

**THE RUDMAN REPORT: SCIENCE AT ITS BEST,
SECURITY AT ITS WORST**

HEARING
BEFORE THE
COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES
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TUESDAY, JUNE 22, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
Washington, DC.

The committee met, pursuant to notice, at 1 p.m., in room 2123 Rayburn House Office Building, Hon. Tom Bliley (chairman) presiding.

Members present: Representatives Bliley, Oxley, Barton, Upton, Stearns, Gillmor, Greenwood, Cox, Burr, Ganske, Rogan, Shimkus, Bryant, Ehrlich, Dingell, Markey, Rush, Klink, Stupak, Sawyer, Green, Barrett, and Luther.

Staff present: Tom DiLenge, majority counsel; Mark Paoletta, majority counsel; Kevin Cook, professional staff member; Anthony Habib, legislative clerk; and Edith Holleman, minority counsel.

Chairman BLILEY. The committee will come to order: I want to thank the Secretary and I want to thank Senator Rudman for being available today. I know they have been testifying this morning over in the Senate. I also know that Senator Rudman has a schedule to meet and a plane to catch and we need to be respectful of that.

As a result of that, I intend to make an opening statement and turn to our colleague, Ron Klink from Pennsylvania, for an opening statement and ask unanimous consent that all members may insert opening statements in the record so that we can get the testimony of the Secretary and the Senator Rudman and have as much time for questioning as possible.

Without objection that will be the order. The Chair recognizes himself for an opening statement.

Today, the full committee will hold this hearing on the report issued last week by the President's Foreign Intelligence Advisory Board—a report that speaks directly about the poor state of security at the Department of Energy's most sensitive nuclear weapons laboratories. The chairman of the board—the distinguished former United States Senator from New Hampshire, Warren Rudman—will testify before us today, along with Energy Secretary Bill Richardson, to discuss those findings and the board's recommendations for structural reform at the Department.

Unfortunately for the American people, the Rudman Report confirms that the Department of Energy as currently organized, simply cannot be trusted with the awesome responsibility of protecting our Nation's most prized nuclear secrets. As I stated this past April at a subcommittee hearing on the topic, the Department's historical

pattern on security matters is all too clear: scandal or incident, followed by announcements from well-meaning department heads of “sweeping” reforms that are either never implemented by the bureaucracy or soon abandoned once the public spotlight fades or priorities change. Given this troubling pattern, I asked the General Accounting Office last fall to begin a review of the Department’s implementation of security recommendations and to update its work on the status of nuclear security.

The Rudman Report describes this historical pattern in detail. Secretary Watkins, during the Bush administration, took aggressive steps to improve the Department’s poor record on security—establishing a high-profile counterintelligence office with FBI involvement, instituting mandatory background checks on foreign visitors, and creating independent security policy making and inspection units for the first time in the Department’s history. I understand that Secretary Watkins personally took an active interest in security matters, and that both he and his senior staff received regular security briefings.

Yet, as the Rudman report found, just 2 years later, a new Energy Secretary came in and killed most of these initiatives. Counterintelligence was slashed and buried in the bureaucracy, background check waivers were granted to the labs’ foreign visitors programs, the frustrated FBI officials packed their bags and left in disgust, and the Department’s own security apparatus was shunted aside. No more secretarial or senior management briefings by the Department’s independent security inspectors—they couldn’t get time on the schedule. And numerous critical security reports and warnings from internal and external critics went unheeded.

While the current Secretary is the first since Admiral Watkins to pay attention to security matters, there are troubling indications that he may be paying attention to the wrong people within the Department. Ever since the latest security scandal broke several months ago, Secretary Richardson has been busy reassuring Congress and the American people that whatever had been broken is now fixed. When our Oversight Subcommittee held a hearing in April to put these claims of success in historical perspective and to raise continuing security concerns, the Secretary attacked us for, “wallowing in old problems,” and, “exhuming the past.”

When the Cox report on Chinese espionage was released in May, Secretary Richardson dismissed its unanimous conclusion that security at the labs remained unsatisfactory, claiming that the report’s 6-month-old findings were “now outdated” in light of his reforms. And when the Rudman report took direct issue with the Secretary’s views on the current state of security, he accused the board of lacking evidence and relying on “malcontents” for information.

The truth, Mr. Secretary, is that your repeated public claims that our nuclear secrets are now safe and secure are simply not accurate, and all the evidence you should have needed on that point was right within your own Department. I fear that you are not being well-served by your advisers, and that you are overlooking important sources of information. I find it difficult to understand that for someone who claims that security is his top priority, you had never met with—indeed you apparently did not even know—your Department’s chief security inspector until 2 days before he

was scheduled to testify before our Oversight Subcommittee in May. And when my staff requested a briefing last week on the Department's May 1999 security inspection of Lawrence Livermore National Laboratory—which I understand was not favorable in many important respects—your office blocked the briefing because you had not had a chance to be fully briefed on the subject yet.

None of this bodes well for your reform efforts. As with all things, the devil is in the details of implementation. The Rudman Report makes clear that Congress cannot solely rely on the Secretary—any Secretary—to make the type of lasting and effective changes in security that this Nation deserves. That said, I think the specific recommendations of the President's Advisory Board need to be carefully considered to ensure that we don't trade in old problems just to find ourselves with new ones.

I am particularly concerned with the board's apparent willingness to subordinate security policy and, more importantly, security oversight and inspections to what in essence would be a nuclear weapons program office. My experience in this area tells me that that would be a step backwards. I also have concerns about what would become of the independent environmental, health, and safety oversight that currently exists with respect to the Department of Defense and lab programs. But I agree with the board's view that the current management structure needs to be vastly simplified to ensure the most aggressive oversight and the highest standards of accountability—two things that have been sorely lacking for as long as the Department has been in existence.

I look forward to today's debate and future debates, on all of these issues. I will now recognize the distinguished ranking member of the Subcommittee on Oversight and Investigations, the gentleman from Pennsylvania, Mr. Klink.

Mr. KLINK. Thank you very much, Mr. Chairman. To call this an important hearing I think would be an incredible understatement. I thank you for holding it and I thank you for yielding me this time for an opening statement. As you, Mr. Chairman, know and Mr. Dingell knows far better than I, this is an area in which this committee has a long and frustrating history of conducting oversight and recommending changes to environment, health, safety and security at these facilities.

The Rudman report has spelled out in no uncertain terms the refusal of the weapons laboratories, to this very day, to make a full commitment to the security that equals the quality of their science.

Whether this has resulted in espionage at a level that is inferred by the Cox report, we do not know. We do know that security needs to be radically changed. But I remain extremely skeptical of the report's recommendation to lift the nuclear weapons program and its contractors out from under the control of any Cabinet-level officers and plunge it down under another name and expect the culture to miraculously change. Also this proposal makes no provision for the safety, health, and environmental management responsibilities at the labs, nor does it deal with the major security problem: the nuclear materials accountability for those materials now stored in other sites.

And, Mr. Chairman, I also am skeptical of the congressional proposals that would reward Defense Programs for its decades of arro-

gance by giving it a semiautonomous status in the Department of Energy, with even less control by anyone, including the Secretary of Energy, and no oversight structure of any type. This astounding provision is in the House defense authorization bill and is expected to be in the Senate's intelligence bill. This is something labs have wanted for at least 2 decades: a structure in which no one except their captive Federal bureaucracy can tell them what to do.

One thing that we in this committee know better than almost anyone else is that the culture of arrogance which pervades the weapons laboratories is not just in the area of security but it is everything that the laboratories do. It is not only because of scientific accomplishment but also because of political clout. In many ways the laboratories, often with the help of the field offices, have control of the Office of Defense Programs, the Assistant Secretaries who have headed it, and occasionally even the Secretary.

The Office of Defense Programs seems to view its job as getting to labs what they want. And we need to take some responsibility up here in Congress. The actions of the labs and the Defense Programs are often backed up by congressional members and delegations in the States in which they are located. For these reasons, the labs have been able to thumb their noses at Congress and the DOE headquarters. Security, industrial and radiation safety, and responsibility for environmental management are viewed as major hindrances to their primary missions.

Even now we must note that no one has been punished at either the Defense Programs or the University of California which runs Los Alamos, the lab on which the Chinese espionage investigation has focused. As far as we can tell, the only adverse action taken has been against the director of the Office of Standards and Security for an alleged security infraction unrelated to the espionage investigation, an action that has yet to be appropriately explained.

The Office of Safeguards and Security is a policy office whose reports over the years pointed out numerous security concerns that angered the labs and Defense Programs. The unclassified version of those reports were cited six times in the Rudman report.

Let me give you just a brief example in the safety area of how the labs' clout works. Just last week, staff was told that the Lawrence Livermore National Laboratory in 1998 killed the Department's press release concerning a large fine assessed for safety—for radiation safety violations. Because Congress has exempted the laboratories from actually paying the fines, the only real club that DOE has is bad publicity. The press release was dutifully prepared by a field office, was sent to the Secretary's office, and then disappeared. We are trying to find out what happened, but the Department is not being particularly forthcoming with staff of this information, and perhaps after this hearing we can get some assistance in finding out what happened to that press release.

Let me give you another example of lab clout. For over a year Mr. Dingell, Mr. Brown, the ranking member of the Science Committee, and myself and others have been investigating the largest CRADA or Cooperative Research and Development Agreement ever signed. It is between the Sandia, Lawrence Livermore, Lawrence Berkeley labs and Intel Corporation, and it will continue to work to develop a critical piece of equipment for the next generation of

computer chips. The labs got \$250 million. The only problem was that they and Intel want to manufacture all the equipment outside the U.S. Even though the technology was developed here. This meant that the lab researchers would have jobs but the high-paying skilled manufacturing jobs based on U.S. Technology would be located another country. That position was developed by the labs and the Oakland field office and was rubber-stamped by the Defense Programs. The headquarters staff hardly even knew the details of this enormous CRADA or that it violated our technology transfers law. At one point they intended to negotiate an agreement with a manufacturer in a single afternoon meeting. Only after great effort were Mr. Dingell and Mr. Brown able to convince DOE headquarters that American taxpayers had the right to get some actual benefit from the investment that they had made—or we think we convinced them.

DOE signed a very general agreement with a foreign manufacturing company that is supposed to guarantee manufacturing in this country but so far has refused to produce a copy of the agreement. From the little we know, it appears not to be binding and we would like some help with the Energy Department to find out about that.

Let me just say in full disclosure, Mr. Chairman, that the Secretary of Energy served with us on this committee, he is a friend of mine, someone I am sure is well-intentioned, and we will stipulate to that. But the question the Rudman report brings up time and time again is, what happens if the people within the Department of Energy don't listen to what the Secretary says, or even what the President says, or even what the Congress says. And what happens when Bill Richardson, our dear friend, the Secretary of Energy, is not the Secretary of Energy anymore? How do we know there is a continuation of policies which are to the best benefit of our Nation and to the taxpayer?

For all of these reasons, I think that it would be a major error to give more independence and power, with no meaningful oversight, to the Nation's nuclear weapons laboratories.

With that Mr. Chairman I yield back my time.

Chairman BLILEY. I thank the gentleman.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF MICHIGAN

Thank you, Mr. Chairman, for holding this very important hearing today. I believe that the issues raised by the Rudman Report and the Department's long-standing inability to get its act together on security matters warrant the prompt attention of the entire Committee, and I applaud you for convening us so quickly to address this problem.

As the new chairman of the Oversight Subcommittee, I have been very troubled by what I've learned over the past few months about both the history of security problems at the nuclear weapon labs and the current progress—or apparent lack thereof—that is being made in reforming this recalcitrant bureaucracy. I'm amazed by the Rudman Report's findings about continuing bureaucratic obstruction of Presidential and Secretarial reforms at the laboratory level. Secretary Richardson has boasted that he now runs the labs and they report to him, but the Rudman findings make me wonder who really is in charge here.

I think it is also self-evident by now that the Department still has a long way to go before it can claim confidently that sufficient reforms are in place—and, most importantly, are working effectively—to safeguard our nation's nuclear secrets. Just last month, the Cox Committee on Chinese espionage unanimously concluded that,

even if all of the announced reforms are fully implemented, we cannot realistically expect that security will improve to a satisfactory level until next year at the earliest. Given the Department's history and the problems experienced so far in instituting the latest round of reforms, the Cox Report's conclusion appears well-founded.

The Secretary's repeated public comments to the contrary are baffling. Either he is misleading the American public—which I don't believe he would intentionally do—or he has less information available to him than the Cox Committee and the Rudman panel had available to them, which itself is a major problem. Indeed, our Committee staff has been receiving briefings from various Department employees over the past several months that indicate continuing problems with security at the labs and the implementation of the Administration's announced reforms. Apparently, everyone except the Secretary knew of these continuing problems, forcing him to repeatedly backtrack in public about this unfolding scandal.

The American people have a right not only to have their nation's most sensitive secrets fully protected, but also to get the most complete and accurate information about the status of that protection. I think, so far, the Secretary and the Department as a whole have failed in both respects. At the Subcommittee level, we plan to keep the pressure on the Department to live up to both of these reasonable expectations.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF HON. JOE BARTON, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF TEXAS

Thank you, Mr. Chairman. I am glad you decided to hold this as a full Committee hearing, as this issue extends beyond just an Oversight and Investigations matter. Any legislative effort to reorganize the Department of Energy will have to come through the Commerce Committee, and it is essential that our Members understand the magnitude of the problem we are facing.

Senator Rudman and his panel deserve a lot of credit for producing a candid and hard-hitting analysis of the security problem at DOE facilities. When the Rudman panel describes the Department of Energy as a "dysfunctional" structure characterized by "organizational disarray, managerial neglect, and a culture of arrogance," it hit the nail right on the head. During my four years as the previous chairman of our Oversight and Investigations Subcommittee, and even dating back to my days as a Presidential Management Intern assigned to DOE, I have seen abundant evidence of the entrenched bureaucracy at DOE. Numerous Secretaries have tried to make changes at the Department, only to be outwitted, or *out-waited*, by those resistant to change.

While Senator Rudman's panel did an outstanding job of characterizing the problem, I am not sure yet whether the proposed solution is the right fix for the problem. I believe it is necessary to relocate the functions of the labs completely out of DOE.

From a security perspective, a more serious problem arises from the fact that a number of other DOE facilities *not* considered by the Rudman panel also engage in weapons-related work. Examples include the Oak Ridge National Lab, the Pacific Northwest Lab, and the Savannah River Site. Whatever solution we propose for the security problems at DOE must address the entire DOE complex, not just the handful of labs and plants that are most strongly identified with weapons work. Here is where the idea of a single security "czar" for the entire Department might be more effective at policing the whole organization than the more limited fix recommended in the Rudman report.

There is one other area where I believe the Rudman panel may have missed the mark. All of my experience with DOE, both within the organization and here in Congress, tells me that the fundamental problem in the DOE organization is the dominant role that its contractors play. One cannot change the culture in DOE without addressing the role of these contractors. I believe that action should be taken where there is evidence of problems with the contractors.

Any meaningful change in the DOE organization must start with the government personnel, but must follow through with how the DOE contractors execute the direction provided by the government. Certainly the government is responsible for defining the scope of work to be performed, negotiating a fair contract price, and then exercising sufficient contract oversight to ensure the work is performed. But the contractor is not off the hook in this equation. Two of the most problematic labs—Lawrence Livermore and Los Alamos—are run by the University of California. This contractor shares a large part of the responsibility for this problem. It may be ex-

pecting too much to ask an academic institution, whose philosophy is built around the free and open exchange of information, to operate effectively in the national security arena. I support terminating the University of California's contract because of their gross negligence in managing the Los Alamos lab where Chinese espionage on our nuclear weapons designs occurred.

And that is where Secretary Richardson comes in. Mr. Secretary, you have a responsibility to set the right security standards for your organization. When those standards are not met, as clearly they were not in the Los Alamos case, you have a responsibility to hold the appropriate government officials *and* contractor personnel accountable. I am not talking about just the Wen Ho Lee incident, but rather about the mounting evidence that something is seriously wrong in the management of these labs and in the security operation throughout your organization. You should be thinking about replacing not just the responsible DOE personnel at the field level and headquarters, but also the responsible lab directors and contractors.

Lastly, I think the Rudman report has it right regarding the limited ability of any one Secretary of Energy to change the system at DOE. No matter how well-intentioned Secretary Richardson may be about reforming the Department of Energy and correcting the security problems, there is no guarantee that subsequent Secretaries will bring the same priority to the job. And there is no guarantee that the existing bureaucracy of government personnel and contractor employees will implement your reforms, when they have resisted so many other reforms in the past. That is why this Committee must consider seriously the proposal to make a statutory change to the organization at DOE.

Mr. Secretary, you have promised this Congress and the American public that the problems that surfaced at Los Alamos are under control and cannot happen again. The Rudman report says otherwise—that major security problems still persist in DOE. I hope we can all get past the natural instinct to defend the status quo and protect existing turf—we have to work together to do what's best for the country. This issue is too important to do anything less. Thank you, Mr. Chairman.

PREPARED STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF FLORIDA

Mr. Speaker: After reviewing the Report of the President's Foreign Intelligence Advisory Board regarding the poor security at the Department of Energy Nuclear Weapons Laboratories and proposals for reform, I have come to the conclusion that I agree with Secretary Richardson's opposition to the recommendations of the Advisory Board to create a semi-autonomous agency or a separate independent agency and I agree with Secretary Richardson's opposition to a wholesale reorganization of the Department of Energy.

The only way to effectively deal with the repeated and critically damaging security lapses is through the *abolishment of the Department of Energy*.

I read with horror the Rudman Report and its notation that:

"Never have the members of the Special Investigative Panel witnessed a bureaucratic culture so thoroughly saturated with cynicism and disregard for authority. Never before has this panel found such a cavalier attitude toward one of the most serious responsibilities in the federal government—control of the design information relating to nuclear weapons... Never before has the panel found an agency with the bureaucratic insolence to dispute, delay, and resist implementation of a Presidential directive on security, as DOE's bureaucracy tried to do to the Presidential Decision Directive No. 61 (issued) in February 1998."

The Presidential Decision Directive (PDD) mandated new counterintelligence measures at the labs, but the Advisory Board found that implementation of PDD 61 suffered from "bureaucratic foot-dragging and even recalcitrance" by DOE and lab officials.

The report further notes that, "DOE and the weapons laboratories have a deeply rooted culture of low regard for and, at times, hostility to security issues, which has continually frustrated the efforts of its internal and external critics."

I personally do not believe that a reorganization or a shake-up of the Department of Energy and how it handles nuclear secrets will be sufficient in destroying the pervasive anti-establishment culture that exists in the Department and at the weapons labs, as detailed by the Rudman Report.

A cancer exists at DOE and the only way to rid the disease that is infecting our national security is through its removal of the Department's control of our nation's nuclear weapons. I believe the Department of Defense is much more capable of insti-

tuting the necessary security measures that will bring discipline to weapons management.

The non-military civilian functions of DOE and the weapons labs could easily be rolled into a semi-autonomous agency within the Department of Commerce, such as NTIA.

I admire my former colleague and still good friend, Secretary Richardson, for his diligent work of trying to correct the serious problems at DOE. But, the Rudman Report clearly details the uncorrectable culture that exists and has existed at DOE.

Secretary Richardson, unfortunately, believes that the security problems that has led to overt espionage being committed against our nation has been fixed. The Rudman Report found new evidence of continuing problems despite the recent Presidential and Secretarial reforms, including poor control of restricted and classified data, inadequate monitoring of outgoing e-mails, and unsecure storage of nuclear weapons parts, to name a few of the ongoing problems.

The Rudman Report concluded that DOE is “incapable of reforming itself—bureaucratically and culturally—in a lasting way, even under an activist Secretary.”

I want to compliment and thank Senator Rudman and the Advisory Board for their comprehensive work.

They accomplished in 90 days what National Security Advisor Sandy Berger could not and did not even try to accomplish in three years. In fact, Notra Trulock, the former Chief of Intelligence for DOE and one of Secretary Richardson’s intelligence advisors, has stated that he informed Mr. Berger in April of 1996 about the dilapidated security conditions at DOE.

But Mr. Berger did less than nothing. He even waited over a year before notifying the President of the serious security problems. For nearly three years after Berger was notified and before Secretary Richardson came on board and before the Advisory Board was formed, nothing was done to correct these devastating problems at DOE.

And now Secretary Richardson says lower-level employees will be fired, even though the National Security Advisor and other political appointees deserve immediate removal.

The Department of Energy is a bureaucratic wasteland deserving of extermination.

Thank you Mr. Chairman.

PREPARED STATEMENT OF HON. GREG GANSKE, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF IOWA

A safe and secure Department of Energy, with its oversight over the most advanced computer and weapons technology in the world, is necessary for our national security. However, the General Accounting Office has been reporting security deficiencies at DOE laboratories for two decades.

The Report of the President’s Foreign Intelligence Advisory Board is important because it alleges that the Department has been indifferent to security, institutional authority, and personal accountability.

GAO told us two months ago that the two main causes of DOE security problems were “a long-standing lack of attention and/or priority given to security matters by DOE managers and its contractors” and “there is a serious lack of accountability among DOE and its contractors for their actions.”

The Report before us today goes even further. . . . “Accountability at DOE has been spread so thinly and erratically that it is now almost impossible to find” and “Never before has this panel found such a cavalier attitude toward one of the most serious responsibilities of the federal government—control of the design information relating to nuclear weapons.”

Even more troubling is the reported attitude that DOE employees approach their security responsibilities with “cynicism and disregard for authority” and that “DOE is still unconvinced of Presidential authority.”

In light of the Rudman Report’s analysis, I think it is valuable to repeat some of GAO’s findings:

DOE Order 1240.2b requires that background checks be done for all foreign visitors from sensitive countries. In September 1997, GAO reported that at two of our nuclear laboratories, due to a special exemption to help those facilities cope with the high volume of foreign visitors, background checks were conducted on only 5 percent of visitors from sensitive countries. As a result of this failure to follow procedure, GAO was able to document 13 individual cases in which persons with suspected foreign intelligence connections were allowed access to DOE laboratories without background checks.

Other reports detail foreign visitors allowed to roam secure areas after hours without supervision, a lab losing 10,000 classified documents, and a DOE security clearance database that was so outdated that 4,600 clearances should have been terminated.

The Rudman Report asserts that we *may* now be physically secure against armed infiltration. Even if this assessment is accurate, we currently face an even more dangerous and harder to control threat—electronic espionage. Computer hackers are very adept at circumventing firewalls and other protective devices. I would expect that we could construct a secure system.

The Rudman Report recommends changes to the Department's structure. Something needs to be done to change not only the regulations of the Department, but also the institutional culture within which DOE employees perform their duties. I agree with the security changes recommended by the President's Foreign Intelligence Advisory Board. DOE remains accountable not only to the President, but also to this Congress and the American people.

I would like to thank both Secretary Richardson and Senator Rudman for appearing here today. I look forward to your testimony and hope that you can help reassure this Committee that DOE is taking the necessary steps to ensure our national security.

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

Mr. Chairman, thank you for holding this hearing today. No Congressional committee has spent more time and effort on oversight of the Department of Energy's security efforts. During my tenure as Chairman of the Subcommittee on Oversight and Investigations, we conducted dozens of hearings over a decade. We looked at numerous security lapses, such as the inability to account for nuclear material, the lack of security at our weapons facilities, theft of property, and problems in the security clearance process, the handling of classified information, and the foreign visitors program. Now the rest of the country knows why we were concerned.

I have reviewed the report by Senator Rudman and the President's Foreign Intelligence Advisory Board, and I want to commend the Senator for an excellent report. It documents security lapses over the past several decades in a clear and comprehensive fashion. It is a wakeup call to the country that these problems are extremely serious and in need of correction.

Reports alone will not suffice. Nor will good intentions. I note with interest that on Sunday, Senator Rudman stated that bureaucrats at the Department of Energy are still balking at implementing a Presidential order on security. He said, "The attitude of people within that department, in that bureaucracy, is astounding."

To that I say, "Amen."

The question before us is what to do next. In his report, Senator Rudman gave good marks to recent actions by Secretary Richardson. He stated that more reforms are necessary. More importantly, he noted that even if the Secretary made all of the appropriate reforms, we need a statutory restructuring, because a future Secretary could undo the reforms.

Indeed, we have already seen reforms adopted by one Administration, such as an independent Office of Safeguards and Security Assessments, undone by the next Administration.

Yet Chairman Bliley and I share concerns about current legislative efforts to establish an autonomous or semi-autonomous agency in charge of nuclear weapons for precisely the reasons described by the Senator. We are concerned that those same bureaucrats and lab contractors, who are refusing to accept the President's security order, would be the ones running this agency, with even less oversight than is currently in place.

None of us wants to use these serious security problems as an excuse to put the inmates in charge of the asylum.

This concern is not hypothetical. It is real. In every investigation concerning problems at the DOE weapons facilities and labs, the individuals responsible for the operation of defense programs and their contractors consistently and repeatedly denied the problems, punished the whistleblowers, and covered up the problems to their superiors and Congress.

Unfortunately, two provisions that are currently before Congress—one in the House-passed Defense Authorization, and the other a pending amendment to the Intelligence Authorization in the Senate—would give these recalcitrant bureaucrats and contractors total control over these programs. I strongly oppose these provi-

sions. I was joined in my opposition to the House provision by Chairmen Bliley and Sensenbrenner, but we were not permitted to offer an amendment to strike it.

I want to turn attention to an even greater problem. Senator Rudman's Panel's report is entitled, "A Report on Security Problems at the U.S. Department of Energy." As a report on security problems, it is excellent. But in crafting legislative solutions to security problems, we must not create other problems. I refer specifically to safety, health, and the environment.

Throughout the report, I found no references to the safety and environmental problems at the DOE facilities, and I understand why: that was not the panel's mandate. However, some of the legislative proposals would certainly affect those activities.

I am taken aback by those who say, in effect, that we need to return to the days of the Atomic Energy Commission.

Do they want to return to the days when the operators of the Hanford facility put thousands of gallons of highly radioactive waste in steel drums and buried them in the ground, and then for years tried to hide the environmental damage that is now costing the country billions of dollars a year to clean up their mess?

Do they want to return to the days when safety was so bad at our weapons facilities that every plant had to be closed down, and we still do not have the capacity to produce tritium for our weapons?

Do they want to return to the days when radiation experiments were conducted on human guinea pigs, and then were covered up for decades?

The answer, of course, is "no." I am pleased that the Rudman panel report appears to recognize the need for independent oversight for security and counterintelligence. I note that the recommendations also expect the independent oversight board to "monitor performance and compliance to agency policies." In my view, health, safety and the environment must also be subject to oversight that is independent of national security officials.

Mr. Chairman, I am sure that we will find that in the end, we are much more in agreement than disagreement. We all support the need to streamline the organizational structure and enhance accountability of agency officials. We all agree that independent oversight of sensitive areas, such as security, health, safety, and environment is required. We all agree that current proposals need to be significantly amended so that we do not repeat the problems of the past. We have in the past worked in a bipartisan manner to bring about reforms, such as the Cox-Dicks amendment to the Defense Authorization and the establishment of a Defense Facilities Safety Board. That same effort is required now—not in a hasty and haphazard manner on the Defense or Intelligence Authorization bills—but in carefully crafted bipartisan legislation.

