

NOMINATION OF HON. PAUL A. SCHNEIDER

HEARING

BEFORE THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

ON THE

NOMINATION OF HON. PAUL A. SCHNEIDER TO BE DEPUTY
SECRETARY, DEPARTMENT OF HOMELAND SECURITY

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MAY 14, 2008
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CONTENTS

Opening statements:	Page
Senator Lieberman	1
Senator Akaka	7
Senator Tester	8
Senator McCaskill	11

WITNESS

WEDNESDAY, MAY 14, 2008

Hon. Paul A. Schneider to be Deputy Secretary, U.S. Department of Homeland Security:	
Testimony	3
Prepared statement	27
Biographical and professional information	29
Letter from U.S. Office of Government Ethics	37
Responses to pre-hearing questions	38
Responses to post-hearing questions	81

APPENDIX

ICE, Public Information, New York Times Death in Detention Article, May 6, 2008	97
ICE, Public Information, Washington Post Detainee Health Care Series—Day 1, May 11, 2008	100

NOMINATION OF HON. PAUL A. SCHNEIDER

WEDNESDAY, MAY 14, 2008

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

The Committee met, pursuant to notice, at 10 a.m., in Room SD-342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Akaka, McCaskill, and Tester.

OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. Good morning. The hearing will come to order.

We are here today to consider the nomination of Paul Schneider to be Deputy Secretary of the Department of Homeland Security. For the past year and a half, Mr. Schneider has been serving as Under Secretary for Management at the Department, and in October he took on the additional responsibilities of being Acting Deputy Secretary.

Mr. Schneider has obviously been working under a heavy load. In fact, he has stated that his portfolio covers everything from overseeing preparations to respond to a nuclear terrorist attack to ensuring that the Department employees have adequate office space, and that is exactly right. I must say that personally I have been impressed by his ability to handle such a diverse range of responsibilities and to handle them very effectively. I think he has brought a level of stability and experience to the administration of the Department that it needs, of course.

But the journey, if I may paraphrase from a business executive, for the Department of Homeland Security to better management has no final destination point. The Department must perpetually be better and better because our enemies, plotting and searching for new ways to attack us here at home, will never, in our generation at least, end.

When we created the Department of Homeland Security 5 years ago, the intention was to unify the Federal Government's previously balkanized and too often neglected counterterrorism, border security, and emergency preparedness and response efforts into one cohesive and effective Department to meet the threat that became all too real on September 11, 2001. We also wanted to build critical new functions into the Department such as a unique homeland security intelligence department and a directorate to focus on critical homeland security research and development, to do for homeland

security what agencies like the Defense Advanced Research Projects Agency (DARPA) have done within the Department of Defense for our national security.

The country is clearly safer as a result of the creation and work of the Department of Homeland Security, but as we all know, there has been no shortage of problems within this new Department of more than 200,000 employees as it has sought to fulfill its critical and challenging missions.

Mr. Schneider, you have tackled many of the big issues in your tenure. For the most part, as far as I can tell, when you have tackled them, you have wrestled them to the ground, and the Department and the country are better off for it. I appreciate your willingness to take on these new assignments, and I appreciate the efforts of the more than 200,000 Department of Homeland Security employees who work with you every day—and with Secretary Chertoff, of course—to keep our Nation secure here at home.

I am going to put the rest of my opening statement into the record, and I will take up the various matters that I mention in it in the question period.

[The prepared statement of Chairman Lieberman follows:]

OPENING PREPARED STATEMENT OF SENATOR LIEBERMAN

Good morning and welcome. We are here today for the nomination hearing of Paul Schneider to be Deputy Secretary of the Department of Homeland Security. For the past year and a half, Mr. Schneider has been serving as Under Secretary for Management at the Department and in October he took on additional responsibilities when he was named Acting Deputy Secretary.

Mr. Schneider has obviously been working under a heavy load. In fact, he has stated that his portfolio covers everything from overseeing preparations to respond to a nuclear terrorist attack to ensuring that DHS employees have adequate office space. I have been impressed by his ability to command such a diverse range of responsibilities and I believe he has brought a level of stability and expertise to the Department that it sorely needs.

But the work of the Department of Homeland Security is never done, and we must keep pressing forward to improve upon its capabilities, particularly in the areas of acquisition and cyber security, while also ensuring that the Department is prepared for the upcoming transition to a new administration.

When we created DHS 5 years ago, the intention was to unify the Federal Government's previously balkanized and too often neglected counterterrorism, border security, and emergency preparedness and response resources under one banner for a more cohesive and effective result. We also wanted to build critical new functions such as homeland security intelligence and a directorate to focus on critical homeland security research and development.

I think the country is clearly safer as a result, but there has been no shortage of problems at the Department as it seeks to fulfill its difficult and challenging missions.

Mr. Schneider, you have tackled many of the big issues in your tenure. I appreciate your willingness to do so and I appreciate the efforts of over 200,000 DHS employees working to keep the Nation secure.

I am eager to hear about your efforts to help forge a new FEMA within DHS. In the past 2 weeks, we have seen the unfathomable destruction caused by a cyclone in Myanmar and an earthquake in China. We know from Hurricane Katrina what can happen when catastrophe hits. And this year our Committee has held a series of hearings on the threats and challenges that would ensue from a terrorist attack on our country with nuclear weapons. One of DHS's most critical responsibilities is to make sure our country is prepared, and I know you are heavily involved in that work.

One of the biggest issues facing the Department—acquisition—is a subject you are quite familiar with, based on your previous assignments as the top acquisition officer for the Navy and the National Security Agency. Some of the Department's largest and most troubled acquisition programs—Deepwater, SBInet, radiation detection portal monitors—have benefited from your leadership.

But the Department's heavy reliance on contractors to perform basic services raises serious questions about whether DHS is building sufficient internal capacity and institutional knowledge. DHS still has insufficient capacity to develop requirements and evaluate the technical feasibility of contractors' proposals. I know that you have taken great strides to build up the acquisition workforce in the past year and a half. But much remains to be done, and I look forward to hearing your plans for improvement in this area.

The Department's new initiative to strengthen the security of Federal information technology systems—the Comprehensive National Cybersecurity Initiative—is another project critical to the security of the American people. Given the Administration's request to triple DHS's cyber security budget over the past year, I hope you will encourage increased openness and information sharing with Congress, the private sector, and the American public on this project to ensure that it is a success.

In 7 short months, we will experience a change of leadership here in Washington. The time during which a new Administration sets up shop is often one of uncertainty or disengagement as employees wait for new bosses and new directions. This is also a time, we know from experience, which terrorists seek to exploit.

The Department has been working hard on transition planning, for which the Nation should be grateful. I am eager to hear about your plans in greater detail, and this Committee will work with the Department closely on this issue in the coming months.

These are just a few of the many challenges ahead for you and the Department, but it is essential that they be met and conquered if the Department is to succeed in its ultimate mission of protecting the Nation from terrorism and natural disasters. We will work cooperatively with you to support the Department in these endeavors, in particular on an issue that I know you are passionate about, the need for a permanent headquarters for DHS.

If confirmed, you will play a large part in setting the Department on course to overcome these challenges. Thank you for your service.

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

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath, so, Mr. Schneider, I would ask you at this time to stand and please raise your right hand. 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. SCHNEIDER. I do.

Chairman LIEBERMAN. Thank you. Please be seated.

Mr. Schneider, I understand you have a few family members with you here today. On behalf of the Committee, I would like to welcome them, and I invite you, as you proceed with your opening statement, to introduce them to us.

TESTIMONY OF PAUL A. SCHNEIDER¹ TO BE DEPUTY SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. SCHNEIDER. Thank you very much, Mr. Chairman. First, I am really pleased that my wife, Leslie, is here today; my sister, Barbara, and my brother-in-law, Gary.

Chairman LIEBERMAN. Great.

Mr. SCHNEIDER. There are many people from the Department that are here, three in particular I would like to recognize. They

¹The prepared statement of Mr. Schneider appears in the Appendix on page 27.

are Lieutenant Commander Laura Collins, and she is the one in the Coast Guard uniform.

Chairman LIEBERMAN. I figured it out.

Mr. SCHNEIDER. Yes. And I have Brian White, who is the counselor to the Deputy Secretary. And last but not least is Barbara Lucas. Barbara is the Special Assistant to the Deputy Secretary. These three people are, frankly, the main battery of the organization that supports the Deputy Secretary and responsible for, simply put, just making the place run and making whoever happens to be the Deputy Secretary successful.

Chairman LIEBERMAN. Thank you and we thank them.

Mr. SCHNEIDER. It is an honor to appear before you today as you consider the President's nomination of me to be the Deputy Secretary at the U.S. Department of Homeland Security. I am deeply honored and humbled that President Bush has nominated me to serve this great country and its people, and I thank Secretary Chertoff for his support throughout this process. If confirmed, I look forward to the opportunity and privilege to continue to serve under his direction in this position of greater responsibility.

There are many dedicated men and women who are working to secure our homeland and defend our freedoms, and it is an honor to be able to work with them.

The specific priorities that I established when I became the Acting Deputy Secretary in October 2007 are the ones that, if confirmed, I will continue to work on. They include:

First, preparing for the transition of this Administration, which, as you know, is the first time that this Department, a relatively new Department, will actually undergo a transition of Administrations;

Second, executing department-wide operations, planning, and coordination. It is how we do work, how we operate as a Department on the border, in the ports, and every place else, both nationally and internationally;

Third, executing our major programs;

And, fourth, being able to respond to a national incident, whether manmade or natural disaster.

I hope that my continued willingness to serve the public trust, integrity, competence, and the ability to accomplish significant and challenging objectives demonstrate the skill set and experience needed to meet the significant responsibilities required for this position. If confirmed, I commit to working with you and your staff, other governmental departments and agencies, businesses both large and small, and our international partners to make a contribution to securing our homeland for today and tomorrow.

Thank you very much for the opportunity to appear here today. I would be happy to answer any questions you may have.

Chairman LIEBERMAN. Thank you very much, Mr. Schneider. I welcome our colleagues, Senator Akaka and Senator Tester.

I am going to start the questioning with the standard questions we ask of all nominees. First, is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. SCHNEIDER. No.

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

Mr. SCHNEIDER. No.

Chairman LIEBERMAN. 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. SCHNEIDER. No.

Chairman LIEBERMAN. Thank you for those strong and definitive answers. We will now start with a round of questions limited to 6 minutes each per Senator.

In early 2005, based on reports that I had read, including one done by the U.S. Commission on International Religious Freedom, I began asking DHS nominees and senior-level officials to explain how the Department intended to address the abuses and mistreatment of asylum seekers described in that report. I must say that I never received satisfactory answers, and in the ensuing years, the Department has first opposed and then suggested possible compromises to legislation that I introduced to try to implement modest reforms here.

I must tell you, this has been frustrating for me. Recently I—and I presume you—have seen and been upset to read even more details about the inferior medical care provided to these detainees, as documented in articles in the *Washington Post* and other media outlets. And I want to stress that these detainees are not being held on criminal charges. These are people whose status is not yet determined, and, as a result, processes are going forward and they are being held pending that, not on criminal charges, though. As some of the reports indicate, they often seem to be treated worse than criminals. This is not the way America is supposed to behave. I know we can and must do better.

The documents uncovered by the *Washington Post* are especially revealing because they demonstrate the concerns and protests of medical professionals who are used to practicing medicine in a correctional setting. In one memo, a deputy warden at a county jail wrote to a U.S. Immigration and Customs Enforcement (ICE) office complaining that the agency had “set up an elaborate system that is primarily interested in delaying and/or denying medical care to detainees.” One Department document actually details the cost savings achieved by denying medical care for a variety of serious conditions.

So, generally, I do not know to what extent you have been involved in this, but obviously as Under Secretary for Management, and now Acting Deputy Secretary, everything comes under you. Why is it that after years of complaints and reports of improper care, the Department appears not to have taken decisive action to improve the medical treatment of these detainees?

Mr. SCHNEIDER. Senator, let me start by saying I think it is important to put in perspective that it was only, I believe, in October 2007 that the medical aspects of the detention centers were formally transferred to the Department of Homeland Security. Previously, we did not have direct responsibility for that.

What we did upon the transfer of that responsibility was to initiate a series of studies by independent groups, professionals that were recognized to be able to examine detention facilities, to do reviews of the types of health care that were being provided, and come up with a series of recommendations. They have been compiled. Upon reading the first story in the four-part series, we convened a group of people to examine all the different studies that have been done since we assumed responsibility in October 2007.

We have asked our Chief Medical Officer, Dr. Runge, to review these analyses and come up with whatever group of resources he thinks is necessary. His job in our Department is, clearly, to oversee the medical care, whether it is in detention centers, whether it is the medics that we have in the U.S. Customs and Border Protection (CBP) on the border, whether it is the Secret Service, etc.

So I think the fact is that when we assumed responsibility in October 2007, we commissioned various efforts to take a look by experts at what needs to be done because we were aware at the time of some of these stated concerns. And we have Dr. Runge taking a look at that.

I would tell you that I find myself actually over the past couple of days reading each story and then talking to Immigration and Customs Enforcement to separate fact from fiction. And I will just tell you that, in response to these stories, we have initiated on the ICE website what we call a "Myth Versus Fact Sheet." And I would recommend—I would respectfully request that the accuracies of some of these stories that have appeared be held in abeyance until basically we can get our side of the story out.

I can tell you that they are riddled with inaccuracies and misrepresentation of facts, and I think as I said, we have already put out—I believe it is two Myth Versus Fact Sheets.¹ Obviously, the article that is in today's paper regarding the sedation of detainees we haven't had a chance to respond to.

But we take this very seriously. Some of the actions that we have taken, for example, in January 2008, we very explicitly issued direction that no detainee is to be sedated unless there is a court order issued. And that was approximately 2-plus months after we assumed responsibility for this.

Chairman LIEBERMAN. OK. I will certainly look at the myth and reality document, but I take it that you are not saying that there is no problem here. In other words—

Mr. SCHNEIDER. The fact that people have stated concerns is something we have to take very seriously, and that is why, frankly, when we assumed the responsibility for the Division of Immigration Health Services (DIHS), various efforts were commissioned by the then-Assistant Secretary of ICE specifically to go look into the quality of medical care being provided to detainees. I can tell you just the sheer volume of one study in particular—I believe it is called the Nakamoto Study—it is literally that thick. And I browsed through it because I was interested. It goes into every aspect of medical care, from how are supplies issued to how people are examined, when do people get referred, with a series of assessments and recommendations.

¹ICE Public Information releases appear in the Appendix on pages 97-108 exclusively.

So the fact is that we took this stated concern very seriously when we assumed direct responsibility for the medical care.

Chairman LIEBERMAN. OK. My time is up so I do not want to delay turning over to Senator Akaka. I appreciate what you just said. My own review of the documents said there is a problem here and that DIHS is underfunded and understaffed and it is hard for it to meet the normal humanitarian standards that we would want to meet.

I also would say if you get a chance to go back and look at the U.S. Commission on International Religious Freedom report, back in 2005, it goes to much more than the health care. And the point is that a lot of these people are asylum seekers. They are people coming here alleging that if they return to their homelands, either for reasons of politics or religious affiliation, they will be subject to very bad treatment. They are "the huddled masses yearning to be free," as it says on the base of the Statue of Liberty.

Obviously not all of them are legitimately entitled to come into the United States, but history shows that a lot of them are. And I think while we are making that decision, we really have a moral obligation to treat them better, generally speaking, than we have been treating them.

I thank you. I am now going to turn it over to Senator Akaka.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman.

Mr. Schneider, let me say thank you very much for meeting with me prior to this nomination hearing. And I also want to welcome you and your lovely wife, Leslie, and any of your family and friends who are here at this hearing.

Let me start by saying that I am pleased that you are willing to continue serving at DHS through the Presidential transition. As the transition draws closer, continuity of leadership becomes increasingly important, and I was glad to hear your thoughts about that. Your management and operational experience will be valuable to keeping the Department steady and focused on its mission to transition.

As you know, Mr. Schneider, and many of my colleagues know, we continue to have serious concerns about DHS's management and operations. One area of concern is DHS's human capital management. Senator Voinovich and I introduced legislation last month to give DHS the flexibility to hire a career employee to be the Department's Chief Human Capital Officer (CHCO). This would remove a unique requirement that the CHCO be presidentially appointed and make the appointing authority consistent across the government.

DHS's last confirmed Human Capital Officer served for just about a year, and DHS has had a series of Acting Directors in recent months since her resignation.

Would providing the Department the flexibility to fill this position with a career civil servant improve continuity in DHS's human capital management?

Mr. SCHNEIDER. Thank you for the question, Senator. I first of all want to say I appreciate the effort on your part and Senator Voinovich's part to introduce that legislation. That is absolutely es-

sential. Being the Chief Human Capital Officer at the Department of Homeland Security is probably one of the toughest human resources or human capital positions in the Federal Government. The fact that by law it is a political appointee means that, for the most part, that person will leave on January 20.

You have no idea how difficult it was for us to recruit the gentleman that the President just announced to be the Chief Human Capital Officer for what turns out to be the remaining 7 months of the Administration. And the fact of the matter is one of the biggest challenges we have in this Department is human capital. Unlike, fortunately, many departments, we are on a hiring upswing. Whether it is Border Patrol agents, whether it is trying to increase our intelligence capability in what still is a very new Department, whether it is to hire contracting officers, the challenges that we have in hiring, in professional development, are probably unique in the Federal Government.

Having a career civil servant in that job, especially, frankly, at this point in time, where somebody could carry over to the next Administration, would be absolutely essential, I think, to improve the management operations of the Department, especially in this very critical area.

Senator AKAKA. Thank you. Mr. Schneider, in the last 3 months, two U.S.-flagged cruise ships left Hawaii for the last time, causing a dramatic economic loss to the State of Hawaii. There is only one remaining U.S.-flagged cruise ship operating in Hawaii. Now, these ships were forced out of trade by the rapid growth in foreign-flagged ships that operate with lower costs by avoiding U.S. tax, labor, and employment laws. The Passenger Vessels Services Act (PVSA), restricts foreign-flagged ships' operations at U.S. ports, but it has not been enforced adequately. Customs and Border Protection issued an interpretive rule on the PVSA in November 2007, but the rule has not been finalized.

Mr. Schneider, time is running out, and unless CBP acts soon, there may not be a U.S.-flagged cruise industry left, and the coastal States of this country will certainly be impacted. Can you assure me that DHS is going to promptly implement a rule that addresses the situation in Hawaii and other parts of the country? When will CBP's final rule be implemented?

Mr. SCHNEIDER. Senator, I just became aware of this situation very recently. I understand what the impact is relative to cruise ships, where they stop, what the rules are, how dramatically it affects tourism in especially those States that are affected by it. I have discussed this with CBP. I would commit to you that I will do whatever I have to do to get a speedy resolution of this.

Senator AKAKA. All right. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you very much, Senator Akaka. Senator Tester.

OPENING STATEMENT OF SENATOR TESTER

Senator TESTER. Yes, thank you, Mr. Chairman. I also want to thank Mr. Schneider for being here, and thank you for your visit to my office, too, earlier. I want you to know up front I intend to vote for your confirmation, unless, of course, something awkward comes in. We will just put it that way.

I want to also reiterate our conversation where, if you get a chance—Montana has got about 500 miles of border with Canada—if you are willing to come up, we would be more than happy to show you around. I think it would do us both good. So that invitation still stands.

On the Southern border, you have established the Shadow Wolves. On the Blackfoot Reservation, I think that you had tried to do something similar to that, use native resources to help fill in gaps. Can you tell me if that is progressing or if it is yet to progress, or where are we at?

Mr. SCHNEIDER. I, frankly, do not have details on the Shadow Wolves—I know who they are. I know what they do. But I, frankly, today cannot give you an assessment of that. What I will do is go look into that and get back to you.

Senator TESTER. That would be great. It might be an opportunity.

We had talked before, there is some stuff going on on the Southern border with a 28-mile stretch of cameras and sensors that did not work. They may be available with new testing in about 2010, a year and a half from now. What kind of impact does that have on the Northern border?

Mr. SCHNEIDER. Well, first I would respectfully disagree—

Senator TESTER. That would be fine. You can.

Mr. SCHNEIDER. Yes. I disagree a little bit with the characterization of what worked and what did not work. Given the fact that it was a demonstration of critical technologies, we got out of that demonstration what we needed to get out, to figure out what we have to do to modify the ultimate configuration so that we have an enterprise architecture that works.

That said, the Northern border, as we have discussed, is a significantly different geography, and fences will not work, for the most part. What we are doing in the Detroit area is a demonstration for the Northern border. This is where we are going to have a heavy interface with air assets and marine assets. The air asset piece is really kind of critical because what our initial feeling is relative to the architecture for the Northern border is it is going to rely very heavily on air assets, both manned and unmanned.

Senator TESTER. So you are talking about drones and airplanes.

Mr. SCHNEIDER. Yes.

Senator TESTER. So the sensors and the cameras are pretty much off the table?

Mr. SCHNEIDER. No. What we need to do is, first, characterize the border. And so in my discussions with CBP, what we plan to do is to characterize the border. That is by running manned/unmanned. Let's see what our intelligence shows. Let's see what we can identify as the critical crossing points and then see what the best solution is.

Senator TESTER. So that technology would be available with the right solution?

Mr. SCHNEIDER. Yes, sir.

Senator TESTER. And it meets the needs, it is bulletproof—or nearly bulletproof?

Mr. SCHNEIDER. I am not going to say anything is bulletproof, and the reason being is I have had to testify before—

Senator TESTER. OK.

Mr. SCHNEIDER [continuing]. Several committees here about—

Senator TESTER. You would be comfortable with it, though. Let's put it that way.

Mr. SCHNEIDER. Well, I am comfortable that once we characterize the border, we understand what the threat is, we take a look at what the critical areas that need to be protected that we, with a combination of different types of assets, will figure out the best architecture.

Senator TESTER. Well, and the reason is because—I think I told you in the office, and I think I made the statement on this Committee. I live 80, 90 miles south of the Canadian border. We are talking about implementing things like REAL ID and listening in on people's phone conversations, and the list goes on and on and on. And I dare say I could jump on a Honda motorcycle and hop across that border if I pick my spot.

And so it is important that we—and I do not mean that as a negative to what Customs and Border Patrol is doing. They are doing great work up there. But you have got 500 miles, and Montana is not the only State in the Union that shares a border with Canada.

What is going on as far as agents go? We are 1,500 short. What do you plan on doing over the next 7 months—and that is not just Montana. That is across the Northern border; 1,500 manpower short is what the studies have shown us. I hope that is information you have got, too, because if you do not, then we have got problems.

Mr. SCHNEIDER. First of all, one of our many focuses in hiring is the CBP agents.

Senator TESTER. You have to, because—

Mr. SCHNEIDER. I forget the exact number that we will hire by the end of the year. We are on track to meet that number, and that is a number that we look at. It is not just the hiring number, quite frankly, but basically it is the throughput of what we have to do then to send them to the Federal Law Enforcement Training Center.

Senator TESTER. No doubt about that.

Mr. SCHNEIDER. We are currently on track to meet the stated hiring goals—

Senator TESTER. By when?

Mr. SCHNEIDER. The end of this calendar year is—I forget the number. I thought it was 1,200 that we were—

Senator TESTER. Well, it is in the ballpark. If you get 1,200 by the end of the year, that is a great success.

Mr. SCHNEIDER. We are on track to meet those numbers.

The other thing is, as I believe the Secretary has testified in front of this Committee, our plan—

Senator TESTER. How many of those are going to be in Montana? Could you get back to me on that?

Mr. SCHNEIDER. Yes, sir.

Senator TESTER. All right. Thank you. We have other issues that I need to talk to you about, airplanes and that kind of stuff. But you have 7 months left—and I appreciate your service for the last 6, by the way, and before that. But you have 7 months left, and you could really make a difference, and there are things that need

to be done that do not cost a lot of money in the overall spectrum of things. And I hope you grab the bull by the horns and you ask me to support you in it, because I will.

Mr. SCHNEIDER. Yes, sir.

Senator TESTER. Thank you.

Mr. SCHNEIDER. Well, just if I may follow up, you asked me when I met with you about that radar.

Senator TESTER. Yes.

Mr. SCHNEIDER. And so I have actually been trying to understand a little bit more about it. So I have gone back, and I found out, in fact, that there has been—it was last summer—a National Guard demonstration of the radar, and the results were inconclusive.

Senator TESTER. Inconclusive, by the way, means it did not work.

Mr. SCHNEIDER. Well, I am trying to understand why it did not work, quite frankly. It is one of the things I intend to get into, and the reason being is based on your description of the geography—

Senator TESTER. It should have worked.

Mr. SCHNEIDER. It should have worked.

Senator TESTER. Yes.

Mr. SCHNEIDER. So that is why I need to get into that, and I will.

Senator TESTER. OK. Thank you very much. I appreciate it.

Chairman LIEBERMAN. Thanks very much, Senator Tester. Senator McCaskill, good morning.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator McCASKILL. Thank you. Thank you, Mr. Chairman.

I would like to talk a little bit about ICE. I saw that you had another huge raid in Iowa a few days ago where 300 different people were taken for immigration violations. I guess what I am most frustrated about is that there are ways to make a case. And the Federal Government, because they do not answer 911 calls, they get to decide what kinds of cases they are going to focus on. And I am talking about all of Federal law enforcement.

Now, in the area of immigration, there is a decision that is made somewhere: Are we going to focus on the employers or are we going to focus on the immigrants?

