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NOMINATION OF HON. MICHAEL CHERTOFF

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON THE

NOMINATION OF HON. MICHAEL CHERTOFF TO BE SECRETARY OF HOMELAND SECURITY, U.S. DEPARTMENT OF HOMELAND SECURITY

FEBRUARY 2, 2005

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CONTENTS

	Page
Opening statements:	
Senator Collins	1
Senator Lieberman	3
Senator Warner	4
Senator Levin	5
Senator Coleman	6
Senator Akaka	7
Senator Bennett	10
Senator Dayton	10
Senator Domenici	11
Senator Lautenberg	12
Senator Carper	43
Prepared statements:	
Senator Voinovich, Coburn, and Pryor	59

WITNESSES

WEDNESDAY, FEBRUARY 2, 2005

Hon. Jon Corzine, a U.S. Senator from the State of New Jersey	14
Hon. Michael Chertoff, to be Secretary of Homeland Security, U.S. Department of Homeland Security	16

ALPHABETICAL LIST OF WITNESSES

Chertoff, Hon. Michael:	
Testimony	16
Prepared statement	72
Biographical and financial information	74
Corzine, Hon. Jon:	
Testimony	14
Prepared statement	65

APPENDIX

Article from *The Washington Post,* January 31, 2005, entitled "Civil Service Reform"	61
Series of three FBI E-mails submitted by Senator Levin	62
Responses to pre-hearing questions for the record for Mr. Chertoff	87
Responses to pre-hearing questions for the record for Mr. Chertoff from:	
Senator Levin	236
Senator Lieberman	247
Responses to post-hearing questions for the record for Mr. Chertoff from:	
Senator Collins	249
Senator Collins on behalf of Senator Specter	257
Senator Stevens	261
Senator Coleman	262
Senator Coburn	264
Senator Chafee	265
Senator Domenici	267
Senator Lieberman	272
Senator Levin	284
Senator Akaka	290
Senator Carper	303
Senator Lautenberg	307
Senator Pryor	308

Page

LETTERS OF SUPPORT OR CONCERN SUBMITTED FOR THE RECORD FROM:

International Union of Operating Engineers 310
Airforwarders Association (AfA) 311
Honduran Unity—Unidad Hondurea 314
Republican Governors Association 315
Fraternal Order of Police 318
National Association of Emergency Medical Technicians 319
Hispanic Association of Colleges and Universities (HACU) 320
National District Attorneys Association 321
Georgia Association of Emergency Medical Services, Inc. 322
National Asian Pacific American Bar Association 323
ASIS International 325
National Sheriffs' Association 326
Federal Law Enforcement Officers Association 327
Port Authority of New York and New Jersey 329
Numerous organizations 330

NOMINATION OF HON. MICHAEL CHERTOFF

WEDNESDAY, FEBRUARY 2, 2005

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:03 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Susan M. Collins, Chairman of the Committee, presiding.

Present: Senators Collins, Coleman, Bennett, Domenici, Warner, Lieberman, Levin, Akaka, Dayton, Carper, and Lautenberg.

OPENING STATEMENT OF CHAIRMAN COLLINS

Chairman COLLINS. Good morning. The Committee will come to order.

Today, the Committee on Homeland Security and Governmental Affairs will consider the nomination of Judge Michael Chertoff to be the Secretary of the Department of Homeland Security. This is an extraordinarily challenging job, a job that requires an individual with extraordinary leadership skills, extraordinary dedication, extraordinary energy, and at times, extraordinarily thick skin.

Before I begin, I would like to express my gratitude to the person Judge Chertoff seeks to replace. Following the attacks of September 11, Tom Ridge answered the call of service to his country. At a time when homeland security was little more than a concept, Tom Ridge stepped forward to begin the monumental task of making it a reality. He is a pioneer and a patriot, and on behalf of all Americans, I thank him and wish him great success in his future endeavors.

Judge Chertoff now steps forward to answer that call. The strengths and experience he brings are impressive. He has devoted a significant part of his life to public service, as a Federal prosecutor in New Jersey, then as head of the Justice Department's Criminal Division, and now as a Federal judge. As the overwhelming vote for his confirmation 2 years ago demonstrated, he is well respected on both sides of the aisle. That is also evident from the fact that two of our distinguished Democratic colleagues are here to introduce him this morning.

Since September 11, Judge Chertoff has established himself as a leading expert on the legal and national security issues surrounding the war on terrorism.

The purpose of this hearing is, of course, to evaluate the qualifications, integrity, and positions of the nominee. It is inevitable and necessary that we do so in the context of where the Depart-

ment currently stands and where we want it to go. To do that, I believe it is important that we should also consider the context in which the Department was born.

In the immediate aftermath of September 11, America was a Nation determined to defeat terrorism, but still feeling its way toward an effective response. We knew from the start that ensuring our Nation's security should not come at the cost of our civil liberties, the very freedoms that Americans cherish and that define us as a country. In those perilous, uncertain days, we also knew that we needed to take decisive action immediately to protect our citizens from further attacks. Some now question whether we tilted the balance too far towards security. It is always appropriate to ask that question, but it is also important to remember the atrocities that led us to take action and to remember that the threat continues today.

One of the difficult balancing questions that has been raised in conjunction with this nomination is the matter of interrogating those detained in the war on terror. In his responses to our written questions, Judge Chertoff makes absolutely clear that he believes that torture is wrong, no matter where it occurs. Of course, that is exactly right. But the larger issue of security versus liberty is much more complex and I very much look forward to discussing this balance with Judge Chertoff today.

Since it began operations nearly 2 years ago, the Department of Homeland Security has made considerable progress in its mission of protecting our Nation against terrorism and improving our ability to respond should an attack occur. The melding of 22 Federal agencies with some 185,000 employees has proven to be a task as difficult as it sounds, but it has not been the impossibility that some predicted. We are, in fact, better protected today and our ability to respond is greatly improved.

This new year begins, however, with fresh reminders of the great challenges that lie ahead. A week ago, this Committee held an oversight hearing to assess those challenges and they are considerable. From the lack of long-range strategic planning to an inefficient management structure to unexplained delays in the Transportation Worker Identification Credential, our expert witnesses made a powerful argument that homeland security remains very much a work in progress.

The Government Accountability Office's high-risk list released last week bolsters that assessment. Many of the difficulties the GAO foresaw 2 years ago in consolidating 22 separate agencies into one new and cohesive Department remain to be overcome. Now, the GAO additionally finds that information sharing, both within the Department and with other departments and other levels of government, is a weakness that also must be addressed.

There are other important challenges that the new Secretary will face. They include strengthening the security of our ports, ensuring adequate funding for our first responders, fostering stronger relationships with State and local law enforcement, and securing our critical infrastructure. The new Secretary will have a full plate.

The Committee looks forward to hearing Judge Chertoff's views about the direction and the future of the new Department as well as his own priorities.

Senator Lieberman.

OPENING STATEMENT OF SENATOR LIEBERMAN

Senator LIEBERMAN. Thanks, Madam Chairman, and welcome, Judge Chertoff. Madam Chairman, I was thinking as I was listening to your opening statement that after our work together on the intelligence reform bill last year, you said it would be dangerous if we ever didn't agree on something because we know so much about how each other thinks. Your opening statement proves that either that is true or we have the same person drafting our opening statements. [Laughter.]

So I will speak more briefly than I had intended. The fact is that the Department of Homeland Security, in the 2 years since this Committee led the way in creating it, has become the leader in the U.S. Government in protecting the security of the American people here at home.

And you are absolutely right, Senator Collins. Secretary Ridge deserves credit for beginning the enormous transformation that the Homeland Security Department's creation required, and for enabling us all to say today that we are safer than we were on September 11, 2001.

Yet as you know, Judge Chertoff—and as we heard from the panel of experts and independent analysts that we had in here last week—significant challenges await the next Secretary, ranging from the development of a clear strategic plan—and I do not see how we can ask you to do the job that we want you to do and that I know you want to do, without having a plan which includes setting of priorities for the Department in a time when you just can not do everything right away—to improving the Department's day-to-day operations.

We heard some very powerful testimony that the position of Secretary of Homeland Security and those who serve the Secretary as deputies may not have all the authority that they need to carry out their responsibilities that we have given them. They may not, in fact, have within their own offices the staff that they need to carry out their responsibilities that we have given those offices.

There was a suggestion made last week by several of the experts in regard to the lack of a strategic plan and priorities for the agency that we establish an Under Secretary for Policy and Planning. I gather that you have expressed some interest in the creation of that position. I look forward to hearing your thoughts on it today.

But most importantly, the Department has to receive adequate financial support to carry out the enormous responsibilities we have given you in law to protect the American people from a terrorist who will strike us where we are vulnerable. And in an open society, there are many vulnerabilities. We are never going to be able to close them all against fanatics who, as someone else has said, hate us more than they love their own lives. They are prepared to take their own lives in destroying us.

But we know that there remain persistent vulnerabilities that we have to close at our borders and ports, within our rail and transit system, at the Nation's core energy, telecommunications, water, transportation, financial, and chemical industry networks that exist. The Coast Guard is in dire need of a modernized fleet. The

administration and we must do more to prepare the Nation for a possible bioterror attack that could put millions of Americans at risk.

The bottom line is, this Department needs more authority from us to help you do what we have asked you to do in our defense. It needs more money. I just can not cloud that in any other way. I know how difficult it will be in a resource-limited environment, but we have the best military in the world and therefore the best international security operation in the world today because we have invested in it, and we will only have the same here at home if we invest in it.

To do that, we are going to have to regain some of that sense of urgency that propelled us following September 11, 2001, and we are going to have to express that urgency in the way we support and you administer the Department of Homeland Security.

Judge Chertoff, I have examined your record. I have had the chance to speak to you at some length. You have served your country with distinction. I greatly appreciate your willingness to leave the circuit court to take on these truly awesome responsibilities.

I think you know that a number of questions have been raised in recent days, as the Chairman indicated, about your role in the administration's prosecution of the war on terror, most recently with regard to advice you provided regarding the laws prohibiting torture, advice you may have provided while you were head of the Justice Department's Criminal Division. I know that you discussed that issue with the Committee's staff extensively on Monday. Today, I think it is important that you discuss these issues publicly before the Committee and the American people.

My interest here is, first, to determine what your role was in those various policies, what your opinions are today with regard to those. But then, second, notwithstanding whether we agree or disagree with you about your course of conduct in those matters or your opinions today, if they in any way affect your ability to assume the responsibilities for which you are nominated. Otherwise, beyond those questions, I would say you are extraordinarily well qualified for the position.

I look forward to the testimony and ultimately I look forward to working with you to keep America and the American people safe from terrorist attack. Thank you.

Chairman COLLINS. Thank you, Senator Lieberman.

As is customary, we will be following the early bird rule and I will now call upon the other Members for opening statements, not to exceed 3 minutes in length. Senator Warner.

OPENING STATEMENT OF SENATOR WARNER

Senator WARNER. Thank you, Madam Chairman.

Welcome, Judge. We had a wonderful visit in my office, exchanged our respective views very cordially and very forthright. We both started our careers as law clerks for the Federal judiciary and you succeeded. You ended up on the bench. This country owes you a great debt of gratitude, having resigned that position to which you aspired, I presume most of your life, to take on the new challenges of this day. So as a citizen, we thank you for that, and your family.

I would simply say, Madam Chairman, that we take notice that the U.S. Senate has confirmed this extraordinary public servant on one occasion and I anticipate, and I intend to give you my support, you will be confirmed again.

Once in office, I will try and offer to work with you to see that there is a seamless and full cooperation between the Department of Defense, over which I have some responsibilities together with several members, the chairman and ranking member on my committee, the Armed Services, and your new Department, because America deserves no less than the full coordination of every single asset we have to perform your challenging mission. Good luck.

Chairman COLLINS. Thank you, Senator. Senator Levin.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Thank you, Madam Chairman, and welcome, Judge Chertoff.

The new Secretary of Homeland Security will have an enormous challenge, including strengthening the programs that fund our domestic preparedness and response capabilities, protecting our borders and ports, and improving our transportation security, and taking all the necessary steps to enhance our collective security without eroding our core values.

I want to thank our Chairman and Ranking Member for making reference to Governor Ridge and the dedication that he showed towards that challenge. I know that you both spoke for really, I am sure, every Member of this Committee and every member of Senate and the people of the United States in expressing our gratitude to Secretary Ridge.

There are a lot of funding issues that relate to the Department that Judge Chertoff will hopefully address. The State Homeland Security Grant Program, which is one of the most important sources of funding for our first responders, was actually cut last year. The administration requested only $700 million for the program, which had been funded at $1.7 billion in fiscal year 2004. Congress stepped in and increased the amount to $1.1 billion in the final Homeland Security appropriations bill. But if we are serious about homeland security, we have to fund it.

We also need to change the way funding is distributed by allocating it to those areas where the threat and the risk of attacks are most significant. The existing funding formula used to allocate funding in some of the largest Department of Homeland Security grant programs has led to some irrational and some inequitable results. Secretary Ridge opposed the formula that led to those results and the administration said it would propose that the funding be allocated more on risk.

I look forward to Judge Chertoff's perspective on those funding issues, as well as a number of issues which have been raised.

I raise issues which he addressed as head of the Criminal Division at the Department of Justice. He headed the division from May 2001 until March 2003. Judge Chertoff, you have a reputation of being a thoughtful person and a straight shooter, and the presence of these two Senators from New Jersey here today in support of your nomination is surely a testimony, an eloquent testimony, of that reputation.

The Justice Department's Office of Legal Counsel, which is a different division from yours, took actions that were troubling during the period in which you headed the Criminal Division, most notably its promulgation of legal theories circumventing legal prohibitions against torture and inhumane treatment of detainees. Judge Chertoff's role in the development of those legal theories needs to be clarified. Those theories helped to create an environment in which the abusive behavior of prisoners was either permitted or was perceived to be permitted. That distortion of our legal and moral obligation to treat prisoners humanely undermines the safety of our troops. It also undermines our standing in the world.

Judge Chertoff's written answers to pre-hearing questions state that he reviewed a draft of the August 1, 2002, Office of Legal Counsel memorandum that interpreted the definition of torture prohibited under our anti-torture laws. That discredited August 2002 memorandum defined what constitutes prohibited torture very narrowly, including the claim that, "physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily functions, or even death."

Judge Chertoff has acknowledged that he was consulted on how he, as chief Federal prosecutor, would apply the law. Last weekend, *The New York Times* reported that the Justice Department's Criminal Division, then under Judge Chertoff, was consulted on several occasions by the CIA as to whether their agents could be subject to criminal prosecution for using specified interrogation techniques, and I hope Judge Chertoff will elaborate on the advice that he and the Criminal Division provided regarding the definition of torture and the legality of specific interrogation techniques.

There are other events that were reported to have occurred during Judge Chertoff's tenure at the Department of Justice that I hope he will address, as well. For example, a report from the Department's Inspector General stated that some alleged immigration law violators detained following the September 11 attacks were prevented from obtaining counsel in a timely fashion.

So again, I thank you, Madam Chairman and Senator Lieberman, for your comments. I share those thoughts of yours not only relative to Governor Ridge but relative to the principal role of this agency which Judge Chertoff is going to head and I believe can head with distinction.

Chairman COLLINS. Thank you. Senator Coleman.

OPENING STATEMENT OF SENATOR COLEMAN

Senator COLEMAN. Thank you, Madam Chairman. I want to thank you for moving so quickly on this very important hearing that we are having today. Thank you for your leadership.

I want to join in those who have acknowledged and applauded Tom Ridge. No one expects the Secretary of Transportation to prevent every highway death. No one expects the Director of the EPA to prevent all pollution. But we expect the head of Homeland Security in this country to make sure that America is safe and not failing, would have a tremendous impact. So it is an extraordinarily difficult job and Secretary Ridge did an extraordinary job.

Judge Chertoff, there is no question in my mind about your qualifications, and the Chairman laid out that this hearing is about qualifications and integrity of your position in terms of leading this Department. I think you come with extraordinary credentials.

The one concern I have as a former mayor, as a local official, and reflecting on your background as a Federal prosecutor and as a Federal judge, as working in the Justice Department, is the level of coordination between this Department and folks at the local level. I remain deeply concerned about that. Part of it goes to funding. We had a situation in Minnesota where the Twin Cities, as they are known in the Twin Cities, perhaps not in Washington, but as the Twin Cities, Minneapolis gets funded and St. Paul gets zeroed out. And the level of communication with local elected officials, in that instance, the mayor is called the morning of the announcement. There is no communication, no consultation.

As I speak to law enforcement folks, first responders, they still raise concerns today about the level of communication. International Falls, Minnesota, is in a rural area. It is the coldest place in the United States. It is one of the 50 busiest land ports of entry in the United States. We have two nuclear facilities, one in Red Wing, Minnesota, a rural area on the Mississippi River, one in Monticello, outside the urban center and considered a rural area. And the level of communication between folks at the Federal level and the local level has to be better than it is.

So I look at that funding issue that we had and the lack of communication, lack of understanding. I speak to local law enforcement and the concerns are there and they are still there. So certainly in my questioning, I hope we can discuss your vision for what can we do to improve the level of communication so that our real first responders know what is going on, are in consultation, are in contact, are consulted and have the level of confidence they need to be the ones who, God forbid there ever is an attack on our homeland, have the ability to respond in the right way.

So with that, I do look forward to this hearing. Thank you, Madam Chairman.

Chairman COLLINS. Thank you. Senator Akaka.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Madam Chairman. I want to thank you for expediting this hearing of the confirmation of Judge Michael Chertoff.

I want to welcome Judge Chertoff to this Committee with my congratulations on your nomination. I also want to welcome your family who are present here today. I am certain that they all share your pride in being nominated as Secretary of the Department of Homeland Security.

My colleagues and I will lay before you a variety of issues that concern us and suggest solutions, just as we did with your predecessor, Secretary Ridge, who led this new agency with strength and grace. DHS remains an agency still in the process of being created.

Madam Chairman, I would ask that my full statement be placed in the record.

Chairman COLLINS. Without objection.

[The prepared statement of Senator Akaka follows:]

PREPARED STATEMENT OF SENATOR AKAKA

Judge Chertoff, please accept my heartiest congratulations on your nomination. I welcome you and your family today. I am certain they all share your pride in being nominated as Secretary of the Department of Homeland Security (DHS).

Today's hearing presents a special opportunity for you to articulate your vision of how DHS will carry out its mission of defending the Nation's borders and protecting us from terrorism while defending our civil liberties. The challenges you will face, if confirmed, are demanding and will require you to search for answers beyond the commonplace and apply your impressive skills to this new job.

My colleagues and I will lay before you a variety of issues that concern us and suggest solutions just as we did for your predecessor, Secretary Ridge, who led this new agency with strength and grace. But DHS remains an agency still in the process of being created. The December 2004 DHS Inspector General report on management challenges outlines an array of worrisome problems—some of which are to be expected when 22 entitles are combined in a single department.

I have a number of concerns, some of which I will summarize today.

I want your assurance that you will defend the Constitution to safeguard our civil liberties. The price of security should never erode our constitutional freedoms, which are essential to the preservation of this democracy.

When we met a couple of days ago, you and I talked about the just-released personnel regulations covering the 180,000 men and women who staff DHS. To make these new regulations work, there must be significant and meaningful outreach to this dedicated workforce, their unions, and their managers.

With just about half of the Federal workforce eligible for retirement in the next 5 years, DHS and other Federal agencies must promote a sense of trust and a sense of worth among its employees.

Madam Chairman, I wish to insert into the record an editorial from the January 31, 2005,[1] *Washington Post* that goes straight to my concerns about the new DHS personnel rules: Implementing a pay for performance system without a strong performance management system in place, internalizing employee appeals without independent members and adequate external oversight, and the continued position by some that belonging to a union is a threat to national security.

Judge Chertoff, it will be up to you to make sure that DHS recruits and retains the best and brightest to be on the front lines of our national defense.

DHS has been given, by statute, a prominent seat in the Intelligence Community. But the Department will need to earn the respect of that community through the quality of its analysis and its response to threats.

The Department must have the financial management systems and practices in place to provide meaningful and timely information needed for sound and efficient management decisionmaking. I am particularly pleased that a provision similar to legislation I sponsored with our former colleague, Senator Peter Fitzgerald, is now law, thus bringing DHS under the Chief Financial Officers Act and ensuring a Senate-confirmed CFO who reports directly to the Secretary of DHS.

Judge Chertoff, when we met earlier this week we also discussed my home State of Hawaii. Given the State's unique geographic location, nearly 2,500 miles from the West Coast, there are unique challenges to securing Hawaii from asymmetric threats. For example, when disaster strikes, Hawaii cannot call on neighboring States for assistance due to the distance and time differences. Our eight inhabited islands must be self-sufficient. Secretary Ridge recognized this and took the opportunity to visit Hawaii. I hope you will go there, too.

Hawaii, as an island State, depends heavily on air travel. We are waiting for TSA funding to install in-line Explosive Detection System (EDS) machines. This need is critical at all our airports. Honolulu International Airport serves more than 20 million travelers each year, and each of the other islands have international travelers as well. In fact, the neighbor islands combined serve as many visitors as Honolulu. Because tourism is the State's largest industry, crowded lobbies due to long wait times pose a threat to this critical economic sector.

Judge Chertoff, I look forward to a productive working relationship with you. Congress was the impetus for creating DHS. We want to work with you to ensure the Department carries out its mission. I am pleased you have stressed the need to cooperate closely with Congress, particularly this Committee, and to provide the information we need to do our job. You will find this Committee very detailed-oriented; but details are necessary to conduct effective oversight in order to provide you with the resources and support you will need to be successful.

Thank you Madam Chairman. I look forward to hearing from our nominee.

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[1] Article from *The Washington Post,* appears in the Appendix on page 61.

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Chairman COLLINS. Without objection.

Senator AKAKA. That article talks about implementing a pay-for-performance system without a strong performance management system in place, internalizing employee appeals without independent members and adequate external oversight, and the continued position by some that belonging to a union is a threat to national security.

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Thank you, Madam Chairman.

Chairman COLLINS. Thank you. Senator Bennett.

OPENING STATEMENT OF SENATOR BENNETT

Senator BENNETT. Thank you, Madam Chairman.

I first met Michael Chertoff as a very green, very new Member of the U.S. Senate when Senator Riegel was chairing the Whitewater hearings and Michael Chertoff came in to inform those of us that were unburdened with a legal education as to what was really going on. I was tremendously impressed with him at that time, learned a great deal from him, and have followed his career with great interest.

I am happy to make it clear that I will be a very enthusiastic endorser for his nomination. Mr. Secretary, I think it is, echoing what Senator Warner said, a demonstration of your willingness to serve your country that you will give up a lifetime appointment with a permanent pension to step into a situation that can only be described as dysfunctional.

That in no way is a criticism of Secretary Ridge. I said to this Committee and my colleagues when the Department was created, let us be under no illusions that it will work for at least 5 years. The past history of departments put together like this demonstrates that the administrative challenge of making something like this work requires a tremendous amount of time and a tremendous amount of talent, and I agree with those Senators who said that Secretary Ridge has handled the first 2 years with great distinction. But the challenge is still just as great and I, for one, am grateful to you, Mr. Secretary, for your willingness to take it on.

I will have some specific questions about the area of greatest concern that I have, which is cyber security, which I have discussed with the nominee in the confines of my office, and I will save that for the questioning period.

Chairman COLLINS. Thank you. Senator Dayton.

OPENING STATEMENT OF SENATOR DAYTON

Senator DAYTON. Thank you, Madam Chairman.

Senator Bennett mentioned a lifetime appointment and a permanent pension. He didn't mention you also wouldn't have to appear before Senate committees, but all the more to your credit that you are willing to take this assignment on. I apologize for not being able to meet with you. Mad cow disease is one of the priorities in Minnesota, so I apologize that that intervened.

I will save most of my comments for the questioning period, but I do support very strongly what my colleague from Minnesota said. You notice there are two Minnesotans on this Committee, so I will be watching to see if you visit International Falls twice for every one time you go to Honolulu. [Laughter.]

Particularly since this body has in the past debated the need for additional funds for first responders, for local enforcement and re-

sponse efforts and the majority decision was not to provide that additional funding, it is particularly distressing to see these, what appear to me to be very arbitrary and nonsensical elimination of funding for certain areas while others continue at the same or even reduced level.

Senator Levin had mentioned the threat assessment. The people I represent, the threat is omnipresent and telling people in one area that their threat is not real in an era where, as September 11 showed, even the inconceivable is possible, just is not something that I can get away with saying in Minnesota and I defer to my colleagues elsewhere.

I also want to address later the Transportation Security Agency. One thing we are all experts on is flying and getting in and out of airports and the like, and while there have been some improvements there since pre-September 11, there is also, in my view, as a result of some of the management decisions that have been made, less than optimal performance and consistency there.

So again, I will look forward to the chance to question you and thank you very much for your dedication to our country.

Chairman COLLINS. Thank you. Senator Domenici.

OPENING STATEMENT OF SENATOR DOMENICI

Senator DOMENICI. Thank you, Madam Chairman.

Judge Chertoff, I didn't ask you to come up and visit with me before you came here to testify because I had no reason to interview you. I already know you. I will have ample time in this hearing to discuss issues as I see them for my State and we will probably do that in the next couple of days.

I want to hearken back for a minute to about 6 years ago. I was visiting with then-President Clinton. He asked me if I would talk with him about a problem and give him some suggestions. The problem was the Immigration Service and the Border Patrol and he said, "Senator, do you have any ideas on how to fix it up?" Frankly, I said, I wish you could have asked me about any other thing. I just don't know the answer. Our borders are so broken that I don't know what to do about it.

Well, we haven't fixed it. We just packaged it up and gave it to DHS, and then we gave it an additional concern in that we now live in an era of terrorism and our borders take on a huge new level of importance.

I tell you that only because, Judge, you will have an enormous job at DHS. Many of the pieces that we put together in the Department are not functioning properly now, and it will be very difficult to make them function after you inherit them, so I wish you the best.

I hope you know that most of what you have to do is manage a monster. I don't know who the President could have nominated that would have been a natural worldwide, renowned manager. He had a choice and he picked you, not because you are a worldwide, renowned manager, but because you are a very committed citizen. You are very intelligent and every government job you have had, you have done very well. You understand the law, and law enforcement, and that is a big part of this job, so I wish you the very best. There is no doubt in my mind that you will do it well.

But I don't want to join the chorus here who says you need more money. You may need more money, but what we need to do is make sure that you tell us what things you have to do and what things you don't think you have to do, and I must say they are not always consistent with Congress's wishes. That is why I won't talk to you about how you are going to distribute money in terms of first responders. If I were to make you respond to that question today, you might get some Senators angry enough that they wouldn't vote for you on the floor, because the truth of the matter is, you can't distribute first responder money the way all the Senators want it distributed. Some first responder requests do not pose a significant enough risk to be funded. You know that, and you will find it out more the longer you are in office, without question.

I expect you, without telling us how today, to not address every risk that everybody tells you is a threat. I expect you to find a security plan, an overall strategy that tells us how to assess risks, how to fund them and which ones are real threats. Every first responder request is not responding to a risk that is worth funding, no question about it. Everybody that clamors for first responder money knows that, but they want money, even for things that aren't necessarily risks we should be taking care of.

I close with a little story. When I was 16, I had a very bad bone problem with one of my legs. The doctor told my mother that I shouldn't walk around too much, and over exert my leg, and she said, "Oh, don't worry. I will never let him move." And the doctor said, "Well, if you overdo this, you could put him in bed and leave him there, and one day you could wake up to find that he has fallen out of bed and has broken his neck."

So you can't eliminate every risk. I thank you very much for trying. Do the best you can, and good luck.

Chairman COLLINS. Thank you, Senator Domenici, though I am not quite sure what the moral of that story is. [Laughter.]

I appreciate your comments.

We are very pleased this morning to be joined by two of our distinguished colleagues who are here to present the nominee. Senator Lautenberg is a Member of the Committee, as well, so I would first want to see if he has opening comments that he would like to give and then call upon him to begin the introduction of the nominee. I would note to Judge Chertoff that you are very fortunate to have two such distinguished Members here with you today.

OPENING STATEMENT OF SENATOR LAUTENBERG

Senator LAUTENBERG. Thank you very much, Madam Chairman. This might be considered double-dipping because first I get to make my statement and then I get to introduce our distinguished guest and friend.

On September 11, 2001, 700 of the Americans who lost their lives were from our home State of New Jersey. The people of North Jersey could see the smoke rising from the World Trade Centers. The New York-New Jersey region was attacked on that terrible day and our region continues to be most at risk of terrorist attack.

This morning, there was a plane crash at Teterboro Airport, a very busy commercial airport in our State, and as I listened to the report on TV, the first questions that seemed to arise from the

commentators was whether this was sabotage or terrorism. It shows you the sensitivity. If this had happened elsewhere in the country, I doubt that question would have been raised. But when you look at the region where the tragedy struck on September 11 in such proportion that we are still in shock over that day, it tells you something.

Judge Chertoff and I have discussed the FBI's finding that the two-mile stretch between the Port of Newark and Newark Liberty International Airport is one of the most at-risk areas in the entire Nation for terrorist attack. That ought to be a top priority for protection.

Now, Michael Chertoff understands that risk and vulnerability must be the principal yardsticks. I saw his head shaking positively as Senator Levin talked about that and others about the risk factor. Right now, funds are not being distributed strictly on the basis of risk and vulnerability. But I am confident that Judge Chertoff knows that needs to be changed.

One of the recommendations in the 9/11 Commission report states, "Homeland security assistance should be based strictly on an assessment of risks and vulnerabilities and should not remain a program for general revenue sharing." So Senator Corzine and I are drafting a bill to require that all homeland security grants for terrorism prevention and preparedness be based on relative risk, threats, and vulnerabilities, and our bill will follow the recommendation of the 9/11 Commission. It will give the Secretary of Homeland Security the discretion and the authority necessary to distribute Federal resources to those areas that are most at risk and I hope that we will have the support of then-Secretary Chertoff.

So I look forward to working with him on meeting the homeland security needs of New Jersey and the entire Nation.

Madam Chairman, do I slip into my introduction at this point?

Chairman COLLINS. That would be great.

Senator LAUTENBERG. I thank you, because we are so pleased that President Bush has nominated a kind of hometown fellow from New Jersey. Judge Michael Chertoff is one so well suited for this critical position of Secretary of Homeland Security. He has the intellect, we understand that, both academically and as a member of the Court of Appeals. We have seen him in several positions. I had the good fortune to have recommended Judge Chertoff three times. In this case, it is three times and you are in.

We are so lucky to have someone like Michael Chertoff who can come in and take on this task following Secretary Ridge's very arduous task and getting the framework established in the first place. It still has plenty to go, as Michael Chertoff knows, and he is prepared to take on that task.

Judge Chertoff has the experience to be an excellent Homeland Security Secretary, lengthy background in law enforcement, keen understanding of New Jersey and America's homeland security. Judge Chertoff was born in Elizabeth, New Jersey, and distinguished himself academically as an undergraduate and law student at Harvard. After graduating from law school, he served as a law clerk to Judge Murray Gurfein on the U.S. Court of Appeals for the Second Circuit. Following his clerkship on the Second Circuit,

Judge Chertoff served as a clerk to a legendary Justice from our home State, U.S. Supreme Court Justice William Brennan.

In 1990, Judge Chertoff became the U.S. Attorney for the District of New Jersey. During his tenure, which lasted 4 years, he aggressively attacked organized crime, public corruption, health care, and bank fraud. And I particularly appreciate the critical role that he has held in New Jersey, getting the State Legislature to investigate racial profiling in our State. There was an expression that driving while black should not be a crime, and it was a reference to a casual process that had people being stopped for no reason other than the fact that they were people of color. That propelled the bill that I introduced in the Senate to ban racial profiling.

Based on his past performance in so many different jobs, I am confident that Judge Michael Chertoff will be a strong, effective leader of the Department of Homeland Security and I am also confident that he will make sure that States under actual risk and threat of terrorism, including our own home State, obviously, get an appropriate share of Homeland Security funding. It does matter. We have seen reductions in funding in two of our major cities, Jersey City and Newark, substantial reductions, and overall, a reduction of some 30 percent in funding available. We desperately need that help to cope with so many problems that we have in the region.

Madam Chairman, you know that Judge Chertoff currently serves on the prestigious U.S. Court of Appeals for the Third Circuit and I think a good measure of his commitment to public service, as was said by others, is to give up a lifelong appointment on the second-highest court in the land to accept President Bush's call to duty.

So, Chairman Collins and fellow Committee Members, I strongly support Judge Chertoff's nomination. I am proud of him and proud of the fact that he is going to have a chance to serve, bringing his full skills and abilities of considerable proportion to do this job. I urge this Committee to report the nomination to the full Senate as soon as possible and I thank you, Madam Chairman.

Chairman COLLINS. Thank you, Senator. Your endorsement means a great deal to this Committee on which you have served so well. Senator Corzine.

STATEMENT OF HON. JON CORZINE,[1] A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator CORZINE. Thank you, Madam Chairman and Ranking Member Lieberman, and to all the Committee, thank you for allowing me to join in both recommending and endorsing his candidacy and speaking up for an individual who I deeply believe will do an outstanding job as the Secretary of the Department of Homeland Security.

I will say that, hearkening back to the Morris Udall comment that whatever could be said has been said except by who is saying it, so I will be brief and I will submit my formal statement for the record.

[1] The prepared statement of Senator Corzine appears in the Appendix on page 65.

Before I do that, though, I do want to make a couple of comments. First of all, I want to congratulate this Committee for taking on the intelligence reform issue and driving it to conclusion. I think the leadership, both of the Chairman and the Ranking Member and those on the Committee, has been extraordinary service to the country, as well as the efforts of Secretary Ridge in serving as the initial leader of this. So I think those need to be said.

I am sitting next to a remarkable individual. He is one of the most able lawyers I think America has. Senator Lautenberg talked about his credentials. He is intelligent, and as we heard in the 9/11 Commission, we need imagination to be able to deal in protecting the American people. No one, I think, will bring greater intelligence and imagination to this effort than Judge Chertoff.

I know him as an honorable and impartial man. Sometimes people will use that he is a tough, straight shooter. I think that is what we need in this position. He will call them as he sees them. I think the idea that he has demonstrated, as others have mentioned, that he is prepared to give up a lifetime appointment to take on a job that will come with lots of rocks and stones and bows and arrows from all of us is a statement to how committed he is to public service.

This is the third time I have sat at a table recommending Judge Chertoff. I have to admit he is a personal friend and I like the idea he is from New Jersey. But I think this is one of America's most able public servants.

I know you are going to ask questions about detention. You are going to ask questions about torture memos and other issues. I will refer back to the work that I saw done at the New Jersey State Senate level with regard to racial profiling. It was a test of balancing, protecting the American public, or protecting the New Jersey public and our civil liberties. No one could have done that more intelligently and then worked to try to create legislation that would bring that to be addressed in a way that really searched for the right balance.

I have read some of the writings, I have reviewed some of the speeches, and I have had personal conversations about this search for the right balance that, Judge Chertoff, we will certainly talk to you about. I don't think there is anybody better to be looking for this.

Finally, I would just say this is a focused individual, policy-based, objective. I think we need to follow the 9/11 Commission's recommendation on threat and vulnerability assessments. I would like to make that case in the context of New Jersey. As Senator Lautenberg said, we have got this two-mile stretch. Whatever the outcome is, we really need to make sure that we are allocating those scarce resources that Senator Domenici talked about based on the optimization of protecting the American people on threat and vulnerability. I think this is a man that will do it.

I have to lobby for something that I have been fighting for on chemical plant security. We have seen in recent rail issues that the vulnerability that is associated with our infrastructure can be deadly just in its normal course of events, let alone within the context of a terrorist attack.

I hope that when it comes to setting priorities, we will all work to help Judge Chertoff deal with something that I know that he will imbue in how he goes about making his judgments, and I hope we will all help him in the day-to-day operations, the managerial issues that I think come from a colossally difficult job in managing 180,000 people in all of these 22 groups. I think this is the individual that will do as good a job as anybody who could be put forward and I proudly recommend him to the Committee. I hope you will ask great questions about this balancing issue because I think it is the question of our time, but I do think we have the right person and I recommend him. Thank you.

Chairman COLLINS. Thank you very much, Senator.

I would be happy to have Senator Lautenberg come join us on the panel and I would be happy to excuse Senator Corzine if you do need to leave to go on to other events. We thank you very much for being here today to present the nominee.

Judge Chertoff has filed responses to a biographical and financial questionnaire, answered pre-hearing questions submitted by the Committee, and had his financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made part of the hearing record, with the exception of the financial data, which are on file and available for public inspection in the Committee offices.

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath, so Judge Chertoff, I would ask that you stand and raise your right hand.

Do you swear the testimony you are about to give the Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Judge CHERTOFF. I do.

Chairman COLLINS. Thank you. Judge Chertoff, I understand that you have some family members present and I would invite you to present them to the Committee at this time.

Judge CHERTOFF. Actually, my wife, Meryl, is present. She is sitting right behind me.

Chairman COLLINS. We welcome you to the Committee today.

Judge CHERTOFF. I do have two children. They are at home and they should be in school. [Laughter.]

We will find out when I get back.

Chairman COLLINS. Do you have a statement you would like to make at this time? If so, please proceed with your statement.

TESTIMONY OF HON. MICHAEL CHERTOFF,[1] TO BE SECRETARY OF HOMELAND SECURITY, U.S. DEPARTMENT OF HOMELAND SECURITY

Judge CHERTOFF. Thank you. Chairman Collins, Ranking Member Lieberman, and Members of the Committee, I am pleased to appear before this Committee as you consider the President's nomination of me to be Secretary of Homeland Security.

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[1] The prepared statement of Judge Chertoff appears in the Appendix on page 72.

The biographical information and pre-hearing questionnaire of Judge Chertoff appears in the Appendix on page 74.

I want to begin by thanking my family, whom we have just mentioned, for their support and sacrifice.

I also want to thank Senators Lautenberg and Corzine for their introductions. I have known them and I have been friends with them for a long time. They are distinguished public servants and their praise means a great deal to me professionally and personally.

I was deeply honored by the President's decision to nominate me to be Secretary of DHS. As I said at the time of the announcement, if confirmed, I would feel privileged to serve with the thousands of men and women who stand watch protecting America's security and promoting America's freedom.

Since September 11, 2001, the challenge of our generation has been to defend our country against the evil of terrorism while honoring our fundamental commitment to liberties and privacy. We must work together to preserve an America that is safe, secure, and free.

I want to take this opportunity very briefly to outline some of the experiences which I will bring to bear if I am confirmed as Secretary of DHS.

As Assistant Attorney General of the Criminal Division of the Department of Justice from 2001 to 2003, I shared in the management of the Department during and in the wake of the attacks of September 11. As a consequence, I have had the rare experience of managing a critical government organization under the stress of a national emergency. I became fully familiar with the central elements of the war against terrorism, the strategic response, the need to break down barriers to intelligence sharing, the imperative of cooperating with other agencies, including what became the Department of Homeland Security, and the importance of negotiating cooperation with our State and local government officials and our counterparts overseas.

While serving as the head of the Criminal Division, I was required to evaluate information from many intelligence agencies as a prerequisite to operational decisionmaking. As a result, the values and the limitations of intelligence are familiar to me as a manager.

Additionally, I reconfigured many of our component sections to push resources into the field and to increase our operational capacity. My style is to lead by example, and that includes a willingness to get into and understand the challenges faced in the field.

I have also dealt directly with the issue of security at a State and local level. As a young prosecutor, I worked closely with agents from services which have now become part of DHS, including the Customs Service and the Secret Service, and with first responders, such as State police and local police.

As a United States Attorney in the 1990's, State and local officials joined me in fashioning a comprehensive response to addressing urban crime and social problems under programs such as Weed and Seed. I have learned to appreciate the perspectives of State and local officials because I have shared their vantage point, and just as important, from my vantage point on September 11 and in the weeks and months that followed, along with everyone else in America, I saw and honored the heroism and sacrifice of fire fight-

ers, police, and other emergency response professionals. If confirmed, I look forward to working with them to make the great promise of this still young Department a reality for them and those they serve.

I also believe the Secretary of Homeland Security will have to be mindful of the need to reconcile the imperatives of security with the preservation of liberty and privacy. As an attorney representing indigent defendants, as a legislative counsel examining racial profiling, and as a U.S. Circuit Court judge, I have committed to fostering liberty and privacy. If confirmed, I will draw on this background to promote measures that enhance our security while affirming our constitutional values.

Finally, the cornerstone of my leadership philosophy has always been this: Respect those with whom you work. That means invite candid discussion and advice, make prompt decisions, articulate clear goals, expect accountability, and reward service.

If I am confirmed as Secretary, we will work as a Department to improve our technology, strengthen our management practices, secure our borders and transportation systems, and most important, focus each and every day on keeping America safe from attacks. I will be privileged to strive under the leadership of President Bush to accomplish these goals. I will also look forward to working with this Committee and with Congress in pursuit of our shared goal of keeping America secure and free. I cannot promise perfection in our efforts, but I can promise we will work tirelessly and do everything within the law to keep our Nation safe.

I will be pleased to answer questions from this Committee. Thank you.

Chairman COLLINS. Thank you, Judge Chertoff.

There are three standard questions that the Committee asks of all nominees and I would like to dispose of those first.

First, is there anything that you are aware of in your background which might present a conflict of interest with the duties of the office to which you have been nominated?

Judge CHERTOFF. No.

Chairman COLLINS. Second, do you know of anything personal or otherwise that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Judge CHERTOFF. No.

Chairman COLLINS. Third, do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted Committee of Congress if you are confirmed?

Judge CHERTOFF. Yes.

Chairman COLLINS. And Judge, I am going to add a fourth question because this was brought up by several Members. The Committee has several ongoing investigations involving the Department of Homeland Security and many of us have experienced difficulties in gaining access to information and individuals during the course of our investigations, so I am going to ask you, do you agree to cooperate with the Committee's investigations?

Judge CHERTOFF. Yes.

Chairman COLLINS. Thank you, Judge.

We will now start the first round of questions. They will be limited to 8 minutes each. I want to assure each of our Members that there will be a second round, so I would ask you to adhere to the 8 minutes so that every Member gets to speak before it gets too late in the day. But there will be a second round.

Judge Chertoff, many of the Members of this Committee have mentioned that you are giving up a very prestigious judicial appointment, a lifetime appointment on one of the most prestigious courts in the country in order to take over a troubled Department, a Department that has experienced and undoubtedly will experience growing pains. I want to start my questioning by asking you, why are you willing to give up your very secure position to take on such an extraordinarily difficult job?

Judge CHERTOFF. Senator, thank you for the question. I want to begin by saying that the nomination and confirmation by the Senate of my appointment as a circuit judge was the high point of my professional life and I have loved every minute of my service on the Court of Appeals.

But September 11 and the challenge it posed was, at least by my lights, the greatest challenge of my generation and it is one which touched me both personally and in my work at the Department of Justice. The call to serve in helping to protect America is the one call I could not decline, and I have to say, since having begun the process with the announcement by the President of his intent to nominate me, I have been privileged as I travel back and forth from home to Washington, D.C., to have people come up to me and express how much they care about the work of the Department and how important it is to them. I think they have a sense of ownership, unlike any I have ever experienced, and that has redoubled my sense that it was right for me, if I can add value and make a contribution, to put my personal considerations aside and to accept this challenge.

Chairman COLLINS. Judge, speaking as one Senator, I am very impressed with your commitment and your willingness to make that sacrifice for your country. I think it reflects a deep commitment to public service for which I salute you.

In your responses to the Committee's pre-hearing questionnaire, you talked about the balance that I mentioned in my opening statement between liberty and security. In a speech that you gave at Rutgers Law School in 2003, you discussed the balance between the government's need to exercise emergency powers in times of crisis with the need to protect civil liberties and you said the following, "Measures that are easily accepted in the sudden response to overwhelming crisis demand somewhat greater testing in the light of experience. In the heat of the battle, the decision maker has to rely on foresight because he has no hindsight. We should, therefore, not judge him in hindsight, but at the same time, when hindsight does become available, we would be foolish if we did not take advantage of its lessons for the future."

You were involved in developing the Justice Department's investigative strategy in the immediate aftermath of the attacks on our country. In your view, looking back now, did the Department strike the right balance in the policies that it pursued?

Judge CHERTOFF. Senator, let me begin by making the principle I believe in very clear. I believe that we cannot live in liberty without security, but we would not want to live in security without liberty. So we need both of those to fashion the architecture of our civilization going forward.

I believe in the response to September 11, the Department, at least speaking from my vantage point, did everything we could to strike the right balance. But I also know the lesson of history is, as I said in the speech, dealing in a crisis, particularly an unexpected crisis, fashioning a response with the tools that we have at hand, there are inevitably going to be imperfections, and the critical thing is to learn from things that experience teaches us.

In response to our efforts after September 11, I think there has been considerable review of that, for example, by the Inspector General. I have appreciated the opportunity to look at what the Inspector General found and I think there are some lessons which we have learned and can continue to learn as we attempt to get ever closer to what I think is that ideal balance between liberty and security.

Chairman COLLINS. Judge, one of the greatest challenges that I believe that you will face is strengthening the security of our ports. This is an area that I do believe has not received the attention it deserves nor the funding that is needed. The Coast Guard, for example, has estimated that implementing the Maritime Transportation Security Act would cost $7.3 billion over 10 years, yet in the current fiscal year, the Department of Homeland Security will distribute only $150 million in port security grants. That is a huge gap. But that is a major step forward, believe it or not. That was the first budget in which there was funding that exceeded $100 million.

We have three ports in my home State, including the economically strategic port in Maine's largest city of Portland. They still have significant needs in terms of port security. I hear from the director of the port that there is not enough flexibility in the system nor enough funding.

In response to written questions from the Committee, you noted that this is an important area. Can you tell me what you plan to do to improve the security of our ports and will you push for more funding?

Judge CHERTOFF. Well, I am acutely aware, because I also come from a State which has major ports, of how important the issue of ports are from a standpoint of our security. I know the Department has already taken steps forward in terms of the screening and inspection of cargo. I know the Coast Guard has taken steps to improve port security. But I know we have a lot left to do.

My general philosophy on all of these issues of protecting our vulnerable infrastructure is to be disciplined about identifying and prioritizing so that we are not spending all of our effort on one type of infrastructure, for example, aviation, and neglecting other parts, such as ports and cargo.

I do think we need to be flexible. I think we have to have a formula for funding and a formula for lending assistance to State and local governments across the board that takes account of the reality of vulnerabilities and risks in making sure that we are making a

fair allocation, and I think we need to encourage feedback to make sure we are on the right path.

Chairman COLLINS. I recently visited our Nation's two largest ports in California, Los Angeles and Long Beach. Those two ports alone handle some 43 percent of all the containers coming into our country. Just a couple of days after I left, an alert crane operator spotted 32 Chinese nationals in two separate containers who had been smuggled into the country. That really concerns me, because if the smugglers of illegal aliens know to use the container system, then surely al Qaeda has identified that as a possible means of smuggling an al Qaeda cell into our country. Despite all the high-tech cameras and other surveillance techniques and the Department's screening programs, none of those caught these illegal Chinese citizens. It was, in fact, an alert crane operator.

What does that say about the effectiveness of the programs that we have now to ensure that containers have cargo that is harmless to our country and important to our commerce rather than containing threats to our country, such as the makings of a dirty bomb or even terrorists themselves?

Judge CHERTOFF. I share your concern about the story. I read it. I don't know the facts. I think every time there is an instance where we find a penetration of our security, whether it be people coming in through containers or people slipping things into airports, it raises a concern in my mind.

It seems to me these are opportunities to learn. We need to go back and see what this tells us about something that we are not doing and then we ought to make adjustments. And one of the things I would hope to do if confirmed is set about finding out with respect to this and other instances what the lesson is.

Chairman COLLINS. Thank you. Senator Lieberman.

Senator LIEBERMAN. Thanks, Madam Chairman. Thanks, Judge Chertoff.

I want to go to some of the questions that have been raised about things that happened that you may have been involved in while you were head of the Criminal Division at the Department of Justice post-September 11. After September 11 and the attacks, do you recall participating in the development of the investigative strategy at the Department of Justice that led to the detention of a large number of people on immigration violations, I believe over 760 people?

Judge CHERTOFF. Yes.

Senator LIEBERMAN. In April 2003, the Inspector General for the Department of Justice determined that there had been wrongdoing in the carrying out of that policy, and that many of the detainees had been encountered by investigators coincidentally with no connections to leads on terrorism. Others were detained based on anonymous tips from the public suspicious of Arab or Muslim neighbors who, in their opinion, were keeping unusual schedules. Once detained, a significant number of the individuals were not allowed to call their lawyers or their family, and according to the IG, some were physically abused. The detainees were held for an average of 80 days, according to the IG's report, primarily because of FBI delays in clearing them, and in the end, none of the detainees were charged in connection with terrorist activities.

Needless to say, I, and I know most everybody who read the IG's report, was very troubled by the findings. I wanted to ask you now what was your reaction to the report, whether you think mistakes were made in the carrying out of that strategy that you helped devise at the Justice Department.

Judge CHERTOFF. I am happy to answer that, Senator, and if I may, just for a moment, to set the context of the policy as I participated in formulating it.

Senator LIEBERMAN. Please.

Judge CHERTOFF. I remember very vividly in the couple of days after September 11 being struck by the fact that 19 hijackers had seamlessly gotten into the country, gotten on airplanes, and with the exception of the heroism of the passengers in the last plane, had carried out their missions. Based on my experience investigating, it seemed obvious to me that there was a likelihood that there were other people in the country who had assisted them, wittingly or unwittingly, in carrying out their mission.

I also thought, based on the history of al Qaeda, there was a very serious risk that there were going to be other attacks, including, to be honest, attacks that would be worse than September 11.

So the objective, as I saw it, and I think this was generally shared, was to begin the kind of investigation we would normally do but compressed in a very tight time frame and on a huge scale, using in many cases agents who had never had prior experience with terrorism. And the mandate that went out was, follow all of the leads that are generated by the hijackers and their behavior. For example, if we found pocket litter in a rent-a-car that had been used by a hijacker and there are phone numbers, follow the numbers, credit card receipts.

Senator LIEBERMAN. Right.

Judge CHERTOFF. So that was the plan as conceived and I think that it was a reasonable plan under the circumstances.

What I did not participate in was the actual decisionmaking about where people should be detained or how they should be housed.

I did read the IG report when it came out and I was troubled to see that certainly the plan as conceived had not always been executed perfectly. For example, I understand from the report that there were agents who sometimes perhaps took a tip without much foundation and used that as a basis to pursue investigation. I understand that because I know that, particularly in New York, people were laboring under the emotional stress of seeing their colleagues killed, under very difficult physical conditions. But clearly, that is something that is regrettable.

I understand, in fact, was informed at the time there were delays in clearing people, the idea being that everybody who was arrested was in violation of the law, so they were lawful arrests——

Senator LIEBERMAN. They were, and let me just clarify, in violation of immigration——

Judge CHERTOFF. Immigration or criminal laws.

Senator LIEBERMAN. Right.

Judge CHERTOFF. And everybody who was detained was detained in accordance with the law, but nevertheless, the policy was to try to clear people as quickly as possible so that we no longer had to

argue to keep them detained. I understand that process was slower. In fact, I raised it a couple of times with the FBI during the process. But again, they were operating from a position of simply never having had to contend with this kind of pressure.

As far as the reports by the Inspector General concerning people not getting access to lawyers, that was, frankly, not something I was aware of at the time. That is clearly not something that should have happened. And to the extent that there were instances of guards acting in an improper fashion, that is also clearly inappropriate and my understanding is that, I think, probably is under investigation as we speak.

Senator LIEBERMAN. I appreciate your answer. I must say, the part of the IG's report that most agitated me was the fact that people would be held without a right to counsel, which is such a fundamental right in the United States. I appreciate your saying that you thought that was a mistake.

Let me ask you now, as you approach becoming leader of the Department in which the Immigration and Naturalization Service and other entities associated with immigrants are located, what would you do to ensure that similar abuses do not occur again in the future?

Judge CHERTOFF. Well, I know, first of all, that the Inspector General recommended a series of steps. His report came out, I think, a matter of days before I left for the bench, but I believe that some of those proposals had already been put into effect. Others, there was a commitment to put into effect. So clearly, we have to again learn the lessons and put into effect protocols to prevent these kinds of issues from arising again.

Part of it is intelligence and training. Frankly, if we have better databases and people are better trained, and I believe that has happened, the ability to identify who really has a link to terrorism and who doesn't is going to be enhanced. So that is going to eliminate or reduce one set of problems. It also will make the clearance problem become diminished because we will have a better ability to get at databases. We won't be wondering if we have complete information.

I think to the extent, and I think this applies across the board, to the extent we deal with people who are properly and lawfully detained because of legal violations, there should never be any possibility of those people being mistreated by guards. I think that if a clear message is sent through the investigative and disciplinary process, people will understand that a person is presumed innocent. And even if we need to detain somebody in accordance with the law because we are investigating the possibility of involvement with terrorism, that is not an excuse or a license to mistreat that person.

Senator LIEBERMAN. I thank you again for that. Let me say to you that in the aftermath of September 11, as you well know, there was and continues to be a lot of agitation about the Patriot Act and how it was used to abuse individual freedoms. I personally find some but little evidence of that. But I do find some significant evidence that deprivations of due process and rights occurred, as in this case, under immigration law, and that, in fact, immigration law is greatly lacking in some of the fundamental due process pro-

tections that we associate with what it means to be American or be in America and enjoy American protections.

I would just finally ask you if you would consider, with everything else we are asking you to do, to bring to bear in this new position your law enforcement, your legal, and your judicial experience to recommend to the Congress and to the administration steps that can be taken to improve the existence of due process in the conduct of our immigration laws.

Judge CHERTOFF. I would certainly like to work on that, Senator.

Senator LIEBERMAN. Thank you.

Chairman COLLINS. Thank you. Senator Warner.

Senator WARNER. Thank you, Madam Chairman.

Judge, I am privileged to kind of step in every now and then and help the District of Columbia with its problems, and during the course of the inauguration, the District of Columbia, in coordination with Virginia and Maryland, really stepped up and did a marvelous job on the questions of security and other costs associated with it. You need not respond to this question because your able staff, whom I know quite well, right behind you are going to take notes. But there is a question on the funding and the reimbursement.

The budgets of the District are quite stretched and I want to speak up on behalf of the Mayor and the citizens and the security team that he put forth in this and see if we can't ask your staff to reconcile that situation.

Likewise, the Congressional delegations of Maryland and Virginia, working with the Representative for D.C., Eleanor Holmes Norton, we put in an amendment to the homeland defense legislation establishing the Office of the National Capital Region. It is basically to coordinate issues regarding homeland defense. At some point, not the first week or the second week, but at some point, take a look at that because this region has the pride of the Nation's capital. So much of the infrastructure of our government is in the two States and the Nation's capital. I think that it needs to be taken a look at and see if you can give it a little personal attention.

In due course, you will have the responsibility of determining whether your current infrastructure space is adequate. I represent to you I will be glad to help you on that. I think probably some improvement is needed. Your predecessor, who did an admirable job, did the best he could in a very short period of time.

And on other budget matters, I would hope to work with the Chairman and Ranking Member of the Committee. If you think there is additional funding needed, let us bring it to the attention of this Committee and see what we can do to work it out.

Today's *Washington Post* carried a very interesting article by a highly recognized and respected journalist. I don't know whether you have had a chance to look at it or not, but I was rather intrigued here on your opening day to be greeted by this valentine that dropped on your desk. [Laughter.]

It has got a number of critical points in here, but one that really caught my eye, and I will repeat it, "Two arms of the Department are gridlocked over efforts to secure hazardous chemicals on trains." Well, regrettably, we have witnessed here recently two in-

cidents where there was a very tragic situation on trains. Can you represent to us that you will move that agenda item up——

Judge CHERTOFF. Yes.

Senator WARNER [CONTINUING]. And take a good look at it?

Judge CHERTOFF. I will.

Senator WARNER. Trains are very difficult to put secure. We saw that tragic incident of the individual who presumably had a mental problem and now caused the death of a lot of people. Our Nation's railroads are absolutely a central part of the infrastructure and we have got to improve it.

Another point, and I am just going to ask this question just forthright, and that is, again, we both served in the prosecutor's office and I watched with great interest when you prosecuted cases in my State of Virginia as a Federal prosecutor in the area of terrorism. Time and time again, the issue of the identification of terrorists comes up.

I think you have got to face up to this question of the national I.D. card and what this Nation should do about it. Have you got some views that you would share with us this morning on that tough issue?

Judge CHERTOFF. Well, Senator, I know it is a tough issue. I know that there is legislation, I think in the Intelligence Reform Act, that talks about setting national standards for drivers' licenses.

Senator WARNER. Yes. That is sort of a fallback, in a way.

Judge CHERTOFF. Whether or not the country ultimately decides it wants to move to some more standardized identification, I think what I have observed certainly as a citizen over the years, my own experience has been that the drivers' license has become in many respects the standard identifying document. In fact, I remember trying to get into—I won't even mention the agencies, but certain buildings using my credentials and people saying, no, I want to see your driver's license instead.

That suggested the reality is, at a minimum, we need to make sure that drivers' licenses are reliable. There is no, it seems to me, argument in favor of having unreliable licenses. So I certainly look forward to working on that.

As to the larger issue, because I know it is complicated, it is something I would certainly want to study and consider very carefully.

Senator WARNER. Well, there are tremendous advancements in the technical community as to how to take certain, whether it is your eyes, your fingerprints, or so forth, and make that I.D. a very credible instrument and one that does not lend itself to forgery or wrongful duplication. You said if the country decides. You can't sit around waiting for the country to decide. Somebody has got to stand up and let the brickbats come at them and make the recommendation and hopefully the Congress will step up to that tough decision and give you the support that you feel the issue deserves.

I think that the terrorists have an agenda for this Nation and I think the work that has been done by Secretary Ridge and others has heavily contributed to deterring a major attack. But we will have to sleep with one eye open for the indefinite future and I feel very comfortable with you there. You are kind of like the boxer sit-

ting in his corner and that bell is ringing and when you come out, you start swinging, because this article this morning points out that apparently more clout is needed, and you understand what clout is.

Judge CHERTOFF. I do.

Senator WARNER. You do, and you don't need this Committee to put that definition before you. You are ready to exercise it and see that your cabinet position elevates itself and you take on the Secretary of Defense, is that correct?

Judge CHERTOFF. I am prepared to use every faculty at my command to make sure that we get the job done.

Senator WARNER. Thank you, sir. With that, I think I will yield back my time.

Chairman COLLINS. Thank you, Senator. Senator Levin.

Senator LEVIN. Thank you, Madam Chairman.

Judge Chertoff, the 9/11 Commission said the following about the allocation of homeland security funds. "Homeland security assistance should be based strictly on an assessment of risks and vulnerabilities," Do you agree?

Judge CHERTOFF. That is my philosophy, yes.

Senator LEVIN. Now, there are a number of questions which have been raised about your actions when you were head of the Criminal Division and I would like to spend the balance of my time this first round on those issues.

I think you have acknowledged having conversations from time to time with lawyers from agencies outside of the Department of Justice who were seeking advice related to specific interrogation techniques. Was the CIA one of those agencies that talked to you?

Judge CHERTOFF. I think, Senator, and this is the position I took with the staff, I did speak with lawyers for the intelligence community. I don't know that identifying a specific agency is—might be getting into betraying a confidence, which I feel that I am kind of committed to honor. I am certainly, though, and I have indicated that I will be pleased to indicate what my position was and what I communicated to those lawyers.

Senator LEVIN. OK, and we will get to that. Does the Federal statute that prohibits torture, 18 U.S. Code 2340, apply to the CIA?

Judge CHERTOFF. My understanding is that the statute applies to official action. I don't have the statute in front of me. I have a recollection that there is a geographic limitation to the statute, but I may be wrong about that.

Senator LEVIN. But that it applies to—I think you are wrong about that, but that it does apply to all employees of the Federal Government?

Judge CHERTOFF. My understanding is it applies to any official action. I think it also applies to foreign official action.

Senator LEVIN. Now, the statute defines torture as, "an act committed by a person acting under the color of law, specifically intended to inflict severe physical or mental pain or suffering upon another person within his custody or physical control." A memorandum interpreting that statute by the Department of Justice's Office of Legal Counsel, which was not your division but nevertheless you are familiar with it, obviously, that memorandum was prepared for White House Counsel Alberto Gonzales on August 1,

2002. It defined, "severe physical pain or suffering" as pain rising to the "level that would ordinarily be associated with a sufficiently serious physical condition or injury, such as death, organ failure, or serious impairment of bodily functions."

You said in your answers to pre-hearing questions that the Office of Legal Counsel showed you a draft of what you, "believe developed into the August 1 memorandum" to obtain your views on how a prosecutor might apply the anti-torture law in a practical sense. Is that accurate?

Judge CHERTOFF. That is correct.

Senator LEVIN. All right. Now, do you agree with the definition of torture contained in the August 1, 2002, memo?

Judge CHERTOFF. Let me begin by saying, first of all, of course, torture is illegal, so we begin with that proposition. And, in fact, the President has said that on a number of occasions.

Second, I don't—since I saw a draft of what I believe became this memo, I don't remember if that language was in it or whether it was used as or purported to be kind of a bottom-line definition.

Senator LEVIN. My question is do you agree, not did you. I will get to the "did" in a moment.

Judge CHERTOFF. With that as a—I do not believe that definition is a sufficiently comprehensive definition of torture.

Senator LEVIN. All right. Now, let us go back in time. Did you object to the definition in the memo in 2002?

Judge CHERTOFF. As I say, because I don't remember the way it was specifically worded, I can tell you that my role in dealing with the memo was limited to this. I was asked to communicate what my views were as a kind of practical prosecutor about how a statute like the torture statute would be applied, and my essential position—and again, this is talking to other lawyers so it is really lawyer-to-lawyer kind of discussion—was that when you are dealing with a statute with a general standard and an intent issue, the question of good faith and an honest and reasonable assessment of what you are doing becomes critical and whether or not a particular type of thing that someone proposes to do violates the statute is going to depend on whether a prosecutor views it as a violation of the statute is going to depend a great deal upon whether the particular technique is specifically mentioned in the statute, or if it is not, whether the people who are thinking about doing it are making an honest assessment about whether what they are going to do rises to the level of the statute.

I guess my bottom-line advice was this. You are dealing in an area where there is potential criminal liability. You had better be very careful to make sure that whatever it is you decide to do falls well within what is required by the law.

Senator LEVIN. Wasn't the main purpose of that memo to address the definition of torture? How could that issue not have come up?

Judge CHERTOFF. It is—again, since I was not involved in the process of how the memo was generated, I can't tell you why it was generated or what the purpose was. And, of course, to the extent there was scholarship done or review of cases or legal materials, I had no involvement in that and frankly don't know what those were.

I could only give the practical advice that I have, I guess, based on my experience over the years in dealing with this kind of statute, and that advice was very simple. You are dealing with a definition which in some respects is general. There is an intent issue in the case. You had better be sure that you have good faith and you have operated diligently to make sure what you are considering doing is well within the law.

Senator LEVIN. Last weekend, the *New York Times* reported that you were consulted on several occasions by the CIA as to whether CIA officers risked prosecution by using particular interrogation techniques. The article stated that, "one technique that CIA officers could use under certain circumstances without fear of prosecution was strapping a subject down and making him experience a feeling of drowning."

Now, it is unclear whether or not they are quoting somebody as saying that was your comment, but nonetheless, that is in the article. Do you believe that the technique which was described in the *New York Times* article violates the statute?

Judge CHERTOFF. Again, and this is—I am confident I was consistent about this on the handful of occasions this question came up. As a prosecutor, and in dealing with lawyers, as a prosecutor, institutionally, my position was not to give advance advice about what you can do. It was to look at a historic state of facts and then determine whether the statute applies. So I was not prepared to say to people, to approve things in advance or to give people speculative opinions that they might later take as some kind of a license to do something.

My position was limited to making sure people understood—and these are lawyers I am talking to—that what is critical here is the honest good faith assessment by these people of what the effects of what they are doing is and how it measures against the statute.

Senator LEVIN. Let me just wind this question up because I am almost out of time. Were you asked whether or not that technique, the use of that technique, would subject the user to prosecution? Specifically, were you asked?

Judge CHERTOFF. I am sure a number of techniques were mentioned to me. It is sometimes difficult now in retrospect to know what I was told at the time versus what I have now read in the copious discussion in the press. But I can tell you that whatever was mentioned to me at the time, my answer was exactly the same. I am not in a position to evaluate a set of facts based on a hypothetical circumstance.

I will tell you, if you are dealing with something that makes you nervous, you better make sure that you are doing the right thing and you better check it out and that means doing honest and diligent examination of what you are doing and not really putting your head in the sand and turning a blind eye.

Senator LEVIN. To summarize, you would not, then, have given a yes or no answer to that question?

Judge CHERTOFF. Correct.

Senator LEVIN. Thank you. Thank you, Madam Chairman.

Chairman COLLINS. Thank you. Senator Coleman.

Senator COLEMAN. Thank you, Madam Chairman.

I am just going to touch briefly on the torture issue just so it is clear and it is very clear for the record here and it is certainly clear in your answers. You stated the President has said that, "torture is wrong no matter where it occurs," and your position on that is——

Judge CHERTOFF. Exactly correct. I completely support the President's view on that.

Senator COLEMAN. And as a former prosecutor, I must say, Judge, I have great respect for your analysis and basically telling folks, if you are not sure it is a problem, you had better act very carefully. You had better look at the statute. But my concern, as we have this discussion, is that we get into situations where we are judging certain techniques and making judgments and coming to speculative opinions about things that are in front of us. I think that could be dangerous, so I respect your analysis and I respect your judgment.

I associate myself with the comments of the Ranking Member, Senator Lieberman, who talked about this issue of basic notions of due process, right to counsel, very basic stuff, no license to mistreat, and adhering to those standards are important and what I heard from you today was a reflection of that and agreeing with that.

The other side of that is I want to make sure that we are not gun shy in these areas. That may not be a great analogy, but our Permanent Subcommittee did an investigation of sham tax transactions. We had the IRS in front of us and the IRS went through a lot of difficulties with this Congress over abusive behavior across a number of years and I almost got the sense that they were then stepping back where they should have been stepping in because of the nature of their experience here.

So with that fundamental understanding, notions of due process, notions of liberty, no license to mistreat, I would hope, then, that we are not hesitant to step forward and do those things to protect security where they need to be done, the Patriot Act being a good example.

Judge CHERTOFF. I can say the Patriot Act, for example, in the areas in which I dealt with it, was a significant aid in allowing us to pursue terrorism cases. To be very brief about it, I was surprised shortly after I came on the job to realize there were large amounts of intelligence relevant to terrorism that I was legally forbidden to see as head of the Criminal Division because of this wall between intelligence and law enforcement. And when the act brought that down and a subsequent court decision brought that down, I was astonished at what there was that we could now use to make cases and actually prosecute people involved in terrorism because we could have the full picture, and I think that is an example of a very important step forward.

Senator COLEMAN. And it has been effective.

Judge CHERTOFF. Yes.

Senator COLEMAN. I was very pleased that the Chairman decided to ask a fourth basic question—and you said you would cooperate with the investigations of this Committee. I take it that also means Subcommittees of this Committee.

Judge CHERTOFF. Yes.

Senator COLEMAN. The Permanent Subcommittee is looking into the issue of container security. Ranking Member Levin and I, along with the Chairman and Senator Lieberman, Ranking Member of the full Committee, have submitted two letters to Under Secretary Hutchinson, chairman's letters requesting certain documents, so again, I take it that the answer is an affirmative across the board and we look forward to working with you on that.

Judge CHERTOFF. Yes, it is.

Senator COLEMAN. Let me just go back to my issue of communications one more time. I understand the issue of standards for funding that have to be based on risk and assessment. My concern is how you get there. My concern is the process that is used in making that assessment and that it is not a Washington bureaucratic process, but it is one that understands what is happening on the ground. That is our concern, Senator Dayton and I representing Minnesota, with what happened in Minneapolis and St. Paul. Anybody who looks at a map or anybody who just knows the name "Twin Cities" understands that they work hand in hand. You have an assessment process that in the end zeroes out completely funding for one entity, one urban center, while putting a lesser amount of money in the other urban center. So my concern is with the process, not with the political decision, are we getting money, but is the Department communicating in a way with folks at the local level so they really know what is going on.

One other issue of communication, HBO had a film called "Dirty War" which described the chaos of a dirty bomb——

Judge CHERTOFF. I saw that, yes.

Senator COLEMAN. It is worth looking at.

Judge CHERTOFF. Yes, I saw that.

Senator COLEMAN. One of the issues there was this whole issue of first responders not saying that they were adequately trained, didn't get adequate information. I have had a conversation, for instance, with the Hennepin County Sheriff's Office, Captain Brian Johnson, who from his perspective still feels that the lines of communication between the sheriff's office and Homeland Security and local officials needs improvement, God forbid we ever have to test that out.

From your vantage point, can you tell me, give me a sense of where the Department can go to satisfy those concerns of folks at the local level that there is adequate communication with the folks at the Federal level?

Judge CHERTOFF. First of all, I totally agree with that one, if the keys to our protecting against vulnerabilities and our ability to respond if, God forbid, we have an attack, is the ability to work in partnership with State and local officials, tribal people, and private people, and we can't do that if we are not prepared in advance.

I know, for example, the FBI has Joint Terrorism Task Forces and a long history of working across the board. It seems to me one of the things I want to make sure about if I am confirmed, very soon after I get on board, is to see that we have an adequate network of communication with the responsible people in each of the States through which we can go back and forth in terms of information, not just our sending information down, but understanding

their practical constraints and what they need in order to respond, for example.

I agree with you, Senator. This is an area where we can't use a cookie cutter. Every State is different. I mean, there are geographic issues, as you point out, that certainly cry out as a matter of common sense for treatment that is different from treating two cities that are 500 miles apart.

I don't know why the Department sometimes misses that. As I said, people make mistakes. What I do want to put into place is a strong system of feedback so that before we reach a final decision, if we are doing something silly, we hear about it. I am quite confident that we will always have some disagreement, but I would like to believe that at least it is disagreement that comes after intelligent discussion and analysis.

Senator COLEMAN. But let me add another wrinkle to the issue of communication, and first, let me state that having worked with the Joint Terrorism Task Force, they are pretty effective, certainly in our area, very effective. So it is a good model and I get good feedback on that.

The other wrinkle is an issue for border States, myself, the Chairman and Senator Levin, and that is dealing at a border area where you have local officials dealing both with Federal officials here and folks from another country. In my last visit up to Grand Marais, the border area in Minnesota, they talked about the difficulty of communicating with the Canadians.

So you have the issue of local-Federal, and then on the other hand you have an international piece there. Can you talk a little bit about your sense of where that is at today and the kind of things we can do to strengthen the coordination between folks at the local level, another country, and folks at the Federal level?

Judge CHERTOFF. Well, I think that is an important point and we see both at the border, obviously with Canada and Mexico, and also with respect to cargo, for example, in dealing with our friends overseas. We can't do this alone. This is an area where I have to say I have some experience from my prior job at Justice. We made a real effort to go out and meet our counterparts in other countries and form strong working relationships, actually putting people overseas to work side by side with foreign prosecutors, and that taught me that we actually have a terrific relationship with our overseas partners when it comes to dealing with the issue of terrorism.

I think it is important to have not only at the Federal level contacts with the Canadian Government and the Mexican Government, but also bringing local officials into that process so that we can really try to reach some kind of a symmetry. I know there are differences in the legal systems, but we have certain things that we have to get if we are going to keep our borders open and also secure.

Senator COLEMAN. There are also differences in communication technology. There is a difference in licensing of firearms, the whole range of things——

Judge CHERTOFF. Yes.

Senator COLEMAN [continuing]. That make it very tough for folks at the local level up there to have the level of coordination they need.

Judge CHERTOFF. I know that.

Senator COLEMAN. Thank you, Madam Chairman.

Chairman COLLINS. Senator Lautenberg.

Senator LAUTENBERG. Thank you, Madam Chairman.

I am satisfied that, with the responses that we have heard from Judge Chertoff as to risk-based needs and understanding of the need to protect civil liberties even as we go on a search to eliminate the possibility of terrorist attacks and organizations forming that, having that in mind. So I am going to try to just narrow it down to a couple of things.

I wonder whether, Mr. Chertoff, you have had a chance to look at things like the color-coded system. I find it to be kind of peculiar, because in the State of New Jersey, we have been on orange alert and they have identified buildings and locations where we are susceptible to attack and have seen commentaries that we uncovered that describes these specific places. To me, a color-coded message that doesn't tell you what to do doesn't do anything but raise the anxiety level. Do we want people to just stay home, not go to the doctor, not go to school, not go to work? That is totally impractical and I wonder whether you have had a chance to think about that. If not, I would commend it to your attention and hope that you will be able to get onto that very quickly. Do you have any response to that?

Judge CHERTOFF. My only brief thought, Senator, of course, having experienced it up to now as a—at least for the last 2 years as a citizen, is I do understand the value of having a notification system for our State and local counterparts. Obviously, the more specific we can be as to region or type of installation, the better off we are. But I do think it is important for them to know when there is a heightened level or heightened concern.

The second piece, of course, is the public piece. I remember when things weren't announced publicly and then almost as a matter of, as the sun rising in the morning, some version of what was communicated leaked out in the paper and then there was some kind of public uncertainty. I think the value of public notification is in part simply to explain to people why they may be seeing certain things happening, for example, why they may see concrete blocks or more police in front of a particular building than they saw the day before.

On the other hand, I think it is important not to convey the impression that a heightened alert means people ought to change the way they go about their business. We always encourage people to be watchful. The shoe bomber case was a great example of how ordinary citizens prevented an attack.

I am open, of course, to taking a look at the system and seeing whether we can refine it in a way that makes it a little bit clearer or a little bit less alarming and preserves the basic notification function with State and locals.

Senator LAUTENBERG. Senator Coleman was talking about the communication to the local level and I think the practicality of trying to do that is perhaps almost impossible because when you think

of the number of jurisdictions there are within each State, county, local, and regional, and every State, I believe has a State police department. Shouldn't that be a kind of a focal point and expect that their communications system—that, I suggest, is also an area for review for the Judge Chertoff of Homeland Security, to see what these States have and where they are lacking and alert them to the fact that, hey, we want to get the information to you as quickly as we can.

Now, you have to give us a central place. We can't go to the larger cities or more industrialized cities and do it in a practical fashion. So I think that also is something that—I don't want to give you a lecture here, but I think that kind of thing ought to be high on the agenda.

Judge CHERTOFF. It will be.

Senator LAUTENBERG. They described in the paper today some dysfunctionality at the Department of Homeland Security. I saw some folks in the audience who I know are members of the police union and they wanted to hear your testimony. What about your management philosophy regarding Federal workers, the right to organize, collective bargaining and so forth? How do you see that in terms of your ability to manage this gigantic program?

Judge CHERTOFF. Well, I know the Homeland Security legislation, of course, allowed the Secretary and the Department to take some steps to change the traditional method of compensation and things of that sort in order to increase efficiency. I also know from my experience that this Department will not succeed unless the people with whom I serve, if I am confirmed as Secretary, feel that their service is appreciated and treated fairly, and I understand that there is some controversy and concern about some of the changes that were announced in the most recent regulations.

What I would like to do early on is sit with the union representatives—I have certainly worked with unions in the past and I understand the important role that they play—and see if I can address their concerns. We obviously have stages of implementation to go and I think we ought to be informed in how we make these decisions by how the people who serve at DHS feel about it. That is important. Their morale is really indispensible to making the job of the Department work.

Senator LAUTENBERG. There has been talk about privatizing the—and I am never quite sure where privatizing and public fall out, but it is about turning over to the business sector the screening operation. Well, we took it away from the private sector because it wasn't functioning well. Despite some glitches here and there, I think it is quite apparent that there are a lot of energetic, committed people out there who are doing their job diligently. I wonder whether you have had a chance to look at the question of whether or not the screening at the Department of DHS ought to be returned to the private sector.

Judge CHERTOFF. I have not, Senator, but I know it is an important question. I also have to say my personal observation in the last year, since I often seem to be pulled aside for secondary screening—— [Laughter.]

Is that, actually, I feel I am—while it is not something I would willingly experience all the time, I am treated professionally and

courteously and I have at least had a generally positive impression of how the TSA workforce has worked.

Senator LAUTENBERG. So it is working fairly well, getting better, I think, all the time. The question is, does what works have to be fixed.

Judge CHERTOFF. Again, I have given you my own individual experience, which I would not extrapolate from. But I do think this is an issue that needs to be seriously considered. Again, I am very mindful of the stake that the people who work at TSA have in what they are doing and the dedication of their service.

Senator LAUTENBERG. Madam Chairman, I congratulate you for conducting this hearing and my colleagues for the nature of their questions and concerns. I think Mr. Chertoff has handled his responses very well. I look forward to voting for his confirmation.

Chairman COLLINS. Thank you. Senator Bennett.

Senator BENNETT. Thank you very much, Madam Chairman.

First, a totally parochial issue. Last night, President Bush signed the emergency designation for the flood conditions in Southern Utah, which will change the status of FEMA dealing with that particular challenge. I toured the area and it is incredibly dramatic to see the power of water when nature unleashes it in the kind of force that it came down into parts of Southern Utah. There were not a lot of homes destroyed by the standards of the Florida hurricane, but if it were your home that was destroyed, you would recognize how much of an emergency this was.

So I simply mention that. I am looking forward to working with you, with FEMA and your people to see what we can do to maximize the aid and to make it come as quickly as possible because it is always humbling for a human being to see what happens when nature unleashes her fury, even if it is relatively self-contained. It was just incredible and dramatic.

Now, going back a little in my own history and a subject you and I have discussed but that I want to discuss publicly here in this hearing, as Chair of the Senate Special Committee on the Y2K Problem, I became aware of how vulnerable our society now is to a computer failure. We worked to prevent what would have happened if the computers had failed by accident as a result of a programming problem. But as I did so, it occurred to me what could happen if the computers failed on purpose. If someone got into the American computer networks, which are all interlaced now, and brought deliberate harm, the damage to the economy could be more serious than the damage from a nuclear weapon, more longlasting, more expensive, and more difficult to repair.

I held a hearing on this subject in the Joint Economic Committee because of the impact on the economy and I still remember very clearly the testimony that we received from a CIA witness. Attempting to lead the witness, which as Senators we can do. (You lawyers are not supposed to do that, but we Senators do that every day.) I said, isn't it likely that the next attack on this country will not be a military attack but will be a computer attack, a cyber terrorist attack, making again the point that it could do more damage to the economy. And the witness said, "No, Senator, that is not likely because the terrorists want something that is very dramatic, splashy, on television, and television pictures of computers not

working simply won't do it in terms of their agenda for what they want to say to the rest of the world."

Chillingly, that testimony was less than 60 days prior to September 11 and we have seen that particular assessment carried out as the terrorists wanted something very dramatic. They picked a symbol of American capitalism, the Twin Towers in New York. They picked the symbol of American military might in the form of the Pentagon. And we assume that if the other plane had not gone down in Pennsylvania, they had also picked the U.S. Capitol, where it gets very personal. That is where I work.

I think the response of this country in Afghanistan and then Iraq has taken the terrorists—let us put it this way. They are occupied in ways that we are not seeing any kind of attacks now. Bin Laden is rendered incapable of communicating with his network in any way other than carrier pigeon or personal courier. He is hiding in a cave somewhere. He cannot pick up a cell phone. Zarqawi is obviously occupied otherwise in Iraq.

The combination of the American military and the international intelligence community cooperation, working with the Patriot Act and others, has prevented terrorism from giving us a sequel to September 11. The Sherlock Holmes story about the dog that didn't bark, the real news here is the attack that hasn't come. And since September 11, we have had a number of opportunities, and we have a number of vulnerabilities which are talked about here in this hearing, none of which the terrorists have been able to exploit because the military and the intelligence community has, as I say, got them occupied elsewhere, and I like that. I much prefer to deal with Zarqawi in the streets of Baghdad than in the streets of Detroit.

But the time is still coming. The vulnerability is still there. And at some point, some terrorist is going to say, all right, let us regroup here. Let us look at American vulnerabilities. And one major American vulnerability still remains our critical infrastructure, 90 percent of which is in private hands—Verizon, we are seeing the merger with AT&T and SBC, and power plants and chemical plants, all of which are dependent upon computers for their security and their safe operation, which if they got hacked into could produce tremendous devastation.

So with that lead up, I would like to discuss several things with you. One proposal, which I don't expect you to have a specific response to other than the one you have given the Committee, but the creation of an Assistant Secretary with primary focus on this. Is that something that you would give careful consideration to?

Judge CHERTOFF. I certainly would. One thing—what I would like to do is make sure that we have the kind of positions in the Department that are capable of attracting people of a sufficient stature and quality to really give us value in terms of dealing with the cyber security threat.

Senator BENNETT. And do you agree that the cyber security threat is not just science fiction stuff, but it is real and requires attention at the highest levels of the Department?

Judge CHERTOFF. I absolutely do.

Senator BENNETT. Have you given some thought to this, have some feelings that you could share with us at this point?

Judge CHERTOFF. I have given it some thought and I recognize that although I am reasonably competent on a computer, there are real limits to my expertise and this is really an area which is heavily technology dependent. One thing I would like to do actually, in terms of my own staffing of the front office, is making sure I bring somebody on board who really understands computers and these issues.

I guess the couple of observations I would make is that I believe the Department has in process plans and programs to deal with the issue of alerting people to potential attacks, which I think experience shows is important, working with private sector to develop guards against these kinds of attacks and remedies for these attacks. I think that those are all very important efforts in terms of dealing with the issue of cyber terrorism. And I am also mindful of the fact that we could have a combined cyber attack and a physical attack, as you point out, where a cyber attack lowered defenses and then there was a follow-on physical attack.