PREPARED STATEMENT OF HON. EDWARD J. MARKEY, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF MASSACHUSETTS

Thank you, Mr. Chairman.

The Rudman report justly accuses the Department of Energy's Defense Programs of a "culture of arrogance," of "organizational disarray," of being a "dysfunctional bureaucracy." The report then proposes to isolate this dysfunctional culture into a separate government agency that will be even less subject to outside oversight. It does not address how to change the culture at the nuclear weapons labs or at the contractors who run them.

The report traces many of the problems back more than 25 years. At that time, the weapons labs were under the Atomic Energy Commission, an *independent* agency. Because of the problems due to lack of oversight, the Commission was disbanded, with the labs transferred to the Energy Research and Development Administration, which later became part of the Department of Energy. Twelve years later, when the extent of environmental destruction hidden behind the walls of secrecy became widely known, the environmental cleanup and restoration functions were split off from the Defense Programs and an environmental czar was appointed. Ten years after that, when security problems became well-publicized, a security czar was appointed. Throughout this time, the same contractor, the *University of California*, has actually managed Los Alamos as well as Lawrence Livermore Labs.

Now we are being urged to reorganize the Department of Energy, to put defense programs back into a separate agency, to reanimate the corpse of the old Atomic Energy Commission. I fear this will take us back to the *bad* old days, when an agency focused on making bombs, hidden from public sight, caused environmental havoc and public health catastrophes. And once again the contractors who actually run the weapon labs go virtually unmentioned. Rearranging deck chairs on the Titanic will

not plug the hole the security iceberg at Los Alamos has opened up. There is a gaping security hole in our weapons laboratories, but rearranging government offices will not close it.

PREPARED STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF TEXAS

Mr. Chairman, I would like to start by thanking you for holding this important hearing. The findings in this report deserve the close scrutiny that only this committee can provide.

I would also like to thank our witnesses, Senator Rudman, and especially our former colleague and good friend, Secretary Richardson, for appearing before the Committee today.

It was clear to me, even before this report came out, that there were serious problems with security at these DOE laboratories. Since the early 1970s, this committee has held extensive hearings on this subject, closely following the efforts of the DOE to institute reforms.

Hopefully, this report, and the recommendations that it contains, will open a new chapter in our oversight of this problem. We need to move forward on solutions that will ensure the safety and security of both the information and technology that these labs produce and the personnel who work in these labs.

However, I have my concerns about some of those recommendations. For instance, if a new, semiautonomous agency is created within DOE, or if we move the responsibility for these labs outside of DOE, what will happen to the many other tasks and functions that these labs serve that are not weapons-related?

Also, it seems to me that part of the problem is the culture that has grown inside these labs over the years. If we streamline the chain of command or create a new agency, what will prevent that culture, that has contributed to the problem, from becoming established in this new entity?

Furthermore, these weapons labs are currently self-regulating on things like radiation exposure, safety and environmental issues. Since these are the types of issues that have been problems in the past, will we continue to allow the labs to police themselves?

Finally, we all know that these labs, for many years, ignored environmental concerns and focused simply on producing weapons. Who will be responsible for the environmental cleanup at these sites, especially if they are removed from DOE jurisdiction?

These are just a few of the questions that I hope we have the opportunity to hear the answers to today, Mr. Chairman. I look forward to hearing the responses from both Senator Rudman and Secretary Richardson.

Chairman BLILEY. Mr. Secretary.

**STATEMENT OF HON. BILL RICHARDSON, SECRETARY OF
ENERGY**

Mr. RICHARDSON. Mr. Chairman, members of the committee, thank you for the opportunity to discuss how to improve security and counterintelligence at the Department of Energy. I want to thank the committee for its flexibility which allowed me to testify before the Senate this morning. I truly mean that, because I know how busy members of this committee are.

No mission is more important to me than taking the actions necessary to ensure that America's nuclear secrets are well guarded. We have made considerable progress, but I won't admit perfection, as some of my colleagues have indicated. I am looking forward to working with this committee, the Congress, and Senator Rudman on ways to make things better.

Let me deal with Senator Rudman's report. This is a very important report. It is hard-hitting, it identifies the root causes of the long-standing security and counterintelligence problems at the Department of Energy: confusing organizational structure, lack of ac-

countability, unclear roles and responsibilities, a lack of attention to security.

I want to thank the chairman, Chairman Rudman, and this panel for recognizing the aggressive steps we have already taken to address serious and systemic security problems at the Department's labs and for making additional recommendations that can help address the critical nature of the problems.

Chairman Rudman identifies a list of attributes that must characterize meaningful reform. I agree virtually with all of them, such as the needs of leadership, clarity of mission, and streamlined field operations. The Presidential decision directive and the reforms I have undertaken are based on some of the same basic principles about what is needed to address the underlying problems. After several months of wrestling with the problems at the Department, I think it is essential that any reform of the departmental organization ensure that certain criteria are met.

First we must ensure that there is a clear chain of command and accountability for implementing national security policy. I have already undertaken a major reorganization of the headquarters-to-field relationship which clarifies reporting lines and responsibilities across the complex. In my plan, the chain of command is clear, and accountability is established for the nuclear weapons program. The three weapons labs, and all of our nuclear weapons sites and facilities throughout the complex report to the Assistant Secretary for Defense Programs.

On those charts, Mr. Chairman and members of the committee, are the reorganizations of the Department of Energy. The left chart is the way that I have organized the Department. The chart on the right is the confusing maze that I think has caused us these problems because of lack of attention given to security.

Second, the second principle, we must raise and not lower the profile on authority of the nuclear weapons program to overcome the systemic and long-lived security problems identified by both the Cox and advisory board reports. From my experience, the Department needs more engagement from the Secretary of Energy and his or her office in the nuclear weapons program. I am concerned that fencing off the Nation's nuclear weapons program would blur the Cabinet Secretary's role.

Third, we must ensure that security and counterintelligence programs have a senior departmental advocate with no conflicts of interest. The only way to assure this is to have a separation between the office responsible for the nuclear weapons program and the office responsible for establishing and monitoring security and counterintelligence policies. That is the only way that you can assure that security decisions aren't shortchanged and that they are not competing for the time and attention of senior management as well as budgetary resources.

And fourth, we must ensure that stockpile stewardship doesn't lose its link to cutting-edge science. Our ability to ensure the safety and reliability of the nuclear deterrent depends upon cutting-edge science. An autonomous agency would partition the laboratory system and ultimately undermine the science on which our national security depends.

A bureaucratic Berlin Wall between the weapons labs and the science labs would hamper the joint research that they perform and weaken the quality of basic science at the weapons labs. The nuclear weapons program depends on unclassified cutting-edge science, requires active engagement in the other national labs, and contact with the international community. It needs overall scientific excellence to recruit and retain the best and brightest scientific minds for the weapons program.

Let me just go through some reforms that we have taken. When I went through all the recommendations that Senator Rudman and his commission proposed, 43 in number, I found that my security plan embraces 38 of them. That is almost 90 percent. That is a lot of common ground in which we can work.

Let me quickly run through some of the reforms that we have already put in place. In counterintelligence, in February 1998, President's Clinton ordered that the Department of Energy improve its security dramatically and implement an innovative, comprehensive counterintelligence and cybersecurity plan. By November of last year, I approved the far-reaching aggressive new plan, improving background checks on visitors, document controls, use of poly graphs, and increases in our counterintelligence budget which has grown by a factor of 15 since 1996.

In March we took additional steps for counterintelligence upgrades, security training, and threat awareness and focused an additional \$8 million on further security, classified and unclassified computer network. When I was informed of the serious computer transfer issue at Los Alamos, I ordered a complete stand-down of the classified computer systems at our three weapons labs—Los Alamos, Livermore, and Sandia—to accelerate computer security measures already underway. The systems went back on line only when I was convinced significant progress had been made. As of today we have implemented 85 percent of the key recommendations in our counterintelligence action plan.

We deal with security. I know that this has been an issue of great interest to this committee, particularly Chairman Dingell, former Chairman Dingell. I came to the Department of Energy after having served 14 years on this committee, where I came to understand the magnitude of the security management problems facing the Department. And key members of this committee have held a few hearings on this subject. Important hearings.

One of the first steps I undertook was to figure out how to untangle the maze of illogical reporting relationships between the labs, the field offices, and headquarters, to clarify chain of command and establish accountability. That reorganization was completed April 21 and you can see it on the left.

Then on May 11 I took the next step needed to bring about accountability and put some teeth into the security operation, with the farthest-reaching security reorganization in the Department of Energy's history. We established the new high-level Office of Security and Emergency Operation; the security czar, gathering all departmental security functions in one place and answering directly to me.

Last Thursday, retired four-star General Gene Habiger accepted the position as the Department's security czar. General Habiger

brings to this job his experience as the Commander in Chief of Strategic Command, where he was in charge of nuclear forces. He is only 1 of 9 CINCs, and there is probably nobody better to deal with nuclear weapons than General Habiger, who is here with me, and who has come out of retirement to take this position.

As the security czar, the general will rebuild the entire Department's security, cybersecurity, and counterterrorism apparatus, as well as our emergency response operations. He will be the single focal point for security policy in ensuring that security is rigorously implemented across the Department complex. We all know that any organizational structure is only as good as its people. We should all thank him for coming out of retirement to serve his country once more.

These are some of the measures we have already undertaken. I believe that these changes embody the attributes that the Rudman Commission identifies as critical to meaningful reform, and have already had a dramatic impact on the security of the labs.

But, clearly, more needs to be done. I am looking carefully at the recommendations in the Cox report and in this report of Senator Rudman. I have been meeting with Senators and Members of the House on ways to sort out what additional steps are needed and which of these changes are measures we should codify to ensure that the changes are institutionalized and last beyond the tenure of any one Secretary of Energy or committee chairman.

There is much common ground. I think we can work that common ground to build on what has already been accomplished and make even more sweeping Department reforms than the advisory board recommends. But I do have concerns, I do have concerns about the creation of an autonomous or semi-autonomous entity, especially if we are trying to solve the security and counterintelligence problems at the Department.

Security and counterintelligence problems cut across all of the Department's missions and are not limited to the weapons labs and production sites. If anything, I think this has been the greatest contribution of this committee, to point out some of the problems that are in the entire complex, in the plutonium areas, at Rocky Flats, in other parts where the guns, bombs, some of the other parts of the Department have not been up to speed.

Chairman BLILEY. Mr. Secretary, could you—

Mr. RICHARDSON. Mr. Chairman, this is pretty important. I would appreciate the chance to be heard. We need to improve security at all sites, and fencing off the weapons complex is not the answer. Plutonium located at our environmental management sites demands the same level of security as plutonium at Los Alamos.

Mr. Chairman, since I am the person that inconvenienced the committee, I will now wrap up. Let me just say that this Commerce Committee is one of the most active oversight committees in the Congress. And the last point I am going to make is that I think it is very important that there be independent oversight of my Department by an independent oversight agency reporting directly to me.

This is something that was part of the Dingell Commission reforms that were adopted, but then previous Secretaries took out this office, put it in Germantown, Maryland, and I have brought

this back because I think it is important to have this independent oversight.

I believe that with the Rudman recommendations, with the Cox recommendations, we can make a lot of progress. I am trying to fix a problem. I have been in the job 8 months. We are not perfect but we have made dramatic reforms. I need the support of this committee to ensure that we have those reforms in place.

Chairman BLILEY. Thank you, Mr. Secretary.
Senator Rudman.

**STATEMENT OF HON. WARREN B. RUDMAN, CHAIRMAN,
PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD**

Mr. RUDMAN. Mr. Chairman, Mr. Dingell, first let me inquire of Mr. Chairman how long is that set for in opening statements, and I will try to stay within that time.

Chairman BLILEY. Well, since Mr. Secretary took about 10 minutes, you plan on taking that amount, too.

Mr. RUDMAN. All right. Let me try to do that. I will assume that members have at least read part of the report, if not all of it.

First let me tell you it is an honor to appear here. It has been a long time since I have been up here again. It is nice to see so many familiar faces. There is rarely enough time to discuss a report such as this in detail, so I will try to highlight what we did.

Our objective was to write a report that would stick, that would make a substantial difference, would help the President and the Congress and the Secretary effectuate reform, and that is essentially what we have produced. Let me point out to this committee that has had a long record of oversight over this agency, that we were not asked to look at management generally, we were not asked to look at other issues. Our charge at the present was quite narrow and direct: Look at security at these agencies, historically, present, future; make a recommendation; back it up with facts. That is what we have done. I cannot comment on other parts of this Department because we did not study them. And I must tell you I have never served on a committee in the Congress that had oversight directly over the Department of Energy, for which I express some degree of luck.

I had our staff sit down and add up the number of reports that have found problems with security at DOE for the past 20 years. There are 29 reports from GAO and 61 from inside DOE; more than a dozen reports from special task forces and various ad hoc panels. We wanted to cut through the fog of the bureaucratic jargon and somewhat wishy-washy language of some of those reports, so we have written a fairly direct and blunt report.

I want to advise the committee that I did not do this alone. I had people familiar to this panel, certainly one of the preeminent nuclear physicists of this country, Sid Drell, who I am sure has appeared over here, who knows these laboratories better than anyone I have ever spoken to; Ann Caracristi, former number 2 at NSA, long-time government employee; Stephen Friedman, who, since his retirement from business, has done a lot of intelligence assignments for several administrations. So this is a group effort. And I have had a great staff, much of it loaned by agencies, some PFIAB staff.

There is an old saying among farmers from New Hampshire, and probably Chairman Bliley would say it is Virginia, but we have all heard it, and the saying is, you know, if it ain't broke, don't fix it. Well, I have a corollary, and my corollary is if it is broken so badly as this is, don't even try to fix it, do something to kind of replace it. And that is about where we come out.

It comes down to this: This is really not about security. That is what we finally decided. This is about what, frankly, former Chairman Dingell talked about in a series of reports written by him when he was chairman. This is about accountability. This is about a chain of command that works. And counterintelligence, security are merely symptoms of a problem of accountability.

Let me say a word about the root causes. These laboratories are not only, in our opinion, the crown jewels of the United States scientific establishment, they are the crown jewels of the world's scientific establishment. Nothing we say in this report should be construed as criticism of the extraordinary contribution these laboratories have made to this Nation's security. In fact, we chose the title with some care, *Science at Its Best, Security at Its Worst*.

And we don't have any comments about the work they do. We have a lot of comments about improving their security.

We found evidence and heard testimony that was appalling, and I use that word deliberately. Now, you hold a lot of hearings here, and I held a lot of hearings over in my career at the Senate. It is fascinating what you can do in a closed hearing which you don't have the luxury to do that. It is as fascinating to invite people in who are not on the record, who are not subject to retribution by their agency, and have them tell you frankly what is going on. And what we heard was astounding. We can back up every allegation in this report with solid, uncontrovertible, confirmed fact.

We found six areas, security and counterintelligence and management, and planning, physical security, personnel security, information security, nuclear materials accounting, and foreign visitors.

The striking thing about this is—and this is known to this committee better than to us; I mean, after all, you have been doing this for years—there have been report and report after report that has come to the Congress, and I expect people have tried to do things. I don't quite understand why this bureaucracy seems to be able to defend itself against almost anything. I brought a few along for those of you that are lawyers. We often talk about the weight of the evidence; well, this is pretty heavy. There are a hundred of them. I brought six, just to remind you of some of the work that has been done mainly by DOE at your request and by the Senate committee's request, but more by this committee: 1986, DOE management of safeguards and security needs to be improved; 1988, GAO, major weaknesses in foreign visitor program at nuclear labs; 1993, done by DOE, lack of accountability for implementing security requirements; 1996, Defense Nuclear Facilities Safety Board, impediments to resolving problems as a result of lack of understanding, experience and personal involvement by upper echelons of DOE management; 1997, DOE Office of Security Affairs, fragmented and dysfunctional security management in place at DOE; 1999, DOE's bureaucratic complexity is so great that it can conceal otherwise obvious and easily detected flaws. The variety of rela-

tionships that exist between field offices, headquarters and contractors will continue as a root cause for complexity, confusion and lack of efficient, effective performance. And finally 1999, mandated by this Congress, the Chiles report, which you are all familiar with, I am sure, says a thorough revamping to institute streamlined, efficient management would send a strong signal throughout the complex that DOE takes its weapons programs seriously.

Now, also this year in 1999, GAO, I believe at the request of this committee, "In the final analysis security problems reflect the lack of accountability."

Now, I go through that not for dramatic effect, but to impress on this committee that this is not a security issue. This is not a counterintelligence issue. Those are only symptoms. This is totally dysfunctional unless you change it; no matter the caliber of the people that Bill Richardson brings in, it will happen again.

Let me go through the remaining 8 or 10 pages without repeating myself. I believe that Congress and the President have an opportunity to do what no one has done before, and that is because of the environment in which this all takes place. I want to say to you that as a former Member of the Congress, I think you would all agree with me we are a lot like a fire department. We tend to respond to the latest fire. Had it not been for the New York Times breaking this story, had it not been for Chris Cox and Norm Dicks and the excellent work that they did, I daresay that the President would probably not have asked PFIAB to do this. I wouldn't be here today, and business would go on as usual.

That is a troubling thing to me. It shouldn't take the press to galvanize our own institutional responsibilities. And I use the word "our" because I still in my way feel as an alumni of this great legislative institution called the U.S. Congress.

You certainly have enough evidence here. I don't understand. Maybe Chairman Dingell, Chairman Bliley will understand why something didn't happen before. Maybe people tried. But we found evidence of this bureaucracy managing to fight off every major reform that was tried until the man on the left, and I have high regard for what he has done, and I want to put that on the record.

Now, let me first talk about the models. We have just come from 3 hours over at the Senate, and we are able to disagree without being disagreeable. Why we recommend a semiautonomous agency is no accident. This was nothing that we came up with just suddenly a flash of lightning. We looked at agencies that had very interesting scientific and technical responsibilities contained within larger departments that had dissimilar functions, and we found four, and they work. The National Security Agency is part of DOD, yet the Secretary of defense has total responsibility and authority to run that agency. Defense Advanced Research Projects Agency, DARPA, huge, does extraordinary scientific work, part of the Department of Defense, but a separate agency; NOAA, part of the Department of Commerce, responsible to the Secretary; and finally the NRO, which we can't talk about much in unclassified session, but which does extraordinary work, very similar in some ways in terms of contracting and research, but with a totally different management structure and none of the problems that we have seen here. That is why we made this recommendation.

Let me say one other thing and just put this prepared text totally aside because I want to wind up in time. A question has been raised by former Chairman Dingell in a letter that was written to this committee in response to the Kyl-Domenici proposal. That letter was written before our proposal ever was published by a matter of weeks. One of the things that Dr. Drell pointed out to us—and if you look at our organizational chart—was a very strong point made by several people here, and I want to just assure you of what we are doing. You can't separate science of the Department of Energy from these labs. They do biological research, they do mathematic research, they do computer research, many other things. So we maintain a strong link. That is why although you will find in our report there are two models we give you, one like NASA, which take it separately, pull it out of DOE, make it directly accountable to the President, or make it a separate agency, or, if you will, administration, directly responsible to the Secretary, but still within DOE.

We opt, I opt, for the second one because of the incredible science that is done, and you ought not to separate that. But what you have now is a dysfunctional bureaucracy. And what we have put together is what we have modeled after those bureaucracies within this government that work.

Finally, the most incredible thing that we came across was this IDA, Institute for Defense Analysis, report, which this Congress authorized, this Congress appropriated money for. This is a superb report. It mirrors much of what we have said, and yet it appeared to go in some dust bin. And I would just say to you, Mr. Chairman, that there is not much disagreement between the Secretary and myself except he continues to say, I don't want a semiautonomous agency. And I said to him privately and publicly I don't really understand that. The language we recommend in this semi-autonomous agency is, notwithstanding any other provision of this law or act, the Director of the Agency for Nuclear Stewardship, who also serves as an under Secretary of Energy, shall report directly to and be responsible directly to the Secretary of Energy, which shall be the Director's immediate superior. That is not our language. That is the language from the existing agencies around this government.

So, Mr. Chairman, I will stop right there.

[The prepared statement of Hon. Warren B. Rudman follows:]

PREPARED STATEMENT OF HON. WARREN RUDMAN, CHAIRMAN, PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD

Distinguished members of the House Commerce Committee. Let me first say thank you for the invitation to appear here today.

I know there is rarely enough time to discuss all the issues that are raised in a report such as this, so I would like to make just a few introductory comments, give you a brief synopsis of the PFIAB panel's report, and then move straight on to the questions and answers.

Introduction

Let me say first that we had one major objective with this report. There is nothing more important to America's long-term national security interests than security of our nuclear secrets. And that security has been atrocious for a long time. But report after report has been tossed up on the shelf to gather dust. So our objective was to write a report that would stick, that would actually make a substantial difference in the way that security at the labs is handled.

I had our staff sit down and add up the number of reports that have found problems with security at DOE for the past 20 years. The numbers are astounding.

29 reports from the General Accounting Office;

61 internal DOE reports; and,

More than a dozen reports from special task forces and ad hoc panels.

Altogether that is *more than 100 reports*, or an average of 5 critical reports a year for the past two decades. And here we are, 20 years down the road, still battling with the same issues. That's unacceptable.

Even more unacceptable to our panel would be adding this report to that list of more than 100 reports.

We wanted to cut through the fog of the bureaucratic jargon and wishy-washy language that has worked to protect the status quo over the years.

So our objective was to take the major security issues one-by-one, and address them directly and forcefully. We did that. And I want to commend my colleagues—Ann Caracristi, Stephen Friedman, and Dr. Sidney Drell—for working with me to do that. This was not an easy report to put together. But they, and the members of the PFIAB staff and adjunct staff, put in long hours to get it right, to make sure it was rock-solid on the facts, and to get it done on time. And I think they did an extraordinary job.

That is also why I think President Clinton also deserves a great deal of credit. We had some very tough words for the Administration in this report. But he agreed to release it to the public—something that has never been done in the history of the PFIAB—and put this issue on the table. And I must say that when we briefed him, he was very appreciative of the work that we had done, because he recognizes how important it is.

Restoring Accountability

There's an old saying among New Hampshire farmers. They say: "If it ain't broke, don't fix it. I have a corollary: "If it's badly broken, don't fix it—replace it!"

This report finds that the Department of Energy is badly broken. And it is long past time for half-measures and patchwork solutions. It is time to fundamentally restructure the management of the nuclear weapons labs and establish a system that holds people accountable.

That's what it comes down to. It's not just about security. If you've ever been to one of these labs, you know they put up one heck of a fence. And it's not just about counterintelligence. It's about whether we are going to have a system of management that holds each and every person responsible for the security of these labs.

No President or Energy Secretary or Committee Chairman can guarantee that the laws on the books are going to provide absolute security. But when management of these labs is on our watch, we can and should demand absolute accountability. So that's what our report has proposed: alternatives that we think will help the leadership impress the seriousness of this responsibility on the people within the organization.

Background and Root Causes

Let me say a word about what we found.

We found that these labs are not only the crown jewels of the *U.S.* scientific establishment. They are the crown jewels of the *world* scientific establishment.

We visited several of the labs, and I can tell you that their work is truly phenomenal. And I want to be clear that nothing we say in this report is intended as criticism of the scientific research and development at the labs. Nor do we want to do anything to undermine their effectiveness. We want to improve their security, their counterintelligence, and the accountability that allows them to continue to do their job.

We found that maintaining security and strong counterintelligence at the weapons labs, even under ideal circumstances, is challenging. Part of the difficulty comes from the inherent character of the work at the weapons labs:

- an *international* enterprise;
- requiring *collaboration* across *bureaucratic* lines;
- involving *public/private* cooperation;
- amid a *culture* of scientific research.

The inherent problems have been made *worse* over the years because the weapons labs have been incorporated within a huge bureaucracy that has *not* made security a priority. The Department has been distracted by other national imperatives, such as the cleanup of radioactive waste and DOE's role in the national drive for clean and efficient energy, etc.

Recurring Problems

We found evidence and heard testimony that was appalling in six critical areas: security management and planning; physical security; personnel security; information security; nuclear materials accounting; and foreign visitors (counterintelligence).

There has been report after report of serious security failings; here are but a few examples . . .

We found recent cases of:

- Foreign scientists visiting labs without proper background checks and monitoring.
- Classified computer systems and networks with innumerable vulnerabilities.
- Top-level bureaucrats who could not say exactly to whom they were accountable.
- Instances where secure areas were left unsecure for years.
- Thousands of employees being granted security clearances without good reason.
- In the middle of all this, there were confirmed cases of espionage, the damage from which we may never know.

And as you can see from the chart that shows how long it took to fix even the very basic security problems, some of the evidence that we found simply boggles the mind.

How can it be that it took less than three years to construct the first weapons labs and build an atomic bomb, but in our time it takes nearly four years for someone to fix the lock on a door protecting nuclear secrets?

Responses and Responsibilities

There is not a person in this room—and I would add there’s probably not a person in the Department of Energy—who, when confronted with that kind of record would say that this is tolerable. It is not. It is intolerable. In fact, it is a disgrace to the nation.

If that is the case, then why have these things been allowed to go on, year after year? DOE has had so many overlapping and competing lines of authority that people are rarely held accountable for failures. Just to give you an example, I want you take a look at a chart that I brought.

A couple of years ago, the Defense Department made an honest attempt to track the chain of responsibility for protection of the nuclear-related operations at the Department of Energy. This is what they came up with.

If anyone in this room can make sense out of this management structure you ought to be a brain surgeon instead of a Member of Congress.

Let me be clear: there is plenty of blame to go around. No administration can claim it gave this problem sufficient attention, let alone took the proper steps to solve it.

Several Secretaries have tried some type of reform at one time or another. And there *were* attempts to try to improve management effectiveness and accountability—but *within* the confines of the DOE bureaucracy. The problem is that the DOE bureaucrats and lab employees have been able to wait out the reform initiatives and then *revert* to form.

Because of the overwhelming weight of damning evidence of security failures, and the profound responsibility that comes with the stewardship of nuclear weapons technology, it is time to *fundamentally restructure* the lines of authority so that the weapons labs and their security are “Job Number One” within a *substantially* autonomous agency.

Even in the current uproar over the Cox Committee report (and related events), PFIAB found as late as *last week* indifference and “business as usual” at some levels at the labs. For example, there has been incomplete implementation of computer security measures and foot-dragging on implementation of a good polygraph program.

Just yesterday, there were reports of “strong opposition” to the use of polygraphs at the weapons laboratories.

If the current scandal, plus the best efforts of Bill Richardson are not enough, *only* a fundamental and lasting restructuring will be sufficient

Looking Ahead

The Congress and the President have an *opportunity* to do what none of their predecessors have done: step up to the plate and make a *lasting* reform through a fundamental restructuring of DOE

PFIAB offers two alternatives that will make accountability clear and streamline reporting channels: A semi-autonomous agency; and, A completely independent agency.

I would like to note, parenthetically, that we call for the integration of the DOE Office of Naval Reactors into the new Agency for Nuclear Stewardship. We recommend this because we believe that the ANS should be the repository for all de-

fense-related activities in the DOE. However, we believe the Office of Naval Reactors must retain its current structure and legal authority under which its director is a dual-hatted official of both DOD and DOE.

