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# NOMINATION OF HON. MICHAEL P. JACKSON

# 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 P. JACKSON TO BE DEPUTY SECRETARY OF THE U.S. DEPARTMENT OF HOMELAND SECURITY

MARCH 7, 2005

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MONDAY, MARCH 7, 2005


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# NOMINATION OF HON. MICHAEL P. JACKSON

**MONDAY, MARCH 7, 2005**

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

The Committee met, pursuant to notice, at 2 p.m., in room SD–342, Dirksen Senate Office Building, Hon. Susan M. Collins, Chairman of the Committee, presiding.

Present: Senators Collins, Coleman, Levin, Akaka, and Pryor.

## OPENING STATEMENT OF CHAIRMAN COLLINS

Chairman COLLINS. The Committee will come to order.

Today, the Committee on Homeland Security and Governmental Affairs will consider the nomination of Michael P. Jackson to be Deputy Secretary of the Department of Homeland Security.

Let me begin by noting that I recognize that our nominee shares his name with another individual who has been receiving a great deal of media attention lately. To anyone thinking about cracking a joke along those lines, I would offer two observations. First, our nominee had the name first, and second, there cannot possibly be a joke that he has not already heard a hundred times before. So I think that he would find our avoiding the subject to be a real "thriller."

[Laughter and groans.]

Good. I wanted to see if you would all get that.

This month marks the second anniversary of DHS operations. At this time, we are witnessing the departure of many of the Department's first generation of officials. These pioneers of Homeland Security—Tom Ridge, Admiral James Loy, Asa Hutchinson, and others—stepped forward to serve their Nation under extraordinarily difficult and uncertain circumstances. All Americans owe them a great debt of gratitude.

Now, a second generation is stepping forward. This transformation began last month with the confirmation of Secretary Michael Chertoff. As the unanimous votes in both this Committee and in the full Senate indicate, Secretary Chertoff's distinguished career in the law has prepared him well for this leadership position.

Similarly, Mr. Jackson's distinguished and varied career prepares him well to be Secretary Chertoff's second in command. He was Deputy Secretary of Transportation on September 11 and thus was on the front lines of the war on terror from the very start. He was a leader in the creation of the Transportation Security Administration. Prior to, and now after that tour of duty, he gained valu-

able experience in the private sector that bears directly on some of the Department of Homeland Security's most pressing issues. From the American Trucking Association, to Lockheed Martin, to his most recent position as Chief Operating Officer of AECom Technology Corporation, Mr. Jackson appears to be well qualified for this important post.

There is no specific job description for the Deputy's position, but the individual Mr. Jackson seeks to replace, Admiral James Loy, summed up the job qualifications this way in a recent interview. He said the job requires vision, action, perseverance, and a thick skin.

Beyond an impressive employment record, Mr. Jackson brings with him something that will be invaluable to the Department, a reputation as a great manager. In fact, a book about post-September 11 America titled "After," by Steven Brill, describes Mr. Jackson as, "whip smart when it comes to budget and operational details, a real manager who everyone seems to think was destined for bigger things."

It doesn't get any bigger than helping to protect our Nation against terrorism and improving our ability to respond. The first generation of Department leaders did a remarkable job in laying the foundation, but much remains to be done. The task is made even more challenging by the fact that new threats and vulnerabilities continue to emerge, even as we still strive to address the old ones.

Since the stand-up of the Department, this Committee has held several oversight hearings to explore the status of DHS and to help chart its future. The expert testimony we have heard has made it clear that the melding of 22 Federal agencies with more than 180,000 employees into one cohesive unit remains very much a work in progress.

Within the general status reports are several troubling specifics. A lack of strategic planning continues to hamper our ability to direct the right resources to the right place at the right time. The configuration of the Department itself has yet to be refined for maximum efficiency and effectiveness. There is a need to define more clearly the authorities and responsibilities of the agencies within the Department as well as between the Department and other Federal agencies and departments.

On a more specific level, I am very concerned about a number of issues. For example, our Nation's seaports remain an obvious vulnerability and have not received the resources and the priority that they warrant. The delay in implementing the Transportation Worker Identification Credential Program is inexplicable and unacceptable. And the administration's proposed budget would reduce funding for our first responders to clearly inadequate levels.

I am heartened, however, that Mr. Jackson shares at least some of these concerns. In a Heritage Foundation lecture entitled, "Securing America's Airports and Waterways," Mr. Jackson described his vision for a fully integrated approach to security across our entire transportation network, air, land, and sea. The details of his plan go directly to the core of many deficiencies that have been described in our oversight hearings. Most heartening is his bottom line. The turf battles and bureaucratic inertia that continues to af-

flict DHS internally as well as to affect its relationships with other agencies at all levels of government cannot prevent us from answering the fundamental question with which he concluded his lecture. That question was, "What works?" Nothing else makes a difference. I think that is a terrific question for us to be asking as the Department begins this new stage of its existence.

I do want to say that the Department has accomplished a great deal. I have tended to focus in my opening remarks on the challenges that will confront the nominee, but certainly, we are making progress, and even the Department's staunchest critics will admit that progress has been made. At the same time, even the Department's fiercest supporters would concede that we still have a long ways to go.

I look forward to discussing what works in greater detail today with our nominee. Senator Levin.

**OPENING STATEMENT OF SENATOR LEVIN**

Senator LEVIN. Thank you very much, Madam Chairman. Let me add my welcome to Mr. Jackson.

This Committee is going to be holding a hearing, as our Chairman has said, on Wednesday to ask Secretary Chertoff about a number of issues, including the proposed funding for fiscal year 2006, but I just want to quickly say that the funding request for first responders, with the significant cut that it is proposed, as our Chairman has mentioned, is something which is deeply troubling to me.

The allocation last year for our first responder grant programs was $1.1 billion. This year, by requiring States and localities to allocate no less than 20 percent, or about $200 million of that 2006 budget request, means that it is going to take a significant reduction if this budget is adopted. Rather than reducing the amount of grants going to first responders, we ought to be increasing those grants as they have proven to be inadequate.

How we allocate Homeland Security resources is just as important as the level of funding that we provide, and what we need to do is change the way that this funding is distributed by allocating funding where the threats and the consequences of attacks and the vulnerabilities are the most significant. The Homeland Security Department this year does appear to be moving towards funding for Homeland Security grant programs based on risks, threats, vulnerabilities, and unmet essential capabilities, and that is a positive move, certainly an improvement over the formula which has been used to allocate this funding which has yielded inequitable results.

Hopefully, with the commitment of the Department, we will be able to actually move to a more equitable formula this year, and I know that our Chairman has attempted to find various formulas, and I commend her on her effort, which will be equitable to all of the States and all of our localities. She has made a Herculean effort to find that magic formula which can obtain a consensus which will both produce greater equity, but also make sure that all of our States are given allocations which reflect their position as States and their responsibilities as States.

I am also concerned that there is still no dedicated funding source to enhance the interoperability of communications equipment, even though that remains one of the top priorities of our first responders. Secretary Chertoff has expressed his support for focused spending and is committed to studying that issue further and I would be interested, Mr. Jackson, in your ideas on how we can accomplish the goal of providing interoperability communications equipment that is so desperately needed by our first responders.

The Chairman has mentioned programs to try to protect our ports of entry in a much greater fashion than we have to date. I concur with her comments on that. I would only add this, that the ports of entry on land, which receive about half of the containers, are just as significant as the seaports of entry that receive approximately the other half of our containers.

Just to give you one example, the Ambassador Bridge in Detroit, which supports 6.25 million truck crossings, and the Blue Water Bridge in Port Huron, Michigan, which supported almost two million truck crossings in 2004, are highly vulnerable ports of entry and they must be considered along with other land ports of entry, along with those seaports which have been inadequately funded since such a huge percentage of containers come in through those ports, both on land and at the seaports.

So those are some of the questions that I hope you will be able to comment on. Again, we congratulate you. I gather your family—I wasn't here when our Chairman opened up——

Chairman COLLINS. We haven't got to that yet.

Senator LEVIN. You haven't got to that yet, all right. She always does, so I will allow her to do that without moving into that area.

Chairman COLLINS. Thank you. Senator Akaka.

**OPENING STATEMENT OF SENATOR AKAKA**

Senator AKAKA. Thank you very much, Madam Chairman. I am pleased to join you in welcoming Dr. Michael Jackson, the President's nominee to be Deputy Secretary of the Department of Homeland Security.

This is one of the most challenging positions in government. I have a longer statement, Madam Chairman, and I ask that it be included in the record.

Chairman COLLINS. Without objection.

Senator AKAKA. DHS is a work in progress. Some good work has been done already by Secretary Ridge and you will have picked up where he left off and continue improving it. Now is a good time to assess whether or not some areas need changing.

To bring together these functions, Congress authorized the Department and the Office of Personnel Management to create a new personnel system which, now finalized, represents a radical departure from the existing Federal Civil Service system. Most Americans are not aware of this particular aspect, and those who are might think of it as one of those inside-the-Beltway issues of no real consequence. They are wrong.

The first line in our national defense is our public servants, in or out of uniform. We must ensure that our national security workforce has the right tools, the right incentives, and the supportive working environment necessary to accomplish their mission.

I believe you appreciate this, Dr. Jackson, but as you know, you will be judged by your deeds and not your words. I am hearing from Federal workers in Hawaii and throughout the Nation that DHS personnel regulations lack the support of employees. Dr. Jackson, you and Secretary Chertoff have the opportunity to foster a more positive environment so that the Department of Homeland Security can meet its mission of making America more safe.

There are several actions that you can take to make this happen: One is ensure that the DHS internal labor relations and mandatory removal panels include members recommended by employees.

Two, reinstate the current authority of the Merit Systems Protection Board to mitigate penalties.

Three, issue more detailed regulations in the *Federal Register* on the pay-for-performance system.

And four, provide greater opportunities for employees and their union representatives to be involved in agency decisionmaking.

In addition, it is essential to ensure strong whistleblower protections for all Federal workers, especially national security employees.

Last week, a bipartisan group of Senators from this Committee joined Senator Collins and I to reintroduce legislation to strengthen whistleblower protections for Federal workers. I ask you to consider whistleblowing as an effective tool for management, not a hindrance, and I urge you to extend whistleblower protection to all DHS employees.

Reports that other Federal agencies, such as the Department of Defense, paid more bonuses to senior political appointees than career senior executives damages morale and heightens apprehension of everyone serving in the Federal workforce. I hope this does not happen to DHS. Employees should be treated fairly and equitably. Dr. Jackson, your first challenge will be to convince the men and women who work for you that that is the case at DHS.

Your second challenge will be to provide leadership to the DHS workforce, not just a new set of personnel regulations. As I mentioned earlier, right employees must have the right tools, the right incentives, and the right environment to accomplish their mission. And again, you can tell how focused I am on this. Chairman Voinovich and I, as Chairman and Ranking Member of the Committee on Oversight of Government Management and the Federal Workforce intend to focus on this.

Again, I welcome you to the Committee and I want to welcome your family. I think your wife and your daughter are here and it is great to see them. I want to thank them for their sacrifice for their country in supporting you for this position. I hope they will be able to join you in a visit to my State of Hawaii. [Laughter.]

Mr. JACKSON. Well, you have opened the door now, Senator. [Laughter.]

Senator AKAKA. Sooner, rather than later.

Thank you very much, Madam Chairman.

Chairman COLLINS. Thank you, Senator.

[The prepared statement of Senator Akaka follows:]

PREPARED STATEMENT OF SENATOR AKAKA

Madam Chairman, I am pleased to join you in welcoming Dr. Michael Jackson, the President's nominee to be Deputy Secretary of the Department of Homeland Security. This is one of the most challenging positions in the government.

I understand that Secretary Chertoff, who was sworn in 2 weeks ago, has already begun a top-to-bottom review of the Department, and I want to say that I welcome this review.

As we all know, the Department was cobbled together from 22 existing government entities with new functions added. DHS is a work in progress, and I agree that now is a good time to assess whether or not some areas need changing.

To bring together these disparate functions, Congress authorized the Department and the Office of Personnel Management to create a new personnel system, which now finalized, represents a radical departure from the existing Federal civil service system.

Most Americans are not aware of this particular aspect. And, those who are, might think of it as one of those inside-the-Beltway issues of no real consequence.

They are wrong.

The first line in our national defense is our public servants: In or out of uniform. We must ensure that our national security workforce has the right tools, the right incentives, and a supportive working environment necessary to accomplish their mission.

I believe you appreciate this, Dr. Jackson. But as you know, you will be judged by your deeds.

I am hearing from Federal workers in Hawaii and throughout the Nation that the DHS personnel regulations lack the support of employees. Moreover, employee unions have filed suit to prevent the implementation of these regulations, and even if the suit fails, it is indicative of a severely strained labor-management environment.

Dr. Jackson, you and Secretary Chertoff have the opportunity to foster a more positive environment so that the Department of Homeland Security can meet its mission of making America more safe.

There are several actions that you can take to make this happen:

- Ensure that the DHS internal labor relations and mandatory removal panels include members recommended by employees;
- Reinstate the current authority of the Merit Systems Protection Board to mitigate penalties;
- Issue more detailed regulations in the *Federal Register* on the pay for performance system; and
- Provide greater opportunities for employees and their union representatives to be involved in agency decisionmaking.

In addition, it is essential to ensure strong whistleblower protections for all Federal workers, especially national security employees.

Last week, a bipartisan group of Senators from this Committee joined Senator Collins and I to reintroduce legislation to strengthen whistleblower protections for Federal workers. As you know from your role in helping to establish the Transportation Security Administration (TSA), Federal baggage screeners do not have full whistleblower rights. This Committee supported extending full whistleblower rights to all DHS employees during our markup of the DHS bill in 2002. Unfortunately, the final legislation did not reflect this intent.

I ask you to consider whistleblowing as an effective tool for management, not a hindrance, and I urge you to extend whistleblower protection to all DHS employees. Such action will have an immediate impact on employee morale and will help the Department uncover mismanagement and security lapses. This is what leadership is all about—being able to focus on the goal and not be dragged down by the details.

It is also essential that employees have adequate training on the implementation of the new human resources system, particularly on the performance management system. We often find that in tight fiscal years, training budgets are routinely cut or used to pay for other agency priorities. I hope you will be committed to ensuring a strong and robust training program for the Department.

I fear the Administration has been too focused on the details, wasting time, expending political capital, hurting the morale of the very civil service workforce whose duty is to make America safe.

Reports that other Federal agencies, such as the Department of Defense, paid more bonuses to senior political appointees than career Senior Executives damages morale and heightens the apprehension of everyone serving in the Federal work-

force. I hope this has not happened in DHS. Employees should be treated fairly and equitably.

Dr. Jackson, your first challenge will be to convince the men and women who work for you that that is the case of DHS.

Your second challenge will be to provide leadership to the DHS workforce, not just a new set of personnel regulations.

As I mentioned earlier, employees must have the right tools, the right incentives, and the right environment to accomplish their mission.

Again, I welcome you to the Committee, and I welcome your family, and I want to thank them for their sacrifice for their country in supporting you for this position. And, I hope they will be able to join you in a visit to my State of Hawaii sooner rather than later.

Chairman COLLINS. I am wondering why you don't invite the Senators from Maine and Michigan also to come learn more about the challenges in Hawaii.

Senator LEVIN. With all our kids and grandkids, too, right? [Laughter.]

Chairman COLLINS. Mr. Jackson, both of my colleagues have alluded to your family members, so I think I will go slightly out of order and ask you to introduce them to the Committee right now.

Mr. JACKSON. Thank you, Chairman Collins. Well, I have with me my wife, Caron, and my daughter, Katherine. As has been said, they do make it possible for public service by giving such strong support. But DHS is really all about protecting families and citizens and with Caron and Katherine, as with your families, my family gives a name and a face every day to the motives for me wanting to do a job such as I have been nominated for, so I am grateful for their support but also grateful for how they bring home every day how important it is, the work of this Committee and the Department of Homeland Security. So thank you for the welcome.

Chairman COLLINS. Thank you. Senator Levin and I were just remarking that your daughter is beaming—— [Laughter.]

And I think that she is very proud of her father here today, so we welcome you both to the Committee.

In my opening comments, I gave considerable information about Mr. Jackson's background. Let me just add that he also served as a pro bono member of the Coast Guard's Integrated Deep Water System Navigational Council. I am going to ask you later some questions about the deep water program, which I care deeply about, but I am very pleased to see that you bring experience in that area to the Department, as well.

Mr. Jackson has filed responses to a financial and biographical questionnaire, answered pre-hearing questions submitted by the Committee, and has had his financial statements reviewed by the Office of Government Ethics.[1]

Without objection, this information will be made a 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, Mr. Jackson, would you please stand and raise your right hand.

[1] The biographical and financial information and pre-hearing questionnaire appears in the Appendix on page 35.

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

Mr. JACKSON. I do.

Chairman COLLINS. Thank you. Mr. Jackson, if you have a statement you would like to make, I would ask that you proceed at this time.

**TESTIMONY OF HON. MICHAEL P. JACKSON, TO BE DEPUTY SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. JACKSON. Thank you, Chairman Collins, and Members of the Committee, thank you for your warm welcome and for having this hearing today for me.

I am deeply honored to be nominated, and if confirmed, I would look forward to working very closely with this Committee on the issues that have already been raised and the many others that you have the responsibility to oversee at the Department.

Perhaps it would be helpful, and Madam Chairman, you have already been through my history a little bit, so I won't say too much, but I will try to compact it with just a brief summary of what I have done and a few words about what I would bring to this job, if confirmed.

My professional life has been equally divided in the past 20 years between public service and private service. In the public domain, if confirmed for this position, I would have worked for three Presidents in four Presidential terms and for five Cabinet Secretaries. I started out with a GS number that was definitely in the single digits and have worked through a variety of different responsibilities. In the private sector, I have been in multiple corporate and trade association jobs that are relevant to our work at the Department of Homeland Security.

In both of the last two corporate jobs, and in my DOT job, I was the Chief Operating Officer. The COO's job is a job that I relish. It is a job for which I bring enthusiasm, and if confirmed in this position, it is a position that I would love to return to at the Department. That really is the core of the Deputy Secretary's job at DHS. It calls for supporting the President and the Secretary. It calls for being a strategic thinker, yet immersed in the weeds of what you do enough to know the practical issues that have to be resolved. It calls for being customer-focused. It calls for being a change agent, action oriented, and I would say constructively impatient with the progress of our mission.

At DHS, the COO is involved in much work within the administration, within other departments, with our State and local first responder community, with State and local leaders, and certainly in a very immediate and important way with this Committee and with other Members of Congress in the work of oversight that you have for the Department.

I have no illusions about the complexity of this job. Secretary Chertoff has no illusions about the difficulty of the work that we have ahead of us. But I can tell you that the two of us most definitely share this conviction. The jobs for which we have been nominated are perhaps the two most exciting jobs that a person can be offered in this government. We believe that the work ahead is so

vital. Why do I say this? It is for this vitality, it is for the mission, and it is for the people, and so perhaps I could say just a brief word about those before turning to questions from the Committee.

About the mission first. The importance of the mission is self-evident. The President has given tremendous support for this mission. The Congress has a passionate interest in this mission, which I acknowledge and which I, frankly, welcome with great regard.

I was on watch, Madam Chairman, as you said, on September 11 at DOT and that day permanently changed my own make-up, my own constitution, my own DNA. After that, I walked away with an unquenchable desire to serve the public's effort at trying to prevent such a day ever again, in whatever fashion it was, in the private sector or the public sector, in something great or something small.

We have already done so much, and I cannot more heartily agree with the words that have been expressed here for Secretary Ridge and Deputy Secretary Loy and the phenomenal colleagues that they brought to this new Department. The work that they have accomplished is truly large and truly a legacy to the Nation, and I think they would be the first to say that there is still so much left to do. We have done much, but we can't eliminate vulnerability. We can't eradicate risk. We have to keep working at it and stay one step ahead of the ones that President Bush called the "evil ones" shortly after the attack of September 11.

So whether it is in strengthening transportation infrastructure, such a vitally important job, whether it is looking at the security associated with chemical plants and reducing vulnerability there, with our food supply, or with any of the other 17 clusters of critical infrastructure that have been outlined in our work in this area, DHS and our allies at the State, local, and tribal level must be committed to this continuous innovation. We cannot ever stop innovating or resting on our laurels.

That brings me to the second reason why I am attracted to this opportunity that I have been nominated for and it is the people. In building TSA with our colleagues at the Department of Transportation, in working with many of the agencies that now constitute DHS, in my work as a private citizen, I have met so many thousands of people who share the same passion that this Committee brings to this topic for their daily work in this area, whether it is a local first responder or a Coastie standing watch or a TSA agent trying to get through that massive line that they have to sometimes work their way through. This is one of the hallmark things that makes working with this Department so attractive, is the people, what they bring to it, their passion and commitment about it.

I certainly recognize the mission of this Department is more than just counterterrorism work. It is crucial in the Department to maintain the complex missions that have been assigned to the Department by Congress in the Act which created us. So in the Coast Guard, for example, search and rescue missions are absolutely vital. Our work in immigration is absolutely vital. Our work in responding to natural disasters is indispensably vital to what the Department has stood up to bear. And I just want to acknowledge at the outset that I understand that all of these missions, none of them can be dropped. All of them have to be maintained and to work hard.

I certainly recognize, however, that counterterrorism was the core of why we came into being, and I think that by continuing to focus on this, with all of the best and brightest minds that we can bring and continuing to ask, Madam Chairman, the words that you mentioned of mine earlier, "What Works?" By doing this, we honor the tragic victims of September 11 and nothing else but that is what we have to hold dear.

So vital mission, great people. These are the things that are at the top of the list of what animates those of us who would propose to work here and work with you. If confirmed in this position, I would very much look forward to working closely and routinely with this Committee.

Chairman COLLINS. Thank you. Mr. Jackson, the Committee starts its questioning of every nominee with three standard questions. Lately, I have been adding a fourth, and I am going to do that in your case, as well.

First, is there anything 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?

Mr. JACKSON. No, there is not.

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

Mr. JACKSON. I do not.

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?

Mr. JACKSON. Without reservation, I certainly do.

Chairman COLLINS. And the fourth, which I also asked Secretary Chertoff, is the result of experience that many Members of this Congress, including myself, have had with difficulty in securing information from the Department as part of our investigative responsibilities. So the fourth question is, do you agree to cooperate with the Committee's investigations and oversight activities?

Mr. JACKSON. I certainly do. I respect that important role in the Committee's work.

Chairman COLLINS. Thank you. We will now start a first round of questions limited to 6 minutes each, but I want to assure my colleagues that we will have a second round, so don't be concerned about having to get it all in on the first round.

Mr. Jackson, the 9/11 Commission set forth a report that was very critical of the information sharing within the Federal Government, and I want to give you an example of poor information sharing that the Committee has encountered as part of an ongoing investigation. As you may be aware, the Department relies on a system that is called the A file, which stands for Alien file, to keep documents and records relating to an alien's immigration status. This is a paper-based system that appears to be extremely cumbersome and difficult to manage.

For example, our Committee learned that a suspected terrorist was mistakenly granted citizenship because his A file could not be located at the time the request for citizenship was made. More recently, this Committee, as part of its ongoing investigation, requested the A file of a known associate of the September 11 hijack-

ers and was told that the file was in "deep storage" and could not be easily located.

These experiences suggest the need for fundamental reforms within the Department in its information sharing, and they are very troubling because if individuals who are suspected of links with terrorists or of terrorist activities themselves can be granted citizenship because the information from the FBI is not shared with the Immigration Bureau or vice versa, that is putting our country in danger.

You have considerable private sector experience. You understand information systems. What would you do to try to improve on the types of antiquated paper-based systems that seem to still be far too prevalent within the Department?

Mr. JACKSON. Senator Collins, I think that is an excellent question. It is a very important priority for the Department, and if confirmed, it is one that I would bring a significant amount of focus to in my own efforts.

I think that the right start has been launched by Secretary Chertoff. He has asked for a review of major programs, systems, processes, policies, interagency relations. This is both to understand our relations inside the Department and with our external stakeholders, including our other Federal stakeholders. A part of that is to work with our CIO and with some other U.S. Government assets and non-U.S. Government assets at this cluster of issues about information management to come up with an assessment and options for making substantial improvements. It is not good enough to say that a file is in deep storage and it is something that we should work on, and I promise to do so if confirmed and to report back to you as you would feel comfortable in having reports on.

Chairman COLLINS. I would appreciate that. I think the Department, in addition to having some antiquated paper-based systems, also has a structural problem because the Chief Information Officers of the various component agencies are not reporting to the Chief Information Officer of the Department. This sets up a structural problem that makes it very difficult for leadership to be exerted. So that is an area I would like you to look at as you review this whole area.

Mr. JACKSON. Yes, ma'am, I certainly will.

Chairman COLLINS. I would now like to turn to the Transportation Security Administration, which you obviously have tremendous background in since you helped to create and stand up that agency. According to a recent GAO report, TSA has experienced significant project management problems in implementing the Transportation Worker Identification Credential. As a result, this has been delayed year after year after year. The last target date was August 2004. That now apparently has slipped by at least 2 years, and TSA is still in the process of testing a prototype.

I know from my recent visit to Los Angeles that those two large ports are using just a driver's license as the means for access to the ports, when you have thousands of people having access to these two ports only having to show what may be an easily counterfeited driver's license.

What is most troubling to me is during this same time period, other secure identification programs have proceeded as planned. So it is not like the technology is not there. This can be done. For example, the International Labor Organization has adopted a biometric identification card standard for the world's 1.2 million mariners. More recently, the Commerce Secretary approved a new standard for a smart card-based identification for all Federal employees and contractors associated with Federal facilities in that Department.

What has gone so wrong with the TWIC program when it affects an area that is so important to our security and was specifically mandated by the Congress?

Mr. JACKSON. I honestly don't know and I wish I did. I have to say it is perhaps impolitic but it is true that I just share your frustration in this area and I am perplexed at why we have not been able to move this ball further and faster because it is important. I would just tell you that I have asked for some additional information. This is an area where my sense of urgency would be focused at the Department to try to get some answers and see where we can go. This is not rocket science. It is a case where we should not let perfect be the enemy of making a substantial improvement, and I would be committed to helping the Department move in that direction and working with the Congress to do so.

Chairman COLLINS. This is an area that the Committee will be following up on——

Mr. JACKSON. Good.

Chairman COLLINS [continuing]. So I appreciate your commitment. Senator Levin.

Senator LEVIN. Thank you, Madam Chairman.

The first question that I want to ask you relates to the way in which the formula should be structured. That has been, of course, a matter of some debate here in terms of how that funding goes to the States. But the 9/11 Commission recommended that homeland security assistance should be based on assessment of risks and vulnerabilities and I am wondering whether you agree.

Mr. JACKSON. I do agree with that.

Senator LEVIN. Now, the overall funding level that is in the administration's budget is significantly reduced when it comes to first responder grant programs. As I indicated, last year, we allocated $1.1 billion to the program, and this year, States and localities are going to be required to allocate at least 20 percent of that program, which is a significant reduction in that program. I am wondering, how does that reflect the huge need that we have for first responder funding? How does that reflect the priorities of this Nation to defend this homeland?

Mr. JACKSON. Senator, I would agree that supporting first responders is an important part of the Department's work and mission and I would say that I have not had the benefit of a detailed opportunity to drill down into the fiscal year 2006 proposed budget and would be very grateful to do that, if confirmed, and to get back with you in more specifics about the grants that you are raising. But I understand the importance of what you are raising.

Senator LEVIN. Well, we do appreciate that and we will be talking to the Secretary more about that, then, on Wednesday.

The 2006 budget request relative to firefighter grants provides that priority shall be given to applications enhancing terrorism response capabilities. Now, when the Fire Act was passed, I think 5 or 6 years ago, it was passed before September 11, obviously. We were trying to provide some support to fire departments relative to providing equipment, training, and so forth.

So my question is what your reaction is to that shift. Is that something which is necessary, or can we not basically do both, provide the first responder grants to our fire departments at the same time we are supporting their needs, their ongoing needs, I won't say separate and apart, but which would have existed even without the September 11——

Mr. JACKSON. Yes, sir. Well, my understanding of the Department's programs does identify a first priority on the preparation for events of terrorism and other events which we are designed by statute to protect against. But there is a zone in which investments in that also certainly have some significant benefit to the more traditional roles that you reference and understanding where the point of reason might be for seeing a middle ground on those is an area that I would commit to you also to study in more detail.

I will say this about the structure of the grant programs for our State and local partners, is that we are trying in the structure of the fiscal year 2006 budget to provide this focus on having a threat-based assessment of how to make these investments at a local level, and by aggregating some of the previously separate programs, we give ourselves some more flexibility to look and say, where does the discretion drive us? Where does the threat analysis suggest that we go? And so I believe that is, as a principled matter, an improvement in the structure of the programs. Obviously, we have to have a nuanced and sophisticated understanding of what the threat assessment means for us and how we should invest in that. It doesn't mean that it is just an exclusively population-based approach, but it does mean that we take a more sophisticated view of understanding risk and how to mitigate it.

Senator LEVIN. The Northern border is not only extremely long, but it is very open, relatively. Huge numbers of people cross that border. Canada is the single largest trading partner with the United States. The largest trade link in the world is the Ambassador Bridge, which connects Detroit and Windsor, Ontario. We have more than 7,000 trucks crossing each day from Canada into Michigan.

Yet when we look at the amount of money which goes to port security, it is not only inadequate overall, we only look at, I think, 2 to 5 percent of the containers coming into this Nation overall as a Nation. But between land ports and seaports, there is a huge discrepancy even though, again, about half the containers come into the land ports.

I am wondering what your reaction is to that issue, to that problem, and what you would like to see done to accommodate that kind of a concern.

Mr. JACKSON. Yes, sir. It is an excellent question. In our approach to this, the Department of Homeland Security screens all of the traffic moving across and then inspects a smaller number, which is indicated by their risk analysis in the screening, and I

think that without casting any aspersions on the terrific work that has been done on both fronts, that, and consistent with our idea that this is a constant innovation cycle that we have to chase, we can do better on the screening and we can do better on the inspecting.

I have had some experience in the private sector and in the public sector at these cross-border trucking issues and I am eager to look for process solutions and technology solutions that can help us make continued progress here.

Senator LEVIN. Thank you, Madam Chairman.

Mr. JACKSON. Yes, sir.

Chairman COLLINS. Thank you. Senator Coleman.

**OPENING STATEMENT OF SENATOR COLEMAN**

Senator COLEMAN. Thank you, Madam Chairman. I am looking forward to this confirmation——

Mr. JACKSON. Yes, sir.

Senator COLEMAN [continuing]. To getting it done. Secretary Chertoff is getting lonely over there and he needs as many good hands on deck as we can get forward and you are going to be one of those, Mr. Jackson.

Mr. JACKSON. Thank you, sir.

Senator COLEMAN. Let me follow up, though, on actually two concerns raised by my colleagues. First, in regard to the port security, I had a chance to be out at Long Beach in L.A. about 2 weeks ago and about 46 percent of the sea cargo comes through there. I am not as concerned about the numbers that are screened. I am concerned about the screening process, and I understand the rating system.

But I am concerned on the technology side. The issue of radiation portal monitors, the fact is that if you look at the, as I understand the system, it doesn't detect neutron radiation, the kind of radiation that we need, and we have some handheld monitors that get some of that, but can you tell me why, help me understand where we are at with radiation portal monitors? The concern over threat of any kind of nuclear attack——

Mr. JACKSON. Yes, sir.

Senator COLEMAN [continuing]. Is obviously enormous and I am concerned about where we are on the technology side.

Mr. JACKSON. It has very high consequence, obviously, and therefore is a very high priority. In an internal administration effort, which I believe the Congress has been briefed on, we are proposing to create a so-called DNDO, a locus within the Department of Homeland Security for putting in place a strategy for counterterrorism related to the nuclear issues. An integral part of that strategy is an accelerated schedule to do some fundamental research on a variety of nuclear detection tools.

It doesn't mean we can't continue the deployment of existing state-of-the-art technology, but I will tell you that this has been one of Secretary Chertoff's early briefs. He is strongly supportive of the effort and a time table has been laid out for implementation of this office and an aggressive schedule to work with it.

Senator COLEMAN. It is certainly an issue that we will be following very closely here.

Let me also follow up on the question raised by the Chairman, and that is the secure I.D.s and the lack of movement on the TWIC program. Is there an issue here regarding the—let me step back. If you are talking about folks who are longshoremen working in L.A. or working in New York or anywhere else and we are looking at a secure I.D. program, I assume one of the issues is going to be background checks, and I have to presume that there may be folks who have been working with these folks for long periods of time that may have records that will not relate to national security but would certainly cause them to have some concern, and perhaps based on other Federal standards, may cause us not to have a security concern, which should be the major concern, but it may run afoul of some other laws or rules or regulations.

First, is that an issue, and second, is there some flexibility? The main thing is national security and we have to, I believe as soon as we can, have a better system in place of understanding who is handling this cargo, who is coming in. Pre-September 11, we were looking at land coming in. Theft was an issue. But we are way beyond that today, and I just worry about whether there is a flexibility issue here and are we in the Federal Government being flexible enough to allow for a rapid deployment of this TWIC program or whether we are suffering from some inflexibility here.

Mr. JACKSON. We may be suffering from inflexibility that needs busting up, and if so, that is something that I would like to have a chance to bust at. But I would tell you that my understanding of the program is that we have better tools than we did in the year or so after September 11 to apply to these background investigations. There has been some significant work in improving those tools, for example, in the work that TSA did with screening airport employees, and we should be taking those tools for more rapid and aggressive deployment and I would be pleased to work on that work, as well.

Senator COLEMAN. Again, here is one where the technology is certainly available——

Mr. JACKSON. Yes, sir.

Senator COLEMAN [continuing]. To have the kind of smart cards that we need. It is a matter of getting them in place.

Mr. JACKSON. The technology to do the background investigation itself is, I think, at a stage where we can learn new lessons there, as well.

Senator COLEMAN. Let me raise one issue about airlines—Minnesota is the home of Northwest Airlines. There is another proposed increase in security fees. Many of us, I am sure, have heard our airlines folks coming to us saying, hey, you are going to kill us. I don't know the situation with rail, but I presume there is not a security fee on Amtrak yet. Am I right on that?

Mr. JACKSON. Yes, sir, to my knowledge.

Senator COLEMAN. And I presume truckers at this point do not have a specific security fee?

Mr. JACKSON. It may depend in some facility entrance fees and the like, but there is not a general levy of the sort that you are referencing.

Senator COLEMAN. It would seem to me that airlines are one place where clearly we are focusing. The terrorists know we are fo-

cusing on it. I just don't want to—and I am not looking for reaction on the proposal, but I just want to kind of put on the record that a lot of us are deeply concerned about the impact of these fees. We understand the importance of security. We are working on that. But we seem to be piling it on one industry that at this time is in a very precarious situation and we shouldn't tax them to death. So I just want to raise that and my sense is you will be hearing that from some of my other colleagues, too, and I know the Secretary has heard it.

