

THE PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD REPORT ON DOE

JOINT HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

THE

COMMITTEE ON ARMED SERVICES

THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

AND THE

SELECT COMMITTEE ON INTELLIGENCE UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

THE PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD'S REPORT
TO THE PRESIDENT: SCIENCE AT ITS BEST; SECURITY AT ITS WORST,
A REPORT ON SECURITY PROBLEMS AT THE U.S. DEPARTMENT OF
ENERGY

JUNE 22, 1999



Printed for the use of the Committee on Energy and Natural Resources, the
Committee on Armed Services, the Committee on Governmental Affairs, and
the Select Committee on Intelligence

U.S. GOVERNMENT PRINTING OFFICE

60-963 CC

WASHINGTON : 2000

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-060498-2

COMMITTEE ON ENERGY AND NATURAL RESOURCES

FRANK H. MURKOWSKI, Alaska, *Chairman*

PETE V. DOMENICI, New Mexico	JEFF BINGAMAN, New Mexico
DON NICKLES, Oklahoma	DANIEL K. AKAKA, Hawaii
LARRY E. CRAIG, Idaho	BYRON L. DORGAN, North Dakota
BEN NIGHTHORSE CAMPBELL, Colorado	BOB GRAHAM, Florida
CRAIG THOMAS, Wyoming	RON WYDEN, Oregon
GORDON SMITH, Oregon	TIM JOHNSON, South Dakota
JIM BUNNING, Kentucky	MARY L. LANDRIEU, Louisiana
PETER G. FITZGERALD, Illinois	EVAN BAYH, Indiana
SLADE GORTON, Washington	BLANCHE L. LINCOLN, Arkansas
CONRAD BURNS, Montana	

ANDREW D. LUNDQUIST, *Staff Director*

DAVID G. DYE, *Chief Counsel*

JAMES P. BEIRNE, *Deputy Chief Counsel*

ROBERT M. SIMON, *Democratic Staff Director*

SAM E. FOWLER, *Democratic Chief Counsel*

COMMITTEE ON ARMED SERVICES

JOHN WARNER, Virginia, *Chairman*

STROM THURMOND, South Carolina, <i>Chairman Emeritus</i>	CARL LEVIN, Michigan
JOHN MCCAIN, Arizona	EDWARD M. KENNEDY, Massachusetts
BOB SMITH, New Hampshire	JEFF BINGAMAN, New Mexico
JAMES M. INHOFE, Oklahoma	ROBERT C. BYRD, West Virginia
RICK SANTORUM, Pennsylvania	CHARLES S. ROBB, Virginia
OLYMPIA J. SNOWE, Maine	JOSEPH I. LIEBERMAN, Connecticut
PAT ROBERTS, Kansas	MAX CLELAND, Georgia
WAYNE ALLARD, Colorado	MARY L. LANDRIEU, Louisiana
TIM HUTCHINSON, Arkansas	JACK REED, Rhode Island
JEFF SESSIONS, Alabama	

LES BROWNLEE, *Staff Director*

DAVID S. LYLES, *Staff Director for the Minority*

COMMITTEE ON GOVERNMENTAL AFFAIRS

FRED THOMPSON, Tennessee, *Chairman*

WILLIAM V. ROTH, Jr., Delaware
TED STEVENS, Alaska
SUSAN M. COLLINS, Maine
GEORGE V. VOINOVICH, Ohio
PETE V. DOMENICI, New Mexico
THAD COCHRAN, Mississippi
ARLEN SPECTER, Pennsylvania
JUDD GREGG, New Hampshire

JOSEPH I. LIEBERMAN, Connecticut
CARL LEVIN, Michigan
DANIEL K. AKAKA, Hawaii
RICHARD J. DURBIN, Illinois
ROBERT G. TORRICELLI, New Jersey
MAX CLELAND, Georgia
JOHN EDWARDS, North Carolina

HANNAH S. SISTARE, *Staff Director and Counsel*

FREDERICK S. ANSELL, *Chief Counsel*

CHRISTOPHER A. FORD, *Chief Investigative Counsel*

CURTIS M. SILVERS, *Professional Staff Member*

JOYCE A. RECHTSCHAFFEN, *Minority Staff Director and Counsel*

LAURIE RUBENSTEIN, *Minority Chief Counsel*

DARLA D. CASSELL, *Administrative Clerk*

SELECT COMMITTEE ON INTELLIGENCE

RICHARD C. SHELBY, Alabama, *Chairman*

J. ROBERT KERREY, Nebraska, *Vice Chairman*

JOHN H. CHAFEE, Rhode Island
RICHARD G. LUGAR, Indiana
MIKE DeWINE, Ohio
JON KYL, Arizona
JAMES M. INHOFE, Oklahoma
ORRIN G. HATCH, Utah
PAT ROBERTS, Kansas
WAYNE ALLARD, Colorado

RICHARD H. BRYAN, Nevada
BOB GRAHAM, Florida
JOHN F. KERRY, Massachusetts
MAX BAUCUS, Montana
CHARLES S. ROBB, Virginia
FRANK R. LAUTENBERG, New Jersey
CARL LEVIN, Michigan

TRENT LOTT, Mississippi, *Ex Officio*

THOMAS A. DASCHLE, South Dakota, *Ex Officio*

CONTENTS

STATEMENTS

	Page
Akaka, Hon. Daniel K., U.S. Senator from Hawaii	5
Bingaman, Hon. Jeff, U.S. Senator from New Mexico	7
Bunning, Hon. Jim, U.S. Senator from Kentucky	4
Burns, Hon. Conrad, U.S. Senator from Montana	3
Cochran, Hon. Thad, U.S. Senator from Mississippi	5
Craig, Hon. Larry E., U.S. Senator from Idaho	2
Dingell, Hon. John D., U.S. Representative from Michigan	9
Domenici, Hon. Pete V., U.S. Senator from New Mexico	34
Hutchinson, Hon. Tim, U.S. Senator from Arkansas	49
Inhofe, Hon. James, U.S. Senator from Oklahoma	54
Kerrey, Hon. Robert, U.S. Senator from Nebraska	17
Kyl, Hon. Jon, U.S. Senator from Arizona	58
Levin, Hon. Carl, U.S. Senator from Michigan	12
Lieberman, Hon. Joseph, U.S. Senator from Connecticut	14
Murkowski, Hon. Frank H., U.S. Senator from Alaska	1
Richardson, Hon. Bill, Secretary, Department of Energy	19
Rudman, Warren, former U.S. Senator from New Hampshire, Chairman, the President's Foreign Intelligence Advisory Board	24
Shelby, Hon. Richard C., U.S. Senator from Alabama	15
Smith, Hon. Bob, U.S. Senator from New Hampshire	5
Thompson, Hon. Fred, U.S. Senator from Tennessee	13
Warner, Hon. John, U.S. Senator from Virginia	11

THE PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD REPORT ON DOE

TUESDAY, JUNE 22, 1999

U.S. SENATE, THE COMMITTEE ON ENERGY AND NATURAL
RESOURCES, THE COMMITTEE ON ARMED SERVICES, THE
COMMITTEE ON GOVERNMENTAL AFFAIRS, AND THE SE-
LECT COMMITTEE ON INTELLIGENCE,

Washington, D.C.