Our panel debated the merits and demerits of these reorganization proposals. But we came down in full agreement on one principle and from that principle we will not deviate: the nuclear weapons labs need to be semi-autonomous from the Department of Energy as a whole, and that change needs to be substantial and codified.

It is *not* enough to change policy from the top, we have to change the *culture, priorities, and implementation* at the ground level.

That will require very strong leadership plus an organization that allows people to be held *fully and directly accountable for their actions*.

Response to Hint about Cooperation

Someone asked me if it was merely a coincidence that the PFIAB panel's recommendations for a semi-autonomous agency were similar to those proposed by some in Congress.

Foremost, I will state unequivocally and for the record that there was *no collaboration* with the Congress on our findings or our recommendations.

Second, I would remind people that we did *not* endorse a single solution, although I would have much preferred to do so. We sketched two alternatives and, as a panel, purposely did not favor one over the other.

Finally, none of the conclusions that we reached or alternatives that we considered are new. After looking at the 100 or so of these critical reports, the fact that we reached similar conclusions was not a matter of coincidence. *It was destiny.*

Just look at the record.

In 1976, federal officials studied the operation of the weapons labs and considered three possible solutions: placing the weapons labs under the Department of Defense, making them a freestanding agency, or leaving them within the Energy Research and Development Administration. They opted for the status quo.

In 1979, an internal management audit of DOE found that its top management was poorly organized, its planning was spotty, and its field structure was not integrated into headquarters staff. When asked who was in charge of the field offices, the Secretary of Energy at the time said he would have to consult an organizational chart. One employee said that DOE was "about as well organized as the Titanic was in its 11th hour." But again, the status quo prevailed.

In 1981, the incoming Reagan Administration, led by OMB, evaluated whether to dismantle the Department of Energy and place its nuclear operations with an independent agency. The idea was dead in less than a year.

In 1985, the Reagan Administration appointed a blue-ribbon panel appointed to study DOE's security and organization problems. Again, Congress and federal officials weighed whether the weapons labs should be transferred to the Department of Defense or DOE should be restructured to be given more autonomy to the labs. The status quo prevailed.

In 1995, the Galvin report said that it was "hard to reach any other conclusion than that the current system of governances of these laboratories is broken and should be replaced with a bold alternative." That report recommended "an alternative structure...that achieves greater independence." But the status quo prevailed.

In 1997, the Institute for Defense Analysis issued a very detailed report.

This was a report that was proposed by Congress. You authorized it. And you paid for it. You must have paid a lot of money for it, because it was very thorough. Its conclusions were very clear and very similar to those of our panel. *Nothing happened.*

Every time a President or Energy Secretary or Congress has run up against the DOE bureaucrats, the bureaucrats have won. They are fully aware of that fact. And if you let them, they will win again in the future.

It reminds me of what a current DOE official told our panel just a few weeks ago. He said that the attitude of the people deep inside the bureaucracy is "WE-BE." Their attitude toward the leadership is "WE BE here when you came, and WE BE here when you're gone. So we don't have to take you seriously."

That is arrogance. That is the type of arrogance that enables DOE bureaucrats to ignore a direct order from the highest authority in the Executive Branch. In other words, their response to a direct order from the President of the United States was not "Yes, sir" or even "Yes." It was "maybe."

I have yet to meet a general who believed he could win a war with soldiers who will not obey orders and are never punished for failure to do their duty. That is what we have in DOE. This is not a security or counterintelligence problem. It is an accountability problem.

Secretary Richardson

I think it would be useful at this point to say a word about Secretary Richardson's recent initiatives.

I have a high regard for Secretary Richardson and I think that he has been working very hard to carry out his duty—as he perceives it—to address these problems. I would also like to commend the Secretary for bringing both Ed Curran and General Habiger in to address the problems at the labs. Both have impeccable credentials and a no-nonsense approach to getting things done.

But as good as Ed Curran and General Habiger are, they cannot make up for the culture of arrogance, the pervasive disregard for security and counterintelligence issues, and the lack of accountability in the Department.

The problem, as we see it, is that Secretary Richardson will be gone in 18 months, and it is not clear that these two very capable men, under a new secretary, will be allowed to remain indefinitely.

Most of the events that precipitated this current uproar occurred before Secretary Richardson arrived on the scene in 1998. Because he has been at the tip of this sword, he has been sensitized to these security problems and has worked very hard at them.

But one thing is certain: the next Secretary will have different priorities and be pulled in a different direction by other emergencies.

Secretary Watkins, for example, had excellent credentials on security issues. But when he became Energy Secretary he was immediately besieged by the public outcry over the handling of environmental issues. Congress also diverted its attention to address these issues—and rightly so.

Unfortunately, the reality is that the American body politic works like a fire department. It responds to the latest fires.

That is why Congress and the President must institutionalize these changes in the Department of Energy by embedding them in the statutes and implementing them at every level.

Regardless of whatever issue is occupying the Congress or the Executive Branch, the people in charge of security and counterintelligence at the nuclear weapons labs need to have the tools and the structure that allow them to do their jobs.

The fundamental issue of accountability and how well it is instilled in the attitudes and actions of individuals within the labs is going to remain regardless of which President, which Energy Secretary, or which Congress is in office at any one time.

Conclusion

So I hope that you, in this Congress, and the President can work together on this. Nothing about this is politically easy. Jobs are at stake. And it is hard for people who have so much vested in the existing system to admit that it simply does not work. But I do hope that the Congress and the President can reach an accord. This is a matter of tremendous gravity for our national security. And I think everyone here will agree that it should be above partisan politics.

I also believe that solving these security and counterintelligence problems within DOE will ultimately help the Department to better address its many other missions.

I want to commend Congressman John Dingell, in particular, for his steadfast efforts over the past two decades to try to remedy so many of the problems at DOE. Our panel agrees with the Congressman that the pervasive lack of accountability undermines not just security and counterintelligence, but the work of the Department in many areas.

For example, the Congress, in restructuring DOE, should also look at the contractual relationships and evidence that the contractors have impeded and resisted federally mandated reforms.

Thank you again for inviting me to come up here. And I will be more than happy to take any questions you have.

Chairman BLILEY. Thank you, Senator.

The Chair will recognize each member for 5 minutes for questions. I would ask that we not ask for extension of time because, as I said at the outset of this hearing, that Senator Rudman has a tight schedule, and we want to get everybody a chance to ask their questions.

Chair recognizes himself for 5 minutes.

Mr. Secretary, according to press accounts, the November 1998 intelligence report provided to you and other top administration of-

ficials noted that 37 Chinese intelligence officers had visited or been assigned to the labs or other Department sites over the last 5 years. GAO testified before our oversight subcommittee in April that often the Department knew its foreign visitors were spies, but felt that they could adequately monitor their access to sensitive materials or had other defensive mechanisms in place.

You say that you are now doing 100 percent background checks on foreign visitors to the labs, but given the history here, I am not sure whether that means scientists whose backgrounds suggest ties to intelligence agencies will actually be barred from the labs or whether they will be permitted anyway on the theory that they can be adequately monitored.

What exactly is the Department's policy on foreign visitors with suspicious backgrounds, and will you commit to us today that no known or suspected intelligence officers from sensitive countries will ever again be permitted to have any contact with their labs or their employees?

Mr. RICHARDSON. Mr. Chairman, I can commit that to you. I can assure you that we have the best counterintelligence person in the government in Ed Curran, who has had 37 years experience in the espionage cases. We now have at this very moment 100 percent capability to do background checks on scientists from sensitive countries. That is a list includes Russia, China, India, Pakistan, several others. We think our foreign visitors program—it has been tightly controlled. We are monitoring it closely. We have individuals from the lab accompany some of these scientists to classified areas.

We have rejected potential visitors who raised suspicions, a criteria that is important as these scientists have ties to intelligence agencies. As I said, we have rejected groups and people, and it is working well. And Mr. Curran can provide further details if you so choose.

Chairman BLILEY. Thank you, Mr. Secretary.

Mr. Secretary, I have some questions about your proposal for a new security czar to coordinate the disparate security functions of the Department. I have seen reported that the czar would have control over the now cross-cutting 800 million security budget, which I believe would be essential to effective reform. But I note that in the Department's recent press release announcing the hiring of the czar, there is no mention of whether he will, in fact, have this power which now resides with each Assistant Secretary and lab director.

What are your plans in this regard? Will the czar have total budget control and authority to order and pay for security upgrades, or will the labs and the Assistant Secretary still be able to block reforms?

Mr. RICHARDSON. I created a czar, Mr. Chairman, to precisely ensure that security is given a higher priority than it was before. And it certainly was not given a higher priority before. General Habiger for the first time—all the security budgets will be formed separately from the rest of the program budgets. And we are talking about \$800 million.

What we talk about in cross-cutting budgets is General Habiger will work with all the relevant Assistant Secretaries throughout the whole complex and make sure that security is given a budget,

that it is properly administered, that it is handled, that it is not siphoned off. In the past what you saw was security budgets siphoned off the programs. If you are a program director, you spend it on your program and not security.

Chairman BLILEY. Well, who is going to have the final say if he says, I need this security at Lawrence Livermore, and the lab director says, well, we think that is too much, we don't think you need that, and I am the Assistant Secretary?

Mr. RICHARDSON. The security czar will have the ultimate say because he will have my backing, and he will determine the security budgets.

Chairman BLILEY. All right. Well, thank you very much.

Senator, your report is quite candid, and I commend you for it. I know that before it was issued, you briefed the President and other White House officials on your findings and recommendations. What was the White House reaction, and did anyone over there indicate to you whether the President was prepared to accept your reform recommendations?

Mr. RUDMAN. Mr. Chairman, it was a strange event. This was not to be released until last Thursday. I got a call in New Hampshire on Sunday the President wanted to be briefed on it Monday morning last. So I flew back here, got the staff to get it together, got it printed overnight, and saw him at 9 in the morning. He had a call coming from Mr. Yeltsin following that. So we finished our briefing. He thanked us, told me he appreciate what we have done, would read it very carefully, and the phone rang. So I have no idea what he thinks about it.

Chairman BLILEY. Thank you. I see my time has expired.

Now, I would like to recognize the gentleman from Michigan, the ranking member, Mr. John Dingell.

Mr. DINGELL. Mr. Chairman, I thank you. Mr. Chairman, I ask unanimous consent my opening statement be inserted in the record.

Chairman BLILEY. Without objection all opening statements will be inserted in the record.

Mr. DINGELL. Mr. Chairman, I wish that 5 minutes were enough to express the high regard that I have for Senator Rudman and to welcome him back, and also to welcome our old friend, a former member of this committee, the Secretary.

Senator, the laboratory directors at Los Alamos and Lawrence Livermore labs are employees of the University of California, not the Department of Energy. The lab directors have day-do-day responsibility for security and computers, physical security, other types of security. The government basically employs the University of California as a contractor to manage employees and lab facilities.

You talked in your report of the culture of the defense laboratories, regarding it as arrogant, fractious, saturated with cynicism and disregard for authority. You stated that to this day the laboratories are fighting security changes. You—shouldn't we fire a contractor who behaves this way?

Mr. RUDMAN. This was not within the ambit of our charge, but I am never one to avoid a direct question, Congressman Dingell, so I will answer you. I think that the Secretary ought to look real hard at every contractor that deals with DOE.

Now, let me say from a scientific point of view you cannot beat what they have done so far. I think they are extraordinary.

Mr. DINGELL. But they provided a good bit of it to the Chinese.

Mr. RUDMAN. I did not have that in mind, but of course you are correct. But I would make the observation that certainly the Secretary is going to have to look at all its contractors, which, if I am correct, the Secretary's predecessor fired a contractor at Brookhaven for misdeeds and replaced that contractor. I think you have got to be very careful changing contractors. These people do very good work.

As you know, I am not from California, Mr. Dingell, I am from New Hampshire, so I have no constituent interest. But it seems to me that they not only have to do good science, but they have to do good security.

Let me tell you something that may surprise the Secretary. I was going to tell him this right after the hearing this morning, but he left and headed over here, and I just missed him. I read a report last evening, we have good sources at PFIAB, from an employee at one of these laboratories who thought that the idea of computer security training today was nothing but—to use a polite word—hogwash, and he would not attend.

Now, let me just say that there better be some discipline in this process or—it is one thing to lay down rules; it is something else to get these people to obey these rules, which is one of the reasons we want to see this thing carved out a bit.

Mr. DINGELL. Well, I would like to do a little carving on my own, but it would probably take place on the persons of some of the people who have been violating security.

Mr. Secretary, why don't we fire these contractors if they behave the way the Senator and his commission say? Why do we keep people on who are security risks and who are arrogant, haughty and resist change?

Mr. RICHARDSON. Congressman, I have set a new policy with contractors. In most every case since I have been on board, we have recompeted contracts. We think that this is a good use of taxpayer money. This is in line with what the Congress wants to do and gets us a better bang for the buck. I will reassess—I personally get involved in look looking at every contract. I will look at the lab contract. I will say that we have had dramatic improvement in the attitude of the lab employees in terms of observing security procedures.

What Senator Rudman mentioned is that I ordered a stand-down the last 2 days after reading the Rudman report. A stand-down at the nuclear weapons labs is—basically I shut them all down for 3 days—2 days, so that we look at all security, cybersecurity, computers and see where we are.

Now, I would wish you would tell me about this employee. I will say one more thing.

Mr. DINGELL. My time is limited, Mr. Secretary, and I do this with all respect. We have talked about a semiautonomous or independent or semi-independent agency. Frankly, we have seen this kind of structure. It is call the Atomic Energy Commission. It didn't work. It had no accountability. Every place it dealt with is now a cesspool of contamination, atomic and otherwise. It dripped

abuses, and it was run not by the U.S. Government, but by the contractors.

How is it we can expect a semiautonomous agency to behave any better than the AEC did in times past?

Mr. RUDMAN. Fair question, Mr. Dingell. Let me simply say that that is why we think it should not be—even though we gave the Congress two independent kinds of looks at it, one totally autonomous, like NASA—we looked back at the AEC experience, the folding in of all these agencies, we believe it needs Cabinet-level supervision. That is why we believe it ought to be within the DOE as an agency or an administration. As a matter of fact, as the Secretary I am sure will tell you, his latest proposal almost mirrors ours with some exceptions, but does not make it semiautonomous, creates an Under Secretary. We believe that because this gentleman will not be there more than another 18 months, unless he is truly a glutton for punishment and wants to serve another 4 years, I assume that General Habiger might be there or might not be there, I assume Mr. Curran might be there or might not be there, we are concerned about the future. That is why we want to carve it out, if you will, semiautonomous.

I don't think the AEC is a good example. NSA is a much better example.

Mr. DINGELL. I ask unanimous consent to be permitted to send written questions to our two witnesses and they be inserted into the record.

Chairman BLILEY. Without objection, all members, since time is extremely limited today, will be able to send written questions to the witnesses.

At this time I would like to recognize the gentleman from Texas, the chairman of the Energy and Power Subcommittee, Mr. Barton for 5 minutes.

Mr. BARTON. Thank you, Mr. Chairman. And I am basically going to give a statement, then if I have a chance ask a question or two, and be around for the second round. I think this is the most serious issue that has come before our committee in the time that I have been on it. I was chairman of the Oversight and Investigation Subcommittee the last two Congresses and has been pointed out I am now chairman of the Energy and Power Subcommittee.

I am going to read some of the comments that were in the Rudman report; talks about a feckless system of control of classified documents, underfunded and poorly trained counterintelligence programs, security methods that were naive at best and dangerously irresponsible at worst. That is a direct quote. It also talks about the fact that these problems, when they were highlighted, were blatantly and repeatedly ignored; placed the blame on organizational disarray, managerial neglect and a culture of arrogance both at DOE headquarters and at the labs themselves. Furthermore, the Rudman report states, and I quote again, the Department of Energy and the weapon laboratories have a deeply rooted culture of low regard for and at times hostility to security issues, which have continuously frustrated the efforts of internal and external critics.

Finally the report says, never have the members of the special investigative panel witnessed a bureaucratic culture so thoroughly

saturated with a cynicism and disregard for authority. Never before has this panel found such a cavalier attitude toward one of the most serious responsibilities in the Federal Government, control of the design information relating to nuclear weapons. Never before has the panel found an agency with the bureaucratic insolence to dispute, delay, and resist implementation of a Presidential directive on security as the Department's bureaucracy tried to do to the Presidential Decision Directive Number 16 issued in February 1998.

It doesn't say this in the report, but staff has indicated to the members of the committee that since we have been attempting to correct some of these problems, that same elitism and arrogance and cynicism apparently is still in the laboratory.

So here are my recommendations, and they are not members of the committee, they are not members of the subcommittee, but if I were the Secretary of Energy, and if I were the new czar that is sitting out there behind the Secretary, I would immediately take whatever steps are necessary to terminate the contract with the University of California, period. I would do that. I think they are the root of the problem.

I would centralize or ask for legislation to centralize the jurisdiction over the weapons laboratories within the House of Representatives. Currently they are between the Science Committee, the Energy and Commerce Committee and the Armed Services Committee. That is too many bosses. I think we need to take steps to centralize that.

I think if it is possible under the Federal service rules, every member of the weapons laboratory that it can be shown has exhibited this arrogance and indifference should be terminated. I think they should be asked to resign at a minimum. And if they won't resign, I think they ought to be terminated.

I think the weapons bureaucracy should be downsized by statute if necessary, by administrative action if possible.

And I think long term we should pass legislation to take the weapons laboratories out of the Department of Energy. I don't think the Department of Energy ever effectively managed them. I think it is an impossible task. I think we should take them out, put them in within the Department of Defense, the National Security Administration, or some other Federal agency. Some may say that that somehow violates the decision made after World War II to keep weapons developments in civilian hands, but I would point out that the Secretary of Defense is a civilian and is appointed by the President of the United States.

So, in short, Mr. Chairman, I think this is a very serious issue. I don't think it can be swept under the table. I don't think we can spin-control it. I think it needs to be addressed immediately, effectively, and comprehensively by the House and the Senate and with the full cooperation of the Secretary of Energy and Senator Rudman and his panel and General Habiger, if he is the man that is in charge of this.

So that is really not a question as much as it is a statement. I guess my question to the Secretary would be do you think we can terminate the contract at the University of California?

Mr. RICHARDSON. Congressman, I will make that decision after I assess their performance, their improvements. As I said, I have a policy of recompeting almost every contract, and I will apply the same standards at the University of California.

Mr. BARTON. My time is expired, but let me simply say when that came up several years ago, a decision was made by your predecessor not to recompute the contract, and it was given to the University of California again on a noncompetitive basis.

Thank you, Mr. Chairman.

Chairman BLILEY. The time of gentleman has expired. The Chair now recognizes gentleman from Pennsylvania, Mr. Klink.

Mr. KLINK. Thank you, Mr. Chairman. I am sitting here, and, of course, I have read, Senator Rudman, your report. I am still left with some blanks here. I hope you can help me fill them in.

Mr. RUDMAN. I will try.

Mr. KLINK. My problem is I don't see how exactly we can change that lab culture that you referred to in the report if the contractor is the same, the management is the same, the employees are the same. You cited that stack of reports, and Congress, and GAO and everybody else has done these reports, the Energy Department, various agencies within it have done these reports saying there are problems. Why in the world would this new administration pay any more attention to someone else when the defense program has ignored all of those reports, the DOE inspector general, General Accounting Office, all of the reports that you have cited? You said there were a hundred of them. You state that this group of people is even unconvinced of Presidential authority. So I can't understand why the same people in a new agency would all of a sudden become convinced of Presidential authority, in particular when an administrator would have a 5-year irrevocable term. Why would they be all of a sudden convinced to do what is right and see the light of God and bow to the altar?

Mr. RUDMAN. Let me try to answer that if I can. First they would not necessarily be the same people; and number 2, there would be a lot less of them.

I think that one of the most extraordinary things that has been written on this was written yesterday in the Wall Street Journal by a scholar at Brookings, Paul Light. Mr. Light did a little different analysis than we did and found the following: In 1979, there were 10 layers of senior bureaucracy with 56 senior executives. In 1998, there were 18 layers with 143 senior executives. It takes 15 to 25 layers to get from the top of the Department to the top of Los Alamos. So what we say is take a broom and sweep that intermediate bureaucracy out, put accountability in directly from a position where if something goes wrong, you know who to blame. We are not talking about the moving the deck chairs, Congressman, we are talking about really changing this organization.

Mr. KLINK. What I am really talking about is at the labs. You still—how do we know that we are going to have new people or we are going to have the same shrinkage of bureaucracy at the labs themselves? We understand there are going to be changes at DOE, but what is going to happen at the labs? Are we not going to have the same people there who have looked at science only and not

looked at environment, have not looked at security, have not looked at safety issues?

Mr. RUDMAN. Congressman, let me answer that question, which is a very good one. If there is accountability and strong leadership without intermediate layers of bureaucracy, and these organizations refuse to do as they are told, then I assume the Secretary would replace them. This is, after all, U.S. Taxpayer money even though they are being done by private universities or, in one case, a private contractor.

What we are saying is that there has been no way for this bureaucracy to work with these labs in an effective way because there has been no straight-line accountability. Too many people have had the responsibility to these labs, including an intermediate structure, which boggles the mind. And I submit that your staff ought to show the staffing of area offices, regional offices, field offices, laboratory offices. I mean, if anybody wants to avoid responsibility in this structure, they can.

Now if you are saying that the identical people that are there won't change, well, if you are right, then under the structure we are recommending, I guess they will be replaced.

Mr. KLINK. Mr. Secretary, what do you plan to do to defense programs? What changes do you have in mind for defense programs?

Mr. RICHARDSON. Well, Congressman I have addressed Senator Rudman's very accurate claim. I have put lines of responsibility that are very clear. Under defense programs, you will eliminate some of the middle layers. You give the Assistant Secretary for Defense Programs direct responsibility. You make that person accountable. You have the field offices that are responsible for defense programs report directly. Headquarters policy comes from Washington, it comes from me, and that is very clear.

I think one of the things that we need to do is acknowledge that there have been some reforms, and also to say that the labs don't look at health, don't look at safety, don't look at security. With all due respect, I will defend my lab employees. These are patriotic, these are strong-willed people, they are scientists, but the culture is changing.

How do you do that? By enforcing accountability, by having zero tolerance policy for leaks, by telling them who is the boss, defense programs and me.

I am ready to look at some of the Senator's very good recommendations, upgrade the defense programs, create an Under Secretary for Nuclear Stewardship. We are ready to do that, to strengthen that, to better deal with security, to better deal with many of the issues that you have asked.

Mr. KLINK. But, Mr. Secretary, do you agree with the comment of the reporter with Senator Rudman that you have this bloated bureaucracy and that there are, in fact, too many people doing too many things, and if that is the case at the top of defense programs, the top level of the defense level, not the intermediate level, the top level, are you going to get rid of some people, narrow that down to fewer bodies, more direct responsibility, or are we still going to just shuffle the bodies around?

Mr. RICHARDSON. I don't accept the claim that we have too many people. This Department has downsized 25 percent in the last 3

years, and I need strong people and plenty of good people to deal with the defense programs. We are talking about nuclear weapons here. If I need more security people, I am going to ask you for them. So I am not necessarily—I am changing the boxes around to eliminate the layers of bureaucracy, that is what I am doing with defense programs, to have more accountability.

The problem is that Los Alamos and Sandia felt that they were these independent operators, and they didn't have to answer to anybody. That has changed. And I think we have to acknowledge that that is happening. And I can tell you right now that the security stand-down that we are doing with Los Alamos and Sandia this very day, where everything has stopped, is working, and we are getting our act together. And I think to just say that we are beyond help or dysfunctional is not going to correct the problem.

Chairman BLILEY. The time of the gentleman has expired. The Chair now recognizes the gentleman from Ohio, Mr. Oxley.

Mr. OXLEY. Thank you, Mr. Chairman.

Welcome, Senator Rudman and our old friend Bill Richardson.

Senator, you mentioned in your report the culture of arrogance. Is that arrogance on the part of the DOE bureaucrats or on the part of the contract researchers?

Mr. RUDMAN. About equal.

Mr. OXLEY. And you also described the DOE relationship with the FBI counterintelligence experts up to the mid-1990's, quote, strained at best. Where does that relationship stand now? Is DOE making effective use of the FBI's capabilities?

Mr. RUDMAN. I believe Secretary Richardson has made major progress in the areas of counterintelligence and security, including relationships with those agencies and asking them for help, reaching out try to reorganize things. We commend the Secretary. Had I had a chance to give my entire statement, which, because of time, I realized I couldn't, you would have found a section in there that talks about what the Secretary has done.

We don't have a problem with that. We think he has done a great deal. But we have serious concerns that this bureaucracy has nine lives, and when Bill Richardson is off in New Mexico, wherever he goes after his tenure, and Mr. Curran and General Habiger are doing something else, and the new Secretary of Energy is faced with a different kind of an issue, like Secretary Watkins was when we had the problem with nuclear waste, environmental pollution, I submit to you that there isn't anything in the record of a hundred reports that convinces me that anything that the Secretary of Energy does here or that the Congress does that does not radically reform the organization of this, you will fail and fail once more. I will quote one of the finest corporate executives in America. Mr. Galvin, Motorola, was asked to do an independent study. What did he say, what, 4 years ago, 3 years ago? He said, unless you radically restructure this, it won't work.

Now, I understand bureaucracies. They are extraordinarily good at perpetuating themselves. And this one may after we are all done. PFIAB has no constituency, we have no obligation other than as citizens. We reached this conclusion inescapably after reading 50 other reports. I have high regard for the Secretary and the people

that he kept. I have no confidence that that will continue once he is gone.

Mr. OXLEY. Thank you.

Mr. Secretary, I would like you to respond to that particularly in relation to how this culture of arrogance or this strained relationship over the years came to exist between the FBI counterintelligence operations and your employees.

Mr. RICHARDSON. Well, Congressman, I know you have experience with law enforcement and the FBI, so I want to be particularly precise. Counterintelligence in the past, in this past administrations, in yours and mine, were not given the priority they deserved at the labs. Counterintelligence types were dismissed, security was not considered important, we are a science lab, et cetera. That has changed. And I can assure you that my relationship with Louis Freeh on many of these law enforcement issues, issues relating to the suspect, issues relating to the counterintelligence plan, is excellent.

I have an FBI agent running the counterintelligence program at all of our labs at DOE. It is Ed Curran, 37 years experience, has been involved in the Ames and Nicholson espionage cases. He is the best in the business. And I believe that our plan is working. Our counterintelligence budget has quadrupled. It is close to \$50 million thanks to the help of the Congress. We have FBI and counterintelligence people at each of the labs. We are not perfect. We can use some improvements, but we have got a good relationship right now.

And I want that counterintelligence director to report directly to me, to have direct access to me. And I have some concerns about that counterintelligence person reporting through another entity. But I think this is something that we can work out.

Mr. OXLEY. What other entity?

Mr. RICHARDSON. Well, under a semiautonomous agency, I just want to make sure that the counterintelligence chief has direct access to me and reports directly to me.

I want to make one final point, Congressman Oxley. We have said we are ready in the administration to codify many of these changes suggested by Senator Rudman and by Congressman Cox and Dicks' committee. Many of you all already voted in the armed services bill for some codification in the counterintelligence area, provisions that we think are quite good.

Mr. OXLEY. Thank you, Mr. Chairman.