Mr. JACKSON. Yes, sir. I have heard this story since the day after September 11, and so I am absolutely——

Senator COLEMAN. It seems to be increasing. We have another round of proposed fee increases.

Mr. JACKSON. Yes, sir.

Senator COLEMAN. I am not talking about where we have been. I am talking about where we are going.

Mr. JACKSON. Exactly, and it is a balance. We have tried to use user fees because we stood up a Federal workforce to manage this, unlike security in some of the other modes of transportation. But I recognize it is an area that needs close listening.

Senator COLEMAN. Thank you, Madam Chairman.

[The prepared statement of Senator Coleman follows:]

PREPARED STATEMENT OF SENATOR COLEMAN

Madam Chairman, I want to thank you for holding this important hearing on the nomination of Michael Jackson to be the Deputy Secretary of Homeland Security. I want to join in thanking Michael Jackson for appearing this morning before the Committee and I want to personally thank you for coming to my office and visiting with me.

My home State of Minnesota has a wide range of Homeland Security interests given that we have an international border with Canada, we have two major cities in Minneapolis and St. Paul, we have two nuclear reactors in Red Wing and Monticello, and a major port in the city of Duluth. Unfortunately, however, Minnesota witnessed an average 48 percent reduction in the allocation of Federal homeland security dollars, including a 71 percent reduction to our urban area security initiative alone. Now I don't want to beat a dead horse but I do want to reiterate my concerns that you cannot have effective homeland security with a lack of continuity. I am very pleased that Secretary Chertoff has agreed to work with me on this issue and I would like to enlist your help as well so we can avoid this problem next year.

Turning to another important matter, about a month ago, former Attorney General John Ashcroft warned that the gravest threat to the U.S. is the possibility that al-Qaeda or its sympathizers could gain access to a dirty bomb or a nuclear weapon. In fact, recent studies indicate that a nuclear or radiological event at a U.S. port could inflict numerous casualties as well as result in an economic impact of greater than one trillion dollars to the U.S. economy. I share the former Attorney General's concerns and traveled to California in February to meet with port officials and get a first hand look at the challenges we face.

Given the enormous stakes involved in the Federal Government's response to nuclear terrorism, the Permanent Subcommittee on Investigation, which I chair, is working in conjunction with Members of the House and Senate in a bicameral and bipartisan fashion and have collaborated to review the actions taken by the Department of Homeland Security and Customs to safeguard our country from a nuclear attack.

PSI will focus it initial inquiry into three areas:

- the deployment of radiation portal monitors at our Nation's vulnerable ports and borders
- the Container Security Initiative, and
- the Customs Trade Partnership Against Terrorism

I look forward to working with you on these endeavors to insure that our citizens are protected from the threat of nuclear terrorism.

Chairman COLLINS. Thank you. Senator Akaka.

Senator AKAKA. Thank you, Madam Chairman.

Dr. Jackson, the Emergency Management Performance Grant Program is the only source of Federal funding to States and localities for all-hazard emergency management preparedness and response. Most grant recipients use that money to fund key emergency management personnel positions that could not be filled otherwise. In fact, 50 percent of Hawaii's civil defense staff are funded through these grants.

I have been told by the National Emergency Management Association and officials in Hawaii that OMB wants a 25 percent cap on the amount of EMPG funds that can be used for salaries and other personnel expenses. If this happens, States and localities would lose a significant number of their trained staff. This would severely cripple emergency management capabilities. Is the information I received about OMB's intentions accurate?

Mr. JACKSON. Senator, I have to give you my apology that I have not yet had a chance to dive into this level of granularity about that part of the program, but I will do so if sent to the Department and would be happy to report back to you on that.

Senator AKAKA. I would like for you to look at the issue and inform this Committee——

Mr. JACKSON. Yes, sir.

Senator AKAKA [continuing]. Before the action is taken to cap the personnel funding.

Dr. Jackson, the National Association of Agriculture Employees testified before my Subcommittee that CBP, that is Customs and Border Protection, has consciously ignored agriculture inspection duties. One of three groups comprising CBP are agriculture specialists who were transferred from USDA to DHS when DHS was created. I understand there are currently 800 vacant agriculture specialist positions there, and that is of great concern to me.

In addition, I understand the number of agriculture inspections conducted per year has decreased by 3.5 million since the DHS took over, even though agricultural imports have increased.

Hawaii is home to more endangered species, as you know, than any other State and our economic security depends heavily on agriculture inspections being carried out. Will you commit to look into this situation and ensure that agricultural security at the border is not sacrificed to other priorities?

Mr. JACKSON. Yes, sir, I absolutely will.

Senator AKAKA. The State of Hawaii, Dr. Jackson, is 2,500 miles away from the West Coast. We don't have any neighboring States to call on for assistance, and our eight inhabited islands must be self-sufficient. We rely on FEMA's specific area office in Honolulu, to coordinate and provide equipment for disaster preparedness and response efforts in Hawaii as well as the rest of the Pacific.

I understand that FEMA is considering closing the Pacific Area Office this year to cut costs. You will be interested to know that I introduced the bill that created that office. Will you please look into this issue and report back to me as soon as possible?

Mr. JACKSON. Yes, sir, I will.

Senator AKAKA. Thank you very much, Madam Chairman.

Mr. JACKSON. Thank you, Senator.

Chairman COLLINS. Thank you. Senator Pryor.

**OPENING STATEMENT OF SENATOR PRYOR**

Senator PRYOR. Thank you, Madam Chairman, and thank you for being here today. I appreciate, Mr. Jackson, your willingness to serve and step into this.

I have a prepared statement I would like to submit for the record.

[The prepared statement of Senator Pryor follows:]

PREPARED STATEMENT OF SENATOR PRYOR

Thank you Madam Chairman and Senator Lieberman for convening this hearing and continuing your bipartisan leadership on this Committee. I also would like to thank your Committee staff for its commendable work in preparing for our many important hearings such as this session today.

Mr. Jackson, good afternoon and thank you for your years of service to your country. I am anticipating an open and in-depth discussion of your background and your ideas for securing our country's safety.

The Department of Homeland Security faces, as part of its challenge of protecting America, a reorganization of over 180,000 men and women. Such a challenge requires great skill in strategic planning, management, and innovation.

Securing our borders and protecting our infrastructure, while preserving our civil liberties are the tasks before you if you are confirmed. I look forward to hearing how you would accomplish these tasks in the position for which you have been nominated.

Senator PRYOR. The way I see this is you have got a unique opportunity and a unique perspective here because you are really an outsider at the agency. Let me ask this. It is a fairly new agency, a couple of years old or less. From the outside looking in, where do you want to focus your energies at Homeland Security?

Mr. JACKSON. Well, the issue is that there are many areas that need focus and so what we are trying to do at the start, Senator, is to begin with an assessment of how to prioritize what needs to be done. This is something that Secretary Chertoff has announced internally and that we are beginning to launch. It will involve looking at probably two dozen clusters of like issues, everything ranging from IT programs, such as we have discussed earlier, to specific policy areas, and then trying to decide, do we have the organization mapped to meet the needs that we think are the highest priorities?

In this process, we have the National Infrastructure Protection Plan reaching its conclusion, and that will intimate a strategic allocation of resources and illuminate some of the key problems, as well. So there is much to do on a policy front.

On an organizational front, we want to take just a quick look and see if we can tweak the system and then proceed ahead.

Senator PRYOR. How long do you think it will take you to set those priorities? The concern I have is that could be a never-ending process and——

Mr. JACKSON. Yes, sir. This is intended to be 2 months, possibly three at the most for some complex areas. It is intended to be very fast. It certainly mimics a process we used at the Department of Transportation to set up the Transportation Security Administration, which we established some 50 "go" teams, who came into being, did their work, made their recommendations, put options on the table, and the boss made the decision. So this is intended to be something animated by a sense of urgency.

Senator PRYOR. Based on your responses to those last two questions, can I imply from your answers that you see areas that can be improved at DHS?

Mr. JACKSON. Yes, sir, I absolutely do. I will give you one example that the Secretary has spoken about publicly and which I surely share, as did Secretary Ridge and Deputy Secretary Loy. We believe that some work to create a policy shop can have a very substantial integrating function within the Department to help us accelerate and to cast a department-wide perspective on some of the work done throughout the operating components. So that is just one example of something that I would say is an organizational tool in the tool kit that we can use. There are multiple other such issues to unpack.

Senator PRYOR. OK. Let me turn my attention to two specific areas that have gotten a lot of attention in this Committee over the last couple years. One is the TSA.

Mr. JACKSON. Yes, sir.

Senator PRYOR. I think it is fair to say that Members of Congress and Members of the Senate were led to believe that consolidation of inspection functions would not only be more effective, but also more efficient if they were under TSA, but I am not sure I am seeing any cost savings there and I am not sure it has lived up to its promise. Do you have a comment on that?

Mr. JACKSON. Well, I think TSA is an absolutely vital part of the force that we throw against the issues we are worried about in counterterrorism. Are they perfect? No. Have they done a good job? I think, yes. When you see what we moved from in the old system, which was owned by the airlines and which you could come and in half a day become a screener with very little subsequent oversight, testing, or examination of performance, we have made dramatic strides. We have some terrific people out there in the field.

Is it good enough yet? No. Can technology help us make some significant improvements? Yes. In the cargo screening, is this an area where we need further work? Absolutely, we do.

I would not want to be a Pollyanna about it, but I wouldn't want to cause you to be prematurely anxious about the direction that we are taking. There is much to do, for sure, but I can tell you there are just literally thousands of people working their hearts out to do the right thing, and if we support them and give them the right vision, the right tools, the right equipment to do their job, they are going to be a phenomenally important part of this Department, and they are already.

Senator PRYOR. Great. The last thing I have is that you actually, I think, anticipated my question about port security. I know Senator Levin asked about it a few moments ago and also Chairman Collins over the last couple years—can I use the word "grill"? You grilled witnesses on port security? [Laughter.]

She has had "discussions"—— [Laughter.]

About port security issues with witnesses, and justifiably so, and I think she is right on that. You have mentioned containers with me and with Senator Levin and maybe others, but it sounds to me like you are not satisfied with port security.

Mr. JACKSON. I am not satisfied, and you are probably not ever going to see me, if I am confirmed in this position, to be satisfied

and over with any of the progress that we are going to make. It is a commitment. It is not just a buzzword to say continuous innovation is how we stay ahead of the game.

That being said, I do think that if you disaggregate the container security issues into both land issues, as Senator Levin rightly points out, and land interfaces and sea interfaces, then you see that there are tools within that for further unpacking. If you take the port issues, there is the security of the facilities themselves, many of which are privately owned, and there is the waterside support that the Coast Guard provides and the look at vessels and mariners coming in. There is the screening of the containers themselves, which CBP has the significant responsibility for.

So it is a so-called system of systems that we have to put in place, both on the land and the marine side, and continue to work each of those component parts so that they are a interlocking whole that strengthens the system that we have. It is a multidimensional puzzle that has to be worked at every dimension.

Senator PRYOR. Thank you, Madam Chairman.

Chairman COLLINS. Thank you. You will be glad to know, Senator Pryor, that today I just asked about port security as opposed to grilling the witness.

Senator PRYOR. Grilling is fine with me. I don't have any objection to grilling. [Laughter.]

Chairman COLLINS. Mr. Jackson, you responded to a question from Senator Levin about the formula for Homeland Security grants. Just to clarify for the record, do you also agree that every State has certain minimum homeland security preparedness needs and that population alone does not equate to threat?

For example, you can have a State with a small population but an extensive coastline that is a border State, that is the home of a major Navy yard, that was the departure point for two of the September 11 hijackers, that also, just for example, would have some considerable vulnerabilities.

Mr. JACKSON. Yes, ma'am, I acknowledge that. This is, again, something that has to be nuanced and complex. I have been to the Portland airport both before and after the conversion of TSA to take a look at that departure point and to understand its importance to what happened on September 11, and I would just say that understanding how to array these skills is hard. It is harder in a constrained budget environment. And the fact that the administration has the 0.25 figure in the budget is an acknowledgement of the fact that we believe that there are needs across the Nation while we are making the argument for a more nuanced focus on risk-based assessment.

Chairman COLLINS. We will be working closely with you on that issue.

I want to talk about something that, in my opinion, would fail the question that you have raised about what works, and it has to do with a practice of TSA and the airlines in designating passengers as selectees. This is an issue that my constituents have raised with me. It is not uncommon during the winter months for planes to be canceled that are going into the State of Maine.

When that happens, the passengers are diverted to other flights. At that point, each and every one of those passengers becomes a

selectee subject to secondary intrusive screening, solely because they had the bad fortune of having their flight canceled. There is no way that these passengers could have predicted the flight was going to be canceled and manipulated the flight to get on a different flight. So it is entirely different from a situation where an individual is purchasing a ticket on a flight at the last minute.

First of all, are you aware of that practice, other than from my bringing it to your attention, and second, whether or not you are aware of that, do you think this works? I mean, shouldn't we have a better way of using our scarce resources?

Mr. JACKSON. I would describe that as a blunt instrument and not a refined one. I do believe that with—there is a very important topic of Secure Flight that the Department has spoken to this Committee about before and which itself needs some, I think, substantial—some attention. That will be the tool that will help us to begin to reduce the hassle factor of multiple different dimensions in what passengers go through as they go through airports. Patience is still a virtue in this environment, but this is an area where I think we can make progress. We need to accelerate some tools to do just that.

As an orientation on what my view is on this, I parallel very much what you heard from Secretary Chertoff. I think we have to be able to look all the time at what we are doing and ask if it is the right thing. In 2002, when Jim Loy came aboard as the head of the TSA at that point, he and I launched what we called internally and somewhat affectionately the "stupid rule review." We asked, what are we doing that we thought we needed to do in those hours and days after September 11 that now we know better or have different tools we can torque back on? This would be an area that we could look at in the Department, I am confident.

Chairman COLLINS. I would now like to turn to the Coast Guard. I mentioned that I was very pleased to see that you had served on a council and have experience with the Deepwater program. The Coast Guard, since September 11, has done an extraordinary job in balancing its homeland security mission with its traditional functions, but that increased expectation in performance has imposed a tremendous strain on the Coast Guard's personnel and its assets. In fact, the Coast Guard is spending millions of additional dollars each year just to maintain its cutters, its airplanes that are breaking down rapidly, creating possible danger to the Coast Guard members and also in some cases causing a delay in response.

I am a strong supporter of the Deepwater program, which would recapitalize those assets, and a RAND report issued just last year suggested that if we invested now at a quicker rate in the Deepwater project, if we accelerated it from a 20-year period to a 10-year period, it would generate almost one million additional mission hours and it would save $4 billion in procurement costs over the life of the project. This strikes me as a win-win situation for the taxpayer and for the Coast Guard, but it is going to require more of an up-front investment to save that enormous amount, $4 billion, in the long run.

What is your position on the acceleration of the Deepwater program? Do you think it is possible for us to finance this more rapidly to meet the needs of the Coast Guard?

Mr. JACKSON. A couple of points on this important topic. One, I am a very strong supporter of the Deepwater program. I understand the urgency of taking on these questions.

Two, you are absolutely right in saying that the operations tempo, what the Coast Guard calls the OPTEMPO, has increased dramatically after September 11 and changed in its structure so that different assets which weren't anticipated to deplete as rapidly are facing different configurations in their depletion cycle.

So the Coast Guard has commissioned a rebaselining study, as I suspect you are aware of. The Secretary has asked for 30 days with OMB to review this issue and to make those choices, and that is something which, if confirmed, I would love to and expect to participate in, to get a chance to make that weighing and balancing on what we need and how to configure the assets that we are placing against the need.

On the overall acceleration issue, I have an open mind on that issue, but just simply recognize that in constrained budget times, accelerating that comes at a cost of other programs and so it is a prudential balancing act and we would be happy to talk through all that in some detail in conjunction with bringing the rebaselining program up here for your review.

Chairman COLLINS. Thank you. Senator Levin.

Senator LEVIN. Thank you, Madam Chairman.

In August 2004, the Bureau of Immigration and Customs Enforcement inside the Department now established the Northern Border Airwing, opened two locations to give some air cover to the Northern border. There was a commitment at that time that there would be two additional locations opened to serve as the base for that Northern Border Airwing. Apparently, however, that has not happened, and I am wondering if you are aware of that fact, and if so, why.

Mr. JACKSON. No, sir, I was not, until you raised it just now, aware of that commitment. I don't believe anyone has told me about that. I would be happy to look into it further.

Senator LEVIN. And would you get back to us on it?

Mr. JACKSON. Yes, sir. Absolutely.

Senator LEVIN. Whether that commitment is going to be carried out.

Our Chairman asked you about cooperation with this Committee in terms of providing documents and information. You very promptly and strongly indicated that you would do so to assist in the oversight of this Committee and you indicated that you thought it was, indeed, highly appropriate that this Committee engage in oversight. Both with our Chairman Collins and Senator Coleman here, who chairs a Subcommittee which is engaged in oversight, this Committee and its Subcommittees are engaged heavily in oversight, and frankly, we are one of the few Committees that engage in oversight to any significant degree. As far as I am concerned, that has been the case. We do too little oversight in the Congress.

It is important to me that you not only be available to us and your Department be available to us promptly with documents and information, but that we get it unvarnished, not screened through any political screening process at the White House. Some agencies, such as the Securities and Exchange Commission, have a require-

ment that when they are asked to testify in front of a Committee of the Congress, that they not seek permission from OMB or any other Executive Branch entity and that they do not supply their testimony in advance to the White House. They rather respond to the invitation and provide testimony without that screening process.

By the way, I may say that we attempted to get language to that effect in the Intelligence Reform bill and our Chairman and Senator Lieberman were very supportive of the effort, which was a bipartisan effort in the Senate to get provisions in the Intelligence Reform bill which would require that the Intelligence Community—and you have a piece of that community—respond to invitations to testify and for information to come promptly without screening, and indeed, upon request of either the Chairman or Ranking Member of the Committee.

I am wondering what your reaction is to those thoughts, as to whether or not you would have any problem—let me put you on the spot here a bit—whether you would have any problem if a law was passed requiring your agency's intelligence piece to promptly appear before this Committee or the Intelligence Committee, I assume, and to supply information as I have outlined.

Mr. JACKSON. Well, let me unpack that in a couple of ways. First, I will start with the principle, which I one hundred percent endorse. This Committee has had a unique historical role in oversight, which I recognize. We have many committees, as you know, that have different oversight and testimony responsibilities, but I recognize that this Committee, in particular, has a history and a need and a mandate to do this.

I would, if nominated and confirmed, be eager to try to find ways to avoid making this some sort of confrontation or a big conflict. I would look for ways, formal and informal, to make sure that the Department is providing this Committee with the materials and the information they need.

I found the bipartisan support for building TSA after September 11 to be an enormous engine that allowed us to do good and we have to do our share of that at the Department, to come up here and to work with you and listen to you, and when we disagree, we will have to have it out and say that. But I think that you would find in me someone very willing to do this.

I would not be able or willing to speculate about a position that I might bring to some projected legislation without review of the legislation itself, in respect for the President's prerogatives in this area.

Senator LEVIN. Fair enough. We will look forward to your offering your best efforts in that regard. They are important to a successful and a bipartisan oversight function.

Mr. JACKSON. Yes, sir.

Senator LEVIN. Finally, I made reference to the number of border crossings on the Northern border and the land crossings before in terms of numbers. I just want to raise one specific issue with you, and that has to do with the large number of trucks that come into my home State of Michigan every day with garbage from Ontario. It is a very sore point in my State and there is a lot of deep resentment against Ontario for sending its garbage to be landfilled in my

State. They have a lot more land than Michigan does and a lot more vacant land than Michigan does, and to use our landfills has created a real deep resentment of a very good neighbor otherwise.

The question for you goes beyond that and that has to do with the security situation, because it is very difficult to inspect garbage trucks, to put it mildly, and x-rays do not work particularly well because the waste is too dense for an x-ray machine. And yet we know already from experience that those trucks can, indeed, contain drugs and hopefully nothing on the biological and chemical weapons side and on the nuclear side. But nonetheless, we have a real concern about that.

I would like to get a commitment from you, given your philosophy of "does it work," to either come up with a technology which protects our country from those trucks and their cargo or stop those trucks. If we can't inspect those trucks to make sure that their cargo does not contain the type of weapons that I have talked about—chemical, biological, or nuclear—I think we may have a radiological capability now, but we sure don't have a chemical and biological one—but I would like your commitment to give us a prompt report as to whether or not we have the technology to make sure that we are protected against cargo which does contain those substances, and if not, whether or not we are going to stop those trucks from coming in on that basis alone, putting aside the environmental issue which I started off this question with. Do we have that commitment from you?

Mr. JACKSON. Yes, sir. If confirmed, I would be happy to dig into this issue and to come back and report what the credible options seem to look like and to counsel with the Committee about steps that might be taken here.

Senator LEVIN. Thanks. I appreciate that. Again, congratulations to you and thanks to your family.

Mr. JACKSON. Thank you, sir.

Chairman COLLINS. Thank you. Senator Coleman.

Senator COLEMAN. Thank you, Madam Chairman.

I got here just a couple of minutes after we started. I didn't get a chance to hear the introductions. I presume that is your wife and lovely daughter.

Mr. JACKSON. My wife, Caron, Senator, and my daughter, Katherine.

Senator COLEMAN. I have a 15-year-old daughter and I would hope that Katherine should be very proud of her father. This is an extraordinary responsibility that he is raising his hand and being willing to undertake and it is really important to America. I can see the pride. Little girls can smile with their mouth shut. It is amazing.

Mr. JACKSON. They can. But as you know, as a father, the dad is probably even more proud of the daughter than the daughter is of the dad.

Senator COLEMAN. She is doing a wonderful job, just kind of sitting and listening.

One of the responsibilities, one of the challenges you are facing, Mr. Jackson, is you are leading an agency, helping lead an agency of close to 180,000 people, and one of the challenges that you face with that is the responsibility, as my colleague, Senator Levin, has

talked about, of responding to oversight, which is important, and we have gotten the assurances that you will respond.

My question is kind of the other side of that, and that is how do you lead, how do you provide leadership to 180,000 people when the Secretary needs to be up here perhaps a lot. You, yourself, need to respond to us. I am a believer in managing by walking around.

Mr. JACKSON. Yes, sir.

Senator COLEMAN. So how are you and the Secretary sorting that out? How are you going to be responsible for the needs of oversight, but at the same time provide a very clear direction and leadership, hands-on leadership, to the folks who are doing this incredibly important function for this country?

Mr. JACKSON. First, let me just start by saying I appreciate your being sensitive to that balancing act, and it is a balancing act and it takes a phenomenal amount of the Department's time to get the Secretary adequately prepared and responsibly prepared to visit here with the degree of respect that he will always bring to these meetings. Ditto for all the rest of the people who would come, as well.

So I think that one crack at that consultative side is why I have stressed the informality of being able to come up, visit, talk, and say, here is where we are going, here is what we are thinking about, what are you thinking? It is giving you a sense of comfort that you know what is going on inside the Department. Those don't always have to be in the formal fashion or particularly in a hearing fashion, but we can find other methods.

I do believe in managing by walking around and so that means you just have to work a little harder in this. But if you always hire someone—as a former boss of mine said—who is smarter than you are, you can ripple down a group of women and men who are committed to managing in this way and who are committed to listening to our employees and working with them carefully and finding out what works and being impatient about the solutions.

So it is not an easy thing in an organization this large, but we are looking at various ways inside this management review that the Secretary has launched to accelerate our capacity to get decisions over and done with, to track, monitor, and execute plans that need to be done, and to work with our other Federal colleagues, which is a very large part of what we do in addition to working with State and locals. So it means getting around a lot. It is a challenge that we will put on all of our managers.

Senator COLEMAN. I appreciate that, and again, it is an extraordinary challenge.

Let me follow up. A number of us represent Northern border communities, the Chairman, the Ranking Member, and myself specifically. Some of the experiences they have on the Northern border are much different than obviously in Arizona, Texas, or California.

Mr. JACKSON. Yes, sir.

Senator COLEMAN. Pre-September 11, I think there were about 300 Border Patrol folks in the Northern area. I think that has more than tripled now to over 1,000. But in the Northern border, you have to know how to fire a gun at minus-20. It is a little bit different than when it is 50, 60, and 70 degrees outside. You have to know how to ride a snowmobile. Float planes are extensively used.

I am concerned about—and in addition to the issues which are common to my friend and colleague from Hawaii, agricultural issues and the whole range of things, on the training side, we have had—I have had discussions with Under Secretary Hutchinson about a Northern Border Patrol training facility, in fact, in International Falls, Minnesota, which hails itself as the coldest place in the United States, right on the Canadian border, and also, by the way, Port Ranier, which is right next to International Falls, one of the busiest crossing areas in this country. We have discussed with them the possibility of doing a training facility, in fact, not building one, there is a community college there that has offered its facilities. But my concern is making sure that we have agents who are adequately trained to meet the exogenous circumstances that are different in the North areas than they are in Southern areas.

I don't know how familiar you all are with this, but I would urge you to kind of bring yourself up to speed and to work closely with those of us who do have very specific needs in border areas. We just want to make sure folks are well trained.

Mr. JACKSON. I share that concern and I would be happy to look into that issue in more detail.

Senator COLEMAN. I appreciate that. Thank you. And again, I hope we can move very quickly on this confirmation.

Mr. JACKSON. Thank you, sir, for your consideration.

Chairman COLLINS. Thank you. Senator Akaka.

Senator AKAKA. Thank you very much, Madam Chairman.

Dr. Jackson, for some time, I have called attention to the vulnerability of American agriculture to either an accidental or intentional contamination by terrorists. This week, I will introduce two bills that will improve Federal, State, and local governments' ability to prevent and respond to an attack on the U.S. food supply. Senator Collins and Senator Levin both raised concerns over cooperation with this Committee. I agree with them. I have made repeated requests to the Department for a briefing on agriculture security activities. Unfortunately, the briefing has not yet occurred.

One, I would ask for your commitment to the critical task of securing the United States against an agro-terror attack, and two, I would appreciate you looking into my briefing requests.

Mr. JACKSON. Yes, sir. I am happy to look into that request and to get back to you in a timely fashion. I will tell you that I have launched my own request for some briefings, both inside the Department and at the Department of Agriculture at a very senior level to help me understand these issues better. I participated in a USDA-sponsored senior executive tabletop exercise while I was Deputy Secretary of Transportation and it was an enlightening experience for me and one that made me more eager coming into this job, if the Senate is willing, for me to look at these issues closely.

Senator AKAKA. Thank you. As you know, TSA recently began accepting applications allowing airports to revert back to contract screeners. I am concerned that the DHS IG has found widespread security lapses in airport screening. I am also concerned about the allegations made in a recent lawsuit by a former contract employee at the San Francisco International Airport. This former employee claims there were nonexistent employees on the payroll, non-functioning security equipment, and attempts to thwart government

auditors. What will you do to ensure that DHS has effective contract management and oversight of private screening forces?

Mr. JACKSON. Well, I became aware of this particular issue through reading a news article and have asked for some additional information on the specifics of that set of allegations. I am familiar with the design and was very much involved in the design of the five pilot test programs at San Francisco and other four airports around the country. I am eager to dig in and understand the result of those, since I was there at the launch but haven't seen the landing. I believe in principle that a program can be designed that allows both public and private screening services, but I am inflexible as to the performance and the outcome and the accountability that would have to be put in place, not only for private screening, but for us, as well.

So I am eager to dig into this. I understand it is an area that Dave Stone, the TSA Assistant Secretary, has told me they are doing some considerable measurement work on. So I would like the chance to explore those metrics and to work with him and his team on good performance.

Senator AKAKA. Thank you for that response. The U.S. Immigration and Customs Enforcement (ICE) has had serious financial management problems, resulting in a hiring freeze and spending restrictions. Last year, DHS asked to reprogram $300 million to make up for a budget shortfall at ICE. Last fall, we were assured that ICE had its financial affairs in order, yet last week, we learned that DHS plans another reprogramming request for an additional $280 million this year.

ICE has a critical mission of preventing terrorist attacks by targeting people, money, and materials that support terrorists. My question to you is what do you intend to do to ensure that these financial shortfalls do not impact ICE's ability to fulfill its mission?

Mr. JACKSON. Senator, I understand that in the first year of DHS's existence, that ICE was a donor to other parts of the Department to help during that first year stand up and meet needs within the Department. In the last 2 years, last year and this fiscal year, they have been a recipient of funds from other departments.

The Secretary was briefed in his first week on this potential reprogramming request and was told by the Department that they believe that the fiscal year 2006 budget will provide a stabilized base and that this is the last of these problems. I believe I would take a page from Ronald Reagan on that and say, trust but verify. I would like to dig into the financial performance and see for myself what I think.

But I believe that one of the things that ICE is suffering from is insufficient financial controls and IT systems to understand their budget and to project appropriately. That is also an area where the Department is bringing assets to try to seek greater performance. It is an area which I would be interested in all across the Department, as well. So hopefully, we will see an end to this.

Senator AKAKA. Thank you very much, Madam Chairman. I thank you very much for your responses and I want to wish you and Mrs. Jackson and Katherine well in your future and look forward to working with you.

Mr. JACKSON. Thank you so very much. I am grateful for that.

Chairman COLLINS. Thank you.

Mr. Jackson, you will be glad to learn that this is the final round of questions, but I am trying to figure out how I am going to raise 6 issues with you in six minutes, but I will do my best.

Senator AKAKA. Madam Chairman, I have other questions that I will submit for the record.

Chairman COLLINS. Without objection, and I am certain some of my questions will make it into the record as well as Senator Coleman's. We will ask that the record remain open until 10 a.m. tomorrow morning for the submission of any materials and questions and responses.

I want to follow up on the issue just raised by the Senator from Hawaii about some of the budget problems with the Immigration and Customs Enforcement Bureau, because those concern me, as well. As you know, the CSIS–RAND study recently recommended, partially to solve some of those problems, a merger of Customs and Border Protection with ICE. When I have talked to law enforcement officials, whether at the State, Federal, or local level, they have been very enthusiastic about the prospect of this merger. On the other hand, former Under Secretary Asa Hutchinson has a contrary view that he has expressed to me and he has told me he thinks that it would be a big mistake to merge the two Bureaus.

I am not going to ask you to take a position on the merger today since obviously it requires a great deal of analysis and care, but I would ask you to take a close look at the pros and cons of merging these two Bureaus and to report back to the Committee with your findings and recommendations within a reasonable period of time. I anticipate that the Committee will do a reauthorization bill. It may not be next year until we do it, but we are putting together the pieces through our hearings this year. So will you commit to taking a look at that and giving us your thoughts after a reasonable period?

Mr. JACKSON. Yes, I absolutely will. It is an issue that is already on my radar screen.

Chairman COLLINS. Thank you. Another issue that is of concern to many of the Members of this Committee, including myself, is the recent shortage of H2–B visas. In a State like Maine, which has a huge peak in the summer and fall months in the workforce needed for the hospitality industry, it has been a real problem that the Department has reached the statuary cap on H2–B visas within the first couple of months of the fiscal year. In fact, I think it was reached in late January this year. That puts areas of the country like New England at a competitive disadvantage because our tourism season is later than Florida's or, for example, the ski areas in the West.

I want to emphasize that these are just temporary, seasonal workers who return to their home countries and employers can only apply for these temporary workers if they certify that there are no local American workers available for the jobs. Indeed, a very important safeguard against abusing the system is that the State of Maine, or any other State, has to certify that advertising has taken place and that workers are not available.

Would you commit to exploring administrative solutions that would allocate the visas throughout the year, perhaps by holding

back some until later in the year, or at least doing it by quarters or some other means, so that we could eliminate this regional inequity that now hurts the tourism and other businesses that need these workers for a limited period of time in my State and other New England States?

Mr. JACKSON. Yes, Madam Chairman, I would make that commitment, and I understand—I have been told that this is an issue that we have struggled with and I think reasonable solutions are something that we should absolutely continue to press for and I will take that attitude to looking at the issue.

Chairman COLLINS. I would note that there is some urgency associated with this issue for those of us who have employers whose small businesses will be adversely affected if they can't rely on these workers. Before you know it, the high season will be here. So I hope you will make it a priority to work with us on that.

Mr. JACKSON. I will.

Chairman COLLINS. I know this is of interest to Minnesota, to Michigan, to many other States, as well, but we in New England, because of when our tourism season is, are hit particularly hard, and that is why there has been bipartisan concern over this issue.

Mr. JACKSON. Yes, ma'am. I recognize the complexity of it and I will be happy to look at it.

Chairman COLLINS. Thank you. One of the challenges that the Federal Government faces in homeland security is protecting our critical infrastructure. But according to most estimates, 85 percent of our Nation's critical infrastructure is owned by the private sector. It is not government-owned.

One of our witnesses, Richard Falkenrath, in a hearing that we held in January, pointed to this need, particularly with relation to the chemical industry and the need to secure our chemical facilities. In fact, he identified securing our chemical facilities as one of the greatest uncompleted tasks of the new Department.

What would you do to encourage more cooperation with the private sector, and do you believe that we need to develop some chemical security legislation to address this issue?

Mr. JACKSON. After September 11, I met with the Chlorine Institute, to give you just one example, in my capacity as Deputy Secretary at DOT, and there was a case of a private trade association that worked very closely with a relatively compact and small number of the manufacturers of this particular chemical to put in place what I would consider some very meaningful and strong measures. Perfect? I couldn't say they were perfect, but were they a substantial improvement? Yes, very much so. I had the same conversations with the railroad industry that moves these tank cars.

I think that we can do a lot by the appropriate consultations with the private sector. When asked a question similar to this in his confirmation hearing, Secretary Chertoff mentioned that the President himself has said that in areas where we do not feel that we can reach the right level of security by a voluntary effort, that we should be or we would be open to considering regulation in this area.

So I think my first choice would be to see how much we can get done in a voluntary motion, being patient with that, and continue to reassess that, but there are a lot of good-willed people out there

that want to try to crack these issues with us. If regulation is necessary, so be it. We move in that direction. If legislation is the only way to proceed, then I think that we would be happy to counsel up here and make such an assessment with you.

Chairman COLLINS. What I have found in recent months is a real evolution in the approach taken by the chemical industry to the point where now they are asking for Federal legislation or regulation because they are having to deal with too many different State systems that is making it very difficult for companies with operations in more than one State. So this is an issue that the Committee does intend to pursue this year and we look forward to working closely with you and getting the advice and guidance from the Department.

Mr. JACKSON. Good. And I should say on this one, just to be—my general point about how to tackle these issues is true. I have not made, since being nominated, an independent study or had significant conversations in the Department about the chemical industry per se and what might be needed there. It certainly, as with Rich Falkenrath, it is on Michael Jackson's radar screen, as well.

Chairman COLLINS. Thank you. The final comment that I want to make today echoes some of the concerns that Senator Akaka made in his opening statement, and that is the Department is embarking on a new personnel system and the system may well end up being a template for future legislative reforms of the Civil Service system. It is absolutely essential that there be adequate training, consultation with employees and with their representatives for this new system to be a success. The Department has taken a great deal of time and care in the consultative process, but a lot of challenges remain.