The committees met jointly, pursuant to notice, at 9:36 a.m. in room SD-124, Dirksen Senate Office Building, Hon. Frank H. Murkowski, chairman of the Committee on Energy and Natural Resources, presiding.

OPENING STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA

Chairman MURKOWSKI. Good morning, ladies and gentlemen. The hour of 9:30 has come and not gone very far, so we are going to get started.

Today we have the Committee on Energy and Natural Resources joining with the Committee on Armed Services, the Committee on Governmental Affairs and the Select Committee on Intelligence. Senator Shelby, Senator Thompson will be joining us very soon, Senator Warner on my right.

The purpose of this is to hold a hearing on the President's Foreign Intelligence Advisory Board report on security problems at the Department of Energy. I am told, according to some of the Senate historians, that this four-committee hearing is unprecedented. It was pointed out that it is kind of like the House, where you have 50 or 60. But in any event, we intend to move along.

Let me propose a procedure for the hearing. First I would propose the opening statements be limited to the four chairmen and the four ranking minority members of each committee, for hopefully less than 5 minutes. Seeing no objection, we would then turn to our first witness, Secretary Richardson. I notice you are further away than usual, Mr. Secretary. Maybe that is a good thing, maybe it is not.

But in any event, after Secretary Richardson testifies we will have a round of questions, with each member having about 5 minutes. We would then turn to Senator Rudman for his testimony. After Senator Rudman testifies we will have a round of questions with each member having 5 minutes as well. For both rounds of questions, we would start with the chairman and ranking members, alternating sides in order of appearance, again alternating sides.

If that is agreeable to all, I would proceed. My statement is going to be very, very brief in the interest of time and to accommodate our witnesses.

What is before us clearly, as has been pointed out, is a disaster of major proportions to the national security of our Nation, and it is going to take some time, perhaps 10 to 20 years, before we know the full extent of the harm that has been brought about as a consequence of the worldwide geopolitical impact.

According to the House Select Committee's report, the Chinese have stolen design information on virtually all of the United States' most advanced nuclear weapons. Well, this is of course unacceptable. But the question we now face is what shall we do about it, how to prevent it from occurring again.

Senator Rudman's report gives us some clear guidance on what to do. A few quotes from that report I think are worth mentioning: "Organizational disarray, managerial neglect, and a culture of arrogance both at the DOE headquarters and the labs themselves conspired to create an espionage scandal waiting to happen."

"The Department of Energy is a dysfunctional bureaucracy that has proven it is incapable of reforming itself."

"Accountability at the Department of Energy has been spread so thinly and erratically that it is now almost impossible to find."

"Never before have the members of the Special Investigative Panel witnessed a bureaucracy, a 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. Particularly egregious have been the failures to enforce cyber security measures to protect and control important nuclear weapons design information. 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 in February 1998."

Finally, the recommendation from the Rudman report is that the panel is convinced that real and lasting security and counterintelligence reform at the laboratories is simply unworkable within the DOE's current structure and culture.

Well, I happen to agree. That is why Senator Kyl, Senator Domenici, and I will be offering an amendment to the intelligence appropriation bill when it comes up to the floor to implement the recommendations of the President's own Intelligence Advisory Panel.

I am going to call on Senator Bingaman and then I would call on each of the chairmen of the various committees and the ranking members.

Senator Bingaman.

[The prepared statements of Senators Craig, Burns, Bunning, Akaka, Cochran and Bob Smith follow:]

PREPARED STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR FROM IDAHO

I look forward to the testimony of our witnesses today. I think the Panel of the President's Foreign Intelligence Advisory Board headed by Senator Rudman should be congratulated for its thought provoking analysis of what is right and what is wrong inside the Department of Energy. I credit the panel with having achieved a

balanced treatment of many of the issues that perhaps led us to the grave security lapses which occurred at Los Alamos.

This Panel was chartered by the President to identify structural and management problems in DOE's security and counterintelligence operations, but in order to analyze security issues, the Panel needed to look at the Department of Energy structure overall—headquarters program offices, field offices, area offices and the laboratories themselves.

In taking this broad view, I think the Panel hit upon the essential—and lacking—ingredient, without which nothing works. That key ingredient is accountability.

The following statement is a quote from the Panel's report: "The Department of Energy is a dysfunctional bureaucracy that has proven it is incapable of reforming itself. Accountability at DOE has been spread so thinly and erratically that it is now almost impossible to find." Again, quoting from the report: "Layer upon layer of bureaucracy, accumulated over the years, has diffused responsibility to the point where scores claim it, no one has enough to make a difference, and all fight for more."

I do not have a weapons laboratory in my state. My state hosts the Idaho National Engineering and Environmental Laboratory. The INEEL has made a multi-decade, multi-billion dollar clean-up commitment to the citizens of Idaho. We have had some successes. We have also had some notable failures—one example is the Pit 9 clean-up.

Although I won't be drawn in to take sides on the Pit 9 litigation, I can tell you one thing that I know is missing—and that is accountability. Sometimes at DOE it seems like everyone is responsible but no one is accountable. Mr. Chairman, and Mr. Secretary, this is something we must fix if we have the opportunity to do so.

The Panel has recommended a couple of ways to fix DOE's poor handling of the security of the nuclear weapons program. I believe there may be some merit in the creation of a semi-autonomous agency within DOE to handle the weapons function. I agree with some of the Panel's findings that such an agency might eliminate some of the bureaucratic bungling that got us where we are today. I leave any final conclusions for a later date, after hearing from these witnesses and debating the issue further with my colleagues.

What is obvious now is that parts of DOE are "broken." But parts of DOE are performing world class science. These labs are the crown jewels of our scientific infrastructure—both the facilities and the people. The challenge will be fixing what is broken without destroying the parts that work.

PREPARED STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Thank you, Mr. Chairman. I appreciate you holding this joint hearing with the Senate Armed Services Committee, Senate Governmental Affairs Committee, and the Senate Select Committee on Intelligence to review the key findings and recommendations of the President's Foreign Intelligence Advisory Board Report "Science at it Best / Security at its Worst", more commonly called the "Rudman Report". I understand the President was recently briefed on this report as a follow up to the "Cox Report".

I was pleased when President Clinton tasked his Foreign Intelligence Advisory Board in March this year to review the history of security and counterintelligence threats at the nation's weapons laboratories and how effective the U.S. government's response has been thus far. Such a move finally showed he recognized the seriousness of this national security threat. Now that we have the benefit of this Board's special investigation, I am interested in reviewing their findings and recommendations.

The United States' technology advantage in the world is slowly being eroded from within and that disturbs me. Even though our national weapons laboratories represent the best of American's scientific talent and achievements, they have become a major source for leaking information to foreign intelligence organizations both friendly and hostile. With the end of the Cold War and U.S. successes in the Persian Gulf War and more recently in Kosovo, a technology gap has been identified between the U.S. and the rest of the world. Most nations now covet our technology and have targeted us to secure it legally.