So the clock on all of these things is ticking and without promising that everything can be done at once, I do think it is a matter that needs to be attended to urgently.

Senator BENNETT. I very much appreciate your statement here and getting it into the record. Madam Chairman, the nominee has made that pledge to me privately, for which I am very grateful.

The one last comment I would get into the record, given the fact that 90 percent of this critical infrastructure is in private hands, the challenge of information sharing back and forth between the government and private entities, between private entities themselves, and then within the government agencies, is an enormous challenge and everybody is putting it off under the pressure of more immediate things. I don't know how much time the military and the intelligence community can buy us for this and I appreciate the Secretary's focus on this particular issue.

Chairman COLLINS. Thank you. Senator Akaka.

Senator AKAKA. Thank you very much, Madam Chairman.

Judge Chertoff, today's *The Washington Post* reported on your role in the alleged retaliation against an employee of the Justice Department Professional Responsibility Advisory Office who disagreed with DOJ interrogation policies. As the author of legislation to strengthen protections for Federal whistleblowers this troubles me. My question to you is, will you pledge to protect whistleblowers and foster an open work environment that promotes the disclosure of government mismanagement and government illegality?

Judge CHERTOFF. Senator, first I had no part in any way, shape or form in any retaliation against this individual for any reason, let alone giving advice. I am pledged to support whistleblowers and to support candid assessments by employers when there are problems in the Department. In fact I would like to hear about them first because, as I said previously, we all make mistakes and the only way we learn is if we get feedback and I would rather get the feedback to correct it than have people just simmer about it.

Senator AKAKA. Since 2001, I have been urging the administration to develop a coordinated response to bioterrorism and agriculture security through legislation which I reintroduced this ses-

sion. Improving coordination among Federal, State and local agencies is critical to the health and safety of Americans.

What will you do to improve bioterrorism preparedness within the Department and do you consider agricultural security to be a responsibility of DHS?

Judge CHERTOFF. Senator, my understanding is that agricultural security is a joint responsibility of DHS and the Department of Agriculture as well as other agencies of the government. I believe, in fact, there is a sector council that deals with this in particular.

The whole issue of nuclear, biological, chemical contamination and weapons is probably generally acknowledged as the most serious single threat that we face as a country. We have seen that when there have been contamination problems historically in private industry they can be deadly as well as disruptive on a wide scale. We have also seen though there are ways to respond to that in terms of confining the damage, being able to track the damage, building in protections within the system in terms of how we handle our food. I am not in a position to comment on specifics but I do look forward to working with, if I am confirmed, with the Secretary of Agriculture and other interested agencies in making sure we are strengthening that sector.

Senator AKAKA. Senator Lautenberg raised this issue so I will not ask a question, but I want to emphasize that approximately 3,800 comments were filed on the proposed homeland security personnel system regulations, virtually all of them in opposition to them. All the unions representing employees at DHS have raised strong objections. So I am pleased that you have pledged to discuss with employees why they view these regulations as unfair.

Like most Americans, I am troubled by recent reports of taxpayer dollars being used for public relations campaigns to promote administration policies. Such action is contrary to law which forbids the use of appropriated funds for public relations purposes.

Do you know if DHS is using funds for public relations campaigns? And will you give this Committee your assurance that under your leadership DHS will not use taxpayer money for such purposes?

Judge CHERTOFF. I am not aware of any such things, although I am not at the Department. I will certainly make sure that in terms of our public outreach effort we are complying with the law in how we spend taxpayer money.

Senator AKAKA. You have been characterized in the press as a defender of the use of data mining by the Federal Government. As you know, while data mining may identify terrorist threats and improve government efficiency, it may also collect personal data that could violate an individual's privacy rights. At my request, GAO reviewed the data mining activities of the Federal Government and confirmed the challenges data mining poses to the protection of privacy.

If confirmed, how will you safeguard Americans' privacy rights while using data mining techniques to wage the war on terror? And how will you ensure the accuracy and quality of data mined from the private sector?

Judge CHERTOFF. Senator, I think that is a very sensitive issue and needs a lot of thought and I look forward to talking to people

in the Department about the ways in which we can deal with that issue. Obviously, we are concerned about accuracy, we are concerned about not intruding unnecessarily into personal things. We are very concerned about when we do obtain data, even if it is publicly available data, that we not disseminate it widely or in a way that is inappropriate. I understand there are proposals, for example, to have methods of keeping parts of the data separate so that no one person looks at everything comprehensively unless you can match them and show that there is some reason to suspect that someone is involved in terrorism. I think, frankly, technology probably has a significant role here.

It is an important subject. I have certainly had reinforced to me in the last 2 weeks how important privacy is and how painful it is to lose your privacy. I think it is very important that we protect the privacy of Americans and I want to make sure that as we conduct ourselves in this potentially very valuable area that we are doing everything we can to protect that value.

Senator AKAKA. According to press reports, the administration will seek $2.4 million in fiscal year 2006 to create an Office of the Assistant Secretary for Policy, Planning, and International Affairs. International coordination is an operational function now being handled by 12 different offices in DHS. I agree DHS needs a dedicated policy office, but I see international affairs as its own function.

If you take a suspected terrorist off a plane in Bangor, Maine and return him to his home country, we need to know his next steps. This can only happen with international coordination. I would appreciate your commitment to review and to report back to this Committee on how you propose to streamline DHS's international affairs function, and also your vision of DHS's international activities. I would look forward to that.

Thank you very much for your responses.

Judge CHERTOFF. I will do that.

Senator AKAKA. Thank you, Madam Chairman.

Chairman COLLINS. Thank you. Senator Domenici.

Senator DOMENICI. Thank you very much, Madam Chairman.

Let me talk a minute about your Department and how you are going to get the kind of information you need. First, I want to add to the thoughts of Senator Bennett when he alluded to why we have not had anything happen since September 11 here at home. I would have added one thing. I think that homeland security activities, at least those activities under the general rubric of homeland security, even while the Department was being put together, had some effect. I think we had an impact on the potential operation of terrorists within the United States. It is more difficult today for them to plan and execute a terrorist activity in America than it was when September 11 occurred, whether we are all prepared to say you are in perfect shape or not, I think it is tougher for terrorists to get things done. I hope it gets even more difficult.

Having said that, I drive around the cities in my home State and I am a captive, as all of us are, to what is being done on our streets and to our buildings in the name of security. Cities are closing streets, building barriers, spending thousands of dollars digging up streets so we can put in new lampposts that cannot get knocked

over. I wonder across America how many thousands of things are we doing in the name of national security, and I cannot fathom how many.

But I am very concerned that, as we prepare ourselves, we have somebody giving direction as to what we ought to do and what we ought not do. We need that, not just down at the grass-roots level where people think there is a danger so they spend money, or they do things.

Now I do not know how to cope with that; I cannot figure it out in my mind. But it does seem to me that you need, on behalf of our country, a strategic plan that talks about what the dangers are and how we ought to implement programs to assess the risk. Is that true or not?

Judge CHERTOFF. I completely agree with that. I think in the foundation, from a policy standpoint, of everything we do has to be a disciplined, strategic vision of what our priorities are, because as I think a number of Members of the panel said today, we cannot protect everything, everywhere, every time. We have to make choices, so we have to be disciplined and intelligent about the way we make those choices, and that means having a strategy.

Senator DOMENICI. Now I want to talk about first responders. A national program of first responders—a Federal program—did not come about after September 11. It already existed 5 years before the attack. We passed a bill here in the Senate. I can remember it vividly. It was done on the floor as an amendment, providing $165 million in funds. Senator Nunn and I added that amendment. It created homeland securities to be determined by the Defense Department. We did not know where to put the money, which city should have homeland security. But we thought we had a lot of security. In fact to tell you the truth, we thought we had a homeland security operative in New York. Now we are told maybe we did, and maybe the attack would have been worse if we did not have that operative.

But I wonder if it is not also your responsibility to determine whether first responder activities are really effective. How do we judge whether we have the right things in place? We know it was communication, or lack of it; that we all need to be on the same wavelength.

I think it is also very important that we not mislead ourselves into thinking we have got first responders in 100 major cities and surrounding 50 other risk areas only to find that everybody knows how to make a lot of noise, and ambulances will all go to an attack site, then we will have more ambulances and you will not be able to travel the streets.

Do you agree that we ought to make sure what we have got is the right thing? And how do we do that?

Judge CHERTOFF. I do agree, and lot of this involves our working again with State and local officials, providing them with information, providing them with benchmarks, so there is an understanding of what they need to be prepared for. And also looking for mutual cooperation. Not every town has to have a full panoply of things. Sometimes it may make sense for a region or a particular area to be able to cover something. I think these are things where

the Department, working with State government can really add value at the local responder level.

Senator DOMENICI. I submit to you that, in all deference to local involvement, many localities will judge it in terms of how many fire engines we gave them, and how many new radio systems we gave them. All that is good, but I think we need some kind of a simulation process where we find out whether what we have will work, and I urge that you try to find out some way to do that.

My next question has to do with how you gather information that you need. Let me talk about technology. There is a tendency, whenever an agency is created as big as yours that needs new technology, to build your own new technology in-house. I think that is a terrible mistake. We have so many sources of science and technology, and the evolution of it. They are out there working on things that will help you. The problem is that we do not have a system wherein you call upon them to share that technology, or that they feel free to give you the technology they have.

So I urge that there be a very serious effort to see where the technology development is, and that you capitalize on what is available, and that you charge existing research programs with doing things for you. Do you understand what I am talking about?

Judge CHERTOFF. I absolutely do and I agree.

Senator DOMENICI. Now I happen to have two national laboratories in New Mexico that have a lot of research they do, and they make it available to DHS. But sometimes they tell us, nobody is interested. They tell us Federal agencies are doing their own research, or——

Judge CHERTOFF. We should be interested because there is a lot of expertise out there in the private sector, and we would be shortchanging ourselves and the public if we did not look there for some solutions.

Senator DOMENICI. There are both public and private capabilities. I did not mean just public.

My last observation has to do with, how do you know what the risks are? I do not think that you are supposed to find out what the risks are on your own, or we would not need a CIA, right? Or we would not need other intelligence-gathering operations.

So I would hope that your Department would be on a path that says, we have these other formidable agencies that are supposed to be gathering the kind of information we need as to what risks are out there. So you would not be preparing for terrorists and terrorist activities that the intelligence people tell you do not exist. Because we could dream them up, right? We have plenty of fertile minds. But are they real or not? I would just like your thoughts about that because I think it is a very important issue, but I am not in your shoes.

Judge CHERTOFF. Senator, the cornerstone of our ability to prioritize is understanding what the risk really is. From outside, I was a very strong supporter of the Intelligence Reform Act which the Chairman and Ranking Member were so instrumental with the Committee in moving forward, because I think we do need to have a central location for intelligence.

My vision for DHS is twofold. One, DHS itself will collect information and intelligence, partly through its network of State and

local partners. But also, my understanding is DHS has people at the new NCTC. They need to be full participants because only DHS can pull the information it needs for its particular analytical functions. DHS cannot count on people in the middle, who do not understand the needs, to push the information out. So that is my approach to the issue of intelligence.

Senator DOMENICI. Thank you very much. Thank you, Madam Chairman.

Chairman COLLINS. Thank you.

Senator DAYTON. Thank you, Madam Chairman.

Judge, the February 14, 2005 issue of the magazine *The Nation* has an article which alleges that in June 2002, just prior to John Walker Lindh going to court regarding an evidence suppression hearing that the Justice Department's Criminal Division, under your direction, offered him a deal reducing his charges if he would not appear before that judge and allegedly describe his experiences of being tortured or abused by U.S. authorities after his capture. Is that accurate?

Judge CHERTOFF. My recollection is somewhat different, not surprisingly. I hasten to add, I do not have the documents in front of me. But let me begin by saying, this is a completely public and transparent issue. Obviously, the arrest of John Lindh was national if not international news. All the proceedings took place in open court.

There was a point in time that I was made aware by the lawyers working on the case that they had discovered that while Lindh was in custody of some military personnel there were some photographs taken of him, and he had been held perhaps in the battlefield in difficult conditions. I do not remember exactly what they were. I do not remember there being an allegation of torture at the time.

These discoveries were disclosed to the defense by the government. The government made that information, what they had, available to the defense. I believe they were presented to the judge in papers which were filed in open court and fully available to the public.

The decision to reach a plea agreement was not driven by the desire to keep a secret of something that had already been publicized, but was, as is the case with all decisions to accept a plea, looking at the time and effort that would be necessary to litigate the case versus whether the government could substantially achieve its results in the case by getting a plea. In this case, I think the plea required not only a sentence of approximately 20 years but actually cooperation by Lindh.

Senator DAYTON. But the issue is—have you seen this article, sir?

Judge CHERTOFF. Someone showed me the article.

Senator DAYTON. One of the defense attorneys for Lindh asserts that you demanded, reportedly at the Defense Department's insistence, according to what defense attorneys were told, that Lindh sign a statement swearing he had "not been intentionally mistreated" by his U.S. captures and waiving any future right to claim mistreatment or torture. The article goes on further, you attached a "special administrative measure" essentially a gag order, barring

Lindh from talking about his experience for the duration of his sentence. Is that accurate?

Judge CHERTOFF. All I can say, Senator, is I do not have the plea agreement in front of me. It is not uncommon in my experience to have circumstances where in the course of a plea, a defendant who has raised claims that the police somehow committed misconduct, will waive any claim that it is intentional. So I do not think it is uncommon. But again, I do not have the plea agreement.

Senator DAYTON. This was not a matter of police abuse, which is a serious matter. This was a matter of alleged torture by U.S. authorities, which is important on this case because it preceded some of the other incidents reportedly of torture that had not then come to light. I just would like to speak——

Judge CHERTOFF. Senator, let me just be clear.

Senator DAYTON. No, let me just finish here. Because when you talk about pictures and the like, these allegations of his torture included keeping a seriously wounded and untreated Lindh who was malnourished and dehydrated, blindfolded and duct taped to a stretcher for days in an unheated and unlit shipping container and reportedly threatening him with death, that defense lawyers said was known to you, known to the prosecution, and that desire to suppress that from coming—you talk about transparent transactions—suppress that information from coming to public light was what drove this offer.

Judge CHERTOFF. Senator, I do not believe that is correct for the following two reasons. One, first of all my recollection is, and I think I directed that it be done, that the appropriate military investigative authorities were made—if they were not already made aware, were made aware of this, so they could conduct an investigation and discipline the people who had done something wrong, which is what we always do.

Second, it could hardly have been kept secret because it was discussed in papers filed in open court at considerable length. The plea and everything else was put on the record in front of the United States District judge. So I have to say the idea that somehow this was to keep something secret does not jibe with my memory. My memory is the government forthrightly, the prosecutors in the case, who were not involved in the underlying conduct, forthrightly disclosed it. The matter was litigated openly in front of a United States District judge, and the appropriate military authorities who investigate misconduct by military personnel, which unfortunately does occur from time to time, were given the information about the case and pursued their investigation.

So there was in no sense an effort by my lights to keep any of this hidden, because in fact I recall it being public.

Senator DAYTON. Are you aware of any other cases, instances in which the Justice Department offered, negotiated a plea to anyone for suppression of evidence or information regarding alleged torture or mistreatment?

Judge CHERTOFF. No, I am not aware of any other instance, and I do not think that—as I said, this concept of, in the context of a plea, requesting that somebody waive a claim, I've previously encountered that in just ordinary, garden variety context with the

criminal justice process. It is not something that is particularly rare, I think.

Senator DAYTON. Regarding the Patriot Act. In retrospect now, are there areas, aspects of that law that you believe should be curtailed or eliminated? Or conversely, are there areas that are still inadequate or insufficient that should be expanded or added?

Judge CHERTOFF. Again, my experience with the act is a couple of years old. In the areas in which I worked I thought the information sharing, the additional enhanced criminal penalties actually worked quite well. Particularly in information sharing, I think was critical in allowing us to pursue additional terrorism cases.

With respect to criticism of the act, my position is always that if there is something that we have not anticipated that is going on that we do not know about, I am always interested in hearing about it and I am always open to adjust. I do not know that I am aware as I sit here of any particularly systemic criticism of the act that comes to mind.

Senator DAYTON. Anything that you are aware of that is lacking that should be expanded or added?

Judge CHERTOFF. I know the Congress has added some additional measures. Again, because I am 2 years out of date I am not sure I am perhaps in a position right now to articulate things that I think need to be added.

Senator DAYTON. I will reserve my questions for the second round. Thank you, Madam Chairman.

Chairman COLLINS. Senator Carper.

Senator CARPER. Thanks, Madam Chairman.

Judge, good morning. How are you holding up?

Judge CHERTOFF. Good morning. Fine, thanks.

Senator CARPER. I rode down on the train this morning with one of your colleagues from the Third Circuit Court, a fellow named Becker. A senior judge who is doing really great work, as some of my colleagues know, on asbestos litigation reform. I have been in and out of this hearing—I apologize for that—but sitting in with the Judiciary Committee to try to find common ground on that subject. I think we made a little progress today. And I have got a hearing going on on clean air, trying to bridge the difference between the administration's proposal and the proposal that some others of us have taken on clean air.

Anyway, we were coming down on the train today—and I know you travel on the train a fair amount—and I asked Judge Becker, did you feel safe today? He said, fairly safe, considering the company I am with.

You and I talked earlier this week about rail security; something I often raise with Secretary Ridge and others, as my colleagues will tell you. We have got all these folks, especially in the Northeast corridor, who ride the rails, intercity passenger rail, Amtrak, and also a lot of folks who ride transit to get to home, to work, and other places. We have done, I think, a pretty good job of addressing security needs around airports. We are trying to do a pretty good job around ports. We have been slow on the uptake with respect to intercity passenger rail and transit. I just want to ask you to share your thoughts with us about the adequacy of what we are doing, what we might do more of, different, less of.

Judge CHERTOFF. I am mindful of the terrorist attack in Madrid which exposed the attractiveness of rail as a target. I am mindful of the incident in South Carolina some weeks ago involving chlorine. And then there was the incident on the train tracks in California. So it is hard not to be aware that trains have a vulnerability and have attractiveness as a target.

There are obviously issues with respect to protecting trains that are different than airplanes. Again, I think this is part of our need to have a comprehensive assessment of what our infrastructure, transportation and fixed is, and to take a priority-driven approach. When we look at this issue I understand there are pilot projects with respect to screening, for example. So we want to look at the possibility of screening for explosives and radioactive and chemical materials.

There are particular points in the rail corridor, tunnels and bridges, which may be particularly vulnerable. We need to assess what we can do to strengthen those and to protect them.

Then I think, again, we need to work with State and local partners in terms of making sure, for example, that our trackage is adequately covered and is cut back. There are maybe some technological things we can do.

Again, this is part of an overall look at what we are doing to protect our country, and I think this is an issue we need to focus on.

Senator CARPER. Thank you. Just a follow-up to that, if I could. You may be mindful that the Congress has appropriated for the current year an amount of money for transit. We have also appropriated a much smaller amount of money to support intercity passenger rail, notably Amtrak. The administration's budget that will be submitted to us probably in a week or so apparently will zero out entirely Federal support for Amtrak, both on the operating side and on the capital side. Even with $1.2 billion a year in support, Amtrak has a tough time supporting the capital infrastructure, the trackbed, overhead wires, signaling systems, the rolling stock, all the repair shops, train stations and all, with the support of the $1.2 billion.

The administration thinks that Amtrak can get by without any Federal support now. And meanwhile we need to improve the quality of our security on our trains, and better surveillance in our tunnels, better ability to escape, to breath in tunnels should people have to evacuate trains, find an exit, better surveillance of bridges. Simply just having dogs who are available to—sort of low-tech but it actually works—to use those where we need to, or just have some more Amtrak police.

I am not sure how we pay for all this. I know we are having a hard enough time paying for it when Amtrak received, as they are this year, $1.2 billion. The idea that they are going to run the trains on time and meet the security needs with nothing from the Federal Government, in my own judgment is just ludicrous. You do not have to comment on that.

My question though is this, who should be responsible for paying for the extra security precautions that we are going to be taking with respect to intercity passenger rail and with transit?

Judge CHERTOFF. I am not sure as I sit here I have sufficient knowledge to know how, particularly when you are dealing with

rail, how things are allocated between departments and to what extent the responsibility, for example, for trackbed and things of that sort rest with State and local government.

Clearly, in this area we are always dealing with finite resources. There is always more that you could use. I think the issue will be to, again, evaluate where, even in the rail context, where our priorities are, what are the most vulnerable issues? Some of what we need to attend to may be a response and recovery, escape and things of that sort. And low-tech things like dogs sometimes work pretty well too, and I think dogs are comparatively inexpensive.

So I think we need to look at all of those ways of approaching the problem as well as funding that may be available in other departments, and State and locally, in fashioning our response.

Senator CARPER. Thank you. Let me turn to another issue. Senator Collins and I have worked with our colleagues over the last year to write a formula, as I mentioned to you yesterday, to distribute funds to States and to first responders. We have tried to provide an acknowledgment that all States, even little States like Rhode Island and Delaware get some minimum support for these purposes. But to also acknowledge that there are different levels of risk and to try to figure out how we provide a funding formula that reflects and respects those different levels of risk.

The legislation that we crafted was included in the 9/11 Commission bill, went to conference. I think the House had a different approach and in the end both approaches dropped out and we ended up with nothing. I would welcome any advice you would have for us, what counsel would you have for us, from the perspective of Secretary, in readdressing this issue?

Judge CHERTOFF. If confirmed, obviously, I would look forward to working on this issue, which I know is one of the most burning issues faced in this area. As I have said I think in some of my individual conversations, I believe—my philosophy is a risk-based, vulnerability-based system. I think that is what the 9/11 Commission talked about. And a cookie-cutter approach that says, we just do it based on population or something like that I think is not the most effective way to deploy these funds.

We need to be sensitive to where the infrastructure is and what the potential damage and risk is. Sometimes that may be a function of population density, sometimes it may be infrastructure that is located in a State which does not have a large population but which serves a large population. So we have to consider that. We have to consider how vulnerable it is inherently. We have to consider what is already in place to protect and respond.

Then there is the intelligence piece of risk which is to consider what we know historically and currently about what kinds of things al-Qaeda is targeting. I understand that every community believes its infrastructure is the most important thing. But I think as we develop our protocols further and we get a better sense of what our infrastructure is we can have a more nuanced and more careful approach to allocating funds.

Senator CARPER. My time has expired. Thank you very much. Good luck. Madam Chairman, thank you.

[The prepared statement of Senator Carper follows:]

PREPARED OPENING STATEMENT OF SENATOR CARPER

Thank you, Madam Chairman. I remember this Committee coming together more than two years ago to set in motion what is probably the largest, most significant reorganization of the Federal Government we've ever attempted—the creation of the Department of Homeland Security. We had our share of disagreements back then but I think the Department we created is now able to prevent and respond to terrorist attacks more effectively than the Federal Government was before September 11.

I also remember sitting in this room just before the Department of Homeland Security officially came into being and talking to Secretary Ridge at his nomination hearing about how daunting the task ahead of him truly was.

Judge Chertoff, the task you have ahead of you, should you be confirmed, is no less daunting.

Since September 11th and the creation of the Department of Homeland Security, we've made great strides in a number of areas. In countless others, however, we have our work cut out for us.

This Committee held an excellent hearing last week during which we asked a panel of experts to look back at how successful the Department of Homeland Security has been in meeting its mandate. Some of what we heard last week led me to believe that we have a long way to go before we attain the efficiency and improved coordination we envisioned when we crated the Department. One witness last week even went so far so to say that weaknesses in management at the Department "cut against the core rationale for passing the Homeland Security Act of 2002—gaining the synergy of having most of the key Federal agencies with homeland security responsibilities grouped in one department."

A November report from the Department's Inspector General discusses how key management officials, such as the Chief Financial Officer and Chief Information Officer, are basically unable to do their jobs at times. The CIO apparently doesn't even have the authority and resources necessary to control and coordinate the IT purchase and deployment decisions made by the various Department components.

A recent report from the Heritage Foundation and the Center for Strategic and International Studies discusses how Homeland Security managers have had difficulty developing policy and implementing it throughout all of the Department's component agencies.

You'll probably hear today, Judge Chertoff, about a number of our priorities that we believe the Department of Homeland Security should be dedicating more time or money to. I have some priorities of my own I'll be discussing, chief among them being the gaps in security we have today in our Nation's rail and transit systems.

Thinking about issues like rail security, I have to say I don't envy you at all, Judge. Should you be confirmed, you'll be taking on this important job at a time when the government is facing record budget deficits and the Department of Homeland Security will likely be forced to work with a lot less money than we'd all like to give it.

Throughout this hearing, then, I'll look forward to hearing from you some details about how you would prioritize, plan, and manage during such a challenging time.

Chairman COLLINS. Thank you, Senator.

Judge Chertoff, we have two choices at this point. My inclination is to keep going, to begin the second round of questions, and I think with some good fortune we could be finished within an hour. The alternative is to break for lunch, or if you and our court reporter need a shorter break—she indicates that she is fine, so we will give you the tie-breaking vote.

Judge CHERTOFF. I am very happy to proceed as we are.

Chairman COLLINS. Then we will proceed.

I want to follow up on Senator Carper's question about the homeland security grant funding. As we look at this issue I do believe that the legislation that so many of us, Senator Carper, Senator Levin, and I worked on last year did strike the right balance. It is, I would caution you, a mistake to assume that population density or population alone equates to risk and vulnerability.

The Rand Corporation, for example, in a report noted that homeland security experts and first responders have cautioned against

an over-emphasis on improving the preparedness of large cities to the exclusion of smaller communities or rural areas noting that much of our critical infrastructure and some potential high-value targets, nuclear power plants, military installations, agricultural facilities, are located in less populated areas.

Moreover, those of us who come from the State of Maine are very aware that two of the September 11 hijackers began their journey of death and destruction from Portland, Maine. We know from the 9/11 Commission's report that the hijackers trained, hid, and transited through some of the smaller communities in our country.

Do you agree that an effective homeland security strategy must include some funding that is dedicated to smaller States and rural areas for first responders and infrastructure protection?

Judge CHERTOFF. I agree that we need to be mindful as we talk about a threat-based and risk-based approach that population and population density are not surrogates for doing this kind of approach. That we need to look at all the things that you have outlined, Chairman Collins, in deciding where money ought to be spent. That includes things like where there are vulnerabilities because of borders, where there is infrastructure both big buildings and even agricultural infrastructure that serves a large community. In fact what we ought to be driven to is a much more finely grained analysis of where the threat is, where the risk is, rather than, as the Rand Corporation criticized, a population-driven approach.

Chairman COLLINS. Those of us who represent border States are aware of the vulnerability of an international border. We are also aware of the need to strike the right balance between security at the border and the need to allow the free flow of legitimate individuals and commerce across those borders.

In northern Maine, where I am from originally, there have been many problems with individuals having family members on either side of the border, the hospital may be on the Canadian side, services may be on the American side. There are hospitals throughout Maine that rely on Canadian nurses, for example. We have experienced problems with ensuring that the legitimate traveler can easily cross the border without undue delay.

Will you pledge to work with me to try to resolve some of those problems as we are tightening our borders to prevent terrorists from coming across, we are not doing so in a way that impedes legitimate travel and commerce?

Judge CHERTOFF. Yes, I will.

Chairman COLLINS. Another area of great concern to a number of Committee Members is the state of the Coast Guard. As you know, the Coast Guard has embarked upon a recapitalization program that is known as the Deepwater program. The Ranking Member and I have been pushing for an acceleration of that program. I met with Coast Guard officials in Maine and California who have told me of cutters that are not able to be deployed because of maintenance problems; of helicopters that have had near misses because of their age. It is obvious that the legacy assets of the Coast Guard are deteriorating rapidly.

If you add to that the fact that the Coast Guard's responsibilities and operations since September 11 have increased by 25 percent

without a corresponding increase in personnel and equipment, we are putting tremendous strain on the Coast Guard.

A Rand report issued last year suggested that accelerating the project from 20 years to 10 years would generate almost 1 million additional mission hours and it would save $4 billion over the life of the project. This is an area where I think we are being penny-wise and pound-foolish. We could save $4 billion, get the assets we need in place far sooner if we accelerated the project.

What is your position on accelerating the Deepwater program in the post-September 11 environment?

Judge CHERTOFF. I am aware of the fact that the program was originally initiated prior to September 11. Obviously, the Coast Guard's mission has been increased now because, in addition to the traditional legacy missions which remain important, there is an enhanced mission with port security.

I am not sufficiently familiar with the current state of the equipment to respond with precision to the question about whether in fact assets are degrading more rapidly than envisioned. But I understand the argument that we need to at least consider, is there some way to accelerate some part of this in order to save money over the long run. It is a matter, I think, of importance not only to the Coast Guard itself but also part of our port security program and the whole range of missions that we do. So I would look forward to really taking a look at that and understanding what the arguments are pro and con in assessing what my position would be.

Chairman COLLINS. I hope you will take a close look at this. I would encourage you to talk to Admiral Loy before he departs the Department of Homeland Security, and also to meet with Admiral Collins, the head of the Coast Guard—no relation, but he is a fine individual nonetheless—and get their prospective. If you talk to the Coast Guard men and women out along our ports you really will see a dangerous and deteriorating situation.

Finally, I want to follow up on the second question that I asked you about whether in hindsight, as you look at the investigative strategy the Department of Justice employed in the post-September 11 attacks, whether or not there are some lessons to be learned. You said that the strategy was correct but that the IG's report has shown that there were some implementation problems.

Based on your responses to Senator Lieberman, am I correct in concluding that you believe there were problems in how long it took to clear detainees, and also in how detainees were treated in detention, including the issue of their access to counsel?

Judge CHERTOFF. The short answer is yes. I think that the clearance process—I do not fault—I understand the constraints. I understand that they were agents who had never worked terrorism before who were now being thrust into the field, being forced to make decisions literally under pressure of life and death, and that the FBI was stretched on the one hand wanting to follow all the leads to avoid another catastrophe, and yet needing to have agents do the clearance process.

I think that was unfortunate. My hope and expectation is that as people have been better trained and as we have better databases, the clearance process will be quicker. That we will have more experience.

Mistreatment of detainees in detention facilities is wholly unacceptable. It has always been unacceptable. Again, I understand it was an emotional time. But training has to be in place so people understand that you do not give in to emotions. People are being detained not to be mistreated or punished but simply as part of the legal process to allow an investigation to be completed.

Likewise, with the lawyers, it was not my understanding that there was any plan to keep people away from their lawyers for the sake of doing so, at least from my perspective. I think to the extent that there is a right to counsel in immigration proceedings, that that right ought to be honored. The point, again, of detention is not to mistreat people but it is to accomplish the result of allowing the investigative process to go forward, always, and I want to underline always, to the extent the law permits, and always under the supervision of a judge, be it an immigration judge or a Federal judge if it is a criminal case.

Chairman COLLINS. Thank you. Senator Lieberman.

Senator LIEBERMAN. Thanks, Madam Chairman.

First, Judge Chertoff, I want to congratulate your wife for now approaching the end of 3 hours of listening attentively to not only our questions but your answers. This is very admirable.

Judge CHERTOFF. She deserves a lot of commendation for her behavior throughout this entire process. I appreciate it.

Senator LIEBERMAN. I am sure.

I want to come back to something else that occurred while you were head of the criminal division, briefly. Again it has been in the public discussion the last few days. Senator Levin spoke to you about the memo of August 2002 from Mr. Bybee of the Office of Legal Counsel and your involvement in questions that might have been raised as a result of it, or from the CIA.

There was apparently a second memo or letter that Mr. Bybee issued which, though classified, I gather or it has been alleged, discussed rather than the broader definition of torture, specific methods of torture and whether they were acceptable.

I wanted to ask you, to the best of your recollection were you consulted in the construction of that memo or letter?

Judge CHERTOFF. No. I have never seen it. The only thing, which I mentioned to the staff is, if I said something to somebody and then they took what I said and unbeknownst to me put it in a memo, that is something I would not know. But I was not aware of a memo like that being prepared and was not consulted about it.

Senator LIEBERMAN. Thank you for that. So just to clarify, both in terms of this memo, but more to the point of the first memo, to your recollection were you asked to pass judgment on any specific delineated methods of treatment of prisoners that some might consider torture? We mentioned water boarding before. There is a whole list. Or was not on a question of the general definition?

Judge CHERTOFF. I cannot tell you what was in the heads of the people that were asking me, and whether people hoped to get some kind of a definitive answer. I can tell you that my response was as it is. First of all, given my institutional position I made it very clear torture is illegal and if you violate the statute you are likely to get prosecuted. I was not prepared to approve in advance tech-

niques based on hypotheticals. Again, these were discussions with lawyers so I expected them to understand why I was not going to do that.

My practical advice in dealing with the statute, again, given the way it is worded, was that in general when prosecutors look back to judge whether or not to prosecute they want to have honest and good-faith behavior.

Senator LIEBERMAN. So that if you had been asked about some of the other delineated forms of treatment of prisoners that might be considered torture like sleep deprivation, sensory deprivation, etc., to the best of your knowledge and recollection your answer would have been the general one that you just gave?

Judge CHERTOFF. Correct.

Senator LIEBERMAN. Not to say that that would have made it or that would not have made it.

Judge CHERTOFF. Right.

Senator LIEBERMAN. I do recall that you said before—and correct me if I am paraphrasing it wrong—that you basically said to them, "if you are nervous about it, be careful."

Judge CHERTOFF. I think that is right. The one other thing I should add, if someone had——

Senator LIEBERMAN. "Cautious" is really what I want to say. In other words, I am hearing that almost as if you were saying to them, "if you do not want to come close to law and you are nervous about something, you would be wiser not to do it."

Judge CHERTOFF. Effectively I was saying—I cannot say it any differently than I said it—basically you need to be very careful if you are in that area.

The one thing I want to make sure is clear, and I do not have a specific recollection of this, but if somebody had said something that was specifically forbidden in the statute I think at that point I probably would have said, you probably better take a good look at the statute.

Senator LIEBERMAN. But you do not have a recollection that you were asked about specific conduct, or do you?

Judge CHERTOFF. No, I was asked about some specific conduct. It is difficult for me to separate what I was told at the time from what I have subsequently learned.

Senator LIEBERMAN. That is what you said before.

Judge CHERTOFF. But my position was that I did not want to be pulled into the discussions of hypotheticals.

Senator LIEBERMAN. Let me go to the subject of funding, which is on everybody's mind. Most homeland security is local, is a maxim that you will find followed here in Congress. I want to share with you an experience that we had and just ask you to take a look at it. In addition to the general drop in homeland security funding which affected all of the country, the Urban Area Security Initiative was administered in the last year in a way—and I believe I have got this correct—that eliminated from consideration communities under 225,000 in population. So to be real direct, that meant that the city of New Haven in Connecticut, which had received a substantial grant under that program in the previous year, was eliminated.

I want to ask you to take a second look, not at that specific decision but at the formula, because it does seem to be—and this is the other side of the question Senator Collins raised—that the smallness of the size of a community ought not to automatically eliminate it, assuming it also has risk factors included in it. So my question is, would you take another look at that formula?

Judge CHERTOFF. Yes.

Senator LIEBERMAN. Thank you.

Finally, we referred earlier to risk at chemical plants, which has been a real concern of one of your two Senators that introduced you, Senator Corzine. Last week Richard Falkenrath, former homeland security advisor to President Bush, told the Committee we have done essentially nothing in this area and made no material reduction in the inherent insecurity of our chemical sector. He said that if a terrorist were to attack that sector, "There is potential for casualties on the scale of, or in excess of 9/11."

So I want to ask you if you have thought about this, and whether you agree this should be a top priority as Secretary, and that the Federal Government ought to play a more active role in achieving security at chemical facilities?

Judge CHERTOFF. I have thought about it. I am not in a position to judge, in fact, what the Federal Government has done to date in this. I understand there are programs underway to work with industry to upgrade with respect to security, hardening, and response.

But I do think this—and again I can draw on my personal experience—I do agree that this is an area of potential significant risk. I think the Federal Government needs to be able to use a whole range of tools to bring the industry up to an appropriate standard. At a minimum we have to give them—I know there are surveys and guidance that we can give them of things they can do on their own. I think there are incentives we ought to consider, including working with the insurance industry.

My experience with Y2K was, a lot of industry woke up when the insurance people started to talk about what they were prepared to insure and not insure.

But also I understand the President has indicated that he supports, if necessary, the use of authorities to require chemical companies to come up to certain standards, with appropriate penalties if they do not do so. So I think the President has indicated that that kind of approach, if necessary, would be appropriate to make sure our chemical plants are safe.

Senator LIEBERMAN. We will look forward to working with you on that, as well as everything else we talked about this morning. Thank you very much.

Chairman COLLINS. Thank you. Senator Levin.

Senator LEVIN. Thank you, Madam Chairman.

Judge Chertoff, I want to share with you and have you look at a document which I also would like to be given to the Members of the Committee up here. It is an extraordinary document. I think probably an astounding document. We gave a copy of this to your staff I believe yesterday or this morning.

It contains a series of three FBI E-mails, memos that were written in May 2004,[1] but it is quite clear it is referring to events that occurred probably in 2002. The document is one of many that were released recently as part of a Freedom of Information Act request by the ACLU. It is redacted in places. It clearly questions the interrogation techniques that were being used at Guantanamo Bay, called Gitmo, that were witnessed by the FBI agents. And the document showed that the FBI was really seeking to distance itself from those techniques.

I want to go through this document with you, Judge. On page 1, third line down in the text, the author of the E-mail is someone, T.J. Harrington of Division 13 of—excuse me, it looks like. I cannot see who it is from but it was written to T.J. Harrington, Division 13 of the FBI.

Here is what it says. I went to Gitmo with blank early on and we discussed the effectiveness of blank with the supervisory Special Agent. We—that is the behavioral analysis unit—and the ITOS one, which is the International Terrorism Operations Section one, it also met with Generals Dunleavy and Miller explaining our position, law enforcement techniques versus the Department of Defense. Both agreed the bureau has their way of doing business and the Department of Defense has their marching orders from the Secretary of Defense. Although the two techniques differed drastically, both generals believed they had a job to accomplish. In my weekly meetings with the Department of Justice we often discussed blank techniques and how they were not effective or producing intel that was reliable.

Then the memo goes on with a series of blanks which appear to be individual's names that have been redacted but with the abbreviation SES after the names, indicating that the individuals were members of the Senior Executive Service.

The document then says that the redacted names were of persons from the Department of Justice Criminal Division. That was your division. And that they "attended meetings with the FBI. We all agreed blank were going to be an issue in the military commission cases. I know blank brought this to the attention of blank."

Then on page 2 of this memo in the middle the author writes the following, that "we spoke to FBI Office of General Counsel with our concerns. I also brought these matters to the attention of the Department of Justice during detainee meeting with blank, expressed their concerns to blank."

Then on page 3, the author writes, has there been any written guidance given to FBI agents in either Gitmo or Iraq about when they should stand clear, B.C.—I presume that means because of—the interrogation techniques being used by DOD or DHS, followed by some additional blanks.

Now again while these E-mails were written in 2004 they appear to refer to events that took place earlier, perhaps in 2002. I say that because the first general mentioned in the E-mails, Major General Dunleavy was the operational commander of Gitmo for 9 months ending in October 2002, and Major General Miller was in

[1] The series of three FBI E-mails provided by Senator Levin appears in the Appendix on page 62.

charge of Gitmo from October 2002 through March 2004. Since I believe you were in charge of the criminal division at Justice from 2001 until 2003 March, it appears——

Judge CHERTOFF. Actually May or June.

Senator LEVIN. Through June 2003?

Judge CHERTOFF. Yes.

Senator LEVIN. So it would appear that these events or some of these events took place while you were in charge of the criminal division.

Now what they indicate is that the interrogations that were witnessed by the FBI agents, that so concerned the FBI agents, were discussed in weekly Department of Justice meetings, with FBI legal counsel, with at least four senior officials in the criminal division.

My first question is, during your tenure as head of the criminal division at the Department of Justice did you ever become aware of the issues raised in this document involving FBI personnel witnessing DOD interrogation techniques at Guantanamo Bay that were contrary to FBI techniques?

Judge CHERTOFF. Let me say this. First of all I do not recall having any discussion about techniques that the Defense Department was using in Guantanamo other than simply the question of whether interrogations or questioning down there was effective or not. I was never informed or I had no knowledge at the time—again, I want to take out of my head things I have read in the paper recently—about any use of techniques in Guantanamo that were anything other than what I would describe as kind of plain vanilla.

Obviously, the FBI has its own way of doing things. For example, the FBI might read Miranda warnings to people. DOD might not. I am not particularly familiar with DOD techniques, either standard techniques as they exist in the normal field Army manual or what additional techniques might have been considered.

So for me to interpret this document, which I have not seen, which was written basically a year after I left and which refers—I would really be speculating.

But I can tell you this, I was not aware during my tenure at the Department of Justice that there were practices in Guantanamo, if there were practices in Guantanamo, that would be torture or anything even approaching torture.

Senator LEVIN. Judge, you do not know whether or not your name appears in the unredacted version of this document or not? You have never seen the document before you said; is that correct?

Judge CHERTOFF. Correct. I know I was not in SES. I was a PAS. But other than that, I have no——

Senator LEVIN. We did not see this document, by the way, until yesterday when my staff saw it on some web site, I believe.

Do you know who those—are you surprised, put it this way, to read that members of the criminal division were present at these discussions?

Judge CHERTOFF. My problem is, Senator, I do not really know what the discussions are. What I see is a lot of different—what I see is a discussion of techniques. I do not know whether the techniques reflect simply different ways people question, or whether

they reflect the fact that the DOD was doing something that appeared to be maybe getting close to the line of what would be appropriate or not. And that is a big difference, obviously.

It does not surprise me that people at the criminal division would have attended meetings generally to find out if information was being obtained from detainees, and what the progress was in terms of was DOD going to be moving people out of Guantanamo and sending them home again. That is because, my understanding is part of the process of deciding who should be sent home required an assessment of whether anybody believed that, based on the evidence, that this person was a terrorist threat or not.

So again, given that I do not know what the meetings being referred to are, what the techniques are being referred to, and who the people are, it just would be shear guesswork on my part.

Senator LEVIN. At the top of page 2 it says, we have this information. Now we are trying to go beyond. Did we ever put into writing in an EC memo, note, or briefing paper to our personnel our position blank, that we were pursuing our traditional methods of building trust and a relationship with subjects.

What is an EC memo, do you know?

Judge CHERTOFF. I think it is just an internal FBI document.

Senator LEVIN. Do you know who the members of the criminal division were who attended meetings with the FBI on this subject? There were weekly meetings with the Department of Justice. They discuss techniques, how they were not effective or producing intel that was reliable. There were four names there that were redacted. They are all from the Department of Justice's criminal division. Do you know who those would be?

Judge CHERTOFF. I do not know who these people are. I do not know when these meetings occurred because this is an E-mail written a year after I left, so it covers a span of time. I want to emphasize, I do not know that the discussion of techniques or differences and techniques means that the techniques being used by DOD were necessarily what I would call harsh techniques. My understanding was there are just simply different ways of questioning. The FBI does it one way. There are police departments that do it differently. So I would be speculating about what was going on in these meetings.

Senator LEVIN. Now you indicate because you never saw the memo that you do not know who the people were who were representing you at those meetings.

Judge CHERTOFF. I do not know that they were representing me because I do not know if the meetings were current when I was head of the criminal division.

Senator LEVIN. Or that the meetings took place while you were head of the criminal division.

Judge CHERTOFF. Correct, I just do not know.

Senator LEVIN. Would you be willing to inquire to find out for this Committee?

Judge CHERTOFF. I have to tell you, Senator, I am a sitting Federal judge. I do not know that I have the ability to inquire about this.

Senator LEVIN. Then I would ask our Chairman as to whether or not we could inquire, Madam Chairman, could we see this entire memo?

Chairman COLLINS. I will take it under advisement.

Senator LEVIN. I thank you for that.

My time is up. The only other question that I would have—by the way, I guess EC is an electronic communication.

Judge CHERTOFF. It might be.

Senator LEVIN. Which I know my children would know, but I do not.

I would also then ask whether or not you ever had any discussions—if I could ask for liberty for one more question—have you ever had any discussions——

Chairman COLLINS. We do need to move on, Senator.

Senator LEVIN. Thank you, Madam Chairman. I will finally wind up then.

Did you ever have any discussions with Judge Gonzales about that August memorandum that was addressed to him?

Judge CHERTOFF. I do not believe so.

Senator LEVIN. Or about the subject of that memorandum?

Judge CHERTOFF. I do not believe so.

Senator LEVIN. Thank you. I would have additional questions, if I could, for the record, Madam Chairman. How long will the record be kept open?

Chairman COLLINS. The record will kept open till 10 a.m. tomorrow morning, and there are going to be additional questions from several Members, including myself. Senator Dayton.

Senator DAYTON. Thank you, Madam Chairman.

Judge going back to the Lindh case, did anybody from the Department of Defense, the military, or anyone else in the administration contact you or anyone else to your knowledge on the prosecution team asking that reduced sentence be offered to Mr. Lindh or his attorneys to suppress allegations of torture and/or improper treatment?

Judge CHERTOFF. Again, Senator, I have to say I do not think—although I understand that there was a—not having the document, I do not know what is in it. Assuming there was a provision in the document to say that there would be no claim of intentional mistreatment, which as I say is not an unusual thing, I am sure that was requested by somebody. I do not remember who requested it.

In terms of the decision about whether to take a plea, I do not agree that it was driven by the desire to suppress information because my recollection is that the information had been made public in filings made by the defendant. So one would have been suppressing something that was publicly discussed.

Senator DAYTON. So you do not recall anyone contacting you from the Pentagon, the military, anywhere else in the administration asking that this information or any information or allegations of mistreatment be suppressed, and requesting that there be a negotiated plea reduction in order to accomplish that?

Judge CHERTOFF. I am confident we discussed with the Defense Department in some detail the appropriateness of taking a plea and what the plea should be. I guess what I am not comfortable in agreeing with this magazine article is saying that somehow the

purpose of doing it was to suppress information, because my understanding is the information was public and therefore there is nothing to suppress. It is out. It is public. My recollection—again, I do not have the documents—is that the counsel for the defendant, who were very able and aggressive, had raised it publicly. So while there are reasons to take a plea, I do not think hiding the allegation was one of them.

Senator DAYTON. About a year ago, *The Washington Post* reported a story of a Buddhist nun, a 30-year-old woman originally from Tibet. Her family was being reportedly tortured by Chinese authorities so she fled to Nepal for safety. Then when she feared being rounded up by Chinese authorities or the Nepalese government and returned to China, she fled to the United States and sought asylum. She arrived in August 2003, was granted asylum by an immigration judge in November.

Then the Department of Homeland Security appealed that case. She was returned to her cell, this was reported the end of January last year in *The Washington Post,* and her attorney said that her next court date would be likely in the fall at the earliest. She did not speak any English, did not understand any English, was basically incommunicado. Had only had this one appearance in court where asylum was approved. The Chairman and I wrote a letter, and I think there were some other inquiries too. She was then released and the appeals court subsequently ruled in her favor.

We wrote also and asked Secretary Ridge for the number of instances where this was also occurring and were told that in fiscal year 2003, DHS had sought review of 486 cases involving asylum grants. I realize with all of your myriad responsibilities it is not going to be possible for you to review each one of those, but I would ask that somebody make a determination.

And in his response he says it is generally the discretion that the appropriate ICE field officer, the director, whether or not to ask for the alien to be incarcerated during that DHS appeal, absent exceptional concern such as national security issues or danger to the community. Somebody ought to be able to decide whether a 30-year-old Tibetan nun is a threat to the community and to our national security or not, especially after a judge has ruled in her favor, just on the grounds on basic humanity. As the article said, here she is fleeing persecution in China and ends up being incarcerated here.

Again, I am respectful of the difficulty in making these distinctions, but I think, is important, especially if this is going to be a longer term predicament that we are in, that these decisions and these distinctions be made rationally and carefully.

Judge CHERTOFF. I agree with that. I think we should definitely do that.

Senator DAYTON. Thank you. I would also ask you to review what occurred on June, I believe it was the 9th, possibly the 8th. My staff says the 8th, I say the 9th, so it is probably the 8th of last year when a private plane carrying the Governor of Kentucky flew into the restricted airspace here in violation of FAA procedures, but nevertheless did so. The transponder was not functioning. The same situation we experienced on September 11, 2001. Despite some progress, and I think real progress that has been in

interagency communication and the like, an open line which is great to have but evidently not all parties are staffing that line on an ongoing basis. So it does not do any good to have an open line if no one is there to receive the information.

Anyway, there was a breakdown in communication. Thousands of people were evacuated from the Capitol complex, being told, probably under the circumstances by the Capitol Police, take off your shoes, run for your lives. If that plane had been other than what it was, it would have crashed into the Capitol within a minute of the time that alarm was sounded. So clearly, again, we will never be perfect but when something that replicates what occurred on September 11 can occur, and you could not have a more real-life, realistic simulation of that kind of a situation where most of the responsible authorities really thought that there was another attack. And to see those continued failures to protect this Capitol complex to me was really shocking.

Despite inquiries that I and other Members of Congress have made, to my knowledge, there have been no consequences from that at all. That is also alarming.

Judge CHERTOFF. I agree that is something that, as I said I think previously, when there are penetrations or issues like that, those are opportunities for us to go back and see, why did that happen. I think that is a valuable thing to do.

Senator DAYTON. Thank you. I would urge you to review the interdepartmental communication so that it is adequate to be immediately responsive, which it has to be.

Then finally, I just support what my colleague Senator Coleman said about the predicament in Minnesota, because it is nonsensical. There is a book in my library in my office called The Death of Common Sense, and I could apply that on a daily basis around here. In this case, we are giving a real double message to local officials if we say, make yourself a priority, take the necessary actions, and then on the other hand we turn around and say, you are not important enough, you are not high risk.

If somebody here is going to make a determination that certain parts of the country are sufficiently low risk then they should tell them so and relieve them of the responsibilities, the expenses and the like. But to say, you need to do all that and have local officials conscientiously doing that at cost, have the public believe that is necessary, and then turn around and just without any forewarning just say, now you are out, and the city and county right adjacent to you is in is really, from a standpoint of intergovernmental relations, is really destructive. But it is also really a contradictory message and it is very unfair to them.

If we are not going to be consistent and we are not going to follow up here with the resources necessary to carry out what we say needs to be done, then I think we are really guilty of rank hypocrisy at this level. I hope and would urge that—and I respect that you serve under the President and that they have a process, including Office of Management and Budget, but I think it is imperative that if we are going to do our responsibility here as a separate branch of government to protect this country, that we have confidence that we are getting from you, regardless of OMB's view, regardless of someone else's fiscal policy, we are getting from you the

assurance that we are providing you with the resources necessary to protect this country to the best of our possible capabilities.

I would ask if you are willing to take that responsibility to communicate that independently to us and give us that assurance independently.

Judge CHERTOFF. I think you deserve my candid assessment of where we are and what we need to do, and I will give that to you.

Senator DAYTON. Thank you. I will support your nomination. I wish you well.

Judge CHERTOFF. Thank you very much. Thank you, Senator.

Senator DAYTON. Thank you, Madam Chairman.

Chairman COLLINS. Thank you.

Judge you have completed what I hope will be the first of many appearances before this Committee as we work with you to improve our homeland security. As you can see, this Committee is very concerned about the Department, about its policies, and about improving the security of our Nation. We are going to aggressively oversee the Department. We have new and expanded jurisdiction to do so, and look forward to working very closely with you.

I want to conclude this hearing by again thanking you for your commitment to public service, your patriotism, your dedication to the Nation. I continue to think that is highly unusual and very impressive that a Circuit Court Judge would choose to give up a lifetime appointment to the Federal bench in order to serve in this important post. So I commend you for your dedication, for answering the call to service.

I do have additional questions for the record. The fact that I am submitting them for the record does not mean that I care any less about them than the ones that I posed to you today and I look forward to receiving your answers. I know Senator Levin, and I suspect other Senators as well, will have some questions to submit.

Without objection, the record will remain open until 10 a.m. tomorrow for the submission of any written questions or statements for the record. I would note that the Committee will include in the record the many letters that we have received from law enforcement organizations endorsing your appointment. I have been very impressed with the support that you have from the law enforcement community. I think that bodes well for working out a good relationship with those who are truly on the front lines in the war on terrorism.

So thank you very much for answering the questions.

Senator DAYTON. Madam Chairman, may I inquire, what is your intention regarding a vote on——

Chairman COLLINS. I had hoped to have a vote tomorrow. Unfortunately, there were objections on your side of the aisle to doing so, so we will have the vote on Monday in conjunction with the first roll call vote, or if there is not a roll call vote it will be late in the afternoon on Monday.

Senator DAYTON. Thank you.

Judge CHERTOFF. Thank you very much. I appreciate being able to appear before the Committee, and if I am confirmed, I really look forward to working with you all.

Chairman COLLINS. Thank you. This hearing is now adjourned.

[Whereupon at 1:25 p.m., the Committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF SENATOR VOINOVICH

Madam Chairman, thank you for expeditiously holding this hearing to consider President Bush's nominee for one of the most important positions in the Federal Government: Secretary of the Department of Homeland Security.

Judge Chertoff, I would first thank you for your continuing service to our Nation during these challenging times. Your willingness to step down from a lifetime appointment to the Federal bench to take what is certainly one of the most difficult jobs in the Federal Government is a testament to your patriotism and dedication to public service. I would also thank your family for the sacrifices they have made and will continue to make.

I enjoyed our meeting yesterday very much. I believe you are well qualified for the office in which you are about to enter and am happy to support your nomination. Please let me know if I can assist you in any way during the next 4 years.

Thank you, Madam Chairman.

PREPARED STATEMENT OF SENATOR COBURN

Thank you, Chairman Collins. I am pleased to be here today to review the nomination of Judge Michael Chertoff to be the next Secretary of the Department of Homeland Security.

Judge Chertoff has a distinguished background in the law and public service. He has served in a wide range of positions: In the administration, on staff here in the Senate, and in the private sector. I think we can all agree he has an impressive background.

Of course, what is important for us to determine in this hearing is how Judge Chertoff will serve our Nation if confirmed as Secretary of Homeland Security. Of particular interest to me in this regard is how he plans to use the finite resources of the Department to secure our Nation's borders.

At our most recent hearing, Senator Stevens made an excellent point by telling the witnesses that they should not expect Congress to continue throwing money at the Department of Homeland Security. The Department must find a way to use the resources at its disposal in the most efficient and effective manner possible. At that same hearing our witnesses broadly agreed that the Department has not thought through the most effective ways to utilize its sources. Too often, we have turf battles and a "manage by the inbox" approach to long-term planning and policy.

It is important to me that we know what Judge Chertoff views as the priorities for the Department, and how he plans to use its resources to most effectively protect our homeland and secure our borders.

I thank Judge Chertoff for being here today and for his service to our country. I am looking forward to hearing what he has to say.

Thank you, Chairman Collins.

PREPARED OPENING STATEMENT OF SENATOR PRYOR

Thank you, Madam Chair and Senator Lieberman, for convening this hearing and continuing your bipartisan leadership as we address the important matters our Committee faces today and in the days ahead.

Judge Chertoff, good morning it is nice to meet you.

As our Committee has been assessing the challenges and opportunities at the Department of Homeland Security it has become even more apparent to me what awesome responsibility DHS is tasked with in leading the efforts to protect our borders and secure transportation and other critical parts of our infrastructure.

Of course, it follows that the Secretary of DHS, as director and coordinator of those efforts, faces extraordinary challenges.

It is imperative that the Secretary of DHS lead the charge to make this country safer, while steadfastly honoring our Constitution, which protects our precious rights and liberties.

I look forward to hearing how you would meet the challenges and accomplish the high goals of the post for which you have been nominated.

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January 31, 2005 Monday
Final Edition

SECTION: Editorial; A20

HEADLINE: Civil Service Reform

LIKE MOTHERHOOD or apple pie, "performance-based pay" — the concept that ostensibly lies at the heart of the civil service reform unveiled at the Department of Homeland Security last week — is something everybody loves. That better employees should be paid more; that managers should be able to fire the incompetent; that the federal government should offer pay that at least competes with the private sector; that our civil service should be more flexible in the post-Sept. 11 world: None of that is controversial. What is controversial — and what could be extremely damaging, if not carefully monitored — are some of the reform's other effects, intended or otherwise.

We have three areas of doubt. The first concerns potential problems with the "performance-based" system itself. At the moment, the vast majority of federal employees are graded either on a five-point scale, from "unsatisfactory" to "outstanding," or on a "pass-fail" criterion that offers no precise definition of "good performance." The vast majority of government managers have no experience making more sophisticated evaluations. Training managers will take an enormous amount of time and money, both of which the government is notoriously stingy about committing. Although DHS's published regulatory schedule calls for some of its employees to be subject to the new system as soon as next fall, no criteria have been published, and no pilot program has been launched. Paul C. Light of the Brookings Institution, an advocate of civil service reform, calls the current timetable "wildly optimistic."

Without clear performance criteria and management training, civil service "reform" could slide into civil service politicization: To put it bluntly, if managers can get rid of people whom they perceive as politically unsound simply by handing out bad evaluations, it won't be long before civil servants cease to be politically neutral. DHS and the Office of Personnel Management argue vociferously that the new system contains all of the same protections against politicization as does the old. But the new regulations do reduce the power of some neutral arbitrators. They also appear to raise the standard for employee appeals, which will make it harder to get a disciplinary decision overturned.

Finally, and most worrisomely, the new system appears to undermine government trade unions in ways that are hard to justify. The government already has the ability to bypass unions — and in particular their right to negotiate working conditions — in case of a national emergency. Now administration spokesmen argue that they may also need to bypass unions in case of potential emergencies, or simply because they need flexibility. John Gage, president of the American Federation of Government Employees, calls this claim "disingenuous" and argues that the changes simply use homeland security as an excuse to "remove employees' rights in a much broader area." It would be nice to believe the administration's fervent denials of a plot to destroy the mostly Democratic unions. But before we do, we'd like to see some clearer arguments from the administration about what the elimination of union bargaining has to do with either the nation's safety or civil service performance.

Before these proposals go further — the Defense Department is preparing similar reform — Congress ought to look more closely. Lawmakers should consider legislation that sets broad parameters for performance criteria, an appeals process that preserves civil service neutrality and union involvement. These changes are potentially too political to be left to the managers directly involved.

Message SECRET Page 1 of 3

[redacted] (IR) (FBI) b6 -1 b7C -1

From: [redacted] (Div13) (FBI)
Sent: Monday, May 10, 2004 12:26 PM
To: HARRINGTON, T J. (Div13) (FBI) [redacted] b6 -1 b7C -1
Cc: BATTLE, FRANKIE (Div13) (FBI) [redacted] (IR) (FBI) [redacted] (Div13) (FBI); [redacted] (Div13) (FBI); [redacted] (Div13) (FBI); CUMMINGS, ARTHUR M. (Div13) (FBI)
Subject: Instructions to GTMO interrogators.

SECRET//ORCON,NOFORN
RECORD 315N-MM-C99102

TJ,

I will have to do some digging into old files [redacted] We did advise each supervisor that went to GTMO to stay in line with Bureau policy and not deviate from that [redacted] I went to GTMO with [redacted] early on and we discussed the effectiveness [redacted] with the SSA. We (BAU and TOS1) had also met with General's Dunlevey & Miller explaining our position (Law Enforcement techniques) vs. DoD. Both agreed the Bureau has their way of dong business and DoD has their marching orders from the Sec Def. Although the two techniques differed drastically, both Generals believed they had a job to accomplish. It was our mission to gather critical intelligence and evidence [redacted] in furtherance of FBI cases. In my weekly meetings with DOJ we often discussed [redacted] techniques and how they were not effective or producing Intel that was reliable. [redacted] (SES), [redacted] (SES) [redacted] (now SES [redacted] at the time) and [redacted] (SES Appointee) all from DOJ Criminal Division attended meetings with FBI. We all agreed [redacted] were going to be an issue in the military commission cases. I know [redacted] brought this to the attention of [redacted]

b5 -1 b6 -1,4,5 b7C -1,4,5 b7D -1 b7E -1

One specific example was [redacted] Once the Bureau provide DoD with the findings [redacted] they wanted to pursue expeditiously their methods to get "more out of him" [redacted] We were given a so called deadline to use our traditional methods. Once our timeline [redacted] was up [redacted] took the reigns. We stepped out of the picture and [redacted] ran the operation [redacted] FBI did not participate at the direction of myself [redacted] and BAU UC [redacted] We would receive IIRs on the results of the process. (S)

I went to GTMO on one occasion to specifically address the information coming from [redacted] We (DoD 3 Star Geoff Miller, FBI, CITF [redacted] etc) had a VTC with the Pentagon Detainee Policy Committee. During this VTC I voiced concerns that the intel produced was nothing more than what FBI got using simple investigative techniques (following the trail of the detainee in and out of the US compared to the trail of [redacted] was providing [redacted] portion of the briefing. [redacted] was present at the Pentagon side of the VTC. After allowing [redacted] to produce nothing, I finally voiced my opinion concerning the information. The conversations were somewhat heated. [redacted] agreed with me. [redacted] finally admitted the information was the same info the Bureau obtained. It still did not prevent them from continuing the [redacted] methods". DOJ was with me at GTMO [redacted] during that time.

b1 b5 -1 b6 -1,2,5 b7C -1,2,5

Bottom line is FBI personnel have not been involved in any methods of interrogation that deviate from our policy. The specific guidance we have given has always been no Miranda, otherwise, follow FBI/DOJ policy just as you would in your field office. Use common sense. Utilize our methods that are proven (Reed school, etc).

If you would like to call me to discuss this on the telephone I can be reached at [redacted] b2 -1

-----Original Message-----

SECRET

9/26/2004

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

DETAINEES-2709

From: HARRINGTON, T J. (Div13) (FBI)
Sent: Monday, May 10, 2004 9:21 AM
To: [redacted] (Div13) (FBI) b6 -1
Subject: RE: pls confirm b7C -1

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Referral/Direct

We have this information, now we are trying to go beyond, did we ever put into writing, in an EC, memo, note or briefing paper to our personnel our position [redacted] that we were pursuing our traditional methods of building trust and a relationship with subjects. Tom

-----Original Message-----
From: [redacted] (Div13) (FBI) b6 -1
Sent: Monday, May 10, 2004 10:52 AM b7C -1
To: HARRINGTON, T J. (Div13) (FBI)
Cc: [redacted] (Div13) (FBI); BATTLE, FRANKIE (Div13) (FBI); BOWMAN, MARION E. (Div09) (FBI)
Subject: RE: pls confirm

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

BAU at the request of the then (GTMO Task Force, ITOS1) wrote an EC (quite long) explaining the Bureau way of interrogation vs. DoDs methodology. Our formal guidance has always been that all personnel conduct themselves in interviews in the manner that they would in the field. [redacted] along with FBI advised that the LEA (Law Enforcement Agencies) at GTMO were not in the practice of the using [redacted] and were of the opinion results obtained from these interrogations were [redacted] BAU explained [redacted] FBI has been successful for many years obtaining confessions via non-confrontational interviewing techniques. b5 -1 b6 -2 b7C -2

Referral/Direct

We spoke to FBI OGC with our concerns. I also brought these matters to the attention of DOJ during detainee meetings with [redacted] express their concerns to [redacted] b5 -1 b6 -2 b7C -2

[redacted] has a copy of all the information regarding the BAU LHM. I believe she has provided that to TJ Harrington. b6 -1 b7C -1

I may have more specific information in my desk at HQ. I will search what I have when I return (5/17).

-----Original Message-----
From: HARRINGTON, T J. (Div13) (FBI)
Sent: Monday, May 10, 2004 4:33 AM
To: BATTLE, FRANKIE (Div13) (FBI); [redacted] (Div13) (FBI) [redacted] b6 -1 b7C -1
[redacted] (Div13) (FBI)
Subject: FW: pls confirm

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Please review our control files, did we produce anything on paper???
-----Original Message-----
From: Caproni, Valerie E. (Div09) (FBI)
Sent: Sunday, May 09, 2004 2:31 PM
To: [redacted] (Div09) (FBI); HARRINGTON, T J. (Div13) (FBI); [redacted] b6 -1 b7C -1

SECRET

(Div13) (FBI) [redacted] (Div13) (FBI) b6 -1
Subject: pls confirm b7C -1

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

I think I've heard this several times, but let me ask one more time: b1

Has there been any written guidance given to FBI agents in either GTMO or Iraq about when they should "stand clear" b/c of the interrogation techniques being used by DOD or DHS [redacted] (S)

[redacted] (S)

b1
b5 -1

~~SENSITIVE BUT UNCLASSIFIED~~

~~SENSITIVE BUT UNCLASSIFIED~~

~~SENSITIVE BUT UNCLASSIFIED~~

~~SENSITIVE BUT UNCLASSIFIED~~

DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign Counterintelligence Investigations
DECLASSIFICATION EXEMPTION 1
SECRET//ORCON,NOFORN

STATEMENT OF SENATOR JON S. CORZINE INTRODUCING MICHAEL CHERTOFF, NOMINEE TO BE SECRETARY OF HOMELAND SECURITY

February 2, 2005

Madam Chairman, Mister Ranking Member, and members of the committee, it is my pleasure today to join my colleague, Senator Lautenberg, in introducing Michael Chertoff, the nominee to be Secretary of Homeland Security.

First, however, allow me to commend you, Madam Chairman and Mister Ranking Member, for the work you did in successfully pushing through the Intelligence Reform bill. Your commitment and that of the members of this committee ensured that the bill was passed into law. By doing so, you have done a great service in protecting the security of the American people here at home.

This is my third opportunity to introduce Judge Chertoff. The first was at his confirmation hearing to be Assistant Attorney General for the Criminal Division. The second was when he was

nominated to be Circuit Judge for the Third Circuit. In each of these capacities and throughout his career, Judge Chertoff has served New Jersey and our nation exceptionally well, and I am privileged to support him and recommend to the committee his nomination to be Secretary of Homeland Security.

Judge Chertoff is an extraordinary professional and a remarkably able lawyer. He is highly intelligence, honorable and impartial. He is also a straightshooter, which is exactly what we need right now in this position. He is also a personal friend.

Madam President, the nominee recently told me that this position, as Secretary of Homeland Security, is the most important task he has ever undertaken in his public career. Given his commitment to public service and the distinguished results of his remarkable career, this statement speaks for itself.

Michael Chertoff has impeccable credentials – not the least of which is being a native New Jerseyan. Senator Lautenberg has elaborated on his enormously impressive resume. Suffice it to say that Michael Chertoff's reputation as a brilliant, tough, impartial,

and truly world class litigator led one New Jersey paper to suggest that he might be New Jersey's "Lawyer Laureate."

At the outset, I would like to reiterate one aspect of the nominee's career mentioned by Senator Lautenberg: Michael Chertoff's role in helping the New Jersey state legislature investigate racial profiling. As Special Counsel to the State Senate Judiciary Committee, he led the committee probe into how top state officials handled racial profiling by the State Police. His work was bipartisan, objective, balanced and thoroughly professional, and helped expose the fact that for too long, state authorities were aware that statistics showed minority motorists were being treated unequally by some law enforcement officials, and yet ignored the problem. This landmark racial profiling investigation tested Judge Chertoff's ability to balance the state's responsibility to provide for the public safety with protecting our citizens' civil liberties.

Madam President, Judge Chertoff is uniquely positioned to undertake the enormous challenges that come with the position of Secretary of Homeland Security. Particularly important to the citizens of New Jersey is his understanding of the critical importance of allocating our homeland security resources to those areas of the country where the risks and vulnerabilities are greatest. New Jersey, for example, stands on the front lines of the war on terror. It was the source of the anthrax attack that hit this institution, is the most densely populated state in the nation, and has been the subject of recent terrorism alerts by the Department of Homeland Security. Yet its homeland security funding in Fiscal Year 2005 has been slashed by one third. Threat-based resource allocation, which was an unambiguous recommendation of the 9/11 Commision, should be a national priority. It is time we pass legislation that will ensure that our homeland security allocations are truly based on risk and vulnerability.

Judge Chertoff also understands the critical importance of protecting our chemical facilities. Only a week ago, the former Deputy Homeland Security Advisor to the President testified to this committee that industrial chemicals are "acutely vulnerable and almost uniquely dangerous," presenting a "mass-casualty terrorist potential rivaled only by improvised nuclear devices, certain acts of bioterrorism, and the collapse of large, occupied buildings." He added that chemical plant security "should be the highest critical infrastructure protection priority for the Department of Homeland Security in the next two years."

There are other critical issues that the nominee will face and that I am confident he is prepared to take on. Our rail lines are woefully unprotected and recent accidents have demonstrated the risk that rail transport of toxic chemicals could be attacked by terrorists. There is important work remaining at TSA, where airport screening is far from complete and where too little attention has been paid to ground transportation. And the Department of Homeland Security has not yet adequately confronted the

vulnerabilities of our ports. The checklist is long and the issues complex. And in my view, Judge Chertoff is the best person to address them.

Madam Chairman, one of the critical issues to be addressed by the new Secretary of Homeland Security will be civil liberties. On this issue, I know Judge Chertoff to be thoughtful and open-minded. Since the initial response to the 9/11 attacks, he has called – both publicly and privately – for a new approach to detentions of terror suspects. As he said in November 2003, "We need to debate a long-term and sustainable architecture for the process of determining when, why and for how long someone may be detained as an enemy combatant, and what judicial review should be available." Madam Chairman, I am confident that this committee will take him up on that offer.

I strongly believe that we as a nation can be both secure and free. Given Judge Chertoff's work on racial profiling in New Jersey, I am confident that he will pursue law enforcement

strategies that are both effective and unbiased. And his stated commitment to respecting recent Supreme Court decisions on detainees assures me that he will always pursue terrorists within the context of our laws and treaty obligations.

No one knows what the future may bring. The terrorist threat shifts, and we are constantly learning about new vulnerabilities. At this critical moment, I believe that Judge Chertoff has the kind of commitment, intellect and imagination that we need. Someone who is focused on keeping us safe. Someone who understands that homeland security means identifying the greatest risks and vulnerabilities and making them a priority. Someone who recognizes that, in protecting ourselves, we cannot sacrifice our basic principles and values. Madam Chairman, I am confident that Michael Chertoff is that person, and I am proud to support his nomination to be Secretary of Homeland Security.

INTRODUCTORY STATEMENT OF JUDGE MICHAEL CHERTOFF

Wednesday, February 3, 2005

Chairman Collins, Ranking Member Lieberman, Members of the Committee. I am pleased to appear before this Committee as you consider the President's nomination of me to be Secretary of Homeland Security. Before I proceed with a brief opening statement, I would like to introduce my wife, Meryl, who is seated behind me in the first row. My two children are back at home in school. I thank my family for their support and sacrifice.

I was deeply honored by the President's decision to nominate me to be Secretary of DHS. As I said at the time of the announcement, if confirmed I would feel privileged to serve with the thousands of men and women who stand watch protecting America's security and promoting America's freedom.

Since September 11, 2001, the challenge of our generation has been to defend our country against the evil of terrorism while honoring our fundamental commitment to our liberties and privacy. We must work together to preserve an America that is safe, secure, and free.

I want to take this opportunity to briefly outline some of the experiences which I will bring to bear if I am confirmed as Secretary of DHS.

As Assistant Attorney General of the Criminal Division of the Department of Justice from 2001 to 2003, I shared in the management of the Department during, and in the wake of, the attacks of September 11th. As a consequence, I have had the rare experience of managing a critical government organization under the stress of a national emergency. My duties made me fully familiar with many of the central elements of the war against terrorism. I assisted in formulating our strategic plan of response; breaking down the barriers to intelligence sharing; cooperating with other agencies—including the Department of Homeland Security—and negotiating cooperation with our law enforcement counterparts overseas. I also sat on the Justice Department National Security Coordination Council, which brought together leadership of key Justice components including the FBI and INS. As part of these efforts, I worked closely with officials across our government, across our country, and across the world on some of the key facets of homeland security.

While serving as head of the Criminal Division, I was required to evaluate information from many intelligence agencies as a prerequisite to operational decision making. As a result, the value—and limitations—of intelligence are familiar to me as a manager. Additionally, I reconfigured many of our component sections to push resources into the field and to increase operational capacity. My style is to lead by example, and that includes a willingness to delve into and understand challenges faced in the field.

But, I have also dealt directly with the issue of security at the state and local level. As a young prosecutor, I worked closely with agents from services that are now part of DHS such as the Customs Service and the Secret Service, and with first responders such as state police and local police in major law enforcement actions. As United States Attorney in the early 90s, state and local officials joined me in fashioning a comprehensive approach to addressing urban crime and social problems under programs such as Weed and Seed. Accordingly, I have learned to appreciate the perspectives of state and local officials because I have shared their vantage point.

And just as important, from my vantage point on September 11th and in the weeks and months to follow, along with everyone else in America I saw the heroism and the sacrifice and the commitment of firefighters, police and other emergency response professionals. And if confirmed I look forward to working with them to make the great promise of this still-new Department a reality for them and those they serve.

I believe that the Secretary of Homeland Security will have to be mindful of the need to reconcile the imperatives of security with the preservation of liberty and privacy. As an attorney representing indigent defendants; as a legislative counsel examining racial profiling; and as a United States Circuit Court Judge, I have committed to fostering liberty and privacy. If confirmed, I will draw on this background to promote measures that enhance our security while affirming our constitutional values.

Finally, the cornerstone of my leadership philosophy has always been this: respect those with whom you work. That means invite candid discussion and advice; make prompt decisions; articulate clear goals; expect accountability; and reward service.

If I am confirmed as Secretary, we will work as a Department to improve our technology, strengthen our management practices, secure our borders and transportation systems – and most importantly – focus each and every day on keeping America safe from attacks. I will be privileged to strive under the leadership of President Bush to accomplish these goals. I also will look forward to working with this Committee in pursuit of our shared goal of keeping America secure and free. I can't promise perfection in our efforts, but I can promise that we will work tirelessly and do everything within the law to keep our nation safe.

I will be pleased to answer the Committee's questions.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)

   Michael (NMN) Chertoff

2. **Position to which nominated:**

   Secretary of Homeland Security

3. **Date of nomination:**

4. **Address:** (List current place of residence and office addresses.)

   Residence:

   Office:

   50 Walnut Street, Room 5037
   Newark, NJ 07102

5. **Date and place of birth:**

   November 28, 1953, Elizabeth, NJ

6. **Marital status:** (Include maiden name of wife or husband's name.)

   Meryl Chertoff, nee' Meryl Justin

7. **Names and ages of children:**

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

Harvard University School of Law, 1975-1978; J.D. magna cum laude 1978
Harvard College, 1971-1975; A.B. magna cum laude 1975
London School of Economics, 1972-1973 (year abroad with credit)

9. **Employment Record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

6/2003-Present	Circuit Judge U.S. Court of Appeals for the Third Circuit 50 Walnut St., Rm. 5037 Newark, NJ 07102
6/2001-6/2003	Assistant Attorney General U.S. Department of Justice 950 Pennsylvania Ave., N.W. Washington D.C. 20530
5/1994-5/2001	Partner Latham & Watkins One Newark Center, 16th Floor Newark, NJ 07101
2000-2001	Special Counsel N.J. Senate Judiciary Committee Trenton, NJ
1995-1999	Investigations Officer N.Y. Mason Tenders District Council (court-appointed)
1994-1996	Special Counsel U.S. Senate Whitewater Committee (includes service as minority counsel to the Banking Committee)
6/1990-4/1994	U.S. Attorney U.S. Attorney's Office, D.N.J.

	Department of Justice 970 Broad St., Rm. 702 Newark, NJ 07102
7/1987-6/1990	First Assistant U.S. Attorney U.S. Attorney's Office, D.N.J. Department of Justice 970 Broad St., Rm. 702 Newark, NJ 07102
9/1983-6/1987	Assistant U.S. Attorney U.S. Attorney's Office, S.D.N.Y. Department of Justice One St. Andrews Plaza New York, NY 10007
8/1980-8/1983	Associate Latham & Watkins 1300 New Hampshire Ave., N.W. Washington D.C.
7/1979-7/1980	Law Clerk Justice William J. Brennan, Jr. U.S. Supreme Court One First St., N.E. Washington D.C.
7/1978-7/1979	Law Clerk Judge Murray Gurfein U.S. Court of Appeals for the Second Circuit Foley Square New York, NY 10007
6/1978	Summer Associate Miller, Cassidy, Larroca & Lewin 2555 M St., N.W. Washington D.C. 20037
4/1978-5/1978	Part-Time Staff Mass. Legislative Oversight Commission

	State Capitol Boston, MA
9/1977-4/1978	Research Assistant Harvard University School of Law Cambridge, MA
6/1977-7/1977	Summer Associate Sullivan & Cromwell 125 Broad St. New York, NY 10004
6/1976-7/1976	Summer Associate McCarter & English Gateway Four Newark, NJ 07102
6/1975-7/1975	Intern Tax Analysts & Advocates 6830 N. Fairfax Arlington, VA

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

1996	Commissioner N.J. Election Law Enforcement Commission (state agency that enforces state campaign finance laws)

11. **Business Relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Partner, Latham & Watkins, Newark, NJ (law firm), 1994 - May 2001

Fellow, American Bar Foundation, 1997 - present

Trustee, Association of Criminal Defense Lawyers - New Jersey, 1997 - May 2001

Advisor, CompostAmerica, Spring 1999

Editorial Board, New Jersey Law Journal, 1994 - May 2001

Director, New Brunswick Development Corp., New Brunswick, NJ, 1994 - May 2001

12. **Memberships:** List all memberships and offices currently or formerly held in professional business, fraternal, scholarly, civic, public, charitable and other organizations.

Master, Edward Bennett Williams Inn of Court, Washington, D.C., 2001- 2003

Ex Officio Member, Executive Committee, International Association of Prosecutors, 2001 - 2003

Editorial Board, New Jersey Law Journal, 1994-2001

N.J. Supreme Court Criminal Practice Committee, 1997 - 2000

Association of the Federal Bar of the State of New Jersey, 1994 - 2001

Trustee, Association of Criminal Defense Lawyers - New Jersey, 1997 - 2001

Association of the Bar of the City N.Y., 1984 - ?
-Committee on Legal Education, 1984 - 1987
-Committee on Criminal Advocacy, 1987 - 1990

Federal Bar Council (NY), 1989 - 2001

New Jersey State Bar Association, 1989 - Present
-Executive Board, Federal Practice Committee, 1989 - 1990

Lawyers Advisory Committee, U.S. District Court, District of New Jersey (ex officio), 1990 - 1994

American Bar Association, 1980 - 1983, 1997 - Present
-Antitrust Section, 1980 - 1983

-American Bar Foundation, 1997 - Present

Associated Harvard Alumni

Nomahegan Swim Club, Westfield, N.J.

Westfield N.J., College Men's Club (raises scholarship money for college-bound students)

Cosmos Club, 2121 Massachusetts Avenue, N.W., Washington D.C.

Harvard Law Review

London School of Economics Alumni

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None

b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

I was an alternate delegate to the 2000 Union County, N.J. Republican Convention.

I supplied occasional advice on criminal justice issues to the Bush for President Campaign in 2000, and was a vice chair of the N.J. finance committee in 2000.

From 1997-2000, from time to time I served on finance committees in the campaigns of N.J. State Senators Donald Di Francesco, John Bennett and Joseph Kyrillos.

In the fall of 1996, I did some fundraising for U.S. Senate Candidate Dick Zimmer of New Jersey, and I introduced Bob Dole at a campaign event.

During 1998 and 1999, I served as occasional outside counsel to the local campaign organization of Essex County, N.J. Executive James Treffinger.

c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.

ZIMMER, DICK
VIA ZIMMER 2000 INC
10/24/2000 1000.00

TREFFINGER, JAMES W
VIA JIM TREFFINGER FOR SENATE INC
06/05/2000 500.00

FRANKS, ROBERT D
VIA BOB FRANKS FOR US SENATE INC
08/08/2000 500.00

KYRILLOS, JOSEPH M
PRIMARY 2001
04/20/2000 500.00

BAGGER, RICHARD
PRIMARY 2001
06/25/2001 500.00

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

2002 - Juris Doctor honoris causa, Seton Hall Law School, Newark, N.J.

2002 - Trial Attorneys of New Jersey, Trial Bar Award for "Distinguished Service in the Cause of Justice"

1976-1978 - Member and Note Editor, Harvard Law Review

1986 - Annual Legal Award Association of Federal Investigators (for successful prosecution of corruption in Sullivan County, New York)

1987 - U.S. Department of Justice John Marshall Award for Outstanding Achievement in Trial of Litigation (for successful prosecution of leaders of

Mafia's national "Commission," United States v. Salerno, et. al.)