I am sure you would agree with me that the employees of the Department are your greatest asset, and if they become alienated through this process, not only will the new personnel system fail, but also the Department will not be successful in carrying out its absolutely critical mission.

So I just want to end my questioning today by encouraging you to continue to work in a collaborative way to ensure employee acceptance, participation, and the success of the system, and I think training of managers to do fair personnel evaluations, for example, is going to be absolutely critical to the success of the new system.

Mr. JACKSON. I welcome your comments and I agree with your perspective on this, very much so.

Chairman COLLINS. Thank you. Well, knowing that you have a reputation as a great manager, I am certain you know that running a Department requires the full participation of your employees and I look forward to working with you on that, as well.

Mr. JACKSON. And those employees deserve the support of their political and career leadership and we will work to make sure that they have that.

Chairman COLLINS. They do, indeed, and it is the civil servants who are there day in and day out who are making the decisions that are literally life and death decisions for the security of our country. I know you value their contributions, as do I and the other Members of this Committee.

Mr. JACKSON. Very much so.

Chairman COLLINS. I do want to thank you for agreeing to make all these issues a priority and for your participation today.

Senator Coleman.

Senator COLEMAN. Thank you, Madam Chairman. Let me first off associate myself with the last series of comments by the Chairman concerning the importance of employees. I also appreciate your willingness to focus on this, and also her comments about H2–B visas.

In Minnesota, we have the same problem, a somewhat different circumstance. We have a company, Marvin Windows. It is one of the most successful window manufacturers in the country. They are right up in Warroad, Minnesota. They have a lot of college kids that come work during the summer to fill the assembly lines. And by the way, they employ people from a broad geographic area. But when these kids leave, they have got production lines going and they need folks to fill them and they cannot get folks on H2–B visas. And so the result of this is potentially shutting down lines that will cost American jobs. If we had the ability to fill the lines, they are going to keep the jobs. So this is a very important issue and I appreciate the Chairman raising it and your response.

Just one last area to raise. I also have the opportunity to serve on the Foreign Relations Committee, and during the confirmation hearing of Secretary Rice, she noted that each and every member of the committee asked her about the issue of student visas, international students. America for years championed itself as being in the preeminent position of folks from around the world who wanted to come here and study. In a post-September 11 world, because of legitimate concerns, the system got tight. It tightened. Two of the hijackers, two of the terrorists apparently had student visas, but no one checked to see if they were students.

The concern that many of us had, and again, this was the one item that Secretary Rice said every single member of the committee raised this issue, was that in responding to past sins and mistakes that we have really tightened the system so much that today, I believe we have an over 30 percent decline in the number of international graduate students.

We have the experience now that I am sure all of my colleagues have, and they will speak to a foreign minister or a defense secretary or a vice president or president from another country. Invariably, they studied or their family studied and they have an American experience. In 20 years from now, that is not going to be the case because of policies that are in place today, and that is a concern. Certainly, it is also an economic issue for our colleges that are losing tuition dollars. It is a competitiveness issue for American business.

Homeland Security does have a role in this process. You manage the SEVIS system, which keeps track of students. You make interagency decisions about who and who is not a security threat and participate in the developing of policy for that. So what I am looking for here is just raising this issue——

Mr. JACKSON. Yes.

Senator COLEMAN [continuing]. And hoping that you will, and asking your pledge to work with us to restoring the United States' role in international student education. I think we can do it in a

way that is consistent with meeting the demands of national security, but at the same time doing better than we are doing today in understanding the economic and security implications of both today and tomorrow by some of the policies and procedures that are in place today.

Mr. JACKSON. It is an important balance and it is one that I would focus on. I understand and 100 percent agree with you that it is one of the marvelous things about our country, that we have, as the President spoke in his inaugural address, shared our experience with democracy around the globe by these types of tools. I know that the needs in this century are great in this regard and so we have to have something that is reasonable.

Senator COLEMAN. The sense I get is that the word went out, slow it up, slow it up. What I am looking for here is, again, focus on national security but using common sense——

Mr. JACKSON. And maybe some new tools to help make it work better, smarter, and faster.

Senator COLEMAN. I look forward to working with you on that issue.

Mr. JACKSON. I would, too, Senator Coleman.

Senator COLEMAN. Again, I look forward to your confirmation.

Mr. JACKSON. Thank you, sir, and thank you for your help today.

Senator COLEMAN. Thank you, Madam Chairman.

Chairman COLLINS. Thank you.

Mr. Jackson, I think Senator Coleman's final question really sums up what this is all about, which is tightening security but doing so in a way that does not interfere unduly with the free flow of legitimate commerce and legitimate people across our borders. That is a constant tension.

We had a real problem in Northern Maine in some of the remote communities where services are on the Canadian side of the border. People live on the American side. Border crossings are only open certain hours. The post-September 11 world has changed everything for those of us particularly who live in border States and I think we have to constantly be figuring out how we can do this better and smarter to make sure that we are not infringing on civil liberties, privacy rights, legitimate commerce, and legitimate travel, and yet at the same time tightening the porous borders that allowed the terrorists on September 11 to enter our country so freely and so many times. That is the challenge, among many, that you face, and we look forward to working with you on that.

I want to also echo my colleagues in thanking you very much for being willing to leave your private sector job and to come back into government. That is quite a sacrifice, but as you said in your opening remarks, there are few jobs in Washington that are as important as yours and Secretary Chertoff. So we are grateful for your willingness to serve. I am going to try to move your nomination through the Committee as quickly as possible this week, and I very much appreciate your being here today and your cooperation with the Committee process.

Mr. JACKSON. Thank you, Madam Chairman, for your kindness and your consideration in this.

Chairman COLLINS. The hearing record will remain open until 10 a.m. tomorrow morning.

I want to thank the staff for their work, the Department for its cooperation, and your family for being here. Your daughter listened more closely than anyone else in the room.

This hearing is now adjourned.

Mr. JACKSON. Thank you.

[Whereupon, at 3:48 p.m., the Committee was adjourned.]

# APPENDIX

## BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

### A. BIOGRAPHICAL INFORMATION

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

   Michael Peter Jackson

2. **Position to which nominated:**

   Deputy Secretary, Department of Homeland Security

3. **Date of nomination:**

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

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

   Born April 28, 1954 in Houston, Texas (Harris County)

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

   Married to Caron Suzanne Jackson on 6/12/80; wife's maiden name: Caron Suzanne Ross

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

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

   - Georgetown University (Washington, DC), attended 09/77 to 08/85. PhD (Government) awarded 12/85.
   - University of Houston (Houston, TX), attended 09/72 to 08/77. B.A. (Political Science) awarded 08/77.
   - Strake Jesuit College Prep. (Houston, TX), attended 09/68 to 05/72. Graduated 05/72.

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.)

   1. AECOM Technology Corporation, Fairfax, Virginia (2003 to present)
      Chief Operating Officer, AECOM Government Services Group *(July 2004 to present)*
      AECOM Senior Vice President *(December 2003 to present)*

   2. United States Department of Transportation, Washington, D.C. (2001-2003)
      Deputy Secretary of Transportation *(May 2001 to August 2003)*
      Senior Counselor to the Secretary *(prior to confirmation -- February 2001 to April 2001)*

   3. Lockheed Martin IMS, Transportation Systems and Services, Washington, D.C. (1997-2001)
      Vice President and General Manager, Business Development *(August 2000 to February 2001)*
      Chief Operating Officer *(April 1998 to July 2000)*

Vice President, Marketing and Business Development *(August 1997 to March 1998)*
*Note:* After my departure, IMS was sold in 2001 to Affiliate Computer Services, Dallas, TX.

4. American Trucking Associations, Alexandria, Virginia (1993-1997)
   Senior Vice President and Counselor to the President *(December 1993 to July 1997)*
   Management Consultant *(February 1993 to November 1993)*
   *Note:* I was retained to support the stand-up of the National Commission on Intermodal Transportation, which was established by Congress. ATA's CEO was a Commissioner.

5. U.S. Executive Branch appointments, Washington, D.C. (1986-1993)

   United States Department of Transportation
   Chief of Staff *(February 1992 to January 1993)*

   United States Department of Education
   Director, Office of AMERICA 2000 *(June 1991 to February 1992)*

   The White House
   Special Assistant to the President for Cabinet Liaison *(July 1990 to May 1991)*
   Associate Director of Cabinet Affairs/Executive Secretary for Cabinet Liaison *(January 1989 to June 1990)*

   United States Department of Education
   Special Assistant to the Secretary/Deputy Chief of Staff *(1988)*
   Special Assistant for Public Affairs, Office of the Secretary *(1986 to 1988)*

   White House Conference on Small Business
   Special Assistant to the Director *(1986)*

6. The Madison Center, Washington, DC (09/88 to 01/89)
   Associate Director
   *Note:* the Madison Center, now defunct, was a non-profit education policy research organization.

7. University of Georgia, Athens, Georgia (1985 to 1986)
   Visiting Assistant Professor of Political Science

8. American Enterprise Institute for Public Policy Research, Washington, D.C. (1984 to 1985)
   Researcher in Religion, Philosophy and Public Policy

9. Georgetown University, Washington, D.C. (1977-1984)
   Instructor, Department of Government *(1981-1983)*
   H.B. Earhart Graduate Fellow *(1980-1983)*
   Graduate teaching assistant *(1977-1980)*

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.

- Commissioner, President's Commission on Implementation of United States Space Exploration Policy *(February-June, 2004)*. Note: *pro bono* participation as a member of the Commission.
- Member, U.S. Coast Guard, Integrated Deepwater System Navigation Council *(May, 2004 to January, 2005)*. Note: *pro bono* participation on a council chartered by the Vice Commandant to provide informal management counsel to the Coast Guard's Deepwater program leadership.

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.

Other than employment as detailed in Question #9, above:

- In conjunction with my employment with AECOM, late in 2004 I became a Member of the Board of Directors of an AECOM subsidiary, PADCO, Inc. PADCO is a professional services firm acquired by AECOM in the Spring of 2004.
- In conjunction with my service as U.S. Deputy Secretary of Transportation, and by appointment from Transportation Secretary Mineta, served as a Member of the Board of Directors of Amtrak.
- In conjunction with my employment at Lockheed Martin IMS, was a contractor to and advisor for HELP, Inc., based in Phoenix, Arizona. HELP is a non-profit organization formed by numerous state departments of transportation and private industry to build and operate a national network of commercial vehicle weigh-in-motion and weigh-station bypass systems.

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

- Member, Bush Presidential Library Advisory Council, College Station, TX (1993 to present). *The Council was formed to provide advice to former President George H. W. Bush regarding the programs and operations of the presidential library, foundation and center. This is a non-compensated, informal advisory board with no fiduciary obligations.*
- Member, The Eno Transportation Foundation, Board of Advisors (2004 to January 2005). *Founded in 1921, the Foundation is a nonprofit organization (501-c3) dedicated to policy research and analysis to improve the safety and efficiency of all modes of transportation. This is a non-compensated, informal advisory board with no fiduciary obligations.*
- Member, Boston University, Center for Transportation Studies, advisory committee (2004 to January 2005). *This is a non-compensated industry advisory committee with no fiduciary obligations formed to provide informal counsel regarding faculty research at the Center.*
- Principal, Council for Excellence in Government (2004 to present).

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.

None.

(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.

- 07/04 -- Mitch Daniels for Governor, $1000
- 06/25 -- Rob Portman for Congress, $150
- 04/04 -- Louis B. Gohmert for Congress Committee, $500
- 09/03 -- Bush-Cheney '04, $2000
- 08/00 -- Victory 2000, Republican Party of Florida, $1500.
- 10/99 -- Lockheed Martin IMS Good Government Committee (PAC), $750.

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.

Awards and other entries for which I maintained a record:

- National Aeronautics and Space Administration, Distinguished Public Service Medal (2004).

- American Trucking Associations, Earl Dove Award (2003).
- U.S. Secretary of Transportation, Gold Medal for "visionary and tireless leadership in the aftermath of the September 11, 2001 terrorist attacks" (2002).
- University of Georgia, Political Science Department, "Teacher of the Year," 1985-1986.
- As a graduate student at Georgetown University, I received several tuition scholarships and teaching assistantship grants, including a Georgetown University Fellowship and an H.B. Earhart Fellowship. During that time, I was a member of Pi Sigma Alpha, a political science honorary society, and served a one-year term as its president.

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

- "Intermodalism: Hauling in a Deal," *Journal of Commerce* (October 14, 1996) [op-ed written in support of the Intermodal Safe Container Transportation Amendments Act of 1996].
- Michael Novak and Michael P. Jackson, eds., *Latin America: Dependency or Independence?* (Washington, DC: American Enterprise Institute for Public Policy Research, 1985).
- *Leo Strauss's Teaching: A Study of Thoughts on Machiavelli* (Washington, DC: PhD dissertation, Georgetown University, 1985).
- "Leo Strauss and Natural Law," *Vera Lex* (Summer 1986).
- Review of Jean-Francois Revel, *How Democracies Perish*, in *Reflections* 5 (Winter 1986).
- Review of James V. Schall, *Unexpected Meditations Late in the Twentieth Century*, in *Catholicism in Crisis* 4 (May 1986).
- *Note:* It is possible that I may have published a small number of academic book reviews or research notes not listed above during the 1985-1986 period, but I have listed all publications for which I have a record.

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.

For the last five years in the private sector, I have made presentations routinely as a panelist or speaker at professional and business organizations of various types. These presentations mostly have been related to transportation, freight logistics, technology, general business trends, or more recently, security policy issues. It has been my practice not to speak from a prepared text.

During the period in which I served at the Department of Transportation, I routinely spoke to various transportation and public policy groups. In the public sector as well, it was my customary practice not to speak from a prepared text, except when providing Congressional testimony. An exception to this was a commencement speech I delivered at Florida State University, Panama City in the late Spring of 2002 (copies provided).

Conducting an internet search, I found two speeches (copies of each provided) regarding transportation security matters that were transcribed and then posted on the Internet by sponsoring organizations. They are:

- "Securing America's Airports and Waterways: the Role of the Department of Transportation," Heritage Foundation Lecture #746 (May 28, 2002) at http://www.heritage.org/Research/NationalSecurity/HL746.cfm
- "Excellence in Transportation Security," Council for Excellence in Government's Whitehead Forum (April 18, 2002) at http://www.tsa.gov/public/display?theme=46&content=090005198000396d.

17. **Selection:**

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

I expect that my nomination is chiefly related to: (1) previous government service, particularly my role as Deputy Secretary of Transportation; (2) private sector jobs in which I have worked closely with a broad range of passenger and freight transportation stakeholders and government agencies at the state and federal levels; and (3) senior management experience in the private sector. Moreover, I have a longstanding commitment to public service, and a passion for reducing our country's vulnerability to further terrorist attacks.

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

I have been exposed to a broad range of homeland security policy issues and management work by virtue of my role at the U.S. Transportation Department (DOT), 2001-2003. As the chief operating officer at DOT, my tenure was particularly focused on DOT's response to the terrorist attacks, including standing up the new Transportation Security Administration (TSA) and management of recovery efforts for the nation's aviation industry. My duties included substantial policy coordination within the Administration -- including work on the deputies committees of the Homeland Security Council, the National Security Council, Domestic Policy Council and National Economic Council and membership on the President's Management Council. DOT duties also included frequent Congressional consultation and testimony, coordination with state governors, mayors and state transportation agencies, and work with foreign governments, transportation businesses, numerous interest groups, and the media. Serving as Special Assistant to the President for Cabinet Liaison in the George H. W. Bush White House earlier gave me a good grounding in Cabinet management practices and organizational responsibilities across the federal government. In addition to my work with TSA, I have worked closely with numerous DHS units, for example, FEMA and the Coast Guard.

Board membership at Amtrak gave me further management experience regarding a financially troubled but essential public-sponsored corporation. Work as chief operating officer of various business units within large, private sector corporations added private sector management experience relevant to the DHS's current management challenges. In my work with Lockheed Martin IMS, for example, we provided transportation-related technology services for agencies of roughly half of the U.S. state governments. At AECOM Technology Corporation, I have had corporate management responsibilities within the firm. AECOM is an infrastructure engineering, facilities design, construction management and technology services corporation that operates in some 60 countries. In the private and public sectors, I have been involved with various business issues concerning cross-border movement of freight, particularly at the Mexican and Canadian borders.

Finally, my business career as a technology provider and, earlier in life, as a university professor and researcher strengthen my appreciation of the degree to which we can and must draw upon the nation's research institutions and our high-tech community to meet DHS's vital mission.

## 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, I recently resigned my position with AECOM Technology Corporation.

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.

## 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.

After carefully reviewing my employment history with DHS's Legal Advisor for Ethics, I anticipate no conflicts of interest that would significantly affect my ability to discharge the position for which I have been nominated. If confirmed, I would be recused from matters dealing with AECOM Technology Corporation and from matters dealing with my spouse's employer, Baker Botts, LLP.

The recusal agreement that would apply to me as Deputy Secretary will be conveyed to the Committee by the Department's Legal Advisor for Ethics. First, and consistent with Department policy and regulations of the Office of Government Ethics, there would be a one-year period during which I would be recused from any matter before the Department related to my former employer, AECOM Technology Corporation. Second, I would be recused from matters involving representation made by the law firm at which my wife is employed, Baker Botts, LLP. My wife, who is not an attorney, has not been personally involved in work regarding the Department of Homeland Security.

If confirmed, throughout my tenure at DHS I will regularly consult with the Department's Office of General Counsel not only to avoid any actual conflict of interest, but also the *appearance* of any such conflict.

2. Describe any activity during the past 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.

I divide my answer into two parts: (1) for the period since leaving federal service in August of 2003; and (2) for the period as requested prior to my last federal service, up to 2001.

First, I have complied with all post-employment restrictions following my departure from the Department of Transportation (DOT). Among other restrictions, I was prohibited from representing any interests at DOT during the year following August 1, 2003. In the summer of 2004, I once contacted an OMB employee about a defense appropriation bill that had a potential bearing upon AECOM operating companies. Other than this one communication, since August 2003, to the best of my knowledge and except as explained below, I have not sought directly to influence any specific legislation or the execution of any law or public policy as outlined in this question. I have not been a lobbyist.

In seeking to answer whether any action of mine might have indirectly influenced legislation or policy implementation as addressed by this question, I offer the following, additional detail:

- I appeared at numerous professional seminars, meeting and conferences at which I have discussed various policy matters -- primarily transportation and infrastructure investment practices -- at the federal and state levels. At several of these meetings, Congressional staff, federal and/or state officials have been present.
- Infrequently, I have responded to press questions on public policy matters, and subsequently my opinions were quoted in various newspapers, magazines and books.
- In December 2004, I was invited by DHS Secretary Deputy Secretary James Loy to attend and speak at a DHS-sponsored seminar on freight transportation security. That meeting was attended by federal employees and private sector parties.
- I have participated in the Integrated Deepwater Systems Navigation Council, as mentioned in Part A, Question #10, above.
- At the invitation of the Federal Highway Administration, I spoke in October 2004 at two FHWA-sponsored seminars on the subject of public-private partnerships to support transportation infrastructure investments.
- In October of 2004, at the invitation of a former White House colleague, I met to offer advice on

personnel issues concerning the appointment and training of senior administration officials.

- In the fall of 2004, I met with a House staffer who was then leaving federal service to discuss and offer general views on management issues associated with a Chicago-area rail consolidation project, CREATE.
- In fall of 2004, I discussed rail efficiency policy issues with the chairman of the Surface Transportation Board and various federal, state and local officials in conjunction with their meeting in Houston with private sector business leaders that took place in Houston.
- In the second half of 2004, together with several AECOM employees, I provided technical assistance to an employee of the California Chamber of Commerce regarding several aspects of the Governor's California Performance Review. I have no specific knowledge of whether or how that input may have been used by the Chamber of Commerce.
- I have met with AECOM public sector clients about existing and potential work for them, such as transit agency heads, mayors, state transportation officials, port and terminal managers and airport operators.
- In deliberating about the possibility of the President's nominating me for the DHS deputy secretary position, I have discussed various DHS policy and management matters with Executive Branch officials.
- On various social occasions, I have responded to questions or offered general opinions about a range of public policy issues during informal conversations either with or in the presence of federal and/or state officials.
- I have participated as an employee in various internal AECOM discussions about the design and focus of our public sector business services.

I cannot adequately determine whether any of the instances described above might have played a role in effecting deliberations about legislation or the administration of law or public policy as contemplated by this question.

Second, prior to 2001 and during the period covered by this question, I offer the following detail:

- While at Lockheed Martin IMS, I can recall no issue regarding which I have lobbied, testified or otherwise directly sought to affect federal legislation. Once, on behalf of IMS, I filed written comments with the Department of Transportation on a Request for Information released by the Federal Highway Administration regarding transponder standards for commercial vehicles.
- At IMS, I periodically provided briefings, counseled with or answered questions for various Department officials regarding IMS businesses in service to state governments and other public agencies. For example, IMS has a long-term contract to support HELP, Inc., a non-profit public-private partnership under which some 21 state governments provide electronic weigh station clearance services to the motor carrier industry. I worked directly with HELP's Board of Directors and with numerous states to encourage adoption of this service and to maximize interoperability among systems that provide for electronic clearance services.
- At IMS, I also worked with numerous state governments to market or support IMS's ongoing electronic toll collection services and electronic clearinghouse services.
- While at the American Trucking Associations (ATA), I assisted ATA's management team in formulating and advocating a wide range of public policy positions that represented the interests of its members. My particular areas of policy focus at ATA were international and intermodal policy. While at ATA, I was only rarely involved in direct discussions with public policy makers. During the initial year of my employment at ATA, I was expressly prohibited from representing any interests before the Department of Transportation.

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.

   I understand that I have been named, along with multiple other Department of Transportation employees, in an EEO complaint filed by a Department of Transportation employee following my tenure as Deputy Secretary. I consider the EEO complaint wholly groundless and have voluntarily provided a statement to the Department's counsel in this matter. If helpful, I can provide a point of contact in DOT's Office of General Counsel for additional information about this pending complaint. This is the only such formal or informal allegation of which I am aware in my various positions in both public and private sector jobs spanning more than thirty years of work.

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.

   I was informed in January 2004 that three employees of Amtrak had filed a lawsuit on behalf of themselves and a class of employees in connection with certain terms of a 2001 Voluntary Early Retirement Program at Amtrak. I understand that Amtrak employees and Amtrak's Board members have been named in this dispute. This matter is being handled by the General Counsel at Amtrak, Alicia Serfaty, who can provide further detail, if needed.

   My current employer, AECOM is a large corporation with numerous subsidiary businesses. I have no specific knowledge as to whether any of the AECOM operating companies or their predecessor companies may have been a party in interest in any such proceeding. I have not been involved personally in such circumstances at AECOM. I do believe I would have been aware of any such issue that occurred during the period of my employment at AECOM. An earlier employer, Lockheed Martin IMS, was part of a large corporation with numerous subsidiary businesses. I have no specific knowledge as to whether any of the many Lockheed Martin firms or their predecessor organizations may have been a party in interest in any such proceeding. I have not been involved personally in such circumstances at Lockheed Martin IMS.

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

   None of which I am aware.

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

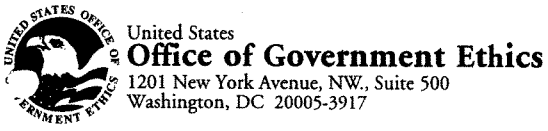
MICHAEL PETER JACKSON, being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Michael P. Jackson
Signature of Nominee

Subscribed and sworn before me this 9th day of February, 2005

Deborah D. Lee-Urquhart
Notary Public

Deborah D. Lee-Urquhart
Notary Public District of Columbia
My Commission Expires April 30, 2006




February 28, 2005

The Honorable Susan M. Collins
Chair
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Madam Chair:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Michael P. Jackson, who has been nominated by President Bush for the position of Deputy Secretary of the Department of Homeland Security.

We have reviewed the report and have also obtained advice from the Department of Homeland Security concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter dated February 22, 2005, from Mr. Jackson to the Department's ethics official, outlining the steps he will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of his confirmation date with the actions he agreed to take in his ethics agreement.

Based thereon, we believe that Mr. Jackson is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Marilyn L. Glynn
Acting Director

Enclosures

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

## I. NOMINATION PROCESS AND CONFLICTS OF INTEREST

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

**ANSWER:** I expect that my nomination is chiefly related to: (1) previous government service, particularly my role as Deputy Secretary of Transportation; (2) private sector jobs in which I have worked closely with a broad range of passenger and freight transportation stakeholders and government agencies at the state and federal levels; and (3) senior management experience in the private sector. Moreover, I have a longstanding commitment to public service, and a passion for reducing our country's vulnerability to further terrorist attacks.

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

**ANSWER:** No.

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

**ANSWER:** I have been exposed to a broad range of homeland security policy issues and management work by virtue of my role at the U.S. Transportation Department (DOT), 2001-2003. As the chief operating officer at DOT, my tenure was particularly focused on DOT's response to the terrorist attacks, including standing up the new Transportation Security Administration (TSA) and management of recovery efforts for the nation's aviation industry. My duties included substantial policy coordination within the Administration -- including work on the deputies committees of the Homeland Security Council, the National Security Council, Domestic Policy Council and National Economic Council and membership on the President's Management Council. DOT duties also included frequent Congressional consultation and testimony, coordination with state governors, mayors and state transportation agencies, and work with foreign governments, transportation businesses, numerous interest groups, and the media. Serving as Special Assistant to the President for Cabinet Liaison in the George H. W. Bush White House earlier gave me a good grounding in Cabinet management practices and organizational responsibilities across the federal government. In addition to my work with TSA, I have worked closely with numerous DHS units, for example, FEMA and the Coast Guard.

Board membership at Amtrak gave me further management experience regarding a financially

troubled but essential public-sponsored corporation. Work as chief operating officer of various business units within large, private sector corporations added private sector management experience relevant to the DHS's current management challenges. In my work with Lockheed Martin IMS, for example, we provided transportation-related technology services for agencies of roughly half of the U.S. state governments. At AECOM Technology Corporation, I have had corporate management responsibilities within the firm. AECOM is an infrastructure engineering, facilities design, construction management and technology services corporation that operates in some 60 countries. In the private and public sectors, I have been involved with various business issues concerning cross-border movement of freight, particularly at the Mexican and Canadian borders.

Finally, my business career as a technology provider and, earlier in life, as a university professor and researcher strengthen my appreciation of the degree to which we can and must draw upon the nation's research institutions and our high-tech community to meet DHS's vital mission.

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

**ANSWER:** No. In responding to the questions below, however, I am now affirming support for several specific DHS initiatives, which I would, of course, honor if confirmed by the Senate.

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:** After consultation with DHS Ethics Counsel and review by the Office of Government Ethics I have put in place a standard recusal regarding my recent private sector employer, AECOM Technology Corporation. In addition I have reinstated a recusal that was in place during the duration of my service as Deputy Secretary of Transportation regarding my wife's employer, Baker Botts, LLP. I am committed to working closely with the Department to avoid any situation that could cause a conflict of interest or the appearance of a conflict of interest.

## II. ROLE AND RESPONSIBILITIES OF DEPUTY SECRETARY OF HOMELAND SECURITY

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

**ANSWER:** The core obligation of this office is to support the Secretary in such assignments as he may determine to be helpful. At DHS the Deputy Secretary, as with most other Departments in the federal government, is the chief operating officer of the Department. The Deputy therefore has fundamental responsibilities to oversee operations of the Department's components and implementation of its core management obligations. This does not mean that the Deputy is a

single-threaded operational decision maker; rather, the Deputy is charged with providing strategic direction and support for the organization overall. To do this requires meeting with and listening carefully to the Department's employees -- our core asset -- routinely and directly, in as many ways as possible.

As a new Department, we still have much to do, building upon an outstanding start. In this Department at this time, the Deputy's role is to assist the Secretary in building many things anew, not just running what he finds in place. I think the Deputy must be an innovator, a change agent and a leader who is committed to disproving the notion that a large organization cannot be nimble. Combating the threat of terrorism -- which lies at the heart of our mission, but is not the entire mission -- requires an avid commitment to continuous innovation, to staying one step ahead of those who would do our nation harm. Secretary Chertoff expressed his strong commitment to this approach in his confirmation hearing.

The Deputy Secretary at DHS also has considerable responsibilities in representing the Department in various fora, both within and without the Administration in support of the Department's mission, high priorities in this regard include assisting the Congress in its oversight of the Department, and working with the Homeland Security Council, the National Security Council and numerous other public sector partners at the federal, state, local, and tribal levels.

Finally, the Deputy Secretary and the entire DHS management team must serve our customers, the public. This means that we must routinely meet with and learn from the myriad experts, leaders and stakeholders that DHS was created to serve and protect. DHS's success is based not solely upon what we can lift ourselves, but upon a partnership that lifts the load together, collegially and effectively.

7. 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:** DHS was founded to protect America from another terrorist attack and to help our first responders and the communities they serve to respond, as well as and recover from any attacks that may occur. In addition, the Department serves multiple other vital missions, such as, protecting the President, natural disaster response, immigration services, drug interdiction and search and rescue at sea.

I know DHS faces numerous challenges, including the integration of information, securing our borders and transportation modes and strengthening the security of other critical infrastructure. Achieving these goals must be pursued with utmost attention to preserving the free flow of people, goods, and services, while also protecting the privacy, civil rights and civil liberties of our citizens. If confirmed as Deputy Secretary, I would help to define and execute effective strategies that reduce vulnerabilities and meet DHS's multiple missions. The Secretary has indicated his intention to conduct a thorough review of DHS policies, structure and effectiveness as part of his transition into office. If confirmed, I would actively participate in that analysis.

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

**ANSWER:** If confirmed, I would seek to communicate with a wide range of DHS staff in person and would use all reasonable tools that can be brought to bear on this vital aspect of leadership. I understand that the Department has multiple existing communication tools, which I would expect to inventory early, utilize often, and improve continuously. My own management experience certainly leads me to respect the organizational chain-of-command, but also routinely to create opportunities for front-line leaders and other employees to speak their mind about organizational performance.

## III. POLICY QUESTIONS

### General Management

9. Some experts have questioned the adequacy of the staff at DHS that is directly assigned to support the Secretary and the Deputy Secretary. For example, at the HSGAC's oversight hearing on January 26, 2005, the Committee heard testimony that the Deputy Secretary has a staff of only five people to support his mission as Chief Operating Officer of the third largest department in government. Indeed, according to the Administration's FY2006 Budget Proposal, the immediate office of the Deputy Secretary would receive 7 Full-Time Equivalents (FTE) in 2006; the immediate office of the Secretary would have 12. Based on your experience, do you believe this level of direct support is sufficient for the Secretary or Deputy Secretary? What was your equivalent level of support while at the Department of Transportation?

**ANSWER:** Based upon what I know at this juncture, I think the FY 2006 budget regarding the Deputy Secretary's direct staff allocations is adequate. At its peak size after the creation of the Transportation Security Administration in 2002, the Department of Transportation was equivalent to DHS's current workforce size, but DOT did have a significantly larger overall budget. My immediate staff at DOT was slightly smaller than the President's FY 2006 proposal referenced in the question. To serve as Chief Operating Officer, the Deputy must be free to task DHS component organizations to support the work needed to execute the Deputy's management responsibilities. I am not aware of impediments at DHS that would make this approach unworkable.

10. The Department's Inspector General (IG) has testified that with regard to integration and preparedness, structural and resource problems at DHS continue to inhibit progress in certain support functions. For example, while the Department is trying to create an integrated and streamlined support service function, most of the critical support personnel are distributed throughout the Department's components, and they are not directly accountable to the functional chiefs: the chief financial officer, the chief information officer and the chief procurement officer. Do you agree that this arrangement will make it more difficult for the Department to achieve the efficiency and cohesiveness that is needed? What steps do you recommend that the Department take to improve its capacity to integrate support functions?

**ANSWER:** If confirmed, I would be committed to supporting closely integrated support and service functionality within the Department. I am told that, consistent with the Inspector General's observations, that DHS has recently taken several steps towards integrating support functions within the Department. I would look forward to reviewing and enhancing these measures as necessary.

11. According to the IG, the Department has structured its support functions based on a concept of dual accountability, where both the operational leadership and the functional chiefs are responsible for the preparation of operational directives and their ensuing implementation. This concept has been described as a robust dotted-line relationship. The IG has noted that while the concept may be workable in some environments, there are concerns that within the Department the functional chiefs may not have sufficient resources or authority to ensure that Department-wide goals are addressed in an effective, efficient or economical manner or that available resources can be marshaled to address emerging problems. The dotted-line relationship may work better in a more mature organization. What is your past experience managing with dotted-line relationships of this kind? Do you believe it is appropriate for DHS at this stage in its development?

**ANSWER:** I have seen the "dotted-line" relationship work well at the Department of Transportation (DOT). For example, in standing up the new Transportation Security Administration (TSA) in 2002, various TSA units – such as budget, human resource, technology and legal offices had a *de facto* dotted line reporting relationship with DOT officers. This allowed TSA to access a Departmental brain trust of experts, and provided DOT management greater visibility into potential problems. This makes for more coordination, to be sure, but it brings an integrating and process improvement mechanism that seems appropriate for DHS. Of course, this requires that the Secretary and the Deputy Secretary have a high sensitivity to and low tolerance for turf battles and personality conflicts, should any emerge.

12. A recent CSIS/Heritage Foundation study noted the absence of a policy and planning staff for the Secretary of DHS, and recommended that one be created. According to the President's proposed DHS budget for FY2006, the Administration does plan to create such an office. However, as described by DHS officials and budget documents, while the Budget proposes four new FTEs for this office, it would be staffed largely by moving existing Department employees, primarily 15 people from the policy office of the Directorate for Border and Transportation Security.

What is your opinion of the need for such a policy and planning office at DHS? Please discuss the optimal size and capacity of such an office.

**ANSWER:** I think it appropriate to create a robust DHS policy office that will be the focal point for policy development and policy integration at the Department level. Secretary Ridge and Deputy Secretary Loy launched an effort to design just such a policy office, and Secretary Chertoff has already indicated his support for such an organization. If confirmed, I would look forward to participating with the Secretary in finalizing a specific staffing plan and charter for a

DHS policy shop. Of course, this proposal will be finalized in conjunction with the Secretary's broader review during his transition of the DHS organization.

**Human Capital**

13. 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:** First, I will respect and seek aggressively to support my DHS colleagues. In the months ahead, reinforcements will be needed as some missions expand, individuals retire, and natural turnover takes place. Second, therefore, I will work to attract outstanding colleagues at all levels within DHS and provide for the working environment they deserve. In doing this, we are aided immeasurably by the nature of DHS's vital mission. I have personally seen heroic sacrifice and commitment to public service at DHS in literally thousands of DHS professionals. I am eager to re-join them in their service.