What is also disturbing is that chronic security problems have existed at our national weapons laboratories for over 25 years without many efforts to correct them. In fact, after reading the Rudman Report, it's most disturbing that security of our national weapons secrets has been such a low priority all these many years. In fact, this report cites that any security reforms have failed due primarily to the opposition of the bureaucracy within the Department of Energy. The bureaucracy has be-

come so entrenched and arrogant to defeat any efforts for change. This tells me that the Department is dysfunctional and incapable of reforming itself. Given its organizational disarray, managerial neglect, and arrogant culture, I am not surprised that past attempts to correct security problems have failed.

After reading the "Rudman Report" reorganization of the Department of Energy is clearly called for to resolve these long problems. And these problems have a multitude of issues to resolve. Accountability is so weak with responsibility so diffused to negate any effective management control. Relationships between DOE's Headquarters offices and the national weapons laboratories are tense and—chaotic. This is compounded by DOE's mid-level field organization between Headquarters and the national laboratories which defuse accountability and responsibility to the point where policies and decisions are ignored or at best confused. Finally, Departmental officials change frequently, on average every 2 years, making permanent reforms near impossible to institutionalize.

Today, I am interested in hearing from the witness about their opinion of the "Rudman Report" and its recommendation to restructure DOE's nuclear weapons organization by creating a new, semi-autonomous Agency for Nuclear Stewardship (ANS). I understand this new organization would report directly to the Secretary of the Department but have some autonomy in certain areas such as counterintelligence. I am curious how this new reorganization would stem the historical national security, counterintelligence, accountability, and responsibility problems at DOE. Finally, I am eager to understand how a reorganization could address the long standing management expertise problem within the Department.

As the "Rudman Report" states, it is time to look ahead instead of back to the future in devising a more effective structure to manage our national weapons laboratories. Since 1976, when it was decided to put our national weapons laboratories in the Energy Research and Development Administration instead of the Department of Defense, management and security problems have been a problem. In the 1980's, when oversight of the national weapons laboratories revealed continued security problems, the status quo was preserved after a blue-ribbon panel was convened by the Administration. Now with national security problems at these laboratories festering into serious international espionage scandals, maintaining the status quo is not an acceptable option. The current policies, structures, and guidelines have failed at DOE. So, Mr. Chairman, we must move ahead with dramatic change and not look back to the future in which the status quo has been preserved.

I thank you again, Mr. Chairman, for holding this hearing and I look forward eagerly to the testimony and answers by our witnesses today.

PREPARED STATEMENT OF HON. JIM BUNNING, U.S. SENATOR FROM KENTUCKY

Mr. Chairman, for the last six months we have had a number of hearings and reports focusing on the depth to which our national laboratories, and for that matter our nuclear secrets, have been pillaged by foreign spies.

We have had so many reports on the lack of security at our labs that any spy in the world now knows that our national laboratories are a fast food take-out window for nuclear secrets.

Basically, our national laboratories are revolving doors. On the way in, you have billions of dollars to research and develop the most sophisticated weapons in the world, and on the way out you have all the plans and information any country needs to build a nuclear weapon.

Mr. Chairman, we have received 19 reports from various committees and panels on security lapses at our nuclear weapon complexes. But, in all of the reports we have had on this important subject—no one, not a single person has taken the responsibility for allowing this to happen. No one has stood up and said, "the buck stops here."

Mr. Chairman, as you know, all we are trying to do is get to the bottom of this mess. But everyone at the Department of Energy and the Department of Justice is so concerned about covering their backsides that we can't get any answers. Someone needs to come forward and explain what happened, and tell us where the chain of command failed.

While I know the Secretary of Energy does not want to lose control over our labs, it's becoming clear that an outside and independent agency needs to have responsibility for them.

I look forward to listening to what today's panel thinks about this idea, and what additional information they can provide on the security failures at our national labs. Thank you.

PREPARED STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

Mr. Chairman, as Ranking Member on the Governmental Affairs Committee's Subcommittee on International Security, Proliferation, and Federal Services and as a Member of the Energy Committee, I have benefitted from several months of hearings and briefings on the security issues raised by the President's Foreign Intelligence Advisory Board report.

Senator Rudman and his colleagues on the Advisory Board's Special Investigative Panel have done a great service to us all in their thorough review of security problems in the Department of Energy. Unfortunately, their report confirms that a great deal more needs to be done if the culture of complacency about security which has plagued the Department of Energy since its inception is to be reversed.

I welcome his call for streamlining procedures and institutions in order to ensure coherent management in our national weapons laboratories. As the report points out, "the weapons labs are reporting to far too many DOE masters."

I am pleased by the report's frankness and seriousness of purpose. I agree that both Congressional and Executive Branch leaders "have resorted to simplification and hyperbole in the past few months" in describing damage to our national security from foreign intelligence services. We should now return to the business of improving our security and stop wasting time apportioning blame.

This reports makes some solid recommendations in terms of restructuring our weapons programs in a way that makes them more effective and more secure. I congratulate Senator Rudman and his staff for a job well done. It is now up to Congress to see that these reforms take place as quickly as possible. I hope that the Congress will remain engaged for the long-term in monitoring the reform process. An effective counter-intelligence program takes time and attention. We should give our fullest support to Secretary Richardson and the Administration as they carry out the necessary reforms.

PREPARED STATEMENT OF HON. THAD COCHRAN, U.S. SENATOR FROM MISSISSIPPI

Mr. Chairman, I urge that care be taken in any reorganization of the DOE to refrain from encumbering, the U.S. Naval Nuclear Propulsion Program with any unnecessary rules or procedures.

Since the days when Admiral Rickover was in charge until the present, this program has demonstrated that nuclear power and nuclear weapons secrets can be safeguarded and nuclear safety practiced. The record of the U.S. Navy in ensuring that we had a professionally operated nuclear navy that has been virtually accident free is a success story worthy of our high praises.

Any changes the Congress or the Administration considers making at the DOE ought to reflect the confidence we have in the Navy's nuclear propulsion program and the way it has been managed.

I commend Senator Rudman for his assurances at this hearing on this subject.

PREPARED STATEMENT OF HON. BOB SMITH, U.S. SENATOR FROM NEW HAMPSHIRE

Mr. Chairman, I greatly appreciate the efforts of each of the four committees gathered today (Energy and Natural Resources Committee, Armed Services Committee, Governmental Affairs Committee, and Select Committee on Intelligence) in responding to the recent revelations of widespread espionage by the government of the Peoples Republic of China against the United States, and specifically against our nuclear labs. By any account, the security at our nuclear labs has been abysmal for many years, and bold action is needed to correct significant deficiencies and restore national security in this vital area. The leaders and distinguished members of each of these committees are to be commended for their desire to address these critical areas, and implement corrective actions. Their dedication to the national security interests of the United States, and their responsibilities as legislators entrusted by the citizens of this country to safeguard those interest, are exemplary.