1992 - Anti-Defamation League Distinguished Public Service Award

1994 - U.S. Department of Health & Human Services Inspector General Prosecutive Leadership Award

1997 - Fellow, American Bar Foundation

2004 - Pingry School Letter-in-Life

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

Note, Valuation of Conrail Under the Fifth Amendment, 90 Harv. L. Rev. 596 (1977)
Case Note, U.S. Trust Co. v. New Jersey, 91 Harv. L. Rev. 83 (1977)
Editor, Note, Constitutional Problems in the Execution of Foreign Penal Sentences, 90 Harv. L. Rev. 1500 (1977)
Editor, Note, The Finality Rule for Supreme Court Review of State Court Orders, 91 Harv. L. Rev. 1004 (1978)
Book Review (with R. Hills), Shareholder Litigation, 60 Wash. U.L.Q. 735 (1981)
Book Review of Confessions, Truth, and the Law, 93 Mich. L. Rev. 1713 (1995)
Article, Changing Definitions of Willfulness in Federal Criminal Law, Washington Legal Foundation Legal Backgrounder, Oct. 21, 1994
Article, "Whitewater: Why It Matters" Newsweek, June 10, 1996
Substantially wrote the following editorials for the New Jersey Law Journal:
"Tools Against Terrorism," June 1996
"Celebrity Jurors," September 1998
"Unsolomonic Compromise," March 2000
"Victims Attain a Voice in the Criminal Justice Process," New Jersey Lawyer, February/March 1994
Letter, "People v. Sol Wachtler," New York Times Book Review, May 11, 1997
Symposium on Securities Law Enforcement, 17 Seton Hall Legis J. 1 (1993)
"Law, Loyalty, and Terror: Our legal response to the post-9/11 world" The Weekly Standard, December 1, 2003
"Judicial Review of the President's Decisions as Commander in Chief," Rutgers Law Review, Summer 2003
"Justice Denied: The International Criminal Court is even worse than its critics have said," The Weekly Standard, April 12-April 19, 2004

"Why is this Ball in Our Court?" The Wall Street Journal, June 17, 2004

I have authored a number of judicial opinions, which are available online.

16. Speeches: Provide the Committee with four copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

On October 10, 2003, I gave a speech entitled "Law, Loyalty, and Treason: How Can the Law Regulate Loyalty Without Imperiling It?" in Chapel Hill, NC, at the invitation of the North Carolina Law Review. Four copies of my prepared speech, a revised version of which was published in the December 1, 2003 issue of the The Weekly Standard, are enclosed.

On October 20, 2003, I gave a speech entitled "Judicial Review of the President's Decisions as Commander in Chief,"in Newark, NJ. A revised version of the speech was published in the Summer 2003 edition of the Rutgers Law Review as noted in question 15. I do not have a copy of my remarks as given.

On April 13, 2004, I gave a speech entitled "America Needs Legal Infrastructure for the War on Terror," at a meeting of the American Bar Association in Washington, DC. A revised version of the speech was published in the June 17, 2004 edition of the Wall Street Journal as noted in question 15. I do not have a copy of my remarks as given.

While I served as Assistant Attorney General, I gave numerous other public speeches and participated in several panel discussions. I typically spoke without a prepared text. If I locate any reports of these speeches, I will provide them to the Committee.

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?

I believe the best explanation for the President's decision to nominate me as Secretary of Homeland Security is set forth in his statement of announcement, which I attach for Committee review.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

The highlights of my public service career are summarized in the White House personnel announcement of January 11, 2005, which I attach.

I have a broad range of experiences which I will bring to bear if I am confirmed as Secretary.

As Assistant Attorney General for the Criminal Division from June 2001 to June 2003, I served as part of top management for the Department of Justice in the wake of the attacks of September 11. As a consequence, I have had the rare experience of managing a government agency under the stress of a national emergency. My duties involved me in – and made me intimately familiar with – most aspects of the war against terrorism: Formulation of our strategic plan of response; breaking down the barriers to intelligence sharing; negotiating cooperation with our law enforcement counterparts overseas; and collaborating with other agencies – including the Department of Homeland Security – in fashioning a coordinated effort to detect, disrupt and incapacitate terrorists. As part of this effort, I worked closely with officials across our government, and sat on the Department of Justice National Security Coordination Council, which brought together leadership of the key Justice components with national security responsibilities, including the FBI and (what was then) INS.

As head of the Criminal Division, I was required to evaluate intelligence information from virtually all the intelligence agencies as a prerequisite to operational decisionmaking. As a consequences, the value – and limitations – of such information are familiar to me as a manager. Additionally, I reconfigured many of our component sections to push resources into the field and to increase operational capacity. My style is to lead by example, and that includes a willingness to delve into and understand challenges faced in the field. Another particular emphasis was fostering interagency teamwork and flexibility.

Apart from serving in senior Department of Justice leadership, I have led a major United States Attorney's Office, and, as a private attorney, worked with large organizations in managing business crises.

Relevant, as well, is the fact that I have served in law enforcement at the line level. As a young prosecutor, I worked closely with agents from the former Customs Service and the Secret Service, and with state police and local police in major law enforcement actions. I can appreciate their perspectives and problems because I shared their vantage point when I started out in government.

Finally, I believe that the Secretary of Homeland Security must always reconcile the imperative of security with the preservation of liberty and privacy. As an attorney representing indigent defendants, as a legislative counsel examining racial profiling, and as a United States Circuit Judge, I have committed to fostering liberty and privacy. If confirmed, I will draw on these experiences in the rule of law to promote measures that enhance our security while affirming our constitutional values.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

   Yes

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

   No

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

   No

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

   No

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

   Yes, at the President's discretion

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have

had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None of which I am aware.

2. Describe any activity during the part 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy other than while in a federal government capacity.

   5/18/99 Testimony before the United States Senate Finance Committee on U.S. Customs Oversight (invited by the Committee)
   11/99 Testimony before the New Jersey State Senate on Jury Selection in Death Penalty Cases

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

   Yes

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

   No

2. To your knowledge, have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

   No

3. Have you or any business of which you are or were an officer, director or owner

ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

In my official capacity as U.S. Attorney and Assistant Attorney General, Criminal Division, I was named a party in a number of civil cases. A list is attached hereto. I was not actively involved in any of these litigations and do not know their curren status.

I was a defendant in an automobile accident in which my car was struck from behind. The lawsuit was filed in 1998 and the court entered judgment in my favor in April 2000.

In 1981, I received a divorce on consent in Superior Court, D.C.

4. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

AFFIDAVIT

Michael Chertoff, being duly sworn, hereby states that he has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his knowledge, current, accurate, and complete.

Subscribed and sworn before me this 18th day of January, 2005.

Notary Public

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U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire for the Nomination of Michael Chertoff to be Secretary of Homeland Security

I. Nomination Process, Background, and Conflicts of Interest

1. Why do you believe the President nominated you to serve as Secretary of Homeland Security?

ANSWER: The President's public statements indicate that my professional background and substantial experience in public service were factors in his decision to offer me this honor and opportunity for further service.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

ANSWER: No.

3. What specific background and experience affirmatively qualifies you to be Secretary of Homeland Security?

ANSWER: My career has provided me with a significant breadth and depth of experience with the law enforcement community as well as a basis for understanding the needs of the first responder communities. These experiences provide a base for understanding the unique needs of both communities, which will be vital to administration of this Department. Based on my experience as an Assistant United States Attorney for the Southern District of New York, as the United States Attorney for the District of New Jersey, as well as the Assistant Attorney General for the Criminal Division, I also understand the intricacies of effective administration. Whether as trial attorney, prosecutor, special counsel, Assistant Attorney General, or appellate Judge, I have been dedicated to addressing and resolving the critical issues which come before me in a prompt, fair, and effective manner. If confirmed as Secretary of Homeland Security, I will devote my energy to helping to protect America's families and communities, promote the many facets of our Nation's homeland security and, as important, to preserve our Nation's fundamental liberties.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as Secretary of Homeland Security? If so, what are they and to whom have the commitments been made?

FINAL

ANSWER: No. I have made no commitments other than to faithfully execute the laws and to preserve and protect the Constitution of the United States. In other words, as noted above, I will devote my energies to helping to protect America's families and communities, promote our Nation's homeland security and, as important, to preserve our Nation's fundamental liberties.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

ANSWER: No. As the attached letter to the Office of Government Ethics makes clear, I intend to divest myself of any holdings that could cause a conflict of interest or an apparent conflict of interest. I will also consult closely with the Department to ensure that I avoid any potential conflict problem, and follow all appropriate procedures in the event that my ethics advisors deem a recusal appropriate in a particular situation.

II. Questions Related to Prior Service

6. Please describe the role you played in the development of the Administration's policies regarding the use of military tribunals for certain detainees in the war on terrorism. Do you support the use of such tribunals?

ANSWER: I was not involved in the formulation of the President's executive order regarding military tribunals. At some point after the President issued the original order, I and others at DOJ were asked to provide suggestions regarding discovery and trial procedures for the tribunal. I believe that military tribunals should be available to the President to invoke appropriate circumstances.

7. What role, if any, did you have in the development of the Administration's policies regarding the treatment of detainees and prisoners of war in the global war on terror? What role, if any, did you have in the development of the Administration's position regarding the applicability of the Geneva Conventions to members of al Qaeda and the Taliban militia? Specifically, did you have any role in drafting, reviewing or commenting upon (1) the January 22, 2002 memorandum to Alberto Gonzales, Counsel to the President, and William Haynes II, General Counsel for the Department of Defense, from then Assistant Attorney General Jay Bybee, concluding that those treaties did not apply either to al Qaeda or the Taliban; (2) the January 25, 2002 memorandum from Alberto Gonzales to the President addressing the Secretary of State's request for reconsideration of this legal position; or (3) the February 1, 2002 letter from Attorney General John Ashcroft to the President commenting upon the status of Taliban detainees under the Geneva Conventions? Do you agree that the United States should not apply the protections of the Geneva Conventions to either al Qaeda or Taliban detainees? Apart from

FINAL

the legal question of whether these treaties apply, what are your views as a policy matter as to how the U.S. should treat those it detains?

ANSWER: Except as addressed in answer 8, I did not participate in the formulation of Administration policy on how to treat detainees and prisoners of war in the global war on terror or on the application of the Geneva Conventions. I did not draft, review or comment on the documents specified. I am not sufficiently versed in the law in this area to offer a definitive opinion regarding how the Conventions apply to the conflict with al-Qaeda or the Taliban, and in any event as to interpretation of law would defer to the Attorney General. I do agree with the President that it is important to respect these international conventions and their underlying values.

8. What role, if any, did you have in drafting, reviewing or commenting upon the August 1, 2002 Office of Legal Counsel memorandum to White House Counsel Alberto Gonzales which expressed the legal opinion that for the purposes of the criminal prohibitions of 18 U.S.C. § 2340, "[p]hysical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death"? Do you agree with the definition of torture provided in this memorandum? As the head of the Department's Criminal Division, what was your responsibility with respect to interpreting this criminal statute? Are there any circumstances under which you believe the President could legally authorize torture? Do you agree with the memo's author that the President retains the right to authorize acts of torture outlawed by statute or international agreement if he believes such legal restrictions encroach upon his constitutional authority as Commander-in-Chief?

ANSWER: Let me be clear: The President has said that "torture is wrong no matter where it occurs," and I agree completely with his position.

As the Committee recognizes, the Office of Legal Counsel, headed by its Assistant Attorney General, is a component that is separate and distinct from the Criminal Division, which I headed. As I understand is not uncommon, OLC did show me a draft of what I believed developed into the August 1 memorandum to obtain my views on how a prosecutor might apply 18 U.S.C. § 2340 in a practical sense. I understand that the OLC opinion has been rejected by the Administration and replaced by a new OLC opinion interpreting the statute. I do not think that the phrase quoted in the question is a sufficiently comprehensive definition of what constitutes torture under the statute.

As head of the Criminal Division my responsibility would have been to apply the statute to a particular set of facts if a possible violation were referred to the Division by an agency for a prosecutive decision. As noted above, from time to time the Division might also have expressed views on criminal law matters to other components.

FINAL

The question whether the President could authorize torture is not one which I can reasonably envision arising in view of the President's complete renunciation of torture. Answering the general question of the constitutional limits of Presidential authority and the impact on that authority of a statute or international agreements would require me to conduct a serious study of a large body of specialized law relating to the separation of powers which I have not undertaken. I understand that the section of the August 2002 memorandum discussing this issue has been withdrawn and replaced by a new OLC opinion.

9. Since 9/11, the Justice Department reportedly has expanded its use of the material witness statute, to hold those it wishes to detain in connection with certain terrorism related matters without having to charge them with a crime. What, if any role, did you have in developing, reviewing or commenting upon the expansion of the use of material witness warrants after 9/11?. Do you believe it is appropriate to hold under such warrants individuals other than those it is necessary to detain to ensure they testify at a judicial proceeding? What standards do you believe should apply to the use of material witness warrants in such circumstances?

ANSWER: The standards that apply to the use of material witness warrants are set forth in the Federal Criminal Code. The use of material witness warrants is authorized by 18 U.S.C. § 3144, which provides for the arrest and detention of a person who may have testimony material to a criminal proceeding and whose presence may not be obtained by subpoena. Persons held as material witnesses have the right to counsel, and under 18 U.S.C. § 3006A, court-appointed counsel shall be provided for any material witness financially unable to obtain adequate representation.

The use of material witness warrants in grand jury proceedings is an appropriate law enforcement technique – a technique authorized by Congress, routinely used by the Department of Justice, and repeatedly approved by federal courts nationwide. *See, e.g., U.S. v. Awadallah*, 349 F.3d 42 (2d Cir. 2003). An individual detained as a material witness must be found by a federal judge to have information material to a grand jury investigation and to have met the criteria for detention under the Bail Réform Act (18 U.S.C. § 3141 *et seq.*) after an adversarial hearing. The decision to detain a material witness is therefore made by a federal judge rather than the prosecutor or law enforcement agent. Generally, material witnesses are released once they provide the information they have about the investigation, unless they are detained under some other legal authority (for example, immigration or criminal charges).

In the aftermath of the 9/11 attacks, I participated in the formulation of a general investigative strategy in response to the attacks. That strategy was to follow each of the many thousands of financial, communications, physical and other leads generated from the 9/11 investigation; to identify persons linked by these leads with the 9/11 or other terrorism investigations; to investigate those persons; to charge those persons if there was evidence that they had violated the criminal or immigration laws; and to make appropriate legal arguments in court to detain those

FINAL

charged persons until such time as we concluded that they were not part of a terrorist conspiracy. The strategy was built on the recognition that every lead should be pursued as far as possible, lest the one missed lead prove to be the connection to another fatal attack.

I agreed that the material witness statute should be used by the Justice Department in accordance with the law in this effort to secure the testimony of persons where that testimony was material to terrorism investigations and it was impracticable to secure the presence of the persons by subpoena. As a matter of law, all of those detained on material witness warrants have been found by federal judges to have information material to a grand jury's investigation. In my tenure at the Justice Department the material witness warrant statute was essential to furthering the Justice Department's terrorism investigations and prosecutions.

10. With respect to the questioning of John Walker Lindh, what was the role in the Lindh matter of the Criminal Division attorney who sought the views of the Professional Responsibility Advisory Office (PRAO)? Did you ask any supervisor to take any action with respect to the attorney from the Criminal Division because of his contact with PRAO? If so, when did you make that request and what did you ask? What was your view of the role of PRAO in the matter involving Lindh?

ANSWER: To my knowledge, the Criminal Division attorney who sought the views of the Professional Responsibility Advisory Office (PRAO) did not have a formal "role" in the Lindh matter. I was more recently informed that the attorney was assigned to do some specialized research projects on the Lindh matter. Evidently, the attorney decided to seek the counsel of the PRAO office with respect to the FBI's authority to interview Lindh. I did not ask the supervisor to take action with respect to the attorney from the Criminal Division because of his contact with PRAO.

My view of the role of PRAO in the matter involving Lindh was as follows:
I understood that PRAO's assignment was to provide guidance to prosecuting attorneys regarding issues that may arise under the professional ethics rules in the states in which the prosecuting attorneys are admitted or practice. I also understood that among the rules on which PRAO advises are those canons of professional ethics that specifically address communications between Department attorneys and represented individuals. The issue in Lindh did not involve communication by Department attorneys but, rather, an FBI agent who wished to question a combatant overseas. As I understood it, under Department regulations in force since 1999, attorney ethics rules falling under the purview of PRAO did not apply to FBI agents. See 28 C.F.R. 77.2 (expressly excluding from the definition of attorney for ethics purposes "investigators or other law enforcement agents.").

III. Role and Responsibilities of Secretary of Homeland Security

FINAL

11. What is your view of the role of Secretary of Homeland Security?

ANSWER: The Department of Homeland Security was created two years ago to ensure a comprehensive, unified effort to protect the American people against new dangers. As Secretary of the Department, my primary mission will be to protect the American people from another terrorist attack. More specifically, I will continue the work of Secretary Ridge to improve and streamline airline security, enhance the protection of our borders and ports of entry, and take vital steps to safeguard the nation's critical transportation and infrastructure. As Secretary, I will also seek to reduce the nation's vulnerabilities to weapons of mass destruction and cyberterrorism. I will emphasize partnership with the state, local and tribal governments, as well as the private sector. I will also strive to effectively oversee and execute homeland security policies, while ensuring efficient and fair administration of the Department.

12. In your view, what are the major challenges facing the Department of Homeland Security (DHS)? What do you plan to do, specifically, to address these challenges?

ANSWER: The Department of Homeland Security was founded upon the premise of securing our Nation's borders and infrastructure from another terrorist attack while preparing our first responder community, our citizens, and our Nation to respond in the event of another such attack. Challenges include integrating information, securing border and transportation efficiently, and in a way that preserves free flow of people, goods, and services, and which emphasizes the protection of privacy, civil rights, and civil liberties. As Secretary, I see a major challenge in ensuring that the Nation is prepared for those threats which, in reality, are the most critical for our Nation, while also ensuring the Department is prepared to move swiftly and effectively to repel and respond to those threats. This focus will require tightening the administrative structure of the Department and ensuring appropriate resource allocation.

13. How do you plan to communicate to DHS staff on efforts to address relevant issues?

ANSWER: I understand that the Department of Homeland Security (DHS) has a variety of formal and informal communication channels in place to help foster effective, timely and accurate communication with DHS employees. Through e-mail, executive messages, the intranet, newsletters, video and web casts, employee town hall meetings, and face-to-face communication, the Department works to ensure DHS employees as well as managers and supervisors receive key messages and information about relevant issues. These mechanisms are in place not only to provide delivery of accurate, timely and relevant information to employees on a day-to-day basis, but also during an incident or crisis. Should I be confirmed, I will continue to place importance on good two-way communication.

IV. Policy Questions

Human Capital Management

FINAL

14. What will be the principal challenges in the area of human capital management at the Department of Homeland Security in coming years and, if you are confirmed, how do you intend to address these challenges?

ANSWER: Let me begin with a brief background note, applicable to this answer and by and large also applicable to a good many other answers included in this document. Many of the questions posed in this questionnaire go to a level of specific detail about Department programs, DHS sub-components, or (as here) draft proposals for regulations or other efforts about which I, as a sitting judge in the Federal system, have relatively little in the way of current, firsthand, personal or definitive knowledge. Of course, I have endeavored to identify as much information as possible so as to be as responsive as possible to the Committee, and thus normal preconfirmation consultation with the White House personnel office and related staff, the Office of Government Ethics, and DHS Counsel and staff have been conducted. That said, these answers are my own, and are based upon my understanding of the information provided me.

It appears that much progress has been made in bringing these organizations together and the employees of DHS are to be commended for their efforts to date. Common core values, leadership development, and intra-Departmental collaboration will all be necessary to reinforce the shared culture and mission among the frontline employees of the Department on a continuing basis.

15. What is your specific plan to reach out to and assure DHS personnel at all levels that, as Secretary, you will listen to and work with them to address their concerns?

ANSWER: I am a strong believer in working with employees, all stakeholders and unions that represent a significant segment of the DHS workforce. Communication with employees is important, and, if confirmed, I plan to reach out to them on this and other issues that affect them

16. What actions in your past executive experiences demonstrate your style and approach in the area of labor-management relations? If confirmed, what steps will you take to achieve the kind of labor-management relationships you want?

ANSWER: Although I have not had extensive experience with labor-management relations, I have made it a goal to treat all employees well and try to create an environment where employees can be as productive and satisfied as possible. If confirmed, I pledge to work with employees, all stakeholders and unions that represent a significant segment of the DHS workforce.

17. What is the status of the final regulations for the new human resources management system for the Department of Homeland Security?

a. What do you believe will be the impact of the new system on the ability of the

FINAL

Department accomplish its mission in the coming years?

ANSWER: The final regulations for the new DHS human resources system are coming out this week. I understand that these regulations are the result of an extended period of collaboration and study led by DHS and the Office of Personnel Management (OPM) in coordination with OMB.

b. Some federal employees criticized the proposed new personnel regulations, which were published in proposed form on February 20, 2004, claiming these rules threaten employees' due process rights, excessively curtail collective bargaining, and propose an unduly vague pay and performance system. What is your opinion of each of the principal objections raised by these federal employees to the regulations? What would you do, as Secretary, to address or respond to the various concerns expressed by these federal employees about the proposed regulations?

ANSWER: The final regulations for the new DHS human resources system are coming out this week. I understand that these regulations are the result of an extended period of collaboration and study led by DHS and the Office of Personnel Management (OPM) in coordination with OMB. It appears that source of the principal objections mentioned here are not with any particular decision within the Department, but rather with the statutory language of the Homeland Security Act.

18. It is extremely important that employees of the Department and their elected representatives be allowed to participate in a meaningful way in the implementation of the new human resource system. How do you plan to make opportunities available for employees and their representatives to participate meaningfully in the implementation of the new system?

ANSWER: I am a strong believer in working with employees, all stakeholders and unions that represent a significant segment of the DHS workforce. Communication with employees is important, and, if confirmed, I plan to reach out to them on this and other issues that affect them.

19. Many believe that effective human resources management requires that rank and file employees be included in making day-to-day decisions that affect their working lives. With respect to DHS, in particular, GAO has stated: "Regardless of whether it is part of collective bargaining, involving employees in such important decisions as how they are deployed and how work is assigned is critical to the successful operations of the department." Human Capital: DHS Faces Challenges in Implementing Its New Personnel System (GAO-04-790), June 2004, page 16.

a. Do you agree that involving employees in such decisions is critical to the successful operations of DHS?

FINAL

ANSWER: I am a strong believer in working with employees, all stakeholders and unions that represent a significant segment of the DHS workforce. Communication with employees is important, and, if confirmed, I plan to reach out to them on this and other issues that affect them

b. The regulations for the human resources management system, as proposed in February 2004, would grant DHS greater discretion as to the circumstances concerning when collective bargaining will occur. With respect to important decisions such as how employees are deployed and how work is assigned, to what extent will you involve employees in making the decisions through collective bargaining, to what extent will you use other processes for involving employees in the decisions, and to what extent will you allow decisions to be made without employee involvement?

ANSWER: As I just mentioned, I am a strong believer in working with employees, all stakeholders and unions that represent a significant segment of the DHS workforce. Communication with employees is important, and, if confirmed, I plan to reach out to them on this and other issues that affect them.

20. What do you believe will be the biggest challenges facing the Department in implementing the new human resources management system? What do you believe should be the role of the Secretary in addressing these challenges?

ANSWER: I feel that the role of the organization's leader is to set the tone for the change. Undoubtedly, change management will be the biggest challenge. This is an historic change that directly impacts a substantial number of DHS employees. When you are improving systems that have been in place for so long, it is only natural to expect a high degree of uncertainty and angst. That doesn't mean that we should shy away from the challenge.

21. In addition to the implementation of the new human resources management system, what would be your plans to continue the integration of the diverse organizational cultures of approximately 180,000 employees from 22 agencies into a cohesive department?

ANSWER: It appears that much progress has been made in bringing these organizations together and the employees of DHS are to be commended for their efforts to date. Common core values, leadership development, and intra-Departmental collaboration will all be necessary to reinforce the shared culture and mission among the frontline employees of the Department on a continuing basis.

22. The FY2005 Homeland Security Appropriations Act did not fully fund the Administration's request for the initial implementation of the new human resources management system. How will you ensure appropriate resources are made available for the initial implementation of the new system?

FINAL

ANSWER: It is my understanding that the program office feels they are appropriately resourced for the task at hand, but will need three years to complete instead of two.

23. The pay-for-performance component of the new human resources management system will require evaluation of employees by their supervisors.

a. How would you address the concerns of front line employees that supervisors, who will be granted pay and performance evaluation discretion under the new system, be properly trained to ensure transparency and fairness for all personnel? What would be your plans for training front-line employees on the details of the new system?

ANSWER: I believe that training and developing those individuals who take part in the performance management process is critical to the performance appraisal effectiveness. Managers need to be trained in order to appropriately align organizational goals, to become better coaches and mentors for the workforce, and to ensure their readiness to distinguish levels of performance for pay purposes. I understand that training for managers and supervisors will begin this spring.

b. The proposed regulations outline an intention to implement key safeguards for the purpose of achieving a fair, effective, and credible system. For example, the proposed regulations specify that the performance management system "must . . . be fair, credible, and transparent." If confirmed, what will you do to fulfill this worthy goal, and to mitigate any risk that the enhanced management discretion will foster arbitrary and unfair action and politicization in the workplace?

ANSWER: I believe that training and developing those individuals who take part in the performance management process is critical to the performance appraisal effectiveness. Managers need to be trained in order to appropriately align organizational goals, to become better coaches and mentors for the workforce, and to ensure their readiness to distinguish levels of performance for pay purposes. I understand that training for managers and supervisors will begin this spring.

c. The proposed regulations would authorize DHS to design and implement the new pay-for-performance system within broad regulatory guidelines. To what extent and in what manner would you provide for involvement of affected employees in designing and implementing the new pay and performance system?

ANSWER: Again, I am a strong believer in working with employees, all stakeholders and unions that represent a significant segment of the DHS workforce. Communication with employees is important, and, if confirmed, I plan to reach out to them on this and other issues that affect them

FINAL

24. The February 2004 proposed regulations for the human resources management system provided that employee appeals from certain discipline cases would be heard by an internal DHS review panel rather than by the independent Merit Systems Protection Board. What do you think of this proposal? If such a system of internal appeal is authorized, how would you, as Secretary, maintain the real and perceived independence of the panel and its decisions, so as to gain the confidence of the Department's personnel?

ANSWER: As I have already mentioned, I understand that the final regulations for the new DHS human resources system will be coming out soon. I look forward to learning about these important details within the new system.

25. Some argue that the compensation for federal law enforcement officers is falling farther behind their counterparts in state and local government and the private sector, and that this situation will harm the Department's ability to recruit and retain a highly-qualified law enforcement workforce. What is your view of this?

ANSWER: It is my understanding that DHS already has significant flexibility in the design of pay systems for employees. I recognize the importance of this issue and, if confirmed, will review to see if additional flexibilities are necessary.

26. The December 2004 report from the Inspector General entitled "Major Management Challenges Facing the Department of Homeland Security" identified a serious problem involving the length of time necessary to complete the security clearances process, even for federal employees from other agencies who hold clearances when they enter DHS. The Intelligence Reform Act of 2004 includes several provisions to streamline the security clearance process, including a provisions to require reciprocity among clearances at the same level among agencies.

What steps should the Department take in response to the report in order to prevent future delays in the process of granting access to classified information?

ANSWER: DHS, like other Executive Branch Departments and agencies, complies with the requirements of Executive Order 12968, "Access To Classified Information," which establishes a uniform Federal personnel security program for employees who are considered for initial or continued access to classified information. Executive Order 12968, like the Intelligence Reform and Terrorist Prevention Act of 2004, calls for background investigations and eligibility determinations to be "mutually and reciprocally accepted by all agencies." I understand that DHS has implemented this reciprocity requirement since its inception. It is important that DHS employees have access to the tools required to carry out their missions. In addition, I understand that DHS is taking a number of steps to streamline and improve the quality of the security

FINAL

clearance process which I will monitor closely if confirmed.

27. Under the Department's "One Face at the Border" initiative, inspectors from the former Customs Service, Immigration and Naturalization Service (INS), and Animal and Plant Health Inspection Service (APHIS) have been merged into a single front-line inspection position.

a. As inspectors with specialized training and experience in the former Customs Service; INS, and APHIS retire, how would you make sure that the remaining and newly hired officers in front-line border position can perform the jobs that were previously done by these specialists?

ANSWER: CBP currently has underway a very aggressive cross training program for existing staff, as well as a two year OJT training program for newly hired CBP Officers. This will ultimately lead to one officer performing most functions and is the necessary step to creating one face at the border. Each CBP Officer will have a foundation in all of the legacy missions – customs, immigration, and agriculture. Each of the legacy agencies had specialties – for instance, Customs had targeting units and Immigration had fraudulent document experts. CBP will continue to provide training to retain these specialties.

In light of the special scientific training required to perform the agriculture mission, CBP will continue to hire individuals as Agriculture Specialists who have the appropriate educational backgrounds. Their efforts will be enhanced by the other inspectors, all of whom will have basic agriculture training. In addition, all Agriculture Specialists will continue to be provided New Officer Training to ensure an adequate focus on the other CBP priority missions. All CBP Officers will be provided adequate refresher training periodically (every three to five years) to maintain skill levels within the various disciplines, including pathway risk analysis, pest identification, and technology advancements. Understanding that some of the best training often comes from experience, CBP will begin assigning new Officers into specialty positions, such as the passenger analytical units and rover teams, thereby allowing experienced Officers to provide them with advanced training and mentoring in areas of expertise.

b. Do you believe that certain individuals should be trained as expert specialists, to be called in to conduct secondary inspections when particular specialized knowledge is required, or do you believe that all officers should be equally fully trained in all Customs, INS, and APHIS disciplines?

ANSWER: I understand that the specialized knowledge required to perform all disciplines is too broad for a single individual. Therefore, CBP believes that we should maintain some individuals with specialized skills to carry out the various missions of the agency. This seems to me to be a reasonable approach, but if confirmed I look to examining this issue in depth and making sure that CBP has the requisite expertise to accomplish its missions.

Procurement

FINAL

28. In fiscal year 2004, the Department of Homeland Security spent more than $6 billion acquiring a wide variety of goods and services needed to meet its mission. What do you see as the most significant procurement challenges facing DHS and how will you address these?

ANSWER: When the Department was created, 22 existing organizations were combined. I understand that of those 22 organizations, only seven brought a procurement office and personnel with them and those offices were staffed for their pre 9/11 activities, not for the complexity and amount of procurement activity that the Department now requires. If confirmed, I will lead DHS in recruiting aggressively in both the Federal and private sector to meet the challenge of hiring the right acquisition workforce – both in terms of quantity and quality of personnel required to meet our critical mission mandate.

I would also review the functional authority of the procurement program and ensure that the Department has appropriate oversight and control over its acquisition program.

29. GAO has designated the implementation and transformation of the Department of Homeland Security (DHS) as high-risk due to the size and complexity of the effort, the existing challenges faced by the components being merged into the department, and the potentially serious consequences should DHS fail to effectively carry out its mission. DHS, which has some of the most extensive acquisition requirements in government, is still integrating the mission functions and acquisition practices of 22 entities. Congress remains concerned about DHS' efforts to develop an integrated acquisition organization that eliminates duplication stemming from the merger of so many different entities, some with their own procurement systems.

a. What steps has DHS taken to assure adequate oversight and control over acquisitions in the department, and what is your opinion of the Department's progress in this area?

ANSWER: I understand that the Department is exercising oversight and controlling procurement authority over the Department's acquisition programs, and if confirmed, I will continue to focus DHS leadership's attention on its acquisition programs.

I understand that DHS has put several measures in place aimed at oversight of acquisition. For example, I understand that DHS has adopted the Government Accountability Office (GAO) framework for reviewing and overseeing its acquisition program. This framework, designed to enable senior agency officials and accountability organizations to conduct high-level, qualitative assessments of an agency's procurement processes, is the basis for the Department's acquisition oversight program. I further understand that DHS has created an investment review process chaired by the Deputy.

b. What steps will DHS do you believe DHS should take to leverage its buying power of supplies and services in the department?

FINAL

ANSWER: As I understand it, DHS has implemented a Strategic Sourcing Program that features the establishment of 15 Commodity Councils. Each Commodity Council focuses on a strategically important supply and service category, such as weapons and uniforms. The Councils leverage the Department's buying power and ensure consistency and compatibility of requirements between the component agencies of the Department.

Additionally, I understand that DHS has established an Information Technology Acquisition Center (ITAC) within the Department, chartered with leading the effective, consolidated, and efficient acquisition of billions of dollars of information technology goods and services across the Department.

30. GAO found that oversight of procurement in DHS is difficult because procurement managers are placed at a low level within the organization, and they do not have the leverage to hold employees across the agency accountable for compliance with procurement policies. *See* GAO-03-799 and GAO-04-544. Further, procurement activities are not coordinated well because DHS has not made effective use of cross-functional teams—consisting of procurement, program, budget, financial, and legal representatives—throughout the acquisition process.

a. Do you agree with GAO's characterization of the problem and its cause?

ANSWER: As I understand it, this specific issue arises from a General Accounting Office (GAO) report on two of the Department's component agencies. I also understand that the GAO audits were started before DHS was established. If confirmed, I look forward to reviewing the reports with the Department's Under Secretary for Management and Chief Procurement Officer, and taking appropriate action to address any remaining concerns. The Department has indicated that it addressed the problem of organizational placement of the procurement function as it developed the Department's overall organizational structure.

b. What steps have been taken, and what further steps, if any, do you believe should be taken, to address the concerns identified by GAO?

ANSWER: As I understand it, this specific issue arises from a General Accounting Office (GAO) report on one of the Department's component agencies. In addition, the GAO report was started before DHS was established. The Department has indicated that it addressed the problem of organizational placement of the procurement function as it developed the Department's overall organizational structure.

DHS is improving its effective use of cross-functional teams by developing such teams early in the acquisition planning process. The Investment Review Board, chaired by the Deputy Secretary and with members throughout the Department, monitors the progress and performance

FINAL

of the teams throughout the acquisition process.

If confirmed, I will ensure appropriate attention is given to the procurement function to enable accountability and control over the Department's acquisition programs. I will also personally ensure leadership commitment to robust acquisition planning and monitoring of goals through the investment review process.

c. What remaining challenges does the Department face in fully integrating its acquisition system?

ANSWER: When the Department was created, 22 existing organizations were brought together, the integration of those entities, particularly as it related to management processes, takes time. If confirmed, I will continue to focus on infusing a cross-functional perspective early in the planning stages of an acquisition and improve upon the groundwork already laid.

31. Reports indicate that DHS procurement managers are unable to make strategic decisions that would allow them to maximize spending power across the agency because their information systems do not provide visibility into what is being spent agency wide for goods and services and who the major vendors are. *See* GAO-03-799 and GAO-04-544.

a. Do you agree with the characterization of the problem and its cause as described in these reports?

ANSWER: As I understand it, this specific issue arises from a General Accounting Office (GAO) report on two of the Department's component agencies. I also understand that the GAO audits were started before DHS was established. If confirmed, I look forward to reviewing the reports with the Department's Under Secretary for Management and Chief Procurement Officer, and taking appropriate action to address any remaining concerns.

b. What steps have been taken, and what further steps, if any, do you believe should be taken, to address the concerns identified in these reports?

ANSWER: I understand that DHS is implementing an automated procurement system within the Department's procurement offices. It is also actively participating with OMB on the e-gov initiatives, including developing and implementing the new Federal government-wide procurement data system.

Though I have not yet been fully briefed, I understand DHS is developing an integrated business system called eMerge². The automated procurement system will feed into the eMerge² system and provide integrated procurement, business and financial information for the Department.

FINAL

32. The DHS IG reports that the department has a large and growing number of complex, high cost procurement programs under way that need to be closely managed. For example, the Customs and Border Protection's (CBP) Automated Commercial Environment (ACE) project will cost $5 billion and the Coast Guard's Deepwater Capability Replacement Project will cost $17 billion and will take three decades to complete. Further, the Department recently awarded a $10 million contract for the development of a system to support the U.S. Visitor and Immigration Status Indication Technology (US-VISIT) program for tracking and controlling the entry and exit of all aliens entering and leaving the country.

a. Does DHS have a strategic acquisition workforce plan to help identify the knowledge, skills, and abilities the agency needs to ensure it can meet current and future contract management requirements? What is your opinion of the strategic acquisition workforce planning that has been performed, and what such planning do you believe is needed, to meet the concerns expressed in this report?

ANSWER: I understand that the DHS strategic acquisition workforce plan was developed during the transition and is being implemented in stages. I understand that the plan includes development of certification programs (including training, experience, and some education elements) for various members of the acquisition workforce including procurement professionals, program and project managers, contracting officer technical representatives, and in the future, IT professionals, and finance and budget professionals. If confirmed, I look forward to becoming more familiar with this initiative and working to ensure its success.

b. The Coast Guard, at least partially in response to a GAO report on the Deepwater Project, has promised to reevaluate the program in order to address emerging mission needs post-9/11. Some maritime security experts believe it is critical that the process for generating and approving new project requirements be responsive to evolving demands. In your view, should DHS and its agencies review, reevaluate and adjust where necessary and possible, procurement contracts initiated prior to 9/11 and/or the formation of the Department of Homeland Security? If so, how?

ANSWER: I believe that, to the extent possible, the Department should be responsive and adapt procurements to meet emerging mission needs and changing circumstances.

33. DHS is one of the largest federal agencies in terms of procurement spending. GAO has recommended that agencies employ a variety of commercial best practices, including spend analysis techniques and commodity councils to identify opportunities to leverage buying power and better manage suppliers. What is your opinion of these techniques recommended by GAO, and what additional steps, if any, do you believe DHS should take to make more effective use of such techniques?

ANSWER I understand that DHS has developed a Strategic Sourcing Program to focus on

procurement spend, sourcing, and strategic supplier relationships. If confirmed, I look forward to becoming more familiar with this program and determining whether any additional steps should be taken to improve procurement practices, with due regard to the GAO recommendations.

34. Over the past several years, federal agencies have increasingly used other agencies' contracts to acquire goods and services, such as through the use of government-wide acquisition contracts and the General Services Administration's (GSA) Federal Supply Schedule program. While the use of these contract vehicles can be an effective and efficient acquisition tool, there has also been widespread criticism of GSA and the Department of Defense for improperly using the schedules program to obtain goods and services that were outside the scope of the schedule contracts, as evidenced by the GSA Inspector General's report of December 14, 2004 on GSA's FTS Regional Client Support Centers. For example, GovExec.com reported in August of 2003 that "Officials at GSA's Federal Technology Service, a division that provides contracting services to other agencies for a fee, improperly used more than $37 million in funds set aside for technology purchases to pay for construction projects on behalf of the Army in Washington state and the Eastern European nation of Moldova..." What steps will you take to ensure that DHS is properly using other agencies' contract vehicles, including the GSA schedule program?

ANSWER: As I understand it, the Department is aware of the issues regarding the GSA FSS program and DOD's use of that program. The Chief Acquisition Officer Council has been briefed on the issues and will continue to exercise oversight and control over the use of GSA's schedule contracts, as well as the use of interagency agreements with other Federal agencies.

35. Because defense of the homeland requires taking maximum advantage of cutting-edge technologies, the department will need to attract the best and most innovative firms in the private sector. But many of these firms traditionally have declined to do business with the federal government. What steps will you take to create an environment in which innovative firms in the private sector will be willing to do business with the department?

ANSWER: As I understand it, the Department has begun several initiatives to bring both existing and new businesses to the Federal government. DHS is effectively using the authority provided the Section 831 of the Homeland Security Act of 2002 to attract non-traditional firms to research and development projects. The Under Secretary for Science and Technology has issued Broad Agency Announcements (BAA) for research and development projects to attract innovative firms to DHS.

Information Technology

36. The DHS chief information officer (CIO) has a significant role in guiding technology investments and creating one network and one infrastructure to ensure IT connectivity among the Department's 22 legacy organizations. Despite these key responsibilities, in July 2004 the OIG reported that the CIO is not a member of the senior management team, with authority to

INAL

strategically manage IT Department-wide. In line with federal IT management guidelines, the OIG recommended providing the CIO with greater authority by repositioning this official to report to the Office of the Deputy Secretary. The OIG said that by reporting to the Under Secretary for Management instead, the CIO is not a peer with the DHS Under Secretaries and component directors, and, as such, lacks the power and influence to advise senior executives on how best to implement and manage IT across the Department. What steps do you believe are necessary to ensure that the CIO has adequate authority to fulfill his strategic IT management responsibilities?

ANSWER: If confirmed, I will ensure that the CIO has the authority and responsibility necessary to meet the Department's mission. I recognize that the role of the CIO is of great importance to the mission accomplishment of DHS and that the CIO should be positioned in a manner that enables the CIO to assert strategic influence and authority over IT. Given that two years have passed since the Department's creation, it makes sense to review the Department's structure. I plan to take this opportunity, should I be confirmed, to undertake such a review.

37. The Federal Information Security Management Act (FISMA) requires an annual independent evaluation of the information security program within DHS by the OIG. The two evaluations conducted by the OIG since the creation of DHS, have recognized the efforts and progress made to ensure the security of the Department's information systems.

a. However, the two evaluations also identified a number of security weaknesses and recommended that DHS recognize as a material weakness the current condition of its information security program. What steps will you take to ensure that DHS' information systems are properly secured?

ANSWER: I understand that the Department has made significant improvements in its information security posture under my predecessor's leadership, including positive steps for resolving security weaknesses identified by the Department's Office of Inspector's General.

Consistent top-down leadership is critical to ensuring that effective information security controls are institutionalized throughout the Department. Safeguarding the vital information associated with the Department's overall mission of protecting the Nation will continue to be a high priority, and I will provide the necessary impetus for ensuring that this principle is fully implemented throughout the Department. I recognize that it is essential for the Department to protect the information and information resources necessary to undertake our important mission.

b. Among other things, the Department of Homeland Security's Office of Inspector General has stated that the Department's Chief Information Officer "is not well-positioned to meet the department's IT objectives." ("Major Management Challenges Facing DHS, " pg. 8). The OIG pointed out that the CIO has limited resources, is not a member of the Department's management team and has no formal relationship with the CIOs of Department components outside of the

FINAL

Department's CIO Council. What steps would you take to ensure that the Department's CIO has oversight and control over IT planning investment and deployment?

ANSWER: If confirmed, I will ensure that the CIO has the authority and responsibility necessary to meet the Department's mission. I recognize that the role of the CIO is of great importance to the mission accomplishment of DHS and that the CIO should be positioned in a manner that enables the CIO to assert strategic influence and authority over IT. Given that two years have passed since the Department's creation, it makes sense to review the Department's structure. I plan to take this opportunity, should I be confirmed, to undertake such a review.

38. With a prominent, and highly visible, federal mission to preserve, protect, and secure our Nation's freedoms, how would you envision exerting a more concerted effort to increase the resources available to the DHS Enterprise Architecture effort for overcoming the challenges affecting the transformation of its business processes and modernizing its supporting systems to maximize operational effectiveness?

ANSWER: If confirmed, I will ensure that the Department's Enterprise Architecture (EA) will be institutionalized and utilized as a critical tool in the efforts to integrate the Department's systems and processes. It is necessary to drive this tool down throughout the Department so that mission capabilities are aligned and that the support systems behind the mission are rationalized and maximized. The challenge in implementing change is dealing with the complexity, magnitude, and dynamic elements (people, process and technology) for what is strategically required.

39. A major challenge for DHS is establishing a Department-wide IT strategy for ensuring effective communications and information exchange among its approximately 180,000 employees, largely drawn from the 22 legacy agencies. Taken together, DHS organizational elements have over 100 disparate, redundant, and non-integrated systems used to support a range of administrative functions, such as accounting, acquisition, budgeting, and procurement. The Department also must ensure that individual technology investments are aligned with an overarching, Department-wide framework for IT. What do you plan to do to meet the Department's systems integration and interoperability challenges?

ANSWER: The underlying framework for effective communications and information exchange among the organizational elements of the Department and their approximately 180,000 employees is a common IT infrastructure. Foremost in their relationship to information sharing among the components of this infrastructure are a common network and a common email system. I understand that these two efforts, and others, are well underway through the Department's Infrastructure Transformation Program.

If confirmed, I will continue to place a priority on these issues, towards evolving the Department's ability to carry out its critical missions.

FINAL

40. In testimony describing the Department of Justice's antiterrorist prosecutions that you delivered to the Senate Banking, Housing and Urban Affairs Committee in January 2002, you stated that "We are using computers to analyze information obtained in the course of criminal investigations to uncover patterns of behavior that, before the advent of such efficient technology, would have eluded us. In our search for terrorists and terrorist cells, we are employing technology that was previously used primarily by the business community."

a. Would you please discuss the viability, cost and impact to civil liberties and privacy of data mining systems?

ANSWER: Technology has broadened exponentially the ability to extract information from data. In seeking to identify and stop those who would come to this country determined to attack and kill innocent Americans, it is important that we use all appropriate tools that are lawfully at our disposal. It is equally important, however, that -- in the quest for knowledge from existing and new data sources -- we protect the important privacy and civil liberties principles in our Constitution and other laws. This may include legitimate issues such as notice, consent, access, dissemination, appropriate use, redress, and data integrity and security. And this focus is necessary in order to preserve as legitimate our efforts and build a consensus on respectful use of the information that is available to us. Concerns over potential abuses and the intrusiveness of data mining methods and technologies are valid and important. I believe that we can and should use technology in appropriate ways to help us advance security while, at the same time, fully complying with the Constitution and other laws to safeguard the privacy and civil liberties of Americans.

I understand that leaders in the business community have demonstrated that privacy and new technology are not mutually exclusive; rather, that privacy protections must be built into the foundation of both the technology and the policy objectives that drive the development of such technology. While the conventional wisdom may be that there is a "cost" to privacy and civil liberties, hard work and ingenuity can, and have, proven that it need not be so. Federal law provides a framework for considering new technologies and new programs for their impact on personal privacy: the Privacy Impact Assessment, required for new technologies and data gathering programs under Section 208 of the E-Government Act of 2002, and was expanded in particular for the Department of Homeland Security to apply to all new rules of the Department under Section 222 of the Homeland Security Act. I will work with the Department's Privacy Officer and Officer for Civil Rights and Civil Liberties to ensure that privacy and civil liberties impacts are considered throughout the Department.

b. Based upon your experience, is it possible to design data-mining technologies in ways that strike better rather than worse balances between liberty and security?

FINAL

ANSWER: Yes. As noted above, I believe that applying fair information principles and transparency to data mining programs, and scrupulous consideration of privacy and civil liberties at the inception of such programs and throughout the technology design and development processes, will allow us to design data mining technologies and establish protective procedures in ways that fully safeguard the constitutional and other legal protections for the privacy of Americans, and thus can strike the appropriate balance between liberty and security. If confirmed, I will work with the appropriate elements of the Department, including the Privacy Office and the Office for Civil Rights and Civil Liberties.

41. What should DHS's role be in the area of biometric identification of citizens, visitors, criminals, and terrorists and how is it different than what the FBI currently does?

ANSWER: The Department of Homeland Security (DHS) is statutorily responsible for homeland and border security, as well as having policy oversight of the visa issuance process, and is solely responsible for making determinations of citizenship and admissibility to the United States. I understand that biometric technologies are rapidly improving both the efficiency and security aspects of this responsibility – through establishing and verifying the identity of U.S. citizens and foreign nationals as well as allowing matching against criminal and terrorist information. The best example of DHS activity is the US-VISIT Program, which uses fingers cans to verify the identity of foreign travelers and is the largest daily used biometric program in the world with, I understand, over 150,000 people processed each day with a response in seconds.

With respect to the DHS and FBI relationship in this area, there are significant differences in the size, scope, and diversity of their efforts, along with the public's expectation of convenience and privacy. US-VISIT does compare against fingerprints of known terrorists and foreign fugitives provided by FBI through regular extracts. However, while having different perspectives, DHS and FBI must improve upon their two-way and real-time information sharing, with all appropriate privacy protections in place.

Financial Management

42. The auditors of DHS's financial statement auditors were unable to express an opinion on DHS's fiscal year 2004 financial statements due to certain deficiencies in financial management at the Department and identified many material internal control weaknesses.

a. What are your views on the importance and role of sound financial management in managing operations and in holding managers accountable for effectively meeting missions, goals, and objectives?

ANSWER: Sound financial management is extremely important. DHS is entrusted each year with about $40 billion of the public's money. And with that money, DHS works to achieve its

FINAL

missions, including protecting the homeland. Sound financial management is all about linking mission, goals and objectives to costs, and holding responsible managers accountable for their performance. DHS must keep the public's trust that not only is it keeping the public safer, but doing so in a financially accountable manner. If confirmed, I will make this issue a priority.

b. What should be done to ensure DHS implements an effective financial management system and resolve its internal control weaknesses?

ANSWER: The 2004 DHS Accountability Act subjects DHS to the Federal Financial Management Improvement Act. To comply with this statute, I understand that the CFO is proceeding with plans to design and implement the Department's resource management transformation initiative, referred to as eMerge2, a business-focused program designed to consolidate and integrate the Department's budget, accounting and reporting, cost management, acquisitions and grants, asset management, and budget functions. As I understand it, this system will significantly assist in implementing improvements.

43. In October 2004, the DHS Financial Accountability Act was enacted requiring DHS to obtain an opinion on its internal controls over financial reporting, similar to Sarbanes Oxley requirements, beginning in fiscal year 2006. What steps will you, as Secretary, take to ensure compliance with the Act's requirements?

ANSWER: Many of the provisions of this new Act have not yet been established within government. However, I understand the Chief Financial Officer has taken the initiative to establish a Department-wide committee comprised of representatives from all component financial management staffs, including representatives from the various procurement, information technology, and human capital domains, as well as staff from the Inspector General. In addition, the CFO is obtaining assistance and expertise from inside and outside of government to implement these intricate provisions. This committee and our employees have been charged with formulating both a short-term and long-term plan to implement and incrementally improve on internal control provisions of the Act.

Strategy and Policy Development

44. The current Homeland Security Strategy sets a general framework for our homeland security efforts, but has been criticized as too general and lacking clear priorities and deadlines for action. The strategy, completed in the summer of 2002, is now also dated. If confirmed, what would your plans be with respect to updating and strengthening this strategy? Please be as specific as possible. As discussed in a September 29, 2004 colloquy between Senators Lieberman and Collins, with respect to the Department of Homeland Security Financial Accountability Act (H.R. 4259, now P.L. 108-330), that strategy should incorporate more rigorous risk analysis and set clear priorities and deadlines, as well as achieve greater integration of diverse federal strategies related to terrorism. What aspects of the Homeland Security Strategy, if any, do you

FINAL

believe need improvement? If confirmed, do you commit to make updating and strengthening the Strategy a critical priority and to comply with Congressional directives on this matter?

ANSWER: I certainly support both the DHS Strategic Plan and the National Strategy for Homeland Security and I believe they have started us in the right direction. That said, I certainly favor robust review of the Strategy, given it has been almost three years since its writing and more than two years since the creation of the Department. I look forward to reviewing this and other strategic issues should I be confirmed.

45. A recent CSIS/ Heritage Foundation report found that the DHS Secretary currently "lacks a policy apparatus with which to lead the development of proactive, strategic homeland security policy, let alone do anything beyond 'managing by the in-box' and responding to crises of the day." It states that DHS lacks a high-level policy officer with the staff and authority to articulate and enforce policy guidance across the Department. It calls for the establishment of a unified policy planning staff headed by an Undersecretary for Policy who would report directly to the Secretary via the Deputy Secretary. The Undersecretary would establish and direct a formal policymaking process and oversee a policy making board, conduct long range policy and strategic planning, conduct program analysis, and conduct periodic net assessments and research specific department-wide issues of interest to the Secretary and DHS leaders. What is your view of this recommendation?

ANSWER: Given that the merger of DHS brought together several policy and planning structures, it seems appropriate to expand the current structure to a robust DHS policy office. Such a unified, DHS-wide policy mechanism should coordinate strategic policy activities on behalf of the Department while overseeing the existing program policy and planning efforts. I believe the Homeland Security Act recognized the Secretary's need for flexibility in organizing the new department, and granted important authority in this area. I understand that Secretary Ridge has thoroughly examined and undertaken certain re-organizational steps utilizing this authority. If confirmed, I will certainly be reviewing any specific recommendations for change and reorganization-including that of the policy office-and will keep Congress apprised of these reviews.

Congressional Oversight

46. Because of the critical nature of DHS's mission, Congressional oversight will be considerable and an important means of reporting to the public on the department's performance. GAO, responding to Congressional requests, has increasingly experienced difficulty in gaining access to officials and records to support Congressional oversight responsibilities.

FINAL

a. Do you agree that Congress and GAO are entitled to timely and full access to federal agency records and other information and to federal officials as Congress determines is necessary to fulfill its oversight responsibilities? What steps would you take to ensure such access?

ANSWER: I have a deep and abiding respect for the Constitution and the laws of this country and, if confirmed, I intend to ensure that everyone in the Department works closely and respectfully not only with other Executive Branch employees but also with members of the other two branches of our Government and particularly with the Congress. In this regard, I will ensure that every effort is made to promptly and professionally respond to appropriate requests for information, whether the requests come from any of the various Committees or Sub-Committees exercising oversight over the Department or from the Government Accountability Office. I appreciate the need for GAO auditors and investigators to access appropriate information from the Department and I also understand the benefit to the Government and to my own mission that can flow from Congressional oversight and GAO input.

b. DHS officials will sometimes deny or delay congressional and GAO access to documents by claiming that they are "pre-decisional," often in cases where decisions have been finalized. GAO and the Congress clearly have a right of access to deliberative materials. What is your view on this issue, and what actions will you take to rectify this problem? Do you concur that the fact that material may be exempt from public disclosure under FOIA does not mean it is exempt from disclosure in response to a Congressional or GAO request for information or material?

ANSWER: It is difficult to identify particular actions in the absence of specific context, but I understand that the Department of Homeland Security has established an official policy of cooperation with GAO, one that was worked closely with GAO. I can assure you that, if I am confirmed, I will look into this issue, I will seek the legal guidance of the Department's General Counsel, and I will ensure not only that the Department fully complies with the law, but also that it makes every effort to respond to such requests in a timely manner, and to resolve cooperatively any issues that may arise.

c. DHS has denied this Committee access to interview Immigrations and Customs Enforcement (ICE) agents concerning allegations that certain ICE agents failed to share information that may have prevented the naturalization of a suspected terrorist. DHS has also denied this Committee access to interview CIS naturalization officials regarding decisions they made in the naturalization process for this individual. Please explain the legal justification for such a refusal, and state whether, if confirmed, you would continue the policy under which the refusals are based, and whether you would provide the Committee access to the officials and information that it has requested.

ANSWER: First, let me state plainly: I am told that it is DHS policy to cooperate with Congressional requests for information and testimony, and I fully support and will continue that policy. As to this specific matter, I understand that DHS officials responsible for naturalization

FINAL

adjudications have met extensively if not yet fully satisfactorily with Congressional staff to address not only questions relating directly to this individual case, but also as to concerns about naturalization policies and quality control procedures. These concerns are understandable, and if confirmed I would be happy to look into this situation, address it, and advise the Committee as appropriate.

More generally, when information requested relates to open investigations, adjudications, and civil (including administrative or regulatory) or criminal enforcement actions pending before or within a regulatory or law enforcement agency, other equities or parameters are often involved. I know that at the Department of Justice, where I worked in many different capacities for a number of years, there were appropriate limitations, for example, as to certain information about criminal investigations or prosecutions, and civil and administrative matters as well. In many cases there were and are court rules or other limitations about what could be disclosed even to colleagues within the Department, let alone elsewhere in the executive branch. Frankly, I am not yet fully familiar with all the parallel protocols that apply to the components of DHS. But I can say this: should I be confirmed, I will ensure that DHS continues to work on enhancing its processes for coordinating these types of information requests to reduce the time needed to comply.

47. While you served as Assistant Attorney General for the Criminal Division, the Justice Department initially declined to comply with a subpoena for declination memoranda relating to a House Committee's investigation of FBI misconduct during the 1960s and 1970s. The President invoked executive privilege over these records, but then provided the Committee with access to the records after a period of negotiation.

a. Do you believe that Congress should be denied access to deliberative records relating to closed investigations or prosecutions? If so, please explain the basis of that belief.

ANSWER: I believe that congressional committee oversight regarding executive branch programs plays an important role in the integrity of government and the legislative process. Hence, the executive branch has an obligation to accommodate legitimate committee oversight needs for information, consistent with its own responsibilities. How best to accommodate those needs in the context of a particular matter is difficult to anticipate but, if confirmed as the Secretary of Homeland Security, I will work to find mutually acceptable solutions in response to committee requests for deliberative documents of the Department of Homeland Security relating to closed matters.

b. If confirmed as Secretary, do you agree to provide such records in response to requests from appropriate Congressional Committees?

ANSWER: If confirmed, I will make every effort to accommodate the information needs of congressional committees conducting oversight about the operations of the Department of Homeland Security. The precise contours of such accommodations would depend upon the

FINAL

congressional needs and executive branch interests in the particular situations and would likely include the provision of appropriate information in one form or another.

c. If you believe there are exceptions to the Department's obligations to comply with Congressional information and document requests, please explain the basis for that belief and elaborate upon the factors you would consider in deciding whether to comply.

ANSWER: First, let me state plainly: I am told that it is DHS policy to cooperate with Congressional requests for information and testimony, and I fully support and will continue that policy. As to this specific matter, when information requested relates to open investigations, adjudications, and civil (including administrative or regulatory) or criminal enforcement actions pending before or within a regulatory or law enforcement agency, other equities or parameters are often involved. I know that at the Department of Justice, where I worked in many different capacities for a number of years, there were appropriate limitations, for example, as to certain information about criminal investigations or prosecutions, and civil and administrative matters as well. In many cases there were and are court rules or other limitations about what could be disclosed even to colleagues within the Department, let alone elsewhere in the executive branch. Frankly, I am not yet fully familiar with all the parallel protocols that apply to the components of DHS. But I can say this: should I be confirmed, I will ensure that DHS continues to work on enhancing its processes for coordinating these types of information requests to reduce the time needed to comply.

Inspectors General

48. Inspectors General are intended to serve as independent watchdogs against waste, fraud, and abuse, but they also can act in a collaborative capacity with agency management to help avoid such problems at the outset of agency programs. Please describe the relationship you intend to have with the DHS OIG.

ANSWER: I recognize the important role the Inspector General plays in highlighting waste, fraud and abuse, and strongly support the appropriate exercise of this critical function. The relationship with the Inspector General is much more productive when it involves mutual trust and understanding of responsibilities. For that reason, should I be confirmed, I will work to foster a positive relationship with the Inspector General and encourage this relationship with Departmental leadership across the board.

49. There are indications that the DHS OIG may not have adequate resources to carry out its missions to prevent waste, fraud and abuse. Although the Department's budget increased by $3.6 billion in FY'05 (or roughly 10%), the FY'05 OIG budget was cut by $3 million, or just over 3%. In response to queries by Committee staff, the OIG has also indicated that the Office lacks adequate investigative staff to respond to the number of allegations of waste fraud and abuse that the Office receives and that it is unable to provide audit coverage of all Department's activities it

FINAL

considers appropriate. Do you believe the OIG is adequately funded? If you are confirmed, what steps will you take to ensure that the DHS OIG has adequate funding and personnel to carry out its responsibilities?

ANSWER: I understand that, in FY 2005, the Office of Inspector General (OIG) received a 2.4 percent increase over its FY 2004 appropriation. I assure you that I understand and appreciate the importance and value of the OIG and will work very closely with the IG to ensure that it has the resources needed to carry out its statutory responsibilities.

50. The OIG routinely refers findings and recommendations from its inspections, audits, and investigations to DHS management for corrective action, as does the U.S. Government Accountability Office (GAO). It is OIG's practice to make these referrals to the senior manager directly responsible for the activity or program that is the subject of the OIG review. In response to Committee staff, OIG has stated that on at least one occasion these managers have declined to directly respond to the OIG or have delegated responsibility for responding to the organizational units that were the subject of the original inspection, audit, or investigation. If you are confirmed, will you ensure that DHS officials to whom OIG and GAO findings and recommendations are addressed are directly responsible and accountable for responding to such findings and recommendations and taking appropriate corrective action?

ANSWER: I am interested in this important issue, and if confirmed would expect to look at this and related issues. As noted above, I recognize the important role the Inspector General plays in highlighting waste, fraud and abuse, and strongly support the appropriate exercise of this critical function. The relationship with the Inspector General is much more productive when it involves mutual trust and understanding of responsibilities. For that reason, should I be confirmed, I will work to foster a positive relationship with the Inspector General and encourage this relationship with Departmental leadership across the board.

Intelligence Reform

51. The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), signed into law by President Bush on December 17, 2004, establishes a Joint Intelligence Community Council (JICC), which will be chaired by the Director of National Intelligence (DNI). In addition, the JICC will consist of the Secretaries of Homeland Security, Treasury, State, Energy and Defense, as well as the Attorney General. The JICC will be critical to helping the DNI achieve the "unity of effort" in the intelligence community that has been lacking. Its role is to assist the DNI in developing and implementing a joint, unified national intelligence effort to protect national security by (1) advising the Director on establishing requirements, developing budgets, financial management and monitoring and evaluating the performance of the intelligence community; and (2) ensuring the timely execution of programs, policies, and directives established or developed by the Director. If you are confirmed as Secretary, how do you envision your specific role on the JICC and what will you do to contribute to its success?

FINAL

ANSWER: If confirmed as Secretary, as a member of the JICC, I will assist the DNI in developing and implementing a joint, unified national intelligence effort to protect national security. I see this as an important aspect of the Intelligence Community reform effort and will work with the DNI to help him or her effectively manage the IC. Initially, I see that assistance in two key areas: ensuring that DHS effectively brings its unique capabilities and skills to the IC, and that DHS intelligence needs are conveyed in a fashion that allow the DNI to structure programs to meet those needs. To that end, I will ensure that the Department of Homeland Security is providing all necessary support to the DNI and the Intelligence Community through access to information and analytic products that originate within DHS as well as access to the expertise of DHS staff. I will also work with the DNI and other members of the JICC to assure that IC members are focused on priority intelligence collection and analysis that supports the DHS mission to prevent and deter terrorist attacks and protect against and respond to threats and hazards to the nation.

Information Sharing

52. The 9-11 Commission, among many others, noted the critical importance of information sharing to the fight against terrorism. The Intelligence Reform and Terrorism Prevention Act of 2004 implements a key recommendation of the 9-11 Commission by requiring the President to establish an Information Sharing Environment that facilitates the sharing of terrorism information among all appropriate federal, state, local, tribal and private sector entities.

a. If confirmed, what will you do to make establishing this environment a priority for the Department?

ANSWER: As recognized repeatedly by the President and the Congress, robust information sharing among Federal agencies is essential in combating terrorism. If I am confirmed, information sharing will be one of my top priorities. I will ensure that DHS remains an active participate in the development and implementation of the Information Sharing Environment.

b. What do you believe DHS's role should be in this new Information Sharing Environment?

ANSWER: DHS has and will continue to be primary contributor to the development and implementation of all areas of the 'Environment,' including the enunciation of policies, and establishment of the functional standards. I recognize that no single department can or should do this alone; it must be a joint effort in order to bring the needed cultural, policy, legal and technological changes.

FINAL

c. What are the distinctive capabilities that DHS possesses as a source, consumer, synthesizer or distributor of terrorism information?

ANSWER: DHS is uniquely positioned as an information source, as well as operating in many of the fields of the Information Sharing Environment: Homeland Security; Law Enforcement; Intelligence; Emergency Preparedness and Response; Cyber-Security; International Trade; and Private Sector and Critical Infrastructure Protection. By virtue of its mission and enforcement responsibilities, DHS is also a very significant law enforcement entity within the Federal Government, and thus is a source of information, as well as a consumer.

d. In what areas do you believe that DHS can most effectively lead or contribute to the development and implementation of the Information Sharing Environment?

ANSWER: I understand that DHS, working in concert with DOJ, has already accomplished several important collaboration efforts. For example, in the creation of the Implementation Plan for Executive Order 13356, DHS became the clearinghouse for concerns raised by State, local, and Tribal governments. DHS has also established collaborative relationships with relevant private entities to ensure that the inputs of the private sector are heard and included in the formulation of policy.

One of DHS's primary responsibilities is to accept collected information from State, local, and Tribal governments and the private sector and provide it to the greater Federal community, as well as to serve as the conduit for dissemination of vital information to those partners. This uniquely positions DHS to serve in the development, implementation, and management of that portion of the Environment in which State, local, Tribal and private sector partners will participate.

53. The Department of Justice, through the Federal Bureau of Investigation, the Office of Justice Programs and other offices, also has substantial responsibilities for fostering information sharing with and among state and local first responders, in particular state and local law enforcement agencies.

a If you are confirmed, what specific actions do you intend to take to coordinate with the Justice Department's efforts in this area, and to avoid duplication of effort?

ANSWER: It is my understanding that the Department of Homeland Security is already working extensively with the Department of Justice and its components in efforts to coordinate information sharing and work towards the Information Sharing Environment. If confirmed, I intend to encourage continued coordination on information sharing initiatives between DHS and DOJ.

FINAL

b. Are there specific programs or systems at either DHS or the Justice Department designed to promote information sharing with state and local officials that can and should be expanded to address the information sharing priorities of the other department?

ANSWER: Yes. I understand that in the fall of 2004, DHS, DOJ and others connected the DHS Homeland Security Information Network, the DOJ/OJP supported Regional Information Sharing System, the FBI's Law Enforcement Online, and the Criminal Information Sharing Alliance Network. If confirmed, I look forward to learning more about this initiative and determining whether it is meeting the need for enhanced information sharing between the two Departments and with state and local agencies.

c. Are there specific information sharing programs or systems at either DHS or the Justice Department that you believe can be eliminated as overlapping or redundant?

ANSWER: At this time I understand that no specific systems have been identified. The development of a system of systems in the short term, however, holds great promise for improving the ability of State, local, and Tribal governments to obtain access to vital information through the Department of Homeland Security and others. DHS is currently working internally to identify overlapping or redundant programs that can be eliminated.

Information Analysis and Infrastructure Protection

54. The Homeland Security Act states that the responsibilities of the Under Secretary for Information Analysis and Infrastructure Protection include "to disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the Federal Government with responsibilities relating to homeland security, and to agencies of State and local governments and private sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States."

a. How will you ensure that preventing attacks will continue to be the priority it needs to be both for IA and the entire Department?

ANSWER: Preventing attacks is at the essence of the mission of the Department, and specifically its Information Analysis and Infrastructure Directorate. If confirmed, I understand that I will receive daily briefings and updates as needed throughout the day from IA regarding both current and strategic intelligence matters, and my highest priority will be to deter, detect, and prevent attacks upon the American people.

FINAL

b. As Secretary, how will you ensure that the intelligence division at DHS is capable of meeting this objective?

ANSWER: If confirmed, I intend to support IA's unique role in the Intelligence Community and make certain they have access to all the information and officials needed to do their job.

55. The Intelligence Reform and Terrorism Prevention Act of 2004 creates a Director of National Intelligence with significant authorities over the Intelligence Community, including (1) determining the intelligence budget, (2) managing the execution of the intelligence appropriation through the departments containing elements of the Intelligence Community, and (3) tasking collection and analysis. The DNI also has a right of concurrence in the selection of the Assistant Secretary of Homeland Security for Information Analysis. What steps will you take to ensure that the DNI is able to exercise his or her authorities effectively vis-à-vis elements of the Intelligence Community within DHS, including budget and tasking authority?

ANSWER: I understand that since the inception of DHS, IAIP, specifically, the Office of Information Analysis (IA), has been working with the Director of Central Intelligence (DCI) in his capacity as head of the Intelligence Community. I understand that these coordination efforts have included the collaborative management of intelligence programs and the determining and levying of intelligence collection requirements. I further understand that IA is currently involved in numerous transition efforts led by the DCI's staff. These efforts will transition to the DNI and his or her staff once named and confirmed. As the IA has been a full partner in the Intelligence Community and a consistent communicator with the DCI and his staff, I believe that IA should similarly work with the DNI and his or her staff to ensure all authorities and requirements of the DNI are fulfilled. Should I be confirmed, I intend to continue to work closely with the DCI, and subsequently the DNI, on these critical transition issues and to work in close partnership to ensure that the DNI has all the information necessary to aid in carrying out his statutory responsibilities with respect to budget, resources and requirements for the intelligence community.

56. The Intelligence Reform and Terrorism Prevention Act of 2004 creates a National Counterterrorism Center with two responsibilities: First, via its Directorate of Intelligence, to serve as the preeminent analytic body on terrorism and to draft net assessments. Second, via its Directorate of Strategic Operational Planning, to conduct planning for joint counterterrorism operations across the Executive Branch and such planning includes the mission, objectives to be achieved, tasks to be performed, and the assignment of roles and responsibilities across the Executive Branch.

a. How will IAIP support the Directorate of Intelligence? For example, what should be the division of labor between the NCTC's Directorate of Intelligence and IAIP regarding the production of analytic products, and what are your plans for IAIP to detail analysts to the Directorate?

FINAL

ANSWER: I understand that IAIP's Office of Information Analysis (IA) will support NCTC through assignment of staff and funding and by continuing to fulfill its unique role in the analytical and operational mission as a partner in the war on terrorism.

I understand that IA presently has three personnel detailed to the NCTC, with another five due to arrive in February, and one more in March. In addition, IA has provided funding to pay for ten contract analysts for NCTC. As IA continues to grow and mature, IA will increasingly replace contract analysts with staff officers who rotate into the NCTC as part of a professional analytic development program. In my view, this plan for deployment should offer multiple benefits. First, it should help ensure that NCTC has the advantage of operating with trained DHS officers who bring unique skills from the Department. Second, it should provide a long term benefit to DHS and the community when those officers return with a broader set of skills and experiences. And finally, these details will solidify a collaborative partnership that should allow both IA and NCTC to leverage each organization's unique information environment.

I understand that IA has a singular focus on the protection of the American homeland against terrorist attack and that IA plays an important part in the intelligence partnership with NCTC and other organizations. I understand that IA's position allows it to leverage DHS's unique posture in the Intelligence Community (IC)—which is derived from its operational mission requirement to work with nontraditional stakeholders in the state, tribal, local, major city and private sectors—and that it is important for IA to provide access to these entities (and their information) to the IC (and NCTC). As a customer of NCTC's unique information and community analysis and as a partner in the IC, I understand that IAIP will continue to map terrorist threats to the homeland against our assessed vulnerabilities and assess and prioritize the relative risk of terrorist attack in order to drive efforts to protect America. Through its combination of intelligence analysis and infrastructure assessment, I understand that IA will independently analyze information from multiple IC sources and leverage unique DHS knowledge to provide both warning and suggested protective measures directly to the American people.

b. How will DHS facilitate the Directorate of Strategic Operational Planning's effectiveness? For example, will DHS detail employees from various DHS components to this Directorate to support the development of plans that include DHS? And are there circumstances in which you foresee DHS objecting to a particular plan, and if so, how can those circumstances be avoided?

ANSWER: I believe that DHS should be a fully vested partner in the National Counter Terrorism Center (NCTC), and particularly within the Strategic Operational Planning Directorate (SOP). I understand that, from the outset, DHS has had three senior members of the Department assigned to the effort. I understand that these members along with representatives from other departments and agencies have formed the NCTC Strategic Operational Planning transition team which is responsible for putting together a concept of operations for the NCTC that supports the

FINAL

partnering departments and agencies responsible for addressing issues related to the war on terrorism.

Strategic Operational Planning should develop national strategic level plans though a truly interagency process. It should coordinate and integrate, but not replace or duplicate, the efforts underway within the U.S. Government. I believe that inter-agency investment and participation in the development of strategic plans will serve to minimize any conflicts that may arise during the planning process.

57. How should the relationship between DHS and state, local, and tribal governments be structured for the effective sharing of intelligence information? What steps should be taken to strengthen that relationship – for example, what will you do to facilitate the granting of security clearances for state, local, and tribal governmental officials and the drafting of Executive Branch analytic products at the lowest possible level of classification? And how will IAIP infuse intelligence information from state, local, and tribal governments into the Intelligence Community?

ANSWER: I understand that DHS has responsibility for ensuring effective sharing of intelligence information with State, local, and Tribal governments and the private sector and has made great strides in improving information sharing with these partners. The establishment of the Homeland Security Information Network (HSIN) has delivered a real time, collaborative information sharing capability with such partners Nationwide, and the implementation of this capability at the Secret level this year will greatly increase the ability to share classified information.

DHS will continue to support the efforts under the President's Executive Order (E.O.) 13356, "Strengthening the Sharing of Terrorism Information to Protect Americans." Implementation of the E.O. will strengthen DHS's ability to share information with their State, local, and Tribal partners, significantly improve the release of analytic products to the lowest possible level, and aid IAIP in passing information from State, local, and Tribal partners to the intelligence community.

Additionally, I understand that the Homeland Security Advisory Council (HSAC) recently provided to the Secretary a number of recommendations regarding the appropriate roles, responsibilities, and requirements of State, local, and Tribal governments as it relates to intelligence and information sharing. I look forward to reviewing the HSAC's recommendations.

58. In addition to being "consumers" of terrorism-related intelligence, state and local governments are also collectors of such intelligence. To improve the sharing of information across all jurisdictional boundaries, several states and cities, including New York, Los Angeles, Arizona and Massachusetts are creating their own "fusion centers." These centers allow states to

FINAL

consolidate the intelligence they and private sector entities gather that may be related to terrorist and criminal activity. Consequently, information that may not seem significant in isolation can be collected, compared, and analyzed for patterns of terrorist or criminal activity. Also, the Intelligence and Information Sharing Working Group set up under the federal Homeland Security Advisory Committee, has called for a nationwide network of fusion centers, coordinated through statewide plans for how each level of government, and in some cases, the private sector, will work together to consolidate and evaluate data from every conceivable source, with minimum standards established by the federal government. What role, if any, do you believe the federal government, in particular DHS, should play in the establishment of fusion centers at the state and local level?

ANSWER: I am aware of the Homeland Security Advisory Council's (HSAC) report given to the Secretary in December. It is my understanding that the report made numerous recommendations regarding the appropriate roles, responsibilities, and requirements of State, local and Tribal governments as it relates to intelligence and information sharing and I look forward to reviewing these recommendations.

Information sharing is essential to prevention and response activities and in detecting trends or patterns of terrorist or criminal activity. I recognize that no single department can or should do this alone. It is my understanding that DHS, in partnership with the DOJ, other Federal entities, and State, local, and Tribal officials, are currently studying best practices and minimum standards for fusion centers. I look forward to studying their findings.

59. Due to the nature of its activities such as border security, DHS is a significant collector of intelligence information. What is IAIP's role within DHS regarding the collection and analysis of intelligence information – for example, does IAIP direct the collection of intelligence by DHS components and have primary responsibility for analysis, or is authority diffused among DHS components? And what are the metrics for assessing whether IAIP has fulfilled that role?

ANSWER: IAIP does not direct the collection of information or intelligence from DHS components. IA, as a member of the IC, has the primary responsibility for intelligence analysis, and works with the other intelligence organizations within DHS. IA has established reporting relationships with all elements of DHS and regularly receives daily reports and spot reports from all activities within BTS, USCG, and others. IAIP advises all DHS components of the information needs of its analysts and requests reporting of relevant information on the topics of terrorism information, homeland security information, information on organized crime and narcotics, or any other information deemed relevant to the homeland security mission. IA maintains continuous contact with DHS components to advise them of any "priority information needs" that may arise due to intelligence tips or due to the necessary security activities of special events.

60. In August, 2004, the DHS OIG reported that despite expectations that IAIP would take

FINAL

the lead role in terrorist watch list consolidation, "IAIP has not provided the leadership of the watch list consolidation effort that is needed. Specifically, DHS is not carrying out significant responsibilities assigned to it under the Homeland Security Act, i.e., orchestrating the integration of terrorist information and establishing national policies and guidelines governing the use of such information. Instead, other federal entities that have traditionally collected, analyzed, and disseminated watch list information continue to conduct these efforts under the auspices of two newly created interagency organizations: The Terrorist Threat Integration Center (TTIC) and the Terrorist Screening Center (TSC)."

a. If you are confirmed as Secretary, would you play a leadership role in consolidating the terrorist watch lists and coordinating their use with other federal, state, and local participants?

ANSWER: I understand that the terrorist names from the 12 terrorist watch lists identified in the April 2003 report "Terrorist Watch Lists Should be Consolidated to Promote Better Integration and Sharing" were consolidated into the Terrorist Screening Data Base (TSDB) maintained by the Terrorist Screening Center (TSC) on March 12, 2004. The TSDB is continuously updated and is the master list of terrorist identities known to the U.S. Government.

b. Should the strategic and policy coordination role for the watch lists be a DHS responsibility? If it is not a DHS responsibility, then whose responsibility should it be?

ANSWER: I understand that a number of statutes exist emphasizing the importance of watch list consolidation and the Administration has undertaken significant efforts in this area. Should I be confirmed, I look forward to reviewing this issue and developing a more informed opinion on this matter.

c. How will you ensure that the watch list accurately includes people of concern and removes them when those concerns have been addressed?

ANSWER: I understand that the TSC has documented procedures to ensure identities in the TSDB meet the criteria established for inclusion at a specific screening opportunity. The criteria are examined for all names being nominated for inclusion in TSDB before it is added to the database. Additional procedures are in place to validate the information in TSDB against the criteria whenever a possible encounter has occurred with an individual matching the name. I understand that since December 1, 2003 the TSC has removed over 5,950 records from TSDB based on inaccurate or additional information.

d. How will you ensure that the lists are appropriately used for security concerns, and no other purposes?

ANSWER: Access and use of the information contained in TSDB is defined in a Memorandum of Understanding (MOU) between the TSC and screening entities. It is key to note the TSDB

FINAL

only contains the Sensitive But Unclassified (SBU) identifying information and does NOT have any of the classified (or sensitive) derogatory information. Access controls to the derogatory data is defined by the agency "owning" the data and requests for information must meet their requirements before any information is released.

61. Most of the nation's critical infrastructure is in the private sector, raising important issues about what the policies should be regarding private sector access to security information held by the government.

a. What is your view of granting security clearances to private sector officials?

ANSWER: In order to protect and safeguard the critical infrastructure facilities of this country, it is important that the Department share relevant information with appropriate private-sector officials. These private-sector recipients, however, must be properly screened and trained to receive the information, whether it is classified or not. To that end, the Department has established the State, local, & Private Sector Program within the Office of Security to initiate the background investigations, adjudicate the completed investigations, and grant security clearances to private sector officials. The Department also implemented the Sensitive Security Information category for information that should be protected but does not warrant formal classification as a means to share information more effectively. I recognize this is an important issue to enable DHS and its partners to accomplish its mission, and, if confirmed, I will review the status of clearance requests and processes.

b. What standards and procedures for granting access do you believe are appropriate for private sector officials?

ANSWER: DHS is investigating and granting access to private sector officials according to the same requirements it applies to DHS employees and contractors. It is anticipated that these private sector officials will be receiving, handling, and storing the same classified national security information as other DHS personnel, and therefore, Executive Order 12968 requires that they be held to the same standards.

To prevent and deter terrorist attacks and protect against threats and hazards to the nation, it is critically important to safeguard this country's most sensitive information. The Department must therefore ensure that the private-sector officials to whom it grants access to classified information have unquestioned, impeccable integrity. The Department's security clearance standards and procedures are designed to ensure confidence in an individual's trustworthiness, reliability, and loyalty.

62. Established in March 2002, the Homeland Security Advisory System was designed to disseminate information on the risk of terrorist acts to federal agencies, states, localities, and the public. However, these entities have raised questions about the System, the threat information

FINAL

they receive from DHS, and the costs they incur in responding to heightened alerts.

a. How would you respond to their concerns?

ANSWER: The Homeland Security Advisory System (HSAS) was created with the input of State and local officials. It continues to evolve as DHS improves the Nation's capabilities to assess and respond to terrorist threats. For example, the system includes the flexibility to assign threat levels for the entire nation, or a particular geographic area or infrastructure sector, depending on the credibility and specificity of available threat information. It should be noted that in addition to being reflective of what is known about a particular threat, the HSAS represents a collaborative process to support decision making, taking into account current threat information and incorporating the perspectives of other Federal entities (both within and outside of DHS); State, local, and tribal partners; and private sector stakeholders prior to a decision being made regarding raising or lowering the threat level. DHS provides as much information as possible as soon as it becomes available to support this process.

However, I recognize the importance of continual assessment of HSAS operations and will work closely with State and local authorities to ensure the system is effectively utilized to meet the needs of all its stakeholders.

b. What plans do you have to improve the current Advisory System?

ANSWER: As noted above, it will be important to continually assess the Advisory System and ensure its ability to adjust to the needs of the stakeholders. If confirmed, I would be happy to consider improvements.

c. What would you suggest as ways to address costs when heightened alerts are issued?

ANSWER I understand that the Department takes changes in the HSAS level very seriously with full appreciation of the cost and other implications on State, local, and tribal governments as well as the private sector. If confirmed, I will continue to explore alternative methods of funding the costs of heightened security needs in response to a HSAS level change such as the Urban Area Security Initiative grants.

d. Some have called for more specific regional or location threat information. What do you see as the current barriers to implementing a new Advisory System that could be more specific?

ANSWER: The elevation of the HSAS level to ORANGE for the financial services sector in New York, northern New Jersey, and Washington, DC in August of 2004 demonstrates the flexibility of the HSAS to adapt response to specific threat information when available. This flexibility allows DHS, local communities, and others to target resources appropriately and reduce resultant costs where possible. DHS learns new lessons and continues to improve the

FINAL

system each time HSAS level changes are considered.

63. To date, the Environmental Protection Agency has taken the federal lead role in ensuring the safety of the nation's drinking water supplies.

a. Do you see that changing in coming years?

ANSWER: The safety of the Nation's drinking water as identified in the Clean Water Act is the authority of the EPA through legislation that has been in place for many years. Since the events of 9/11, water security has emerged as a component of water safety. DHS and the EPA have a close collaborative relationship that leverages the security analysis capabilities of DHS and the EPA's water safety expertise and relationships with water utilities, water related government entities, and associations. This shared responsibility between DHS and EPA provides a robust and comprehensive approach to the safety and security of the Nation's critical drinking water and wastewater facilities.

b. If so, how would you characterize the appropriate division of responsibilities between EPA and the Department of Homeland Security?

