concept; and we are still trying to decide what the best approach is to make sure that the Department of Homeland Security could tap all of those.

Now, whether it makes sense to have a managing office at one of the facilities who then oversees or pulls together the work that would be done or somehow interrelates with the others or not is something we are still trying to assess. We have discovered as we look across the complex there are a lot of people who are working on these kinds of projects in the labs across the country. But it is certainly the direction that we are moving towards.

Ms. PELOSI. Well, I hope we make every decision in favor of less bureaucracy and more excellence.

I wanted to put another concern on the record, Mr. Chairman, and I want to address this to all of the Secretaries and the Director. Do you agree that the new legislation should not alter or diminish the regulatory authority of your executive agency or establish regulatory authority at the Department of Homeland Security except to the extent that the functions of another agency that include such authority are specifically transferred by the Secretary?

I am particularly concerned about the Nuclear Regulatory Commission, Mr. Secretary, that the existing authority should continue to be exercised, those authorities to assess vulnerabilities and critical infrastructures and take necessary actions. Of course, the new Department would have access to this vulnerability assessment as is appropriate. So I put that out there to you.

Secretary ABRAHAM. I appreciate the point. I would comment that the Department of Energy does not oversee the Nuclear Regulatory Commission. It is an independent commission.

Ms. PELOSI. But everything is in flux at this point.

Secretary ABRAHAM. Right. I just mean in terms of areas of my current oversight that is not one of them, and so I don't want to try to speak for an independent commission.

I would just say when I mentioned energy security or energy infrastructure there are a variety of areas that are within the current responsibility of our department, and those are the ones we talked of as being ones that would be, at least in part, under the Homeland Security oversight under this proposal.

Chairman ARMEY. The gentlelady's time has expired.

Ms. PELOSI. Thank you, Mr. Chairman.

Chairman ARMEY. The Chair now recognizes himself for 5 minutes.

Secretary Veneman, as I understand it, our House Agriculture Committee and your agency got together, worked out what you felt was a workable compromise that appears as an amendment to the President's plan recommended or passed by the Agriculture Committee. Is it also correct that this work was cleared with the White House and they, too, find this acceptable?

Secretary VENEMAN. Yes, Mr. Chairman. In fact, I believe that Mr. Ridge yesterday testified that the administration does support this amendment by the House Ag Committee.

Chairman ARMEY. So we could expect then that this committee could probably recognize that good work, that discussion between administration and the House and probably be content to accept that.

Secretary VENEMAN. Yes.

Chairman ARMEY. Thank you.

Secretary Thompson, I want to really get down in the weeds with you now. As I looked through the President's proposal, one of the things that just baffles me is what I find is a curious relationship between your agency and the Department of Homeland Security with respect to grant making. I wonder if you understand this any better than I do. But it appears from my reading that your agency would transfer the funds for grant making to the Department of Homeland Security. They would make decisions, then they would transfer the funds back to you, and you would make the grants. Am I correct in my understanding of that?

Governor THOMPSON. You are correct.

Chairman ARMEY. I assume this is—you know, I kind of grew up in a little old rural town in North Dakota where we had this theory that every time money passed through a government agency you lost 10 percent of it. I am just a little bit worried about this money moving back and forth. Isn't it possible we could streamline this procedure somewhat by working out some kind of cooperative working relationship between the two agencies?

Governor THOMPSON. I think we could, Mr. Chairman.

Chairman ARMEY. It just strikes me that that is a fairly clumsy procedure, and I think this committee might want to look at if we can streamline that a little bit. Thank you. I am just—I appreciate

the affirmation. I was wondering if I was kind of a little dipsy reading that. But I do feel better. I know you are not dipsy, that is.

Governor THOMPSON. Thank you very much, and I know you are not either.

Chairman ARMEY. I try to find a way to compliment whenever I can.

Secretary Mineta, my vision of the Coast Guard is this is a multi-task agency that has personnel and assets that are designed and trained to sort of pick up the ball wherever it falls. My guess would be that when the Coast Guard sees a storm like that which hit our East Coast, I think it was in 1991 or 1992, that which is known as the perfect storm, they probably dropped a lot of other things and said, hey, everybody come on over here and get on this job. They probably dropped a little bit of their interest in drug interdiction, perhaps even buoy maintenance, perhaps in the Gulf Coast or other and moved their assets. And from what I understand of the Coast Guard's record of performance during that fairly awful time, they were able to move with agility and the quickness to be of great service and save a great many lives.

Now what strikes me in this funding formula that the committee suggested that we could have a great storm and all of a sudden the agency, in their effort to move resources to meet that, might say, oh, Lord have mercy, we have run up against our 12 percent limit, and we cannot—I think this would be the loss of flexibility, that such rigid funding formulas might occur.

I just wondered if you might want to comment or if you have any examples of what it is I am searching for here.

Secretary MINETA. Absolutely. That would be the case, Mr. Chairman. When you add up the total that is in the T&I Markup, it adds up to 53 percent in terms of the designated amounts in that legislation. So, ostensibly, that means that 47 percent would be for Homeland Security purposes.

But the problem is that when you have a cutter that is doing fisheries enforcement and then they have to be dispatched to a search and rescue mode, again, if you are, as you say, up against the percentage and you can't shift the assets or in terms of the financial resources, then it seems to me everybody loses in terms of the multi-mission capability of the Coast Guard. I think one of the things that the Coast Guard is always able to do is to be able to respond to surge activities.

Chairman ARMEY. So it would be possible that our Coast Guard cutter captain might hesitate in responding to an SOS for fear that he would offend both an appropriating and an authorizing chairman.

Secretary MINETA. And the helicopter may have to stay on the ground instead of going to a search and rescue.

Chairman ARMEY. That is a very foreboding circumstance for that poor captain to face.

I thank you; and I recognize the gentleman from Texas, Mr. Frost.

Mr. FROST. I have a couple of questions for Secretary Mineta. One of those is a follow-on on Mr. Menendez' question, and this relates—and also deals with what Mr. Armey was just asking. This regards the nonsecurity functions of the agencies in the Depart-

ment, Coast Guard or other. We have had an indication from the Congressional Budget Office that setting up this agency is going to cost an additional $3 billion over and above the current costs of operating these programs. The concern of a lot of us is that when the administration starts looking for ways to satisfy that $3 billion that they will take that money out of the nonsecurity functions of these programs. Because the Secretary of Treasury has said this is going to be budget neutral. There is not going to be $3 billion. We are going to have savings.

Our concerns are that those savings will be out of the very important nonsecurity functions of the Coast Guard and other agencies, and what is to prevent the new Secretary from shifting money out of the nonsecurity functions, very valid nonsecurity functions of these programs so that there won't be $3 billion of transition costs?

Secretary MINETA. Well, first of all, I think since the CBO report just came out OMB hasn't had a chance to really get into the report itself. But I think that when you consolidate a number of agencies under the Department of Homeland Security, or you consolidate any—let's say any department consolidates offices within its own department, there are savings that result from it. It seems to me that there are things like administrative overhead costs, computers, a number of functions that, in terms of redundancy, would be eliminated.

Mr. FROST. Well, Mr. Secretary, there is a disagreement between the CBO and some of you in the administration about this matter. My only concern is, if the Congressional Budget Office turns out to be correct, that there is this $3 billion cost, my concern is that would be taken out of search and rescue and some very valid functions that the Coast Guard and others would be conducting.

Secretary MINETA. Well, again, I would think that would be the responsibility of the Secretary of the Department and, again, the oversight responsibility of the Congress.

Mr. FROST. Mr. Mineta, I have another question, if I may, specifically to you. You state in your testimony that we are going to meet the deadlines, any deadlines Congress gives us with respect to TSA, Transportation Security Agency. It is my understanding that TSA will not receive a report from its contractor, Boeing, regarding the logistic of installing explosive detection machines at our Nation's airports until September. Given this tight time frame, do you anticipate that TSA will meet its December 31, 2002, deadline of installing explosive detection systems at all of our Nation's airports requiring such systems?

Secretary MINETA. We have met every deadline that was mandated by Congress, and we intend to meet all of the remaining deadlines. The major ones are November 19 for having the federalized employees for both baggage and passenger screening and December 31 for EDS systems. So our intent right now and everything we are doing is gearing to meeting those two dates, even with the advent of the concept of the Department of Homeland Security.

What I have said to our people is, don't look over your shoulders. We have got a responsibility to meet in terms of the Aviation and Transportation Security Act. That is what we are concentrating on and literally working on 7 days a week in order to comply with

these dates, including pushing our contractors too—so that we can meet the obligation that we have under the law.

Mr. FROST. Mr. Chairman, I have no further questions.

Chairman ARMEY. Thank you. The gentleman from Texas.

Mr. DELAY. Thank you, Mr. Chairman.

Director James, I appreciate your testimony; and I appreciate the administration's position when it comes to personnel matters. If I recall, your position on personnel matters is to not to diminish the benefits and rights of Federal employees. You articulated that you wanted to protect civil rights, whistle-blower, veterans' preferences and all the other rights and benefits that they enjoy now.

I would assume—but what bothers me is the Morella amendment expands the rights of Federal employees by omission or by contradiction, if you will, under current law. As I think you have stated, the President has the authority to restrict collective bargaining at governmental units that are critical to national security. This is an authority that has been used judiciously by both Republican and Democrat presidents since the late 1970s, and the Morella amendment would weaken that presidential authority or expand the rights and benefits of the employees as it pertains to the Department of Homeland Security.

I find it ironic at a time when national security concerns are paramount that this provision, the Morella amendment, would give the President less authority over the Department of Homeland Security than he has over any other department. I would ask if you agree with my assessment of the Morella amendment in that it expands present rights and benefits of Federal employees and how—and I would ask the other Secretaries that they might comment as to how that would impact the flexibility that you are asking for for this new Department.

Ms. JAMES. I would agree with your assessment, and I am convinced that the majority of Americans would agree with your assessment as well. When we are operating in an environment of a national war, when we are talking about a President and a Secretary who will have to make rapid decisions in the interest of the American people, it is almost mind-boggling to me that at this particular moment in America's history, we would diminish the President's authority and the Presidency and his ability to move people, make decisions quickly, and do that in an environment that would protect us all.

Saying that, I say it within the context. Of course, we recognize the patriotism and the enthusiasm of union members, but that is not what this discussion is about at all. This is a discussion about the ability of the President of the United States to make quick decisions about units of people, to make quick decisions about management and to do that in the interest of the American people and this is not the time to diminish that authority.

Mr. DELAY. Can other Secretaries speak to how you envision the different agencies, offices, and departments could function under a diminished authority by the President of the United States?

Secretary MINETA. Mr. DeLay, I am not addressing the Morella amendment, but again, I think the whole thrust of this legislation is to have flexibility in the Department of Homeland Security, just because of its nature. The Department of Defense has the ability

to be flexible in terms of organization of its financial resources, and I think that that is what we have to have within the Department of Homeland Security.

And that is the case with TSA and Coast Guard, that we will be giving up to DHS, that they have the flexibility. And Congress itself, as I recall, in terms of flexibility in personnel and procurement activities gave essentially that same power to FAA and to TSA, and I believe that comparable language is in H.R. 5005 in terms of the flexibility on personnel and procurement of goods and services.

Governor THOMPSON. Mr. DeLay, with regard to someone who has gone through the anthrax thing and been involved in something that directly relates to homeland security and how to respond quickly, you have to have the Secretary have as much discretion and flexibility as possible. If you limit that, you are going to abrogate or diminish your mission, and that is basically it.

In regards to the anthrax, that was a brand-new situation. Nobody knew what to do. Nobody actually knew what the response was going to be, how to respond, and so on. And you have to make sure that your experts are in place and you are able as a Secretary to make those tough decisions quickly and you have individuals that are going to follow through in order to carry out that mission.

That is the same thing in the Department of Health and Human Services. That has got to be the same thing, even more so, in the new Department of Homeland Security.

Chairman ARMEY. Gentleman's time. The gentleman from New Jersey.

Mr. MENENDEZ. Thank you, Mr. Chairman.

Secretary Mineta, I have the highest respect from our service together on the Transportation Committee, but I have a difference of opinion of whether TSA has met all its guidelines. Depends on how you look at it. They put trace devices, not detection devices, which the Congress really did not approve. They did not meet their deadline on the 15 major airports by the time they were supposed so. So I don't quite think we can honestly say, or we might have a difference of disagreement as we are interpreting this, that TSA met all its deadlines.

But let me just make sure what I am hearing you say today, because what the Transportation Committee did in its amendment on TSA is not to prohibit the transfer of TSA but to ensure that it would not be transferred until three major issues take place: number one, the leadership of the Department as it relates to that section of the Homeland Security Act; secondly, the deployment of explosive detection systems and all baggage being screened; and thirdly, a certification that a sufficient number of screeners have been deployed.

You are telling this committee that TSA will meet all of its congressionally mandated deadlines under the act, without reservation, yes or no?

Secretary MINETA. Yes, we are.

Mr. MENENDEZ. I just wanted a yes or no answer. So you said yes. So then why is there an objection to the Transportation Committee's amendment, if you are going to meet all the deadlines, then it would be transferred into the Department?

Secretary MINETA. I am sorry?

Mr. MENENDEZ. If you are going to meet all the deadlines as you just stated, then the Department—the TSA will be transferred into the Department, so what is the objection to the Transportation Committee's amendment?

Secretary MINETA. Remember, the November 19 date is for screeners. December 31 is for EDS. This legislation, if it gets passed this year, doesn't become effective until January 1, 2003. So the effective date of this legislation is after we have performed everything under ATSA.

Mr. MENENDEZ. That is exactly my point. What is the objection to the Transportation Committee's amendment if you are going to achieve the goals, and those goals will therefore take place before the creation of the new Department? There should be no objection.

Secretary MINETA. Well, as I recall under that legislation—and I will have to look at it, but I believe there were some other requirements.

Mr. MENENDEZ. Those are the only three requirements. And I would ask you to take a look at it at a future time and give us a written response.

[The information follows:]

The Department would like to amplify why, if the Transportation Security Administration (TSA) plans to and does meet every deadline imposed for security actions by the Aviation and Transportation Security Act, there would be any objection to a proposed amendment to H.R. 5005 to delay the transfer of TSA to the new Department until three specified conditions (related to the deadlines for the most part) are met.

The most important point is that the President should have maximum flexibility to time the transfer of the various agencies to the new Department, to deal with inevitable complications that will arise during the transition period. H.R. 5005, as introduced, provides a 1-year period following enactment to stage the transfers most effectively. That flexibility should not be sacrificed.

One simple reason to reject the proposed amendment to delay TSA transfer is simply that the first condition might be manipulated for any number of reasons, perhaps by members of the Senate that object to the TSA transfer. If the Senate fails to conflrln the new Secretary, the Under Secretary for Border and Transportation Security, or an Assistant Secretary (if reference is to an Assistant Secretary subject to Senate confirmation), the TSA could not transfer to the new Department. While this is presumably not the intent of the amendment's drafters, it is a distinct possibility.

Mr. MENENDEZ. Secondly, I want to follow on Chairman Armey's comments. I was not suggesting that nonsecurity budgetary functions could not be transferred within nonsecurity budgetary functions. I was suggesting that you can't drain nonsecurity missions for security purposes. So therefore the hypotheses that Mr. Armey put forth, that you so aptly bought onto, would not apply here. Would not apply.

And I am wondering whether the Secretaries would give me a yes or no answer. Do you believe that language that preserves the nonsecurity functions of departments being transferred out of your respective agencies into Homeland Security should exist to preserve those nonsecurity functions. If you could just tell me yes or no.

Secretary ABRAHAM. Well, just for our Department, we actually aren't moving full departments or subdepartments, we are moving programs that are specifically security-related, so it's probably less applicable to us.

Chairman ARMEY. If the gentleman would yield, I think the answer is really found in the committee's mark. The committee has put in generous language that describes all of the important functions of the Coast Guard, but in addition, rigid percentage allocations of funds among these. And what we are suggesting is while we want that language that cherishes all the functions of the Coast Guard, we don't want the straitjacket of those rigid—.

Mr. MENENDEZ. Reclaiming my time, Mr. Chairman, I am not just referring to the Coast Guard. I am referring to preserving all the missions.

I turn to Secretary Thompson and say, you look at what Doctor Hamburg has said on the nuclear threat initiative. If these programs are carved out of their current habitats and moved into this new Department, it will disconnect bioterrorism preparedness from other essential components and complicate the ability of our public health partners to work together, and is likely to weaken and fragment our Nation's capacity to respond to infectious diseases.

And if you look at what Doctor O'Toole said, the Director of the Center for Civilian Biodefense at Johns Hopkins, she goes on to say that those issues as well of splitting bioterrorism preparedness in essence doesn't help us, it hurts us.

So my point is—and I would like to get a response because my time has expired—is don't you believe in pursuit of your obligation to nonsecurity missions, as well as to security missions, that we should have some language here that preserves those nonsecurity missions?

Governor THOMPSON. Congressman, there is some language on page 5 you may want to look at. It is subsection 3: The Department, which is the new Department, shall also be responsible for carrying out other functions and entities, transferred to the Department as provided by law.

You might want to strengthen that, but that basically I think is the language that you are referring to.

Mr. MENENDEZ. Mr. Chairman, where are you reading from, Mr. Secretary?

Governor THOMPSON. Reading page 5.

Mr. MENENDEZ. Of what?

Governor THOMPSON. Of the act—proposal—section 101, parens 3.

Chairman ARMEY. The gentleman's time has expired and if the gentleman wishes, we may try to come back to this point.

Gentleman from Oklahoma.

Mr. WATTS. Mr. Chairman, thank you.

Director James, we have heard for some time concerning this Agency that we need to be lean and mean. And I agree with that, but I must confess that in the 8 years that I have been in Washington, I have seen very few occasions that we have taken to really streamline things and try to make them run efficiently and effectively for the American people.

And I was sitting here thinking about the different ways that you can get to that lean and mean posture in the government, and one is, you know, sometimes you can have a reduction in force. You can have public/private partnerships to try to make things work a little better. You decentralize. You find waste and abuse in the gov-

ernment. Or you can do what I think the President's proposal is trying to do, and that is to say, give us flexibility so that we can manage in a streamlined way or in an efficient way to focus as much attention on protecting the homeland as we possibly can. Give us that flexibility.

So let me ask you to pretend that I am one of those 170,000 employees that is going to be shifted from agency A, agency B, and agency C, over into this new Homeland Security Department. I am one of those 170,000 employees. What would you say to me to put my mind at ease that I will not lose my job or my protections, and what can I look forward to as a worker in terms of incentives for doing good work?

Ms. JAMES. Thank you. We want to create a world-class organization where Federal employees will be excited about coming to work, looking at the opportunities that are there for them to perform and be rewarded for the work that they do.

What assurances can I give you? I can remember going to college the first time, sitting there during orientation and being exhorted by the President to look to my left and look to my right, and being told that several of those individuals would not be there on graduation day.

Quite frankly, the crisis that we face in the Federal work force today is that we could go a long way towards streamlining if we did nothing because of the looming retirements that we have in front of us. We are not dealing in a situation where we have too many workers. We are in a situation where we have too few. And, as a result of that, a big part of the challenge is going to be, not reductions in force, but how to retain the people that we have, how to create an environment where people will want to come to work, how to attract the best and brightest from the private sector to come in and fill those job openings.

And, so what I would say to the Federal worker who may be listening today—and I suspect quite a many from your departments are—is that there is an opportunity to join a world-class work force, to be in an environment where they will have the opportunity to be rewarded for the work that they do; where they have a clear mission that is set before them; where they have an opportunity to defend this homeland and do significant work.

I think it is a tremendous opportunity. And, knowing the Federal workers as I do, I am confident that they will step up to the plate to do that and do it with vigor and enthusiasm.

Mr. WATTS. Mr. Secretary Abraham, how important will it be for the Nation to have a robust research development test, evaluation and acquisition organization within the new Department of Homeland Security?

Secretary ABRAHAM. Well, I think the advantage, Congressman, is that it is important for there to be effective direction with what already is, I think, a strong program. And I think what we are proposing to do here will provide tools to people who will have the comprehensive intelligence gathering information and threat assessment information to direct those assets at the technologies we most need. We have got great folks in these laboratories in terms of cutting-edge work. They are doing it. But this will give us the kind of coordination of that effort that I think is really missing.

Chairman ARMEY. Gentlelady from Connecticut.

Ms. DELAURO. Thank you, Mr. Chairman.

Director James, I would just like to follow up with you. I appreciate the commentary. I think the rhetoric is soaring, and I couldn't agree more with the new opportunities, and I have no question in my mind about Federal workers, union workers, workers who dedicate themselves every single day to their job, and the unsung heroes who do this.

On the other hand, there are practical issues and matters that people have to deal with in their lives in order that they may sustain themselves and their families. And that has to do with benefits. That has to do with pay scales. That has to do with pensions. And, quite frankly, we haven't had in the last, almost a year, real fine examples of a dedication to what happens to workers in a crisis. We have done what we needed to do with regard to industry and to make sure that industry and airlines are flying and secure and that the companies were secure. When it has come to the workers in these institutions, we have been less than forthcoming with making sure that they sustained their economic livelihoods and their viability.

So I think that there is a great sense here that—what we need to do is to provide assurances to people very clearly about what their benefits will be. If you have got an INS inspector at the State Department, he or she doesn't get paid on the same scale as someone else with different benefits.

How, in fact, are we going to determine what they are going to receive? We are very careful to look at how the various authorities and functions are going to be viewed. Everyone wants to know how that happens. I think workers have every, every single right to want to know before they take that leap. And I would say, not for the first time, being patriotic Americans; they are patriotic Americans all of the time, and the new agencies aren't going to make them more or less patriotic.

But tell me how I sustain myself and my family as you decide in the Congress or anywhere else to take my job, put it someplace else, and then tell me that I have to rely on the goodwill, the trust, the faith of people, and not verify what it is that I am going to be able to take home on a weekly basis and what protections I am going to have if someone says we are going to change the mission, change the allocation, and my friend, too bad for you.

Ms. JAMES. Thank you. Congresswoman, the last thing that we are saying in this legislation to the Federal civil service worker is, too bad for you.

Ms. DELAURO. And why not take on the Morella amendment, which shows some faith and trust in the worker? Let us start from there.

Ms. JAMES. Let us start from there. You raised several issues and I would like to go through them, as many as I possibly can, and I do appreciate your passion on behalf of the Federal worker.