Chairman BLILEY. The time of the gentleman has expired. The Chair now recognizes the gentleman from Ohio, Mr. Sawyer.

Mr. SAWYER. Thank you, Mr. Chairman.

Thank you both for being here and for your candor today.

Mr. Secretary, the recommendations that have been made by Senator Rudman's panel have focused on certainly the highest risk arena of the work that you do in terms of nuclear weapons. But let me ask you, are there other arenas that demand security that are unaddressed by the report as you understand it?

Mr. RICHARDSON. Yes. And this is why I want a security czar that deals with the entire complex. We have security problems in our nuclear materials in fissile materials. For instance, Rocky Flats contains nuclear materials. It wouldn't be covered under this very

good reorganization that the Senator has proposed. And what I am simply saying is let's go beyond his security concerns for the nuclear weapon complex. Let's deal with security at science labs, too. You have sites in Ohio that deserve better security. And so what I want to do is have a comprehensive approach to security. This is why we have General Habiger as the security czar, a czar that would control and be able to deal with security across the complex.

Mr. SAWYER. Let me offer another thought that underlies, I think, a great deal of what both of you are saying. The culture of science, it seems to me, has always been made as rich as it has been in the United States by its openness, by the culture of peer review, of sharing ideas, leaving them open to competition and letting them be criticized.

That is clearly in direct conflict and in deep tension with the kind of work that is done in weapons labs and in the settings where the science that underlies weapons technology is developed. It seems to me that part of our problem is to try to retain the richness of that scientific interaction and the capacity to question one another at the same time we are protecting the security of the technology. Would either of you care to talk about that and the consequences of the two different structures that you have offered for that particular tension between science and technology and weapons?

Mr. RUDMAN. Mr. Sawyer, I will be brief. You have just eloquently essentially stated one of the things that we state in our report. In fact, we say in the report, and probably not as well as you said it, with either proposal it will be important for the weapons labs to maintain the scientific contact on a nonclassified scientific research with other DO labs and the wider scientific community. To do otherwise would work to the detriment of the Nation's scientific progress and security over the long run. This argument draws on history. Nations that honor, advance freedom of inquiry have fared better than those who have sought to arbitrarily suppress and control the community of science, which is what you have said.

I happen to think that you could do it quite well in either model that we have advanced. Certainly the current model promotes that, but unfortunately it allows other things to happen.

Mr. SAWYER. Mr. Secretary, could you talk to that point as well?

Mr. RICHARDSON. I think we have a little bit of a difference, because if you look at these labs, you go to Los Alamos, Sandia, Livermore, right next to each other you have nuclear weapons work and life sciences. You have environmental science. And I am concerned, by giving such separation, that you are going to cutoff the essential science work from the weapons work. It is not a very big difference that we have, because I think we could accomplish both by acknowledging that the weapons labs, at least the nuclear weapons labs, their major mission is national security work. And we are ready to create an Under Secretary that gives them priority, that gives them strength. What I don't want to do is blur the lines of authority that I would have between the two science and national security components.

Mr. RUDMAN. I would simply say, Congressman Sawyer, if you look at page 47, in the interest of time I am not going to read it,

the very point that you have just addressed with the Secretary is covered there. We agree with you totally, and we think we have addressed it in this report. The middle of page 47.

Mr. SAWYER. Mr. Chairman, I see my time has expired.

Chairman BLILEY. The Chair now recognizes the gentleman from Michigan, Mr. Upton.

Mr. UPTON. Thank you, Mr. Chairman.

And welcome to you both, our two witnesses today.

As I have begun to look at the Rudman report, and I have looked over a number of the GAO reports and talked to folks at DOE, I know that there is no more important a job than security at these labs. As I talk to constituents across the country, they want to make sure that, in fact, these labs are safe. And they are appalled, as you indicated, Senator Rudman, in your testimony over some of the details that have been shed in the New York times and other reports.

And, Secretary Richardson, I notice back in May, on May 25, you said, I can assure the American people that their nuclear secrets are now safe at the labs. Yet when I see and read the Rudman report and enormous backlogs of security, background checks that haven't been undertaken, the polygraph tests, we look at some of the labs in terms of, you know, the hogwash item that Senator Rudman raised, it doesn't seem like it all comes together. And it almost goes back to 5 Senator Rudman's comments at the very beginning when he said that there were folks that wanted to just delay and delay and fight off every major reform, and in the end nothing happens, and afraid that a few years from now the same report will be back. How do you put the two comments in sync?

Mr. RICHARDSON. Well, first of all, I think if you read Senator Rudman's report—and I will let him speak for himself—he does acknowledge that progress has been made in security and counterintelligence measures. He does say he doesn't think we have gone far enough. But I think progress is acknowledged.

Second, what I meant in that statement was that we were addressing the security lapses with our best efforts at counterintelligence, our best efforts at security. I can say to you that the Presidential directive of February 1998, his counterintelligence measures are in place. I think that is acknowledged in the report; second, that 85 percent of the top tier recommendations are in place, we have a polygraph plan in place. You got to do it carefully. You can't just polygraph anybody. It has got to be done on substance, not on life-style. It has got to be prepared properly because they are controversial. And we are one of the few agencies that is doing it.

Our foreign visitors program, I believe Mr. Curran will tell you, 100 percent of the background checks are taking place.

Mr. UPTON. So that is happening now; the background checks on all foreign visitors are happening now?

Mr. RICHARDSON. Yes.

Mr. UPTON. Is that for folks that are staying here more than 30 days or less?

Mr. RICHARDSON. This is any scientist from a sensitive country, 100 percent of the background checks are being done now.

They are happening. And I have said—I have been on the record on this before, but what I want, Congressman, is if there is a problem and somebody says, all right, your statement is not 100 percent correct that the nuclear secrets are not safe and secure, I want to see the evidence. Show me who is not observing counterintelligence and security policy. Give me some concrete examples, and I will take action.

I am the one out in the trenches doing this, and I want to hear directly. I think Senator Rudman has pointed out some areas that we need to work on. We are doing that. Congressman Cox's report did, too. But I need direct evidence so I can correct the problem. There have been some that say, well, you know, the security is not happening. I want to see tangible proof of violations of problems so I can act on them.

Mr. UPTON. Now, you said—Secretary Richardson, you said in your opening statement that the Rudman report was hard-hitting and thorough, yet you told Los Angeles Times last week, I want to see evidence from the malcontents he has been talking to, referring to Senator Rudman; I want to see evidence of nuclear security problems.

How does last week fit with this week?

Mr. RICHARDSON. Well, very clearly.

Mr. UPTON. Other than the fact that you are here today.

Mr. RICHARDSON. Well, very clearly. A lot of malcontents went to Senator Rudman. I want those malcontents to come to me and tell me where these problems are. You know, I am ready to talk to dissidents and malcontents, and I have done so, but I want the evidence. I want to see where we are weak. That is what I meant.

And I encourage the process of whistle-blowers, from those who see problems. As part of these reforms, there is an independent commission that is being proposed by Senator Warner of Virginia. I am ready to accept it, outside scrutiny, independent oversight, something this committee has always wanted, independent oversight so we can send somebody to the labs on a moment's notice unannounced to see if there are problems. I am ready to undertake that scrutiny.

Mr. RUDMAN. May I just have one brief response? There was something said there I cannot leave. I am not sure the Secretary meant it the way it came out; at least I hope he didn't. We didn't have any volunteers come to see us. We didn't have a bunch of malcontents, you know, coming in from New Mexico and Oakland and Ohio and saying, let me tell you about this horrible place that I work. We carefully selected who we invited to come in to an intense session before the PFIAB, behind closed doors. And a lot of those folks, I will tell the Secretary, were fairly high-level folks in your Department or across the country, former Secretaries, former deputies, current people with high positions. They weren't malcontents. They were people who had concerns.

I want to just correct that mischaracterization.

Chairman BLILEY. Thank you.

The Chair now recognizes the gentleman from Wisconsin, Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman, and welcome to you both. It is a pleasure to have you here. You will have to excuse me.

I just came in late, and, frankly, I am just trying to get up to speed on this, so some of my questions might be pretty elementary. They pretty much relate to the whole issue of external regulation, and I know, Senator Rudman, that you were the one who basically chaired the report or put the report together.

In preparing this report did your panel make recommendations as to whether the Department's nuclear programs should be subject to external regulation?

Mr. RUDMAN. Would you define "external regulation" for me?

Mr. BARRETT. No, I won't. I am not saying that to be flippant. I am just curious so I have a better understanding as to whether you did look at the whole issue of external regulation.

Mr. RUDMAN. We did not. That was not within our charge at all. We looked at security issues alone. And the answer is no.

Mr. BARRETT. Okay. Just because it wasn't part of the charge.

Mr. RUDMAN. It was not at all.

Mr. BARRETT. I may be showing you my ignorance, but I want to be sure I understand exactly what the panel did.

The Defense Nuclear Facility Safety Board, what do you see as its role, and what did the panel see as its role?

Mr. RUDMAN. Well, they are an oversight group. There are several others. We seriously question whether they have been working the way they should work. We believe that one of the reasons none of these oversight groups works very well is it is too much bureaucracy to layer.

I will disagree with an earlier statement that the Secretary made. I don't argue with the fact that you might need more security people, more FBI people, but I will tell you when you look at the slots, and all of the offices leading up above the laboratories all the way to the Secretary, I think it is so cumbersome up there, and that was the point of an interesting piece by a scholar at Brookings yesterday that was in the Wall Street Journal. I think you have got to slim the place down.

Mr. BARRETT. I understand that, but, again, so I understand the role of your panel, did it gauge the performance at all of that board?

Mr. RUDMAN. We did not particularly look at the performance of the board. We did not. We looked at the performance of another board, I think, with another name.

Now, what is the name of that one?

The Security Management Board, which was supposed to solve some problems, only met, I don't know, two or three times over a long period of time, and some of the members felt that they didn't accomplish very much, and I guess they were right.

Mr. BARRETT. Okay. And under your proposals would the defense board continue to exist? What role do you foresee?

Mr. RUDMAN. We have left that open. That is up to the Congress to decide. We believe that Senator Warner has made a pretty good proposal on the Senate side. It was made before the report was written, so we embodied it in this report as an independent oversight board. Now, the Secretary might want other oversight boards, but I would think one good one over this part of the agency would suffice.

Mr. BARRETT. Would your recommendations about a new oversight agency, is that—again, is that driven by the security concerns?

Mr. RUDMAN. It is driven by a history that there has not been sufficient oversight. And let's face it, Secretaries of departments as big as this one have a lot of other responsibilities. If you have a good independent oversight board that reports directly to you, made up of outsiders that you pick carefully, they can be of enormous help. I might point out that is precisely what the PFIAB is of the President of the United States.

Mr. BARRETT. The reason I ask you about security, there are other issues with nuclear facilities like health and safety. Who would oversee those issues?

Mr. RUDMAN. The Secretary is better to answer that question. We did not address that.

Mr. BARRETT. Okay. Mr. Secretary, again, if the defense board were not to exist, what would be the—who would be responsible for the health and safety concerns at the facilities?

Mr. RICHARDSON. Well, under my reorganization, health and safety are given top priority, and I think they should be. We have an Office of Safety, an independent oversight board and Office of Safety that exists today. Safety has to be a top priority. I think that every entity should be subject to health standards. I don't think anybody should be immune just because you are a nuclear weapons complex. I think that there should be independent oversight across the board.

Now, I am willing because of the importance of nuclear weapons work, because of the security concerns that have been raised, to give the nuclear weapons area an Under Secretary, an organization of some kind, to better streamline. But I am wondering whether we are excluding from proper oversight an entity that like anybody else, like me, like you, should conform to certain safety and health standards.

Mr. BARRETT. Thank you, Mr. Chairman.

Mr. UPTON [presiding]. Thank you.

Mr. Cox.

Mr. COX. Thank you very much.

I would like to pick up on the topic that was under discussion a moment ago, and that is the malcontents, the people that are coming in and talking to you, because I know that the Secretary feels that he needs more evidence that these problems exist or that otherwise we are—actually I ought to let you tell me what you think about why you are saying you need more evidence. What do you mean by that, Mr. Secretary?

Mr. RICHARDSON. Well, what, Congressman Cox, I will do is go straight to your—the claim in your report that you made, and that was that there were serious severe security problems remaining. And I didn't get the sense in your report that the—which was completed in December—that you had acknowledged the number of measures that we have made, and that was my reference. Now, again—

Mr. COX. I mean today. By the way, as you know from having read the classified as well as the unclassified report, and now enough of this has been made public that we can state is it here,

the source for that is Ed Curran, who testified under oath, and we quoted from him with quotation marks around what he said in the transcript.

Mr. RICHARDSON. But very clearly to you in open testimony amended that to say—

Mr. COX. No. No, it was not testimony, it was on a Sunday news show months later.

Mr. RICHARDSON. Well, he very clearly stated that at this point we had achieved 85 percent of our reforms.

Mr. COX. No, what he told us under oath it was going to be sometime in the year 2000 before we could get around to this.

Mr. RICHARDSON. I wish Mr. Curran were here, but he contradicts what you are saying.

Mr. COX. Well, he never did.

Mr. RICHARDSON. Well, I think you should ask him.

Mr. COX. Let me not argue with you here, because I think the problem we are having is that we have now, the President's advisory board coming to us, and they did a very fine job, and their criticism of them was much more harsh than what was in our select committee report. And what they are saying is that they listened to people in a setting that permitted them to let their hair down. These weren't malcontents that walked in.

I guess my question is what would happen if we said instead of PFIAB, the President's Foreign Intelligence Advisory Board, giving people that they selected the opportunity to come in and say, you are not going to be terminated for what you tell us, there is no transcript made of what you said, we are not going to in any way interfere in the process of taking your testimony with what it is you have to say; what if instead we had to wait until somebody in a much more formal way had to come in and talk to you, the Secretary. Would we ever know anything?

Mr. RICHARDSON. I have not discouraged this process of either of you or Senator Rudman talking to anybody he wants. In fact, I have rewarded somebody who I felt was a whistle-blower who made a difference, who persisted, a man by the name of Mr. Trulock, who provided a lot of evidence to your committee. So I don't care who talks to you. I don't care what scrutiny you put me under. All I want is if you have evidence of problems, that you tell me about those problems; and second, if there is progress being made, if there are changes being made, if these changes are working, as Mr. Curran and others are trying to implement, that you acknowledge it. That is all I am asking. And I fail to see that acknowledgment of the dramatic steps that we have taken.

Mr. COX. As you know, our report was written in December 1998, and it was accurate as of that date. So I would ask the chairman of the Investigative Task Force and the president of the President's Foreign Intelligence Advisory Board, who is with us today, who I wish to commend for your work, what has changed, and do you discount the evidence that you heard in these interviews that you conducted? Is there enough change now that we are in June that we can say these problems are behind us?

Mr. RUDMAN. No, of course not. And I don't think the Secretary—it seems like ships passing in the night. I don't think the Secretary is testifying here today that everything is safe and secure. I think

the Secretary is probably saying they put a lot of things in place to try to make that happen. I will tell you unequivocally I don't believe that no matter what they do, with all the—if you passed a bill tomorrow, the President signed it, you did exactly what we said, created an agency within the Department, kept counterintelligence reporting to the Secretary, did all of that, it will take a couple, 3 years before you can have an assurance that you got a safe situation out there. Counterintelligence, poly graphing, all of this takes enormous amounts of time.

No, I don't think that it is safe now. I don't think the Secretary does. But let me just disagree with one thing so everybody knows where I am coming from. There is not a question of whether or not you can prove that the Cox committee's findings were all right, or some were right and some were wrong. You and I have discussed this, Congressman Cox. We say in our report, we agree with a lot of it; we don't agree with all the conclusions. And people can disagree on the same intelligence analysis.

What we do say is that it is the opportunity for espionage that your committee essentially reported on, that Mr. Trulock reported on, that was of extraordinary importance to the country, is the opportunity—it is the opportunity for further mischief that we are concerned about. We think the one way that you get that changed is by streamlining this agency and making it very, very functional and reporting directly to the Secretary. That is what we think.

Mr. COX. My time is expired. I wonder if I might just ask for a brief update on very important issue in your report. In the President's Foreign Intelligence Advisory Board report, you state that remote dial-up access to unclassified networks without any monitoring by the lab is possible at least as of the date of your report. Is that still possible? Do we still have problems with—

Mr. RUDMAN. I have someone here who is an expert in that area from the Intelligence Community. If you will give me 30 seconds, I will answer your question.

We cannot give you any more information that is more current than 13 days ago; 13 days ago that statement stands. Possibly something has done to change it. That was true 13 days ago.

Mr. COX. With your permission I would ask the Secretary then to respond.

Mr. RICHARDSON. I think it applies to unclassified systems only.

Mr. COX. Yes. We are talking about the unclassified network, such as the network to which the millions of lines of nuclear codes were transferred.

Mr. RICHARDSON. I understand that there is a firewall up, and the only thing that is accessible is the Web pages and the unclassified provisions. So there is a firewall.

Mr. COX. Has that changed in the last 13 days?

Mr. RICHARDSON. Yes. In the last month.

Mr. COX. I just wonder if you are talking about before or after the 13 days ago date that Mr. Rudman is talking about.

Mr. RUDMAN. Congressman, let me just say—and we are in an open session, and you know this is—PFIAB deals with these issues all the time. This is something I know something about. I don't take any confidence whatsoever from the statement I just heard, that the Secretary may believe it, but I suggest he talk to some ex-

perts in cyberpenetration. These firewalls are penetrated all the time, and that is all I want to say. But it has got to be looked into very closely. And quite frankly, we have people that we have talked to that are the world experts on this issue, and I expect you could talk to them, too. I am sure the Secretary will.

I just don't think we ought to give people assurances about things we are not certain of. This did not happen on Bill Richardson's watch. He is not responsible for what happened, he is trying to fix it, and I don't think he ought to try to defend something that he can't defend. That is my honest opinion. I will tell you what I think here.

Mr. RICHARDSON. I am not trying to defend it. You asked me a question whether firewalls have been set up, and I answered yes. Are they perfect in the unclassified area? No. The firewalls that deal with security and classified information, we are going through a stand-down right now to determine that. My people tell me that they are. Again, we need time to do this right. And that is exactly what we are doing.

Mr. COX. Mr. Chairman, I thank you, and I wish again to thank both of our witnesses, which I should have done at the outset of my time, for the energy and work that have you been in here, and notwithstanding what I take to be a little defensiveness on the part of the Secretary, we do recognize the work that you have done, and I publicly recognize it and wish to do so here again today.

And insofar as Mr. Curran is concerned, I think it is pretty clear that what he was telling our committee he was telling us in real time at the end of 1998, and what he has said subsequently is that that situation has been changed, and I think it is your point here today that you are trying to accelerate that process where we were at the end of 1998, when our committee was investigating this, was that we were off in the year 2000. And you hope now you can accelerate that. And obviously the purpose of this oversight is to help accelerate that process, and we take very seriously the expressions of Senator Rudman that we shouldn't have to wait for a newspaper account or media reports or what have you in order to do our job up here, and the extent of our job here today is to continue to focus white heat on this. That is what we intend to do. I thank the chairman.

Mr. UPTON. Mr. Burr.

Mr. BURR. Thank you, Mr. Chairman. Mr. Secretary you have used some words over and over again. One of them is "polygraph." let me just ask you, the Washington Post yesterday reported that the first DOE employees to be polygraphed under the new program, and the only ones so far, are 57 of the 60 members of the counterintelligence staff. Is that an accurate report in the Washington Post?

Mr. RICHARDSON. Yes, because we are the source of that. I think it is close to 60 now.

Mr. BURR. Let me ask you, do you know Stu Nagurka? Am I correct?

Mr. RICHARDSON. Yeah. He is my press Secretary.

Mr. BURR. Is he here today?

Mr. RICHARDSON. I don't see him.

Mr. BURR. Let me read a statement that he made on May 30 to the Sacramento Bee. The Energy Department spokesperson said orders have gone out for a large number of Department scientists to be subjected to periodic lie detector tests. I know they have begun, Nagurka said.

Is that an inaccurate statement on his part that, in fact, poly graphs had begun with Department scientists?

Mr. RICHARDSON. His statement is accurate. He said order.

Mr. BURR. No, his statement says, I know they have begun. They have gone out, I know they have begun.

Mr. RICHARDSON. The orders have begun.

Congressman, let me just tell you about poly graphs, because this was a very controversial provision that I approved amidst great opposition within the labs, within the bureaucracy, within the government, within civil liberties groups. If we are going to do poly graphs—and by the way, they began in April, I believe the 27th. When we have polygraphs, you have got to be careful how you do them. They have to be based on national security.

Mr. BURR. So all scientists are not going to go through a polygraph.

Mr. RICHARDSON. That is correct.

Mr. BURR. Let me ask you about the contract, if I could. You stated earlier that you would consider the University of California contract based upon the facts. And I would like to look at some of those facts. Does the contract as written currently require the University of California to carry out the security directives that are set by the Department of Energy?

Mr. RICHARDSON. Yes. All our contracts have—ensure that security and other aspects are adhered to, yes.

Mr. BURR. Did you in 1995 in a letter to Secretary O’Leary ask her to open up the bidding process so that people could bid against the University of California for the Los Alamos contract?

Mr. RICHARDSON. Yes, I did.

Mr. BURR. To your knowledge, has the university ever been penalized through a fee deduction based upon their annual evaluation rating that is done by the Department of Energy?

Mr. RICHARDSON. The policy now is that the subcontractor is penalized, and I believe at the time when I was a member of this committee, which has been my policy, which is that there should be open competition for all contracts.

Mr. BURR. In fact, is there not an annual evaluation rating that is done by the Department of Energy on all their contractors?

Mr. RICHARDSON. No, not on every contract. For some contracts—the University of California contract—there is at least a yearly component, yes.

Mr. BURR. In fact, one of those components is an evaluation performance on safeguards and security. And one was done last year on the University of California where they received a rating of excellent by the Department of Energy. Given what you know today, did somebody at the Department of Energy make an inaccurate evaluation?

Mr. RICHARDSON. I don’t know about that test. I do know that—

Mr. BURR. These are the ratings that DOE gives their contractors based upon their performance.

Mr. RICHARDSON. I don't know if that is accurate. I have never heard of that excellent rating. When I recently conducted very extensive security reviews in Los Alamos, which is the University of California, main contractee, did not receive an excellent rating. In fact, it was marginal. It was marginal. So I don't think your report is up to date.

Mr. BURR. I would challenge you to go back and look at the internal evaluation done for the purposes of whether there was a deduction of their fee based upon their lack to reach a good or above rating.

Let me ask you again, given what you know today, would you consider—not asking you for a definitive answer—would you consider a cancellation in their contract?

Mr. RICHARDSON. I can't give you that answer. I will make a judgment at the end of the term, and it is going to be based on whether they have performed well on security, whether they have achieved their scientific goal.

Mr. BURR. Do you believe they have fulfilled their security requirements based on—

Mr. RICHARDSON. Congressman, I don't want you to blame the University of California for the security problem. You should blame the Department of Energy personnel. You should blame Los Alamos. It is a collective blame. To set up the University of California as a straw man I don't think makes sense. Now, that doesn't mean that we shouldn't look at every contract, as I have, and I have generally recompeted almost every one, despite a lot of political pressure to the contrary. When the University of California contract comes up—and it is not up for a year, year and a half—

Mr. BURR. It is not up until 2002, and with all due respect to you, I certainly appreciate the effort that you have made. Part of my questions are to distinguish—if I could, Mr. Chairman—are to distinguish whose responsibility it is. We have tended to watch a process that I think Senator Rudman's committee has said that there is a tremendous lack of confidence that exists with the current DOE employees to carry out any internal revamping of the security measures at these facilities. Clearly that is substantiated if the DOE internal performance rating was an excellent on security and—

Mr. RICHARDSON. Congressman, that was before I came, and I don't know who did that. That is one of the reasons we need to reform the Department, because you get these ratings that are obviously wrong. That is what I want to change.

Mr. BURR. So your statement would be then, it is the Department of Energy's responsibility, it is not the University of California?

Mr. RICHARDSON. The Department of Energy contracts with the University of California. It should be a collective responsibility. It is not just one or the other. The University of California needs to do better on security. That is painfully evident. I am not taking that out. I am also saying to you, which maybe you are having difficulty accepting, is that we have made dramatic progress on security and counterintelligence with the labs, with the University of

California. The University of California has just undertaken a review of their own. Nobody is disputing that there have been security lapses. We are trying to fix it.

Mr. BURR. I appreciate the chairman's indulgence and would, just for the record, make the Secretary aware that the current contract runs out in 2002, but based upon the requirements, if the government were to open the bid process, the Secretary would have to notify the university by the end of next year. And my question didn't deal with the whether we would open the bid process, it dealt about would the Secretary, based upon his findings, consider cancellation of the current contract, which is certainly within the purview of the Secretary. And I yield back.

Chairman BLILEY. The gentleman from Pennsylvania, Mr. Greenwood.

Mr. GREENWOOD. Mr. Chairman, Secretary Richardson, I think my constituents would be a little bit surprised had they been aware of the fact that there were so many thousands of visitors going through these weapon laboratories. I think they would even be a little more surprised to learn that a lot of them were foreign visitors; might be shocked to learn that those foreign visitors were from countries like China. They would probably be knocked over if they knew that some of those Chinese visitors were intelligence officers, and they just wouldn't believe it at all if we told them that some of them were known spies. But all that seems to have been the case.

It is my understanding that the Department's Inspector General reviewed the last two Department status reports to the President of nuclear security, one in 1997 and one in February of this year. And the IG recommended that the security risk posed by the foreign visitors' program be upgraded in the reports and flagged for the President. But DOE, as my staff tells me, didn't do that, and at least once under your tenure that was the case.

Can you help us understand why the Department did not concur with the IG's recommendations for flagging this issue for the President?

Mr. RICHARDSON. Well, I don't know where your staff is getting this information. I do not believe I ever received any report like that. I can tell you that we have dramatically upgraded the foreign visitors' program. This was part of President's Clinton's Presidential Decision Directive 61.

Mr. GREENWOOD. I am told—if I may interrupt—the answer to your rhetorical question was from the Inspector General in the Department of Energy.

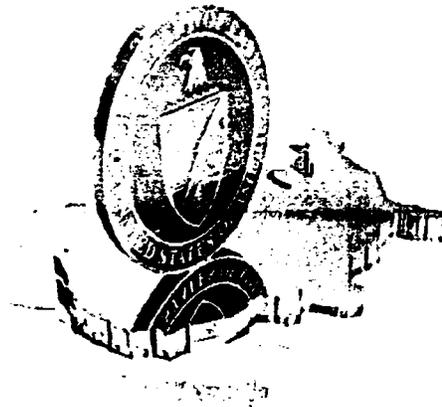
Mr. RICHARDSON. Well, you know, this is news to me. I believe very strongly that we have upgraded the security of this program. You know, I can say to you that the majority of the Congress has agreed with me, to keep the foreign visitors' program. Some of the measures that are in the armed services bills such as moratoriums, are a bad idea and other very strong controls over the foreign visitors' programs are good, and we will go further. But I am not aware of the inspector general saying anything to me or giving me a report about flagging the President on anything.