ANSWER: It is my understanding that the Homeland Security Presidential Directive 7 (HSPD-7) designates EPA as the Sector-Specific Agency for drinking water and water treatment systems. As a Sector-Specific Agency, EPA is responsible for tactical security program development and implementation at the sector level as well as the strategic sector planning called for in the Interim NIPP. DHS is also charged with providing the integration of the threats, vulnerabilities, and consequences to the Sector Specific Agencies such as EPA, and for coordinating the overall national effort to enhance the protection of critical infrastructure and key resources.

64. GAO has reported on the vulnerability of the nation's 15,000 chemical facilities to terrorist attack. How should DHS ensure that these facilities do not place at risk the millions of Americans who reside in proximity to them?

ANSWER: I understand that DHS is applying a risk management process in order to enable comparative assessments of vulnerabilities and estimate potential consequences related to critical infrastructure sectors, in particular chemical facilities. I also understand this approach is being used to identify those chemical facilities posing the greatest potential danger to the American public. It leverages assessments and analyses previously collected or done by the EPA as well as those continuing to be collected and assessed, and the work being done in the sector on a voluntary basis. I am told that those facilities deemed to pose the highest risk receive considerable attention from the Department to help protect them. This includes working closely with owners and operators of these facilities to analyze vulnerabilities and address any gaps in protection to reduce both the "attractiveness" of the asset as a target and the consequence of a successful attack. I further understand that IAIP is employing a variety of initiatives to

FINAL

accomplish these goals, as well as leveraging initiatives which the private sector has appropriately undertaken.

I also understand that the Department has recently awarded five contracts for the development of next generation chemical sensors for both indoor and outdoor use. These sensors will be used in part to give immediate warning to areas surrounding chemical facilities in the event of an incident, whether intentional or accidental. These are all examples of the kinds of initiatives that I would employ if confirmed as Secretary of Homeland Security.

65. In October 2002, Secretary Ridge and the Administrator of EPA stated that they supported bipartisan legislation to require chemical facilities to assess their vulnerabilities and act to reduce them.

a. Do you think legislation creating federal security requirements for chemical facilities is needed?

ANSWER: The President's National Strategy for Homeland Security states that the Department may seek legislation to create incentives for the private sector to adopt security measures or invest in improved safety technologies. I understand that the White House and the Department have worked closely with particular Members of Congress interested in this issue, and that the President has endorsed legislation to ensure a more rigorous Federal role in the chemical sector. If confirmed, I will continue to assess proposed legislation and work with Congress to improve the framework for chemical site security.

b. If so, how should DHS work with the Congress to make this happen?

ANSWER: DHS looks forward to continuing its relationship with Congress, and as in the past, looks forward to providing input and insight on legislation directed at the protection of our Nation's chemical plants.

66. GAO has identified actions needed to better prepare critical financial market participants for wide-scale disasters, such as terrorist attacks. While many participants have reduced their risks, some entities still have elevated risk of operational disruption that could threaten the ability of the securities markets to operate. What actions would you take in, either alone or working with the SEC to increase the readiness of the securities markets?

ANSWER: I understand that DHS and the Department of the Treasury, which has the sector-specific responsibility for the financial sector, work closely with the SEC to encourage, support, and enhance two-way information sharing between the government and the financial community. Together, DHS, Treasury, SEC, and other members of the Finance and Banking Information Infrastructure Committee (the Government Coordination Council for the sector), will ensure timely dissemination of relevant, actionable information on threats to and incidents related to the

FINAL

sector. DHS, Treasury, and other Federal agencies working with the financial sector will continue to collaborate and facilitate critical tasks and activities necessary to prevent, protect against, respond to, and recover from incidents. The recent elevation of the threat level for certain parts of the financial sector demonstrates the success of this coordination and collaboration. I further understand that preparedness is a continuous process involving efforts at all levels of government and between government and private sector entities to identify threats, determine vulnerabilities, and identify required resources.

67. Bioterrorism attacks can be directed at many different targets in the farm-to-table food continuum, including crops, livestock, food products in the processing and distribution chain, facilities, and research laboratories. As Secretary, what would be your strategy at the field level to better protect agriculture and the food supply in concert with other federal agencies, state and local agencies, and the private sector?

ANSWER: The strategy for protecting the Nation's food supply chain is outlined in Homeland Security Presidential Directive 9 (HSPD-9). This document articulates the Administration's policy for government at all levels to partner with the private sector in this vital effort. The strategy calls for a new degree of coordination and collaboration between government agencies, and very specifically identifies key responsibilities, objectives, and tasks. The food and agriculture infrastructure is a highly complex, mainly privately owned production system that is highly integrated internally, and externally integrated with other critical infrastructures. DHS, in collaboration with the Department of Agriculture (USDA) and the Food and Drug Administration (FDA) as well as our State and local government partners, has supported industry in organizing and deploying a new Food and Agriculture Sector Coordinating Council. This Council will expand and complement the original Food Information Sharing and Analysis Center (ISAC), but now represents each segment of the food supply chain.

68. HSPD-9 calls for a national policy to defend the agriculture and food system against terrorist attacks, major disasters, and other emergencies. DHS is to coordinate with other federal agencies to create a new biological threat awareness capacity to enhance the detection and characterization of an attack. What would you do to ensure this biological threat awareness capacity is implemented and sustained?

ANSWER: I understand that the effort to establish a new biological threat awareness capability for the nation is well underway. Through extensive collaboration between the various Federal agencies, DHS is coordinating the development of the National Bio-Surveillance Integration System (NBIS). This new disease surveillance capability breaks down traditional "stovepipes" and integrates disease detection and surveillance information on human, animal, plant, water, environment, law enforcement, and intelligence sources into a single bio-situational awareness information framework. This new framework will enable agencies, state partners, and select industry partners access to a common operating picture. I further understand that the system will provide a new ability to more rapidly characterize bio-situational information, improve the

FINAL

Nation's ability to differentiate between natural and intentional events, and facilitate response to those events.

69. The Independent, non-partisan Trust for America's Health (TFAH) recently issued its second annual report on the Nation's preparedness for bioterrorism. The report concluded that "despite incremental progress, three years after September 11, 2001, there is still a long way to go to protect the American people from a bioterror attack." The report found that only six states were fully prepared to administer and distribute vaccines and antidotes from the national stockpile, only five public health laboratories had the capability to respond to chemical terrorism, and only one third of the labs had sufficient capability to respond to biological attacks. These findings echo conclusions reached by other observers, such as the Government Accountability Office. Given the enormous potential harm that could result from a successful bioterrorist attack on the U.S., if confirmed, what actions will you take to ensure that the U.S. is fully prepared for this threat and that longstanding shortcomings identified by TFAH and others are addressed?

ANSWER: If I am confirmed as Secretary of Homeland Security, I will work closely with Secretary Leavitt at Health and Human Services and Secretary Nicholson at Veterans Affairs to ensure we effectively leverage the resources the President and Congress have made available to build countermeasures against bioterrorism and support efforts already underway to improve the rapid distribution of countermeasures in the event of an attack. I am confident we share a common commitment to establish emergency-ready public health and healthcare entities across the Nation. The Department recently issued FY 2005 grant guidance that now requires States to establish a senior advisory committee of officials that oversee assistance programs from Federal departments and agencies, including those offered by DHS and HHS. These Committees are charged with enhancing integration and leveraging relevant funding sources and resources that support implementation of homeland security strategies, including public health and medical initiatives. Project BioShield ensures that funds are available to pay for advanced development and acquisition of "next-generation" medical countermeasures. Finally, in April, DHS will conduct the third in the Top Officials, or TOPOFF national-level full-scale exercises with Federal, State, local, private sector and international partners. This exercise, like previous TOPOFF exercises, includes a large-scale bioterrorism scenario. They have proven to be invaluable in testing our public health and healthcare systems and identifying key lessons for improving their readiness.

Protection of Critical Cyber Infrastructure (Cyberspace Security)

70. As you know, it isn't just this country's physical infrastructure that is under threat of attack, but the cyber infrastructure as well. Indeed our national information infrastructure is attacked every day, causing costly disruption to our commercial and government networks. DHS and others are fearful of, and have been on the watch for, combined attacks, in which a physical terrorist attack coincides with a cyber attack to disrupt the systems needed to respond to the physical attack. There is some concern in Congress that the department's structure is inadequate

FINAL

to address this threat. What steps do you intend to take to improve the department's ability to address Cybersecurity?

ANSWER: I understand that there are several initiatives underway in the Department to improve the nation's "cyber defense" posture that may be leveraged to improve the nation's "cyber defense" posture.

First, I am told that the National Cyber Security Division (NCSD) within IAIP maximizes our capability to plan for combined physical and cyber attacks and improve our ability to respond after such an attack occurs. However, we can still make improvements. I understand we are still looking to increase NCSD's role, and I am committed to looking at the appropriate way to accomplish this.

I understand that the NCSD has made progress in coordinating the implementation of the National Strategy to Secure Cyberspace with other agencies, the private sector, academia, and the international community – though much more can and will be done to improve their operations. I plan to review their progress and assess ways in which we can further leverage partnerships, provide value to our constituencies, and target resources effectively.

71. Our critical cyber infrastructure is subject to attack from a variety of individuals and groups – terrorists, international criminal groups, and foreign intelligence services, as well as hackers and disgruntled insiders.

a. What do you believe is the relative risk of attack from these or other types of malicious actors, and how should the answer to this question affect the relative priorities that DHS places on various aspects of its infrastructure-protection mission?

ANSWER: At this time, it is not appropriate for me to comment on this issue as I do not have authority to access the necessary information to adequately respond. If confirmed, I would be happy to look into this concern, address it, and advise the Committee as appropriate

b. Among other things, how critical do you believe is the risk of international terrorists mounting computer-based attacks, either alone or in combination with physical attacks?

ANSWER: Certainly any threat to our nation's infrastructure, both physical and cyber, is very serious. At this time, however, it is not appropriate for me to comment on this issue as I do not have authority to access the necessary information to adequately respond. If confirmed, I would be happy to look into this concern, address it, and advise the Committee as appropriate.

72. It has now been nearly two years since the Administration issued its National Strategy to Secure Cyberspace in February 2003. DHS has made some progress in establishing procedures

FINAL

for responding to cyberspace security incidents and to educate the public, such as through the establishment of the National Cyber Alert System as a means to relay cyber security information to computer users. However, less has been done to reduce long-term cyber threats and vulnerabilities. What is your opinion of the Department's record in implementing the various priorities in the National Strategy so far?

ANSWER: The priorities of the *National Strategy to Secure Cyberspace* cover an enormous amount of breadth and depth on emergency operations, vulnerability reduction, securing government cyberspace, training and awareness, and international cooperation. Several key elements have been achieved and are underway in the Department that are improving the nation's "cyber defense" posture. In its eighteen-month existence, the DHS National Cyber Security Division (NCSD) has made significant strides in each of these areas, both in operationalizing a computer emergency readiness team as well as identifying and pursuing key strategic initiatives and coordination needs.

73. The National Strategy laid out strategic objectives, and assigned to DHS overall responsibility for cyberspace security, but it expressed these responsibilities in vague generalities, without clear assignment of responsibilities and without time frames or deadlines or benchmarks for measuring performance. See Homeland Security: Information Sharing Responsibilities, Challenges, and Key Management Issues (GAO-03-1165T) Sept. 17, 2003, page 24. According to a report of the DHS Inspector General, one year later the National Cyber Security Division of DHS still had not "[p]rioritized its initiatives to address the recommendations of the [National Strategy]," "[i]dentified the resources needed to ensure that it can identify, analyze, and reduce long-term cyber threats and vulnerabilities," or "[d]eveloped strategic implementation plans, including performance measures and milestones, focusing on the division's priorities, initiatives, and tasks." DHS Office of Inspector General, Progress and Challenges in Securing the Nation's Cyberspace (OIG-04-29) July 2004, page 4.

a. How important do you believe it is for DHS to establish clear assignments of responsibilities, performance measures, milestones, and deadlines for fulfilling DHS's cyberspace security mission?

ANSWER: The National Cyber Security Division (NCSD) has addressed many of the concerns in the 2004 DHS Inspector General report and has developed a Strategic Plan for future work related to its mission to implement the National Strategy priorities. The Strategic Plan, with actionable steps and milestones, is currently under review by DHS leadership for submission to Congress in conjunction with the FY06 Budget Justification requested in the FY05 Appropriations Committee Report. If confirmed, I look forward to reviewing the NCSD Strategic Plan and ensuring its implementation.

b. If confirmed, what will you do to address this deficiency?

FINAL

ANSWER: There is much work going on in the National Cyber Security Division (NCSD) to coordinate the implementation of the *National Strategy to Secure Cyberspace* — as well as Homeland Security Presidential Directive 7, which is now the operative Administration policy on securing cyberspace — with other agencies, the private sector, academia, and the international community. They have made great strides in the eighteen months of their existence and more can be done in each of their focus areas of US-CERT Operations, Outreach and Awareness, Law Enforcement and Intelligence Coordination, and Strategic Initiatives. If I am confirmed, it is my intent to review their progress and work with them to assess ways in which we can further leverage those partners, provide value to our constituencies, reflect our milestones and metrics, and target resources effectively.

74. Do you believe the Department's cyberspace security R&D budget is sufficient and appropriate, in comparison to other R&D priorities, or do you believe it should be larger or smaller than it is now? What would be your priorities for R&D in the area of cyberspace security?

ANSWER: The allocation of funding resources to portfolios in the DHS Science and Technology Directorate (S&T) is done based on a formal strategic planning process, that takes into consideration risks, threats, vulnerabilities, and other strategic objectives, to perform prioritization within and across technical portfolios. DHS is highly supportive of the planning approach taken by S&T, and believes that this process results in technically sound and supportable decision making with regards to funding allocations. As noted in my responses to Question 71, however, it would not be appropriate for me to comment on these priorities as I do not have authority to access the necessary information to adequately respond

75. Legislation recently was passed by the House and introduced in the Senate to create within DHS an Assistant Secretary for Cybersecurity, to assist the Under Secretary for Information Analysis and Infrastructure Protection. See section 5028 of S. 2845 as it passed the House; Senate Amendment 3894 to S. 2845. What do you believe are the advantages and disadvantages of such legislation, and do you support its enactment?

ANSWER: Given that two years have passed since the Department's creation, it makes sense to review the Department's structure, including that of IAIP. I plan to take this opportunity, should I be confirmed, to undertake such a review.

Critical Infrastructure

76. The Homeland Security Act of 2002 calls for DHS to carry out comprehensive assessments of vulnerabilities of the key resources and critical infrastructure of the United States,

FINAL

including determining the risks posed by particular types of terrorist attacks. Using this information, DHS is to identify priorities for action by DHS, other federal agencies, state and local government, and the private sector. A Dec. 2004 report by the DHS Inspector General, "Major Management Challenges Facing DHS," states that the Department has made progress identifying critical infrastructure assets, but the process IAIP is using to assess threats, determine vulnerabilities, ascertain mitigation requirements and set priorities is "evolving." However, in a Dec. 14, 2004 letter to the editor of USA Today, DHS Assistant Secretary for Infrastructure Protection Robert Liscouski stated that despite assertions to the contrary, DHS "has identified the highest priority targets [related to the nation's critical infrastructure], and we – with our state, local, tribal and private sector partners – are protecting them." He contended that DHS met and exceeded President Bush's December 17 deadline that a strategy be completed for compiling the database, by "not only forming the strategy, collecting and analyzing the data and identifying the priorities, but, most importantly, by protecting them – a point sometimes lost."

a. Has the Department substantially completed its required efforts to conduct critical infrastructure vulnerability assessments that can be the basis for setting priorities for homeland security efforts and, with respect to assets that are most important to protect, has an acceptable level of protection been achieved? If not, please describe what more needs to be done.

ANSWER: The nature of our nation's critical infrastructure is constantly changing. Important facilities within both the public and private sector are continuously being added to the national inventory, and others are removed through obsolescence and devaluing. In addition, we are dealing with adaptive adversaries which will likely, given time, adjust their strategies and tactics in an attempt to counter our protective measures. Consequently, the task of critical infrastructure identification and evaluation, as well as our efforts to constantly improve and broaden our protective posture is unending. I note that DHS has completed comprehensive vulnerability assessments. If I am confirmed, I look forward to reviewing the Department's efforts to date.

b. How would you evaluate the department's progress in building a National Assets Database, a national inventory of the nation's physical critical infrastructure?

ANSWER: As I understand it, the United States possesses the most extensive, complex, and interdependent system of infrastructures ever created. Literally tens of thousands of assets, facilities, physical plant, and information technology systems ensure the available, efficient, reliable, and secure delivery of services across seventeen critical infrastructure and key resource sectors.

I understand that the National Asset Database is one of the tools used to identify the Department's priorities for protection. The National Asset Database is just that, a database of information on the Nation's infrastructure - both critical and non-critical - including more than 80,000 sites. The sites range from nuclear facilities and chemical plants to bridges and shopping malls. I further understand that it is the analysis of the data, not the raw data itself, which is key

FINAL

to our protection efforts. DHS, with its Federal, State, local, and private sector partners, will continue to collect data across the nation and catalog, analyze, and prioritize it to ensure that resources are spent effectively to protect the Nation's interdependent critical infrastructure and key resource sectors. Because our nation changes every minute of every day – new bridges are built every day, technology changes every day – the National Asset Database will never be complete. It is a dynamic and continually evolving resource.

c. There are differing opinions as to what role the federal government should play in ensuring that the nation's critical infrastructure, such as chemical facilities, are prepared for a terrorist attack. What role should the federal government assume?

ANSWER: The Federal government has a critical role to play in homeland security. However, with the vast majority of our Nation's infrastructure being owned by the private sector, it is neither practical nor possible for the Federal government to assume sole responsibility for protecting each and every asset. Acting in partnership with State, local, and private sector entities, Federal departments and agencies are working to identify, prioritize, and coordinate the protection of critical infrastructure and key resources in order to detect, deter, and defend these assets relative to a threat. As directed by Homeland Security Presidential Directive 7, DHS is coordinating this overall effort and will continue to do so as the Interim National Infrastructure Protection Plan is fully implemented. Although DHS oversees coordination, this is truly a Federal government wide effort as implementation relies on the expertise of the Sector Specific Agencies in working with each sector.

d. The GAO has frequently called for a risk management approach for homeland security investments. What do you think are the elements of such an approach?

ANSWER: I understand that one of the underlying themes of the Interim National Infrastructure Protection Plan is the application of a risk management approach in designing and implementing protective programs related to the Nation's infrastructures. As I understand it, the Department has initiated a Risk Analysis Management for Critical Asset Protection (RAMCAP) program. The selected model under development provides a common methodology, terminology, and framework for homeland security risk analysis and decision-making that can be applied across each sector. The elements incorporated into the risk assessment tool include tactical threat, assessment of facility/sector vulnerabilities, consequences of attack, likelihood of attack, and annual economic risk. The Department has already established common vulnerability reports to facilitate the collection of vulnerability data. Combined with available threat data, the result of the analysis process is to assist in determining the most beneficial combination of countermeasures and mitigation strategies within the constraints of available resources. This will enable the Department to make comparative assessments based on a common risk-assessment approach.

e. How do you plan to ensure that DHS agencies such as TSA fully implement and integrate

FINAL

a risk management approach into their processes for evaluating security enhancements across all modes of transportation?

ANSWER: It is my understanding that DHS is the Sector Specific Agency responsible for the transportation sector. Within the Department, TSA has been designated as the lead organization responsible for the overall strategic planning and program management under the framework spelled out in the Directive. It is important to also recognize the other partners within DHS, such as the U.S. Coast Guard, and the Federal government, such as the Department of Transportation which collaborate with DHS to protect the transportation infrastructure.

Risk-based decision-making and prioritization are cornerstones of DHS' work. TSA has been and will remain in synchronization with the Department's approach to the protection of infrastructure, by using the Risk Analysis Management for Critical Asset Protection (RAMCAP) program. The selected model under development provides a common methodology, terminology, and framework for homeland security risk analysis and decision-making that can be applied across each sector. By using this tool, risk management should be consistent not just across transportation modes, but across sectors.

f. The 9/11 Commission noted in its Final Report that the Department still had not yet completed the critical infrastructure inventory and plan for all modes of transportation, and recommended that the Department develop a comprehensive strategy to secure that sector. The Intelligence Reform and Terrorism Prevention Act of 2004 included a requirement that DHS develop a National Strategy for Transportation Security by April 1, 2005 - specifically requiring an identification and evaluation of all transportation assets and as well the development of risk based priorities. The development of a comprehensive, national transportation security plan should help identify, define and begin addressing vulnerabilities with transportation-related critical infrastructure. Do you believe the development of a National Strategy for Transportation Security should be a top priority for the Department of Homeland Security?

ANSWER: Addressing transportation security is a top priority. DHS has already developed the Transportation Sector Specific Plan in response to Homeland Security Presidential Directive 7 (HSPD-7) and in support of the Interim National Infrastructure Protection Plan currently under final review within the Department. In addition, TSA is developing Modal Annexes to the Transportation Sector Specific Plan that will further detail roles, relationships, and responsibilities across federal and non-federal entities to provide security in each mode of transportation.

77. Security expert, Dr. Stephen Flynn, makes the case in his book, "America the Vulnerable: How Our Government is Failing to Protect Us From Terrorism" that despite the many post-9/11 security precautions that have been proposed and implemented since 9/11, "our most serious vulnerabilities remain ominously exposed." He cites a vast menu of soft targets still vulnerable to attack, including water and food supplies, chemical plants, energy grids and pipelines, bridges,

FINAL

tunnels, and ports; and the millions of cargo containers that carry most of the goods we depend on. Given these vulnerabilities, and the demonstrated capabilities of our terrorist enemies, Dr. Flynn argues that we have not really begun the work of integrating security into our economy and marketplace such that it is an accepted part of the way we conduct business, similar to the way we have integrated product safety: "the rationale for investing in security should follow the same logic [as incorporating safeguards in products]. The difference is that security focuses on developing countermeasures against people who consciously set out to cause harm and spawn disruptive consequences."

a. Do you agree with Dr. Flynn's arguments and this conclusion? If not, why not?

ANSWER: Given that the vast majority of the critical infrastructure is owned by the private sector, infrastructure protection is a shared responsibility. Private industry and other critical infrastructure owners and operators have begun to see security as an integral part of their operations. It will take time to fully implement this concept, as doing so may require modifications in design and operation of critical infrastructure. These fundamental changes must occur over the natural lifecycle of such assets as many of them cannot be implemented immediately. If confirmed, I look forward to further reviewing this issue.

78. One of the problems Dr. Flynn has cited is the lack of incentive in the private sector to adequately invest in security. For example, with respect to protecting the 85% of the nation's critical infrastructure owned by the private sector, Flynn contends that "unfortunately, without standards, or even the threat of standards, the private sector will not secure itself. In fact, in the absence of clearly defined and well-enforced security requirements, companies that invest in protective measures for the parts of the infrastructure that they own place themselves at a competitive disadvantage." Flynn argues that it would be irrational for company executives in industries with thin profit margins, like the chemical industry, to invest in greater security absent the assurance that their competitors will do the same. Flynn's view is at odds with the Administration's reliance on voluntary standards and compliance by key sectors of our critical infrastructure.

a. If you are confirmed as Secretary, how will you seek to ensure that the private sector's critical infrastructure assets are adequately protected?

ANSWER: The President's National Strategy for Homeland Security states that the Department may seek legislation to create incentives for the private sector to adopt security measures or invest in improved safety technologies. I understand that the Administration has worked closely with particular Members of Congress interested in this issue, and that the President has endorsed a more rigorous Federal role in the chemical sector. I also note that DHS is continuing to work with the Sector Specific Agencies and private sector to develop incentives in the form of standards and best practices, and other means, while continuing to manage risks by prioritizing our investments and protective measures. DHS will continue to work with other federal

FINAL

departments and agencies, state, local, and tribal governments, and the private sector to protect the nation's critical infrastructure.

b. How do you believe DHS can convince private businesses that defending critical infrastructure is necessary even though it may cost them substantial sums of money?

ANSWER: DHS experience to date indicates that private businesses recognize that enhancing protection of critical infrastructure is necessary. For example, firms in the finance sector taken steps often well beyond their regulatory requirements, as they know that protection and effective response are critical to minimize disruptions to their business continuity. One goal of the National Infrastructure Protection Plan is to ensure that protective measures are integrated into business operations and to provide a metrics framework to serve as a foundation for measuring private sector investment. If confirmed, I look forward to working on this issue.

c. Do you believe that DHS needs any additional authorities to prompt the private sector to improve security of critical infrastructure?

ANSWER: The President's National Strategy for Homeland Security states that the Department may seek legislation to create incentives for the private sector to adopt security measures or invest in improved safety technologies. This is a question that, if I am confirmed, I will ensure that DHS considers in partnership with those agencies and departments that have lead sector-specific roles, as we move forward in protecting the nation's critical infrastructure

d. What, if any, incentives or disincentives do you believe government should provide in order to ensure that minimum security standards are reached.

ANSWER: The President's National Strategy for Homeland Security states that the Department may seek legislation to create incentives for the private sector to adopt security measures or invest in improved safety technologies. I understand that the White House and the Department have worked closely with particular Members of Congress interested in this issue, and that the President has endorsed legislation to ensure a more rigorous Federal role in the chemical sector. If confirmed, I will continue to assess proposed legislation and work with Congress to improve the framework for chemical site security.

Protection of Information

79. DHS Management Directive 11042 issued last year, regarding the safeguarding of Sensitive but Unclassified information, and the accompanying Non-Disclosure Agreement were criticized by some DHS employees and outside groups for their breadth. On January 6, 2005, DHS issued a revised Directive, designated 11042.1, and has discontinued the use of the Non-Disclosure Agreement in favor of a training program for DHS employees regarding the handling of protected information. However, some continue to express concern that the Directive covers

FINAL

an overly broad and vaguely defined universe of information. See "Homeland Security reversed secrecy policy, but protests persist," *Govexec.com* Daily Briefing, January 12, 2005.

a. The management directive indicates that any DHS employee, detailee, or contractor, can designate information as "For Official Use Only," but it does not describe any process by which the designation can be lifted or challenged. Do you believe that such a process needs to be established in the directive?

ANSWER: Although I have not yet been fully briefed on this, I understand that DHS is working to improve its process for handling sensitive-but-unclassified information. Each DHS employee, detailee, and contractor is responsible for the designation of information as "For Official Use Only" (FOUO). I understand that the DHS Management Directive provides clear guidance as to what constitutes FOUO information and what does not If, at some point, the reason(s) for marking a document as FOUO is no longer valid, then such designation should not be used.

As the Management Directive indicates, the FOUO designation does not exempt information from release under the Freedom of Information Act (FOIA). Therefore, if an individual makes such a request for Department information, the request will be reviewed and considered on a case-by-case basis.

DHS also advises that there is a process whereby a designation may be reviewed. If there is a disagreement as to the proper marking of a document, then the relevant parties will work collaboratively to reach a consensus solution as to the appropriate level of protection afforded a particular document.

b. The directive describes a number of categories of information that can be designated as "For Official Use Only," including any information "that could constitute an indicator of U.S. government intentions, capabilities, operations, or activities or otherwise threaten operations security." Are you concerned that this definition is too broad, and could encompass a substantial portion of information at DHS?

ANSWER: DHS continues to examine the appropriate parameters of FOUO materials. As I understand it, the definition must be broad enough to cover the wide variety of sensitive information handled by the Department, and it also must be specific enough to properly instruct DHS personnel on the designation.

The above-referenced excerpt aims to protect and safeguard important information about the Department's enforcement and security functions and operations, so that terrorist or criminal organizations may not gain advantage from such advance knowledge of DHS activities. DHS will continue to work with its partners and stakeholders to reach the appropriate characterization of FOUO information.

FINAL

c. How do you plan to address the need to keep sensitive information protected with the public's need to be informed?

ANSWER: As I understand it, the Management Directive indicates, the FOUO designation does not exempt information from release under the Freedom of Information Act (FOIA). Therefore, if an individual makes such a request for Department information, the request will be reviewed and considered on a case-by-case basis. DHS aims to strike a balance between the public's valid right to know how its government agencies operate, and the need to protect and safeguard sensitive information and prevent it from getting into the hands of terrorist organizations. DHS will continue to examine the propriety of the balance it has struck, and it will take appropriate remedial action as necessary.

d. In what ways do you believe that DHS sharing information with other federal agencies, state and local governments, and the private sector serves to further the Department's mission? Are you concerned that excessive classification or excessive designation of information as protected could interfere with DHS's mandate to share information with state, localities, and the private sector?

ANSWER: The Department of Homeland Security is committed to sharing sensitive information with appropriate State and local government officials and private-sector individuals. Indeed, the sharing of information is a cornerstone of the DHS approach to protecting the homeland. DHS policies are designed to not impede the legitimate flow of information to those who require it.

DHS, once again, aims to strike the proper balance between sharing appropriate information with State and local government personnel and private-sector individuals, and not disclosing sensitive information to our adversaries. We look forward to continuing to work with governmental and private partners in order to achieve the correct balance.

e. It is our understanding that non-disclosure agreements are still in use for DHS contractors. Do you plan on reconsidering such use of non-disclosure agreements?

ANSWER: DHS will continue to examine its use of Non-Disclosure Agreements. The use of NDAs is commonplace in the interactions and relations between and among government agencies and commercial companies. DHS believes that they are useful instruments to promote awareness of the standards used in designating sensitive information.

f. Section K of the Management Directive describes the obligations of DHS employees, detailees and contractors with respect to the destruction of FOUO material. Do you believe the directive is consistent with the obligations to maintain records under the Federal Records Act? If not, how should the directive be modified?

FINAL

ANSWER: The Federal Records Act governs the retention of records that document an agency's policies and transactions. It establishes procedures for the orderly destruction of records pursuant to procedures approved by the National Archives and Records Administration. To the extent that the Management Directive could be construed as inconsistent with the Federal Records Act, the Act, of course, controls. As I understand it, any ambiguity in the Directive can be clarified with a subsequent issuance.

g. What is your opinion with respect to the public concerns that have been expressed regarding the Directive?

ANSWER: I understand that DHS has aimed to strike a balance between the public's valid right to know what its government is doing and the need to safeguard certain sensitive information, that if placed in the hands of terrorist organizations or other adversaries, could be exploited to the detriment of the nation. If confirmed, I look forward to examining this issue in more depth.

80. Under the Critical Infrastructure Information Act of 2002 (CIIA) (6 U.S.C. §§ 131-134), which was enacted as part of the Homeland Security Act of 2002, certain information related to the security of critical infrastructure that is voluntarily submitted to the Federal Government and for which the submitter requests protection will be exempt from disclosure under the Freedom of Information Act and will be subject to other secrecy protections. At hearings before this Committee on similar legislation, several witnesses testified that such protections would be essential to encouraging non-federal entities that own critical infrastructure to share information that the Government needs to fulfill its infrastructure protection mission. However, other witnesses expressed concern that legislation such as the CIIA would not actually be effective at encouraging entities to share sensitive information with the Government, but could result in excessive amounts of private sector information being brought under a veil of secrecy, possibly including information related to environmental, health, and safety risks and regulatory compliance. "Securing Our Infrastructure: Private/Public Information Sharing," Hearing before the Senate Committee on Governmental Affairs, May 8, 2002.

In response to written questions from this Committee to Tom Ridge prior to his confirmation hearing, asking his views of the CIIA and describing the concerns that had been raised, former Secretary Ridge stated:

"In fact, one of the measures of success for the CIIA will be evaluating the quality of the information shared with the Government owing to the CIIA protections and, in turn, the Government's dissemination of that information to the general public to help prevent physical or computer-based attacks against us. In such cases, CIIA success means getting more information to the public rather than less."

a. By this measure, what is your opinion of the success, so far, of the CIIA?

FINAL

ANSWER: If I am confirmed, I will review the operations and effectiveness of DHS programs, including the CII Act of 2002. Until that time, I do not feel qualified to address the effectiveness of the program.

b. In answering the foregoing question, please explain with reference to the amount, types, and quality of information voluntarily shared under the CIIA program, and the amount, types, and quality of information disseminated to the general public as a result.

ANSWER: As stated above, I will review the operations and effectiveness of DHS programs, including the CII Act of 2002. Until that time, I do not have access to the information necessary to adequately respond to this question.

c. Do you believe that other factors more accurately measure the success of CIIA thus far? If so, what are they?

ANSWER: I understand that DHS is establishing a program to be able to receive, validate, and disseminate PCII as required by the CII Act and implementing regulation. In this regard, significant effort has been expended in three general areas to: (1) establish an education and training program for users and train IAIP staff on what PCII is and how it needs to be handled and used; (2) inform the private sector about the existence of the CII Act and what protections it provides to the information they voluntarily share with DHS; and (3) establish an accreditation program under which DHS can share PCII with other federal agencies and state and local governments and be able to assure the private sector that its information will be protected the same way no matter where it is being used. If confirmed, I will undertake a review of the program.

81. With respect to controlling what information the CIIA protections will be applied to, former Secretary Ridge also stated in his answers to this Committee:

"By adopting procedures that carefully 'tag and track' information that is voluntarily submitted with a request for protection under the Act, in conjunction with the designation of specific critical infrastructure protection programs authorized to receive the information, the procedures will help define and clarify what information is subject to special protection."

a. Should CIIA protections apply only to information that is shown through a "tag and track" mechanism to have been obtained from information that was voluntarily submitted, with a request for protection, to a critical infrastructure protection program designated to receive that information?

ANSWER: The CII Act protections do apply only to information that is voluntarily submitted to DHS. If I am confirmed, I look forward to reviewing this program and evaluating its

FINAL

effectiveness.

b. Do you believe current DHS authorities and procedures are sufficient to achieve that goal, or would you propose changes to those authorities and procedures?

ANSWER: If I am confirmed, I will undertake a review of the CII Act and the related authorities and procedures, and the current DHS program. Until that time, I cannot properly evaluate DHS' existing authorities.

Immigration and Border Security

82. DHS interacts with the immigrant community on a daily basis. What will you do to work with the immigrant community and gain their trust?

ANSWER: I think that there are two principal means of ensuring good relations with the immigrant community. The first is to make certain that DHS line officers conduct themselves in a professional and courteous manner while discharging their duties. The second is to reach out to immigrant communities when they have concerns about DHS policies or operations that may affect them. I understand that the Department has a good reputation in both areas, and I intend to continue and build on that reputation.

83. During your time on the federal bench, you heard a number appeals related to immigration matters, including a number of cases involving claims for asylum or withholding of removal. The President has indicated that immigration reform will be a priority on his agenda for his second term. As Secretary, your responsibilities will include implementation and enforcement of the immigration laws.

a. What do you see as your role in advising the President on this important issue?

ANSWER: The Secretary of the Department of Homeland Security (DHS) is in a unique position to advise the President on immigration issues. The DHS structure incorporates the principal immigration agencies for the nation. In addition, the DHS staff includes experts who are familiar with the complexities of immigration law, policy, benefits, and operations, and the Secretary may draw on that expertise to give the President a full picture of how reforms will affect the immigration system as a whole.

b. Did your experiences on the bench influence your views regarding U.S. immigration policy, and if so, how?

ANSWER: During my tenure on the Third Circuit, I heard numerous immigration cases that provided a view into the complexities of our immigration structure. As Secretary I will seek to

FINAL

continue to support the direction of the Administration in ensuring that our immigration policy welcomes those lawful travelers and entrants while continuing to provide sufficient safeguards against those who seek to harm the United States.

c. Do you support comprehensive immigration reform? What specific reform proposals would you support, and what role can the Department of Homeland Security play in immigration reform?

ANSWER: I see the Department as having an active, principal role in advising the President on immigration reform, both on the basis of DHS's subject-matter expertise and responsibility for carrying out those reforms that are put into place. Important reforms have already taken place under my predecessor including the current effort to eliminate the backlog has led to numerous small reforms in the immigration process. Achieving that backlog elimination will allow more comprehensive immigration reform to succeed.

Finally, I support the principles envisioned by the President's Temporary Worker Program as I believe that immigration reforms can enhance our homeland security and public safety, while providing undocumented workers an opportunity to work lawfully in the United States for a temporary period of time.

d. Because of significant backlogs, permanent lawful residents and American citizens must wait for many years before close relatives can receive visas to re-join their families. Would you support increasing visa allocations to expedite family reunification?

ANSWER: As I understand, the lengthy wait for family-based visa issuance is the result of an immigrant priority system that numerically limits the number of immigrant visas that may be issued annually to citizens of each country and by family relationship. If confirmed as Secretary, I would want to study this issue, look at potential solutions, and work with Congress to ensure that our system is fair.

e. Even after someone has qualified for a visa, applicants typically face long processing delays. What steps would you take at DHS to ensure visa applications are processed more quickly and more efficiently?

ANSWER: The actual visa issuance process at U.S. overseas posts is the responsibility of the Department of State. In terms of immigrant visa qualification, I understand that U.S. Citizenship and Immigration Services (USCIS) provide information to the Department of State on applicants seeking permanent resident status, and that the Department of State allocates immigrant visas to the extent possible under existing statutory numerical limitations. If confirmed, I will work cooperatively with Dr. Rice and the Department of State to review the existing process to ensure

FINAL

that the Department is doing everything in its control to facilitate the timely issuance of visas to overseas applicants.

84. In June 2003, DOJ Inspector General Glenn Fine issued a report concerning the detention of 762 aliens who were held on immigration charges in connection with the investigation of the 9/11 terrorist attacks. The report found "significant problems" in connection with these detentions and made 21 recommendations for improvements.

Specifically, the OIG report found that following 9/11 the government detained hundreds of aliens on immigration charges because the FBI indicated that these individuals were "of interest" due to the investigation of the 9/11 attacks. The OIG concluded the FBI and INS "did little to distinguish the aliens arrested as the subjects of PENTTBOM leads or where there was evidence of ties to terrorism from those encountered coincidentally to such leads with no indication of any ties to terrorism." Nevertheless, DOJ adopted a policy that such aliens would be held in detention without bond until cleared by the FBI, even if this meant holding them beyond a scheduled deportation date or preventing a voluntary departure from the United States. Due to delays in the clearance process, these detainees were held for an average of 80 days. More than a quarter of the 762 were held longer than three months. While in detention, these aliens were subject to, among other things, delays in charging them with a specific violation, obstacles to obtaining legal counsel and access to family members and, in some cases, abusive treatment.

None of the individuals detained under this policy were charged with any connection to terrorism, although some were eventually deported on the basis of immigration violations.

As Assistant Attorney General for the Criminal Division, you were involved with the terrorism investigations following 9/11, and the OIG report suggests you were involved in the policy to hold some terrorism suspects on immigration charges instead of, or in addition to, criminal violations.

Please describe your role in developing, implementing and overseeing the policies discussed in the OIG report. Please include, specifically, a discussion of the Department of Justice's policies post 9/11:

a. to authorize detentions without charges during a crisis for "an additional reasonable period of time" beyond 48 hours;

ANSWER: To answer this question properly, I need to place my role in the context of the events of September 11 and their immediate aftermath as they relate to the detentions discussed in the OIG report.

On September 11, I was present at the FBI Command Center for approximately 20 hours,

FINAL

commencing shortly after 9:00 am. During the next six weeks, most of my daily activities occurred at the command center, where I was normally present from early in the morning until late at night (or early the following morning).

During the days following September 11, the following facts became evident to me: For months before September 11, a group of al-Qaeda terrorists, including the 19 hijackers themselves, had secretly penetrated the United States, some in the guise of students seeking to pursue studies. These terrorists deliberately (and consistent with al-Qaeda tradecraft) kept a low profile, and sought to blend into the community. Further, they exploited existing criminal networks to obtain false identification; relied upon others to provide housing and other support; and skillfully bypassed existing airport security to execute their plan.

The objective of these terrorists was not limited to attacks to September 11. Based on al-Qaeda's previous terrorist acts and Bin Laden's explicit declaration of war on America and Americans, it was obvious to me that the terrorists intended additional attacks on the United States, seeking to inflict large numbers of casualties and if possible, to damage the institutions of American government. Thus, my operating assumption in the days after September 11 was that these attacks were a prelude to other attacks, of equal, or perhaps greater, severity.

What was unclear in those days was how imminent the next attack might be; how broad was the remaining al-Qaeda network in the United States; and whether those who had financial, physical or communications interaction with the hijackers were witting or unwitting facilitators of the conspiracy.

Accordingly, I participated in the formulation of a general investigative strategy in response to the September 11 attacks. That strategy was to follow each of the many thousands of financial, communications, physical and other leads generated from the 9/11 investigation; to identify person linked by these leads with the 9/11 or other terrorism investigations; to investigate those person; to charge those persons if there was evidence that they had violated the criminal or immigration laws; and to make appropriate legal arguments in court to detain those charged persons until such time as we concluded that they were not part of a terrorist conspiracy. The strategy was built on the recognition that every lead should be pursued as far as possible, lest the one missed lead prove to be the connection to another fatal attack.

Apart from participating in the formulation of that strategy, I devoted my efforts to an operational role in the criminal investigation generated from the 9/11 attacks. In this capacity, I participated in the process of seeking approval from the federal courts to obtain search warrants, Title III authorization, and other orders necessary to follow leads; from time to time participated in discussions about whether to charge individuals under the federal criminal laws; and worked to assemble a comprehensive picture of the conspiracy from the thousands of leads being pursued simultaneously across the country.

FINAL

More generally, the Criminal Division coordinated with the United States Attorney's Offices across the country in their investigations of the 9/11 leads and their prosecution of criminal cases, and with the FBI and INS to help those agencies ensure that relevant investigative information about any immigration violator was conveyed to immigration prosecutors in the field for use in bond hearings. As detailed at page 15 of the OIG report, much of this coordination took place through participation in the SIOC Working Group, which sought to facilitate the flow of information from the FBI and other agencies to the INS.

As explained in the OIG Report (p.20), neither I nor (to my knowledge) anyone from the Criminal Division played a role in how or where immigration detainees would be held or in setting their conditions of confinement.

b. to hold detainees until affirmatively cleared by the FBI;

ANSWER: In addition to my general answer to section a above, as explained in the OIG report, I believed that if individuals linked through investigation to the hijackers or terrorism were chargeable with violations of our criminal laws or immigration laws, as enacted by Congress, the government should seek detention in accordance with the applicable law while were investigating to determine if the charged individuals posed an actual threat. In these discussions, I repeatedly emphasized that this policy applied only to those properly chargeable with breaking the law and that detention should be sought consistent with relevant law and regulations.

c. to allow an automatic stay of a bond or release determination of such detainees to allow the Department of Justice to continue to hold such detainees while it appealed the decision;

ANSWER: Other than described in section a, I recall no role in this and do not believe I had a role in this.

d. to close all immigration hearings involving the 9/11 detainees and other secrecy measures regarding these detentions.

ANSWER: Other than described in section a, I recall no role in this and do not believe I had a role in this.

85. The OIG report found that the policy was based on an assumption among key DOJ officials that such detainees would be cleared by the FBI relatively quickly. Indeed, when the IG's office interviewed you during its investigation, you stated that you believed at the time that many clearances could be completed "within a few days." According to the report, some Department officials said they believed as late as the summer of 2002 that these clearances were being completed within a few days. Yet the report also indicates that, in late September of early October 2001, a staff attorney form the Criminal Division's Terrorism and Violent Crime Section drafted a memo in your name to the Assistant Director of FBI's Counterterrorism Section raising

FINAL

concerns about the lack of resources to conduct the clearances in a timely way.

With respect to your involvement with the memo, the report states:
"When interviewed by OIG, Chertoff said that while he was familiar with the contents of the draft memorandum, he did not know whether it was sent (it was not, according to other witnesses). Chertoff recalled orally raising the issue of the pace of clearance investigations with FBI Director Mueller and Assistant Director Watson, but indicated that during the first few months after the attacks he believed these issues related to the impact of the clearance process on bond hearings (as opposed to the removal of aliens from the United States). Chertoff told the OIG that he later became aware of a delay in removing detainees when he received questions from Congress about this issue as a follow-up to his November 28, 2001 testimony before the Senate Committee on the Judiciary."

a. What was the basis for your initial belief that the clearances could be accomplished in several days?

ANSWER: My impression that the clearances could be accomplished in several days was based on my experiences as a federal prosecutor and previous experience working within the Department of Justice.

b. When did you learn that it was taking significantly longer – a few months not days for most – for the FBI to clear these individuals?

ANSWER: As described in the OIG report, I became aware of problems in the pace of clearances, which had an impact on bond hearings.

c. What actions did you take, if any, to alert others to these delays and seek to expedite the process?

ANSWER: As described in the OIG report, I recalled orally raising the issue of the pace of clearance investigations with FBI Director Mueller and Assistant Director Watson, and also asked others to raise it with the FBI.

d. In your opinion, does the existence of the delays change the appropriateness of the underlying policy to use immigration charges to hold those of interest to the FBI for a terrorism investigation?

ANSWER: The existence of the delay suggests the importance of developing appropriate procedures to streamline clearances in the future.

86. Is your opinion of the appropriateness of the detention of aliens after September 11th affected by the OIG's conclusion that many of the detainees had been "encountered

FINAL

coincidentally... with no indication of any ties to terrorism"? Please explain your answer.

ANSWER: My understanding is that each and every person detained in the course of the 9/11 investigation was detained with an individualized predicate, meaning, a criminal charge, an immigration violation, or a judicially-issued material witness warrant. There was a legal basis for each detention. I want to emphasize my belief that the Justice Department was right in being cautious about releasing illegal immigrants who were found in the immediate aftermath of the September 11 attacks. The top priority of the Justice Department was preventing another terrorist attack against the American people, and the lawful detention of individuals who were known to have violated immigration laws – like the September 11 attackers themselves – was a reasonable policy. I acknowledge that the policy could have been implemented better and it will be in the future.

87. In light of the OIG report and any other information, what changes if any would you make in the government's policies that were the subject of the OIG report? In your opinion, would such a strategy be justified again in the event of an another terrorist attack and investigation?

ANSWER: Speaking personally, I believe that the Government faced an unparalleled challenge on September 11: How to prevent devastating terrorist attacks that might arise at any moment from al-Qaeda "sleepers" who had been specifically programmed to disguise themselves, blend into ordinary life, and to exploit existing networks for obtaining phony documents and other means of support. That challenge was compounded by the fact that the September 11 attacks physically crippled the FBI and U.S. Attorney's Office in New York (which were the repositories of much of the Department's antiterrorism expertise at the time) and impaired communication between New York and Washington for a period of time. Furthermore, because the 9/11 conspirators operated in cities and towns across the country, the 9/11 investigation necessitated following and analyzing many thousands of leads generated by numerous FBI field offices, some of which had little previous experience in conducting terrorism investigations. Looking for a terrorist under these circumstances was akin to looking for a needle in a nationwide haystack, but with the needle masquerading as a stalk of hay.

As you know I have been out of the Executive Branch for some time, but I believe that circumstances have improved. Better intelligence capabilities here and abroad, greater experience, and a general increase in preparedness will allow the Government to react with more precision in the event of another attack. Indeed, by effective enforcement that reduces the possibility of such an attack, we correspondingly reduce the possibility that we will again face the exigencies that arose in the immediate wake of 9/11.

The OIG report identifies concerns that FBI investigative delays or lack of precision in turn led to delays in processing of immigration detainees. In the aftermath of the surprise attack on September 11, the FBI labored under physical and resource constraints in the face of an urgent

investigative demand of unprecedented scope. Now, additional resources, training enhancements and reorganizations within the Department and the FBI, as well as the Intelligence Reform Bill - are designed to – and should continue to – increase FBI expertise and capability and streamline coordination, so that in any future nationwide terrorism investigation delays and imprecision will be minimized. Furthermore, I believe that the FBI and DHS should and will continue to build upon their experience to develop and firmly establish appropriate protocols for classifying subjects of terrorism investigations at the appropriate level of concern, setting up appropriate deadlines for notification that a particular detainee is or is no longer a terrorism risk; sharing information between law enforcement and immigration agencies; and finalizing a crisis management plan that clearly delineates each agencies procedures and responsibilities in the event of a national emergency.

These enhancements would further reduce the potential for impinging on civil liberties. I believe that DHS and DOJ have implemented some of these proposals and, if confirmed, I will work to further increase their successful implementation.

I have little familiarity with the Bureau of Prisons or INS regulations, policies and practices as they existed during (2001 and 2002) or as they exist now. Accordingly, I have no basis to evaluate whether there were lapses or problems in BOP or INS detainee procedure or violations or BOP or INS regulations, other than the conclusions of the OIG report. If, as the Report concludes, there were unnecessary delays in processing detainees or unnecessarily rigorous restraints imposed on their custody, these should be analyzed and corrective action taken. The purpose of detention is not punitive, but is designed to serve the interests of security and discipline within facilities. Accordingly, I do believe that the Government should and will consider the OIG's recommendations in this regard, but I do not feel competent to offer an opinion on them specifically.

88. The OIG report also discusses disturbing conditions of detention for some of those held on immigration charges in connection with the investigation of the 9/11 attacks. In the words of the OIG report, these conditions were "excessively restrictive and unduly harsh." Those concerns were further documented in a supplemental OIG report on the detainees released in December 2003.

a. Were you aware of such conditions at the time? If so, did you make any efforts to seek improvements?

ANSWER: No, I was not aware of those conditions at the time. Although I understand from the OIG report that there are allegations that guards at one facility deliberately mistreated some detainees, I have no personal knowledge about this. If true, this misconduct is wholly unacceptable and should be (and I believe is being) investigated fully. At the end of that investigation, any appropriate prosecutive or disciplinary action should be taken. Clearly, the Government should continue to reinforce the message to corrections personnel that any detainees

FINAL

are not being held for punishment and should be treated with appropriate respect and restrain.

b. If not, when did you become aware of such conditions?

ANSWER: From the OIG report.

c. What steps would you take as Secretary of Homeland Security to ensure appropriate treatment for those detained for violations of immigration law?

ANSWER: Though I have not had the opportunity to read the supplemental IG report on this matter, I take the expressed concerns seriously. I understand that ICE has implemented a new detention standard specifically to address the report's findings. I think we should strive for a situation where detainees in DHS controlled facilities can have access to counsel, telephones, and visitation privileges. Likewise I think it would be helpful to house detainees in together according to criminal history and other relevant factors.

89. The OIG report found that in addition to delays in charging, there were additional delays before some detainees were notified of the charges against them. Current law and regulations do not specify a deadline to provide such notice. The Department of Homeland Security has issued guidance that such notice be given within 72 hours of arrest, however there are exceptions that would still allow considerable delays.

a. Do you support a firm deadline for notifying individuals of immigration charges filed against them? If so, what should that deadline be?

ANSWER: Under DHS internal guidelines, a charging document for immigration charges, must be served upon the detained alien within 72 hours of arrest, taking into account such factors as infrastructure and logistical considerations, the need to obtain conviction records and other information related to the alien or immigration charges, the need for legal review and other law enforcement requirements. In narrowly defined emergency or other extraordinary circumstances, service of the document shall be made as soon as practicable.

There is a need for some flexibility for such guidelines to allow for unforeseen circumstances during narrowly defined national emergencies or other extraordinary circumstances, such as disruptions that interrupt basic logistical functions.

b. As Secretary, what steps if any would you take to establish such a deadline?

ANSWER: Should I be confirmed, I will certainly look into this matter.

FINAL

90. After the terrorist attack of September 11th, the Department of Justice created the national security entry and exit registration system (NSEERS or "special registration"), a tracking scheme that required visitors from certain countries to be fingerprinted, photographed, and interrogated by immigration officers. This program required men from 25 predominantly Muslim and Arab countries to report to immigration offices around the country for fingerprints, photographs and questioning by officers. More than 13,000 men who complied with call-in registration were reportedly placed in removal proceedings for immigration violations unrelated to national security. The NSEERS program was transferred from DOJ to DHS in 2003. In December 2003, DHS announced (by interim rule) that it would suspend the 30-day and annual interview requirements related to special registration. Since the December announcement, there has reportedly been confusion in the immigrant community about the continuing requirements of NSEERS and the consequences of not registering.

a. Please describe what role, if any, you played in developing, implementing or overseeing the NSEERS program.

ANSWER: I played no role in developing, implementing, or overseeing the NSEERS program.

b. Do you believe the NSEERS program should continue? If so, what aspects of the program should be continued, and in what form? Please explain your reasons, including the policy rationale for continuing NSEERS.

ANSWER: NSEERS was stood up, in part, as the first step towards a more complete entry-exit system. Congress has required the implementation of a comprehensive, automated entry-exit system so that we know when an individual enters and exits the United States. This is a critical capability, which is being implemented in a phased-in approach through US-VISIT.

As I understand from the Department, differences remain between NSEERS and US-VISIT with respect to exit capability and the NSEERS interview. . I am committed to implementing a comprehensive entry-exit system, and should I be confirmed, I will review all aspects of the US-VISIT and NSEERS programs to identify areas of improvement.

c. Do you believe it is fair to expose individuals to special registration requirements and greater risk of deportation based on their national origin? Should the government consider suspending deportation proceedings against individuals who were placed in proceedings after they voluntarily complied with the special registration requirements? Please explain your answer.

ANSWER: With respect to laws governing an individual's admissibility to the United States, Congress, appropriately, has given Federal agencies significant authority, including the responsibility to collect certain information upon an individual's entry and exit.

With respect to NSEERS, the requirements have been based on a number of factors identified by

FINAL

the intelligence community as warranting closer scrutiny. If confirmed, I will review the policies surrounding enforcement of NSEERS requirements. I also understand the sensitivities surrounding this critical legal and policy issue, and, should I be confirmed, I look forward to further discussions on the matter.

d. What steps should DHS take to improve outreach and education to the affected community of the ongoing requirements of special registration?

ANSWER: The government has a responsibility to effectively communicate such admission requirements to the affected individuals. As I understand the current process, a Customs and Border Protection (CBP) inspector provides an alien registered in NSEERS with written instructions for departure registration and a list of ports through which the alien may depart. If confirmed, I will ensure that community outreach and education on all immigration requirements remains a top priority for the DHS.

91. The setting of visa policy has been an important component of homeland security attention over the past few years. DHS has been asked to take on responsibilities that were once the purview of the State Department.

a. What specific role would you see the Department playing in establishing and overseeing the implementation of visa policy?

ANSWER: I look forward to working with the Secretary of State on these issues. As you know, DHS establishes visa policy and reviews policy implementation pursuant to Section 428 of the Homeland Security Act and as further elaborated under section 1(b) of the implementation MOU between DOS and DHS. I believe DHS should continue to work with DOS to strengthen the integrity and security of the U.S. visa system. DHS brings a strong security concern to the process and first line experience in how our visa system and policies are exploited by terrorists and other criminals to illegally enter the U.S.

I understand that the DHS Private Sector office has been critically important in informing the visa policy process about the concerns of the business, academic, and travel communities. I believe that the Department should continue to look to the private sector to not only identify visa problems and to recommend solutions but to provide feedback after changes are made to the visa process.

b. As head of the agency responsible for setting visa policies, how would you plan to create a balance between the two principles of securing our nation's borders and facilitating legitimate travel? Would you foresee any changes to address the concerns of the business and academic communities who have criticized the visa process as being too "cumbersome" or "stringent"?

ANSWER: For immigration and travel issues, including visa policy, I understand that DHS and DOS have used the mantra "Open Doors, Secure Borders." I agree with that philosophy. It captures the common sense notion that we should keep criminals and terrorists out of our country as we quickly and

easily process those into the U.S. who are known or low-risk travelers. Accordingly, DOS in coordination with DHS, FBI, and the intelligence community should continue to examine the visa process, streamline the process wherever possible, and system interoperability and information sharing to help further facilitate the visa process. At the same time, it is imperative that DHS close security gaps in travel to the U.S. The two goals of travel facilitation and security are complementary. For example, the launch of an international registered traveler program will enable frequent, low-risk travelers to enroll in a program that permits DHS to establish the identity of participants while easing visa application and inspection processes. At the same time, this ease of travel for low-risk individuals frees the time of CBP inspectors to focus on unknown travelers, thus increasing security.

With respect to the business and academic communities, it is my understanding that DHS and DOS together have made significant improvements in 2004 to facilitate the visa issuance process for business, student, and research travelers. I am receptive to working with the business and academic communities regarding visa matters. I am also looking forward to working with the Secretary of State and DOS to ensure that the visa process is efficient and effective.

92. The Homeland Security Act of 2002 required the establishment of visa security units at U.S. consular posts overseas for the purpose of reviewing visa applications.

a. What, in your opinion, is the role of DHS Visa Security Officers at consular posts overseas?

ANSWER: The role of Visa Security Officers is to provide law enforcement and counter-terrorism expertise to enhance the security of the visa issuance process beyond what is currently being provided by FBI, State Department Consular Officers and Diplomatic Security fraud specialists. This is done through the review of visa applications (including 100% in Saudi Arabia), providing expert advice and training to Department of State's Consular Officers; and related investigations.

b. Would you plan to strengthen the capacity of these DHS officers to implement more effective security-based reviews of visa applications? If so how?

ANSWER: I am aware that the Department has a plan for deploying additional Visa Security Officers to certain consular posts. I know that such plans can be resource intensive. Additionally, I understand that the Department has identified enhanced training as a critical element to enhance Visa Security Officers' counter-terrorism function and that a specialized training curriculum for Visa Security Officers is under development. If confirmed, I will review this matter closely.

c. Given the small number of consulates overseas where DHS Visa Security Officers will be stationed, would it be effective and cost-efficient to also train more consular officials in evaluating security risks posed by visa applicants? What role can DHS play in providing such

FINAL

training pursuant to section 428 of the Homeland Security Act?

ANSWER: If confirmed, I intend to review the entire program and determine how best to marshal limited government resources to be meet potential threats and enhance homeland security.

93. President Bush recently signed legislation that delays until October 26, 2005, the requirement for Visa Waiver Program countries to include biometrics in their passports.

a. Do you anticipate that program participants will meet this deadline?

ANSWER: The Administration initially requested an extension of the deadline to November 2006 to ensure that Visa Waiver Program participant countries would be able to meet the deadline for inclusion of biometrics in passports. I understand that programs in these countries are undergoing rapid development to meet the 2005 deadline, and substantial progress towards the inclusion of biometrics in passports will have been made by the October 26, 2005 deadline, including the initial issuance of passports.

b. How will you respond if foreign governments again raise concerns about their ability to meet this new deadline?

ANSWER: In coordination with the State Department, I would work with foreign governments to explain the requirements of U.S. law and the reasons for which the law was enacted. With regard to specific deadlines, I would actively encourage foreign governments to make every effort to meet deadlines set by law. Where appropriate and feasible, I would offer assistance and guidance to help foreign governments in understanding requirements and in meeting the required deadline.

In addition, many of the challenges faced by foreign governments are also the same challenges facing the United States in developing biometrically-enabled passports. Many of these challenges are technological in nature, and I would ensure that appropriate technology and experiences are shared with foreign governments to ensure that the development of biometrically-enabled passports can proceed as quickly as possible.

c. If this deadline cannot be met, what would be your contingency plans?

ANSWER: If the deadline cannot be met, the Administration might want to review the reasons for why a particular country or countries failed to meet the deadline. Many of these countries are strong allies in the war against terror and all contribute substantially to our economy through tourism, attendance at our schools, cultural exchanges, and other means.

FINAL

If confirmed, I will work closely with the Department of State and within the Administration to identify all possible options for a contingency plan. It is important that DHS work to ensure that the requirements set by Congress and signed by the President are met, and I will ensure that DHS undertakes every effort to ensure that foreign governments meet the 2005 deadline.

94. In a recent talk at the Center for Strategic and International Studies, Secretary Ridge commented that the United States should require U.S. passports to include all ten of the bearer's fingerprints, adding that "[i]f we're going to ask the rest of the world to put fingerprints on their passports, we ought to put our fingerprints on our passports." His advice to you, if confirmed, was to "be aggressive" in pursuing this requirement, noting that it is "a lot easier to negotiate with your allies if you've already done what you're asking them to do."

a. How would you respond to Secretary Ridge's comments? Do you agree with the suggestion that passports should include a full set of fingerprints?

ANSWER: I look forward to working with the Secretary of State on this issue. As you know, DHS does not issue passports.

Ideally, a U.S. travel document should be issued to an individual upon establishing his/her identity, and that travel document should contain enough information to allow for on-the-spot identity verification quickly, to ensure against counterfeiting and identity theft, and to speed American travelers through air, land, and sea ports of entry.

b. What steps do you believe should be taken to improve the security and reliability of U.S. passports?

ANSWER: I understand that DHS has offered suggestions for improving the security and reliability of U.S. passports to DOS. If confirmed, I look forward to working with the Secretary of State to ensure that U.S. passports are secure.

At a minimum, we can improve the security and reliability of U.S. passports by setting appropriate standards for identification documents which can be used in support of a passport application, ensuring that U.S. passports work with document readers and scanners used in other countries, and in working cooperatively internationally to create a real-time lost and stolen passport database. Lastly, we need to aggressively implement the fraud control measures in IRTPA provided by the Congress.

95. The Intelligence Reform and Terrorism Prevention Act of 2004 requires the Secretary, in consultation with the Secretary of State, to develop and implement a plan to require a passport or other document, or combination of documents, deemed by the Secretary of Homeland Security to be sufficient to denote citizenship and identity for all travel into the United States by U.S. citizens and nationals from Western Hemisphere countries, including Canada, for whom such

FINAL

requirements have previously been waived. This plan must to seek to expedite the travel of frequent travelers, including those living in border communities.

a. What types of document, or combination of documents, do you believe should be considered sufficient, in lieu of a passport, to denote identity and citizenship?

ANSWER: A passport establishes both identity and citizenship for foreign travelers, which makes it an ideal document for travel into the United States. However, other documentation may also suffice to establish identity and citizenship. If confirmed, I look forward to working with DOS in the interagency process to review this important issue.

b. In developing and implementing this plan, what steps will you take to ensure that the needs of frequent travelers, including those living in border communities, are taken into consideration?

ANSWER: Border communities face unusual challenges because they depend economically on the ability for both foreign visitors and U.S. citizens to quickly cross the U.S. border. It is vital to the economic security of the United States that the Department continues to improve and facilitate travel across land borders.

I understand that DHS has a number of ongoing efforts which seek to both facilitate travel and increase security, such as registered traveler programs and improving border facilities. In ensuring the national security of the United States, it is also vital that the Department protect the economic security of the U.S. as well. Expediting the legitimate travel of frequent visitors serves the goals of the Department and of the United States. I will work closely with the Secretary of State to make the determination on which documents would be adequate.

96. Some have proposed enacting legislation that would prohibit the issuing of visas to anyone who is a citizen or national of a country declared by the State Department to be a state-sponsor of terrorism. Would you support applying a blanket prohibition of this kind based strictly on citizenship?

ANSWER: Certainly we must have enforcement and security measures that counter the increased threat of terrorism present to the United States and the rest of the world. However, we must remember that in spite of the dangerous practices and policies of the countries declared to be state-sponsors of terrorism, there are many among their nationals who share our values. While we must be vigilant in the protection of our homeland, we must also recognize that not all of the millions subject to the rule of these governments are supporters of their practices and that welcoming individuals who qualify for visas to this country is one of the best ways to export our values and ideas about freedom abroad.

FINAL

97. Several thousand criminal aliens illegally in the United States have been ordered removed, but cannot be because their countries of origin refuse to accept them. Many other aliens cannot be removed because their countries of origin lack a functioning government, and therefore cannot affirmatively accept them. As a result, the aliens are either held for long periods or released into the community. The Immigration and Nationality Act requires the State Department, upon being notified by the Secretary of DHS , to discontinue granting visas to citizens of countries that refuse to accept aliens ordered removed to their countries of origin.

a. What would be your policy be regarding the use of this tool in response to the refusal of foreign countries to accept the return of their citizens, subjects, or residents?

ANSWER: I believe that every country has a legal obligation to accept its citizens. If a country refuses to accept its citizens then diplomatic efforts should be made to encourage them to do so. One of the diplomatic choices is to invoke visa sanctions. It is obviously a sensitive matter that I would work closely with the Secretary of State.

b. What do you believe our policy should be toward removal of aliens to countries that lack functioning governments?

ANSWER: The recent Supreme Court decision, Jama vs. ICE, upheld the government's ability to remove an alien to a country without the explicit, advance consent of that country's government. I expect that the Department will evaluate the removals of aliens to countries without functioning governments on a case-by-case basis.

98. The Census Bureau has estimated that at least 8 million undocumented aliens live in the U.S. Many, if not most, undocumented aliens come to the U.S. for employment purposes. The effectiveness of the employment verification process established by the 1986 immigration law to prevent employers from hiring undocumented aliens has been limited.

a. In your opinion, what if anything should be done to enhance the employment verification process and/or the employer sanctions provisions of the law in order to prevent employers from hiring undocumented aliens?

ANSWER: For our immigration system to work, employers and employees must understand and abide by the applicable laws. The government's job is to promulgate laws that are understandable and can be followed.

I understand that one possibility for a new approach would be the model now being tested by the Basic Pilot Program. This program is an employment eligibility confirmation system jointly administered by Citizenship and Immigration Services (CIS) and the Social Security Administration (SSA). I understand from DHS that this pilot has been largely successful so far because it is voluntary and easy for employers to understand and use.

FINAL

If confirmed, I will devote attention to this issue.

b. Do you favor increasing immigration enforcement or changing immigration policy to better respond to a wide range of economic demands from the science community, agricultural facilities and other employers?

ANSWER: I think the President's Temporary Worker Program would permit vigorous enforcement of our immigration law and yet afford willing workers the opportunity to accept jobs that no American citizen will do. If confirmed, look forward to learning more about the possible solutions to the needs of our immigrant community and those who work with them.

c. Are there any circumstances in which you would support a law granting lawful permanent residency to undocumented immigrants who have lived in the U.S. for a number of years, held jobs, and paid taxes? Please explain your answer.

ANSWER: It is my understanding that the immigration laws provides some means for doing so already particularly for aliens who have lived here a long time and have United States citizen children. While I do not think an amnesty is the right policy decision for this country, I think we want to ensure that the immigration system is fair to people here seeking lawful status and people who are waiting patiently abroad and are seeking to enter the country legally.

d. President Bush proposes allowing undocumented immigrants to apply for temporary work permits so that they may work and reside in the U.S. legally for a number of years, after which time they would not be able to stay in the U.S. unless they found some other means to secure legal status. Do you support this policy? Undocumented immigrants may be less willing to come forward to apply for temporary work permits if they know they will lose their legal status upon the expiration of the work permits unless they find some other means to remain in the U.S. What is your response to this concern?

ANSWER: I strongly support the goals of the President for immigration reform. There is no quick and easy panacea to undocumented migration and tough choices will have to be made to deal with this difficult problem. If confirmed, I intend to look at these issues very carefully, including the temporary worker program proposal, and intend to work with the President and the Congress to design effective solutions to meet these goals.

99. Please discuss your understanding of any shortfalls and gaps existing within DHS that hinder or play a role in its ability to effectively secure our land borders against illegal entry. How would you address any such shortfalls and gaps?

ANSWER: With the creation of DHS, the responsibility for securing the border against illegal entry both at and between the ports of entry was brought within one Department. I understand

FINAL

that DHS has developed several initiatives aimed at improving border operations both at and between the ports of entry, including the issuance of a revised National Border Patrol Strategy. Implementation of this strategy will require the ability to detect and respond to border penetrations using the right mix of technology, tactical infrastructure, personnel and equipment.

For instance, I understand that CBP is currently developing the America Shield Initiative (ASI), a domain awareness system that will use a mix of sensors, cameras, and other detection technology to identify intrusions and direct Border Patrol agents to the sight of the intrusion. Ideally, this system will frequently be able to identify in real time the source of the intrusion, meaning that it will be able to differentiate between an animal and a person most likely engaged in illegal activity.

100. U.S. Customs and Border Protection (CBP) is responsible for the dual missions of safeguarding borders against the illegal entry of goods and people and of regulating and facilitating legitimate international trade and foreign travel. Oftentimes, these missions come into conflict.

a. What do you see as major challenge(s) with CBP's dual role?

ANSWER: After the September 11 attacks, it became evident that the mission of U.S. Customs and Border Protection must be to prevent terrorists and terrorist weapons from entering the United States. However, as security increased after the attacks and trade at the Northern Border ground to a near halt, it became equally evident that the security mission must not be accomplished at the expense of facilitation of legitimate trade and travel.

Given the sheer volume of traffic – more than 428 million passengers and pedestrians, 23.5 million rail, sea and land containers – I understand DHS embraces using a smart border, multi-layered strategy. This strategy hinges on risk management principles. It begins by pushing our zone of security beyond the immediate border area to address threats and vulnerabilities before they arrive at our border. The receipt of accurate information early in the shipping or traveling process is critical so that CBP can identify risky shipments or travelers overseas, before being placed on a ship or boarding a plane bound for the United States. DHS should continue to build upon the accuracy and timeliness of the advance information, as well as the ability of the Automated Targeting System (ATS) and the National Targeting Center (NTC) to identify high-risk shipments and travelers, in order to accomplish both goals.

I understand that the smart border concept also relies upon partnerships with the trade and the traveling communities that allow CBP to expedite the entry of low-risk, known shipments and individuals while focusing more attention to unknown, higher-risk traffic, such as the Customs-Trade Partnership Against Terrorism (C-TPAT) and the Free and Secure Trade (FAST) program. The continued expansion of these partnerships will be central to meeting the dual goals.

FINAL

I also understand another element of the smart border strategy is the use of technology, such as non-intrusive inspection systems to more rapidly screen containerized cargo. This technology has allowed CBP to thoroughly inspect a greater number of containerized shipments for anomalies and radiation without increasing wait times at the border. The continued deployment of these devices will be critical to accomplishing the dual goals.

b. What priority do you plan to give to each mission if confirmed?

ANSWER: These goals are opposite sides of the same coin – and one does us no good without the other. If we focus solely on security, then the U.S. economy and our Nation's livelihood suffer. If we focus solely on facilitation, then we are inviting another attack on U.S. soil. Of course there are times of heightened alert or when specific intelligence exists, that security must trump facilitation. But generally, we must seek to build upon existing programs that increase security while at the same time facilitating trade and travel – such as the Customs-Trade Partnership Against Terrorism (C-TPAT) and Free and Secure Trade (FAST) program, as well as trusted traveler initiatives like SENTRI, NEXUS, Air NEXUS, and the newly announced Registered Traveler Program.

c. DHS has implemented or modified a number of security measures at our ports of entry that are designed to tighten security, including programs such as US-VISIT (which addresses foreigners visiting and traveling within the United States) and the Trusted Traveler program (which is designed to facilitate travel and improve security domestically). In light of the careful balance between CBP's dual role, is it appropriate at this time to expand these or other similar programs and, if so, how can the Secretary of Homeland Security ensure expansion addresses national security concerns without unfairly burdening or restricting the flow of goods and people?

ANSWER: Programs such as Registered Traveler are indeed aimed at both facilitation of travel and enhancement of homeland security, as they expedite the travel of vetted, low-risk participants and free resources to more closely examine unknown travelers. Should I be confirmed, I will definitely review the current programs to determine the appropriate path forward, including looking at how to integrate related programs that provide for secure movements across our borders or through our aviation and transportation systems and expedite the movement of low-risk persons or goods.

While some refer to the mission of DHS in terms of balancing commerce facilitation and homeland security, I believe it is more appropriate to discuss these two goals as two sides of the same coin. For both our national and economic security, these dual missions must be considered together.

101. If you are confirmed as Secretary, how will you balance the often competing demands of security and legitimate travel and commerce in implementing border controls?

FINAL

ANSWER: DHS should continue to balance the needs of security with the needs of travelers, but those needs are not necessarily in competition. The first need of any traveler is to travel safely and arrive at the intended destination. As Secretary, I would act to ensure that the safety of travelers as well as the security of the United States remains a priority for the Department.

In implementing border controls, consideration must be given to all the factors involved, including economic impacts, local community needs, and the impact upon the traveling public. Legitimate trade and travel is vital to the economic security of the U.S. and must not be compromised. DHS can act to secure the United States while also improving free trade and commerce by, for example, expanding its Registered Traveler Programs, increasing the use of technology and biometrics to speed identification and resolve issues, and pre-clearance of goods and travelers into the United States.

To meet the need for facilitated trade and travel without compromising national security, I would as Secretary promote the use of technology and improved border facilities, the creation of innovative and visionary programs, and the improvement of regulations as a means of meeting these goals.

I will also work closely with the private sector, to include the airlines and cruise ships industries, as well as the multiple stakeholder groups who advocate for positive change along the borders with Mexico and Canada.

102. Some believe that having an effective interior enforcement strategy to identify and remove aliens not lawfully present in the U.S. is an essential component to having an effective border strategy.

What should be the nexus between border enforcement and interior enforcement? How should the two be balanced in terms of priority and resources?

ANSWER: Interior enforcement is an essential component to having an effective border strategy, and it must be aggressively pursued if the Department is to stem the flow of individuals arriving in the United States legally or remaining in the U.S. beyond the time that they are authorized. I expect CBP and ICE to coordinate closely to ensure prosecution or timely removal of individuals who illegally enter the United States either between the ports of entry or at the ports of entry with fraudulent or stolen documents.

103. There have been reports that the United States has seized suspected alien terrorists and rendered them to foreign countries where they have been imprisoned and tortured and that U.S. Immigration and Customs Enforcement officials have assisted in these operations. Do you believe it is lawful to perform such reditions to countries we have strong reason to believe will torture those so rendered? What is your view of renditions as a policy matter? If confirmed, what would be your policy concerning the involvement of DHS personnel in operations that lead to the

FINAL

rendition of suspected alien terrorists to foreign governments known to have violated global standards concerning the human rights of prisoners?

ANSWER: As signatory to the Convention Against Torture (CAT), the United States will not remove anyone to a country where it is more likely than not that they will be tortured by their government.

104. A recent joint report by the Center for Strategic and International Studies (CSIS) and the Heritage Foundation suggests that while DHS succeeded to some degree in consolidating agencies with overlapping missions, it fell short in the area of border and immigration security. In particular, it cited overlap and lack of a clear delineation of responsibilities between U.S. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE). In addition, the report concluded that the split of responsibilities between CBP and ICE was done without a compelling reason, and recommended merging the two organizations and eliminating the Border and Transportation Security Directorate.

a. Have you read the CSIS and Heritage report? If so, what are your views with respect to these findings and recommendations?

ANSWER: I am familiar with this particular report, and welcome the opportunity to assess this recommendation. If I am confirmed as the next Secretary of Homeland Security, it is my intention to review the structure of the entire Department. I look forward to working in close cooperation with Congress to implement any necessary changes.

b. If confirmed, what steps, if any, will you take to address the report's findings and recommendations?

ANSWER: As noted above, I look forward to the opportunity to assess the structure of the Department and the recommendations found in this report.

105. Since the creation of the Department of Homeland Security, the United States Visitor and Immigration Status Indicator Technology (US-VISIT) program has been one of its top priorities. The 9/11 Commission also stressed the importance of this program in its final report, and recommended accelerated implementation of the screening system. The Intelligence Reform and Terrorism Prevention Act of 2004 requires DHS to submit, no later than 180 days after enactment of the Act, a plan to speed the full implementation of the biometric entry and exit system.

However, implementation of the US-VISIT program is inherently risky because it has a multi-faceted mission, is large and complex in scope, has challenging milestones and has significant potential cost.

a. Will the speeded implementation of the biometric entry and exit system be a priority of

FINAL

DHS if you are confirmed as Secretary? If so, what steps would you take to speed its implementation?

ANSWER: Yes, if confirmed, I will place a high priority on the implementation of the biometric entry and exit system as quickly and effectively as possible . I understand that the Department is currently finalizing the strategic plan and vision for the entire immigration and border management enterprise. I will want to review the situation carefully and then work with Congress to get to the right result.

b. How would you oversee implementation of US-VISIT to minimize project delays and changes in scope and cost-growth?

ANSWER: US-VISIT is in the process of being implemented in increments designed to ensure an orderly and effective securing of U.S. borders while minimizing the risks of implementation. I would continue the existing oversight of the program, which has proven to be very effective.

As I understand it, since its creation, US-VISIT has successfully delivered three scheduled implementations on time, within budget, and beyond expectations. In meeting its stated goals, US-VISIT worked closely with the GAO, the DHS Investment Review Board, and OMB to make sure that planning and expenditures were kept within guidelines. This cooperative effort should continue.

I would also ensure that US-VISIT maintains clear goals and deadlines with reasonable and achievable milestones, thus ensuring that project delays are minimized, changes are rarely needed, and so that expenditures are justified and within established guidelines.

c. What steps would you take to ensure that US-VISIT is achieving the programmatic and technological results intended?

ANSWER: While US-VISIT is a challenging project, it is also an important project vital to the continued security of the United States. More than just a means of keeping terrorists out, US-VISIT is also a mechanism to facilitate legitimate trade and travel across our borders.

To ensure that a high level of success, I would continue to monitor and measure performance of the program through a combination of statistical measures, such as wait times and number of travelers processed, and non-statistical measures, such as reports of significant apprehensions. In addition, I would also listen to foreign governments, the travel industry, and other interested parties for ideas on ways that the US-VISIT system could be improved.

I would also expect to continue the current procedure of having US-VISIT work closely with OMB, the GAO, and the DHS Investment Review Board as part of an ongoing management and

FINAL

review process. There are also benefits to maintaining a strong internal DHS communication so that issues that need resolution are quickly brought to my attention for action.

106. During the coming year, DHS plans to develop and deploy its ability to capture arrival and departure information on foreign nationals at land Ports of Entry (POEs). However, questions arise as to whether DHS has fully identified and addressed the need for near- and long-term facility upgrades at these POEs, some of which may require substantial coordination with other federal agencies and border communities.

a. Do you share concerns that changes in the border management processes at land POEs could increase wait times for travelers entering or leaving the country, especially given the condition of existing facilities and roads leading to land POEs? Is so, how would you address these concerns?

ANSWER: I understand that CBP is working closely with US-VISIT to create a land border solution that works and DHS is encouraged that such a solution is possible. As the final solution is proposed, feasibility studies will be completed to determine potential facility needs. CBP is also performing assessments of the land POEs that include facility infrastructure, structure and traffic flow planning. These planning efforts are also being coordinated with the Federal Highway Administration (FHWA).

If confirmed, I will work with border communities to assuage their concerns regarding the potential negative impacts of implementing critical changes in border operations.

b. What would be your plans for coordinating with other federal agencies to identify and address facility upgrade issues, including the costs DHS and other agencies might incur as a result of the need to make major facility upgrades?

ANSWER: Facility needs should be closely monitored as the final solution is proposed. In general, we know that there is need for facility upgrades at ports of entry on both the northern and southern border. For instance, there is currently a power/electrical shortfall at many of the ports due to increased work flow and traffic volumes as trade among the North America nations has increased.

I understand less than approximately ten percent of the space at land POEs is utilized by agencies other than CBP. CBP coordinates with them through the Border Station Partnership Council, which includes members from the FHWA, the Department of State, the General Services Administration (GSA), and the Food and Drug Administration. In addition, by working with private sector interests at the border, DHS should be able to accelerate the building of needed additional infrastructure along the border to facilitate trade and enhance security, such as dedicated Free And Secure Trade (FAST) lanes.

FINAL

c. What plans would you have to work with border communities to minimize the impact on travel and trade resulting from changes to border management processes and more specifically, infrastructure and facilities?

ANSWER: I understand US-VISIT is already scheduling outreach programs to work with the communities to discuss what the expectations are from the implementation of the US-VISIT process. Further, CBP is also a member of the GSA lead Co-Operative Planning Groups, which are in place at most of the large land POEs and are instituted when a major project is begun at the small land POEs.

107. The Chief of the Office of Citizenship for U.S. Citizenship and Immigration Services is responsible for promoting citizenship and producing related educational and training materials. As Secretary, how will you ensure that this office plays a primary role in outreach to immigrants and shaping the value and meaning of citizenship?

ANSWER: Secretary Ridge fully supported the work of the Office of Citizenship, and I will do so as well. It is important to be strategic in how we approach this mission. I understand that the Office of Citizenship is developing materials for and targeting outreach to immigrants at two key points: when they first become permanent residents and later when they begin the formal naturalization process. I think this is a sound approach. We must also leverage our efforts by establishing a robust network of local and national stakeholders. I look forward to working with the Congress to find ways to enhance the work of the Office of Citizenship to ensure that our Nation's immigrants are fully prepared for the all the rights and responsibilities that U.S. citizenship entails.

108. The Committee is aware of several articles over the past year that describe declining numbers of foreign students attending U.S. colleges and universities, enrollments that contribute significantly to the U.S. economy. Since the fall of 2002, some educators have expressed concerns about delays in visa applications for foreign students. At the same time, other countries such as England and Germany are experiencing double digit growth in foreign student enrollments. Last summer the National Academy of Sciences was briefed by the Educational Testing Service that the number of foreign students taking the Graduate Record Examination and submitting enrollment applications to U.S. institutions has dropped dramatically.

The Committee clearly understands the need to carefully screen those individuals who wish to enter our country from abroad. At the same time we must strive to achieve visa policies that support our economy and our standing at the forefront of international academics. If confirmed, what will you do to address these important concerns with respect to visas for international students?

ANSWER: I wholly support the Department of Homeland Security continuing efforts to enhance both the security of the visa process and facilitation of legitimate travel and trade to the United

FINAL

States, a goal embodied in the Administration's policy of "Secure Borders and Open Doors."