Ms. DELAURO. Workers in general, I might add.

Ms. JAMES. Well, unfortunately, my only responsibility at this table right now is the Federal worker, and we share a passion for them. You mentioned an INS worker. What is wrong with the system we are operating under and why do we need these flexibilities?

Let me just give you an example. Suppose we have a worker who is a GS-9 in one of our agencies somewhere and they are doing a great job. They are doing an excellent job. And as a matter of fact, what we would like to do is reward them with more money as a result of the job they are doing, but our current pay system does not allow us to do that. The only way we can get that particular worker more money is to promote them to a supervisory position, but you know, they don't want to be a supervisor. They like the job they are doing. They enjoy it and they are quite good at it, but the system in which we are operating right now prevents us from doing that. So what do you do? You promote that person into a job and make them a supervisor, something they never wanted to be, something they are not equipped to be.

We must fix that system and we must have the flexibility to do that, and that is what we are talking about. And, right now, the legislation as it currently exists in the Chairman's mark doesn't allow us to do that. That is why we need the flexibilities.

You talked about the Morella amendment and how in the world can we show a good-faith effort to the Federal worker right now? Well, quite frankly, we have a responsibility to the Federal worker, and to the American people in total, and it is a very delicate balancing act. But, quite frankly, when there are decisions that have to be made that will protect our national interests and protect this Country, we must balance those.

Chairman ARMEY. I think the gentlelady's time has expired.

Ms. DELAURO. The fact of the matter is, Mr. Chairman, we have a government that has been functioning with all kinds of—we have Defense Department's, Justice Department's sensitive information, all kinds of structures in place that have been thought through and sifted out and vetted. All of a sudden with a new Department that is coming up, we want to change the rules of the game.

Chairman ARMEY. If I may.

Ms. DELAURO. Maybe we should think about changing the rules of the entire—.

Chairman ARMEY. This committee will address, I have no doubt, the substance of the Morella amendment and the extent to which it indeed is what changes the rules of the game from what they had been. We will address that later and I thank the gentlelady.

The gentlelady from Ohio.

Ms. PRYCE. Thank you, Mr. Chairman. And if Ms. James would like to finish her answer, I would be very happy.

Ms. JAMES. I would only say and echo what the Chairman was about to say, and that is that the Morella amendment expands rather than keeps things the way they are. And quite frankly, you know, historically, when you look at the Department of Defense, that authority has not been abused in that particular Department. It has not been abused by any President in the history of this Country, be they Democrat or Republican.

And I think that given the backdrop of where we are right now in terms of being a Nation at a war, given the delicate balancing act that we have to go through, that we cannot put the American people at risk at a time like this.

Ms. PRYCE. Thank you. And reclaiming my time, I would like to address Secretary Mineta, one last time, and you made a good case

of why the Coast Guard and the Transportation Security Administration should be incorporated under Homeland Security. Can you tell us, in your mind what would happen if that were not to take place, how it would affect the entire operation, how it would affect Department of Transportation, because that is going to be a very difficult thing for us to accomplish.

And as we as a committee try to mesh the administration's proposal with our committee's marks, I think that we would be well served to hear from you about what would happen if we are not able to do this.

Secretary MINETA. It seems to me that if the Coast Guard and the TSA are not transferred to the DHS but remain in our Department, there may be responsibilities on the part of the Department of Homeland Security that they will still have to carry out on their own. And if that happens, it seems to me, we would have duplicative services, one provided by the Department of Homeland Security and the other by Department of Transportation.

On the other hand, it seems to me you would have to increase liaison between the the Coast Guard and the Department of Homeland Security, or between TSA and DHS. Again, it would just seem to me it would add to the budget, rather than—part of this whole effort is to make it more efficient and to make it more effective—take advantage of the savings that would come from combining these agencies in the DHS.

Ms. PRYCE. In terms of efficiency, would it have any effect?

Secretary MINETA. I think it would, because the Coast Guard would be able to deal with and coordinate their activities through all of the intelligence activities of DHS. The Secretary of Homeland Security would be in a position to utilize the resources of the Coast Guard, based on the intelligence that he has about doing things. So, again, it would, it seems to me, add to costs if it were remaining in the DOT.

Ms. PRYCE. Thank you. Thank you, Mr. Chairman.

Chairman ARMEY. The gentlelady from California, Ms. Pelosi.

Ms. PELOSI. Thank you very much, Mr. Chairman.

As you know, we have a very serious responsibility here. We work in a very bipartisan way, unified way, with the President of the United States to protect the American people, a very serious responsibility. As we take this next step, we have to again meet the President's challenge to do what is best to protect the American people.

I understand the support for the administration's position that has been expressed here by a number of the Secretaries and by the Director, but I want to see clarification on one point because, as I said, we have a responsibility to every person in America, particularly to the families affected on September 11. They live in their own special fear when they hear a plane going over, or when hearing of any incident. It revisits horror for them. We would like to remove the risk and provide some comfort to them.

When we talk about the Morella amendment—and you say we have to consider the backdrop, we are a Nation at war; indeed we are. But I am drawing from your comment that you consider that a finite state, and in this special circumstance of a Nation at war, this balance is required.

I believe that the conditions that we put forth as we go forward with this legislation are for the very, very long term. We are in a different way of life. So we ought not to make judgments as if there is some finiteness to what we are doing here. This is for the very long term. Threats to our country are different now than before. The unimaginable has become almost the predictable, sad to say.

When we are making this decision about the work force, and you say we don't want to endanger the American people, I completely agree. I think the morale of the work force, the respect that we have for them and the job that they do is a very important component of protecting the American people. Certainly we want to have a Department that is manageable. And I fear that this Department may not be.

But I hope that I am not drawing from your comments an inference that you did not intend, and that is that these are temporary because it is against the backdrop of a Nation at war. We are a Nation in a new state, and we have exposure that we didn't realize before. We should have. We didn't. And so when we do that backdrop, I think we have to think very long term about it.

And that is what I would like to get back to my question earlier. First of all, I want to say to the Secretary of Agriculture, I am pleased with the confirmation that you gave to our chairman that you would support the amendment that came out of the Agriculture Committee.

I want to address the issue that I talked about earlier, a bipartisan amendment that came out of the Energy and Commerce Committee that I referenced earlier, but I couldn't hear from all of you because my time had run out, and that is with respect to regulatory authority.

For example, Secretary Mineta, would you agree with that respect to regulatory authority, this act may not be construed as establishing such authority for the Secretary, except to the extent that the functions transferred to the Secretary include such authority, and that altering or diminishing such authority with any executive agency would have to be transferred—definitely transferred to that Secretary?

I can read it another way to you in a briefer form, but it basically retains for the Department, the originating Department, the regulatory function unless it is spelled out that that function is moved to the new Department.

Secretary MINETA. Well, I would assume that in the case of Coast Guard, it is an operating agency as well as regulatory, so that since the Coast Guard is being moved intact and in full over to the Department of Homeland Security, that the regulatory authority would go with it.

Ms. PELOSI. And that should be spelled out in the legislation.

Secretary MINETA. And that is the way it should be.

Ms. PELOSI. Mr. Thompson.

Governor THOMPSON. I couldn't agree more. That is the way it should be.

Ms. PELOSI. But that it should be spelled out to that extent as well. In other words, altering or diminishing such authority of any other executive agency, except to the extent that a function of such

agency that includes such authority is transferred to the Secretary by a section specified in the legislation.

Governor THOMPSON. I don't know what your real question is, but I agree with the statement.

Ms. PELOSI. The question is about regulatory authority, and we don't want it to be in a vague state of limbo.

Governor THOMPSON. There is no question it has to be, and it has to be spelled out.

Ms. PELOSI. And if it is not, then it is retained by the department of origination.

Governor THOMPSON. That is going to have to be determined by this committee, and this committee should be able to determine which Secretary is going to have that responsibility.

Ms. PELOSI. I was wondering what your point of view is as a Secretary.

Governor THOMPSON. Unless it is changed or transferred, I think it has to be retained by the originating Secretary, because that is the one that has the responsibility.

Chairman ARMEY. The Chair made an announcement that I will recognize the gentleman from Ohio, and the Chair will use his time to recognize Mr. Frost for a question, and I believe Mr. Menendez, and we will try to wrap this up in the Chair's time if the committee will agree. The gentleman from Ohio.

Mr. PORTMAN. Thank you, Mr. Chairman, and I am glad I wasn't at the table having to respond to Ms. Pelosi's question because it is a tough one, and I am not sure I understand it, but I understand what she is getting at and I think this committee will be sensitive to that.

One specific one and one general one. One of the recommendations that comes out of the authorizing committee's work, Secretary Abraham, is with regard to the Under Secretary for Science Research, and Technology. I believe under your proposal, it is a directorship and not an Under Secretary. Do you have strong views on that? Some have said if it is a director, the director could report directly to the Secretary and serve as all of the Under Secretaries, all of whom would have science research needs, and also interface with the private sector, academia, and others, and adding an Under Secretary would add some unneeded bureaucracy. Do you have strong views?

Secretary ABRAHAM. I don't think we have strong views. I mean, I think we could support an Under Secretary designation as well. As I said in response earlier, the key ingredient is the coordination of these programs and the direction that is needed. Obviously we have a lot of, as I said, talented people and a lot of assets that have been effectively deployed in the last few months. But having an office that is trying to set priorities for the sort of research in the future is really the essential ingredient. But, you know, I think we could support an Under Secretary designation as well.

Mr. PORTMAN. More general question. This has to do with this issue of flexibility. I couldn't agree more with Ms. Pelosi on her notion of a leaner and meaner department, one that can effectively address this agile challenge of terrorism.

You said a moment ago you are concerned it won't be manageable, and I share that concern as well. But I think we need to point

out a few things, and I want to ask Ms. James a few questions. All these people will be in the bureaucracy somewhere. In other words, 170,000 employees that would not be moved stay in the bureaucracy. We are not growing bureaucracy. And in fact, as Secretary Mineta just said, by not moving them into a central consolidated function where you get those, as I mentioned earlier, synergies or efficiencies, you are going to have unnecessary duplication and some inefficiencies. In terms of bureaucracy, the people are still there. The question is whether they are all working toward a common goal.

Second, I think we have acknowledged in the Federal Government—and I won't put you on the spot—I think the reason we are doing this is, in part, we want to change the culture of some of these agencies and departments that have all these other functions and bring them into an agency or a department where the focus, culture, and the mission is the fight against terrorism. And to the extent that, post the tragedy in New York City we have decided we need to change that culture, it is easier to do it in a new culture rather than keeping them in an old culture.

Third, if we are really worried about manageability and flexibility and leaner and meaner, we have to give the new Secretary the ability to manage, and I would say there are three aspects of that. And, Ms. James, I want to ask you about the third. First, of course, is some transfer authorities so you can move some funds that we appropriate back and forth as the challenges change. Second would be the flexibilities that we have asked for in the proposal that has come out of some of the committees in terms of management/reorganizational flexibility generally. And third, of course, is personnel.

And if you could, Ms. James, just talk a little about if we do have these personnel flexibilities, again consistent with the merit system and all those principles that I think need to be outlined more in the legislation perhaps than in the initial draft, but if you outline all those principles, stick to those principles, stick to the whistleblower protection, the veterans' preference, the other things we talked about, the collective bargaining rights, how do we ensure that the employees, your people, represented by these four Secretaries who are on the line now, have input into the system?

Roughly 30 percent, as I look at it in the chart, are currently represented by unions. So 70 percent would not have union representation. Of those represented by unions, I am told not all are dues-paying members. So it is a smaller percentage than 30 percent. But I think the union needs to be brought in. We brought in the National Treasury Employees Union with regard to the IRS reforms. They supported the reforms and were quite constructive in moving the IRS toward a new more modern, leaner, better agency. And a lot of these workers will not have union representation. How do you intend to bring these people in to make sure they have a stake in this and make sure that their needs, concerns, and views are addressed?

Ms. JAMES. One of the earlier comments alluded to the fact that we have great soaring rhetoric, but how do we in fact ensure that the details are worked out in such a way that they are in the interest of the Federal worker. And I think that is an excellent question

that deserves an answer, and the answer is simply this. The way that the legislation is designed, it is so these employees move into the Department whole, as they are, with all of their benefits and protections and rights and leave and everything that they currently have. I think that the way that you ensure a world-class organization is to make sure that the people who are doing the jobs are involved in the process of setting it up.

That is one of the reasons that I believe that it would be difficult to try to work out all of the details of what that would look like through the legislative process. But it is the intent to involve all of the stakeholders, involve union and nonunion members, involve management associations, in sitting down at a table and designing what it would look like if all of us could achieve our desire to have a world-class organization.

I think at the end of that process, it should be said, yet again, that it would be an open and a transparent process that would go through the regulatory process so that people would have the opportunity to comment. We can't get this done in the confines of this hearing room. We can't even get it done within the confines of the Office of the Secretary or the Office of the Director.

I think the process that we set in place to get where we need to be will be an inclusive process and one that includes the people who are on the front lines and doing the jobs to help design the systems that they will work in.

Chairman ARMEY. Thank you.

The Chair will now use his time, and I believe the gentleman from Texas, Mr. Frost, has indicated a specific question, and I will share my time with him.

Mr. FROST. This is a question directed to Director James, and I ask that she address this question for the record. I am not asking her to answer this question right now.

There has been a lot of discussion yesterday and today about the President's right under an executive order to exempt people—exempt certain employees from civil service protections.

And here is my question: What specific criteria did President Bush apply when he issued an executive order in January of this year to remove 500 employees of the Justice Department from union coverage? And what specific criteria would you advise he apply in exercising his authority under section 7103 of the existing act with regard to the Department of Homeland Defense? And you may answer those questions for the record.

[The information was not received in time for the printing of this volume. The information, when received, will be retained in the Select Committee's files.]

Chairman ARMEY. The gentleman from New Jersey has a specific question as well.

Mr. MENENDEZ. Two very brief ones, and I thank you for yielding your time.

Secretary Mineta, if you could answer this yes or no, has the Coast Guard done a bad job in defending the security of the United States and the territorial waters which it operates in?

Secretary MINETA. Has not.

Mr. MENENDEZ. Has done a good job.

Secretary MINETA. Absolutely.

Mr. MENENDEZ. Secondly, Secretary Thompson, since I have not been able to elicit from the Secretaries a response to my question about dual missions, let me ask you this. Under the President's proposal, Homeland Security would control both the research and preparedness programs at another department. GAO found that this structure does not ensure that both the goals of homeland security and public health would be met or how priorities for basic public health capacities that are currently being funded through the dual-use CDC programs will be maintained.

Add to that Doctor Tara O'Toole's comments. She is the Director of the Center for Civilian Biodefense at Johns Hopkins, who said instead of consolidating similar programs the proposed agency would split bioterrorism preparedness programs from the related but more encompassing mission of public health protection, which is your Department's main objective. The country would be forced to create parallel work forces, one in Homeland Security for bioterrorism preparedness, and another in HHS for normal public health functions.

And, lastly, Doctor Hamburg's comments which I read to you before in the nuclear threat initiative, who said that the likely outcome will be to weaken and fragment our Nation's capacity to respond to infectious disease, whether occurring naturally or caused intentionally.

Now, just those three independent sources, not any member of this select committee, people in the academic community, the GAO. My questions are not meant to undermine the President's initiative, they are meant to strengthen it.

In that regard, do you not think that a mechanism could be devised under which a memorandum of understanding for those functions which the Department of Homeland Security is concerned about, by virtue of the transfers proposed here, could be achieved in your Department, and we would get the synergy, the cost savings, the benefit that we have heard so much about in other regards by keeping it in your Department with a memorandum of understanding, with the Department of Homeland Security getting the synergies about both producing research and development that will deal with homeland defense issues and public health for which there is so much integration in the process?

Governor THOMPSON. You raise a very valid question, Congressman. But an overall structure to actually accomplish it instead of a memorandum of understanding is a consultation procedure between the new Secretary of Homeland Security and the Secretary of HHS. And so instead of a memorandum of understanding, it is basically a consultation procedure that is set forth in this proposal, and I think either one of those proposals will work well, but I think the one that the President advances works better.

Mr. MENENDEZ. So you dismiss all these criticisms as not valid.

Governor THOMPSON. I don't dismiss them, absolutely not, because all of them are from learned individuals who know the programs and have been very much involved in helping to strengthen bioterrorism. But overall, the actual dollars and consultation really was between Governor Ridge and myself on the original program that we advanced in Congress, and it worked out very well, and I think it has been working out extremely well ever since.

Mr. MENENDEZ. Consultation is one thing, but budget authority which will reside with the Secretary of Homeland Security's ultimate authority.

Chairman ARMEY. Let me thank the gentleman from New Jersey and reclaim my time before it expires. I do want to thank the panel. And if I might make a recommendation to Director James that in addition to your standard GS ranking, that you create a new category called the "G-whiz 10" and give it to every member of the staff. And we want to thank you for your attendance today, and you were very helpful.

And, without objection, the select committee will stay in recess until 2:30 p.m.

[Recess.]

Chairman ARMEY. The Select Committee will come to order.

We are very pleased to have our next panel of witnesses, Representatives Thornberry, Harman, Gibbons and Tauscher—otherwise known as the brains of the mob, I believe. We are excited about your being here and anxious to get on with your testimony, so let me just suggest to you that, without objection, we will put your formal statements in the record; and we will ask you in your turn to present your summary statement.

We will begin with Mr. Thornberry.

STATEMENT OF THE HONORABLE MAC THORNBERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. THORNBERRY. Thank you, Mr. Chairman. Let me thank you for having us before you and let me thank each of the members of this committee for the time and effort that you are putting into this endeavor. You all have full plates already, and this is no small responsibility. As someone who cares about this a lot and has worked on it for a while, I appreciate the time and effort you are putting into it.

Let me try to make just a couple of summary points. One is that the effort to take the Hart-Rudman recommendation to create a new Cabinet Department of Homeland Security originated in the House. The people you see before you on this panel have worked on it together—I nearly said bipartisan but the truth is in a totally nonpartisan way for months and months and months, and I want to express my appreciation to my colleagues here not just for the work they have put in but for the attitude and the approach they have brought to this work.

Now I am sure that if you go down and ask us whether we agree or disagree with every single item that you have to decide we are not all going to agree with each other. But any differences we have have been overcome by our strong feeling that we must take bold action to reorganize the Federal Government so that we are better equipped to deal with the threats we face. I would respectfully suggest that if we can carry on that attitude not just with your committee but with the whole House then we will all have done our duty.

You have a lot of issues to sort out. In my mind, some are more important, some are less important. Let me just outline what I think the three pillars of any Department of Homeland Security has to be.

One of those pillars has to be border security. As a matter of fact, if you look, about 90 percent of the people who would be in a new Department of Homeland Security are involved in border and transportation security. They have to be made to work together as one seamless, integrated unit. That is an essential pillar.

Secondly, is cyber and infrastructure protection. We have not talked nearly as much about cyber terrorism as we have about other kinds of terrorism, and yet we are attacked every single day in this country in all sorts of different ways, and an integrated, seamless effort to prevent cyber terrorism is essential.

The third pillar, to me, is emergency preparedness and response. Every one of us recognizes how important it is for those people on the ground—the policemen, the firemen, the first responders—to have the resources they need. Building upon FEMA's existing structure with 10 regional offices, the relationships FEMA has with State and local governments, the new Department of Homeland Security would be the key entity to help administer grants so they could buy new equipment to help provide training so they can get those things they need there, to help plan for emergencies and, maybe most importantly, to be the channel of communication between the Federal Government and the State and local governments.

Let me give you an example. Suppose the intelligence part of this new agency gets information that shopping malls are about to be attacked. Well, this part of the Department of Homeland Security will get that information out to the people who need to know it. They are the communication that says watch out at your shopping malls.

Now, on the other hand, maybe policeman around the country see suspicious activity at shopping malls. They feed that information back into the Department of Homeland Security, and it goes back up the chain.

This communication with State and local first responders is a critical part to empower them to do their job; and that has to be, I think, a part of this Department. So those are the three pillars I believe.

Intelligence analysis is also important. The technology piece is very critical across all of these areas.

Let me make just one final point. We all know that any time you move money and power around in Washington you are going to meet resistance and you are going to step on some toes. And we—to get this passed on the floor, we have a delicate job. There is no question about that. But I just suggest that what—we have got to focus on trying to get it right. We cannot cut this in half. We cannot take an incremental approach. There is simply too much at stake. So not only as the Select Committee but as our leaders, I know and trust that you will help lift us all to meet the challenge of doing this job right, because there is so much at stake. Thank you.

Chairman ARMEY. Thank you.

[The statement of Mr. Thornberry follows:]

PREPARED STATEMENT OF THE HONORABLE MAC THORNBERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman,

I appreciate the opportunity to appear today before the Select Committee on Homeland Security.

As you know, I've spent a good bit of time working on this issue over the past 16 months. Clearly, there have been a number of changes in the world since I introduced my first homeland security bill in March of 2001.

One thing that has not changed—and, indeed, one thing that has become all too obvious—is that America and Americans are increasingly vulnerable to a broadening array of threats from a variety of areas and actors around the world.

Ten years ago, Operation Desert Storm showed us it is foolhardy to hit us where we are strong. September 11th showed us our enemies are actively searching for ways to strike us where we are weak.

Over the past several years, there have been a number of reports and studies that detailed just how vulnerable we are. In January 2001, for example, the bipartisan Commission on National Security/21st Century—better known as the Hart-Rudman Commission—issued a report in which it found that:

> The combination of unconventional weapons proliferation with the persistence of international terrorism will end the relative invulnerability of the U.S. homeland to catastrophic attack. A direct attack on American citizens on American soil is likely over the next quarter century. The risk is not only death and destruction but also demoralization that could undermine U.S. global leadership.

We have often heard about the dangers associated with nuclear, chemical, or biological weapons being smuggled into this country. But we could also be devastated by computer attacks against our critical infrastructure or by livestock and plant diseases being introduced into our food supply.

Let me give you one fact that caught my attention. Every day $8.8 billion of goods, 1.3 million people, 58,000 shipments, and 340,000 vehicles enter our country. But the Customs Service is only able to inspect a small fraction of them. The volume of U.S. trade has doubled since 1995, and some expect it to double again in the next five years.