[The following was received for the record:]

As indicated by the actual Accountability Report excerpted below, the President has been fully informed of counterintelligence matters at the Department and had as a result, on February 11, 1998, issued a national security directive (PDD-61) to the Department to make improvements in this area. As the Report also indicates, the Department was reporting its progress in implementing these improvements as an emerging issue, including, as stated in the Report, the preparation and submission of an action plan to the President's National Security Advisor. This action plan was submitted to the White House on November 13, 1998. Although the Inspector General criticized the Department for not further elevating these issues in the Accountability Report, the Department believed that these counterintelligence matters had already been reported to the President through other communications, as evidenced by the President's issuance of PDD-61. Consequently, the Department did not agree with the Inspector General recommendation.

DOE/CR-0067

U.S. Department of Energy



**Fiscal Year 1998
Accountability Report**



National Ignition Facility

NS 2: Replace Nuclear Testing with a Science-Based Stockpile Stewardship and Management Program

Since the United States stopped nuclear testing in 1992, the Department of Energy has been working on replacing underground testing with a science-based program of stockpile stewardship. The Accelerated Strategic Computing Initiative is a program being developed to help maintain our existing aging stockpile through advanced simulation and modeling. In FY 1997, a major milestone was achieved with the installation of a one-trillion operations per second computer system. In 1998, DOE developed a three-trillion operations per second computer system which will provide weapons simulations that are larger and more complex than ever before. DOE's objective is to have a 100 trillion operations per second capability in place by 2004.

The National Ignition Facility, an experimental physics facility, is now under construction at the Lawrence Livermore National Laboratory in California. This facility will enable scientists to achieve the highest possible temperatures and densities attainable in a laboratory, simulating those that occur in the detonation of a nuclear weapon. Completion of the new facility, which was on schedule and on cost at the end of FY 1998, is planned for October 2003 although the first experiments are expected to be conducted in the facility by 2001. Project activities in FY 1998 included final site preparation, the award of two building construction contracts, and the establishment of manufacturing capacity at optic vendors.

Subcritical experiments are providing an improved understanding of certain dynamic material properties of plutonium, the fissile material in most nuclear weapons primaries, and are considered essential for assessing nuclear warhead reliability and safety in the absence of nuclear testing. These experiments also make a significant contribution to maintaining nuclear testing readiness. Only two experiments were conducted in FY 1998 although extensive preparatory work was completed for additional experiments expected to be executed early in FY 1999.

Management considers the Department successfully on track toward meeting this strategic objective.

NS 3: Ensure the Vitality of DOE's National Security Enterprise

Meeting national security requirements in this post Cold-War era has required the Department to reevaluate its nuclear weapons complex. Downsizing and modernization activities at several DOE sites will ensure that the U.S. maintains an appropriately-sized, cost-effective, safe, secure, and environmentally sound national security enterprise. Two key activities were underway in FY 1998. The first, the reestablishment of the Pit Production Program at the Los Alamos National Laboratory, is on schedule, and in February 1998, the first early development unit pit was successfully produced. A certified war reserve W88 pit is scheduled to be available in FY 2000 to meet DoD requirements. The second activity, the resumption of Enriched Uranium Operations at the Y-12 Plant in Oak Ridge, began in FY 1997. Scheduled activities in FY 1998 were partially delayed until FY 1999 when the final phase of the resumption is expected to be completed.

Counterintelligence

In 1998, President Clinton mandated immediate and significant changes to the Department's Counterintelligence Program. This mandate was the result of over half a dozen substantive studies critical of the Department's policies and procedures for handling foreign national presence at the national laboratories and our measures to counter the threats posed by these visitors. In response to the President's mandate, the Department created an independent Office of Counterintelligence and launched a major initiative to enhance the protection of sensitive technologies against foreign intelligence



and terrorist attempts to acquire nuclear secrets and other sensitive information from DOE laboratories. A 90-Day study conducted in FY 1998 resulted in a classified report with major findings and recommendations focused on:

- 1) accountability of laboratory directors for counterintelligence activities at their locations;
- 2) organization and management of the counterintelligence program;
- 3) security programs that support the counterintelligence mission;
- 4) weaknesses related to foreign visits and assignments;
- 5) the counterintelligence-cyber threat; and
- 6) FBI and intelligence community relationships.

The Department has delivered an action plan to the Assistant to the President for National Security Affairs that commits to achieving significant improvements in its counterintelligence program by adopting virtually all of the report recommendations.

Maintaining the capability to resume nuclear testing, consistent with Presidential direction, requires DOE to maintain test facilities and equipment at the Nevada Test Site and the nuclear testing skills of personnel at both the test site and the nuclear weapons laboratories. Subcritical experiments, two of which were conducted this year at the Nevada Test Site, and specially designed test readiness exercises maintain test readiness skills. In September 1998, a major exercise, that simulated a mass venting of an underground nuclear test at the site, exercised emergency response systems that could be needed during a nuclear test. Hundreds of experiments were conducted at weapons laboratory facilities during the year which exercised testing related skills and technologies.

The Department's Emergency Response program provides a national capability to respond to any radiological emergency or nuclear accident within the United States and abroad. During FY 1998, DOE radiological emergency response assets participated in 32 U.S. and Overseas exercises and 17 real-world events. Radiation accident management training was provided to 399 health professionals, and there was response to 224 calls for medical assistance.

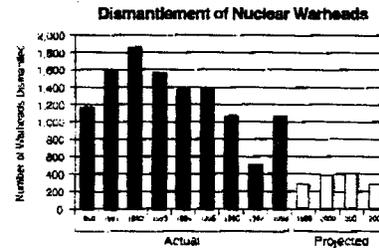
Management considers our efforts in meeting objective NS3 to be on track.

NS 4: Reduce Nuclear Weapons Stockpiles and the Proliferation Threat Caused by the Possible Diversion of Nuclear Materials

The Department takes an active role in reducing the global danger from weapons of mass destruction by reducing inventories of surplus weapons-usable fissile materials worldwide. Such efforts entail reducing our own weapons stockpile as well as international cooperation to dispose of surplus fissile materials, place excess materials under safeguards of the International Atomic Energy Agency, and reduce the demand for highly enriched uranium in civilian programs.

Since 1993, the U.S. has dismantled a total of 6,942 nuclear warheads that have been removed from the U.S. nuclear weapons stockpile. During FY 1998, 1,062 nuclear warheads were dismantled, meeting our detailed dismantlement schedules in a safe and secure manner.

On the international front, DOE has been working closely with Russia to dispose of surplus Russian plutonium that is a potential threat to global security. In



FY 1998, 24 metric tons of Russian highly enriched uranium were converted to low enriched uranium under DOE monitoring. Monitoring trips to Russian facilities, where U.S. officials observed facility operations subject to our agreement with Russia, have been successful.



Department of Energy
Washington, DC 20585

February 12, 1999

THE SECRETARY

Subject: Federal Managers' Financial Integrity Act Audit Report
Audit Report No.: CR-L-99-01

Dear Secretary Richardson:

We reviewed the Department of Energy's progress in implementing the Federal Managers' Financial Integrity Act of 1982. The review was made to assist you in determining whether the evaluations of the systems of management, accounting, and administrative controls were carried out in a reasonable and prudent manner by the Department for Fiscal Year 1998.

The Department's evaluation of its control systems was examined for compliance with requirements of the Federal Managers' Financial Integrity Act, the General Accounting Office's, "Standards for Internal Controls in the Federal Government," Office of Management and Budget Circulars A-123 and A-127, and Department of Energy Order 413.1, "Management Control Program." The results of the Department's evaluations of control systems have been included in an Accountability Report format, which is expected to be required by Office of Management and Budget in the future. This report, due annually no later than March 1, is intended to streamline reporting by providing critical financial and program performance information in a single report.

Our review was made in accordance with generally accepted Government auditing standards, which included tests of internal controls and compliance with laws and regulations to the extent necessary to satisfy the audit objective. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our audit. We assessed the draft Accountability Report and Assurance Memoranda along with supporting documentation filed by selected Departmental organizations to determine whether the results of their evaluations were accurately reported. Follow-up work was also performed to determine what corrective actions the Department took on the problems reported for Fiscal Year 1997.

The Department was generally realistic in reporting deficiencies, and the Assurance Memoranda of key organizations were more timely this year than in the past. However, the draft Accountability Report classified the counterintelligence area as an emerging concern. This classification was selected even though the Department identified control weaknesses in this area, and extensive Presidential and congressional attention has been focused on the counterintelligence program. In addition, the report did not clearly indicate the nexus between the management statement on reasonable assurance and the 10 reportable problems challenging the Department.



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Over the past several years, the Department has experienced dramatic changes. These included reductions in Federal staffing levels, budget restrictions and program redirections imposed by the Congress, continuing efforts to redefine the way in which the Department manages its management and operating contractors, and the adoption of performance-based contracting approaches. Implementation of these actions continues to represent significant changes in the internal control environment within the Department and warrants continued vigilance by management.

The Department was also in the process of remediating Year 2000 computer problems. While a number of actions to refocus the Department's efforts in this area have been undertaken, continuing high-level management attention is necessary to ensure that these efforts are successful. To aid management, we have issued a number of Advisory Memoranda addressing problems such as project management, systems testing, embedded systems, contingency planning, and data exchanges. Management has generally committed to addressing these issues. As emphasized in our Memoranda, we believe that adoption of a risk-based approach is necessary to protect workers and members of the public from consequences associated with unanticipated failures of systems related to health and safety or national defense.

In making the review, we coordinated closely with the Department's Office of Chief Financial Officer. A summary of our observations and analysis is enclosed.

Sincerely,



Gregory H. Friedman
Inspector General

Enclosure

Audit Report No.: CR-L-99-01

FEDERAL MANAGERS' FINANCIAL INTEGRITY ACT
ASSURANCE MEMORANDUM OBSERVATIONS CONCERNING
THE MANAGEMENT CONTROL EVALUATIONS PROCESS

The Department of Energy has conducted the required Federal Managers' Financial Integrity Act (Act) evaluations and implemented Office of Management and Budget requirements. Generally, the results of management's evaluations were accurately reflected in the Assurance Memoranda of the Departmental elements. These evaluations were positive steps in establishing and maintaining a strong management control environment within the Department.

Presented below are our observations on the Department's management control evaluation process and the progress in correcting and identifying reportable problems, as well as areas of concern relating to the results of our review.

PROGRESS

During Fiscal Year 1998, the Department continued to make progress in correcting previously reported problems. Fiscal Years 1997 and 1998 reportable problems are set forth in the Appendix. Through the issuance of a final rule on personal property and the integration of facilities management activities and improvement of financial and project systems, the Department has closed two problems previously reported: Property Controls and Infrastructure. Additionally, there has been improvement in the timeliness of Assurance Memoranda preparation and submission by key Departmental organizations this year.

AREAS OF CONCERN

Counterintelligence

Over the last 10 years, at least six substantive studies have been issued on various aspects of the Department's Counterintelligence Program. These reports have been critical of the Department's policies and procedures for handling foreign national presence at the national laboratories and the counterintelligence measures in place to counter these threats. The Department reported this issue in the Secretary's Federal Managers' Financial Integrity Act Report for Fiscal Year 1997 as an emerging issue.

On February 11, 1998, Presidential Decision Directive/NSC-61, "U.S. Department of Energy Counterintelligence Program," was issued and required specific improvements and due dates for actions to strengthen the Department's counterintelligence program. As a result of the Presidential mandate, the Department established the Office of Counterintelligence as an independent office and a comprehensive review of the Department's counterintelligence activities was conducted. An action plan addressing the problems identified by the review was sent to the Assistant to the President for National Security Affairs. In addition, the General Accounting Office testified twice in October 1998, to congressional subcommittees, on the persisting problems with the Department's foreign visitor program.

Although the Department's Accountability Report has disclosed counterintelligence as a continuing emerging issue, we believe it to be a reportable problem. Departmental and congressional reviews have identified internal control weaknesses in this area that, if not reported and corrected, could adversely affect the Department's credibility and adversely reflect on management's integrity. In our view, this situation meets the criteria of a reportable problem under the FMFIA process.

Accountability Report

In the Department's Accountability Report, 10 problems were identified by management as challenges that require attention. These challenges are areas where management controls have not provided reasonable assurance that program and administrative functions were performed in an economical and efficient manner consistent with applicable laws and that assets were safeguarded against the potential for waste, fraud, abuse or mismanagement. Under the Act, the Department is required to report to the President areas of vulnerability and the corrective actions taken. The draft report that we reviewed could be clarified by indicating that "the Department has reasonable assurance that it has management controls in place to ensure its operational activities are efficient and effective and comply with laws, except for the ten problems representing Departmental challenges that are described in this report".

OTHER MATTERS

The Department has experienced extensive changes in mission, resources, and management in recent years. These changes involved reductions in Federal staffing levels, budget restrictions, the redirection of many of the Department's programs, and continuing efforts to redefine the way in which the Department manages its management and operating contractors including the adoption of performance-based contracting. This represents significant change in the internal control environment within the Department of Energy. For example, many of the personnel who were separated during this period possessed invaluable institutional knowledge regarding key components and functions of the Department. Continued attention needs to be given to assess the impact of these

changes to the Department's management controls and accountability and make adjustments as appropriate.

The impact of the Year 2000 on Federal computer systems is another important government-wide issue. Due to the seriousness of this issue, our office conducted special reviews on the Department's Year 2000 compliance. These reviews found problems with the Department's remediation efforts related to project management, contingency planning, data exchanges, mission critical systems, and embedded systems. The Department has included a detailed status report on Year 2000 compliance in the Accountability Report. While there has been significant progress made in this area, continuing high-level management attention is necessary to ensure that the remediation efforts are successful.

APPENDIX

FY 1998 Reportable Problems

1. Surplus Fissile Materials (*Previously identified as Materials Inventory Management.*)
2. Environmental Compliance
3. Waste Isolation Pilot Plant (*Previously identified as Nuclear Waste Storage and Disposal.*)
4. Yucca Mountain (*Previously identified as Nuclear Waste Storage and Disposal.*)
5. Safety and Health
6. Contract Management
7. Project Management
8. Inadequate Audit Coverage
9. Unclassified Computer Security

FY 1997 Reportable Problems

1. Environmental Compliance
2. Safety and Health
3. Nuclear Waste Storage and Disposal
4. Contract Management
5. Materials Inventory Management
6. Infrastructure
7. Inadequate Audit Coverage
8. Property Controls
9. Project Management

FY 1997 Reportable Nonconformance Continued in FY 1998

Financial Management System Improvements

Mr. GREENWOOD. Okay. The Rudman report also mentioned that there was an incident where there was an illegal wiretap that was discovered in the lab, and that the responsible employee confessed, but was not prosecuted. If this question hasn't been asked in my absence, and I apologize if it has, was the tap discovered in a classified area of the lab?

Mr. RICHARDSON. We have no knowledge whatsoever about this report. And I directed my counterintelligence people to find out about it, and they gave me this answer, too.

I will say to you that there was a—there was a nonespionage-related incident that was presented by the FBI to the Special U.S. Assistant Attorney for Prosecutorial Action, a nonespionage-related incident. The special assistant declined to prosecute. The DOE then pursued prosecution under New Mexico State law as the act violated the New Mexico Law Code. The subject of the investigation pled guilty in court, was sentenced to a fine and probation. And the Department of Energy took administrative action against the subject that included the suspension of his Q clearance, reassigned him to an area that required no classified access. Based on the reassignment action, the subject was forced to accept an estimated \$30,000 reduction in annual salary. So this was a nonespionage incident.

Mr. GREENWOOD. I think we are all a little curious up here. What sort of information was which employee trying to gain through a wiretap? Is this a romantic issue?

Mr. RICHARDSON. I don't know.

Mr. GREENWOOD. Senator Rudman, did you want to comment on either?

Mr. RUDMAN. I would not comment on either one of them. They are both law enforcement matters. We illustrated them only to show the incredible things that were happening in these laboratories long before the Secretary became Secretary, and for which no apparent tough measures were taken.

Now, if I understand it correctly, one of the reasons we cited it is this individual—and, again, this is before this current administration—was reassigned. I think I am correct about that, he was reassigned, but his security clearance was taken. I don't understand how anybody who attempts to wiretap a government facility isn't fired on the spot and just shipped out. It would happen in any private company I know.

But there was such a permissiveness in this place about everything, and we illustrated that. There were other examples, but not in open session can they be talked about.

I mean, again, why the Secretary and his staff defend those kind of actions, if they are, is beyond me. They didn't do them.

Maybe there is something in the water over there. Maybe once you work in the Department of Energy, you defend it to the death, even if the people 10 years before were damn fools, as many of them were. I mean, this was foolishness. This person should have been fired.

Your constituents, told that somebody wiretapped and suddenly got their clearance jerked, but went back to work and got their pension and health care, they wouldn't believe it. They would get

fired from their job from wherever you are from in Pennsylvania with alacrity.

Mr. RICHARDSON. Congressman, I guess I just have a different way of facing things. If there is a problem, I try to fix it. I don't like to say, well, I wasn't here.

I gave you an answer, and the answer was the facts as I know them. I am not trying to defend that. I am not saying it was right. But, you know, to say, look, this was on the Republican watch, and, you know, there is a lot of incidents on the Republican watch, on the Democratic watch, it is a pervasive problem—we are talking about 20 years of problems—you asked me a question, and I am answering it. I am not defending anything, but I just have problems with the perception that just because it didn't happen on my watch I shouldn't try to fix it.

Mr. GREENWOOD. Well, perhaps—it is my understanding, Mr. Secretary, that—I need to yield back now—but that you are not aware of the details of this particular incident, and I asked you what information he was obtaining or she was obtaining through this illegal wiretap. Would you supply this committee with the answer to that question?

Mr. RICHARDSON. Either myself or the FBI would do that for you.

Mr. GREENWOOD. I appreciate it. Thank you very much.

[The following was received for the record:]

On April 28, 1997, a male Los Alamos National Laboratory (LANL) employee admitted to rewiring the telephone and recording telephone conversations of a female LANL employee while at work. He allegedly had an affair with the female employee and recorded the conversations for personal reasons.

On May 7, 1997, the facts of the case were presented to Assistant United States Attorney (AUSA) David N. Williams. AUSA Williams declined federal prosecution of this matter due to the personal nature of the recordings and the fact that the female employee did not work in a classified area or have access to classified information at the time this incident occurred.

Mr. GREENWOOD. Thank you, Mr. Chairman.

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

Mr. SHIMKUS. Thank you, Mr. Chairman.

Senator, first for you, I really appreciated that stack of documents on reports. What do we need to do so this report is not just another one that gets thrown in the stacks and then 2 years from now, instead of—what did you have six, six reports, or eight? I can't remember how many, but then you have seven or nine that you just say, and here is a report—

Mr. RUDMAN. There are actually 100.

Mr. SHIMKUS. [continuing] from June 1999 listing these problems again.

Mr. RUDMAN. What has to be done?

Mr. SHIMKUS. Yes, sir.

Mr. RUDMAN. I would say several things. No. 1, I hope whoever is elected President's in the year 2000 selects a Secretary of Energy that has some national security background and some, hopefully, technical background. I think it is a very important place.

Obviously, Secretary Richardson certainly has substantial national security background, and a lot of technical background from serving on this committee.

No. 2, I would hope that the Congress will adopt some sort of a major reorganization and streamline this agency.

No. 3, I hope the oversight, both within the agency and the Congress, is vigorous; and I mean vigorous. That is what I believe.

Mr. SHIMKUS. Thank you, Senator.

In part of your report, some of the DOE complex would not fall within the new entity that you proposed. Do you think that those other areas and their security concerns could fall under the proposed security czar as the Secretary has mentioned? Or how do you—how do we deal with those elements?

Mr. RUDMAN. This morning before the Senate, we had quite a discussion about that. I don't have a problem at all with some modifications of our proposal in terms of staffing of the semi-autonomous agency. Certainly the Secretary makes a good case that security probably belongs up at the top with reporting to him, setting policy, with some adjunct to that office located in the new Department or agency. I don't have a problem with that at all.

Counterintelligence, I think we still disagree. I think he can have counterintelligence policy at the top level. I don't disagree with that. You have to have strong counterintelligence down within the unit, and I don't think we really disagree with that. So there is a lot of agreement here.

The fundamental disagreement we have seems to be that the Secretary is having a hard time accepting an agency or an administration within a Department, which is fairly common at DOE and at Commerce and a couple of other places, I am told. But, you know, you will have to work that out with the Secretary.

I want to point out here that the PFIAB, this is an unusual role for the PFIAB. We don't have any great pride of authorship. We try to do a public service. It is up to Members of Congress, members of the appropriate committees who do this all the time with your staffs and the people on the Senate side, work with the Secretary and get this done.

But I surely hope that when you get it done, you don't leave it so that some future Secretary or some future Director of Security or some future Director of Counterintelligence cannot realize what everybody went through in 1998 and 1999 on this issue, which, by the way, is what normally happens in government. It is the next crisis that people pay attention to.

Mr. SHIMKUS. Well, I appreciate those comments, and I think that is reiterated in those other reports that you addressed; a new administration coming in in 18 months and another new wave.

I am also really struck by the testimony and your report on corporate culture. That is what we are really getting at, for lack of a better word. The corporate culture at the Department of Energy, especially on the issue of security, seems to be, based on a report of—and I want to choose my words carefully—really a failure, and your report recommends a way to break out of that corporate culture. I guess you said it great in your opening comments, the old saying we need a new wheel, and I would hope that this committee in its oversight, and if we can continue working with the Secretary and as we continue to move forward, keep this close at hand so that we can help rebuild the wheel for national security's sake.

With that, I will yield back my time.

Mr. UPTON. Thank you.

Mr. Stearns.

Mr. STEARNS. I thank the chairman.

In all deference to you, Senator Rudman, I think any CEO of any Fortune 500 company could come in and straighten this out in 90 days or 6 months. It would not take 3 years to do this.

Mr. RUDMAN. Congressman, I am sorry, but I cannot hear. It is probably me and not you.

Mr. STEARNS. Okay. I am just saying, Senator Rudman, I don't think it would take 3 years to straighten this out, like you indicated. I think any CEO of any middle management company could do it in 90 days to 6 months. I think the taxpayers just won't tolerate a 3-year process on this.

The Secretary of Energy had indicated earlier that he didn't think the Department of Energy, or in this case the Department at Los Alamos, was top-heavy. But yesterday's Wall Street Journal talked about the bloated bureaucracy, indicating that in 1979 there were sort of 4 major departments with 10 layers and 56 senior executives, and then last year they exploded to 18 layers and 143 senior executives.

I mean, obviously I think most of us think there is a lot of top-heavy bureaucracy in that area, and I hope the Secretary will look at it more carefully.

My second concern is, Mr. Secretary, you indicated that you talked about—you have ordered a 2-day complete stand-down in the labs to renew instructions for staff about security practices. Now, obviously, this costs a lot of money to taxpayers.

When we try to understand what this 2-day complete stand-down is, we understand that basically all it is employees are told to read the Rudman report, to attend to some old replayed videos on security in the afternoon. We are told that virtually no manager attended these sessions and that employee attendance for the afternoon session was roughly 20 percent. I think this whole idea of this 2-day complete stand-down doesn't seem to be that effective.

And this is a question for Senator Rudman. Back in April, the Secretary of Energy ordered the computer systems at the three nuclear weapons labs shut down for 2 weeks in April in order to brief all the employees on it and to drive home the importance of computer security. In response to the release of your report last week, you ordered complete shutdowns, as I mentioned earlier, for 2 days. I mean, based upon your report and your inspection, do you think there is any value to the Secretary's 2-week, so to speak, lab shut-down, and what do you think of this whole 2-day complete stand-down he did just recently?

Mr. RUDMAN. I am not sure I am qualified to answer the question.

Mr. STEARNS. Did you find any impact from this great 2-week shutdown that he ordered in April? Did you find any segment of this influencing the Department at all?

Mr. RUDMAN. I am not sure that I can answer that question, because I want to be honest and fair here, and I don't want to answer about things that I don't know.

You are asking for a factual answer. I have a lot of opinions, but lately I don't have too many facts. You know, there is an old saying, I am entitled to my own opinions. I am not entitled to my own facts. So I don't think I can answer the question.

But let me just say this to you: I think the Secretary, and I know that he will and his staff, now check and see if what you just said was accurate. If this stand-down was a mock exercise, then there ought to be hell to pay for it, frankly.

Mr. STEARNS. I would think so.

Mr. RUDMAN. That is all I would say.

Mr. STEARNS. Did you see any attitude change in the employees? I don't think you saw any attitude change as a result of this 2 weeks in April, big shutdown to discuss security and talk about security stand-down. I mean, you didn't see any attitude changes at all?

Mr. RUDMAN. Well, to answer your question, we met with a number of employees, some of whom are at levels quite high, others middle, and I would say that they were very concerned about the perception that they were doing a terrible job at security; that they had an arrogance and a culture that was unacceptable. I think there was a lot of concern about that. I think some of that came out of that stand-down.

Now, I don't know much else about it because we have not done a postaudit of what the Secretary has done, so I don't want to answer that question because it will be unfair.

Mr. STEARNS. But the fact that no managers attended this recent stand-down session and the employee attendance for the afternoon session was roughly 20 percent I think says it all.

Now, Senator Rudman—

Mr. RICHARDSON. Congressman, am I asked to respond to totally unfounded allegations?

Mr. STEARNS. Well, let me just continue.

Mr. RICHARDSON. On a stand-down that isn't even over and you have the results, I find that very curious.

Mr. STEARNS. Mr. Chairman, can I have my time? I would like to continue.

Mr. RICHARDSON. The stand-down is not even over yet, and you have its conclusions. I find that strikingly interesting.

Mr. STEARNS. I have a question for Senator Rudman.

Mr. UPTON. The gentleman's time has expired. If we can just get an answer, we are going to have enough time for another round of questions.

Mr. STEARNS. Okay. Can I ask this last question, Mr. Chairman, ask unanimous consent?

Mr. UPTON. He can respond to the question that you asked.

Mr. STEARNS. I mean, this is a question for Senator Rudman.

Mr. UPTON. Go ahead.

Mr. STEARNS. Okay. Mr. Berger, the national security advisor, was notified in 1996 about severe security problems in the Department of Energy, and the President was notified in 1997. Shouldn't the administration bear some responsibility and criticism for security lapses in regard to this Chinese espionage?

I know on the Senate side you indicated that it was Congress' fault, but I mean shouldn't the President take some responsibility?

Mr. RUDMAN. Well, what I said, I said that there was enough fault to go around, including the Congress, including the President, several Presidents, and several Secretaries. I got a note from someone who didn't like that, but that is the way I feel.

Let me answer your question from my report. If you look at page 37 of our report, you will find that we say the following: Although the national security advisor was briefed on counterintelligence concerns by DOE officials in April 1996—that is the bottom of page 37—we are not convinced that the briefing provided a sufficient basis to require initiation of a broad Presidential directive at that time. We are convinced, however, that the July 1997 briefing, which we are persuaded was much more comprehensive, was sufficient to warrant aggressive White House action. We believe that while the resulting PDD was developed and issued within the customary amount of time, these issues had such national security gravity that it should have been handled with more dispatch.

That is a very direct statement. Told the President of that last Monday. That is kind of a good news, bad news story. The good news is that the Presidential Decision Directive that they issued to the Department of Energy was far-reaching, well thought out, and formulated by the FBI, the CIA and the Department. That was the good news.