What I am waiting for and what I am curious about, there was no need to go out there and round up these 300 people. You could have probably pulled a dozen of them out of the workplace, interviewed them, gotten the documentation, or lack thereof, and built a case against the employer. So the headline would not be “300 illegal immigrants arrested at a processing plant in Iowa.” The headline would be “The plant manager is taken out of the place in handcuffs and charged with a felony.”

And what I do not understand is what is it going to take to get the focus of ICE on the employers. There is no way the people running that plant were not fully aware that it was full of illegal immigrants with flawed documentation. And a rookie prosecutor right out of law school, if given the assignment, here are three or four investigators, see if you can figure out how to make a case against the knowing hiring of illegal immigrants en masse across this country, it would not take that much to do it.

And I am not saying—I pounded the table about George’s in Missouri, and finally, there was an indictment, some kind of criminal charge against someone in management at George’s, the chicken processing plant in Missouri.

But I keep seeing these headlines, and what it does is we round up these people, we put them in administrative hold, we have the kind of questions like the Chairman asked about how they are being treated. It costs a lot of money, and if we saw the people who were knowingly hiring illegal immigrants because of the cheap labor costs going to prison in this country, it would overnight have a miraculous impact on the problem of illegal immigration.

Why are you as a leader at this Department not saying, “Hold off on the massive raids, and build a case against the boss?”

Mr. SCHNEIDER. Senator, I think we are trying to do all this. As you know, we have this E-Verify system, which we are actively trying to get the employers—I think somewhere between 250,000 and 300,000 employers have already signed up—to actually check their people to make sure—in fact, it is relatively easy to do—that the people that they hire are here legally.

What we have not done a good job of advertising, quite frankly, is our outreach program to the various industry sectors to get at the people and the employers. We spent a tremendous amount of effort, and whether it is the livestock, whether it is toys, whether it is in agriculture, we have an extensive outreach program that is key to getting at the employers.

So it is really to get them to verify their people. It is outreach to basically say, look, you have a problem, we need to work with you; you need to police your own. In an ideal situation, our effort ought to ultimately be just one of checking compliance.

That said—and I am obviously not a law enforcement expert, but I know within our organizations on the law enforcement side, they go and painstakingly put together what they consider to be a valid case. And that case concludes at a certain point in time. If they believe that they have sufficient justification to go take an action like they have, they go do it.

So I think in an ideal situation, I would like to see every employer in the United States sign up to E-Verify.

Senator MCCASKILL. You will get them to sign up a lot quicker if you take some of them to jail.

Mr. SCHNEIDER. I am with you on that.

Senator MCCASKILL. Well, it does not appear that you are, honestly. And I do not mean to be hard to get along with here, but these are people who are knowingly making these decisions, and these cases could be made, and they simply are not being made a priority. And I will guarantee you could take 15 or 20 of those illegal immigrants, and you could pull them aside quietly and say, “You know what? We are not going to deport you, but you have got to help us build a case. What were you told about the need for documentation at this plant? Who told you this? Did they tell you you could bring in the same Social Security that somebody else brought in and it would not be a problem?” And you just start following the evidence. It is called “turning witnesses against the bad guys,” and it is how law enforcement operates in this country. It is how we get the big whales instead of the little fishes.

And all we are doing in immigration right now is getting the little fishes, and nobody has their scope on the big whales. And until we land a couple of those big whales, we are going to continue to spend more money than we need to spend, and we are going to continue to be more inefficient than we need to be in clamping down on illegal immigration. The walls are not going to do it. The border fences are not going to do it. As long as those people think they can come and feed their families in this country and can get a job, they are going to come. They are going to come because they care more about feeding their families than they do about whether or not they are going to be shipped back in 6 months.

On the other hand, if they come over and cannot get a job, they are going to not come over. And it is the only way—and I do not understand why there is not a sense of urgency.

Mr. Chairman, I know that we may have another round. I have some specific concerns about answers about the ICE pictures that were in the responses that were given to the Committee, and I will be glad to wait until both of you question again to go into that. Thank you very much.

Chairman LIEBERMAN. Thanks, Senator McCaskill. We will do a second round. I will begin it now.

Mr. Schneider, I want to talk to you about national preparedness. As you may know, this Committee has been holding a series of hearings on the difficult but, nonetheless, realistic threat of nuclear terrorism within our country. We have established, based on the testimony of senior American Government intelligence officials, that there is a credible threat that al-Qaeda or other Islamist terrorists will attempt to detonate a nuclear device within an American city.

We have heard testimony from the Commission on the National Guard and Reserves that there are “appalling gaps in our preparedness” for such a catastrophic event, and that the Department of Homeland Security in particular, according to the Commission report, has not demonstrated the necessary urgency to plan and prepare for a nuclear scenario.

Tomorrow, the Committee will be holding a hearing in which we will take testimony from experts in medical care, that is, medical surge capacity in the case of such a catastrophe, mass care and communications.

What we are trying to accomplish in doing all this is to make this difficult scenario, difficult to even focus on, more realistic, because we believe it is realistic as a threat, and then to see that we are making real progress in preparation as a government and a society, obviously, first of all to prevent it, but, second, to be prepared to respond to it.

So I wanted to ask you generally, in your view, what is the state of preparedness to respond—leave aside the prevention for a moment—to such a catastrophic terrorist attack using nuclear weapons and focus, if you will, on some of those questions we will consider tomorrow, such as the capacity of our public health system to surge and also communications capabilities.

Mr. SCHNEIDER. Senator, first, let me say that is a scenario that we worry about. I believe we have 15 national scenarios that we worry about and we plan for.

In the case of the detonation of a nuclear device in the continental United States, what we do is—we summarized in a letter to you, I think it was on March 26 or April 26 of this year, basically a compilation of all the interdepartment responsibilities and plans, and that covers intelligence, detection, incidents, and incident response and recovery.

I would say that, in general, what we do is we work across all of the departments. This is not unlike what we are doing, frankly, as we speak, in terms of preparedness for this current hurricane season. And so while the scenario is different, I can just tell you, since we spent a fair amount of time the other day in hurricane preparedness, it works like this:

It is all the departments, and that includes Lieutenant General Blum from the National Guard; that includes General Renuart from NORTHCOM; that includes HUD, HHS, ourselves, DOD. We take a look at every aspect in terms of capacity. We look at it in terms of housing. We look at it in terms of sheer logistics. We understand State by State.

For example, we know precisely in hurricane season State by State how many National Guard people are basically available within each State. We know in terms of the major commodities, whether it be water, food, blankets, tents, power generators, etc., we know what the Federal Government has and we know State by State. And so we are planning for it.

I think with the issuance of the National Response Framework in early January, it sets the basic framework for how we do this interdepartment coordination as well as the framework for how we deal with State and local officials.

Chairman LIEBERMAN. Do you have similar plans and have you had similar meetings with regard to a weapons of mass destruction attack?

Mr. SCHNEIDER. No, I am not aware that we have. I would say that once we issued the National Response Framework, we have work underway on each of the 15 scenarios. Ultimately, we will get down—and this ends up being the hierarchy of plans. You have strategic plans, tactical plans, and then detailed operational plans.

I mean, it is to the point where, for example—and I get back to the hurricane season only because it is something we live every day. But we know, for example, State by State on the Gulf Coast how many people each of the other States could house, for example, if we have to evacuate them. We know what resources are required to evacuate them. We know how to get to those people. We know how to get them out, and we know how to get them back. Ultimately, that level of specificity would be part of each one of these scenarios at the detailed deck-plate operational level.

Chairman LIEBERMAN. The great challenge of this Department is that this is a big, open country, and that is part of what makes America, America. It makes us also vulnerable. The range of attacks that one could imagine in this current threat climate is very wide, so there is a lot of pressure on you. I remember the day that somebody on the Committee asked Secretary Chertoff the classic question, the familiar question: What keeps you up at night? And he said the fear of a terrorist detonation of a nuclear weapon in an American city.

So I urge you in this position to drive planning and preparation for a response to a nuclear terrorist attack which will not be totally dissimilar to what you need to respond to a natural disaster, but I think you would agree would involve elements that go beyond that.

Mr. SCHNEIDER. Mr. Chairman, if I may, I am a nuclear engineer by profession.

Chairman LIEBERMAN. Right.

Mr. SCHNEIDER. I understand the severity and the magnitude if, God forbid, something like this should happen. And when I had my staff interview with your respective staffs, one of the folks asked me, well, what is your biggest worry? And that is my biggest worry, exactly just like the Secretary. I am very acutely aware of what one of those devices could do, and, frankly, it is very scary.

And so I will commit to you that I will personally go take a look at where we are on the detailed planning for that particular scenario and see what I can do to expedite it.

Chairman LIEBERMAN. And then I want you to promise to come back and tell us what more you need to be truly prepared for it.

Mr. SCHNEIDER. Yes, sir.

Chairman LIEBERMAN. Thank you. Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

Mr. Schneider, as Senator Tester suggests, the Department's SBInet Project 28 (P-28) has been criticized for many problems. DHS did not adequately spell out the contract requirements. The timeline was unrealistic, and DHS did not manage and oversee Boeing's contract performance adequately.

Because DHS tried to do too much too quickly without proper oversight, problems with the software were not understood until very late in the process, and the entire project did not function as expected.

According to a recent *Washington Technology* article, DHS has stated that it expects to begin operating the first two permanent segments of SBInet radar towers in Arizona as early as December. These sections will span 83 miles of the border.

Is this timeline realistic? Should we be worried that DHS is still trying to push this project forward too quickly without enough oversight?

Mr. SCHNEIDER. Senator, first, thank you for the question. That article points out what is basically a problem I have to wrestle with every day, which is what is in the press and what do I have to do to fix it if it is not correct. So, unfortunately, they ignored the complete statement, the information that Customs and Border Protection provided.

Quickly, on the SBInet, what we are doing is we are basically developing—and, actually, we are in the middle of integration testing in Huntsville right now—the software build for the next generation of SBInet.

We also learned from the testing what problems with hardware—whether they be unmanned ground sensors, whether they be cameras, whether they be radars—need to be fixed. Once we do the software testing at Huntsville, then we are going to integrate it with the land-based hardware, satisfy ourselves that it is going to work, and then, and only then, go back to Tucson and basically re-

configure the site in Tucson, which we are now calling Tucson-1, to reflect the upgraded hardware, the upgraded software, that has been land-based tested.

I might point out that because of the press of schedule early on, that land-based testing was not done. It was not done, and many of the problems that we found out on the mountains, we could have found out in the lab. But we did it under the press of schedule. But only when we are satisfied that the software testing, the land-based hardware integration software testing, is satisfactory will we go back there.

That is the section in Arizona that is referred to in the *Washington Technology* article. We have said that all along. When our folks have briefed the Committees, the staffs, we explained we are going to do this land-based testing and go back to Tucson. And we have identified a second site, which I think it is—we call it Ajo-1. But it is only after we complete this land-based testing and satisfy ourselves that the system is satisfactory.

So this is the plan. When we basically said in December, time out, we have got to get this right, stop the deployments, let's go back, fix all the problems. We delayed acceptance of what we call P-28 until the most egregious deficiencies were corrected. Then we ran operational testing with Border Patrol agents. We identified more deficiencies that needed to be fixed. The Secretary and I personally went through every one—I think it was 52, 53 deficiencies—to satisfy ourselves that the ones that were not fixed—it boiled down to four—were because it was not worth the money or because we knew we were going to have a software fix in the new software build. We satisfied that. Then we took basically control of final acceptance. We did this, limiting, frankly, our expenditures to only \$20 million.

So now I think we have restructured the program properly. We are restructuring the contract. As you said, frankly, when this program was started, I do not believe we had the numbers nor the skill set of people to adequately manage this particular contract. We have changed that around. The mix is substantially different with a large number of Feds that are technically competent to go direct this effort.

So this is the plan that we have said all along that we are going to do as a part of restructuring the program. The unfortunate thing is it came out in the press—and I have to tell you, the first thing I did when I read that thing one night, I said, “What is this?” Because it did not sound anything like our plan. Then what I found out was what *Washington Technology* abbreviated, condensed, frankly, with serious omissions, was our plan.

Senator AKAKA. Thank you. Mr. Schneider, Director McConnell recently testified that the National Counterterrorism Center has trouble obtaining detailees from DHS's Office of Intelligence and Analysis. I understand that the amenities in the Office of the Director of National Intelligence (ODNI) are much more attractive, and DHS worries about losing needed staff to the ODNI if its intelligence officers see where the grass is greener, so to speak.

Are there issues in addition to DHS's need for better facilities? For example, have you done surveys of morale in the DHS intel-

ligence components to see if your staff is satisfied or frustrated with their work?

Mr. SCHNEIDER. Well, yes, and thank you for that question. I had to testify in front of the House Homeland Security Committee, and they asked me a question in general somewhat related to this, and I basically said our place is a dump. And it is very hard, especially in the intelligence area, to recruit. So let me answer this in a couple of parts.

Our facilities are absolutely terrible. We are bursting at the seams. It is a 62-year-old facility. We are digging up the roads every day. I really appreciate, Mr. Chairman, as a result of my conversation with you about a month ago, your letter to the appropriators. That actually resulted in the appropriators going out and visiting St. Elizabeth's, I think it was last week. And I want to thank you on behalf of the 3,000 people that work up at the National Advisory Committee (NAC). The facilities are terrible. It really does affect morale.

Now, specifically with regard to intelligence, hiring people in intelligence is very difficult, and the reason being is we have a very difficult time competing with the other intelligence agencies, be it NGA, DIA, NSA, or CIA, and the reason being is this: Our facilities are not conducive to good work and good morale. Just go to the CIA, go into the cafeteria, take a look at the beautiful campus-type facility. And if you were an intelligence analyst, would you rather work at the CIA or would you rather work at DHS? And so we have a hard time competing with other intelligence agencies.

It is even worse when you take a look at the private sector, and the reason being is there is a substantial cost differential between what we can pay somebody, a journeyman intelligence person, versus the private sector. Based on my experience in NSA, my estimate of the delta in cost is roughly 30 percent, and I do not care whether it is a GS-12 earning \$66,000 a year, the private sector on a contracting officer will pay him \$95,000. I used to lose a lot of contracting officers because they are 27 years old and they want to make \$95,000 instead of \$66,000. And the delta only goes up with more experience.

So the problem is this: I have a hard time competing within government, and so then I get these bright young folks from the private sector, and we get them in, and then they look at us, they look at CIA, NSA, beautiful—at NSA they are building a lot of new buildings at Fort Meade as a result of Base Realignment and Closure (BRAC). Who is going to get the talent? We have a hard time getting the talent.

That said, what we have been doing is growing our own. We go out to the colleges and universities. And I would say the Under Secretary for Intelligence and Analysis, Charlie Allen, is very personally involved in this, actively going out there. And the only thing we have going for us, frankly, in the competition is the mission. This is a mission that people understand in this country—keeping our country safe and secure. And so people relate to the mission, and that is what attracts them. So we have had success in getting at the entry level—but it takes, I think, 5 to 6 years to be able to fully develop a journeyman intelligence analyst.

Let me answer the last part of your question. I have been to the National Counterterrorism Center. We work very closely with the Director, Mike Leiter. I have been there. I have talked to our people that are on the floor, and I think the NCTC does a wonderful job. I will work with Charlie Allen to see if we can make sure that we provide as many people as we possibly can to meet his need because the work that they do is very valuable, and we and everybody else in leadership and, frankly, in this country benefit from it.

Senator AKAKA. Mr. Chairman, I just want to thank Mr. Schneider for his response. It is great to hear that response, and it can come only from someone who is a career person and who has been servicing our Federal Government for 40 years. Thank you very much.

Chairman LIEBERMAN. Thanks, Senator Akaka. I agree. I was thinking that the transcript of your answer to the last question will not reveal the passion with which you answered it, and I appreciate the passion. We almost had the money for the St. Elizabeth's site, for a new headquarters in the supplemental appropriations, but the so-called domestic spending, for reasons that you understand, got cut down. I think people are aware of this. This is a very urgent need. There is a chance it will be included in a second economic stimulus. I do not know what the prospects of that are for passage. If not, we are going to make a real effort to get it into the fiscal year 2009 appropriations or an omnibus appropriation, if that is what it is. Because, as you can see by the range of questions we are asking, or anybody here can see—you live with it—we are asking a lot of this Department and the people who work in it. And to put you in really substandard facilities is just wrong. So we have got to change that quickly, and I will do the best I can to make sure that happens.

Mr. SCHNEIDER. I really appreciate it. If I could just add one thing about this, this move to St. Elizabeth's, it is not just about a physical real estate move.

Chairman LIEBERMAN. Right.

Mr. SCHNEIDER. What we did—and I think it was a smart thing to do—is we as part of this move figured out and totally restructured how our operation is going to work. It is a business process restructuring. So it is not just the physical collocation of roughly 14,000 people. It is what ought to be in the front room? What ought to be down in the back room? This enables us to fix a lot of problems that we have been criticized about relative to IT infrastructure and operations coordination.

The other thing it enables us to do, quite frankly, is we are scattered all over the DC area, and so the problem we have is we are paying a fortune in these leases. And so what we did, as part of sequencing our move in three distinct steps, was to sequence them so we could benefit, if you will, and not have to renew a lot of these leases that, frankly, would be at somewhat unfavorable prices.

So it is not just a space thing. This is the business process that we think the Department needs for the future, and we want to get out of being captive to these leases, which, frankly, are going to cost us in the long run probably more money than we have currently budgeted because of the fact we planned on St. Elizabeth's.

Chairman LIEBERMAN. Well said. Thank you. Senator McCaskill. Senator McCaskill. Thank you, Mr. Chairman. And I appreciate the testimony you just gave about the lease issue. It is a huge issue across government, how the lease-purchasing is going on and getting around the capital needs budget. It is a huge problem in the Department of Defense. There are more temporary buildings in the Department of Defense that have sprung up over the last several years, and it is not a good cost-benefit analysis for taxpayers.

I want to revisit an uncomfortable situation, and that is the photograph of the ICE employee taken at the Halloween party. And here is my problem with what has come to light.

You said in your questioning to the Committee that you were informed of the Committee's request for copies of the photograph the week of November 12, 2007. So at the very highest levels of the Department, there was an awareness that there was a congressional request for a photograph. You also were aware that they were trying to restore the photograph based on the report that you received at or about that same time.

So we know the middle of November that Congress wants the photograph, and we know that it is trying to be restored. And, frankly, restoring a digital photograph is not something that takes weeks.

Now, the problem is that the only time this photograph was produced was when we got it from CNN after a Freedom of Information Act (FOIA) request delivered in February. And the problem with that is that Julie Myers' position was being held. She was not going to be confirmed, and it was not until after the hold was released that we saw the picture.

Now, that is a set of facts that are troubling to me. I would hate to think—and I am not making the accusation—that is what occurred. But this is the kind of thing that gets your nose a-twitching in terms of trying to figure out what happened because it smells. It looks like the photograph had been restored and that the Department was aware that we wanted a copy of it, but yet waited until after her confirmation had gone through.

I want to give you a chance to respond to that.

Mr. SCHNEIDER. Well, once the request was made, as I indicated in my question where I was informed of the Committee's request for the copies of the photograph approximately the week of the 12th—that is the best of my recollection. The fact of the matter is—and I was aware based on the Office for Civil Rights and Civil Liberties (CRCL) report that they were trying to restore the photographs.

From that standpoint, first, when I read the report that was given to me, I made a note, "Fine, they are trying to restore the photographs," and that was it, frankly. The Committee's request for photographs, fine, I was aware of that. But I did not take any deliberate action personally to see that the Committee received those photographs, just like I do not take, usually, any specific action in response to what might be tens or twenties of hundreds of requests—

Senator McCaskill. Sure.

Mr. SCHNEIDER [continuing]. For information over a period of time. I just do not do that.

Senator MCCASKILL. You should be aware that—and I understand that, and I am not holding you personally responsible. There is a little of “the buck stops here” that I could draw up.

Mr. SCHNEIDER. Right.

Senator MCCASKILL. But you should be aware that the response from the people directly involved was that they were not aware we wanted a copy of the photograph. So if you were aware it—

Mr. SCHNEIDER. I was aware.

Senator MCCASKILL. Yes, and so it is a little troubling that they are now trying to maintain that we did not request it in writing or there was not—there is some sense that we are getting from the people directly involved at ICE that we did not go far enough to request this photograph, that it took a FOIA request from CNN for this photograph to surface. And, clearly, that is not the way it should work.

Let me also just briefly, before we finish today, I am a little worried about the relationship of the Inspector General at the Department of Homeland Security. I recently learned that a subpoena had to be issued by the IG in the Department of Homeland Security to acquire contract data from FEMA. Now, it is troubling to me that we would have to have a subpoena by the IG to get contract data, and I wanted to get your response to that troubling reality.

Mr. SCHNEIDER. Well, that is troubling, and it is unacceptable. If that is one that occurred months ago, I do not—because I am aware of an instance that occurred months ago, and, frankly, when I heard about it, I was outraged for a couple reasons.

I have a tremendous amount of respect for the IG. I do not understand if he is not getting information—and he and I have had this conversation, frankly, as a warm-up to a hearing in front of this Committee, I think it was last October or November with the GAO. We established what I considered to be protocols, which is basically that if the GAO or the IG cannot get information from one of our component organizations, I told them, “Pick up the phone and call the head of that organization. And if you do not get an answer from them, then pick up the phone and call me.” And the Secretary has basically said the same thing: “If you do not get an answer from me, then pick up the phone and call him.”

What I was troubled by and outraged by, to the best of my knowledge if this is the instance, the situation where that was not raised to the head of the agency. That is unacceptable. The IG is an integral part of our Department. There should be no assuming proper markings and all that—there should be absolutely no reason that I can think of why that should not have been provided. And I was very upset, frankly, when I heard about that instance. I picked up the phone and I called the head of FEMA, and I said, “What gives?” He said, “I know nothing about it.”

So I have to agree with you, that is unacceptable, and I am hopeful that does not happen. As a general rule, I, as the Under Secretary, used to meet monthly with the IG, and the reason is the Under Secretary for Management is responsible within the Department for coordination with the GAO and the IG. And one of the things I say is: Who is not cooperating with you? Because I want to know. And so that specific was not brought up at that particular point in time.

Senator MCCASKILL. Well, thank you for being concerned about it, and I do know that you and all the other people that work there are not working there for the big money you are making. You have a sense of public service, and you want to try to do the right thing, and I hope you appreciate that in our role it is our job to try to bring down the thumb of accountability every place we can. And I do thank you for your service to your country, and I wish you well over the next few months.

Mr. SCHNEIDER. Thank you very much.

Senator MCCASKILL. Thank you.

Chairman LIEBERMAN. Thanks, Senator McCaskill. Senator Akaka, I think you have a few more questions.

Senator AKAKA. Yes, Mr. Chairman, and I thank you.

Chairman LIEBERMAN. Not at all.

Senator AKAKA. Mr. Schneider, the Federal Protective Service (FPS) is facing significant budget difficulties since it was transferred from the General Services Administration to DHS. Previously, GSA made up the deficit with money from the Federal Buildings Fund. FPS now is entirely fee-funded.

In the past, the Department has stated that it does not need an appropriation to cover some of the FPS's general expenses. What is your view on this matter? And should Congress appropriate money for some of FPS's general expenses?

Mr. SCHNEIDER. Senator, let me tell you what I know.

First, you are absolutely correct. The FPS was transferred to the Department without the full cost of operation. They covered with other funds an annual operating loss that was, frankly, a substantial amount of money. So right from the get-go, we were behind the power curve, and we were expected to eat that out of DHS resources, which, frankly, was not a good deal for us.

So what we have done is a series of rate increases. We have, we believe, in terms of what our fees are to the customer, to pass it on to the customer, and some of these customers, to be honest with you, are not happy about the fact that we are increasing their rates. But the fact is they got a free ride, frankly, because GSA picked up the operating loss.

So we have adjusted our rates based on square footage to where we believe that we are fully solvent, and we can, frankly, hire up to the mandated level—I think it is 1,200—by the end of this year. We are on track to do that. We believe we have a sound financial basis to go do that.

Now, when I have asked this question because in some of my visits around the country, I get rave reviews about the performance of the FPS. And some of the folks that are their customers have personally gone out of their way to come up to me to talk about the great job that they do, and they wish they could give them—get more services for them, and they are willing to provide money.

So that led me to—and I have not completed this yet, but there is like three different funding streams that fund the FPS. One of them is almost like a base support; then there is another that is a reimbursable; and then there is a third strain that I cannot remember what we call it.

What I have not got the answer to is this: Whether or not we have within our authority to take on all the customers that would

like to fund FPS, or whether or not I need legislation to fix that. Right now, from what I have read and studied, it does not appear that we need legislation. It appears it is within our authority. But one of the things I would like to do, only after I do that review, and if, in fact, I do conclude that we need some more flexibility from a funding standpoint, I would like to come back and talk to you about how we do that. And the reason is because they provide a very valuable service. From everything I can tell, their service is highly valued by their customers. And if more people want more service than are willing to pay, then I want them to be in a position to be able to accept that money.

Senator AKAKA. I know you have been quite passionate about personnel. Over the next 5 years, the Office of Personnel Management estimates that approximately one-third of the Federal workforce will retire. Last week, we held a Subcommittee hearing to discuss the barriers to entry for the next generation of Federal employees. Agency leadership and reforming the recruitment and hiring process were among the central recommendations.