And yet, by every account, we are not doing enough to protect our citizens. The Hart-Rudman Commission found, "[i]n the face of this threat, our nation has no coherent or integrated governmental structures."

A July 1999 report by the Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction concluded that "a cardinal truth of government is that policy without proper organization is effectively no policy at all. If the Federal Government's policy is to combat the threat posed by the spread of weapons of mass destruction, then the government must be organized to do so."

A June 2000 study by the National Commission on Terrorism echoed this conclusion when it found that "[t]his country's seeming inability to develop and implement a clear, comprehensive, and truly integrated national domestic preparedness strategy means that we may still remain fundamentally incapable of responding effectively to a serious terrorist attack." The Commission also found that "the complex nature of current Federal organizations and programs makes it very difficult for State and local authorities to obtain Federal information, assistance, funding, and support."

Homeland security is a big, complex problem. No one bill and no one branch of government can address the entire need. We need a strategy to reduce our vulnerabilities; we need appropriate funding of the efforts we make; and we need effective organizational structures.

President Eisenhower put it pretty well. He said, "the right system does not guarantee success, but the wrong system guarantees failure. A defective system will suck the leadership into its cracks and fissures, wasting their time as they seek to manage dysfunction rather than making critical decisions."

The plan we are considering today tries to deal with part of the organizational deficiencies created by having literally dozens of agencies with some responsibility for homeland defense. The bill does not try to fix all of the problems. It does not deal with the military's role in homeland security, for example. But it does try to force more integration, coordination, and planning so that we can "prepare for uncertainty."

This bill would implement one of the recommendations of the Hart Rudman Commission. I think it is important to say a word about that Commission. We are all used to commission after commission producing report after report, which simply set

on a shelf somewhere. If we allow the reports of this Commission to simply set on a shelf, history will not be kind to us.

This Commission was unique in the exceptional background, experience—and I would say gravitas—of its members. Their political philosophies ranged from the left to the right. But they unanimously agreed on the nature of the threats we face and on our lack of adequate preparation, and most amazingly, they agreed on what we should do.

The plan we are considering today mirrors and builds upon the Commission's recommendations.

Under the plan:

• Our border and transportation security would be strengthened—The plan will consolidate key border security agencies such as the Coast Guard, Customs Services, Border Patrol, INS inspectors, and USDA border inspectors under one umbrella within the new Department.

• Our emergency preparedness and response would be improved—The Federal Emergency Management Agency will be incorporated into this new department, and its existing framework will serve as the focal point for State and local communities to work with Washington in planning, preparing, and responding to a homeland threat or attack.

• Our intelligence and critical infrastructure defenses will be beefed up—The new department will act as a clearinghouse for intelligence information, supplementing the efforts of the FBI, the CIA and other intelligence agencies in analyzing and gathering data. It will also coordinate and bolster Federal efforts to prevent cyber attacks.

• Our defenses against a chem/bio/nuclear/radiological attack will be bolstered—The Department would lead the Federal government's efforts in this area, helping to coordinate, among other things, advancements in science and technology that will help strengthen our homeland security.

The goal of creating this new department is not to add another layer of fat to the already bloated Federal bureaucracy. Rather, the goal is to realign our government so it is better prepared to prevent and respond to homeland threats.

Just over 50 years ago, Harry Truman called on Congress to realign the country's national security structure by creating a new Department of Defense. President Truman's vision and the plan that Congress ultimately passed laid the foundation for the defeat of communism and the victory of freedom in the Cold War. We are at a similar, pivotal point today.

If Congress lets turf battles and jurisdictional disputes get in the way of reorganizing our government, it will have failed the American people. It is time for us to act.

Chairman ARMEY. Ms. Harman.

STATEMENT OF THE HON. JANE HARMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. HARMAN. Thank you, Mr. Chairman.

I am fond of saying that terrorists won't check our party registration before they blow us up; and in that spirit I am really pleased to see a group of friends sitting before you, friends who have worked together before and will work together after and sitting before a truly bipartisan committee to talk about a subject that is not partisan.

I feel very strongly that what process we use—and this is the beginning of a good process—will determine what margin this bill will pass by. I am hopeful that we will have at least 350 votes for this bill, the end product that you report, after it is debated on the floor, at least 350 out of 435. We will have far more than 218, the bare margin to pass a bill in this House. We must have far more than 218. This is about America, and this is about our biggest threat, and we have to step up together.

So I urge this committee to continue in this fashion, talking to bipartisan groups in this House and to structure a process that is open so that those in this House of both parties who have a lot to

contribute will be able to do that, either in committee or on the floor, and the product that we pass will be worthy of the best talent that we can marshal in the House. That is the biggest point I would like to make.

Secondly, some of us, including you, were at the White House this morning as the President released his strategy for homeland defense. It is a very good product, and calling for a major reorganization, which is what we are talking about.

I am pleased to be an original cosponsor of this bill. I support this bill as introduced. However, I think it could use a little improving, and in the spirit of bipartisanship I would just like to offer a few things.

First of all, I am a member of the House Intelligence Committee which, on a virtually unanimous basis, only one dissenter, reported some amendments to the bill that I think are excellent. What they do is clarify what the analytical function is in the bill, make it clear that it is an important function and also make clear how it can work to get accurate threat information down to first responders. That is a very big deal. Information sharing with first responders so they know what to look for is one of the key aspects of this legislation and a key reason why those who will protect us when the next terrorist act occurs on somebody's real estate will be effective. So that is one thing that I think is very important.

Another thing that I think is important is what thousands of businesses around the country are telling us. These are the folks who are inventing or have invented the cutting-edge technologies which are key to making any Homeland Security strategy successful. Any strategy depends on leveraging the technologies of the private sector, and they need a front door to enter this Homeland Security department. That front door is not as clear as it should be.

That is why some amendments offered on a bipartisan basis by the House Commerce Committee, of which I am a member, and the House Government Reform Committee are very important. They will help us build that front door for the private sector so that their talent really can be leveraged in protecting both public and private infrastructure and American citizens in this huge undertaking that we must embark on.

A final point is this: at minimum, 80 percent of the Federal Government agencies with homeland security functions will be left outside of this new Department; and maybe, if Ms. Pelosi prevails, 90 percent of the Federal Government will be left outside of this Department. But regardless of what percent is in and what is out, most will be out, and we need to coordinate the entire Federal Government in order to implement the strategy that the President recommended this morning.

How do we do that? My answer is that we must provide a statutory office in the White House to coordinate or to be the architect of the strategy across the Federal Government. We will have a new Department. I support it, a big Department. We will have a confirmed Secretary of that Department who will be the person testifying before Congress. But we have to have the capability in the White House for homeland security that we have in the White House for national security. We need a sister or brother for Dr. Rice in the White House. We need to do in this legislation what we

did in 1947 when we passed the National Security Act, and that is to create by statute a Homeland Security Council.

The White House is concerned about this because they don't want someone in the White House to be confirmed. Dr. Rice isn't confirmed. They don't want the President's hand to be tied. I think the President is helped by having Dr. Rice in the White House, and I particularly commend her for her extraordinary service and talent. But I think what we need is the mirror image of the National Security Council in a Homeland Security Council, and I think to do less would compromise our ability to coordinate the whole Federal Government.

In conclusion, I am pleased to see how we are doing. I think we all ought to be proud of this. I hope that this room will not be large enough to hold all the Members of the House who vote for the bill by September 11, but this would be a good start if we filled this with those who vote for this bill. Mr. Chairman, we celebrate and we put a cornerstone on your service in this House because you are leading this effort. I would be very proud to be here and very proud of what I, as just one member of this very talented body, have been able to contribute.

Thank you, Mr. Chairman.

Chairman ARMEY. Thank the gentlelady.

[The statement of Ms. Harman follows:]

PREPARED STATEMENT OF THE HONORABLE JANE HARMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Thank you Chairman Armey, Ranking Member Pelosi, and Members of the Select Committee for inviting me to appear before you today.

I am here as a co-sponsor and supporter of H.R. 5005 to create the Department of Homeland Security. I am proud to have been a sponsor of a previous bill with my bipartisan colleagues here today that proposed in May a somewhat smaller Department of Homeland Security and a more robust White House coordinating function.

The President's bold proposal expanded the Department that we had earlier envisioned, and downgraded the White House office, a subject that I will address later.

Since the bill's introduction in the House, the 12 standing committees of jurisdiction have recommended significant and helpful changes. I commend this panel for its commitment to work with the chairmen and ranking members to incorporate their recommendations into a final proposal.

In particular, I commend the leadership of my two committees, Chairmen Goss and Chairman Tauzin and Ranking Members Pelosi and Dingell for their hard work and strong bipartisanship in consideration of the Department of Homeland Security bill.

I understand that this body will receive testimony from the Intelligence and Energy and Commerce Committees tomorrow. I will only focus on a few specifics from each.

The House Intelligence Committee reported significant alterations to the Administration's proposed information sharing and analysis center. In my view, our changes promote a more rational and far reaching intelligence analysis center that better clarify and empower the Department's intelligence role.

Like the underlying bill, the Department would be charged with assessing the nature and level of terrorist threat and disseminating information to State and local governments and responders. The Intelligence Committee amendment, however, grants the unit better access and staff to fulfill this responsibility.

The Energy and Commerce Committee included language in its mark-up promoting public-private partnerships for homeland security. The Committee specified that the Under Secretary for Science and Technology should serve as a liaison to the private sector, serving as a central point of entry for companies with homeland security technologies.

In my view, this change is essential to respond to the frustration from the aerospace and high tech companies around the nation. They have products, from bio-

detectors to information management software, with important homeland security applications. But these companies have no clear entre to the Federal government to demonstrate their technologies. The White House Office of Homeland Security doesn't have the mandate, and the Defense Department's Technical Support Working Group is understaffed for the mountain of proposals they've received.

The Department of Homeland Security should be charged with the responsibility of providing the private sector, as well as universities and others, with a simple point of entry. The Department would be a clearinghouse, reviewing and logging technologies and referring the companies to the appropriate government entity.

This function would facilitate the deployment of cutting edge technologies into the war on terrorism as efficiently as possible.

While I do not serve on the committee, I also commend the Government Reform Committee for its consideration of the Department bill. The Committee included the provisions of the information sharing bill passed recently by the House by a vote of 422-2. The bill, which I introduced with Saxby Chambliss, directs the President to create new procedures to share information on terrorist threats across the Federal government and down to the local government and first responders.

After these provisions are put in place, the police, fire, public health, EMTs, and other first responders will know when the FBI or CIA has credible information on a threat to their communities.

This function would be placed with threat assessment and warning in Title II of the new Department.

Finally, I want to focus on the White House coordinating piece of the Thornberry-Harman-Tauscher-Gibbons bill, H.R. 4660.

Even if we agreed that all the agencies under discussion should be part of the new Department, 80 percent of homeland security agencies would still remain outside the Department of Homeland Security umbrella.

It is critical to coordinate all the programs—including the Department of Homeland Security, the CDC, the NRC, DoD, and the rest of the alphabet soup of the Federal bureaucracy.

It is impractical to think that the Secretary of Homeland Security, just because she is focused on security efforts, will be able to dictate to other cabinet secretaries how to run their security-related business.

Even Governor Ridge, with an office next to the President and charged specifically with getting things done, was unable to overcome entrenched bureaucracies. A fellow cabinet secretary in a different Department will be less able to coordinate across boxes on the org chart.

I recommend adding in this legislation a statutory Homeland Security Council, patterned on the National Security Council, which was created by statute in the National Security Act of 1947. The Homeland Security Advisor, who would be comparable in status to Dr. Rice, would not be a Senate confirmed position, and would not be subject to testify before Congress.

The Council, with a permanent staff, would have the position in the White House to oversee all Federal homeland security programs and efforts. Rather that "doing"-training, patrolling, collecting, researching-the Council would coordinate these activities, compare what's being done to what is needed to prevent terrorist attack, and advise the President on policy matters.

The Homeland Security Advisor would also be an "architect" for the homeland security enterprise, comparing the current capabilities with the needs to counter future threats. This means comparing the critical tasks, as elaborated in the national homeland security strategy, and matching them up with capabilities. If they don't line up, the Advisor would recommend new efforts as appropriate.

As I mentioned, creating in statute a White House function has ample precedent. The NSC was created by the National Security Act of 1947. In the same legislation, Congress created the CIA, the precursor to the Department of Defense, departments of the Army and Navy, a separate Air Force from the Navy, and called for the Joint Chiefs of Staff.

I thank the Committee, and urge its consideration of these priorities in the legislation before the House.

Chairman ARMEY. I might mention to the committee and to the panel we have just managed to roll some votes on the floor, so that we have at least a comfortable hour before we would be interrupted.

With that note, I would like to recognize the gentleman from Nevada, Mr. Gibbons.

STATEMENT OF THE HONORABLE JIM GIBBONS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. GIBBONS. Thank you, Mr. Chairman; and, hopefully, my testimony won't last an hour.

What I would like to do is summarize three very important points that I want to make. The first important point that I think needs to be made is I am honored to be sitting here at a table with my colleagues, both Democrat and Republican. This has been a bipartisan effort since its inception. Ten and a half months ago, Jane Harman and I joined together in an effort to do exactly what we are attempting to do here; and it is a privilege to watch the process go forward in such a bipartisan—in fact, as Mac Thornberry said, nonpartisan fashion.

It is important, in fact, if it is not critical to America that during the time intervening since September the 11 that we come together as a unifiable body to produce something that is far more important to the American people than anything we could do and this is the protection of their security.

The point I want to make in addition to that is the points about the bill. We have heard over the last several months about the inability of our government to be prepared to be able to work in a fashion that would allow it to understand the information that it had and to be able to connect the dots as we speak. Now, Mr. Chairman, I have seen, as a member of the Intelligence Committee with Jane Harman, agencies come in and tell us that they had certain parts of the information but were unable to communicate, unable to share the information.

The important thing about this bill is it allows for information sharing. What we had prior to this was a large box full of puzzle parts, shaken up and mixed up; and each agency came in and reached in the box and grabbed a handful of those parts and went off to their own department and tried to put the puzzle together without talking or looking into what the other agency was doing. This whole part about trying to put a puzzle together, having parts in one—in many areas, certainly was reflective of our inability to handle the information that we had.

I think the legislation—and, in fact, the legislation and the amendment that the Intelligence Committee has put together will allow us to share information better, creating an analytical center which will take the information generated by our collectors—and this agency is not a collector. But it will take the information generated by our collectors and put them together under a microscope with the focus and the intention being the protection of America's homeland. This will give a new perspective to that information.

It will also allow for this agency to communicate this information both horizontally between Federal agencies and vertically between Federal, State and local agencies as well, which is very important. It creates a two-way highway where information that is generated by our State and local responders can flow seamlessly up into our homeland defense department, and this will be critical in terms of analyzing and sharing this information to produce warnings that are going to be meaningful and effective if we are going to protect the American defense.

Then the second issue that I want to talk about was touched on by Ms. Harman, of course, is the fact that you need someone in there who has the oversight ability and the ability to control and direct some of our Secretaries. As she said, 20 agencies will be brought together in the Department of Homeland Security, leaving approximately 80 agencies outside of that that will have some representative issue with regard to homeland security. The President will need someone that will help organize and share and coordinate that information sharing among those agencies.

It is commonly known in the Washington area that the greatest parlor game here is turf war, and all of these agencies are very protective of their part of this important operation that we have got going in this country to protect our Nation and its people. If we don't have somebody who can oversee statutory authority to oversee and control the budgets and make recommendations, then we have not given the President the authority he will need to regulate and determine what is important among those various agencies and to set priorities as was established in his vision and strategy that was released today.

So, Mr. Chairman, I think this bill, among all other things, is probably the highest priority bill that we could do in this Congress for the American people as directed by our Constitution and that is to provide for the common defense of this Nation. Thank you.

Chairman ARMEY. Thank you, Mr. Gibbons.

[The statement of Mr. Gibbons follows:]

PREPARED STATEMENT OF THE HONORABLE JIM GIBBONS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Thank you, Mr. Chairman, and I would like to thank the Committee for the opportunity to testify on behalf of H.R. 5005, to establish a Department of Homeland Security.

Ladies and Gentlemen, 10 1/2 months ago the most horrific terrorist attack in this nation's history occurred.

Since September 11th, this country has unified—both at home, and abroad—to better prepare our nation for the new security challenges that will face us for years to come.

Here at home, we oftentimes take for granted the liberty and freedom we are provided by our service men and women, as well as the strength and wealth of our nation.

To a great extent, September 11th changed all that. Most Americans recognize that we must now prepare ourselves, and generations of Americans to follow, for the challenges and threats that we now know to well exist.

Over the last couple of months, I have been part of several bipartisan, bicameral meeting at the White House with the President, Vice President, and Governor Ridge * * * to discuss the future of our nation's homeland security.

The fruit from these meetings are outlined in the legislation before us today.

As I have advocated since October 4th of last year, when Congresswoman Jane Harman and I introduced legislation to give cabinet-level status and budgetary authority to the Homeland Security office, this Congress must give Tom Ridge and his successors the ability to succeed in their role as Director of Homeland Security.

But not only does the Administration need this authority, Congress does as well. We must work to craft a bill that will allow Congress to maintain the statutory oversight necessary to maintain our role and responsibility.

And most importantly, the American public needs this legislation. We cannot afford to let this office be another well-intended idea that gets dragged down by the weight of bureaucracy.

American citizens deserve better.

As Vice-Chairman of the Terrorism and Homeland Security Subcommittee, a recurring theme in our hearings has been the lack of information sharing between agencies.

The so-called "Phoenix Memo" is a perfect example. Those in charge of connecting the dots do not always get all the dots to connect to form a complete picture.

The FBI may connect some dots, the CIA may connect some dots, and the Border Patrol, INS and Customs may connect some dots, but if all our efforts still fail to present a complete picture, we may face a tragedy equivalent to—or perhaps worse—than those of September 11.

This "stove-piped" information-sharing has got to stop.Never before in our nation's history has communication-sharing among our national security agencies been as imperative as it is today.

This Congress has no higher priority between now and the end of this session than to give our nation one single agency whose number one goal and priority is to protect our homeland. One key issue that must be worked out is how the new Secretary of Homeland Security will obtain key information from other agencies like the FBI or CIA.

Will the Secretary be able to "task" other agencies for information? We in Congress must ensure the new Secretary is able to get the right information at the right time.

Furthermore, once the Secretary of Homeland Security has key information, it must be integrated both horizontally and vertically. That way, we can ensure we have the right organizations receiving critical information—and that the information is shared all the way down to the first responder.

The first responders are the people who play key roles in protecting the communities in which they serve.

Our police, firefighters and medical personnel must be informed of threats that exist within their communities so that they are able to prepare and protect the communities which they serve.

Perhaps the most important provision must be the budgetary authority granted to the Director of Homeland Security.

The Director needs more than a good personality and a strong commitment to work with others in order to do the job at hand.As Ash Carter of the Boston Globe recently noted: "White House czars have historically been toothless * * * unable to control the activities of Cabinet bureaucracies. To be effective as homeland security czar, Ridge will need * * * influence over the budgets."

H.R. 5005 must give the Director of Homeland Defense real "teeth" by granting him the authority to approve or reject any budget that pertains to Homeland Security Strategy in collaboration with the Office of Management and Budget.

This means, the Homeland Security Advisor to the President can look into the budget for all agencies that play a role in Homeland Security.

If the Advisor determines there is inadequate funding for a specific action or priority that must be taken, they can submit a statement of proposed funding and any specific initiatives, which permit implementation by the agency.

Currently, Mr. Chairman, our homeland security budget reflects a lack of coherency. Next year, the Federal government will spend nearly $38 BILLION on homeland security.

Under the budget approved by the House, 22 percent of this money will be spent by the DoD, 20 percent will be spent by the Transportation Department, 19 percent will be spent by the Justice Department, and 12 percent will be spent by the Health and Human Services Department.

The remaining 27 percent will be divided among other agencies with a piece of the homeland security pie.

It is imperative that Congress create a single, comprehensive agency to take charge of finding duplications or gaps in how taxpayer money is spent.

If Congress wants to ask the Administration how it plans to spend this money, it has essentially two choices.

First, call up all of the Cabinet secretaries who control some portion of these programs to testify, or reorganize government in a way that makes it more accountable in preserving the security of our homeland.

This bill does that—and that is why I am here to express support not only for the legislation before this committee today * * * but to express the need for the goals that this legislation outlines, as we proceed in the crafting of this new Department within our Executive Branch.

In closing, I want to commend President Bush and Governor Ridge.

Together, they have carefully crafted a proposal, with the help of some select Members of Congress, that will adequately and responsibly steer this country in a direction we must now take * * * and they have done it while directing an unprecedented war against terrorism

Not an easy task, Mr. Chairman.

H.R. 5005 will give our new Director of Homeland Security—and those who will follow—the authority and flexibility needed to ensure the protection of our homeland.

I look forward to working with each of you as we work to implement the goals outlined in this legislation.

And I am confident that we can put our differences and egos aside in creating and make the changes that the President asked for by the end of this Congress.

Mr. Chairman, I thank you for this opportunity.

Chairman ARMEY. And Miss Tauscher.

STATEMENT OF THE HONORABLE ELLEN O. TAUSCHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mrs. TAUSCHER. Thank you, Mr. Chairman,

Ms. Pelosi, friends and colleagues on the Select Committee.

I would like is take a moment of personal privilege to tell you how honored I am and humbled I am to sit with my colleagues, especially Mac Thornberry, who had the prescience to take the Hart-Rudman report March of 2001 and turn it into a bill well before September 11 that we could all rally around.

Let me also tell you how impressed I am to sit here before all of you. I have been in Congress now for 6 years. I consider this to be an American moment where all of you, the leaders, the two great parties in the Congress, have come together in a totally nonpartisan way to help lead our ability to protect the American people; and I really thank you for your service. I know that you have many things that you have to do every day and constituents and families that need your attention, but the work that you will do over the next few weeks to take us to, I hope, a good conclusion in early September as Leader Gephardt has asked I think is going to talk more to our adversaries about how we are as Americans than virtually anything else we have done in a nonmilitary way. So thank you very much for your service.

I would also like to just talk for a few minutes about the two areas that I have specific expertise in or committee assignments on, and I just want to just make one thing very clear. I don't think this is about making more bureaucracy. I think this is about making bureaucracy work, and I think that is the challenge that we have as Americans in a government that is sometimes a little leaner, not as lean as we would like and certain a little meaner than we would like. But I think this is a truly historic opportunity for us. But unless we do that we are not going to have a government that is going to truly focus on Homeland Security, and that is why I am a huge supporter of the chance to do this.