As you know, DHS is embarking on an ambitious effort to transform a human capital management system that has been in effect in the federal government for over half a century. This effort includes fundamental changes to the systems used to compensate employees, assess their performance and contributions, and address human capital issues. It calls for business processes to be streamlined and standardized throughout the Department. It requires an enterprise-wide human resources information system capable of supporting managerial decision-making with accurate and timely data.

In addition, the Department is still addressing the continuing impacts of the merger of 22 separate organizations into a cohesive whole. The Department is striving to create a new organizational culture that promotes a common identity, innovation, mutual respect, accountability and teamwork. I'm fully aware of the magnitude and difficulty of these undertakings. If confirmed, I will ensure that employees, supervisors, and managers have the training necessary to take full advantage of the flexibilities Congress provided. In sum, I am committed to ensuring that DHS has a world class human capital system to support our team and serve the public.

14. 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:** I will listen, especially when what is being said is critical. I will try to find agreement, but if necessary will disagree with clarity and a calm that is animated by respect for our common service.

At the Department of Transportation (DOT) I met with labor union rank and file and leaders to listen to their concerns, and often to thank them for their work, this, not only with DOT unions and non-union workers, but also with those who operate our private sector transportation

infrastructure. In President George H.W. Bush's administration, I negotiated settlement terms on behalf of the Administration with the Congress to end a national rail strike. In the current President's Administration I participated with Secretary Mineta in bringing labor and management together to end an airline strike. As chief operating officer of a large corporate business unit that had decided to close a facility with roughly 100 employees, I delivered the news in person to all employees, and then stayed on site until we had met and reviewed the personal circumstances and needs of every employee. In standing up the Transpiration Security Administration, I frequently would find ways to sit with front-line airport screeners, and hear what they thought they needed to do the job.

I frankly seldom use the expression "labor-management relations," preferring instead to talk about teams and performance. In the past 20 years I have worked about the same amount of time in the public and private sectors. In the public sector, I've served three Presidents and five Cabinet members, working at the White House, three federal departments and several presidential commissions. I have come to know and appreciate well the talent and skill of the federal career workforce. They want leadership and respect from the political leaders, who come and go with Administrations. They want to be part of the team. If confirmed, I would work to deliver on those expectations.

15. In testimony before the Subcommittee on Oversight of Government Management on February 10, 2005, DHS Chief Human Capital Officer Ronald James made a personal commitment to improve communication with employees as implementation of the new personnel system begins. What role do you believe the Deputy Secretary should play in ensuring two-way communication so that employees' voices are heard on issues affecting their employment?

**ANSWER:** I fully support the commitment made by Mr. James. If confirmed as Deputy Secretary, I would work to ensure that this commitment is shared by the entire DHS management team at DHS.

16. Thorough training of both employees and supervisory personnel will be key to successful implementation of the new human resources system. What steps will you take, if confirmed, to ensure there is a continued focus on training as employees are converted to the new system? How will the Department ensure individual managers conduct employee reviews and address performance concerns under the new system in a fair and impartial manner?

**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 known as $MAX^{HR}$. Specific plans and course content for leadership and employee training are currently being developed by the Department and will focus on those skills that the workforce and its leaders will most require to ensure fair administration of the new pay and performance systems. If confirmed, I will ensure that all DHS leaders understand their role in this process and commit to the training efforts that will be offered to ensure their readiness.

17. In testimony before the Subcommittee on Oversight of Government Management on

February 10, 2005, AFGE President John Gage recommended passage of legislation to: (1) expand the scope of collective bargaining under the system; (2) ensure that the new pay system enables the Department to attract and retain employees; and (3) eliminate the Homeland Security Labor Relations Board. What is your opinion of this proposal?

**ANSWER:** I think that the Department needs to have the flexibility to carry out its many operations in both emergency and day-to-day situations. Having to bargain in advance over operational procedures would inhibit DHS's ability to act quickly and decisively. In addition, I understand the HSLRB is a critical part of the Department's new labor relations program. It is essential that the Department have a Board that will resolve the most critical labor disputes within the Department quickly and with an understanding and appreciation of the unique challenges facing DHS in carrying out its mission. It is my understanding that the final regulations do preserve collective bargaining and consultation in certain circumstances and add an obligation to confer in other situations.

With respect to the new pay system, I believe the changes contained in the final regulations will better position the Department to attract and retain the best employees. The pay-for-performance system will be designed to reward those who are meeting or exceeding performance expectations, inspiring DHS employees to perform at their best. Also, I understand that the system is designed to be much more market-sensitive by defining occupational clusters and levels of work within each cluster that are tailored to the Department's missions and components. This will allow the Department to allocate payroll dollars to the occupations and locations where they are most needed to carry out the Department's mission. If confirmed, I will remain committed to involving both employees and employee representatives in the development and evaluation of these new provisions. Program evaluation data and results should be used to monitor success and/or any required program adjustments.

18. The final regulations for the new DHS personnel system, issued February 1, 2005, (hereafter, the "Regulations") allow the Department to treat certain misconduct as Mandatory Removal Offenses. The Analytical Perspectives accompanying the FY2006 Budget recommend modification of the IRS employee infractions subject to mandatory removal and provide for a broader range of available penalties. The Government Accountability Office has reported that IRS officials believe these penalties had a negative impact on employee morale and effectiveness and had a "chilling" effect on IRS frontline enforcement employees. Considering the experience at IRS, do you believe Mandatory Removal Offenses are appropriate? If so, what steps will you take to ensure future tables of Mandatory Removal Offenses do not have unintended consequences?

**ANSWER:** I am not familiar with details of the IRS' experience with Mandatory Removal Offenses (MRO). I believe that certain MROs are appropriate in the unforgiving environment in which DHS operates. MROs are offenses that have a direct and substantial adverse impact on the Department's homeland security mission -- these are serious offenses that will be limited in number, but ones that are so egregious that removal is the mandatory penalty. The Department must, however, be careful in identifying them and making certain that all employees are well informed. If confirmed, I would be happy to learn more about the IRS experience regarding

MROs as DHS calibrates its plans.

19. The Regulations require employee input in the development of the implementing directives for the new system. For employees to perceive the new system as fair, the development of the directives must be transparent. How do you plan to reach out to employees and their representatives to seek input on the details of the new pay-for-performance system and create an environment where employees feel their concerns will be heard?

**ANSWER:** If confirmed, I would review and act on information DHS employees provided on the most recent government-wide employee survey, and monitor employees concerns voiced during deployment of the new system. I would work to keep DHS's commitment to involve employee representatives in the final design and implementation of the Department's new HR system.

20. The Regulations require the Secretary to appoint three individuals to the Homeland Security Labor Relations Board, which will be established to resolve certain issues between management and employee representatives. Key to the acceptance of this Board will be the impartiality of its members. Although the unions will be asked to provide nominees, the decision will lie solely with the DHS Secretary. What steps should the Department take to help ensure employee trust and credibility of the panel, given the Secretary's sole authority to appoint?

**ANSWER:** I understand that there have been concerns about the independence and impartiality of the Homeland Security Labor Relations Board (HSLRB), and that the Department has worked to address these concerns by specifying HSLRB member qualifications in the regulations. Members must be known for their impartiality and integrity, as well as for their expertise in labor relations, law enforcement, or national/homeland or other related security issues. To ensure appropriate review of HSLRB decisions, the regulations also identify a process for Federal Labor Relations Authority (FLRA) review of most HSLRB decisions. In addition, I understand that in most cases FLRA decisions would be subject to judicial review. I believe that adherence to the regulations as written, including fair consideration of any nominees for HSLRB membership, will earn our employees' trust and establish the credibility of the HSLRB.

21. The Regulations outline an intention to implement key safeguards for the purpose of achieving a fair, effective, and credible system. 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 understand that DHS is committed to building a Human Resource Management System that preserves all core civil service protections -- including merit system principles, whistle-blower protection, veterans' preference, and due process. With the implementation of this new system, supervisors and managers will be held accountable for effective human resource management and ongoing communication efforts and targeted training will be important in preparing managers to take a lead role in its successful implementation. It is my understanding that training will focus not only on the new system but also on necessary new behaviors. For example, under the new performance management system, managers will require

training on how to provide meaningful feedback as well as coaching and mentoring employees to higher levels of performance. Employees will also need to be trained on the new system, to include their roles and responsibilities. Ongoing and multi-source feedback and internal communication mechanisms will enable employees to have a clear understanding of how they are doing, and, if necessary, how they can make adjustments during the year.

22. On July 25, 2004, Customs and Border Protection (CBP) implemented the National Inspectional Assignment Policy (NIAP) to enable management to align the CBP workforce with operational demands and react quickly to any threat. As with any policy, local managers are key to working with affected employees to ensure changes are implemented in a manner that is fair. The Committee has heard from CBP employees that supervisory personnel have been unwilling to meet, even informally, to hear their concerns related to the implementation of NIAP and work to achieve an appropriate balance between operational demands and quality of life in assigning work. What do you believe should be done to ensure these employees' concerns are heard?

**ANSWER:** I am not familiar with this particular policy and its implementation. DHS Leadership has a responsibility in implementing such policies to listen to concerns of those affected. If confirmed, I would monitor this specific situation to ensure that appropriate communication is maintained.

**Procurement**

23. 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. When the Department was created, 22 existing organizations were combined but only seven brought a procurement office and personnel with them. Those offices were staffed for their pre-9/11 activities, not for the complexity and amount of procurement activity that the Department now requires. Secretary Chertoff reported that, if confirmed, he would: (1) 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 and; (2) review the functional authority of the procurement program and ensure that the Department has appropriate oversight and control over its acquisition program. In your opinion, what further actions must be taken in these two areas?

**ANSWER:** In addition to supporting the initiatives above, I would want to conduct a baseline review of all major procurements underway at the Department to:(a) understand and address any vulnerabilities that may exist; (b) to extract best practices that can be shared extensively within the Department; and (c) personally assess the strength of the procurement teams supporting each of the DHS components.

24. We understand that DHS is developing an integrated business system called eMerge$^2$. When completed, DHS reports that its automated procurement system will feed into the eMerge$^2$ system and provide integrated procurement, business and financial information for the Department.

a. Can you please describe this system in greater detail—including the goals and timeframes for this project?

**ANSWER:** I am not yet personally familiar with the details of the eMerge$^2$ program, but I am told it is to be an integrated Department-wide resource management system that will consolidate and integrate the Department's budget, accounting, cost management, acquisition, grants and asset management functions. It is intended to increase efficiency and effectiveness and enhance the Department's visibility, oversight and accountability of component operations and financial management. I understand the project is currently in a pilot testing phase, with a phased plan for implementation over the next few years. In general, I am firmly persuaded that DHS needs better management tools -- such as what is under development with eMerge$^2$ -- and, if confirmed, I would seek to reinforce or infuse as necessary a sense of urgency in seeing such tools effectively deployed.

b. Also, please provide us with examples of how this system will assist the department's procurement activities and overall management effectiveness?

**ANSWER:** I understand that in addition to providing a seamless automated acquisition process, fully integrated with the financial and budgeting processes, the eMerge$^2$ solution is designed to provide these additional benefits to the Department's acquisition activities:

- Automated aids to strategic sourcing
- Visibility of existing award vehicles
- Improved customer support
- On-line collaborative reviews among the acquisition partners
- Reduced purchase time and cost
- Fact-based business advice
- Automated and facilitated award close out.

25. A directive on functional integration of the procurement function, issued late last year, states that the Coast Guard and Secret Service are statutorily exempt from complying with the provisions of the directive.

a. What is the statutory or other basis for the Coast Guard's exemption? How does this exemption differ, if at all, from the Secret Service exemption?

**ANSWER:** I am told that there are legal bases within in the Homeland Security Act, Title 14 of U.S. Code, and the unique military status of the Coast Guard, which serve to limit but not exempt the Coast Guard's ability to integrate its functions with those of the Department. Within those limits, the Coast Guard is supportive of functional integration and is participating in all business lines to integrate activities, where such integration does not contravene the statutory and policy mandates discussed below.

I am told that DHS has not taken the position that the Coast Guard is exempt from all possible forms of integration. Although I have not seen it, I understand that the Department's General

Counsel provided a response to questions about this issue to the Government Accountability Office, which the Department can also certainly provide to the Committee

b. What is it about these two components that preclude them from being subject to complying with DHS's procurement regulations and policies?

**ANSWER:** When DHS was created, it was the joint intent of the Administration and Congress that both the Secret Service and Coast Guard be maintained as "distinct entities" within DHS. While both are exempted from the specific management directive mentioned, both organizations are collaborating and will continue to participate in the existing efforts to create greater efficiencies within the procurement function of the Department.

c. If confirmed, would you retain this directive?

**ANSWER:** I'd need to take a detailed look at the legal and policy issues associated with this matter prior to forming a position about this specific directive.

26. Do you believe the Chief Procurement Officer, who is vested with responsibility to oversee acquisition across DHS, has been given adequate authority to carry out his duties? Does he have the appropriate level of enforcement authority to ensure that DHS procurement regulations and policies are carried out department wide?

**ANSWER:** I have been told that the Department has made significant progress in creating a unified DHS acquisition program and that the Chief Procurement Officer has been vested with significant authority to manage this program. If confirmed, I would, of course, myself want to assess this issue.

27. In December 2004, the GAO reported that the Homeland Security Department needs to strengthen its policies and its contracting workforce to promote the successful use of its "other transactions" (OT) authority (GAO-05-136). "Other transactions" are noncontractual vehicles that are not subject to the statutory and regulatory requirements that otherwise apply to federal procurement; they are intended as a way to bring commercial firms and other "nontraditional government contractors"--and their cutting-edge technologies--into the federal marketplace. GAO recommended that DHS (1) establish guidance on when it is appropriate to include audit provisions in OT agreements; (2) develop a training program for DHS staff in the use of OTs to help ensure the appropriate use of this authority; and (3) capture knowledge obtained during the acquisition process for use in planning and implementing future OT projects.

a. Has DHS taken steps to address the GAO recommendations?

**ANSWER:** As I understand it, corrective actions were implemented immediately after the GAO report was issued. Training on the use and development of Other Transactions was given to both contracting and program staffs in January 2004. I understand that revisions to the existing Other Transaction policy are also in progress to provide further guidance on audit provisions and to address the need to capture knowledge obtained during the acquisition process.

b. What, if anything, should DHS do to create incentives for industrial companies to become more active in this area?

**ANSWER:** If confirmed, I intend to support, wherever possible, the Department's continued use of innovative techniques, such as Other Transactions, to encourage industry to participate in the development of cutting-edge technologies.

28. 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. We understand that DHS has developed a Strategic Sourcing Program to focus on procurement spending, sourcing, and strategic supplier relationships. Please describe the status of this initiative and whether any additional steps should be taken to improve procurement practices.

**ANSWER:** As I understand it, the Department's strategic sourcing initiative is well underway. Currently, there are 14 specific councils to identify Department-wide opportunities to leverage buying power through better planned and managed contracting vehicles and improved supplier relationships. These councils cover a wide variety of commodities from office supplies to complex information technology requirements. I understand that the Department has membership from each major organizational element on these councils and that there is universal commitment to achieving efficiencies and economies of scale by leveraging Department-wide spending.

29. Protecting our homeland requires taking maximum advantage of cutting-edge technologies. Therefore, the department will need to attract the best and most innovative firms in the private sector. Such firms can be reluctant to do business with the federal government. I understand that the Under Secretary for Science and Technology has issued Broad Agency Announcements (BAA) for research and development projects to attract innovative firms to DHS. What additional steps should DHS 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 foster both existing and new business opportunities with the private sector. DHS is using the authority provided in Section 831 of the Homeland Security Act of 2002 to attract non-traditional firms to research and development projects. Additionally, I understand that the Department has regularly scheduled vendor outreach sessions and has created an "Open for Business" website to encourage private sector participation and partnering with the Department.

I am familiar with various other tools used by federal agencies that I would, if confirmed, like to explore further. The Central Intelligence Agency, for example, has been successful in its partnership with In-Q-Tel to identify and invest in cutting-edge technologies that support the CIA's mission. The Defense Department's Defense Advanced Research Projects Agency has informed a cognate agency at DHS, about which I want to learn more. The Department of Energy's National Labs and other Federally Funded Research and Development Centers are

additional tools that are valuable to DHS's mission. In short, engaging the private sector systematically in meeting DHS research, technology and innovation needs is truly important.

30. Efficient and secure information sharing among intelligence and law enforcement agencies is essential. Yet, at a time when the DHS is responsible for implementing our nation's plan to coordinate federal, state, local, and tribal governments and the private sector during threats or acts of terrorism, DHS recently changed course away from a utilizing a standardized secure messaging technology also utilized by many other federal agencies (and awarded as the result of a competitive bidding process in the Homeland Security Data Network acquisition) in favor of another technology. Would you please commit to us that, once confirmed, you will look into this matter and report back to this committee on the rationale for this decision?

**ANSWER:** Yes, if confirmed, I would review this matter and report back to the Committee.

31. There has been much substantive criticism from industry of the Department's implementation of the SAFETY Act, which was designed by Congress to encourage the development of crucial new homeland security technologies. According to industry, the rules to implement the SAFETY Act were very slow in development, and they view the SAFETY Act process at the Department to be extremely cumbersome. Secretary Chertoff has promised to take a fresh look at the Department's implementation of the SAFETY Act. What steps will you take, if confirmed, to ensure that the SAFETY Act is implemented in a manner that serves Congress's intent in enacting it?

**ANSWER:** Based upon my experience at the Department of Transportation after 9/11, I understand what a valuable tool the SAFETY Act provides the Department. If confirmed, I would, in consultation with the Secretary, undertake a thorough review of DHS's implementation of the SAFETY Act so as to ensure this authority is being leveraged in an appropriate and timely manner to support DHS's mission.

32. The Government Accountability Office has been examining the Department's acquisition system at the Committee's request. What steps do you believe that the Department still needs to take before the Department's acquisition systems can be said to be sufficiently integrated?

**ANSWER:** I understand that much has been done to integrate the Department's acquisition community. The Department has consolidated acquisition regulations, established a communication network, and worked to promote collaboration in these matters. Like many other areas, I have the impression that genuine accomplishments have been obtained, but more remains to do. I am not able to speculate on specific further steps without conducting a more detailed assessment.

**Information Technology**

33. 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, the CIO is not a

member of the senior management team, with authority to strategically manage IT Department-wide. Secretary Chertoff indicated that, if confirmed, he would review the Department's structure to ensure that the CIO has adequate authority to fulfill his strategic IT management responsibilities. What are your views regarding this matter?

**ANSWER:** If confirmed, I would support the Secretary in ensuring that the CIO has the authority and responsibility necessary to meet the Department's mission needs. At the Department of Transportation I considered the CIO a key member of that Department's management team and would expect to support DHS's CIO in that same manner.

34. 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. Secretary Chertoff indicated a common network and e-mail systems for all DHS employees are well underway through the Department's Infrastructure Transformation Program. Can you please provide us with additional information—including goals and timeframes for development and completion of these IT systems?

**ANSWER:** As Secretary Chertoff indicated, this effort is underway. I have no information about specific deliverables, timetables and available budgets. Having effective IT tools in place is an important obligation of the Department. Doing so involves significant labor, but should not require skills that are not readily available in the marketplace. If confirmed, I would be expecting to track these deployments, as spearheaded by the CIO and the Under Secretary for Management.

35. In an audit report issued July 22, 2004, the DHS Office of the Inspector General said that while DHS had made some progress in protecting the nation's critical infrastructure from cyber attacks, key elements of the national strategy had not yet been implemented. According to a February 2, 2005 Federal Register notice, the departments of Defense and Homeland Security are seeking public comment on the adequacy of efforts to address the cyber security weaknesses of commercial software.

a. What is the status of this issue?

**ANSWER:** The President's National Strategy to Secure Cyberspace, issued in February of 2003, requires the federal government to conduct a comprehensive review of the National Information Assurance Partnership (NIAP) to determine the extent to which it is adequately addressing the continuing problem of security flaws in commercial software products. I understand that the NIAP, a collaborative effort of the National Institute of Standards and Technology and the National Security Agency, promotes the development of sound security requirements for IT products and systems, as well as appropriate security evaluation metrics.

The Department of Defense (DoD) and DHS were tasked with conducting the review on behalf

of the federal government, as noted in the question. In an effort to ensure a comprehensive review, DoD and DHS issued a *Federal Register* notice on February 2, 2005 seeking public comment on issues that should be considered.

I have been told that DHS and DOD are funding this review, which is being implemented in three phases: (1) the collection of information regarding NIAP requirements, practices, and expectations *(completed)*; (2) an analysis of the findings and the development of alternative options to increase NIAP's efficacy *(underway)*; and (3) a detailed analysis of the feasibility of the options, with conclusions and recommendations for the future of NIAP *(planned)*.

b. Describe DHS's approach to working with private industry to improve the nation's cyber security? What improvements are needed?

**ANSWER:** Cyber security, like the security of our entire critical infrastructure, is dependent on a public-private partnership, as so much of America's infrastructure is owned and operated by the private sector. Therefore, communication and relationship building between the public and private sectors is crucial to foster that partnership. I understand that DHS has initiated several programs, such as the National Cyber Security Partnership and the US-CERT, that are designed to foster collaboration with the private sector. If confirmed, I look forward to further reviewing this issue and related DHS programs.

36. In November 2004, the DHS IG noted that the Homeland Security Department has made progress in improving its internal cyber security program but its component divisions failed to align their respective measures with the department's overall IT security policies (OIG-04-41). The IG partly attributed DHS's ineffective implementation of its information security program to the chief information officer's lack of management and budget authority and staff. Other problems included: (1) the absence of a formal reporting relationship between the CIO and the operating divisions' security officers; (2) security officers at five of the nine DHS operating divisions did not fully understand the information security program's definition of programs and systems; and (3) nine DHS areas needed stronger protection from cyber threats, including wireless technologies and the department's critical infrastructure. In a written response to the report, the DHS CIO generally concurred with the IG's recommendations and said DHS initiated several projects late in fiscal 2004 that address some of the shortcomings. Can you please describe to the Committee how you would, if you are confirmed, address the recommendations listed in the DHS IG report?

**ANSWER:** Information security must be a priority. I have been informed that numerous actions have been taken with all of the DHS operating components to address issues raised by the IG. This has apparently yielded an assessment of the status and deficiencies of each division's security programs. If confirmed, I would assess the remediation plans, evaluate relevant authorities and delegations, review resources, support the CIO's efforts with DHS operating components and ask the IG's ongoing assistance to audit performance in this area.

**Financial Management**

37. The auditors of DHS's financial statement 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. DHS is entrusted each year with about $40 billion of the public's money. As Secretary Chertoff stated in his confirmation hearing "sound financial management is all about linking mission, goals and objectives to costs, and holding responsible managers accountable for their performance."

a. What specifically will you do, if you are confirmed, to ensure DHS implements an effective financial management system and resolve its internal control weaknesses?

**ANSWER:** If confirmed, I would work in close coordination with the Under Secretary for Management, the Department's Chief Financial Officer and the DHS senior management team to help the Department achieve the performance discipline that the Secretary identified in his confirmation hearing.

I have been informed that DHS has established an internal controls committee to:(1) ensure effective communication on internal control objectives throughout the Department; (2) ensure that assessment of internal controls is performed thoroughly, effectively and timely; (3) assess the Department's year-end financial reporting process; (4) provide technical expertise on internal control structural improvements; and (5) provide Departmental oversight of management processes, findings and long-term remediation efforts. I understand the *eMerge²* system design will also contribute to resolving internal control issues in the Department by incorporating inherent control features for all transactions and automatically documenting audit trails.

This subject has to be made a recurring matter of review and a high priority among all of the Department's leadership team – it is not just a problem that can be relegated to our financial professionals. If confirmed, I would work aggressively to continue and accelerate the Department's efforts to strengthen DHS financial controls.

b. In what ways do you anticipate it will affect the Department's managerial effectiveness?

**ANSWER:** Without timely and accurate financial data the Department cannot be managed effectively. Failure to implement the required systems will diminish the Department's management performance, make accountability more difficult, and deny us the transparency that Congress, the Secretary and the public deserve. Improvements in financial management will yield significant performance and credibility dividends. Chasing this to ground is a must.

**Information Sharing**

38. Recently, the Government Accountability Office called attention to DHS Information Sharing by adding it to its "High Risk" list. The Committee is deeply concerned about whether DHS will fulfill its information sharing mission. Implementing the Homeland Security Data Network (HSDN) is an important component in facilitating the sharing of information.

a. What steps has the Department taken so far 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:** I understand that, in May of 2004, the Information Sharing and Collaboration Program was initiated in DHS to guide Department information sharing activities. If confirmed as Deputy Secretary, I would work to ensure that the sharing of homeland security information with appropriate federal, state, local and infrastructure protection partners continues as a high priority initiative in the DHS.

It is my understanding the Homeland Security Data Network (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 themselves and with other federal agencies. The HSDN is the first DHS secret-level network to peer with the DOD SIPRNET, enabling the sharing of secret-level information between DHS and DOD. During the past year, the Federal Bureau of Investigation (FBI) and the Intelligence Community (IC) have also initiated projects to enable secret-level information sharing between DHS, DOD, FBI and the IC. DHS has completed a review of FY 2005 and FT 2006 systems investments as required by Executive Order 13356 verifying that the budgets fully support government-wide terrorism information sharing efforts.

b. What steps should the Department take to ensure that this item is not on the next GAO list?

**ANSWER:** I understand that HSDN equipment has been already deployed to over 30 DHS field sites and the central network operations and data center is built-out and undergoing accreditation. The HSDN will achieve initial operational capability and the HSDN program will continue to provide enhanced services to strengthen information sharing. If confirmed, I would initiate a review of the DHS information sharing and collaboration program to work to ensure this program is no longer on the GAO "High Risk" list.

c. Please describe what DHS plans to do to enhance its current working relationships and improve cooperation with DOJ, DOD and the rest of the intelligence community?

**ANSWER:** I understand that DHS, working in concert with DOJ, has already accomplished several important collaboration efforts. DHS and DOJ recently led, in collaboration, the proof of concept to link previously stand-alone networks to cross-post and share law enforcement and homeland security information on existing terminals. In addition, I understand that in early February 2005, the DOJ and DHS organizations developed the capability for shared directory services that will provide access to the location and e-mail addresses of personnel in both Departments. The two Departments now also share the capability to exchange e-mail at the Sensitive but Unclassified level.

As part of the transition of the Director of Central Intelligence (DCI) to the Director of National Intelligence (DNI), DHS has been involved with working groups regarding broad IC issues, including information sharing. The Office of Information Analysis (IA) has also been working

with the National Counterterrorism Center (NCTC) to align responsibilities. Secretary Ridge sent a letter to the DCI requesting space for DHS officers at the Liberty Crossing facility to ensure an effective effort with the NCTC, the CIA, and the FBI, and other Community elements working there. DHS has also offered to provide a deputy director to the NCTC to ensure that the national-level effort will serve the stakeholder communities of DHS – the state, local, tribal and private sector organizations that are on the front lines of homeland security.

Additionally, I understand that DHS, DOJ, and the DCI collaborated closely with other relevant agencies on the response to Executive Order 13356, Strengthening the Sharing of Terrorism Information to Protect Americans. This effort, led by OMB, established a plan for development of the future-state vision of an information sharing environment. DHS and DOJ also collaboratively convened a state, tribal and local tiger team to gain their insight into information sharing issues and to ensure that their needs are represented in the future state. In addition, this team will continue to assure that other activities related to the development of the information sharing environment include careful consideration of the needs and requirements of our non-federal partners.

d. In your view who should take the lead in providing information to, and receiving information from, state local and tribal officials?

**ANSWER:** In the Homeland Security Act of 2002, the Department, through IAIP, is charged to "integrate relevant information, analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) in order to identify priorities for the protective and support measures by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities." In addition, Section 892 of the Homeland Security Act and Exec Order 13311 establish the Secretary of Homeland Security as responsible for establishing homeland security information sharing procedures across the federal government and with state, tribal, and local governments as well as private sector security professionals responsible for protecting the nation's critical infrastructure. This certainly does not mean that DHS is the only agency that does and should provide information to state, local and tribal officials. If confirmed, I would work to assure that a fully cooperative and collaborative effort is accomplished to meet the needs and requirements of all stakeholders.

39. GAO's High Risk Report noted that DHS had not yet developed a plan detailing how it will manage its information sharing responsibilities. Secretary Chertoff indicated that DHS has established the Information Sharing and Collaboration Program, which leads, coordinates and facilitates Department information sharing responsibilities. Please describe this program in more detail and provide us with the program's goals and timelines for reaching those goals.

**ANSWER:** Though I have not yet been fully briefed on this office, I understand that the Information Sharing and Collaboration Program was established by Secretary Ridge in a memo dated May 11, 2004, and was charged to develop a DHS-wide business plan for a comprehensive information sharing and collaboration enterprise system. The Information Sharing and Collaboration Office (ISCO) works with the Departmental organizational elements to harmonize

operational sharing efforts, assist them in defining more efficient rules for improved business processes and reporting these improvements to the CIO's Enterprise Architecture Board (EAB) for further action – helping the EAB to implement these actions across the Nation.

The ISCO is working on immediate, near term and long term improvements regarding Department-wide information sharing processes and systems. Their work focuses on four spheres: (1) Intra-Directorate (improving how personnel share information and collaborate with one another within each DHS directorate); (2) Intra-Departmental (improving how the Directorates share information and collaborate within the Department); (3) Inter-Departmental (enhancing information sharing across all the federal departments and agencies); and (4) Inter-Governmental (developing and implementing policy, processes and systems for more effective information sharing and collaboration with state, local, tribal, territorial, major city, private and foreign government stakeholders).

40. There is now secret-level connectivity to all 50 states via the Operations Center and its Information Network. However, there will be only unclassified connectivity established over the next year to one-third of our nation's counties. Is it necessary that not only the state-level but the county and local level need to be connected to the national level so that information related to suspicious activities can flow easily in both directions? Do you believe that this should be given a higher priority so that more counties can be connected at the unclassified level by the end of the year?

**ANSWER:** I understand that in addition to the secret-level connectivity to all 50 states, the Department also has successfully completed connecting state leadership, State Emergency Operations Centers, and select Law Enforcement agencies in all 50 states, 53 major urban areas, 5 territories, and the District of Columbia, at the unclassified level via the Homeland Security Information Network (HSIN). The Department is also working very closely with our state and local partners to deploy a nation-wide information system that compliments existing information systems and communications protocols.

It is a high priority for DHS that the county and local levels are able to communicate with their state officials in close coordination, so that all concerned parties are part of a national information flow. DHS has considered it important, however, that the federal government not be prescriptive in how we establish this system and that we consult with our state and local partners in order to "get it right" and implement the system in a way that works best for a given jurisdiction. If confirmed, I would work to ensure that the Department continues to work closely with the states to coordinate deployment to the county and local levels within their jurisdiction, recognizing that each state is different in its internal structure and current capabilities.

41. You served as Deputy Secretary of Transportation from May 2001 to August 2003. According to the 9/11 Commission report, the Federal Aviation Administration, a DOT component, received numerous warnings from its own security experts regarding potential al-Qaeda terrorist attacks in the months prior to 9/11. Reportedly, several of the warnings mentioned hijackings and others mentioned suicide attacks. Were you aware of such warnings when you were Deputy Secretary? If so, did you direct that any specific actions be taken either

to warn the airlines, warn the public, distribute the warnings broadly throughout the intelligence community, or alert higher officials?

**ANSWER:** I was not briefed about this intelligence and these aviation warnings prior to 9/11. After 9/11 this type of intelligence and analysis about terrorism threats was, of course, a routine part of my job as Deputy Secretary and I did actively participate after 9/11 in decisions to alert the airline industry, other transportation modes and the public about such matters.

42. In your May 28, 2002 remarks to the Heritage Foundation, you quoted Transportation Secretary Mineta as saying that TSA must strike the right "balance between world-class security and world-class customer service".

a. During your tenure as Deputy Secretary do you feel that TSA achieved that balance?

**ANSWER:** For the duration of my tenure overseeing TSA during its creation at the Department of Transportation, I would generally give us high marks but not a perfect score. In the immediate aftermath of 9/11, we ordered some rigorous yet commercially burdensome security measures, gradually ratcheting back security levels as we deployed additional layers of security. For example, the Department of Transportation imposed a commercial flight ban into Ronald Reagan Washington National Airport until such time as we were able to deploy a larger Federal Air Marshal force to cover commercial flights at that airport. In the early days of TSA, we imposed various measures that were later modified based on experience and further input. In fact, in early summer of 2002 we initiated what was internally called the "stupid rule review" at TSA to reassess the need to provide a proper balance on actions we had already taken. Continuous improvement and reassessment is an imperative.

On another level, even before passage of the legislation creating TSA, a small team under my direction mapped out performance metrics for TSA screening. These metrics defined with some rigor a standard against which we could assess our performance regarding the "world-class customer service" goal. By the time that TSA passed to DHS, we were measuring and very often beating key performance metrics.

I have not had access to much data about TSA performance since March 2003, but I do know that TSA continues to measure how to strike this balance in multiple ways. I still think "world-class security and world-class customer service" is the right balance to seek -- not only at TSA, but with other DHS operating components as well. Of course, the assessment of success is somewhat a matter for prudential judgment. That is why setting measurable performance goals is key to accountability.

b. You also said in those remarks that "If we cannot keep the 'Evil Ones' off our airplanes and deal with the terrorist threat, then we have no business being in business." However, for the first three years after 9/11, and perhaps even to this day, the airlines' "No-Fly" list has been a much smaller list than the watch list of terrorists originally maintained by the State Department and now maintained by the Terrorist Screening Center. Why are the lists different? Do you believe that the "No-Fly" list has adequately protected our flying public? If so, please explain

how you believe that it has done so.

**ANSWER:** With the clarity of hindsight, on September 11, 2001 the U.S. government truly had an inadequate and ineffective set of tools to keep terrorists off airplanes. The No-Fly list is one such tool -- and a vitally important tool -- for achieving that goal. But it is not the only tool we subsequently deployed to keep those whom President Bush called "the Evil Ones" off aircraft. Reinforced cockpit doors, enhanced security procedures at the checkpoints, new passenger baggage technology, tougher security within and outside the sterile zone at airports, better background screening for airport employees, a dramatically new and stronger Federal Air Marshal program, enhanced air traffic control procedures -- these and many other measures have combined to increase aviation security dramatically. Aviation security is a system of systems.

Based upon what I have recently learned, I believe that creation of DHS, and work by many colleagues and agencies across the federal government, have significantly improved the No-Fly list and its management.

I understand that in June of 2004, in accord with Homeland Security Presidential Directive-6, all terrorism related government watch lists were consolidated into the Terrorist Screening Center's Terrorism Screening Database (TSDB). These include the No-Fly and automatic selectee lists, and other law enforcement and intelligence databases. These are now aggregated by the Terrorism Screening Center in partnership with DHS and other federal law enforcement and intelligence agencies. Individuals are nominated to the No-Fly and Selectee lists according to specific criteria associated with civil aviation security. Other names within the TSDB do not necessarily meet that threshold and are consequently not part of the No-Fly or Selectee subsets.