However, in studying the Rudman report before us this morning and the Cox Commission report released last month, I cannot escape the conclusion that the Senate's current approach is inadequate to properly deal with the widespread and far-reaching discoveries and conclusions raised in each. Despite this morning's joint hearing, we have not mounted a credible, coordinated effort of any kind to gather or share information, investigate and report findings, develop corrective strategies to stop the leaks at the labs, answer the broader questions of how and why we got to this point in the first place, and hold negligent individuals accountable.

While I applaud the efforts of the Senators who participated in this joint hearing, four committees with a membership of 60 Senators is simply not an effective way to conduct such serious business. And the inefficiency of this system is further illustrated by the fact that even after testifying here this morning, Secretary Richardson will still be back here again tomorrow morning to testify to many of the same Senators concerning the same subject, when he appears separately before the Armed Services Committee. There are now at least four separate Senate committees with jurisdiction in the areas covered by these two reports, and possibly three more committees that could also claim legitimate jurisdiction in related areas, representing nearly the entire membership of the U.S. Senate.

Many of the Congressional efforts to examine this matter have been disjointed and inconsistent. There are too many individuals conducting too many independent investigations, and too many committees going down the same path, which results in duplication of witnesses and a waste of time, energy, and resources. This is no way to deal with a critical national security threat of this magnitude. We need to streamline this effort and put the full weight of the Senate behind it. That means a true investigation, with an experienced staff of investigators, and the power to place witnesses under oath, to serve as a unified focus of our shared bipartisan concern. That is why I have called for the creation of a bipartisan Select Committee on the espionage activity of the People's Republic of China.

The recent release of the Cox and Rudman reports have brought to light the abysmal state of security at our nuclear labs. The Cox report also raised serious concerns about other related threats to national security, including: the relaxing of satellite export controls; the alleged willful disregard of U.S. law by American corporations in providing high technology to China; and the use of illegal political contributions by agents tied to the PRC's military industries to gain access to U.S. military and commercial technology.

Additionally, it must be noted that the Cox report was concluded on January 3, 1999. None of the extremely alarming events that have transpired since then were investigated by the Cox Commission. For instance, it was not until March 8 that we first learned of Wen Ho Lee, who is alleged to have provided the PRC with thousands of legacy codes on the entire U.S. arsenal of nuclear weapons. Indeed, it was only after the conclusion of the Cox report that the news media began uncovering the details of an incoherent and ineffective response to PRC espionage activity—activity the Clinton Administration had been aware of for more than three years.

A Select Committee would examine a number of unanswered questions:

- Why did National Security Advisor Sandy Berger fail to take action for more than 22 months after first learning of the espionage threat at the Los Alamos lab?
- Why did Mr. Berger fail to inform the President of an active espionage threat within our nuclear labs for two years?
- Why did the Department of Energy fail to act on a recommendation by the FBI in August of 1997 that Mr. Lee be stripped of his access to nuclear weapons data—a decision which resulted in Mr. Lee's continued access to critical nuclear programs for more than a year?
- Why did the Justice Department twice refuse to seek court-ordered wiretaps for Mr. Lee's telephones, despite repeated FBI requests and growing indications Mr. Lee was involved in espionage activities?
- When the Cox report was submitted to the White House in January of 1999, why were Congressmen Cox and Dicks denied a meeting to brief the President on its shocking and far-reaching contents for nearly two months?
- Why can't we see a copy of the memo Mr. Berger sent to the President in January of 1999 summarizing the devastating Cox report?
- If the President wasn't briefed until early 1998 as Mr. Berger claims, why was the President compelled to tighten lab security in 1997 by implementing PDD-61, a directive the President touts as evidence he reacted swiftly to PRC espionage? And why did the President claim on March 19, 1999 that "no one reported to me that they suspect such a thing (espionage at the labs) has occurred" if, according to Mr. Berger, the President was briefed in 1998?
- Energy Secretary Bill Richardson was briefed on the PRC espionage suspicions in November of 1998. Why then, did he never discuss the espionage or its serious implications on China policy with the President?
- Why was Secretary of State Albright not informed of the PRC espionage activities until March 1999, especially in light of her February 1999 visit to China to discuss "Engagement Policy"?
- Why did the FBI not search Mr. Lee's computer until more than two years after he became a prime espionage suspect, despite the fact that Mr. Lee had signed

- a computer monitoring consent form as a condition of his employment with DOE? Ultimately the search, conducted a full month after he was fired from Los Alamos, discovered the theft of thousands of files of nuclear "legacy codes" that had been accessible the entire time on an unclassified network.
- Was was Mr. Notra Trulock, then chief of intelligence at DOE, ordered by the acting Energy Secretary to withhold from Congress information about the ongoing espionage activities in an attempt to bolster the President's China policies?
 - If the Vice President's National Security Advisor, Mr. Leon Fuerth, was briefed in April of 1996, why, according to the Vice President, was he not informed of lab espionage until after the story broke in the New York Times in March of 1999?
 - The Clinton Administration has approved the export of more than 600 high performance computers to China—9 times more in the first three quarters of 1998 than in the previous 7 years. These computers could be used to build research models of U.S. nuclear weapon designs—designs Mr. Berger already knew had been stolen. With Mr. Berger, Mr. Fuerth, several senior DOE officials, and the President fully aware of the PRC nuclear weapons espionage activities throughout 1998, why did the Administration approve these unprecedented exports?
 - In the wake of growing revelations of PRC military intelligence connections to political fundraising and more than 50 White House visits by individuals with ties to the PRC intelligence community, why has Attorney General Reno refused to open an independent investigation despite recommendations by the FBI and a handpicked Justice Department task force to do so?

Additionally, the Rudman report raises several other serious concerns that must be addressed immediately. Here are some of the report's conclusions:

- "Organizational disarray, managerial neglect, and a culture of arrogance—both at DOE headquarters and the labs themselves—conspired to create an espionage scandal waiting to happen."
- (The DOE is) . . . "A Department saturated with cynicism, an arrogant disregard for authority, and a staggering pattern of denial."
- Even after President Clinton ordered "fundamental changes in security procedures, compliance by department bureaucrats was grudging and belated."
- "The DOE is a dysfunctional bureaucracy that has proven it is incapable of reforming itself."
- "The predominant attitude toward security and counterintelligence among many DOE and lab managers has ranged from halfhearted, grudging accommodation to smug disregard."
- "Perhaps most troubling . . . is the evidence that the lab bureaucracies, after months at the epicenter of an espionage scandal with serious implications for U.S. foreign policy are still resisting reforms."
- (The Administration's actions) . . . "came later than they should have, given the course of events that led to the recent flurry of activity."
- "Furthermore, bureaucratic foot-dragging and even recalcitrance" occurred after the issuance of Clinton's directive and "DOE is still unconvinced of presidential authority."
- In response to Secretary Richardson's guarantee that "we've put in place the toughest measures to prevent it (continued espionage)," Senator Rudman called Mr. Richardson "either naive or ill-informed" about counterintelligence matters.

There are simply far too many lingering questions surrounding the theft of critical technological information on America's entire arsenal of nuclear weapons, and the apparent inaction of the U.S. government to adequately respond. The consequences of continued ignorance of these matters could be grave indeed. A Select Committee must be created promptly to investigate these matters completely.

STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

Senator BINGAMAN. Thank you very much, Mr. Chairman. I appreciate the chance to be here and hear about Senator Rudman's report and of course hear from Secretary Richardson also.

I have looked through the report. There is a lot in the Rudman report that I agree with. The report speaks out, first of all, against some of the exaggeration and overreaction that has been seen in

some of our past hearings on Chinese espionage. I think you quoted from various parts of the report. Let me give you another quotation. It says: "Possible damage has been minted as probable disaster. Workaday delay and bureaucratic confusion have been cast as diabolical conspiracies. Enough is enough."

I think that is a good note to sound as well. Having sat through many of these hearings that various of our committees have had, I think that clearly is an appropriate comment by the Rudman commission.

At the same time, I think there are a number of recommendations in this report that need to be examined closely before we act. This is particularly true since we are told that an amendment, as you indicated, based on this report is about to be offered to the intelligence appropriation bill or authorization bill as soon as tomorrow.

I am not alone in having some reservations about some of the recommendations that appear in this report. I would ask unanimous consent that a statement from the ranking member of the House Committee on Commerce, Congressman Dingell, be printed in the record of the hearing following my statement. Congressman Dingell has been a tireless investigator of the Department. On many occasions he has pointed out deficiencies at the Department. But he has a perspective on this issue that I think we need to be aware of.

Chairman MURKOWSKI. Without objection.

Senator BINGAMAN. The first recommendation in the Rudman report that deserves a closer look is the advocacy of a semi-autonomous agency within DOE as a solution to the problems of espionage at the labs. The report identifies or defines "semi-autonomous" as meaning "strictly segregated from the rest of the Department."

I am not sure what being semi-autonomous has to do with preventing spying. The defense programs part of DOE has a well documented history of ignoring IG, GAO, and other reports on security shortcomings. History has shown that its management has only improved as a result of pressure applied from outside the defense program. So given this history, it is not clear to me why giving DOE defense programs more autonomy necessarily improves future performance.

Strictly segregating DOE defense programs and its labs from the rest of the Department also builds in institutional barriers between the laboratories and other parts of the Department of Energy. The chart in the report shows the other parts of DOE as having to come to the deputy director of the new agency in order to place work at the labs, instead of dealing directly with the laboratories as they can now. Connections to non-defense research and development are vital if we are to maintain the defense laboratories' excellence or, as the title of the report puts it, if we are to maintain "science at its best," which I think we are all interested in doing.

The Rudman report has language in it agreeing that these connections should be maintained, but it seems to me that the very nature of the solution being proposed is in conflict with those good intentions.

The second recommendation in the Rudman report that deserves more scrutiny is the idea that this semi-autonomous agency within an agency should have its own general counsel, its own congressional relations, its own comptroller, and so on. We have seen this duplication of bureaucracies in larger agencies such as the Department of Defense, and in my view it does not work particularly well there, either. It certainly would not help the work of the Department of Energy laboratories and would probably cause no end of confusion within the Department as to who really is speaking for the Department of Energy.

The third recommendation that seems to be off the mark is the idea that DOE needs to cut the field operations offices completely out of the management of its defense programs. I have no quarrel with DOE field elements being directly subordinate to the headquarters sponsors. That is a recommendation of the 120-day study and Secretary Richardson has been implementing that recommendation. But the Rudman report's idea that you can do away with regional operations offices altogether and rely on small on-site offices strikes me as questionable.

Mr. Chairman, let me just indicate what I said on the floor when we discussed this before: I think these are very far-reaching changes we are talking about in the organization of the Department. I think the right way to proceed would be to have a series of legislative hearings on these proposals. We need to invite a broad range of experts in the Department and on agency management, experts on the Department and on agency management, to give us their input. Last month I mentioned former Secretary of Energy James Watkins as a highly regarded individual who could give us real insight into improvements.

We should also hear from present and former managers of the laboratories. Former Sandia Director Al Narath comes to mind as someone who has a long and successful history of managing R&D organizations. We should hear from him in my view.

We should hear from experts in analyzing government organizations, such as Don Kettle of the Brookings Institution, who I believe have insights to offer.

I do not believe Congress should make major changes in how we manage the nuclear arsenal in a hurried fashion or in a partisan fashion. I hope we can come to a consensus in a deliberate way on improvements that will further the security of the country.

Thank you very much.

[The prepared statement of Representative Dingell follows:]

PREPARED STATEMENT OF HON. JOHN D. DINGELL, U.S. REPRESENTATIVE
FROM MICHIGAN

Mr. Chairmen, Ranking Members, and members of the committees, thank you for allowing me to provide testimony to your committees. No Congressional committee has spent more time and effort on oversight of the Department of Energy's security efforts than our House Commerce Committee. 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, 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, 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 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 total control over these programs. I strongly oppose these provisions. 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.

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.

Chairman MURKOWSKI. Thank you very much, Senator Bingaman.

Senator Warner and then Senator Warner will call on his ranking minority member, Senator Levin.

**STATEMENT OF HON. JOHN WARNER, U.S. SENATOR
FROM VIRGINIA**

Chairman WARNER. Thank you very much, Mr. Chairman. I want to commend you and Senator Lott. Senator Lott held a series of meetings of the four chairmen here today and we have gone into the background of this very important case, and it directly led to this very important hearing we are having here today.

There is nothing that is more important to Congress than the protection of the security interests of this country and most particularly those weapons systems that pose the greatest danger to our Nation.

Senator Rudman, our former colleague, has been very outspoken in creating this report, and we commend him. I would hope that you could clarify the President's acknowledgment of your work, that acknowledgment being reported that, in essence, he accepted it.

Of course, we are fortunate to have Secretary Richardson again before our committees. I think that you have done the best you can, given that you did not create the problem, you inherited it, and you are trying to deal with it, and a new chapter unfolds just about each week that goes by.

But this morning you appeared on early morning media and said that your approach to this solution and that of former Senator Rudman was very close. I would hope that this morning you could narrow such differences as remain and they could then hopefully be the guideposts for Congress.

We will have before us the amendment by our chairman, Senators Domenici and Kyl, and are hopeful that that amendment could quickly embrace whatever agreement that you and Senator Rudman reach as to remaining differences.

The Armed Services Committee, of course, held a number of hearings on this whole issue and we will continue with our schedule by having another hearing tomorrow.

This problem is characterized as China stealing America's state secrets. My own view is that we are aware in this Nation, and in the 21 years I have been in the Senate and served on the Intelligence Committee as former vice chairman, that all nations to one degree or another are involved in trying to determine the secrets of another.

In this case it seems to me that, to the extent China was behind this—and the evidence is mounting—it seems that the burglar entered the house and the jewelry and the cash were left out on the bureau. Little more than a flashlight was needed to remove it and to depart. We have to protect this Nation from that ever happening again, whether it is China or any other nation seeking to get our secrets.