We know none of this is going to be easy, and we know you have got a tough situation ahead of you, but as the ranking member of the Armed Services Panel that oversees the National Nuclear Security Administration and as a member of the Transportation Committee I am just going to focus on two critical issues, one in the aspect of the sciences and technology to protect our homeland and the second is the Transportation Security Administration.

As you know, the NNSA's three national laboratories, Los Alamos and the two in my district, Livermore National Laboratory and Sandia Laboratory, have long worked to develop technological capa-

bilities to detect, counter and mitigate the proliferation of weapons of mass destruction and the threat of terrorism.

The administration's logic for giving the Department of Homeland Security responsibility for a central management and research facility at one of these labs and having satellite centers of excellence at all the national labs is very sound. An appropriate degree of central coordination will be necessary to insure that the counterterrorism expertise at all three labs is tapped into in the most efficient and least bureaucratic way possible.

I support the language reported out of the House Armed Services Committee, and I want to thank Ms. Pelosi for speaking so eloquently today about my constituents in California. Actually, I am sure some of them live in your district at the Lawrence Livermore Lab and the Sandia Lab.

The White House has designated the Livermore National Laboratory, but I am not confused. I want this to work. We have three great laboratories—two in California, two in New Mexico. I am not interested in planting a flag in my district if it is going is create the Donner party and have everybody not focus on what the mission is.

So what I believe we need to do is to report the House Armed Services language that effectively says that the President wants to appoint one of these labs and that he will have the discretion to do that. I think that Livermore can compete. I think there are lots of logistic reasons, because we do have two labs literally across the street from each other and we could be the site. But I think it is much more important for us not to get into parochial issues and to allow the President the flexibility he has asked for.

I do hope he picks Livermore, but, once again, I think we need to do this right. I certainly don't want to go into a conferencing situation with the Senate where perhaps we are dealing with parochial issues of New Mexico versus California. That is the wrong thing for us to do. My constituents don't want that, and I hope that you will support the opportunity to do what the House Armed Services Committee recommended.

In report language we do say that the President has designated Livermore, but we really want this decision to go forward.

The second issue is the Transportation Security Administration. Many of us are on the committee. We understand that we had a necessity when we were doing transportation security, and during the debate I had hoped that we could create the Transportation Security Administration that could have gone in a Homeland Security Department. But we didn't have a Homeland Security Department then; and, frankly, we needed to move and we did.

Now our opportunity is to do it right; and since we couldn't do it right from the beginning, I am concerned that moving the TSA into the Department of Homeland Security now before the Department of Transportation and the TSA can meet their deadlines that we mandated—whether they were achievable or arbitrary or not, those are the deadlines, and they need to set—they are set higher and train Federal workers. They have to deploy explosive detection devices.

I am afraid this would create too many problems if they all of a sudden had to move at the same time. That is why, regardless

of the deadlines and the underlying legislation to create the Homeland Security agency, I support the recommendation of the House Transportation and Infrastructure Committee to delay the TSA's transfers until certain milestones are met. This is not going to create a big problem for us, because I am only asking for about 60 days. But they are 60 crucial days where we need to have the Department of Transportation finish their work, which has been difficult and perhaps unachievable in the end. But they need that time to bridge forward a Transportation Security Administration that has at least met some metrics in its infancy, has a sense of momentum going forward. Otherwise, my concern is that we will hobble the new homeland security administration with a bunch of deadlines and a bunch of things that they haven't done with an agency that is growing very, very rapidly.

So I think that it is important that we think about what T&I has said. I think we can find some accommodations. I think that there is an issue between November—the November deadlines for hiring Federal screeners and the January deadlines for putting the EDS machines in the airport, and I think that we are talking about January anyhow. So I think that there is a narrow window there.

But as we look at the Aviation Subcommittee, of which I am a member, we are going to be holding hearings next week to find out if the TSA actually is going to meet these deadlines or not. We may be able to come forward with some help on how they can assure—we can insure that they will. But I think it is going to take this historic opportunity for us to try to get some of the things that we couldn't do well because of time constraints back in September, much better off for the American people.

I am just very pleased to be here. I appreciate the fact that you have made time for us to come. Once again, it has been a very heartwarming experience, a reaffirmation of America, to work with my colleagues; and I thank you for the chance to be here.

Chairman ARMEY. Thank you.

[The statement of Mrs. Tauscher follows:]

PREPARED STATEMENT OF THE HONORABLE ELLEN O. TAUSCHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, Ranking Member Pelosi, thank you for the opportunity to testify before this committee.

I would also like to recognize the strong leadership of my colleagues sitting beside me and, in particular, Mac Thornberry who had the foresight to turn the recommendations of the Hart-Rudman Commission into legislation several months before September 11th ever happened.

We have a tremendous opportunity to dramatically improve the way our government protects the American people.

This is not about making more bureaucracy; this is about making bureaucracy work.

Creating a new agency headed by a cabinet secretary with robust budget authority and the means to coordinate the dozens of different parts of the government doing counter-terrorism work is the only way to truly focus on homeland security.

None of this is easy, but I believe we can preserve the core mission of the agencies involved while creating a new agency that interfaces with first responders and gives them a single place to go for any catastrophe affecting the security of our homeland.

As ranking member of the Armed Services Committee panel that oversees the National Nuclear Security Administration and as a member of the Transportation Committee, I am going to focus on two critical aspects of the Department of Homeland Security: the use of science and technology to protect our homeland, and the Transportation Security Administration.

While in a number of areas we have to consider creating new security structures, science and technology is one area where we have a wealth of resources at our national laboratories already working to protect the American people.

As you know, the NNSA's three national laboratories, Los Alamos and the two in my district, Lawrence Livermore and Sandia, have long worked to develop technical capabilities to detect, counter, and mitigate the proliferation of weapons of mass destruction and the threat of terrorism.

The administration's logic for giving the Department of Homeland Security responsibility for a central management and research facility at one of these labs and having satellite centers of excellence at all the other national labs, is sound.

An appropriate degree of central coordination is necessary to ensure that the counter-terrorism expertise at all three of the labs is tapped into in the most efficient and least bureaucratic way possible.

I support the language reported out of HASC last week because it strikes the right balance by assigning responsibility for science and technology to a lead lab—a critical measure to ensure accountability and prevent dilution of the science and technology effort—and it gives the new Secretary the flexibility to select which ever national lab is most appropriate.

As you know, the administration's request specifically designates Lawrence Livermore National Laboratory as the lead in this effort.

I urge this committee to adopt the HASC language as it is too early to know how all these details should be implemented and the new agency will need flexibility to build an organization that best makes use of our vast science and technology resources.

With regard to transportation security, during debate on the sweeping aviation security legislation last year, I was an early advocate of housing the newly created Transportation Security Administration in a Department of Homeland Security.

Unfortunately, no such agency existed at the time, and Congress put it under the Department of Transportation.

Because we did not do it right from the beginning, I am concerned that moving the TSA into the Department of Homeland Security now -before they meet the deadlines Congress set to hire and train Federal screeners and deploy explosive detection equipment—would create more problems than if the TSA were transferred shortly after the deadlines are met.

This is why, regardless of the deadlines in the underlying legislation to create a homeland security agency, I support the recommendation of the Transportation and Infrastructure Committee to delay TSA's transfer until certain milestones are met.

This should result in a delay of no more than sixty days and will help ensure that the TSA stays focused on its vital mission of screening our airports.

I have concerns, Mr. Chairman, about the TSA's ability to meet the deadlines set by Congress and have called for oversight hearings.

I am pleased that the Aviation Subcommittee will hold hearings next week to find out exactly where the TSA is in its plan to meet these approaching deadlines.

Thank you for inviting us to testify today.

This is an historic opportunity to do what's right for the American people.

The leadership of both parties has agreed to an accelerated schedule to mark up this legislation, and I hope we can have a fair and open process on the House floor when we debate this bill next week that will preserve the bipartisan spirit that has guided us this far.

I am glad to assist you as your committee moves this landmark legislation forward.

Chairman ARMEY. I want to thank all the panel.

It is our custom in this committee then to proceed under the 5-minute rule and for me to ask full cooperation on the part of everybody on the committee and panelists alike to try to conform to that rule. We will begin with Mr. DeLay from Texas.

Mr. DELAY. First, let me say I really appreciate the work that you have done even before 9/11. You had the foresight to understand the importance of protecting and defending the American people; and you have been very persistent, every one of you, in pushing your ideas and certainly participated in this process. I commend every one of you, not only in the work that you have done but also commend you for working together.

Because of the 5-minute rule, I have learned that if you ask one question that is all you get. So I want to ask two that maybe you can—the entire panel can speak to.

One is the jurisdiction issues that this Select Committee is going to have to deal with, and Ms. Tauscher has already touched on one of them, the TSA, but there is also in your committee a recommendation that we not move the Coast Guard into the Department of Homeland Security and there are some other issues out there. I would ask you to comment on what your recommendations to this Select Committee would be in dealing with those issues, most importantly, the Coast Guard and TSA and any others that you may—I mean, there is the INS problem of whether we split INS and what we do with the State Department.

The second issue is one that came up at the Government Reform Committee, and that was an amendment by Ms. Morella that changed how the President can operate when it comes to collective bargaining. In fact, the amendment, as I read it, changes what is presently under current law, and that is that the President has the authority to restrict collective bargaining at governmental units that are critical to national security. Democrat and Republican presidents have used that and have used it judiciously ever since the 1970s.

What the Morella amendment does is basically says, for the Department of Homeland Security, you will treat the employees differently than any other department in our government. In other words, it restricts the President's ability to waive collective bargaining for those that are—for those employees that may be involved in direct national security issues.

So if you could speak to those two issues, I would appreciate it.

Mr. THORNBERRY. I will try to start very briefly.

The Coast Guard has got to be a part of this Department. If we are to have effective border security and port security, they have to be part of this. They cannot be out there by themselves, and I don't think it works to split the Coast Guard in half. They have to be part of it.

The Transportation Security Administration, I think, does, too; and I don't know of much controversy about that.

I think INS is a turf question. Frankly, I can see a variety of arguments. What you have to have is the Border Patrol. They have to be part of this. Now, whether the service part of INS—we did not include it in our legislation in the part of homeland security. I think that is one of those issues—in my mind, that is important, but it is not as critical as the others to making this work.

On the other point, I think that it would be a mistake to give the President less flexibility than he has now. I think to get this new organization going he has to have some added flexibility. Now maybe we—I will just throw out, maybe we can restrict that added flexibility in terms of time or in particular ways so that people are reassured, but I think to make this work the things like the reprogramming and the other things, that flexibility has to be there.

Ms. HARMAN. I have been saying that the war on terrorism has expanded to the war on turf. That may be the tougher war. But we have to win that one, too. I think this Congress will be measured by whether we win that war or not, and I predict that over

time we will have to change our own structure in order to be more effective in authorizing and appropriating funds for the homeland security effort for the country.

I think all of us on this panel were together on a bill before the administration proposed its bill that would have had a smaller department and a more robust White House function. I am prepared to go with this version, but I do think many in Congress have valid concerns about how big it should be. It would be a terrible mistake if we spent all of our time transitioning to this big structure and forgot about focusing on the threat. That, obviously, is not the point; and Norman Ornstein wrote an interesting piece in the Washington Post on Sunday making the point that we might get lost here.

So my comment is just that I think you ought to be a little bit open to some of the concerns expressed, but I do agree that, at a minimum, we have to have one integrated digital border system and everything that goes into protecting our borders has to be linked together or we will not be able to keep the evildoers out and make certain we know who is in.

Chairman ARMEY. I am afraid I have to call time on this question. I am sorry. Maybe we can come back to it later. Ms. Pelosi.

Ms. PELOSI. Thank you, Mr. Chairman. With our colleagues, we will just go back to the regular order.

Thank you all very much for being here and for your leadership and your early leadership on this very important issue. Did you hear the wonderful things I said about you?

I keep forgetting that button.

I always begin my comments by referring to the families affected by September 11, and I know we all carry them in our hearts. When we met with the families as part of other responsibilities here, they have told us that when a plane flies over or they hear the warning of a threat the horror for them is revisited, not that it ever leaves but it is intensified. So we owe them to act in a very bipartisan way. We are walking on hallowed ground here, and we want to do the right thing.

My concerns are about the size of this new department. I would prefer your suggestion—your early suggestion of something very strong in the White House and leaner in terms of the bureaucracy outside the White House.

I would hope, Mr. Chairman, that we could make the suggestion that several of our colleagues here, including Congresswoman Harman, about strengthening the Office of Homeland Security in the White House by making it statutory, not just its existence springing from an executive order. I don't know if we have that authority in our bill, but I hope that we could consider that because I think that is very important.

I have had conversations with Mr. Gibbons about the need, as has been mentioned here, of having our entire government responsible for Homeland Security and that coordination could happen at the White House. I don't want us to have any more or less bureaucracy than we need within the new Department. There is some cost involved in this transition as well as time.

Secretary O'Neill was here the other day, and in the questions that Mr. Frost asked of the cost involved in transitioning, he said

it shouldn't cost much. There is no reason I can't still be the landlord for the Customs Service. Just change the sign on the door.

Maybe that is the way the administration intends to go. I don't know. But I mentioned this morning to the President, after we had our public meeting, there are only 125 municipalities in the country that have populations bigger than this new department will have. 150, 160, 170,000 and below is where most people live in this country. So I would hope that we could have something much leaner than that population so that the Secretary can be coordinating and dealing with the threat, the risk, and the response, God forbid, if it is needed, rather than with the management of this gigantic new department.

So make no mistake. If we need it to be that big, okay. But let's subject those suggestions to the congressional scrutiny that is necessary. Tell me what you think now in light of the—I heard what you said, Congresswoman Harman, about the original proposal and how you wholeheartedly support the President's proposal. From your experience to each of the other members of the committee, I would like to know what your preference would be, to be closer to a leaner model, technologically based, with coordination with a very strong element in the White House or this larger entity.

Mr. GIBBONS. Perhaps I will start with that, since we finished over here. My preference would be to have one that is very efficient, very flexible, almost an expeditionary model, if you will, of our government where we can be mobile enough to react to situations that arise that we don't predict, that we don't foresee at this point in time.

I agree that having a department with 170,000 people in it seems unwieldy, almost bureaucratically burdensome. I think this is the one reason why, when you look at the difficulty of all of the responsibilities, you either strip responsibilities from agencies to put them into a smaller one, or you bring the responsibility with a department to a common leadership role. This is the justification for having an advisor to the President on top of all of the Secretaries that could advise the President and make recommendations to the President, on giving directions to the Secretaries of various departments that will have a responsibility for homeland defense.

One of the other challenges, for example, would be to take the analysis or the intelligence part. Will the homeland defense department be able to task our CIA or our FBI once it has information in its hands that says that we need to be focusing some of our resource collection on a specific item or a specific person? In order to do that, someone outside of the chain of equal power, in other words, Secretary to Secretary, is going to have to make a decision on where resources will be spent.

This is why I believe that if you have an agency, even if this has certain departments, certain responsibilities within its own domain, that you have somebody who is making recommendations in the process to give direction for coordination. Without the coordination, without the information sharing, you will be reaching back into that box of puzzle parts and taking your part, your handful and running off to your room and trying to put the puzzle together. You need somebody to coordinate it and somebody to give direction

to it, and how they work that out I think is something that this Congress and future Congresses will be doing in the future.

Chairman ARMEY. I am sorry. The gentlelady's time has expired. The gentleman from Oklahoma.

Ms. PELOSI. Thank you.

Mr. WATTS. Well, I surely appreciate you all's time as well, and I appreciate very much the work that you guys have done on this. And I have—that is spooky for politicians to hear those kind of noises behind them. I have seen much of the work that each of you have done, some of the comments that you all made over the last—or post September 11 on this issue, and I—in the President's legislation, he is asking for some flexibility for the new homeland defense department and trying to manage this thing.

Two things I would like to ask. One, there is a transition period of about a year. We had Tom Ridge here yesterday, and I questioned deeply whether or not a year is going to be adequate time to make a transition. I would like to get your thoughts on that.

Secondly, last week in the Government Reform Committee, as you all know, Congresswoman Morella offered an amendment which was adopted by one vote limiting the President's ability to restrict collective bargaining rights at the Homeland Security Department on national security grounds.

I know that each of you serve with me on the Armed Services Committee. I would like to get your thoughts on that as well.

Mrs. TAUSCHER. Mr. Watts, I strongly support the Morella amendment that provides the agency's employees the right to collective bargaining.

But when we were creating—if you think about a couple of years ago, Mac Thornberry and I were the parents of the National Nuclear Security Administration. We took the nuclear weapons components of the Department of Energy, and we moved them into a semiautonomous agency specifically to get them out of a kudzu-laden bureaucracy where, you know, the Department of Energy regulates refrigerator coolant, and it had the nuclear weapons. Unfortunately, not a lot of people were paying attention to the nuclear weapons. So we decided it was important to move them into this new semiautonomous agency, and we can probably get you some of the language that was used at the time.

But it gave the administrator of the NNSA some opportunity to work with the Civil Service employee unions to provide what I think we all agree is some necessary flexibility but not to bend the collective bargaining pieces into a pretzel. I think that the people that are coming into this new agency are going to be tremendously energized. They are the front-line defense in a new war with tremendous vulnerabilities in this country. They want to preserve their civil rights. We should preserve their abilities to have the kind of rights in their job that they have had before. But I think we have to be thoughtful about what we term as flexibility versus what we take as an opportunity to change what I think are fundamental rights of these employees.

Mr. THORNBERRY. If I might just—I think a year is certainly enough to move things around for budget purposes and for the lines of authority. Of course—and my colleagues know better than I—but the intelligence analysis piece is not going to be all done and

up and running as it should be in a year. I would suggest, just as we have continued to make refinements on the nuclear weapons part that Ellen was just talking about, we are going to have to make some refinements as we go along. We won't get it perfect. We will have to watch how this transition process goes and try to make improvements as we feel like they need to be.

If I could just take a second and go back to one point, Ms. Pelosi, that you have—because I have listened carefully on television to all y'alls comments.

Ms. PELOSI. I hope that you heard me compliment you on your—

Mr. THORNBERRY. I did, and thank you very much. But I have just a slight concern about the talk about the size of this Department. Ninety percent of the people in this Department are border and transportation security. I don't think many people want to do with fewer Border Patrol agents or fewer screeners at the airports, and I know you are not for that. But my point just is, 90 percent of these people are in those two functions. So I think we have to be—we want them together. We want them working together and hopefully that is an outcome.

Thank you for letting me get that in.

Ms. HARMAN. Well, the clock is ticking, so in 15 seconds or less I think a year is maybe too long. I think the goal is to protect the American people, and we need to front load the most critical tasks.

I suggest that whatever we create, however big or small the Department is, it has the capacity quickly to prevent terrorist attacks, to shore up our infrastructure and to help us respond quickly. If we can't do those things tomorrow, I think we are vulnerable. So I would just urge us to front load the most critical tasks.

Chairman ARMEY. Thank the gentlewoman.

I believe we are getting the hang of this.

The gentleman from Texas, Mr. Frost.

Mr. FROST. Thank you, Mr. Chairman. I, too, was at the White House this morning; and I think the—Ms. Harman's comments were very important which she made directly to the President urging that we have a procedure that would permit the final result to be a large vote in favor of final passage. I concur with that, and I hope that we can get 350 Members on final passage at least.

My question is to Ms. Harman. Hypothetically, if this committee and ultimately the Rules Committee were to adopt a procedure that did not permit votes on individual amendments on the floor on some of the matters that have been strongly supported by the committee's original jurisdiction, what do you think the result of that would be in terms of our ability to get a large vote for a final passage?

Ms. HARMAN. Well, it is a hypothetical question, and I think it depends in large part on what this committee reports.

Mr. FROST. Assume for the sake of argument that the committee reports something that is substantially similar to the President's original proposal.

Ms. HARMAN. I don't assume you would do this. In fact, I assume you will not do it. But if the impression in the House was that you ignored the work of the committees and ignored the good suggestions from a large number of Members on a bipartisan basis and

then closed the rule, I don't think that would be very good for a big vote on passage or even for passage.

I hope this committee will not only listen to us—we are just four people—but will take the good ideas from the committees, will be open to refining the bill—not throwing the bill out but refining the bill in good ways, will think about this issue of how fast will this be up and running—because we are vulnerable this hour, this day—and will report something that reflects a lot of the good ideas in the House.

If that is the case, then I can imagine a rule that at least gets us to consider the whole thing in a reasonable period of time, open to some amendments. I don't think it has to be a totally open rule, but it really depends, Mr. Frost, on what the reported bill looks like; and I would urge inclusion of the good ideas brought forward in this House.

Mr. FROST. Thank you.

I do have one other matter I would like to discuss with you and other members of the committee. I don't think that my friend from Texas, Mr. DeLay, was intentionally trying to misstate what had been done in the Government Reform Committee, but I would like to clarify one point and then ask your comments.

Under current statutory law passed in the late 1970s, only the President may exempt employees from Civil Service requirements. He must—he can do so by executive order. Under the bill introduced—under the President's bill, H.R. 5005, introduced by you and other Members, a number of Members, there is a provision, section 730, which vastly expands the authority of the government to exempt Civil Service—employees from Civil Service protection. It cedes this authority to the Secretary of the new Department; and the Office of Personnel Management, without any action of the President, gives them the right and does not set any particular standards for exempting employees from Civil Service protection.

The Government Reform Committee then adopted as its base text language written by Mr. Burton, the chairman, a Republican, which basically wiped out the provision, section 730. That is that provision ceding the authority to the President previously had giving that authority to the new Secretary and the OPM Director. Then that text was adopted; and then the Morella amendment was added on top of that, which would further refine the President's' authority to issue a executive order.

Now I guess the first question is, what is wrong with Mr. Burton's amendment? Forget about the Morella amendment for a minute. What is wrong with what Mr. Burton did in just saying we are not going to give the Secretary and the Director of OPM the authority to exempt people? We are going to put it back so that only the President could do that. Is there anything wrong with that?