Completion of the Secure Flight program at DHS will add a critical component of security rigor to the management of no-fly and selectee lists. Having said all of this, I'd judge that it is fair to be impatient about the pace of further improvements, and, if confirmed, I would certainly bring a passion about this topic to my job as Deputy Secretary and a sense of urgency to make further progress.

**Protection of Critical Cyber Infrastructure**

43. Currently, the DHS National Cyber Security Division, which reports to the agency's Assistant Secretary for Infrastructure Protection, serves as the national focal point for cyber security and implements the National Strategy to Secure Cyberspace.

a. There is some concern in Congress about whether the Department's structure is adequate to address the threat of cyber attack. Do you believe the current organizational structure gives the Cyber Security Division and its director sufficient stature and access to top decision makers? What are your views regarding the establishment of an Assistant Secretary for Cyber security at DHS?

**ANSWER:** Almost two years have passed since the Department's creation, so it makes sense to review the Department's structure, including that of IAIP. Secretary Chertoff has expressed his

intent to undertake such a review. I start with a conviction that the cyber security issues should attract significant DHS management focus. I am also concerned that DHS needs greater management stability in the leadership of this important office.

b. Legislation was passed last year by the House of Representatives and introduced in the Senate to establish a statutory Assistant Secretary for Cyber security by statute. What do you believe are the advantages and disadvantages of such legislation, and do you support its enactment?

**ANSWER:** I would not presently advocate legislation to mandate establishment of an Assistant Secretary for Cyber Security. I am not closed to this idea, but if confirmed, would prefer to have a relatively short period in which to complete the departmental transition review that Secretary Chertoff has promised, and to be able to assess this issue as part of the larger review.

44. It has now been two years since the Administration issued its National Strategy to Secure Cyberspace in February 2003. DHS has made some progress in establishing procedures for responding to cyberspace security incidents. Also, the National Cyber Alert System relays cyber security information to computer users. However, it is unclear how much has been done to reduce long-term cyber threats and vulnerabilities.

a. What is your opinion of the Department's record in implementing the various priorities in the National Strategy so far?

**ANSWER:** In its eighteen-month existence, the National Cyber Security Division has made significant strides in creating a computer emergency readiness team as well as pursuing key strategic initiatives and coordination objectives. As described in the *National Strategy to Secure Cyberspace*, these priorities cover many contingencies regarding emergency operations, vulnerability reduction, securing government cyberspace, training and awareness, and international cooperation. If confirmed, I look forward to reviewing NCSD's efforts to date, and its plans for going forward. This is an area where continued public-private partnerships are especially crucial to our success.

b. Do you believe that Homeland Security officials have given enough attention and resources to cyber security concerns, in comparison with the focus on preventing physical attack, or do you believe cyber security warrants greater attention and resources than it has received in the past?

**ANSWER:** I am not in a position to evaluate past focus and resource commitments in this area, but if confirmed I would be eager to make such evaluations for our going forward plans.

c. What would be your priorities, if you are confirmed, in making the nation more secure against cyber attack?

**ANSWER:** If confirmed, I would first look to leverage existing DHS initiatives to improve further the nation's "cyber defense" posture. For example, this would include:

- Using the National Cyber Response Coordination Group (NCRCG) -- an interagency mechanism formalized in the Cyber Annex to the National Response Plan for coordinating response to a cyber incident with national implications.
- Implementing provisions of the Interim National Infrastructure Protection Plan related to cyber security.
- Continuing implementation of the *National Strategy to Secure Cyberspace* with other agencies, the private sector, academia, and the international community.

In addition, as part of the Secretary's overall transition review of DHS, I would encourage further cyber security policy recommendations by the private sector, including but not limited to input from relevant DHS advisory groups. This would be used also to inform the Department's search for a new permanent head for this cluster of important activity at DHS.

**Training and Education**

45. As you know, homeland security poses a complex challenge for the Nation that can be successfully addressed only by the combined effort of federal, state, and local governments and the private sector. As we have seen since the September 11th attacks, the United States fields a dedicated workforce to provide homeland security. But, there is growing concern that our system lacks a coordinated homeland security education system that links a strategy-based education with hands-on training and real time simulation. Moreover, DHS does not have the capacity to identify where: 1) federal training programs are redundant; 2) the department can direct trainees to state programs better suited to their needs; and 3) federal, state, and local facilities can coordinate in an effort to provide the most efficient services.

a. If confirmed, will you review current training and education opportunities throughout DHS to determine if there is a need for greater coordination and consolidation?

**ANSWER:** If confirmed, I look forward to reviewing the current training and education opportunities throughout DHS and our related work with federal, state, local and tribal partners.

b. What steps would you take to identify the many different training and education resources offered by federal and state facilities, to improve, coordinate, and consolidate the many training institutions, in an effort to eliminate redundancy and allow institutions to concentrate on the areas for which they are best suited?

**ANSWER:** The nature of the response community, its size and complexity require the Department to take innovative approaches to training. Again, I would start with assets that I am told DHS has developed. I understand that the Office of State and Local Government Coordination and Preparedness has recently completed a review of DHS training facilities and gathered data from the states on how they are spending homeland security funds for training,. This assessment must of course also include many other parts of DHS and other federal agencies. This is an area where I have little history in this area about what DHS has accomplished and planned over the last two years for that reason, should I be confirmed, I will further review this issue.

c. There appear to be wide discrepancies among the legacy agencies regarding training. One of the witnesses at the Committee's January 26, 2005 hearing stated that the Coast Guard, for example, has built into its personnel system an allowance for career personnel to spend as much as 40% of their career doing training. Nothing similar exists for the 41,000 Customs and Border Protection employees, and yet they are performing new specialized tasks related to detection equipment. Would you have some recommendations on changes to training procedures?

**ANSWER:** I do not start with specific recommendations in this area, but have some prior history with the training regimes maintained by several DHS component organizations. I would, if confirmed, seek to harmonize approaches where possible and adopt best practices on a Department-wide basis.

**Funding Formulas and Grants**

46. *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. For example, terrorists Mohamed Atta and Abdul Aziz al Omari came to Portland, Maine on the morning of September 10, 2001, and remained in Maine until beginning their mission of terror on September 11 from the Portland jetport. Yet the DHS FY2006 budget request proposes slashing the minimum funding to states by almost 80 percent.

Do you agree that an effective homeland security strategy must include significant funding dedicated to rural states and smaller communities for first responders and infrastructure protection?

**ANSWER:** If confirmed, I will work with DHS to maintain flexibility to allocate grants based on risk and needs, appreciating that these factors do not only apply to densely-populated regions. While states and communities differ in risk exposure and their resource base, each has a role to play in securing potential targets and preventing attacks.

47. Following an attack on an urban area, fallout – nuclear, chemical or biological– may drift into small communities and rural areas. Do you agree that it is prudent to ensure that those communities are also protected?

**ANSWER:** The threats and hazards that present the gravest threat to our national interests will have wide-ranging impact. No community is immune from these effects, whether direct or indirect. We live in a world of finite resources and so must make risk-based decisions to maximize our homeland security investments. Communities large and small clearly understand

that to prevent, protect, respond or recover from such threats and hazards will require the combined efforts of federal, state, local and tribal governments, as well as the private sector. There are real needs at all levels.

In order to ensure that every jurisdiction is adequately prepared to prevent or respond to an event we must also encourage regional collaboration. I support, for example, the use of mutual aid and assistance compacts as a way to ensure communities and states have risk sharing agreements in place, that they are routinely exercised, and that they cover a planning radius that addresses the profound and wide-ranging effects of catastrophic threats and hazards.

48. The FY2005 Appropriations bills waived the requirements of the Cash Management Act for one fiscal year. If confirmed, what steps would you take to ensure that states and localities are changing their laws so that the Act does not inhibit the effectiveness of homeland security grants they receive? Do you support an extension of the Act's waiver?

**ANSWER:** If confirmed, I intend to work closely with the Homeland Security Advisory Council (HSAC), and in particular, the members of the HSAC's Task Force on State and Local Homeland Security Funding. I am told that this group of state, local, tribal and federal stakeholders provided some excellent recommendations related to changes in laws at the state and local level to assist in more expeditious spending of federal grant funds. It is my understanding that some of the members of this Task Force have already sponsored similar legislation in their states, and we would look to use some of those states as a model.

49. While the State Homeland Security Grants Program has received significant audit and scrutiny from DHS, Congress and other parties, relatively little oversight has been directed to the UASI program. What efforts do you think DHS should make to ensure adequate oversight over expenditures made under the UASI program to minimize wasteful spending?

**ANSWER:** I understand that DHS is currently undertaking several efforts to ensure adequate oversight of UASI funding: monitoring; annual grant reporting; the Homeland Security Assistance Program (HSAP); and instituting programmatic requirements for coordination. These efforts will be continued in the future to ensure that needs for programmatic oversight from DHS are met. I would also propose to work with the Inspector General to request that he support the Department with a rigorous plan to provide appropriate audit review of DHS grant making procedures.

50. In his written answers to pre-hearing questions from this Committee, Secretary Chertoff, asked whether he agreed 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," responded, "Yes, all jurisdictions should be given consideration when allocating homeland security funding and funding should be allocated based on risk." In contrast to the view expressed by Secretary Chertoff, DHS, according to agency staff, imposed a population threshold in FY2005 for cities to be considered for Urban Area Security Initiative (UASI) grants, regardless of the level of threat faced by the city. If confirmed as Deputy Secretary, will you

work to remove this population threshold for consideration for future grants?

**ANSWER:** I agree with the Secretary and, if confirmed, would work with him to implement appropriate procedures for DHS grant programs.

As I understand it, the purpose of the UASI program has been to provide 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. The UASI program is intended both to prioritize funding and ensure that funding is not distributed so widely that it dilutes the ability to effect significant improvements in the homeland security posture in the selected high threat, high population urban areas. Other DHS grant programs certainly bring different, broader objectives and eligibility criteria to bear. I understand that the State Homeland Security Program (SHSP), for example, provides financial assistance directly to each of the states and territories in accordance with the FY 2005 Department of Homeland Security Appropriations Act. The allocations are determined by a formula as directed by the Congress which requires each state and territory to pass through no less than 80 percent of its total funding to local units of government.

If confirmed, I look forward to reviewing DHS's grant making initiatives more thoroughly.

51. DHS has repeatedly indicated its support for regional collaboration among first responders in an area faced with a terrorist attack, natural disaster or other emergency. Nonetheless, in selecting UASI recipients and allocating FY2005 UASI grants, DHS chose to measure a locality's population solely within city limits and to count critical infrastructure only within those same city limits, rather than looking at metropolitan areas or regions – regardless of the levels of interactions among citizens within the greater metropolitan area or the effect an incident at infrastructure sites outside the city (such as a release from a chemical plant or nuclear facility) might have on the entire region. Not only does such an approach systematically disadvantage areas of the country, such as New England, that are made up of numerous contiguous individual jurisdictions, it is also at odds with efforts at regional planning and cooperation. Will you commit to ensuring that UASI candidates are evaluated based on regional risk factors if you are confirmed as Deputy Secretary?

**ANSWER:** I would look forward to working with state and local partners and the Congress on ways to encourage consideration of appropriate regional risk factors in DHS grant making.

52. In his written answers to pre-hearing questions, Secretary Chertoff set forth five variables used in the formula to allocate UASI funds. In meetings with Committee staff, DHS staff have provided additional information on the measures used to arrive at the value of those five variables. Do you believe that the formula DHS used in FY2005 to allocate UASI grants accurately assesses the comparative threat faced by U.S. cities? What evidence supports the validity of this formula and its accuracy in assessing the relative threat faced by a particular city? What testing or other assessment of the measures did DHS conduct before using them as criteria for grant allocations?

ANSWER: I understand that in Fiscal Year 2005, the Department devised an enhanced formula for determining participation in the Urban Areas Security Initiative (UASI). As noted in the question, this formula provided five variables, which have been previously explained in testimony. This formula was the result of discussions with other DHS entities, as well as external agencies, and was determined to be the best measure of risk-based activity available at the time. The difficulty of determining which cities/urban areas are most at risk is ambiguous to some degree because of the nature of most intelligence information and the scarcity of data specifically identifying targeted cities and infrastructure. Since the inception of the UASI program, it has evolved and changed as the Department's knowledge base and capabilities improve, including refinements that reflected input from Congress and state and local partners. I look forward to reviewing this issue further, should I be confirmed.

53. 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 Underfunded, 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 significantly less funding for first responders and preventers in FY2005 than FY2004. The President has proposed cutting funding for first responders still further in FY2006, decreasing total spending on first responder grants (including state homeland security grants, law enforcement terrorism prevention, citizen corps, metropolitan medical response system, emergency management performance grants and UASI grants) by $350 million.

a. Do you believe that the President's FY2006 budget includes sufficient funding for first responder grants?

ANSWER: Yes, I support the President's budget. I understand that since 9/11 the Office of Domestic Preparedness and, subsequently, the Office of State and Local Government Coordination and Preparedness has distributed or requested $17 billion to state and local entities, including the President's FY 2006 Budget request. Many states have adopted a regional approach in their planning and allocation of these homeland security resources, with the knowledge that every community cannot build and sustain a comprehensive prevention, response, and recovery capability. DHS recognizes that communities of all sizes depend upon one another in times of need, and, where appropriate, advocates this regional approach in the allocation of resources.

In the FY06 budget request, DHS is proposing to redesign the homeland security funding process to award state homeland security grant funds based on revised criteria for risk and needs. This allocation is intended to reflect a results-based planning process that supports achievement of minimum baseline capability levels nationally. This discretionary allocation will allow the flexibility to direct grant funds to areas with the greatest needs. If confirmed, I look forward to reviewing this issue further.

b. If confirmed as Deputy Secretary, what will you do to close the gaps between the funding necessary to meet the identified needs of first responders and the amount of funding available to fulfill those needs?

**ANSWER:** DHS has begun focusing the application of homeland security funding more finely -- targeting it through proscriptive guidance and requirements to address critical national priorities and capability gaps. For example, in its FY 2005 Homeland Security Grant Program, DHS requires states and local jurisdictions to begin active, multi-jurisdictional operational planning and to achieve tactical interoperability in key urban areas in all 56 states and territories. As national priorities and capabilities are further defined through the HSPD-8 process, homeland security grant guidance will continue as necessary to become more granular, ensuring that funding is expended to close critical capability gaps nationally. If confirmed as Deputy Secretary, I will continue the DHS commitment to ensuring that critical funding necessary to support our nation's first responders continues to be made available in a timely and effective manner.

54. The President's FY2006 budget provides that each state only be guaranteed to receive 0.25% of the total funds for state homeland security grants. Please explain whether you believe that a 0.25 percent allocation is sufficient to ensure that all states achieve a baseline level of preparedness. What data or analyses do you believe DHS should rely on in determining a sufficient minimum funding level for states?

**ANSWER:** As noted in the question, the President's FY06 budget calls for a revised minimum allocation formula of 0.25% for each state and territory, increasing the attention to risk, need and other appropriate factors in determining the balance of the funding awarded. I support the President's request. Importantly, this would give DHS needed operational flexibility -- and with that, the capability to be more nimble in matching DHS funding to changing circumstances. This would mean, for example, that DHS grant awards can be based on the best threat evaluations available to DHS at the time of actual award.

I am told that to determine the appropriate funding level, DHS will look to minimum baseline capability levels, which will be established via HSPD-8, and corresponding reports from states detailing how they will achieve at least the minimum levels. It is my understanding that DHS will review this information and other factors such as threat, presence of critical infrastructure, vulnerability, population, borders, and ports of entry in making final award determinations. If confirmed, I look forward to reviewing this issue further.

55. The President's FY2006 budget provides that state homeland security grants are to be awarded on a discretionary basis based on "risks, threats, vulnerabilities and unmet essential capabilities"; similarly, DHS's Budget in Brief, indicates that awards of state homeland security grants are to be based on "evaluations of risk, and an application-based review of need, and consistency with national priorities." DHS staff have explained to Committee staff that reviews of need (or "unmet essential capabilities") will be based on the National Preparedness Standard that the Department is expected to issue at the end of March. How do you think the evaluation of needs/essential capabilities should be balanced against the evaluation of threat in the allocation of these grants? What weight do you believe should be given to each of these factors?

**ANSWER:** I understand that the Department is currently reviewing potential formulas to best identify a baseline of funding for all states and territories, with an accompanying supplement for demonstrated needs and capabilities. This supplement is proposed to be based on a quasi-competitive formula that would require states and territories to outline their efforts against established national priorities, as well as demonstrate the need for additional funding above the baseline amount. If confirmed, I look forward to reviewing this issue further.

**Emergency Management and Preparedness**

56. According to the National Emergency Managers Association, there is a $265 million shortfall in the Emergency Management Performance Grant Program (EMPG). The Administration's budget proposes to decrease the funding by $10 million for FY2006. These Grants are a critical component of our nation's all-hazards emergency management system as the only source of direct federal funding to state and local governments for emergency management capacity building. EMPG is primarily used to assist states in maintaining personnel for state and emergency management programs, and consequently the nation's emergency response system. In short, EMPG is the backbone funding for the nation's multi-discipline, multi-jurisdictional emergency coordination and disaster education programs and therefore the backbone for the nation's preparedness and response. Do you support additional EMPG funding? What will you do to address the critical programmatic need for funding this program? What do you believe is the proper amount to budget for EMPG?

**ANSWER:** I understand that in FY 2005, the EMPG program is included in the Homeland Security Grant Program (HSGP), which consolidated six funding streams into a single application kit and set of program guidelines. Inclusion of EMPG in the HSGP is intended to raise the profile of the EMPG program and underscore its critical importance to all-hazards preparedness. This integrated approach is also intended to ensure that state emergency management directors, homeland security advisers, and other key players coordinate closely on implementation of state homeland security strategies. Effective coordination among these stakeholders enhances a state's ability to leverage all sources of homeland security assistance rather than relying on a single source.

I understand that DHS is committed to continuing the EMPG program, as demonstrated by the $170 million budget request for FY2006. Furthermore, DHS is coordinating closely with the National Emergency Management Association (NEMA) to ensure that the integrity of the EMPG

program is maintained and that state emergency management directors continue their critical role in implementing this program. NEMA is also assisting DHS in the development of a performance measurement tool to help emergency management agencies measure the effectiveness of their EMPG initiatives. If confirmed, I look forward to reviewing this issue further.

**Emergency Alert System**

57. The Emergency Alert System (EAS) is the primary system to alert the American public at the state and local levels in times of emergency. DHS has focused its programs and aid to provide first responders with the resources they need to protect the public. However, DHS has provided only minimal aid and training so that first responders and local officials have access to the EAS to alert the public in times of emergency.

a. If confirmed what will you do to ensure that an ability to alert the public is a DHS priority?

**ANSWER:** I understand that DHS has several ongoing initiatives aimed at this issue, including an ongoing effort by EP&R and IAIP to test, develop, and field an Integrated Public Alert and Warning System (IPAWS) through funding that was made available in Fiscal Years 2004 and 2005 to both directorates. This IPAWS initiative is currently leveraging public-private partnerships to design and build a technologically advance, robust, survivable and reliable alert and warning system. I look forward to reviewing this issue further, should I be confirmed.

b. What role can we expect DHS to play in EAS - both on the federal level, including with other agencies such as the FCC, and on the state level?

**ANSWER:** DHS, through FEMA, is the Executive Agent for the national level EAS and together with IAIP will continue to play a leadership role at the national and state level. Because the FCC has a regulatory responsibility for broadcast stations that are required to participate in the EAS, we will continue our close working relationship to ensure a government wide coordinated approach to improving alert and warning to the general public. In addition, DHS and NOAA signed a cooperative agreement to enable the distribution of all hazards alert and warning over the NOAA All Hazards Radio Network. NOAA and the FCC are full participants in the DHS led IPAWS initiative. I understand that this year DHS intends to work more closely with state and local EAS participants through outreach and training. On that note, the Department is working with the National Association of State CIOs (NASCIO) to ensure better coordination at the state and local level.

c. Do you expect that, eventually, the EAS will be a "worldwide" system?

**ANSWER:** No. The national level EAS is designed and intended to ensure the President can address the nation during a national emergency. NOAA and state and local authorities also use EAS on a daily basis to provide a variety of alerts and warning. Because our primary focus is to

provide timely alert and warning messages to the nation, there are no plans to expand the system to a worldwide warning capability.

58. If a national EAS warning message to warn the public of a national emergency had to be sent out by the federal government today it would be sent via a cold-war era national "Daisy-Chain-Relay" utilizing AM stations. This system has never been activated nationally and we have no proof that it will work. A number of states since 9/11 have abandoned their in-state EAS 'daisy-chain' delivery methodology, replacing it with a satellite based direct EAS terminal at each broadcast and cable facility. Such direct enhanced EAS systems provide instant two-way communications and also enable cross border communications among states.

a. Do you agree that the "Daisy-Chain-Relay" is antiquated technology?

**ANSWER:** The current national EAS distribution system does utilize a daisy-chain-relay approach and has worked since its inception. Moreover, the national level EAS connectivity to the Primary Entry Point Stations (PEPs) is tested weekly. DHS recognizes that this system has its limitations and, using Fiscal Year 2004 and 2005 funds has undertaken to transition the current EAS distribution system to a satellite based dissemination system. Under the current plan, DHS will expand PEP coverage to all fifty states and U.S. territories and will eventually provide receiver capabilities to all state and territory emergency operations centers.

b. If confirmed will you make the replacement of the existing national warning system a priority?

**ANSWER:** Yes. DHS will continue with its IPAWS initiative by leveraging public-private partnerships and working closely with our federal, state and local stakeholders to replace and improve our ability to provide nationwide alert and warning messages.

c. Will you direct your staff to review existing solutions that have been deployed by twelve states and prepare an action plant to adopt enhanced EAS systems for our National Warning System?

**ANSWER:** DHS will continue to work with state and local stakeholders and organizations, such as NASCIO, APTS, the FCC and NOAA to enhance alert and warning capabilities using state of the art technologies and leveraging existing infrastructures. In so doing, DHS intends to ensure that IPAWS will not replace, but will enhance, the capabilities of existing state EAS warning systems.

**Intelligence**

59. 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 are the main challenges you will face if confirmed as Deputy Secretary in helping the Secretary of Homeland Security 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**: Secretary Chertoff is committed to lending any needed DHS support for making a smooth transition in implementing the DNI legislation. If confirmed, I would gladly assist him in that commitment. DHS is planning to exchange staff with the DNI as appropriate to facilitate easy interaction. I see the transition less as a challenge, and more as an opportunity for DHS. DHS will look to strengthen its ties with the intelligence community by working closely with the new DNI and by continuing our ongoing good relations with other Intelligence Community components.

**Critical Infrastructure**

60. Protecting our nation's critical infrastructure is one the of the Department's most important responsibilities. Indeed, in February 2003, in its National Strategy for the Physical Protection of Critical Infrastructures and Key Assets, the White House framed the issue as follows:

The basic nature of our free society greatly enables terrorist operations and tactics, while, at the same time, hinders our ability to predict, prevent, or mitigate the effects of terrorist acts. Given these realities, it is imperative to develop a comprehensive national approach to physical protection.

Ten months later, the White House issued Homeland Security Presidential Directive 7, which required the Department of Homeland Security to "produce a comprehensive, integrated National Plan for Critical Infrastructure and Key Resources Protection to outline national goals, objectives, milestones, and key initiatives" by December 17, 2004, a date that has now passed.

How would you as Deputy Secretary elevate the importance of the department's efforts to complete the critical infrastructure report, to serve as a roadmap for prioritizing homeland security efforts?

**ANSWER:** It is frankly a disappointment that DHS has failed meet this very important deadline. I understand that its recovery plan looks like this:

- In accordance with Homeland Security Presidential Directive 7, DHS has released the Interim National Infrastructure Protection Plan (NIPP).
- Over the next 270 days, DHS will work further to engage the broad base of federal, state, local, tribal, and private sector partners across the 17 critical infrastructure and key resource sectors. I would, if confirmed, expect to play a personal role in reviewing the adequacy of plans with our private and public sector partners. The cooperation and support of the private sector in this unprecedented effort is essential to its success because the private sector owns approximately 85 percent of the U.S. critical infrastructure.

- DHS will issue the final NIPP – a national plan that establishes the framework for critical infrastructure protection – at the end of this 270-day period.

If confirmed, I would look forward to reviewing very carefully the efforts to date and DHS's plan for the way forward.

61. DHS has just recently shared with Committee staff the Interim National Infrastructure Protection Plan (NIPP). According to the document, the plan "provides the starting point for developing the national, cross-sector plan for critical infrastructure protection." It points out that national and sector specific plans that will be implemented vary widely in development and progress and notes that some have been successfully operating for years, while others were more recently established. The interim NIPP builds on the existing base, "while acknowledging the need to expand dialogue and partnerships with the private sector and other stakeholders to create an integrated, national CIP program." Sector specific plans are to be developed as annexes to the NIPP, with the next iteration due in 270 days. Do you believe that this time frame is appropriate? What would you recommend DHS do, if anything, to accelerate completion of this critical function?

**ANSWER:** If confirmed, I would quickly assess the prospect of accelerating the completion date for this project. In addition, I would look to see whether specific components of the overall plan might be finalized and distributed on some basis as appropriate prior to completion of the whole.

62. The Administration has proposed combining existing DHS grant programs for rail security, port security, bus security, and infrastructure protection into a consolidated program called Targeted Infrastructure Protection or TIP. The President's budget would seek $600 million for these TIP grants in FY2006.

For port security alone, the Coast Guard estimates it will cost $7.3 billion over 10 years to comply with the security provisions of the Maritime Transportation Security Act of 2002. In the area of rail security, the Senate last session passed legislation (S. 2273) authorizing more than $1.2 billion in federal spending over four years, and a separate Committee-approved bill (S. 2453) would have authorized $5.2 billion for transit security.

a. Do you believe $600 million is an adequate amount of money to address this broad range of security needs?

**ANSWER:** If resources were unlimited, additional projects could surely be funded. But we operate in a time of war with many competing budget priorities. I do believe that, all things considered, the President's FY2006 budget sets reasonable targets for this area of investment.

I understand that the President's FY 2006 budget actually requests an increase for TIP of approximately $235 million above what was appropriated in FY 2005 for infrastructure protection, including port security, mass transit security, and buffer zone protection efforts, among others. TIP investments in FY06 could also be augmented by Urban Area Security

Initiative (UASI) and State Homeland Security Grant Program (SHSGP) funds.

b. Do you believe all of these security needs should be funded out of a single grant program?

**ANSWER:** A major element of the FY 2005 DHS program was a shift towards a more risk-based allocation of funding across these sectors, as well as integration of these programs with regional homeland security planning efforts. The FY 2006 Targeted Infrastructure Program (TIP) will build on these enhancements by shifting to a discretionary approach for all program elements. If confirmed, I would look forward to exploring the construct of DHS grant programs more thoroughly.

63. According to most estimates, 85% of our nation's critical infrastructure is in private hands.

a. If confirmed, what role do you expect to play in helping the federal government to keep these facilities secure?

**ANSWER:** Pursuant to Homeland Security Presidential Directive 7, DHS has created the framework of the National Infrastructure Protection Plan (NIPP) and has begun extensive outreach with owners and operators of critical infrastructure in the private sector, as well as with other appropriate federal departments and agencies. DHS' goal is to assess vulnerabilities and identify best practices for keeping these resources secure. Our nation's critical infrastructure is regularly changing, so the plan must incorporate a process for continual improvement.

As stated above in several related questions, if confirmed, I would intend to be actively engaged in working with private sector leaders in multiple industries to reduce vulnerabilities related to privately owned infrastructure.

b. If confirmed, what challenges do you expect to face in making sure the private sector pays sufficient attention to protecting its critical infrastructure?

**ANSWER:** I expect typically to find private sector leaders who are firmly committed to reducing risk for the infrastructure and systems they own or operate. That was most often my experience with industry following 9/11. So I expect much goodwill and commonality of purpose.

But I also expect occasionally to struggle with how best to reduce risk and, importantly, which technical solutions are most appropriate. We will face challenges in deciding how to minimize negative impacts on the flow of commerce, the movement of people and the provision of services. There will be issues of how best to manage the data-rich environment in which security systems operate so as to ensure the personal privacy and individual rights that America cherishes. There will be differences of views and potential legal differences, especially in managing risk with global transportation networks. And, inevitably, many of these vital security

issues will entail making prudential judgments about how much security will cost and who should pay.

c. A recommendation that surfaced during the Homeland Security and Governmental Affairs Committee hearing with a panel of experts on January 26, 2005 was that the Department of Homeland Security should work more closely with our nation's private sector by putting in place incentives and mechanisms for the private sector to work as a partner with DHS to reduce the vulnerabilities of our critical infrastructure. Do you agree that more work needs to be done with the private sector on critical infrastructure protection? How would you secure more involvement and cooperation by the private sector?

**ANSWER:** Yes -- I agree that private sector partnerships are indispensable and that DHS should have a rich and perhaps more varied set of tools to encourage such partnerships. I also think the Department will need to recruit more individuals who have had deep experience in building and running critical private sector infrastructure assets, in order for the Department to understand better which incentives and improvements will work best. At the Department of Transportation following 9/11, for example, we made a concerted effort to attract a small cadre of loaned executives for a short period -- which included strict attention to preventing conflicts of interest -- who helped enormously in resolving issues associated with building TSA.

d. Since the private sector owns 85% of the nation's critical infrastructure, it clearly must play a major role in ensuring that infrastructure is protected. The Administration has thus far contended that there are ample market-based incentives for private businesses to invest in securing their assets. Others dispute this notion. For example, at the HSGAC hearing on January 26, 2005 homeland security expert Steve Flynn testified that after three years (since 9/11) there has been very little investment by the private sector, particularly in industries like the chemical industry, food supply, and others. Further, he stated his belief that investing in security has historically been weak in the private sector – giving us a very low baseline from which to start -- because our economy is based on open, low-cost, efficient and reliable drivers. Security was essentially pushed to the sideline because it did not seem to be a threat that warranted making those investments. You have considerable experience in the private sector. What is your own assessment of this issue? Are you comfortable that the level of private investment, particularly in areas that are critical to our overall economy, is sufficient?

**ANSWER:** I think the country can and should do more and better. If confirmed, I would look forward to an opportunity to work these issues.

64. The Intelligence Reform and Terrorism Protection Act of 2004 includes a Sense of the Congress urging DHS to promote the adoption of voluntary national preparedness standards for the private sector, such as the consensus-based standard developed by the American National Standards Institute and based on National Fire Protection Association (NFPA) 1600.

Do you agree that such a standard could play a useful role in helping to enhance private sector preparedness? What role should DHS play in promoting such a standard?

**ANSWER:** I agree that voluntary industry standards can be powerful and efficient engines to improve private sector preparedness. I am familiar with several real success stories in the transportation world and with high-hazard chemical manufacturers. Voluntary standards may not always yield a workable solution, so the available options regarding critical infrastructure protection must not rule out consideration of appropriate federal regulatory measures as well. If confirmed, I look forward to reviewing these issues further.

65. In addition to this country's physical infrastructure being under threat of attack, its cyber infrastructure is as well. There is some concern in Congress that the department's structure is inadequate to address this threat of attacks on this country's cyber infrastructure.

a. What steps do you intend to take as Deputy Secretary to improve the department's ability to address Cyber security?

**ANSWER:** If confirmed, I would first look to leverage existing DHS initiatives to improve further the nation's "cyber defense" posture. For example, this would include:

- Using the National Cyber Response Coordination Group (NCRCG) -- an interagency mechanism formalized in the Cyber Annex to the National Response Plan for coordinating response to a cyber incident with national implications.
- Implementing provisions of the Interim National Infrastructure Protection Plan related to cyber security.
- Continuing implementation of the *National Strategy to Secure Cyberspace* with other agencies, the private sector, academia, and the international community.

In addition, as part of the Secretary's overall transition review of DHS, I would encourage further cyber security policy recommendations by the private sector, including but not limited to input from relevant DHS advisory groups. This would be used also to inform the Department's search for a new permanent head for this cluster of important activity at DHS.

b. What challenges do you expect to face in helping the Department of Homeland Security to better address threats from cyber attacks?

**ANSWER:** One of the challenges in thwarting and recovering from cyber attacks is the rapid pace by which organizations and individuals are adopting emerging technologies without fully understanding and guarding against vulnerabilities that may exist with those technologies. The number of vulnerabilities being disclosed is increasing measurably, and the pace of innovation among hackers and attackers makes for a rapid cycle-time in closing emerging risk.

Secondly, when a cyber attack has been detected, it is often difficult to identify the true source of that attack or attribute it to a specific person or organization. This is due in part to many open proxies on the Internet that obscure digital trails. In order to increase the likelihood of identifying a cyber attacker, DHS will have to collaborate with the international technology community, law enforcement and intelligence organizations to strategize on how to best achieve attribution.

66. DHS is the lead agency responsible for the overall effort to enhance the protection of critical infrastructure and key resources (CI/KR). According to the interim National Infrastructure Protection Plan (NIPP), DHS is responsible for establishing uniform policies and approaches for protection activities, and tracking performance and progress in program implementation. DHS also carries out cross-sector vulnerability assessments, asset prioritization, and where appropriate, implements protective measures. However, Sector Specific Agencies (SSAs) provide the subject matter and industry specific expertise and are responsible for developing, implementing and maintaining a sector specific plan for conducting protection activities within the sector. To adequately perform its oversight role, do you believe DHS must also have expertise in the various sectors that are not its direct responsibility? What is your understanding of the Department's current resource base in this regard? What steps is the Department taking to ensure that Sector Specific Agencies do in fact possess the industry expertise that is needed?

**ANSWER:** Although DHS is ultimately accountable for the success of the Nation's Critical Infrastructure Protection program, implementation requires an integrated process across all of the key infrastructure protection stakeholders. To that end, DHS and the so-called sector-specific agencies have been working collaboratively to ensure that specific industry expertise is adequately available in each of the 17 sectors and key resources identified by HSPD-7.

I understand that DHS relies on sector-specific expertise resident within the Information Analysis and Infrastructure Protection directorate to coordinate work in each sector. I would like to validate that subject matter experts employed by DHS operating components are also appropriately engaged. It seems to me that DHS does need at least some meaningful subject matter expertise in each of the 17 sectors, but obviously far less in those sectors for which the Department does not have the sector lead.

67. The interim NIPP points out that some strategies tailored to protect specific infrastructures have existed for several years, even though they do not constitute an overall national CIP program. Even so, the success, or lack there of, of existing strategies should clearly inform the process as DHS and various sectors move forward. From that perspective, what is your understanding of the primary lessons learned from the development and implementation of existing infrastructure protection strategies? Which sectors have been most successful, and what have they done which could serve as a model for others?

**ANSWER:** I am not yet familiar enough with the process that produced the NIPP to be able to offer meaningful observations about primary lessons learned in this process. I have, however, been told by senior DHS officials that the transportation work is among the most complete sets of work to date.