Now, we have established on the Armed Services Committee a commission study. Senator Rudman in his report referred to that study. Two years ago the Senate Armed Services Committee endeavored to establish just such a commission and the Department of Energy, then under the Acting Secretary Ms. Moler, fought it tooth and nail. I am curious, since we are now proceeding with the Rudman report and the Armed Services bill to have this commission, if it had been formed as originally intended by the Senate would we be here today.

So Mr. Chairman, I join with others. We are in a search for the truth and a solution, and I think we are making considerable progress.

Chairman MURKOWSKI. Thank you, Senator Warner.
Senator Levin.

**STATEMENT OF HON. CARL LEVIN, U.S. SENATOR
FROM MICHIGAN**

Senator LEVIN. Thank you, Mr. Chairman.

The security problems at the Department of Energy have been festering for 20 years. GAO report after GAO report were filed. Administration after administration did not act on those reports, and there were too many in Congress that also failed to act despite positions of responsibility which, it seems to me, should have set off alarm bells both with administrations and here in Congress.

The frustration over the security conditions at the Department of Energy has now created a broad consensus for corrective action and I hope that we will finally act further, because some actions have already been taken.

Senator Rudman's report makes clear that this administration is indeed the first administration since the Energy Department was established in 1977 to address the issues of security and counterintelligence head-on. Beginning with the February 1998 Presidential Decision Directive 61, stronger security and counterintelligence measures are being implemented by Secretary Richardson at our national weapons labs. And the Senate has now passed significant legislation in this area. The Armed Services Committee included a series of measures in the Fiscal Year 2000 National Defense Authorization Act designed to enhance safeguards, security and counterintelligence at the Department of Energy facilities, and the Senate passed last month.

During the floor debate on the bill, the Senate adopted Senator Lott's amendment expanding and broadening the committee's provision.

There was another amendment, which was offered but not passed on the floor of the Senate, by Senators Murkowski, Kyl, and Domenici, which overall, is very different from what Senator Rudman is proposing in his report. There is one similarity which I think is important and which I hope there will be a consensus on that weapon and other defense-related functions be consolidated under one person underneath the Secretary.

There is, it seems to me, a growing consensus on that approach, but not on the amendment which was offered on the floor and that was not adopted. This is also the proposal in the Rudman report. But there are very important differences between the so-called Kyl

proposal, I believe, and the Rudman proposal from that point on. It seems to me the key issue is whether or not we promote accountability more by having the intelligence and counterintelligence functions go directly to the Secretary of Energy, as the person ultimately responsible or whether or not the persons who are going to be put in charge of intelligence and counterintelligence would report to that new person underneath the Secretary of Energy, a new under secretary or an assistant secretary.

How do we promote accountability more? That seems to me to be what we are all after. We want accountability. But there is in that regard and in a number of other regards significant differences between what was proposed to the Senate 2 weeks ago and set aside and what the Rudman commission is proposing to us, which we will be considering this morning.

But accountability it seems to me is what our goal is and, even though there are some differences as to how best to achieve this, it seems to me that that ought to be the goal which we keep in mind. So we do want to consolidate, I believe, by consensus almost these various defense-related functions: the weapons production and other weapons-related issues, under one person under the Secretary. But where we place that intelligence and counterintelligence direction, down with that person below the Secretary or at the Secretary level as the person who is ultimately responsible, is one of the key issues which we I hope will be discussing this morning.

So I want to commend both our witnesses. They are both doing wonderful jobs. Secretary Richardson has undertaken this responsibility with great vigor. He has already undertaken important reforms. Senator Rudman, as always, with his commission is doing the yeoman's work which we always saw him do when he was in the Senate, direct, plainspoken, blunt, and we always enjoyed that when he was here and we appreciate it now again.

Chairman MURKOWSKI. Thank you, Senator Levin.

I might add, Senator Levin, we, Senator Kyl, Senator Domenici, and myself, have changed our amendment to adopt the language of the Rudman recommendations. So I mention that.

Chairman WARNER. Mr. Chairman, it might be helpful if a copy of that amendment would be made available for all Senators' reference.

Chairman MURKOWSKI. I am sure that we can arrange that to happen.

Moving on, we are joined by Senator Thompson, chairman of the Government Affairs Committee, and he will be followed by Senator Lieberman, the ranking member.

STATEMENT OF HON. FRED THOMPSON, U.S. SENATOR FROM TENNESSEE

Chairman THOMPSON. Thank you very much, Mr. Chairman. We have many people here today and I will be brief.

I come away from this with the stark realization of how difficult change is, and in fact it is true that over a period of several years now we have had report after report after report and warning after warning and not much has been done about it. Now this Secretary is doing some things. But the question is whether it is going to be

enough to make some changes at this late date or whether we are going to have to do something more fundamental than we have done in times past, because the Rudman report points out very starkly and in no uncertain terms how extremely difficult it is to move that gigantic bureaucracy that was cobbled together from 40-some odd agencies once upon a time.

Now we are told that if we do anything with that that bureaucracy we are making a grave mistake. I do not think so. I think that anything closely resembling a band-aid approach would be a grave mistake. Some of the things Secretary Richardson is trying to get done still have not been done despite his best efforts, and there are many, many more fundamental things that need to be done.

Apparently, there have been innumerable reports coming in to the Foreign Intelligence Advisory people about the mid-level kind of blasé attitude toward all this within the Department of Energy. I find this very, very disturbing. I am convinced something fundamental is going to have to be done, and I applaud those Senators who have worked so hard on the Kyl and Domenici and Murkowski amendment.

So thank you, Mr. Secretary, for being here. Thank you, Mr. Chairman.

Chairman MURKOWSKI. Thank you very much, Senator.
Senator Lieberman.

STATEMENT OF HON. JOSEPH LIEBERMAN, U.S. SENATOR FROM CONNECTICUT

Senator LIEBERMAN. Thanks, Mr. Chairman. Like all of you, I have been extremely disappointed, troubled, and ultimately angered by the numerous and repeated revelations that we have seen over the past months about the terrible state of security at our Nation's weapons labs. I have read the Cox report, I have sat through extensive closed hearings of the Governmental Affairs Committee on the Wen Ho Lee case.

All of that convinced me of the pressing need to do some serious rethinking of the way the Department of Energy is organized, particularly around matters of security. But Senator Rudman's report I think sealed the conviction for me that fundamental change is critically needed at the labs. We simply cannot tolerate either a culture or an organizational framework that does not put appropriate emphasis on safeguarding the security of our Nation's most precious secrets, secrets that we have invested billions of dollars to develop and that are critical to our security.

I think we also have to make sure that the very positive focus and resolve that we now collectively have aimed at this problem does not lead us, in our haste to do something, to do the wrong thing. As I look around this room, both on this side and on that side of the table, I think the collective experience and purpose represented here can allow us in a reasonable period of time to arrive at the right response to this crisis.

I thought that the Rudman report carried the characteristics that I associate with its author. It was tough-minded, it was direct, it was balanced, and it was ultimately constructive. I think Senator Rudman's proposal to reorganize the weapons labs as a semi-auton-

omous entity within the Department of Energy may very well be the right way to go.