I am keenly aware that America's outstanding academic and research institutions are as valuable to U.S. national security as the overt protection of our borders and recognize that one of the foundations of the U.S. academic and scientific communities is vibrant international participation.

I understand that over the past year, DHS and the Department of State have met with thousands of our stakeholders from academia, tourist and business groups and the healthcare industry. They have not only helped foster a better understanding of the problems, but have also suggested immediate and practical steps for improvements. The Department and is now implementing some of their suggestions and I look forward to implementing these and other suggestions from our stakeholders.

I am pleased to hear that as a result of a well-coordinated interagency process, the overall visa process has been shortened and improved, while retaining the necessary security safeguards. I understand that, now 97 percent of the people who apply for visas and are approved receive them within one or two days.

As Secretary, I will continue to support these and other Department efforts to meet the goals to enhance the security of our citizens and visitors while facilitating travel for the millions of visitors we welcome each year.

109. The Intelligence Reform and Terrorism Prevention Act of 2004 contains various provisions to promote and accelerate the use of biometric technology for secure identification. For example, the law requires the Secretary of Homeland Security to develop a plan to accelerate the full implementation of an automated biometric entry and exit data system for aliens traveling to or from the United States. The law also provides for the use of biometric technology in airport access control and law enforcement travel. The Department of Homeland Security is also developing other biometric identification systems, such as the Transportation Worker Identification Credential (TWIC) and Registered Traveler Program

How do you plan to advance the development and deployment of these various biometric identification systems and to ensure the interoperability and compatibility of these systems and those under development by other agencies? As you develop and deploy these biometric identification systems, how will you ensure that privacy and civil liberties concerns are fully addressed?

ANSWER: Ensuring the compatibility and interoperability of biometric systems, particularly those within the Department's purview, is particularly important for efficiency, security and privacy. I recognize the responsibility given to the Secretary under the Intelligence Reform and Terrorism Prevention Act of 2004, as well as by the President under Homeland Security Presidential Directive-11 on terrorist-related screening procedures. Within the Department, there

FINAL

is significant expertise in these matters, and I understand integration efforts are underway. Should I be confirmed, I will place a priority on continuing these important efforts.

"Non-Work" Social Security Numbers

110. There are circumstances under which some individuals who are here legally but who are not authorized to work may need a Social Security number (SSN). For example, some State or local laws require an SSN to receive general public assistance benefits. Social Security cards and records are annotated at the time a number is assigned to reflect the fact that the individual has not been authorized to work by the Department of Homeland Security (DHS).

Under 8 U.S.C. 1360(c)(2), if earnings are reported to the SSA on an SSN issued to an alien not authorized to work in the United States, the SSA has been required to provide that information, initially to the Immigration and Naturalization Service in the Department of Justice, and now to the Department of Homeland Security, on an annual basis. This information is disclosed in the form of a "non-work" alien (NWALIEN) file, and is intended to help DHS identify non-citizens who may be working illegally.

In 2003, the Social Security Administration's Inspector General (IG) completed an audit of the NWALIEN file for Tax Year 2000. The IG found 872,138 reports of earnings for 574,461 non-citizens who had been classified as not authorized to work by the DHS. SSA identified $21.3 billion in earnings that were associated with these SSNs issued for non-work purposes. The analysis also identified 862 records with earnings of over $1 million for 765 unique non-work SSNs.

a. What do DHS and ICE do with the information provided by the SSA? Is it used for immigration enforcement purposes? If not, why not?

ANSWER: My understanding is that information provided by the NWALIEN file cannot be easily used for immigration enforcement purposes. I am also advised that DHS continues to work closely with the Social Security Administration to determine what system and information improvements could be made to facilitate better information sharing, within appropriate parameters.

b. Do current Social Security files provide an accurate picture of unauthorized employment in the United States?

ANSWER: I suspect that Social Security files do contain a great deal of information that could be used as indicators of unauthorized employment in the United States. I think this is an issue that needs further examination, however, and if confirmed, I intend to examine it.

c. Does DHS routinely provide information to the SSA to enable them to update their records to reflect changes in work status for non-citizens? If not, why not?

ANSWER: I understand that the ICE Detention and Removal Office does share some information with SSA on a limited basis, periodically supplying the names and SSNs of deported aliens. As with the above answer, I look forward to examining this issue further and working with the Social Security Administration.

d. Is there a need to make the files and data systems at SSA and DHS more compatible? If so, what will you do to make the files and data systems more compatible?

ANSWER: I am uncertain at this time what the specific solution is to improve information sharing between SSA and DHS. If confirmed, I pledge to examine this matter closely.

Coordination on Immigration Policy

111. With the dissolution of the INS and the creation of three separate Bureaus responsible for different aspects of immigration law, there is no single official devoted solely to ensuring consistent and coordinated immigration policy and implementation.

a. In the absence of such a leader, does the Department of Homeland Security need some type of structure or coordinating instrument to ensure consistent policies and application of laws?

ANSWER: The current structure, as I understand it, was discussed during the creation of the Department. At this time, I am reluctant to hypothesize about possible structural changes at the Department. Should I be confirmed, I will welcome input from others on this matter, as well as conduct a full review of the Department's structure.

b. What steps would you take to ensure more effective coordination between the three bureaus?

ANSWER: I will fully consider the matter, should I be confirmed, to understand the current mechanisms for coordination as well as determine any changes, as appropriate.

Local Immigration Offices

112. Local offices continue to suffer from inadequate staffing, funding, and antiquated technology, all of which have a negative impact on processing times for immigrant petitions and applications. Staffing shortages and new mandates have reportedly also caused officers to be

FINAL

pulled from adjudications in order to perform enforcement-related functions, like the National Security Entry and Exit System (NSEERS). As Secretary, what steps will you take to ensure increased and experienced staff and improved and updated databases?

ANSWER: I have devoted most of my career to public service and I am well aware of the resource limitations that the federal government faces. It is my understanding that the particular NSEER issue has been resolved. Moreover, I am committed to giving DHS employees, who work so hard to make this country safe and welcoming, the training and resources they need to do their jobs. If confirmed, I look forward to working with Congress on such matters.

Immigration Enforcement by State and Local Police

113. In 1996, the Department of Justice Office of Legal Counsel ruled in a published opinion that state and local police lack legal authority to stop and detain an alien solely on suspicion of civil deportability, as opposed to a criminal violation of the immigration laws or other laws; that ruling was reiterated in November of 2001. (Assistance by State and Local Police in Apprehending Illegal Aliens, February 5, 1996, Office of Legal Counsel, http://www.usdoj.gov/olc/immstopo1a.htm) In 2002, then-Attorney General John Ashcroft asked his Office of Legal Counsel to look into the matter again, and OLC reportedly opined in spring 2002 that state and local police do have this "inherent authority." The 2002 OLC opinion has never been made public.

a. What are your views on the expanded use of local police in immigration matters?

ANSWER: I recognize the critical role state and local law enforcement play in the homeland security mission. In the normal course of events, state and local law enforcement officials are the first responders to any incident or attack against the United States. They are also likely to encounter foreign-born criminals and immigration violators during the course of their daily duties. I am advised that the Department makes immigration status information available to state and local law enforcement through the ICE Law Enforcement Support Center (LESC) within minutes of a query and that ICE encourages its officers at all levels to engage in partnerships with state and local law enforcement agencies through a variety of partnership arrangements because this is the best way to increase the effectiveness of our organizations. I think we need to look carefully at whether and how local police are involved in immigration matters. If confirmed, I would want to study this issue carefully.

b. Some local police officials do not wish to be involved in enforcing immigration law, while others have indicated an interest in assisting in the enforcement of immigration laws. Many of those who oppose the involvement reason that undocumented aliens will be reluctant to report crimes against themselves or others if they fear that contacting the local police will lead to their deportation. Many security and law enforcement experts also argue that good intelligence and

FINAL

strong relationships are the keys to keeping our nation and our streets safe. Another concern is that if state and local police enforce federal civil immigration laws, foreign nationals who might otherwise be helpful to security investigations will be reluctant to come forward, for fear of immigration consequences. How do you respond to these concerns?

ANSWER: I think these are legitimate concerns and, if confirmed, I will review the issue carefully.

Immigration and Customs Enforcement

114. According to some news reports, several DHS component agencies – such as the Federal Air Marshal Service (FAMS) and ICE – may be suffering from problems with low morale. If confirmed, how would you boost morale within these agencies?

ANSWER: It appears that all of the DHS components have felt initial "growing pains" associated with the creation of a new Department of this size and complexity. For ICE, that task has been even more complicated than that of other agencies which transferred intact to the new Department.

Part of the challenge in the creation of ICE was, apparently, to ensure continuity of operations while at the same time creating a new management and administrative infrastructure. It has also been a challenge bridging the cultural gaps that arose in bringing together different law enforcement components with proud histories into a single functioning agency. I would continue to prioritize ICE integration efforts, should I be confirmed as Secretary.

Ensuring strong communication with the field is also important to bolster morale. I understand that ICE leadership has communicated with ICE field employees through frequent field visits to deal with any confusion or concerns.

Finally, to characterize this uncertainty as necessarily creating "low morale" is unfortunate and runs the risk of becoming self-fulfilling. As I understand it, ICE continues to post record levels of performance when it comes to the basic metrics of law enforcement – that is, arrests, seizures, prosecutions, and so forth. Improvement is always possible, however, and if confirmed I will work with ICE's leadership to that end.

Federal Air Marshal Service: There were a number of significant challenges associated with the emergency stand-up of the FAMS that may have contributed to some initial growing pains, and there continue to be media reports about a small number of issues that seem to be driven by the same small number of individuals each time they arise. It is my understanding, however, that a recent inspection of the Atlanta Field Office by a FAMS management review team determined that morale was good.

FINAL

If confirmed, I will take action to maintain high morale within the FAMS workforce and continue to develop and support initiatives to meet that goal across the Department.

115. Almost two years after the creation of the U.S. Immigration and Customs Enforcement bureau (ICE), many fundamental management challenges persist that degrade operational effectiveness and could have serious consequences for agents and the public. Among the unresolved issues include unclear roles and responsibilities, problems with investigative priorities, and budget problems.

What do you see as the key management challenges with respect to ICE and, as Secretary, what steps would you take to improve the capabilities of this bureau?

ANSWER: The reorganization of the 22 agencies that made up the new Department was complex. Perhaps one of the most complex aspects was realigning various legacy budgets, into the newly created organizations within DHS. I understand the Department has additional work to do to ensure the problem is fixed functionally in FY 2005. I have been advised that ICE has strengthened its budget execution and oversight processes and that the Department continues to closely monitor the situation. If confirmed, I will work to ensure that previous budgetary problems do not recur.

116. The Intelligence Reform and Terrorism Prevention Act of 2004 included several provisions designed to improve the Federal Air Marshals Service, including measures to maximize deployment of air marshals on international flights and allows the Federal Air Marshals Service to provide training, as appropriate, to law enforcement personnel from foreign countries. What more, if anything, can or should be done to improve security on international flights?

ANSWER: I understand the Department has taken a number of initiatives to improve the security of both international and domestic flights – including employing a layered aviation security system of which FAMS are a critical element. If confirmed, I will take all appropriate measures to improve aviation security.

117. There have been a number of press reports regarding conflict between some employees of the Federal Air Marshal Service and their management. What will you do to ensure good relations between employees and management at the FAMS?

ANSWER: The Federal Air Marshal Service (FAMS) has been instrumental in restoring the confidence of the traveling public in the commercial aviation industry. The FAMS is a vital component of our Nation's aviation security system; which uses a risk-based, layered approach.

In addition, the management structure for the FAMS was created subsequent to the mass hiring of Federal Air Marshals (FAMs). I understand that the FAMS assembled a management team consisting of individuals with proven senior and executive level management experience from a

FINAL

variety of Federal Law Enforcement Agencies. This team was hired to develop and build a professional law enforcement infrastructure that previously had not existed. Consequently, the FAMS has acquired a very experienced and senior law enforcement management team that, from the onset, not only had the ability to manage, but also to mentor the new workforce given that there were only 33 legacy Federal Aviation Administration (FAA) FAMs onboard prior to the 9/11 attack.

If confirmed, I will take seriously the needs of the Department's 180,000 employees and work to address their concerns.

Transportation Security

118. The Transportation Security Administration (TSA) made progress in the last year in assessing the performance of its screening functions. Now that the agency is collecting data on screening, the next step is to collect information for other security initiatives, assess the data, and make targeted improvements.

How would you plan to ensure that reliable, accurate performance data on security initiatives is collected and analyzed, and used to make decisions regarding enhancements and resource allocations?

ANSWER: I understand TSA is currently developing the Transportation Security Operational Plan (TSOP). This plan is being coordinated with other DHS organizations, DOT Modal Administrators, and private stakeholders. The plan, scheduled to be completed and forwarded to Congress by April 1, 2005, includes an appendix to specifically discuss measuring program effectiveness.

As part of this appendix, TSA will be establishing an "outcome based" plan to measure transportation security operations. This effort will provide a gauge used to measure the effectiveness of the various programs and initiatives implemented in support of enhancing security in the surface transportation sector.

TSA is also exploring how to use performance measurement processes for other modes of transportation that are similar to those in place for aviation. The ultimate goal would be to provide a guide to what kind of regulatory or other actions to take to ensure strong security outcomes.

119. The GAO has recommended that the Secretary of Homeland Security and the Secretary of Transportation develop mechanisms, such as a memorandum of understanding, to clearly define the roles and responsibilities of TSA and DOT in transportation security matters. Representatives from the transportation industry and state and local government associations have stated that they are not clear about which agency to contact for their various security concerns and which agency

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has oversight for certain issues. They have reportedly received conflicting messages from the different federal entities. How do you plan to address this perceived lack of clarity and in what timeframe?

ANSWER: I understand the importance of clarifying roles and responsibilities among Federal agencies, with our partners in the state and local governments, and with private industry.

The Department has informed me that, on September 28, 2004, the Deputy Secretaries of the Department of Homeland Security (DHS) and the Department of Transportation (DOT) signed a Memorandum of Understanding that establishes the framework for interaction between the two departments. Should I be confirmed, I will ensure DHS maintains a strong working relationship with DOT.

120. While the performance of TSA's passenger and baggage screening workforce continues to improve concerns have been raised about the number of weapons and banned items that the screening workforce still fails to detect, and GAO has noted that some problems persist. Additional training and new technologies may play a role in improving screeners' performance.

a. What steps do you believe should be taken to improve the performance of our screener workforce, and what tools might TSA utilize to aid in this effort?

ANSWER: The passenger screening at checkpoints has certainly been effective in keeping from six to seven million prohibited items per year from coming on board aircraft. In addition, almost 3,000 arrests were made at security checkpoints in fiscal year 2004. If confirmed, I will continually seek ways to improve performance through training and development and procurement of improved screening technologies.

b. What do you believe the associated costs will be, and who do you believe should bear these costs?

ANSWER: The full cost to improve the equipage of screening checkpoints is under review. The Federal government has paid the cost to equip checkpoints, and I expect that this will continue. Any cost sharing arrangements will be considered on a case-by-case basis depending on the security and budget priorities of the Department.

c. The federal government took over airport security screening following the September 11, 2001 terrorist attacks. However the Aviation and Transportation Security Act, which required federal screeners, also allowed the Department to initiate a pilot program which would allow private contractors to replace federal screeners at airport security checkpoints. Over the past year a few airports across the country participated in the pilot program, and in November 2004 the Department of Homeland Security announced it would begin accepting applications from airports

FINAL

which sought to opt-out of the federal screening system. To participate, airports must apply to TSA; private security firms can also apply to become approved security contractors. TSA then selects a security firm for approved airports and a contract is signed between the agency (not the airport) and the security firm. The law requires that the security firms abide by the same security standards, and federal supervisors will continue to oversee the contract screeners. A recent GAO report could not find conclusive evidence that private screeners performed any better than federal screeners.

i. What procedures should the Department have in place to ensure that contracted screeners provide the same or better security than federal screeners?

ANSWER: I understand that TSA is required by statute to ensure the same level of security is provided by both private contract and federal screeners. If confirmed, I will ensure the appropriate mechanisms are in place to monitor privately contracted screeners and guarantee private screeners provide, at the minimum, the same level of security.

ii. Do you believe airports should be allowed to use or continue to use privately contracted screeners if evidence is found that minimum security standards are not being met?

ANSWER: If confirmed, and as appropriate, I will work to ensure we utilize the best methods to screen airline passengers and ensure minimum security standards are met. I would take prompt action at any airport should I find that the minimum security standards are not being met; whether it be by private or federal screeners.

iii. What safeguards should be put in place to ensure privately contracted screeners are not unfairly or unduly pressured by airlines or airports to speed the flow of passenger traffic through checkpoints, at the expense of security?

ANSWER: I understand that TSA is required by statute to ensure the same level of security is provided by both private contract and federal screeners. If confirmed, I will ensure the appropriate mechanisms are in place to monitor privately contracted screeners and guarantee private screeners provide, at the minimum, the same level of security.

121. Since TSA began operations, much of the agency's attention and resources have been focused on securing passengers and baggage at the nation's commercial airports. The 9/11 Commission noted that the agency's efforts did not yet reflect a "forward-looking strategic plan. In response to this, the Intelligence Reform and Terrorism Prevention Act directed the Department of Homeland Security to develop a comprehensive, national strategic transportation security plan. TSA will clearly be involved in this effort. As the agency moves forward, what would you recommend for DHS planning to determine the appropriate balance between aviation security and security for other modes of transportation? Do you anticipate either seeking additional funding to

FINAL

address the needs of other modes of transportation, reprogramming current funds, or both?

ANSWER: I understand that DHS has paid considerable attention to the security of all modes of transportation. The responsibility of securing our Nation's transportation systems is a shared one. TSA's main charge, both under the Aviation and Transportation Security Act (ATSA) (P.L. 107-71) and as part of DHS, is to coordinate these efforts under the guidance of the Secretary and the Under Secretary for Border and Transportation Security, identify gaps and work with appropriate partners to ensure that security gaps are filled.

Congress gave TSA an explicit operational role for the security of the aviation system, which has driven resources devoted to aviation versus other modes. These specific responsibilities and the operational nature of TSA's relationship to aviation appropriately require an inherently different and more robust effort in this mode of transportation.

In addition, TSA's efforts in non-aviation security over the past two years have focused on greater information sharing between industry and all levels of government, assessing vulnerabilities in non-aviation sectors to develop new security measures and plans, increasing training and public awareness campaigns, and providing greater assistance and funding for non-aviation security activities. TSA should work with its government and industry stakeholders to continue these efforts, establish best practices, develop security plans, assess security vulnerabilities, and identify needed security enhancements.

122. The DHS FY 2005 appropriations act requires DHS to triple the percentage of cargo inspected on passenger aircraft. The Intelligence Reform and Terrorism Prevention Act of 2004 also included several air cargo security provisions, including a requirement the Department finalize air cargo security regulations and implement a pilot program to make use of blast resistant containers. What do you see as the major challenges in implementing these and other requirements?

ANSWER: I understand DHS is implementing the requirement to triple the percentage of cargo inspected on passenger aircraft through phased changes to the Aircraft Operator Standard Security Program (AOSSP) with the higher inspection rate achieved by the middle of June 2005.

While TSA is committed to meeting the Congressional mandate imposed upon it by the FY05 Appropriations act, as Secretary, I will also strive to refocus TSA's attention on implementing its Air Cargo Strategic Plan, which prescribes a threat-based, risk-managed approach similar to that taken for screening international cargo. In the international arena this approach has proven to be cost effective and flexible. It should provide greater security by infusing security throughout the air cargo supply chain.

123. A recent report by CSIS and the Heritage Foundation suggests that the TSA's mission lacks clarity. In particular, it cites the Border and Transportation Security Directorate's failure to

FINAL

effectively delineate the relative responsibilities of TSA and CBP, particularly with respect to the responsibility for securing the movement of cargo into the United States. This failure, the report finds, has resulted in policy impasses between these agencies. The report recommends that TSA's mission be restructured so as to become an operational agency with no oversight or infrastructure protection policy functions, focusing on overseeing DHS deployments protecting elements of transportation infrastructure that are deemed to be of national importance.

a. What are your views on these findings and recommendations?

ANSWER: I am familiar with this particular report, and welcome the opportunity to assess this recommendation. If I am confirmed as the next Secretary of Homeland Security, it is my intention to review the structure of the entire Department. I look forward to working in close cooperation with Congress to implement any necessary changes.

b. If confirmed, what steps, if any, will you take to address this perceived lack of mission clarity?

ANSWER: As noted above, I look forward to the opportunity to assess the structure of the Department and the recommendations found in this report. If confirmed, I will take actions to clarify responsibilities across the Department, as necessary.

Maritime and Port Security

124. Numerous terrorist threats have been articulated against the various transportation modes, in particular leading to a vigorous discussion regarding our ports, shipping containers, the security of foreign ships and mariners, Liquefied Natural Gas (LNG) terminals, and a host of other significant issues. As you may know, approximately 95% of our trade - totaling nearly $1 trillion - enters through one of our 361 seaports on approximately 8,555 foreign vessels manned by 255,555 foreign mariners making more than 55,000 port calls per year - providing a vital lifeline to our economy. The Coast Guard's estimates in 2003 for the implementation of the Maritime Transportation Security Act of 2002 (MTSA) was $1.5 billion for the first year and $7.3 billion over ten years. Yet, since 2002 DHS has distributed only $513 million for port security grants with another $150 million scheduled for FY'05. In addition, the FY'05 budget was the first budget to even request port security grant funding.

a. Although the Maritime Transportation Security Act of 2002 (MTSA) has been enacted and has begun to be implemented by the Coast Guard and Customs and Border Protection Service (CBP), what do you see as the most significant and pressing threats facing the U.S. with regard to maritime and port security and what will you do to prioritize, direct resources, and take action to mitigate those threats? Please specifically address your views on the use of Port Security Grants and on providing for a specific authorization for this funding.

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ANSWER: Currently, the Department views chemical, biological, radiological, nuclear and explosive (CBRNE) devices and their introduction into the country by sea or detonation in one of America's seaports as one of the most serious threats facing the United States with respect to maritime and port security.

To address these concerns in a more systematic, risk-based fashion, the office of State and Local Government Coordination and Preparedness (SLGCP), in conjunction with the U.S. Coast Guard (USCG) and other DHS partners, is refocusing the Port Security Grant Program in FY 2005 to address these priorities.

Finally, the Department strongly supports authorization of funding to address protection of critical infrastructure, including assets within port areas.

125. During the recent debate on the Intel Reform bill it was learned that cruise ships currently provide DHS agencies (Coast Guard, Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP)) with several submissions of the same passenger and crew data so that they may be screened against multiple watch list databases such as the DHS prevent departure list; the Interagency Border Inspection System (IBIS); the FBI National Crime Information Center database; and additional unnamed databases under the 96 hour Advance Notice Of Arrival (ANOA). Section 4071 of the Intelligence Reform and Terrorism Prevention Act of 2004, in part, was designed to streamline this process by requiring passenger and crew lists be compared to a consolidated, comprehensive terrorist database while improving security aboard cruise ships. In addition, it was discovered that some of these passenger and crew lists are not provided to DHS until after a vessel has departed port.

a. In addition to ensuring Section 4071 is carried out, what other actions, if any, would you take to develop and implement a more streamlined method for different transportation modes, including cruise ships, to screen passenger and crew lists against the multiple watch lists that currently exist and a comprehensive terrorist watch list before departure from, or entry into, the U.S., and without routinely delaying them from their schedule?

ANSWER: It is my understanding that the Department has worked closely with state and local government, as well as private sector owners and operators, to improve maritime security. For example, the Coast Guard has a strong historical relationship with ferry operators and continues to assist operators in meeting existing requirements. I understand that DHS continually assesses security requirements using risk-based management principles. I also believe that each security measure must be weighed against the impact on commerce and in this case particularly on small business. The Department should continue to examine threats and vulnerabilities as they emerge and should move quickly to implement regulatory changes or take protective measures where the risk requires.

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b. In response to the 9/11 Commission's recommendation that the Department of Homeland Security focus on securing modes of transportation (in addition to aviation) and a Commission staff recommendation that TSA begin passenger prescreening for vessels, the Intelligence Reform and Terrorism Prevention Act of 2004 requires the Department to implement a passenger prescreening system for large cruise ships. However, thousands of people travel on smaller passenger vessels – including ferries, charter fishing boats and river cruises – which have little or no security or means of screening their passengers. Though passenger prescreening may not be the best solution for any or all smaller vessels, other options, such as simple security checkpoints prior to boarding, may provide some security. Do you believe the Department should take any steps to secure smaller passenger vessels and ferries? If so, what steps and in what timeframe?

ANSWER: The Department has worked closely with state and local government, as well as private sector owners and operators, to improve maritime security largely and ferry security specifically. The Coast Guard has a strong historical relationship with ferry operators and continues to assist operators in meeting existing requirements, as well as continually assessing whether such requirements should be adjusted based risk management principles. I believe that each security measure must be weighed against the impact on commerce and in this case particularly on small business. The Department will continue to examine threats and vulnerabilities as they emerge and will move quickly to implement regulatory changes or take protective measures where the risk requires.

126. The millions of shipping containers that enter our ports every year continue to be listed by many observers as particularly vulnerable and an inviting method to target our economy and ports. There is also some controversy over how many of these containers are inspected, how many should be, and how we accomplish ensuring the security of our nation's ports and protecting our economy while simultaneously maintaining our vital trade. In October 2004, DHS sent out a Fact Sheet stating that 100% of shipping containers are *"screened"* prior to entry to the U.S. and that screening led to 6% of all shipping containers receiving a follow-up *"physical examination"*. More recently at the December 2004 Cargo Security Summit held at Georgetown University, DHS released a draft of a paper entitled "A National Cargo Security Strategy White Paper." In the DHS draft, the roles and responsibilities of DHS agencies related to cargo security are described as having "*...ample opportunity for overlap and redundancy, particularly between CBP, TSA, and USCG.*" The draft then concludes that, "*During the two years since DHS was established, this has frequently led to questions of 'who's in charge [of cargo security]?'*" In addition, the draft went on to state: "*Intelligence analysts suggest that the probability of containers used as a platform for a terrorist attack is low.*" This draft report does continue to state that the severity, or consequences, of a terror attack using a shipping container are rated at a high level.

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a. Do you think that the risks posed by shipping containers entering our ports has been adequately mitigated or do you think that there are still areas for improvement to the screening and inspection of shipping containers?

b. If you do think that there are areas that have room for improvement with regard to the security of shipping containers entering the U.S., can you please explain what your focus and priorities will be as the Secretary of DHS in this area ?

c. How do you propose to clearly delineate the responsibilities for cargo security within DHS' component agencies and when do you expect the ambiguity to be cleared up in response to DHS's own question of *"who's in charge [of cargo security]"*?

ANSWER: Since the terrorist attacks on September 11, 2001, I understand DHS and its component agencies have implemented important measures to significantly improve the security of maritime commerce.

Vessel and Port Security
The physical security of ports and vessels, both at home and abroad, has been greatly enhanced with the implementation of the Maritime Transportation Security Act and its global counterpart, the International Ship and Port Facility Security (ISPS) Code.

Cargo Security—A Layered Approach
I understand international cargo security is primarily a responsibility of U.S. Customs and Border protection, while TSA has the lead on domestic cargo security. Whether we look at home or abroad, the approach must be the same—to pre-screen all cargo for risk and focus our available human and technology resources on cargo determined to be high-risk.

In my view, the first and most critical component of an effective cargo security strategy is mitigating the introduction of a WMD/WME threats coming across our borders via cargo container.

The second critical component of an effective cargo security strategy is the collection and analysis of information to determine risk associated with every shipment coming into the country. In short, we must know in advance what type of cargo is coming into the country in order to understand the risk associated with a particular shipment.

The third component is the use of non-intrusive inspection (NII) technology to effectively screen cargo shipments that are determined to be of elevated risk.

Finally, I will ensure that DHS helps develop, test and deploy new technology and business process solutions to further secure the cargo supply chain.

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Partnerships
Certainly, government action alone is not adequate to keep the flow of commerce moving efficiently and securely. As a result, DHS has formed a close partnership with the corporations responsible for transporting goods internationally. The hallmark of this effort is the Customs-Trade Partnership Against Terrorism (C-TPAT), through which CBP works with nearly 7,000 private companies that have voluntary sought to improve security in those segments of the supply chain beyond DHS's regulatory control.

I understand that the Department has taken on the development of a National Strategy for Cargo Security, in particular to highlight roles and responsibilities as well as articulate milestones and an end state for the near future. This effort will clarify the question as to "who's in charge" in cargo security.

d. Lastly, what relationship should DHS develop and/or maintain with other federal agencies, including the Department of State, the Department of Energy and the Department of Defense for the purpose of preventing dangerous radioactive materials from entering the United States?

ANSWER: While certainly not on expert on radioactive materials, I believe that DHS should continue their practice of working with any agency that can assist in this effort. For instance, I understand that CBP has developed interagency relationships with DoD, DOE, DOS and other nuclear-related agencies to ensure coordination and alignment with CBP's efforts to prevent radioactive materials form entering the United States.

127. The Container Security Initiative (CSI) was developed after September 11, 2001 in an effort to protect the United States, and global trade generally, from acts of terrorism. CSI embodies a policy of pushing our borders back to inspect containers before they present the greatest risk to the United States. More than 90% of the world's trade is transported in cargo containers, and more than 6 million containers arrive in one of the more than 300 U.S. ports of entry each year. Under the program, the screening of containers that pose a risk for terrorism is accomplished by teams of CBP officials deployed to work in concert with their host nation counterparts. CSI participation began with 20 of the world's largest ports, and is currently operational at 33 ports worldwide, though staffing levels and available equipment varies from location to location. The Department of Homeland Security has stated that it plans to consider expansion of the program.

a. Is further expansion of CSI necessary? If so, what is your vision for the scope of the program?

ANSWER: While I have not been fully briefed on the program, I understand that further expansion of CSI is necessary to increase the Departments capacity to protect the United States and global trade from acts of terrorism. Commissioner Bonner has stated that the program will be expanded to a total of 50 foreign ports by the end of calendar year 2005.

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b. How should the Department deal with cargo not shipped through a CSI port, now and in the future?

ANSWER: I understand that CSI is but one piece of a multi-layered, risk-based approach. DHS has implemented a layered, defense-in-depth, risk-based approach that includes the screening of all containers bound for the U.S. and the inspection of all high risk containers.

128. More than 6 million containers enter the United States through our ports every year, and only a small fraction of them are inspected by DHS. Because inspecting every container could affect the flow of commerce, Customs and Border Protection (CBP) utilizes a risk analysis program to determine which containers ought to be inspected, either manually or via various electronic means. Programs such as CSI are heavily dependent on the success of the risk analysis program identifying which containers present the greatest risk. The National Targeting Center is supposed to provide target-specific information to CBP agents so that "high-risk" containers can be inspected. The Center utilizes the Automated Targeting System (ATS) to do this, and ATS scores containers and determines risk based on internal and external information. However, some experts have raised concerns that the limitations of the current risk analysis program for cargo containers diminish the effectiveness of the container security programs.

a. One concern is that the targeting system may not collect enough information - that the data submitted may not provide accurate, detailed and complete information on containers that have moved through multiple transshipment points prior to the port of loading. A related concern is that CBP does not have a program in place to track containers through multiple transshipment points. As a result, some experts believe that terrorists can hide the true contents of a container by moving that container through numerous ports and transportation modes, thereby disguising its point of origin and providing opportunities to disguise the contents of the container. What steps should be taken, if any, to address the concerns associated with transshipment and container security?

ANSWER: I understand that CBP has developed and implemented a layered strategy that includes four interrelated and complementary initiatives: the 24 Hour Rule/Trade Act of 2002, the National Targeting Center (administering CBP's Automated Targeting System that risk scores all maritime cargo entering the United States), the Container Security Initiative (CSI) and the Customs-Trade Partnership Against Terrorism (C-TPAT). I also understand that DHS maintains a variety of near and long-term programs to develop and test advanced container security devices (ACSDs) that will more effectively seal a container and provide evidence of tampering as well as several programs to enhance the quality of trade data used in risk management decisions. If confirmed, I look forward to continuing the efforts to improve supply chain security.

FINAL

b. Another serious concern is CBP inability to validate "low risk" containers. While Customs inspectors have the authority to conduct random inspections of containers, few have the time or resources available to do so. Random checks are necessary for providing a benchmark, and assessing the effectiveness of ATS, allowing the system to develop and improve. Do you believe random inspections of "low risk" containers (containers not identified by ATS as high risk for the purpose of inspection) are necessary?

ANSWER: I understand that CBP is already a proponent of using random inspections for benchmarking and assessment of operations, as well as for creating an unpredictable targeting variable within its selection algorithms, and that CBP has a random selection process in place called the Compliance Measurement Program which has been randomly selecting consumption entries since 1994. I understand that, post-9/11, it was modified to include a manifest-discrepancy component that required the inspector to review and compare the entry to the manifest data to determine if the claimed container contents were in fact adequately declared on the manifest. If confirmed, I look forward to becoming more familiar with this issue and determining if additional random inspections of "low-risk" containers are necessary.

c. What other steps, if any, should be taken to validate low risk containers and assess the effectiveness of ATS?

ANSWER: If confirmed, I look forward to looking into this issue in depth and taking any appropriate action to validate low-risk containers and assess the effectiveness of ATS.

129. There have been reports of poor security at some of the 15,000 chemical plants and other critical facilities around the country and that they lack basic security plans to mitigate potential attacks and reduce impacts if they are attacked. It is the Committee's understanding that at a minimum however, the Federal Government has required approved security plans at chemical plants and other critical facilities in port areas through the Maritime Transportation Security Act of 2002 (MTSA) that is being implemented by the Coast Guard. In addition, MTSA required the Coast Guard to form Area Maritime Security Committees and to compile an agreed upon list of critical infrastructure between the Federal, State, and local governments as well as interested industry and community stakeholders. MTSA became law on November 25, 2002 and the Coast Guard published Final Rules on October 22, 2003 which required the implementation of security plans by July 1, 2004 - which some people consider a remarkably quick and relatively nimble effort in the bureaucratic work of taking a law, translating it into regulations, and implementing the rules. Though the Coast Guard is still in the process of physically verifying 100% of the provisions of these plans, it seems that DHS has made progress at protecting important and especially hazardous facilities in port areas. Outside of these port areas however, it does not appear that the same clear lines of jurisdiction, effort, and responsibility exist for DHS.

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Do you believe that the MTSA framework to form Area Committees, identify critical infrastructure, and require security plans on certain facilities is working in our port areas? If so, what will you do as DHS Secretary to encourage or require those areas not covered by MTSA to institute a similar framework? If not, why not and what will you do to improve upon the requirements and framework of MTSA to provide adequate security to our port areas and the remaining critical infrastructure of our nation?

ANSWER: I understand that the Maritime Transportation Security Act of 2002 (MTSA) framework has proven highly successful in the port environment through the submission, review and approval of facility security plans, areas, or port security plans and by establishing Area Maritime Security Committees. This framework may prove effective in other applications and is currently aligned with interdepartmental security initiatives. The Federal, State, local, and industry partnerships that exist within the MTSA Area Maritime Security Committees can readily serve as models for security initiatives in other parts of the Nation's infrastructure. I will promote similar critical infrastructure protection strategies beyond the port areas, according to risk-based approach.

130. The Maritime Transportation Security Act of 2002 (MTSA) called for DHS to issue a worker identification card that uses biometrics to control access to secure areas of ports or ships. The Transportation Security Administration (TSA) has experienced significant project management problems in implementing the card and is still in the process of testing a prototype system at various ports of entry throughout the U.S. and is already several months behind schedule. In the meantime, it is the Committee's understanding that some facilities are still accepting nothing more than a driver's license as acceptable identification to gain entry. Do you believe that there have been good reasons for the implementation delays associated with the TWIC program thus far, and what will be your approach to get this key security measure implemented effectively and quickly?

ANSWER: I understand that the Transportation Worker Identification card (TWIC) program has faced significant challenges when it comes to interoperability of technology, changes to business practices and management. The program goal has been to deploy a flexible, yet interoperable, nationwide system/standard for identification and access controls for use in secure areas of the transportation system. This is no small task. At this point, I understand the program is on track to provide recommendations soon for full implementation based on the prototype phase. Should I be confirmed, I will review these recommendations thoroughly and work to implement the program in a responsible, timely manner.

131. In May 2003, President Bush launched the Proliferation Security Initiative (PSI) to stem the trafficking of weapons of mass destruction and related materials. A critical component of carrying out the PSI is through maritime interdiction operations. These operations use-among other capabilities-maritime patrol aircraft to collect intelligence and are of particular value in crowded shipping lanes and in areas of poor weather or visibility. However, land-based aircraft

FINAL

need bases to fly from that optimize their speed, range, and turnaround capability on missions.

The current Maritime Patrol Aircraft force includes P-3 bases in Hawaii, Florida, Maine, and Washington State. From these sites, multi-mission maritime aircraft response time to any point on the coast will be less than two hours, and all major sea lanes of approach can be covered within the operational range of the aircraft.

Have you considered the establishment of a Joint Forces Maritime Interdiction Center under the Proliferation Security Initiative? Are you familiar with the potential maritime interdiction capability and strategic location of installations such as the Naval Air Station in Brunswick, Maine?

ANSWER: Maritime Patrol Aircraft (MPA) play an important role in several arenas of PSI, including conducting patrols of the sea lanes which contribute to Maritime Domain Awareness, and intelligence-based searches for particular vessels of interest. Aside from the Naval Air Stations hosting P-3 Squadrons, the Coast Guard and CBP also contribute MPA to the PSI effort from various locations around the nation.

There has been much discussion of a Joint Maritime Command with responsibilities for Maritime Homeland Security of all sorts, not just PSI. I understand that the current Command and Control structure was satisfactorily tested during a Coast Guard sponsored exercise, CHOKEPOINT 04, last November. The exercise involved 16 nations and included MPA resources from the Navy, Coast Guard, CBP, and our international partners. The development of any Joint command to oversee these operations would be a substantial effort that would be undertaken in consultation with the Department of Defense only after considerable study of our existing capabilities. Several related efforts are currently underway, such as Maritime Domain Awareness and development of the National Strategy for Maritime Security. Should I be confirmed, I look forward to reviewing their findings.

132. During the first four rounds of Port Security Grants it would appear that in some cases tenant maritime terminal operators and private terminal operators may have been awarded port security grants that were not coordinated with those of the Port Authority on whose property they operate or other adjacent private terminals. This lack of coordination between private terminals, tenants and Port Authorities may have led to scarce port security dollars being spent on duplicative, mismatched, or unneeded security systems. In addition, the competitive nature of the port security grant program leads to an environment where coordination for the greater security needs of the entire port is not always the primary concern of the applicant for the grant. We understand that the local Coast Guard and Maritime Administration representative perform a screening of the local grant applications before they are considered for approval by the Department, but that this screening is not binding and that the Department may override any effort at coordination at this level in their final grant awards.
What is your opinion about how these scarce port security grant dollars being awarded can be

FINAL

better coordinated to meet the security needs of the entire port while not providing conflicting, mismatched, or duplicative security systems to adjacent or tenant terminal operators?

ANSWER: If confirmed, I will work to ensure that this process will eliminate any duplication of effort and that resources are allocated to enhance the security of the entire port area in a manner that is also consistent with the security requirements of the region it serves.

Coast Guard

133. As DHS Secretary you will also serve as the representational Service Secretary for the Coast Guard. By law the Coast Guard is always one of the five Armed Forces of the U.S. and your position could be equated to that of the Secretary of the Army, Navy, or Air Force. The Homeland Security Act established a number of protections for the Coast Guard's non-homeland security missions. These are provisions that the Committee worked hard to develop and they ensure that all of the functions and assets of the Coast Guard will be maintained intact and without significant reduction as a result of the Coast Guard's transfer into the DHS. Given that, among other non-homeland security missions, in 2003 the Coast Guard responded to 19,000 reports of water pollution and hazardous material releases, answered 31,500 rescue calls and saved 5,100 people, the Committee believes that these protections are extremely important. Recent examples of these missions and their importance to our nation are reflected in the large oil spills in the Delaware Bay and Alaska, the latter of which resulted in the unfortunate loss of six of the ship's crew and a Coast Guard helicopter when it crashed while attempting to rescue crew members from a disabled ship in extreme weather conditions. Twenty other crewmembers were saved by the Coast Guard during this same incident. Many times the very people and assets that are performing a non-homeland security mission in the morning are performing a homeland security mission in the afternoon.

What will you do to ensure a budget for the Coast Guard that continues to provide sufficient funds to conduct its non-homeland and homeland security missions noting that the Coast Guard performs both missions with the same personnel and assets? How will you protect the Coast Guard's unique multi-mission service as one of our five Armed Forces in any potential reallocation of functions or reorganization of DHS?

ANSWER: The U.S. Coast Guard is a maritime, military, multi-mission service possessing a unique blend of humanitarian, law enforcement, regulatory, diplomatic, and military capabilities.

I understand the vast responsibilities of the Coast Guard, including maritime homeland security, law enforcement, search and rescue, defense readiness, marine safety, waterways management, living marine resources protection, and marine environmental protection. Further, the Coast Guard is unique in that it brings both law enforcement and national defense responsibilities. All Coast Guard Mission-Programs are aligned with the Department of Homeland Security's strategic goals, and the Coast Guard should continue to balance the requirements of all missions to ensure

FINAL

the best overall service to the American people.

The Coast Guard's discretionary budget has grown more than 53 percent from 2002 to 2005 in an effort to give Coast Guard men and women the tools they need to carry out their important missions. I will continue supporting the Coast Guard in their effort to meet both their homeland and non-homeland missions.

134. The Coast Guard has undergone an exponential growth in missions and responsibilities and substantial growth in both budget and personnel since it re-focused its assets on the Homeland Security mission following the events of 9/11 and their transfer to DHS. In addition, they are in the process of re-capitalizing their surface and aviation assets under the Deepwater program. Strains of this transformation have shown in certain critical skills in both the enlisted and officer ranks as all the billets have not been able to be filled and others have been filled with junior persons that do not always have the level of experience expected or required. Maintaining or attracting people to the critical skills that have taken on an extraordinary amount of work or performs particularly arduous duty has been successfully accomplished by the use of Critical Skills Retention Bonuses (CSRB) by all the branches of the Armed Forces, including recently in the Coast Guard. A recent DHS-IG report concluded that one of the three major barriers to improving and sustaining readiness in the Coast Guard was the workload demands on Captain of the Port personnel in continuing to implement the Maritime Transportation Security Act of 2002 (MTSA) while simultaneously suffering from declining experience levels and sustained high operating tempo since 9/11.

What will you do as the DHS Secretary, and as the representational Secretary of the Coast Guard, to support the continued or expanded use of CSRB's for those specialties in the Coast Guard that are experiencing critical shortfalls in the numbers needed for the Coast Guard to effectively and successfully perform its missions, especially with the ongoing implementation of the Maritime Transportation Security Act of 2002 (MTSA)?

ANSWER: I will do everything in my control to ensure the Coast Guard has the tools and resources to retain the critical skills they need to perform all of their essential homeland security and non-homeland security missions. CSRBs are certainly one factor having a positive influence on retention and I will continue to support them along with all other pay and incentive programs the Coast Guard deems appropriate. I look forward to working with you to ensure the Coast Guard personnel are properly supported.

135. The Coast Guard has begun an extensive 20 year recapitalization of its major assets to include its Cutters and aircraft under a multi-billion dollar program called Deepwater. This program was primarily designed before the events of 9/11 and the Coast Guard's move to DHS and focused on its missions more than 50 miles from shore. While there is no argument about the need for such an effort due to the age and obsolescence of the Coast Guard's current assets, the Deepwater program has struggled at first to get adequate funding and then to adjust to the post

FINAL

9/11 environment and its new homeland security responsibilities. It is the Committee's understanding that Al Qaeda's effective maritime attacks have not been more than 50 miles off shore; but on the USS COLE in the harbor at Aden, on the Tanker LIMBERG within sight of the coast of Yemen, and a thwarted plan to attack vessels in the Straits of Gibraltar and all involved very small, explosive laden boats. The FY'05 DHS Appropriation Bill stated the concerns of the Appropriations Committees from both the Senate and House and required the Coast Guard to provide a new baseline for Deepwater reflecting the post 9/11 environment. In addition, there have been several GAO and DHS-IG reports with recommendations for the improvement in the management overall of the Deepwater program.

a. What will you do to ensure that the Coast Guard's Deepwater program correctly reflects: the threats we face in the maritime arena; the Coast Guard's move to DHS and their new post 9/11 responsibilities; the Coast Guard's much valued non-homeland security missions; and provide this vital program with adequate funding while ensuring that proper management of this large and complex program is performed effectively?

ANSWER: As you know, and I have learned, the Integrated Deepwater System (IDS) was conceived in the late 1990s to replace the major surface and air assets in the Coast Guard inventory that existed at the end of the 20th century. The IDS acquisition focuses on system-wide capabilities, not specific assets, so it is not just new ships and aircraft but an integrated approach to upgrading existing shore, air, and surface assets while transitioning to newer or more capable platforms with improved command, control, communication, computers, intelligence, surveillance, and reconnaissance (C4ISR) and innovative logistics support. Given that the Coast Guard developed the initial implementation plan in 1998, it is now evaluating whether this plan will enable it to meet its mission requirements in the post 9/11 world.

Deepwater is a major undertaking that has been supported strongly by both the Department and the Administration. If confirmed, I look forward to developing a thorough understanding of this critical acquisition program and how to ensure appropriate funding and management is provided.

136. Due to the events of 9/11 several members of the Senate have supported an acceleration of the original 20 year Deepwater program to either 15 or 10 years. In addition to the more pressing need to bring these assets on line in an accelerated manner in the post 9/11 environment, the Coast Guard's legacy assets, many of which were rapidly approaching or past their expected service life, have been put into an aggressive and more demanding schedule since 9/11. This increased service has increased the wear and tear on these assets, as exemplified by the critical need to immediately re-engine the HH-65 helicopters, and erased much of any remaining service life requiring the Coast Guard to spend millions of dollars just to maintain these legacy assets. A RAND report issued last year suggested accelerating the project, from 20 years to 10 years, which would generate almost one million additional mission hours available to the service and save $4 billion in procurement costs over the life of the project.

FINAL

What is your position on acceleration of the Deepwater program in the post 9/11 environment and why? What will you do to maintain the Coast Guard's legacy assets while awaiting for Deepwater assets to come on line?

ANSWER: As noted above, the Coast Guard is evaluating the current Deepwater implementation plan to ensure it meets the mission requirements of the post 9/11 world. This acquisition project was designed to span 20 years so that new assets are delivered as legacy assets reach the end of their useful lives, which minimizes total acquisition costs over the course of the project.

Unfortunately, legacy assets are reaching the end of their service lives faster than anticipated, but they must remain operational while awaiting their eventual replacement. I support funding for the maintenance necessary to sustain the Coast Guard's legacy assets until they are replaced. Re-engining the HH65 helicopters is an example of a major legacy asset sustainment project to both correct a significant flight safety risk and extend the life of a critical "workhorse" asset for all Coast Guard missions.

137. The Maritime Transportation Security Act of 2002 (MTSA) required larger, commercial vessels in U.S. waters to be equipped with electronic identification equipment, as part of a nationwide wireless ship-tracking system. The United States Coast Guard has been working to deploy Automatic Identification System (AIS) technology. However, a recent Government Accountability Office (GAO) report (GAO-04-68) noted that high costs, as well as a pending lawsuit, are threatening the effectiveness of the program.

a. What, if anything, should be done to expedite implementation of the Automatic Identification System program?

ANSWER: I understand that the Automatic Identification System (AIS) is a critical capability to enhance navigation safety and homeland security and increase Maritime Domain Awareness. I take GAO findings and recommendations seriously and, if confirmed, I will review the program accordingly. I understand that the Coast Guard is acting upon these recommendations.

138. Under the Homeland Security Act, the DHS Secretary has the authority to reallocate functions of officers and establish or discontinue organizational units within the DHS. The Homeland Security Act also established a number of protections for the Coast Guard's non-homeland security functions. During the debate on the FY'05 DHS Appropriations it appeared that the Coast Guard's Research and Development (R&D) program was being absorbed into DHS's Science and Technology Directorate and that their funding was being reduced from traditional levels which threatened their historic, experienced, non-homeland security R&D efforts in marine environmental protection and search and rescue.

a. While the Committee understands the need to consolidate and reorganize potential duplicative functions within DHS, it also recognizes that several agencies and facilities still

FINAL

possess critical non-homeland security missions that might be difficult or impossible to replicate elsewhere. If confirmed, what will you do to ensure the protections for the Coast Guard's non-homeland security R&D efforts within DHS?

ANSWER: I understand the clear intent of congressional action in FY05 when it placed RDT&E funding in the CG appropriation. I understand that the R&D Center is the sole government entity performing and sponsoring research in support of the Coast Guard's non-homeland security missions, and I am mindful of section 888(d) of the Homeland Security Act of 2002, which prohibits the diversion of any asset of the Coast Guard "to the principal and continuing use of any other organization, unit, or entity of the Department, except for details or assignments that do not reduce the Coast Guard's capability to perform its missions."

DHS has made clear it intends to fund research and development for non-homeland security Coast Guard mission areas. At a minimum, that funding should be in line with the FY05 appropriation, adjusted annually for budgeted inflation rates. It should be recognized, however, that, as reflected in sections 302(4), (11), and (12) of the Homeland Security Act, the Congress created the Department's Directorate of Science and Technology (S&T) precisely for the purpose of conducting, coordinating, and integrating the research, development, testing, and evaluation (RDT&E) activities of all elements of the department. Therefore, it is my view that, in order to fulfill its statutory responsibilities, and to make the Department's RDT&E efforts more effective and efficient, S&T should have a prominent role in the Coast Guard's RDT&E efforts while ensuring that the needs of all Coast Guard missions are appropriately addressed. I understand DHS S&T intends to enter into a Memorandum of Understanding with the Coast Guard to outline the specific responsibilities of the Department and the Coast Guard in order to ensure R&D benefits for the non-homeland security missions while avoiding duplicative functions in DHS.

b. Do you believe established centers for research and development that support non-homeland security missions for agencies within the Department should be maintained?

ANSWER: If confirmed, I look forward to examining this issue with the benefit of the advice of the Department's Under Secretary for Science and Technology.

139. Secretary Ridge used the term *"One Team, One Fight"*; yet it is the Committee's understanding that much more work is needed to fully merge the 22 agencies of DHS into "one team". For example, the Coast Guard maintains joint harbor operations centers located in Norfolk, Charleston, SC, and San Diego and which they are currently evaluating. While the centers in Norfolk and San Diego may be more focused on the large naval facilities located in those cities, the Charleston center appears to have greater application for the majority of our ports that do not have a large naval presence. One of the Homeland Security and Governmental Affairs Committee's highest priorities in oversight of DHS will be the integration of the agencies into one effective team.

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a. Please describe how DHS is implementing its 'One Team, One Fight' concept in these joint harbor operation centers and specifically in the center located in Charleston, SC.

ANSWER: There is a clear need to integrate the Coast Guard's Joint Sector Command Center (SCC-Js) with Federal, State and local partners who have a stake in the port and coastal security. As the Lead Federal Agency for Maritime Homeland Security, the Coast Guard is ideally positioned to consolidate their Sector Command Centers, implement and upgrade appropriate sensor suites and jointly staff these command centers with the appropriate mixture of Federal, State and local partners.

I have been told by DHS the SCC-Js in San Diego and Hampton Roads are jointly manned and operated by Navy and Coast Guard personnel, primarily due to the large naval presence in those two ports. There is no "one size fits all" approach to arranging the appropriate mixture of joint service cooperation or interagency cooperation. Since each port's geographic layout is different, and the customer bases vary (military, commercial, recreational, etc), critical infrastructures vary (petroleum, chemical, container, passenger cruise ship terminals, etc) and potential Federal, State and local partners vary (jurisdictional relationships to various commercial and military activities).

Further, DHS has indicated the Charleston Harbor Operations Center (CHOC) is a unique interagency arrangement where DOJ maintains primary focus on the shoreside approaches to the pier and the Coast Guard focuses from the pier to sea. This arrangement between DOJ and the Coast Guard facilitates each agency's focus on their jurisdictional interests, but the co-location enables a level of information-sharing and couples maritime domain awareness with shore-side awareness seamlessly.

b. Do you see these centers as a framework for intelligence and information sharing among the agencies of DHS as well as their State and local partners to ensure the security of our ports?

ANSWER: These Joint Sector Command Centers and Interagency Operations Centers appear to provide a facility for the sharing of information and intelligence. As stated earlier, there is not a "one size fits all" solution. They will allow the information sharing framework in which the right mixture of joint service or interagency cooperation and sensor suites can be carefully developed to provide the "One Team, One Fight" approach.

While these centers provide key command and control nodes, the "One Team, One Fight" approach must also focus on other programs that emphasize partnerships and collaborate on mutual interests through committees and fostering new working relationships.

c. If you believe these centers are effective in our port areas, do you believe this framework should be duplicated in other ports?

FINAL

ANSWER: I understand the Coast Guard has done extensive port vulnerability assessments in militarily and economically strategic ports. Based on the Coast Guard's analysis, they are already moving forward with planning to establish additional Sector Command Centers in a variety of locations around the country. If confirmed, I will look forward to having a better understanding of these efforts and how to support them.

d. Do you believe this framework could be effectively duplicated to inland areas as a method of merging DHS agencies and their State and local partners into the 'one team' that Secretary Ridge spoke of?

ANSWER: This approach to enabling partnerships between Federal, State and local law enforcement officials certainly shows promise for inland areas as well. Geography and jurisdiction will be critical to determining the specific arrangements to provide this command center approach.

Rail and Transit Security

140. Unlike the aviation environment, rail and transit systems are "open" systems, where passengers freely embark and disembark at any of the many stops or stations throughout a system. This makes screening passengers and implementing security procedures, with a minimum disruption or delay, even more difficult to accomplish. In May 2004, TSA launched a rail security pilot program to determine the feasibility of screening passengers and bags for explosives before boarding a train. The goal of the Transit and Rail Inspection Pilot (TRIP) program was to evaluate emerging technologies and procedures for screening passengers and their bags for explosives in the transit and rail environment. Advanced explosives detection portals and K-9 units were among some of the security technologies and procedures tested. If confirmed, will you make it a high priority to complete and release the report on TRIP? Additionally, in your opinion what steps can and/or should be taken to secure surface transportation, particularly in open systems where complex security measures might cause unwieldy delays?

ANSWER: I understand that the Department, through the Science and Technology Directorate as well as TSA, has been conducting research, development, and operational testing of explosives detection technology. If confirmed, I will work in partnership with state, local, and private sector owners and operators to take the appropriate steps to improve surface transportation security. Further, I will ensure TRIPP report is completed and released in a timely manner.

141. Rail transportation's unique characteristics – an open system, with networks crossing through either dense, urban areas which allow for multiple attack points and easy escape, or rural regions which are difficult to patrol or secure – make the system highly vulnerable to attack, as we saw last March in Madrid, Spain. Passenger and freight rail systems remain vulnerable today. However, the Department of Homeland Security has yet to develop a coordinated federal policy

FINAL

on rail security. Do you believe the Department of Homeland Security should develop a coordinated policy covering freight, passenger and commuter rail? What should be the role for the federal government in preventing or mitigating an attack on rail infrastructure and assets? As secretary, would you support and or promote a version of the rail security legislation (S. 2273) passed by the Senate last year?

ANSWER: I understand that, under Homeland Security Presidential Directive 7 (HSPD-7), DHS was tasked with coordinating the national effort to enhance security protection of critical infrastructure and key resources, including development of the National Infrastructure Protection Plan (NIPP). I am not familiar with S.2273; however, should I be confirmed, I will work with Congress to promote appropriate rail security legislation.

142. A recent freight train accident in South Carolina killed nine people and hospitalized dozens more when chlorine gas escaped from a tank car following an apparently accidental crash. Accidents like this remind us of the potential threat posed by terrorists targeting such transport of hazardous materials, especially through densely populated areas, including Washington, DC. What steps will you take to protect these shipments and the populations through which they travel from terrorist attack, including hazardous materials temporarily stored in rail cars while awaiting delivery to their ultimate destination?

Until March of 2004, 90-ton tank rail cars containing dangerous toxic chemicals traveled through the District, passing within four blocks of the U.S. Capitol building and near the Departments of Transportation and Energy. A senior scientist from the Naval Research Laboratory said that an attack or accident involving such cars could put the lives of the more than 100,000 people at risk within 15 to 30 seconds and had the potential to cause the death of those exposed. The EPA has estimated that a "worst-case" accident involving just one 90-ton tank car would cause a "danger zone" of 14 miles. If Capitol Hill was ground zero, as many as 2.4 million people including President of the United States and Members of Congress would be well within the 14 radius. Those shipments reportedly stopped last March under an agreement between DHS and CSX Transportation, but the details of the agreement have not been made public.

Do you believe such shipments should be permitted to pass through Washington, DC? If not, what will you do to ensure they do not resume?

ANSWER: Since the terrorist attacks of September 11, 2001, I understand that the government and that private sector have undertaken several initiatives to ensure the security of hazardous material rail shipments. If confirmed, I will examine the issue of rail shipment through Washington, DC and take appropriate action.

143. The U.S. Conference of Mayors (the Mayors) has repeatedly called for notifications of rail shipments to keep city officials aware of potential dangerous materials traveling through their jurisdictions. In their document entitled, the "National Action Plan for Safety and Security in

FINAL

America's Cities," the Mayors identified freight rail security as an issue area of major concern. Their Plan recommends that freight railroads be required to develop new notification procedures and to provide better information to the local jurisdictions through which the railroads will be transporting chemicals and other hazardous materials. Additionally, the Mayors recommend that improved notification and information should extend to the storage of freight on sidings and to other practices that could pose risks to immediate neighborhoods and major local assets and venues.

Do you believe that existing notification procedures provide adequate information to local officials and communities, alerting them to dangerous shipments traveling through their communities? If confirmed, would you conduct an assessment of existing freight railroad notification procedures? What steps will you take improve this system?

ANSWER: If confirmed, I will examine the notification issue and take appropriate action.

Emergency Preparedness and Response

144. As we continue to fight the war on terrorism, natural disasters are continuing to occur regularly.

a. How will you balance the war on terrorism and homeland security focus with the natural disasters that are occurring regularly?

b. Do you have sufficient funds available in the Disaster Relief Fund?

ANSWER: ANSWER TO a AND b: The approaches to terrorism and natural disasters are not mutually exclusive. I have been told that a broad all-hazards approach recognizes that the same comprehensive framework of mitigation, preparedness, response, and recovery can be used to address the full range of disasters. Sound preparedness planning must also utilize a variety of hazard-specific scenarios to ensure that the Nation's response system is sufficiently flexible, and can call upon appropriate assets and expertise.

My understanding is that the Department is focused on terrorism and protecting the homeland and it is also committed to an all-hazards approach of preparedness for, response to, and recovery from all events, including natural disasters. Recent efforts to improve response to and recovery from a terrorism event do not diminish FEMA's commitment to dealing with the destruction caused by a natural disaster. In fact, I am told these efforts have strengthened FEMA's response to natural disasters.

Finally, I understand the President's Disaster Relief Fund is a no year fund that has been replenished, responsibly, by Congress through the Appropriations process, as needed.

FINAL

FEMA/DHS routinely keep OMB and the Congress apprised of the costs of current disaster operations. At present, I understand that FEMA has sufficient funds in the Disaster Relief Fund and continues to provide aid to victims throughout the country.

c. State and local stakeholders in particular have raised serious concerns about the implementation of HSPD-8, in using scenarios that focus on almost exclusively terrorism and not an all-hazards perspective. What are your plans to work with stakeholders to address concerns such as these?

ANSWER: I understand that suite of planning scenarios incorporates both terrorist threats and natural hazards, including hurricanes, earthquakes, and pandemic influenza. The compilation was not designed to be exhaustive; rather, it represents a range of key national risks, especially those in which our preparedness is still lacking. The scenarios were used to catalog critical homeland security tasks and required prevention, response and recovery capabilities to meet all hazards – not just terrorism. Most tasks, such as "Coordinate incident management operations" are common to all threats and hazards. Our nation has had considerable experience in dealing with large-scale natural disasters, but not with catastrophic terrorism scenarios. This is why they warranted emphasis. The scenarios were compiled with input from experts across government. For implementation, I will ensure that the process continues to involve professional associations and stakeholders from across the nation to develop agile, flexible, and robust capabilities to meet a wide-range of threats and hazards like those represented by this selection.

145. Some emergency management experts have lamented a slower decision making process within FEMA following its incorporation within DHS. In the report, *DHS 2.0: Rethinking the Department of Homeland Security*, the Heritage Foundation and Center for Strategic and International Studies recommend consolidation of DHS response missions into FEMA. It further proposed a "flatter" management structure and elimination of middle-management in the EPR Directorate to better allow the Secretary to lead on the important issues of preparedness and response.

a. What steps will you take as Secretary to ensure that FEMA's preparedness and response requests receive timely approval?

ANSWER: It is my understanding that the integration of FEMA into DHS has not slowed the decision making process regarding the Federal government's ability to prepare and respond to any emergency or disaster event. FEMA has a well-established and efficient process for managing approvals and denials of disaster requests from states. Indeed, I am told that FEMA's integration into DHS has only led to a strengthening of the Federal government's ability to prepare for an event that is likely to occur.

b. What are your views on the management changes recommended in the report with respect to the preparedness and response functions of DHS?

FINAL

ANSWER: If I am confirmed as the next Secretary of DHS, it is my intention to not only review the report's recommendations regarding preparedness and response, but also to review the management structure of the entire Department. I understand that the Department is currently conducting an inventory of all preparedness programs and assets to determine the feasibility of consolidating those programs and assets under a single entity. If confirmed, I look forward to reviewing the results of this assessment.

Homeland Security Presidential Directive 8 Implementation

146. HSPD-8 calls for a national domestic all-hazards preparedness goal to establish measurable readiness priorities and targets with plans for national planning guidance to be issued in a very fast timeframe. The new intelligence reform bill and the fiscal year 2005 DHS appropriations legislation set rapid implementation timeframes.

What steps would you take to ensure DHS produces a well-crafted goal with related priorities, capability expectations, and metrics by that time?

ANSWER: HSPD-8 requires close consultation and coordination with stakeholders across all levels of government. This consultation and coordination is the key to ensuring the goal and priorities reflect the best input from experts across all levels of government. I understand that the Department has engaged hundreds of professional associations and stakeholders from across the country in the implementation effort, and I look forward to participating in the continued interagency effort. It is my understanding that DHS is on track to establish the goal, priorities, capability expectations, and metrics in the time provided in the intelligence reform bill and the fiscal year 2005 DHS appropriations legislation.

147. DHS has chosen to apply what it calls "the capabilities-based planning approach" to rapidly implement HSPD-8, based primarily on the approach under development by the Department of Defense for its capability development.
What do you think of this approach and what changes, if any, would you make in how DHS is specifically using the approach?

ANSWER: I understand that capabilities-based planning is an advanced methodology for all-hazards planning, which has been in decades-long use in the emergency management community. The capabilities-based planning methodology is planning, under uncertainty, to provide capabilities suitable for a wide range of scenarios while working within an economic framework that necessitates prioritization. All-hazards planning addresses natural disasters and accidental or man-caused events, including those involving terrorist use of a weapon of mass destruction. I am told that, DHS has benefited from the Department of Defense's implementation of capabilities-based planning and is collaborating with them as well as other departments and agencies to share

FINAL

lessons and best practices. As DHS applies improved methodologies and tools across the homeland security community, I would fully anticipate and welcome many "product improvements" in the Department's planning approach and tools.

148. The Fiscal Year 2005 Homeland Security Grant Program guidelines call for statewide all-hazards preparedness strategies to be consistent with the national preparedness goal and to address and to implement tools such as national planning scenarios, task lists, and capabilities lists.

a. What flexibility do you believe states and localities should have in setting their own priorities based on their own risk assessments rather than following the federal national requirements?

ANSWER: Securing the nation is a shared national responsibility, and every State and community's preparedness contributes to that end. State and local flexibility must be recognized as important principles in meeting this goal. At the same time, I understand that DHS must have some means for prioritizing the billions of dollars of homeland security assistance it distributes each year, and a means for tracking progress of State and local efforts. Establishing national preparedness goals and developing tools such as planning scenarios and lists of critical homeland security tasks allows DHS to strengthen the ability of States and localities to address unique needs while also developing the collective proficiency and required capabilities that provide national assurance that we are prepared for the threats and hazards facing our nation. I further understand that the national preparedness goal and planning tools are being developed in close collaboration with stakeholders from all levels of government and the private sector to further ensure State and local flexibility are built into the system.

b. Do you agree that states and localities often have a better sense of local needs and priorities then federal entities?

ANSWER: Yes, States and localities best understand their unique needs and priorities and reflect that understanding in the State homeland security strategies. They also clearly understand that the tasks of preventing, protecting, responding to and recovering from the threats and hazards we face will require the combined efforts of Federal, State, local and tribal governments, as well as the private sector. At the same time, DHS is uniquely positioned to understand the Nation's threats, risks, and vulnerabilities. Experience has driven home the lesson that catastrophic terrorist attacks or natural disasters have nationwide impact. The terrorist threat is adaptive and global in scale, requiring not only that we act locally to meet unique needs and priorities but that we also ensure those actions contribute to our collective national preparedness against potentially catastrophic threats and hazards. Thus, it is essential that States and localities determine their homeland security needs and priorities using a common process based on national assessment criteria and priorities. I understand that this will provide a common framework for understanding needs and for ensuring that target capability levels are achieved nationally.

FINAL

149. In 2005, DHS plans to expand its capabilities-based planning approach to the private sector, nongovernmental organizations, and citizens. Some believe such an expansion will be very difficult.

a. What incentives would you provide private sector organizations to adopt the capabilities-based planning approach? What would be the authority for those incentives?

ANSWER: As we call on private entities to improve security over dangerous materials and the Nation's vital infrastructure, a variety of incentives exist to encourage and enforce security. I am committed to working closely with Congress and the private sector to identify the most effective means to encourage and enforce homeland security and safeguard our citizens, economy, and way of life.

b. How, if at all, will the capabilities-based planning be integrated with national strategies for homeland security and critical infrastructure protection?

ANSWER: The National Strategy for Homeland Security established the vision that led to adoption of a capabilities-based planning approach. The National Strategy states the nation must "develop interconnected and complementary homeland security systems that are reinforcing rather than duplicative and that ensure essential requirements are met." The National Strategy for the Physical Protection of Critical Infrastructures and Key Assets identified the need to "coordinate the complementary efforts and capabilities of government and private institutions" and to "foster an environment in which key public - and private - sector stakeholders can better protect the infrastructures and assets they control according to their specific responsibilities, competencies, and capabilities." These strategies highlight the need for a capabilities-based planning approach that establishes standards of performance necessary to reach consensus about respective government and private sector homeland security roles and responsibilities. This process has been a collaborative effort among those charged with responsibility for national preparedness and critical infrastructure protection within the Department, across the Federal government, and throughout the homeland security community.

Private Sector Preparedness

150. The 9/11 Commission and Secretary Ridge have endorsed the voluntary adoption of the NFPA 1600 standard as the national preparedness standard. The new intelligence reform act calls for the DHS Secretary to establish a program to promote private sector preparedness for terrorism and other emergencies, including promoting the adoption of a voluntary national preparedness standard.

a. What do you believe should be the major elements of the private sector preparedness program?

FINAL

ANSWER: The Intelligence Reform Act highlighted basic elements of private sector preparedness and identified that these measures are common across the private and public sectors. I understand that the major elements of a preparedness program, such as the Department's Community Preparedness initiatives as well as those identified in NFPA 1600, generally include: a well-organized, comprehensive set of authorities, responsibilities, agreements and activities that are documented in regularly exercised and updated plans; a program that comprehensively prepares for and mitigates risks; the active involvement of leaders; regularly conducted training and outreach; promotion of highly collaborative partnerships; measures of accountability; adequate resources; consistency with applicable regulatory requirements or voluntary standards; provision for continuity of operations; and ability to respond in the event of an incident with the required speed and effectiveness.

b. What approach would you take in promoting the adoption of a national preparedness standard?

ANSWER: NFPA 1600 appears to be an excellent example of the well-structured development of a voluntary consensus standard for emergency management and business continuity planning. As the Intelligence Reform Act notes that NFPA 1600 and other existing standards will require modification to ensure they meet the full range of homeland security responsibilities, including prevention and protection. I understand that DHS is already working with governmental and non-governmental standards-making bodies to develop standards that establish broad performance goals or benchmarks, as well as "micro-level" standards that address specific operational procedures, training competencies, or equipment specifications.

Homeland Security Advisory System

151. Established in March 2002, the Homeland Security Advisory System was designed to disseminate information on the risk of terrorist acts to federal agencies, states, localities, and the public. However, these entities have raised questions about the System, the threat information they receive from DHS, and the costs they incur in responding to heightened alerts.

a. How would you improve the current Advisory System?

ANSWER: The HSAS is a collaborative process, which takes into account current threat information and incorporates the perspectives of other Federal entities (both within and outside of DHS), State, local, and tribal partners, and private sector stakeholders. It will be important to continually assess the Advisory System and ensure its ability to adjust to the needs of the stakeholders. If confirmed, I would be happy to consider improvements.

b. What would you suggest as ways to address costs when heightened alerts are issued?

ANSWER: When considering HSAS level changes, I understand DHS carefully considers the

FINAL

potential impacts on affected sectors and geographic areas. I also understand the Department has made changes based on these considerations – including the decision to allow grant funds to be used for overtime costs of State and local law enforcement associated with protective measures under ORANGE and for specific urban areas under YELLOW for large events and critical infrastructure. I recognize the importance of this issue and, should I be confirmed, I pledge to work with State and local officials to address their concerns.

152. Many have called for more specific regional or location threat information. What do you see as the current barriers to implementing a new Advisory System that could be more specific?

ANSWER: The elevation of the HSAS level to ORANGE for the financial services sector in New York, northern New Jersey, and Washington, DC in August of 2004 demonstrates the flexibility of the HSAS to adapt response to available threat information. This flexibility allows DHS, local communities, and others to target resources appropriately and reduce resultant costs where possible.

If confirmed, I will work to ensure that DHS continues to assess and improve the system each time HSAS level changes are considered.

Regional Approach

153. GAO's recent work on domestic preparedness grants—including those administered by ODP and successor organizations—showed that grant management could benefit from a coordinated regional approach that builds a consensus of problems and potential solutions. Coordinated regional approaches can also better target resources while reducing or eliminating duplication and inefficiency. Among other things, data is needed on funding streams used regionally, purchases made, and purchases planned.

a. What policies, practices, and steps would you implement to ensure regionally collaborative approaches to enhancing domestic preparedness?

ANSWER: I understand DHS has taken a very proactive stance in encouraging States to leverage existing regional entities, and establish regional collaboration where it does not exist. In addition to the work that DHS has done to establish the Urban Areas Security Initiative (UASI), which encourages regional collaboration among large, multi-jurisdictional cities, the Fiscal Year 2005 Homeland Security Grant Program adds another opportunity for regional participation. In 2005, each Urban Area receiving Federal grant funding from DHS must develop a multi-jurisdictional prevention and response plan based on the Improvised Explosive Device (IED) planning scenario. If a state does not have a designated Urban Area, they must identify a multi-jurisdictional metropolitan area or region in which to conduct this exercise. The goal of this planning and exercise requirement is to further facilitate the integration of regional operational planning and

FINAL

activities.

b. What policies, practices, and steps would you implement to ensure that regional data was collected regarding funding streams, purchases made, and purchases planned?

ANSWER: Collecting regional data is an important component of ensuring that Federal funds are being spent effectively and efficiently. Through the Urban Areas Security Initiative (UASI), the Department has encouraged the formation of regional structures, by mandating that the State, core city and core county/counties take into account those other governmental entities that are either contiguous to the Urban Area with whom they have mutual aid compacts. This regional structure provides for the prudent and necessary expenditures of Federal financial assistance against the stated goals and objectives outlined in the Urban Area Homeland Security Strategies. It is my understanding that SLGCP has greater improved its collection of data on how grant funds are being expended, including information on which States use a regional structure, and how grant funds are being expended at the State and local level towards regional projects. I also understand that DHS is beginning to collect data that will outline the projects by solution area (such as equipment, planning, exercises and training) as well as by discipline (such as law enforcement, fire services or public works).

c. Do you believe that regional offices now in the Department should be reorganized? If so, what should the timetable be?

ANSWER: I certainly intend to consider plans to establish a DHS regional structure with each regional office responsible for a specific geographic area of responsibility. If confirmed I will consider an appropriate regional structure for DHS and develop a timetable for implementation.

Communications Interoperability

154. The new intelligence reform act requires DHS, coordinating with the FCC and the National Telecommunications and Information Administration, to assess potential technical and operational standards and protocols for a nationwide interoperable communications network that may be used by public safety, homeland security, and other first responder personnel.

a. What policy guidance would you give officials who are doing the assessments?

ANSWER: First, as over 90 percent of public safety communications infrastructure is owned and operated at the local and State level, it is vital that any interoperability solution take into consideration the State and local level perspective Assessing potential technical and operational standards and protocols is complicated by the challenge of replacing existing equipment while maintaining legacy systems. To move forward, existing State and local infrastructures should be leveraged to the extent possible limit the burden on State and locals of new system and equipment requirements they cannot afford to maintain.

FINAL

In addition, while the improvement of interoperable communications begins with technology, I understand that there are other critical success factors in planning and implementing interoperable communications that must be considered in developing a nationwide interoperable communications network. It is my understanding that the Department's Office of Interoperability and Compatibility and its SAFECOM program are working with the public safety community to encourage a shift from a technology-centric approach to a comprehensive focus on all critical success elements. These critical elements – frequency of use of interoperable communications, governance, standard operating procedures, technology, and training and exercises – must also be addressed to develop robust interoperability solutions.

b. What do you see as major challenges in the assessment and then later implementation of a nationwide interoperable communications network?

ANSWER: Perhaps the best answer has already been presented by the National Task Force for Interoperability (NTFI) in its final report on public safety communications. NTFI was formed and funded by the DOJ National Institute of Justice, and included representatives from across the public safety community. It defined the following five barriers to interoperability:

- Incompatible and aging communications equipment
- Limited and fragmented budget cycles and funding
- Limited and fragmented planning and coordination
- Limited and fragmented radio spectrum
- Limited equipment standards

Upon confirmation I look forward to working with the Office of Interoperability and Compatibility and other principal DHS agencies on the means to address the solutions to these barriers as quickly and effectively as possible.

155. The inability of first responders to communicate with effectively with one another during an emergency is a long standing problem. Consequently, the Intelligence Reform and Terrorism Prevention Act of 2004 includes several provisions to promote the development of interoperable communications among our nation's first responders. Among other things, the Act authorizes establishment of an Office for Interoperability and Compatibility within the Directorate of Science and Technology, which will carry out DHS responsibilities and authorities currently related to the SAFECOM program. It requires the Secretary to develop a comprehensive national approach to achieving public safety interoperable communications, coordinate with other Federal agencies, accelerate the development of national standards, and develop appropriate minimum capabilities for interoperable communications for federal, state and local public safety agencies. The Act further authorizes the awarding of multi-year grants to ensure that first responders in high threat areas can communicate with appropriate state and federal partners when responding to emergencies. These provisions signal Congress' intent that the federal government significantly enhance its support for this vital homeland security need.

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a. If you are confirmed as Secretary, what steps will you take to ensure that Congress' intent is realized so that achieving interoperable communications receives the leadership such a national priority requires?

ANSWER: I understand that interoperability is a priority for DHS. In order to build on the successful efforts of SAFECOM, Secretary Ridge formed the Office for Interoperability and Compatibility (OIC) in October 2004 to serve as the overarching program within the Department to strengthen and integrate interoperability efforts that improve local, tribal, State, and Federal public safety preparedness and response. If confirmed as Secretary, I will continue to make interoperability a top priority for DS, and will work the OIC and give it the support it needs to expedite solutions.

d. How do you believe the grant process should be used to focus state and local emergency planners and first responders on developing and implementing plans for achieving specific first responder interoperable communications capabilities?

ANSWER: It is my understanding that within the FY 2005 Homeland Security Grant Program, the office of State and Local Government Coordination and Preparedness (SLGCP) is building on the RAPIDCOM initiative, requiring each urban area receiving FY 2005 Urban Areas Security Initiative funding to develop a plan to achieve tactical interoperable communications across jurisdictions in the urban area, and to test that plan through exercises. States that do not have a designated urban area must identify a multi-jurisdictional metropolitan area or region in which to undertake this requirement.

With input from the public safety community, I also that understand SAFECOM has created coordinated grant guidance for use for relevant DHS and DOJ grants which outlines eligibility for grants, the purposes for which grants may be used in support of interoperability. and guidelines for implementing a wireless communication system. Grant guidance is an important step toward improving national interoperability because it helps to align public safety communications related grant dollars with the national effort to improve interoperability at all levels of government.

If confirmed as Secretary, I will work with DHS to continue to leverage the grant process as a stimulus for action guidance and to support achievement of interoperable solutions nationally.

Citizen Involvement

156. Over the past two years, DHS has initiated many new programs such as Citizen Corps and Ready.Gov for citizen awareness and preparedness.

a. How do you rate the effectiveness of these efforts? How, if at all, would you change these programs?

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ANSWER: I understand Citizen Corps and the *Ready* campaign have made important contributions to preparedness. The Ad Council has called the *Ready* public awareness campaign the most successful launch in the history of the Ad Council and has garnered more than $360 million in donated media support.

It is my understanding that "Public Awareness and Citizen Participation" is one of the national initiatives reflected in the FY 05 DHS grant guidance to the States. In the coming year, Citizen Corps and *Ready* will be more closely aligned organizationally and will work more closely with State and local governments as well as other stakeholders to focus greater attention on the role citizens play in homeland security; to better educate the public about all-hazards safety and local emergency plans; and to encourage collaboration between emergency responders and citizens through training, exercises, and volunteer programs. In addition, if confirmed I will review other areas within the Department that focus on engaging the general public in hometown security and assess whether these efforts could be combined with *Ready* and Citizen Corps to promote a unified and Department-wide voice on community preparedness.

b. Are there additional initiatives you believe might add value to citizen involvement in homeland security?

ANSWER: I understand that there are outstanding examples from around the country of how citizens are contributing to homeland security – from critical infrastructure protection and bio-terrorism exercises to watch programs and volunteer teams trained and ready to supplement emergency responders.

The Department certainly has the opportunity to help replicate existing local programs nationwide and expand opportunities for citizen involvement through pilot programs that would create a more comprehensive network of citizen participation programs. For example, I understand the Community Emergency Response Team (CERT) program, a valuable emergency response training program that is a part of Citizen Corps, was started by the Los Angeles Fire Department in 1994 and is now active nationwide. There are many other examples of successful local programs that the Department could explore to see if they too could be expanded nationwide.

DHS will continue the work of the *Ready* campaign and Citizen Corps and support additional community outreach through schools, private and public sector worksites, faith-based organizations, recreational outlets, and local media. Local, State, and national leaders must also place greater emphasis on citizen responsibility and ensure their constituents have necessary information relating to preparedness as well as training and volunteer opportunities.

Funding Formulas and Grants

FINAL

157. In *When Terrorism Hits Home: How Prepared are State and Local Law Enforcement,* the Rand Corporation noted that "[h]omeland-security experts and first-responders have cautioned against an overemphasis on improving the preparedness of large cities to the exclusion of smaller communities or rural areas, noting that much of our critical infrastructure and some potential high value targets (nuclear power plants, military installations, agriculture facilities, etc.) are located in less-populated areas." Moreover, we know that al Qaeda attackers lived, trained, transited, hid, and otherwise used rural areas as a staging ground for the September 11, 2001 attacks.

a. Do you agree that an effective homeland security strategy must include significant funding dedicated to smaller communities and rural areas for first responders and infrastructure protection?

ANSWER: An effective homeland security strategy must recognize that each state will have some basic requirements for prevention, protection and response. Given that we possess finite resources in time, funding, and personnel, we must ensure that our allocation of resources is done as efficiently and effectively as possible based upon we what currently know. I understand the Department has provided almost $12 billion dollars to State and local entities since September 11, 2001. States were required to perform detailed threat, vulnerability, needs and capability assessments at the local level, and then roll that information up into a comprehensive state strategy that addressed prevention, response and recovery goals. Urban Areas were required to go through the same assessment and strategy development process.

b. What steps will you take to ensure that smaller communities and rural states and localities receive adequate federal assistance to prepare to thwart or respond to terrorist attacks?

ANSWER: If confirmed, I will work with SLGCP towards flexible means of allocating grants based on threats, vulnerabilities, and needs, appreciating that these factors do not only apply to densely-populated regions. DHS also continues to give considerable flexibility to States to decide on funding allocations. I understand that SLGCP guidelines mandate that the State Administrative Agency (SAA) provide at least 80% of the total amount of the grant award to local units of government. This funding can be used for prevention, protection, response or recovery to terrorism incidents, so recipients may address any of the gaps identified in their State Homeland Security Strategies.

c. Do you agree that international borders, coastline, and the presence of critical infrastructure, such as power plants and food supplies, are important factors that must be included in addition to population and population density in distributing risk-based counter-terrorism grants?