What plans do you have to improve the recruitment and hiring process to ensure that DHS is removing barriers to attracting the best and the brightest to DHS?

Mr. SCHNEIDER. Thank you. I think the exodus that people are talking about is somewhat precipitated by baby boomers and shortly thereafter. The situation, quite frankly, is exacerbated by the fact that in many departments, from the late 1980s to the mid-1990s, there was a hiring freeze, basically, and the way the hiring freeze worked is you basically cut off the spigot and basically achieved your reductions that were mandated by attrition, which is the worst way to do this.

And so the fact of the matter is it just compounds the situation where you have this exodus of people based on age and what people typically do when they retire, as well as this void in the pipeline.

So we have recognized that along with the other departments in government, and so what we have been doing is we have a massive hiring campaign. We are out, frankly, with job fairs, with ads. We have had one-day job fairs in the Reagan Building. We had 1,200 people show up. We go out to the Midwest, we go out to the Southwest, we go up to the North to try and attract people.

Our Department is working together not just one agency going out trying to recruit, but basically it is a department-wide recruitment effort. We have many entry-level programs where—we have intern programs, for example, that we have started, primarily to build up our acquisition workforce and other specialty areas. In the case of our policy people, we have scholar programs that we have initiated with Harvard to get some of the bright minds that are out there interested.

I continue to be encouraged by a lot of very bright people who want to come work in our Department, either from a law enforcement standpoint or from a policy standpoint, and the reason being is from a policy standpoint, where people realize that many of the issues that this country is going to wrestle with over the next couple of years are going to be major policy issues regarding security of the homeland—this trade-off between what you have to do to protect and defend versus privacy. And so we are attracting some

of the best minds from some of these really top-notch schools that want to work in these areas.

So I am encouraged, but that does not totally alleviate my concern with the sheer numbers. The sheer numbers are dramatic. When we are trying to ramp up—and we are trying to convert from a contractor workforce to a Federal workforce—and we are probably in the most unusual situation compared to the rest of the Federal Government, which is why my charge to the new Chief Human Capital Officer and, frankly, to Elaine Duke, who you have met, who is the Deputy Under Secretary for Management, is we have to fix the staffing. We have to get these people on board. And it is not just our internal processes, what we do, but how well do we work with OPM and the others. How well can we get people cleared?

I think we have done remarkably well in cutting the time frame it takes to get somebody cleared, even at the top secret SBI/SCI level. It is a problem I spent a lot of time on, and we have—I can tell you, one of the things we have done is basically almost like a stop-gap measure, plugging holes in the dike, is we have taken a large percentage of our folks that work in the Chief Human Capital Office and said it does not matter what you were doing yesterday, today you are working on staffing, because we have got to get these people on board.

Senator AKAKA. Well, I want to thank you very much, Mr. Schneider, for your responses, and I know that with your experience and your background, you understand how important personnel and personnel hiring is to our Federal Government.

I just want to add that I hope in your considerations of hiring, the diversity of the Federal workforce would be one of your priority concerns.

Mr. SCHNEIDER. Yes, it is. And, in fact, let me just say that we are obviously very concerned about diversity. It is an established fact our numbers are not as good as they ought to be, especially in the senior leadership positions. It is something that we actively work at.

I think what we do not get a lot of visibility on is a lot of the development programs where, in fact, if you take a look at the people that are selected to these programs, we have a very high percentage of minorities and women that have been selected for these programs. And so I am encouraged by the fact that, as we look to the future, the programs that we have put in place to develop these future leaders that will be in a position so that they compete successfully for the senior executive level jobs in the Department, we will have a solid population from which to choose from.

Senator AKAKA. Thank you very much, Mr. Schneider.

Mr. Chairman, I would urge this Committee to move quickly on the confirmation of our nominee. Thank you.

Chairman LIEBERMAN. Thanks, Senator Akaka. Thanks for your contribution to the hearing this morning. I have one more question to ask Mr. Schneider, but it certainly is my intention to move quickly and see if we can possibly confirm the nomination, both through the Committee and the Senate, before the Memorial Day break next Friday.

One of the big concerns that we all had when we created this Department—and it is an ongoing concern; I know you share it—is

the enormous administrative challenge of integrating more than 20 pre-existing Federal agencies and more than 200,000 people.

I was very interested to learn from my staff that in your interview with the Committee staff, you explained that one strategy you have for dealing with this challenge was a plan to expand the role of the Operations Directorate, and that in particular you were thinking of setting up a joint staff from the component agencies through the Operations Directorate, as I understand it, to do operations, coordination, and planning—somewhat like the model of the joint staff at the Department of Defense.

I wanted to ask you if you could briefly explain what you have in mind here, because I find it very interesting.

Mr. SCHNEIDER. Yes, sir. One of the things that—when I became the Acting Deputy Secretary, I found myself involved with things that previously I was not involved in. I worried about—I call it “the business of the business” aspect from the management standpoint of what the Department did. I was really not that heavily involved in what I would call the law enforcement operations.

By and large, we are a law enforcement operation. Not unlike the Secretary of Defense and the Department of Defense, the chain of command for, I call it, “fighting in the war,” is from the Secretary directly to the combatant commanders. And so that is very similar, frankly, for how we operate. We have, obviously, a headquarters staff, and they work on policies and procedures and business. But the fact of the matter is our law enforcement operation, the chain of command is directly from the Secretary to the heads of TSA, Coast Guard, all the above.

Chairman LIEBERMAN. Right.

Mr. SCHNEIDER. The issue came up, frankly, when in a situation that required us to assemble our forces and figure out a coordinated approach to a specific problem, I found myself, frankly, sitting at the head of the table as the Acting Deputy Secretary shortly into this, trying to understand how do we put together a coordinated operational law enforcement plan for the specific scenario at hand. And what I immediately realized was we did not really fully have the equivalent of a joint staff. We needed, not somebody that had direct line of control of authority over the combatant commanders, but, rather, somebody who would work with all the combatant commanders, figure out what the threat was, work with the intelligence community, etc., work with the operational type people, and put together a comprehensive plan, or at least a set of alternatives that could be considered by the Secretary.

So I talked to the Secretary about it, with others, and what we concluded was we needed that type of capability. Now, the Secretary in some of his testimony or in some of his speeches has been talking about a J-3/J-5 type operation, and for those that are familiar with Pentagon lingo, J-3/J-5 is operations and planning.

And so what we have done is we had a team that was put together that was headed by a Coast Guard two-star admiral, that was made up of all the operational deputies from across the component agencies, to figure out what should we do, how do we do business, can we do it better, what ought to be the structure. They worked this by themselves, frankly, and briefed me and the heads of the operating components on a monthly basis.

About a month ago, they came in with their final recommendation. We sat down and went through it. We briefed the Secretary, and he agreed with it, and it was something that they came up with on their own. These are the operational deputies saying we think we can do a better job of how we do our planning and how we coordinate our operations.

This is really at the deck-plate level. And so we are in the process right now of making that happen. And our plan, frankly, is to do it a couple of ways. Our plan is to rely, frankly, on the operational expertise that is inherent in each of the operating components to staff this operation at headquarters with detailees. This brings some of the best and brightest operational people that have already developed, frankly, a good operational working relationship. It exposes them to other areas of the Department, and one of the Secretary's initiatives is that we expand the experience base for all of our employees, much like what the Director of National Intelligence is doing and much like what the Deputy Secretary of Defense is doing. And so this will get them exposure and in the long run helps solidify the Secretary's goal of one DHS.

So we are in the process of doing that. We are in the process of getting detailees, and, frankly, we hope to have this up and running next month.

Chairman LIEBERMAN. I appreciate that. That is very refreshing and I think will definitely help in the goal of integration.

I would ask you in regard to that, and more broadly in terms of what you are doing, to keep in mind that the Committee is working now on a Department of Homeland Security authorization bill. The House, as you know, passed one earlier. We are not quite sure whether we are ready to go to an annual authorization as the Armed Services Committee does for the Department of Defense. Maybe we are. Maybe in these early years that is important. Maybe we will aim for having one every Congress.

But, in any case, we are working on that now, and if there is any legislative language that you would like to kind of institutionalize that or other changes you have made or think should be made, I urge you to let the Committee staff know as soon as possible.

That is it for me. My staff tells me that in those first three questions that I asked, the routine questions, that either because of the way I asked the third or perhaps you did not hear, that you gave—I do not want to quote you too much, Paul, but you said “No,” and the answer, I think, is different. So let me ask that third question again to remove any doubt. 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. SCHNEIDER. Yes.

Chairman LIEBERMAN. Thank you.

We are going to keep the record open just for a day until the close of business tomorrow for any additional comments that you want to add and any additional questions that Committee Members may have of you. We are going to do it just for a day because, as I indicated earlier, my hope is to get you confirmed before the Memorial Day break.

I thank you very much for your testimony today and, in general, of course, for your long record of distinguished public service.

The hearing is adjourned.
[Whereupon, at 11:23 a.m., the Committee was adjourned.]

APPENDIX



**TESTIMONY OF
PAUL A. SCHNEIDER
U.S. DEPARTMENT OF HOMELAND SECURITY
ACTING DEPUTY SECRETARY
BEFORE THE UNITED STATES SENATE
COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
*May 14, 2008***

Chairman Lieberman, Senator Collins and distinguished Members of the Committee, it is an honor to appear before you today as you consider my nomination by the President to be the Deputy Secretary at the U.S. Department of Homeland Security.

I am deeply honored and humbled that President Bush has nominated me to serve this great country and its people, and I thank Secretary Chertoff for his support throughout this process. If confirmed, I look forward to the opportunity and privilege to continue to serve under his direction, in this position of great responsibility, with the dedicated men and women who are working to secure our homeland and defend our freedoms.

I would like to recognize my wife Leslie, cousin Carolyn Griffin and several of our friends who have joined me here today. Also, present are key members of the staff of the Office of the Deputy Secretary who simply put, ensure the place runs properly.

I will continue to focus on the specific priorities that I established when the President designated me as the Acting Deputy Secretary.

They include:

1. Preparing for the Transition
2. Executing Department wide operations planning and coordination
3. Executing our major programs

4. Being able to respond to a national incident whether man made or a natural disaster

I hope that my continued willingness to serve the public trust, integrity, competence, and ability to accomplish significant and challenging objectives demonstrate the skill set and experience needed to meet the significant responsibility required by the Deputy Secretary's charge.

If confirmed, I commit to working with you and your staff, other governmental departments and agencies, business (large and small), and our international partners to make a contribution to securing our homeland for today and tomorrow.

Thank you very much for this opportunity to appear here today.

I am happy to answer any questions you may have.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** Paul A. Schneider
2. **Position to which nominated:** Deputy Secretary of Homeland Security
3. **Date of nomination:** February 26, 2008
4. **Address:**
5. **Date and place of birth:** Brooklyn, New York
6. **Marital status:** Separated, Leslie Levine Schneider
7. **Names and ages of children:** None
8. **Education:** James Madison High School, Brooklyn, NY, 1957-1961
University of Mass at Lowell, BS in Nuclear Engineering 19961-1965
9. **Employment record:** List all jobs held since college, and any relevant or significant jobs held prior to that time, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.) **See attachment**
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. **None**
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.

CNAC Institute for Public Research-contractor
Whitney Bradley and Browne - contractor
WILCOR - part time employee
G2 Software Systems Inc. - part time employee
Beacon Management Group- consultant
Interactive Technologies Group (ITG) - contractor
DRS - consultant
Federal Aviation Administration - contractor
National Defense Industrial Association – on the DC Board
Cryptolex – on the Board of Advisors

REDACTED

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

**Annapolis Yacht Club
Association of Scientists and Engineers
American Society of Naval Engineers
Old Crows Society
AFCEA
Navy League
Naval Institute
National Defense Industrial Association
Society of Naval Architects and Marine Engineers**

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 any political party or election committee 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 during the past 5 years. **None**

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.

**Department of the Navy Superior Civilian Service Award
Department of the Navy Distinguished Civilian Service Award
Department of Defense Distinguished Civilian Service Award (twice)
Presidential Rank Award of Distinguished Civilian Executive (twice)
Presidential Rank Award of Meritorious Executive
President's Award for Distinguished Civilian Service
NSA Director's Award for Exceptional Civilian Service**

15. **Published writings:** Provide the Committee with two copies of any books, articles, reports, or other published materials which you have written. **None**

16. **Speeches:**

- (a) Provide the Committee with two 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 of and are on topics relevant to the position for which you have been nominated. Provide copies of any testimony to Congress, or to any other legislative or administrative body.

I gave no formal speeches prior in the period of interest prior to becoming the Under Secretary for Management. As the Under Secretary I gave several speeches that were delivered primarily from hand written notes. There are two speeches I gave from text which are attached.

- (b) Provide a list of all speeches and testimony you have delivered in the past 10 years, except for those the text of which you are providing to the Committee. Please provide a short description of the speech or testimony, its date of delivery, and the audience to whom you delivered it.

It is not practical for me to provide a list of all speeches with dates. While I gave many speeches while I was at NSA and the Navy I do not have records of dates, places and occasions. However I can provide a rough idea of the kinds of speeches I gave:

NSA - Keynote address at classified and unclassified technical symposia.

Navy - Keynote address at many classified and unclassified technical symposia, international conferences and public forums. Over 50 speeches at ship launchings and commissionings and international ceremonies; breakfasts and lunches and dinner meetings. Over 50 somewhat informal talks (many public).

All formal speeches were cleared for release by the appropriate Public Affairs Offices. For most informal talks I would speak from a small card of key notes and not a formal text.

As the Under Secretary I testified before Congress several times. Copies of testimony is attached.

17. **Selection:**

- (a) Do you know why you were chosen for this nomination by the President? Yes
- (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I have served in positions of significant responsibility that cover the broad range of management areas required for the position I have been nominated for. For over 40 years I have served the public trust and have demonstrated my integrity, competence and ability to accomplish significant and challenging objectives. The skill set and experience that I have qualify me to meet the challenges of this important position.

B. 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? **I have none; they were severed prior to be assuming the position of Under Secretary.**
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, or to start employment with any other entity? **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**
6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? **No**

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. **None that I am aware of.**
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 or execution of law or public policy, other than while in a federal government capacity. **None**
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? **No**
2. 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? **No**
4. For responses to question 3, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity. **N/A**
5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. **N/A**

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

I Paul A. Schneider being duly sworn, hereby states that I have 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.

Paul A. Schneider

Subscribed and sworn before me this 4th day of March,
2008

Lydia Stampley

Notary Public

Employment Record

From 1965 to 1966 - Project Engineer in the Submarine Propulsion and Auxiliary Machinery Branch at the Portsmouth Naval Shipyard, NH.

From 1966 to 1970 - Project Engineer in the Bureau of Ship's Submarine Overhaul and maintenance Program and the SSN Submarine Ship Acquisition Project, Washington DC.

From 1970 to 1975 - TRIDENT Submarine Acquisition Project starting as a Project Engineer for Ship Design, and then as Director, Research, Development, Test and Evaluation Division, Washington, DC.

From 1975 to 1981 - Director, TRIDENT Submarine Ship Systems Engineering Management Division. Was responsible for the management of the ship design and the integration of weapons and combat systems. During this period also served as Program Manager for a Submarine Advanced Technology Program and the submarine design portion of the US/UK Trident Submarine Program.

From 1981 to February 1986 - Deputy Director of Naval Sea Systems Command (NAVSEA) Auxiliary Systems Sub-Group in the Engineering Directorate. Responsible for the design, engineering and life cycle support of surface ship and submarine piping, heating, ventilation and air conditioning systems and auxiliary machinery, including environmental pollution control and aircraft carrier fire fighting systems.

From March 1986 to March 1991 - Executive Director of the NAVSEA Amphibious, Auxiliary, Mine and Sealift Ships Directorate, responsible for ship design, acquisition, maintenance, modernization and life cycle support of these ships. During this period also served as Program Manager for two classified programs.

From March 1991 to October 1994 - Executive Director of the NAVSEA Surface Ship Directorate with expanded responsibilities to include aircraft carriers and in-service surface combatants, combat systems, security assistance and foreign military sales and the Navy's diving and salvage program.

From October 1994 to June 1998 - Executive Director and Senior Civilian of the Naval Sea Systems Command, the Navy's largest shore organization. In this position was responsible for the day-to-day operations of an \$18 billion dollar a year, 70,000-person organization, including shipyards, laboratories, and engineering and test facilities.

From July 1998 to September 2002 - Principal Deputy Assistant Secretary of the Navy (Research, Development and Acquisition). Responsible for the oversight and execution of Navy and Marine Corps research, development and acquisition programs with an annual budget in excess of \$30 billion dollars. These included aviation, weapons, shipbuilding, undersea and mine warfare, missile defense, information technology, command, control, communications and

intelligence, and security assistance. During the administration transition served as the acting Assistant Secretary of the Navy for 8 months.

From October 2002 to September 2003 - Senior Acquisition Executive of the National Security Agency (NSA), Ft. Meade MD. Was responsible for oversight and execution of signals intelligence and information security development and acquisition programs.

From October 2003 to December 2006 - Self employed defense and aerospace consultant. Also is a part time employee, systems engineer, of WILCOR, MD and G2 Software Systems Inc., San Diego, CA.

From January 2007 to October 2007 – Under Secretary of Homeland Security for Management.

From November 2007 to Present – Under Secretary of Homeland Security for Management and Acting Deputy Secretary.



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

March 4, 2008

The Honorable Joseph I. Lieberman
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Paul A. Schneider, who has been nominated by President Bush for the position of Deputy Secretary, 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.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Robert I. Cusick".

Robert I. Cusick
Director

Enclosure

**U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire for the
Nomination of Paul A. Schneider to be
Deputy Secretary of Homeland Security, Department 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?

I believe that the President agreed with Secretary's Chertoff's recommendation that I would be an excellent nominee based on my background and experience to fill this critical position and in doing so, make a major contribution to securing our homeland.

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

No.

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

I have served in positions of significant responsibility that cover the broad range of management areas required for the Deputy Secretary position. For over 40 years I have served the public trust and have demonstrated my integrity, competence and ability to accomplish significant and challenging objectives. The skill set and experience that I have, qualify me to meet the challenges of this important position.

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?

No.

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.

Not to my knowledge. However, should a conflict arise, I will consult with the Department's Designated Ethics Official to seek advice and guidance.

6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

No.

II. Role and Responsibilities of Deputy Secretary of Homeland Security

7. How do you view the role of the Deputy Secretary of Homeland Security?
- The Deputy Secretary is the Chief Operating Officer of the Department. As such he or she is responsible for running the day to day operations of the department. Having served as the Acting Deputy Secretary for approximately five months I have had a good opportunity to fully understand the day-to-day operations and the responsibilities and authorities of the position.**
8. In your view, what are the major challenges facing the Department of Homeland Security (DHS)? If confirmed as Deputy Secretary, how, specifically, would you address these challenges?
- The major challenges facing the Department are: keeping our borders secure; enforcing the law and ensuring only those people that should be in this country are here; protecting our critical infrastructure; ensuring the country develops a culture of preparedness; enhancing the performance of the department; and preparing for the upcoming transition of the administration.**
9. You were sworn in as Under Secretary for Management at DHS in January 2007 and have been also serving as Acting Deputy Secretary since October 2007. What do you consider your most significant accomplishments during your time at DHS?
- During my approximate 16 months at DHS I think the following are some of our major accomplishments:**
- Starting the Cyber Security Initiative
 - Getting our major programs properly structured and resourced
 - Building our acquisition capability
 - Establishing our transition plan
 - Filling our executive positions
 - Institutionalizing some of our major processes
10. What are the highest priority items you intend to focus on if confirmed as Deputy Secretary? What do you hope to accomplish during your tenure as Deputy Secretary?
- Our major priorities are:**
- Transition preparation
 - Department-wide operations planning and coordination
 - Executing our major programs
 - Responding to a major national incident whether man made or a natural disaster

I hope to successfully work on these matters and others and ensure that the transition is seamless to the general public and the country.

IV. Policy Questions

11. Department Integration and Cohesion

One of the daunting challenges that DHS faced at its inception was the integration of some 22 agencies and roughly 180,000 people into a single, new, cohesive Department. Five years later, DHS continues to struggle with the integration of its component agencies and its workforce.

- a. If confirmed as Deputy Secretary, what specific steps would you take to improve the integration and cohesiveness of DHS?

In my role as Under Secretary for Management and Acting Deputy Secretary, I have designed an integration framework based upon the need to transform various disparate agency challenges. This framework is the foundation for the Department's transformation and outlines the manner by which strategic goals are developed, resources are utilized, and performance is monitored.

If confirmed as Deputy Secretary, the steps that I would take to improve integration and cohesiveness of DHS are to continue the implementation of the transformation framework and performance improvement initiatives as described in the Department's draft DHS High Risk Management Plan. As Deputy Secretary, I will ensure that best practices within the transformation framework are executed with respect for the challenges that exhibit the greatest risk to the Department's integration and cohesiveness per the following steps:

- 1. Assess and audit risk challenges to determine corrective actions and goals that address high risk areas and performance improvement initiatives;**
- 2. Integrate initiatives, managing their interdependencies, and ensuring synergy of these complementary efforts;**
- 3. Improve the metrics that will be used to measure performance;**
- 4. Monitor progress through frequent intra-agency communication, coordination with GAO, and periodic briefings to OMB.**

I expect that these steps will result in:

- Clear accountability, including roles and responsibilities of key personnel leading integrative initiatives within the Department;**
- Improved execution of Management strategic objectives through Line of Business implementation strategies;**
- Established guidelines and processes for DHS to integrate risk into other management systems, such as budget and program reviews;**

- **Prompt and proper resolution of identified material weaknesses, reportable conditions, and non-conformance conditions;**
- **Assurance that performance appraisals of appropriate officials reflect effectiveness in resolving or implementing corrective action for identified challenges to the cohesiveness of the Department; and**
- **Execution of a framework that supports a commitment for continual improvement and best practice implementation.**

b. As acting Deputy Secretary and as Under Secretary for Management, what measures have you taken that you believe most improved the integration and cohesiveness of DHS?

As Acting Deputy Secretary and as Under Secretary for Management, the transformative measures that I have taken that have most improved the integration and cohesiveness of DHS include:

- 1. Instituting an Investment Review Board to ensure that proper investment, acquisition oversight, and effective resource management is consistently applied throughout the Department in order to meet the mission and obtain potential synergies;**
- 2. Initiating Joint Requirements Planning and Risk Assessment Process for Informed Decision Making Steering Committees to prioritize Department-wide resources and capabilities in consideration of strategic threats;**
- 3. Implementing a Corrective Action Plan methodology that provides Department-wide integration and cross functional guidance through best practices and entity level internal controls; and**
- 4. Strengthening the Department's focus and capacity to perform solid Planning Programming, Budgeting and Execution.**

Acknowledging administrative and operational weaknesses that remain, DHS' management framework enables DHS to design processes that focus on management challenges and improve operational performance. Subsequently, this framework will improve capabilities to monitor performance, improve accountability, and overcome entity level management challenges.

c. Section 701 of the Homeland Security Act, as amended by section 2405 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53), requires that the Under Secretary for Management develop a management integration strategy for DHS. Has a management integration strategy for DHS been completed? If so, please provide a copy of the strategy. If not, when do you expect that the management integration strategy will be completed?

As mentioned, under my guidance, DHS has completed an overarching management integration strategy that identifies and addresses entity-level challenges through improved internal controls, strengthened program oversight, and enhanced performance monitoring.

In collaboration with OMB and GAO, this integration strategy has been drafted as the DHS High Risk Management Plan and is presently being reviewed for enhancements. Having submitted this plan to OMB and GAO representatives, we will continue to implement the corrective action measures described within the plan and remain steadfast in our dedication towards implementing an integrated approach to provide core support to operations that protect the homeland.

12. **Contracting and Acquisition Management**

- a. **Requirements Planning.** Poor acquisition planning, in particular, poor requirements definitions, for procurements can lead to a number of problems during the acquisition cycle. When an agency embarks on a major procurement without adequate planning, it creates a risk that bidders will offer a product that does not ultimately suit the agency's needs. In some cases, without fully understanding its own requirements, the agency may select the wrong contractor for the job. Ill-defined requirements also increase the risk that the agency will rely on time-and-materials contracts rather than contracts based on a fixed price, thus exposing the government to escalating costs. Additionally, decisions by an agency to change requirements after a contract has been signed often lead to cost overruns and program delays. Inadequate requirements planning, therefore, frustrates the long-term goals of an agency, makes it difficult for the private sector to respond to and fill critical agency needs, and confuses the expectations of both the Congress and the public as to the agency's ability to execute a specific mission. The technological component of SBInet, for example, has suffered from a lack of clear requirements. In fact, CBP's operational requirements were not formally documented until months after the task order was issued for the initial P28 project, and thus could not be used as the basis for the project's development. Moreover, the project appears to have proceeded without adequate input from CBP agents, who are ultimately the customers for the system.
- i. What processes will you put in place to ensure that DHS conducts rigorous requirements development (or acquisition planning) before making procurements, particularly procurements for service solutions?

As the Under Secretary for Management, I directed a "Quick Look" review of all DHS level One programs (basically, those valued at \$100 million or more), in order to provide a rapid management and execution risk assessment of these programs and to provide insight for the re-engineering of the Department's investment policy and processes. One of the structural issues identified during those reviews was the lack of a robust Departmental requirements determination and documentation process. Fixing the structural issues identified during the reviews will be one of my top priorities as Deputy Secretary.