Mr. GIBBONS. Let me say I think the issue here is time. Does the President have to micromanage each and every individual? There is nothing wrong with collective bargaining or the rights that our civil service employees have negotiated. Let me say that my issue with this would be that if it is currently, in the opinion of Congress, that the standard that we meet today by having the President be the person responsible for waiving any right of a negotiated

agreement is satisfactory, and if Congress feels that that waiver can be done in a timely fashion in the face of a national crisis, then I would say there is nothing wrong with Mr. Burton's language.

Mr. FROST. And I would hope—.

Chairman ARMEY. Sorry, the gentleman's time has expired.

Mr. FROST. —the committee seriously considers Mr. Burton's language and consider it on the floor.

Chairman ARMEY. Gentlelady from Ohio.

Ms. PRYCE. Thank you, Mr. Chairman.

Would any of you care to discuss the risks involved to industry, and how we can encourage industry to be open and above-board and completely honest about what the risks may be? Of course, that involves the Freedom of Information Act, and that is a balancing act that we must do and there is a lot of controversy surrounding that. And I am sure that you all have given that a lot of thought, and I just would like to hear each of your expressions of what this committee should do. So I will stop now and allow you to address it.

Mrs. TAUSCHER. Well, Ms. Pryce, I think what is important, I know in my district where I have the headquarters of ChevronTexaco, PeopleSoft, and Safeway stores, soon after September 11 they went on to their public, very used Web sites and began to scrub them of just gratuitous information that was on there; just nice stuff that was up there, like friendly information that was very dangerous, on second view, in the context of September 11. And they have aggressively gone about taking some of that information down. A lot of it was gratuitous. It was stuff they volunteered to tell people.

But I think we have, once again, a balancing act. The right to know—certainly in northern California, George Miller's district, my district, we have a Dow Chemical plant. Is there a right to know of my constituents of what kind of chemicals are there? Absolutely. But the way we do that and the context in which we do that, the partnership among the local governments, certainly the first responders, the EPA has a lot of that information. You know, how do we make sure the right people have information so they can act appropriately at the right time to protect in the case of an attack or an accident?

So these are difficult situations. I know Mr. Gibbons and Ms. Harman have worked hard on this issue. Let me turn it over to them.

Mr. THORNBERRY. On the FOIA issue, it seems to me if a company has to produce information now that is subject to the Freedom of Information Act, we ought to leave that alone. If they are going to produce new information about their vulnerabilities that is not now required, maybe we ought to look at protecting that, because otherwise they are simply not going to tell us their problems.

And so I know you put a lot of discussion into this and may want to consult with the lawyers more, and certainly they know more than I, but it seems to me it is not hard to get what we want on both sides.

Ms. HARMAN. I think the goal here is to get companies to come forward voluntarily with new information that could be helpful in the homeland security effort, and new products, and we are going

to have to consider how to protect their trade information against competition and how to indemnify some of their products if they are offered in good faith and there is no reckless conduct. I think those are hard issues, but I think this committee should grapple with them.

I just wanted to say to Mr. Frost, I have been thinking about Mr. Burton's amendment, which I was not aware of. We don't want to derogate existing law, I don't believe. I think there is a careful balance struck. Nor do we want to weaken or offer different treatment of employees in this administration from other administrations. So I think you have a very interesting idea. And I would just point out that the President this morning said to us in the group, he is not trying to fiddle with collective bargaining. He thinks that those processes should be left in place.

Mr. GIBBONS. Let me go back to your question. I think the greatest tool we have in our inventory is good intelligence. First of all, warnings are created by the fact that we are supposedly gathering the information. I have created in my district in the State of Nevada, a homeland security committee which is made up of both first responders and industry officials, bringing them together to talk about their weaknesses or talk about their needs and where one can benefit the other. And I think if we all went out and created the same within our districts and looked internally, then Congress doesn't have to be the one who sets out in an enormous process of trying to manage and trying to protect each and every individual agency. This is going to be one where first responders, police, fire departments, National Guards, are going to be there first. They should be working closely with private sector agencies.

Our worst enemy is the Web, and it has information, all kinds of notorious information that can be used against us in a whole panoply of contrived and thought-up terrorist acts. We have to be able to react to it, and that is where good intelligence warnings and preparation come into hand.

Chairman ARMEY. The gentlelady's time has expired. The gentleman from New Jersey.

Mr. MENENDEZ. Thank you, Mr. Chairman. I want to commend all of you for the work you have been doing collectively and individually. I think it is remarkable and it has in part led to some of my questions over the last several days. And I would like to take this opportunity to—especially to Ms. Harman and Ms. Tauscher who serve as—in the Democratic Caucus' Task Force on Homeland Security and are chairs of the different working groups—for all of the work they have done in that regard as well. And I would like to pick your brain a little bit about some of the issues we have been raising and see where you are at.

Mr. Gibbons described that this Department has proposed—provides the opportunity—allows, I think were your words, for information sharing. My concern is that there are no mechanisms to guarantee information sharing in the legislation.

So I would like to know, do you believe that language that provides for mechanisms for information sharing to actually take place is worthy of being considered, one.

Two, are there mechanisms to protect nonsecurity missions transferred into this Department which presently do not exist in

the legislation? That was a good part of my questioning today. Do you believe that providing for mechanisms to protect nonsecurity missions within the Department would be appropriate?

Thirdly, I think I heard the discussion on FOIA, and I basically agree. I just want to make sure that as I read the legislation right now, a chemical company in my district in New Jersey gives all their chemical ingredients to Homeland Security and avoids the right-to-know law. I don't think that is the administration's intent, but the language could be used that way and I want to firm that up.

And, lastly—I want to lay out all the questions and let you take up the time in that regard. But, lastly, I am concerned on this whole question of separating public health research, and I raised it with Secretary Thompson.

And whether you look at Margaret Hamburg, the Vice President of Biological Programs for the Nuclear Threat Initiative, who believes in her words that we will weaken and fragment our Nation's capacity to respond to infectious disease, whether occurring naturally or caused intentionally; or Doctor Tara O'Toole at the Center for Civilian Biodefense at Johns Hopkins, who believes that the country would be forced to create parallel work forces, one in Homeland Security for bioterrorism and preparedness, and another in HHS for public health functions; or whether you listen to the GAO report that found that the structure proposed for the research and preparedness program at another department does not ensure that both the goals of homeland security and public health will be met—is that an area that we should reconsider in the context of achieving the synergies, the cost savings, the benefits that we want to achieve?

Those are my four major areas of questions, and allow any one of you to take whatever parts of it that you want.

Mr. GIBBONS. Let me start, Mr. Menendez, with the intelligence part. I believe that the amendment that was passed in the Intelligence Committee allows for and, in fact, does permit sharing of information between agencies, both horizontally and vertically. Again, it goes back to my thought, in addition to how do you task various agencies who are collecting that information with pointing out weaknesses or areas that they should be interested in. This is why we need, I believe, either a director or an adviser to the President who can direct these various agencies in—.

Mr. MENENDEZ. Just to note, that is not in the President's bill as is. It is important to note that that is something for the committee to consider.

Ms. HARMAN. If I could just add to that point, I believe in the Government Reform Committee, Mr. Shays added the text of a bill this House passed 422 to 2, that was coauthored by a number of us here, that would require the government to implement a program to share information across the Federal Government on potential threats, and then vertically down to first responders, stripping out the sources and methods, so that people without clearances can receive the information and know what to do.

I think that that is a very good road map and it is certainly in the material before you. And I would urge you to adopt what the

Intelligence Committee did on this point, plus the bill that I think all of you probably voted for on the House floor a couple weeks ago.

Mrs. TAUSCHER. One of the issues on intelligence that has concerned me for a long time is you cannot just view this Homeland Security Agency as a customer. It is a permeable barrier from top to bottom. Literally, the dots are connected of the 87,000 different jurisdictions in this country, of which every one is now basically a combatant.

So this Agency, it will be the ability to do the four A's; they have to analyze, they have to archive, they have to advise, and they have to alert. So they are just not going to be a customer per se of intelligence.

It is important that you have a procurement strategy that decides that people have the right kind of ability to have interoperability to talk to each other. So I think this is very, very complicated. And I think your questions are good questions, but I also think there is a necessity and an urgency to create this Department so you do have a Cabinet Secretary that can begin to do the work that subsequently answers many of your questions. Congress is just beginning its job.

Chairman ARMEY. Thank you. The time has expired. The gentleman from Ohio.

Mr. PORTMAN. Thank you, Mr. Chairman. I would like to start by commending the four of you, first, because you were ahead of the curve, along with Bob Menendez and J.C. Watts and a few others, only a handful here in Congress. You were talking about this and pushing some on this long before C-SPAN was covering your comments, and we appreciate that.

Second, it is because you have worked—just as we want this Agency to work—you have worked seamlessly, with agility, sometimes flexibility, because you come together I know with some differences and work them out. And, finally, you have left your partisanship behind as you worked on this project. So it has been impressive to watch it, and I have enjoyed working with you.

I want to ask you some questions, and the Chairman may not give me a second round, so if you could just give me a quick yes or no and answer in unison.

First, do you all think the Transportation Security Agency ought to be part of this new Homeland Security Agency?

Ms. HARMAN. Yes.

Mrs. TAUSCHER. Yes.

Mr. GIBBONS. Yes.

Mr. THORNBERRY. Yes.

Mr. PORTMAN. Do you all think the Department of Immigration as it relates to the Border Patrol ought to be part of this new Agency?

Ms. HARMAN. Yes.

Mrs. TAUSCHER. Yes.

Mr. GIBBONS. Yes.

Mr. THORNBERRY. Yes.

Mr. PORTMAN. Do you think the Customs Service ought to be part of this new Agency?

Ms. HARMAN. Yes.

Mrs. TAUSCHER. Yes.

Mr. GIBBONS. Yes.

Mr. THORNBERRY. Yes.

Mr. PORTMAN. Do you all think that the Animal Plant and Inspection Service, so-called APHIS over at the Department of Agriculture, ought to be part of this new Agency?

Mr. THORNBERRY. As the Ag Committee has changed it, I think that is one example where the committees have done great work. They took out the border piece and left what we didn't need for this Department, and that is the right answer.

Mr. PORTMAN. Do you think the Coast Guard ought to be part of this new Agency?

Ms. HARMAN. Yes.

Mrs. TAUSCHER. Yes.

Mr. GIBBONS. Yes.

Mr. THORNBERRY. Yes.

Mr. PORTMAN. Right there, you are over 90 percent. How about the immigration processing function—Immigration Service processing function?

Mr. THORNBERRY. I mentioned that I can see all sorts of arguments there. I would probably say yes, because I don't know where else it gets better, but it is one of those things that could be argued in a variety of ways.

Ms. HARMAN. I would argue that whatever we do with it, we have to totally reform it. One of the huge vulnerabilities is the inability of our agencies to keep out people who should be kept out or to monitor student visas when they lapse.

Mr. GIBBONS. And I would say that in addition to reform we must make sure that the information collected through the INS is coordinated with our other intelligence agencies so that we can determine whether or not the individuals we are admitting are on any watch list.

Mr. PORTMAN. Ellen.

Mrs. TAUSCHER. I also think it is a tremendous asset for intelligence. The good news is that there are a lot of things we can learn from that function and that we have to know. And these are people that are also going to be providing, I think, maybe a high level of security information, but it needs to be able to go in the bin.

Mr. PORTMAN. Do you think FEMA should be part of this Agency?

Mrs. TAUSCHER. Yes.

Mr. GIBBONS. Yes.

Mr. THORNBERRY. Yes.

Ms. HARMAN. Yes, I think it should be the basis of the new Agency.

Mr. PORTMAN. How about the Federal Protective Service that protects Federal buildings—these are some of the smaller ones.

Mr. THORNBERRY. Yes. I think it makes sense.

Mr. PORTMAN. How about the Secret Service?

Mr. THORNBERRY. It was not in our original bill, but given the role they have taken at Super Bowls and Olympics and that sort of thing, I think it makes sense.

Mr. PORTMAN. In Salt Lake, and they handled the Super Bowl. I would just make the point—and, again, I agree with everything

that Ms. Pelosi has been saying about leaner and meaner, and this needs to be a 21st century agency, and we need to rely on technology and coordination. But 170,000 people is just what you all have said is necessary. And I don't get hung up on the numbers. I mean, being leaner and meaner means we work better with what we have. The alternatives are not good, which is to leave out agencies that have a direct impact not just on homeland security, as Ms. Harman said. There is another 80 percent of the government that has something to do with that.

But these are agencies that have a direct impact on our borders and direct impact on the security of our country in a way that, if they were not a part of it, it would not work as well. I would also say that it is still going to be there in the bureaucracy. And to the extent that you can consolidate and get some savings out of that not just in terms of people, but in terms of effectiveness, I think it is worthwhile in the synergies we can get out of that. What we need to do is be sure we have management flexibility and personnel flexibility.

And I would just quickly comment on Mr. Frost's questions, because I think he said—maybe Tom DeLay didn't state it quite right. I am not sure that we stated it quite right the second time around in terms of the general issue. Section 730 does not exempt employees from all civil service protection. What it does say, you are going to follow the basic principles of merit, and that the Agency would come back to us with a recommendation on a new system, but it would not take people out of civil service protection.

Second, this whole issue of the national security waiver, and you answered this well, but as I understand it—and, again, I may be missing something here—this agency is not like the FBI and it is not like any other agencies, the DEA, the Secret Service, the agencies of the Department of Defense, the Department of Energy defense programs, AID, parts of FEMA, where the President does have the ability to go in on a selective basis and deal with collective bargaining rights, exempt people from collective bargaining rights for national security reasons. The alternative is to come in with a big club and to say the whole Agency is exempt, which I think is not as good for the employees and doesn't make for a leaner and meaner agency.

So with that, Mr. Chairman, I yield back my time.

Chairman ARMEY. Thank the gentleman. Gentlelady from Connecticut.

Ms. DELAURO. Thank you very much, Mr. Chairman. Let me say thank you to my colleagues. I would just say to you that we have heard a lot of testimony in the last 2 days, and I think it is always true, very much for Members in listening to other Members who have spent a very, very long time pursuing these issues and these areas, and the four of you and the folks who are on committees, I think you get a certain sense of reassurance or understanding of the issues from another Member's perspective, especially people who are recognized in their particular areas.

So I just say to you, thank you very, very much and this is very much appreciated.

I want to say two things quickly, and then I would like to get back to the public health issue, because, as Congressman Menen-

dez focused on that today, and I focused on that yesterday, and I think there are important pieces here. If you would just take a look at—and for no real comment today, because we are talking about the FOIA issue, there is exemption 4 of FOIA which already protects from disclosure certain confidential or trade secret information that private entities may supply to the government.

That was reinforced by the commentary of a FBI official, the Director of the National Infrastructure Protection Center, where he said, we believe that there are sufficient provisions in the FOIA not to protect information that is provided to us.

I would ask you to take a look at that and also to consider on the proposal, the current proposal, and what surrounds the issue of the Inspector General with regard to this Agency as to how it regards the Defense Department and Justice and to see—because I would love to get your views at another time, soon, on what you think in that area.

Let me move to the public health issue, because I think that it is critical about seeing whether or not we are going to bifurcate agencies that are doing an unbelievable job already, and they are tried and true. Doctor Hamburg's remarks, Doctor O'Toole, the GAO, I might comment to you, was concerned. They concluded that giving the Secretary of Homeland Security control over programs to be carried out by other departments will create confusion about roles and responsibilities for certain health functions could lead to difficulties in balancing priorities with regard to transfer of dual-purpose programs, concerns with priority setting, concerns with transfer of control. It goes from academics to government agencies.

And I received a letter from Bob England, Health Director from the Milford Health Department—and I would like to put this in the record—who said, if funding is transferred away from public health systems, away from professionals who already know how to contain outbreaks, spread of disease, but are rarely given adequate tools to do so, the result will be a less adequate level of bioterrorism preparedness and continued performance in everyday disease control. There is real concern out there about this issue across the line.

I don't know amongst you who has focused their time and attention on this particular issue. I just would love to get your comments and be further enlightened about this from your perspective.

[The information follows:]

Bob England
Health Director
Milford Health Department
82 New Haven Avenue
Milford, CT 06460-4827

July 2, 2002

The Honorable Rosa DeLauro
United States House of Representatives
2262 Rayburn House Office Building
Washington, D.C. 20515-0703

Rep. DeLauro:

I am seriously concerned about proposals to transfer bioterrorism funding from HHS and the public health sector to the new Department of Homeland Security. As the Local Health Director for Milford, I have been very involved in bioterrorism planning and preparation both locally and at the state level. I am also a public health physician who has spent most of my career on disease control issues, and I am very familiar with the existing serious gaps in our long-ignored public health system.

The bioterrorism funding that you have so wisely provided will be used within the public health system to prepare us for bioterrorism while protecting the lives and health of untold numbers of Americans whose illnesses can and should be prevented. If funding is transferred away from the public health system -- away from the professionals who already know how to contain outbreaks and spread of disease but are rarely given adequate tools to do so -- the result will be a less adequate level of bioterrorism preparedness and continued poor performance in everyday disease control.

I am generally an advocate of centralization, but it would be a serious mistake to remove policymaking and priority-setting for public health preparedness from the experts at HHS, particularly the Centers for Disease Control and Prevention (CDC). Please, please, please do not transfer bioterrorism preparedness programs away from HHS. Thank you.

Sincerely,

Bob England, MD, MPH
Health Director
Milford Health Department
203- 783-3285

msg. - 7/16

Mr. THORNBERRY. If I might start, Ms. DeLauro. The short answer is this provision was not in our bill that we introduced originally, so none of us have focused on it in depth.

But let me say this. Clearly defense is, prevention of bioterrorism is a critical part of what this Agency needs to do and what our government needs to do. Now, it is easier said than done, but it seems

we can have the necessary assurances that the important public health functions continue. These people as I understand it are not really going to move. One source of their funding comes from a different place. And we are going to have to make it all fit together. I realize that is your job, and it is easier for me to say it than to do it. I just don't see why it should be an insurmountable obstacle.

Ms. HARMAN. I think it is a hard issue. If I had to make the call, I would not move it in here. But what I would have in here is all the technology to create syndromic surveillance so we know what is showing up in our hospitals and to make sure that electronically we can make sure we have surge capacity and move people around in the event of a terrorist attack. But I don't really care whether the smallpox epidemic was caused by a random bug or a terrorist, and I don't think we need take 3 nanoseconds to analyze that, we need the capacity, period, and we need to robustly fund it.

Chairman ARMEY. I am the final questioner in this round. I might advise the panel that we will have a second round, and further advise the panel to—if you have a burning notion that you want to share with the panel, jot it down and I will surrender my last 5 minutes to this panel for your final thoughts.

In the meantime, let me also ask you if you would for the benefit of this committee take the time in the next day or so to find the Burton language and study it if you will. It is my understanding it has been worked out with the Office of Personnel Management and vetted with the White House and very likely might serve us well, and we would value your opinion on it.

On this question on FOIA, I am fascinated because one of my favorite songs is "Nobody's Business," I think first done well by Eartha Kitt, most recently by Hank Williams, Jr. Nobody's business but my own. Fundamental American right to proclaim it is nobody's business but my own. FOIA, I believe, is designed to protect America from a government that operates in secret. The idea that we might apply FOIA to private business enterprise and compel them to divulge information that might put them at risk for reckless lawyers or put their own security of their operation at risk for villainous deeds does not strike me as a very wise extension of FOIA, nor one that is consistent with foundation rights in America. Which is to wit, as I have said, the right to say to you, it's none of your business what I am doing.

I wonder if you would comment on that.

Mr. THORNBERRY. Mr. Chairman as I say, to me we should leave FOIA as it is for existing requirements and in general. I think with this law what we should try to do is do the organizational part without changing more substantive law than we need to change. That makes all of our jobs easier. We ought to leave it where it is. But to the extent we need private businesses to tell us, the Federal Government, about their vulnerabilities, to work with us to reduce their vulnerabilities, to the extent we are asking them to volunteer information that they do not now have to give us, I think they have to be protected from that.

Ms. HARMAN. I agree with Mr. Thornberry, but I think our language has to be very careful so we don't create what Mr. Frost called a loophole. We don't want to give the opportunity for those who could not shield their information otherwise, to dump it in

here and say, "Oh, sorry, now the public can't know." There is a valid public policy purpose to getting businesses to come forth and help us. There is also a valid public policy purpose to protect and preserve the goals of FOIA.

Mr. GIBBONS. I would join with Mr. Thornberry and Ms. Harman in their comments on this, and only to remind the panel that in the law we do protect companies who in terms of lawsuits make a remedial correction to a deficiency. If they put out into the public information which allows a terrorist to attack and injure people, then they themselves can be held liable for that information which they put out there. And so we have got ourselves into a very difficult position on this issue, but I do believe that we should allow FOIA to remain unaltered.

Mrs. TAUSCHER. I agree.

Chairman ARMEY. We talked a little bit about our concern that the Transportation Safety Agency may not fulfill all of the congressional mandates by the time this new Department might be created in law, and your suggestion, Ms. Tauscher, is that we might want to leave this Agency out until such time.

Isn't it conceivable that another alternative might be for us to look at those deadlines that this Congress sets some time—at an earlier time in this process; perhaps deadlines that may have been overly optimistic and naive, and seize the opportunity with this legislation to correct those deadlines so we can move the Agency as we move everything else?

Mrs. TAUSCHER. You know, I think we can be like all good American women and multitask. I think it would be smart to look at those deadlines, because I believe they were arbitrary and unachievable. That is why the Aviation Subcommittee, at my request last week, is going to have hearings, both open and closed, with the Transportation Security Agency and ask them point blank whether they can deliver on those deadlines, the mid-November deadline for hiring Federal screeners, and the January 1 deadline for the EDS machines.

And last week we had a 435-Member frequent flyer focus group when we dealt with the arming of pilots. And I don't think anybody flies more than Members of Congress. And I think what my constituents tell me at home is that they perceive that the pilots were talking about very serious vulnerabilities, that the cockpit doors have not been armorized, they have been reinforced by Home Depot, and that we need to do the right thing. That is an April 9 deadline. We should look to move that up, and we should look to do it in a very responsible way because that is what people believe will protect them.

Ms. HARMAN. I strongly agree. I represent LAX, where there was a shooting and three deaths at the El-Al ticket counter a couple of weeks ago. And I am worried about the security of that airport. And I was yesterday with the new TSA director on his first day on the job at LAX talking about the deadlines.