ANSWER: Absolutely. Key structures or areas such as high traffic borders, high volume ports, mass transit operations, and critical infrastructure should be taken into account when DHS is allocating grants and when states are expending their DHS homeland security assistance. It is my

FINAL

understanding that through the FY 05 Urban Areas Security Initiative (UASI), the Department used a risk-based formula that took into account not only threat, but the presence of critical infrastructure in 13 sectors, including transportation, energy, power plants, agriculture and food, governmental facilities, commercial assets, defense industrial base, and others. Population and population density were also factors in the overall UASI formula devised to identify 50 large urban centers to participate in the program. The recipients of the UASI funds have the ability to expend their dollars against the goals and objectives as stated in their Urban Area Homeland Security Strategy. As Secretary, I would work to ensure that in making risk-based allocations for state homeland security funding, DHS would look at these factors, as well as others such as the presence of borders, ports, transit activities, and critical infrastructure

d. Do you agree that, while population should be a factor in the allocation of homeland security grants, that localities that face significant threats should not be disqualified from receiving homeland security funding simply because they do not meet a particular population threshold?

ANSWER: Yes, all jurisdictions should be given consideration when allocating homeland security funding and funding should be allocated based on risk, of which population is only one factor. In addition, it is my understanding that DHS continues to give considerable flexibility to States to decide on funding allocations to localities through the State Homeland Security Grant Program. SLGCP guidelines mandate that the State Administrative Agency (SAA) provide at least 80% of the total amount of the grant award to local units of government.

e. In allocating FY2005 UASI grants, the Department chose to measure a locality's population solely based on the population within city limits rather than look at metropolitan areas or rely on other patterns of population distribution. Such an approach systematically disadvantages areas of the country such as New England that are made up of numerous contiguous smaller cities and towns. Do you believe that DHS, rather than relying on arbitrary (and sometimes centuries-old) political boundaries, should explore other means of defining an "urban area" and other measures of how many people are likely to truly be at risk in a given area? Do you agree that this would be more consistent with DHS's focus on regional cooperation and mutual aid?

ANSWER: Major incidents will invariably have a regional impact, and prevention, protection, response and recovery missions all require extensive regional collaboration. Homeland security in the 21st century is highly interdependent, and it is imperative that we explore expanding our collaboration to effectively address the threats and hazards we face. If I am confirmed, I will work to identify and expand successful regional approaches that allow participants to coordinate planning and protection, spread costs, and share risk. State and local officials recognize the value of risk-sharing agreements, and I look forward to close cooperation and consultation in determining how best to assess risk, and ensure Federal assistance, including UASI grants, strongly promotes expanded regional collaboration and mutual aid.

FINAL

f. What criteria should be used to determine which localities should receive direct funding?

ANSWER: I understand that other than port security grants and fire act grants, no funding is made directly to a locality. Instead, DHS provides funding to States to ensure consistency with State strategies and priorities. The Urban Areas Security Initiative provides financial assistance to address the unique planning, equipment, training, and exercise needs of high risk urban areas, and to assist them in building an enhanced and sustainable capacity to prevent, respond to, and recover from threats or acts of terrorism. This funding is provided to urban areas through the State Administrative Agencies.

DHS identified eligible urban areas through a formula that included variables to objectively prioritize funding for high-threat, high density urban areas. It is my understanding that the FY 05 UASI grant formula includes variables such as threat data from classified Intelligence Community information and reported Federal, State and Local incidents; law enforcement activity; critical public and private sector infrastructure; mutual aid cooperative agreements; and population and population density.

The UASI program and the approach to identifying urban areas have evolved as our knowledge base and capabilities improve. If confirmed, I will work to ensure that the formula reflects input from Congress and our State and local partners, among others, and recognize the evolving nature of both threat and overall risk.

g. What steps should be taken to ensure that direct funding to localities is spent in coordination with states and other localities and is consistent with state response plans?

ANSWER: I understand that other than port security grants and fire act grants, no funding is made directly is made directly to a locality. Currently, Homeland security grant Program funding is disbursed is directly to the States to ensure that funds are spent in a coordinated fashion in support of the goals and objectives included in the State homeland security strategies. It is also my understanding that a minimum of 80 percent of these funds are passed-through to local jurisdictions. In addition, UASI funding is provided to urban areas through the State Administrative Agencies (SAA). I also understand that participation of local jurisdictions was a critical component of the State Homeland Security Assessment and Strategy Process that took place in FY 2003 and remains a core component of DHS programs. If confirmed, I look forward to working with our stakeholders to ensure the spending is coordinated and consistent with State strategies.

158. In the past two years, several concerns have been raised about the possible misuse of homeland security funding provided by Congress through various DHS grant programs.

FINAL

a. What oversight do you believe DHS should exercise with respect to how recipients of Homeland Security grants are using the funds?

ANSWER: Recipients of grant funding are primarily States, territories and urban areas, but other grantees include city and county governmental entities, transportation systems, port authorities, and private companies. I understand a major challenge in administering first responder grants is balancing two goals: minimizing the time it takes to distribute grant funds to State and local first responders, and ensuring appropriate planning and accountability for the effective use of grant funds.

I note DHS already has established a number of policies and procedures to ensure accountability on the part of grant recipients in use of funds. SLGCP has consolidated six separate homeland security and emergency management grant programs into the Homeland Security Grant Program, which has resulted in one simplified application package from States and territories, better coordination of program goals and resources at the State level, and consolidation of reporting requirements. States and urban areas are required to develop and submit for DHS approval homeland security strategies that address threat, vulnerability, needs, and capabilities. Allocation of grants funds must be tied to the strategic goals established to meet the threats, vulnerabilities and needs identified in the strategy.

b. What assurance should DHS provide that funds are being used properly?

ANSWER: DHS should continue to place more emphasis on results-based reporting of planned and actual grant expenditures, monitor expenditures, and make every effort to ensure that grant guidance is clear and complete, providing technical assistance as appropriate. It is my understand that SLGCP has implemented a biannual reporting process that tracks expenditures to ensure they are based on State strategy goals and objectives. I also understand that DHS is beginning to collect data that will outline the projects by solution area (such as equipment, planning, exercises and training) as well as by discipline (such as law enforcement, fire services or public works).

In addition to these programmatic and reporting systems, I understand DHS already uses a variety of formal and informal monitoring activities to ensure accountability in the management and administration of homeland security grant funding. SLGCP plans to perform at least one formal monitoring visit to all 56 states and territories each fiscal year. In addition, SLGCP has assigned Preparedness Officers who work with every state/territory on a daily basis in implementation of their homeland security strategy and grants management issues.

I further understand that SLGCP aggressively investigates reports of misallocation of funds and takes actions to rectify the issues accordingly. When areas of confusion arise, SLGCP periodically issues Information Bulletins that provide additional guidance or clarifies DHS's position on the use of grant funds. The Department routinely provides technical assistance at the

FINAL

request of grantees to aid in programmatic operations, and conduct regional financial management training to grantees

If confirmed, I would continue these activities and seek other methods to encourage effective monitoring.

159. In June 2003, a non-partisan, independent task force sponsored by the Council on Foreign Relations, chaired by former Senator Warren Rudman, issued a report entitled "Emergency Responders: Drastically Under funded, Dangerously Unprepared." That report (at page 1) stated that "the United States remains dangerously ill prepared to handle a catastrophic attack on American soil." The report found (at page 1) for example, that "on average, fire departments across the country have only enough radios to equip half the firefighters on a shift, and breathing apparatuses for only one-third. Only 10 percent of the fire departments in the United States have the personnel and equipment to respond to a building collapse." It also noted that police departments in cities across the country do not have the protective gear to safely secure a site following an attack with weapons of mass destruction." The Task Force stated (at page 2) that if current funding levels (state and federal) are maintained, America will fall approximately $98.4 billion short of meeting critical emergency responder needs over the next five years. Despite these and other findings, the Administration proposed, and Congress approved, less funding for first responders and preventers in FY 04 than FY 03. Last year, federal funding for first responders decreased for the first time since the 9/11 terrorist attacks.

a. If you are confirmed as Secretary, what will you do to close the gaps between the funding necessary to meet these and other identified needs, and the amount of funding available to fulfill them?

ANSWER: While I am not conversant with the details with the CFR report, I would note that supporting our nation's public safety and homeland security is a shared responsibility for all levels of government and for all Americans. The Administration believes the President's Budget requests have included sufficient funding to address the most critical needs of State and local first responders, recognizing that DHS and its State and local partners are still evaluating the full extent of our homeland security vulnerabilities and needs. In FY2005, DHS anticipates awarding over $3.5 billions in grants. As national priorities and capabilities are further defined through the HSPD-8 process and the development of the national preparedness goal, homeland security grant guidance will continue to prioritize spending to close critical capability gaps nationally. If confirmed, I will work to ensure that the critical funding necessary to support our Nation's first responders continues to be made available in a timely and effective manner.

b. How can we assess what is truly needed and not short-change those in the first line of defense?

ANSWER: DHS is working with State and local entities and the first responder community to

FINAL

develop a national preparedness goal that will provide target capabilities and performance metrics that will allow jurisdiction to assess their preparedness.

Additionally, as national priorities and capabilities are further defined through the national preparedness goal process, homeland security grant guidance will continue to become more targeted, ensuring that funding is expended to close critical capability gaps nationally. If confirmed, I look forward to ensuring that the Department remains committed to ensuring that critical funding necessary to support our nation's first responders continues to be made available in a timely and effective manner.

160. For FY 2005, DHS decided not to renew New Haven, Connecticut's funding under the Urban Areas Security Initiative (UASI). In addition to New Haven, five other cities that received FY 2004 UASI grants were excluded. 43 communities remained in the program. According to the FY 2005 program guidelines, UASI allocations are distributed using credible threat, presence of critical infrastructure, vulnerability, population, population density, law enforcement investigative and enforcement activity, and the existence of formal mutual aid agreements as funding factors. However, the exclusion of cities that were designated as "high threat urban areas" in FY 04 from the FY 05 program is difficult to explain and is very disturbing. The result is that communities designated as high threat areas one year are left without dedicated funding before their vulnerabilities are adequately addressed. This problem is especially acute given deep cuts proposed by the Administration in the State Homeland Security Grant Program.

a. Has the threat to these particular communities decreased while it has increased for others?

ANSWER: Answer provided below.

b. Has the Department sufficiently catalogued and prioritized critical infrastructure across the country such that it can reliably determine that protecting the critical infrastructure in the excluded cities is no longer a national concern?

ANSWER: ANSWER TO BOTH 160(a) AND 160(b): I understand that the Department used the most comprehensive and robust data available in determining the urban areas eligible for funding under the FY 2005 UASI program. To expand your description of the funding formula used to allocate the UASI funds is a combination of five variables: 1) a combined threat index derived from classified intelligence community information and reported Federal, State, and local incidents; 2) a law enforcement activity index that accounts for the number of FBI terrorism-related cases under investigation and/or arrests, along with Immigration and Custom Enforcement data for special interest alien apprehensions; 3) an index for national critical public and private sector infrastructure, weighted for vulnerability and consequence of loss; 4) an index for formal, written mutual aid cooperative agreements; and 5) an index for population and population density.

FINAL

If confirmed, I look forward to reviewing the way these funds are being allocated to see if there are ways the process can be even further improved. I recognize that the non-static nature of risk and threat may lead to changes in the funding allocation over time. I believe that all relevant data and the manner in which it is used to determine the urban areas at greatest risk should be continuously reviewed and improved so that this program most effectively and efficiently in reduces the vulnerabilities of the areas at greatest risk.

161. Smaller states often have a smaller tax base and more limited resources that more populated states. Yet, open borders and coastlines, nuclear power plants, critical food supplies, large temporary tourist populations, ports, and other significant targets are located in these communities. Without federal assistance to these areas many terrorism prevention and recovery needs will simple remain unmet. Despite these facts, some commentators have suggested that too much federal funding has gone to rural areas and urge a large shift in funding to favor large population centers alone.

a. Do you agree with those that believe too much funding has gone to small states?

ANSWER: Every State has some risk factors and minimum capabilities that will need to be addressed. As we become more sophisticated in our data collection and analysis, our funding decisions should become more refined and more targeted towards risks, vulnerabilities, and needs.

b. Are small and rural states now prepared to meet the challenges of a terrorist attack, such that DHS should focus its attention and resources on populated areas to the exclusion of smaller states?

ANSWER: Our homeland security depends upon our commitment to secure those areas that are of the highest interest to our enemies and which would result in the highest consequences if attacked. While disagreements may occur regarding distribution of the Federal investment among the various jurisdictions across the country, we all agree that our financial investments should first secure those areas most at risk of a terrorist attack. However, because terrorists can live and plan anywhere, and because critical infrastructure, homeland security efforts must encompass the nation. If I am confirmed as Secretary of Homeland Security, I will ensure that we carefully differences in risk and resource base among States.

162. On January 6, 2005, this committee announced that it would conduct an investigation of allegations of fraud and waste in the distribution of disaster aid by the Federal Emergency Management Agency. In the course of this investigation, the committee will seek and expect full access to documents, witnesses and other information related to FEMA's processes, decision-making, recommendations and actions in connection with the distribution of disaster aid, particularly with respect to the recent series of hurricanes that hit Florida and the Southern Atlantic coast.

FINAL

a. Can you assure the committee that it will receive FEMA's full cooperation in this investigation and that you will personally intervene, if necessary, to assure such cooperation?

ANSWER: If confirmed, I will make every effort to accommodate the information needs of congressional committees conducting oversight about the operations of the Department of Homeland Security. The precise contours of such accommodations would depend upon the congressional needs and executive branch interests in the particular situations and would likely include the provision of appropriate information in one form or another.

b. Can you assure the committee that it will receive full access to all documents, witnesses and other information needed to conduct its investigation and to ensure visibility into how taxpayer funds are being spent?

ANSWER: If confirmed, I will make every effort to accommodate the information needs of congressional committees conducting oversight about the operations of the Department of Homeland Security. The precise contours of such accommodations would depend upon the congressional needs and executive branch interests in the particular situations and would likely include the provision of appropriate information in one form or another.

c. What actions will you take to protect the integrity of FEMA's disaster aid program?

ANSWER: If confirmed, I would work with FEMA to ensure that it continues to be a good public steward of taxpayer dollars through proper program and financial controls, while still ensuring that the needs of all eligible disaster victims are met in the quickest possible fashion. FEMA has responded to numerous natural disasters over the last fiscal year and aided millions of victims. DHS will continue to review its policies and programs to improve the effectiveness and efficiency of response and recovery efforts.

Exercises and Communication

163. DHS has conducted two major preparedness exercises and the reporting of is working to report on the lessons and best practices learned. In the meantime, the Department is also preparing for its third coordinated, full-scale exercise this spring.

a. How useful do you feel preparedness exercises such as TOPOFF-2, the five-day, full-scale exercise and simulation of how the nation would respond in the event of a WMD attack, are in preparing the nation to respond?

ANSWER: Preparedness exercises such as TOPOFF 2, and TOPOFF 3 are extremely useful because they allow emergency resources to operate using real world scenarios and help identify issues or preparedness gaps that require attention prior to an actual event. I understand that these exercises are planned and developed over two years, increase in complexity and provide an

important opportunity for interaction between local, State and Federal response agencies that otherwise might not work together prior to real incidents. These week-long exercises test the capabilities of numerous entities throughout specific regions with national and international participants. I further understand that the lessons learned from these exercises are utilized when developing national response plans, first responder training, and designing new homeland security initiatives.

b. Do you believe DHS should fund and oversee additional exercises in different areas of the country to help identify and address weaknesses in regional response capabilities?

ANSWER: Yes. In addition to TOPOFF, DHS supports numerous other exercises to provide Federal, State, and local responders and regional organizations the ability to test their capabilities. With the ongoing expansion of the exercise programs, the Department will be able to better understand and to address the needs of responders throughout the Nation.

164. Effectively communicating risk to the public during an event is essential. What policies would you have for disseminating information to the public swiftly and what role do you envision for DHS in different scenarios?

ANSWER: The Secretary of Homeland Security has the responsibility to coordinate response to major domestic incidents. A critical component of that national effort is communications – our ability to inform our citizens accurately and promptly about homeland security issues and incidents. This is a challenge for us to meet at the Federal, State, local and private sector levels. I understand that DHS is responsible for coordinating the Federal incident communications effort to ensure that the public is fully informed during incidents of national significance. Specific procedures and communications protocols have been developed, exercised, and refined during real-world incidents. I understand these are now incorporated as doctrine within the National Response Plan and the National Incident Management System (NIMS). When activated, they rapidly unify the Federal incident communications effort and ensure synchronization of the message with State, local, tribal, and private sector incident management authorities.

In addition, the Homeland Security Advisory System (HSAS) was implemented to improve coordination and communication among all levels of government, the private sector and the American public. Since this tool was unveiled, DHS has demonstrated that the HSAS can be raised for the entire Nation or applied more surgically to certain geographic regions or industry sectors on the basis of intelligence reports at that time.

First Responders

165. Although the Department has recently created a "one-stop" shop for first responder funding in the office of State and Local Government Coordination and Preparedness (OSLGC), coordination issues within DHS remain. For example, SAFECOM and OSLGC have

FINAL

independently developed scenarios for first responders to use in assessing their capabilities to respond to specific types of events. It is not clear how first responders are expected to combine the two sets of scenarios to develop a single, cohesive assessment of their current capabilities.

What would you do to coordinate DHS' guidance for and interaction with first responders to help them identify the threats and events for which they should be prepared, assess their capabilities to prepare for and respond to those threats and events, and measure their progress in developing needed capabilities?

ANSWER: I understand there are 15 scenarios that have been developed that focus both on terrorist threats and natural hazards, including hurricanes, earthquakes, and pandemic influenza. These scenarios represent a range of key national risks, and are designed as illustrative planning. scenarios to inform and guide development of agile, flexible, and robust homeland security capabilities at all levels of government. They form a core element of the strategy for achieving a true national preparedness system, as called for in Homeland Security Presidential Directive 8, and will be used by all DHS components to assist states and local jurisdictions in assessing their capabilities to prevent, protect, deter, respond to, and recovery from specific types of events and achieving minimum baseline capability levels.

I also understand that the Department is currently conducting an inventory of all of its preparedness programs and assets so that an analysis can be completed to determine the feasibility of consolidating those programs and assets under a single entity solely dedicated to preparedness activities. If confirmed, I look forward to reviewing the results of this assessment.

166. Some state and local governments believe that they should be allowed to use funds in the Homeland Security Grant program for salaries for first responder personnel, which is one of their most critical homeland security needs. Secretary Ridge, however, testified before this Committee on May 1, 2003, that it was not the role of the federal government to pay the salaries of state and local employees. Despite opposition from the Administration, Congress passed the Staffing for Adequate Fire and Emergency Response Firefighters Act (SAFER Act), which authorizes funds for a competitive grant program for localities to hire more fire fighters. The Act was passed as part of the Fiscal Year 2004 National Defense Authorization Act. DHS has also recognized that the federal government must assume a larger share of the burden for funding first responders by allowing states and localities to use up to 25% of certain homeland security grant funds to support operational overtime costs associated with critical infrastructure protection during elevated threat levels. Do you support these initiatives in which the federal government is actively assuming a greater role in helping states and localities meet these personnel responsibilities?

ANSWER: The focus of Federal funds must be the development of sustainable capacity at the State and local levels to ensure preparedness. I understand that the Department does support efforts to supplement, but not supplant, State and local personnel needs in specific circumstances. The operational costs included in the 25% of the Urban Areas Security Initiative (UASI) and the

FINAL

Law Enforcement Terrorism Prevention Program (LETPP) are available for the payment of overtime costs related to the protection of critical infrastructure during both Code Orange and Code Red alerts and a lesser amount at code Yellow. These funds also may be used for overtime costs related to the participation in local, state, or regional information sharing entities, such as Joint Terrorism Task Forces (JTTFs). The Department encourages these information sharing initiatives, as a way of providing enhanced capacity at the state and local level to detect, deter, disrupt or prevent acts of terrorism. The I further understand, however, that there is a concern that allowing grants to be used for the hiring of additional State and local public safety personnel will divert funds from training and equipping those already on the front lines, and would leave these newly-hired personnel at risk of termination once grant funds expire.

167. The aforementioned report of the Council on Foreign Relations pointed out that the nation has yet to define national standards of preparedness – that is the essential capabilities that each jurisdiction of a particular size should have or have immediate access to in order to keep citizens safe. Without such standards, it is impossible to determine for each jurisdiction the gaps between how prepared it is and how prepared it needs to be. The Council stated that "the absence of a functioning methodology to determine national requirements for emergency preparedness constitutes a public policy crisis. Establishing national standards that define levels of preparedness is a critical first step toward determining the nature and extent of additional requirements and the human and financial resources needed to fulfill them." (page 8-9). Similarly, the 9-11 Commission pointed to the need for "benchmarks for evaluating community needs." (Commission report at page 396).

a What is your understanding of the amount of progress the Department made in developing such standards or benchmarks?

ANSWER: I understand that the Department has sought extensive input from the Federal, State, local, and tribal levels of government and the private/non-profit sectors, and intends to publish the National Preparedness Goal at the end of March 2005.

b. When would you anticipate that these standards would be completed?

ANSWER: I understand that the Department has sought extensive input from the Federal, State, local, and tribal levels of government and the private/non-profit sectors, and intends to publish the National Preparedness Goal at the end of March 2005.

c. Do you agree that these standards are necessary in order to guide funding decisions?

ANSWER: I believe these standards are essential so officials at all levels of government can make informed decisions about where to best apply finite resources, and can gauge and report progress to the public. If confirmed, I look forward to an energetic Federal, State, local, tribal and private sector

FINAL

partnership that uses outcome-oriented standards of performance that are reliable indicators, have predictive power, and provide actionable information.

Science and Technology

168. The Science and Technology Directorate is the primary research and development arm of DHS.

a. How adequate do you believe the current efforts are to coordinate ongoing and future research among different federal agencies?

ANSWER: I understand that the current efforts to coordinate research among the Federal agencies are adequate and are, in fact, working well. The S&T Directorate has been coordinating with all other relevant Federal agencies as well as other components of the Department of Homeland Security, as well as working with other Federal agencies. I understand that DHS is the coordinating lead on countermeasure research and development.

b. Do you believe there is a benefit to overlapping research efforts?

ANSWER: I understand coordinated and integrated research efforts across the entire enterprise allow the Department of Homeland Security to leverage results of the basic science conducted by organizations such as the National Science Foundation, the Department of Energy Office of Science and the Department of Commerce National Institute of Standards and Technologies. The Department also leverages investments in technologies by the Department of Defense and the Department of Health and Human Services. Multiple approaches and leveraged and coordinated efforts are critical in areas of high importance, such as nuclear and biological countermeasures. Research and development efforts in these and other areas should be coordinated to ensure a minimum of duplication.

c. What do you see as inhibitors to the transfer of technology for homeland security purposes?

ANSWER: DHS advises that technology transfer is definitely a concern. Often, technology developed for one purpose, such as a military application, cannot be transferred in a straightforward manner to civil operations. The requirements for maintenance and support, for performance, and for total cost of ownership often inhibit such transfers. Although the basic scientific principles that underpin a particular technology may be leveraged, nevertheless significant re-engineering is required to make the technology suitable for homeland security purposes.

FINAL

I understand that other issues associated with transferring technologies to the homeland security operating environment include the need for ease of operations, extremely low total cost of ownership, providing liability relief, providing incentives for non-Federal actors to purchase useful technologies, developing and promulgating standards and providing technical assistance to aid those purchasers in their procurement decisions. While DHS has made tremendous progress in all these areas, much remains to be done, and sustained effort is needed.

169. The Science and Technology Directorate within DHS was designed to be a lean, flexible organization that could draw broadly across the full scope of expertise and resources within and outside government to help solve homeland security challenges. However, there are concerns that, as it is currently operating, the Directorate is not fulfilling this vision. Specifically, the Homeland Security Act established HSARPA within the S&T Directorate to be similar in purpose, powers and organization to the Defense Advanced Research Projects Agency (DARPA) within the Department of Defense. DARPA's success has been grounded in its independent role, which has enabled it to recruit outstanding scientific and technical talent, to promote creativity and adaptability under a lean, flexible organizational structure, to use highly flexible contracting authority, and to entice collaboration from other entities by using its own relatively modest R&D investments to leverage far larger R&D and development investments by its partners, both in DOD and in the private sector, to achieve the remarkable technology advances crucial to the DOD mission.

However, DHS officials have not followed this model for HSARPA. Instead, the Science and Technology Directorate includes a large office of Programs, Planning and Budget – an office not authorized in the legislation – that controls funding decisions and which thus far has chosen to funnel a disproportionate amount of R&D funding to federal laboratories on a non-competitive basis rather than to HSARPA for competitive grant awards. The labs will perform "intramural" services, not the competitive "extramural" outreach effort to leverage other technology actors that the authorizing legislation called for, and which have been far more productive of results. While there may well be a need for research by the federal labs, such as in the radiological area, this is not the optimal balance or the one envisioned by the authorizing legislation.

a. For FY 04, what is your understanding of the final breakdown of money distributed competitively through HSARPA compared to funds given for "intramural" R&D? Do you have a view on what the propose breakdown should be for FY 05?

ANSWER: For FY 2004, I understand the S&T Directorate allocated $365 million competitively to industry, $174 million for Federal laboratories (including construction), and $160 million to the national laboratory system. For FY 2005, I look forward to working with the Under Secretary for Science and Technology to allocate funding in a manner that will most effectively meet the Department's mission to ensure the safety of the nation.

FINAL

b. Describe your views on the role of the office of Programs, Planning and Budget within the Science and Technology Directorate and on the optimal funding levels for HSARPA and for intramural entities such as the national labs.

ANSWER: It is my understanding the Office of Plans, Programs and Budgets manages and executes the PPBS cycle for the Directorate. I look forward to working with the Under Secretary for Science and Technology to ensure that the Directorate's structure and allocation of resources are conducive to fulfilling its critical missions under section 302 of the Homeland Security Act of 2002.

Office of International Affairs

170. The mandate of the Department of Homeland Security's Office of International Affairs is to manage international activities within the Department and to serve as a liaison between DHS and foreign governments, diplomatic missions, and international organizations. What are your plans to ensure that DHS is effectively forming and managing relationships with the international community? How do you envision the role of the Office of International Affairs in this Departmental effort?

ANSWER: I fully appreciate the concept that to be safe at home, the Department also needs to be engaged effectively abroad. Effective international partnerships can exponentially increase the border and transportation security for the US and our international partners. In the first two years of DHS, the U.S. and the international community have recognized that we have mutual security problems that we can solve by working together for our mutual benefit.

I look forward to working closely with the international community in the months and years ahead to build upon and expand the tremendous international cooperation the Department currently enjoys. I understand their responsibilities include the promotion of information and education exchanges with nations friendly to the United States and the sharing of best homeland security practices and technologies. If confirmed, I will encourage these efforts to become even more robust.

171. Because many countries have long histories of fighting terrorism, foreign governments, universities, businesses, and non-profits are often a valuable source of expertise on homeland security technologies and terrorism prevention, response, and crisis management. How do you envision DHS taking advantage of current and potential partnerships with the international community to better prepare our country for the terrorist threat?

ANSWER: I strongly believe in pursuing international cooperation in support of counterterrorism technology development, testing, evaluation, deployment, and operation. International cooperation allows us to expand our capacity by leveraging funding, people, and

facility resources to address a broad range of threats. Closer international collaboration also helps to ensure that countermeasures are technologically compatible and interoperable.

I expect that joint research and development activities will cover a broad spectrum including exchanges of information and experts; joint exercises, workshops, and conferences; and collaborative research and testing. I understand that there has already been significant activity in this area, this past December DHS signed an agreement with the United Kingdom to pursue joint research and development of homeland security technologies. I expect additional agreements with other countries to follow.

172. DHS is in the process of developing a system of attaches to serve in embassies around the world, with the goal of eventually establishing a cadre of DHS specialists to represent DHS abroad. What is your overall strategy in developing this attaché system?

ANSWER: I understand the Department is planning to build a cadre of DHS to engage the international community at senior levels. DHS maintains a robust presence around the world and its international concerns range from border and transportation security to refugee processing. The concept of DHS attaches seems promising, and I look forward to engaging on this issue.

Secret Service

173. Following 9/11, the Secret Service's protective responsibilities increased with additional individual protectees as well as the responsibility for a greater number of National Special Security Events (NSSEs). Further, their investigative mission has become more imperative, particularly with regard to financial infrastructure protection and the expansion of their Electronic Crime Task Force initiative. In light of this expanded workload, do you believe the Secret Service has the manpower and resources it needs to fulfill its protective and investigative missions? Will the Department be requesting additional FTEs for the agency?

ANSWER: This is my understanding as well.

Security concerns have increased tremendously since 9/11 and the Secret Service has been fulfilling its enhanced protective responsibilities with Special Agent personnel.

In terms of future growth, I understand that the Secret Service will create a new protective detail for President George W. Bush and his spouse when he leaves office at the end of his second term. The addition of a former President's protective detail is supported by both protective and investigative based agents. By proactively and addressing this requirement, the Secret Service will not negatively impact other critical mission areas.

174. Some are concerned that the Department has plans to de-emphasize the investigative mission of the Secret Service, including work they do in the areas of counterfeiting, financial

FINAL

fraud and cybercrime. Do you believe the Secret Service's investigative functions should remain intact, and that the Department should continue to support the work the agency accomplishes in this field?

ANSWER: As discussed above, the Department is keenly aware of the Secret Service's dual missions of criminal investigations and protection and has strongly supported the agency's efforts, both domestically and abroad. The dual missions of the Secret Service complement each other and are interdependent. Through its extensive field office network, the Secret Service develops and maintains the liaison with the international, State, local, and tribal partners who provide the local foundation for the protective mission. Agents gain valuable maturity and experience through their work in the field offices which provide a training ground to develop the unique skills required of the agents for both the criminal and the protective missions. Should I be confirmed, I will continue to work with the Secret Service to ensure that they have the resources, tools and authorities necessary to effectively carry out these intertwined dual missions.

175. Many in Congress have expressed support for the Secret Service Electronic Crime Task Force initiative. What is the Department doing specifically to support this initiative and ensure the Secret Service has the resources it needs to continue this important work?

ANSWER: As background, the USA PATRIOT Act of 2001 directed the Secret Service to develop a nationwide network of Electronic Crimes Task Forces (ECTF), based upon the Secret Service's highly successful New York ECTF model. The ECTF's incorporate elements of the private sector, academia, Federal and state prosecutors, and law enforcement in the prevention, detection, mitigation and aggressive investigation of attacks on our Nation's financial and critical infrastructures. I understand the Service has established 15 ECTFs nationwide.

In addition to the ECTF model, I understand that the Secret Service has established several other initiatives in the effort of preventing and investigating cyber-based crimes. One of the initiatives is the development of a cyber training program for State and local law enforcement in an effort to increase law enforcement capabilities in dealing with electronic crime cases. These efforts complement the Department's continuing goal of enhancing State and local partnerships.

176. Please describe your understanding of the mission of the Secret Service as it relates to National Special Security Events. Were the four NSSE events in 2004 deemed successes from a security perspective? Do you see a way to "export" the lessons and procedures learned from NSSE's to other homeland security programs and projects?

ANSWER: In Calendar Year 2004, the Secret Service developed, coordinated and implemented the operational security plan for the following five National Special Security Events:

- State of the Union Address (January 20, 2004)
- G-8 Economic Summit (June 6-8, 2004)
- State Funeral for President Reagan (June 7-11, 2004)

FINAL

Democratic National Convention (July 26-29, 2004)
Republican National Convention (August 30-September 2, 2004)

In 2005, to date, the following two events have been designated as NSSEs:
2005 Presidential Inauguration (January 20, 2005)
State of the Union Address (February 2, 2005)

From a security perspective all of the events to date were successful. The Secret Service's ongoing partnerships with Federal, State, and Local public safety and law enforcement officials were exemplified this past summer when the Secret Service was tasked with addressing the operational security plans for two major, concurrent multi-venue NSSEs (the G-8 Summit and President Reagan's funeral ceremonies on both the East and West coasts) while also involved in the 2004 Presidential campaign. This called for creative use of all available resources – in terms of both personnel and equipment. This also highlights the importance of the Secret Service's field office network that maintains these ongoing critical relationships with our Federal, State and local partners.

Federal Identification Standards

177. Section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) calls for a negotiated rulemaking process to establish federal minimum standards for drivers licenses. The Secretary of Transportation is in the process of appointing a rulemaking committee of interested parties, which must submit its recommendation to the Secretary of Transportation within nine months. Under the new law, the DOT is to consult with DHS in the formulation of these federal standards, and DHS will have a representative on the rulemaking committee.

a. What priorities should guide the federal government in developing the standards? What is your view of the role that DHS should play in this process?

ANSWER: DHS should participate fully in this activity, supporting DOT in its development process and providing the homeland security perspective. I understand that a DHS-DOT working group has already met and will continue to work aggressively on this important matter.

b. Should DHS be seeking primarily to ensure that the final rule results in the most secure and reliable drivers licenses and identification cards possible? Or should DHS be seeking to advocate for goals other than security and reliability?

ANSWER: DHS will advocate for secure and reliable licenses. However, DHS recognizes that Congress gave DOT the lead on this issue and required DOT to conduct a negotiated rulemaking to develop the standards.

c. Do you believe that requiring applicants in all states to supply social security numbers (or

FINAL

proof from the Social Security Administration that they are not eligible for a social security number) would increase the security and reliability of drivers' licenses and identification cards? Why or why not?

ANSWER: I do not have a firm position yet on the desirability of using social security numbers during the issuance process. I will need to learn more from the Social Security Administration about their databases in order to address this question more fully.

d. Currently, some states allow illegal aliens to obtain drivers licenses. IRTPA specifically prohibits the minimum standards from infringing on a State's power to set criteria concerning what categories of individuals are eligible to obtain a drivers license. Some are advocating for passage of a federal law that would prohibit illegal aliens from obtaining a drivers license in any state. Do you believe the federal government ought to dictate to the states whether and under what circumstances they may issue drivers licenses to undocumented aliens? Please describe what you see as the proper federal role in this question. Should the federal government encourage issuing licenses and identification cards to undocumented aliens, should it discourage doing so, or should it remain neutral? Why?

ANSWER: States have traditionally issued driver's licenses and identification cards to their residents. Today, driver's licenses not only serve to certify that a person understands the rules of the road and is eligible to drive, but are also widely used as a form of identification. While States are best situated to govern the public safety aspects of licenses, the federal government has a legitimate interest in improving the security and reliability of documents that are used to establish and verify an individual's identity. The related matter regarding issuance of driver's licenses to undocumented aliens is particularly challenging. I understand that there are significant issues on both sides of the debate, though I have not yet had the opportunity to fully consider and hear the issues involved. Should I be confirmed, I look forward to engaging in the conversation.

178. Section 7220 of the IRTPA requires the DHS Secretary to submit proposed minimum standards within six months for identification documents required of domestic commercial airline passengers. Congress must then approve the standards or a set of default minimum standards will go into effect. Those default minimum standards would require that passengers have (1) a valid, unexpired passport, (2) a domestically issued document that the DHS Secretary designates as reliable for identification purposes, (3) any document issued under the authority of the immigration laws, or (4) a foreign document issued by the country of nationality of any alien not required possess a passport for admission to the U.S. and designated as reliable for identification purposes by the DHS Secretary.

a. What factors do you believe DHS should consider in promulgating identification standards for airline passengers and drivers licenses?

ANSWER: The primary purpose of setting minimum identification standards for airline

FINAL

passengers is to ensure the safety and security of the air environment, especially commercial airline travel. Guidance provided by the statute's default standards will assist DHS in proposing minimum standards for airline passenger identification. Such standards should seek to improve the document issuance process by enhancing the reliability of verification of "breeder" documents (i.e., birth certificate, or other documents used to validate the identity of an individual), thus improving security.

b. In what ways do you think the DHS-proposed standards should differ from the default minimum standards in the statute?

ANSWER: As noted above, one area where the DHS standards should differ from the default minimum standards is how the potential DHS standards address the ability of minors to board commercial aircraft.

c. Do you believe that the minimum standards for identification documents required of airline passengers should be any different than federal minimum standards for drivers licenses and identification cards? If so, why and in what way should the standards be different?

ANSWER: While there may be a substantial overlap between the standards used for identification required of airline passengers and the standards used to issue driver's licenses and identification cards, the standards need not be identical since they serve different purposes. The primary purpose of setting minimum identification standards for airline passengers is to ensure the safety and security of the air environment, and especially commercial airline travel. This should no doubt inform, but not mandate the processes by which States issue and verify identification.

d. Should DHS attempt to ensure that the federal minimum standards for drivers licenses will be sufficient to serve as identification for domestic airline passengers? Should the two sets of standards be integrated? If so, how do you plan to do so?

ANSWER: I understand that section 7220 of IRTPA requires the Secretary of Homeland Security, by June 17, 2005, to propose to Congress minimum ID standards for domestic commercial airline passengers boarding an aircraft. If confirmed I look forward to examining this issue in depth in developing the proposal. I also look forward to working with the Secretary of Transportation to implement section 7212 of IRTPA, which requires the issuance of regulations that set forth minimum standards for driver's licenses or personal ID cards issued by a State for use by Federal agencies, and determining the extent to which the requirements in section 7212 and 7220 should be coordinated.

Civil Liberties

179. The nature of the mission of the Department of Homeland Security makes safeguards especially important. The Department is now our country's biggest law enforcement agency. It

FINAL

has more Federal officers with arrest and firearm authority than the Department of Justice. In addition, DHS law enforcement personnel have contact with thousands of people every day. In this post 9/11 world, DHS law enforcement personnel must be especially sensitive to maintaining civil liberties as they work to strengthen security and detect and deter terrorist attacks. To that end, when Congress created the Department of Homeland Security, it also established an Officer for Civil Rights and Civil Liberties as well as a Privacy Officer within DHS to provide input as policies and programs are developed and implemented that may have potential impacts on the privacy and civil liberties of individuals.

To further strengthen protections of civil liberties, last Congress, Senators Collins and Wyden introduced S. 2536, the Homeland Security Civil Rights and Civil Liberties Protection Act of 2004. The bill became law as part of the Intelligence Reform and Terrorism Prevention Act of 2004. That Act amends the mission of DHS to ensure that actions taken by DHS to protect the homeland do not diminish civil liberties and civil rights. The Act also codified into law many of the responsibilities that were assigned to the Officer for Civil Rights and Civil Liberties, including assisting in the development of departmental policies to ensure that civil liberties are given due consideration; overseeing compliance with constitutional and other requirements relating to the rights and liberties of individuals affected by the Department's programs; coordinating with the Privacy Officer to ensure that overlapping privacy and civil rights concerns are addressed in a comprehensive way; and investigating alleged abuses of civil rights and civil liberties. The Act also clarifies that the Officer is appointed by the President and reports directly to the Secretary. Finally, the Act requires the Inspector General to designate a senior official within his office to focus on civil rights and civil liberties issues.

a. If confirmed, what steps will you take to implement this Act?

ANSWER: I believe that it is critical that the Department of Homeland Security continue its commitment to protecting civil liberties and privacy while aggressively seeking ways to enhance America's security. We cannot sacrifice liberty for security; rather, we must search for innovative ways to enhance security and liberty at the same time. The Department also must continue to prohibit the practice of racial profiling, which is unacceptable as a law enforcement tool, and carry out our law enforcement activities as mandated in the Department of Justice's *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies.*

The Department will fully implement the Homeland Security Civil Rights and Civil Liberties Protection Act of 2004 ("the Act"). If confirmed, I will ask for an implementation plan from each of the three offices impacted by the law – the Office for Civil Rights and Civil Liberties, the Office of the Chief Privacy Officer, and the Office of the Inspector General. I will also consult with the Privacy Office and the Office for Civil Rights and Civil Liberties to ensure that, in areas where they may have overlapping jurisdiction, they have the appropriate protocols in place to ensure the coordination necessary to take comprehensive action. The Act seeks to strengthen the roles these offices play within the Department so that senior officials fully consider civil rights,

FINAL

civil liberties and privacy issues as the Department formulates policy and carries out its law enforcement and intelligence activities.

b. What role do you see the Department's Officer for Civil Rights and Civil Liberties playing in the development and implementation of Department policy under your leadership?

ANSWER: Preserving the civil rights and civil liberties of the American people is essential as we combat terrorism. Section 8303(4) of the Intelligence Reform and Terrorism Prevention Act of 2004 codified the Officer's important role in providing legal and policy advice to the senior leadership of the Department. I understand that the Officer is preparing an implementation plan that is responsive to these statutory changes and constructive for the Department, and if confirmed I look forward to working with the Officer on this plan. The Officer should have a prominent role in policy development and implementation.

c. How will you, as Secretary, seek to achieve the necessary balance between preserving our security and preserving our liberties? How will you ensure privacy, civil rights, and civil liberties issues are considered and addressed as DHS policies and programs are developed and implemented?

ANSWER: The Department of Homeland Security is unique in the process it has used to address issues relating to civil rights, civil liberties and privacy. From its inception the Department has had a Privacy Officer and an Officer for Civil Rights and Civil Liberties who report directly to the Secretary. The Intelligence Reform and Terrorism Prevention Act will strengthen the mandate of both of these important officers. Both of these officials have broad access to the senior leadership of the Department and have made important contributions to the policies and procedures of the Department. I will ensure that they continue to play key roles in shaping policy within the Department. Moreover, I will emphasize that the job of protecting civil liberties is not the sole responsibility of these two officials and their offices; instead, it is the responsibility of all of the officials and employees of the Department to protect America while preserving our freedoms.

d. Under what circumstances do you believe it appropriate to curtail the civil liberties of Americans or other individuals on US soil or under US control?

ANSWER: I understand that the Department's mission statement is "Preserving our freedoms, protecting America … we secure our homeland." Preserving our freedoms is the first goal, so when the Department acts it should do so always with this in mind. Our Constitution guarantees many civil liberties that we have long cherished. It is never appropriate to curtail those civil liberties protected by our Constitution or federal statutes. In extreme cases where there is imminent threat to life, liberty, or property, emergency action may need to be taken that could, temporarily, impact in a practical matter the full exercise of some particular freedoms.

FINAL

e. What steps has DHS taken to ensure that our privacy and fundamental liberties are protected as the Department carries out its mission of securing the American homeland?

ANSWER: The Department has made great progress in standing up two effective offices to protect fundamental liberties and privacy: the Office for Civil Rights and Civil Liberties, and the Privacy Office. The Department has been well served by establishing offices that advise senior leaders as they shape policy, seeking to prevent problems from occurring so that there are fewer problems to investigate.

f. In what areas do you believe DHS needs to take additional steps in order to ensure the protection of privacy and fundamental liberties? What specific actions would you recommend as head of the Department?

ANSWER: The Department should be vigilant in looking for ways to ensure that fundamental liberties and privacy are protected. As discussed above, I understand that the Officer for Civil Rights and Civil Liberties is preparing a constructive implementation plan that seeks to be responsive to the statutory changes contained in the Intelligence Reform and Terrorism Prevention Act. If confirmed, I look forward to working with him on this and will take any other necessary steps to ensure the protection of privacy and fundamental liberties, as those situations arise. The DHS Privacy Office oversees the implementation of the E-Government Act for the Department and ensures that privacy considerations are considered throughout the life cycle of any DHS programs. I would expect the important work of both the Office for Civil Rights and Civil Liberties and the Privacy Office to continue under my supervision to ensure that the protection of civil liberties and privacy is given the highest priority at DHS.

180. The Intelligence Reform and Terrorism Prevention Act of 2004 created a Privacy and Civil Liberties Oversight Board within the Executive Office of the President. Following the 9/11 Commission's recommendations, this Act creates, for the first time, a Board that can look across the federal government and ensure that liberty concerns are appropriately considered in the policies and practices of the executive branch. The purpose of the Board is to ensure that privacy and civil liberties concerns are appropriately considered in the implementation of all laws, regulations, and policies that are related to efforts to protect the Nation against terrorism. The Board is empowered to carry out its mission in two equally important ways. First, the Board is to advise policy makers, including departments, at the front end, to ensure that when executive branch officials are proposing, making or implementing policy, they appropriately consider and protect privacy and civil liberties. Second, the Board is to conduct oversight, by investigating and reviewing government actions at the back end, reviewing the implementation of particular government policies to see whether the government is acting with appropriate respect for privacy and civil liberties and adhering to applicable rules.

a. As Secretary, how would you view the role of the Board in DHS' development of policies and practices?

FINAL

ANSWER: The Privacy and Civil Liberties Board that is authorized by the Intelligence Reform and Terrorism Prevention Act will review regulations and programs of Federal agencies that are concerned with combating terrorism and provide advice to the President and Executive Department heads to ensure that privacy and civil liberties are appropriately considered in the development of any such regulations and programs. Because DHS is the first agency to have statutorily required Privacy and Civil Rights and Civil Liberties Officers, whose roles are precisely to ensure that privacy concerns and civil liberties are addressed in the course of developing DHS programs and policies, I envision that the Board may look to DHS as a model for implementing its own mandate. I anticipate that the Board will work cooperatively with DHS and, particularly, with our statutory officers who have specifically assigned duties in these important areas.

b. Are you committed to working with the Privacy and Civil Liberties Oversight Board as the Department develops and implements its policies? What measures will you take to ensure that the Department and its employees regularly consult with the Privacy and Civil Liberties Oversight Board in the development and implementation of Department policies related to efforts to secure the American homeland?

ANSWER: If confirmed, I will work actively with the Privacy and Civil Liberties Oversight Board (in addition to the President's Board on Safeguarding Americans' Civil Liberties, which was created by Executive Order on August 27, 2004) as provided in IRTPA in order to assist it in fulfilling its statutory missions. I would expect that the Department's Officer for Civil Rights and Civil Liberties and the Office he supervises, along with the Department's Privacy Officer, who also sit on the President's Board, will have ongoing interaction with the Privacy and Civil Liberties Oversight Board. By statute, both the Officer for Civil Rights and Civil Liberties and the Privacy Officer would report directly to me if I am confirmed, and that will allow me to make sure that the appropriate level of interaction takes place between the Department and the Oversight Board.

c. Are there specific issues with regard to which you intend to seek the views of the Privacy and Civil Liberties Oversight Board?

ANSWER: If confirmed, I look forward to determining the areas in which the Department should confer with the new Board.

d. How do you envision the roles the DHS Officer for Civil Rights and Civil Liberties, the DHS Privacy Officer with respect to the role of the Board to ensure effective and efficient input is provided to DHS regarding privacy and civil liberties issues? How do you expect the Department's Officer for Civil Rights and Civil Liberties and the Department's Privacy Officer to coordinate their efforts with those of the new Privacy and Civil Liberties Oversight Board?

FINAL

ANSWER: As my previous answers indicate, I would expect that the DHS Privacy Officer and Officer for Civil Rights and Civil Liberties will work collaboratively with the Board to ensure that privacy and civil liberties issues are addressed. Because of the work that these two officers have already accomplished, consistent with the Department's commitment on these important matters, the Board may find that our programs represent appropriate models for addressing privacy and civil liberties in a systematic and systemic fashion so that efforts to heighten the security of all Americans are only implemented after careful attention has been paid to the preservation of our basic freedoms.

e. What is your understanding of the actions has DHS taken to ensure the protection of privacy and civil liberties in its current information sharing efforts? What actions do you believe DHS should take to incorporate the protection of privacy and civil liberties as it undertakes new information sharing efforts?

ANSWER: I understand that the Department's Office for Civil Rights and Civil Liberties and Privacy Office are actively involved in the decision making processes on information sharing. If confirmed, I will continue to ensure that the protection of privacy and civil liberties is incorporated into any new information sharing efforts. And, as mentioned above, I will ensure that the Department confers to appropriate extent with the Privacy and Civil Liberties Oversight Board in its review of the implementation of information sharing guidelines pursuant to the Intelligence Reform and Terrorism Prevention Act of 2004.

181. On May 30, 2002, Attorney General John Ashcroft announced revisions to the Attorney General's Guidelines for FBI investigations. One revision that drew particular attention was Part IV, Subpart A.2, entitled "Visiting Public Places and Events," which provides: "For the purpose of detecting or preventing terrorist activities, the FBI is authorized to visit any place and attend any event that is open to the public, on the same terms and conditions as members of the public generally. No information obtained from such visits shall be retained unless it relates to potential criminal or terrorist activity." As Assistant Attorney General, what role did you have in revising the Attorney General's Guidelines generally, and specifically with respect to this particular provision? Does this provision authorize FBI agents to monitor religious activities at any public place of worship, such as at mosques, synagogues, and churches?

ANSWER: In the aftermath of the 9/11 attacks the Attorney General revised several sets of Attorney General Guidelines to reflect the Justice Department's shift to a preventive, rather than a reactive, approach to terrorism. In May 2002, during my tenure, the Attorney General reissued the guidelines governing the FBI's criminal investigations. I would note that I did not play a significant role in the development of the Attorney General Guidelines, although members of my staff played some part in reviewing these guidelines.

Part of the shift to a preventive focus is a provision in those guidelines allowing the FBI

to visit any public place, on the same terms on which the public could visit, of the purpose of preventing terrorism. With respect to the Internet, the FBI can access websites on the same conditions as the public, again for the purpose of detecting or preventing terrorism or other criminal activities. The old version of the guidelines allowed agents to visit public places or search public information only if the FBI already had a lead or some evidence of a particular crime.

In addition to shifting to a preventive focus, the guidelines for criminal investigations allowed more initiative to be taken at the FBI field office level, promoted inter-component cooperation and information sharing, promoted proactive information collection to identify terrorist threats and activities, and strengthened the Preliminary Inquiry stage of investigations.

The "public place" provision of the guidelines has been criticized because it allows FBI agents to attend all public places, including places of worship. However, the provision contains several safeguards for civil liberties: it applies only for the purposes of detecting or preventing terrorist activities; it allows visits only of places any member of the public could enter and only on the terms available to the public; and it prohibits retaining information obtained from such visits unless it relates to potential criminal or terrorist activity. In addition, the guidelines prohibit maintaining files on individuals solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights.

182. If you are confirmed as DHS Secretary, how will you assure Americans that their First Amendment right to worship freely will not be infringed in the effort to protect them from future terrorist attacks against the homeland? Do you believe that the Attorney General's May 2002 Revisions to the Attorney General's guidelines for FBI investigations could have any effect of chilling that right?

ANSWER: If confirmed as DHS Secretary, I will send a clear message to those within the Department that the exercise of our authorities must be undertaken with respect for the right to worship freely, and with care to avoid acts that might chill the exercise of religious freedom. While I have no knowledge how the revised Attorney General guidelines have actually applied in practice, I am confident that the FBI leadership is sensitive to the need to avoid chilling the right to worship.

183. After leaving the Justice Department, you expressed the opinion that the time may have come for a more considered review of some of the Administrations post-9/11 policies in the war on terror, such as the detention of enemy combatants. For instance, in a speech given on October 10, 2003, you suggested that "[w]e need to debate a long term and sustainable architecture for the process of determining when, why and for how long someone may be detained as an enemy combatant, and what judicial review should be available." As DHS Secretary, under what

FINAL

circumstances would you advocate for the President to designate an individual as an enemy combatant? If your answer is different for US citizens and non-citizens or for those apprehended on US soil and those apprehended elsewhere, please explain. What legal and policy limits do you think should apply to such designations?

ANSWER: I do not know that the Secretary of DHS has a role in the process by means of which the President designates enemy combatants, especially combatants captured overseas during the course of military operations. If asked, of course I would provide the President or others with advice. My speech was designed not to furnish answers to these complicated legal questions, but precisely the opposite: to invite discussion. Of course, there are different considerations depending on where a combatant is captured and whether or not that combatant is an American citizen.

184. In that same speech, you also stated that "the government's actions after September 11 reflected a consciousness of history and of the historical moment. Excesses of the past were not repeated. A balance was sought and hopefully achieved. That balance was struck in the midst of the first flush of the emergency. If history shows anything, it shows that we must be prepared to reconsider and if necessary recalibrate that balance. We should get about doing so, in the light of the experience of our forebearers and the experience of our own time."

a. What specific post-9/11 government policies or actions do you believe should now be reconsidered, and why?

ANSWER: As I have indicated in previous answers, I believe lessons learned from our experience in responding to the attacks of 9/11 can improve our response to attacks, if any occur, in the future. Similarly, the recent Supreme Court decisions relating to combatants have, as I understand it, spurred revisions to government policies regarding status review of detainees. My general approach in this area, as in others, is that government should be open to the lessons of experience and to constructive criticism in its ongoing efforts to refine and approve policies.

b. If confirmed as DHS Secretary, what would you do to move forward the process of making any changes you deem appropriate?

ANSWER: If confirmed as DHS Secretary, I would address the question of reconsideration of policies by reviewing our experiences; soliciting and considering the views of knowledgeable individuals both inside and outside government; and suggesting or implementing any recalibration that seems appropriate.

FINAL

185. What lessons about the misuse of racial profiling can you draw from your experience as Special Counsel to the New Jersey Senate Judiciary Committee that would be applicable to your responsibilities as DHS Secretary? Under what circumstances do you believe it is both lawful and appropriate to target particular communities or individuals for heightened scrutiny based entirely or partly based on race, ethnicity, or religion for law enforcement or intelligence-gathering purposes? How will you ensure that all DHS employees apply consistent standards regarding the use of racial profiling?

ANSWER: In 2000, I was asked by the New Jersey Senate Judiciary Committee to be its Special Counsel in the investigation of allegations of racial profiling by the New Jersey State Police. Under my counsel the Committee held nine hearings into the allegations and concluded that the former state attorney general had misled the Committee and had attempted to cover-up the extent of racial profiling from the U.S. Department of Justice. The lesson I have drawn from that experience is this: I strongly oppose the practice of racial profiling; it is wrong and it should be ended. Not only is the practice invidious, it is ineffective in that profiling is a very poor proxy for performing real investigative and intelligence work.

The President has made ending racial profiling a priority. Indeed, this Administration is the first ever to ban racial profiling in any law enforcement capacity. In June 2003, at the President's direction, the Civil Rights Division of the Justice Department issued guidance to the entire Executive branch that prohibits racial profiling by federal officers engaged in traditional law enforcement activities. This is a substantial accomplishment. Now, when a federal officer is engaging in any enforcement activity, that officer may not make law enforcement decisions simply on the basis of race. These restrictions apply even in terrorism and national security investigations. And if confirmed as Secretary of the Department of Homeland Security, I will make certain that the federal officers under my command use only legal means in their investigations.

186. In a Wall Street Journal article on June 17, 2004 entitled "Why is this ball in our court? -- There's no national consensus on how to handle alleged terrorists" you wrote about the dilemma that you state still exists in our legal system of how to deal with terrorists in the United States when we discover through intelligence that they are terrorists and they are here. You describe the legal climate as" foggy" and "murky" and you assess that such a climate hamstrings both our legal and our enforcement efforts against terrorism. You point to the need for a national debate regarding the trade-offs between national security and individual liberty. You have now served in all three branches of government. What are your recommendations for creating a legal framework that spells out what our government can do when it discovers through intelligence that a terrorist is in our country? What would be the key elements of such a legal framework? If confirmed, will you endeavor to have DHS play a role in proposing and implementing such a legal framework?

ANSWER: The article was written in a period before the Supreme Court decided a trilogy of

decisions regarding enemy combatants. The decisions have partially filled in the legal landscape in this area of the law. I believe that working from the general principles of the Supreme Court's decisions, we should work together to find what kind of process would satisfy the Court's requirements and also preserve the country's need to enhance our national security. Although the responsibility for addressing these legal issues lies with the Department of Justice, if asked, I would be happy to assist the President and Attorney General in addressing these issues.

187. There has been considerable public debate about a national ID card. What are your views on the value of a national ID card for national security purposes?

ANSWER: I agree with the position of the Administration, and do not support establishment of a national ID card. In fact, the Homeland Security Act contained a provision regarding this important issue. While we seek to refine and enhance the mechanisms in place to both securely identify individuals and verify their identity, we must continue to be respectful of this position.

Securing the Nation's Capital

188. The Homeland Security Act of 2002 created the Office of National Capital Region Coordination (ONCR), intended to address the unique security and planning needs of the Nation's Capital. With the large presence of Federal facilities and employees, coordination efforts in this area are uniquely difficult. For example, the Federal government leases 55 million square feet of space and owns 155 million square feet of space in the District, and this does not include the large amount of open space and park land under Federal jurisdiction. The Federal government is the largest employer in the Region, with 370,000 federal workers. The Federal presence is a large contributor to the 18 million tourists that visit annually. To protect all of these interests, there are over 30 Federal law enforcement entities that operate in the District, including the Park Service, the Federal Protective Service, and the Secret Service, many of whom have responsibility for securing buildings, parks, and other government property and installations. With this unique situation, Congress established the ONCR with the primary intent of ensuring there is coordination not only among the local jurisdictions (MD, DC, VA) but also among the Federal agencies in D.C.

The lack of such coordination could be disastrous. While the District has issued emergency response and evacuation plans, without a coordinated plan with the Federal stakeholders, the effectiveness of the District's plans may be questionable. For example, it is unclear whether and if the authority of various Federal law enforcement entities to close city streets will impact the District's evacuation plans should there be a terrorist attack. It is also unclear whether or not there is a sufficient communications mechanism to alert local jurisdictions to any sudden evacuation of Federal employees. There is very little clarity as to who will have responsibility for responding to a terrorist attack, in general. The District assumes it will have primary responsibility and would be lead agency in coordinating the response. But there may be certain

FINAL

situations in which a terrorist attack impacts both local and Federal properties, a highly likely scenario in the District where jurisdictional boundaries are so close.

a. What role has the ONCR played in coordinating other Federal law enforcement and agencies operating in ths Region?

ANSWER: I understand the Office of National Capital Region Coordination (NCRC) actively coordinates with Federal law enforcement and agencies in the National Capital Region (NCR). The NCRC chairs the Joint Federal Committee (JFC), a Federal interagency coordination body comprised of representatives from most executive branch agencies (including the Federal law enforcement agencies noted in the question) as well as representatives from the Federal legislative and judicial branches. The JFC provides a forum in which Federal homeland security issues can be addressed across the whole Federal government.

I further understand that the NCRC also participates in, and often leads, ad-hoc coordination efforts with Federal law enforcement agencies focused on particular issues. As a recent example, the NCRC was instrumental in bringing Federal executive, legislative and judicial representatives together with local government and law enforcement officials to coordinate appropriate protective measures during the recent national elections.

b. Is there a coordinated Federal emergency response and evacuation plan for the Region? If not, why not?

ANSWER: As you have noted, the NCR is unique with respect to the number of jurisdictions (Federal, State and local) that must coexist. As such, the key to the safety and security of the people who live in and work in the region is not any single jurisdiction's emergency response or evacuation plan. The key is the seamless coordination of the plans that exist for each of the jurisdictions. If confirmed, I will work to ensure that this coordination preserves the roles, responsibilities and authorities of the many jurisdictions in the NCR while allowing them to operate together toward a common purpose, for instance, emergency response or emergency transportation.

In order to accomplish the seamless coordination among jurisdictional plans a Regional Emergency Coordination Plan (RECP) was developed through the Metropolitan Washington Council of Governments (COG). The RECP provides a vehicle for collaboration in planning, communication, information sharing, and coordination activities before, during, or after a regional emergency for local governments, the State of Maryland, the Commonwealth of Virginia, the Federal government, the public agencies, the private sector and volunteer organizations, and local schools and universities.

In the event of an emergency resulting from terrorism or natural causes it is likely many plans will be executed. For instance, the Office of Personnel Management would execute its plan for

FINAL

providing guidance to the Federal workforce; if necessary the D.C. government would execute its emergency transportation plan; the Washington Metropolitan Area Transit Authority (WMATA) would execute their plans to support the D.C. emergency transportation plan and I understand that all of the decisions and coordination would be accomplished through the RECP.

c. What steps has DHS taken to ensure key Federal stakeholders in the Region are coordinating with local jurisdictions on security planning and emergency response? Is there a process in place that ensures continued coordination for updating Federal and local plans?

ANSWER: As mentioned in the answer to question a, NCRC chairs the Joint Federal Committee (JFC) to ensure that key Federal stakeholders in the Region are coordinating with local jurisdictions on security planning and emergency response. These regular monthly meetings allow for the continued coordination of security and response planning. Additionally, workgroups within the JFC have been established to focus on key security planning areas such as the coordination of protective measures and street closures between Federal and local jurisdictions.

In addition to the regular meetings, NCRC has worked with the other Federal, State, local, private sector, university and non-profit stakeholders on a number of senior leader seminars and command post exercises to further identify areas that require updating and/or additional coordination. As I understand it, through future exercises and the many regular events (i.e. Fourth of July Celebration, State of the Union Address, and IMF/World Bank meetings), the continued efforts to update and better coordinate Federal, State and local plans are ensured as a matter of course.

d. What additional tools, if any, does DHS need to improve coordination and readiness in the Region?

ANSWER: Continued commitment to joint planning and coordination are vital to the improvement of coordination and readiness in the Region. I understand that in August 2002, the Chief Executives of Maryland, Virginia, District of Columbia and Federal Executive Branch firmly committed to working together to make the National Capital Region better, safer and stronger.

e. What communication systems, if any, have been put into place to ensure Regional jurisdictions are alerted to Federal responses to an attack that may impact District plans?

ANSWER: I understand that the NCR is fortunate to have many communication systems that ensure Regional jurisdictions are alerted to Federal responses. A multi-layer, redundant capability to communicate is essential given the broad spectrum of threats both natural and man-made. The systems in place include the Homeland Security Operations Center (HSOC), the Homeland Security Information Network (HSIN), the Washington Area Warning and Alert

FINAL

System (WAWAS); and the Regional Information Coordination and Communication System (RICCS). All of these systems provide an independent means of communicating with Regional jurisdiction in times of an emergency. The HSOC provides the ability to communicate directly to State and local emergency operations centers, in fact, several NCR jurisdictions have contributed personnel to populate an NCR pod in the HSOC specifically to communicate and coordinate operational information and activities with State and local jurisdictions. NCR State and local emergency operation centers are also connected through the HSIN so that information can be shared electronically during and event. WAWAS provides warning and alert capabilities via dedicated phone lines to Federal, State and local jurisdictions in the Region. The RICCS system provides the capability to send text information to regional officials very quickly through wireless devices.

189. The Interagency Security Committee (ISC) was established by Executive Order in 1995, which was amended in 2003 to make the Secretary of Homeland Security chair of the ISC. Duties of the ISC include, among other things, developing and evaluating security standards for Federal facilities, developing a strategy for ensuring compliance with such standards, and overseeing the implementation of appropriate security measures in Federal facilities. The ISC includes 18 agencies and departments including GSA, OMB, VA, DOE, DoD, and Interior.

In October of 2002, the National Capital Planning Commission (NCPC), the Federal planning agency in the National Capital Region, issued the *National Capital Urban Design and Security Plan*. The Plan was in response to the heightened physical security requirements for Federal property and buildings in the Region and included collaboration with Interior, GSA, the Secret Service and other key Federal stakeholders. The Plan attempts to balance legitimate security needs with the preservation of the District's historic urban design and character and the vitality of a local city. One outgrowth of this Plan has been the renovation of Pennsylvania Avenue in front of the White House. As more Federal agencies increasingly are seeking NCPC approval for new physical security features to their buildings and facilities in the Region, it becomes even more crucial to ensure that key agencies in the District include such design and planning issues in front-end of their security planning process.

a. How has DHS or the ISC coordinated with the NCPC on ensuring that agencies are appropriately incorporating such design and planning issues in their security plans? What role do you envision for DHS or the ISC in coordinating with the NCPC on such issues?

ANSWER: As stated in the opening of the question, the ISC is responsible for developing and evaluating national security standards for Federal facilities, developing a strategy for ensuring compliance with such standards, and overseeing the implementation of appropriate security measures in Federal facilities nationwide. I understand that the ISC would work with a variety of local commissions and organizations, such as the NCPC, responsible for urban design and preservation issues.

FINAL

b. In developing physical security standards for Federal facilities, particularly in the National Capital Region, has the ISC incorporated urban design considerations?

ANSWER: Through the involvement of the many agencies which participate in the ISC and which manage large Federal real estate portfolios that span the nation, urban design, preservation and planning have been major considerations with respect to the policy and guidelines developed and issued by the ISC to date. This relationship will continue into the future.

Environmental Impacts

190. 42 U.S.C.§ 4332 requires Federal agencies to develop an environmental impact statement (EIS) regarding major Federal actions significantly affecting the quality of the human environment. It also requires that such documents be made available to the public. In a recent incident, involving the border infrastructure system south of San Diego, an EIS for a project with controversial environmental impacts was not available for public review in DHS offices and was obtained by the Congressional Research Service only after some considerable difficulty. In fact, the requester was advised that the document could be obtained through a private contractor at a cost estimated to be $1,000. If you are confirmed, what steps will you take to ensure that such documents are readily available to Congress and the public? What steps will you take to ensure that members of the public can review an EIS without being required to expend $1,000?

ANSWER: First, let me state plainly: I am told that it is DHS policy to cooperate with Congressional requests for information and testimony, and I fully support and will continue that policy. While I am not familiar with this matter in particular, if confirmed I would be happy to look into this situation, address it, and advise the Committee as appropriate.

191. Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA) establish the circumstances under which a formal environmental evaluation is not required for a Federal activity. These categorical exclusions are "a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations." 40 CFR 1508.4. Because categorical exclusions eliminate public disclosure and participation in the NEPA process, federal agencies are to use categorical exclusions in a narrow set of circumstances.

The creation of DHS involved consolidating many separate agencies into one agency responsible for a large array of activities and operations. These separate agencies previously had promulgated agency specific NEPA regulations, including categorical exclusions. Now DHS is promulgating its own NEPA regulations. Categorical exclusions which were once appropriate for a single agency may not be appropriate for all of DHS's components because of DHS's

FINAL

responsibilities for such a wide range of activities and operations.

a. If you are confirmed, what measures will you take to ensure that the categorical exclusions adopted by DHS are appropriate?

ANSWER: I am not yet fully familiar with all the protocols that apply to the components of DHS and compliance with specific regulatory matters. But I can say this: should I be confirmed, I will ensure that DHS continues to work on its compliance efforts.

b. When considering what activities are appropriate for categorical exclusions will you apply the criteria published by CEQ at 40 C.F.R. 1508.4? If so, how will you assure that any activities proposed for categorical exclusion satisfy those criteria?

ANSWER: Again, I am not yet fully familiar with these specifics, but will ensure that DHS continues to work on its compliance efforts should I be confirmed.

c. What actions will you take to pay close attention to the requirements of NEPA to ensure that regulations proposed by DHS and actions taken by DHS conform to NEPA requirements?

ANSWER: As I have mentioned, if I am confirmed I will ensure that DHS continues to work on its compliance efforts.

Relations with Congress

192. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

ANSWER: I do so agree.

193. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

ANSWER: I do so agree.

Assistance

194. Are these answers your own? Have you consulted with DHS or any interested parties? If so, please indicate which entities.

ANSWER: Many of the questions posed in this questionnaire go to a level of specific detail about Department programs, DHS sub-components, or (as here) draft proposals for regulations or other efforts about which I, as a sitting judge in the Federal system, have relatively little in the

FINAL

way of current, firsthand, personal or definitive knowledge. That said, I have endeavored to identify as much information as possible so as to be as responsive as possible to the Committee, and thus normal preconfirmation consultation with the White House personnel office and related staff, the Office of Government Ethics, and DHS Counsel and staff have been conducted. That said, these answers are my own, and are based upon my understanding of the information provided me.

AFFIDAVIT

I, Michael Chertoff, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Subscribed and sworn before me this 31 day of January, 2005.

Denice M. Jones Neaves
Notary Public
Commission Expires: August 15, 2009

Senator Carl Levin
Pre-Hearing Questions for
Judge Michael Chertoff
Nominee, Department of Homeland Security Secretary
January 21, 2005

1. On November 28, 2001, when you were Assistant Attorney General for the Criminal Division at the Department of Justice (DOJ), you testified at a Senate Judiciary Committee hearing about DOJ's policies with respect to terrorism investigation detainees. You testified that, "Every one of these individuals [detainees] has the right to counsel. Every person detained has the right to make phone calls to family and attorneys. Nobody is being held incommunicado."

An April 2003 report by the DOJ Inspector General entitled, "The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks," found a number of cases in which detainees' access to counsel was delayed or restricted. The following are excerpts from the IG report.

> "We found that the BOP's decision to house September 11 detainees in the most restrictive confinement conditions possible severely limited the detainees' ability to obtain, and communicate with, legal counsel." (pg. 130)
>
> "BOP officials imposed a "communications blackout" specifically for September 11 detainees within a week of the terrorist attacks. During this blackout period, detainees were not permitted to receive any telephone calls, visitors, or mail, or to place any telephone calls or send mail. While we were unable to determine the exact length of this communications blackout, it appears to have lasted several weeks, after which time the September 11 detainees were permitted limited attorney and social contacts." (pg. 158)
>
> "(T)he restrictive conditions imposed by the MDC prevented the detainees from obtaining counsel in a timely fashion. The BOP has no national policy regulating the number or length of telephone calls that inmates in an ADMAX SHU can make to their attorneys. Consequently, the policy regulating the frequency and duration of legal telephone calls established by the MDC for September 11 detainees – while complying with very broad BOP national standards – severely limited the detainees' ability to obtain and consult with legal counsel." (pg. 160)

(a) Please explain the apparent inconsistency between your testimony and the findings of the IG report.

ANSWER: As explained in the OIG report (p.20), neither I nor (to my knowledge) anyone from the Criminal Division played a role in where immigration detainees would be held, or in setting the conditions of confinement. My testimony in November 2001 was based on the information I was given at the time.

(b) In his book "After, How America Confronted the September 12 Era" author Steven Brill wrote: "Chertoff reasoned that while they [material witness detainees] were being held they would be discouraged from calling lawyers, and could be questioned without lawyers present because they were not being charged with any crime." **What is your response to this claim?**

ANSWER: I disagree with the claim. I did not believe that detainees would be deterred from calling lawyers. My understanding was that they would be presented before a judicial officer and have a right to counsel.

2. In October 2002, DOJ charged six men from Lackawanna, New York with conspiracy and providing material aid to a terrorist organization for attending al Qaeda training camps in Afghanistan. The Wall Street Journal reported in April 2003 that guilty pleas by two of the men charged in the Lackawanna case "came after the government threatened the defendants with 'enemy combatant' status."

An attorney for one of the Lackawanna defendants told a Levin staff member that while enemy combatant status was never directly threatened, he and his staff were clearly led to believe that it was a real possibility.

Public statements by Michael Battle, the U.S. Attorney overseeing the case, seemed to support that assertion. Mr. Battle told CNN in April 2003 that he had discussed the possibility of enemy combatant status for the Lackawanna defendants with the Department of Defense (DOD). In addition, he told the Washington Post in July 2003 that he was "trying to use the full arsenal of our powers" and "[y]ou had a new player on the block – the Defense Department – and they had a hammer and an interest."

(a) During your tenure as Assistant Attorney General for the Criminal Division, what was the policy of the Department of Justice regarding discussions of enemy combatant status by DOJ prosecutors with criminal defendants? Was it ever the policy of DOJ to use the threat of enemy combatant status as leverage in plea negotiations?

ANSWER: During my tenure as Assistant Attorney General, when the issue arose, my policy was that enemy combatant status may be addressed in plea discussions where applicable, but may not be threatened for leverage to obtain a plea. As I recall it, in some instances in which counsel for a criminal defendant requested it, DOJ prosecutors, after appropriate consultation, entered into plea agreements with defendants that contained assurances addressing the government's ability to declare the defendant an enemy combatant.

(b) Did you ever take part in, authorize, or become aware that any U.S. Attorney or other federal prosecutor had discussed with DOD the possibility of designating any criminal defendant as an "enemy combatant"?

ANSWER: During my tenure, I, along with prosecutors within the Department's Criminal Division, consulted from time to time with attorneys from the Department of Defense (DoD) to ensure that information concerning persons who may properly be deemed enemy combatants in the conflict with al-Qaeda was shared in a timely manner so that each department could carry out its distinct functions. In those instances in which DOJ entered into plea agreements with defendants that contained assurances addressing the government's ability to declare the defendant an enemy combatant, DoD was consulted.

(c) Did you ever discuss, authorize, or become aware of that any U.S. Attorney or other federal prosecutor told a defense counsel in any criminal case that enemy combatant status was a possibility for a criminal defendant?

ANSWER: I am aware that in some instances in which counsel for a criminal defendant raised it, DOJ prosecutors, after appropriate consultation, entered into plea agreements with defendants that contained assurances addressing the government's ability to declare the defendant an enemy combatant.

3. Immigration regulations state: "For the purpose of protecting witnesses, parties, or the public interest, the Immigration Judge may limit attendance or hold a closed hearing." Until recently, this regulation was interpreted as requiring immigration judges to decide whether to close an immigration hearing on a case-by-case basis. However, in September 2001, Chief Immigration Judge Michael Creppy sent a memorandum to all immigration judges requiring that all immigration hearings related to the September 11th investigation be closed to the public.

(a) **Please describe any role or involvement you had in discussions related to issuance of the Creppy memo.**

ANSWER: I was not involved in the decision to issue the memo.

(b) The 3rd Circuit Court of Appeals upheld the constitutionality of the Creppy memorandum in North Jersey Media Group v. Ashcroft, 308 F.3d 198 (3rd Cir. 2002), while in Detroit Free Press v. Ashcroft, 303 F. 3d 681 (6th Cir. 2002), the 6th Circuit invalidated the policy. **What is your view of the Creppy memorandum, the policy of closing a category of immigration hearings without individualized fact finding, and what principles or considerations should guide the resolution of this issue? In your view, should immigration hearings be open to the public unless a judge makes a finding on a case-by-case basis that warrants closure of a hearing?**

ANSWER: Generally, I favor the most openness possible, consistent consideration of national security. I favor case by case determination where practicable.

(c) In a July 3, 2002 letter to Senator Levin, the Department of Justice said that, as of March 28, 2002, the Department had detained 752 individuals on immigration violations as part of the investigation into 9-11. DOJ said that 611 of those detainees were subject to nonpublic hearings pursuant to the Department's request and 419 were subject to more than one closed hearing. **Do you know how many of the 611 detainees subject to closed hearings have been deported on terrorist grounds?**

ANSWER: I do not know.

4. On December 12th, 2001, President Bush made a formal claim of executive privilege in response to a congressional subpoena from the House Governmental Reform Committee to the Department of Justice. The Committee sought documents related to alleged acts of corruption by FBI personnel involving mob informants beginning in the 1960s, which resulted in a wrongful murder conviction of four innocent men, two of whom died in prison and two of whom spent more than 30 years wrongfully imprisoned before being exonerated.

(a) You were the Assistant Attorney General for the Criminal Division at the time of the subpoena. At a hearing on December 13, 2001, your Chief of Staff defended the invocation of executive privilege before the Committee. **What was your role or involvement in the decision to deny Congressional access to the requested DOJ documents?**

(b) As a general matter, do you believe it is appropriate to use executive privilege to prevent a Congressional investigation into alleged corruption or misconduct by U.S. personnel?

(c) Do you support a restrictive policy regarding the release to Congress of an agency's internal deliberative memoranda?

(d) Unless executive privilege is invoked or there is a relevant statutory provision (such as disclosure of personal tax return information), does an executive agency have a legal basis for withholding subpoenaed documents from Congress?

ANSWER: ANSWER FOR 4(a) THROUGH 4(d): I participated with others in the executive branch in the deliberations that led to the President's decision to invoke executive privilege regarding the internal prosecutorial memoranda requested by the House Government Reform Committee in 2001. I also participated in the deliberations that led to the accommodation of providing Committee staff with information about the prosecutorial decisions relating to the memoranda and access to some of the documents themselves. I want to emphasize that the

issues of misconduct related to this investigation occurred decades before I joined the Department of Justice.

I believe it is important for the executive branch to work with congressional oversight committees to accommodate their legitimate information needs, consistent with executive branch responsibilities. How those needs can be best accommodated, whether through disclosure or access to documents or the provision of other information, must be determined in the context of each particular request. I would defer to legal advice from the Department of Justice as to the legal issues relating to the invocation of executive privilege, but again expect that those issues depend in large part on the factual context in which they arise.

5. In the Homeland Security Act (HSA), companies sought and received a broad exemption from the requirements of the Freedom of Information Act (FOIA). HSA provides that information which is furnished to the Department of Homeland Security and labeled "voluntarily submitted critical infrastructure information" cannot be disclosed or used by government officials or private citizens, except for certain very narrow purposes. Critical infrastructure includes many types of facilities and structures essential to the functioning of our society, including roads, telephone lines, computer networks, water treatment facilities, and chemical plants.

Some have interpreted HSA as prohibiting disclosure of critical infrastructure information even to enforce laws protecting public health and safety. Suppose the following facts:

A large Midwest utility decides to replace an old coal burning electric generation unit with a new one. The new unit, much larger than the first, will produce significantly greater air pollution emissions. The company could mitigate these increases by installing additional pollution control equipment, but decides it does not wish to incur the expense. It begins construction and simultaneously reports its plans to the DHS as "critical infrastructure information," so federal security experts will know about its increased capacity to generate electricity.

A Department of Homeland Security employee, visiting the plant to consult on government purchases of power during emergency situations, notices readings on internal gauges reflecting the dramatically increased emissions. She telephones EPA to report the situation. EPA issues a Notice of Violation to the company, and threatens to bring an action for civil penalties, but is instructed to desist by DHS officials who inform EPA that the HSA prohibits disclosing the information provided to the agency in court and that DHS wants to list the company as an emergency supplier capable of providing expanded electricity production in an upcoming report to Congress. EPA drops its enforcement action, and the DHS employee not only loses her job but also is prosecuted criminally.

With regards to the scenario described above:

(a) Could the critical infrastructure information from the above scenario properly be disclosed by a DHS employee? If the answer is yes, please describe how and to whom

the DHS employee could disclose the information.

ANSWER: It is my understanding that under this scenario, this information would not qualify as Protected Critical Infrastructure Information and accordingly, would not be exempt fro disclosure under FOIA.

In order to be exempt from disclosure, the critical infrastructure information must be deemed **Protected** Critical Infrastructure Information (PCII), which occurs only if the information satisfies the procedural requirements established in both the Homeland Security Act and the "Procedures for Handling Critical Infrastructure Information." In addition, the submitted information must fall within the definition of Protected Critical Infrastructure Information as defined in the Homeland Security Act and the accompanying regulation.

If, however, this information qualified as PCII, it is my understanding that the information could be properly disclosed by a DHS employee under certain circumstances as allowed for in the Homeland Security Act and accompanying regulations. I hope to learn more about PCII if and when I am confirmed as Secretary of Homeland Security.

(b). In the above scenario, could a DHS employee disclose this critical infrastructure information to another federal agency such as EPA? If the answer is yes, please describe the proper manner in which the DHS employee could disclose the information to EPA or another federal agency.

ANSWER: It is my understanding that this information is not protected critical infrastructure information. Accordingly, a DHS employee could disclose it to another federal agency subject to all applicable laws and other protections.

(c) In your view, should the DHS refer the type of DHS "whistleblower" described in the above scenario to the Department of Justice for criminal prosecution? Has the DHS ever done so? If the DHS has referred a whistleblower for criminal prosecution, please provide the name(s) of the whistleblower(s) and reason(s) for the referral(s).

ANSWER: It is my understanding that the applicable regulations for Protected Critical Infrastructure Information specifically address the concern that is raised in this question. Section 29.8(f)(3) provides whistleblower protection subject to the limitations of the Whistleblower Protection Act.

(d) On January 17, 2003 at his confirmation hearing before this Committee, Governor Ridge was asked about problems with the current wording of the HSA related to critical infrastructure information and FOIA. He was asked whether the provision could have the unintended consequence of shielding wrongdoing while impeding access to information to protect public health and safety. Governor Ridge replied: "[T]hat certainly wasn't the intent, I am sure, of those who advocated the Freedom of Information Act exemption, to give wrongdoers

protection or to protect illegal activity, and I will certainly work with you to clarify that language." **In your view, could the critical infrastructure information section of the Homeland Security Act, as currently worded, be used to conceal wrongdoing and impede access to information to protect public health and safety? What steps could be taken to prevent this unintended consequence of this provision?**

ANSWER: The Department has repeatedly stated that the Critical Infrastructure Information Act of 2002 will not be used to conceal wrongdoing and impede access to information to protect public health and safety. I look forward to learning more about the program and to ensuring that this is not an unintended consequence of the provision, if I am confirmed as Secretary of Homeland Security.

(e) Last year my colleagues, Senators Leahy, Lieberman, I and others introduced S. 609, the Restore FOIA Act, to remedy the FOIA problem in HSA, using bipartisan language developed by this Committee. Among other provisions, the bill would make it clear HSA does not forbid the use of critical infrastructure information in civil court cases to hold companies accountable for wrongdoing. We intend to re-introduce the bill during this Congress. **Would you support enactment of this legislation to resolve the FOIA problem in HSA?**

ANSWER: I look forward to working with Congress to ensure that private sector entities are encouraged to share sensitive vulnerability and proprietary information with the Federal government in furtherance of homeland security, while at the same time balancing the protection of this information against the public's need for access to information that affects public safety and health.

6. Hundreds of trucks carrying municipal solid waste from Canada into Michigan each day represent a homeland security threat, because of the dense and variable nature of the cargo and the difficulty of effective inspection. Last year, for example, a Canadian trucker smuggled 50 pounds of marijuana in a garbage truck headed for a Michigan landfill. The president of a company that owns one of the Michigan landfills has disclosed that a few months prior to this incident, U.S. Customs agents had asked the landfill to be on the lookout for contraband such as illegal drugs. Clearly, the word on the street is that trash trucks can effectively hide materials from Customs inspectors. **As Secretary of Homeland Security, how would you address the issue of inspecting the hundreds of trucks transporting municipal solid waste into the United States on a daily basis?**

ANSWER: One of the Department's most critical mission areas is border management – that is, facilitating the secure movement of legitimate trade and travel, while ensuring the safety and security of the American people. Should I be confirmed and as appropriate, I will work to ensure that we develop and utilize the latest technology to inspect trucks transporting municipal waste into the United States. Additionally, I will work with owners and operators, the Canadian government, truck drivers and others at each step of the process to guarantee layered security measures are in place.