68. 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 will be exempt, if requested, from disclosure under the Freedom of Information Act and will be subject to other secrecy protections. What is your opinion of the performance, so far, of the

CIIA?

**ANSWER:** I understand that on February 20, 2004, DHS established the Protected Critical Infrastructure Program Office to implement the Act, and that that Office is operating, receiving CII submissions from the private sector, and appropriately sharing them within DHS. One of the important aspects of the CII Act is to encourage the private sector voluntarily to share its critical infrastructure information with the government. The CII Act is said to be facilitating greater information sharing between the public and private sector and enhancing the Department's ability to provide government entities with the necessary information to reduce the nation's vulnerability to terrorism. If confirmed I look forward to further reviewing this program.

**Immigration and Border Security**

69. The President has indicated that immigration reform will be a priority on his agenda for his second term. Secretary Chertoff has indicated that he will continue to support the direction of the Administration in welcoming lawful travelers, while continuing to provide safeguards against those who seek to harm the United States. In particular, he espoused support for the principles envisioned by the President's proposed Temporary Worker Program.

a. How do you envision the Department of Homeland Security's role in immigration reform formulation and implementation?

**ANSWER:** With Secretary Chertoff, I strongly support the President's goals for immigration reform. There are no simple solutions to many of the concerns in this area, and reform will require making the tough choices. If confirmed, I intend to look at these issues very carefully, including the temporary worker program proposal. I look forward to working with the Secretary, the President and Congress to design effective solutions to meet these goals.

b. Since immigration reform involves both immigration services and enforcement, and since there is no single policy office where enforcement and services meet, where do you believe immigration policy issues should be dealt with within DHS?

**ANSWER:** I agree that new policy initiatives such as immigration reform require close collaboration between the immigration services and enforcement components of the Department. Secretary Chertoff is evaluating options to establish a policy office reporting to the Office of the Secretary that will handle key DHS policy matters, including immigration policy issues Department. I am told that with regard to immigration this office will be designed to insure that the appropriate balance exists between services and enforcement interests in the development and implementation of immigration policy. I support the establishment of such an office.

c. What immigration reform proposals would you support if confirmed?

**ANSWER:** I understand that there are numerous proposals for immigration reform. If confirmed, I would look forward to learning more about these issues about concerns regarding immigration reform, and assessing which of these reforms are best suited for Departmental

advocacy.

70. 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. Asked whether he would support applying a blanket prohibition of this kind based strictly on citizenship, Secretary Chertoff responded that we must be vigilant in protecting our homeland, while recognizing that not all who are subject to the rule of these governments are supporters of their practices, and that welcoming these individuals is one of the best ways to export our values and ideas about freedom abroad.

What are your views on this issue? How do you believe DHS should pursue the goals of protecting the homeland while maintaining our reputation as a freedom-loving nation that welcomes immigrants?

**ANSWER:** I believe that 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, I think it is also critical for us to 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. Thus, while I firmly believe that we must be vigilant in the protection of our homeland, I share Secretary Chertoff's view that we must recognize that not all of the millions subject to the rule of these governments are supporters of their practices. And, further, that the welcoming of individuals who qualify for visas to this country is one of the best ways to export our values and ideas about freedom abroad.

71. 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. One model currently being tested is the Basic Pilot Program, an employment confirmation system administered by U.S. Citizenship and Immigration Services and the Social Security Administration. At present, this employers' participation is voluntary.

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:** It is my understanding that the current employment verification system has been problematic because it is too easy to circumvent with fraudulent documents, which have been particular problems in areas and industries with large numbers of undocumented aliens. It is also my understanding that the Basic Pilot program, mandated through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), has shown considerable promise as a better system.

I understand that USCIS has evaluated the Basic Pilot extensively, made changes in response to evaluation recommendations, and is continuing to evaluate to ensure that those changes have

been made. If confirmed, I intend to develop a full understanding of the issues with the employment verification process as well as the potential solutions, including the Basic Pilot, for resolving these issues.

b. Do you believe that making employer participation in the Basic Pilot Program compulsory would be beneficial?

**ANSWER:** It is my understanding that there are concerns with the Basic Pilot program that may need to be overcome before making the Basic Pilot mandatory for all employees. Again, if confirmed, I certainly intend to learn more about these issues, and the ramifications of the potential solutions to these issues.

72. More than 6 million containers enter the United States through our ports every year, and only a small fraction of them are physically or with non-intrusive inspection equipment 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.

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 unloading. 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, to address the concerns associated with transshipment and container security?

Another concern is CBP's 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?

What additional steps, if any, should be taken to validate low risk containers and assess the effectiveness of ATS?

**ANSWER:** Global supply chain security is a significant challenge, as you have articulated in these questions. Targeting provides just one tool in a layered approach that must continue to be continuously refined. My knowledge of both CBP's current and planned capabilities – particularly, the specific data now being utilized by the National Targeting Center -- is not yet as deep as I would like.

CBP's leadership has made significant advances in cargo security since 9/11, an effort comprised of multiple programmatic components. I am also convinced, however, that we can continue to improve the scope and granularity of data that feeds the CBP risk assessment engines. Tracking multiple legs in a container movement would be one example of such greater data granularity. CBP's screening and inspection systems are but two components – vital components, to be sure – in managing cargo security. I am generally persuaded that some element of random inspection would provide valuable security and a further method to evaluate the performance of CBP's screening criteria, but I am also sensitive that such inspections not swamp CBP inspection assets and unduly constrict commerce. This is an area that I have a high personal interest in aggressively exploring and supporting, should the Senate confirm me as Deputy Secretary.

73. The Administration's budget for FY2006 includes $37 million designated for hiring 210 additional Border Patrol officers (and enough to pay for 105 FTEs). This number is well below the 2,000 additional agents authorized for FY2006 budget by Congress in the Intelligence Reform and Terrorist Prevention Act. Do you believe the additional Border Patrol officers proposed in the budget are sufficient to adequately protect our borders? Please explain your answer.

**ANSWER:** I have not made an independent study of Border Patrol staffing levels and thus do not have an informed opinion about the issue raised. I understand that the President's FY 06 budget request funds for not only an additional 210 agents, but also provides for the American Shield Initiative and other necessary resources. If confirmed, I will work with the Secretary and the Commissioner continually to assess and deploy the right balance of technology and agents to protect our borders.

74. Secretary Chertoff has indicated that interior enforcement is an essential component to having an effective border strategy, and that the Department must aggressively pursue this if we are to stem the flow of illegal immigration.

a. What are your views on the nexus between border enforcement and interior enforcement?

**ANSWER:** I agree with the Secretary that interior enforcement is clearly essential to an effective border strategy, and it must be aggressively pursued if the Department is to prevent individuals from arriving in the United States illegally or remaining in the U.S. beyond the time that they are authorized. Border and immigration management is a core mission of the Department, and I expect CBP and ICE to coordinate closely in carrying out their responsibilities.

b. How do you believe that the two should be balanced in terms of priority and resources?

**ANSWER:** As noted above, the efforts of both border and interior enforcement must be closely aligned. It makes sense that strengths and weaknesses in each area affect the effectiveness of the other – increased resources in Border Patrol agents generally require a corresponding increase in ICE investigators and detention and removal bed space, as each step in the system must support the last.

As an example of how the two work together, I understand the Department implemented the Arizona Border Control initiative last summer. This initiative as I understand it, involved joint operational planning to put together a full complement of measures to reduce the flow of illegal immigrants at a time and location that posed significant risk for loss of life. It is a good example of how the Department can allocate resources and design operations in a complimentary fashion to enhance security and the missions of both organizations.

75. 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. As Deputy Secretary, what steps would you take to ensure more effective coordination between the three bureaus?

**ANSWER:** As the Department's chief operating officer, I think that the DHS Deputy Secretary should accept responsibility to ensure adequate coordination. Should I be confirmed, I intend to examine carefully the current structure within DHS relative to our immigration laws, enforcement and policy. To assist the Deputy in that area, formation of a DHS level policy office, for which I have above indicated support, would be a significant Department asset to facilitate such coordination.

b. Do you believe DHS should designate an official with the power to coordinate immigration services and enforcement and also handle immigration policy matters? If not, why not?

**ANSWER:** I am not prepared to embrace such a recommendation at this juncture. As stated in my response to the previous question, I would expect that a properly configured DHS policy office will contribute significantly to department coordination on these issues. I would also like to have the benefit of including this specific question in the Secretary's transitional review of Department organization and policies.

76. 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."

Secretary Chertoff has stated that state and local law enforcement play a critical role in our homeland security mission, and are likely to encounter immigration violators and foreign-born criminals and immigration violators in the course of their duties. He also acknowledged that the Department needs to look carefully at the issue of whether and how local police should be involved in immigration matters.

a. What are your views on the expanded use of local police in immigration matters?

**ANSWER:** I fully agree with the Secretary's views, both about DHS's vital partnership with state and local law enforcement agencies and that this legal matter merits further internal review by DHS.

b. During his confirmation proceedings before this Committee, Secretary Chertoff acknowledged the "legitimate concerns" of security experts and law enforcement personnel who are opposed to involving local law enforcement in policing immigration violations. Among these concerns is that undocumented aliens might be reluctant to report crimes or come forward with important information. Please describe your own views of these concerns. Do you think those concerns argue against expanding the role of local law enforcement in policing immigration violations?

**ANSWER:** I understand and agree with the Secretary's concern that involving local law enforcement in policing immigration violations might raise legitimate concerns by state and local law enforcement. If confirmed, I would like to look more closely at these issues.

77. 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 Deputy Secretary, what steps would you take to improve the capabilities of this bureau?

**ANSWER:** Probably the most visible and serious current challenges at ICE are related to ICE's ongoing budget shortfall and its financial management requirements. The Department has an action plan that would patch the budget problems in the current fiscal year and which proposes to fix them within the levels proposed by the President in his FY06 budget for ICE. A parallel track is to strengthen considerably the cost accounting tools that ICE uses to plan for and manage the enterprise. If confirmed, I would work closely with ICE and DHS management to address these issues. In addition, there are undoubtedly numerous policy and operational issues that I would wish to assess early in order to support well the ICE team.

78. The Census Bureau has estimated that approximately 8 million undocumented aliens live

in the United States. Most of these come to the U.S. seeking employment, approximately 400,000 are absconders from final deportation orders, tens of thousands are convicted criminals, and an unknown (but presumably much smaller number) have links to terrorist organizations.

a. Given the available resources for immigration enforcement, how should DHS prioritize its efforts in pursuing violators from the different groups mentioned?

**ANSWER:** DHS has and will continue to prioritize national security cases and focus its authorities and resources on such threats. In addition, DHS is committed to prioritizing cases involving aliens who have committed crimes or pose other community threats. On a daily basis, DHS officers apply these priorities to investigate leads and immigration violator targets. At the same time, following the general finding by the 9/11 Commission that stricter immigration enforcement may disrupt terrorist attack planning, DHS will focus enforcement priorities particularly on individuals who have had their legal proceedings completed, been ordered removed from the country, and then absconded from the system.

In FY 2004, DHS removed over 160,000 aliens — including over 60,000 criminal aliens — a record number. Additionally, fugitive operations teams from U.S. Immigration and Customs Enforcement apprehended over 11,000 fugitive aliens in FY 2004, marking a 112 percent increase in fugitive alien apprehensions in comparison to the same period in FY 2003. As with any law enforcement agency, our officers will continue to prioritize enforcement actions in order to maximize the impact our finite resources have in support of the Department's national security mission.

b. The Administration's proposed budget for FY2006 includes funding for an additional 140 ICE agents, who would be devoted to workplace enforcement. There are no similar hiring increases for other ICE enforcement initiatives. Do you believe this is the appropriate allocation of enforcement resources? Please explain.

**ANSWER:** I do not have enough visibility into the resource allocation issues within ICE to form a valid judgment about this question. If confirmed, I would certainly make forming such a view a part of my more detailed review of ICE.

79. For years, Congress and immigration advocates have called on INS and ICE to expand the use of community based release programs as an alternative to detention, pending the resolution of aliens' immigration proceedings. They have advocated for release programs that include effective reporting requirements, appearance assistance service, linking released individuals with legal counsel and other community based support services, and providing work authorization to those released. Every year, Congress appropriates funds for these "Alternatives to Detention" programs. Recently, ICE has initiated an "Alternative to Detention" pilot program titled Intensive Supervision Appearance Program (ISAP) in eight cities.

a. As Deputy Secretary, what, if anything, would you do to ensure that implementation of these and other alternatives to detention are transparent?

**ANSWER:** In an effort to ensure that the alternative to detention programs remain transparent, ICE's Office of Public Affairs has issued press releases on both the ISAP and Electronic Monitoring Device programs, and conducted several interviews with the members of national press organizations on ISAP.

In addition, ICE has conducted briefings with Non-Governmental Organizations (NGOs) to discuss the various alternatives to detention programs and to provide a clear definition and description of what ISAP involves, including a national kick-off briefing with NGOs in Washington, DC.

If confirmed, I will ensure that ICE continues to utilize the various techniques such as those mentioned above to help ensure that their Alternatives to Detention programs are transparent, and will look further into developing even more ways to advertise these very important initiatives.

b. What if anything would you do to ensure that alternatives to detention are expanded from the eight pilot cities to other areas of the country?

**ANSWER:** The ISAP program is an ambitious attempt to assess the effectiveness of alternatives to detention as incorporated under this program. The President's FY 2006 Budget Request includes additional funding to support expanding ISAP to two additional cities. I understand that ICE is currently developing and reviewing performance measures for ISAP in order to measure the impact ISAP has on the overall absconder rate as well as on enhancing compliance with removal orders.

DHS and ICE are committed to exploring further use of ISAP and other alternatives to detention currently being implemented or under development. If I am confirmed, I look forward to working with ICE as alternatives to detention are actively explored, programs that may enhance ICE's ability to manage the more than one million aliens in the non-detained docket without the requirements or costs associated with detention.

80. On February 8, 2005, the US Commission on International Religious Freedom released a Congressionally authorized report on how expedited removal procedures were affecting asylum seekers. Among its findings, the Commission reported:

- In approximately half of observed inspections, inspectors failed to inform aliens subject to expedited removal that they may ask for protection if they have a fear of returning home. DHS regulations required that this information be read to the aliens.
- In 15% of observed cases where an alien expressed a fear of return, the DHS Inspector failed to refer the alien for a credible fear interview; instead the aliens were returned, in spite of the fact that they may have had a legitimate claim for asylum.
- In one port of entry, immigration officers were observed improperly encouraging asylum seekers to withdraw their applications for asylum.

a. Do you view these reported problems at ports of entry as representing serious problems and serious violations of the rights of asylum seekers?

**ANSWER:** I strongly believe that the U.S. should adhere to its international obligations in the treatment of asylum seekers and if confirmed, will look into this matter and address any inadequacies that may exist in training and procedures.

b. What, if anything, would you do to address these problems in the procedures followed by DHS personnel at ports of entry?

**ANSWER:** If confirmed, I intend to review the procedures further and determine how DHS should best address these problems.

81. The Commission determined that in over 25% of the examined immigration judge decisions where relief was denied, the judge cited that the applicant had "added detail" to the asylum claim compared to earlier statements made to inspectors or asylum officers. The Commission report noted, however, that such negative credibility findings fail to take into account that the records of these prior statements are often unreliable and incomplete.

a. In your view, how serious a problem is it that, according to the Commission report, asylum claims are being rejected because DHS officers documented earlier statements poorly?

**ANSWER:** If confirmed, I will look forward to reviewing the Commission's recommendations on this matter and developing a considered Departmental response.

b. What, if anything, would you do to address these problems?

**ANSWER:** I understand the Commission has recommended DHS seriously consider revising the sworn statement forms used by inspectors (I-867B), indicating that the form is not a transcript and is not intended to document detail about the fear of persecution or torture. I am informed that the Department has formed a working group involving a number of different DHS components that will carefully consider the Commission's recommendations. If confirmed, I will look forward to reviewing the Commission's recommendations and developing a considered Departmental response.

82. The Commission report documented that asylum seekers are detained by DHS in harsh maximum security correctional facilities, and are often housed in the same cellblocks or in the same cells as convicted criminals. The Commission reported that many of the detainees, who often had been tortured or persecuted in their home countries, were further traumatized by the conditions of confinement, and some even said that the conditions were one of the factors that they led them to terminate their applications for asylum.

a. Based on the Commission's report, do you think conditions of confinement should be improved for non-criminal asylum seekers?

**ANSWER:** I appreciate the significant impact that confinement conditions can have on

detainees. If confirmed, I will look forward to reviewing the Commission's recommendations regarding the conditions of refinement and developing a considered Departmental response.

b. What, if anything, would you do to improve conditions of confinement for asylum seekers?

**ANSWER:** Again, I cannot make an appropriate determination without further study, a task I'd gladly assume if confirmed.

83. As you know, all immigration policy, services, and enforcement components are now located within the Department of Homeland Security. Immigration benefits and services are a critical function of the U.S. federal government and there is continuing concern among immigration advocates that insufficient attention is being devoted to immigration services and benefits.

b. What are your specific goals and objectives with respect to the United States Customs and Immigration Services (USCIS)?

**ANSWER:** The Department has embraced three core goals for USCIS: (1) enhance national security; (2) eliminate backlogs of applications for benefits; and (3) improve customer service. I enthusiastically embrace these three.

c. How do you intend to ensure that the U.S., consistent with its history as a nation of immigrants, deals sensitively and appropriately with those seeking to make the U.S. their home, either permanently or temporarily?

**ANSWER:** It is an indispensable part of what America stands for in the world that our nation continue to offer opportunities to immigrants that wish to make the United States home. We have an obligation to treat individuals who are applying for legal entry into the United States with respect, dignity, fairness and efficiency. At the same time, we have an obligation to ensure security and keep the doors to America well guarded. The DHS, including the USCIS team therefore has a unique role to serve as Ambassadors to these people, and DHS must sustain this commitment as part of our overarching ethos of service. If confirmed, I would be honored to support and improve the tools, policies and training needed to meet our service goals.

84. Historically, immigration services and benefits have received less attention than immigration enforcement. If confirmed, how do you intend to ensure that USCIS receives adequate resources and prioritization?

**ANSWER:** USCIS is a vital part of the Department's mission. If confirmed, I would work diligently to support each DHS component with the care it deserves. Therefore I would routinely assess performance and needs at USCIS.

85. The Chief of the Office of Citizenship for USCIS is responsible for promoting citizenship and producing related educational and training materials. As Deputy Secretary, would you

coordinate with this office to ensure that it plays a primary role in outreach to immigrants and shaping the meaning and value of citizenship?

**ANSWER:** Yes, I certainly would do so.

86. Virtually all of USCIS funding comes from fees immigrants and prospective immigrants pay to have their applications processed. When new procedures are implemented or systems are upgraded, however, fees that are meant for processing have been diverted to pay for these expenses. As Deputy Secretary, how will you ensure that USCIS can reduce the backlogs and keep pace with incoming applications?

**ANSWER:** Because USCIS is a fee-funded agency, it is imperative that the fees charged its customers cover program costs; including infrastructure support systems I understand that DHS has significant information technology challenges ahead to replace antiquated adjudicative systems. At the same time, backlog elimination is an ongoing and non-negotiable deliverable that the Department will require of USCIS. We will try to surge Departmental management focus onto any operating problems that might crop up to threaten the backlog elimination priority.

87. Local offices reportedly continue to suffer from inadequate staffing, funding, and antiquated technology, all of which negatively impact on processing times for immigrant petitions and applications. Staffing shortages and new mandates have also caused officers to be pulled from adjudications in order to perform enforcement related functions, like the National Security Entry and Exit System (NSEERS). As Deputy Secretary, what steps if any will you take to ensure increased and experienced staff and updated databases?

**ANSWER:** I am unaware of the specific issues referenced in this question, but if confirmed would explore staffing issues at USCIS more fully.

88. 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. Secretary Chertoff has indicated that he believes that the goals of security and facilitation are opposite sides of the same coin, and that one does no good without the other. He has said that "[i]f we focus solely on security, then the U.S. economy and our Nation's livelihood will suffer. If we focus solely on facilitation, then we are inviting another attack on U.S. soil."

a. Do you share this view?

**ANSWER:** I agree with the Secretary. The Department's mission requires both enhancing security and facilitating legitimate trade and travel. Though sometimes challenging, these missions should not be viewed as conflicting, so the Secretary's analogy of a two-sided coin is appropriate. At TSA in the months after 9/11, we spoke of the same issue and the same mandate

by suggesting that our mission was to deliver both world-class security *and* world-class customer service.

b. What do you see as major challenge(s) with CBP's dual role, and how do you believe that these challenges should be addressed?

**ANSWER:** Immediately after the September 11 attacks, the U.S. Customs Service turned its prime focus toward preventing terrorists and their weapons from entering the United States. However, the increased security in those early days nearly stopped the flow of commerce across the northern border. Clearly, what was needed was a hard-nosed, multi-layered risk management strategy that preserved the flow of people and goods. Customs -- later Customs and Border Protection at DHS -- began a process of striking an appropriate balance, a process that continues today.

I am convinced that constant improvement and innovation in the programs and tools used by CBP to manage this balance must remain a core commitment of both CBP and of DHS senior management.

89. The Customs-Trade Partnership Against Terrorism (C-TPAT), a program which allows private companies to apply for expedited screening and inspections from CBP in return for submitting and implementing a global supply chain security plan, is based on a "trust but verify" principle, where the Department trusts private sector representatives to implement security plans and practices in return for more favorable and efficient treatment at the border. However, only a small fraction of the companies participating in C-TPAT have had their security plans validated thus far.

a. Do you believe it is important to ensure the companies are acting in good faith, and only receive economic/commercial benefits if they are warranted? What changes, if any, do you believe should be made to improve the program?

**ANSWER:** Yes, it is important to validate program compliance in an appropriate and rigorous way. At present, CBP has established procedures to assess and vet the security credentials of companies that seek membership in C-TPAT. I am told that CBP is aware of the concern you have raised and has initiated steps to increase the level of scrutiny. Should I be confirmed, I will thoroughly review C-TPAT and similar programs to identify and address any program vulnerabilities.

b. The President's budget request includes an additional $8.2 million for FY2006 for C-TPAT. Committee staff has been told that the budget increase is not intended to be used to hire additional FTEs, despite statements by CBP officials that an insufficient number of supply chain specialists have inhibited CBP's ability to perform validations. Do you believe all or part of any budget increase for this program should be used to additional personnel to validate supply chain security plans for C-TPAT members? Given the backlog of validations required, do you believe DHS should at least consider using a certified (and/or licensed and bonded) third party to validate the supply chains of C-TPAT members?

**ANSWER:** Though I have not been fully briefed, I understand that the number of permanent CBP supply chain specialists is being expanded through FY05 funding. CBP indicates it expects that by the end of FY05 sufficient permanent personnel will be assigned to the C-TPAT program. If confirmed, I will look carefully at this issue.

**Maritime and Port Security**

90. Numerous terrorist threats have been articulated against the various transportation modes, 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 maritime 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 awarded only $565 million for port security grants with another $150 million scheduled for FY2005 which was the first administration budget to even request port security grant funding in the amount of $46 million. In the FY2006 budget there is again no separate line item for port security.

Please specifically address your views on the Port Security Grants program and on providing for a specific funding source for this program.

**ANSWER:** If I understand this question correctly, my views are sought on two issues: (a) regarding the consolidation of various DHS targeted grants, including the Port Security Grants into a single grant category; and (2) regarding the sufficiency of funds recommended by the Administration.

On the first matter, I do support the President's FY06 budget proposal to consolidate what were previously multiple sector-specific grant funds into a larger DHS grant pool (the Targeted Infrastructure Protection Program). This change is intended to provide flexibility to protect critical infrastructure, such as seaports, mass transit, railways, energy facilities and other infrastructure. Its goal is to give both the Department and potential grant recipients greater flexibility to target investments based on need, risk and national priorities. It also allows DHS to align grant priorities closer to actual award with the very best threat analysis, rather than guessing how to allocate funds roughly a year in advance into more narrow accounts absent the more timely risk analysis. If confirmed as Deputy Secretary, I would pledge to work with Congress and DHS grant recipients to assess continuously the success of this approach, and other program management criteria for DHS grant programs.

On the question of whether there is adequate funding available to seaports under this approach, I would have to say that I certainly support the President's overall funding level and funding approach. Of course, I do not at this juncture have full visibility into the necessarily difficult decisions and tradeoffs that went into specific line-item allocations in what is a DHS budget with

significant overall proposed growth.

91. 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. 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]?'" Nearly three and half years after 9/11, DHS is still sorting out 'who's in charge [of cargo security]?

a. 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:** I welcome the focus that DHS's recent security summit placed on cargo security. This has been a particular priority of Deputy Secretary Loy, and one that I very much share. There has been great progress on improving cargo security since 9/11 and for that DHS deserves considerable credit. Particularly with regard to inbound container security, the Coast Guard and CBP have implemented powerful and successful tools. Nonetheless, it does seem that that there is still some ambiguity about which organizations at DHS are responsible for policy development and program implementation for various aspects of freight transportation security. In fact, there is a fair bit of shared responsibility, depending upon mode of transportation. I believe that the Department can sort this out and make it easier for the private sector to work with DHS. And of course, there is more work ahead in both public and private sectors to refine existing tools and build new ones that will diminish threats to the global supply chain.

Secretary Chertoff has already made resolving these "who's in charge" issues a Department priority, and determined that this will be a point of focus for his transition review of DHS's organization and policies. If confirmed, I would make this a matter for personal attention in the early days of my service at DHS.

b. 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:** The threat of radioactive materials either smuggled through a port or actually used in that setting is a focus of very significant federal activity. I understand that the Administration is currently assessing specific options and recommendations regarding how to strengthen counterterrorism capabilities regarding radioactive material threats. DHS plays a crucial role in these matters and is working extensively with each of the departments mentioned in this question. I would expect further work on these issues to be completed shortly.

92. There have been reports of poor security at some of the 15,000 chemical plants and other

critical facilities around the country. The reports also cite a lack of 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). In addition, MTSA required the Coast Guard to form Area Maritime Security Committees and to compile an agreed upon list of critical infrastructure in coordination with state and local governments as well as interested industry and community stakeholders. 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.

Do you believe that the MTSA framework to form Area Committees, identify critical infrastructure, and require security plans on certain facilities is effective in our port areas? If so, do you believe it makes sense to encourage or require those areas not covered by MTSA to institute a similar framework?

**ANSWER:** I believe 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 extending these efforts outside the marine domain. If confirmed, I will carefully explore this issue with the Coast Guard, other components of DHS and within the broader community of stakeholders.

93. 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, the Committee understands that some facilities are still accepting nothing more than a driver's license as acceptable identification to gain entry since DHS took a lead role in implementing the universal Transportation Worker Identification Credential (TWIC) program.

What specific reasons are there 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:** At this juncture I do not have adequate information about why wider deployment of the TWIC has not occurred. I would bring to DHS a strong conviction that any outstanding issues regarding TWIC should be resolved and that a work plan to do so be developed and executed with a sense of urgency.

94. 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:** As Deputy Secretary of Transportation, I followed Coast Guard's development of the Automated Identification System (AIS). It does provide a key capability that should be supported. I understand that AIS is being implemented at an expedited pace and is recognized as an important part of the maritime domain awareness efforts. In the short range, I understand that AIS is being implemented in high traffic/high interest areas including Puget Sound, San Francisco, Anchorage, Columbia River, Los Angeles/Long Beach, San Diego and other locations.

I see that the President's FY06 proposed budget provides $29.1million to continue nationwide implementation of this critical maritime safety and security system. Should I be confirmed, I would certainly review the implementation of these plans.

b. What safeguards are being built into the system to prevent or avoid a situation where a terrorist's first action is to disable the transponder thus eliminating our ability to track a vessel similar to the 9/11 attacks?

**ANSWER:** In the broader context of vessel tracking, the Coast Guard is focusing efforts on both long and short-range tracking and identification sources and methods. Fusing track data from multiple sources would certainly reduce the likelihood of not being able to track a vessel whose AIS transponder has been disabled by a terrorist. While more needs to be done and is in progress, some alternate classified and unclassified methods for confirming a vessel's identity exist. AIS is intended to complement a variety of other vessel tracking capabilities, including radar, acoustic and visual sensors from a variety of platforms. In the case that the AIS transceiver was disabled on a vessel, the goal is to have one of these other sensors available to track it, or additional information that will highlight the vessel as a potential threat. For example, a large vessel detected by radar that is not transmitting an AIS signal could be identified as a vessel of interest and one requiring monitoring using the Coast Guard's alternative tracking methods. Should I be confirmed, I will continue to be interested in the development of this program and will thoroughly review these efforts.

95. On February 15, 2005 the Office of Inspector General at DHS released its report on the Port Security Grant Program, pointing to several areas for concern. The report noted that an aggregate amount of $67 million for more than 250 port security projects in both the public and private sectors were funded through the program despite receiving a "marginal" rating by a review board. Some awards were made without any explanation for how those ports met DHS' criteria for "national critical seaports." The review also found that DHS had distributed grants to

the private sector for projects that appeared to be for something other than security. The IG report provided a dozen recommendations to the Department for ways to improve the program.

a. Do you believe the issues raised by the IG report should be addressed?

**ANSWER:** Of the twelve recommendations provided in the IG report, the Department concurred with eleven, and disagreed with the recommendation that DHS cease the practice of funding projects that do not meet the definition of a Priority 1 project. I understand that the Office of State and Local Government Coordination and Preparedness, TSA and the Coast Guard worked together to focus the $75 million from the Urban Area Security Initiative (UASI) grant funding on the highest risk port areas and highest evaluated projects in those port areas.

b. One of the key recommendations made by the IG was that DHS should develop a policy on grants to the private sector in order to prevent the problems identified in the report. While many of the critical facilities in and around our ports are owned and operated by the private sector, in previous rounds of the grant security program, tens of millions of dollars were awarded to large energy (oil and gas) companies. DHS has stated its plans to develop a formal policy on private sector funding, and in the interim has at least temporarily adopted a policy of not funding Fortune 500 companies. If confirmed, would you make it a priority to establish a formal policy on private sector funding?

**ANSWER:** I agree that a formal policy on private sector funding needs to be established. If confirmed, I will work to ensure DHS develops such a policy.

c. The IG report noted that some of the problems identified could be attributable to conflicting views among DHS officials about how best to award the grant money. If confirmed, what would you do to manage conflicting opinions on this matter and resolve outstanding issues with the Port Security Grant Program?

**ANSWER:** If confirmed, I will ensure we work with our federal partners to identify priorities for port security funding based on risk. Additionally, we will work to improve continually the previous process and further coordinate policy on this issue.

**Coast Guard**

96. By law the Coast Guard is always one of the five Armed Forces of the U.S. 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 2004 the Coast Guard responded to 24,000 reports of water pollution and hazardous material releases, answered 32,000 rescue calls and saved 5,500 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:** I have much to learn about DHS, but if confirmed I can assure the Committee that I would arrive on Day #1 with a deep appreciation for the diversity of the Coast Guard's mission. The Coast Guard is a maritime, military, multi-mission service possessing a unique blend of humanitarian, law enforcement, regulatory, diplomatic, and military capabilities. As a long-time advocate for the Coast Guard who served two senior management tours at the Department of Transportation directing their activities, I understand the interplay of the Coast Guard's diverse responsibilities, including maritime homeland security, law enforcement, search and rescue, defense readiness, marine safety, waterways management, living marine resources protection, and marine environmental protection. All Coast Guard 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 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.

97. The Coast Guard has undergone an exponential growth in missions and responsibilities and substantial growth in both budget and personnel since it re-focused 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 with 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 now placed 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.

Do you support the continued or expanded use of CSRB's for those specialties in the Coast Guard that are experiencing critical shortfalls?

**ANSWER:** I will work tirelessly 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. I will need to refresh my understanding of CSRB's and would consult with the Commandant on his recommendations regarding this tool.

98. 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 before the Coast Guard's move to DHS. It focused on Coast Guard 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 9/11 environment and its new homeland security responsibilities.

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 its new post 9/11 responsibilities; and the Coast Guard's much valued non-homeland security missions. How will you provide this vital program with adequate funding while ensuring that proper management of this large and complex program is performed effectively?

While the President is seeking an increase for the Deepwater modernization program, it does not appear that the increase will speed up the timetable for completing this vital project. The increase in funding appears to only keep up with the rate of inflation and the twelve-fold increase in the Coast's estimation of costs to sustain legacy assets (from $20 million in the initial program budget, to more than $240 million in FY2006). If the budget request is approved, how many years would it take to complete the Deepwater modernization? Given the obvious increased costs associated with sustaining legacy assets – more than the Coast Guard originally budgeted for – do you believe additional resources should be devoted to the Deepwater modernization program?

**ANSWER:** I am generally familiar with and certainly very supportive of the Integrated Deepwater System (IDS). DHS and the Administration are completing final review of the Coast Guard's re-baselining study, which is intended to update the original IDS plan to incorporate post-9/11 mission changes and to reflect the associated acceleration of the Coast Guard's operations tempo following 9/11. This re-baselining will form the basis for future budget recommendations associated with the Deepwater program. If confirmed, I would very much look forward to participating in the finalizing this study and working with Congress as it evaluates this new baseline data.

99. The House and Senate Appropriations Committees required the Coast Guard to re-baseline the Deepwater program to reflect the post 9/11 environment and its move to DHS. This Committee, in its oversight role of the entire department, is very much interested in seeing that

report as well.

a. Has the Coast Guard completed the re-base lining of the Deepwater program?

**ANSWER:** The Coast Guard, with the Department's support, has been working to update the Deepwater implementation plan from a 1998 baseline to a revised baseline that ensures our new assets can respond in the higher threat post 9/11 operational environment.

Reshaping the single largest and most complex acquisition in Coast Guard history and the first major acquisition subject to DHS review has, I am told, been a challenge. First, the Coast Guard needed to determine the gaps in the projected performance of the 1998 baseline and determine the capabilities required to fill those gaps. The Coast Guard then developed an executable funding strategy to modify the Deepwater acquisition to incorporate the capabilities and capacity required to meet the new security environment. The Coast Guard and the Department are close to achieving this change. In the interim, DHS has provided an updated Deepwater baseline for 2005 that reflects post-9/11 mission needs through 2006.

b. When can the Homeland Security and Governmental Affairs Committee expect to be briefed on this effort?

**ANSWER:** The Department will brief the committee upon Administration approval, which, I understand, will be achieved very shortly.

100. Under the Homeland Security Act, the DHS Secretary has the authority to reallocate functions of officers and establish or discontinue organizational units within DHS. The Homeland Security Act also established a number of protections for the Coast Guard's non-homeland security functions. During consideration of FY2005 funding for DHS , it initially appeared that the Coast Guard's Research and Development (R&D) program might be absorbed into DHS's Science and Technology Directorate and that its funding was being reduced from traditional levels, which threatened its historic, experienced, non-homeland security R&D efforts in marine environmental protection, search and rescue and other traditional missions. Congress concluded it was important the Coast Guard maintain control over its R&D, particularly with respect to its traditional missions, and the FY2005 DHS appropriations bill kept the R&D funding in the Coast Guard's budget. However, in the Administration's FY2006 budget funding for Coast Guard R&D has been moved to the DHS S&T Directorate.