I think Mrs. Tauscher is right in that we should accelerate doing a few things well, like installing sensors and fortifying cockpit doors, and then we should delay a few things that we know that are going to be disasters, like the installation of outmoded equipment that weighs too much to be supported on the floors of our cur-

rent airports, and wait until it miniaturizes and put in leaner and more efficient machines next year.

Chairman ARMEY. Round 2, the gentleman from Oklahoma.

Mr. WATTS. Mr. Chairman, I will yield my time—or forego my time.

Chairman ARMEY. Gentlelady from California.

Ms. PELOSI. Thank you very much, Mr. Chairman. I want to get back to my lean, unflabby department for the future, and I want to respond to what Mr. Thornberry said earlier as well as my distinguished colleague on the panel. And that is, I am not saying that we should have any fewer than the number of people we need to be doing the job of protecting the American people and reduction of risks. What I'm saying is do they all have to be managed and administered by this one Secretary?

The point is that we want him or her to have the ability to be thinking in a very forward thinking way about our collecting the intelligence, analyzing—they won't be collecting it, they will be receiving it, perhaps they will task back. When we present our proposal tomorrow from the Intelligence Committee, I think you will see that it is a constructive improvement on the President's bill and one that I hope that this committee will accept.

And so it is not a question of whether we have the same number of people protecting the American people. It is a question of who is responsible for the general administrative management of these people, rather than the coordination of their activity.

That is why I think your original suggestion of a strong Office of Homeland Security in the White House was brilliant, because that is where the coordination would take place, rather than Burton's, and then have this leaner department.

I also think, as I said again in my opening remarks last week, they say in real estate the three most important points are location, location, location. In this case I think it is localities, localities, localities. Across our country—that is where the risk is, that is where the great ideas are, and that is where the need is also for resources from the Federal level.

So I would like to see this Department being a place that is a grant-maker to exploit the opportunity, possibilities, and needs that are out in the localities. And they are not universally excellent.

Mr. Gibbons has talked about what he has done in his area. We who live in earthquake country know that our emergency services are well matured in this regard, and we can always do better in light of terrorism. But some of our colleagues have come to us and said in rural areas we have volunteer fire departments and we have needs that are quite different from what you have. So we need this Department to be thinking about how do we use the resources that we have to exploit the opportunities that are there in the localities, where I say the fear, the needs, and the good ideas are.

So it is not about having anything less to protect the American people. It is about having a Secretary whose focus is on that, and not on the management responsibilities which can be burdensome, and the additional bureaucracy.

Mr. THORNBERRY. Thank you, Ms. Pelosi. And I appreciate the chance to discuss this some more.

The second part of your statement, I agree completely. I think that is why it is so essential that you have this FEMA-like structure that can help this communication with the State and local folks. If we empower those emergency responders on the ground, we will have done a tremendous benefit in this bill. It is one of the highest goals I think of this proposal.

On the administrative part, let me give you this concern. For all of the different agencies on the borders, they have approximately 11 different databases, many of them have different systems of communication, some of which do not even operate with one another. And my concern is that Tom Ridge and 100 people in the White House cannot go down to that level of detail and coordinate to make sure they buy the same radios, that their databases are compatible. Only somebody with a direct chain of command and the budget authority, i.e., a department Secretary with a direct chain of command, can make those things happen on the ground. That is why they have to be brought together.

Ms. PELOSI. I understand that, and I think we should subject every suggestion to the scrutiny and to the analysis that you just gave. And I am not saying there shouldn't be a Department, I think there should be a Department, but we select with care what must absolutely be there, because some of these agencies do so much other than terrorism, and you know that and we have been down that path before.

Mr. THORNBERRY. If you are going to take part of border security, you got to go ahead and take the Coast Guard, the Customs Service and the Border Patrol if it is going to work.

Ms. PELOSI. Let me just say that the great genius of FEMA is that it is not a permanent work force. It is something that is drawn upon in time of emergency. They call upon people with experience to come in and do this. FEMA will now have an enhanced role and maybe a permanent work force. I don't know how it will play out, but it is going to need more resources. So we cannot really say that this is budget-neutral. And I think we have to be careful, as the President said in his strategy, that we have to reduce risk and we have to be judicious in the use of our resources as we give them priority in fighting the war on terrorism.

Chairman ARMEY. Gentlelady's time has expired. Gentlelady from Ohio.

Ms. PRYCE. Thank you, Mr. Chairman. You truly are experts among us and I didn't take an opportunity to thank you for doing the hard work to advance this to the point where we could actually make some sense of it when our work started. So I wanted to let you know how grateful we are to all of you.

Since we touched on TSA and the first time we have been brave enough to consider reconsidering some of it, are there other parts of that bill, for lack of another word I might use, but are there other parts that we should reconsider at this point? Did we do any of it wrong? Is there room to improve upon it while we are looking at some parts to perhaps reconsider at least in terms of deadlines? Would anybody care to touch that one?

Ms. HARMAN. I think we intended to move quickly to make our airports safer. That was absolutely critical to do in order to get the American people flying again. And as one who represents an airport, the economy around my airport is absolutely devastated and hasn't rebounded because of the decrease in flying. But I do think we could do better. I think TSA is an analog agency in a digital age, and we need to be creating a more technology-based, smarter agency that manages risks better. Throwing a lot of people and a lot of money at the problem I don't think will fix it.

The recent poll—I think that was a poll or survey that TSA did or someone did of our airports—was devastating and shows that we have enormous gaps. So I think this is the right time to reinvent TSA and accelerate those things we can do well at this minute before the deadlines we set, and to push back deadlines that we can't meet effectively. I think the American people will understand, and I would urge that in this bill we make some of those changes.

Mrs. TAUSCHER. I will tell you, the citizenship requirements that we put in are very onerous for many of our airports to meet. I think we have to find a balance between

Ms. Pelosi's airport in San Francisco that is in my area. Eighty percent of the screeners are legal aliens but are not citizens, and many of them have applications to become citizens. And it is a train wreck for us to figure out how to meet these deadlines, which is one of the reasons why SFO is one of the top five airports to opt out.

I think that we all believe that we need to have background checks. It is difficult to do a background check on someone if they are not a citizen. But there are many people in this country that are working, through the ability of getting their citizenship papers, who are hardworking Americans that have worked in these airports, that deserve a chance to keep their job. They are trained. They are going to get more training. So I think the citizenship issues that we put in the bill are honorable but perhaps unachievable, and I am not sure that they actually deal with what we were afraid of at the time, and I think we should relook at those.

Mr. GIBBONS. Let me add just in the brief time we have left that I believe that the original bill, H.R. 5005, was merely a framework within which we could add our ideas and improve the bill to make it work. There are those people in Congress here who have many more years in Federal Government and experience than I have, and are able to look at these issues and say, this will or will not work; therefore, we should do it this way. I think those are taken in good faith both by the administration and by us, by everybody on this committee.

We will, of course, be working on this bill for a considerable time in the future. This Congress, the next Congress, and perhaps Congresses to come, will be making additions, changes, deletions as we go. So I don't think that we have the infinite wisdom today to sit down and say that everything we are doing today is cut in concrete, will work, and should never be changed. But I think we have started down this road with the right idea and we have got to make it work.

Mr. THORNBERRY. I agree. I would just say in general I would not want to refight all of those battles on this bill. Maybe there are some things we can agree with, and maybe some deadline flexibility is appropriate, but let us not take on more than we need to here.

Ms. PRYCE. Thank you. I yield back.

Chairman ARMEY. Gentleman from Texas, Mr. Frost.

Mr. FROST. I agree with my colleague from Texas, Mr. Thornberry, that we should resist the temptation to make this a Christmas tree; that while I have great sympathy for changing those deadlines, I do not think it is appropriate to put it in this bill, because we will then create opposition for this bill on the floor that would otherwise not be there.

Secondly, I know my friend Mr. Portman did not mean to misstate what is in section 730, so I will read the section into the record, because Mr. Portman said there was a provision in that section that would have the Secretary's work come back for further consideration by Congress, and of course that is not in this section.

The section reads as follows:

Notwithstanding any other provision of this title, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish and from time to time adjust the human resources management system for some or all of the organizational units in the Department of Homeland Security which shall be flexible, contemporary, and grounded in the public employment principles of merit and fitness.

Now, the provision that Mr. Portman may have been thinking about actually is in Mr. Burton's amendment, the committee amendment, which provides that not later than 5 years after the effective date of this act, the Secretary shall submit to Congress a proposal for a demonstration project, the purpose of which shall be to obtain the human resources management system in which the judgment of the Secretary is necessary in order to enable the Department to best carry out its mission.

So there is authority in the committee version, the provision written by Mr. Burton, for the Secretary to come back to Congress. And I think that is appropriate. But it is not in the underlying bill as 5005, as submitted to this committee.

I would ask, Members, do you have a view on this? I know a couple of you stated a view briefly, because it was at the end of my last exchange, about the underlying provision drafted by the committee by Mr. Burton, which basically puts us back in the status quo, basically returns us to current law, and then provides for a demonstration project. Do you have any views on that?

Mrs. TAUSCHER. I support putting it back the way it was.

Mr. GIBBONS. I think I answered your question.

Ms. HARMAN. I think the Thornberry rule of not taking on additional fights might apply here, too.

Mr. THORNBERRY. And the chairman has asked us to review the Burton language again, which I think we intend to do and see.

Mr. FROST. I thank you, because this is in the spirit, Mr. Chairman, of bipartisanship in trying to narrow the differences that may exist between the two sides and trying to provide something from this select committee that will have broad agreement.

I have no further questions and yield back my time.

Chairman ARMEY. Gentleman from Ohio.

Mr. PORTMAN. I thank you, Mr. Chairman, and again appreciate everything this panel has done to help us get to this point, and as important as it will be to get this bill passed, and I think you are going to be key to that, I really do. I think as we get to the floor, Mr. Chairman, we are going to be relying on these four individuals and others who have been involved.

But I think what is even more important is what happens next, and I would love to have your thinking today about how this gets implemented, because it does relate to what we are doing today in two respects. I think we can put in language which provides some important flexibility, particularly on the management side, to be able to get this up and going in a way that does protect our citizens.

And second, I think it relates to congressional oversight and the need for ongoing oversight to be sure that some of these issues—which frankly we cannot iron out through legislation, but will only be discovered once we begin the process of consolidating and hopefully finding those synergies. There will be issues I think that will come up that we can't predict today.

Could you comment on what happens next and particularly what you think about flexibility?

Mr. THORNBERRY. Just to start briefly, I do think flexibility is important, particularly in the transition phase. But let me give you one other example. And Ms. Tauscher and I dealt with this in dealing with nuclear weapons. Part of the Department of Homeland Security is going to fight cyber terrorists. In other words, we have to go hire people who are computer experts, take them away from Silicon Valley salaries, to come work for the government. Some sort of flexibility on pay so that you can get the kind of people you need to do that kind of work is essential.

We had to do the same thing in nuclear weapons. We had to find people who were going to supervise nuclear physicists, who were among the smartest of anybody in the world. So there has to be some flexibility, I think, to make this work right. And that needs to be taken into account as you all move along.

Ms. HARMAN. Applying the Thornberry rule, there is learning in other departments like the CIA and the Defense Department about hiring some of these whiz kids to run the computers and invent the new technologies, and maybe we just need to borrow that and apply that in spare amounts to those functions of the new Department, rather than scare a lot of folks about the fact that we are going to take away their civil service protections. That would be one comment.

But two other points. First of all, whatever is in this Department, it will require a strong leader as Secretary, somebody very skilled at merging cultures, and reaching for the private sector. Doing the politics of Washington is no easy feat, and there aren't that many people around who can do that. And I hope that the President chooses wisely.

I would like to commend Tom Ridge for the service he has given us. I assume he is at the top of any list. But I hope that the Presi-

dent picks somebody with all of those skills, and that would be my second point.

Last point, and it relates to something Ms. Pelosi said. Every act of terrorism is local. It happens on somebody's real estate. It could happen again in Washington, but it could have easily happened in Los Angeles, Cleveland—pick one—and we will be measured not by how we move the boxes around—that is an arcane exercise that Washington loves—but by what tools, resources, and information and interoperable communications we get to those who will be on that piece of real estate to prevent something or protect something or respond to something. And if our exercise in remodeling doesn't give them the tools, we will have failed, no matter what we put in this.

So I hope we will keep our eye on what the goal is, and the President's strategy this morning laid out that goal very well, and that is what this committee should be about, achieving the goal.

Mr. GIBBONS. This is the largest reorganization of any government we have seen since 1947. I think the collective wisdom of this panel of putting it together and getting the bipartisan contributions and looking at all of the agencies and committees that have had some input into this and taking a serious look at that and not merely going with blinders on and saying this is the only way we can approach this will be the answer to how we get this bill moved through Congress with a bipartisan and large vote.

Mrs. TAUSCHER. I will tell you, this has to be a vote of 350-plus, because we are going to have to spend a lot of time looking through the rear view mirror and a lot of time deciding that this law of unintended consequences—which will grip us the moment that the President signs it, and we say, oops, we forgot that, or not enough this or not enough that. This is spaghetti sauce. We are going to have to keep tasting it and adding, and we are going to have to make sure—you know, would rather have it be spaghetti sauce than sausage making, but I think we have to have everybody in the boat; otherwise we are going to be pointing at each other and picking it apart and not moving forward together to fix it, that is what we are going to have to do for a long time.

Chairman ARMEY. Gentleman from New Jersey.

Mr. MENENDEZ. Thank you. I enjoy spaghetti sauce.

Mrs. TAUSCHER. And I make a good one.

Mr. MENENDEZ. Hopefully we can make a good one of this Department without too many tries.

I want to go back to my original line of questioning because I only got one answer of the four, and I know I laid out a lot.

Question: Should there be mechanisms to protect nonsecurity missions in this legislation? I think that is one of the concerns that people have on the floor. I think you will have a lot more willingness to get to that 350, maybe far beyond it, if nonsecurity missions are protected by language that ensures that we have—for example, for argument's sake, is the budgetary provisions of nonsecurity elements of an agency being transferred in and are protected as a base line and for which you could transfer, but not to deplete for security purposes. You have a lot maybe less resistance to the Coast Guard going in, so it can still have environment and navigational issues and search and rescue.

If you are representing some fishing community, you are going to care about your spouse coming back alive. So you want that search-and-rescue mission to be a reality.

So don't you think we can create language here that will give us a sense of security and not strap the administration beyond it necessarily? Because if we are arguing in the first instance we are going to preserve all of those nonsecurity missions, then why not have language that deals with that?

And secondly, what about this whole research and development issue on the question of health in the health-related field, the public health field? I think we are going to lose some of the synergies that this committee has talked about, some of the savings this committee has talked about, some of the goals this committee has talked about.

And I am worried about all of these academicians that have raised questions, the GAO that has raised questions. Is there not a better way in that respect?

So those are my two major—and I would like each of you to respond if you can to each of them.

Mr. THORNBERRY. Mr. Menendez, on the nonsecurity missions, a couple of points. One is I think beefing up FEMA, giving it more resources, having more regular communication with the State and local folks, is going to put FEMA in a better position to deal with hurricanes. In other words, what we are doing really is elevating some of these agencies—FEMA, to take this example, so that they are in a better position.

Coast Guard—you know, I am a long way from the ocean in my district, but I believe we have to put more resources into the Coast Guard. I think it will get more resources in the Department of Homeland Security, whose primary mission is to keep us safe, than left in a Department of Transportation which has other missions associated with it. I think it is better.

Second point I would make, that is part of our job in Congress. We appropriate the money. We do the oversight. It is part of our job to make sure that they take care of the fisheries and the other things that the Coast Guard is responsible for.

Having said all that, if there is a way to put some guidelines in to give people other reassurance, I would like to look at them because I would rather have constraints than to not have the Coast Guard as part of it, because I believe it falls apart if we leave out a major element like that.

Ms. HARMAN. I have been involved over 10 years and a lot efforts by Congress to micromanage things and set ceilings and put caps and the rest of it, and I would generalize and say that most of the time we have been wrong. And I would much prefer, Mr. Menendez, to have good leadership of this Department and good oversight over this Department and watch carefully to be sure that other missions are fulfilled. There may be more efficient ways to fulfill them. I wouldn't like to freeze resources in place, especially in a budget deficit environment.

On the public health piece, I think you were out of the room when I answered Ms. DeLauro by saying my call would be to leave it out, but to have in this Department the capability to do syndromic surveillance so we know if strange things are turning up

at our hospitals all over the country and to manage surge capacity of our hospitals. Those are two contributions we could make through this legislation. But I would keep our public health effort intact, because it doesn't matter to me whether the smallpox epidemic was started by a terrorist or started by accident.

Mr. GIBBONS. Fifteen seconds. Let me see if I can answer your question. The question would be whether or not you weaken the agency from which the agency departs to go to Homeland Security to the point that that agency can't conduct the remaining balance of its mission. It is mission versus transferring agency.

And let me say, for example, the Treasury Department has the responsibility to ensure the protection and the security of our currency. That office also transfers that authority to enforce that to the Secret Service. If you transfer the Secret Service protective mission to Homeland Security, can the Treasury still enforce monetary security; in other words making sure that our money system is safe? I think they can. But the question would be if you transfer one, do you weaken the other so it is ineffective? And we don't want to do that. We don't want to micromanage that decision.

Chairman ARMEY. Let the Chair observe that the Chair expects to be called on the floor within the next 10 to 15 minutes. That being the case, and in light of the fact that Chairman Sensenbrenner has agreed to come back after the votes are taken, I would suggest that we proceed in this manner; that we now have two members of the committee remaining who would have their second round. The Chair would reserve his final place in the second round, as we said, for the panel to make their final observations for the committee. By that time, my expectation is we will be into the vote and recess the committee following your comments, and then reconvene the committee 5 minutes after the last vote in this series is taken, to hear Chairman Sensenbrenner and his ranking member. That being the case, let me go to the gentleman from Texas, Mr. DeLay.

Mr. DELAY. Thank you, Mr. Chairman. I apologize for having to step out and have missed some of your answers. I want to revisit, since we ran out of time, an issue that will be a problem for this committee, and that is the human resource issue. And I just want to give you the benefit of testimony by the administration, who has over and over again said we don't want to undermine the benefits and rights of Federal employees, that we want to protect their civil service rights, their veterans' preference rights, their whistleblower rights, all of those rights.

The problem is in Government Reform an amendment was passed that actually puts the President—or gives the President less authority over the Department of Homeland Security than he has in any of the other departments, and it all focuses on security, and that is the right to waive collective bargaining rights when it affects national security.

And I don't think, Ms. Harman, you spoke to that in your answer. And I would give you the opportunity to answer that, as Mr. Thornberry already has and the other three.

Ms. HARMAN. I think I did, Mr. Delay. While you were gone, we were talking about the Burton language which was offered in Government Reform.

Mr. DELAY. The Burton language isn't what we are talking about.

Ms. HARMAN. I understand. We together have been coming to the view that that might be the preferred language, the Burton language, not the other language that I think you are now referring to. The goal would be to continue present law and have it apply to this Department, not to change present law.

There is now operating here the Thornberry rule, which is not to open issues if you don't have to.

Mr. GIBBONS. I would agree, Mr. Delay, with my colleagues that we have looked at this issue and believe that flexibility should remain as it is written in the laws today, allowing the President to make those decisions; and should Congress feel that that is inadequate at a time of national security, to come back at some point and discuss that as a single issue, an issue which all can be part of, rather than incorporating it into a bill which is an either yes or no on the bill against one single issue; if you want to incorporate the ideas of the full committee, that perhaps Mr. Burton's language best accommodates that issue.

Mrs. TAUSCHER. I agree, Mr. Delay. Existing law is the way we should go, and we shouldn't try to encourage the kind of problem we might have if we went a little further than that.

Mr. DELAY. I yield back.

Chairman ARMEY. Gentlelady from Connecticut.

Ms. DELAURO. Thank you, Mr. Chairman. Let me, if I can, just go back on the issue of the Inspector General, if I can. Section 710 of the proposal prohibits the Inspector General of this new effort from doing work in areas that involve certain information. Let me just fast-forward that. We have at Defense—there isn't any question about protecting sensitive information.

Everyone is on board in terms of the effort of national security and threats to national security. But at Defense and at Justice, as I understand this, they have similar limitations on access. But in those areas, the IGs are directed to report to Congress if the relevant Secretary impedes their access to necessary information. In the case of the Inspector General for the new Department, this check, if you will, on Secretarial interference has been eliminated. Instead, the proposal gives the responsibility of reporting interference with an IG investigation to the Secretary. So instead of coming to the Congress if you have got a problem as the IG, you go to the Secretary. If the problem is with the Secretary, you are building in here a conflict of interest.

So what I wanted to just probe with you, should we follow the model again of agencies that in fact are dealing with absolutely sensitive issues? We know—I mean, we have got a Department of Defense. We have a Department of Justice. That is serious and sensitive material all of the time.

I have asked my question. I don't want to belabor it. Should we just use the model that we have?

Mrs. TAUSCHER. Yes, I agree. I think we should use the Department of Defense and DOJ model; which I think, once again, we are going to be fine-tuning this legislation for a very long time. We should be open to doing that. We should be trying to improve on

a constant basis, but at the minimum I think we should do what they do, and then if we have to fix it later we can.

Mr. GIBBONS. I would agree. The Department of Defense model would be my preference in all of this versus having an IG that reports directly to the Secretary who has authority to respond and react to an incident or a situation within his own division. So I think the report should bypass and go to an independent oversight authority.

Ms. HARMAN. I see no reason to change present practice either.

Mr. THORNBERRY. The only question I would have is how does the CIA work, maybe some of those other entities, and my colleagues on the Intelligence Committee might know the answer to that. I would be curious as far as the administration's reason why they think it should be different from the Department of Defense, and maybe check on some of these other precedents as well. It seems to me it is an issue that we can work out.

Chairman ARMEY. If I may advise the committee on further reflection, for the sake of the committee, we will adjourn after our final statements, with the anticipation of reengaging our panel from the Judiciary Committee. Should that be impossible, we would adjourn until 10 o'clock tomorrow morning. The chairman of the committee will advise members of this committee, perhaps by an announcement between votes, if we are indeed coming back.

So I have been assured that we can reengage that panel, but schedules being what they are, we should leave ourselves with the flexibility to dance to the right or dance to the left, and we will certainly dance in either case.