We have a number of related initiatives underway to improve our investment and acquisition processes. For example, we:

- Established the Program Management Council, which is the principal DHS forum to ensure program management as the Department builds acquisition expertise
- Established the Test and Evaluation (T&E) Council, which promotes best practices and lessons learned in establishing consistent T&E policy and processes.
- are Rewriting our Acquisition Line of Business Directive to ensure appropriate Departmental oversight of our contracting and acquisition programs.
- Established a new Acquisition Program Management Division within the Office of the Chief Procurement Officer, that will provide policy, oversight and support of DHS acquisition programs (they led the Quick Look assessments previously mentioned), and lead the re-engineering of the Department's Investment & Acquisition Management review processes.

Finally, the Office of Strategic Planning, in the Office of the Assistant Secretary for Policy, is taking the lead in integrating requirements development with the new acquisition program management processes. It will apply to both hardware and services procurements.

- ii. The Acquisition Advisory Panel, which was created by Congress to examine and make recommendations on major challenges in federal acquisition, has recommended that each agency establish a center of expertise in requirements analysis and definition, and obtain express advance approval of the requirements from key stakeholders (e.g., program managers and contract officers), to more closely resemble processes employed by the private sector. Are you considering implementing this recommendation of the Advisory Panel, and if not, why not?

As the Office of Strategic Planning develops the requirements process, the Panel's recommendations are being taken into consideration. To date, the recommendation has not been implemented.

- iii. The requirements process is particularly important for performance-based acquisitions (PBA). What steps will you take to ensure that DHS establishes measurable performance standards and appropriate contract incentives for PBAs?

Effective PBAs require significant up-front effort from all members of the acquisition team – including requirements, program management, test and evaluation, contracting, and other personnel. This means more time planning and demands a thorough understanding of the tasks required by both parties. Then the Contracting Officer must work with those people who will administer the contract to develop the Quality Assurance Surveillance Plan (QASP). Finally, the administration in the field must follow the QASP

strictly and fairly to complete the assessment that will determine the incentives or disincentives that are applied. All in all, more time in planning and more time administering the contracts. That's been difficult to do in DHS where every requirement has some urgency and while we are building our Program management and Contracting workforce.

The second challenge is applying performance based contracts to the appropriate efforts. We've been pretty good across the government in using performance based contracting for what I call "traditional performance based efforts" such as building maintenance, preventive services and other applied labor situations. We are also employing performance based contracting on some of our IT contracts, such as EAGLE and First Source,

We must be careful, however, not to "force fit" a PBA approach where the requirements are subject to significant fluctuation during the life of the contract, or in cases where urgency prevents us from adequately performing the required up-front planning tasks. If we try to impose performance based contracting on Advisory Assistance contracts, for example, the tool can become counterproductive. I am anticipating a report from the Government Accountability Office that will reinforce those two points. Like any other contracting tool, performance based contracting is excellent when appropriately used.

- iv. Even excellent contracting officers with good intentions will do poor contracting if they have to process more than they can handle. In your assessment, does DHS have enough acquisition personnel, including the support staff needed in areas such as acquisition policy, to handle the enormous quantity of complex contracts DHS manages? How many contracting officers and procurement analysts do you currently have and how much money will DHS obligate this year?

As of Feb 2008, DHS had 977 GS-1102 contract specialists and procurement analysts, but have been authorized 1231. DHS plans to obligate nearly \$20B this fiscal year.

- b. **Reliance on Contractors.** Insufficient requirements planning at DHS results, in part, from its heavy reliance on contractors to perform core Departmental missions, such as policy planning and acquisition. Without an intrinsic capability to set its own requirements and measure contractor performance, DHS runs the risk that its decisions will be influenced by contractors, rather than made independently from contractors. What has DHS done to review the mix of contractor and federal personnel to ensure that DHS personnel are in charge of core functions? If confirmed as Deputy Secretary, what will be your personal role in preventing DHS from being overly reliant on contractors?

On March 6, 2008, Deputy Under Secretary for Management, Elaine Duke, issued the annual DHS Federal Activities Inventory Reform (FAIR) Act (P.L.

105-270) data call to Heads of DHS Headquarters and Component organizations. For the first time, that data call, which is normally addressed to the Department's inventory of in-house inherently governmental and commercial resources, requested information on certain contract activities. This request is a follow-up to the Secretary's goal to strengthen and further unify DHS operations and management capabilities, by considering the possibility that some of the work that was contracted in the early years of our stand-up or as the Department's mission escalated may now be appropriate for recurring performance by Federal employees. It also builds on our pilot study efforts currently being conducted at the National Protection and Programs Directorate (NPPD) as reported to you during Under Secretary Robert Jamison's nomination testimony before the Senate Homeland Security and governmental Affairs committee on November 9, 2007.

Similar to the approach required under the FAIR Act to review commercial work performed by federal employees for possible conversion to contract, we have begun the process of reviewing contract work to ensure that no inherently governmental work is being performed by contractors and to ensure that a core capability of in-house management resources is being maintained. We consider this to be an important part of our workforce planning effort and to ensure that short and long-term workforce and skill gaps are being met. At the NPPD, for example, a careful distinction is being drawn between contract work that can and should now be converted to in-house performance for reasons other than cost, i.e., it requires inherently governmental judgments, might result in the development of an inappropriate personal services contract relationship or is required for developmental purposes, and the work that is commercial in nature or requires skills not generally available within the public sector. At NPPD, we seek to strike a balance between in-house and contract resources that will make the Directorate more efficient and more effective, but will also will position the Directorate for future success.

My expectation is that we will continue to expand this effort to review both in-house and contract workload to assure that we have the resources and technical skills necessary to meet mission requirements.

- c. Technology Assessment. A number of major homeland security acquisition programs have been delayed or disrupted in part because of overly optimistic assumptions about the "maturity" or technological readiness of advanced technologies to carry out difficult homeland security missions.
 - i. If confirmed as Deputy Secretary, please describe the actions you would take to improve DHS's technology assessment process.

As Deputy Secretary, I would finalize the process currently being implemented by the Management Directorate to develop a robust acquisition policy that has programmatic decision points that include appropriate

technology assessments. To improve the technology assessment process, I would direct the newly established Test & Evaluation (T&E) Council, composed of representatives from the major DHS components and led by the Director of T&E and Standards within the Science and Technology Directorate, to establish an independent Operational Test Agency (OTA) for DHS. While the T&E Council promotes T&E best practices and lessons learned in establishing consistent T&E policy and processes for use in acquisition programs throughout DHS, the OTA would be responsible for independent Operational Test and Evaluation of Department acquisition programs. These efforts will provide further discipline and structure to the acquisition of technologies by identifying program capabilities and limitations early on in the acquisition process, and ensuring programs are providing those capabilities at key decision points.

- ii. Section 1104 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) requires that DHS provide a report to Congress that contains "a plan to develop a departmental technology assessment process to determine and certify the technology readiness levels of chemical, biological, radiological, and nuclear detection technologies before the full deployment of such technologies within the United States." That report was due February 3, 2008. Has DHS completed the required plan? When do you anticipate that the report will be submitted to Congress? When do you anticipate that the development of a department-wide process for determining and certifying the technology readiness levels of chemical, biological, radiological and nuclear detection technologies will be complete?

The Department is developing a process to certify the technology readiness level (TRL) of all technologies prior to deployment including chemical, biological, radiological, and nuclear detection technologies. The report to Congress is being finalized and I expect to submit it by May 30, 2008. The report will describe a plan to implement a department-wide process for technology readiness assessments by the end of 2008.

The report is being finalized and will be submitted once it is finished.

- iii. The Directorate of Science and Technology (S&T) has developed a comprehensive testing and evaluation process designed to support the Investment Review Board (IRB) and senior Department officials by providing independent verification and validation of the testing practices and procedures used by other DHS components. What are the current capabilities of the S&T Directorate's Testing and Evaluation Division to provide support to the IRB by verifying and validating the reliability of the testing protocols, procedures and analytical methods used by all DHS agencies?

DHS T&E currently employs nine Full Time Employees (FTEs) who are developing department wide T&E policy that assigns responsibilities to the components and their acquisition staffs requiring test and evaluation throughout the acquisition framework to support acquisition milestone decision makers. The current DHS T&E staff is adequate to perform oversight and analysis of T&E for level one acquisition programs (more than \$200 million total life-cycle cost) and provide input to the T&E Director in supporting the IRB. Additionally, the DHS T&E Director will approve Test and Evaluation Master Plans (TEMPS) and Operational Test Plans for level one acquisition programs and review those artifacts for level two programs. This direct involvement will provide the necessary oversight to assist program managers in evaluating the performance of their acquisition technologies throughout the development process.

- iv. Recently, DHS received the final report of an independent review of testing and evaluation practices used by the Domestic Nuclear Detection Office (DNDO) during its evaluation of the Advanced Spectroscopic Portal (ASP) radiation monitor. That report included findings based on an assessment of “the testing approach” used by DNDO from “contractor testing, through operational testing, processes employed, specifications, test procedures, and analysis methods.”
- A. What lessons did DHS learn from the independent review’s findings regarding the testing protocols, procedures and analytical methods used by DNDO and what changes, if any, will DHS require in DNDO practices?

It is important to note that the ASP Independent Review Team (IRT) stated that they did not find any indication that the test procedures used by DNDO resulted in manipulation or biasing of the test results.

The IRT did conclude that the testing approach used last year was not designed to measure the full range of ASP performance, and they pointed out that minimum detectable amounts (MDAs) were not estimated. It is true that the tests were not designed to measure MDAs, but in a requirements-based acquisition program with finite resources, testing is focused on systems performance against the defined threat requirements, since these target amounts are generated with consideration for their potential to produce a threat.

Postponing certification has allowed additional opportunities to further characterize ASP system performance relative to the existing operational system. Specifically:

- **The test approach for the planned performance test campaign will include not only quantities of Special Nuclear Materials (SNM) and shielding configurations defined in the threat guidance, but**

also configurations above and below the guidance, to better determine the performance range of ASP.

- As recommended by the IRT, DHS will also complete Threat Injection Studies that will provide estimates of ASP performance in a wider range of threat, cargo, and shielding configurations than can be directly tested. These studies will allow DHS to understand ASP performance well beyond the ranges of threat activity used in the physical tests.

The ASP IRT also found that the ASP testing done last year (through October 2007) would be more properly categorized as Developmental Test and Evaluation (DT&E), rather than as Operational Test and Evaluation (OT&E). OT&E determines how well a system can perform its required tasks when used by typical field personnel under operational conditions. The IRT also identified that DHS would greatly benefit from an independent operational test and evaluation process to ensure that testing measures the operational performance and reliability of new systems. In response to this finding, the Department has established an independent operational testing and evaluation team for ASP, under the oversight of the DHS Director of Test and Evaluation and Standards. This independent team will coordinate with CBP and DNDO on further Developmental testing and directly manage the independent Operational test. The Independent OT&E team will evaluate the test results to determine ASP operational effectiveness and suitability findings.

- B. Please describe the process that DHS intends to use to certify that the deployment of ASPs would achieve “a significant increase in operational effectiveness,” as required by the Fiscal Year 2007 Homeland Security Appropriations Act (P.L. 109-295).

The process by which DHS will certify that deployment of ASP systems will provide a “significant increase in operational effectiveness” is a multi-faceted approach that will be executed through the integrated efforts of a multi-agency team including the DNDO, DOE-SLD, CBP, and an independent Operational Test and Evaluation team. The approach will build off of the body of knowledge and data from previous test campaigns, and add information gained from extensive testing being executed this year. The approach will also use a multi-agency subject matter expert working group, consisting of DNDO, DOE, CBP, and national laboratory scientists, to help guide the technical work. The main features of the approach include:

Threat Injection Studies: Threat injection studies are a well recognized technique that creates a series of “threat” signatures and injects these threats into a large number of occupancy signatures measured from

actual stream of commerce. The combined signatures are evaluated through the ASP algorithms to determine ASP performance against a much wider range of potential threat, cargo, and shielding configurations than can be physically configured and tested. It should be noted that this method is the only viable way to estimate ASP performance in an actual stream of commerce because actual Special Nuclear Material threat sources cannot be hidden inside of real cargo at operational ports. The threat injection studies are supported by two specific data collection events. Spectral data was collected on bare SNM threat sources in a laboratory controlled environment at the Los Alamos National Laboratory in January 2008. This effort was led by the DOE with support from DNDO. A second data collection event is currently underway at the Nevada Test Site to collect data on more challenging Naturally Occurring Radioactive Material (NORM) masking scenarios and to validate threat injection modeling methodology.

Developmental Test and Evaluation (DT&E): Future developmental testing will include

- **System Qualification Testing (SQT)** witnessed by DHS at the vendor's facility to evaluate required system functionality against the performance specification
- **Integration Testing** at the 331G facility operated by the Pacific Northwest National Laboratory. This testing will verify system performance in a simulated port of entry (POE) environment prior to deployment for operational testing. Integration testing assures that the gates, lights, and other peripheral systems found at Ports of Entry interoperate with the ASP systems.
- **Performance Testing** against threat quantities of Special Nuclear Materials (SNM) at the Nevada Test Site. Re-verify/re-validate ASP performance for detection and identification of threat materials. It should be noted that the planned testing approach will include not only quantities of SNM and shielding configurations defined in the threat guidance, but also configurations above and below the guidance. Testing will also include masking scenarios using more challenging NORM materials than was used previously. These masking scenarios have been identified by the DOE-SLD program.

Independent Operational Test and Evaluation (OT&E): The Department has set up an independent OT&E team to plan and execute the operation test and evaluate the operational effectiveness of the ASP systems. The OT&E phase of testing will be performed at 4 different areas of the country: a West Coast port (LA/LB); an East Coast port (NYCT); a Southern Border crossing (Laredo); and a Northern Border crossing (Detroit/Port Huron).

Cost Benefit Analysis: A cost benefit analysis will describe the difference of the cost and benefits of the ASP system vis a vis the currently deployed PVT RPMs and identify the best overall solution among competing alternatives.

- d. **Investment Review.** The Deputy Secretary of DIIS is the chair of DIIS's IRB, the lead entity for DHS's Investment Review Process. According to DHS Management Directive 1400, the IRB is intended to serve as "the forum that provides senior management the proper visibility, oversight, and accountability for Level 1 investments." However, as alluded to above, many of DHS's large capital investments over the past five years have faced serious problems (*e.g.*, cost overruns, poor performance, unclear requirements), including Deepwater, SBInet, TSA-ITMS, US-VISIT, and the ASP program. This suggests that the Investment Review Process at DHS has not been as effective as it has needed to be.
- i. In testimony before the Management, Investigations and Oversight Subcommittee of the House Homeland Security Committee on March 1, 2007, you noted that DHS was in the process of "strengthening the requirements and investment review processes by improving the Joint Requirements Council (JRC) and IRB process."
- A. What steps has DHS taken to strengthen the IRB and JRC processes since you provided that testimony?

Since providing that testimony, I have stood up a dedicated office within the Chief Procurement Officer's cognizance that is tasked with strengthening acquisition practices across the department's portfolio. This group, the Acquisition Program Management Division (APMD), has conducted multiple programmatic reviews on Departmental major programs; assisted in performing two independent reviews (SBInet and Advanced Spectroscopic Portal [ASP] programs). APMD is currently leading multiple initiatives to strengthen and improve acquisition processes, to include improving the IRB process, making it an "issue focused" forum; restructuring the periodic reporting process to make it more relevant to program management; and working with major DHS programs to improve the content and quality of their Acquisition Program Baseline documents.

The JRC process is being reexamined as part of the current requirements process re-engineering effort.

- B. Do you believe that these steps have led to a measurable improvement in the DHS acquisition process since the beginning of 2007? If so, by what metrics are you able to account for this improvement?

While the majority of these initiatives are comparatively new (started within the last eight months), I count the initiation of a new, improved IRB process as a tangible indicator of positive change. Since October 2007, seven IRBs have been completed or are in various stages of pre-IRB staffing.

- ii. Since you were named Acting Deputy Secretary in October 2007, how many meetings of the IRB have you chaired? Please list all investments reviewed by the IRB in these meetings, and indicate which (if any) investment proposals were denied or in any way modified by the IRB.

Since October 2007, I have conducted IRBs on SBInet, WHTI, and SEVIS-II. I intend to hold an IRB on the Detention and Removal Office Mitigation (DROM) program prior to the end of April. Four other programs are in various stages of pre-IRB review at the lines of business chief (CXO) level. So far, no proposals have been denied, but all completed IRBs have resulted in multiple action items, aimed at strengthening program processes and/or documentation to better manage risk within the reviewed programs.

- iii. In a report published in April 2007, the GAO wrote: "The [DHS] officials attributed the absence of [project-level management] procedures to resource constraints, stating that, with a full time staff of six to support department-wide investment management activities, they are more focused on performing investment management rather than documenting it in great detail." How many full-time staff currently support department-wide investment management activities at DHS? Do you believe that DHS needs additional staff and resources in order to perform investment management activities with an appropriate level of rigor and thoroughness?

The Acquisition Program Management Division (APMD) currently has twelve government and six contractor FTEs attached. I plan to increase APMD staffing over the next two years. The extent of this increase is still under review, and will reflect balanced considerations of other high-level DHS priorities.

13. Transition

Presidential transitions present challenges for virtually all federal agencies. The challenges faced by DHS during the upcoming transition have the potential to be particularly difficult, both because DHS is a new department undergoing its first such transition and because DHS has a critical mission protecting the United States.

- a. As Acting Deputy Secretary, what role are you currently playing in preparing for the upcoming presidential transition? Do you anticipate any change in this role if you are confirmed?

My role is to ensure we:

- **Have the right career people in place when the political leadership changes to ensure day-to-day operations of the Department are not impacted.**
- **Ensure our critical processes are well documented and mature.**
- **Ensure our major programs are properly structured.**
- **Are able to respond to a national emergency during the transition.**

If I am confirmed, I do not anticipate my role changing.

b. What do you believe are the key priorities that must be implemented to ensure a smooth transition at DHS? What has DHS done, or does it plan to do, to achieve these priorities?

- **Order of Succession - White House Executive Order and DHS Order of Succession for the Secretary and Component Leaders - COMPLETE**
- **DHS Succession Planning - Identification of critical positions and interim acting career executives for departing appointees - NEAR COMPLETION**
- **Cross-Government Collaboration – Build DHS employees’ knowledge of national security protocols and interfaces with other departments as well as state, local, and tribal governments. Working with FEMA and CEG to deliver table top exercises during the transition period for career senior officials and incoming appointees. Working with Homeland Security Council to ensure other departments with Homeland Security roles are integrated with DHS’ transition efforts – IN PROGRESS**
- **Best Practices - Learning from state and local governments as well as the private sector through the Homeland Security Advisory Council - COMPLETE**
- **Administrative Transition Guidance - The Senior and Deputy Transition Officers are working closely with USM Core Transition Team to evaluate internal processes and develop briefing materials for major programs and operational areas to ensure effectiveness during the anticipated surge of incoming and exiting staff – IN PROGRESS**
- **Training and Exercises- We are holding training conferences as well as briefings and exercises to prepare DHS senior level career personnel to be the decision makers and ensure preparedness to act should a crisis either natural or man-made arise - IN PROGRESS**
- **Processes – We are focusing on management processes that include the budget, our major investments and the role of the Operations, Planning and Coordination Component. Providing a cohesive, integrated and operationally efficient planning and coordination effort across the department - IN PROGRESS**
- **Programs – We are ensuring our major programs are properly structured, that the requirements are clear, cost estimates are valid, technology risks are properly assessed, schedules are realistic, contract vehicles are proper, the efforts are well managed and**

resourced to be successful. Formalized oversight efforts and support for acquisition programs and established Acquisition Program Management Division (APMD) within the office of the Chief Procurement Officer - IN PROGRESS

- c. What do you see as the three or four most important risk factors that must be addressed in order to ensure a successful transition at DHS? What is DHS doing now, or planning to do, to mitigate these risks?

The Department is taking a multi-pronged approach to our transition planning to ensure operational continuity of homeland security responsibilities during transition. By focusing on this multi-pronged approach, we will accomplish our major objectives which are as follows:

- **Have the right career people in place when the political leadership changes to ensure day-to-day operations of the Department are not impacted.**
 - **Ensure our critical processes are well documented and mature.**
 - **Ensure our major programs are properly structured.**
 - **Be able to respond to a national emergency during the transition.**
- d. The Homeland Security Advisory Council (HSAC) Administration Transition Task Force recently issued a report that, among other things, recommended that DHS develop an "outreach strategy to federal, state, local, tribal and private sector leaders" as part of its transition planning. Has DHS developed such a strategy? If so, please describe the elements of this strategy. If not, does DHS plan to develop such an outreach strategy?

In January 2008, the HSAC Administration Transition task Force (HSAC-ATTF) delivered a report that identifies transition best practices. The recommendations in this report will help the department develop transition guidance to address the operational challenges during leadership change. One part of the Department's outreach for our transition planning efforts is through our National Level Exercise that is scheduled in May. In addition, the Department engaged the Council for Excellence in Government (CEG) to help ensure our senior career, incoming appointee and those leaders of other agencies critical to homeland security are prepared to respond should a national incident occur. CEG is facilitating our efforts on interagency collaboration. This interagency collaboration effort centers on structured, deliberate processes where DHS will engage key groups and individuals. CEG will in concert with FEMA and other parts of DHS utilize the National Response Framework, and deliver multiple table top exercises during the time of the presidential election campaign, inauguration, and subsequent appointments of Senate-confirmed positions. With these exercises, participants will not only practice their roles but also build relationships and camaraderie with other key decision makers in a variety of emergency scenarios. This effort will strengthen DHS employees' knowledge of national security protocols and interfaces with other departments

as well as state, local, and tribal governments to ensure we are prepared should a crisis arise. We are also working closely with the Homeland Security Council at the White House to ensure that other departments with Homeland Security roles are integrated with our transition efforts.

e. If confirmed, do you intend to stay in office until Inauguration Day 2009?

Yes, if the Secretary and the President of the United States wants me to.

14. **Cyber Security**

Earlier this year, President Bush signed National Security Presidential Directive 54/Homeland Security Presidential Directive 23. This presidential directive, known as the Comprehensive National Cyber Security Initiative ("the cyber initiative"), laid out a new government-wide approach to protect government information systems and defined new responsibilities for many agencies, including DHS. For both DHS's new role in the cyber initiative and its overall responsibilities in the area of cyber security, DHS has requested an additional \$83 million dollars in Fiscal Year 2009 for the National Cyber Security Division (NCSD), a component within DHS's Office of Cyber Security and Communications. Including the \$115 million that was awarded for the initiative in the 2008 omnibus appropriations bill, this would be a nearly \$200 million dollar increase, tripling the amount of money spent for cyber security in DHS. Additionally, on March 20, 2008, Secretary Chertoff announced that Rod Beckstrom would be the Director of the new National Cyber Security Center (NCSC), stating that in this position Beckstrom would "coordinat[e] cyber security efforts and improv[e] situational awareness and information sharing across the federal government."

a. What are DHS's goals for cyber security in FY 2009?

One of DHS's goals for cyber security in FY 2009 is to increase government staffing and provide expanded DHS cyber security personnel, capabilities, and services to our public and private sector partners. Our adversaries are highly educated, skilled, and motivated. We must constantly stay one step ahead by attracting a world class workforce and leveraging the latest cyber security technologies in our cyber defense efforts.

In an effort to ensure that the IT security workforce is prepared to meet the IT security challenges that exist today and in the future, the Training and Education Program focuses its resources on improving cyber security education for IT professionals, increasing the efficiency of existing cyber security training programs, and promoting strategic initiatives for workforce development.

Several additional goals for FY 2009 are to expand Federal cyber situational awareness, intrusion detection, information sharing, and response capabilities. For intrusion detection and situational awareness, we have made progress by strengthening Federal systems, developing a preparedness and deterrence

strategy, and enhancing our operational cyber response capabilities. This is a federal-wide initiative and DHS is working with its Federal partners on developing and implementing a strategy for securing our Federal civilian networks and systems.

DHS is a major driver of the OMB-led Trusted Internet Connections (TIC) Initiative, which is a plan for improving the Federal Government's security posture through the reduction of external network connections, including Internet points of presence, from thousands to a target of 50. The TIC initiative will enable the expansion of the Einstein Program, a 24x7 intrusion detection system across Federal networks, providing better situational awareness, earlier identification of malicious activity, and more comprehensive network defense.

Information sharing will be improved by strengthening and formalizing the relationship with our cyber intelligence counterparts. Our expanded United States Computer Emergency Readiness Team (US-CERT) will aggregate intelligence information and distribute that timely and actionable information to those who need it.

An additional goal for FY 2009 is to strengthen partnership efforts to integrate cyber security into Federal, State, private sector, and international preparedness, response, and resilience efforts. The National Infrastructure Protection Plan (NIPP) provides a model for public and private cooperation. Through our Critical Infrastructure Protection Cyber Security Program, we will continue to focus on the implementation of the NIPP and the Sector Specific Plans (SSPs) with our private sector partners. In addition, we continue to assess and strengthen our response capability with local, regional, and national exercises.

DHS outreach and awareness programs are working to develop and promote the adoption of proven cyber security practices with government, the private sector, the general public, and the international community through a variety of initiatives. DHS worked with industry and government to raise awareness about cyber security as part of National Cyber Security Awareness Month this past October. We reached over 130 million Americans with tools, tips, and information about how to stay protected online. This outreach will continue into 2009 and beyond.