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 possess critical non-homeland security missions that might be difficult or impossible to replicate elsewhere. Do you believe the Coast Guard's historic, experienced research and development program and facility are uniquely situated to fulfill the research and development needs for the service's traditional missions? If confirmed, what will you do to ensure that the Coast Guard's non-homeland security R&D needs are met?

**ANSWER:** 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 Coast Guard research and development for non-homeland security.

I also recognize, as reflected in sections 302(4), (11), and (12) of the Homeland Security Act, that 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.

Indeed, I understand DHS has made great strides toward developing inter-departmental RDT&E synergies for both homeland and non-homeland security research this past year and S&T staff is working collaboratively with the U.S. Coast Guard on a Management Directive and MOU for seamless budget execution of consolidated funding. The Coast Guard, though exempt by statute from any mission, function, or asset being transferred, will collaborate with S&T to advance operational and organizational effectiveness. Accordingly, I would expect S&T will provide oversight of certain RDT&E activities conducted by the Coast Guard. This relationship will contribute to the Coast Guard's ability to leverage its capabilities, assets, roles, and missions for both its non-Homeland Security and Homeland Security role. If confirmed I will keep an eye on this issue to assess progress on the collaboration between S&T and the Coast Guard.

b. What will you do to ensure that the Coast's Guard's current research and development mission, programs and existing facility will be maintained?

**ANSWER:** If confirmed, I'd be watchful of maintaining the traditional missions of the Coast Guard. I've not known the Coast Guard's command structure to be bashful with their Departmental leadership in advocating for appropriate support, so any proposals to undermine these missions would not likely escape my notice.

c. Given the S&T Directorate's primary focus on chemical, biological and radiological research and development, and the Coast Guard R&D Center's historic and unique ability to focus on research and development related to the traditional missions of the Service, shouldn't the S&T Directorate improve coordination with the Coast Guard's Center, but allow it to continue to be funded and operated by the Coast Guard? Would you commit to ensuring that the existing facility and its research and development programs continue to be funded and operated by the Coast Guard?

**ANSWER:** I would need to understand further details about these issues before making such an unequivocal commitment.

d. Do you believe other established centers for research and development that support non-homeland security missions for agencies within the Department should be maintained?

**ANSWER:** Consistent with supporting the Department's mission, I believe that both homeland security and non-homeland security-related research, development, testing and evaluation (RDT&E) should be supported. There are significant efficiencies to be gained with an integrated RDT&E effort for the Department under a single accountable authority, allowing other organizational elements to focus on their operational mission; the trade between realizing those efficiencies against other policy imperatives must be made on a case by case basis.

101. Secretary Ridge used the term "One Team, One Fight"; yet it is the Committee understands 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 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 its component agencies into one effective team.

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 is a unique interagency arrangement where DOJ maintains primary focus on the shore side approaches to the pier and the Coast Guard focuses from the pier to sea. I am told that 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 Maritime Domain Awareness (MDA), domestic outreach, and intelligence and information sharing among the agencies of DHS as well as their state and local partners to ensure the security of our ports and in support of HSPD-13?

**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?

**ANSWER:** I understand the Coast Guard has done extensive port vulnerability assessments in militarily and economically strategic ports. In fact, this effort began soon after September 11th, when the Coast Guard was still within the Department of Transportation. 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 look forward to examining the framework closely, particularly how it aligns with other Department efforts or could serve other Department needs.

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 adaptation for inland areas as well. Geography, local needs and jurisdiction will be critical to determining the specific arrangements to provide this command center approach.

102. The President's FY2006 budget proposes moving the headquarters of the Coast Guard to the West Campus of St. Elizabeths in Washington, DC. To this end, the budget proposal for the General Services Administration (GSA) includes $24.9 million for Coast Guard Consolidation and $13 million for St. Elizabeths West Campus Infrastructure in the District of Columbia. In 2003, the Committee conducted an investigation into the management of federal real property. The St. Elizabeths West Campus was used as a case study during this investigation and it was highlighted in a Committee hearing held on October 1, 2003 relating to a federal real property management. The West Campus of St. Elizabeths contains 182 acres of land, 61 buildings, and 1.1 million square feet of space. It has been designated as a historic landmark. Unfortunately,

lack of proper maintenance and management of this large parcel of property has resulted in the advanced decay of the property and, according to GSA estimates, it would take between $440 and $495 million to restore.

a. Will the plans to locate the Coast Guard headquarters to St. Elizabeths include use of the entire West Campus facility? If not, what other uses are being considered for the site and which buildings and parts of the property are intended for use by the Coast Guard?

**ANSWER:** As I understand it, the St. Elizabeth's project is in the very preliminary planning stage. GSA currently is seeking a contractor through a solicitation that will develop the site master plan. GSA's current capacity estimates are more than the USCG requirements. I would commit to keeping the Committee informed as these options are further explored.

b. For those portions of the property intended for the Coast Guard headquarters, what is the timetable for completion? If the project is expected to be done in phases, please elaborate on the plans.

**ANSWER:** From what I understand, the occupancy for the USCG is now projected to be able to occur in 2010.

c. What, to your knowledge, are the plans to ensure there is no further deterioration of the property and historic buildings as the renovation plans proceed?

**ANSWER:** I understand that the site is now in GSA's stewardship and I would assume that GSA is taking appropriate actions.

d. What are the current cost estimates of renovating and preparing the property for use by the Coast Guard in comparison to continuing current Coast Guard leases in D.C. and VA.?

**ANSWER:** I understand that GSA is responsible for the renovations of the site and development of the property. Costs to the Coast Guard should be similar to current occupancy costs. However, the Coast Guard has been in the same location for some time with no upgrades to the building. If confirmed, I will look into the cost considerations.

e. The Coast Guard's budget is under considerable strain despite increases since 9/11. With the need to support their new maritime security responsibilities, the Deepwater recapitalization program, and shortfalls of key personnel, will those costs be funded through GSA's budget or the Coast Guard's budget?

**ANSWER:** I understand that GSA typically bears the costs of development.

f. Given the fact that the site is historic and contains not only historic buildings, but other historic features of public interest, such as a civil war cemetery, and historic views, to your knowledge, are there plans to try to reopen parts of the West Campus to public use? If not, why not? If so, how will an open campus affect the security of the Coast Guard? Who will fund the

security needed for an open campus?

**ANSWER:** If confirmed, I will ensure that GSA's master planning efforts are closely coordinated with DHS and USCG real estate managers to provide for necessary security and any public access.

g. What steps, if any, has GSA, DHS, or the Coast Guard taken to coordinate the renovation of the West Campus with District of Columbia plans to redevelop the East Campus of St. Elizabeths.

**ANSWER:** GSA has a long history of coordination of development efforts with local communities, especially with the District government. While I have no specific knowledge of their actions in this case, I expect that they are in ongoing discussions.

h. Has GSA, DHS, or the Coast Guard evaluated the impact of this move on the use of local public transportation systems and infrastructure and the impact of the move on relevant federal workers?

**ANSWER:** It is my understanding that GSA is planning transportation studies as part of the USCG project design effort. Transportation support for the site and impact on the local community are important, and if confirmed, I will ensure that the needs of USCG personnel are taken into account.

103. The FY2006 budget has transferred $47.5 million of base funding for the operation and maintenance of the Coast Guard's Polar Icebreaking fleet to the National Science Foundation (NSF). Under this arrangement, the NSF would transfer the funding back to the Coast Guard through a Memorandum of Understanding (MOU) that is yet to be developed. This appears to be an unneeded bureaucratic hurdle for both the Coast Guard and the NSF. The Committee's concern is heightened by the fact that the report from the National Academy of Sciences regarding the Coast Guard icebreaking mission required by the FY2005 Appropriations Bill has not been completed and provided to Congress. In addition, the transfer of these operation and maintenance funds outside the Coast Guard and the Department for our nation's only icebreakers may lead to a, or be seen to be in, contradiction of Section 888 of the Homeland Security Act (HLS) regarding the preservation of Coast Guard missions.

a. Do you believe that this funding should remain in the Coast Guard's budget pending Congress's review of the National Academy of Sciences report and the approval of the MOU between the Coast Guard and the NSF?

**ANSWER:** The Department of Homeland Security, and the Coast Guard, supports the Administration's proposal to shift budget authority for the polar icebreakers to the National Science Foundation (NSF) in FY06. This proposal envisions long term support for the Arctic and Antarctic polar icebreaking program by placing operating maintenance budget authority with the NSF, the primary beneficiary of the polar icebreakers.

The Department, and the Coast Guard, recognize that splitting funding and operations authority presents challenges in providing a reliable and effective management framework for the safe and efficient operation of these vessels. The Coast Guard and NSF have already begun meeting to conclude an MOU that gives the Coast Guard -- the agency with the greatest expertise in polar icebreaking -- ultimate policy authority on proper maintenance, logistics, training, and operations. NSF would seek funding for these specialized icebreakers under the umbrella of the U.S. Antarctic Program.

The Coast Guard has already contracted with the National Academy of Sciences to study the Polar Icebreaking Mission and future viability of Arctic traffic in the Northern Sea Route and Northwest Passage. The initial portion of that study, dealing with the nation's icebreaker needs, will be completed by 30 Sep 2005, as directed in the FY 2005 Appropriations Bill and will help further inform the budget process.

b. Please describe your views on this transfer of funds and whether or not it is in compliance with Section 888 of the HLS Act.

**ANSWER:** I recall that the icebreakers also serve the nation by providing defense mobility assets, Antarctic Treaty enforcement, and projecting presence for sovereignty purposes. The Coast Guard will retain operational control of the icebreakers, so I would conclude based upon my current knowledge, that the Administration's proposal meets both the letter and the spirit, of §888 of the Homeland Security Act.

**Transportation Security**

104. 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. While DHS and DOT reportedly signed a memorandum of understanding in September 2004 that establishes the framework for interaction between the two departments, representatives from the transportation industry and state and local government associations have stated that they are unclear about which agency to contact for their various security concerns and which agency has oversight for certain issues. They complain of having 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. I was involved in the process for developing the Memorandum of Understanding (MOU) between FAA and TSA at the Department of Homeland Security's creation, and made the decision not to sign additional MOUs between the DOT modes and TSA at that time. It was determined that TSA's non-aviation organization was not as robust and the need for specific delineation of responsibility in an MOU was not needed at that time. I understand that late last year, the Deputy Secretaries of the Department of Homeland Security (DHS) and the Department of Transportation (DOT) did sign an MOU that establishes the framework for interaction

between the two departments. Should I be confirmed, I will work to ensure that DHS maintains a strong working relationship with DOT. I would also take it as an assignment to attempt to resolve any ambiguity that private sector transportation stakeholders may feel regarding DHS's partnership with DOT.

105. As you are aware, TSA was given responsibility of securing all modes of transportation. Yet since its inception, TSA has been predominantly focused on aviation security with limited personnel or resources allotted to other modes of transportation.

How do you assess TSA's performance to date in securing non-aviation modes of transportation?

**ANSWER:** This is an excellent question which I'd like to study further before offering a detailed assessment. It is simply not possible for me to evaluate the question adequately based on what I now know. I will, however, hazard one observation on a part of this matter. Because of the strong leadership role played by Coast Guard and CBP at the Department, TSA's role in the maritime domain has obviously turned out to be considerably smaller than its role in aviation and surface transportation modes. This is not a criticism of TSA, just a factual observation about the depth of assets at DHS that are focused on the maritime security matters in other operating components. I would, if confirmed, look forward to a detailed review of TSA's strategic plan, and to coordinating that with other DHS components adequately.

What changes, if any, would you make in the Department's organization, budget or policies with respect to non-aviation security?

**ANSWER:** I am not prepared to make any specific recommendations at this juncture, but understand the importance of assessing these issues in a timely manner. I further understand that the Secretary and his management team must seek opportunities, after completing such a review, to share our conclusions about these issues directly with the Committee.

106. 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 is your assessment of the progress that TSA has made in this area since its inception, and what steps do you believe should be taken to continue to improve the performance of our screener workforce? What tools might TSA utilize to aid in this effort?

**ANSWER:** During the stand up of TSA, significant attention was placed on qualifications and training for the screening workforce. Inherently, this must be a constantly evolving process to respond to new threats, refresh core competencies and incorporate new tools and technologies. I am convinced that proper training, adequate employee performance testing, and technological innovation each has an important role to play in delivering excellent screener performance.

If confirmed, I will continually seek ways to improve performance through training and development and procurement of improved screening technologies.

b. Who do you believe should bear the cost associated with these security activities?

**ANSWER:** To date, TSA has been sustained by fees paid by those who benefit directly from the aviation security network and by General Fund appropriations. If I understand the budget properly, the portion that is now being covered by General Fund revenue is much higher at this point than was contemplated at TSA's founding. I understand that finding the proper balance is essential to TSA's success and look forward to working with Congress on these issues.

107. 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 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 have looked at this report and find some number of useful recommendations. I do not, however, support the recommendation concerning TSA that is here attributed to the report. In fact, it is wholly contrary to my experience of how valuable TSA's front-line employees are to helping the Department's leaders balance world-class security and world-class customer service. It is through the proper execution of its operational responsibilities that organizations such as TSA gain invaluable subject matter expertise. This ongoing daily contact with the real world of the Department's customers makes TSA an irreplaceable participant precisely in the strategic management of the Department and its development of effective, practical infrastructure protection plans. If there is ambiguity at DHS about roles, that can be fixed.

b. If confirmed, what steps, if any, will you take to address this perceived lack of mission clarity?

**ANSWER:** If confirmed, I will work with the Secretary to make any clarifications of mission as may be needed at the Department.

108. The President's FY2006 budget for the Department of Homeland Security calls for the creation of an Office of Screening Coordination and Operations (SCO) within the Border and Transportation Security Directorate. The stated mission of the new office would be to enhance screening and improve the ability to identify, track and interdict people, cargo and other entities and objects that pose a threat to homeland security. The office would bring together several programs currently run by the Bureau of Customs and Border Protection and the TSA, including the Transportation Worker Identification Credential (TWIC), US-VISIT, Free and Secure Trade

(FAST) and Secure Flight.

Some experts have questioned whether the new office would strip TSA of most of the security functions inherent to transportation security except for the actual checkpoint screening done at commercial U.S. airports, and asserted that the separation of duties could make communication and information sharing more difficult, and impede the Department's basic goal to improve transportation security. Do you believe the creation of the Office of Screening Coordination and Operations could result in creating impediments to communication and information sharing with the Transportation Security Administration? What benefits do you believe can be gained from the creation of the office?

Under the President's budget, a significant portion of the new office would be funded through a new user fee related to the Transportation Worker Identification Credential. Are you aware of the basis and justification for the fee, and if so, what is it? If the fee is not approved, how should the Department and Congress address the costs of the office?

**ANSWER:** I support the creation of an Office of Screening Coordination as a key capability to provide the right information to the right people at the right time. This office would be focused on effectively developing a seamless set of data, systems, processes and procedures in support of operational entities. The Secretary and his team will develop a comprehensive transition plan for establishing this office, in particular delineating the responsibilities of the SCO and the operational entities. Rather than impeding information sharing, the SCO would enhance information sharing among various DHS components and rationalize the basis upon which screening decisions are made across programs.

With respect to the TWIC, Congress gave TSA fee authority for this program. Fees cannot be collected until the fee rule is implemented, which will designate the specific fee and the populations and facilities to be covered. I understand that the basis of the fee is the cost to the government for operating the program, including the necessary infrastructure and program operating costs. The fee would also include the pass-through costs of a terrorist threat assessment and a criminal history records check. The fee will be set once final implementation decisions are made, following the current prototype phase.

109. 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 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 finalize a coordinated federal policy on rail security. At the same time, the President's FY2006 budget submission for DHS includes little mention or information on new or existing programs for rail (either passenger or freight) or mass transit 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 of the federal government in preventing or mitigating an attack on rail infrastructure and assets?

**ANSWER:** Yes, and I understand that further work augmenting existing security measures for passenger and freight rail systems is underway. Under Homeland Security Presidential Directive 7 (HSPD-7), DHS developed the National Infrastructure Protection Plan (NIPP), a component of which addresses these rail issues.

Rail is obviously not a closed loop system such as aviation. It therefore presents unique security challenges. Our efforts in this area will focus not only on prevention, but on supporting essential incident response and recovery planning. I am familiar with many of these issues from my service at DOT, my membership on Amtrak's Board of Directors and work in the private sector on behalf of transit agencies. If confirmed, I would look forward to reviewing and helping the Department to shape this product.

**Aviation Security**

110. According to some news reports, several DHS component agencies – such as the Federal Air Marshal Service (FAMS) and ICE – may be suffering from problems of low morale. If confirmed, how would you boost morale within these agencies?

**ANSWER:** I certainly respect the dedication and skill of the Federal Air Marshals specifically, and the ICE team more broadly. At the core, morale is lifted by respecting and supporting our front-line team every day. Should I be confirmed, I look forward to making my own determination as to the accuracy, sources of and solutions to any morale problems.

111. 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 that the Department has begun to implement the force multiplier program for other federal law enforcement officers and is supporting training for foreign law enforcement personnel. Of course, the FAMS efforts represent one layer in the system of measures in place to increase the security of international flights. If confirmed, I will examine the efforts already undertaken and support implementation of all appropriate measures to improve aviation security.

112. There have been a number of press reports regarding conflict between some employees of the Federal Air Marshal Service and their management. What steps do you believe should be taken 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 as a key component of our layered approach to aviation security. As with all organizations, it is important to maintain good

relations between employees and management. If confirmed, I will take seriously the needs of the FAMS and work to address their concerns.

113. As you know, 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 which sought to opt-out of the federal screening system. 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.

What is your position on the privatization of our screening workforce?

What procedures should the Department have in place to ensure that contracted screeners provide the same or better security than federal screeners?

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?

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 am open to further privatization of the screener workforce, as contemplated by TSA's founding statute, provided that any such further deployments meet or exceed the same high standards of screening set for facilities that are served by a wholly federal screening workforce. Such additional deployments of private sector firms must be undertaken with appropriate TSA supervision and governed by published rules and procedures, which must include rigorous employee testing and enterprise accountability provisions. I have not yet given adequate thought or research to the specifics of how to expand the five pilot projects. Of course, any such expansion must build protections against dilution of mission performance, and guard against the possibility of unscrupulous providers that might be tempted to achieve greater profitability at the expense of security. As with our wholly federal screener teams, active red cell testing and Inspector General oversight would be essential.

114. The Administration is proposing to fund certain existing and new spending on aviation security by increasing an existing passenger security fee. While there is certainly a need for increased spending on aviation security, there is controversy over this proposed funding mechanism. The airline industry claims that competition will force it to absorb the tax rather than pass it on to consumers, and that airlines can ill-afford to do this at a time when many are facing bankruptcy. Further, key lawmakers on committees that must approve the increase have already signaled their plans to block the proposed hike. At the same time the Administration is

proposing to raise the security fee charged to air passengers, the Administration is proposing a reduction in the security fee assessed to the air carriers, from approximately $750 million in FY2005, to just $350 million in the FY2006 budget. The air carrier fee was originally based on a rough estimation of $1 per passenger. There does not appear to be any explanation or analysis for the reduction in the fee in the President's budget.

a. Do you believe TSA should seek an increased ticket tax? What analysis has been done, or should be done, to assess the likely impact on the airline industry?

**ANSWER:** The Aviation Security Infrastructure Fee (ASIF) was authorized by the Aviation and Transportation Security Act (ATSA), which set the criteria for its collection. The President's budget supports an increase in the existing fee and I support the President's budget. Although I have seen data produced by the airlines in the past about the impact of federal taxes, I have no knowledge of whether specific research was done recently on possible impacts to the aviation industry.

b. What are your views on the reduction in fees for air carriers at the same time the President is asking for an increase in the passenger fee?

**ANSWER:** I have not yet examined this aspect of the FY06 budget (i.e., the carrier fee reduction) in sufficient detail and thus have not formed an educated opinion. If confirmed, I would anticipate learning more about these issues and consulting with Congress about them.

c. After September 11, 2001, Congress, the Administration and industry representatives worked together to determine what kinds and levels of fees needed to be assessed to pay for the security measures the TSA would be assuming or implementing. A rough analysis attempted to take into account the costs air carriers had been spending on security prior to TSA's creation. It was determined that approximately $1 per passenger should be assessed to the air carriers. However, the Department has not yet concluded any studies or produced any reports on the security costs paid by air carriers prior to 9/11 which would provide details or justifications for changing the fee assessed. Do you believe the Department should conclude any evaluations or assessments on the security costs paid for by air carriers prior to 9/11 before changing the fee?

**ANSWER:** In addition to passenger fees, TSA's authorizing statute (ATSA) authorizes TSA to impose and collect fees from air carriers to the extent that passenger fees are insufficient to pay fully the costs of providing civil aviation security services. ATSA also placed an overall limit on the amount that can be collected from carriers based on the amount carriers expended in screening passengers and property in calendar year 2000. However, ATSA also allows TSA to reallocate the same 2000 screening cost by current market, beginning on October 1, 2004. Such reallocation would permit TSA to start charging airlines that did not exist in 2000 and to reduce the fee on airlines whose market share has declined since 2000. TSA is accepting proposals from the airlines on how best to determine "current market share" and has received more than 15 proposals to date. The agency expects to issue a Notice of Proposed Rulemaking with its final proposal in the next few months.

I understand that to assist TSA with determining what the airlines had spent on security screening prior to TSA assuming those functions, the agency required airlines to complete an extensive cost questionnaire on the costs the carriers incurred in 2000. Industry memoranda and Congressional testimony both pre and post 9-11 indicated that the airlines spent as much as $1 billion on security screening. Based on that information, TSA conservatively estimated that the industry's costs would be $750 million. However, the total reported by the airline industry through the cost questionnaires was around $350 million. Independent audits also could not validate the completeness of the industry's reported costs. As the air carrier fees are currently being paid based on the airline cost submissions, there is an approximately $400 million difference between fees being paid and costs originally reported by the industry.

TSA has briefed Congressional staffs on the 2000 aviation screening costs submitted by the airlines. The Homeland Security Appropriations Act, 2005 mandates that the General Accounting Office (GAO) undertake a study to determine the airlines' 2000 screening costs, as the fee is capped by what the airline industry spent on screening in 2000 and by what each individual airline spent in 2000. GAO's determination is due in mid-April of 2005. TSA will be able to use the GAO cost study as the basis for determining any adjustments that are appropriate to the aggregate amount that should be collected from air carriers.

**TOPOFF and Other National Exercises**

115. In early April, DHS will be conducting a major national exercise – TOPOFF 3 – involving terrorist attack scenarios centered in Connecticut and New Jersey. This is the third in this series of major national homeland security exercises that test the ability of federal leaders and organizations to respond to such attacks. Unlike the previous exercises, however, DHS this year is not providing any financial assistance to either the state or to the local governments involved in this exercise to help defray the costs that they are incurring. Instead, DHS has instructed the states to utilize their existing Homeland Security grant funds. It is our understanding that some states declined to host the exercise because of these additional costs. Additionally, because TOPOFF 3 is a national exercise directed by DHS, the participating states reportedly have had limited involvement in its planning and have not been able to structure the exercise to maximize their ability to test state and local capabilities.

a. While participating states will benefit from participation in the exercise, the TOPOFF exercises are national exercises for the benefit of national preparedness. In light of the primary federal purpose of the exercises, do you believe it is appropriate to require participating states to pay the full cost of their participation? Do you have concerns that this policy will discourage some states from participating and, thereby, shape decisions about where these national exercises are actually held?

**ANSWER:** The TOPOFF exercise series is a shared responsibility. State and local jurisdictions utilize a combination of local and state funds coupled with authorized federal grant funds to meet their obligations under the program. In addition to this mix of funding, activities that are conducted in the state are significantly underwritten by direct application of federal funds. Identifying venues for TOPOFF activities is an interactive process where governors are invited

to 'self-nominate' their states and territories. During the solicitation process, states are informed about the financial requirements for hosting a TOPOFF exercise. If confirmed, I would, however, make sure I review these issues in advance of future such exercises.

b. Even though participating states are contributing a significant portion of the total cost of the TOPOFF exercise, our understanding is that the exercise itself is planned, designed, and conducted by DHS and its exercise contractor with minimal input from participating states. The result is that participating states are unable to achieve the full benefit of the drill with regard to testing their own state and local capabilities. If you are confirmed, what steps will you take to ensure that states and local entities that participate in national DHS-sponsored exercises, such as TOPOFF, have a direct role in the planning and design of the exercises?

**ANSWER:** I am told that design of the TOPOFF activity is a highly interactive process, with views and priorities from all participating stakeholders taken under careful consideration. It certainly should include very considerable input from our state partners. Again, if confirmed, I would make sure I review these issues in advance of future such exercises and make sure that states have a direct and adequate role in the planning process.

**Civil Liberties**

116. 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 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.

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 also aggressively seeking ways to enhance America's security. I do not believe we can sacrifice liberty for security; rather, we must search for innovative ways to enhance security and liberty at the same time.

The Department will fully implement the Homeland Security Civil Rights and Civil Liberties Protection Act of 2004 ("the Act"). I look forward to being fully briefed on details of the Act. If

confirmed, I will fully support the Secretary in what I understand is his plan to ask for an implementation plan from each of the three offices impacted by this 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 understand that the Act seeks to strengthen the roles these offices play within the Department so that senior officials fully consider civil rights, civil liberties and privacy issues as the Department formulates policy and carries out its law enforcement and intelligence activities. And, if confirmed, I will be dedicated to ensuring the Act is wholly and effectively implemented by the Department.

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:** I believe that preserving the civil rights and civil liberties of the American people is essential as we combat terrorism. I understand that 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 also understand that the Officer is preparing an implementation plan that is responsive to these statutory changes and constructive for the Department, and I would look forward to working with the Officer on this plan. I believe the Officer should certainly have a prominent role in policy development and implementation.

c. How will you, as Deputy 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:** Striking this balance starts with a commitment to affirm the importance of these issues. I would begin service at DHS with this commitment, and I would make that fact unambiguously clear to my colleagues. Second, it requires working to ensure that protecting America *and* preserving our freedoms is the responsibility of all employees of the Department, not just an obligation of the certain officials based in Washington. Secretary Chertoff has certainly embraced this same commitment. I would work with the Department's leadership team to affirm this commitment as an unequivocal part of the Department's ethos. And I would seek to support this with appropriate employee training.

d. 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:** DHS 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. The Intelligence Reform and Terrorism Prevention Act will strengthen the mandate of both of these officers, who already have broad access to the senior leadership of the Department. I also understand they have made important contributions to the policies and procedures of the Department. If confirmed, I will certainly ensure that these officers continue to play key roles in shaping policy within the Department. Moreover, I will emphasize that this is an obligation of all DHS employees.

e. 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 Deputy Secretary?

**ANSWER:** I do not start with a specific agenda or worry list in this regard. I do, however, have a sensitivity to raising privacy, civil rights and civil liberties issues early and often in the design of the various information technology tools and threat screening tools that are proposed for managing the Department's security missions.

117. The President's FY2006 Budget includes no new funding for the Office of Civil Rights and Civil Liberties, notwithstanding passage of the Homeland Security Civil Rights and Civil Liberties Protection Act, which expanded the responsibilities of this Office. In particular, the Office is now charged with not only reviewing and assessing information concerning racial and ethnic profiling, but also religious profiling. In addition, the Office is now charged with investigating complaints, assisting the Department in the development of policies, and overseeing the Department's compliance with relevant constitutional, regulatory and other policies.

a. Do you believe the proposed budget is adequate to fully and effectively implement the requirements of the Homeland Security Civil Rights and Civil Liberties Protection Act? Please explain.

**ANSWER:** I have not had an opportunity to review these budgets at this juncture, but would certainly do so if confirmed.

118. The DHS Inspector General also has additional responsibilities under the Homeland Security Civil Rights and Civil Liberties Protection Act. How does the proposed budget for the OIG reflect these additional duties?

**ANSWER:** It is my understanding that these are not additional responsibilities, but merely a codification in law of duties already being performed by the Office of Inspector General. As a result, the OIG will not require additional funding to perform the civil rights duties outlined in the Homeland Security Civil Rights and Civil Liberties Protection Act.

119. 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 Deputy Secretary, how would you view the role of the Board in DHS' development of policies and practices?

**ANSWER:** It is my understanding the Privacy and Civil Liberties Board that is authorized by the Intelligence Reform and Terrorism Prevention Act is charged with reviewing regulations and programs of federal agencies that are concerned with combating terrorism. I also provides 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. Understanding that DHS is the first agency to have statutorily required Privacy. I would certainly envision the Board may look to DHS as a model for implementing its own mandate. I would also anticipate 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 would certainly work actively with the Privacy and Civil Liberties Oversight Board (in addition to the President's own Board on Safeguarding Americans' Civil Liberties, which was created by Executive Order on August 27, 2004). I would also expect that both the Department's Officer for Civil Rights and Civil Liberties and 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 and that they will advise the Secretary and the Deputy Secretary on the appropriate levels of DHS interaction with 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 will certainly look forward to determining all the areas in which the Department should confer with the new Board.

**Domestic Nuclear Detection Office**

120. The Department's FY2006 budget proposes creation of a Domestic Nuclear Detection Office (DNDO) which would be responsible for an array of programs and systems designed to detect efforts to import nuclear or radiological material into the United States. The office would apparently be staffed with officials from DHS, the Department of Energy (DoE), the Pentagon and the FBI, with coordination among the Department of Justice (DoJ), the Department of State,

the Intelligence Community and other departments as needed. The DNDO would develop, acquire and deploy a detection system for nuclear and radiological materials. According to press reports, the office would also be responsible for developing protocols so that detection leads to effective response by military, law enforcement, and others. These capabilities are clearly essential to effectively protect the American people against a "dirty" bomb or other radiological or nuclear device, and establishing them must be among the government's highest priorities.

a. What is your understanding of the time frame for bringing these resources together?

**ANSWER:** I understand that DHS intends to stand up the DNDO as soon as possible during FY 2005. And, further, a transition team whose members come from the Departments of Energy (DOE), Defense (DOD), Justice (DOJ), and Homeland Security (DHS) is working now to establish the new office.

b. What will DHS do in the interim to mitigate the vulnerabilities in our defenses that this office is being designed to address?

**ANSWER:** It is my understanding that the DNDO is proposed to manage an integrated nuclear detection architecture. Once DNDO is operational, it will assess, validate and coordinate all existing architectures and conduct a gap analysis to drive future work. I understand that DHS and other Administration colleagues are preparing the necessary groundwork to ensure DNDO's capabilities are operational immediately upon establishment. I would expect that the appropriate functions will therefore transition to the new office with the least possible disruption of existing programs. DNDO is intended to promote, enhance and magnify those programs' effectiveness and synergies.

c. Will agencies such as DoJ, the State Department, or DoE retain any responsibility for developing, acquiring, or supporting systems designed to detect attempts to import or transport radiological materials, or will DNDO be solely responsible? If these or other agencies retain some responsibility, how should the responsibility be divided?

**ANSWER:** It is my understanding current DOJ, State Department, DOE, and DOD responsibilities for developing, acquiring, or supporting systems designed to detect attempts to import or transport radiological materials will remain within the respective Departments. Their efforts will fall under the global nuclear detection architecture, and this architecture will be developed by the jointly staffed DNDO.

As a national office, DNDO will be responsible for ensuring that federal efforts remain consistent with the jointly established global architecture. Tight coordination of nuclear detection research, development, test and evaluation efforts among DHS, DOE, and DOD will also provide opportunities for joint technology development. I believe such joint work will, in turn, foster efficient development of technologies that can then be specifically engineered for the individual missions of each department.

d. It is our understanding that, as part of an effort to merge the detection and prevention

efforts of the separate agencies, the DNNO would be jointly staffed by representatives from DHS, the DoE, the Department of Defense (DoD), and the FBI, with coordination between the DoJ, the Department of State and the Intelligence Community. Should staff from the identified agencies be detailed to the DNDO, or should they be considered permanently reassigned to DHS? What are the advantages or disadvantages of either arrangement? Which agency should be responsible for paying those employees?

**ANSWER:** The DNDO will be a national, jointly staffed office. Staff from DOE, DOD, DOJ/FBI, and DHS will be detailed from their respective departments. The plan is for such employees to remain knowledgeable (and proficient) with respect to their home Department's missions and activities throughout their tenure in DNDO, and for such employees generally to have rotations to DNDO of 1-3 years duration. I believe that since DNDO is a national office, staff should continue to be paid from the appropriations of all the Departments who participate in and benefit from its work, consistent with any limitations imposed by law.

e. Do you believe the DNDO should be responsible for testing, evaluating and/or certifying the technologies that can be used to prevent or detect attempts to import or transport radiological materials? What relationship should the DNDO have with existing government and private sector facilities that also have the ability and experience to test, evaluate or certify relevant technologies?

**ANSWER:** I understand the DNDO will be responsible for developing the global nuclear detection architecture. I understand it will also be responsible for development, acquisition, and support of the deployment of the domestic nuclear detection architecture. I would think that for the DNDO to make sound acquisition decisions, and to determine system and architecture effectiveness, every subsystem and its components must be well understood and characterized. Thus, I would assume that the DNDO should have effective relationships with these other facilities. If confirmed, I look forward to learning more about how such relationships should be structured.

121. The Department's FY2006 budget proposal includes a request for $50 million to provide funding to support the establishment of the DHS Regional Structure. The proposal points out that twelve of the 22 agencies that were brought together to form the Department have regional field structures that are distributed throughout the nation, and that establishment of a regional structure would improve program delivery through integration/consolidation of information technology, facilities, and operations centers. What is your understanding of the progress that DHS has made on this initiative?

**ANSWER:** I am aware that Secretary Chertoff will soon be reviewing various organizational and budget options that have been drafted by DHS staff regarding the deployment of DHS regional assets. This will take place within the context of the Secretary's overall transitional review of DHS organizational structures, policies and operations. If confirmed, I would expect to assist the Secretary with this analysis.

**Interoperability**

122. On 9/11, the inability of New York City's Police and Fire Departments to effectively communicate contributed to the deaths of over 300 fire fighters. The lack of interoperability across our country is a long standing problem that has proven difficult to solve for numerous reasons: Many of the 44,000 public safety agencies are small, often volunteer organizations, with limited budgets, and little or no engineering expertise; radio communications infrastructure is old and outdated; planning for interoperability is limited and fragmented; coordination and cooperation is difficult to achieve; and there is a limited and fragmented amount of radio spectrum available to public safety. Even so, systematically overcoming these challenges clearly must be one of our highest priorities. Unfortunately, the Administration has proposed further cuts in funding for first responders. What is your understanding of the percentage of first responders that has achieved the necessary level of interoperability with their local, state and federal counterparts? Do you think it is appropriate to reduce funding before this critical, baseline level capability has been reached?