So with those observations and with the concurrence of the committee, that we would adjourn, with the anticipation of coming back 5 minutes after the next vote or until 10 o'clock tomorrow morning.

I would like to now give the panel your 5 minutes, 1 minute 15 seconds apiece, to give us your last bit of advice. We will start—let's start with Mrs. Tauscher.

Mrs. TAUSCHER. Thank you, Mr. Chairman,

Ms. Pelosi, and members of the committee. I am just very thankful that I was able to come and to provide, you know, my limited experience on what we can do. I am certainly available to help in any way I can.

What I think is the most impressive thing is how you are working together. The tone that you are all using, the professionalism, and I think this is—not only are the American people watching and our allies, but our adversaries are watching. This is another point, the vulnerability for us; whether we can manage to do this so that we can respond and protect ourselves. And I think that the Congress is well up to the task. I am very very proud of this institution. I am proud of all of you, and I thank you for your hard work.

Chairman ARMEY. Thank you.

Mr. GIBBONS. Mr. Chairman, Ms. Pelosi, I too want to thank this committee for its diligence and its work and its commitment to this issue. Ten and a half months ago this Nation underwent a significant change. Change is not easy. The thing my mother used to tell me: The hardest thing about change is not accepting the new, but letting go of the old.

I believe that what we have before us is an opportunity to create something new, but it is going to require letting go of the old. Highway 50 is a two-way street into Washington, D.C. It is both coming into Washington and it leaves Washington. Not all good ideas emanate out of Washington, D.C. We ought to be able to understand that this is going to be felt mostly in our districts, in our localities, and we ought to be at least aware and cognizant of the fact that ideas are going to come and we are going to have to make changes in the future.

This is the most important focus on any piece of legislation that we have before Congress today, and that is to ensure the protection of America's citizens and its homeland. And to do that, we must all commit ourselves to the very job that we have been doing. I am very proud of my colleagues for their effort in all of this and I want to thank you for the opportunity to be here.

Ms. HARMAN. Thank you, Mr. Chairman and ranking member. I have held a lot of events recently on Homeland Security in my district, and I think it is still true that first responders don't understand this bill. They just ask, how much money do we get? And while I think money matters, it is not what will secure the homeland. We have to have a strategy. We have to implement it wisely, and I think we will be measured by whether first responders and citizens have all the tools, not just money, but training and information and interoperable communications to know what to do, and whether or not we achieve the goals of the President's strategy to prevent attacks to protect our infrastructure and to respond effectively.

So that is what we have to keep our eye on, not which box goes where. I would just urge again that we look for a huge vote in the House and we have a process that lets our House Members who know a lot about this—since every one of us represents the same amount of real estate—lets our House Members buy into this bill. There are a lot of good ideas in this House, and the product will be better if all of us have a chance to speak.

Mr. THORNBERRY. Mr. Chairman, there were a couple of issues we did not have a chance to get to. One is cost. I would recommend that your staffs actually read the CBO cost estimates. Two thirds of their $3 billion cost estimate is new things, things the government does not do now, the new Intelligence Analysis Center and so forth. Their estimate on the cost, even under CBO's counting no savings, is $1 billion over 5 years. I am just saying we need to look down into it.

We are going to spend more money on homeland security. The question is are we going to spend it as effectively as we can. That is what our goal is.

The second point we didn't have a chance to talk about is technology. It is boring and complicated to talk about how you identify and develop and field the technologies that are going to save lives. But again, you have some good people working for you. Getting those details right is important. We cannot stand a 20-year procurement cycle like the Department of Defense has to develop—to get technology out there for the policeman and firemen to use. We have got to do better.

The last point I would say is this. It is hard to talk about this topic without being melodramatic, because so much is at stake. And yet I do believe that, as Mrs. Tauscher said, people are watching us, even our adversaries. It is true that the safety of our children depends on how we behave, how we act in the next few weeks. And I trust and know that this select committee will lift us up to the challenge, not just here, but on the floor and beyond.

And thank you for what you do.

Chairman ARMEY. And let me thank the panel. Let me just say freedom deserves service like yours. And with that, the committee stands adjourned until whatever.

[Recess.]

Chairman ARMEY. The committee will come to order. The committee would like to welcome the distinguished Chairman of the Judiciary Committee. It should be noted that both Chairman Sensenbrenner and Ranking Member Conyers of the Judiciary Committee were invited at this time so as to not interfere with a markup they will have tomorrow. They are going out of order, and the Chair has been advised by Ranking Member Conyers that he is not available to testify at this time.

Chairman ARMEY. So at this time we will say to you, Mr. Chairman, we would be pleased to put your formal statement in the record, and we would like at this time for you to give us whatever statement you would like to give.

STATEMENT OF THE HONORABLE F. JAMES SENSENBRENNER, JR., CHAIRMAN, COMMITTEE ON THE JUDICIARY

Mr. SENSENBRENNER. Thank you, Mr. Chairman, for the opportunity to appear before this committee. The events of September 11th forever altered our collective sense of invulnerability to terrorist attacks on American soil. As it has done repeatedly since September 11, the Judiciary Committee has answered the President's call by vigorously and diligently discharging its responsibility to ensure the security of all Americans. The Judiciary Committee has expeditiously responded to terrorist threats by spearheading bipartisan legislation such as the PATRIOT Act, the Border Security Enhancement Act, the Antiterrorism Explosives Act, the Terrorist Bombing Convention Implementation Act, the Cybersecurity Enhancement Act, and the Homeland Security Information Act. In addition, the committee has engaged in robust and ongoing oversight of Federal law enforcement agencies in the wake of these attacks.

As introduced, H.R. 5005 would transfer several existing law enforcement agencies into a new Department. On July 10 the Judiciary Committee favorably reported amendments through H.R. 5005 by voice vote. While consistent with the articulated mission of the Department of Homeland Security, the proposed amendments recommend important structural changes which would strengthen America's ability to effectively assess, prevent, and respond to terrorist threats. Of no less importance, the committee makes critical recommendations to help safeguard the civil liberties and freedoms cherished by all Americans.

The Judiciary Committee was the first to respond to the urgent need to address systemic problems within the Immigration and

Naturalization Service, and our restructuring legislation passed the House by a vote of 405 to 9. The amendment reported by the committee to this bill build on this critical legislation. We support the bill's transfer of immigration enforcement functions to the Department of Homeland Security where they can be integrated into a comprehensive and coordinated Federal border security unit.

At the same time, we strongly support maintaining immigration services in the Department of Justice and not transferring it to the Department of Homeland Security. INS service problems are legendary, and Congress must ensure that immigration services are no longer sacrificed in favor of enforcement priorities. The best way to do this is to have services and enforcement in two different departments, which was originally recommended by the Jordan Commission on Immigration Reform several years ago. By separating these two functions and elevating the status for immigration services within Justice, the committee's proposal would prevent these services from being subsumed by the massive size and scope of the new Department and ensure agency immigration services will receive the resources necessary to treat legal immigrants with the professionalism they deserve.

Second, the committee supports shifting FEMA's Office of National Preparedness to the new Department, but not the entire agency. FEMA's main mission is to respond to natural disasters and to dispense aid, not terrorism. In conjunction with FEMA's Office of National Preparedness, the Justice Department's Office of Domestic Preparedness would also be transferred to create a central office within the new Department for Federal, State and local training and coordination on terrorist attacks. FEMA does not provide crisis management training or support to States and localities, but its transfers to the new Department would be incompatible to the missions of both. Preserving FEMA as an independent Agency will ensure that the new Department's large bureaucracy is more streamlined and more focused.

The fifth Under Secretary under which FEMA would have been placed becomes unnecessary, as the Office becomes much smaller. Therefore, the committee recommends the elimination of the Under Secretary for Emergency Preparedness for Response, and then the transfer of the remaining functions to the Under Secretary for Border and Transportation Security under title IV of the bill.

Third, the committee recommends transferring the Secret Service to Justice. Unlike most other law enforcement agencies, H.R. 5005 would transfer to the Department of Homeland Security—the main mission of the Secret Service is the investigation of financial crimes, including counterfeiting, and the protection of certain government officials, not the protection of the border. Shifting the Secret Service to the Justice Department would ensure that its fundamental law enforcement mission is not compromised or diluted.

Finally, the committee recommends the adoption of important safeguards to protect individual rights and civil liberties. These include heightened whistleblower protections, a more independent Inspector General, the creation of a Deputy Independent Inspector General for Civil Rights and Civil Liberties, and the appointment of a privacy officer to protect against the unauthorized use or disclosure of personally identifiable information.

The Judiciary Committee strongly supports the establishment of a Federal department whose primary purpose is the protection of our homeland against terrorist threats, and I believe our recommendations help advance this crucial goal and should provide valuable guidance to the select committee as it completes the critical task of shaping the Department of Homeland Security.

I appreciate the opportunity to testify here, and let me just wave to the committee a comparison of two charts. One is the chart that the President has recommended, which you can see has quite a few boxes in it and five separate divisions. The other is the chart which we recommend that has fewer boxes, one fewer Under Secretary, and fewer employees than was recommended by the President.

I thank the committee for their indulgence and I will be happy to answer questions.

[The statement of Mr. Sensenbrenner follows:]

PREPARED STATEMENT OF THE HONORABLE F. JAMES SENSENBRENNER, JR., CHAIRMAN, COMMITTEE ON THE JUDICIARY

Chairman Armey, Ranking Member Pelosi, and distinguished members of the Select Committee on Homeland Security. Thank you for inviting me to present the views of the House Judiciary Committee concerning H.R. 5005, President Bush's proposal to create the Department of Homeland Security.

The events of September 11th forever altered our collective sense of invulnerability to terrorist attacks on American soil. As it has done repeatedly since September 11, 2001, the Judiciary Committee has answered the President's call to action by vigorously and diligently discharging its responsibility to ensure the security of all Americans. The Committee has expeditiously responded to terrorist threats by spearheading bipartisan legislation such as the PATRIOT Act, the Border Security and Enhancement Act, the Antiterrorism Explosives Act, the Terrorist Bombing Convention Implementation Act, the Cybersecurity Enhancement Act, and the Homeland Security Information Act. In addition, the Committee has been engaged in robust and ongoing oversight of Federal law enforcement agencies in the wake of these attacks. While these steps have made Americans less vulnerable to terrorism, the work of Congress is far from complete. As introduced, H.R. 5005 would transfer several existing law enforcement agencies into a new Department of Homeland Security with over 170,000 employees. The proposed Department's central, predominant purpose is to assess and prevent terrorism and other threats affecting America's internal security. The Judiciary Committee's jurisdiction over subversive activities affecting the internal security of the United States, the nation's immigration and naturalization laws, Federal civil and criminal procedure, and administrative law and procedure makes it uniquely positioned to assist the Select Committee as it considers legislation to establish the Department of Homeland Security.

On June 23, 2002, we were pleased to welcome Homeland Security Director Tom Ridge before the Judiciary Committee. In addition to receiving Director Ridge's testimony, the Judiciary Committee Subcommittees on Crime, Terrorism, and Homeland Security; Immigration, Border Security, and Claims; and Commercial and Administrative Law conducted separate hearings to examine this proposed legislation. The Committee's recommendations reflect the views received at these hearings, as well as extensive consultation with Administration officials, outside experts, and the conclusions of several congressionally-chartered antiterrorism commissions. Several of our recommendations, including the separation of immigration enforcement from services, the Department's focus on border and transportation security, the preservation of most of FEMA as an independent agency, and heightened DHS scrutiny of visa issuance by State Department consular offices, were echoed in a recently-issued, comprehensive Brookings Institution assessment of the President's homeland security proposal.

On July 10, the Judiciary Committee favorably reported amendments to H.R. 5005. Most of these changes are contained in a Manager's Amendment which I was pleased to introduce with Ranking Member John Conyers. While consistent with the articulated mission of the Department of Homeland Security, the proposed amendments recommend important structural changes which would strengthen America's ability to effectively assess, prevent, and respond to terrorist threats. These amendments would also create a more focused Department, better able to respond to exist-

ing and emerging threats. Of no less importance, the Committee makes critical recommendations to help safeguard the civil liberties and freedoms cherished by all Americans.

The Judiciary Committee was first to respond to the urgent need to address systemic problems within the Immigration and Naturalization Service, and our INS restructuring legislation passed the House by a vote of 405-9. The amendments reported by the Committee build on this critical legislation. The Judiciary Committee supports H.R. 5005's transfer of immigration enforcement functions to the Department of Homeland Security, where they can be integrated into a comprehensive and coordinated Federal border security unit. The Committee preserves the core of the Administration's proposal to create a seamless web of law enforcement at the border by placing various border law enforcement agencies below one Undersecretary, most notably the Customs Service, Transportation Security Agency, Coast Guard, and immigration enforcement and border patrol from the INS. At the same time, the Judiciary Committee strongly supports maintaining immigration services at the Department of Justice. INS service problems are legendary and Congress must ensure that immigration services are no longer sacrificed in favor of enforcement priorities. By separating these two functions and elevating the status for immigration services within the Justice Department, the Committee's proposal would prevent these services from becoming subsumed by the massive size and scope of the new Department. These reforms will end the INS's mission overload and ensure that immigration services will receive the resources necessary to treat legal immigrants with the professionalism that they deserve.

Second, the Committee recommends transferring the Secret Service to the Department of Justice. The Secret Service is unlike most other law enforcement agencies that H.R. 5005 would transfer to the Department of Homeland Security. Its main mission is to investigate financial crimes, including counterfeiting, and to protect certain government officials—not to protect the border. Shifting the Secret Service to the Justice Department would ensure that its fundamental law enforcement mission is not compromised or diluted in the proposed Department.

Third, the Committee supports shifting the Federal Emergency Management Agency's Office for National Preparedness to the new Department, not the entire agency. FEMA's main mission is to respond to natural disasters and to dispense aid, not to prevent terrorism. In addition, the Justice Department's Office for Domestic Preparedness should be transferred to DHS. In conjunction with FEMA's Office of National Preparedness, the Office of Domestic Preparedness will create a central office within the new Department to coordinate the Federal, State, and local response to terrorist attacks. This new office should be under the authority of an Under Secretary for Enforcement and Security to assure that law enforcement and crisis management functions are given priority, consistent with the Department's principle mission.

The Committee amendments also provide definitions for key terms contained in the bill. These include the definition of terrorism, critical infrastructures, and the crucial distinction between crisis and consequence management. Defining these terms will help focus the mission of the Department.

Finally, the Committee recommends the adoption of critical safeguards to protect individual rights and civil liberties. These include heightened whistleblower protections, a more independent Inspector General, the creation of a Deputy Independent General for Civil Rights and Civil Liberties, and the appointment of a privacy officer to protect against the unauthorized use of disclosure of personally-identifiable information. The Judiciary Committee strongly supports the establishment of a Federal Department whose primary purpose is the protection of the American homeland against terrorist threats. Our recommendations help advance this crucial goal and should provide valuable guidance to the Select Committee as it completes the critical task of shaping the Department of Homeland Security.

I appreciate the opportunity to work with the Select Committee as it considers legislation to ensure that Congress fulfills its most fundamental obligation to provide for the security of the American people.

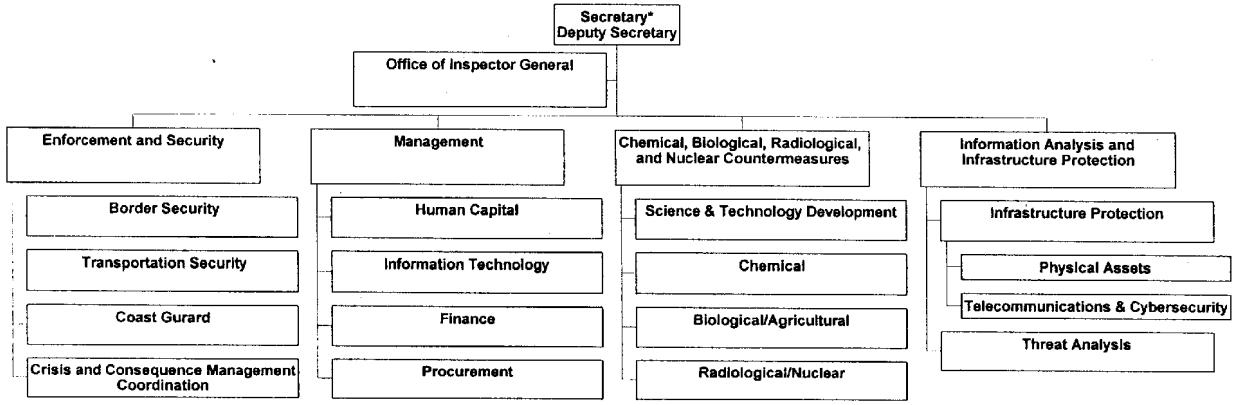
Chairman ARMEY. I thank the gentleman for your testimony. I have your testimony here. I do not have a copy of the two box diagrams you had.

Mr. SENSENBRENNER. The staff will provide you with those.

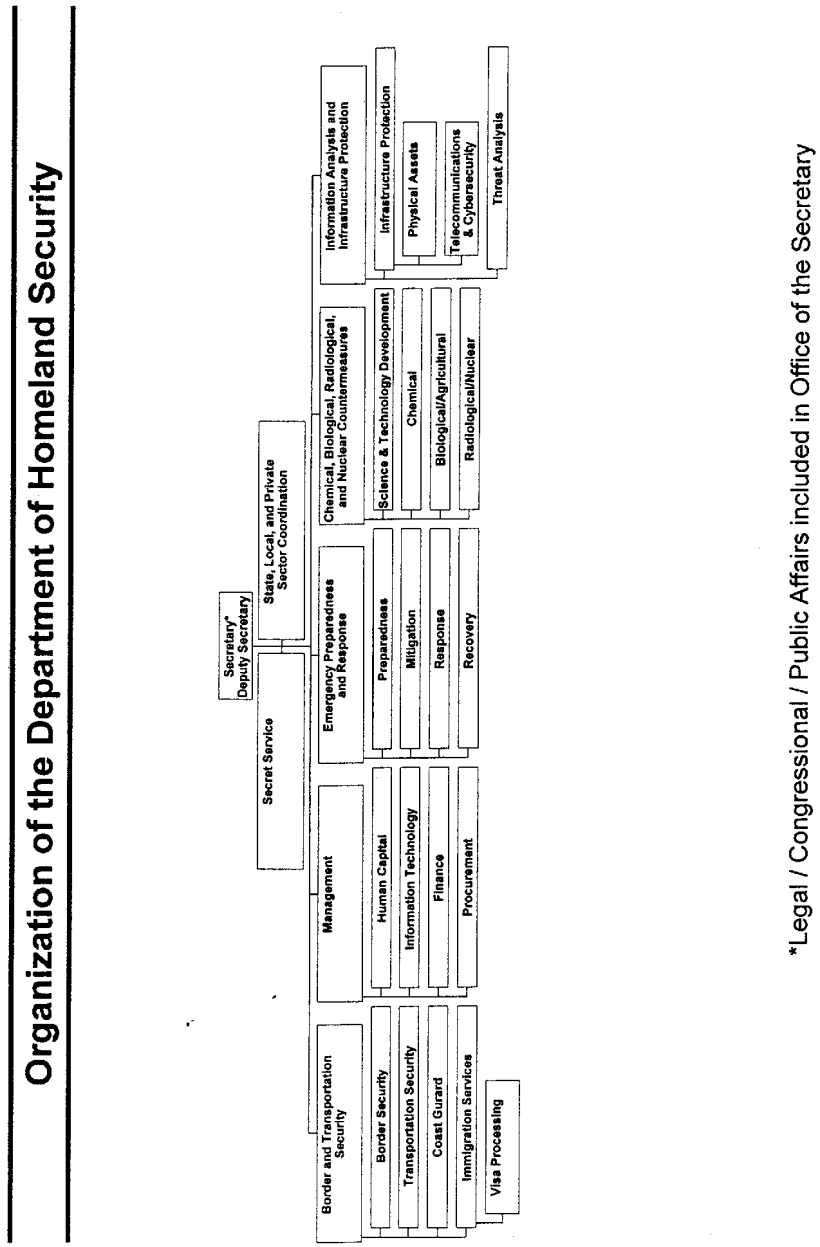
[The information follows:]

Organization of the Department of Homeland Security

Prepared by the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security



*Legal / Congressional / Public Affairs included in Office of the Secretary



Chairman ARMEY. I would appreciate that and I am sure the other members of the committee would as well.

It is the custom of this committee to now proceed to the 5-minute rule. It is also the usual practice of the chairman of the committee to reserve himself for the last place in the order. And with that, let me now recognize the gentlewoman from Ohio for her first 5 minutes.

Ms. PRYCE. Well, thank you, Mr. Chairman. This will be my only 5 minutes. Chairman Sensenbrenner has been very patient with us today, and I just have a very brief question to begin with. Mr. Chairman, you indicated that there are three boxes in your committee's chart, is that correct?

Mr. SENSENBRENNER. Four.

Ms. PRYCE. Four. But fewer employees.

Mr. SENSENBRENNER. Yes.

Ms. PRYCE. And does that come from the INS function that was not transferred?

Mr. SENSENBRENNER. It comes from the INS function, the FEMA function, and transferring Secret Service into Justice rather than putting it in Homeland Security.

Ms. PRYCE. Okay. But the Federal Government would still have the same number of total employees. They are just in different boxes, some of them.

Mr. SENSENBRENNER. That is correct. The charge that we got from this committee was to deal with the organization; not the authorized numbers of employees, whether it is too many, too few, or just right. I guess we will do that later on, both in terms of the authorization and appropriations process.

Ms. PRYCE. Well, I think this definitely is the first step and that we need to put something on paper. And even through our own deliberations in this committee and on the floor and through conference, it will probably be a moving target, but I hope nobody thinks that this, even what we do end up passing, is the final set-in-stone version and that we can't change it, because it does need to be tested and tried, and I don't think that we need to pretend that it is going to be perfect right out of the box. But with that, Mr. Chairman, I will yield back.

Thank you very much.

Chairman ARMEY. Thank you. Ms. Pelosi from California.

Ms. PELOSI. Thank you, Mr. Chairman.

Welcome, Mr. Chairman, and thank you very much for your patience. More importantly, thank you for your leadership. Your committee has worked so hard and largely in a bipartisan way since September 11 on so many different issues, and we appreciate your good work and your presentation on the Homeland Security Department. Our chairman referred to it as the custom. You realize we are 1 week old in our hearings. And he referred to the usual practice, which is now 3 days old. But nonetheless, I appreciate the opportunity to have questions and give the last word to our very distinguished chairman.