Finally, control systems remains an area of great risk and DHS is dedicated to providing tools, training, and technical assistance to help secure the control systems that operate so much of our Nation's critical infrastructure. Recently, we developed the Control Systems Cyber Security Self Assessment Tool (CS2SAT), which provides critical infrastructure owners and operators with a systematic and repeatable approach to assess the cyber security risks to their control systems. DHS is also developing a roadmap to guide future industry and government control systems security activities.

- b. How will the proposed increase in funding and staff for cyber security help DHS better protect computer networks?

The proposed increase in funding and staff for cyber security will enable DHS to increase the fielding of protective measures across government. This includes expansion of the Einstein program and implementation of the TIC initiative, which will create an environment that will make it more difficult, more time consuming, and more expensive for our cyber adversaries to reach their intended targets. It will also enable us to respond more rapidly and mitigate the damage when attacks do occur.

- c. What will the relationship be between the newly created NCSC and the Office of Cyber Security and Communications?

The Office of Cybersecurity and Communications (CS&C), within the National Protection and Programs Directorate (NPPD), is directly responsible for executing the cyber security initiatives to protect Federal civilian (non-DoD) networks. The National Cyber Security Center (NCSC) is charged with coordinating certain cyber centers and activities across the Federal Government in order to achieve an all-source situational awareness.

However, on a daily basis this interaction will reside in NCSD, FBI, and USSS per their specific missions.

- d. Will responsibilities that are currently under the NCSD be moved over to the NCSC?

No, the National Cyber Security Division (NCSD), like other entities across the Federal Government, will continue to have its specific authorities and missions. NCSC will serve to support and coordinate across some of these centers (such as NCSD/US-CERT) and mission areas.

- e. What are the respective roles and responsibilities of Under Secretary for the National Protection and Programs Directorate Robert Jamison, Deputy Under Secretary for the National Protection and Programs Directorate Scott Charbo, Assistant Secretary for Cyber Security and Communications Gregory Garcia, and Mr. Beckstrom with respect to cyber security?

Under Secretary Robert Jamison is the designated senior cyber official in the Department. Mr. Scott Charbo is Under Secretary Jamison's deputy and is involved in cyber initiatives as well all the other responsibilities of the NPPD organization which include intergovernmental relations, protection of critical infrastructure, and NS/EP communications initiatives.

Assistant Secretary for Cybersecurity and Communications, Greg Garcia, who reports to Under Secretary Jamison, is directly responsible for cyber security initiatives at DHS.

The Director of the National Cyber Security Center, Mr. Rod Beckstrom, has the responsibility to coordinate and foster collaboration across the certain Federal cyber centers and activities. The NCSC has as its primary focus the requirement to ensure systematic and comprehensive situational awareness needed to support network defense. That is the coordinating role of the National Cyber Security Center.

- f. Which of these officials will be taking the lead for the cyber initiative?

Under Secretary Jamison is the senior Cyber Official of the Department.

- g. What role does the Office of Policy play in cyber security and specifically the cyber initiative?

The Office of Policy participates in the cyber initiative, because there are policies that have to be developed and put in place regarding cyber. They are involved with coordination with the private sector and the Assistant Secretary for Policy is a key member of the leadership team and as such participates in all matters of significance in the Department.

- h. As part of the new cyber initiative, DHS intends to increase quickly the number of staff supporting the program. How do you intend to find and recruit people with sufficient qualifications?

We are aggressively searching for qualified people to fill our critical positions. We have set up a dedicated hiring team to fill our cybersecurity positions.

- i. In your view, what is the right balance between contract and government staff to carry out the cyber initiative at DHS?

While there are no hard and fast rules regarding what should be the proper balance is depending on the work that needs to be accomplished I believe the appropriate initial goal for cyber should be a 50/50 split.

- j. Given that only a few people at DHS appear to have been integrally involved in the development and deployment of the cyber initiative and that the only senior career employee integrally involved in the initiative has resigned, how do you intend to ensure that the cyber initiative continues effectively through the 2009 transition?

This is a concern, but many senior and working-level people at DHS have been involved in the cyber initiative and some are moving or soon moving into leadership positions in the cyber security elements at DHS. We are close to

filling Mr. Garcia's deputy position. Mr. Beckstrom's appointment is for two years, which should help to ensure continuity through the transition. Our plan is to fill all the vacant positions through the competitive hiring process. These positions will be classified as career civil servants to ensure that the cyber initiative continues through the 2009 transition and beyond.

15. **FEMA Reform**

The Post-Katrina Emergency Management Reform Act of 2006 (the Post-Katrina Act) calls for broad reforms to the Federal Emergency Management Agency (FEMA), including, among many things, building FEMA into an entity that can prepare for and respond not just to "ordinary" disasters, but also to catastrophic disasters. As part of creating the new FEMA, the Post-Katrina Act calls for building up FEMA's regional offices and rejoining preparedness with response in order to improve our ability to respond to disasters.

- a. What is your vision for the new FEMA called for by the Post-Katrina Act?

Working with Administrator Paulison, we have set a Vision for the New FEMA that charts a course to becoming the Nation's preeminent emergency management and preparedness agency. The Vision has guided the significant improvements FEMA has already made in disaster operations, disaster assistance, logistics, preparedness, acquisitions and all our other core business processes. Pursuit of the vision, however, is a multi-year effort of continuous improvement, and I am committed to supporting Administrator Paulison in that effort.

Our initial efforts are focused on building a sustainable organizational structure in Headquarters and the Regions, selecting and supporting quality leaders, instituting standard business processes supported by measures and metrics, and strengthening partnerships across all levels of government, with non-governmental organizations, the private sector and individuals whom we serve. As we move ahead to make further improvements, we will be supported by three key elements: a dedicated FEMA workforce, a supportive Congress that provides the resources and legislative tools we need as well as constructive oversight, and an operational focused President and Secretary who have requested the resources we need and demonstrated support for the efforts we are undertaking to attain the vision for the New FEMA.

- b. What is your vision for building the stronger regional offices called for by the Post-Katrina Act?

The Region is the essential field echelon of FEMA that engages most directly with State partners and disaster victims to deliver frontline services. It is the Region that can build and nurture State and local capabilities across the spectrum of preparedness, response, recovery and mitigation. And it is the

Region that will lead the Federal response to incidents across the spectrum of all-hazards events. A strong FEMA will rely on strong Regions to regain the trust and confidence of Governors, mayors, leaders in the private sector and the citizens of our homeland. Significant increases in field personnel will continue in future years to include regional staffing enhancements in: Disaster Operations, Emergency Communications, Disaster Assistance, Preparedness, Grants Management, Logistics and Mitigation. These additional resources will support implementation of new functions such as regional Incident Management Assistance Teams, full 24/7 operational capability of the Regional Response Coordination Centers to ensure full situational awareness, and build robust field preparedness, grants management, operational planning, logistics and communications capabilities. Strong FEMA regions are important to the Department and have assisted in providing a forum for greater intra-DHS coordination efforts.

National Preparedness Integration and Coordination

National Preparedness directorate (NPD). Through the NPD, FEMA will integrate and synchronize strategic tools, including the National Incident Management System, National Response Plan, National Infrastructure Protection Plan and the National Preparedness Goal into a national operational capability. The NPD will ensure development of preparedness processes, exercises and training that foster harmonized day-to-day routine interaction of disciplines, organizations, levels of government and our citizens. NPD's capability requires partnerships at the headquarters level, among those in the field and on the front line.

- c. What will you do to ensure the new, stronger FEMA, as envisioned by the Post-Katrina Act, is actually built?

If confirmed, I will remain focused on assisting Administrator Paulison implement the policies and principles that comprise the vision for the New FEMA. This Vision has guided the significant improvements that FEMA has made in preparedness, disaster operations, disaster assistance, logistics and all of our core business processes. I am committed to using the larger DHS coordination capabilities to support FEMA in its transformation. Pursuit of the vision is a multi-year effort of continuous improvement and will no doubt be made stronger by the significant capabilities of DHS.

- d. What management challenges have you faced and will you face in the implementation of the Post-Katrina Act? What are you doing and what will you do to address those challenges?

The transfer of preparedness missions from the former DHS Preparedness Directorate has improved the abilities of FEMA to provide more comprehensive emergency management services to the Federal government and it's State, tribal,

territorial, and local government and private sector stakeholders. The management challenges associated with the transfer have also helped to improve FEMA's quality of service. Those challenges include mission integration, consolidating business processes, as well as structuring the workforce and hiring to fill vacancies.

Like any organizational change, the influx of new missions and requirements requires personnel to both perform and support those missions. For example, the transfer of several hundred preparedness positions and the missions performed by those individuals into FEMA continues to be a huge administrative undertaking that has significant implications to human resources, information technology systems, facilities, financial and procurement operations, external affairs, and oversight operations. FEMA worked closely with DHS Headquarters to organize nine business function teams to manage the transition of each of the administrative support services to FEMA. Most FEMA support offices are continuing the process of integrating email systems, budget development and personnel recruiting. For example, over 600 personnel were transferred from the former Preparedness Directorate with separate email systems, financial accounting systems, over half a dozen separate web portals, more than 20 percent vacancy rates and no business support staff or offices.

FEMA took this as an opportunity to re-examine and perform updates to its total organizational alignment to include a mission and function review of organizational structures, alignment of personnel and institution of new budget development procedures. As a result, the Agency's infrastructure, both at FEMA Headquarters and at the Regions, is now better positioned to support a larger organization. Also, I am very proud of the pace in which we have hired new people to maintain a high staffing rate for its permanent full-time positions. This next year will require further refinements to address redundancies and fully merge preparedness administrative functions with those of the rest of the Agency.

16. **Catastrophic Planning**

This Committee has repeatedly identified interagency planning for catastrophic incidents – including, for example, a nuclear or bioterrorism event – as a critical gap in preparedness, and the U.S. cannot afford additional delay in this planning. Annex I to Homeland Security Presidential Directive (HSPD) 8 establishes “a standard and comprehensive approach to national planning,” and in so doing, requires DHS to lead the federal effort to develop strategic and concept plans in support of the National Planning Scenarios, which will serve as the basis for operations and tactical plans specific to each Federal agency with homeland security responsibilities. Although the Incident Management Planning Team at DHS has been leading interagency planning efforts for the National Planning Scenarios thus far, it is our understanding that there are not yet finished plans for any of the existing 15 scenarios.

- a. If confirmed as Deputy Secretary, what will you do to ensure that the deadlines set out in Annex I are met? Does DHS have the necessary resources to meet these deadlines? If not, what additional resources are needed?

The Annex establishes a series of new requirements which we are addressing in concert with our Federal counterparts, and in consultation with our State and local partners. We will meet the timelines identified in the Annex for production of plans and guidance. The Annex does require departments and agencies to identify resource requirements in order to fulfill the responsibilities outlined in the Annex. The Department has principal responsibilities for the Integrated Planning System (IPS) implementation and administration, and resource needs are being analyzed now that the draft description of the IPS has been completed and distributed for formal interagency review. FEMA, for example, is considering the establishment of a Program Executive or Joint Program Office to serve as a coordination point for IPS implementation and administration on behalf of the homeland security planning community.

- b. What will you do to achieve the necessary level of cooperation by other Federal agencies? Are any additional authorities required to enable DHS to achieve the necessary level of cooperation by other Federal agencies?

We are using the well-tested coordinating processes of the Homeland Security Council, and have a host of standing forums, such as the Incident Management Planning Team (IMPT), or the Emergency Support Functions Leaders Group (ESFLG) administered by FEMA that provide near-daily opportunities to coordinate our strategies, plans and activities. During the course of Integrated Planning System development, we hosted several working forums with over 100 participants to contribute to System development and identify particular coordination requirements for the IPS. The Secretary's authorities are sufficient to secure the coordination of other Federal departments and agencies. Our experience has been that they welcome active engagement and seek opportunities to ensure our collective efforts are strategically and operationally integrated.

- c. What entity within DHS will be responsible for establishing the Integrated Planning System and executing the planning responsibilities outlined in Annex I to HSPD 8?

The strategic aspects of IPS will be led by DHS Office of Operations Coordination. As Strategic Guidance Statements and Strategic Plans are developed by that Office, FEMA will be the lead-agent for executing the planning responsibilities outlined in Annex I to HSPD-8. FEMA will be responsible for developing Concept Plans (CONPLANS) and working with the Federal interagency on Operations Plan (OPLAN) development. Additionally, through development of a series of Comprehensive Preparedness Guidance

publications, FEMA will work with DHS and its partners at all levels of government to develop and provide doctrine and guidance on operational planning.

17. Cooperation with State and Local Governments

State and local governments play a critical role in our nation's homeland security, and DHS has responsibility for coordinating with states and localities on a wide range of homeland security matters, including the prevention, preparedness for, and response to natural and man-made disasters.

- a. If confirmed, what will you do to strengthen the relationship between DHS and state and local governments and first responders?

The Department is committed to being a good partner with State, local, tribal, and territorial governments.

The Department's Office of Intergovernmental Programs (IGP) lead by Assistant Secretary Anne Petera serves as a primary point of contact for the coordination of Departmental programs that impact State, local, territorial, and tribal governments as well as the national associations that represent these officials.

Through coordination with DHS Senior Leadership and their staffs' throughout the Department, IGP promotes communication and timely information sharing with state, local, tribal, and territorial governments and their leaders. The office works to coordinate and maintain constant awareness of the various issues occurring regularly throughout the Department in order to better inform our constituency

IGP serves as an advocate within the Department for State, local, and tribal governments and provides recommendations that influence federal policies, programs, and initiatives that affect these constituencies.

Additionally, IGP works together with the White House Office of Intergovernmental Affairs as well the Intergovernmental Affairs offices of the other Executive Branch Cabinet Agencies to ensure proper coordination on initiatives throughout the Administration that may effect DHS State, local, and tribal stakeholders.

In addition to the work of IGP, as part of the State and Local Fusion Center initiative, DHS is installing Homeland Security Data Network (HSDN) in Fusion Centers where we are embedding personnel. HSDN is a collateral SECRET network which provides timely intelligence information to affected constituencies.

The Department is granting full HSDN access to cleared state and local employees. Access is based on need to know and a SECRET clearance. We currently have HSDN installed and operational in 19 Fusion Centers nationwide. We will have HSDN installed in 40 Fusion Centers by the end of FY 2008.

- b. State and local first responders, including our nation's 750,000 state and local law enforcement officers, effectively serve as the front line in the war on terrorism. They may be the first to learn information that could be crucial to stopping a terrorist attack and they are likely to be the first ones on the scene to respond to any incident. Therefore, information sharing between federal officials and state and local officials is essential to our nation's defense. Yet we continue to hear concerns voiced by state and local officials about difficulties in getting relevant information to flow from federal officials, including at DHS, to states and localities. If confirmed, what steps will you take to improve information sharing between DHS officials and state and local officials and first responders?

DHS is actively pursuing both the procedural and technical means to implement the national information sharing environment (ISE) and strengthen information exchanges with state and local homeland security and law enforcement personnel. For example, in order to improve information sharing between DHS and State and local officials and first responders, the Department has supported the deployment of information sharing tools (i.e. HSIN, HSDN, Constellation/ACAMS), as well as the deployment of personnel, including FEMA Federal Preparedness Coordinators (FPCs) to the FEMA Regions, I&A Intelligence Officers to fusion centers, and Protective Security Advisors (PSAs) across the Nation. These resources help strengthen regional homeland security and emergency management partnerships among both among traditional and non-traditional stakeholders. Additionally, these personnel deployments support the facilitation of homeland security-related information sharing across all disciplines and among all stakeholders, including: State and local intelligence fusion centers (SLFCs); FBI Joint Terrorism Task Forces (JTTFs) and Field Intelligence Groups (FIGs); emergency managers and emergency operation centers (EOCs); and critical infrastructure/key resource (CIKR)-focused Government Coordinating Councils (GCCs) and Sector Coordinating Councils (SCCs). These personnel also provide a direct liaison to coordinate regional preparedness initiatives among DHS field elements; State, local, and tribal governments; public safety agencies; information sharing and analysis centers; first responders, and the private sector.

The Department's Office of Intergovernmental Programs (IGP) regularly coordinates rollouts, Department Initiatives, and other relevant information to state and locals via the state Homeland Security Advisors, other local emergency management officials, and national associations.

I&A will continue to support State and local fusion centers by providing people and tools to as many centers as resources permit. For example, training participants in the fusion centers is essential to understanding how to access information and the value and potential uses of the information (e.g., implications of the information within the context of its reporting and possible interdependent consequences of an attack). Exercises also provide a means for testing relationships, capabilities, and processes to identify areas for enhancement.

DHS is currently deploying professional intelligence and operations officers to the fusion centers and installing the HSDN for communicating classified information. Secure unclassified portals are also provided to specific sectors to further information sharing with the Department.

Twenty-two I&A analysts are currently in place at respective state fusion centers. By the end of FY 2008, we plan to have 35 in place.

In addition, the National Operations Center (NOC) is the primary National-level hub for domestic situational awareness, common operating picture, information fusion, information sharing, communications, and operations coordination pertaining to the prevention of terrorist attacks and domestic incident management. NOC all-source fusion integrates multiple information flows, in an operational context, to produce actionable knowledge.

If confirmed I would continue these activities.

- c. State and local fusion centers are playing an increasingly important role in this nation's approach to homeland security. It is essential that fusion centers are able to connect the information observed by state and local first responders with other relevant information and with the appropriate decision-makers. If confirmed as Deputy Secretary, what will you do to implement the requirements of the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) with respect to fusion centers? Specifically, what will you do to establish guidelines and standards for fusion centers, provide the management assistance to help them meet those standards, and ensure they are able to effectively "fuse" information from disparate sources so as to be useful information sharing assets?

First, let me assure you of DHS's commitment to the State and Local Fusion Centers. These centers are a major element in our strategy to secure the homeland. Charlie Allen, Under Secretary for Intelligence & Analysis, has the lead for developing the Department's information sharing and coordination strategy with State and local government. Presently, we have structured a program over the last two years with a primary focus on developing the communications flow between State, local and Federal government. We regularly produce and disseminate joint DHS, FBI, NCTC, ITACG products to address a variety of specific interests and needs for our State, Local and Tribal

partners. We will continue to post useful information and intelligence at both the secret and open source levels.

One fundamental component of this effort is the creation of baseline capabilities for the fusion centers that include privacy, communication and training. These standards were developed by DHS in coordination with the Department of Justice and have resulted in a draft document that was just presented to all our fusion center directors at the recent National Fusion Center Conference for their review and comment. It is our goal to incorporate their comments and suggestions into a final product that ultimately can be attached to the grant funding process. However, special attention has been made to ensure that nothing has been done to remove or impair the states abilities to establish fusion centers that meet their distinctive needs and requirements.

DHS is dedicated to serving the State and Local Fusion Centers and our tribal partners. To achieve success we must be committed to including the right people, networks and resources that “fuse” all these resources into a system that will enable us to better support every effort to securing the homeland.

- d. Preparation for man-made and natural disasters – and, in particular, catastrophic disasters – requires planning at the federal, state and local level, and further requires coordination and alignment among those plans. Accordingly, HSPD 8 Annex I requires DHS to “expand opportunities for education, training, and professional development for planning communities at all levels.” However, DHS’s 2006 Nationwide Plan Review, which surveyed state and local plans for responding to catastrophic incidents, found substantial deficiencies in state and local planning, concluding that “the current status of plans and planning gives grounds for significant national concern.”
- i. What will you do to provide education, training and other support to states and urban areas to enable them to address these inadequacies with the necessary urgency, and to ensure coordination among federal, state and local plans?

FEMA’s National Preparedness Directorate (NPD) is expanding direct support to jurisdictions to enhance preparedness at all levels and specifically address shortcomings in operational planning. Our preparedness activities, services and programs are being reoriented to support implementation of the Integrated Planning System. Additionally, through the development of a series of Comprehensive Preparedness Guidance publications, such as the newly updated “Producing Emergency Plans, A Guide for All-Hazard Emergency Operations Planning for State, Territorial, Local, and Tribal Governments,” FEMA/NPD is modernizing its doctrine to provide clear, concise, and usable guidance across all mission areas. FEMA/NPD is also working with the Emergency Management Institute and other partners, within and external to FEMA/NPD, to establish a Master Practitioner

Program for planning. This program will provide a formal curriculum for building planning capacity at all levels of government.

The FEMA Competitive Training Grant Program is designed to fill gaps in training for homeland security preparedness through the development and delivery of new curricula targeted to specific needs and populations, including states and urban areas, in the areas of coordination and collaboration among federal, state and local plans. Examples of current courses include “Preparing the States: Implementing Continuity of Operations Planning” at the University of Maryland, Baltimore, and “Principles of Planning and Implementing Recovery” at the University of California, Davis. Western Oregon University is developing a course that will identify “key” multi-sector, multi-jurisdictional, and multidisciplinary approaches that build capabilities for regional collaboration, information sharing, infrastructure protection processes, response planning, and community and individual outreach.

FEMA/NPD’s National Integration Center (NIC) National Exercise Division (NED) provides support for exercising and testing state and urban area plans that have already been developed. Exercises are conducted to identify gaps and deficiencies in plans, both vertically and horizontally. The NED supports a review of existing plans and procedures to develop exercise objects for testing and evaluation. Through the Homeland Security Grants Program (HSGP), states and Urban Areas (under the Urban Area Security Initiative, or UASI) are encouraged—and, in some cases, required—to include local, State, and Federal partners in conduct of exercises. Any issues identified via the exercise are identified for corrective action and, once plans have been updated and training provided on the updated plans, jurisdictions are encouraged to institutionalize a rigorous exercise program to maintain their plans – and, as importantly, their confidence in their plans.

The NED exercise plan associated with the Top Officials 4 Full-Scale Exercise was intended to link federal, state, and UASI radiological dispersal device planning and the National Response Framework into the exercise objectives. The 2008 hurricane preparedness exercise program is intended to exercise planning and preparation for the upcoming hurricane season.

Funding is available through the FY 2008 HSGP for planning efforts. Strengthening preparedness planning is one of the three objectives of the FY 2008 HSGP. This objective aligns with the National Priority to Strengthen Planning and Citizen Preparedness Capabilities as outlined in the National Preparedness Guidelines and supports the Planning Annex to HSPD-8 “National Preparedness.” Through the guidance, State and local jurisdictions were encouraged to engage in comprehensive national and regional planning processes which will enhance emergency management

capabilities through strengthened national and regional relationships and the allocation of resources toward preparedness planning.

- ii. Because the federal response to a catastrophic disaster, though potentially substantial, will in most cases be provided in support of state and local governments, it is critical that state and local plans be considered in federal planning efforts.
 - A. What role will states and locals have in the Integrated Planning System, required by HSPD 8 Annex I?

State and local officials have been involved during several iterations of the design of the Integrated Planning System (IPS), including participating in large interagency forums and in a forum designed to introduce the IPS to select national homeland security and emergency management associations and their key leadership. Additionally, the documents used for the implementation of IPS – the Comprehensive Preparedness Guides (CPG) – are being developed and written with extensive support from States and local subject matter experts. While the IPS is focused on Federal planning efforts, it is also designed to foster vertical and horizontal integration of Federal, State, local and tribal plans. This effort was explicitly designed to ensure consistency of effort across all levels of government.

- B. How will state and local plans be incorporated into federal strategic, concept, and operations plans for the National Planning Scenarios?

Annex I to HSPD-8 outlines requirements for guidance and synchronization processes that are included in the draft Integrated Planning System publication. As the National Response Framework states, “Federal, State tribal and local government planning is mutually supportive. Planning for low-probability, high-consequence scenarios is a Federal focus and complements a State, tribal and local focus on more likely and frequently experienced smaller-scale events.” For example, our Federal preparedness assistance builds State, tribal and local capabilities, which, in turn, support the National Response Framework and contribute to national response capacity. Using a consistent planning process and leveraging new preparedness and planning capacity at the 10 FEMA Regional offices strengthen our capacity for integration and synchronization. FEMA Regional Offices have oversight over FEMA’s preparedness programs, activities and services to State and local governments. They also work closely with States and Urban Areas in the development and review of grant applications and with States and Urban Areas on conduct of their Hazard Identification and Risk Assessment (HIRA) process. HIRA serves as the foundation for State and local governments’ planning, resource management, capability development,

public education, training and exercises. These preparedness assistance and HIRA-driven activities support the Integrated Planning System and ensure national planning is fully integrated and mutually supportive.. Federal strategic and CONPLANS will be provided to our State and local partners to ensure transparency and visibility in all planning endeavors.

18. **Border Security**

- a. **Border Security Strategy.** A few weeks ago, the Committee received the DHS report to Congress, required by last year's 9/11 Commission Recommendations Implementation Act (P.L. 110-53), regarding ongoing initiatives to improve security along the Northern Border of the United States. The report notes that 90% of Canada's population lives within 100 miles of the U.S. border and that Canada has extremist groups with potential to quickly infiltrate our border. The report lists three primary threats along the Northern Border: terrorism, drug trafficking, and illegal immigration.
- i. Five years after the creation of DHS, please detail what has DHS done along the Northern Border to better identify the threats, to gain a clear understanding of the needed resources, and to establish a time frames for deployment?

DHS has conducted extensive work in the identification and analysis of threats along the Northern Border. For example, DHS's Integrated Border Enforcement Teams (IBETs) (a multi-agency law enforcement initiative with Canada) use intelligence sharing and analysis to continuously evaluate threats on the Northern Border, producing reports such as the 2007 US-Canada IBET Threat Assessment.