The bad news is that for a long time nobody paid any attention to it.

Mr. UPTON. The gentleman from Maryland, Mr. Ehrlich.

Mr. EHRlich. Senator, I love your style.

Mr. Secretary, I like your style, too. I know you have a tough position. I think a lot of us who have been in government can have some sympathy with respect to where you are right now.

Let me ask you, particularly with respect to the issue of polygraphs, my friend from North Carolina had begun a line of questioning, which I am an attorney, but I am not an expert in polygraphs, and I think he was referring to the observation made in yesterday's papers that not a single scientist had yet been subjected to polygraphs, University of California scientists.

Let me ask you, or whomever is the appropriate person on your staff, what the status of the law is with respect to polygraph testing.

Now, you made an earlier statement that the issue of probable cause comes into play as to the identities of those who are subject to polygraph, and I understand this is a legal land mine with all sorts of potential lawsuits and the whole 9 yards. Can you tell us right now what the present status is with respect to the law, how it applies to contractual employees, let alone Department employees, and particularly in the context of the observation that someone has made that it would take the initial round of polygraphs—for those who are supposed to take it, it would take 4 years? I know that is a wide-ranging, multifaceted question. Let me throw it open to you and ask you to respond to all of those questions.

Mr. RICHARDSON. Congressman, on March 17 of this year, I signed notice DOE 472.2, use of polygraph examination. This is what it does: It identifies those DOE programs subject to the polygraph and the general provisions for conducting polygraph exams of DOE Federal employees. Since its issuance, the DOE has polygraphed many Federal employees who are covered by the notice, as well as some of its contractors who have volunteered to be polygraphed.

We are at the time undertaking a rulemaking process, and I haven't waited for the rulemaking process. I have gone forward with the policy initiative of doing polygraphs.

We are undertaking a rulemaking process which will expand DOE's counterintelligence polygraph program to include its contractor employees as well Federal employees.

Now, the polygraphs are based on counterintelligence, on espionage, on national security grounds. They are carefully drawn. They don't involve life-style.

This is, as you know, a scientifically questioned procedure. They can refuse, but they would be removed from sensitive work, and there would be no need for probable cause.

Mr. EHRLICH. Let me interject, if I may, just for a second. You had said with respect to contractual employees, at this point in time the ones who have volunteered have been polygraphed. That leads me to believe that others have not volunteered.

Is it your opinion that you have the authority with respect to those contractual employees who have not volunteered that if they are asked and decide not to take the polygraph, that they can be removed from any sensitive areas?

Mr. RICHARDSON. Yes, I would have the authority—once I get the rulemaking, and we are going to get it, I would have the authority to polygraph the contractors, too.

Mr. EHRLICH. Do you need any statutory changes in the law that we need to know about to implement what you believe needs to be done with respect to polygraphs generally?

Mr. RICHARDSON. Congressman, I don't think so, because I think this rulemaking is imminent. I think I have the existing authority.

The tough decision was doing polygraphs. Only two other agencies do it: the National Security Agency and the CIA.

Mr. EHRLICH. Thanks. I appreciate it. I yield back.

Mr. UPTON. Thank you.

Mr. Klink.

Mr. KLINK. Thank you, Mr. Chairman, for allowing me to go first. I am going to try to get to the floor.

First of all, Mr. Secretary, I just want to follow up on one question on Mr. Cox's line of questioning. Currently can employees still download classified information—

Mr. RICHARDSON. No.

Mr. KLINK. [continuing] into their own disks? Can they download classified information currently onto their own disks, and then take it out of the laboratory?

Mr. RICHARDSON. They cannot take them out of the labs. They cannot download on classified disks.

Mr. KLINK. I am sorry. I don't understand. They can what?

Mr. RICHARDSON. They cannot download on classified disks, and they cannot take the disks home.

Mr. KLINK. How are you to enforce them not taking that disk home?

Mr. RICHARDSON. We have a two-person rule. We have what is called a two-person rule, and intrusion devices. The two-person rule involves two individuals giving approval whenever you transfer classified to unclassified.

Mr. KLINK. So how would you be made aware—without giving up anything secret, give us an idea of how you would be made aware that they were downloading something that was classified.

Mr. RICHARDSON. I can't do that.

Mr. KLINK. But there is a way?

Mr. RICHARDSON. There is a way. I think we have to go into classified session.

Mr. KLINK. I understand. But you are assuring me that there is a way that you would know that something classified was being downloaded?

Mr. RICHARDSON. Yes.

Mr. KLINK. We don't have to go any further than that, Mr. Secretary. I appreciate that.

Senator Rudman, I don't want you to get angry with me with this question, but it is something that needs to be asked, and I have been struggling with it myself. Please don't be insulted. One of the things that has bothered me about the panel that you put together to look at these enormous security problems that surfaced at the weapons labs was that you appointed Dr. Sidney Drell, who I don't know, from the University of California, who has the responsibility of those same laboratories.

Now, he may be a wonderful person, may be an honorable person, but the question is are we not putting somebody in charge of the investigation who is going to be asked to rat out his employer to the President of the United States? That is a very uncomfortable position to ask Dr. Drell to be in. Can you explain that thought process to us?

Mr. RUDMAN. Yes. I thought it was, and that is why I told Sid Drell, that I thought this service was so important to this country that I would like him to resign from his position at the University of California before going on this panel. He did so.

Mr. KLINK. So you didn't see any problems at all with the—

Mr. RUDMAN. Dr. Drell is a man of such unquestioned integrity, but even with that we felt that staying on the UC advisory board would have a terrible appearance, and so we just said, Sid, we need you on this panel.

I had a limited group to pick from. The PFIAB was only about 14 people. He is a world-renowned expert and could answer questions that no one else could, and he decided, after many years, that he would resign.

I might also point out to you that we had another extraordinary person on there named Lou Allen, who you may know, former Chief of Staff of the United States Air Force, former director of the jet propulsion lab, he is on the Sandia board, and thus we felt we could not have him on the panel at all. But we did not have a problem with Dr. Drell, but I did require that resignation, and he did it.

Mr. KLINK. Thank you. You have cleared that up for us.

Now, did your panel review the ramifications of shifting the control—again, I want to get back to environment, safety and health operations. If you are shifting that function away from the Office of Environmental Management to this new autonomous Nuclear Security Administration, what impact would it have on national

laboratories and facilities like Oak Ridge or Savannah River? Is this something that you looked at?

Mr. RUDMAN. Well, I don't think we are doing that. I don't think we are doing that at all.

If you are looking at the chart on page 50, I believe, or 51, we have everything in place, and we leave the Secretary full authority to interface those other parts of his Department, such as environment, health, with the new Agency for Nuclear Stewardship.

We put nonproliferation and arms control, fissile material and naval reactors in there, and these plants, but those other parts of the agency, huge, particularly environmental, we don't touch those.

Mr. KLINK. Then who would be responsible for environment, safety and health operations at the sites that you have listed?

Mr. RUDMAN. Within the Agency for Nuclear Stewardship, it would be the Under Secretary, as it should be.

I mean, you can't have someone—Congressman Klink, let me tell you something. You know, from being out in the private world that I am in, you know, I see people who head up a corporation, and one of their division managers heads up a division with 10,000 people in that division. If anything goes wrong in that division, whether it is production, cost, embezzlement, environment, OSHA, whatever, that person is responsible, and they are gone if something happens they should have prevented.

That is what is wrong here; there is nobody responsible. I mean, you know, if you want to put the person from the environmental part and the health part and all the other parts and say, well, they are going to have jurisdiction over that part of it, then you are going to go back to where we started.

Name a strong leader and make that leader responsible. It works in the private sector. It will work here. It works at NASA. It works as NOAA. It works at DARPA, and it works at NSA.

Mr. KLINK. So, Senator, what you are saying is you are setting up a parallel structure, one within DOE and one within this autonomous?

Mr. RUDMAN. The difference is it is just a—this is a division of DOE, if you will, a part of it; like NSA is a part of the Department of Defense.

Obviously, the Secretary will have at his level a much bigger environmental organization than they will have, but they will have to have people who look after environmental issues.

Mr. KLINK. What if there is a disagreement then between what DOE thinks and what this semiautonomous or this autonomous group thinks?

Mr. RUDMAN. I have been trying to figure that out now for 72 hours because I like Bill Richardson, and we have talked. We have had discussions. But he has a block that he has placed someplace that says, I will do this all with some changes, but don't call it an agency, don't call it an administration; just don't call it anything.

We believe that to insulate this, not isolate it but to insulate this, from the rest of the bureaucracy, which we have plenty of evidence has not contributed to the solution but is part of the problem, we want this to be called an agency or administration responsible directly to him.

Mr. KLINK. If there is a different interpretation between what DOE thinks how something should be done or interpreted and this autonomous agency thinks something differently, who overrides whom?

Mr. RUDMAN. The Secretary is in charge. The statutory language I read here this morning. There is no question. Let me give an example. The National Security Agency located out in Maryland, suburban Maryland, an extraordinarily important agency, does very important things. They have a Director who happens to be a military officer. Anything that the Secretary of Defense is unhappy with at NSA, it goes through the chain of command; it is fixed. True also of DARPA, true of NOAA and Commerce. The Secretary, under our reorganization plan, if people will just read it, not just look at the chart, says to the Secretary, you are in charge of these weapons programs ultimately, and this is the fellow or the woman who is going to run them. It is in this box down here. We call it an agency, because we are worried about what happens after this current group leaves. I am very concerned about that.

Why? Because we looked at transitions over the last 20 years, and you wouldn't believe what we found.

Mr. KLINK. Thank you for being so forthright.

Mr. Secretary, I thank you also.

Mr. RICHARDSON. Congressman, I hope you will let me use 1 minute or so to respond to an unsubstantiated charge which Congressman Stearns didn't have the courtesy of letting me respond to.

To say that the stand-down of 2 weeks ago that we ordered because of the security concerns raised by so many in cybersecurity that you raised, and to say that the 2-day stand-down that we have done, where we are training employees, where we are looking at all the cybersecurity changes, where we are testing, putting ourselves under scrutiny, is an exercise that is not worth doing, and 20 percent of the employees—of the managers have not attended is a totally baseless charge.

It is now in New Mexico 1:30, and I find Congressman Stearns' results already tabulated before we have finished the exercise rather skillful manipulation.

So these are necessary exercises. I think that to do a stand-down at a national laboratory, a nuclear lab, is one of the most drastic actions you can take. You are actually stopping work to make sure that counterintelligence security are being observed. That is never happened before.

I did it for 2 weeks. I didn't tell them when I would stop it until I was satisfied. I am doing it now for 2 days, after reading further concerns that some in the Rudman Commission and others in the Congress had. And I may do this again, but to say this is not a worthy exercise when you are asking me to test our labs, to go out and make them uncomfortable, which this does, is something that I am rather flabbergasted at this claim that this is an exercise that we shouldn't do.

Mr. UPTON. The time has expired.

Gentlemen, thank you, again, for coming up. I know that members of the committee are going to have additional questions later for you. I know that Mr. Klink and I are going to be cooperating and having probably additional hearings on this topic as well.

Mr. MARKEY. Mr. Chairman, I apologize. I was just sitting over here. I thought you were going to go a second round.

Mr. UPTON. We are now starting a second round. Actually, I yielded to Mr. Klink to start the second round because he has an amendment on the floor. I am going to just take a minute or 2. I am going to go yield to Mr. Dingell. We will come back to Mr. Shimkus, and then we will take you.

In any case, I have one question that remains unanswered, as I listened to the many questions that are here now, and that is the banning of foreign visitors. We had an amendment on the floor a couple of weeks ago offered by our colleague Jim Ryun from Kansas. As I recall, the amendment failed, but he did ban foreign visitors, with the feeling that the background checks were not in place.

Mr. Secretary—Senator Rudman, as we listened to you, you indicate that even if everything was taken into account, the GAO reports, your study that you so carefully prepared, it would still take a minimum of 3 years before that was going to be in place.

Mr. RUDMAN. Well, if you look at the number of people there are to go through the clearance process, if we believe it wasn't done properly before, if you look at the amount of polygraphing, and that is a tough issue, I mean, I am going to predict there will be lawsuits on this issue, I think you may have long delays. You know, it is a very tough issue with arguments on both side.

If you look at the foreign business program, which I understand the policy for that is being promulgated, the regulations, I think, in the next week or so to formalize it, that is what we are told, I mean, that takes time. This is nothing you can do overnight.

I am pleased to see these efforts undergoing, but I will guarantee you they won't all be in place when Secretary Richardson is off cruising the Caribbean after working on it all these years and somebody else will be there. And I don't want to sound like a broken record, but, you know, Congressman Dingell can tell you better than I can tell you what happened in every transition of DOE going back to 1978. We have looked at it, and things which were considered so important just dropped through the cracks. They just left. Why? Because people had other priorities. So I would say that it is going to take time.

Mr. UPTON. Shouldn't we have that barn door shut on some of these foreign visitors from countries like China and other places until these reforms are actually in place and they are working?

Mr. RUDMAN. I would err on the side of being safe rather than the side of being sorry, given the choice, if I were running this program.

Mr. UPTON. Thank you.

Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. Secretary, if you have a director of a laboratory who you think is not doing a good job, or you have an employee at the laboratory that you don't think is doing a good job in terms of security or something of that sort, what can you do about them?

Mr. RICHARDSON. I can fire them. I can fire a lab director.

Mr. DINGELL. Can you fire the employee of a contractor?

Mr. RICHARDSON. Yes.

Mr. DINGELL. You can fire an employee of a contractor?

Mr. RICHARDSON. Yes. I have to consult with the lab director, but, in essence, I am going to do that.

Mr. DINGELL. Supposing the lab director doesn't want them fired, what then?

Mr. RICHARDSON. Then I fire the lab director.

Mr. DINGELL. I have always been told that Secretaries couldn't address this problem. You are telling me that you can?

Mr. RICHARDSON. I can, and I will.

Mr. DINGELL. I am going to watch very closely, Mr. Secretary, and I know you are not going to disappoint me, because we are going to be quoting those remarks.

Now, Mr. Secretary, how do you expect to control this through an independent agency?

Mr. RICHARDSON. Well, Congressman Dingell, I have indicated my preference, which is to have an Under Secretary for Nuclear Weapons with a security czar, and a Director of Intelligence on these separate tracks.

Senator Rudman and I differ a little bit about the semi-autonomous agency. I am willing to work with him and others in the Congress, but I think the reorganization I have done with the security czar, with this very distinguished general that has nuclear weapons background and security background and military and management background, I think we can do that better.

Mr. DINGELL. All right. Now, did all of the employees of the contractors show up to this stand-down that you put on out there?

Mr. RICHARDSON. Well, they are all required to, yes.

Mr. DINGELL. Did they?

Mr. RICHARDSON. Well, it is not over, Mr. Chairman. It is going to be over today at 5 p.m.

Mr. DINGELL. But, beloved friend, I assume that they were supposed to show up. Did they? Did they all show up?

Mr. RICHARDSON. Well—

Mr. DINGELL. Mr. Secretary, they showed or they didn't show. Which is the case?

Mr. RICHARDSON. Well, they showed, but it is not over yet.

Mr. DINGELL. So some of them did not show?

Mr. RICHARDSON. No, no, I didn't say that.

Mr. DINGELL. Well, did they all show?

Mr. RICHARDSON. I will know at 5 p.m. Today. This is a very serious exercise.

Mr. DINGELL. If they didn't show, what will you tell this committee?

Mr. RICHARDSON. Well, anybody that did not take it seriously, I will let you know.

Mr. DINGELL. I am informed that a large number of them did not appear. Is that a true statement?

Mr. RICHARDSON. Well, I don't know how those reports have come in when the exercise isn't even over.

Mr. DINGELL. Well, if they haven't showed, they haven't showed. They were supposed to, though, were they not?

Mr. RICHARDSON. Well, I don't have that. That is information that I don't have.

Mr. DINGELL. But if they are not showing when you have a stand-down, they are not complying with your orders; isn't that right?

Mr. RICHARDSON. That is correct.

Mr. DINGELL. All right. I want a full written report on this matter, and I want to have it inserted into the record because I think that should be.

[The following was received for the record:]

Recent inquiries indicate that participation in the Security Immersion Program conducted at the three Nuclear Defense National Laboratories on June 21-22 was high. The Sandia National Laboratories reports that 93% of their personnel attended and the Los Alamos National Laboratory reports a 90% attendance. Those which did not attend were on previously scheduled vacations, official travel that could not be rescheduled, ill or excused for legitimate personal reasons, or in jobs which must be staffed at all times. The Lawrence Livermore National Laboratory did not keep centralized attendance records for the two days of training, but there is no reason to believe their training was not just as well attended.

On June 24, 1999, Dr. Reis, Assistant Secretary for Defense Programs, submitted an information memorandum to the Secretary summarizing the two-day security stand-down training. A copy of that memorandum follows.

DEPARTMENT OF ENERGY
WASHINGTON, DC 20585
June 24, 1999

MEMORANDUM FOR THE SECRETARY
THROUGH: Ernest J. Moniz, Under Secretary
FROM: Victor H. Reis, Assistant Secretary for Defense Programs
SUBJECT: INFO MEMO: Security Immersion Program

In response to your June 16 directive, the three Nuclear Defense National Laboratories—Los Alamos, Lawrence Livermore, and Sandia—underwent a two-day Security Immersion Program standdown on June 21-22. During the standdown, all normal operations ceased and employees were required to participate in mandatory intensive reviews of personal responsibility for security, counterintelligence, and cyber-security.

Following are the missions that were accomplished by the Security Immersion Program at the laboratories:

Personal responsibilities were reviewed with all employees to enforce and respect effective counterintelligence, security, and cyber-security procedures.

Historical problems related to the laboratories' culture of resistance to effective security and counterintelligence were reviewed with all employees.

The status of implementation of previous counterintelligence, security, and cyber-security improvements underway by prior directives was reviewed with all employees.

Cyber-security actions being taken at the laboratories, especially those associated with personal responsibility for personal computer use and e-mail, were explained to all employees.

The Zero Tolerance Security Policy was fully discussed to assure a complete understanding by all employees.

Senior management at all laboratories was actively involved in planning for the Security Immersion Program at their respective sites and participated fully in the program. With very few Director-approved exceptions, all employees and contractors, either in person or through video links, attended the full two-day sessions with their supervisors and managers present and participating. Those employees absent from work, off-shift, or not able to attend will be required to attend make-up sessions.

In general, contents of the program sessions included:

- Laboratory commitments to security
- Document control
- Export control
- Counterintelligence
- Cost of espionage
- Foreign interactions, visits, assignments, travel
- Cyber-security

Information management

The Security Immersion Program at all three laboratories was determined to be a success. All sessions were well attended, with active question and answer periods that went beyond scheduled times. Interest focused on understanding, guidance, and additional information rather than rejection. Feedback from employees and managers has been constructive and positive.

If you have any questions or require further information, I would be pleased to meet with you at your convenience.

Attachments

SUMMARY OF SECURITY STANDDOWN ACTIVITIES

LOS ALAMOS NATIONAL LABORATORY—JUNE 21-22, 1999

Los Alamos National Laboratory completed its two-day security standdown at the close of business on Tuesday, June 22, 1999. All Laboratory operations, except those necessary to maintain the safety, security, and compliance posture of the site, were suspended so that University of California and Department of Energy (LAAO) employees and subcontractors could devote all of their attention to an intensive review of personal responsibility for security, counterintelligence, and cybersecurity.

The two-day event featured an opening presentation by Director John Browne with a question and answer session, presentations by guest and internal speakers on a variety of security topics, and meetings of line organizations led by line managers. The presentations were delivered in two large auditoriums (600- and 900-seat capacity) and transmitted live on closed-circuit television to a large number of offices and conference rooms around the Los Alamos site. In addition, the presentations were made available through an internal web server.

The principal speakers and topics were as follows:

Opening Remarks, John Browne, Director, Los Alamos National Laboratory

Questions and Answers, William Frazer, Interim Chairman, University of California, President's Council

Nuclear Weapons, Stephen Younger, Associate Laboratory Director for Nuclear Weapons

Cybersecurity, Scott Larson, FBI—National Infrastructure Protection Center
Espionage/Information Security, H.T. Hawkins, Director of Nonproliferation and International Security

Strategic Counterintelligence, Rusty Capps, Center for Counterintelligence and Security Studies (former FBI)

Employee Responsibility/Accountability for Security, John Hopson, Senior Technical Staff Member

The line organization meetings were held at the "group" (10-100 people) level on both Monday and Tuesday for a total of 2½ hours. The purpose of these meetings was to obtain feedback on the presentations, develop individual group plans on addressing the five points in the Secretary of Energy's Security Immersion Program, and to engage employees in addressing any other security issues that might need attention. A telephone "help" line and e-mail address were manned by Laboratory security resource experts during the two-day standdown to assist organizations in developing their individual plans. A total of 68 inquiries was received and responded to by the expert assistance team during the standdown.

At the end of the second day of the standdown, group leaders met with their Division Directors (next line management level) to begin rolling up their group-level plans into Division-level plans. Director Browne has scheduled a meeting with all Division Director-level management for June 24 to roll up Division-level plans to ensure that the points in the Secretary's Security Immersion Program have been addressed.

All of the speaker's presentations were videotaped. Because some employees and contractors could not attend all of the sessions, makeup sessions for viewing the videotapes are being scheduled. Attendance was taken during the standdown and will also be recorded for the makeup sessions. At this time, we estimate that approximately 80% of the more than 10,000 Laboratory employees and subcontractors participated in standdown activities. We are collecting attendance information from Laboratory organizations to obtain a better estimate of actual participation. Makeup sessions will be conducted until all employees and contractors have viewed these sessions.

Questions and feedback from employees both during and subsequent to the presentations and meetings has been constructive and positive.

June 22, 1999

Vic—

We thought you would be interested in LLNL's activities in support of the Secretary's two-day Security Immersion Program. I WILL IMPROVE ON THIS TOMORROW, BUT I AM SENDING A DRAFT VERSION TONIGHT AS I DON'T KNOW WHEN YOU MIGHT NEED THIS. I have also faxed you some supplemental material.

Content: We created and tailored a full day of video presentations for all employees to view, which clarified security concerns, instructed in LLNL security policies and practices, and educated as to outside perceptions of security problems at the weapons labs.

We followed that with a half-day designed for employees to read and discuss specific security-related materials relevant to their workplace and activities.

Lastly, we concluded with a half-day of discussion in the workplace between employees and supervisors to apply what they've learned to their specific workplace and activities.

We are now rolling up the output of these discussions to a Laboratory-wide compilation of issues, resolutions and lessons learned.

Process: Two special meetings were held on Thursday and Friday of last week, with all senior managers to explain and design the program.

With very few Director-approved exceptions, all work was stopped at the Laboratory. All employees were required to participate in the full two-days at their normal workplace with their supervisors and managers present and participating.

Phone conversations between the Deputy Director for Operations and each senior manager (26) or principal assistant were held Tuesday morning to assess progress and ensure successful implementation.

Videos were rebroadcast continuously during the immersion program for make-up and off-shift viewers. Video tapes will be provided to employees who were unable to view them during the immersion program.

Preliminary results: Preliminary feedback has been positive. Rusty Capps with his espionage talk captivated viewers and set the stage for stimulating participation in the remaining day and a half.

Phone calls to our hot-line indicated high employee interest—mostly seeking answers to questions or additional guidance to material or information.

I hope this is of interest and assistance to you. As our rollup is completed, we will provide additional results and conclusions. This will take a few days. If you need any additional information or help, please let me know.

BOB

 LLNL SECURITY IMMERSION PROGRAM
Monday, June 21, 19998:30 am *Director Tarter address to all Laboratory employees*

Bruce discussed the importance of, and our commitment to security. He explained the reasons for and the details of the Secretary's Security Immersion Program. He provided a hot-line number for employees to call if they had input or questions.

Bruce then introduced the next speaker.

(This was conducted live in the Laboratory auditorium with ~200 people present. It was televised live to all Laboratory employees. With a few director-approved exceptions, all work was stopped and all employees watched the broadcast from their workplaces.)

9:00 am to 12:00 pm *The High Cost of Espionage*

Presentation by Rusty Capps, former FBI agent, to all Laboratory employees.

(This hour presentation was conducted live in the auditorium to ~200 employees and broadcast live to all employees over Lab-wide television. With a few Director-approved exceptions, all employees viewed the presentation from their workplaces.)

1:00 pm *Current LLNL Practices, Foreign Visits and Assignments and Foreign Travel*

Presentation by Bill Dunlop, Program Leader for Proliferation Prevention and Arms Control Program at LLNL to all Laboratory employees.

(This is a 30-minute video recorded specifically for this immersion program. It was broadcast on Lab-wide television. With a few Director-approved exceptions, all employees viewed the video from their workplaces.)

1:30 pm *Export Control at LLNL*

Presentation by Bill Bollinger, LLNL Classification and Export Control Advisor, to all laboratory employees.

(This is a 30-minute video recorded specifically for this immersion program. It was broadcast on Lab-wide television. With a few Director-approved exceptions, all employees viewed the video from their workplaces.)

2:15 pm *Cyber Security at LLNL*

Presentation by Joe Brandt, Principal Deputy Associate Director for Compensation Directorate and Information Security Program Leader, Office of the Chief Information Officer.

(This was a 45-minute video presentation recorded specifically for this immersion program and broadcast via Lab-wide television to all employees. With a few Director-approved exceptions, all employees viewed this presentation from their workplaces.)

3:15 pm *Laboratory Directors' Testimony*

(This one and one-half hour video is a compilation of the recent testimony on security by the three nuclear weapons Laboratory Directors. This tape was created specifically for this immersion program and televised to all employees via lab-wide television. With a few Director-approved exceptions, all employees viewed the video from their workplaces.)

4:45 pm *Security-related TV Clips*

(This one hour video was a compendium of various security-related video clips from various recent television news programs. It was created specifically for this immersion program and broadcast on Lab-wide television.)

Tuesday, June 22, 1999

8:00 am to 12:00 n—All employees gathered in their work areas and read and discussed selected materials from the following:

- 1) US. National Security and Military/Commercial Concerns with the Peoples Republic of China
- 2) Report of President's Foreign Intelligence Advisory Board (PFIAB)
- 3) Director of Central Intelligence George J. Tenet's April 21, 1999, statement on the implications of China's acquisition of U.S. nuclear weapons information
- 4) Report of the Secretary of Energy Advisory Board Working Group on Foreign Visits and Assignments (June 8, 1999)
- 5) and other related materials, as appropriate

1:00 pm to 5:00 pm—Employees gathered in their workplaces and discussed with supervisors the application of the information viewed and read, to their group activities and their workplaces. This information will then be rolled up and aggregated at increasing levels until a full Laboratory roll-up is accomplished by the Deputy Director for Operations. This will then be used for further Lab-wide communication and actions concerning security. Employees and supervisors will also immediately implement local security improvement measures identified in the two-day program.