There have been some who have talked about a fifth box, substituted wherever for INS under the Homeland Security Department. The Attorney General has testified here that he would like the INS to stay together so that the protections of civil liberties and the rest that go with dealing with the INS are there with the

enforcement function as well as with the services function. Would you like to comment on that?

Mr. SENSENBRENNER. Well, you know, let me say, Ms. Pelosi, that the committee has given considerable thought, and I have given even more thought to how best to deal with INS. Everybody agrees that INS has to be split between the enforcement function and the service function. The Jordan Commission recommended that the service function of INS within the United States be transferred to the State Department, so the green cards and the adjustments of status and the naturalization and all of these other things would have been handled by employees of the Department of State in the INS offices all around the country.

When the Judiciary Committee dealt with the INS restructuring bill, we were not all that confident that the State Department would do any better job than the Justice Department in dealing with legal aliens who wish immigration services, who are not criminals, who are not conspiring to violate the law, and who wish to become productive and tax-paying members of American society, hopefully becoming citizens at the end of the process.

Moving both service and enforcement into the new Department of Homeland Security would result, we fear, in service getting stripped of the resources that it needs not only to deal with the 5 million case backlog that presently exists in the service end of INS, but dealing with new petitions as they come in should the Congress change the immigration law. And the Department of Homeland Security is even more of a law enforcement agency than the Department of Justice is, and given the reprogramming authority that the executive branch has requested for this new Department, at least initially, and the bill that is before us, we were awfully afraid that the service end of the split INS would be dealt with even more as a stepchild than it is currently under the Department of Justice.

Now, there was a proposal by Ms. Jackson Lee in the Judiciary Committee to basically pull out the enforcement part of INS and to have a new Under Secretary created where there would be the enforcement part of INS and the service part of INS in separate bureaus under the newly created Under Secretary. The down side in that, as I see it, is that the desire to have a seamless border security agency would end up being destroyed, because if the President's bill is passed and you have this fifth department with the immigration inspectors at ports of entry and the Border Patrol reporting to the fifth Under Secretary, and the law enforcement functions of Customs and the Coast Guard reporting to another Under Secretary, you know, then we start getting back to the current dysfunctionality that we have.

So the conclusion that was reached is to keep law enforcement seamless, which means that Border Patrol and the immigration inspectors and the ports of entry would be, you know, in one vertical line authority that would be up under Homeland Security. But that would really mean that services would be, you know, kind of out in the box, off into never-never land. And that is why we decided that it probably would be better for services to be kept in Justice, because that way there would be no raiding of the services' money to provide for more enforcement, as there is currently in Justice, and I think there would be increased pressures if both services and

enforcement and INS were in the new Department. So that is why we reached the conclusion that we did.

Ms. PELOSI. I appreciate your very valuable contribution and all of the work that is implied in that.

Mr. Chairman, do you go next and then I will go next, or should I just do another one?

Chairman ARMEY. Why don't you go ahead?

Ms. PELOSI. I just wanted to say how pleased I was to see in your presentation the heightened whistleblower protection because much has been said here about whether whistleblowers are covered in this bill and this and that. But under what we have seen in the past months, we know that we have to pay very special attention to whistleblowers, so I like that word "heightened."

And I also just wanted to talk about the creation of a Deputy Independent General for Civil Rights and Civil Liberties. I think never has that been more important.

Is that what we are envisioning under Justice, a Deputy Attorney General?

Mr. SENSENBRENNER. No, this would be in the new Department of Homeland Security.

Ms. PELOSI. In the new Department, an Independent General for Civil Rights.

Mr. SENSENBRENNER. Right.

Ms. PELOSI. And that would fall under what block?

Mr. SENSENBRENNER. Let's see, I am really not sure about that. Let me just see.

The Inspector General's Office would be right under the Secretary and Deputy Secretary. If you look at the organization chart that was prepared by the Judiciary Committee, which is our recommendation, the IG's office would be there and there would be an Independent Deputy Inspector General that would be dealing with the civil rights issues, and there also would be a privacy office there to make sure that identifiable personal information did not spill out into the public domain.

Ms. PELOSI. I appreciate that very much, because as the ranking member on the Intelligence Committee, a concern that we have is we want to have all the best intelligence at the disposal of the Secretary and certainly the President of the United States. But there is some concern that with that much information, especially about so many individuals from our country, some precautions would be needed, and it seems that you have done that.

I appreciate your testimony. Thank you, Mr. Chairman.

Chairman ARMEY. Mr. Chairman, let me, first of all, appreciate—from your own testimony you remind us about your earlier work in response to the new circumstance we have in the world after 9/11 of last year. The PATRIOT Act, a big job, we all worked on that very important piece. Border Security and Enhancement Act, the Anti-Terrorism Explosive Act, the Terrorist Bombing Convention Implementation Act, the Cyber Security Enhancement Act, and the Homeland Security Information Act. The Cyber Security Enhancement Act, very important matter that has been addressed before this committee.

Now in these six pieces of legislation that we have seen here, we have done a fairly fundamental restructuring of the foundation and

the laws about rights and activities in America. Is there anything that you do in your recommendations on this Homeland Security bill that would enhance any of these bills, second-guess, fine tune, add to any of these, or do you see any area where we need to make changes in the underlying law?

Mr. SENSENBRENNER. The question, Mr. Armey—the first part of your question is that in the amendment that was adopted, the H.R. 5005, there are no changes to any of these other laws. The charge that the standing committees were given by the House and by your committee was to review H.R. 5005 and make our recommendations on where these various agencies should reside, and that is what we did.

Now, in terms of the broader issue, Mr. Conyers and I jointly sent a 47-question letter on oversight of the PATRIOT Act to the Attorney General. He did not view it as a valentine, and the due date for the response of the letter was last Friday. He has asked for an extension of time. We have granted him an extension of time.

I am sure he does not like to spend his time sending a response back, but it is my intention to release the response to the President if there are further questions that need to be asked, Mr. Conyers. I will attempt to have a joint follow-up letter, and if there are hearings that are necessary on the responses we will have those hearings, assuming that the leadership does not require us to report out a few more bills in order to fill up the House calendar.

Chairman ARMEY. I might—I believe—see if my observation here is correct. It has been the tradition and the practice in America to honor and protect individual rights of persons without distinction between citizen and noncitizen. I do not believe we changed that when we did, for example, the PATRIOT Act. We have still, despite the enormous threat we have, despite the fact that many nations across the globe make the distinction between the rights to protect citizens and noncitizens, it is still the practice in America, is it not, to maintain no distinction between citizen and noncitizen and the respect of the right of persons in America and should we continue with this, I think, extraordinary American tradition?

Mr. SENSENBRENNER. I don't see that there is anything that has happened since 9/11 to change this extraordinary American tradition. The vast, vast majority of noncitizens in the United States are honest, law-abiding, tax-paying individuals. Some of them have elected not to petition for naturalization. Some of them do. That is their business.

What the PATRIOT Act does is that those noncitizens that might be wishing ill to America, to its institutions and to its people, we expanded the time that they could be held without being charged from 48 hours to 7 days. And anybody that is held after 7 days has to be held pursuant to the order of a judge for either an immigration violation, an accusation of an immigration violation or an accusation of a criminal violation.

One of the things that I hope to do in a few minutes is to talk to a group of people, members of the European Parliament, you know, that seem to think that the PATRIOT Act allowed for indefinite detention. If there is indefinite detention, it is due to a judicial order that has been validly entered after the 7-day period. The

standards for that type of a detention order are the same in the case of a criminal indictment where a magistrate judge would make a determination on whether someone was—had a danger of flight or was a danger to society if they were released on bond. If they were, either of them, then bond can be denied; and that is very clearly constitutional.

Chairman ARMEY. Thank you for that; and could you remind me, what was the vote on the PATRIOT Act in your committee?

Mr. SENSENBRENNER. The version that was reported from the committee was unanimous. That means Maxine Waters and Bob Barr both voted aye on the same bill.

Chairman ARMEY. Marvelous achievement.

Mr. SENSENBRENNER. That didn't happen on the floor, but—.

Chairman ARMEY. Do you recall the vote on the floor?

Mr. SENSENBRENNER. On the floor?

Chairman ARMEY. Yes.

Mr. SENSENBRENNER. I believe there were about 60 no votes on that.

Chairman ARMEY. But clearly, in a way, whether in your committee or on the floor, the Congress of the United States, the House of Representatives affirmed in the PATRIOT Act our commitment to maintain the rights of persons in America.

Mr. SENSENBRENNER. Absolutely. And I would not have voted for any bill, regardless of how it was phrased, that trampled on the rights guaranteed to people in the United States by the Constitution. If that is to be done, it must be done by constitutional amendment, and I doubt there would be many Members of the House that would support that type of an amendment.

Chairman ARMEY. Well, thank you. And I might mention, Mr. Chairman, in these trying times, when risks increase and fears sharpen, a position in defense of liberty such as you have just stated is one that is not always applauded. So let me take my moment to applaud you for that.

Mr. SENSENBRENNER. Well, I thank you on that. But, you know, the people who signed the Declaration of Independence took a position of—in defense of liberty, and they pledged their lives, their property and their sacred honor, and they had a lot of all three of those when they put their names on the bottom of the Declaration of Independence.

Chairman ARMEY. Thank you.

Ms. PELOSI. Mr. Chairman, may I join you in commending the distinguished chairman for his very eloquent response to your questions as well in support of freedom.

Chairman ARMEY. Thank you. I believe—I see we have been joined by Ms. DeLauro.

Ms. DELAURO. Thank you very, very much, Mr. Chairman.

Mr. Chairman, I apologize for being late and not hearing all the past commentary. I will be mindful of your time and try to ask a couple of questions.

My question is about the Inspector General. As I understand, the proposal from the administration would limit the new Inspector General's access to information, doesn't give the IG the ability to report to Congress if the Secretary impedes his or her access. As in the case of the Defense Department or the Justice Department,

can you explain how you address this in your mark? Does your language mirror the DOD IG language; and, if not, how does it differ?

Mr. SENSENBRENNER. Well, the introduced bill required the Secretary to report to the Vice President and the Speaker that he had exercised the authority to limit the scope of an IG's investigation for specific reasons, largely relating to national security. The Judiciary Committee did not agree with that.

The amendment would expand the reporting requirements by directing the Secretary to notify the IG, not the Vice President and the Speaker, of the reasons for exercising the authority, then requiring the IG to report or to forward the notice and the reasons to the President, the Senate, the Speaker of the House and the appropriate committees and subcommittees and requiring the Inspector General to report whether he agrees or disagrees with the Secretary. If the IG disagrees with the Secretary, the reasons for the disagreement must be reported to Congress, which I presume would be a matter of public record.

This amendment makes the reporting requirements for the proposed new Department consistent with provisions relating to Inspector Generals of the CIA, Treasury, Justice and the Defense Department, so we don't have a different type of IG in the new Department. We have the same type of IG in this Department as we have in the existing Departments.

Ms. DELAURO. Let me just quickly—your committee recommended creating a Deputy IG for Civil Rights and Civil Liberties. How you came to the decision and do you think that this type of position would serve the country better than creating a Special Office of Civil Rights, Immigration and—.

Mr. SENSENBRENNER. I get a little bugged at the tables of organization that have been bandied about that kind of look like a very complex integrated circuit that would more properly come out of Silicon Valley than out of the United States Capitol.

By having an independent Deputy IG, you know, he would not have the status of being an IG—meaning one was appointed by the President and confirmed by the Senate—but would have the independence of an IG basically to call matters as that official saw those matters. So I think that, you know, what we did was kind of a compromise in this to have this Deputy IG who has got the functions for civil rights and civil liberties to be in the same box but to give that person at least some independence in actions relative to investigations falling under their jurisdiction.

Ms. DELAURO. A visa question. The committee recommended processing functions in State Department. I commend the decision. I have a couple of questions. How will State coordinate with the Department of Homeland Security to look over visa applications to determine which ones should be refused? Who determines if an application will be bumped to State? Will they all go to State? Who has the final jurisdiction if there is a disagreement?

Mr. SENSENBRENNER. Ms. DeLauro, I will be very honest. I did not vote for the Hyde amendment that set up what is in the Judiciary Committee's amendment. I do favor transferring the functions of visa issuing into the Department of Homeland Security because that essentially is a security issue and should not be a foreign policy issues.

Having voted against the amendment, I can't give you the most objective assessment, but my fear is that the amendment that Mr. Hyde proposed and which was adopted here as well as in the IR Committee and in the Government Reform and Oversight Committee kind of is a two-headed animal dealing with visa-issuing questions of people who might be of questionable security should they enter the United States. I don't think it is exactly clear on who will have the final say on whether an applicant that falls into a watch list type category or comes up with funny answers in a visa interview will make the determination on whether the visa application is approved or rejected.

So I can't answer that question, and I do think that this needs some clarification.

Ms. DELAURO. I just have one more quick question, and then I will be done.

Chairman ARMEY. One more quick question.

Ms. DELAURO. Are there plans to put the INS reforms passed by the House in place? Well, are there plans to put the reforms that were passed—is that—are those reforms going to go into the—.

Mr. SENSENBRENNER. Before you came, Ms. DeLauro—.

Ms. DELAURO. I apologize.

Mr. SENSENBRENNER. What the Judiciary Committee recommended is to keep services in Justice. The fear that we have is that if INS services go into an agency that is even more devoted than the Justice Department to border security and enforcement and with the broad reprogramming funds authority that the administration has requested in this bill, the chance of services being treated as more of a stepchild than under the present arrangement is even greater.

You have to realize that the INS services end are dealing with legal aliens in the United States. They are people who want to obey our laws. They are not terrorists. They ought to be treated promptly and professionally, which is not the case at the present time.

The Jordan Commission originally recommended that services and enforcement be put in two separate agencies. We couldn't do it with the INS reform bill that was passed by the House, but we do it here by keeping it in Justice and then bumping up the person who would oversee the services to an assistant attorney general level so he would be equal with civil rights and criminal and antitrust and civil and the other divisions in DOJ.

Ms. DELAURO. Thank you very, very much, Mr. Chairman, and thank you for your thoughtfulness in this process.

Chairman ARMEY. Thank you.

We have Mr. Portman from Ohio and Mr. DeLay from Texas.

Mr. PORTMAN. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate your being here and the thought you have put into this. A couple of quick questions, and I will try to be brief.

With regard to the Inspector General—getting back to that for a moment—you have recommended a Deputy Inspector General for Civil Rights. Are there any other agencies that have a Deputy Inspector General for Civil Rights to your knowledge?

Mr. SENSENBRENNER. I am not aware of any other agencies that do. Of course, we do have a Civil Rights Division in the Justice Department that has got extremely broad authority.

The reason we have recommended a Deputy—an independent Deputy Inspector General for Civil Rights is, given the sensitivity of this new homeland security agency and the fact that, you know, it will be dealing with issues that pose civil rights questions much more often than any other department of the Federal Government, including the existing Justice Department, and that is why the feeling of the Judiciary Committee is that there had to be a watchdog over that and a place where complaints of civil rights violations could be dealt with very promptly and professionally. Because if there are rogue agents or employees at the new Department of Homeland Security that trample on the Constitution and rights guaranteed by law, I think we are all going to want to put a stop to that as quickly as possible; and one of the best ways to do that is to have an independent Deputy IG that would deal with those kinds of allegations.

Mr. PORTMAN. Mr. Chairman, we have heard earlier this week and even as recently as this afternoon from some of our colleagues about the Secret Service and where it ought to be. Governor Ridge believes it is appropriate that it be part of the new homeland security agency. Some of our colleagues who looked into this issue over the years really, not just the weeks or months, have said they think that because of the functions the Secret Service has, particularly the increasing function it has with regard to major events like the Super Bowl, like the Olympics, which were related to a terrorist threat in both cases, that it ought to be part of this agency.

Your proposal, as I read it, would move the Secret Service from the Treasury Department but would put it instead at the Justice Department and not in the Department of Homeland Security. Can you just speak briefly about that, why you think that is important?

Mr. SENSENBRENNER. The primary role of the Secret Service is the investigation of financial crimes and counterfeiting and protection of certain designated government officials, principally the President and the Vice President, and do not have anything to do with terrorist threats. In fact, someone who joins the Secret Service as an agent has to spend at least 7 years in the financial and counterfeiting end of the Secret Service before they can even apply to go onto the protection detail.

What agency is designated to investigate terrorist threats on major events like the Olympics and the Super Bowl is the call of the President. The role of the Secret Service has traditionally been law enforcement on the financial crimes, which I don't think has anything to do with Homeland Security, as well as the protection of government officials. So the President can designate some other branch in the Department of Homeland Security. But sticking the people who investigate the counterfeitings and identity thefts and financial mismanagement into an agency other than the Justice Department is going to result in a duplication and bifurcation of those services which we felt was not a good idea.

Mr. PORTMAN. Thank you, Mr. Chairman.

Chairman ARMEY. Mr. DeLay.

Mr. DELAY. Well, being one of last of the questioners, Mr. Chairman, you always get your questions asked; and Mr. Portman just asked my question about the Secret Service. So I will have to defer to the answer that you gave, Mr. Chairman; and I have no further questions.

Chairman ARMEY. Mr. Chairman, I also have no further questions. Again, let me thank you and your committee for your continuous outstanding work and appreciate your time and patience today.

Mr. SENSENBRENNER. And thank you for taking me out of order so I can do more outstanding work in an all-day markup tomorrow.

Chairman ARMEY. My pleasure.

This committee stands in recess until 10 tomorrow morning.

[Additional material submitted for the record follows:]

QUESTIONS SUBMITTED FOR THE RECORD TO THE HONORABLE NORMAN Y. MINETA, SECRETARY OF TRANSPORTATION, BY THE HONORABLE ROSA L. DELAURO

Question. Protecting our nation's ports is a critical piece of homeland security. Currently, Customs is only able to screen 2 to 3 percent of the large cargo containers that enter the United States. That leaves us highly vulnerable to the importation of any number of threats from abroad.

How will moving Customs into the new department improve performance?

Does the President's proposal include adequate funding to inspect all Customs-related products?

Will the new department implement new strategies to secure our ports?

Answer. The proposed Department of Homeland Security will bring unity of effort and unity of command to homeland security, with clear lines of authority to get the job done. By bringing together the various Federal entities that support port security, the Department will have a common operational picture of available resources, a more comprehensive view of all known threat information, and a command and control structure that swiftly exerts tasking and initiates coordination to best employ available enforcement and security resources against specific threats. The Administration agrees that protecting our nation's ports is critical to homeland security. As such, moving the Customs Service to the new department is a necessary step to improving port security. Proposed legislation in both the House and the Senate reflects Congressional agreement that the Customs Service is integral to the new department.

The Administration presently has in place two important initiatives to address port security. First, the Department of Transportation and Customs established the Container Working Group, and the "Operation Safe Commerce" Interagency Working Group to address cargo security measures and to prototype technology and procedures to improve the security of the supply chain. Second, the Customs' Container Security Initiative and Customs Trade Partnership Against Terrorism (C-TPAT) seek to foster partnerships with various entities, including businesses and foreign ports, to protect the security of cargo entering the United States while improving the flow of trade. The cooperation and synergies built through these initiatives would be strengthened in the proposed Department of Homeland Security.

At the same time, the National Strategy for Homeland Security identifies initiatives to improve port security. The new Department would work to implement these initiatives and others that arise as the difficult task of identifying threats and analyzing vulnerabilities proceeds.

Question. The Administration proposes to transfer the Coast Guard to the new Department of Homeland Security. Rather than moving the Coast Guard, my colleagues on the Transportation Committee have recommended creating a new undersecretary for homeland security to act as a liaison to the new department.

If the Coast Guard is transferred to the new department, how will you ensure that this move will not disrupt the Coast Guard's long time relationships and coordination with other Federal, State and local agencies?

Answer. The Coast Guard is unique in the Federal government as a military service that is also a law enforcement agency, a regulating agency, a protector of the environment, and provider of humanitarian services. The success in each mission area is built not only upon the exemplary men and women of the Coast Guard, but also the extensive supporting and supported relationships at the Federal, State,

international, and local levels, with non-governmental organizations, and public and private interests. This is why it is so critical, and the President's proposal calls for, the Coast Guard moving intact so these relationships can continue to be exercised every day. These relationships will easily transition with the Coast Guard to the new Department. The President's proposal mirrors the approach used in 1967, when the Coast Guard was transferred intact to the new Department of Transportation from the Department of the Treasury. The Coast Guard was the only element of the new Transportation Department that had existed elsewhere in the Government that was not re-created in the new DOT. Its "whole cloth" transfer then taught us a great deal about how to transfer it this time with a minimum of disruption to its operations and relationships.

Question. If the Coast Guard were a part of the Department of Homeland Security, how will the Administration make sure that missions unrelated to homeland security, like search and rescue missions, are not given second priority?

Answer. In proposing the Department of Homeland Security, the President recognized that the new Department would have a number of functions that are not directly related to securing the homeland against terrorism. The Administration has stated repeatedly its commitment to ensuring that missions unrelated to homeland security suffer no detriment. Specifically, The Secretary of Homeland Security will assume responsibility for all of the Coast Guard's statutory responsibilities to conduct both maritime homeland security (MHLS) and non-MHLS missions and will be held accountable for their successful performance. A robust Coast Guard, properly funded as contained within the President's budget requests, will continue to effectively execute all missions regardless of the Service's departmental organizational location.

Question. Since the Coast Guard's responsibilities will most likely increase if it is included in the new department, will the Administration request more funding for the Coast Guard in future budgets?

Answer. The Administration's budget requests have supported the Coast Guard's requirements and will continue to do so in the Department of Homeland Security.The Coast Guard's required operational capabilities have already increased as a result of increased emphasis on Maritime Homeland Security. The additional responsibilities that Coast Guard has assumed since 9/11/01 are determined by the nation's needs and will not be driven by the Coast Guard's reorganization under a new department. In the long run, the co-location of the homeland security component agencies in a new department and the consolidation of their administrative functions and business systems can produce savings that may reduce budgetary needs below what Coast Guard would require if it remained in the Department of Transportation.

[Whereupon, at 6 p.m., the committee was recessed, to reconvene at 10 a.m. on Wednesday, July 17, 2002.]

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