But I also think there are a number of legitimate questions that have been raised about its details that we must answer before we proceed and do so in a timely way. To take one example, I have had people say to me that the labs do far more than just traditional weapons-related research. Their weapons-related research in fact benefits from the non-weapons-related research activities that go on inside and outside the labs.

So some of these observers have said if in using the response, the tool of isolation, to erect a security fortress around our weapons labs, we may also cut those labs off from part of what makes them great, are we truly doing the right thing? In other words, may we not in isolating the labs from non-weapons research reduce not only the quality of research our Nation benefits from, but also the quality of scientists our labs can recruit?

In some ways it is stated in the title of the Rudman report: "Science At Its Best, Security At Its Worst." The challenge for us here is to keep the science at its best while raising the security also to its best, to the highest standards.

Those are balances that are manageable if we devote ourselves together to them. These are very important questions we are dealing with in these considerations. They deserve considered reflection, the reflection that is necessary to make sure that we get this one right. But I am convinced that if we work together in the spirit that has developed between the two witnesses that we have before us today, we can arrive at a consensus and act appropriately to both protect the science but to protect the security as well.

I thank you, Mr. Chairman.

Chairman MURKOWSKI. Thank you, Senator Lieberman.

The chairman of the Intelligence Committee, Senator Shelby. Good morning.

STATEMENT OF HON. RICHARD C. SHELBY, U.S. SENATOR FROM ALABAMA

Chairman SHELBY. Thank you. Mr. Chairman, I ask that my entire statement be made part of the record.

Chairman MURKOWSKI. Without objection.

Chairman SHELBY. I will try to be brief.

Secretary Richardson, Senator Rudman, we appreciate very much your being here today to testify in public about the thorough, bracing, and compelling report on the security problems at the DOE labs. Secretary Richardson, I believe, and I have said this before, that you deserve credit for the steps that you have taken thus far and the energy that you have invested in trying, trying very hard, to do something about this problem.

But I believe, Mr. Secretary, that we need to go farther. First, the Rudman report finds, and I agree, that administrative changes are inadequate to the challenge at hand. It is just too big. A statutory overhaul is needed. Prior attempts, and there have been many, to reform DOE demonstrate that DOE and the labs can outwait—yes, Mr. Secretary—outwait and outlast Secretaries and even Presidents.

The Rudman report tells us that, even after President Clinton issued Presidential Decision Directive 61 ordering that the Department make fundamental changes in security procedures, that compliance by Department bureaucrats was grudging and belated.

Second, a more ambitious reorganization of the nuclear weapons complex is needed, I believe along the lines proposed by the Rudman report and by Senators Murkowski, Kyl, and Domenici. I further believe that the nuclear weapons complex needs to be rescued from the Energy Department. It needs to be granted extensive autonomy. In my view, its chief should be an under secretary, reporting directly to and accountable to the Secretary of Energy. A good example of this I believe would be the National Security Agency, an agency within the Department of Defense, and it has a similar arrangement.

However, only—yes, only when this reorganization is complete will the critical issues of nuclear weapons and security receive the attention that they require.

Senator Rudman, you have done a great service by pointing out the need for urgent, comprehensive, systematic, and statutory reform of the Department of Energy. Secretary Richardson, you now have the opportunity, I believe, to do a similar service by embracing these positive recommendations. I believe, Mr. Chairman, that the Nation deserves no less.

[The prepared statement of Senator Shelby follows:]

PREPARED STATEMENT OF HON. RICHARD C. SHELBY, U.S. SENATOR FROM ALABAMA

Secretary Richardson, Senator Rudman, we appreciate your being here today to testify in public about PFIAB's thorough, bracing, and compelling report on the security problems at the DOE labs.

Long before the current controversy over spying at DOE labs, the Senate Intelligence Committee, on a bipartisan basis, identified problems in DOE's counterintelligence program and took steps to address them.

Nonetheless, it took an enormous espionage scandal to create the impetus for change. More than one hundred studies identifying counterintelligence and security problems at the Labs and documenting DOE mis-management were not enough.

Secretary Richardson deserves credit for the steps he has taken and the energy he has invested. But I believe we need to go further.

First, the Rudman Report finds, and I agree, that administrative changes are inadequate to the challenge at hand. A statutory overhaul is needed. Prior attempts to reform DOE demonstrate that DOE and the labs can outwait and outlast Secretaries and even Presidents.

The Rudman Report tells us that, "even after President Clinton issued Presidential Decision Directive 61 ordering that the Department make fundamental changes in security procedures, compliance by Department bureaucrats was grudging and belated."

Second, a more ambitious reorganization of the nuclear weapons complex is needed, along the lines proposed by the Rudman Report and by Senators Murkowski, Kyl, and Domenici.

The nuclear weapons complex needs to be rescued from the Energy Department. It needs to be granted extensive autonomy. In my view, its chief should be an Under Secretary, reporting directly to, and accountable to, the Secretary of Energy.

The National Security Agency, an agency within the Department of Defense, is a good example of a similar arrangement.

Only when this reorganization is complete will the critical issues of nuclear weapons and security receive the attention they require.

Senator Rudman, you have done a great service by pointing out the need for urgent, comprehensive, systematic, and statutory reform of the Department of Energy.

Secretary Richardson, you now have the opportunity to do a similar service by embracing these positive recommendations. The Nation requires no less.

Thank you, Mr. Chairman.

Chairman MURKOWSKI. Thank you, Senator Shelby.
Senator Kerrey.

**STATEMENT OF HON. ROBERT KERREY, U.S. SENATOR
FROM NEBRASKA**

Senator KERREY. Well, Mr. Chairman, first of all, I regret that the appropriations—

Chairman MURKOWSKI. The cleanup batter, I might add.

Senator KERREY. I appreciate that. I am not very clean, but I will try to bat.

Chairman MURKOWSKI. Well, you are up, anyway.

Senator KERREY. I regret that the Finance Committee and the Appropriations Committee did not assert jurisdiction of this bill, so we could have had this hearing in RFK stadium.

[Laughter.]

Senator KERREY. Never have I felt more separation between myself and the people than I do this morning because there are so many seats for Senators separating us from the public audience.

First of all, let me state that it seems to me what we are doing is debating the final change that Congress took up on the Defense Authorization Bill. I would remind the public that we are already proposing in the Defense Authorization Bill eleven specific changes to law in response to the problems that have arisen through various committees with various jurisdictions.

Let me also begin my statement by both commending Senator Rudman's report and beginning with his language, in which he says that: "We believe that both congressional and executive branch leaders have resorted to simplification and hyperbole in the past few months. The panel found neither the dramatic damage assessments nor the categorical reassurance of the Department's advocates to be wholly substantiated."

Regrettably, in politics that very often is the case. This is not unique in a political debate.

Senator Warner, I was also encouraged by Secretary Richardson's comments this morning, because I think there today is considerably less disagreement between what the Senate would like to do and what the administration would like to do. I am very hopeful that this hearing will produce further movement together and changes in the law which will make our country safer, but will also enable our laboratories to continue to produce the good science that has also contributed enormously to this Nation's security.