In addition to this comprehensive report, DHS produces numerous drug seizure & threat reports, including the threat assessment provided in the Northern Border Initiatives report mentioned above. Also, the Border Patrol has developed Border Security Evaluation Teams (BSETs). This concept was developed as a mechanism for the Northern Border Sectors to expeditiously evaluate the level of border security within the outlying border zones of a sector. BSETs gather intelligence and establish points-of-contact with State and local law enforcement agencies, local civic leaders, and the public.

DHS also has a clear understanding of the resulting resource needs as well as the time frames for their deployment. As outlined not only in the Northern Border Initiatives report referenced above but by others as well, such as the Workforce Staffing Model report, DHS has a clear plan to increase staffing levels on the Northern Border to optimal levels.

Regarding assets, the Northern Border Initiatives report lays out target increases in Radiation Portal Monitors, Non-Intrusive Inspection equipment, and the deployment of the Automated Commercial Environment. It also discusses the planned opening of a fifth Air Wing (Detroit) and the anticipated deployment of a Predator B Unmanned Aerial Vehicle to a Northern Border location.

As far as Northern Border infrastructure is concerned, CBP has undertaken a systematic review of the land port inspection facilities to determine the enhancements needed to sustain its evolving operational requirements. Based on the information gleaned from these assessments, CBP has identified between four and five billion dollars in repairs, enhancements and replacement projects across the entire land port inventory, of which 2.2 billion dollars is for Northern Border facilities. In addition, multiple facility projects were initiated in FY 2007 in response to the mandate that CBP deploy 6,000 additional Border Patrol agents by December 2008. CBP adopted an aggressive facility strategy to fulfill these requirements, which includes a number of new 50-agent stations on the northern border, as well as alterations and expansions to existing facilities to remediate operational deficiencies and capacity shortfalls.

- ii. While the report provided information regarding some initiatives taking place along the Northern Border, does DHS have a comprehensive strategy to address potential threats of terrorism, drug trafficking, and illegal immigration coming from Canada?

DHS has a comprehensive strategic approach that will address these threats and achieve border security on the Northern Border. As described in the report "DHS Initiatives to Improve Security Along the U.S. Northern Border", the Department's strategic approach is to use the optimal mix of resources to achieve border security in the land, air, and maritime domains along the Northern Border and to maximize their effectiveness through information sharing and partnerships. We use intelligence and risk based analysis to determine this optimal mix of resources and plan for their deployment.

Examples of achieving the optimal mix of resources include a balance of increases in Border Patrol agents, CBP officers, and air assets deployed to certain locations. Examples of technology include ground sensors, tactical communications, and SBI^{net}'s Northern Border Technology Demonstration, which will explore opportunities of advanced situational awareness by merging sensor data, including air and marine sensors. Examples of partnerships include: Shiprider, a joint venture involving the cross designation of Coast Guard and Royal Canadian Mounted Police (RCMP) officers; Integrated Border Enforcement Teams/Border Enforcement Security Teams, a joint U.S./Canadian law enforcement initiative centered

around 15 geographic regions; and the High Interest Drug Trafficking Area program. These robust partnerships multiply the effectiveness of our resources. Partnerships are also important because DHS, while a key player, shares statutory responsibility with other Departments for combating these threats, particularly terrorism and drug trafficking.

Finally, DHS believes that comprehensive immigration reform that includes, but is not limited to, law enforcement is an essential step in controlling illegal immigration.

- iii. What are the similarities and major differences between the strategy being applied along the Southwest Border, and the strategy which will be applied along the Northern Border?

The overall strategic approach is similar in all environments and regions: simply put, DHS must secure the border using the best mix of resources to counter each given threat. We must maximize the effectiveness of these resources by tailoring them to the specific characteristics of each region and environment.

Achieving the appropriate level of enforcement and support personnel is a critical element of this approach. Without them, we could not perform the many functions that are essential to our success. However, increased staffing alone will not guarantee success; technology and infrastructure are also important elements of this strategy, allowing us to achieve border security in a better and more efficient manner. Air and other assets, along with partnerships and intelligence, are also important to this approach.

Operations and personnel on the Northern and Southwest Borders look quite different. This is a result of a variety of factors, including differences in geography, economic activity, cross border relations, and threat environment. Whereas the Southwest Border contains hundreds of miles of open desert, rugged mountains, the Rio Grande River and other coastal waters, the Northern border is characterized by vastly different terrain, including densely forested lands, the Great Lakes, and many sparsely populated areas. There are also notable differences in scale of illegal activity.

Such differences call for a different deployment of resources. Along the Northern Border, with its different terrain and volume of illegal entries, the overall approach will have a smaller emphasis on fence and a greater reliance on air assets and technology, as well as staffing targets that are appropriate to the volume of traffic and the threat. The Northern Border will also have a greater reliance on maritime assets due to the Great Lakes environment.

- iv. What is known about the frequency of smuggling of drugs and other illegal contraband across the Northern Border?

DHS has produced a number of reports that address the frequency of drug smuggling across the Northern Border, to include the joint DHS/CBSA report: *Smuggling Networks' Efforts to Move MDMA (Ecstasy) from Canada to the United States*, CBP's draft *FY 2007 BorderStat – Drug Report*, and of course the drug trafficking references in the Northern Border Initiatives report mentioned above. Highlights of this analysis follow:

In general, marijuana and ecstasy are smuggled into the U.S. from Canada, while cocaine, tobacco, currency and weapons are smuggled into Canada from the U.S., with more seizures of illegal commodities recorded at ports of entry than between ports of entry.

Recent analysis highlights an increase in the flow of cocaine into Canada from the U.S., and other source/transit locations within Latin America. The U.S. has become the number one transit location for cocaine entering Canadian markets. Motorcycle gangs and other organized criminal elements with links on both sides of the border move cocaine consignments via cargo shipments transported via land commercial and private vehicles, with the bulk of the activity targeting ports of entry along the West and Eastern corridors.

Law enforcement reporting and investigative information indicate that organized crime groups are increasingly smuggling large quantities of ecstasy from Canada to the United States. In FY 2007, for example, CBP seized over 2,100 pounds of ecstasy along the U.S. northern border—almost 1,500 percent more than CBP seized four years earlier. This activity appears to be driven by the demand for ecstasy in the United States. To move ecstasy into the United States smugglers typically hire subcontractors who in turn hire “mules”—or low-level drug couriers. Network leaders set up this layered structure to reduce the chance that they would be compromised should an operation go awry.

- v. Air coverage along the Northern Border will be an important component of any strategy. The report mentioned a fifth air wing to be established this May in Detroit, with secondary operational air branches scheduled for Spokane, Buffalo, and Houlton, although no information was provided on scope or size. Will the locations of these air wings and secondary branches provide adequate coverage to border areas and support to Border Patrol Agents on the ground?

The establishment of the first five Northern Border air branches gives us our initial air capability across the border and enables us to assess the threat and adjust accordingly. The number and locations of secondary units to be established and the aircraft to be deployed to the units will be determined as

CBP gains sufficient experience with air assets along the Northern Border. CBP is continuously evaluating the effectiveness of its force and will adjust plans as the threats dictate.

In general, there must be continual re-evaluation of aviation support in border areas and to Border Patrol Agents on the ground. All CBP aviation assets must be geographically located based on threat intelligence and operational requirements in a manner that will provide appropriate proactive and reactive rapid response capabilities. The aviation facilities are strategically located to support timely responses based on those operational requirements. This will ensure that CBP can fully, efficiently, and effectively exploit its air assets as force multipliers.

- b. **Terrorist Travel.** Section 722 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) requires DHS to establish a terrorist travel program to help review, implement and coordinate DHS's efforts in preventing terrorist infiltration into the country.

- i. What is the status of DHS's implementation of this requirement?

DHS has a Terrorist Travel Program that satisfies all of the statutory requirements. Secretary Chertoff has designated our Assistant Secretary for Policy, Stewart Baker, as the head of the program. Accordingly, Assistant Secretary Baker assists in (1) developing terrorist travel strategies and policies; (2) reviewing existing programs and recommending improvements; (3) making budgeting and resource recommendations; (4) ensuring effective intra- and inter-agency coordination; and (5) serving as DHS's primary point of contact with the National Counterterrorism Center in regards to terrorist travel matters.

We expect to provide to you shortly a report regarding the status of the program. In keeping with the interagency nature of the program, last month DHS provided a draft to our fellow federal agencies, and last week we received a variety of comments, which we are in the process of addressing.

- ii. Which DHS office or entity is primarily responsible for analyzing terrorist travel patterns and helping prioritize DHS's efforts to address the threat?

Intelligence and Analysis working closely with the other operating components.

- iii. What are the most likely routes by which terrorists would seek to enter the country?

The answer to this question requires a higher classification level than this document and we are happy to offer a classified briefing for a further discussion.

19. **Transportation Security**

Last year, the GAO concluded that DHS has made progress securing and helping secure the aviation, surface and maritime transportation sectors (See *Department of Homeland Security, Progress Report on Implementation of Mission and Management Functions*, GAO-07-1240T). Though GAO concluded that DHS had made substantial progress in maritime security, and moderate progress in both aviation and surface transportation security, it is recognized that there was still work to be done in these areas.

- a. Secretary Chertoff recently announced that DHS would undertake a sweeping review of aviation security over the next two months, as part of an effort to improve the effectiveness and efficiency of DHS's efforts to secure the aviation sector. Do you believe DHS should similarly review its programs and missions for both surface and maritime transportation security?

The Department of Homeland Security (DHS) continually assesses and reassesses its programs in all modes of transportation. We understand clearly that the terrorist threat and the methods used to carry out that threat are not static. Rather, they are innovative and evolving. DHS must be too in all its operations. Using real-time intelligence, trends, and vulnerability assessments we determine where the greatest risks are and act accordingly. Our evolving guidance on port security and transit grants is an example of how we use available resources to focus on the greatest needs in a manner that enhances security throughout the transportation network. The Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) in conjunction with the SAFE Port Act of 2006 (P.L. 109-347) provides us with a clear roadmap for strategic planning in surface and maritime security. This includes a focus on information sharing, preparedness, domain awareness, training, and using a risk-based management approach to maximize the impact of available resources through random, visible security activities.

The Department's layered approach to security seeks to identify and deter threats well before they reach the Nation's airports, railways, highways, mass transit, ports and pipelines. While there are a number of differences in the aviation and non-aviation operating environments (including the degree of regulation, number of operators, degree of access to the system, and scope of Federal authority), DHS recognizes that there are many similarities as well.

TSA's risk-based security strategy continually incorporates transportation-specific intelligence. TSA coordinates closely and shares information with other DHS components, the intelligence and law enforcement communities, other government departments and agencies, and the transportation industry.

Transportation-specific intelligence is critical to TSA's overall risk-based security strategy, and its products provide a threat framework to prioritize security resources across all modes of transportation.

- b. Where do you believe DHS should now focus its attention and resources among the transportation sectors (aviation, surface, and maritime transportation), as well as within each sector?

The President's budget request for the Department of Homeland Security (DHS) for fiscal year 2009 provides clear direction where the Government's resources should best be directed. Transportation security in all modes receives a substantial portion of the funding allocated to DHS each year through the Transportation Security Administration, U.S. Coast Guard, U.S. Customs and Border Protection, Federal Emergency Management Agency, and Science & Technology. As noted above, the threats, vulnerabilities and consequences to transportation networks differ across each mode. The Department remains actively engaged with the intelligence community to ensure its programs and activities are based on risk and aligned with both current and emerging threats. Moreover, the very nature of the transportation network in each mode varies greatly, thus requiring a different strategic plan for protecting that mode. DHS, its offices and components, remain committed to the process of implementing those plans. This planning has been centered on the National Infrastructure Protection Plan (NIPP) that is available to the public and the Sector Specific Plans that further implement and complement the NIPP.

- c. The aviation, surface and maritime transportation sectors each present unique environments and challenges. Security solutions which work in the closed aviation sector will likely not work in the open public transportation sector. Looking at DHS's budget submission for Fiscal Year 2009, it appears that most research and development projects related to transportation are either specifically geared to aviation security or designed to be broad enough to be applied to any mode of transportation; few research and development projects appeared targeted specifically at the maritime or surface transportation sectors. In your view, what should DHS's transportation security research and development priorities be? Should they be aimed at developing solutions specific to the maritime and surface transportation sectors or should they be designed to be more broadly applicable?

Under the leadership of Under Secretary Cohen, the Department's research and development efforts are properly focused on the proper balance of funding and emphasis between conventional explosives that we might face in the transportation sector and the detection of Weapons of Mass Destruction including nuclear, chemical and biological agents. Explosives detection and countermeasures research and development efforts have broad potential impact in aviation, surface, and maritime sectors. Additionally, the Department supports a comprehensive explosives detection canine program that is used by

DHS and its transportation security partners in the non-federal sector to detect explosives that might be secreted on people, in baggage, and in cargo.

20. **Progress Assessment**

On September 6, 2007, the Committee held a hearing entitled "A DHS Status Report: Assessing Challenges and Measuring Progress" at which you testified, along with then-Comptroller General David Walker. At that hearing, you and Mr. Walker disagreed about the most appropriate way to measure DHS's progress in fulfilling its mission. At the Committee's request, you and Mr. Walker agreed that DHS and GAO would work together to determine a mutually acceptable methodology for assessing DHS's progress. In a follow-up letter dated November 21, 2007, signed by DHS's Deputy Under Secretary for Management and GAO's Managing Director for Homeland Security and Justice, DHS and GAO reported on their progress in this effort, explaining that they had agreed that DHS officials would establish goals, targets and measures that GAO could use in assessing DHS's performance, and that DHS and GAO would work together to develop a method of analysis that would best present a picture of DHS's progress. The letter also indicated that DHS anticipated having a signed strategic plan "shortly" that would assist in this effort by helping to align operations to goals.

Please provide an update on the efforts described in the November 21, 2007 letter, including a description of DHS's work with GAO. What progress has DHS made in developing goals, targets and measures that can provide the basis for performance assessments? What is the status of DHS's revised strategic plan?

DHS is committed to strengthening our ability to report on performance results in achieving our goals and delivering value to the American public. As I stated in my November testimony to the Committee on Homeland Security and Governmental Affairs, we agree that assessments of progress can best be made when, as mandated by the Government Performance and Results Act, program officials have established performance goals, which include measures and targets, that are used by stakeholders and the American public to appropriately assess our performance in accordance with mission goals. DHS and GAO agreed to this approach, along with efforts by program officials to improve the performance measures that will be used in future performance assessments.

DHS currently has a performance management framework that ties Department-wide goals and objectives to mission-oriented programs, performance goals and their associated measures, targets, and actual data reporting. We recently published several reports that summarize our performance results in accordance with our mission and integrated with our budget requests. The DHS Highlights Report summarizes our performance relative to Department-wide goals and objectives for FY 2007. The DHS Annual Performance Report, published in conjunction with the DHS Congressional Budget Justification, identifies and describes the performance measures and targets that are being used to gauge and report on performance relative to our goals and objectives for the current fiscal

year. For this plan, program managers developed new performance measures this year to improve our ability to capture and record results.

Lastly, the recently published FY09-13 Future Year Homeland Security Program (FYHSP) Report highlights our five year resource and performance plan, and identifies program milestones to achieve results. Copies of all these reports have been provided to members of Congress, and the Highlights Report and the Annual Performance Report may be found on our public web site.

To assist in the transition to using this framework as the foundation for future assessments of DHS progress in delivering results, we have mapped the GAO performance expectations used in the Four-Year Anniversary Report to our framework. We are planning to meet with GAO to review this cross-walk, familiarize them with the DHS performance management framework and our set of performance measures, and work to continue to improve the way we gauge and report results.

The Department's strategic plan is an essential element of the integrated management strategy designed to mitigate risks and improve performance across operations. In accordance with this management strategy, our strategic plan recently underwent updates with regard to evolving threat-based risk analysis and the priorities outlined in the National Security Strategy. This effort resulted in a stronger characterization of our mission goals and emphasis of the Department's role in the coordinated inter-agency approach to confronting threats to our nation. As our integrated management strategy outlines, next steps for our strategic planning efforts include designing the most appropriate performance measures to demonstrate our progress and delivery of mission goals and organizing our performance management mechanisms to realign organizational and employee performance to these strategic measures.

21. **Communication and Cooperation with Congress**

Congressional oversight of federal agencies is an essential constitutional function and Congressional oversight of DHS is of particular importance to help ensure that the relatively new Department achieves its critical mission and fulfills what has been ambitiously envisioned for it. Congressional oversight has been hindered, however, in a number of cases where DHS has been less than forthcoming in providing materials requested by Congress. Such instances range from DHS's failure to provide all the documents and information requested by the Committee as part of its investigation into the response to Hurricane Katrina to more recent matters such as a failure to provide timely and accurate responses to the Committee's requests for information regarding its investigation of the repeated border crossings by an individual infected with multi-drug resistant tuberculosis.

If confirmed as Deputy Secretary, what steps will you take to ensure that information and materials requested by this Committee in the exercise of its oversight function is provided

by DHS in a complete and timely fashion? What other actions will you take to improve communication with Congress?

- **Use existing tracking system to ensure timely and responsive replies to formal requests.**
- **Respond promptly to members' requests.**
- **Ensure lines of communications are open and used to inform key members and staff of emerging issues and DHS activities.**
- **Seek opportunities to build a relationship of trust and cooperation recognizing the respective roles of the executive and legislative branches of government.**

IV. Relations with Congress

22. 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?

Yes.

23. 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?

Yes.

V. Assistance

24. Are these answers your own? Have you consulted with DHS or any interested parties? If so, please indicate the individuals or entities with whom you have consulted, and the nature of the assistance they have provided.

Many of the questions posed in this questionnaire go to a level of specific detail about some DHS programs or related efforts about which I have relatively little in the way of firsthand knowledge. Nevertheless, 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 DHS staff. That said, these answers are my own.

VI ICE Questions

25. Please state who informed you of the incident in which Immigration and Customs Enforcement (ICE) officials recognized an ICE employee for originality for his Halloween costume portraying an escaped ICE detainee, when you were informed, and what you were told.

I was advised by Ms. Julie Myers on the evening of October 31, 2007 that there was a Halloween costume party to raise money for the Combined Federal Campaign

(CFC), that there was a contest for the most original costume (and other prizes for different categories), and that she and others in management participated in the judging, awarding the prize for most original costume to an individual (who they did not know), who was dressed in an old style large stripe type prison uniform and had applied black make up. She advised me that they subsequently learned that the person was an ICE employee on temporary duty at Headquarters (which is why most people did not know the person) and was not an African American but had used makeup in a very professional manner so that it was not obvious to her or the majority of the workforce. She also advised me that some employee groups were upset about this matter.

Your office requested that the DHS Office of Civil Rights and Civil Liberties (CRCL) conduct a management inquiry of the incident.

- a. Please name any person who contacted you about that decision or with whom you consulted in making that decision, specifically including whether the Office of the Secretary of Homeland Security or the White House was involved in the decision.

I made the decision to request the CRCL office to review the matter after consulting with the Chief Human Capital Officer Ms. Marta Brito Perez, the acting General Counsel Mr. Gus Coldebella, and my immediate staff. I subsequently advised the Secretary and later, the Office of Public Affairs and Legislative Affairs, of the details of the situation and the actions I had taken. The White House was not involved in the decision making process.

- b. Why was the inquiry handled by CRCL? In particular, please address the following:
- i. Why was the inquiry handled at the departmental level rather than handled internally by ICE, for example by the ICE Office of Professional Responsibility?

Since the incident involved the senior leadership of ICE, I determined that the inquiry should be handled outside of ICE.

- ii. Why was the inquiry handled by CRCL rather than the DHS Inspector General?

I determined that because of the nature of the incident it could best be handled by the CRCL Office. The CRCL Office has expertise in these particular matters.

- c. Did you take any action in response to the CRCL report? Why or why not?

I read the report, talked to the people that prepared the report and Ms. Myers and then sent Ms. Myers a letter with my assessment of the matter requesting her to take specific actions.

26. Your office was involved in the initial decision to place the employee in question on administrative leave.
- d. Please name any person who contacted you about that decision or with whom you consulted in making that decision, specifically including whether the Office of the Secretary of Homeland Security or the White House was involved in the decision.
- I made the decision after consulting with the Chief Human Capital Officer, Ms Marta Brito Perez, the acting General Counsel, Mr. Gus Coldebella and Ms. Myers.**
- e. Why was that decision handled at the departmental level rather than by ICE?
- Since the incident involved the senior leadership of ICE, I determined that the decision should be made by DHS headquarters and since I was the acting Deputy Secretary, as the Chief Operating Officer of the Department, it was my responsibility to take this action.**
- f. Why was the decision made to place the employee on leave?
- I made the decision because I considered his behavior unacceptable and until a more thorough review could be made, I believed this was the appropriate action to take.**
- g. Why was the employee directed to return to his home state?
- The employee was on a temporary duty assignment at Headquarters. As such placing him on administrative leave would automatically require him to return to his normal duty station.**
27. Were you informed of this Committee's request for a copy of CRCL's report? If so, when were you informed?
- I was informed of the Committee's request for a copy of the CRCL report on November 13, 2007.**
28. With respect to the deleted photographs of the Halloween party –
- h. Did you take any action with respect to the CRCL report's recommendation that the DHS Office of General Counsel should review the decision to delete photographs of the event? Why or why not?
- I took no action regarding the recommendation. In my opinion and having seen one photograph with the CRCL report, I considered it appropriate to prevent further distribution of insulting and inappropriate material.**

Additionally, Ms. Myers had made public statements on the photographs and I saw no benefit to having the pictures available.

- i. Were you informed of this Committee's request for copies of photographs from the Halloween party? If so, when were you informed?

I was informed of the Committee's request for copies of the photographs, approximately the week of November 12, 2007.

- j. When were you informed that ICE was restoring deleted photographs from the party?

I was aware ICE was going to try to restore the photographs based on the CRCL report.

- k. When were you informed that the photograph restoration had been completed successfully?

Just prior to the release of the photographs in response to the FOIA request, approximately Tuesday, February 5th.

- l. When did you view the restored photographs?

I viewed a couple before they were released in compliance with the FOIA request.

- 29. Do you accept the explanation of the ICE officials who judged the Halloween contest that they were unaware at the time of the contest of any racial element of the employee's costume, which included a dreadlock wig, darkened skin makeup, and was presented explicitly as that of an escaped Jamaican detainee?

Yes.

AFFIDAVIT

I, Paul A. Schneider, 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.

Paul A. Schneider

Subscribed and sworn before me this 21st day of April, 2008.

Stuart A. Connolly
Notary Public

Stuart A. Connolly
Notary Public, District of Columbia
My Commission Expires 1/1/2012

Question#:	1
Topic:	Halloween party
Hearing:	Nomination of Paul Schneider to be the Deputy Secretary of Homeland Security
Primary:	The Honorable Susan M. Collins
Committee:	HOMELAND SECURITY (SENATE)

Question: You had the Office of Civil Rights and Civil Liberties (CRCL) conduct an investigation of the Immigration and Customs Enforcement (ICE) Halloween party last fall where an ICE employee dressed in a detainee costume and wore skin-darkening makeup. After reviewing the results of the CRCL investigation, what management errors did you identify and what corrective actions have you implemented to prevent similar incidents from occurring in the future?

Response:

After reviewing the events and discussing the details with the Deputy Officer for Programs and Compliance and Acting Chief Counsel, I am confident that there was no intention to demean racial or ethnic minority groups. The inquiry confirmed that neither Assistant Secretary Myers nor the other judges knew that the individual wore makeup to disguise his skin color. However, many within ICE exercised errors in judgment when they either acted with indifference toward or affirmatively recognized a costume that depicts an immigration detainee. Based on my review of this matter, I requested that Assistant Secretary Myers take the following actions:

1. To ensure that all supervisors within ICE understand the concerns that she and I share about this incident.
2. To continue to tackle any perceptions of discrimination within the ICE workforce and ensure that those who were offended by these events are reassured that ICE is and will remain a tolerant and respectful workplace, and continue to take steps to work with employee organizations that can make that commitment a daily reality for ICE employees.
3. To ensure that ICE remains a respectful place to work a deep investment in training its workforce is required with regard to cultural competence and to understand the special obligations and responsibilities of those who detain others.
4. To conduct a comprehensive review of the measures taken by other law enforcement agencies to foster and ensure a culture of professionalism which respects cultural differences and administers the law in an even-handed manner among racial, religious, and ethnic minorities and determine if there are best practices that should be adopted by ICE and DHS.
5. To closely examine the environment within the agency that might lead individuals to be concerned about real or perceived discrimination.

Assistant Secretary Myers has provided me with regular updates on ICE's progress in each of these areas. I am confident that Ms. Myers remains firmly committed to improving ICE and the perceptions of ICE for its employees.

Question#:	2
Topic:	information sharing
Hearing:	Nomination of Paul Schneider to be the Deputy Secretary of Homeland Security
Primary:	The Honorable Susan M. Collins
Committee:	HOMELAND SECURITY (SENATE)

Question: Mr. Schneider, in October of 2007, you wrote a memo rightfully drawing urgent attention to the need for the Department of Homeland Security (DHS) to improve its information sharing capabilities – focusing on the mechanisms and portals used to do so. I commend DHS’ internal assessment efforts, but found it troubling that more than 100 information sharing portals existed across DHS. Many of these are duplicative both in cost and function, managed differently, and some are ineffective. You warned in your memo that if DHS did not take action now, uncontrolled portal growth will drive up costs and directly impact DHS’ mission. I was pleased that as Under Secretary for Management you spearheaded initial efforts to remedy information portal duplication.