7. Nationwide, most first responders and state and local emergency managers cite communications interoperability as their number one concern. Though local first responders have seen the Interoperable Communications Technology Program, administered through Department of Justice, increase to $100 million this year, the available funding is insufficient to meet the need. Last year's 9/11 Commission Report further highlighted the importance of interoperable communications equipment that allows first responder agencies to talk to each other during an emergency. Despite this high priority need, the Department of Homeland Security does not have a designated funding program for interoperable communications, which forces first responders to compete for scare homeland security dollars.

(a) Do you support the creation of a designated DHS funding source for interoperable communications equipment?

ANSWER: I understand that the Department has provided several billion in grant dollars and that some of those grant dollars have the flexibility to be used for interoperable communications equipment. And, I understand that DHS is adjusting its grant guidance to emphasize interoperability. While I support the goal of focused spending, either through grants or other means, once confirmed, I will need to study this issue further to understand whether a designated funding source, targeted grant guidance, or some combination is the best avenue to ensure effective spending.

(b) The Department of Homeland Security's Safecom office is the DHS agency responsible for enhancing interoperable communications. **If confirmed, how much of a priority will this issue be for you, and how will you use Safecom to quicken the pace of the move to interoperable communications for all federal, state, and local agencies?**

ANSWER: I understand that in October 2004 DHS announced the opening of the new Office of Interoperability and Compatibility which houses the Department's interoperability initiatives, including Project SAFECOM. I see the issue of enhancing and improving interoperability efforts (on both a technical and collaborative level) as critical to our readiness as a nation. And, once confirmed, will certainly encourage this as a top priority. Furthermore, I look forward following confirmation to better understanding how to utilize programs such as the OIC, SAFECOM, and others to best enhance our readiness.

8. A December 30, 2004, New York Times article disclosed that a report by the Department of Justice Inspector General had concluded that infighting between federal agencies had so slowed efforts to unify the government's various fingerprint identification systems that most visitors to the United States are still not fully screened. The core of the problem, according to the report, is that the FBI, the Department of Homeland Security, and the State Department disagree on two basic issues: whether 2 or 10 fingers should be printed, and what agencies should have access to those prints. The result, the report said, is that 99 percent of foreign visitors to the United States do not have their fingerprints checked against an FBI database that contains 47 million prints,

including non-American citizens suspected of terrorism. Instead, they are checked against a more limited Homeland Security fingerprint database.

(a) If confirmed, how would you address the disagreements among the three agencies and restart momentum toward a unified fingerprint identification system?

ANSWER: From what I have recently learned, good progress has been made and I believe that we are standing on the threshold of truly great progress in integrating our data bases while remaining vigilant on privacy concerns. Should I be confirmed, I will review this matter carefully and ensure that the appropriate short term and longer-term actions are taken to address any challenges.

(b) Will you commit to reviewing the problem and reporting back to the Committee with your recommendations within 90 days of your confirmation?

ANSWER: If confirmed, I commit to reviewing this matter and reporting back to the Committee on the status within 90 days.

9. This Committee has a long history of examining issues related to money laundering and terrorist financing. The Customs Service, which was the government's premier anti-money laundering agency, is now part of the DHS Bureau of Immigration and Customs Enforcement.

(a) What do you see as the role of DHS in combating money laundering and terrorist financing? How do you see its role as differing from and complementing the roles played by the Departments of Justice and Treasury and other federal agencies?

ANSWER: DHS' largest investigative arm, U.S. Immigration and Customs Enforcement (ICE) employs a comprehensive, historically based approach to the investigation of cross-border financial violations and transnational money laundering. This multi-pronged approach, known as the Cornerstone initiative, encompasses – detection and intensive investigation – identification and elimination of systemic vulnerabilities – proactive outreach and industry partnership. As you know, prior to the creation of the Department of Homeland Security (DHS), the former U.S. Customs Service had a robust anti-money laundering and counter-narcotics program built upon the extensive border authorities and smuggling expertise of that agency. Key to the success of that legacy program was a financial crime expertise developed over the course of 30 years. Stemming from its origin in the Treasury Department, ICE's long history of transnational and international money laundering investigations as well as its unique border authorities, positions ICE as a recognized "industry leader" in these investigations.

I understand that through its Cornerstone initiative, ICE seeks to detect and close down vulnerabilities within U.S. financial, trade and transportation systems before they can be exploited by these organizations. The Cornerstone methodology targets the alternative financing

mechanisms that terrorist and other criminal organizations use to ***earn***, ***move***, and ***store*** funds.

With respect to the unique roles, I understand that since May 2003, ICE operates pursuant to a DHS and Department of Justice Memorandum of Agreement (MOA) that delineates specific coordination of terrorist financing investigations to the FBI's Terrorist Financing Operations Section (TFOS) and Joint Terrorism Task Forces (JTTF). In instances where ICE investigations are determined to have a demonstrated nexus to terrorism, they are conducted under the auspices of the FBI/JTTF. In cases where ICE has significant investigative equity, ICE agents assigned to the JTTF serve as lead agents and affiants on violations within ICE's authority. As part of its role in terrorist financing, ICE serves as DHS' representative to the National Security Council's (NSC) Policy and Coordination Committee (PCC) on Terrorist Financing.

(b) Section 6303 of the intelligence reform bill developed by this Committee last year requires the Department of Treasury to provide a report by September 2005 on a variety of issues related to money laundering and terrorist financing, including addressing the difficulties associated with establishing and implementing government-wide priorities. **Will you commit to working with the Department of Treasury to contribute to this report and, in particular, address issues related to establishing and implementing government-wide priorities for combating money laundering and terrorist financing?**

ANSWER: I am aware DHS and ICE work collaboratively with the Department of the Treasury on many fronts and will continue to collaborate with Treasury to produce this very important report. In addition, DHS/ICE will work in formulating the National Money Laundering Strategy (NMLS) with DOJ and Treasury, and is already a major contributor to the Treasury-led Money Laundering Threat Assessment Working Group. DHS through ICE, serves as part of the U.S. delegation, led by Treasury, to the Financial Action Task Force (FATF) in combating international money laundering and terrorist financing.

(c) If confirmed, will you commit to reviewing the activities within DHS to combat money laundering and terrorist financing and provide a briefing to the Committee within 90 days of your confirmation?

ANSWER: If confirmed, I commit to reviewing this matter and reporting back to the Committee on the status within 90 days.

AFFIDAVIT

I, Michael Chertoff, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Subscribed and sworn before me this 31 day of January, 2005.

Jessie M. Jones-Weaver
Notary Public
Commission Expires: August 15, 2009

Additional Pre-Hearing Questions
From Senator Joe Lieberman
For the Nomination of Michael Chertoff to be
Secretary of Homeland Security

1. You wrote the opinion in Shardar v. Ashcroft, 382 F.3d 318, in which the Third Circuit rejected the petitioner's appeal of a decision of the Board of Immigration Appeals (BIA). Among other things, the petitioner, an alien, sought relief under the Convention Against Torture, on the grounds that he had been beaten with canes and kicked in the face while being held in a Bangladeshi jail. The BIA had held, in part, that the beatings the petitioner received did not rise to the level of torture, and the Third Circuit held in Shardar that the BIA had not abused its discretion in coming to that conclusion. As noted in the opinion, torture is defined (quoting in part) "as any act by which severe pain or suffering . . . is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind . . . ." In your own opinion, how should the definition of torture be applied to cases involving serious beatings, where serious injuries are sustained?

ANSWER: To properly apply the definition of torture contained in the Convention Against Torture (CAT) to a particular case, including cases involving serious beatings, the factfinder (in most cases, the Immigration Judge) must weigh all the facts and circumstances of the particular case, including the credibility of the witnesses and any documentary evidence. As the federal appellate court, we were not the factfinders in the Shardar case. Instead, we reviewed the decision of the lower immigration courts on the CAT issue under a standard of review that the law requires us to give broad deference to the factfinder, in the context of motions to reopen. See INS v. Abudu, 485 U.S. 94, 106 – 11 (1988). In our decision, we noted that the beatings were "extremely troubling." 382 F.3d at 318. However, our decision to affirm the lower courts denial of asylum and withholding was based on the fact that persecution was unlikely to recur, given the extensive time lapse between the beatings and the significant change in the relevant political climate.

2. In the three years following September 11, 2001, refugee admissions fell far below the authorized ceiling of 70,000 refugees established for each of those years. The consultation document that the Bush Administration provided to Congress on proposed FY2004 refugee admissions stated that "new procedures instituted by the Department of Homeland Security and the FBI are, after many difficulties, streamlining security processing in a meaningful way." Nevertheless, admissions in 2004 still ended up being

well below the authorized level of 70,000, although an improvement over the previous two years.

a. As Secretary of DHS, how committed would you be to ensuring the expeditious processing and resettlement of refugees?

ANSWER: I understand, that in Fiscal Year 2004 DHS deployed more than 140 officers overseas to 50 locations around the globe, and the United States admitted more than 52,000 refugees, an 86% increase in admissions over Fiscal Year 2003. If confirmed, then, I am dedicated to working closely with refugee program partners to continue those initiatives necessary to ensure that the United States refugee admissions program is a model in effective processing and resettling.

b. What can the DHS do to help ensure that the number of refugees resettled in the U.S. reaches the ceilings authorized by the President and Congress?

ANSWER: One mission of the Department of Homeland Security is to restore public confidence in the integrity of America's immigration services. It is my understanding the Unite States Citizenship and Immigration Services (USCIS) has already begun the work necessary to hire a dedicated corps of refugee officers for FY 2005. I certainly support these ongoing initiatives and, if confirmed, I look forward to encouraging these and other initiatives to assist tl refugee population.

AFFIDAVIT

I, Michael Chertoff, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to tl best of my knowledge, current, accurate, and complete.

Subscribed and sworn before me this 31 day of January, 2005.

Bessie M Jones Weaver
Notary Public
Commission Expires: August 15, 2009

Post-hearing Questions Submitted for the Record
by Senator Susan M. Collins, Chairman
for the Nomination of Michael Chertoff to be
Secretary of Homeland Security

February 2, 2005

Background

1. On February 1, 2005, the Department of Justice sent a copy of a July 1, 2004 letter addressed to Senator Leahy. The letter answers written questions in connection with a Judiciary Committee hearing on the interrogation of detainees.

   In response to a question about whether the Department ever approved interrogation techniques, the letter states the following: "The Department of Justice has given specific advice concerning specific interrogation practices, concluding that they are lawful."

   I understand that you did not personally approve specific interrogation techniques, but do you know who or what office at DOJ did?

ANSWER: As I recall, at the time I was at the Criminal Division I was not aware that anyone at DOJ approved specific interrogation techniques. I do not know to what the July 2004 letter refers, and I was no longer at the Department of Justice when the letter was written.

Agriculture/APHIS

2. As Secretary, you would oversee a wide array of agencies, including portions of the Animal and Plant Health Inspection Service (APHIS). As you may know, my home state of Maine shares a unique relationship with Canada. Part of this relationship involves the exchange of agricultural goods between both nations, such as Maine seed potatoes. Currently, Maine seed potatoes must be inspected on both sides of the border, increasing shipment time and costs associated with these shipments. In March of 2003, APHIS and their Canadian counterparts at the Canadian Food Inspection Agency (CFIA) agreed to accredit a potato inspection laboratory in Maine for the certification of seed potatoes shipped to Canada. This accredited lab would ensure that potatoes only need to be inspected once to reduce time and costs associated with seed potato shipments. This model has already proven effective with a similar lab in Wisconsin. By July of 2004, APHIS agreed to accredit Maine's potato lab. Unfortunately, we are still waiting for CFIA to agree to this accreditation, which would benefit farmers on both sides of the border. As Secretary of Homeland Security, will you work with the Canadian government to encourage them to accredit this laboratory in an expeditious manner?

ANSWER: If confirmed, I would be willing to raise this issue with the Government of Canada as part of our overall discussions on reducing traffic congestion at the ports of entry.

Border and Transportation Security

3. Last week, this Committee held a hearing looking at the future of DHS. One of the proposals the Committee reviewed was to merge U.S. Customs and Border Protection with Immigration and Customs Enforcement. I was traveling in California two weeks ago, and spoke with several senior state and local law enforcement officials who told me they thought this merger would be a good idea. Two witnesses at our hearing thought this proposal was a good idea, while two others thought that it was premature to merge these two organizations. What is your opinion on whether CBP and ICE should be merged?

   ANSWER: I am familiar with the recommendation of the Heritage/CSIS report to which your question refers. If I am confirmed, it is my intention to review the structure of the entire Department; however, prior to that review it is premature for me to offer a particular viewpoint. I look forward to working with the Congress to make any changes that are necessary.

4. U.S. Customs and Border Protection (CBP) has reportedly failed to utilize the $9.7 million Congress allocated in FY 2004 for expansion of the Customs Automated Operating System (CAOS) at more than 50 ports of entry along the Northern Border, including eight in Maine, and for maintenance of existing CAOS systems at more than 30 Southern Border ports of entry. CAOS is a software application to schedule, announce, record, and report enforcement operations, such as mandatory hood, trunk, and tire inspections. It also creates random lane variations for CBP officers, which deters countersurveillance of operations by smuggling organizations through the use of "spotters."

   What has been the cause of this delay, and what is your best estimate as to how soon CBP will begin to deploy existing CAOS technology along the Northern Border?

   ANSWER: While I have not been fully briefed on this issue, I understand that CBP is developing a new version of CAOS, using CBP staff and support contractors, and deploying this version to the Northern Border. If confirmed, I will look into this issue so that it is implemented without unnecessary delay.

5. Should the Department of Homeland Security pursue a fully integrated, holistic approach that covers all U.S. border areas versus only segments of the border? Is it envisioned that

the America's Shield Initiative (ASI) will be the program to pull together all existing and planned border security programs under one umbrella?

ANSWER: I believe it is important to develop and implement multi-layered, yet comprehensive strategies to address complex issues, such as border security. I understand the Department is currently pursuing an integrated approach to our borders in carrying out its critical mission. One key example is the integration of inspection forces and the Border Patrol under U.S. Customs and Border Protection (CBP). If I am confirmed as Secretary, one of my top priorities will be to focus on securing our nation's borders. I will closely review the current strategy and implement additional measures as needed. In addition, I understand that the America's Shield Initiative (ASI) program is one effort, within the holistic approach to border security, to develop a comprehensive and unified system of electronic surveillance of our nation's land borders, integrated with rapid response capability so that unauthorized crossings are detected and met with the appropriate response.

6. The Intelligence Reform Act and Terrorism Prevention Act of 2004 requires a Northern border pilot program and Southwest border plan to be developed to help secure our borders. Is it envisioned that these programs will be incorporated into one overarching program?

ANSWER: I understand that DHS' current plan is that these two requirements will be met under the America's Shield Initiative (ASI). ASI is the program through which DHS is developing a comprehensive and unified system of electronic surveillance to secure both the northern and southern borders. If confirmed, I expect to evaluate this issue fully.

7. According to recent reports, security fees for airline passengers would more than double under the President's FY 2006 budget for the Department of Homeland Security. The budget reportedly calls for fees on one-way flights to increase from $2.50 to $5.50, and from a maximum of $5 to $8 on multiple legs. These passenger fee increases would raise an estimated $1.5 billion for DHS. Some in the airline industry have expressed concerns that this fee increase would have a severe negative impact on an already-struggling airline industry.

Do you believe that this increase is warranted? What security fees and costs are being levied in or are planned for other modes of transportation to cover security-related costs and support the DHS budget?

ANSWER: Since I am not familiar with the contents of the FY 2006 budget, I cannot comment on the reported changes in airline passenger fees. If confirmed, I pledge to carefully consider the allocation of costs and benefits associated with the Department's actions. Further, as appropriate, I pledge to work with the Congress in continuing these critical discussions.

"No-Fly" Lists

8. Section 4012 of the Intelligence Reform and Terrorism Prevention Act directs TSA to assume the function of checking passengers against the no fly list within six months after testing of the new passenger prescreening system is complete. It also requires that in taking over this function from the airlines, that TSA establish a procedure for passengers who have been delayed due to the system to appeal and to correct erroneous information about themselves within the system.

a. When will testing of the new passenger prescreening system be complete?

ANSWER: I understand that, in accordance with Section 4012 of the Intelligence Reform and Terrorism Prevention Act (P.L. 108-458), TSA began initial testing of Secure Flight on November 30, 2004. This testing is expected to conclude in February 2005.

b. What do you believe are the essential aspects of an adequate appeals procedure for erroneous determinations?

ANSWER: It is critical that such a system include a redress process for those passengers who may have been unnecessarily selected for additional screening. I understand that TSA has begun the development of such a redress process, and, if confirmed, I will place a high priority on assuring an appropriate process is in place.

International Affairs

9. Because many countries have long histories of fighting terrorism, foreign governments, universities, businesses, and non-profits are often a valuable source of expertise on homeland security technologies and terrorism prevention techniques. Do you believe DHS should promote greater cooperation in these areas with allies like Israel, the UK, and Canada to better prepare our country for the terrorist threat?

ANSWER: I strongly believe in pursuing international cooperation in support of counterterrorism technology development, testing, evaluation, deployment, and operation. International cooperation allows us to expand our capacity by leveraging funding, people, and facility resources to address a broad range of threats. Closer international collaboration also helps to ensure that countermeasures are technologically compatible and interoperable.

I also would expect that joint research and development activities will cover a broad spectrum including exchanges of information and experts; joint exercises, workshops, and conferences; and collaborative research and testing. I understand that there has already been significant activity in this area with our international allies – for example, this past December DHS signed an agreement with the United Kingdom to pursue joint research and development of homeland security technologies. I would certainly expect additional agreements with other countries will follow.

9. Over the years the Department of Defense has had extensive success working with some of our closest allies through frameworks of cooperation established via bilateral Memorandums of Understanding. I understand that DHS has attempted to establish similar bilateral MOUs for the purpose of homeland security cooperation with many of these same allies, but the process of completing these important agreements has been bogged down by bureaucratic debates between DHS and other offices and departments in the Executive Branch. What will you do to ensure these MOUs are signed, allowing us to take full advantage of the homeland security experience several of our closest international allies have? If there are statutory issues that need to be overcome to facilitate this process, what does Congress need to do to fix these problems?

ANSWER: I believe such international cooperation is critical to furthering security here at home and abroad. I have been informed that the process to obtain internal approval of the recent DHS agreement with the UK was indeed lengthy, partly because it was the first such agreement entered into by DHS and the first time for anything is often more difficult than the second. The authority to enter into such agreements, I understand, has been beneficial to DOD. Should I be confirmed, I would certainly examine this issue and would welcome the opportunity to work with Congress, should a statutory change be necessary.

Fire Service

11. The United States Fire Administration is the lead federal agency for our nation's fire and emergency services. It provides an array of mission-critical services and programs to the fire and emergency services to enhance its level of readiness to respond to all hazards. As Secretary of Homeland Security, how can you elevate the role of the United States Fire Administration in the development of federal homeland security policies to ensure that these policies reflect the guiding principles of the fire service in homeland security?

ANSWER: I recognize and value the important role of the nation's fire service in homeland security and that the U.S. Fire Administration (USFA) is a critical component of the Department of Homeland Security. If confirmed, I look forward to working with Congress in continuing to support and utilize America's fire service for ensuring the nation's homeland security.

12. Because we cannot predict the date, time and location of a terrorist attack, we have to maximize training opportunities across the nation to as many local first responder agencies as possible. Having said that, there is an infrastructure in place already providing training to 800,000 first responders throughout every state in the union. The state fire training academies are accredited by one or both of the national accrediting agencies for fire and emergency services training and have certified instructors who tech to national standards. How can the Department of Homeland Security take greater advantage of this system, which provides training locally rather than at regional facilities

and possesses instructors with practical experience in a wide range of homeland security disciplines?

ANSWER: I understand that allowable training-related costs under DHS grant programs include the establishment of chemical, biological, radiological, nuclear, and explosives (CBRNE) terrorism and cyber security training programs through existing training academies (including state fire training academies), universities or junior colleges. I also understand that DHS, through SLGCP, develops and delivers training on terrorism and weapons of mass destruction to the emergency response community through the National Domestic Preparedness Consortium (NDPC) and its other training partners.

Through the NDPC, I am told that SLGCP is delivering a standardized WMD awareness curriculum to States and Urban Areas in a "train-the-trainer" format and working to build a sustainable capacity within existing State and local public safety training institutions -- including State fire training academies -- for the integrated and continued delivery of training.. . If confirmed, I look forward to reviewing the best ways to further leverage existing training infrastructures to enhance training delivery.

13. America's fire departments respond to approximately 20 million calls each year, which cover all hazards including WMD, terrorism, structural and wildland fires and hazardous materials incidents. They conduct technical rescues, including swiftwater rescues, confined-space rescues, and auto extrication.

The fire service is also the Nation's single largest provider of pre-hospital emergency medical services and emergency ambulance transportation. Fire departments respond to all of the above in response to natural as well as man-made disasters without regard to whether a terrorist caused the event.

a. As Secretary of Homeland Security, what will you do to recognize and embrace the key role of our Nation's fire service in the defense of the homeland, and what changes will you implement to ensure that America's fire service has the training and resources it will need to respond to everyday "all hazards" events as well as terrorist incidents?

ANSWER: Given my roots in the New York and New Jersey area, I am certainly mindful of the needs and critical role firefighters hold in our first responder community, and the heroism they demonstrated in performing their duties on September 11th. I recognize that the fire service is a key pillar of our Nation's preparedness and response capability, and that its members are called upon for a wide variety of missions to save lives and property. Since 9/11, the Administration has supported significant investments in fire response capabilities, especially those critical to homeland defense and terrorism preparedness. If confirmed, I will continue to examine the best ways to support this crucial segment of our response community.

b. Do you intend to appoint well-qualified personnel with backgrounds in the fire services in the senior leadership of DHS, including as key advisors to you, to assist with policy efforts?

ANSWER: If confirmed as Secretary, I intend to review the management of the Department to ensure that a wide range of professional skills are represented in DHS leadership, including hands-on experience with local response.

Acquisition

14. Many of our largest industrial companies have robust R&D that could be leveraged for Homeland Security. According to comments from industry regarding the implementation of the Safety Act and reports from the Government Accountability Office (GAO) regarding DHS's use of "other transactions" authority, however, DHS is failing to effectively utilize its statutory authorities. How will you create incentives for our industrial companies to become more active in this area?

ANSWER: Under the Homeland Security Act of 2002, the Department was granted authority to use "Other Transactions" to acquire research and prototype requirements. The DHS "Other Transaction" Authority is a vital tool that has assisted the Department in acquiring cutting-edge and innovative technologies from firms throughout the private sector with special emphasis on those firms who traditionally have not done business with the Federal Government. If confirmed I will aim to insure that the Department will continue to take maximum advantage of this, and other special statutory authorities, to leverage industry advancements in R&D.

Information Technology

15. Recently, the Government Accountability Office called attention to DHS Information Sharing by adding it to its "High Risk" list. The Committee is deeply concerned that DHS fulfill its mission regarding information sharing. Implementing the Homeland Security Data Network is an important component in facilitating the sharing of information. Has the Department taken all necessary steps to ensure that the Network's applications and processes will be interoperable with existing systems in the Federal government to the maximum extent practicable?

ANSWER: It is my understanding that DHS places a high priority on interoperability and information sharing and that the Homeland Secure Data Network (HSDN) system advances this goal. I am told that HSDN is designed to provide the Department with a secret-level classified communications network and with information sharing and collaboration tools that will enable DHS personnel to share classified information among them and with other Federal agencies. I look forward to learning more about this initiative if confirmed.

16. As you know from your experience in the aftermath of the 9/11 tragedy, terrorist

elements have been able to mask their true identities while living in this country and planning significant attacks against us. They have been able to do this in spite of the fact that there is data held in public records and commercial databases that can reveal their true identity. What potential does information-based identity authentication have to help the Department of Homeland Security and its constituent agencies prove that individuals are, in fact, who they claim to be?

ANSWER: Should I be confirmed, I will carefully review the potential uses of information-based identity authentication and ensure that it is appropriately applied.

Information Sharing

17. As reflected in Executive Order 13356, and in Section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004, sharing terrorism information among appropriate federal, state and local entities and the private sector is critical to the success of the war against terrorism. What plans do you have to facilitate, in near real time, the exchange of large amounts of terrorism information from disparate sources, and that will simultaneously fuse this information into meaningful intelligence products?

ANSWER: I understand that DHS is working to integrate the intelligence activities of the Department to better support overall homeland security. As part of this effort, I am told that DHS has established the Information Sharing and Collaboration Program. If confirmed, I look forward to further reviewing this issue.

Post-Hearing Questions
Submitted by Senator Susan M Collins, Chairman,
on behalf of Senator Arlen Specter for the
Nomination of Michael Chertoff to be
Secretary of Homeland Security

February 2, 2005

1. There have been substantial criticisms leveled at the adequacy of immigration inspector training. In fact, the 9/11 Commission staff report notes that border inspectors do not have basic intelligence and operational training to aid them in detecting and preventing terrorist entry, adequate access to databases important to determining admissibility, or viable options to prevent documents known to be fraudulent from being returned to travelers denied entry. As you know, immigration inspectors are the country's first line of security at our borders and other points of entry and are in the best position to keep out of the country those who intend to enter and do us harm. What do you plan to do to address this inadequacy?

   ANSWER: I share your concern regarding the fraudulent use of documents by terrorists and others who present a threat to the United States. I understand that a number of steps have been taken or are being planned to help address this problem. I understand the current policy is to seize and remove from circulation all fraudulent, counterfeit, altered or improperly presented travel documents. Further, significant changes have been made to targeted training programs to include fraudulent document detection training and anti-terrorism classes.

   I understand the Administration has worked extensively with our friends and allies around the world to increase document security as well as reporting of lost and stolen passports. Additionally, the Department is currently assessing the passport issuance and control procedures of countries that participate in the Visa Waiver Program. These reviews are providing valuable information to help identify areas, which might require more careful monitoring. If confirmed, I will examine this issue more thoroughly to determine what additional steps might be appropriate to further our nation's efforts in this area.

2. The President and others have discussed implementation of a temporary or guest worker program to allow workers to enter the United States to work for a period of time and then return to their country of origin. The Department of Homeland Security will be an integral part of any resolution of this issue. Describe your views on whether you believe a program like those being considered will help or hinder attempts by the Department of Homeland Security to secure our country?

ANSWER: I strongly support the goals of the President for immigration reform. There is no quick and easy solution to undocumented migration and tough choices will have to be made to deal with this challenging situation. If confirmed, I intend to look at these issues very carefully, including the temporary worker program proposal, and intend to work closely with the President and the Congress to design those programs that increase our security while also providing the necessary reforms to our immigration system.

3. The 9/11 Commission Report describes the mobility of the 9/11 terrorists, and notes that "travel documents are as important as weapons" to terrorists. As the Commission points out, the 9/11 terrorists traveled to countries throughout the world to attend terrorist training camps and clandestine meetings. Often, however, they would return to their native countries and apply for new passports, so the multiple "entry-and-exit" stamps from suspect countries would not be revealed to future border inspectors. This represents a multi-faceted problem that involves the travel document issuance and screening procedures of countries throughout the world. Biometric initiatives may eliminate certain aspects of the problem, but only if they are widely adopted and strictly enforced. What safeguards do you envision as Secretary of the Department of Homeland Security to ensure that someone who applies for a visa to visit the United States has not exploited loopholes in his or her own country's passport process?

ANSWER: I understand that a layered strategy for strengthening document security and identification processes is the best strategy for preventing the exploitation of visa or passport issuance systems. I understand that biometric technologies are rapidly improving and provide significant gains for both establishing and verifying identity. It is also important to ensure that inspectors have the appropriate training and information to identify fraudulent documents and lost/stolen passports. If confirmed, I will carefully review this important matter.

4. Secretary Ridge enacted a color code system designed to advise the public and law enforcement of the current terrorist threat level. As you know, in addition to reactions by members of the general public, local law enforcement agencies expend significant resources increasing their readiness in response to changes in the threat level evidenced by the color code. Can you describe what your approach will be in conveying threat information to the public at large and to State and local law enforcement?

ANSWER: I understand that the Homeland Security Advisory System (HSAS) was created originally with input from State and local officials, and that it has continued to be improved over time as experience has grown. For example, I understand that the system now includes the flexibility to assign threat levels for the entire nation, or a particular geographic area or infrastructure sector, depending on the nature of available threat information. I recognize the importance of continual assessment of the HSAS, and if

confirmed I will work closely with State and local authorities to ensure that the system, or any successor system, is effective and efficient.

5. The Congress has made clear its intent that the Secret Service continue, as it did under the Department of the Treasury, to function as a cohesive unit and not have its functions divided or merged with other entities that might would dilute its ability to achieve its crucial mission. Additionally, the Congress has made clear its intent that the Director of the Secret Service report directly to the Secretary of Homeland Security. Given this mandate from Congress, how do you envision working with the Secret Service to ensure that it carries out its original core mission while simultaneously contributing to other vital Department of Homeland Security tasks?

   Answer: If confirmed, I intend to maintain the Secret Service as a distinct entity within the Department, as required under the Homeland Security Act of 2002, and the Director of the Secret Service will continue to report directly to the Secretary of Homeland Security. If confirmed, I will be committed to ensuring that the Secret Service has the authorities and resources necessary to carry out its critical protective and investigative missions.

6. Last Congress, during the Senate reorganization, the Senate agreed that Secret Service jurisdiction would remain within the Senate Judiciary Committee. As you know, the Secret Service's criminal jurisdiction extends to a host of crimes. Additionally, the Secret Service is authorized, at the request of any State or local law enforcement agency or at the request of the National Center for Missing and Exploited Children, to provide forensic and investigative assistance in support of investigations involving missing or exploited children.

   The Senate Judiciary Committee intends to conduct vigorous oversight of the components within its jurisdiction this Congress and intends to examine various criminal statutes to determine if they need to be modified. On those issues that implicate either the Secret Service's jurisdiction or other Department of Homeland Security agencies that fall within the Senate Committee on the Judiciary's purview, will you commit to appearing before the Judiciary Committee for regular oversight hearings?

   ANSWER: Yes. From my previous experience in the Department of Justice, I very much appreciate this committee's jurisdiction over Federal law enforcement agencies and title 18 criminal authorities. I will be pleased to testify before or meet with this committee on any issue related to the Secret Service or other law enforcement functions of the Department.

7. In the aftermath of the September 11 terrorist attacks, as you are well aware, the Department of Justice used the federal immigration laws to detain aliens who were suspected of having ties to those particular attacks or to terrorism in general. More than 750 aliens who had violated immigration laws were arrested and detained in connection

with the FBI's investigation into the attacks (called PENTTBOM). I am mindful of the circumstances confronting the Department and the country as a result of the September 11 attacks. Notwithstanding, in a June 2003 report issued by the Department of Justice, Office of Inspector General findings were made that serious mistakes were made in the treatment of these 762 detainees, including their processing for detention, the timing of their removal or release, their access to counsel, and their conditions of confinement. Could you describe your views with respect to the conclusions and recommendations regarding the systemic problems identified in this report? And, what do you see as the role of DHS in assisting in the implementation of any needed changes?

ANSWER: I take the expressed concerns regarding these problems very seriously. As you know I have been out of the Executive Branch for some time, but I do believe that, overall, circumstances have improved since the time frame of this report. For example, the OIG report identifies concerns that FBI investigative delays or lack of precision in turn led to delays in processing of immigration detainees. I understand that additional resources, training enhancements and reorganizations within the Department and the FBI, as well as the Intelligence Reform Bill - are designed to - and should continue to - increase FBI expertise and capability and streamline coordination. DHS will, of course, play a principal role with DOJ in implementing some of these proposals. Indeed, I understand they have already undertaken some of these proposals and, if confirmed, I am committed to further increase successful implementation of these recommendations by DHS in partnership with DOJ. If confirmed, I will certainly strongly encourage DHS to continue its active engagement to address these findings.

Post-Hearing Questions for the Record
Submitted by Senator Stevens for the Nomination of

Michael Chertoff to be

Secretary of Homeland Security

Pursuant to the U.S. Government's reciprocal obligation under the International Air Services Transit Agreement, the U.S. agreed not to preclude foreign air carriers from traversing the U.S. without landing, or from landing in the U.S. for non-traffic purposes such as technical fuel stops.

Notwithstanding this obligation, on August 2, 2003, the Department of Homeland Security (DHS) and the Department of State suspended the Transit Without Visa (TWOV) Program and the International To International (ITI) Transit Program, both of which were designed to allow people who ordinarily need U.S. visas to travel without visas through U.S. airports while en route to other countries. While the stated U.S. objective for suspending these programs was to thwart entry into the U.S. by terrorists who may have viewed these programs as weak links in U.S. security, the suspension had a significant adverse economic consequence on both the affected airports (e.g., Anchorage and Fairbanks, AK; Bangor, ME; and Honolulu, HI) and corresponding State governments that relied in various ways on the revenue generated as a result of technical fuel stops. However, when U.S. Customs and Border Protection (CBP) once again allowed technical fuel stops without individual passenger clearance, carriers that had begun re-routing to foreign airports to avoid the added expense of passenger clearance returned to U.S. airports and the revenue stream to airports and States was restored.

1. I understand that as part of DHS's development with CBP of the Air Transit Program (ATP) regulation, the question of fuel stops has been discussed, and DHS has pledged to work closely with CBP in a transparent way should changes to the regulation be necessary. If confirmed, to assure consistency of policy thereby avoiding future detrimental reliance by air carriers, airports, and affected State governments concerning the TWOV and ITI Transit programs, would you outline for the Committee what in fact will be the U.S. policy for the foreseeable future with respect to these programs?

   ANSWER: I understand that the Department of Homeland Security is currently reviewing the issue. If confirmed, I will look into this closely.

2. Last year DHS officials indicated that the ATP regulations would be issued quickly, yet a successor program to TWOV/ITT is still not in place. When will ATP be implemented?

   ANSWER: It is my understanding that the Department of Homeland Security is currently reviewing the issue. If confirmed, I will look into this closely.

Post-Hearing Questions Submitted for the Record by Senator Norm Coleman for the Nomination of Judge Michael Chertoff to be Secretary of Homeland Security

1. St. Paul & UASI Grants

In Fiscal Year 2004, St. Paul and Minneapolis received a total of $20,108,247 in Urban Area Security Initiative Grants. However, this year St. Paul received no money and Minneapolis received only $5,763,411. To make matters worse, the St. Paul mayor was informed of this cut the morning it was announced. I know that you are getting the brunt of my frustration at the Department of Homeland Security but I do not know how we can have a coherent homeland security strategy with inconsistent funding, incoherent policy and poor communication. Here you have two major cities only 10 miles apart that have an interconnected homeland security strategy. One was zeroed out altogether and apparently is to have no homeland security funding while the other was drastically cut. Will you work with me to fix this specific problem?

ANSWER: If confirmed, I look forward to reviewing the way these funds are being allocated to see if there are ways the process can be improved. I believe that funding should be based on risk, and I recognize that the variable nature of risk and threat may lead to changes in the funding allocation over time. I believe that all relevant data and the manner in which it is used to determine the urban areas at greatest risk should be continuously reviewed and improved so that this program most effectively and efficiently reduces the vulnerabilities of the areas at greatest risk. I look forward to working with the Congress on this issue.

2. **PSI**

As part of the oversight initiative by Permanent Subcommittee on Investigations, I have (along with PSI ranking member Levin, Homeland Security and Governmental Affairs Committee Chairman Collins and Ranking member Lieberman) sent Undersecretary Asa Hutchinson 2 chairman's letters requesting certain documents and relevant information on the deployment of radiation portal monitors and the Container Security Initiative. These programs are designed to prevent the importation of weapons of mass destruction into the United States. Do I have your commitment that DHS and Customs will comply with reasonable oversight requests made by Congress?

ANSWER: Yes, you have my commitment that, if confirmed, I will ensure that the Department complies with appropriate oversight requests.

3. The Government Accountability Office will soon release a report that is critical of the Customs Trade Partnership Against Terrorism program. My Subcommittee plans to hold hearings on this and other anti-terrorism programs. Can I have your assurance that DHS and Customs will work with GAO and PSI to produce a report that is available to the public while, at the same time, not reveal sensitive information?

ANSWER: I understand that DHS is currently working with GAO to review the draft C-TPAT report and is discussing the possibility of a public version. If confirmed, I assure you that DHS will work with GAO on this matter.

4. In addition, do I have your commitment that DHS will work with GAO and the DHS Inspector General to respond to the recommendations that they have made in past reports and will soon be making in new reports?

ANSWER: I recognize the value of reviews by GAO and the DHS IG and, if confirmed, I will welcome their assessments and recommendations, as well as the opportunity to respond appropriately.

5. **Border Security Training Program**

International Falls, Minnesota is one of the 50 busiest land ports of entry in the country with over 2 million people traveling through there each year. Last week, this Committee held a hearing focusing on the road ahead for the Department of Homeland Security. In his testimony, Dr. Stephen Flynn, a retired Coast Guard Commander pointed out that while the average U.S. Navy officer may spend up to forty percent of his or her career receiving training or education, any training provided to the 41,000 employees assigned to the Customs and Border Protection Agency must come at the cost of ongoing operations because there are no training stations built into their personnel system. Do you think that the education program for customs and border officials is adequate considering we ask these front-line agents to simultaneously enforce immigration, customs and agriculture laws; work with sophisticated technologies; and be able to work in specialized assignments such as being deployed to an overseas port as a part of the Container Security Initiative? If not, what will you do as Secretary of Homeland Security to change this?

ANSWER: While I have not had the opportunity to assess the training programs for CBP officers, I recognize the importance of providing our frontline officers with the tools they need to carry out their missions. If confirmed, I will certainly monitor CBP's training programs and determine whether any changes are necessary to ensure that CBP has the expertise within its ranks to fulfill its missions.

6. **Student Visas**

I have been working for some time with the Department of State towards reversing the decline in the number of international students who are studying in the United States. The Department of Homeland Security also has a role in this process – managing the SEVIS system for tracking international students, making inter-agency decisions about who is and is not a security threat, and participating in the development of policies that, I hope, will bring our country back to its preeminent position as a destination for the world's best and brightest. If confirmed, will you pledge to work towards restoring US leadership in international education?

ANSWER: It is vital to our national interest that we ensure the security of the visa process while facilitating legitimate travel to the United States. In particular, if confirmed I will make it a high priority to facilitate the participation of foreign students in America's outstanding academic programs, as long as that participation does not impair homeland security. I will work with our partners at the Departments of State and Education and the academic community to ensure that the message that the United States continues to welcome legitimate students and exchange visitors is heard nationally and internationally. I recognize that this type of international

Post-hearing Questions Submitted for the Record
by Senator Tom Coburn (R-OK)
for the Nomination of Michael Chertoff to be
Secretary of Homeland Security

1. In Oklahoma, we have had several well-publicized incidents where illegal aliens were apprehended by the local authorities, detained, and then released back into the public after federal immigration officials told local law enforcement there was nothing they could do with them. The explanation given was that because of budget constraints, federal immigration officials could only deport illegal aliens charged with violent crimes. I have since become aware that this is a national phenomenon, not just a problem in Oklahoma. If you are confirmed, will you continue the current policy of allowing illegal aliens charged with non-violent crimes to remain in the United States?

   ANSWER: As I understand the current policy, national security cases and criminal aliens are the Department of Homeland Security's priority in immigration enforcement. As far as I know, no DHS policy exists that excludes non-violent criminals from being placed in removal proceedings or from being detained pending removal proceedings. As with any law enforcement agency, I understand that DHS must prioritize the use of its resources and conduct case-by-case determinations on who will be processed for removal and under what conditions of release or confinement. If confirmed, I will aggressively enforce our nation's immigration laws and work with the Congress if additional resources are needed for that purpose.

2. As the *Washington Times* reported on Monday, the Department of Homeland Security is faced with determining the best way to allocate its resources in order to protect our borders. Although Congress authorized an increase of 2,000 border patrol agents for the new fiscal year, the President intends to only add 200. The President instead intends to focus funds on technology. With these budgetary constraints in mind, I am interested to know what you believe should be our top priorities in working to secure our borders.

   ANSWER: Although I was not involved the budget process for DHS this year, I do recognize that securing our nation's borders is a core mission of the Department. A key challenge in this area is identifying the proper mix of personnel and technology to enhance security in the most effective and efficient manner possible. Our DHS personnel on the frontline should have the best tools available to detect and prevent terrorists and weapons of terror from entering the country. If confirmed, I will focus on this critical area.

Post-Hearing Questions Submitted for the Record
by Senator Lincoln Chafee for the
Nomination of Michael Chertoff
to be Secretary of Homeland Security

February 2, 2005

24. During our meeting last month, I asked you about the Transportation Security Administration's (TSA) implementation of the Explosive Detection System (EDS) integration program. As we discussed, T.F. Green Airport in Rhode Island is one of a number of airports nationwide that are seeking EDS integration funds. This funding is particularly important for T.F. Green because the existing baggage screening process creates additional security threats, and was the subject of letters dated January 13, 2004 and January 31, 2005 from the Rhode Island congressional delegation to Admiral David Stone.

→ Do you believe that rapid implementation of EDS integration would enhance security at airports throughout the nation?

ANSWER: I understand that one of TSA's top priorities is to ensure that 100% of checked baggage is screened by explosive detection systems, as required by law. If confirmed, I will continue to reaffirm this priority.

→ Will you commit to having TSA work with T.F. Green and other airports to address their EDS integration needs?

ANSWER: I am fully committed to ensuring that TSA works with all airports in an appropriate manner to address EDS needs.

25. As part of the Homeland Security Act of 2002, Congress enacted the Support Anti-Terrorism by Fostering Effective Technologies (SAFETY) Act to mitigate the liability of certain companies participating in the design, development, and production of anti-terrorism technologies. DHS established rules for processing applications of SAFETY Act coverage in October 2003. During the past 15 months, only four applications have been approved out of more than 50 submitted – and no approvals have been granted since June 2004.

→ What steps will you take to streamline the approval process for applicants seeking SAFETY Act coverage?

ANSWER: I understand that there are concerns from the public, industry, as well as yourself and other members of the Congress that the application process established by the Department to implement the SAFETY Act has been more burdensome than intended. I understand that the Department has, based upon comments from the public and the Congress, taken steps to streamline the process.

If confirmed, I intend to review the implementation of this important program and work to ensure that the application process is as streamlined as possible consistent with the requirements of the SAFETY Act.

→ Will these steps include consideration of an expedited review process for high-priority applications, where rapid deployment would greatly enhance the Department's mission?

ANSWER: I understand that the Department already has established an expedited review process, but if confirmed I will review that process and make any appropriate changes to ensure that the SAFETY Act program is fulfilling its intended purposes.

Post-Hearing Questions Submitted for the Record
by Senator Pete V. Domenici for the Nomination of
Michael Chertoff to be Secretary of Homeland Security
February 2, 2005

Subject: Research and Technology --- **NISAC**

Questions: Judge Chertoff, I believe DHS's leadership in developing innovative tools and technologies to protect our nation is one of the most important roles the Department plays. The National Infrastructure Simulation and Analysis Center, or NISAC, is funded by DHS to develop such tools and technologies, and much of NISAC's work is done by New Mexico's two National Laboratories: Sandia and Los Alamos.

Specifically, NISAC's purpose is to evaluate the effects of disruptions to America's infrastructure. These effects include direct consequences such as lives lost, property destroyed, and areas contaminated; secondary consequences like national defense threats and economic disruptions, and cascading consequences such as regional and infrastructure interdependencies. I strongly believe in NISAC's efforts and capabilities, but I do not believe the program is being used by the Department of Homeland Security to its full extent.

1. As Secretary of Homeland Security, would you coordinate the activities among the different DHS Directorates so that programs like NISAC could be used throughout the Department?

   ANSWER: From my current perspective from outside of the Department, it appears that coordination of technology development activities among the DHS Directorates is critical to our success. As I understand, and as reflected in sections 302(4), (11), and (12) of the Homeland Security Act, the Congress created the Department's Directorate of Science and Technology (S&T) precisely for the purpose of conducting, coordinating, and integrating the research, development, testing, and evaluation (RDT&E) activities of all elements of the department.
   It is my understanding that in the past year, the Department has undertaken an effort to consolidate the research, development, test, and evaluation (RDT&E) efforts of each of its component agencies under the leadership of the Science and Technology Directorate (S&T).

   From my current understanding, I would expect the Information Analysis and Infrastructure Protection Directorate (IAIP) to use the NISAC in its own operations as well as to assist the other operational elements of DHS to address operational issues as appropriate. I would also anticipate that the S&T Directorate would evaluate the capabilities of NISAC in the context of the needs of all of DHS and to coordinate RDT&E activities to maximize the use and benefit derived from this valuable national

resource. If confirmed, I look forward to examining what other mechanisms for coordination would be appropriate.

2. What level of priority would you give to researching and developing new tools and technologies to defend America?

   ANSWER: First, I would agree that the Department's leadership in developing innovative tools and technologies to protect our nation is one of the critical roles for the Department. Indeed, I would say that the nation's advantage in science and technology is a key to protecting the homeland from intentional, accidental, and natural catastrophes. It would seem that new technologies for analysis, information sharing, detection of attacks, and countering cyber, explosive, chemical, biological, radiological, and nuclear weapons would help prevent and minimize the damage from future terrorist attacks. Therefore I place very high priority on the research, development and deployment of new tools and technologies and, if confirmed, I look forward to providing further support to this key priority.

Subject: Research and Technology --- **UAVs**

Questions: Judge Chertoff, I have long been a proponent of exploring the option of using unmanned aerial vehicles (UAVs) to monitor our borders, particularly the Southwest border. In fact, in last year's legislation that reorganized our intelligence community, I called for the Department of Homeland Security to develop a plan for using UAVs for surveillance of America's southwest border. This plan will consider the types of UAVs and associated infrastructure necessary to enhance security along our porous borders. This is important to border states like New Mexico given the potential for infiltration by terrorists and other critical elements.

In New Mexico, we have some experience with UAVs. The Physical Sciences Laboratory at New Mexico State University operates a Department of Defense sponsored UAV validation and test facility. Because of the already established presence of UAVs in New Mexico, and because of our location on the US/Mexico border, I believe my state would be an asset in the use of UAVs for surveillance.

1. What are your views concerning the use of surveillance technologies like UAVs for securing remote areas of our borders?

   ANSWER: I understand that UAVs provide enhanced capabilities to DHS. I also understand that the Department has been employing UAVs on a trial basis along the southwest border and is still evaluating where UAVs best fit in the Department's border security efforts, both operationally and in terms of cost-effectiveness. If confirmed, I look forward to learning more about this technology and how best to utilize this and other technologies to secure our borders.

Subject: **Border Security**

Questions: Judge Chertoff, DHS has yet to extensively focus on America's 197 land ports of entry, despite the fact that it has been almost 20 years since we launched a major effort to upgrade our border infrastructure --- that's almost 15 years before September 11, 2001.

In a time when we are placing increasing emphasis on upgrading protective measures across the board, including those for our airports, seaports, and critical infrastructure, it is imperative that we also improve land port security. If we are going to be successful in the war on terror, we must ensure that our nation uses every available tool at its disposal, including border modernization.

1. Under your leadership, when might DHS more extensively address the needs at our land ports of entry?

   ANSWER: I believe that the Department must take all possible actions to provide the best tools to our frontline officers to allow them to carry out the important mission of securing our homeland. I understand that, since 9/11, significant improvements have been made at the land ports of entry to put tools in the hands of our personnel and carry out a layered defense to smuggling attempts and the entry of terrorists. The US-VISIT system has been deployed to secondary screening at the 50 largest land ports of entry, which requires the collection of biometric information from visa holders and VWP travelers. If confirmed, I will review the Department's approach to this critical issue.

2. Based on your study of DHS, what do you believe are the three top priorities for securing our land ports?

   ANSWER: While I cannot, at this time, pronounce my top three priorities for securing our land ports, I can tell you that continued deployment of technology; use and expansion of partnerships with industry, U.S. government agencies, and foreign governments; and the complete integration and unification of port personnel into a cohesive unit will be high-priority focus areas if I am confirmed..

Subject: New Mexico capabilities -- **FLETC**

Questions: Judge Chertoff, one of the federal government's premier training sites for law enforcement officers is located in Artesia, New Mexico. It is known as FLETC-Artesia (Federal Law Enforcement Training Center). When terrorists attacked us on 9/11, Congress required the training of hundreds of new Air Marshals. It was FLETC-Artesia that rapidly responded, ramping up the training program and bringing three 727's to Artesia for the training.

FLETC-Artesia also provides basic and advanced training for Border Patrol officers, training for airline pilots who carry firearms in the cockpit (also known as Federal Flight Deck Officers), and various other forms of training for other federal agencies.

1. How do we ensure DHS utilizes facilities like FLETC-Artesia to the maximum extent possible?

   ANSWER. The national "war on terrorism" precipitated by the events of September 11, 2001 placed new and increased demands on the nation's Federal law enforcement agencies. Officers and agents immediately began to work extended hours and many have been reassigned geographically or to expanded duties. Nearly all Federal law enforcement agencies made plans to increase their cadre of qualified officers and agents, and I understand that urgent requests were submitted to FLETC for basic law enforcement training far in excess of the FLETC's normal capacity. I understand that FLETC sites now serve more than 80 federal agencies across all branches of government. If confirmed, the Department of Homeland Security will continue to provide excellent training for law enforcement officers, employing the first-rate capabilities of FLETC.

2. In your opinion, how can we in Congress help provide the best training possible for our federal law enforcement officers, particularly within the Federal Law Enforcement Training Center?

   ANSWER: I believe both Congress and the Administration share a common goal of ensuring all Federal law enforcement officers have the opportunity to receive the highest quality training in the most economical and timely manner. Since the events of September 11, 2001, there have been extraordinary new requirements placed upon law enforcement officers, and I understand that the Federal Law Enforcement Training Center (FLETC) plays a pivotal role in preparing our law enforcement personnel to perform those responsibilities. With the support of the Congress, I understand that FLETC has added many new facilities and improved upon the delivery of critical training in combating terrorism, first responder, international financial crimes, and other related areas. If confirmed, as FLETC and its agencies continue to define the broader nature of training requirements in a post 9-11 environment, especially with regard to specialized and in-service training, the Department will continue to work with the Congress to maintain the highest training capabilities for all Federal agencies, and FLETC will continue to play a prominent role.

Subject: New Mexico capabilities – **Playas**

Questions: Judge Chertoff, this fall I participated in the opening of New Mexico Tech's National Emergency Response Training, Research and Development Center in Playas, New Mexico. DHS played an integral part in this center by providing the funding for

New Mexico Tech to purchase the town of Playas. Playas is a small town in Southwest New Mexico that was virtually abandoned when the copper smelting operation in the area was shut down in 1999.

Its remote location makes it an ideal place for New Mexico Tech to develop a wide range of research and training activities to support homeland security efforts nationwide. With DHS's support, New Mexico Tech was able to purchase the town to pursue these purposes.

In an age in which our enemies are employing advanced technologies to further their goals of disruption and destruction, it is more important than ever that we have a unified force to counter terrorist threats, and New Mexico, with its open spaces, can serve as the perfect place for training that unified force.

1. As Secretary of Homeland Security, will you commit to providing improved and innovative training for our emergency personnel?

   ANSWER: It is my understanding the Department has already provided key resources for training our emergency personnel. If confirmed, I certainly intend to carefully examine all the opportunities that the Department can provide for enhancing the effectiveness of our emergency personnel. Training would be a critical component of this effectiveness, although I believe a comprehensive assessment of all avenues would be appropriate.

2. As Secretary of Homeland Security, would you visit New Mexico with me to view the facilities in place and consider the many other possibilities our open space offers?

   ANSWER: I appreciate this invitation and, if confirmed, I look forward to understanding first-hand the efforts of the Department in securing our homeland. And, I would certainly be happy to visit New Mexico to understand the scope of our homeland security efforts in the region.

Post-Hearing Questions Submitted by
Senator Joe Lieberman
For the Nomination of Michael Chertoff to be
Secretary of Homeland Security

Homeland Security Funding

1. Will you advocate aggressively for homeland security spending needs within the Administration and give Congress your honest appraisal of what is called for?

   ANSWER: If confirmed as Secretary of DHS, I will advocate aggressively for homeland security spending needs and will ensure that Congress receives my honest appraisal of homeland security spending needs and priorities within the Department.

Management

2. In an article titled "Infighting Cited at Homeland Security," *The Washington Post* (Feb. 2) reports on a number of disturbing problems that undermine the Department's vital mission. The article describes DHS as an agency "hampered by personality conflicts, bureaucratic bottlenecks, and an atmosphere of demoralization, undermining its ability to protect the nation against terrorist attack..." It states that DHS "remains a second-tier agency in the clout it commands" within the President's cabinet, with "[p]ockets of dysfunction" scattered throughout the Department. Among other problems, the article contends that: two different agencies in the Department are "gridlocked" over efforts to secure hazardous chemicals on trains; policy quandaries remained unaddressed for long periods of time; the Department is underfinanced and understaffed and suffers from "weak leadership;" and there is a reluctance to make decisions that will be unpopular. According to the *Post* story, the main problem is that "under pressure from the White House to keep staffing lean" the Department "lacks a policy staff to study its largest strategic challenges." The article describes "civil war" within the government as TSA and other agencies struggled over leadership of some aspects of transportation security. It also discusses "personality conflicts" between key senior leaders of the Department. If the *Post* article is correct in its assessment of the state of the Department, these problems, if not addressed, will hinder DHS's capacity to fulfill its

mission. If you are confirmed, what will you do to ensure that these problems are solved and DHS is managed in a professional manner?

ANSWER: If confirmed, it will be my priority to unite the organizations that form this Department into a cohesive, united Department. I will make it clear that infighting, personality conflicts, gridlock, or other bureaucratic problems – if they exist – will not be tolerated. I will also undertake a comprehensive review of the current organizational structure to understand what structural or personnel changes should be made to ensure the DHS wholly fulfills its capacity, mission, and potential.

3. This Committee held a hearing on January 26 to review major challenges facing the Department as it enters its third year of existence. The witnesses, who included the Department's Acting Inspector General and several leading homeland security experts, painted a disconcerting picture: senior officials working with virtually no support staff; weak or nonexistent mechanisms to set Department-wide policy; and key Department officials responsible for financial and technology infrastructure and other central functions swimming upstream against an array of uncoordinated programs within the component agencies. While the Department is still very new and faces extraordinary challenges, these reports go beyond the sort of "growing pains" one would necessarily expect at this stage. In your assessment, how serious are the Department's management challenges at present? What key tools do you think you would need to make improvements? In particular, what if any, organizational changes do you think may be warranted?

ANSWER: I have not had adequate opportunity to carefully study and understand the management challenges faced by the Department. Some of the fundamental challenges, of course, include integrating information, securing border and transportation efficiently, and in a way that preserves free flow of people, goods, and services, and which emphasizes the protection of privacy, civil rights, and civil liberties. If confirmed, I will focus on organizational improvements within the Department.

Policy/Strategy

4. Specifically on the issue of policy, there seems to be growing consensus – including with outgoing Secretary Ridge – that the Department needs a central policy office that can get beyond the crises of the day and do long-term strategic planning, integrating all aspects of the Department's missions and resources. According to news reports, Department officials now say that the lack of a policy staff was a mistake and the Department

plans to create a policy office soon. Are these reports accurate? If so, do you agree with the need for such an office and, if so, describe what role you would expect it to play in the Department's work.

ANSWER: If confirmed, I look forward to better understanding the needs of the Department, including the role that an expanded policy office would play. I understand that there is currently only a limited dedicated core policy staff advising the Secretary. Given that the merger of DHS brought together several policy and planning structures, it thus seems appropriate to harmonize the current structure to create a unified, robust DHS policy office. Such a unified, DHS-wide policy mechanism should coordinate strategic policy activities on behalf of the Department while overseeing the existing program policy and planning efforts. Addressing this will be one of my earliest tasks, if confirmed.

I understand the Homeland Security Act recognized the Secretary's need for flexibility in organizing the new department, and granted important authority in this area. If confirmed, I will certainly be reviewing any specific recommendations for change and reorganization-including that of the policy office-and will keep Congress apprised of the conclusion of these reviews.

a. On a related concern, I was pleased that you indicated to Committee staff that you see the need for an updated homeland security strategy. The current national homeland security strategy was written in the summer of 2002. It predates the creation of DHS and, in the view of many, does not go far enough to set clear priorities, deadlines and responsibilities. Can you describe what improvements you think need to be made in the existing strategy?

ANSWER: As noted in my conversations with Committee staff, I certainly support both the DHS Strategic Plan and the National Strategy for Homeland Security and I believe they have started us in the right direction. That said, I certainly favor a review of the existing strategic documents with the Homeland Security Council, given it has been almost three years since their writing and more than two years since the creation of the Department. If confirmed, I intend to undertake a comprehensive review of the existing strategic documents to understand whether improvements should be made to enhance our homeland security efforts.

b. Given that many homeland security responsibilities lie outside DHS, how should the Administration approach drafting a new national homeland security strategy? Should that task rest with DHS? If so, how would you address the critical homeland security roles played by other parts of the federal government?

ANSWER: If revisions to the national strategy are determined to be necessary, I believe that DHS should have a principal role. Any such effort should be coordinated by the Homeland Security Council and actively include our other Federal partners and a recognition of the critical roles which they play.

Coast Guard Modernization

5. As you know, the Coast Guard has undergone an exponential growth in missions and responsibilities, with some growth in both budget and personnel, since it re-focused its assets on the homeland security mission following the events of 9/11 and their transfer to DHS. There is still much to do to help prepare the Coast Guard to succeed in this post-9/11 environment. The service is in the process of re-capitalizing its surface and aviation assets under the Deepwater program while the Coast Guard's legacy assets, many of which have been rapidly approaching or are now past their expected service life, are experiencing serious breakdowns. The personnel restructuring the Coast Guard has been undergoing has shown signs of strains within the service, with critical billets not being filled or being filled by inexperienced, junior personnel. The Coast Guard Academy, one of this nation's preeminent service academies, has dorms and facilities which need to be updated and repaired in order to provide a safe and productive environment for the students and faculty working and living there. What will you do to ensure that the Coast Guard receives the necessary support and resources so it can perform its critical traditional and homeland security missions?

ANSWER: I appreciate the important work of the Coast Guard, including maritime homeland security, law enforcement, search and rescue, defense readiness, marine safety, waterways management, living marine resources protection, and marine environmental protection. Given the breadth of these responsibilities, sustaining mission balance is important for the Department and the Coast Guard. It is my understanding that all Coast functions are aligned with the Department of Homeland Security's strategic goals, and that there is a continuing focus on balancing the requirements of all missions to ensure the best overall service to the American people.

I understand that the Coast Guard's budget grew more than 50 percent from FY2002-2005 in an effort to give Coast Guard men and women the tools they need to carry out their important missions. If confirmed, I will support the Coast Guard in its homeland security and non-homeland security missions.

There are two critical areas that you addressed in your question: legacy asset sustainment and the maintenance of the Coast Guard Academy. I understand the Administration has strongly supported the Coast Guard's Deepwater program and that plans for the Academy's renovation are underway. I recognize the importance of supporting our Coast Guard men and women in carrying out their critical mission. Should I be confirmed, I pledge to do that to the best of my ability.

Critical Infrastructure Protection

6. Numerous homeland security experts have stressed the urgent need for threat and vulnerability assessments of the nation's critical infrastructure, which can then serve as an analytical basis for making urgent choice about priorities for prevention, protection and response programs. The President himself has underscored this issue in HSPD-7, and had called DHS to do this work and prepare a national infrastructure protection plan by December 2004. Yet that date has come and gone, and there are conflicting reports about the status of the effort and the quality of the draft plan as it exists thus far. What is your understanding of the status of this urgent project? Please explain the importance you place on conducting this assessment of our critical infrastructure, and what you would do as Secretary to hasten the work.

   ANSWER: I understand that the Interim National Infrastructure Protection Plan (NIPP) is in the final stages of review and approval. This effort will necessarily require the acceptance and cooperation of the private sector and State and local governments as the vast majority of the critical infrastructure is owned and operated by the private sector. When fully developed and implemented, the NIPP will provide a critical piece to homeland security, delineating a truly national plan for protecting the critical infrastructure and key resources of the United States. If confirmed, I look forward to reviewing the Department's efforts to date on this critical initiative, and to pressing for producing this assessment as soon as possible.

Chemical Plant Security

7. Given how long and how strongly I and others have been advocating for greater security of the nation's chemical plants, I was disturbed to read in *The Washington Post* article "Infighting Cited at Homeland Security" (Feb. 2, 2005) that the Department believed it was prohibited from spending money to help secure these plants and other critical

infrastructure sites. According to the article, the perceived obstacle has been resolved, and $92 million will now be going out to help secure such sites – the first such significant expenditure in this area.

This is the first indication I have heard that the Department believed it should be spending more in this area, but did not have the necessary tools to do so. Please provide a description of the "technical language" the Department believed prohibited such spending, as well as a description of the plans to now distribute $92 million for infrastructure protection. If confirmed, do you pledge to alert this Committee promptly if you identify impediments to providing resources for homeland security that you judge to be necessary and appropriate?

ANSWER: If confirmed, I will examine this issue, I look forward to working with Congress on homeland security funding issues to ensure that that these and other important matters are addressed in a timely and productive manner.

Information Sharing

8. As you know, effective information sharing among federal agencies, as well as with state and local governments and, where appropriate, the private sector, is critical to homeland security efforts. The Homeland Security Act of 2002 gave DHS significant information sharing responsibilities, and the Intelligence Reform and Terrorism Prevention Act of 2004, implementing a 9/11 Commission recommendation, requires the establishment of a comprehensive Information Sharing Environment to foster the sharing of terrorism information. Despite the crucial role of information sharing in terrorism prevention and response, however, GAO last week added homeland security information sharing to its list of high-risk programs. Among other things, GAO noted that DHS had not yet developed a plan detailing how it will manage its information-sharing responsibilities. If confirmed as Secretary, what specific actions would you take to address these problems and ensure that DHS becomes a leader in the information sharing effort?

ANSWER: I understand that DHS has established an office, the Information Sharing and Collaboration Program, which leads, coordinates and facilitates Department information sharing responsibilities. If confirmed, I look forward to working with this office to see that DHS can facilitate the Federal information sharing effort.

9. Secretary Ridge recently spoke about an incident in which an unsubstantiated – and, according to *Associated Press* reports, bogus – tip

that terrorists were going to attack Boston was made public, resulting in a public alert and increased security. The FBI briefed local authorities about the tip, but apparently did not include Secretary Ridge in the conversation. According to the *Associated Press* account, Secretary Ridge said the incident highlighted the need for DHS to be the primary federal contact for state and local authorities on such matters.

a. Why were Secretary Ridge or other Department officials not included in this conversation?

ANSWER: I do not have any information about the specifics of this incident. If confirmed, I look forward to reviewing this issue to ensure that DHS and DOJ appropriately coordinate their information sharing responsibilities.

b. What do you believe is the appropriate division of responsibilities between DHS and the Justice Department with respect to coordinating information sharing with state and local governments?

ANSWER: The Homeland Security Act gives DHS the primary responsibility to serve as the national level conduit to State, local, tribal, and private sector authorities. While DOJ plays a key role in law enforcement matters, DHS must be engaged in any discussions regarding homeland security. I believe DHS has both a responsibility and a strong interest in maintaining close ties to DOJ for coordinating and harmonizing the flow and content of information. If confirmed, I will further review this issue.

c. What is needed to ensure greater coordination between DHS and DOJ in this regard? Would the system would work better if one or the other took the lead in providing information to, and receiving information from state, local and tribal officials?

ANSWER: It is my understanding that the Department is already working extensively with DOJ and its components in efforts to coordinate information sharing. If confirmed, I intend to review these initiatives and further refine the Department's efforts.

I understand that DHS and DOJ are currently working on enhanced coordination. Agreements have been established to harmonize technical standards which will ultimately facilitate the movement of information, and DHS and DOJ are coordinating advice to State and local law enforcement organizations. Additionally, senior DHS representatives are located at the FBI, TSC, and NCTC, and representatives from the FBI are present at DHS.

Human Resources Management

10. As you know, the Department recently issued rules for establishing its human resources management system. When the proposed rules were published about a year ago, I and many others objected to a number of elements that remain in the final rules – including excessive limits on collective bargaining that are not needed to meet the Department's critical mission, changes to the appeals process that interfere with employees' due process rights, and unduly vague and untested pay and performance provisions.

While the Department made some improvement in the final rules over what was proposed a year ago, I believe the final rules will still undermine some of the key employee protections that prevent workplace abuse. Thus, I fear that these final rules will engender a risk of politicization and arbitrary treatment of employees that could damage the merit-based workplace and undermine the effectiveness of the new Department. Assuming you are confirmed, what will you do as Secretary, in implementing these new rules, to safeguard the civil service and collective bargaining protections of employees in the Department, to foster a collaborative culture, and to minimize the risk of politicization and abusive treatment of employees?

ANSWER: I understand that, first and foremost, the new human resources management system does preserve all core protections, including merit system principles, veterans' preference, and due process. I am also told it protects against discrimination, retaliation against whistleblowers, and other prohibited personnel practices, and ensures that employees may organize and bargain collectively in certain circumstances. The new DHS personnel regulations create a Homeland Security Labor Relations Board to ensure that those who adjudicate the most critical labor disputes do so quickly and with an understanding and appreciation of the unique challenges DHS faces in carrying out their mission. These and other efforts serve to safeguard employee protections, and if confirmed, I look forward to working with employees and their representatives to fulfill the Department's mission, while preserving workplace fairness and enhancing morale.

S&T Directorate

11. While our federal research institutions undoubtedly have much to offer in helping to build our homeland security, I am concerned that too large a portion of the research and development money available through the Department's Science and Technology Directorate is going to federal and national labs and not to a broad array of entities in the private sector and academia. The Homeland Security Act established HSARPA within the S&T Directorate to be similar to the Defense Advanced Research Projects Agency (or DARPA) in DOD, which has succeeded by virtue of

collaborating with an array of outside entities. Given that most of our critical infrastructure is privately-held, it is particularly important to make use of private sector R&D to design the technologies and methods to protect that infrastructure.

As Secretary, will you act to ensure that more of the Department's R&D dollars are leveraged through HSARPA on a competitive basis with partners in the private sector and academia?

ANSWER: As I understand, the funding levels for HSARPA and for other R&D are determined through the Department's planning, programming, and budgeting process and are dependent on where the best expertise is found to conduct the R&D that will most effectively meet the Department's mission to ensure the safety of the nation. If confirmed, I look forward to working with the Under Secretary for Science and Technology to allocate funding in a manner that will most effectively meet the Department's mission to ensure the safety of the nation and enhance our necessary partnerships.

Tracking

12. In response to homeland security programs and initiatives, a number of companies are developing and testing different technologies to monitor and track the flow of goods and people across our borders and within the country. The Department, through programs like Operation Safe Commerce and the Smart Box Initiative, has also been testing various ideas and technologies, in an attempt to determine what is reasonable and effective. If confirmed, would you share progress reports and final reports on the Smart Box Initiative and Operation Safe Commerce with the Committee as they are completed? What more if anything do you believe the Department should do to examine the available technologies for monitoring and tracking people and goods that are being developed by either government or private entities?

ANSWER: If confirmed, I would be happy to share progress reports on such initiatives with the Committee when the initiatives are completed. Along with the above-mentioned Department-sponsored pilots, I understand that DHS is actively monitoring private sector efforts at developing solutions to improve supply chain security, efficiency, and transparency, and that the prospects for those efforts are encouraging. I understand that much of the technology is rapidly changing, so the Department must work closely with stakeholders to maintain awareness and continue to review emerging technology with an eye toward how it can be integrated into information and processing systems. If

confirmed, I will look to the Department's Directorate of Science and Technology to continue to play a significant role in this critical development and evaluation effort.

Torture Issues

13. At your hearing, you discussed your role in the development and implementation of Justice Department memoranda and advice on the federal anti-torture statute. So that the record contains your response to all of the allegations raised, I would appreciate your providing responses for the record to a more complete set of questions on the issue.

    a. What your involvement was in the development of the Justice Department's guidance on the meaning of the anti-torture statute, and what role did you play in advising the CIA or any other agency about particular interrogation techniques?

ANSWER: The Office of Legal Counsel was the primary DOJ component responsible for the guidance on the meaning of the anti-torture statute. As the Committee recognizes, the Office of Legal Counsel, headed by its Assistant Attorney General, is a component that is separate and distinct from the Criminal Division, which I headed. As I understand is not uncommon, OLC did show me a draft of what I believe developed into the August 1 memorandum to obtain my views on how a prosecutor might apply 18 U.S.C. § 2340 in a practical sense. My essential position was that when you are dealing with a statute with a general standard and an intent element, the question of good faith and an honest and reasonable assessment of what you're doing becomes critical. My bottom line assessment to the other lawyers asking the question was this: You are dealing in an area where there's potential criminal liability. Agency personnel need to look to the statute, carefully consider the effects of what they propose to do and be very careful to make sure in good faith that whatever it is that they decide to do falls well within what is required by law.

As I mentioned at the hearing, I was also approached on a limited number of occasions by lawyers seeking guidance on how a prosecutor might apply the torture statute as a practical matter. My institutional role as a prosecutor generally was to iron out a historic set of facts and measure it against the law. Thus, I was not prepared to approve things in advance or to give people speculative opinions that they might later take as a license to do something. I did attempt to make sure that the lawyers understood that what is likely to be critical to a prosecutor evaluating a potential charge is the honest good-faith assessment by any interrogators of the effects of what they are doing and how those effects measure against the statute.

    b. How many times did you consult with the CIA or other agencies (or individuals acting on their behalf) about the anti-torture statute or particular interrogation techniques?

ANSWER: I cannot recall the precise number of times, but I believe that I was asked about this matter by lawyers from other agencies no more than half a dozen times, including passing conversations.

c. When did those consultations occur?

ANSWER: Any conversations that I had on this topic occurred between the summer of 2002 and the middle of 2003.

d. Did you discuss conditions that could protect agency personnel from prosecution?

ANSWER: As stated above, my position was not to give advance determinations about what one can do. I was not prepared to approve things in advance or to give people speculative opinions that they might later take as a license to do something. My position was limited to making sure that the lawyers understood that what is critical is the honest good-faith assessment by interrogators of the effects of what they were considering and how they would measure against the statute.

e. What specific advice did you give?

ANSWER: See my answer to sections a and d above.

f. Did you ever opine on the legality or likelihood of prosecution for particular techniques? If so, please describe the technique in question and your advice.

ANSWER: No, except as expressed in sections a and d above.

14. The August 2002 Bybee memo, which the DOJ's Office of Legal Counsel has since withdrawn, contains a very troubling discussion of the President's supposed authority to ignore the anti-terror statute. Specifically, on page 35, it says the following:

> Congress may no more regulate the President's ability to detain and interrogate enemy combatants than it may regulate his ability to direct troop movements on the battlefield. Accordingly, we would construe Section 2340A to avoid this constitutional difficulty and conclude that it does not apply to the President's

detention and interrogation of enemy combatants pursuant to his Commander-in-Chief authority.

Was the discussion of this defense in the draft of the memo you saw?

ANSWER: I recall seeing some general discussion of this issue but not the specific language.

Did you comment on it? If so, what was your comment?

ANSWER: I do not believe I was asked to address this issue and I did not.

As the head of the criminal division, did you have a reaction to the suggestion that you would not be able to prosecute for this reason? What was it?

ANSWER: Anything I saw on this point I would have regarded as speculative.

Do you have a reaction to that suggestion now?

ANSWER: Because I understood the President has unequivocally rejected use of torture, I believe any such suggestion addresses an unrealistic prospect. I also understood the new OIG opinion on this point does not contain any such advice. In addition, I am not sufficiently versed in the law in this area to offer an opinion regarding the abstract separation of powers issues presented in this hypothetical, and in any event as to interpretation of law would defer to the Attorney General. I do agree with the President that it is important to respect the law and its underlying values.

Posthearing Questions for the Record
Submitted by Senator Carl Levin for the
Nomination of Judge Michael Chertoff to be
Secretary of Homeland Security
Senator Carl Levin
February 3, 2005

Reverse Inspection Pilot Program

As part of the FY 03 Omnibus Appropriations bill, Congress authorized the creation of integrated border inspection areas between the United States and Canada. These areas are designed to be used for conducting shared border inspection or reverse customs inspection at the U.S. Canadian border crossings. Such inspections would enable the U.S. Customs Service to inspect vehicles for hazardous material before they cross bridges or tunnels into the United States. Congress believed conducting inspections this way would both enhance security and alleviate traffic congestion at border crossings. With the increased security risk faced by our nation, inspecting vehicles for dangerous contents such as bombs and explosives after they enter our tunnels or cross our bridges is totally inadequate.

Because Michigan has the first and second highest volume commercial land border crossings on the U.S.-Canadian border, each of which include bridge crossings, the creation of reverse inspection areas is of great importance to Michigan for both security and traffic congestion purposes. The Administration originally indicated that establishing reverse inspection areas would require entering into a treaty with Canada in order to secure the necessary legal authorities for U.S. officials operating in Canada. However, On December 16, 2004, Secretary Ridge and his Canadian counterpart, Canadian Deputy Prime Minister Anne McLellan, announced a plan to move forward with two land pre-clearance pilot projects, one at the Peace Bridge in Buffalo, New York, and the second in a yet to be determined location.

Would you commit to considering implementing the second pilot project in Michigan (at Detroit's Ambassador Bridge or Port Huron's Blue Water Bridge) since these are the two highest-volume commercial crossings on the U.S.-Canadian border?

ANSWER: I recognize the potential both for enhancing security and facilitating commerce in successfully implementing a pre-clearance inspection pilot, and am supportive of continuing the development process for this project. I understand that the agreement to move forward at the Peace Bridge is still contingent on a few issues, such as the amendment of Canadian laws to enable certain U.S. inspection authorities. I understand that the Michigan border crossings are critically important to U.S. trade, and if confirmed I intend to work with you and all of the stakeholders involved to further our mutual goals of enhancing security and facilitating commerce.

Direct Use of DHS Funds

The FY05 Homeland Security Appropriations bill contains a waiver that allows DHS grant recipients to use homeland security grant funds directly, instead of first spending the money and then requesting reimbursement. What are your views on this waiver and with respect to making this approach a permanent feature of DHS grant programs?

ANSWER: I understand that the Funding Task Force, convened last spring by Secretary Ridge, was charged with examining the speed at which funds were distributed to recipients and other issues impeding the efficient distribution of funds. I am told that the task force's report included a recommendation to provide this waiver to DHS grant recipients, a waiver which may be used only if certain requirements are met by the grant recipient. If confirmed, I look forward to reviewing the program to determine if the waiver should become a permanent feature of DHS grant programs.

University Research

Current DHS research efforts may not be taking advantage of the wealth of talent at our nation's universities. What are your views with respect to referring those technology needs which are not readily addressed by current or near-term technologies to the national laboratories and university community for research?

ANSWER:

It is my understanding the Department has engaged the national laboratories and university research communities through such initiatives as the Homeland Security Centers of Excellence. Although I do not know the full scope of the DHS engagement, if confirmed, I certainly intend to examine ways to enhance and strengthen these partnerships so that universities and national laboratories become even more effective partners in securing the homeland.

FBI Document

At your hearing, you were asked about a document containing three internal FBI emails indicating that, on a number of occasions, FBI personnel communicated with personnel in the Department of Justice, including the Criminal Division, about interrogation techniques which were contrary to FBI policy and which were being used by the Department of Defense and DHS in Guantanamo Bay to interrogate detainees. You indicated that, during your tenure at the Criminal Division, you did not take part in discussions of DOD interrogation techniques except to discuss their effectiveness. Please elaborate on the nature of these discussions, who participated in them, and why.

ANSWER: I do not recall the specifics of these discussions, which I believe mainly occurred among DOJ personnel. I do recall that the tenor of the discussion was what information was

being furnished by detainees and whether detainees should be encouraged to talk by providing offers of favorable treatment in return for information. I recall no discussion of mistreatment of detainees.

Enemy Combatants

In October 2002, DOJ charged six men from Lackawanna, New York with conspiracy and providing material aid to a terrorist organization for attending al Qaeda training camps in Afghanistan. The Wall Street Journal reported in April 2003 that guilty pleas by two of the men charged in the Lackawanna case "came after the government threatened the defendants with 'enemy combatant' status."

An attorney for one of the Lackawanna defendants told a member of my staff that while enemy combatant status was never directly threatened, he and his staff were clearly led to believe that it was a real possibility. Public statements by Michael Battle, the U.S. Attorney overseeing the case, seemed to support that assertion. Mr. Battle told CNN in April 2003 that he had discussed the possibility of enemy combatant status for the Lackawanna defendants with the Department of Defense (DOD). In addition, he told the Washington Post in July 2003 that he was "trying to use the full arsenal of our powers" and "[y]ou had a new player on the block – the Defense Department – and they had a hammer and an interest."

In your answers to pre-hearing questions, you say that "During my tenure, I, along with prosecutors within the Department's Criminal Division, consulted from time to time with attorneys from the Department of Defense (DoD) to ensure that information concerning persons who may properly be deemed enemy combatants in the conflict with al-Qaeda was shared in a timely manner so that each department could carry out its distinct functions. In those instances in which DOJ entered into plea agreements with defendants that contained assurances addressing the government's ability to declare the defendant an enemy combatant, DoD was consulted."

Did the Department of Defense call the Department of Justice to say that DOD was considering enemy combatant status for the Lackawana defendants? What about defendants in other cases such as the Detroit case that charged defendants with providing material support?

If not, how did you determine whether or not to notify individual defendants that enemy combatant status was a possibility?

How many cases were you aware that enemy combatant status was raised by DOD with the Criminal Division as a possibility for defendants?

ANSWER: We learned from defense counsel in the Lackawanna case that the Department of Defense was considering enemy combatant status for the Lackawanna defendants. I do not

specifically recall how many times the possibility of enemy combatant status came up, but it's my general impression that it was a small number of times.

I do not recall this arising in the Detroit case.

As a general matter, during my tenure, I, along with prosecutors within the Department's Criminal Division, consulted from time to time with attorneys from the Department of Defense (DoD) to ensure that information concerning persons who may properly be deemed enemy combatants in the conflict with al-Qaeda was shared in a timely manner so that each department could carry out its distinct functions. In those instances in which DOJ entered into plea agreements with defendants that contained assurances addressing the government's ability to declare the defendant an enemy combatant, DoD was consulted.

Department policy was that prosecutors were not to use enemy combatant status as "leverage" in plea negotiations with defendants. If defendants or their counsel raised the issue, however, prosecutors could address it. I am informed that in the Lackawanna case this issue was raised by defense counsel.

Material Witness Detentions

The material witness law authorizes the detention of individuals who have testimony that is material to a criminal proceeding and are likely to flee. Since the September 11 tragedy, the government has increased its use of the material witness law to detain an undisclosed number of individuals in counterterrorism investigations. A Washington Post article quoted you as saying that the material witness law is an "important investigative tool" which can be used to obtain "fingerprints" and "hair samples," suggesting that the Justice Department may be using the material witness law to detain individuals who are really criminal suspects, rather than simply potential witnesses. For example, during your tenure at the Justice Department, the United States detained several individuals as material witnesses who were later deemed enemy combatants such as Jose Padilla.

Do you believe it is proper for the U.S. government to detain individuals as material witnesses in order to investigate them as criminal suspects, and, if confirmed, would you encourage or discourage this use of the material witness law?

ANSWER: The standards that apply to the use of material witness warrants are set forth in the Federal Criminal Code. The use of material witness warrants is authorized by 18 U.S.C. § 3144, which provides for the arrest and detention of a person who may have testimony material to a criminal proceeding and whose presence may not be obtained by subpoena. Persons held as material witnesses have the right to counsel, and under 18 U.S.C. § 3006A, court-appointed counsel shall be provided for any material witness financially unable to obtain adequate representation.

The use of material witness warrants in grand jury proceedings is an appropriate law enforcement technique – a technique authorized by Congress, routinely used by the Department of Justice, and repeatedly approved by federal courts nationwide. *See, e.g., U.S. v. Awadallah*, 349 F.3d 42 (2d Cir. 2003). An individual detained as a material witness must be found by a

federal judge to have information material to a grand jury investigation and to have met the criteria for detention under the Bail Reform Act (18 U.S.C. § 3141 *et seq.*) after an adversarial hearing. The decision to detain a material witness is therefore made by a federal judge rather than the prosecutor or law enforcement agent. Generally, material witnesses are released once they provide the information they have about the investigation, unless they are detained under some other legal authority (for example, immigration or criminal charges).

I believe that the material witness statute should be used by the Justice Department in accordance with the law to secure the testimony of persons where that testimony is material to terrorism investigations and it is impracticable to secure the presence of the persons by subpoena. I note that the decision to seek such a warrant from a court lies in the discretion of federal prosecutors, and I would defer to them.

> What procedures and standards would you recommend be instituted to ensure that agency personnel establish that a specific individual, in fact, could provide material testimony about a crime, before recommending detention of that individual as a material witness?

ANSWER: The appropriate policies and standards for use of material witnesses are established by law, and applied by the Department of Justice. If confirmed, I would defer to them in this matter.

> Would you commit to examining this issue and establishing such procedures and standards for DHS personnel?