The classes listed below were optional for those departments who believe these topics are relevant to work-specific projects being performed by employees in their organization:

UNCLASSIFIED Presentations for Security Immersion Program

Time	Topic	Speaker
08:30-09:15 a.m	Document Control	Maggie Lucero
09:30-10:15 a.m	Export Control	Chad Twitchell
10:30-11:15 a.m	Counterintelligence	John Kirby
12:30-01:15 p.m	Foreign interactions	Melanie Florez
01:30-02:15 p.m	Cyber Security	Sharon Walsh
02:30-03:15 p.m	Information Management	Joe Morreale

Attendance at these meetings was high both in the Schiff Auditorium and in the video linked areas. Question and answer periods were active with questions going beyond the scheduled time. Videotapes are being made available to all Sandia organizations for make-up sessions and for those who were double scheduled and wanted to review the session that they missed.

General Observations

The staff at Sandia took the request to focus on security during these two days with an intensity that was surprising and pleasing even to those of us who knew that they would do a good job. Questions concerning zero tolerance and polygraphs were related to understanding rather than rejection of the concept. A great deal of this success is due to the planning sessions that Paul Robinson and the Laboratory Vice presidents conducted on June 17 and 18 and the training materials prepared by Lynn Jones and staff over the weekend. This material gave each organization a wide range of materials to cascade the initial Monday meetings down to the staff.

SECURITY IMMERSION MEETINGS AT SANDIA NATIONAL LABORATORIES—JUNE 21-22,
1999

MONDAY, JUNE 21, 1999

08:00-09:30—Half of managers attended an address by Paul Robinson, labs Director and a review of core presentation by Vice President Lynn Jones. Both speakers emphasized the five points in Secretary Richardson's request and personalized these points to the Laboratories.

09:30-11:30—Second half of management staff attended the above presentation. The above were video taped for use in required make-up for employees and videolinked to our California site.

Vice Presidents met with their center and department groups for the remainder of Monday morning. The intent of these meetings was to cascade the messages presented by Paul Robinson and Lynn Jones to each employee. The challenges presented to all Sandians are to emphasize security responsibilities and think of ways to improve security in our operation. A quick estimate of the number of these cascade meetings is 60 center-level meetings plus 1 per department (approximately 600 total meetings). Many of these were multiple session and are continuing on Monday afternoon.

Source material was provided to every Sandian via the web site (see attached Security Immersion Program Official Use Only page). Sandians were automatically linked to this page when they logged onto the internal web page on Monday, June 21, 1999.

TUESDAY, JUNE 22, 1999

On June 22, these cascade meetings continued plus special meetings for those holding SCI clearances were conducted. These meetings progressed far beyond information gathering into discussions of operation in specific organizations and how to improve on a detailed level. Direct involvement of the Vice Presidents was clearly a plus for the staff. This involvement ranged from teaching classes to joining classes to answer questions.

General training sessions were held in our largest auditorium and were video broadcast to many smaller meeting rooms. These special sessions were conducted every hour from 8:30 a.m. to 3:30 p.m. Each session was planned for a 30-minute presentation with a 15-minute Q&A period following.

Mr. DINGELL. Now, the Cox report stated that the labs were penetrated by spies. Is that true? And he stated—it said today by spies. Is that true?

Mr. RICHARDSON. Mr. Chairman, there are three cases: in the 1970's, a neutron bomb case; the Tiger Trap case in 1984/1985 and from 1984 to 1988, we have alleged espionage. Right now, in the present case involving the suspect from Los Alamos there is no law enforcement case for espionage.

Mr. DINGELL. Has anyone been punished for what happened at Los Alamos?

Mr. RICHARDSON. I will, in 2 weeks, be issuing a report on who has been punished, and that will be based on an inspector general report, and individuals at Los Alamos and DOE will be punished or disciplined.

Mr. DINGELL. Will anybody be punished?

Mr. RICHARDSON. Yes.

Mr. DINGELL. They will? And this report will be forwarded, I know, Mr. Secretary, to the committee?

Mr. RICHARDSON. Yes, it will.

Mr. DINGELL. Very good. So that we may be informed of the actions which will be taken.

Under your proposal, who would have—Senator, under your proposal, who would administer the authority to impose civil penalties on contractors for violation of health and safety rules which the Congress granted DOE—when it renewed the Price-Anderson Act in 1987?

Mr. RUDMAN. Congressman Dingell, it would be the Secretary. I want to make it very clear again that this is a semi, and I emphasize the word semi, autonomous agency. There are two models in the report. One is a NASA-type model, which is totally autonomous. This is an agency reporting to the Secretary with his final control and his ability to do anything he wishes in terms of those issues.

Those issues particularly reside in the Secretary's office and in his other departments. He has full authority to impose whatever he wishes on this independent, semiautonomous group.

Mr. DINGELL. Will this require renegotiation of the contract with the contractors?

Mr. RUDMAN. We would not think so.

Mr. DINGELL. Mr. Secretary, do you know this?

Mr. RICHARDSON. There are environmental and safety and health provisions in the contract. I don't think you need to renegotiate.

Mr. DINGELL. You don't think you have to renegotiate them so you have full control over the behavior of the contractor, including hiring and firing, things of that kind?

Mr. RICHARDSON. Any—

Mr. DINGELL. Would you request your counsel to give us an opinion on that particular matter?

Mr. RICHARDSON. Yes.

[The following was received for the record:]

The Department's management and operating (M&O) contract is a contract characterized both by its purpose (i.e., the operation, maintenance, or support of Government-owned or controlled research, development, special production or testing facilities) and the special relationship it creates between the Government and the contractor. See Federal Acquisition Regulation (FAR) 17.601 and 17.604. One of the indicia of an M&O contract is the close relationship with the contractor and its personnel in a number of important areas, including safety, security, cost control and site conditions. FAR 17.604 (b). Through the uniquely structured M&O contract vehicle, the Department retains a large measure of control over the contractor's internal management activities, generally beyond that found in other government contracts. Through the M&O contract, the Department also possesses a number of remedies in the event of deficient performance.

Notwithstanding the close relationship and control established under the M&O contract, however, the M&O contract is not considered to be an employment contract or personal services contract with the contractor and its employees. As a result, the Department does not have full control over all aspects of the behavior of the contractor, including the hiring and firing of contractor employees, and it would be necessary to renegotiate the M&O contracts should the Department (or Congress) determine that the Secretary should possess complete control.

Using the LANL contract for illustrative purposes (Contract No. W-7405-ENG-36, effective October 1, 1997), the following is a general description of some of the contract's principal control measures and remedies available to improve performance. The discussion below also touches upon some of the legal issues, risks and liabilities which should be considered.

Personnel

The University of California is charged under the contract with providing the necessary intellectual leadership and management expertise to manage, operate and staff the Los Alamos National Laboratory. While the contractor has the overall responsibility for hiring the personnel necessary to perform the contract, the contract addresses a number of specific personnel-related matters. For example, the selection of "Key Personnel" (the Laboratory Director and Deputy Laboratory Director(s)) must be approved by the DOE Contracting Officer and cannot be removed or re-assigned (except for disciplinary reasons) without prior consultation with the Contracting Officer (clause 5.8). However, subject to the Key Personnel clause, the University retains the authority to terminate senior management from University employment (Appendix A, Section III (f)(4)). Additionally, in Clause 6.4, the Laboratory Director is to be a competent full-time resident supervisory representative of the contractor "satisfactory to the Contracting Officer" in charge of all work under the contract, the contractor is made responsible for maintaining satisfactory standards of employee competency, conduct, and integrity; for taking disciplinary action with respect to its employees as may be necessary, and for establishing standards and procedures, to be approved by the Contracting Officer, as are necessary to effectively implement DOE's regulations relating to contractor employee standards of conduct, acceptance of gratuities, and outside employment.

The contract also contains Appendix A, "Personnel Costs and Related Expenses, which is an advance understanding between the University and the Department on allowable personnel costs and related terms and expenses. This Appendix addresses, among other things, compensation standards, vacation time, training, travel and so forth. Appendix A also establishes that the evaluation of the contractor's performance in science and technology and operation and administration is the basis for determining the contractor's senior management's salary increases "authorization multiplier." (Personnel Appendix A, Section III (f)(8)).

Thus, while in general the Department cannot contractually direct the University's hiring and firing decisions, DOE has a wide range of controls and review functions in the M&O contract to assure that highly qualified individuals are employed by the University of California in the performance of the contract and that they perform well in the operation of the Laboratory. As a result, DOE may exert substantial influence over the selection, performance appraisal and retention of contractor employees, particularly those in senior management positions.

The oversight controls and mechanisms discussed provide the Department with the ability to direct, evaluate and monitor contract performance, but at the same time to avoid creating what might be viewed as an "agency" or "employer-employee" relationship which could arise if the Department had full control over the behavior of the contractor, including all hiring and firing. If DOE had direct control over employees of the University of California, such control might raise legal questions by giving the appearance that DOE was hiring a personal services contractor rather than an independent management and operating contractor. For example, the Federal Acquisition Regulation provides that obtaining personal services by contract, rather than direct hire, circumvents civil service laws unless Congress has specifically authorized acquisition of the services by contract (FAR 37.104). The Federal Acquisition Regulation describes the characteristics of an employee-employer relationship as including situations where contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee. Thus, in view of the fact that the University of California is intended to have contractual responsibility for managing and operating the Los Alamos National Laboratory and is not intended to be essentially a personal services contractor, it would not be appropriate for DOE to exercise relatively continuous supervision and control over individual contractor employees.

Other legal issues could also arise in the event full control over laboratory employees was obtained such that an employer-employee relationship is created and the employees were considered to be agents of the Government. These issues include whether the Government could be held directly liable for the tortious conduct of the employees, whether the contractor would enjoy the Government's sovereign immunity from state taxation, and whether subcontractors could assert claims directly against the Government.

Security

Through a number of contract clauses, DOE has the authority to require the contractor to fulfill extensive responsibilities in the security area. For example, the contractor is required to establish appropriate controls for nuclear materials pursuant to DOE directives (Clause 10.1), safeguard classified information and special nuclear material and protect against sabotage and espionage, and conform to all DOE secu-

rity regulations and requirements (Clause 10.3), ensure that all information and equipment generated under the contract in a potentially classified subject area is reviewed by an appropriate classifier in accordance with classification regulations or directives (Clause 10.4), protect certain unclassified controlled information in accordance with DOE regulations and directives (Clause 10.5), and protect DOE programs, technology, unclassified sensitive information, classified matters, etc. from foreign intelligence threats (Clause 10.6). Among the powers and authorities DOE has in the security area is the right to determine whether an authorization of access to classified information or special nuclear material shall be denied to or revoked for an individual. Possible grounds for denial or revocation of an access authorization include failure to protect classified matter or disclosure of classified information to a person unauthorized to receive such information (10 C.F.R. Ch. 111, section 710.8(g)(1999)).

Environment, Safety and Health

The general environment, safety and health clause in the contract provides broad general requirements for the contractor and rights for DOE to be closely involved in assuring that the contractor properly performs its responsibilities in the areas of environmental, safety and health protection (Clause 6.7). For example, the contractor is required to manage and perform work in accordance with a documented Safety Management System, and the contractor must submit to the Contracting Officer documentation of its system for review and approval. The contractor must also comply with all applicable laws, regulations, and DOE directives; and if, at any time, the contractor's action or failure to act cause substantial harm or an imminent danger to the environment, or health and safety of employees or the public, the Contracting Officer may issue an order stopping work in whole or in part.

Performance Appraisal

As a performance-based management contract, the contract provides an extensive system for appraisal and evaluation of the contractor's performance in two overarching areas: (a) Science and Technology, and (b) Operations and Administrative performance (Clause 2.6; Appendix F). Detailed performance objectives, criteria and measures are provided in areas which include, among others, safeguards and security, and environment, safety and health, and financial management. The amount of the program performance fee awarded to the contractor depends upon the ratings the contractor is given in the performance areas described (Clause 5.3).

Termination

Under the Termination clause in the contract (Clause 13.2), the Contracting Officer may terminate the contract for certain specified reasons (e.g., certain illegal activities), or "whenever, for any reason, the Contracting Officer shall determine any such termination is for the best interest of the Government." The right to terminate a contract for convenience "for the best interest of the Government" has been given great deference and generally will not be disturbed, absent a finding of bad faith or abuse of discretion by the Government. *Krygoski Construction Company, Inc. v. United States*, 94 F.3rd 1537 (Fed. Cir. 1996).

Conclusion

It is clear that DOE has broad authority to set standards and impose requirements over many areas of contractor performance in the operation of the Los Alamos National Laboratory. And, although the M&O contract is not an employment or personal services contract providing DOE with full control over contractor behavior, including the ability to directly fire and hire all individual contractor employees, DOE does have numerous mechanisms available, such as the right to approve a satisfactory laboratory director, the right to evaluate contractor performance and thus affect the contractor's fee, and ultimately the right to terminate the contract, so that it can effectively assure that the work is being performed in accordance with the contract's performance standards.

Mr. DINGELL. I notice my time has expired, but one quick question, Senator. You talked about the NRO. That is an agency that built a building without ever telling the Congress?

Mr. RUDMAN. As a matter of fact, they built the building and told the Congress, but everybody ignored it.

Mr. DINGELL. Is that what happened?

Mr. RUDMAN. That is exactly what happened. That is not what the press said, but that is what happened.

But let me say that they have a lovely headquarters out there, which I was here when we appropriated the money for that. I was on the Intelligence Committee, and it is rather palatial. I think some people up here are a bit jealous of it, but the fact is that the work that they do is extraordinary, and I commend it to this committee to look at.

Mr. DINGELL. And they spent money, I gather, very genteelly.

Mr. RUDMAN. They spend a lot of money, but we tend to appropriate it for them up here.

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. UPTON. The building is like the B-2 bomber, you weren't supposed to see it.

Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Mr. Secretary, you probably thought you were getting a break coming to the DOE versus the U.N. It seems like the firing is a little more intense on this end.

Senator, I am a former Army officer, and I think there is another agency that holds people accountable for what the unit does or fails to do, and that is the military. That is why I think we see a proliferation of retired generals coming into the Federal bureaucracy to help us rein in and keep people accountable, and I, as a veteran and as a Reservist, I applaud that portion of our Federal Government that still holds a line on some accountability.

I want to kind of follow up on our last line of conversation to try to understand, Senator, the line you drew between the facilities and functions that would be transferred to the new semi-autonomous, independent organizations and those that would remain in DOE.

Your report recommends transferring three labs, Lawrence Livermore, Los Alamos and DN; four facilities, Kansas City, Pantex, Y-12 and the Nevada test site.

These three labs each conduct a significant amount of non-weapons work, so that the basic question is: What do we do with those parts of those labs that are not doing weapons-type research? Do we keep them there? Do we move them? Do we move the personnel? What would you do given that problem?

Mr. RUDMAN. Congressman, your question is addressed in some detail in our written report.

Let me point out to you that the reason that we believe that even though we gave you two alternatives, that the alternative keeping it under the Secretary of Energy's control, even though it is a semi-autonomous agency, is for that very reason. You will note on page 50 of our report, we show the Assistant Secretary for Science and Energy who has a direct line going into the Deputy Director of Defense programs. You would still have the authority going up to the Deputy Director and all the way up, if you will, to the Under Secretary, but we believe that all of that science should be kept at the Department of Energy.

It should be done at those laboratories, and the Secretary has enormous power under their enabling statute to do anything he wishes to effectuate that. What we don't want to happen is to have all of these other folks who have some lines of authority over this weapons agency. That is where we think the trouble starts.

It also starts in the field operations, which we strongly say ought to be stripped away and then put back in place to the extent that they are needed.

Mr. SHIMKUS. Am I correct in stating that at Savannah there is some weapons research done there also; do you know?

Mr. RUDMAN. Yes. That is production of tritium, right; I knew that, right.

Mr. SHIMKUS. So I guess the same—I guess the same follow-up question continues with what do we do—Savannah is not really specifically mentioned in the report, as far as I have reviewed. How do we respond with Savannah?

Mr. RUDMAN. The Secretary can correct me on this because he has more knowledge of it, but my understanding is that that is in the process of a very careful long-term shutdown, if I am not mistaken.

Mr. RICHARDSON. Savannah deals with tritium. Savannah has many components. We are not shutting Savannah down.

Mr. RUDMAN. Part of it is being shut down, correct?

Mr. RICHARDSON. The tritium extraction facility is going to be built there.

Now, I guess—

Mr. SHIMKUS. You see, the problem is when we are trying to merge and have a separate entity, and I kind of tend to agree with the Senator on the report, the question is these facilities that have other activities that are civilian-related, how do you break them apart? I don't know if we have thought that through.

Mr. RUDMAN. We don't break them apart. We say there are certain of these facilities which should not be a part of this agency for nuclear stewardship. We say that the problem now is that you have got too much in too many places.

Look, I showed this organization to the CEO of I guess it is the ninth largest U.S. Corporation. He got hysterical looking at it. He said it is impossible to run anything like this. He says what you would do is you would break it into smaller units. That was after we had done our report.

I mean, I agree with some of these comments. You bring in a ruthless CEO, and let me tell you, it would be yes, sir, and no, sir, march off to the right. The trouble in the body politic is we don't operate that way, although I think the Secretary may find in the coming 18 months of his term that he may have to get very tough with people, because my sense is there are a lot of folks out there who are still resisting in spite of every good effort.

Mr. SHIMKUS. I think the Secretary can take support from the fact that there are a lot of Members of Congress who would support activities that the Secretary does in moving aggressively.

I yield back my time.

Mr. UPTON. Thank you.

The gentleman from Massachusetts, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

Mr. Secretary, as a long-time veteran of this committee, you remember, I am sure, back in the 1980's, the battle days when DOE production was everything, and there was a severe lack of environmental compliance, health compliance, safety compliance, dozens of hearings held in this committee trying to get the Department of

Energy to measure up on issues that were clearly of great importance to American families, American workers and the environment in our country.

At that time, the defense nuclear complex, this thing that coexists with DOE, the same operators who created the massive contamination of these facilities, was in charge of the environment, of the safety, of the health function.

Now, in 1989, after countless investigations and GAO reports, the environment, health and safety function was given to the Office of Environmental Management. Will you oppose any legislative effort, such as the Kyl amendment in the Senate, that effectively puts the environment, safety and health function back in the defense nuclear complex, whether in the form of a semiautonomous entity or otherwise?

Mr. RICHARDSON. Yes. Although Senator Kyl has changed his amendment several times, I can't keep track of it, but, yes, I think that environment, health, safety oversight should be in a separate entity that reports directly to me, and I think the nuclear weapons component should abide with safety and health provisions and should not be immune from being scrutinized in these areas.

Mr. MARKEY. Senator Rudman, no one holds you in higher regard than I do, and you have done an excellent job in diagnosing the problem here. We just want to make sure that we make the referral to the right doctor for each one of the problems. The health, the safety, and environmental issues have always been very troublesome in terms of the handling by the defense establishment.

Would you support the Kyl amendment?

Mr. RUDMAN. Oh, absolutely not. I told him that. In fact, they have withdrawn it. They have essentially adopted our formulation. And we were very careful because, you know, we heard a lot of testimony from a lot of people. We looked at all of the reports from this committee. We had—how many reports from this committee did we look at? Probably 30, 35 reports over the last 20 years. We got them all from both minority and majority staff.

We do not believe that any—that the environment, the health issues should be stripped out from where they are and put down within this unit. We believe they ought to stay where they ought to stay, with the Secretary. So we didn't do that, and I would not support that kind of a change, because I know what we all went through back during the 1980's.

Mr. MARKEY. Now, do you think that it is impossible to construct an entity such as the Secretary is recommending, that is within the existing structure of DOE, to solve these problems, that would satisfy the concerns which your report has identified? Do you think he just can't accomplish this under any circumstances, or are you just kind of trying to propose the perfect, but the good could still be accomplished under the Secretary's formulation?

Mr. RUDMAN. It would certainly be an improvement, but let me just make an observation, Congressman Markey.

The only essential difference, if you take the boxes of the staff offices and say to the Secretary, what don't you think ought to be there, and say, okay, we will move that around, we won't have an IG, we won't have a general counsel, we will move that back up, we will have a representative there, you get that all done, the only

lasting—the only difference that is left between our proposal and his proposal is whether or not you refer to this in the statute as the Agency for Nuclear Stewardship or the Nuclear Stewardship Administration, directly responsible to the Secretary. That is the only difference. There is no difference.

I have been trying to figure out now for going on 7 hours—and I am usually not that slow, but I am pretty slow today.

Mr. MARKEY. You went to an excellent law school, Senator. I just want to compliment you.

Mr. RUDMAN. That is right.

I can't figure out for the life of me if everybody is willing to say to the Secretary, we will put the boxes the way you want them, this persons is directly responsible to you and all of that, he has some sort of a block against the word "agency" or "administration," and maybe you can help get him over that.

Mr. MARKEY. Mr. Secretary, is there a bridgeable gulf? Is there another word in the thesaurus that we could look to that could solve the problem?

The Senator says that there really is not a substantive difference of opinion here; that it is now on the nomenclature that is dividing you.

Mr. RICHARDSON. I think that we are—hopefully we will merge these differences.

Congressman, I also want to preserve the rights in the House of my old committee, your oversight responsibilities, that you are now conducting. So I want to put that on the table.

No. 2, I think it is important that we do this right because we are going to codify it, and we don't want to create a monster that doesn't have proper oversight by anybody else, as imperfect as it may be.

I will repeat again, I don't think Senator Rudman and I are very far apart. I worry about some of the drafting that is going on in the other body that has all the right rhetoric, but if you look at the boxes that Senator Rudman and I can agree on, that there are some that want to, for instance, deal with safety and health separately and not make them a part of the charter of this new entity.

I don't think it is right. I think everybody should be accountable for safety and health and security, and I think my plan achieves this. I think we are coming closer as the hours go by.

Mr. MARKEY. Senator Rudman and I are both alumni of Boston College Law School, but you and I are both alumni of this committee, and I am very sensitive to your concern about our committee's jurisdiction.

At the bottom of all of this is really a problem of contractors and how we make them accountable, and if we move the people who used to be responsible for \$800 toilet seats and now put them in charge of this, and we take the people who used to be in charge of our secrets at the labs and move them over here to the toilet seat area, that doesn't really do anything.

Moving around the boxes isn't going to solve this. Accountability of contractors, no matter how we design it at the end of the day, is really going to determine whether this is a success or not. And I think that our committee's record in identifying and highlighting these issues over the years is unsurpassed in Congress.

As a matter of fact, I think you largely have had to rely upon the reports of this committee, and I think in the same way that while the Banking Committee might have had their scandals with the S&L industry, we never had the counterpart in the securities industry. The same thing can be said here, and I would just hope that there would be some respectful attention paid to the legitimate concerns raised by the Secretary.

Mr. RUDMAN. I just want to respond, if I may, Mr. Chairman, in 30 seconds.

Mr. UPTON. Go ahead.

Mr. RUDMAN. I think that it is essential that this be done carefully, methodically. I don't know what the Senate will do. It may pass something in the next several days. I think this ought to be looked at very carefully, but I just want you to understand where I am coming from, Congressman Markey. I said it before you got here. I am deeply concerned about what happens after Secretary Richardson is no longer Secretary of Energy, and his top people are now gone, and somebody comes in with different priorities. That is why we think the semiautonomous agency or administration, structured with the right people, stands the greatest chance of maintaining accountability.

This is all about accountability. That is what it is really about, and I think you have said that.

Mr. MARKEY. Thank you, Senator, very much.

Mr. UPTON. The gentleman from Texas, Mr. Barton.

Mr. BARTON. Thank you, Chairman Upton.

I want to first welcome Congressman Markey's better half, Dr. Susan Markey, in the hearing room. She was smiling broadly as you spoke, nodding her head aggressively on occasion. So we are glad to have her here.

I have just three questions, and I know you have got to catch a plane, and I know Secretary Richardson has a busy schedule.

My first question is to you, Mr. Secretary. When I gave my opening statement, I said that we ought to terminate the contract with the University of California immediately, if possible. Do you see any cultural conflicts in having an academic institution, which tends to seek openness and dialog, in charge of a weapons complex where a paramount concern is just the opposite, which is security and classified information?

Mr. RICHARDSON. Congressman, I don't see a conflict. I think whoever your contractor might be, if you have strong stipulations on security and counterintelligence, as there should be—I think that the labs have benefited in their science, in their research, from being associated with world-class institutions like the university. I am talking about the science side. We have labs associated with MIT, with Princeton, with the University of Chicago. That is good for science. That is good for us.

We have some relationships with your universities that are good for the Department of Energy.

Mr. BARTON. Why hasn't the University of California then, if it is good for the weapons complex, why haven't they aggressively acted on the recommendations that you have made and other Secretaries before you have made? Why does it take a congressional oversight hearing and a national scandal to get their attention?

I could point out that when Chairman Dingell was chairman of the full committee, his oversight subcommittee uncovered a number of scandals in the contract that the University of California was then administering. So how many scandals and how long does it take, Mr. Secretary?

Mr. RICHARDSON. Well, there shouldn't be any more. There shouldn't be any more.

Mr. BARTON. Well, I think we agree on that.

Mr. RICHARDSON. There should be statutory language to prevent ingrained problems. We are moving in that direction, but I am not going to blame the University of California for all the security lapses at the lab.

Mr. BARTON. Well, they are the contractor.

Mr. RICHARDSON. Well, it is—

Mr. BARTON. You either blame the contractor, or you blame people above them in your chain of command. There has to be accountability.

Mr. RICHARDSON. I am blaming the people above them. I am blaming the Department of Energy. I am blaming past White Houses. We could have a collective responsibility. You can't just blame the contractor. We change the culture of the lab employees.

Mr. BARTON. Well, I think you can hold them accountable.

Mr. RICHARDSON. I am blaming the Congress, too. You know, we shouldn't have—my staff is yelling no.

Mr. BARTON. No, that is okay. I won't disassociate myself with that.

Mr. RICHARDSON. We briefed a lot of committees about these problems, and there were times when my counterintelligence chief didn't get the funding that he requested from the Congress.

Mr. BARTON. I have got two more questions. I know that you can filibuster with the best in the other body when you want to.

Senator Rudman's report has a part of it in the section entitled Trouble Ahead, where it talks about that foreign nationals were able to have remote dial-up access to unclassified networks without any monitoring by the lab. Is that true, yes or no?

Mr. RICHARDSON. There will be monitoring soon.

Mr. BARTON. No, it is not true. So Senator Rudman's report is wrong? Well, we will come back to that.

Mr. RICHARDSON. No, Senator Rudman has got a very good, strong report.

Mr. BARTON. Okay. It goes on to say that the labs have begun to monitor outgoing e-mails for classified materials, that you personally ordered that in April, but that one lab took the minimal action necessary. It began monitoring e-mails but did not monitor the files attached to the e-mails. What is your reaction to that?

Does that indicate to you that they are taking seriously these concerns?

Mr. RICHARDSON. Well, no, no, no. Every lab has been strong, some stronger than others. There are some that should have been stronger. There were some technology problems related to cybersecurity. This is why I ordered this computer stand-down.

Mr. BARTON. My high school junior daughter knows that if you are supposed to monitor an e-mail, you also have to monitor the file attached to it, Mr. Secretary. That doesn't take a rocket sci-

entist at a weapons laboratory. I mean, that is kind of honoring the spirit of your direct request.

Mr. RICHARDSON. We are doing that.

Mr. BARTON. But not doing what is totally required.