You have highlighted your priorities to include preparing for the transition, DHS-wide operations planning and coordination, and responding to major incidents. One of the prerequisites for achieving these goals is to overcome the serious issues your memo identified. DHS must share the right information, at the right time, and ensure that oversaturation doesn’t exclude or alienate our state, local, and private sector partners.

As Deputy Secretary, what are your plans for continuing the information portal consolidation process and to overcome institutional challenges that have slowed progress?

Response:

Since the Portal Consolidation Memo was released under my signature, the department has achieved several important milestones and continues to implement changes necessary to improve its information sharing capabilities across the Homeland.

- To execute this strategy, DHS has named the Homeland Security Information Network Next Generation (HSIN NG) to serve as the baseline platform for the department’s Collaboration & SBU portal. This standards-based platform will be used to facilitate secure access to DHS information and services for all DHS user communities, including users in the Law Enforcement, Critical Sector, Intelligence, Immigration, Emergency and Disaster Management among other communities.
- DHS’ Office of Operations Coordination (OPS) is leading the implementation and operation of HSIN NG with oversight and guidance support provided by the DHS CIO.
- To ensure Component requirements were included in HSIN NG, DHS Components were actively engaged in OPS’s HSIN Mission Coordination Council (HMCC) where requirements were developed and finalized. As a part of the HSIN NG acquisition process, DHS also solicited input from several key stakeholders such as DNI and DOJ.

Question#:	3
Topic:	transition
Hearing:	Nomination of Paul Schneider to be the Deputy Secretary of Homeland Security
Primary:	The Honorable Susan M. Collins
Committee:	HOMELAND SECURITY (SENATE)

Question: In less than a year, a new President will be sworn into office, and the Department of Homeland Security will undergo its first Presidential transition. Recent history in Britain and Spain has highlighted the security vulnerabilities of a country during transitions and emphasized that poor transition planning can put our nation's security at risk. Could you describe how DHS has been coordinating transition preparations with other federal agencies that have national security responsibilities?

Response:

Transition is a major priority for DHS. This year, the Secretary of Homeland Security, in coordination with the heads of other relevant departments and agencies (D/As), recommended an exercise program to introduce new and transitioning heads of D/As and other key officials to existing policies, plans, and capabilities, as well as possible shortfalls in those policies, plans, and capabilities based on strategic estimates of threat and risk. These transition specific exercises will be in addition to the other major national exercises that DHS, other Departments and Agencies, and other homeland security partners engage with together such as the TOPOFF series.

In addition to the FEMA-developed exercises, DHS will host transition readiness workshops developed by the Council for Excellence in Government (CEG). These workshops complement the exercises by providing participants a solid grounding in the roles and responsibilities detailed in the National Response Framework and other documents that guide response to national incidents. Prior to the election, the workshops will be delivered to senior career leaders of DHS and other Departments and Agencies with responsibilities pursuant to the National Response Framework's Emergency Support Functions. Invitations to participate in the workshops will be extended after the election to members of the President-elect transition team, and after the inauguration to incoming DHS appointees as well as appointees to other Departments and Agencies with homeland security responsibilities.

DHS is also working closely with the Homeland Security Council at the White House to share best practices for transition preparation and to integrate efforts among all Departments and Agencies with homeland security responsibilities.

Question#:	4
Topic:	political appointees
Hearing:	Nomination of Paul Schneider to be the Deputy Secretary of Homeland Security
Primary:	The Honorable Susan M. Collins
Committee:	HOMELAND SECURITY (SENATE)

Question: The Office of Personnel Management customarily issues warnings to federal agencies to monitor and scrutinize political appointees who attempt to become career civil servants shortly before a presidential election in an attempt to remain in the executive branch - a practice known as "burrowing in." While some political appointees may obtain executive branch career position based on their qualifications alone, what measures have you taken to ensure that inappropriate "burrowing in" does not occur at DHS?

Response:

At DHS, we are committed to hiring career civil servants consistent with merit system principles that require agencies provide a selection process that is fair, open, and based on skills, knowledge, and ability. 5 U.S.C. 2301(b)(1). The staff of DHS abides by all statutory and regulatory requirements as well as guidance issued by the Office of Personnel Management (OPM).

We are required by statute to avoid granting any individual a preference or advantage in the application process. Further, OPM regulations outline procedures required for making appointments to career positions, such as providing public notice of the position on USAJOBS and a 14-day open competition period for vacancies in the career Senior Executive Service. And like every other Executive Branch agency in the Federal Government, we will follow the OPM guidance in setting policy for personnel actions.

As you know, OPM has oversight authority to ensure all Executive Branch agencies are following the merit system principles and can revoke delegated appointment authority when agencies abuse that authority. In the case of SES positions, OPM reviews the selection process to ensure merit staffing procedures were followed, then OPM forwards the individual's executive qualifications to an OPM-administered Qualifications Review Board (QRB) to certify prior to appointment. During presidential election years, OPM reminds agencies of the need to ensure personnel actions remain free of all political influence and meet all relevant civil service laws, rules, and regulations and also requires agencies to seek OPM pre-appointment approval for the conversion of non-career (Scheduled C and non-career SES) into career positions. Guidance on this was issued by OPM in March and we distributed that guidance to all DHS organizations.

Question#:	5
Topic:	detentions
Hearing:	Nomination of Paul Schneider to be the Deputy Secretary of Homeland Security
Primary:	The Honorable Joseph I. Lieberman
Committee:	HOMELAND SECURITY (SENATE)

Question: During your nomination hearing, I asked you about the medical care for immigration detainees. Please provide the following additional information.

Currently what agency in the Department of Homeland Security (“DHS” or “the Department”) is ultimately responsible for ensuring that detainees are provided with access to medical care? Prior to October 2007, what agency within DHS was ultimately responsible for ensuring that detainees had access to medical care?

Given recent media reports, what actions do you think DHS or Immigration and Customs Enforcement (ICE) should have taken to ensure that detainees had access to appropriate medical care? How does ICE plan to remedy reported deficiencies?

In response to a hearing question on medical care for detainees, you stated that Division of Immigration Health Services (DIHS) had only come to DHS in October 2007. Would you please provide information outlining the current relationship between DIHS and DHS components, and the relationship as it existed prior to October 2007? Please address the mechanism through which DIHS provides services to DHS/DHS components pre- and post-October 2007.

In an ICE Fact Sheet on Detention and Removal Operations (DRO): Detainee Health Care modified on May 13, 2008, DIHS was referenced as an “independent stand alone medical unit.” What does “independent stand alone” mean in the context of organizational placement in DHS and DHS components? Please provide us with information on DIHS’s current organizational position in DHS, and its position prior to October 2007. Please provide information outlining the chain of command over DIHS in DHS and DHS components pre and post October 2007.

Question: During your nomination hearing, I asked you about the medical care for immigration detainees. Please provide the following additional information.

Currently what agency in the Department of Homeland Security (“DHS” or “the Department”) is ultimately responsible for ensuring that detainees are provided with access to medical care? Prior to October 2007, what agency within DHS was ultimately responsible for ensuring that detainees had access to medical care?

Question#:	5
Topic:	detentions
Hearing:	Nomination of Paul Schneider to be the Deputy Secretary of Homeland Security
Primary:	The Honorable Joseph I. Lieberman
Committee:	HOMELAND SECURITY (SENATE)

Response:

Prior to and after October, 2007, ICE has been and continues to be responsible for ensuring the overall care of detainees including access to medical care. In accordance with 8 USC 1222(b), ICE must use the Public Health Service through a reimbursable agreement and may also contract with outside medical professionals and administrative personnel who work under the supervision of Public Health Service officers. See also 42 USC 252; 42 CFR 34.7.

Question:

Given recent media reports, what actions do you think DHS or Immigration and Customs Enforcement (ICE) should have taken to ensure that detainees had access to appropriate medical care? How does ICE plan to remedy reported deficiencies?

Response:

The question presumes the accuracy of the media report. The reports, however, offer misleading views of the efforts made to provide humane and adequate treatment to detainees in ICE's custody. Over the past two and a half years, ICE has examined these decades-long practices, making substantial improvements and significantly increasing funding towards detainee health care.

Some media reports have focused on a relatively small number of deaths that have occurred at ICE detention facilities. Let's be clear: Any death that occurs in detention is regrettable. ICE has allocated significant resources for detainee medical care, spending nearly \$100 million last year, double the funding of just five years ago. Our efforts are producing tangible results. While the number of people in ICE facilities detainee has increased by more than 30 percent since 2004, the number of deaths has declined every year.

In 2004, the mortality rate for ICE detainees was 10.8 per 100,000 and decreased to 3.5 per 100,000 in 2007. While the population of detainees has increased each year, the number of deaths has decreased, from 29 in 2004 to seven in 2007.

Detainees receive mental health visits from qualified professionals, and staff working with ICE detainees, who are trained to spot suicide risks and prevent suicides. Psychologists and social workers have managed a daily population of over 1,350 seriously mentally ill detainees without a single suicide having taken place in the past 15 months.

Question#:	5
Topic:	detentions
Hearing:	Nomination of Paul Schneider to be the Deputy Secretary of Homeland Security
Primary:	The Honorable Joseph I. Lieberman
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ICE has taken significant steps to increase oversight and accountability in all ICE detention facilities, including establishing an independent oversight body to review detention inspections; implementing a stringent new set of national detention standards; retaining full-time quality assurance professionals to assess compliance with those standards; and contracting with an independent company comprised of corrections and detention experts to conduct audits of ICE facilities. Moreover, ICE detention facilities are open to inspection by those outside the agency; we routinely conduct tours of our detention facilities for members of Congress, representatives from non-governmental organizations, and the media. All detention facilities used to house detainees must meet ICE's National Detention Standards which are comparable or surpass industry standards in their commitment to detainee health and comfort.

Working with the Department of Homeland Security's Office of Health Affairs, ICE is also taking aggressive steps to improve operations at DIHS, which, as the designated medical authority for ICE, is directly responsible for detainee health care. Since the administration of DIHS came under ICE's authority in October 2007, a number of improvements have been implemented and others are underway. These include selecting a new DIHS director at the appropriate rank, implementing streamlined hiring processes to address staff shortages, implementing a new electronic medical records system, and reviewing ways to improve the treatment authorization process. All of these steps will help to enhance the quality of care and the responsiveness of DIHS to detainee needs. As we continue to strengthen the detainee medical health system, we will also look to valuable recommendations from others, from our own DHS Inspector General to the NGO community, and look for direction from the Congress, that we can use to build an even stronger system for medical care of detainees.

Reporters have also examined the involuntary sedation of some aliens during the removal process, giving the misleading impression that detainees are routinely sedated against their will. In June 2007, ICE enacted a policy requiring a court order before any involuntary sedation outside the course of treatment for individuals diagnosed with a mental condition could take place, except in emergency circumstances where the detainee would be a threat to himself or another. In January of this year, ICE further strengthened that policy to prohibit involuntary sedation outside the usual course of treatment without a court order – no exceptions.

ICE will not tolerate malfeasance or malpractice. We want to know about individual instances of improper behavior so that we can immediately and vigorously investigate each such allegation and take appropriate disciplinary and corrective action.

Question#:	5
Topic:	detentions
Hearing:	Nomination of Paul Schneider to be the Deputy Secretary of Homeland Security
Primary:	The Honorable Joseph I. Lieberman
Committee:	HOMELAND SECURITY (SENATE)

Question: In response to a hearing question on medical care for detainees, you stated that Division of Immigration Health Services (DIHS) had only come to DHS in October 2007. Would you please provide information outlining the current relationship between DIHS and DHS components, and the relationship as it existed prior to October 2007? Please address the mechanism through which DIHS provides services to DHS/DHS components pre- and post-October 2007.

Response:

DIHS is a stand alone medical unit consisting of U.S. Public Health Service (PHS) Officers and contract medical professionals who work under their supervision. DIHS is the medical authority for ICE and provides and manages the health care provided to those detainees in ICE custody. Prior to October 1, 2007, ICE received the medical services of DIHS through a reimbursable agreement with the Health Resources and Services Administration (HRSA) which is part of the Department of Health and Human Services (HHS). Prior to October 1, 2007, HRSA within HHS provided administrative support to DIHS and oversight of the administration of DIHS.

Since October 1, 2007, the detail of the PHS officers was accomplished via a Memorandum of Agreement (MOA) between Department of Homeland Security (DHS) and HHS. The MOA also covers PHS resources elsewhere within DHS. Since October 1, 2007, ICE continues to receive the medical services of DIHS through a reimbursable agreement between DHS and HHS. Also, since October 1, 2007, ICE has provided administrative support to DIHS and oversight of the administration of DIHS. However, DIHS remains solely responsible for detainee health care and for serving as the medical authority for ICE. All DIHS healthcare providers who care for detainees are licensed and credentialed under the same guidelines as those serving the U.S. Bureau of Prisons and in other federal agencies. ICE has administrative control over DIHS.

Question: In an ICE Fact Sheet on Detention and Removal Operations (DRO): Detainee Health Care modified on May 13, 2008, DIHS was referenced as an “independent stand alone medical unit.” What does “independent stand alone” mean in the context of organizational placement in DHS and DHS components? Please provide us with information on DIHS’s current organizational position in DHS, and its position prior to October 2007. Please provide information outlining the chain of command over DIHS in DHS and DHS components pre and post October 2007.

Response:

Question#:	5
Topic:	detentions
Hearing:	Nomination of Paul Schneider to be the Deputy Secretary of Homeland Security
Primary:	The Honorable Joseph I. Lieberman
Committee:	HOMELAND SECURITY (SENATE)

“Independent stand alone” was meant to designate DIHS’ independence from ICE in providing medical care for detainees. While ICE is responsible for ensuring the overall care of detainees, DIHS is solely responsible for providing or managing detainee health care on behalf of ICE. ICE does not make medical decisions. Prior to October 1, 2007, ICE received the medical services of DIHS through a reimbursable agreement with the Health Resources and Services Administration (HRSA) which is part of the Department of Health and Human Services (HHS). Prior to October 1, 2007, HRSA within HHS provided administrative support to DIHS and oversight of the administration of DIHS. Since October 1, 2007, ICE continues to receive the medical services of DIHS through a reimbursable agreement between DHS and HHS. Also since October 1, 2007, ICE has provided administrative support to DIHS and oversight of the administration of DIHS. DHS has asked the Office of Health Affairs to review the DIHS/ICE/DHS relationship and to make recommendations for areas of improvement as appropriate

Question#:	6
Topic:	NPRM
Hearing:	Nomination of Paul Schneider to be the Deputy Secretary of Homeland Security
Primary:	The Honorable Joseph I. Lieberman
Committee:	HOMELAND SECURITY (SENATE)

Question: On April 22, 2008 the Department announced the notice of proposed rulemaking (NPRM) to establish the collection of biometric fingerprints from foreign travelers when departing U.S. air and sea ports.

Did DHS model passenger flows in air/sea departure terminals prior to making decisions about which exit mechanisms should be subjects of a pilot project?

Did DHS evaluate conducting a pilot project of the collection of exit data by Transportation Security Administration (TSA) or by DHS personnel near TSA checkpoints?

Did DHS evaluate conducting a pilot project of carrier collection of information?

Were the results of your exit pilots shared, as appropriate, with carriers?

The NPRM contemplates a passive collection of exit data as opposed to an active check of a foreign traveler against watch lists. What is the basis for DHS's determination that an active check of passengers departing the U.S. is unnecessary?

What consequences does a foreign traveler face if his or her departure from the U.S. is not recorded?

Question: Did DHS model passenger flows in air/sea departure terminals prior to making decisions about which exit mechanisms should be subjects of a pilot project?

Response: The Department of Homeland Security (DHS) performed significant planning and testing over the past five years, examining possible solutions for integrating the biometric exit requirements of the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program into the international air departure process. During three of the five years, US-VISIT conducted biometric exit pilots at 14 air and sea locations. The pilots, which evaluated the use of both automated kiosks and mobile devices in port terminals, ended in May 2007. Prior to implementing the pilots, DHS did modeling to measure the impacts of the kiosks on airport passenger time. While no further intensive modeling has been conducted, we did utilize our Department's (Transportation Security Administration in particular) understanding of the airline industry and airport infrastructure.

Question#:	6
Topic:	NPRM
Hearing:	Nomination of Paul Schneider to be the Deputy Secretary of Homeland Security
Primary:	The Honorable Joseph I. Lieberman
Committee:	HOMELAND SECURITY (SENATE)

Question: Did DHS evaluate conducting a pilot project of the collection of exit data by Transportation Security Administration (TSA) or by DHS personnel near TSA checkpoints?

Response:

DHS has not conducted live pilots on other options for biometric data collection. Our understanding of the process and information gained from the kiosk process were sufficient to make informed decisions.

Question: Did DHS evaluate conducting a pilot project of carrier collection of information?

Response:

DHS has not conducted a pilot project of carrier collection of biometric information. Our understanding of the process and information gained from the kiosk process were sufficient to make informed decisions.

Question: Were the results of your exit pilots shared, as appropriate, with carriers?

Response:

The results of the 2005 Exit Pilot Evaluation have not been shared with carriers.

Question: The NPRM contemplates a passive collection of exit data as opposed to an active check of a foreign traveler against watchlists. What is the basis for DHS's determination that an active check of passengers departing the U.S. is unnecessary?

Response:

DHS does not believe such a check is unnecessary; however, the need for it is outweighed by the ability to keep the program as a whole from being too disruptive to airline travel, especially considering that all passengers are required to comply with biometric and biographic vetting through U.S. Customs and Border Protection (CBP) upon entry, and with the Transportation Security Administration Secure Flight and CBP Advanced Passenger Information System departure manifest requirements. Under the current proposal, the carriers would have difficulty sending the data back to DHS in the timeframe that would be necessary to successfully interdict passengers before the take-off of an aircraft without significant airline delays.

Question: What consequences does a foreign traveler face if his or her departure from the U.S. is not recorded?

Question#:	6
Topic:	NPRM
Hearing:	Nomination of Paul Schneider to be the Deputy Secretary of Homeland Security
Primary:	The Honorable Joseph I. Lieberman
Committee:	HOMELAND SECURITY (SENATE)

Response:

Travelers who do not comply with biometric collection upon departure, even if they are able to board aircraft to begin with, would be in violation of the terms of their original admissions. For Visa Waiver Program (VWP) passengers, this could result in their being permanently barred from using the VWP; visa-holding passengers could experience the automatic cancellation of their visas. Such travelers may also be considered overstays. Overall, those who do not comply with biometric collection upon departure will face hurdles if and when they seek a U.S. visa or subsequent readmission to the United States.

Question#:	7
Topic:	grant guidance
Hearing:	Nomination of Paul Schneider to be the Deputy Secretary of Homeland Security
Primary:	The Honorable Joseph I. Lieberman
Committee:	HOMELAND SECURITY (SENATE)

Question: In the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Recommendations Act) (P.L. 110-53), Congress for the first time formally authorized some of the major homeland security grant programs for states and local governments. One of the changes made by the Act was to give states and localities greater flexibility in how they used these funds. Among other things, Congress recognized that much of what states and urban areas need to do to prevent and prepare for terrorist events and other disasters is not as much about equipment as it is about people – whether staffing fusion centers, “backfilling” critical positions when police officers and fire fighters are receiving training, or having sufficient numbers of qualified people to draft emergency plans. The 9/11 Recommendations Act therefore specified that states and high-risk urban areas could use up to 50% of their federal homeland security funds for personnel costs in support of otherwise permissible uses of the grants.

Unfortunately, when DHS issued its 2008 grant guidance for State Homeland Security Program (SHSGP) and Urban Area Security Initiative (UASI) grants, it did not abide by this provision, but instead imposed multiple subcaps on the use of homeland grant funds, which, even aggregated together, were significantly below the 50% ceiling mandated by the 9/11 Recommendations Act. In fact, under the guidance, a total of only 30% of SHSGP funds and 40% of UASI funds could be used for personnel costs, including overtime and backfill costs. It should be noted also that subcaps of any sort were not provided for in the Act, and were intended to be replaced by the single, 50% overall cap provided in the statute.

Senator Collins, Representative Thompson, Representative King, and I sent a bipartisan, bicameral letter to Secretary Chertoff on April 11, 2008 expressing our strong concerns about the grant guidance’s restrictions on the use of grant funds for personnel and asking the Secretary to change the Department’s policy to be consistent with the terms of the 9/11 Recommendations Act. A month later, we have not yet received a response to that letter. In light of the express provisions in the law, and the clear intent of Congress, will DHS change its policy to comply with the 9/11 Recommendations Act and revise its grant guidance to specify a single, 50% overall cap on use of homeland security grant funds for personnel costs?

Question#:	7
Topic:	grant guidance
Hearing:	Nomination of Paul Schneider to be the Deputy Secretary of Homeland Security
Primary:	The Honorable Joseph I. Lieberman
Committee:	HOMELAND SECURITY (SENATE)

Response:

Overall, the FY 2008 Homeland Security Grant Program (HSGP) has continued to maintain consistency with previous year HSGP allowances relative to personnel and operational costs activities. As in years prior, the Department has decided to impose caps on the percentage of funding allowed to be associated towards operational and personnel cost activities in order to ensure that vital Federal Homeland Security funds are dedicated towards long-term preparedness investments rather than immediate salary enhancements. Because the Department was allotted the flexibility of allowing "not more than 50%," it chose to remain consistent with previous years' guidance.

The Department does not disagree with the importance of using Federal Homeland Security funds to be used to enhance salaries for immediate purposes such as, for example, the hiring of staff for operational responsibilities (such as the conduct of intelligence gathering and analysis activities) or for personnel strategic administration responsibilities (such as developing a statewide training and exercise program.) However, the Department believes in the importance of ensuring that Federal Homeland Security funds are wisely invested in both short- and long-term endeavors, thus its continued application of personnel and operational caps on salaries.

Question#:	8
Topic:	ASP
Hearing:	Nomination of Paul Schneider to be the Deputy Secretary of Homeland Security
Primary:	The Honorable Joseph I. Lieberman
Committee:	HOMELAND SECURITY (SENATE)

Question: The Domestic Nuclear Detection Office (DNDO) is conducting testing this year with the goal of achieving certification of the Advanced Spectroscopic Portal (ASP) radiation monitor by September 2008. Last year, I wrote to Secretary Chertoff, asking him to delay any decision on ASP certification until the Governmental Accountability Office (GAO) reported to Congress on the reliability of DNDO testing and evaluation. Recently, Elaine Duke, DHS's Deputy Under Secretary for Management, testified before the House Homeland Security Committee, and indicated that the Department will consider GAO's findings before certifying the ASP system.

If DNDO's testing ends up showing that the ASP monitor does in fact provide a significant operational improvement over current generation radiation portal monitors, it is important that GAO's review not be delayed to the point that it holds up deployment of a new radiation portal monitor that could make this country safer from nuclear terrorism.

What steps will the Department take to ensure that DNDO provides GAO with prompt and unfettered access to ASP test data and test results as soon as possible after each round of testing is completed?

Has DNDO provided GAO with all completed test plans for ASP testing planned for this year in support of ASP certification and all completed results of new ASP testing?

Will you ensure that DNDO's approach to evaluating ASP test results, and the department's methodology for ASP certification, is fully disclosed and transparent to GAO well in advance of September 2008?

Response:

DNDO will continue to provide the GAO with prompt access to ASP test data and results as soon as they are complete. DNDO has responded promptly to any requests to meet with GAO investigative teams.

At the entrance conference held on May 16, 2008, DNDO presented the overall ASP testing and evaluation strategy and answered initial questions from the GAO team. The DNDO also provided all completed ASP test plans to the GAO, including: the signed test plan for LANL Data Collection, the signed test plan for NTS data collection, and a copy

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Committee:	HOMELAND SECURITY (SENATE)

of the final SQT procedure for Raytheon. Additional ASP test plans and analysis reports will be provided upon completion.

The Department will ensure that DNDO's approach to evaluating ASP is transparent to the GAO and that the methodology for ASP certification is clear. DNDO has a formal end-to-end test planning process that follows accepted systems engineering methodologies, provides for safe and effective evaluations of detection systems, engages multiple governmental agencies to ensure good communication, standardizes test practices where possible and minimizes redundancy.

In addition, the Department has signed a Memorandum of Understanding between DNDO, the DHS S&T Testing and Evaluation Standards Division, and Customs and Border Protection to establish an independent Operational Test and Evaluation (OT&E) team for the ASP program. The OT&E team will assist DNDO in completing developmental testing of the ASP systems and directly manage OT&E to determine ASP operational effectiveness and suitability findings.

The Department continues to maintain an open dialogue with the GAO regarding its investigation of the ASP program. There are currently multiple GAO teams that DNDO has been interacting with. DNDO has stated to both Congress and the GAO that it is beneficial for test plans to be shared and commented on early in the evaluation process. This gives the Department the opportunity to make necessary changes and address concerns well in advance of key program milestones.