ANSWER: In my understanding, DHS personnel would not be responsible for making decisions on the appropriateness of the use of the material witness statute. Instead, this would be the responsibility of DOJ personnel. I would defer to the Department of Justice on this matter.

PRAO Advice on Lindh Interrogation

During your tenure as head of the Criminal Division, John Walker Lindh was detained and questioned by Criminal Division personnel. Last May, Senator Kennedy asked you whether anyone in the Criminal Division had sought the advice of the Justice Department's Professional Responsibility Advisory Office (PRAO) on whether Mr. Lindh could be interrogated without his defense counsel's being present. You responded by saying, "I have to say, Senator, I think the professional responsibility office was not asked for advice in this matter. I'm familiar with the matter I was involved in it." Since then, your written responses to Senate questions and certain documents indicate that John De Pue of the Criminal Division did seek advice from the PRAO by sending an electronic mail inquiry to that office, and a PRAO attorney responded by clearly advising against interrogating Mr. Lindh without the presence of his counsel. I understand that you did not regard this email exchange as the PRAO's official position.

Please indicate whether it is still your position that the PRAO "was not asked for advice in this matter," or whether your earlier testimony was incorrect. In addition, please confirm whether it is your position that the PRAO advice contained in the email exchange did not represent the

office's official position, why you believe that to be the case, and what the office's official position was.

ANSWER: The e-mails which are referred to in Senator Kennedy's questions of May 12, 2003, indicate that Mr. DePue initiated contact with PRAO about whether the FBI should question Walker Lindh and that Ms. Radack responded to that inquiry. I do not know how he came to do that, and he did so at the time without my knowledge and without my request. Before and during the December 9 and 10, 2001 interviews of Walker Lindh I was unaware that anyone had contacted PRAO regarding the FBI's intent to interview. I first became aware of contacts on this issue between anyone in the Criminal Division and PRAO after Lindh had waived his Miranda rights (including his right to counsel) and consented to his December 9 and 10 interviews. I recall that in early 2002 the existence of e-mail traffic between Mr. DePue and Ms. Radack came to my attention as an outgrowth of the prosecutors' review of documents in connection with the Lindh case.

PRAO is not part of the Criminal Division and does not report to me. My personal understanding is that PRAO's assignment is to give guidance to prosecuting attorneys regarding issues that may arise under the professional ethics rules in the states in which the prosecuting attorneys are admitted or practice. I also understand that among the rules on which PRAO advises are those canons of professional ethics that specifically address communication between Department attorneys and represented individuals. I do not know PRAO's customary practice in rendering guidance or advice on attorney ethics questions in routine settings or in various contexts.

In stating my personal belief that I would not regard the e-mail traffic as constituting an official opinion of the Professional Responsibility Advisory Office, I am expressing my subjective standard based on what I would expect in the circumstances. Indeed, I still do not know whether PRAO has taken an official position on whether the professional ethics rules governing attorneys should have barred FBI agents from questioning Walker Lindh while he was in military custody in Afghanistan.

In my personal opinion, the legal questions raised by the FBI's desire to interview Walker Lindh involved, among other things, the interplay between the Fifth and Sixth Amendments and intelligence gathering during military operations overseas. But the ethics rules by their terms apply only to attorneys. Accordingly, it is unclear how such ethics rules could be applicable to an FBI agent who wishes to question a combatant overseas. 28 C.F.R. 77.2 (explicitly excluding from the definition of attorney for ethics purposes "investigators or other law enforcement agents"). Yet another consideration is that the Supreme Court has established that a family member's retention of counsel for a suspect does not create a legal bar to questioning where the suspect has waived his Miranda rights. In Moran v. Burbine 475 U.S. 412 (1986), the Court held that although an adult defendant's sister had retained counsel without defendant's knowledge, it was not a constitutional violation for police to fail to inform the defendant of that fact when they obtained his Miranda waiver and questioned him. The Court also held that prior to the initiation of adversary judicial proceedings, no Sixth Amendment right would attach.

In expressing my personal belief that I would not regard the e-mail as PRAO's official position, I have in mind my expectation that an official opinion addressing the novel and complex issues involving questioning of an American captured with the enemy during operations overseas would include explicit analysis of the above factors (and others). Accordingly, in reading the quoted e-mail, I interpret it at most as an initial step toward an official position. In so

POST-HEARING QUESTIONS FOR THE RECORD
SUBMITTED BY SENATOR DANIEL K. AKAKA FOR THE
NOMINATION HEARING OF JUDGE MICHAEL CHERTOFF
TO BE SECRETARY OF THE DEPARTMENT
OF HOMELAND SECURITY
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS
FEBRUARY 2, 2005

1. On November 17 and 18, 2004, National Public Radio reported on the mistreatment of immigrant detainees housed at the Passaic and Hudson county jails in New Jersey. In response to the reports that detainees were assaulted by guards and attacked by dogs, I asked former Department of Homeland Security (DHS) Inspector General (IG) Ervin to review the allegations. I was advised that the IG was examining DHS contract detention facilities throughout the U.S. I look forward to this report.

In the interim, what steps will you take to strengthen the DHS oversight of contract facilities and ensure that detainees are treated humanely and in accordance with the rule of law?

ANSWER: I understand that conditions of confinement for all DHS detainees are governed by DHS's National Detention Standards, which were promulgated in a collaborative effort between the American Bar Association, the Department of Justice, and the Immigration and Naturalization Service. If I am confirmed, DHS will remain committed to monitoring and improving oversight of the conditions of our detention facilities, to include those managed through contractors, and any allegations pertaining to the mistreatment of detainees will be investigated vigorously and appropriate action will be taken to address any negative findings.

2. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) personnel in Hawaii and across the United States have expressed their concerns to me regarding the seemingly arbitrary manner in which Customs and the Immigration and Naturalization Service were split between CBP and ICE. The result has been mismanaged budgets, which prompted a hiring freeze for CBP and ICE in the spring of 2004, an ongoing overall budget freeze for ICE, and low staff morale.

In addition, I have heard from members of the National Association of Agriculture Employees, representing agriculture inspectors transferred to DHS from the Animal and Plant Health Inspection Service at the Department of Agriculture, who tell me that a number of inspectors are considering retiring or leaving DHS. In fact, there are about 500 vacancies within the agriculture quarantine inspection functions at DHS.

What are you going to do to resolve these budget issues and improve employee morale?

ANSWER: If confirmed, I will ensure that support of the Department's workforce in carrying out the Department's critical mission is a top priority. While I have not been part of the Department's stand up, I recognize that the merger and consolidation of 22 entities to create this Department was a tremendous undertaking. It is understandable that some individuals adjusted to the growing pains and opportunities that change affords differently than others. If confirmed,

maintaining a motivated and skilled workforce at the Department will be among my top priorities.

It is also true that the Department was confronted with difficult and complex budget challenges in examining and realigning resources among the agencies. I understand that the Department, with the support of Congress, took steps to manage its available resources and transferred or reprogrammed funds to meet the priorities of critical security programs. If confirmed, I will work with Congress to resolve any budgetary issues.

3. Since DHS assumed responsibility for agricultural inspections at the border, the number of inspections conducted per year has decreased significantly even though agricultural imports have increased.

How do you plan to ensure that agricultural security at the border is not sacrificed to other priorities, such as customs and immigration?

ANSWER: It is critical that DHS carry out its mission requirements, including maintaining the appropriate attention to agricultural inspections. I understand that pursuant to a formal Memorandum of Understanding between Customs and Border Patrol and the Department of Agriculture (USDA), the CBP inspection force at the ports of entry continue to carry out and enforce agricultural policy that is established by USDA. I am committed to ensuring agricultural security, and if confirmed I look forward to working on this issue.

4. The extent of DHS's coordination with other federal agencies varies based on the subject matter. For example, you mentioned in your responses to pre-hearing questions that you believe the Department of Treasury and DHS are working together successfully to secure the financial sector. However federal coordination in the area of agriculture security, for example, is lacking.

How will you ensure greater interagency coordination for the Department's different missions?

ANSWER: As directed by Homeland Security Presidential Directive 7 (HSPD-7), DHS is coordinating the overall effort to protect our nation's critical infrastructure and key resources and will continue to do so as the Interim National Infrastructure Protection Plan (NIPP) is fully implemented. Although DHS oversees coordination, this is truly a government-wide effort as implementation relies on the expertise of the Sector-Specific Agencies such as the Department of Agriculture in working with each sector. Moreover, because the private sector owns the vast majority of our nation's infrastructure, it is neither practical nor possible for the Federal Government to assume sole responsibility for protecting each and every asset. If confirmed, I will continue the Department's efforts to act in partnership with Federal, State, local, and private sector entities to identify, prioritize, and coordinate the protection of critical infrastructure and key resources in order to detect, deter, and defend these assets relative to a threat.

5. The 27 Visa Waiver Program (VWP) countries have been given until October 26, 2005, to incorporate a facial biometric identifier into their passports. Most VWP countries are struggling to meet that goal because the process costs millions of dollars.

Secretary Ridge recently made a number of public statements arguing that the United States should incorporate biometric data into U.S. passports before we can ask the rest of the world to do so. However, no specific timeline was given.

Do you agree with Secretary Ridge, and if so, do you plan to pursue a policy to expedite the incorporation of biometric identifiers into U.S. passports with the State Department?

ANSWER: Recognizing that it is the State Department's responsibility to issue U.S. passports, I believe that, ideally, a U.S. travel document should be issued to an individual upon establishing his/her identity, and that a travel document should contain enough information to allow for quick, on-the-spot identity verification quickly, to ensure against counterfeiting and/or identity theft, and to speed American travelers through air, land, and sea ports of entry. If confirmed, I look forward to working with Secretary Rice to ensure that U.S. passports are secure. It seems to be reasonable for the United States to work toward implementation of the same passport security measures that we expect to be implemented by other countries.

6. Maintenance of non-homeland security missions, such as the Coast Guard's search and rescue and fisheries enforcement, is especially important to my home state of Hawaii.

In a March 2004 report, the Government Accountability Office (GAO) found that during FY 2003, the non-homeland security mission hours of the Coast Guard were below pre-September 11, 2001, levels, even though the Coast Guard experienced a 32 percent budget increase and nine percent increase in personnel.

On February 1, 2005, the GAO released a report on the Coast Guard which stated that increases in the Coast Guard's homeland security operations after the September 11 terrorist attacks clearly affected Coast Guard stations' mission activities and presumably readiness needs.

How will you ensure that adequate resources and funding are provided for the Department's non-homeland security missions?

ANSWER: I understand the important work of the Coast Guard, including maritime homeland security, law enforcement, search and rescue, defense readiness, marine safety, waterways management, living marine resources protection, and marine environmental protection. Given the breadth of these responsibilities, sustaining mission balance is important for the Department and the Coast Guard. I also understand that all Coast Guard functions are aligned with the Department of Homeland Security's strategic goals and there is a continued focus on balancing the requirements of all missions to ensure the best overall service to the American people. If confirmed, I will support the Coast Guard in both homeland security and non-homeland security missions.

7. Under the Homeland Security Act, states have primary responsibility for planning and responding to homeland security emergencies within their borders. States, however, generally have little or no jurisdiction on sovereign tribal lands, and tribal governments and federal agencies bear the primary responsibility to ensure that tribal homelands are secure from terrorist attack.

Given that over 260 miles of our Nations' borders are located within tribal lands and given the proximity of tribal lands to critical infrastructure, particularly energy infrastructure, we

must ensure a coordinated and comprehensive approach to homeland security. Because federal assistance flows from DHS through state governments, tribes must compete with localities within a state for federal homeland security funds. This frequently means that many economically-depressed tribes have not been able to acquire the assistance needed to help them meet their homeland security responsibilities.

What actions can be taken to ensure that tribal governments are adequately represented?

ANSWER: Federally Recognized Tribes are defined in the Homeland Security Act as local governments and, as such, are eligible for funding to support their planning, prevention, preparedness and response activities. To ensure coordination, cooperation, unified response and the leveraging of scarce resources, DHS grant funding is distributed through State governments, with the vast majority of the funding passed along to units of local government, including the Federally Recognized Tribes. If confirmed, I look forward to continuing to work closely with tribal governments and other tribal associations and organizations to provide support and guidance for seeking these grants.

8. The Transportation Security Administration (TSA) began receiving applications from U.S. airports that wish to participate in the Screener Partnership Program in November 2004. This program will allow airports to hire security screeners employed by private-sector companies to provide baggage and passenger security screening at their facilities for the first time since September 11, 2001.

According the DHS Inspector General and GAO, the data used to evaluate the pilot program that preceded this "opt-out" program was insufficient.

Given the high stakes involved in airport security, do you believe the pilot program was evaluated thoroughly before commencing this program? What steps will you take to ensure that the federally mandated security standards are being applied at airports using private screeners?

ANSWER: If confirmed, and as appropriate, I will ensure this program has been thoroughly evaluated and take the necessary steps to guarantee that the Federally mandated security standards are being applied at all airports.

9. In response to questions about the new DHS personnel system at today's hearing, you stated that you would meet with employees to get their input on the system and to improve employee relations. Will you please detail how you intend to initiate dialogue with employee groups and obtain employee input on pre-decisional departmental policy?

ANSWER: I understand that the DHS personnel regulations provide for continuing discussions with employees and their representatives to discuss their views and concerns. If confirmed as Secretary, I will ensure that employee concerns are fairly considered, including meeting with employee representatives.

10. The final personnel regulations grant the DHS Secretary the sole discretion to appoint, remove, and reappoint members of the internal Labor Relations Board and the Mandatory Removal Panel. In my opinion, these two entities lack independence primarily because of the

appointment process. To ensure employee trust and credibility of the panels, would you agree to select panel members recommended by employee groups?

ANSWER: If confirmed, I would retain the ability to make these appointments from any appropriate source. To ensure that employee groups including unions have a voice in the nomination process for the Homeland Security Labor Relations Board and the Mandatory Removal Panel, I will give full and fair consideration to their nominees and consult with them if additional information is needed about a particular nominee, but it would be inappropriate to prejudge who would best serve on these panels by limiting the selection to candidates nominated by employee groups.

11. The final personnel regulations grant the DHS Secretary the authority to identify certain "mandatory removal offenses" which would be subject to appeal to an internal panel. What types of offenses would you list as "mandatory removal offenses"?

ANSWER: I understand that while no mandatory removal offenses have been established, the preamble to the DHS personnel regulations provides examples of possible offenses. These examples were developed to address concerns raised by participating labor organizations during the 30-day meet-and-confer process. I am told that two examples are intentionally abetting an act of terrorism or intentionally selling or transporting weapons of mass destruction.

12. As the author of legislation to strengthen federal whistleblower rights, I am concerned that DHS is not participating in the 2302(c) Certification Program established by the Office of Special Counsel to certify that agencies are meeting their requirements under law to inform their employees about their rights and remedies under the Whistleblower Protection Act. Will DHS participate in the OSC certification program and educate employees on their rights and protections?

ANSWER: I understand the Department of Homeland Security is currently registered as a participating member of the Office of Special Counsel's 2302(c) certification program. If confirmed, I will ensure that DHS pursues policies to educate its workforce on their rights, protections, and the resources available to them.

13. In response to my question at the hearing on fostering an open working environment at DHS where employees feel comfortable coming forward to disclose government mismanagement and illegality, you said that you would hope that employees would make disclosures internally. I agree that it is preferable for such disclosures to be addressed internally without retaliatory action. However, employees may feel uncomfortable making internal disclosures and, in some cases, could diminish their legal protections by doing so in light of recent court decisions. As such,

> a. Do you agree that the Whistleblower Protection Act provides protection for employees who make protected disclosures to both internal and external entities, such as the press and the Office of Special Counsel, except in the case of classified information which can

only be disclosed to the Inspector General, the Special Counsel, Congress, or a designated agency official?

ANSWER: I agree, with the understanding that the protected disclosures referenced above do not include information specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

b. Will you guarantee that any non-disclosure policy issued by the Department will be consistent with and not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b))?

ANSWER. While I have not had a recent opportunity to review each of these significant authorities, and while I obviously have not had the benefit of the best legal and other thinking from the professionals at DHS, if confirmed, you certainly have my commitment to focus on the importance of these protections and these issues, and my pledge to ensure compliance with the law. The Department will comply with all the laws of the United States, including the provisions of law protecting whistleblowers, consistent with the Constitution, the Homeland Security Act and other legal authorities such as those noted above.

14. In further response to my question on your commitment to whistleblower protections, you stated that you were not responsible for Ms. Jesselyn Radack's employment, performance, or her departure from the Department of Justice Professional Responsibility Advisory Office. Were you ever consulted, in any manner, about her role in the interrogation of John Walker Lindh and the personnel actions taken against Ms. Radack?

ANSWER: I was not consulted regarding any personnel actions taken against Ms. Radack.

15. In response to recent cases of federal employees disclosing information to Congress, the Department of Justice has argued that provisions included in annual appropriations bills to prohibit the use of funds to pay employees who retaliate against employees or prohibit employees from disclosing information to Congress are unconstitutional. Do you believe that those provisions violate the Constitution? If confirmed, will you agree to abide by all provisions of law protecting federal whistleblowers?

ANSWER: If confirmed, I agree that I will comply with the laws of the United States, including the provisions of law protecting whistleblowers, consistent with the Constitution and the Homeland Security Act.

16. I strongly support continuing education and training. However, across the federal government, employee training programs are generally underfunded and thus, underutilized. This is especially true in the area of training managers to measure performance and discipline employees.

a. What will be your primary training goals?

ANSWER: I understand that beyond operational training designed to enhance mission performance, a major focus for training in the next year will be on enhancing managerial and supervisory skills and on educating all employees on the new human resource system at DHS. If confirmed, I will ensure that the DHS will develop leaders who can and do coach, mentor, and motivate employees, address performance concerns, and reward and recognize excellent performance.

b. What percentage of the DHS budget will be allocated for training?

ANSWER: If confirmed, I will review the training funding allocations of the Department's budget and ensure that employee training programs and funding are adequate to meet the needs of the Department's most important resource: its employees.

c. Given the Department's documented financial management difficulties, how do you propose to ensure the continuation of department operations as well as fund training programs for the new personnel system and fund a pay for performance system?

ANSWER: I understand that the training program for implementation of the new personnel system is funded for FY 2005 and managed by the Chief Human Capital Officer. I further understand that training and communication materials on the new system will be developed beginning this year.

17. According to the May 2004 Office of Personnel Management (OPM) report on the use of student loan repayment programs, the Department of Homeland Security did not make any student loan repayments on behalf of DHS employees. This program is an important recruitment and retention tool.

a. Is there a student loan repayment program at DHS? If not, will you establish such a program to use this flexibility to recruit and retain talented individuals?

ANSWER: I understand that the Department of Homeland Security provided guidance last year on the use of incentive programs for recruitment and retention, including

repayment of student loans, but that the student loan program has received little to no use. If confirmed, I will ensure that the Department reviews the adequacy of the guidance and the criteria used to remove any unnecessary restrictions limiting its use.

b. If there is a program, what criteria is currently used to award loan repayments? Will you change this criteria?

ANSWER: See answer to question 17 (a).

18. It has been alleged that DHS and OPM have exceeded their authority in issuing personnel regulations that are in conflict with provisions of title 5 of the Untied States Code which cannot be waived or modified by the Homeland Security Act, such as giving the Merit Systems Protection Board intermediate appellate jurisdiction in conflict with its chapter 12 authority. Based on your legal expertise, what is your opinion of this allegation?

ANSWER: Without having the benefits of all the facts surrounding this issue, and without study of the relevant law, I cannot render an opinion, but I do understand that the department believes that they are within the authority provided for in the Homeland Security Act (HSA). I anticipate being guided by DHS legal counsel.

19. The DHS IG reported in December 2004 on the lack of language training for temporary duty officers serving overseas in the Border Security and Transportation Directorate. For DHS to secure our borders effectively and prevent terrorist attacks, it is necessary to have employees with high levels of proficiency in foreign languages. How will you ensure that DHS increases the number of personnel possessing critical language skills, particularly given the small applicant pool from which to recruit individuals possessing such skills?

ANSWER: I understand that through its Foreign Language Assistance Program (FLAP), CBP rewards its officers with additional pay if they acquire the language skills necessary to perform effectively in the line of duty. If I am confirmed, I will ensure that the Department continues to appropriately recruit and reward personnel who have or gain needed foreign languages, particularly those relevant to our anti-terrorism mission.

20. In response to my question on data mining at today's hearing, you stated that technology will play a significant role in ensuring that privacy rights are not violated when DHS utilizes information obtained by data mining.

a. Which DHS directorates are responsible for devising and implementing information technology (IT) software and systems to address the conflict between guaranteeing privacy of information and ensuring access to information vital to the mission of DHS?

ANSWER: As I understand it, all DHS Directorates are responsible for ensuring that privacy is built in at the inception of developing information technology software and systems. I further understand that compliance with this requirement, which is based in the E-Government Act of 2002, is the responsibility of the DHS Privacy Officer, who is charged by Section 222 of the Homeland Security Act with ensuring that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information. I am told that the DHS Chief Privacy Officer works closely and coordinates with the DHS Chief Information Officer on these efforts.

b. What IT systems exist, or are being developed, to protect the important privacy and civil liberties principles in our Constitution and, at the same time, provide adequate access to information needed by DHS employees? If this capability does not exist within DHS, do you know if privacy protection technology exists in the private sector?

ANSWER: I understand that there are a number of technologies that can be employed to protect the privacy of personal information that is part of an IT system. I am told that key technologies include privacy data tagging, strong authentication and audit tools, anonymization, rules for role-based access, and information security features to ensure data integrity and to prevent the misuse of information. I understand that these technological tools are already in use at DHS. If confirmed, I will certainly explore with the Chief Privacy Officer and with the Chief Information Officer additional ways to accomplish this goal.

21. According to a May 2004 GAO report I requested, DHS has 11 data mining systems either planned or in operation, not including CAPPS II or its successor Secure Flight, that use personal information. Four of those systems use information from the private sector and eight of them use information from other government agencies. Based on this report I have the following questions:

a. As an advocate for data mining, do you expect the Department to engage in additional data mining activities involving personal information, and if so, could you describe the purpose for such activity and whether personal information will be used?

ANSWER: In fighting the war on terror, it is important that we use all lawful tools at our disposal, including tools that allow us to extract information from data. In the process, however, it is equally important that we protect important privacy and civil liberties principles in order to preserve as legitimate our efforts and build a consensus on respectful use of the information that is available for use. I would expect the Department of Homeland Security to use the full array of tools available to it to obtain information to prosecute the war on terror. At the same time, if we need to use personally identifiable information for this purpose, I would expect that the Department will do so in ways that comport with fair information principles and demonstrate respect for the values that we as Americans cherish.

b. What are some best practices that you believe need to be implemented at DHS to protect an individual's privacy rights?

ANSWER: DHS has the first statutorily mandated Privacy Officer, who ensures that the best practices for protecting privacy are integrated as part of all DHS programs. Using the statutory frameworks available, I understand that the Privacy Officer has put in place robust programs to ensure that privacy is protected at the inception and throughout the life cycle of DHS programs, and she complements these efforts with education and training for all DHS employees to sensitize them to the need to protect personal privacy. Additionally, I understand that the Department has created the Data Privacy and Integrity Advisory Committee, chartered by Secretary Ridge, and comprised of privacy and technology experts from the private sector, academia, advocacy, industry, and technology, to bring its collective wisdom to bear on best practices for protecting privacy.

c. Do you believe the current legal privacy protections are adequate?

ANSWER: If confirmed, I look forward to working with the Chief Privacy Officer to review the adequacy of the current legal privacy protections.

d. DHS did not report CAPPS II as a data mining system based on the definition used by GAO in its report. Are you aware of other programs at DHS that do not fit the GAO definition of data mining, but are considered a data mining activity within a broader definition of the term and use personal information? If so, please identify and describe them.

e. Of the DHS data mining activities using personal information from the private sector, can you provide me with a general description of the sources and types of information used?

f. Of the DHS data mining activities using personal information from other government agencies, can you provide me with a general description of the sources and types of information used?

ANSWER FOR (d), (e), AND (f): I understand that the term "data mining" has many definitions. Regardless of the definition, the key consideration is defining an appropriate policy for using databases -- both public and private -- to enhance the knowledge of DHS personnel and therefore, our ability to wage war on terrorism. If confirmed, I will work with the Privacy Officer to help identify those programs that use personally identifiable information, and to make sure that any efforts to engage in "data mining," regardless of definition, are conducted in a way that is respectful of personal privacy.

22. Data and privacy protections are key to ensuring cooperation with other countries in preventing and deterring terrorist activities. What steps should the Department take to improve

the protection of personal information in order to improve international collaboration and cooperation?

ANSWER: I believe it is important that we extend fair information principles and privacy protections to information maintained by DHS. I understand that the DHS Privacy Officer has moved aggressively to foster this policy for the Department. I also understand that steps are already being taken on joint programs with our foreign partners, such as collaboration on real-time data sharing to enhance international travel security. If confirmed, I look forward to examining this issue closely.

23. According to a 2004 report by the Heritage Foundation and the Center for Strategic and International Studies, decisions to designate information "sensitive but unclassified" at DHS are made on an ad hoc, office-by-office basis. In addition, there is no usable definition for the term and no common understanding of how to control it. What steps will you take to regulate the designation of such information?

ANSWER: I understand that DHS continues to examine the appropriate parameters of the designation "For Official Use Only" (FOUO) used for sensitive-but-unclassified materials. I believe that the definition should be broad enough to cover the wide variety of sensitive information handled by the Department, and specific enough to instruct DHS personnel on appropriate use of the designation.

24. I am troubled by the breadth of DHS's Non-Disclosure Policy regarding "sensitive but unclassified" information. That term covers an unlimited universe of information, including any information whose disclosure "could adversely impact a person's privacy or welfare" or "the conduct of Federal programs." In addition, any DHS employee is permitted to designate such material as "For Official Use Only." An employee who discloses "sensitive but unclassified" information without authorization is vulnerable to disciplinary action. In my view, the imposition of restrictions of this breadth raises very serious constitutional questions. To me, the restrictions actually undermine national security and the public interest by imposing barriers to the legitimate airing of information about government misconduct or malfeasance. Will you review this policy to assess whether the government's interest can be adequately served by a less burdensome restriction on speech?

ANSWER: I am told that the Management Directive specifically articulates that the FOUO designation must not be used for unreasonable or illegitimate purposes, such as concealing government negligence, ineptitude, illegalities, or other disreputable circumstances embarrassing to a government agency. I am further told that the FOUO designation does not exempt information from release under the Freedom of Information Act (FOIA) or from disclosure to Congress or other authorized recipients. Therefore, if an individual makes such a request for Department information, the request will be reviewed and considered on a case-by-case basis.

I believe DHS aims to strike the proper balance between an individual's civil liberties and the need to protect sensitive information and prevent it from getting into the hands of terrorist

organizations. The Department is committed to safeguarding constitutional freedoms and sharing sensitive information under appropriate circumstances. I will look forward to reviewing this policy.

26. In addition, you may not be aware that CBP prohibits employees from disclosing any "official information" without proper authority. "Official information" includes "any information that an employee acquires by reason of CBP employment, that he or she knows, or reasonably should know, has not been made available to the general public." This restriction on speech is even broader than the DHS prohibition discussed above. In your view, is a restriction of this breadth justified? Would the government's interest be adequately served by a restriction on speech that is more clearly and narrowly drawn?

ANSWER: I am concerned about not unduly impinging on employee speech, and will review policy in this area if confirmed. I understand that DHS aims to strike a proper balance between an individual's civil liberties, and not disclosing sensitive information to our adversaries. As the law enforcement agency responsible for the preventing terrorists and terrorist weapons from entering the United States, CBP employees have access to sensitive information about individuals, terrorist means and methods, and CBP techniques for countering the terrorist threat. The unauthorized release of this information could interfere with an ongoing enforcement action or tip off a terrorist or other criminal to CBP's enforcement tactics, therefore making it easier for them to circumvent our border security mechanisms. I am told that the current CBP policy protects against the dangers of an improper disclosure while providing employees an avenue to express any concerns they may have through authorized channels, such as the Inspector General. Should I be confirmed, DHS will continue to work with governmental and private partners in order to achieve the correct balance.

27. In response to question 79(f) of the Committee's pre-hearing questions, you averred that any ambiguity in DHS Management Directive 11042.1 with respect to conformity with the Federal Records Act (FRA) can be clarified with a subsequent issuance. Do you believe that the Management Directive is inconsistent with the FRA, and, if so, will you issue a subsequent directive to ensure that the Department's record retention policy is consistent with the FRA?

ANSWER: As I noted in that answer, to the extent that the Management Directive could be construed as inconsistent with the Federal Records Act, the Act, of course, controls. If confirmed, I will certainly study this issue further and ask for the advice of my General Counsel regarding any possible inconsistencies or concerns between existing law in this or any other Departmental directive.

28. In your written responses to pre-hearing questions you stated, "I will ensure that DHS helps develop, test and deploy new technology and business process solutions to further secure the cargo supply chain."

In the container security research that has been conducted by DHS, there has been no discernible focus on productivity and efficiency gains. In addition, research has tended to be conducted using a limited number of containers and an expensive, high-end technology still in

the developmental stage, making the research impractical in a real world environment where thousands of containers are traveling simultaneously.

What are your thoughts about conducting a large-scale container security trial with at least ten thousand containers and using technologies that are available today in order to assess the universal application of a system?

ANSWER: I understand that DHS has several programs in which it is evaluating and developing technologies for monitoring and tracking the integrity of cargo shipments. Operation Safe Commerce, Smart Box, and Advanced Container Security Device (ACSD) are all examples of this effort at identifying next generation monitoring and tracking technologies. I understand, however, that much of this technology is rapidly changing, so the Department must maintain an ongoing review of emerging technology and how it can be integrated into information systems. If confirmed, I will further review this issue.

Post-Hearing Questions for the Record
Submitted by Senator Tom Carper for the
Nomination of Michael Chertoff to be
Secretary of Homeland Security

February 2, 2005

1. In recent years, more and more first responder aid has been allocated to large urban areas, somewhat at the expense of the State Homeland Security Grant Program. At the same time, more and more cities are receiving funding through the urban program, called the Urban Area Security Initiative. Do you think concentrating more of our efforts on urban areas puts states without big cities at some risk? As secretary, how would you decide which cities should get urban area grants?

   ANSWER: Allocation of Federal preparedness assistance is designed to manage risk by providing the appropriate balance of resources to counter the potential threat and magnitude of terrorist attacks, major disasters, and other emergencies. Our security depends upon our commitment to secure those areas that are of the highest interest to our enemies and that would have the gravest consequences if attacked. If confirmed, I look forward to reviewing the way these funds are being allocated to see if there are ways the process can be even further improved.

2. There have been some complaints from state and local governments in the past about how the department's first responder aid programs are administered. The department's IG has pointed out that grants are often distributed and spent too slowly and that there are few guidelines for grant recipients on preparedness standards. I know that Secretary Ridge convened a task force last spring that was charged with examining why funds were so slow in making their way down to recipients. That task force issued a report in June. As secretary, how would you continue current efforts to speed up the grant distribution process? How would you make sure that grant recipients have the guidance they need to develop state and local response plans and to put their first responder aid to the best use?

   ANSWER: If confirmed, I look forward to reviewing the Funding Task Force recommendations. I understand that DHS will need to establish a balance between grant recipients developing proper planning processes, spending the grant funds expeditiously, and ensuring the money is spent properly. I further understand that DHS' implementation of Homeland Security Presidential Directive 8 will provide the standards for preparedness throughout the country and will enable officials at all levels of government to make informed decisions about where to best apply finite resources, and to accurately gauge and report progress to the public.

3. Some of those who've looked at the department's progress since it came into being have remarked that it still behaves in some ways like a collection of agencies rather than a fully-integrated department. Many of the agencies that make up the department apparently still follow the direction of their own policy-making bodies. In addition, top department managers like the Chief Financial Officer and the Chief Information Officer often have difficulty carrying out initiatives government-wide. A lot of these problems were probably expected. As secretary, however, what steps would you take to make sure that all parts of the department are on the same page? Do you think changes will need to be made to the structure of the department in the near future in order to foster greater integration?

   ANSWER: Given that two years have passed since the Department's creation, it makes sense to review the Department's structure. I plan to take this opportunity, should I be confirmed, to undertake such a review, and to strengthen organizational coherence.

4. The department IG reported in November that some parts of the department, notably the Coast Guard and the Bureau of Customs and Border Protection, have had some difficulty successfully carrying out some of the important non-homeland security missions at the same time that they're being called on to dedicate more and more resources to homeland security. What steps would you take as secretary to ensure that the important non-homeland security work that migrated over to the department remains a priority?

   ANSWER: I understand the vast and critical responsibilities of the United States Coast Guard and U.S. Customs and Border Protection (CBP). I understand that all DHS functions are aligned with the Department of Homeland Security's strategic goals, and in my view the Coast Guard and CBP should continue to balance the requirements of all missions to ensure the best overall service to the American people. If confirmed, I will continue the strong support of these and other agencies of the department in their effort to fulfill their homeland and non-homeland missions.

5. Although the Office for Domestic Preparedness (ODP), the department's grant-making body, was originally intended to be located within the Federal Emergency Management Agency, it is now located in the Office of the Secretary. In addition, its mandate has been expanded to include numerous programs not traditionally related to homeland security. For example, ODP is now responsible for administering the Assistance to Firefighters grant program that used to be administered by the Fire Administration. What are your plans for ensuring coordination between ODP and FEMA and other department components?

   ANSWER: I am told that the functions of ODP are now within DHS' Office of State and Local Government Coordination and Preparedness (SLGCP). I understand that SLGCP has worked closely with FEMA and the USFA in the development of the Fire Act

program, and will continue to work with them and all other agencies within the Department that have an interest in SLGCP-managed programs. I also understand that the Department is currently conducting an inventory of all of its preparedness programs and assets to determine the feasibility of consolidating those programs and assets under a single entity solely dedicated to preparedness activities. If confirmed, I look forward to reviewing the results of this assessment, and to reviewing the organizational structure generally.

6. In an effort to improve the nation's preparedness for a terrorist attack, considerable investments have been made in terrorism training through the National Domestic Preparedness Consortium and numerous other facilities. I'm told, however, that the Office for Domestic Preparedness could save money if it instead utilized existing training infrastructures at the National Fire Academy or at state and local training academies. These proven institutions have experienced a consistent reduction in funding by the department. What are your plans for utilizing these and other existing training infrastructures that might very well be able to reach a greater number of first responders at a lower cost to the federal government?

   ANSWER: I understand that allowable training-related costs under DHS grant programs include the establishment of chemical, biological, radiological, nuclear, and explosives (CBRNE) terrorism and cyber security training programs through existing training academies (including state fire training academies), universities, or junior colleges. I also understand that DHS, through SLGCP, develops and delivers training on terrorism and weapons of mass destruction to the emergency response community through the National Domestic Preparedness Consortium (NDPC) and its other training partners. Through the NDPC, I am told that SLGCP is delivering a standardized WMD awareness curriculum to States and Urban Areas in a "train-the-trainer" format and working to build a sustainable capacity within existing State and local public safety training institutions -- including State fire training academies -- for the integrated and continued delivery of training. If confirmed, I look forward to reviewing the best ways to further leverage existing training infrastructures to enhance training delivery.

7. It's come to my attention that the United States has no secure and reliable means to ensure delivery of vital medicines and pharmaceuticals to hospitals, clinics, and other locations via truck during or after terrorist attacks or natural disasters. U.S. cabotage law, however, apparently prevents a Canadian trucking company that's apparently the only one in North America approved by the FDA to carry these types of materials from doing so within the United States. Right after September 11th, the INS addressed this problem by granting Canadian truckers temporary permission to make humanitarian deliveries. I understand that the Department of Transportation has developed a more long-term solution to this problem but that Homeland Security officials have, to date, been unable to schedule a meeting to discuss the proposal. If confirmed, what would you do to ensure that medicines and pharmaceuticals can be safely transported throughout the country in

the event of an emergency? Will you commit to meeting with Transportation Department officials to discuss their proposal?

ANSWER: I understand that through the Strategic National Stockpile (SNS), the U.S. has a secure and reliable means of delivering vital medicines and pharmaceuticals. I am told that the SNS, which is managed by the Department of Health and Human Services (DHHS), Centers for Disease Control and Prevention (CDC), maintains 12 50-ton Push Packages strategically stored across the U.S., each containing an assortment of medical products to help in a variety of possible biological, chemical or nuclear terrorism events. I am further told the SNS has a secure and reliable system to deploy its Push Packages to any location in the country within 12 hours of a Federal order to deploy.

Should I be confirmed, I look forward to working with you to resolve any remaining concerns you may have about this matter and am willing to meet with the Department of Transportation officials to discuss their proposal.

Post-Hearing Questions Submitted for the Record
by Senator Frank Lautenberg for the Nomination of
Michael Chertoff to be Secretary of Homeland Security

Senate Homeland Security and Governmental Affairs Committee

February 3, 2005

Question One:

On September 11th, Al Qaeda's strategy for causing catastrophic harm to America was to strike an inherently dangerous, poorly secured system. America's poorly secured chemical facilities pose an even greater inherent threat. Would you support legislation to reduce that threat by requiring chemical facilities to use less hazardous chemicals, where possible?

ANSWER: The President's National Strategy for Homeland Security states that the Department may seek legislation to create incentives for the private sector to adopt security measures or invest in improved safety technologies. I understand that the White House and the Department have worked closely with particular Members of Congress interested in this issue, and that the President has endorsed legislation to ensure a more rigorous Federal role in the chemical sector. If confirmed, I will continue to assess proposed legislation and work with Congress to improve the framework for chemical site security.

Question Two:

There is a draft DHS guidance document on the cleanup of dirty bombs. It recommends that DHS use a radiation cleanup standard that would put 1 in every 4 people at risk of developing cancer. This level of risk is unheard of. Will you assure me that DHS will use the more common cleanup standard of 1 cancer in 10,000 or in a million?

ANSWER I believe the document to which you refer is one developed by an interagency working group I understand that this document is currently undergoing OMB review for publication in the Federal Register for a 120 day public comment period and has not been finalized. As I understand, the draft guidance does not endorse, or discount, any existing standards or guidelines for clean-up. I also understand that once the document is published for comment, those comments will be adjudicated by the interagency working group. If confirmed, I will commit to studying this issue further and to ensuring that any guidance for standards appropriately address all relevant risks.

Post-Hearing Questions for the Record
Submitted by Senator Mark Pryor for the
Nomination of Judge Michael Chertoff to be
Secretary of Homeland Security

1. There are over 100 nuclear power plants in the United States. The magnitude of a single attack on one of these nuclear power plants could cause countless deaths and devastating economic loss. The land and properties destroyed would remain useless for many years, thereby becoming a monument of sorts, reminding the world of the terrorists' ideology. Furthermore, if one plant is successfully destroyed, just threatening additional attacks could create the sort of high impact terror which is being sought by the terrorists.

   The Department of Homeland Security is responsible for ensuring that federal agencies are coordinated in their efforts to combat terrorism. Specifically, DHS should direct or coordinate efforts to protect targets with catastrophic potential, such as nuclear power plants.

   While nuclear power plant upgrades have been addressed by some agencies, the reality of today's terrorist threats and methodologies need to be taken into consideration and reflected in heightened security measures.

   Question: As Secretary of the Department of Homeland Security, what steps would you take to direct and coordinate efforts to increase security measures at nuclear power plants?

   ANSWER: I understand that DHS, as the Sector Specific Agency responsible for the protection of the commercial nuclear sector, and in close collaboration with the Nuclear Regulatory Commission (NRC), has organized an interagency working group aimed at improving the security of commercial nuclear facilities. If confirmed, I look forward to learning more about these efforts and addressing nuclear power plant security.

2. Mr. Chertoff, as you know, general aviation is important to many of us on the committee. It is especially important to those of us from rural states-most of our in-state flights are general aviation. In addition, my home state is home to many corporate operators who rely on private planes to conduct business. Some, like Wal-Mart have large fleets. Others, like the many agriculture operators in my state, may only have one single turbine plane. You can see how general aviation presents a conundrum for many of us-restrictions placed on general aviation after September 11th have hurt many small businesses. At the same time, it is vital that we find ways to secure our airspace.

   Some of my constituents have made me aware of the TSA Access Certificate program (TSAAC), where the TSA has been working with the general aviation community to enhance security. They have been encouraged by the initial results. I did a little research,

and I found a press release from December, 2004, in which the TSA announced its intention to expand this program beyond the original 24 participants.

Question: Could you provide the Committee with an update on the status of the program and perhaps a time frame for full implementation?

ANSWER: I understand that TSA is currently operating the TSAAC pilot program at three general aviation (GA) airports in the New York City area, and that 24 GA operators are participating in the pilot program. If confirmed and as appropriate, I will instruct TSA to explore the feasibility of expanding TSAAC to additional GA airports and ensure that Congress is kept fully informed.

3. Stakeholder outreach programs can provide extremely valuable and timely information to the private sector and industry about developing issues.

Question: Could you provide us with your preliminary views on how DHS/TSA might improve aviation industry stakeholder participation in such efforts to insure that DHS and TSA find that very sensitive balance between protecting homeland security and yet promoting non-discriminatory operational access to the nation's airspace and airport system?

ANSWER: To secure our Nation's transportation system effectively, the Federal government must partner with relevant Federal, State, local, tribal and private industry entities. If confirmed, I will work closely with all of our aviation stakeholders to secure this vital mode of transportation.

International Union of Operating Engineers
1125 SEVENTEENTH STREET NORTHWEST ★ WASHINGTON, D. C. 20036
AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
OFFICE OF GENERAL PRESIDENT • (202) 429-9100

February 1, 2005

The Honorable Susan M. Collins, Chairwoman
The Honorable Joseph I. Lieberman, Ranking Minority Member
U. S. Senate Homeland Security and Governmental Affairs Committee
Dirksen Building
Room 340
Washington, DC 20510

Dear Madam Chairwoman and Ranking Member:

As the general president-elect of the 400,000-member International Union of Operating Engineers, I respectfully ask your support for President George W. Bush's nomination of Judge Michael Chertoff to become secretary of the U. S. Department of Homeland Security.

I believe that Mr. Chertoff is an ideal nominee for the position of secretary of Homeland Security. He is an extremely talented and experienced public servant, who has served capably and admirably as a judge on the U. S. Court of Appeals for the Third Circuit, U. S. assistant attorney general, U. S. attorney for New Jersey and as a special prosecutor in New York City. His leadership role at the Department of Justice in the wake of the September 11 terrorist attacks certainly stamps him as a take-charge individual with an unwavering dedication to protecting the nation and its people.

His experience, his intellect, his commitment and his toughness would be an invaluable asset to DHS and its daunting responsibility to ensure a comprehensive, united effort to protect America and Americans against new dangers.

I personally have known and observed Mr. Chertoff for years, especially during his public service in my home state of New Jersey. I always found him to be a reasonable, intelligent and eminently fair individual.

I thank you in advance for your consideration of this request and look forward to your support of his nomination.

Sincerely,

Vincent J. Giblin
General President-elect

February 2, 2005

Dear Chairman Collins and Committee Members,

We the members of the Airforwarders Association (AfA) Executive Board are writing to apprise you of the attached testimony, which we are submitting to the Senate Committee on Homeland Security and Governmental Affairs concerning the nomination of Mr. Michael Chertoff for the position of Secretary of the U.S. Department of Homeland Security.

The Department of Homeland Security has become the coordinator for most aviation security regulations and, as such, the nomination process of Mr. Chertoff is a matter that greatly affects our association and the $17 billion air cargo industry. As you may know, the air cargo industry employs thousands of Americans and provides a vital transportation service for thousands of businesses in the global economy. No one is more committed to ensuring that our nation's aviation system remains viable and secure than our members.

Over the years, the AfA has been an active participant in working groups and discussions aimed at enhancing the security of the air cargo system. We played a key role in the Aviation Security Advisory Committee sponsored by the Transportation Security Administration as well as programs sponsored by the Department of Homeland Security. We enjoyed a close working relationship with the office of Secretary Tom Ridge as he sought to ensure the efficient and safe transport of airfreight following 9/11.

The next Secretary of the Department of Homeland Security will face many of the same challenges of maintaining the security of our nation and its citizens. Aviation security will surely be among his top priorities and, consequently, may be of particular interest to your committee during the hearings. Should you or your fellow Senators require any information or background on the air cargo industry during the proceedings, please feel free to call on our members for assistance.

The AfA stands with your committee in our determination to create the most secure environment for our skies and looks forward to supporting you during the hearings in any way we can.

Sincerely,

David Wirsing, Executive Director
Airforwarders Association

TESTIMONY FOR THE RECORD BY THE AIRFORWARDERS ASSOCIATION

BEFORE THE UNITED STATES SENATE COMMITTEE
ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

HEARING ON THE NOMINATION OF MR. MICHAEL CHERTOFF FOR
SECRETARY OF THE U. S. DEPARTMENT OF HOMELAND SECURITY

February 2, 2005

The nomination of Mr. Michael Chertoff as the next Secretary of the U.S. Department of Homeland Security will impact many pending and future regulations that concern the nation's transportation system, including the air cargo industry. The Airforwarders Association, the industry voice for air cargo companies and their partners, has established a close working relationship with the U.S. Department of Homeland Security (DHS) and the Transportation Security Administration (TSA) and looks forward to continuing that relationship under Mr. Chertoff.

Mr. Chertoff has proven his commitment to ensuring a safer, more secure America through his work in the U.S. Department of Justice and his distinguished public service record. The determined, thoughtful approach he took in the days following the 9/11 attacks is a positive indicator of how he will confront the challenges waiting at the Department of Homeland Security. Mr. Chertoff's extensive legal background will no doubt aid him in overseeing the implementation and enforcement of new regulations concerning air cargo, as it helped him in implementing the legal framework for the domestic war on terror efforts.

The U.S. Department of Homeland Security has already faced several challenges in its short history and is certain to see more in the coming years. The incorporation of many separate agencies into one entity has not been without its difficulties and we commend Secretary Tom Ridge for streamlining the roles of the TSA, U.S. Customs and Border Protection and others under the umbrella of the U.S. Department of Homeland Security. These outreach efforts extend far beyond just governmental reorganization, however, as Secretary Ridge and DHS have sponsored working groups, discussions and seminars to better understand the industries their regulations affect. We hope and expect this willingness to reach out to affected parties and incorporate their concerns into the decision-making process is becoming a trademark of the U.S. Department of Homeland Security.

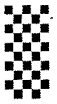
For the businesses and individuals whose daily lives and livelihoods are affected by these policies, these efforts have been greatly appreciated. Many complex regulations emerged in the post-9/11 era and without the outreach programs sponsored by DHS and the agencies under its direction, many businesses could have been crippled or even eliminated. The Airforwarders Association has been an active participant in a number of working groups, both prior to and after the inception of DHS. We strongly believe that

for the future of both aviation security and the air cargo industry, it is imperative for the next Secretary to continue this approach in implementing policy.

The air cargo industry is a particularly important component of America's economy, providing for the safe, secure and timely transport of good and materials at all hours of the day around the world. A $17 billion dollar industry, it directly employs thousands of Americans in both small businesses and internationally recognized companies. A healthy air cargo industry ensures financial benefits to the economy as a whole, providing revenue for airlines, as well as cost-effective services to the manufacturers and other companies that depend on the rapid transport of their goods across the nation. Just as its health boosts other industries, impediments to the health of air cargo have financial ripple effects felt across most, if not all, economic sectors.

Security is among the most vital components of our industry's health. No one is more committed to aviation security than the Airforwarders Association and its members. The business of airforwarding is built around a guarantee to provide safe transportation of goods in a timely manner. Without a high priority on security, our ability to execute those goals is compromised, harming both our customers and our businesses. We understand firsthand the challenges associated with the secure transport of air cargo, particularly in the 9/11 environment. Our employees face the threat of hazardous materials and dangerous items on a daily basis. This constant reminder of the high risk environment we operate in has taught us how to identify potential dangers and solutions to prevent these problems from occurring. Everyone in the airforwarding business is involved in security training in some form, with the level of training depending on the work the employee is assigned. In many ways, our very business is providing and ensuring aviation security. That is why we have been actively involved in discussions, working groups and meetings with both DHS and TSA in assessing potential problems and crafting solutions. Most recently, we were asked to be a part of the Aviation Security Advisory Committee, which produced more than 40 recommendations for improving air cargo security, many which were included in the newly proposed TSA rules. These relationships and exchanges have fostered many advances in aviation security that have been effective without negatively impacting the health of the industry.

Our relationship with TSA and DHS has shown us firsthand the importance of a collaborative, good faith atmosphere for strengthening air cargo security. The programs that have been implemented have imposed burdens on the air cargo industry but were crafted in such a way that the concerns of airforwarders were included, creating realistic and effective regulations. By all reports, air cargo grew by more than 9 percent in 2004, fueled by growth in transport to Asia and increased volume. By continuing the advisory groups, other outreach efforts and the balanced regulatory approach, we are confident Mr. Chertoff will continue to advance both air cargo security as well as the economic security of one of America's most critical industries.



Honduran Unity – Unidad Hondureña
1421 S.W. 8 Street Suite # 4
Miami, Fl. 33135
Tel. 305-285-1755 / Fax. 305-285-1559

Miami, Fl. January 31, 2005

To: The Honorable Senator Susan M. Collins
Chairman
United States Senate Committee on
Homeland Security & Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

Ref: Submitting letter of support for the confirmation of the nomination of Judge Michael Chertoff as the Secretary of Homeland Security

Dear Chairman Sen. Collins:

Firstly, On behalf of the Board of Directors and volunteers of the Honduran Unity / Unidad Hondureña , (a non-profit community based organization and an immigrant advocacy group founded in 1997), wishes to commend your hardwork and dedication not only as a Senator but as the Chairman of the Committee.

We write to you as a community based organization and an immigrant advocacy group which handles various issues including Immigration which is part of the Department of Homeland Security, and also as concerned citizens for the well being of our community to support the confirmation of the nomination now before you of the Honorable Judge Michael Chertoff, submitted by President George W. Bush, whom you will consider to head the Department of Homeland Security, one which requires a loyal, trustworthy , honorable and respectful person with sense of sensibility , legal knowledge, common sense , self motivated and initiative & moreover a team player.

After having carefully reviewed the impressive public record of Judge Michael Chertoff all of his hardwork, commitment and service and the functions and responsibilities required for such post we hereby kindly urge and request your utmost consideration to approve the nomination of the Honorable Michael Chertoff as Secretary of Homeland Security which is indeed a right choice with all the credentials and expertise required for such challenging post to continue securing our country from terrorism, and making it a more secure and safe nation through an even much more balanced and effective Department.

Thanking you in advance,

Sincerely,

Jose Lagos
President

CHAIRMAN
Governor Kenny C. Guinn
State of Nevada

VICE CHAIRMAN
Governor Mitt Romney
State of Massachusetts

REPUBLICAN GOVERNORS ASSOCIATION

February 1, 2005

The Honorable Susan Collins
Chairman
Committee on Homeland
Security and Government Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Joe Lieberman
Committee on Homeland
Security and Government Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Collins and Senator Lieberman:

As Republican Governors, we are writing to express our enthusiastic support for the confirmation of Judge Michael Chertoff as the next Secretary of the United States Department of Homeland Security.

Judge Chertoff's long record of distinguished work makes him an invaluable asset to our nation's homeland security efforts. As a former U.S. Attorney in the State of New Jersey and a front line prosecutor in New York City, Judge Chertoff worked with state and local law enforcement daily. This interaction leads us, as governors, to believe he fully understands the challenges of communication among law enforcement officials, public officials, and the first responder community.

As far back as 1996, Michael Chertoff argued for increased resources to be used in the federal government's fight against terrorism. After the September 11, 2001 terror attacks, he served as the Assistant Attorney General for the Criminal Division of the Department of Justice. In that role, Judge Chertoff was instrumental in tracing the terrorist attacks to the Al Qaeda network.

During Judge Chertoff's time at the Department of Justice he managed eight hundred employees and a budget of approximately $130 million. This experience will prove critical in his efforts to enhance coordination of the two dozen programs and agencies that comprise the Department of Homeland Security.

555 Eleventh Street, Northwest . Suite 700 . Washington, DC . 20004 . 202 662 4140 . Fax 202 662 4924 . www.rga.org
PAID FOR BY THE REPUBLICAN GOVERNORS ASSOCIATION

Page Two

In addition, Judge Chertoff's work on the United States 3rd Circuit Court of Appeals, and previously as counsel investigating racial profiling in New Jersey has demonstrated his commitment to guarding American liberty.

Given Judge Chertoff's superior record and service to his country, we urge you to swiftly confirm him as Secretary of Homeland Security.

Sincerely,

John Hoeven
Governor of North Dakota

Kenny C. Guinn
Governor of Nevada

Mitt Romney
Governor of Massachusetts

George E. Pataki
Governor of New York

Bob Taft
Governor of Ohio

Arnold Schwarzenegger
Governor of California

Dirk Kempthorne
Governor of Idaho

Mike Huckabee
Governor of Arkansas

Bill Owens
Governor of Colorado

Rick Perry
Governor of Texas

Page Three

Haley Barbour
Governor of Mississippi

Dave Heineman
Governor of Nebraska

M. Jodi Rell
Governor of Connecticut

Frank H. Murkowski
Governor of Alaska

Matt Blunt
Governor f Missouri

M. Michael Rounds
Governor of South Dakota

Robert L. Ehrlich, Jr.
Governor of Maryland

Jim Douglas
Governor of Vermont

Linda Lingle
Governor of Hawaii

GRAND LODGE
FRATERNAL ORDER OF POLICE®

309 Massachusetts Ave., N. E.
Washington, DC 20002
Phone 202-547-8188 • FAX 202-547-8190

CHUCK CANTERBURY
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

12 January 2005

The Honorable Susan M. Collins
Chairman
Committee on Governmental Affairs and Homeland Security
Washington, D.C. 20510

Dear Madam Chairman,

I am writing on behalf of the membership of the Fraternal Order of Police to advise you of our strong support for the nomination of Michael Chertoff to be the next Secretary of the Department of Homeland Security.

Judge Chertoff has had a distinguished career in public service and law enforcement. After serving as a clerk for Supreme Court Justice William J. Brennan, Jr., he spent a short time in private practice before joining the U.S. Attorney's Office for the Southern District of New York in 1983. In 1987, he was promoted to First Assistant U.S. Attorney for the District of New Jersey and, three years later, was appointed by President George H. W. Bush as the U.S. Attorney for the District of New Jersey. During his tenure as a prosecutor, Judge Chertoff was an important part of the "Mafia Commission," which brought extensive charges against the organized crime leaders.

Prior to his appointment and confirmation to the U.S. Court of Appeals for the Third Circuit, Michael Chertoff served for more than two years as the Assistant Attorney General for the Criminal Division at the U.S. Department of Justice. In this role, he helped lead the effort to trace the attacks of September 11 to the al-Qaida terrorist network. His knowledge, experience, and ability to work effectively with the men and women in law enforcement made him a crucial component of our nation's effort to protect all Americans in the months that followed.

This Administration has a strong commitment to, and track record of, involving law enforcement in crafting and implementing a national homeland security policy. The F.O.P. is proud to have played a role in the development of such initiatives as the National Incident Management System (NIMS) and the recently completed National Response Plan (NRP), and we have every confidence that Judge Chertoff, with his law enforcement background, will continue his predecessor's strong partnership with State and local law enforcement.

President Bush has made an excellent choice in Judge Michael Chertoff to lead the U.S. Department of Homeland Security and, on behalf of the more than 318,000 members of the Fraternal Order of Police, we are proud to support his nomination. If I can be of any further assistance on this matter, please do not hesitate to contact me or Executive Director Jim
Pasco at my Washington office.

Sincerely,

Chuck Canterbury
National President

NATIONAL ASSOCIATION OF EMERGENCY MEDICAL TECHNICIANS
Post Office Box 1400 • Clinton, Mississippi 39060-1400
Phone: 800-34-NAEMT or 601-924-7744 • Fax: 601-924-7325
Web Site: www.NAEMT.org

January 12, 2005

The Honorable Susan M. Collins
Chairman
Committee on Homeland Security and Government Affairs
U.S. Senate
340 Dirksen Senate Office Building
Washington, DC 20510

RE: Support of Judge Michael Chertoff to serve as Secretary of Homeland Security

Dear Chairman Collins:

I am writing to express the strong endorsement of the National Association of Emergency Medical Technicians (NAEMT) for President Bush's nomination of Judge Michael Chertoff to serve as Secretary of Homeland Security. We urge your committee, and the Senate as a whole, to act quickly in confirming him to this vital position.

As you know, NAEMT is the largest EMS professional organization in the nation and the only national organization that represents the interests of Emergency Medical Technicians (EMT) and Paramedics. The more than 870,000 EMT's and Paramedics in the United States heroically respond millions of life threatening emergencies annually and are those individuals who are charged with the difficult task of "turning victims into patients".

Judge Chertoff has extensive experience in the homeland security, criminal law, and international issues handled by the Department of Homeland Security. Over the years he has worked closely with state and local emergency responders and is well versed in the unique needs and requirements that EMT's and Paramedics face daily. We believe that his extensive experience across the public safety spectrum combined with his proven managerial capacity and organizational vision that he will prove to be an effective leader for this critical mission.

We appreciate your consideration of our views, and encourage you to act swiftly in reporting his confirmation to the full Senate.

Sincerely yours,

Paul M. Maniscalco
NAEMT Board of Directors
NAEMT Past President

cc: Members of the Senate Committee on Homeland Security and Government Affairs

National Headquarters
8415 Datapoint Drive, Suite 400
San Antonio, Texas 78229
210-692-3805 *(voice)* 210-692-0823 *(fax)*
Website: www.hacu.net

January 25, 2005

The Honorable Susan Collins, Chair
The Honorable Joseph Lieberman, Ranking Member
Senate Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senators Collins and Lieberman:

The Hispanic Association of Colleges and Universities (HACU) urges the Senate Committee on Homeland Security and Governmental Affairs to confirm the nomination of the Honorable Michael Chertoff as U.S. Secretary of Homeland Security. HACU applauds Judge Chertoff's extraordinary record of leadership in public service to our country and his unwavering commitment to protecting the civil rights of our diverse citizenry.

HACU represents more than 395 colleges and universities that collectively serve more than two-thirds of all Hispanic students in higher education. HACU is eager to work with the U.S. Department of Homeland Security to more fully engage Hispanic-Serving Institutions in preparing a more highly skilled and more diverse workforce to protect the freedom and security of our country.

The leadership of HACU applauds Judge Chertoff's dedication to protecting the lives and the civil liberties of all Americans. A past winner of the Anti-Defamation League Distinguished Public Service Award and numerous other honors, his efforts were instrumental in exposing racial profiling in New Jersey and in coming to the aid of indigent death row defendants through his pro bono work with the NAACP Legal Defense Fund. His excellent record and his championship of civil rights will well serve the country.

HACU will look to your leadership in swiftly confirming the Honorable Michael Chertoff as our next U.S. Secretary of Homeland Security.

Respectfully,

Antonio R. Flores
President and CEO

January 21, 2005

Honorable Arlen Specter
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510-6275

Honorable Patrick J. Leahy
Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Chairman Specter and Senator Leahy:

On behalf of the National District Attorneys Association we want to express our strong support for the confirmation of Judge Michael Chertoff as Secretary of Homeland Security.

During Judge Chertoff's tenure as Chief of the Criminal Divison of the Department of Justice our leaders had frequent opportunities to meet with him and to work on resolving issues – both domestic and international - challenging public safety. Through the opportunity to work closely with Judge Chertoff we have come to recognize both his commitment to protecting the American public and to ensuring closer working relationships between federal, state and local law enforcement organizations.

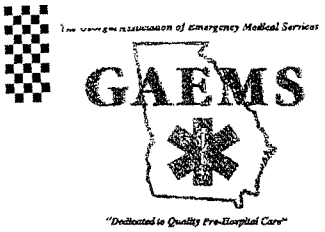
With the increasingly complex challenges facing us in our fights against both international criminals and terrorists he brings the skills and legal acumen necessary for this position of responsibility. We are confident that his confirmation will enhance the safety of our citizens from threats, both domestic and foreign, while protecting those liberties that we all treasure.

As leaders for the only national organization representing the local prosecutors of this nation we have the utmost confidence in his ability to lead this most challenging Department and pledge to do everything within our ability to ensure that the working relationship between the Department of Homeland Security and America's prosecutors grows even stronger.

Sincerely,

Paul F. Walsh, Jr.
District Attorney, Bristol County, Massachusetts
President, National District Attorneys Association

Thomas J. Charron
Executive Director
National District Attorneys Association



Georgia Association of Emergency Medical Services, Inc.
P.O. Box 4626
Macon, Georgia 31208
Phone (478)633-7514
Fax (478)749-9145
Website: www.gaemt.com

January 24, 2005

The Honorable Susan M. Collins
Chairman
Committee on Homeland Security & Government Affairs
U.S. Senate
340 Dirksen Senate Office Building
Washington, DC 20510

RE: Support of Judge Michael Chertoff to serve as Secretary of Homeland Security

Dear Chairman Collins:

This letter is to express our strong endorsement of the Georgia Association of Emergency Medical Technicians (GAEMT) for President Bush's nomination of Judge Michael Chertoff to serve as Secretary of Homeland Security. We ask that your committee and the Senate act quickly to confirm him to this vital position.

GAEMT is a professional organization who represents the interests of the more than 13,000 Emergency Medical Technicians and Paramedics in the State of Georgia. The role of these first responders in Homeland Security is crucial and must be supported by a strong Department of Homeland Security. We believe that Judge Chertoff has the strengths to meet the needs of our providers and the nation. He has demonstrated over the years his ability to work with the state and local emergency responders. He understands that all disasters are local events requiring close coordination with the local responders. It is our belief that his experience will suit him well as Secretary of Homeland Security.

Thank you for your consideration of our views. We hope that you will act swiftly in reporting his confirmation to the full Senate.

Sincerely Yours,

Gregg Lord
GAEMT Board of Directors
GAEMT, Vice President, Ed. Div.

CC: Members of the Senate Committee Homeland Security & Government Affairs
Honorable Saxby Chambliss
Honorable Johnny Isakson

NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION

January 26, 2005

The Honorable Susan M. Collins
Chairman
United States Senate
Committee on Homeland Security &
Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Joseph I. Lieberman
Ranking Member
United States Senate
Committee on Homeland Security &
Governmental Affairs
604 Hart Senate Office Building
Washington, DC 20510

Dear Senators Collins and Lieberman:

On behalf of the National Asian Pacific American Bar Association (NAPABA), I am writing to express our support of the nomination of Michael Chertoff to the position of Secretary of the U.S. Department of Homeland Security.

NAPABA, a nonpartisan professional association, is the national voice of the Asian Pacific American legal profession, promoting justice, equity and opportunities for Asian Pacific Americans as well as all Americans. The membership consists of Asian Pacific American attorneys, judges, law professors, and law students. With a national network of 47 affiliates, NAPABA advocates for the legal needs and interests of the Asian Pacific American community and represents over 45,000 attorneys nationwide.

Throughout his legal career, Judge Chertoff has demonstrated an objective commitment to justice. From prosecuting organized crime to investigating governmental misconduct, Judge Chertoff has aggressively sought out the truth. Judge Chertoff, who served as an Assistant United States Attorney General, and previously as United States Attorney for the District of New Jersey during both Republican and Democratic administrations, is respected by lawmakers of both parties; he has a stellar record despite having made difficult and sometimes unpopular decisions, often under unprecedented challenges.

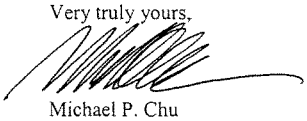
NAPABA's relationship with Judge Chertoff has proven to us his support for communities of color and his dedication to justice for all. Over the years, Judge Chertoff has attended and spoken at events ranging from the NAPABA Northeast Regional Conference a decade ago, to the annual meeting of the Coalition Bar Associations of Color in 2003. I personally have had the pleasure and privilege of getting to know Judge Chertoff during these events.

910 17th STREET, NW, SUITE 315 ♦ WASHINGTON, DC 20006 ♦ PHONE: 202.775.9555 ♦ FAX: 202.775.9333
WWW.NAPABA.ORG

Judge Chertoff has fought against racial profiling and has spoken out in support of privacy and other civil liberties issues. NAPABA recognizes that the terrorist attacks of September 11, 2001 forced the country and Judge Chertoff, then Assistant Attorney General, into uncharted territory, and actions taken by the Department of Justice in response were aggressive within the limits of unclear legal precedent. We are encouraged by his advocacy of open and candid discussion to, in his own words, "confront the trade-offs between national security and individual liberty. That process of debate and compromise builds the public support that is indispensable to a long-term strategy for coping with terrorism." We expect that his record on fighting for civil liberties prior to September 11 will be reflected within his tenure as Secretary of Homeland Security, and we look forward to working with Judge Chertoff to protect this nation's citizens.

Judge Chertoff is a skilled jurist, a brilliant attorney, an able policymaker and a dedicated public servant whose confirmation as Secretary of Homeland Security would herald an aggressive national security agenda in concert with the aggressive protection of civil liberties. We applaud and support his nomination and ask for a timely confirmation.

Very truly yours,



Michael P. Chu
President
National Asian Pacific American Bar Association

cc: Members of the Senate Committee on Homeland Security & Governmental Affairs

910 17th STREET, NW, SUITE 315 ♦ WASHINGTON, DC 20006 ♦ PHONE: 202.775.9555 ♦ FAX: 202.775.9333
WWW.NAPABA.ORG

1625 Prince Street
Alexandria, VA 22314-2818 USA
703-519-6200 Fax: 703-519-6299
www.asisonline.org

OFFICERS

PRESIDENT
Daniel J. Consalvo, CPP
State Farm Insurance Companies
Bloomington, Illinois

PRESIDENT-ELECT
Jeff M. Spivey, CPP, PSP
Security Risk Management, Inc.
Charlotte, North Carolina

TREASURER
Steve D. Chupa, CPP
Johnson & Johnson
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January 19, 2005

The President
The White House
1600 Pennsylvania Ave., NW
Washington, D.C. 20500

Dear Mr. President:

On behalf of ASIS International, the world's largest association of security professionals with more than 33,000 members worldwide, I express my strong support for your nomination of Judge Michael Chertoff to be the next Secretary of Homeland Security.

As you have stated, there is no greater role for our government than protecting our homeland. ASIS members, typically the senior security managers in corporations and other institutions, protect the nearly 85 percent of our nation's critical infrastructures that are in the private sector. Therefore, it is of graat importance to us that the Department of Homeland Security continue, as it did under Secretary Ridge, to partner effectively with private industry and to recognize the role and responsibilities of private security. As it has developed programs for making our nation safer, the Department repeatedly has sought our members' counsel and utilized their skills and experience.

Judge Chertoff has enjoyed a distinguished career in public service—one marked by dedication and integrity—and has proven himself a tireless advocate in the prevention of crimes against the American people. We have no doubt that he appreciates the importance of the private sector in this work and that he will continue to build bridges of cooperation started by Secretary Ridge. We believe his extensive experience in criminal justice, counterterrorism and law enforcement, and his recognition of the needs of the first responder community will play critical roles in his management of the Department and its continued success.

We hope that the Senate will quickly confirm Judge Chertoff's appointment. His abilities are too obvious to be denied and his work too important to be delayed. We look forward to working with him and stand ready to assist him in any way possible. With warm regards, I am

Respectfully yours,

Daniel J. Consalvo, CPP
President, ASIS International

NATIONAL SHERIFFS' ASSOCIATION

1450 DUKE STREET • ALEXANDRIA, VIRGINIA 22314-3490
Telephone (703) 836-7827 • Fax (703) 683-6541
nsamail@sheriffs.org • www.sheriffs.org

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January 11, 2005

The Honorable George W. Bush
Executive Office of The President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

VIA FACSIMILE: (202) 456-1976

Dear Mr. President:

On behalf of the National Sheriffs' Association, Sheriff Aaron D. Kennard, our President, and all our members, I write to express our strong support for the nomination of Judge Michael Chertoff for Secretary of Homeland Security. As the voice of elected law enforcement, we are proud to lend our support to his nomination and look forward to his swift confirmation by the United States Senate.

As you know, NSA is a non-profit professional association located in Alexandria, VA. NSA represents nearly 3,100 elected sheriffs across the nation and has more than 22,000 members including deputy sheriffs, other law enforcement professionals, students, and others.

We believe Judge Chertoff is more qualified and more capable of serving in this post than most anyone. His superior intellect, his temperament, and background make him an exceptional candidate to succeed Secretary Ridge. His aggressive and efficient management style will lend greater strength to the entire Department of Homeland Security. His long experience in law enforcement and his deep commitment to the war on terrorism will serve him well in meeting the challenges ahead.

We further commend him for his willingness to give up his lifetime appointment to the federal court in favor of serving the nation and helping to insure that Americans are protected. We would be honored to work with him.

Sincerely,

Thomas N. Faust
Executive Director

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January 11, 2005

Honorable George W. Bush
The White House
Washington, DC 20500

Dear President Bush:

On behalf of the 23,000 members of the Federal Law Enforcement Officers Association (FLEOA), I want to offer our support and congratulations to you, for your selection of Judge Michael Chertoff as the new Secretary of Homeland Security.

I recently had the opportunity to speak with Judge Chertoff, and I believe that he is well-versed on law enforcement issues as they relate to the Department of Homeland Security. I am impressed with Judge Chertoff's credentials, experience and knowledge regarding Federal law enforcement issues, both within the Department of Homeland Security and the Department of Justice.

As you are aware, Judge Chertoff was a Federal prosecutor in New York, the United States Attorney in New Jersey, the Chief of the Department of Justice Criminal Division in Washington, DC and he is currently a sitting Judge on the US Court of Appeals.

FLEOA is well acquainted with Judge Chertoff, since many of our members worked closely with him as a Federal prosecutor over the years. He is held in high regard within the law enforcement community. He has demonstrated the ability to bring Federal, State and local law enforcement personnel together to keep our nation safe.

FLEOA believes that Judge Chertoff's law enforcement background is critical to the next phase of development of the Department of Homeland Security. Our 23,000 members are the men and women of Federal law enforcement, who put their lives on the line every day to keep our nation safe. These men and women, many of whom work within DHS, truly deserve Judge Chertoff as their next leader.

I commend Secretary Ridge for his efforts in creating the newly formed Department of Homeland Security. He made great strides during his tenure. However, I now believe it is time to focus more energy on the law enforcement functions and components of the Department of Homeland Security (DHS).

Judge Chertoff assured me today, that he has a strong desire to work with FLEOA to improve the Department of Homeland Security and keep our nation safe. I commend Judge Chertoff for reaching out to us today, since FLEOA is truly committed to working with this Administration to improve Federal law enforcement.

I would be happy to testify on behalf of FLEOA and our membership, in support of Judge Chertoff's nomination at his upcoming confirmation hearings before the United States Senate if you deem it appropriate.

Please feel free to contact me at 443-463-5912, if I can be of any assistance to you or members of your staff.

Sincerely,

Art Gordon
National President

CC: Andrew Card, White House Chief of Staff

Federal Law Enforcement Officers Association

Samuel J. Plumeri, Jr.
Superintendent of Police
Director, Public Safety Department

January 19, 2005

The Honorable George W. Bush
The White House
Washington, D.C. 20500

Dear President Bush:

On behalf of the 1,600 members of the Port Authority Police Department, which is responsible for securing many of the New York-New Jersey region's airports, tunnels, bridges and seaports, I would like to commend your selection of Michael Chertoff as the new Secretary of Homeland Security.

As you are keenly aware, following the terrorists attacks of September 11, 2001 at the World Trade Center, our police force lost 37 commanders and officers, the largest single loss of life ever experienced by a police agency in the nation's history. Another 37 Port Authority civilian employees also died that day. Three years later, we are clearly aware of the continuing threats to this region and we sincerely believe Judge Chertoff understands those concerns.

As you know, Judge Chertoff was born and raised in New Jersey and spent much of his professional career working in New York as a Federal prosecutor and in New Jersey as a United States Attorney. Given Judge Chertoff's familiarity with the New York-New Jersey region, he knows that the threat level here is far greater than it may be in other parts of the country. We also know that he will be sympathetic to our requests as we seek to enhance the region's security and to prevent another attack on U.S. soil.

Judge Chertoff is highly regarded by members of the law enforcement community around the nation, and we strongly support his quick confirmation.

Sincerely,

Samuel J. Plumeri Jr.
Superintendent of Police
Director, Public Safety Department

cc: Arthur Gordon
Judge Michael Chertoff

Port Authority Technical Center
241 Erie Street, Room 302
Jersey City, NJ 07310
T: 201 239 3780
E-mail: splumeri@panynj.gov

February 1, 2005

Committee on Homeland Security and Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator:

As you consider the nomination of Michael Chertoff to the position of Secretary of Homeland Security, the undersigned organizations urge you to carefully consider his troubling record on the misuse of immigration laws and the material witness statute, and to obtain clear commitments from him to avoid similar civil liberties problems should he be confirmed to head the Department of Homeland Security. We also urge you to conduct a full inquiry into recent reports that Mr. Chertoff advised the CIA on the legality of coercive interrogation tactics based on the 2002 Office of Legal Counsel memorandum on torture.

Directly after 9/11, the Justice Department began a carefully planned campaign focusing on the prevention of future attacks. Although no one can take issue with the goal of this effort, revelations in the three years since have called into question the investigative methods used by federal law enforcement.

Reportedly, several of the most controversial policies were both conceived and managed by Mr. Chertoff, then the assistant attorney general in charge of the Justice Department's Criminal Division. We believe the Senate should thoroughly examine his role in developing and implementing post-9/11 investigative policies that went too far in intruding on the basic rights and liberties of people in the United States.

Of greatest concern are the findings of the Justice Department's own Inspector General, made public in June 2003,[1] that senior officials in the department implemented a policy of "indiscriminate and haphazard" detentions of non-citizens in the wake of the September 11th attacks. These detentions entailed the round-up of hundreds of primarily Arab, Muslim and South Asian men, often without any information linking them to terrorism, and subjecting them to series of special measures that violated their basic rights, such as prolonged detention without charge, interference with the right to counsel, denial of an opportunity for release on bond, and unduly harsh conditions of confinement, including some cases of physical and verbal abuse. The Department refused to release the names of the persons detained and kept their deportation hearings completely closed.

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[1] *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks*, Department of Justice Office of the Inspector General, April 2003 at 2, available at http://www.usdoj.gov/oig/special/0306/full.pdf (unless otherwise noted, the facts and specifics cited in this letter are taken from this report).

The Inspector General found that the Department implemented an official, though unwritten, "hold until cleared" no-bond policy. Because the clearance procedure was given a low priority and was plagued by resource shortages, the average length of confinement for the detainees was 80 days, with many held for much longer – up to 8 months. The average length of time before the detainees even learned the basis for their detention was three weeks.

The inspector general also found fault with the conditions of confinement for many of the detainees. His office looked in detail at the people held in the Metropolitan Detention Facility in Brooklyn, NY, which held many of the FBI's "high interest" detainees under extremely restrictive conditions. During the first three weeks of their confinement, the detainees were subject to a complete "communications blackout," which kept their families, attorneys and the news media in the dark as to their whereabouts and condition. Even after the blackout period ended, problems with the detention policy sometimes still kept them incommunicado. A subsequent report from the Inspector General released in December 2003 confirmed that many detainees held at the Metropolitan Detention Facility were subjected to physical and verbal abuse.[2]

As head of the Criminal Division, Mr. Chertoff was also deeply involved in the strategy of using the material witness statute when investigators could not establish any legal basis for taking a person of interest into custody, be it civil or criminal.[3] But the material witness statute was never intended as a way for the authorities to detain, without evidence, persons suspected of crime.[4] We still do not know the scope or number of material witness arrests in connection with the counterterrorism investigation as Mr. Chertoff maintained throughout the investigation that material witness detentions must remain secret; the Justice Department has refused to disclose even to Congress the names or how many material witnesses it has arrested in connection with the 9/11 investigation.

Several other similar questions arise in Mr. Chertoff's public record, including his role in the revision of the Attorney General Guidelines governing the initiation of FBI investigations and the "voluntary" interview program of thousands of Arab and Muslim men not suspected of any crime. The former policy now permits the FBI to send undercover agents into social, religious or political events, open to the public, even when there is no suspicion of wrongdoing. The latter program, many individuals believe, "had a chilling effect on relations between the Arab community and law enforcement."[5]

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[2] *Supplemental Report on September 11 Detainees' Allegations of Abuse at the Metropolitan Detention Center in Brooklyn, New York,* Office of the Inspector General, Department of Justice, December 2003, available at http://www.usdoj.gov/oig/special/0312/final.pdf.
[3] Steven Brill, *After: How America Confronted the September 12 Era,* Simon & Schuster, 2003, at 148.
[4] *See* 18 U.S.C. § 3144 (2004) ("No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and if further detention is not necessary to prevent a failure of justice.")
[5] *Justice Department's Project to Interview Aliens After September 11, 2001,* GAO Report Congressional Committees, GAO-03-459 (2003).

We are also very concerned about reports that Mr. Chertoff advised the CIA on interrogation methods to be used on detainees, pursuant to the August 2002 memo from the Office of Legal Counsel.[6] The CIA reportedly sought legal protection against the prosecution of its agents under the federal anti-torture statute, and in response Mr. Chertoff provided advice on a wide range of coercive methods of interrogation. In particular, it has been reported that he did not tell the CIA that waterboarding – a technique that unquestionably constitutes torture – was absolutely illegal. On the contrary, he reportedly advised the CIA that waterboarding could lawfully be used under certain circumstances.

Most of these problematic policies contain elements of profiling based on religion, ethnicity or national origin. Rather than focusing on real terrorist threats, many of these post-9/11 policies seemed to target people based on little more than their religion or national origin. Basic American principles of fairness and equality before the law, as well as practical concerns about the waste of scarce resources on investigative dead-ends, prompt our concern. Accordingly, we ask that the Senate seek the following commitments from Mr. Chertoff prior to voting on his nomination.

- **No more secret arrests.** Commit to inform the American people of the identity of and charges brought against individuals detained by the DHS.

- **Release the names of those secretly arrested and detained in the wake of the 9/11 attacks.** Virtually none of the more than 760 immigrants arrested and detained on immigration violations in the wake of the 9/11 attacks had any connection to terrorism. Yet to this day the government refuses to release their names and has gone to great lengths to keep them secret. In the words of Judge Gladys Kessler, "Secret arrests are a concept odious to a democratic society."

- **Ensure open deportation hearings.** In order to keep secret the identities of the hundreds of non-citizens arrested after the 9/11 attacks, the DOJ issued a blanket order automatically closing all deportation hearings for all of those detainees. The secrecy helped cover up the fact that many detainees were denied access to a lawyer, held in unduly harsh conditions, and that some were abused by guards. Open hearings, with appropriate protections for classified information, are needed to ensure that abuses such as the ones documented by the IG are prevented and that the American public is informed concerning what its government is doing.

- **Ensure that individuals are not jailed without being charged and commit to providing individuals who are jailed on suspicion of immigration violations timely notice of the charges against them, no later than 48 hours after they are jailed.** Almost one-half of the aliens detained on immigration violations following Sept. 11 were not charged within a 48-hour period. An analysis by the Washington Post found "about 40 percent of the immigrants were not charged within a week, and that some were held for seven weeks or more without charges."

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[6] *See* David Johnston, et. al, "Security Nominee Gave Advice to the CIA on Torture Laws," *New York Times*, January 29, 2005, at A1.

- **Assure that individuals are provided fair, individualized bond determinations when the DHS seeks to jail them.** By October 2001, DOJ had instituted a policy to override decisions of immigration judges that an individual detainee was entitled to release on bond after a hearing in his case. The DOJ policy, which remains in place in the form of a regulation, enabled the blanket override of judicial bond decisions in individual cases. Thus, persons being held for minor immigration violations, who would ordinarily obtain pre-hearing release, were detained for weeks and months without a fair opportunity to seek release on bond.

- **Assure that individuals who are detained are allowed immediate access to counsel and family.**

- **End the selective enforcement of the immigration laws based on ethnicity or religion.** The special registration program conducted between November 2002 and April 2003 sought to gather information on 83,000 Arab and Muslim men. There has been no claim that the program uncovered terrorists, but it did lead to deportation proceedings against approximately 13,000 persons who voluntarily complied with the program. Targeting these immigrant communities is inconsistent with President Bush's statements in the wake of the 9/11 tragedy that individuals should not be singled out for harsh treatment just because they were Arab, Muslim or South Asian.

- **No more abuse of the material witness statute.** DHS should work with DOJ to ensure that the material witness authority is confined to its proper use – detention of individuals whose testimony is material and is needed in court, and who are likely to flee if not detained.

Thank you for your attention to this issue. Please do not hesitate to contact us if you have any questions.

Respectfully,

American Civil Liberties Union
American-Arab Anti-Discrimination Committee (ADC)
American Humanist Association
Asian Law Caucus
Bill of Rights Defense Committee
Caribbean and American Family Services, Inc.
Center for National Security Studies
DRUM - Desis Rising Up & Moving
Human Rights First
Human Rights Watch
Illinois Coalition for Immigrant and Refugee Rights
Islamic Circle of North America (ICNA Relief)
Korean American Resource & Cultural Center (KRCC)
Korean Resource Center (KRC)
Lawyers' Committee for Civil Rights Under Law

Leadership Conference on Civil Rights
Legal Momentum (the new name of NOW Legal Defense and Education Fund)
National Council of La Raza
National Korean American Service & Education Consortium (NAKASEC)
Open Society Policy Center
The Interfaith Alliance
The National Asian Pacific American Legal Consortium
The New York Immigration Coalition
Young Korean American Service & Education Center (YKASEC)

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