Mr. RICHARDSON. What we are doing, we are monitoring e-mail. There are such explosive changes in technology. This is why in cybersecurity you need constant testing. That is what is happening today in the stand-down.

Mr. BARTON. So can I depend upon you today directly to go back and send out another directive that in addition to monitoring the e-mails, they also monitor the files attached to the e-mails?

Mr. RICHARDSON. They are working on that.

Mr. BARTON. Do I need to give you a definition of what a file attachment is? I mean, how many levels down do we have to go before you begin to take this seriously?

Mr. RICHARDSON. You know, Congressman, I am—this is what I mean. I marvel at the sources of information that you have that I apparently don't have.

Mr. BARTON. Our source is sitting right next to you.

Mr. RICHARDSON. Well, you have—in the last second, 2 minutes, you have come up with two claims that I am unaware of.

Mr. BARTON. I am not even the Secretary of Energy. I am just a lowly midranking Congressman trying to just bask in the reflected glory of your stewardship at the Department of Energy.

I have got one final question for Senator Rudman.

When Secretary Richardson ordered the computer shutdowns at the three laboratories back in April, the Department stated that the computers would not be allowed back on until each lab undertook certain security upgrades to prevent the downloading there, we have that word again, or transfer of classified files and to scan its unclassified systems and outgoing e-mails for classified data.

Mr. Secretary—I mean, former Senator, what did your panel find with respect to these initiatives? Were the computers allowed back on despite the failure to achieve these upgrades? And if so, why so?

Mr. RUDMAN. We started drafting this report in early May. We had a chance to observe much of what went on. We believe the stand-down was a good idea. We think something was achieved by it. We do not have the level of confidence of the Secretary or some of his people that we are quite where we want to be. As a matter of fact, in fairness, it is not just DOE. It is the entire government. Some of the firewalls that people think that have existed at DOE and other places don't exist.

The PFIAB does not talk about its work publicly, but let me simply say parenthetically we do a great deal of work and have been doing it, obviously, in the area of the Intelligence Community and cybersecurity. So I think we probably know a little bit more about that than most folks out there.

I have no high level of confidence, but I am not even sure the Secretary has a high level of confidence. I think they have done what current technology will give them, but there is a lot more to be done.

Mr. BARTON. Is there a protocol, now that your report is public, that prevents your staff that helped in the advisory board to com-

pile this report from talking to the Secretary of Energy's designee on some of these issues? Is that allowed or not allowed?

Mr. RUDMAN. It is allowed. The PFIAB is an independent group, but nonetheless part of the Executive Office of the President, bipartisan. It can work with any agency that has a component of intelligence or counterintelligence. So certainly we don't have a problem talking about it.

Mr. BARTON. The Secretary seems perplexed that sources of our information are not available to he and his staff, so I would encourage you to provide them what you have provided the committee.

Mr. RUDMAN. Well, we are not the original source, but we will be happy to direct him to the best source in the government for that information.

Mr. BARTON. Mr. Chairman, in closing, if we take legislative action on this issue, and I hope we do, it will come before my subcommittee, and I pledge to the Secretary and to the Senator that we will work together to try to come up with something that everyone can support.

I want to tell my good friend, the Secretary, that I want to be more proactive on this and think outside the box a lot more than I gather that you do based on your testimony today, but I will work with you on it.

Thank you, Mr. Chairman.

Mr. UPTON. Thank you, Mr. Barton.

Again, to my two friends, personal and certainly professional, we appreciate your fine work and your willingness to spend a number of hours with us this afternoon. We look forward to working with you in the days ahead. Thanks very much.

[Whereupon, at 4 p.m., the committee was adjourned.]

[Additional material submitted for the record follows:]

RESPONSES FOR THE RECORD OF HON. BILL RICHARDSON, SECRETARY OF ENERGY

QUESTIONS FROM THE HOUSE COMMERCE COMMITTEE

Question 2. Do you believe that giving the labs more independence will change their culture or improve security? What do you recommend as the most effective step you can take to change the laboratory culture, from the lab director down through the ranks, so well described in the Rudman report concerning the significance of security and safety issues?

Answer 2. Improving security at the labs depends on factors including Headquarters and laboratory management commitment; employee training; the recognition by each employee that security is their individual responsibility; and financial incentives for the laboratories to strive for the highest level of performance in safeguards and security. Each of these important areas is being addressed.

Defense Programs has initiated measures that will institutionalize each of these factors. Field managers have been directed by Defense Programs Management to provide immediate, detailed information to headquarters for management assessment of all security incidents as well as their corrective actions. Defense Programs is currently tracking to closure all deficiencies so that sites will attain a satisfactory rating by the end of calendar year 1999. A laboratory stand-down was conducted in April 1999, and a 9-point INFOSEC Action Plan for all classified computer professionals and administrative users was instituted. A security Immersion Program for all federal and contractor field and headquarters personnel was conducted in order to provide training in Information Security policies and procedures and to insure that each individual understands that security is his/her responsibility. Finally, Defense Programs is working to assure a more consistent process for determining safeguards and security Performance Objectives, Criteria and Measurements (POCM's) for the laboratories in FY 2000. The new performance evaluation criteria will be based on safeguards and security results from oversight reviews. Award fees

will be determined in conformity with the laboratories' performance and their accountability for individual protection programs.

The revised POCMs will provide an incentive for the laboratories to achieve a satisfactory rating in their programs. Defense Programs management accountability and sustained attention to its safeguards and security programs will promote a cultural change and superior performance in these areas.

QUESTIONS FROM CONGRESSMAN DINGELL

Question 3. Who do you think should enforce environmental, health and safety requirements at the DOE weapons facilities? Under a quasi-independent agency as proposed, how would these requirements be imposed?

Answer 3. I believe the soundest approach to enforcement of environment, health and safety requirements in the DOE defense complex is one in which line management bears responsibility for safe and compliant operations, with a robust independent oversight and enforcement regime outside the operational chain of command. This ensures that all the Department's expertise can help assure safe and compliant operations. It is well to remember that the DOE defense complex must conduct its operations using potentially extremely hazardous materials in esoteric processes, and therefore assuring worker and public health and safety is an objective whose importance cannot be overstated.

Under the recently-adopted National Nuclear Security Administration Act the Administrator is expressly charged by statute with responsibility for environment, safety and health regarding operation of the Department's defense complex. Other provisions of the legislation, in particular its unusual limitations on the Secretary's direct management and delegation authorities, likely will compel changes in the independent environment, safety and health enforcement regime within the Department with respect to the defense complex. Specifically, for example, the legislation would effectively terminate the emergency "shutdown" authority that since 1988 has been delegated to the Assistant Secretary for Environment, Safety and Health. We anticipate seeking clarifying legislation bearing on this question, and in any event will provide the Department's implementation plan in the report the statute requires the Secretary to submit by January 1, 2000.

Question 4: The Rudman panel is very taken by the operations of the National Reconnaissance Office (NRO) which is responsible for the awarding and managing the contracts that provide the nation's surveillance satellites. The report indicated that DOE should be modeled after the NRO. Is this an appropriate agency to compare to the Department of Energy. Why or why not?

Answer 4: The NRO's charter, which is a Department of Defense Directive rather than a statute, makes clear that the entire NRO is "under the direction and supervision of the Secretary of Defense," and is headed by a Director who manages the NRO "in accordance with policy guidance and decisions of the Secretary of Defense." DoD Dir. 5105.23, §§ 1&2. The Secretary of Defense, in turn, may "exercise any of his powers" of supervision of the NRO "through, or with the aid of such persons in, or organizations of, the Department of Defense as he may designate." 10 U.S.C. 113(d). Thus the Secretary of Defense retains both direct supervisory authority over the NRO itself and the ability to delegate that authority to any person or entity within the entire Department of Defense.

These Secretarial management authorities over the NRO were rejected in the legislation establishing the National Nuclear Security Administration. Instead that legislation enacted "firewalls" immunizing NNSA personnel from any outside supervision, including by the Secretary himself, and limited the Secretary's ability to delegate his sole supervisory authority—over just the head of the NNSA—only to the Deputy Secretary. These are major deficiencies of the legislation, which conflicted in this respect with the models of semi-autonomous agencies cited in the Rudman Report recommendations.

Question 5: Does the NRO have any non-military scientific missions? Is it expected to go out and find unclassified work in the private sector to keep its contractors busy?

Answer 5: While it is possible that the NRO has non-defense scientific missions, the Department is not aware of any such missions and there is no evidence of any such missions in the publicly available documents on the NRO.

The Department of Defense Directive which created the NRO describes the NRO's "Organization and Responsibility" as follows: "The Director [of the NRO] will be responsible for the consolidation of all Department of Defense satellite air vehicle overflight projects for intelligence, geodesy and mapping photography [deleted material] into a single program, defined as the [deleted material] National Reconnaissance Program..." DoD Dir. 5105.23, § 2 (March 27, 1964). The NRO's mission

statement as it appears on the NRO's official website reads as follows: "The mission of the National Reconnaissance Office is to enable U.S. global information superiority, during peace through war [sic]. The NRO is responsible for the unique and innovative technology, large-scale systems engineering, development and acquisition, and operation of space reconnaissance systems and related intelligence activities needed to support global information superiority."

The Department similarly has no direct familiarity with the NRO's policies and procedures governing its contractors and their work.

The Department will have to defer to the NRO regarding additional information on both of these matters.

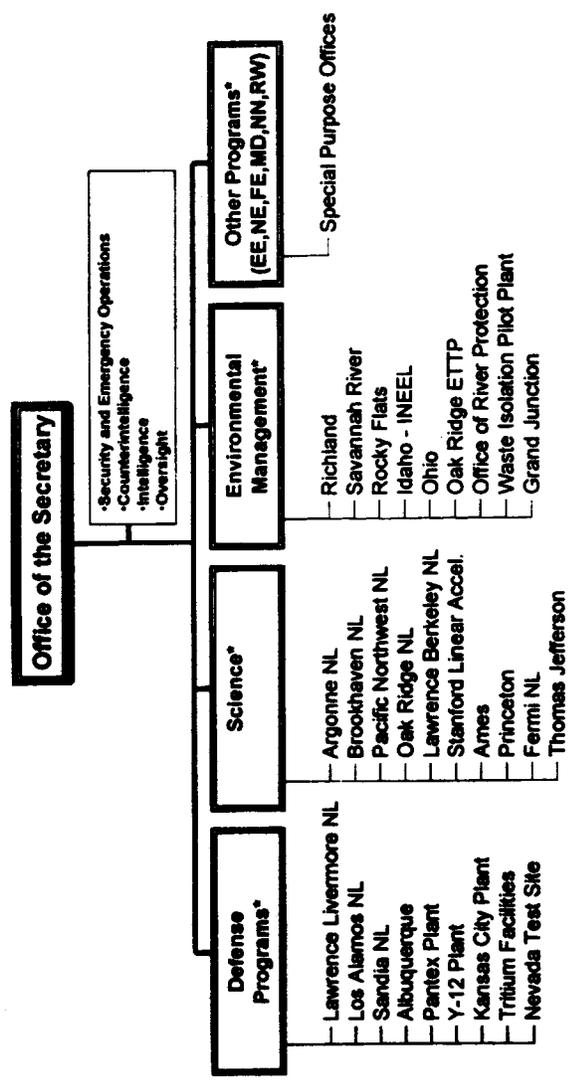
Question 6. The complicated organization chart in the Rudman report does not describe your recent changes, but is there more to be done/ For example, should the field offices be eliminated or significantly reduced?

Answer: The "complicated organization chart" to which you refer was drawn to make the point that the lines of authority and accountability within the Department were unclear. While the chart was somewhat overdrawn, I agree with the point. That is why I chartered a Management Review of the roles and responsibilities and lines of authority and accountability at Headquarters and the field. In recent testimony before the Congress on these issues, I presented the attached chart showing how we had clarified the Department's program responsibilities.

We are continuing to implement the changes to the Departmental structure that I proposed in April as a result of my Management Review. These changes will eliminate multiple reporting channels and improve lines of communication, direction and accountability.

Regarding the field offices, I continue to believe they play an indispensable role. As you know, our laboratories and production sites are primarily government owned, contractor operated, facilities. These sites need a Federal presence nearby for contractor oversight, liaison with Headquarters and the continuing task of representing the Federal government to the surrounding communities, local political institutions, and regulators. We have reduced the Department's Federal field staff by an average of 25% since 1996 and we continue to look for more efficient ways to do our work in the field.

Department of Energy Program Responsibilities*



* Accountable for program policy, direction, and implementation, including FS&H and Security.

Question 7. Would you oppose a requirement that all lab management contracts which have not been rebid in the last five years should be rebid at their next expiration? Why or why not?

Answer 7. Consistent with the Competition in Contracting Act of 1984 (CICA), DOE policy establishes competition as the norm for its contracts for the management and operation of its major sites and facilities, including its laboratory management contracts. DOE's competition policy also preserves the benefits of long term relationships by permitting contract terms for up to 10 years for these contracts. I support that policy and believe that there are significant benefits to competition. During this Administration, DOE has competed numerous site and facility contracts (both laboratory and non-laboratory), e.g., Brookhaven National Laboratory, Idaho National Engineering and Environmental Laboratory, Bettis Atomic Power Laboratory, National Renewable Energy Laboratory, Hanford Site, Rocky Flats Environmental Technology Site, Savannah River Plant, the Oak Ridge environmental program, and Mound Site. Notwithstanding this impressive track record of competition, I would oppose a statutory requirement to compete laboratory management contracts which have not been competed in the last five years. Such a requirement would be contrary to established law and regulatory policy, could adversely affect the accomplishment of critical Departmental missions, and would ignore circumstances which would rationally support a noncompetitive action.

Consistent with current law and regulations applicable to other Federal agencies, DOE's competition policy provides that contracts for the management and operation of DOE sites and facilities, including laboratories, will be competed, unless a non-competitive procurement is justified in accordance with criteria contained in CICA. CICA recognizes the need for contractual latitude in addressing the needs of the United States Government by providing seven specific exceptions to the requirement to compete, e.g. only one responsible source; unusual and compelling urgency; industrial mobilization or essential engineering, development, or research capability provided by educational or nonprofit institutions, or Federally Funded Research and Development Centers (FFRDCs); and national security. Moreover, the Federal Acquisition Regulation (FAR), under Part 35.017, encourages long-term relationships between the Government and FFRDCs in order to provide the continuity that will attract high-quality personnel to the FFRDC, permit special long-term research or development needs to be met, and accomplish tasks that are integral to the mission and operation of the sponsoring agency. Flexibility under special circumstances is an important management tool in order for DOE to meet mission needs and retain excellent R&D laboratory contractors.

The ability to engage in prudent decision-making provided by CICA and the recognition of the value of special long term relationships found in the FAR are critical to the successful conduct of DOE missions. DOE missions are broad and varied, critical to the national security of the United States, and the national laboratories are an important cornerstone in the accomplishment of these missions. However, this does not mean that DOE mechanically applies the exceptions allowed by CICA or the flexibility of the FAR. DOE's exercise of the discretion authorized by statute and regulation is, in fact, more rigorous than what is found in most, if not all, other Federal agencies. Any decision to extend rather than compete a management and operating contract requires an extensive analysis of the basis for non-competition, consensus of DOE's senior management, Secretarial authorization, and Congressional notification. Pursuant to the Energy and Water Appropriations Act of 1999, none of the funds appropriated by that Act may be used to award a management and operating contract unless such contract is awarded using competitive procedures or the Secretary of Energy grants a waiver to the requirement. Also under this Act, the Secretary must notify Congress of any waiver at least 60 days before contract award. Furthermore, DOE is the only agency that routinely reviews its FFRDC laboratory contracts for competition even though one CICA exception expressly covers FFRDCs. Over the last five years DOE competed, or is in the process of competing, six FFRDCs. No other agency has demonstrated such a track record.

QUESTIONS FROM THE HOUSE COMMERCE COMMITTEE

Question 8. The security function at DOE has always included the nuclear materials accountability responsibility. There are large amounts of nuclear materials stored at sites, such as Rocky Flats, that would not be part of the new agency as proposed by Senator Rudman and others. Do you believe that this is a workable and efficient arrangement.

Answer 8. The Department is committed to assure that nuclear material accountability responsibilities at DOE sites both within and outside the purview of the new

administration will be coordinated in order to ensure proper accountability for these materials.

The Department has convened a Task Force to develop a plan for implementation of the National Nuclear Security Administration. Details of the plan will be included in the report required by the National Defense Authorization Act for Fiscal Year 2000.

Question 9. Under the Rudman proposal, who would be responsible for security at the other DOE weapons sites and its other facilities? Who would be responsible at Savannah River, Hanford, and Oak Ridge? Would there be a parallel structure for the non-weapons and weapons sites?

Answer 9. The Department has convened a Task Force to develop an implementation plan for the National Nuclear Security Administration. Details of the plan will be included in the report required by the National Defense Authorization Act for Fiscal Year 2000.

ONE HUNDRED SIXTH CONGRESS

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U.S. House of Representatives
Committee on Commerce
 Room 2125, Rayburn House Office Building
 Washington, DC 20515-6115

June 25, 1999

The Honorable Warren B. Rudman
 Chairman
 President's Foreign Intelligence Advisory Board
 Room 340, Old Executive Office Building
 Washington, D.C. 20502

Dear Senator Rudman:

Thank you for your hard work on the Report on Security Problems at the U.S. Department of Energy (DOE), and for your testimony before this Committee on June 22nd. Your panel's factual determinations appear very sensible; the recommendations appear less so.

I am greatly concerned that under these proposals DOE will revert to a previous structure — which was notably unsuccessful — under which the Office of Defense Programs is almost totally independent of any control by DOE. That structure led to the General Accounting Office finding in 1988 found that "DOE has not given sufficient emphasis to environment, safety and health protection at DOE's nuclear defense complex." All of these problems continue to this day.

The panel pointed with great approval to the organization of the National Reconnaissance Office, the Defense Department, and the National Aeronautics and Space Administration for dealing with defense contracts. However, in the nuclear defense complex, the Federal government owns the facilities in which its contractors work and is directly responsible for each of these sites, as well as the health and safety of its contractors' workers. It appears that your panel made its recommendations for restructuring without directly addressing the Department's ongoing responsibility for these facilities and workers.

As we address your restructuring proposals, therefore, it would be very helpful to have your response to the following questions:

1. By law, the nuclear operations of the DOE are not subject to external health, industrial, and radiation safety by the Nuclear Regulatory Commission or the Occupational Safety and Health Administration. These activities are currently

The Honorable Warren B. Rudman
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regulated by the DOE itself. Under the panel's proposal for an independent agency or a semi-autonomous administration, who would have the authority to enforce federal health and safety standards in the new agency's facilities?

2. Did your panel study which federal regulatory bodies could take on the environmental, safety and health responsibilities for this new agency?
3. Did the panel examine in any detail the likely consequences of putting the same contractors and staff who caused massive and costly environmental pollution at their sites in charge of managing future waste production safely and cleaning up past pollution according to state and federal law?
4. In its June 1998 report entitled "Accelerating Cleanup", the DOE described its new systems which link planning, performance measurement, and the budget formulation to accelerate cleanup. In the panel's proposal, did it anticipate the setting up of a parallel environmental, health and safety structure in the new agency to take on these responsibilities or leaving that authority within the DOE? How would you expect either system to work?
5. Almost all of the defense facilities are on the Superfund National Priorities List and have entered into inter-agency agreements with the states and the Environmental Protection Agency. These agreements set firm dates for clean-up events to occur. DOE has been fined several times for failing to meet these deadlines. Would a new agency accept legal responsibility for these cleanup agreements and possible fines?
6. Did the panel examine how much delay in cleanup might occur if the environmental, health and safety responsibilities are shifted to a new entity?
7. Does the panel recommend that responsibility for sites such as Savannah River and Oak Ridge be split up between the new agency and the DOE? If so, will there be two separate contractors and two DOE managers for each of these "dual" sites?
8. In 1989, this Committee established the Defense Nuclear Facilities Safety Board to provide independent advice to the Secretary on contractors' compliance with departmental safety and environmental rules. Under the panel's proposals, will the Defense Board continue to exist and will it have jurisdiction over the new agency? If not, who will provide independent health and safety advice regarding these facilities? For example, who would provide the Secretary with independent advice regarding the safe design and operation of a new tritium production facility?

The Honorable Warren B. Rudman
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9. The panel's report stated that defense programs and laboratory officials remain "unconvinced of Presidential authority" as expressed in Presidential decision directives. We anticipate that few of these people will leave their positions, regardless of how DOE is restructured. How does the panel propose to change the culture to convince these people of the validity of "Presidential authority"?
10. The panel has suggested an independent oversight board to monitor the agency performance and compliance with its own policies. What authority would this board have? Will it do studies and make recommendations? We have seen plenty of studies and recommendations already, and they haven't been very effective. Why does the panel expect this board to be more effective?
11. Would this board provide independent oversight of the entire operations of the new agency, including contract management, environment, safety and health, or just its security, intelligence and counterintelligence functions?
12. Under the Kyl and Thornberry amendments, a nuclear security administration would be created within DOE with an administrator appointed by the President. This administrator would report to no one within the Department. In fact, the Secretary is directed to give the administrator all the support and facilities he requests. Budget requests would go to Congress without administration review. Under such a system, do you believe that there would be adequate oversight to make sure that the new administration carried out its functions, including meeting environmental, safety and health responsibilities?
13. Should the Secretary have the authority to fire lab contract employees without receiving the approval of the lab manager?

Thank you for your attention to these questions. Because of legislation action on the panel's recommendation may occur in the near future, I would appreciate a response by Friday, July 9, 1999. If you have any questions concerning this matter, please call me or have your staff contact Edith Holleman of the minority staff at 202-226-3400.

Sincerely,



JOHN D. DINGELL
RANKING MEMBER

cc: The Honorable Tom Bliley, Chairman
Committee on Commerce

THE WHITE HOUSE
WASHINGTON

President's
Foreign Intelligence
Advisory Board

June 30, 1999

MEMORANDUM OF CLARIFICATION

RE: PFIAB REPORT ON DOE SECURITY PROBLEMS

On June 14, 1999 this Board released a report to the President on security and counterintelligence problems at the DOE weapons labs. Subsequently, questions have been posed by the Department of Energy and interested committees of Congress regarding our recommendations. Our core recommendation is the creation of a semi-autonomous agency within the Department of Energy to manage the weapons labs and all other national security activities conducted by DOE. This memo is intended to clarify the issues raised concerning that recommended agency.

Security and Counterintelligence Chiefs and the Energy Secretary's Authorities

There clearly must be solid CI, intelligence and security programs within the new Agency. To achieve this, the Agency Director must have sufficient staff assigned directly to him/her to advise on the implementation of CI, security and intelligence policy as promulgated by the Secretary. To be sure, the Agency Director (dual hatted as an Under Secretary) is responsible and held accountable for ensuring complete and faithful implementation of the Secretary's security, CI and intelligence policies within the new Agency.

In this Board's view, the creation of these CI, Intelligence and Security "Chiefs" inside the new Agency as part of the Agency Director's staff in no way undermines, subverts or supercedes the authority of the Secretary. The Secretary is still responsible for developing and promulgating DOE-wide policy on these matters, and it makes sense to us that a Secretary would want advisers on his/her immediate staff to assist in that vein. We understand that is why Secretary Richardson recently created DOE-wide "czars" to advise him on security and CI.

Other Vital Staff Functions Attached to the Agency Director

For the new Agency to function efficiently and effectively, there must be resident within it certain vital organizational functions, including oversight, legal advice and human resource management. We never stated or implied in our report that these functions should be removed from the Secretary level. What we are insisting is that these functions specifically reside at the agency level -- on the staff of the new Agency Director. This

can be achieved either by creating independent entities on the Agency Director's staff or by detailing sections of these departmental functions to the Agency Director's staff. That said, the Secretary must not remove flexibility at the agency level with regard to the possible special needs of the agency -- for example, a tailored, agency-specific personnel system. Also, these functions must not be fulfilled by departmental sections still residing at the department level -- they must be detailed to the new Agency.

Authorities of the Secretary

We fully and unconditionally agree that the Secretary must have complete authority over the new Agency -- through the Agency Director. We have even offered (repeatedly) language to that effect: "Notwithstanding other provisions of this Act, the Director [of the new Agency], who also shall serve as an Under Secretary of Energy, shall report directly to and shall be responsible directly to the Secretary of Energy, who shall be the Director's immediate supervisor. The Secretary shall retain full management and policy authority over the entire department, including the Agency through the Director of the Agency. The Director of the Agency may establish agency-specific policies so long as they are fully consistent with the departmental policies established by the Secretary."

DOE/Weapons Labs Reporting Channels

The fundamental intent of our entire series of recommendations is to provide the kind of management structure and reporting chain that will ensure personal accountability on security, counterintelligence and other critical management responsibilities. *On this issue we stand absolutely firm.*

A clear chain of command between the Weapons Labs and the government manager is essential. We believe our semi-autonomous agency model achieves this by delineating only one reporting channel for the Weapons Labs into the DOE hierarchy -- through the Deputy Director for Defense Programs. It is crucial that the Weapons Lab Directors fully comprehend that they must report directly to and will be held accountable by the Deputy Director for Defense Programs on all lab management responsibilities, including security and counterintelligence. The Deputy Director for Defense Programs, of course, is accountable to the Agency Director, who, in turn, is accountable to the Secretary. This direct reporting responsibility on the part of the contractor to the government manager is axiomatic -- and absolutely necessary for the proper management of all contracts.

We further streamline the reporting chain in our model by abolishing all Weapons Lab ties with DOE field offices, which, because of their layers of bureaucracy, are inimical, we believe, to the efficient and effective operation of the labs. To help ensure that this streamlining takes place, the following language should be added to the pending legislation: "On January 1, 2000, the Secretary of Energy shall report to the President and the Congress on a reorganization plan of the DOE field and area offices to significantly reduce the layers of non-headquarters bureaucracy that have seriously inhibited the efficient and effective management of DOE activities, including contract management at the national weapons laboratories."

Finally, we categorically reject the insinuation made by some that DOE science will somehow be harmed by the streamlined management structure featured in our semi-autonomous agency model. We make clear in our report that the weapons labs will still conduct non-weapons science and that their contacts with the non-weapons labs will not be impeded. Indeed, we hold the Secretary responsible for ensuring that lab-to-lab scientific interaction continues to flourish. And, we clearly show that all DOE and US Government entities wanting to continue R&D contracting with the Weapons Labs will do so, but those contracts will be coordinated through the Deputy Director for Defense Programs. If management issues over such contracts arise, they may be referred for resolution to the Agency Director or ultimately to the Secretary.

Qualifications of the Agency Director

There have been questions raised regarding the constitutionality of legislation prescribing certain criteria for the selection of the Agency Director. As we explain in our report, we strongly believe that the successful candidate must have a strong background in at least two of three critical areas: management; national security; and science. Such background should be obtained from years of in-depth experience in government, the armed forces and/or private industry.

We seriously doubt that delineating such qualifications in legislation is unconstitutional. There are statutes already in force that prescribe qualifications for senior US Government officials, such as the Secretary of Defense. We recommend that such judgments be left to the competent governmental authorities: the Counsel to the President, the appropriate Congressional committees, and, ultimately, the Supreme Court.



Warren B. Rudman
Chairman

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Reorganization To Create Semi-Autonomous Agency