New York Times Death in Detention Article



**U.S. Immigration
and Customs
Enforcement**

Public Information

New York Times Death in Detention Article

May 6, 2008

If you read yesterday's New York Times front page article titled For Immigrants Who Die in U.S. Custody, Few Details Provided, you may also be interested in the following:

- ICE takes great care to ensure the safety and well being for each of the more than 300,000 detained individuals who come through our detention facilities each year. ICE has established plans and processes in place with Division of Immigration Health Services (DIHS) medical professionals to provide care for all those detained, including those who may encounter a medical emergency while in custody.
- Nearly 1.5 million individuals have come through detention facilities since ICE was created in 2003. Each of them received taxpayer-funded medical treatment, including a comprehensive health screening and care management provided, not by ICE, but by the Division of Immigration Health Services of the Department of Health and Human Services, at a cost of more than \$360 million.
- Though the ICE detainee population has increased by more than 30% since 2004, the mortality rate has actually declined. The number of deaths per 100,000 is dramatically lower for ICE detainees than for the population in US prisons and jails and the general public as a whole.
- When a detainee is hospitalized, the hospital assumes medical decision-making authority including the patient's drug regimen, lab tests, x-rays and treatments. If a detainee passes away while in ICE custody, it is our policy to immediately notify the next of kin or the consular official from the respective country. In addition, ICE's Office of Professional Responsibility (OPR) reviews the circumstances surrounding the death of a detainee and determines if further investigation is warranted.
- OPR also informs the Department of Homeland Security's (DHS) Office of the Inspector General (OIG) of all detainee deaths, regardless of reason. OPR reviews the circumstances surrounding the death and determines whether the death necessitates investigation and coordinates appropriately with the OIG.

Myths vs. Facts regarding the May 5, 2008, article

Article:

New York Times Death in Detention Article

“...for five days, no official notified the family of the detainee, Boubacar Bah.... On the fifth day, they said, a detention official called them with the name of the hospital...”

Fact:

It is ICE policy to contact next of kin immediately upon an emergency or of the death of the individual in custody. When there is no emergency contact information on file, ICE contacts the consular officials from the individual’s home country. Specific to Mr. Bah’s situation, family members were notified of Mr. Bah’s deteriorating condition and his cousins were notified of his death on the day it occurred.

Article:

Regarding the FOIA list of detainee deaths: “The list has few details, and they are often unreliable...”

Fact:

In response to a specific Freedom of Information Act request from the New York Times, ICE provided the reporter with exactly what she requested. This document lists the deceased individual’s name and A-Number, date of birth, date of death, location of last detention (if applicable), location where the individual died and the findings/circumstances of that death. More specific information regarding the cause of death would be available through state or county coroner’s offices or the official who provided the cause and time of death.

Article:

“...Mr. Bah’s relatives never saw the internal records....The documents detail how he was treated by guards and government employees....”

Fact:

ICE found that the established process for notifying the medical group by detention officers was followed and the recommendations made by the medical professionals on duty were also followed. ICE found no evidence of foul play or lack of follow-through in this incident. Mr. Bah’s relatives have not contacted ICE regarding any specific complaints or allegations.

Article:

“...In Mr. Bah’s case, a review before his death found no evidence of foul play, an immigration spokesman said, though after later inquires from the Times, he said a full review of the death was under way...” and relating to Mr. Walter Rodriguez-Castro; “...Immigration authorities said on Friday that the case was now under review....”

Fact:

ICE reviews all deaths as a standard practice; and the New York Times’ implication that the mere inquiry into a death is proof of wrongdoing is erroneous. In fact, the inquiries into the deaths of Boubacar Bah and Walter Rodriguez-Castro have been completed and there was no evidence that standard processes were not followed or that there was foul play. However, certain policy aspects of the cases were referred to the Office of Detention and Removal (DRO) for a review to determine if any administrative processes were in need of improvement/modification and to ensure

New York Times Death in Detention Article

quality control is in place. This process allows ICE to identify areas for improvement and quickly implement changes.

Article:

"...As the country debates stricter enforcement of immigration laws, thousands of people who are not American citizens are being locked up for days, months or years while the government decides whether to deport them..."

Fact:

It is important to note that the length of stay in an ICE detention facility is considerably shorter than that of a correctional facility. In 2007, ICE detainees spent an average of 37.5 days in detention. Decisions regarding detention are made on a case-by-case basis, taking into account a number of factors, including whether or not mandatory detention is required, whether the individual poses a threat to national security or public safety and whether he or she is a flight risk. All individuals involved in the removal process have the right to full due process of law, such as a hearing before an Immigration Judge and the right to appeal before the Board of Immigration Appeals and the U.S. Circuit Court of Appeals. As such, some removal cases are lengthier than others, which can result in an individual being detained for longer periods of time.

Article:

"...An immigration lawyer hired by his friends was unable to reopen the application while Mr. Bah waited for 9 months in detention, records showed."

Fact:

Mr. Bah was detained in Elizabeth from May 2006 until the time of his medical emergency in February 2007. Because he had left the country and attempted to return unlawfully without a valid visa, he was subject to mandatory detention as an inadmissible alien under the law. These cases generally do remain in custody while going to proceedings and detainee driven appeals.

As allowed under the law, Mr. Bah had several hearings and was appealing his second order of removal to the Board of Immigration Appeal in February 2007 which explains the nine months he spent in detention.

Article:

Regarding Mr. Bah: "...was left in a disciplinary cell for more than 13 hours, despite repeated notations that he was unresponsive and intermittently foaming at the mouth."

Fact:

Mr. Bah was treated by medical professionals following his fall in the dorm. After his medical evaluation, Mr. Bah was placed in segregation for further observation. He was checked regularly through the day and was found unconscious later that evening.



**U.S. Immigration
and Customs
Enforcement**

Public Information

Washington Post Detainee Health Care Series – Day 1

May 11, 2008

The Washington Post began a four part series on Sunday, May 11th on detention health care. The first article in the series and the companion CBS “60 Minutes” piece presented information on a number of detainee cases and incidents occurring before the transition of the DIHS from the Department of Health and Human Services (HHS) to ICE and before ICE assumed greater administrative control over DIHS. Nonetheless, these pieces are very disturbing as they provide a very limited view of a complex and important topic.

If you read the first article, you may also be interested in the following:

Myths vs. Facts regarding the May 11, 2008, article:

Myth: “During the intake screening, a part-time nurse began a computerized medical file on Osman, a routine procedure for any person entering the vast prison network the government has built for foreign detainees across the country. But the nurse pushed a button and mistakenly closed file #077-987-986 and marked it “completed” -- even though it had no medical information in it.”

Fact: What was marked “Completed” was the physical exam appointment, which is why the individual did not receive a follow up physical examination. The medical record had the intake screening in it and did not show any significant health problems. Mr. Osman’s medical record was active for the duration of detention.

Myth: “About 33,000 people are crammed into these overcrowded compounds on a given day, waiting to be deported or for a judge to let them stay here.”

Facts: ICE detention facilities are not experiencing overcrowding conditions. In fact, ICE takes appropriate and necessary action to ensure that facilities do not exceed their capacity.

Myth: “The detainees have less access to lawyers than convicted murderers in maximum-security prisons, and some have fewer comforts than al-Qaeda terrorism suspects held at Guantanamo Bay, Cuba.”

Washington Post Detainee Health Care Series – Day 1

Fact: Individuals who are detained while in administrative removal proceedings are entitled to an attorney at no expense to the government and we provide all detainees with a list of pro bono representatives. All facilities are expected to abide by the ICE National Detention Standards. Under these standards, attorneys are entitled to, and receive, more access than any other visitor to ICE facilities, and cannot be compared to how “convicted murderers” are treated. The facility shall permit legal visitation seven days a week, including holidays, for a minimum of eight hours per day on weekdays. Given the comprehensive ICE National Detention Standards, developed in consultation with a number of immigrants’ advocacy groups and the American Bar Association, it is hard to imagine how the treatment of detainees can be in any way be compared to Guantanamo Bay. It bears noting that neither reporter has requested to tour a single ICE detention facility. Numerous reporters from a number of media have requested and been provided tours resulting in more balanced stories.

Myth: “The most vulnerable detainees the physically sick and the mentally ill, are sometimes denied the proper treatment to which they are entitled by law and regulation. They are locked in a world of slow care, poor care and no care, with panic and coverups among employees watching it happen, according to a Post investigation.”

Fact: Sick call requests are prioritized 24/7 based on urgency of medical treatment. They are triaged daily and scheduled accordingly. Those in need of immediate treatment are seen right away and lower priority cases are scheduled as appropriate.

Myth: “There is evidence that infectious diseases, including tuberculosis and chickenpox, are spreading inside the centers.”

Fact: Varicella (chicken pox) is a highly contagious communicable disease and very little exposure time is required for transmission to an individual who is not immunized. Most developing countries do not routinely vaccinate for chicken pox; in the United States, routine vaccination began in 1995. Therefore it is expected that individuals in our care who are not born in the U.S. will not be vaccinated. If one person enters a facility with active lesions (most likely infected in their country of nationality), and exposes other individuals who have never had Varicella and are not immune, transmission is likely to occur. Facilities with DIHS staffing have strict protocols in place for management of Varicella, including restricted movement of exposed, non-immune persons, and contact investigation for the entire incubation period for exposed persons who are not immune and vaccination. The fact that DIHS initiated a vaccination protocol is indicative that we were proactive in intervening to halt further transmission; this was an appropriate and timely intervention.

In addition, DIHS implements a state-of-the-art screening program for tuberculosis using a digital chest radiograph to screen detainees. This system produces a result within four hours and allows providers to place patients with a finding suspicious for active tuberculosis in an airborne infection isolation room before ever being placed in the general detention population. All TB patients are managed in accordance with Centers for Disease Control guidelines. Additionally, DIHS initiated and provides national and international leadership for the Transnational Tuberculosis Continuity of Care Workgroup, which facilitates bi-national and international referrals for

Washington Post Detainee Health Care Series – Day 1

tuberculosis patients to enable them to continue their treatment without interruption in their countries of nationality following repatriation. This is a national initiative involving partnership with the Centers for Disease Control and Prevention, state and local health departments, nongovernmental partners, the U.S.-Mexico Border Health Commission, foreign governmental TB control programs, and foreign consulates, and is proving highly successful. In a recent evaluation, between January 1, 2004 and July 31, 2006, DIHS helped 221 active TB patients complete their treatment regimen through these partnerships.

Myth: “These way stations between life in and outside the United States are mostly out of sight: in deserts and industrial warehouse districts, in sequestered valleys next to other prisons or near noisy airports. Some compounds never allow detainees outdoor recreation; others let them out onto tiny dirt patches once or twice a week.”

Fact: All ICE Service Processing Centers and Contract Detention Facilities have outside recreation areas. Further, it is factually inaccurate to say that detainees are only allowed outdoor recreation once or twice per week. Detainees are provided outside recreation five times per week, weather permitting.

Myth: “When doctors and nurses at the immigration compounds believe that detainees need more than the most basic treatment, they have to fax a request to the Washington office, where four nurses, working 9 to 4, East Coast time, five days a week, make the decisions.”

Fact: If a detainee requires off-site care, the facility where they are housed submits a request by means of email or fax. Submissions are adjudicated by the next business day, but no more than 72 hours after receipt. If the request is urgent or emergent, the medical care is provided and the managed care requests are adjudicated after the fact.

Myth: “To this end, the agency recently increased its inspections of facilities and is in the process of creating an inspection group at headquarters to review serious incidents, including deaths or allegations that standards are not being met.”

Fact: ICE implemented the Detention Facilities Inspection Group (DFIG) within the ICE Office of Professional Responsibility in February 2007. The DFIG provides objective oversight and independent validation of the detention facility inspection program. It also conducts immediate focused reviews of serious incidents involving detainees.

Myth: “A new director for health services arrived six months ago, following a stretch when the agency was run first by Sampson and then by a second interim director. The new boss is LaMont W. Flanagan, who brought with him the credential of having been fired in 2003 by the state of Maryland for bad management and spending practices supervising detention and pretrial services. An audit found that Flanagan had signed off on payments of \$145,000 for employee entertainment and other ill-advised expenditures. His reputation was such that the District of Columbia would not hire him for a juvenile-justice position.”

Washington Post Detainee Health Care Series – Day 1

Fact: Mr. Flanagan served as Commissioner of the Maryland Pretrial Detention and Services system for 12 years. In May, 2003, he resigned, five months after the election of the new Governor. On May 14, 2003, the newly appointed Secretary of the Department of Public Safety announced the resignation of Commissioner Flanagan in writing stating, "He served the Department with distinction during his tenure, and we wish him every success in the future". During Commissioner Flanagan's tenure, he was lauded by the media, his superiors, the legislature and his peers for his programmatic initiatives and superior management in corrections. Editorials and articles from the Baltimore Sun have lauded the performance and leadership of Flanagan. (May 29, 1992-June 1, 1992-May 24, 1999- April 8, 2000). In addition, two months after the resignation of Commissioner Flanagan, the Maryland State Senate passed a resolution congratulating and recognizing Mr. Flanagan for "Outstanding and Dedicated Service to the State of Maryland as Commissioner of Pre-trial and Detention Services"

In February, 2005, two years after Commissioner Flanagan's resignation, the Maryland Department of Legislative Services conducted a routine audit of his former agency, the Division of Pretrial Detention. The audit noted that the agency's annual budget requests submitted to the Maryland General Assembly did not adequately disclose general fund entertainment-related expenditures which totaled approximately \$145,000 during fiscal years 2002 to 2004. The entertainment-related expenditures emanated from an "Inmate Welfare Fund" mandated by a Federal Consent Decree governing the agency. The Inmate Welfare Fund emanated from the profits from commissary and telephone receipts. The Inmate Fund was utilized exclusively for the benefit of inmates, providing social, cultural and educational initiatives for inmate programs and activities. This program assisted in reducing violence by seventy-one percent and providing inmates extracurricular activities. All expenditures were reviewed and approved by finance and budget authorities in the Office of the Secretary of Public Safety and the State Comptroller.

Commissioner Flanagan had no direct check writing authority and each expenditure was a requisition request with a three-level management review/approval process above the Commissioner.

In 2004, the Executive Director of the Department of Human Services for the District of Columbia asked Mr. Flanagan to apply for the position of Juvenile Services Administrator. Flanagan interviewed for the position and was designated by the press as a major candidate. Advocates within the Juvenile Justice community impressed upon the Mayor that a corrections administrator was not their preference for administering the juvenile services program. The Mayor appointed a juvenile justice advocate as the juvenile services administrator. Subsequently, Mr. Flanagan was appointed by Mayor Williams to the position of Deputy Director for administration in the Department of Human Services where he served with distinction for two years.

Mr. Flanagan is not the director of DIHS. He is the Detention Health Care Unit Chief, within DRO where he serves as the liaison with DIHS. Mr. Flanagan does not make clinical decisions; however he has been instrumental in overseeing several aspects of the transition and increasing the staffing at all DIHS facilities.

Washington Post Detainee Health Care Series – Day 1

Myth: “An entry-level emergency medical technician, with barely any training, had done Guevara's intake screening and physical assessment at the Otero County immigration compound in New Mexico. Under DIHS rules, those tasks are supposed to be done by a nurse.”

Fact: The ICE National Detention Standards require that intake screening and physical assessments be conducted by trained personnel, including Emergency Medical Technicians (EMT).

Myth: “His wife, pregnant at the time with their second child, recalled that she rushed to the hospital, but ICE guards would not let her inside until the Mexican Consulate interceded. Guevara's mother waited five hours before they let her in. By then he was brain dead.”

Fact:

Otero County officers were providing security coverage during Mr. Guevara's hospitalization. ICE contacted Mr. Guevara's family so they could report to the hospital immediately to see their family member and to speak with the doctor regarding his condition. ICE was never made aware that there was a delay in their ability to see Mr. Guevara and we have no record of the Mexican Consulate interceding.

Myth: “The government's internal medical records say Dantica died of pancreatitis. A one-page death certificate in his file has "VOID" stamped across it. Two outside doctors who reviewed his medical records for The Post said he probably died of heart problems.”

Fact: There is no space on the actual death certificate in which to enter the cause of death. This likely explains why Mr. Dantica's death certificate does not indicate the cause of death. The VOID mentioned in the article on the death certificate is a security feature to prevent forgery.

Myth: “But internal documents and interviews reveal unsafe conditions that forced the agency to relocate all 404 detainees that month. An audit found 53 incidents of medication errors. A riot in August pushed federal officials to decrease the dangerously high numbers of detainees, many of them difficult mental health cases, and caused many health workers to quit. Finally, the facility lost its accreditation.”

Fact: San Pedro was temporarily closed because of the need to perform significant work on the fire suppression system and to replace the boiler. A decision was made that it would be a life safety issue to house the detainees there while the fire suppression system was offline while undergoing repairs. That would have placed the detainees in a potentially dangerous situation. We opted to relocate them.

In addition, and for clarification, San Pedro lost its ACA accreditation for not having been in compliance with one mandatory standard. That standard had to do with the manner in which caustic and toxic substances (like cleaning supplies, oil, gas, bleach, etc) are stored and inventoried. The facility immediately addressed the deficiency and were then in compliance with the standard again. Nonetheless, because the standard is mandatory, not having been in compliance with it was the cause for the loss of accreditation.



**U.S. Immigration
and Customs
Enforcement**

Public Information

Washington Post Detainee Health Care Series – Day 2

The Washington Post began a four part series on Sunday, May 11th on detention health care. The second article in the series focuses on the health care provided to Yong Harvill.

If you are reading this series, you may also be interested in the following:

Myths vs. Facts regarding the May 12, 2008, article:

Myth: “Yong Harvill..... She noticed the lump under the thin, blue cotton in August, five months after federal immigration officers, to her amazement, took her into custody to try to deport her for buying stolen jewelry more than a decade ago.”

Fact: ICE is specifically prohibited by the Privacy Act from commenting on the medical records or treatment of an individual detainee. However, under the Immigration and Nationality Act, once an individual is convicted of any one of a number of crimes, that individual may be subject to removal. To ensure that individuals who have been convicted of a crime and who are amenable to removal are not released back into society at the conclusion of their sentence, ICE created the Criminal Alien Program. This program identifies individuals in federal, state and local jails and places them into removal proceedings at the conclusion of their incarceration.

Myth: “The lump grows slowly. It is now three inches across. And though she keeps asking, no one has done a test to see whether her sarcoma has come back.”

Fact: ICE is specifically prohibited by the Privacy Act from commenting on the medical records or treatment of an individual detainee; however, ICE detainee health care is equal to or better than that provided to U.S. citizens in custody. Each detainee is medically screened upon arrival and last year, 34 percent were diagnosed and treated for pre-existing chronic conditions. ICE routinely provides medical care for life threatening conditions, such as cardiac arrest, kidney disease, high risk pregnancies, HIV/AIDS, hypertension, and diabetes. ICE detainees also receive dental visits, physical exams, sick call visits, prescriptions and mental health visits.

Myth: “They are locked up in a patchwork of out-of-the-way federal detention compounds, private prisons and local jails. This unnoticed prison system was built for a quick revolving door of detainees -- into custody, out of the country. But often, people linger in detention for months or years.”

Fact: It is important to note that the length of stay in an ICE detention facility is considerably shorter than that of a correctional facility. In 2007, ICE detainees spent an average of 37.5 days in detention. Decisions regarding detention are made on a case-by-case basis, taking into account a number of factors, including whether or not mandatory detention is required, whether the individual poses a threat to national security or public safety and whether he or she is a flight risk.

All individuals involved in the removal process have the right to full due process of law, such as a hearing before an Immigration Judge and the right to appeal before the Board of Immigration Appeals and the U.S. Circuit Court of Appeals. As such, some removal cases are lengthier than others, which can result in an individual being detained for longer periods of time.

Myth: “Two months after ICE agents seized Harvill in Florida, they transferred her to Arizona last May, saying a federal compound called the Florence Service Processing Center was better suited to handle her medical care. Four weeks later, they moved her, without explanation, a few miles down a cactus-lined highway to a county jail that hasn't had a full-time staff doctor since she arrived.”

Fact: As a measure to ensure overcrowding does not exist at ICE facilities, ICE routinely moves detainees to other locations. In fact, oftentimes, when a facility reaches its capacity, we immediately take action to bring the population down to eliminate the strain of overcrowding. Further, a detainee may be moved to a facility that can better handle specific medical issues.

Myth: “The day after she arrived, Harvill saw a nurse and a doctor for a checkup that all new detainees are supposed to have, but don't always get.”

Fact: Nearly 1.5 million individuals have come through detention facilities since ICE was created in 2003 through fiscal year 2007. Another 345,000 are expected to pass through ICE detention in fiscal year 2008. Each of them received taxpayer-funded comprehensive medical screening and, for those remaining in ICE custody at least 14 days, a comprehensive physical examination. Each also received specific treatment, as medically necessary. Care management was provided by the Division of Immigration Health Services or local Intergovernmental Service Agreement (IGSA) contractors at a cost of more than \$360 million.

Myth: “Harvill gets shuttled back and forth to the hospital in Phoenix because the jail does not have a doctor on its staff.” “According to internal government documents, one-third of the 29 medical positions at the Pinal County Jail were vacant as of February. The jail, the Florence compound and the large compound in nearby Eloy each had no full-time doctor.”

Fact: According to ICE records, the Pinal County Detention Facility, ICE Medical Clinic is staffed with a Health Services Administrator (HSA), two Mid-Level Providers (MLPs) such as a Nurse Practitioner and Physician's Assistant, a Pharmacist, one Pharmacy Technician, six Registered Nurses (RNs), four Licensed Practical Nurses (LPNs), one Administrative Assistant and four Medical Records Technicians (MTRs). While not on site full time, there is also a Physician, a Psychiatrist and a Psychologist that provide services to the detainees at Pinal County on a regular basis. In addition, the Medical Clinic has full laboratory capabilities as well as a fully staffed pharmacy on site. Further, the facility does rely on specialists in the local area.

Myth: “Whether the gaps in Harvill's treatment are by accident or by design is difficult to discern.

Yet it is clear that the obscure federal agency that oversees detainees' medical care, the Division of Immigration Health Services (DIHS), operates with a top priority of limiting care and saving money. Its medical mission is only to keep people healthy enough to be deported."

Fact: The mission of DIHS is to provide appropriate medical care for ICE detainees. The DIHS Detainee medical care primarily provides health care services for emergency care. Accidental or traumatic injuries incurred while in the custody of ICE and acute illnesses will be reviewed for appropriate care. Other medical conditions which the physician believes, if left untreated during the period of ICE custody, would cause deterioration of the detainee's health or uncontrolled suffering affecting his/her deportation status will be assessed and evaluated for care. Each claim is reviewed by a medical professional on an individual basis for appropriateness and medical necessity.

Myth: "Instead of listing, as most health plans do, the services available to patients, the manual specifies services that are "usually not covered" for allergies, heart problems and other illnesses. Cancer is not mentioned at all."

Fact: The DIHS benefit package, to include services available for detainees, is available on the DIHS website <http://www.icehealth.org/> for public review.

Myth: "Internal government documents obtained by The Post show that most requests are approved. But the documents also show that, when requests come in for people with serious problems, there can be pressure to cut costs." "One chart, covering October 2005 to September 2006 -- seven months before Harvill became an immigration detainee -- is labeled "TAR Cost Savings Based on Denials." The agency, the chart shows, saved \$129,713 by denying 17 medical requests for people with HIV, \$36,216 by denying seven requests for people with various forms of psychosis, \$91,926 by denying 27 requests for people with chest pain and \$9,545 by denying treatment for a case of blood in stool, one of the problems Harvill has had for months."

Fact: In fact, Treatment Authorization Requests (TAR), which are requests for off site medical care, are approved at a very high rate. However, a TAR may be denied because of available alternative procedures or the treatment is available on site. Thus, a TAR is not determined with an effort to cut costs.

Myth: "These sorts of machinations prompted the deputy warden at York County Prison in Pennsylvania, which houses many immigrant detainees, to fire off an angry letter about the health services division. "[I]n my opinion, they have set up an elaborate system that is primarily interested in delaying and/or denying medical care to detainees," the warden, Roger Thomas, wrote in late 2005. "There is nothing easy about working with DIHS. If something can be delayed, it is delayed. If it can be denied, it is denied. If it can be difficult, it is made difficult. Most importantly, if there is some bureaucratic procedure that will delay/deny treatment to a detainee . . . you can be assured that DIHS will do it." Harvill's lawyers have tried to find out how many requests for treatment have been sent from Pinal County Jail on her behalf and how Washington has ruled on each one. They filed a Freedom of Information Act request last summer and, after two months, got an incomplete answer. In January, they left a phone message for the division's medical director. No one has called back."

Fact: Without speaking specifically to Ms. Harvill's case, each detainee is given the highest level

of care. DIHS treats each TAR case on an individual basis and at times may request more information to make an informed medical decision.

Myth: “The thing that makes perhaps the least sense to him is that his wife is covered under a good health insurance policy that he gets through his union, the International Brotherhood of Boilermakers, and she and her lawyers have asked whether she could use that policy to pay for her treatment by private doctors while she is detained. They have been told no.”

Fact: A decision on appropriate medical care is made between the patient and the physician. If necessary ICE will transport a detainee to an approved specialists to obtain appropriate and necessary medical care. DIHS uses a similar standard in determining the appropriate procedures for an individual as any other healthcare provider—appropriateness and medical necessity.

ICE

U.S. Immigration and Customs Enforcement (ICE) was established in March 2003 as the largest investigative arm of the Department of Homeland Security. ICE is comprised of five integrated divisions that form a 21st century law enforcement agency with broad responsibilities for a number of key homeland security priorities.

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