**ANSWER:** This is obviously an extremely important question, and I understand the Department has been working to : (1) rigorously assess existing interoperability among these agencies: and (2) determine how DHS can best increase the level of interoperability. It is my understanding that our Office of Interoperability and Compatibility's SAFECOM program is charged with assessing these issues, and will complete a baseline evaluation of communications interoperability by the end of FY 2005. This study is intended to identify in detail what our emergency responders need, and to established well-grounded standards for equipment, training, and systems that meet those needs. I would hope that this plan will provide an effective baseline for future investment planning. If confirmed, I look forward to learning more about the findings from these studies.

**Anti-Trust Action and the Justice Department**

123. Columnist Robert Novak mentioned your name in a November 29, 2001 column about a possible anti-trust action by the Department of Justice concerning an American Airlines and British Airways marketing alliance. Novak stated that White House Chief of Staff Andrew Card asked you to check on the status of American Airlines' request from DOJ for anti-trust immunity. Novak reported that you called Deputy Attorney General Larry Thompson and, according to a Novak source, you "allegedly instructed the Justice Department not to intervene" in the anti-trust action that other airlines were requesting to block the American Airlines-British Airways deal. Please respond to the allegations in the Novak column. Were you requested to contact DOJ regarding the American Airlines-British Airways alliance? If so, specifically what were you requested to do? What did you do in response?

**ANSWER:** I do not recall all details of this matter or this news story, but Secretary Card did not intrude in this matter. In the case referenced by this question, I would note that the Department of Transportation, not the Department of Justice, had the legal authority to decide this matter. At the time, there was a great deal of press speculation about this proposed aviation alliance, and my memory is that Mr. Novak got his story flat wrong.

**Press Reporter, using alias, gained access to White House press conferences with President**

124. Recent press reports have detailed how a journalist named Jeff Gannon of TalonNews gained entry to White House press conferences despite the fact that he was using an alias. If true, what do you believe the Secret Service should do to ensure that this doesn't happen again?

**ANSWER:** I have not had the opportunity to familiarize myself with the facts of this case. However, if confirmed, I will work with the Secret Service to review this particular set of facts and ensure all appropriate measures were taken to ensure the security of the White House.

**Securing the Nation's Capital**

125. 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.

In his responses to Committee questions, Secretary Chertoff noted that the Office of National Capital Region Coordination (NCRC) actively coordinates with federal law enforcement and agencies in the National Capital Region and that the NCRC chairs the Joint Federal Committee (JFC), a federal interagency coordination body. He further noted that to "accomplish the seamless coordination among jurisdictional plans a Regional Emergency Coordination Plan (RECP) was developed through the Metropolitan Washington Council of Governments (COG)."

a. What is the current process through which the RECP is regularly reviewed and updated by both federal and local stakeholders in the National Capital Region?

**ANSWER:** I am informed that the Regional Emergency Coordination Plan (RECP) was developed and is maintained through the Metropolitan Washington Council of Governments (COG). As noted on the COG website, the RECP was designed to be a flexible document that will be tested and updated regularly. In order to be effective, the Plan must be tested both through real world operations and simulation exercises. Activities include exercises and forums to ensure that key decision makers are kept up to date with changes to the RECP. The RECP will be reviewed and updated as appropriate. This review and update process will include input from federal, state and local jurisdictions, private sector and not-for-profit stakeholders.

b. What forums or procedures, if any, have been created to ensure ongoing coordination between DHS, other federal agencies in the area, and District of Columbia government, including D.C. police and emergency planners?

**ANSWER:** I am informed that the Joint Federal Committee (JFC) which is chaired by the Office of National Capital Region Coordination (NCRC) was established to ensure that key federal stakeholders in the region are coordinating with local jurisdictions, to include the District of Columbia, on security planning and emergency response. Regular monthly meetings allow for the continued coordination of security and response planning between all three branches of the federal government and state and local agencies. Representatives from the Metropolitan Police Department, D.C. Fire and Emergency Medical Service, D.C. Emergency Management Agency and D.C. Department of Transportation have participated, and will continue to participate, in meetings and coordination.

c. How has DHS ensured any concerns held of the District of Columbia regarding coordination of and with federal agencies have been resolved?

**ANSWER:** I have been informed that DHS, through the Office of National Capital Region Coordination (NCRC), has committed to and maintains a very close working relationship with the Mayor of the District of Columbia's senior homeland security staff. This includes the Homeland Security Advisor, Director of Emergency Management and Deputy Mayor for Public Safety and Justice. Constant communication and regular interface through weekly conference calls and monthly day-long off-site meetings enable DHS to hear D.C.'s concerns and issues with federal agencies and develop appropriate plans for resolution.

126. 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.

In response to Committee questions regarding how DHS or the ISC has coordinated with the NCPC on security enhancements, Secretary Chertoff indicated that he "understand[s] that the ISC would work with a variety of local commissions and organizations, such as the NCPC, responsible for urban design and preservation issues." While it is important federal entities do coordinate with relevant local commissions and organizations, the NCPC is a federal agency through which physical security improvements in the Region must be approved, prior to implementation. Sometimes, the lack of coordination on the front-end of such security planning could result in increased costs to taxpayers as such plans must eventually be approved by federal entities such as the NCPC. If those plans are not appropriate or inconsistent with the National Capital Urban Design and Security Plan and guidelines, the result could be disapproval and delay in the implementation of the security plans and may result in the federal agency having to reassess their security enhancements, which may increase costs to the government.

Given DHS' role as chair of the ISC and the mission of the Office of National Capital Region Coordination, how do you believe DHS can assist in ensuring that federal agencies and the ISC work with NCPC as security planning is developed?

**ANSWER:** I understand that 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 have been informed that the ISC would work with a variety of local commissions and organizations, such as the NCPC, responsible for urban design and preservation issues. Through the involvement of the many agencies that participate in the ISC and 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. I will expect this relationship to continue into the future.

127. The President's FY2006 budget includes $2 million to the Secret Service to address a need identified by the Secret Service to "upgrade around the area of the White House." The Budget in Brief further notes that "[t]his 'White House Zone' includes the west side of the Eisenhower Executive Office Building along 17th Street, and the east side of the Treasury Building along 15th street." The Secret Service has been an active partner, along with other federal stakeholders, in the National Capital Planning Commission's Interagency Security Task Force, which issued the National Capital Urban Design and Security Plan to help guide federal agencies in ensuring physical security improvements are consistent with the urban design of the city. That Plan also includes enhanced security around the White House, which has already been substantially completed.

a. Will the $2 million be used only for security planning purposes or for actual security improvements in these locations?

**ANSWER:** I am told that the $2 million will be used for security planning, surveys, studies, designs, validation testing, and the like. It is not intended to be used for construction, implementation or execution of security improvements.

b. Are DHS and the Secret Service committed, as they proceed with this planning process, to continue consulting with and working with the NCPC on physical security planning?

**ANSWER:** I understand that the Secret Service and DHS are committed to working with the National Capital Planning Commission (NCPC) as this planning process proceeds. The Secret Service will share these plans and consult with NCPC once concepts are sufficiently developed to show the intent of the proposed security enhancements. I also understand that the Secret Service and NCPC have successfully worked together on several past projects that include the "Pennsylvania Avenue in Front of the White House" project, the North President's Park Project, and the South Side Barrier project.

c. Are DHS and the Secret Service committed to ensuring that proposals for physical security enhancements are consistent with the National Capital Urban Design and Security Plan and guidelines?

**ANSWER:** I understand that the Secret Service and DHS are committed to developing security upgrades and enhanced countermeasures for the "White House Zone" that are consistent with the goals outlined in the NCPC guidelines.

d. What steps will the Secret Service take to inform and work with the District of Columbia government on any proposed enhancements that may have practical implications on pedestrian and traffic movement in those locations?

**ANSWER:** I am told that the Secret Service will work with and involve the District of Columbia government, the National Park Service, NCPC, neighboring properties, and other entities that may be affected by any proposed security enhancements. The Secret Service has successfully worked with these stakeholders on past projects and will involve them in the planning process associated with this effort.

128. The President's FY2006 budget proposes a $360 thousand increase for the National Capital Region Coordinator Initiative. What are the intended uses for this increase?

**ANSWER:** I have been informed that the increase requested will be used to support additional staff in the office. Additional staff will be used to coordinate and integrate the policies and programs within specific public safety domains in the National Capital Region.

**Science and Technology**

129. 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. In particular, 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. However, there are concerns that, as currently operating, the Directorate is not fulfilling this vision. Instead, the Directorate includes a large

office of Programs, Planning and Budget 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. While the national laboratories undoubtedly have important expertise to contribute to homeland security work, this is not an optimal balance or the one envisioned in the authorizing legislation. 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. This issue takes on added importance with the pending move to consolidate more of the Department's R&D work in the S&T Directorate.

a. Do you agree that private sector R&D should be an important part of the Department's homeland security effort? As Deputy Secretary, will you work 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:** I believe that leveraging the private sector is critical to the success of the Science and Technology Directorate. I understand that funding levels for both HSARPA and for intramural R&D are determined through the planning, programming and budgeting (PPB) process and are dependent on where the best expertise is found to conduct proposed RDT&E work. For FY 2005, I understand that over 60 percent of the Directorate's RDT&E budget will be executed by the private sector.

I certainly look forward to a detailed review of DHS methods for bringing nimble, entrepreneurial private sector skills to bear in working on the Department's technology mission requirements.

b. As Deputy Secretary, will you work to ensure that the S&T Directorate has sound policies and procedures to determine how funding priorities are set, as well as the determination to seek work through competitive "extramural" outreach as opposed to non-competitive awards to federal laboratories that provide "intramural" services to the Directorate?

**ANSWER:** Yes. I believe that both the private sector and federal labs have a role to play and I would be eager to see that an appropriate balance is maintained.

## IV. RELATIONS WITH CONGRESS

130. 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.

131. 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.

**V. ASSISTANCE**

132. 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 draft proposals for regulations or other efforts about which I have relatively little in the 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. This has entailed normal pre-confirmation and departmental orientation consultations with the White House personnel office and related staff, the Office of Government Ethics, DHS Counsel and staff. That said, these answers are my own, and are based upon my understanding of the information provided me.

AFFIDAVIT

I, MICHAEL P. JACKSON, 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.

Michael P. Jackson
Signature

Subscribed and sworn before me this 1st day of March, 2005.

Lozetta J. Harris
Notary Public

Lozetta J. Harris
Notary Public, District of Columbia
My Commission Expires 09-30-2008

**Additional Pre-Hearing Question**
**From Senator Joe Lieberman**
**For the Nomination of Michael Jackson to be**
**Deputy Secretary of Homeland Security**

1. On February 10, 2005, the House of Representatives passed the REAL ID Act (H.R. 418) which, among other things, places greater restrictions on the award of asylum and imposes a legal presence requirement on drivers' licenses. On February 9, 2005, the White House had endorsed H.R. 418. In a letter dated October 18, 2004, however, the Administration stated its opposition to an asylum provision in H.R. 10 essentially identical to the asylum provision in H.R. 418. The letter also endorsed the provision on drivers' licenses contained in S. 2845 over the competing version in H.R. 10; H.R. 418 would repeal the enacted Senate provision and replace it with the language from HR 10. The Senate provision on drivers' licenses is now being implemented by the Department of Transportation, with the assistance of DHS. The National Governor's Association, the National Conference of State Legislatures, and the American Association of Motor Vehicle Administrators all oppose the drivers' license provision in H.R. 418; they say it would incur massive costs, and that the driver's license and ID card provisions of S. 2845 offer the best course for increasing the security and integrity of drivers' licenses.

a. What are your personal views on the provision in H.R. 418 placing greater restrictions on asylum? What effect would the provision have on legitimate asylum seekers?

**ANSWER:** I would start by saying that I do not yet have a detailed understanding of the issues and policy options associated with this question regarding asylum. I have, however, read the Statement of Administration Position (SAP) supporting passage of HR 418. I understand that the Administration's support for the asylum provisions of HR 418 is animated in part by a commitment to achieve greater consistency and discipline in how the U.S. Government makes decisions when evaluating individual applications for asylum. I fully support those objectives. At the same time, the SAP indicates support for the asylum reform provisions, provided that the legislation "ensure[s] the changes do not unintentionally create new barriers to asylum" and notes that "some of these provisions would require refinement to ensure consistency with foreign policy priorities." I fully support these objectives as well. If confirmed, I would look forward to working with Congress and my colleagues in the Administration regarding any refinements that may be advisable.

b. What are your personal views on the drivers' license provision in H.R. 418? Do you agree that the provision, which would require state DMVs to instantly verify the authenticity of all identification documents, including birth certificates issued many decades earlier by county clerks in other states, would be very difficult if not impossible to implement? Please explain your answer.

**ANSWER:** I must also begin a response to this cluster of questions regarding drivers' licenses by acknowledging that this important topic deserves more study than I have been able to make at

this juncture. I can, therefore, in fairness offer only a few preliminary observations. First, I believe that 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. I understand many of the proposed measures for improving driver's license issuance will require significant policy and technical work to implement, both at the federal and state levels. The Administration's statement for HR 418 says that the Administration seeks to work with Congress on a number of issues associated with the drivers' licensing provisions, so I infer that there is ongoing need to consult with Congress on these matters. If confirmed, I would look forward to participating in such discussions as appropriate.

c. What are your personal views on the requirement in H.R. 418 that all states confirm that applicants for drivers' licenses must be legally present?

**ANSWER:** I understand that the Administration has endorsed this policy and I support that policy.

d. What are your views on the drivers' license provisions enacted as part of S.2845 with the support of the Administration? How should DHS work with the Department of Transportation to ensure that the provision is implemented as enacted?

**ANSWER:** As indicated above, I strongly support making improvements to the security and integrity of driver's licenses. The Intelligence Reform and Terrorism Prevention Act of 2004 set in motion a process that is intended to bring such improvements. I know from personal experience that the Department of Transportation (DOT) has considerable subject matter expertise in this area. The enacted legislation calls for DHS to cooperate closely with the work of DOT in this matter and I understand that DOT has already begun this implementation with DHS support. If confirmed, I would make DHS' work on this statutory obligation a priority.

**AFFIDAVIT**

I, Michael P. Jackson 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.

Michael Jackson

Subscribed and sworn before me this 2nd day of March, 2005.

Janice M. McKutchin
Notary Public

Janice M. McKutchin
Notary Public, District of Columbia
My Commission Expires 8-14-2009

**Post-Hearing Questions Submitted by**
**Senator Susan M. Collins, Chairman**
**for the Nomination of Michael Jackson to be**
**Deputy Secretary of Homeland Security**
**March 8, 2005**

An Integrated Department

1. Most of the Department's critical support personnel are distributed throughout the Department's components, and they are not directly accountable to the functional chiefs: the chief financial officer, the chief information officer and the chief procurement officer. These chiefs are not members of the senior management team, and lack authority to manage the issues or resources in their respective portfolios on a Department-wide basis.

a. Do you agree that this current arrangement makes it more difficult for the Department to achieve the efficiency and cohesiveness that is needed?

**ANSWER**: Yes, I would agree that this arrangement is not yet optimal. If confirmed, I would be committed to supporting closely integrated support and service functionality within the Department. I am told that DHS has recently taken several steps towards integrating functions within the Department. Additionally, if confirmed, I would support the Secretary in ensuring that the CFO, CIO, and CPO have the authorities and responsibilities necessary to meet the Department's mission needs. At the Department of Transportation, I considered these managers to be key members of that Department's management team, and would expect to support these positions at DHS in that same manner.

b. What steps do you recommend that the Department take to improve its capacity to integrate support functions?

**ANSWER**: If confirmed, I would look forward to reviewing and enhancing existing capacities and to form specific recommendations as part of the Secretary's transition review. On an immediate basis, after a confirmation, I would personally reinforce the importance of this matter in my initial meetings with operating components of DHS.

Coast Guard

2. In the FY'05 DHS Appropriation Bill the Coast Guard was required to provide the Congress with a post 9/11 implementation plan for the Deepwater program when the FY'06 budget request was submitted to Congress. It is the Committee understands that the OMB, DHS and the Coast Guard are still in the process of reviewing this plan and that it should be available within the next 30 days.

This program is essential to the current and future needs of the Coast Guard as the lead agency tasked with Maritime Homeland Security. I would strongly hope that, during this review, the acceleration of the program is being vigorously promoted, and that the debate is not centering on decreasing budgets and extending the timeline for this acquisition.

Can I have your commitment that when this report is available, the Department and Coast Guard brief this committee on the new implementation plan?

**ANSWER:** Yes, the Department and the Coast Guard will brief the Committee with the new implementation plan when it is available.

Immigration

3. One of the concerns people have raised is that DHS law enforcement agents who investigate fraud in the immigration benefits process work in the Bureau of Immigration and Customs Enforcement (ICE) which is a different Bureau from CIS. So, ICE agents do not work alongside the DHS personnel adjudicating immigration benefits applications. Yet, historically, many terrorists involved in attacks inside the United States also were involved in some form of benefits fraud. You have indicated in your written responses that you support the establishment of a policy office within DHS reporting to the Office of the Secretary that is designed to "insure that the appropriate balance exists between services and enforcement interests in the development and implementation of immigration policy." Since that office does not yet exist, can you tell us your view on what should be ICE's role in investigating potential immigration benefit fraud?

**ANSWER:** I understand that the ICE Benefits Fraud Units are working closely with the USCIS Fraud Detection and National Security Unit (established following the establishment of USCIS) to coordinate the Department's efforts to combat benefits fraud and respond to national security issues that are identified in the USCIS case-load. I also understand that ICE special agents are designated to be co-located in each CIS field office and processing centers. And, further that ICE and CIS meet on a bi-weekly basis to discuss immigration benefit fraud issues. If confirmed, I intend to learn more about the specifics of this partnership and its effectiveness and what changes, if any, should be made to the present ICE role. Moreover, I would work to accelerate timely development of policy office assets mentioned in this question.

4. As you mention in your written responses, the Bureau of Immigration and Customs Enforcement (ICE) faces "serious current challenges," including those related to its "ongoing budget shortfall and financial management requirements." It is our understanding that ICE has been under a hiring "freeze" for the past two years, and has ceased all training activities because of this budget situation. We also hear continuing concern that ICE does not have a clear mission and set of investigative priorities. We have received reports that there are ongoing conflicts between ICE and the FBI over the

appropriate role of those two agencies in terrorism investigations. Not surprisingly, there are frequent media reports about poor morale in ICE. What is your proposed solution to these problems?

**ANSWER:** If confirmed, I would bring to DHS a very low tolerance for any such conflicts. I would work aggressively with the Secretary to resolve any such issues. As the Secretary has indicated, he will soon begin a full review of Department operations and policies. Through this process, he intends to surface any issues that need to be resolved, and then will work with the Department's management team to address them. This would include recommendations regarding strengthening, validating or adjusting the current allocation of responsibilities across Department organizations. The focus of the Department is to do the job for the American people to the best of our ability. If confirmed, I would work to ensure the Department is appropriately structured to meet its mission.

**Post-hearing Questions Submitted**
**for the Record by Senator Daniel K. Akaka**
**for the nomination of Michael Jackson**
**to be Deputy Secretary of Homeland Security**
**March 7, 2005**

Data Mining

1. Last month two serious breach of privacy were disclosed by ChoicePoint and Bank of America. Although 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 American's privacy rights while using data mining techniques to wage the war on terrorism? And how will you ensure the accuracy and quality of data mined from the private sector?

**ANSWER:** I can strongly reaffirm the Department's commitment to protecting privacy while also aggressively seeking ways to enhance America's security. In designing programs that would consider use of data mining or other techniques, I would advocate looking at different business models for both the IT infrastructure and screening processes that would enable transparency and accountability. I'd look for best practices from both public and private sectors. I would expect that any plan to use commercial data would incorporate strict analysis of data quality and accuracy, and would include measures to test and review these matters routinely.

Further, I would ensure that DHS entities utilize the significant resources of both the Privacy Office and the Office of Civil Rights and Civil Liberties. As the Department formulates policy and carries out its law enforcement and intelligence activities, these offices can assist in ensuring full consideration and incorporation of relevant civil rights, civil liberties and privacy protections.

In addition, the proposed Office of Screening Coordination and Operations would provide expertise and oversight on these matters. This office, which the Secretary has embraced in concept and will be further refined through development of a detailed implementation plan, will give the Department a focal point for the responsible use of these tools. And, if confirmed, I pledge that my personal focus will be on these critical issues.

Employee Issues

2. It appears that the final DHS personnel regulations issued last month have neither the support of employees nor meaningful opportunities for employees to express their views and concerns.
Please share with us how DHS will ensure open lines of communication with employees, including their union representatives.

**ANSWER:** I am a strong believer in working with stakeholders and unions that represent the DHS workforce. The regulations provide for continuing collaboration with employee representatives. The Department's management team will reach out to them on this and other issues that affect their members. Specifically, the regulations commit DHS to provide employee representatives with an opportunity to discuss their views and concerns during the drafting and implementation of directives that will codify final aspects of the program design. I understand that union comments will be taken into consideration before any final decisions are made. In addition, DHS labor organizations will be provided an opportunity to submit nominees to serve as members of the new Homeland Security Labor Relations Board and Mandatory Removal Panel. There will also be opportunities for employees to serve on focus groups, some of which are already underway. These groups will discuss design concepts related to performance management, occupational clusters and pay banding. Finally, DHS regulations provide for employee representative participation in the evaluative aspects of the new program.

If confirmed, I would support the measures outlined above and would seek to find other appropriate ways to include employees integrally in the plans and deployment of the new human resources system. I would also seek opportunities to participate in this process personally and to meet with employee representatives, seeking their counsel and their ongoing assessments of our progress.

DHS Personnel System:

3. At a House subcommittee hearing last week, the Chairman of the Merit Systems Protection Board, Neil McPhie, voiced concerns about the new DHS personnel system. Chairman McPhie testified that the new system may adversely affect employees' due process rights and will overburden MSPB judges. How do you respond to these concerns?

**ANSWER:** I understand that the decision to continue to use Merit Systems Protection Board (MSPB) judges to hear disciplinary appeals was made, at least in part, with the Chairman's support. I believe that employees have confidence in the MSPB's impartiality. If confirmed, I would ensure that DHS work closely with MSPB judges to mitigate any potential adverse impacts as raised by this question, and that we jointly monitor this issue.

Whistleblower

4. As you know, TSA screeners are not covered by the new DHS human resources system. Unlike other DHS employees, TSA screeners do not have the right to have their whistleblower complaints reviewed by the Merit Systems Protection Board. I believe the TSA screener workforce deserves full whistleblower rights.

Do you disagree, and if so, why?

**ANSWER:** I understand that TSA has a memorandum of understanding with the Office of the Special Counsel to review allegations of whistleblowing. TSA's intention in signing this memorandum was to provide very significant protections to its employees. I have no data upon which to judge the experience of TSA in this regard. If confirmed, I would be willing to review the situation and assess whether any further refinements are needed.

DHS Financial Management

5. In 2003 Senator Fitzgerald and I introduced legislation to make the Department subject to the requirements of the Chief Financial Officers Act of 1990. I introduced an amendment requiring DHS to render an audit opinion on its internal controls that apply to financial reporting. Both these reforms became law.

However, the Committee was informed last week that DHS will not be able to produce an opinion on internal controls until next year. We also learned that DHS still relies on eight separate accounting providers within the Department. DHS relies upon the financial system of the Immigration and Customs Enforcement (ICE), which is considered antiquated and in need of modernization, for the majority of its accounting.

The DHS IG has found serious weaknesses in DHS' financial management, reporting, and accounting systems. The Government Accountability Office has placed the implementing and transformation of DHS on its High Risk List. Among the specific high-risk management challenges are: strengthening internal controls and reducing the number of material weaknesses in its financial systems.

Can you inform this Committee what steps will be taken by DHS to expedite the consolidation of accounting systems, while ensuring the development comprehensive internal controls?

**ANSWER:** If confirmed, I would work in close coordination with the Under Secretary for Management, the Department's Chief Financial Officer and the DHS senior management team to help the Department achieve the performance discipline that the Department clearly needs. Additionally, I understand that DHS is in the process of designing and implementing a Department-wide, fully integrated financial management system through the *eMerge*$^2$ initiative. I understand the *eMerge*$^2$ system design will enable the CFO to reduce the number of accounting offices and also contribute to resolving several IT-related internal control issues in the Department by incorporating

improved control features for all transactions and automatically documenting audit trails.

I have been informed that the CFO recently completed a major effort to develop clean action plans to resolve material weaknesses in internal controls and that he has established a requirement for quarterly reporting on the progress taken to achieve key milestones in these plans. This effort is part of a larger 3-year vision outlined by the CFO for financial reporting, encompassing financial statement audits as well as internal control projects. This 3-year vision has the support of the Inspector General.

I also have been informed that the CFO has established an internal controls committee to: (1) ensure effective communication on internal control objectives throughout the Department; (2) ensure that assessment of internal controls is performed thoroughly, effectively, and timely; (3) assess the Department's year-end financial reporting process; (4) provide technical expertise on internal control structural improvements; and (5) provide Departmental oversight of management processes, findings and long-term remediation efforts. Currently, the CFO is developing implementation guidance for the internal control provisions of the DHS Financial Accountability Act and plans to release a draft in late April. The CFO is participating with OMB in developing government-wide implementation guidance for the revisions to OMB Circular A-123, Management's Responsibility for Internal Controls.

This subject must be made a recurring matter of review and high priority among all of the Department's leadership team – it is not just a problem that can be relegated to our financial professionals. If confirmed, I would work aggressively to continue and accelerate the Department's efforts to strengthen DHS financial controls.

Privacy Concerns

6. DHS recently announced appointments to its Data Privacy and Integrity Advisory Committee which provides outside expert advice on privacy policy. Some of the persons appointed represent companies that have engaged in actions that are intrusive and inconsistent with the mission of the DHS Privacy Officer. Some also say that the privacy advocacy community is not adequately represented.

Can you comment on these claims and provide us your assurance that the Committee will adequately represent the privacy rights of American citizens?

**ANSWER:** Though I have not yet been fully briefed on this Committee, I recognize the importance of having such a forum as a resource for Department activities. I have been told that the recently formed Data Privacy and Integrity Advisory Committee, comprised of members representing the privacy advocacy, academia, industry, and technology sectors, has been well established to provide insights for, oversight of and evaluation of Departmental policies, programs, and initiatives. The board includes leaders on privacy policy from American companies, think tanks, and policy centers, as well as individual citizens who are concerned about these issues. Further, the Department can learn from

the board members who have assisted organizations that have experienced – and overcome – past privacy challenges, in order to improve the Department's awareness of current best practices and policies.

Should I be confirmed, I would look forward to discussing this board's activities and its current and future appointments with the Department's Chief Privacy Officer and others. We will strive to make sure that representation on this Board is credible and serves its important purpose.

Critical Infrastructure Protection Personnel:

7. The British intelligence agency known as MI-5 recently informed me that one reason it has been successful in working with the private sector on critical infrastructure protection is that it employs and trains staff that specialize in one particular sector. MI-5's assessment teams do not jump from industry to industry, and this is one of the primary reasons the private sector trust's MI-5's advice.

I know that DHS is a new agency and has not had time to cultivate long standing relationships with industry, but do you believe the MI-5 approach should be utilized by IAIP?

**ANSWER:** I am unfamiliar with the workings of MI-5 in significant detail. However, I certainly would concur with recommendations that flow from the spirit conveyed by this question. More specifically, I would concur that DHS should employ subject matter experts who have a thorough and well-developed understanding of key critical infrastructure sectors. Furthermore, these subject matter experts should have specialized experience to participate in appropriate policy and operational discussions with the private sector. Assessing the depth of the DHS employee bench will be included in the transitional organizational review of DHS undertaken by Secretary Chertoff. If confirmed, I would welcome the opportunity to assess how best to deploy such subject matter experts in the work of DHS.

**Post-hearing Question Submitted for the Record by**
**Senator Robert F. Bennett for the Nomination of**
**Michael Jackson to be**
**Deputy Secretary of Homeland Security**
**March 8, 2005**

1. As part of the Homeland Security Act of 2002, Congress enacted the SAFTEY Act, designed to mitigate tort liability for companies participating in the design, development and production of anti-terrorism technologies. It has recently been brought to my attention that since the Department established rules for processing the applications, more than fifty have been received. It is my understanding that of the applications received, four have been approved. In your view, do the current rules regarding the processing of these applications allow for adequate review of anti-terrorism technology in a timely manner? If not, what steps can be taken to improve this process?

**ANSWER:** I understand that concerns have been expressed by the public, industry, and members of Congress that the current process established by the Department to implement the SAFETY Act has been unduly burdensome and protracted. I understand the Department has, based upon comments from the public and the Congress, taken significant steps to streamline the process. If confirmed, then, I would intend to review the current rule, the current implementation of this program and I will work to ensure the application process is streamlined as much as possible, consistent with the requirements of the SAFETY Act.

**Post-hearing Questions Submitted for the Record by**
**Senator Ted Stevens for the Nomination of**
**Michael Jackson to be**
**Deputy Secretary of Homeland Security**
**March 8, 2005**

1. As you know the Administration is planning to increase the security fee that airline passengers are required to pay. Last year alone the airline industry lost about $10 billion. In light of this do you believe that this is the right time to add another $1.5 billion in fees?

**ANSWER:** During the creation of TSA and drafting of its enabling legislation, Congress established the principle that user fees would be a primary means for funding the agency's work in aviation. I am supportive of that principle. Moreover, I recognize that the President's budget supports an increase in the existing passenger fee, and I support the President's budget. In creating TSA, it was recognized that the new agency's aviation security work would require the deployment and management of a significant federal workforce, which is different than with other areas of transportation security.

I am also well aware of the financial difficulties facing the airline industry in today's marketplace. In my prior work at the Department of Transportation I worked closely with aviation industry stakeholders to evaluate such issues and their impact on the aviation network. I have not yet had the opportunity personally to assess these issues since my nomination to serve at DHS and, if confirmed, would do so. Should I be confirmed, I look forward to the opportunity to work with Congress as it considers the President's FY06 budget request.

2. While you were at the Department of Transportation you oversaw the creation of the Transportation Security Administration (TSA). One of TSA's programs allows registered travelers, who undergo background checks, to bypass some security procedures. Are you supportive of this program?

**ANSWER:** I understand from Secretary Ridge and TSA that the Department has launched five successful, Registered Traveler pilots in domestic airports. The results of these pilots are being closely examined, including the impact on overall wait times, screening effectiveness and customer satisfaction. From TSA's founding, I have been eager to reduce the hassle factor for passengers at screening checkpoints, and I am convinced that we can identify and deploy an effective mix of personnel, technologies and tools that will accelerate our progress in this regard. Based on what I know at this juncture, I think that an effectively designed and nationally deployed Registered Traveler program could have great promise to achieve these goals. Should I be confirmed, I would look forward to assessing the Registered Traveler program design, costs and deployment plan.

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 JACKSON FOR DEPUTY SECRETARY OF THE U. S. DEPARTMENT OF HOMELAND SECURITY

March 7, 2005

The Department of Homeland Security is entering a critical stage as the agency continues to define itself and its strategy for eliminating potential threats to American security. The nomination of Mr. Jackson for Deputy Secretary will have a significant positive impact on the future of the agency and the many pending or future regulations that concern the nation's transportation infrastructure, including air cargo. The Airforwarders Association, the industry voice for air cargo companies and their partners, has established a close working relationship with the Department of Homeland Security (DHS) and Transportation Security Administration (TSA) and looks forward to continuing that relationship with Mr. Jackson as Deputy Secretary.

Mr. Jackson has devoted his life to public service, with a particular focus on ensuring the transportation safety of Americans. As chief of staff to the Secretary of Transportation under former President George H.W. Bush, as the Deputy Secretary of the Department of Transportation from 2001 to 2003 and in his related work establishing the Transportation Security Administration, Mr. Jackson demonstrated a keen understanding of issues facing the United States transportation industry and the changes businesses have implemented in the post 9/11 era.

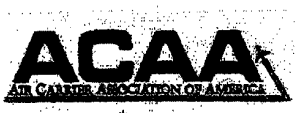
Mr. Jackson's work in the private sector is also critical to the future of DHS, as the agency functions most effectively when it has a clear understanding of the marketplace and how proposed regulations may affect it. We believe part of what has made the reforms implemented by the agency successful to date has been the willingness of DHS principals to reach out to affected industries by establishing working groups, discussions and seminars. Initiating a dialogue with industry has eased the burden of new and expansive regulations for many businesses that saw their concerns and questions addressed. We hope and expect this willingness to engage in constructive dialogue will continue with Mr. Jackson's arrival at the DHS.

Without DHS' commitment to incorporate industry concerns into crafting regulations, many businesses could have been severely crippled or even eliminated during the wave of regulations in 2001 and early 2002. The Airforwarders Association has been honored to participate in a number of these working groups, both prior to and after the inception of DHS. We have long been a part of the Aviation Security Advisory Committee, which recently produced more than 40 recommendations for improving air cargo security, many which were included in the newly proposed TSA rules

The air cargo industry is a $17 billion dollar industry that 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 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. This constant reminder of the high-risk environment in which we operate has taught us how to identify potential dangers and solutions to prevent these problems from occurring.

Our relationship with TSA and DHS has shown us firsthand the value of a collaborative, good faith atmosphere for strengthening air cargo security. Stricter regulations on 'known shipper' and increased oversight and inspection of cargo facilities have imposed burdens on the air cargo industry but were crafted in such a way to include the concerns of airforwarders, creating realistic and effective regulations. By continuing outreach efforts and a balanced regulatory approach, we are confident Mr. Jackson will help advance both air cargo security as well as the economic security of one of America's most critical industries.




1776 K Street, N.W., 9th Floor, Washington, DC 20006
(202) 719-7420 (Telephone) (202) 719-7207 (Facsimile)
epfaberman@acaa1.com
www.acaa1.com

February 8, 2005

The Honorable Susan M. Collins
United States Senate
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Collins:

Since the horrific events of September 11, 2001, the Transportation Security Administration and the Department of Homeland Security have faced enormous challenges. By partnering with the airline industry, they have improved airport security and the travel experience for American travelers. As a result of their efforts, the United States has a more secure airport system and the commercial airline industry is experiencing increased flights and more people are traveling.

This development has been particularly important for low-fare carriers and smaller markets. This market expansion has supported local job growth and economic development. We recognize that more needs to be accomplished. It is for this reason that we urge prompt Senate approval of the nomination of Mr. Michael Jackson to be Deputy Secretary of Homeland Security. When Mr. Jackson was Deputy Secretary of Transportation, he was instrumental in the formation of the Transportation Security Administration. He worked around the clock to ensure that all security needs were met and established a unique industry/government partnership to address all security issues.

We fully support Mr. Michael Jackson's nomination to be Deputy Secretary of Homeland Security. We also look forward to him joining Michael Chertoff, the expected new Secretary of Homeland Security, as the Department enhances existing security programs and works to address all new challenges.

Sincerely,

Ed Faber

Edward P. Faberman
Executive Director