The question that I try to answer as I look at both the Rudman report as well as other reports that have been made is why has it taken us so long? The Department was created in 1977. We have been warned for well over 20 years—not only why have we taken so long is the question, but what has happened that all of a sudden we are on the threshold, it seems to me, of significant and meritorious changes in our law?

For whatever the reason, I think it began with a walk-in by a Chinese agent to a CIA station delivering significant stockpiles of documents. We do not still know and PFIAB did not comment exactly why that occurred. But that has led us to the change in the law. There is significant irony in that, I daresay.

But we have been warned and we have been given specific road maps about what to do, not just by the excellent report by the PFIAB, Senator Rudman's report, but an equally damaging report by the Institute for Defense Analysis, the so-called 120-day study that provided much of the foundational work for the PFIAB's analysis. In other words, there is no shortage of examinations that tell us that we need to change the law to reorganize this agency in order to make the United States of America both safe through our scientific efforts, but also safe through our counterintelligence efforts.

The only thing that I can come up with is that, as is often the case whether you are trying to reorganize a land grant university or whether you are trying to reorganize a Federal agency, there is always going to be bureaucratic resistance.

Mr. Chairman, I would ask unanimous consent that an exchange of correspondence between the head of the Office of Energy Intelligence and Senator Rudman be included in the record as an illustration of this very thing.

Chairman WARNER. Without objection.

Chairman MURKOWSKI. Without objection.

Senator KERREY. This exchange of correspondence comes from Mr. Notra Trulock, who objected to one of the recommendations in Senator Rudman's report which would downsize the Office of Intelligence. Mr. Trulock took offense at the suggestion, and I think Senator Rudman's response is not only instructive to Mr. Trulock, but also very instructive to us as to why it has been difficult to change the law. Mr. Trulock is a fine public servant. He has helped us a great deal in bringing a lot of this to our attention. However, I believe he is wrong in his conclusion. There is a proliferation of efforts throughout the entire government to do intelligence work, and that is what the PFIAB has noted on previous occasions.

So I think we have to listen to people who are in the bureaucracy and who have dedicated their lives to try to do their jobs. We have to listen with great respect. But I believe it is bureaucratic resistance that made it difficult for us to make change in the past, and I think we have to listen with great respect now, but at the end of the day we have to decide what is in the best interests of the United States of America.

I believe we are very close to having agreement along the lines of what was initially suggested by Senator Kyl and Senator Murkowski and Senator Domenici, now modified in the Rudman report and encouraged by Secretary Richardson's comments. But I hope that we do not miss this opportunity to change the law. I hope that we are not looked back upon—10, 20 years from now—and offered as an example of an opportunity that was squandered and lost.

Chairman MURKOWSKI. Thank you, Senator Kerrey.

Let me just lay down a couple of suggestions to proceed with the hearing. One is that we will conclude with Secretary Richardson's portion at 11, at least before 11, no later than 11, and then Senator Rudman will have from 11 to 12:30. I recognize that is difficult to accommodate everybody, but I do not know any other way to make this thing equitable relative to the number of members that we have here.

So let me introduce the Honorable Bill Richardson, the Secretary of Energy. You have been very patient this morning. You have listened to the wisdom—well, perhaps I should say the views—of the various chairmen. With that, you certainly need no introduction. We commend you for the difficult task that you have undertaken and the progress that you have made. We look forward to your statement relative to the Rudman report today.

As you are aware, after you have concluded we will have an opportunity to have a few short questions, and then we will hear from Senator Rudman.

Secretary Richardson, good morning. Please proceed.

Secretary RICHARDSON. Thank you very much.

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

Secretary RICHARDSON. Mr. Chairman, members of the committees. If there are six messages that I would wish that you take from my comments today, they are as follows:

No. 1, the Rudman report is good, it is thorough, it is hard-hitting. It outlines the problem. It admits dramatic changes are needed, and I want to acknowledge that. We are prepared to accept close to 90 percent of its recommendations right away.

The second message that I wish to leave you with is that we have undertaken already dramatic reforms, sweeping reforms at the Department of Energy, to try to deal with the Cox report and the PFIAB. I think the PFIAB, the Foreign Intelligence report, the Cox report, all of you here, we all want the same things. We want accountability, we want vertical integration, we want better oversight, and, most importantly, we want stronger security.

But if you look on my left to those charts that exist there we have already undertaken dramatic reforms that deal with ensuring better security and counterintelligence at our labs.

My third point is that we are ready as an administration, as a Department of Energy, to codify some of these changes, to put them into statutory language, to recognize that there will be Secretaries of Energy beyond me, to recognize that past reforms were not implemented and it makes sense to put them into law.

However, as we put them into law I believe we have to be extremely careful that we not create something that we will later regret. This is I think where we are in terms of our discussions with members of this committee, with Senator Rudman. I do not think we are that far apart, but it is extremely important that we carefully in legislative language do something that makes sense.

The fourth point that I wish to make is that it is critically important that the Secretary be held accountable. If you are head of a cabinet, you should have full authority. You should not have entities under you that might undermine you or have their own separate strength that does not allow you to do your job. So I think it is critically important that the Secretary of Energy and future Secretaries have full authority to implement these reforms. In other words, the whole Department should report to the Secretary and that should be made very, very clearly.

The fifth point that I wish to make is that it is critical, too, that counterintelligence, security, and oversight not be wrapped up in

the defense component. Counterintelligence, according to the PDD and legislation passed by many committees, should report directly to me. We already have the best counterintelligence person in government. We are implementing a vigorous plan, and his lines of authority should not be blurred.

Secondly, in the component on security, we have a problem at the Department of Energy in the entire complex. The Rudman recommendation deals with about 30 percent of our complex, the nuclear weapons component. We have other areas that have security problems. They deal with nuclear materials, they deal with science, they deal with waste. For instance, Rocky Flats that has weapons waste would not be under this security component in the defense programs because it is environmental management.

So I want to be very clear that it is important that these entities report directly to the Secretary and they not be wrapped up in this entity that might be created.

Lastly, let me say that it is very important that we not build a Berlin Wall between our science and our defense and nuclear programs. This is the point that Senator Lieberman made. Our labs do excellent science. They do biology, they do energy research, they do many other issues relating to matter and physics that is important to our national security and to our science.

It is very important that, if not properly drafted, an autonomous agency or a semi-autonomous agency would blur the lines of authority between science and weapons.

I think it is very important that we deal with some principles as we reorganize the Department, and here are the principles that I wish to share with you. I am going to repeat it again: The overarching principle is that the Secretary of Energy must be held accountable, responsible, but should have full authority.

The first principle is that it is extremely important that there be clear chains 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. We are ready, as I said, to codify many of these changes that have come from various committees here in the Senate.

Secondly, we must raise and not lower the profile and authority of the nuclear weapons program to overcome the systemic and long-lived security problems identified by both the Cox and Advisory Board reports. In other words, it is important that we recognize that the national security component of the labs, perhaps without question, is the most important and we must acknowledge that in the bureaucracy. From my experience, the Department needs more engagement from the Secretary of Energy and his or her office in the nuclear weapons program.

I agree with Senator Rudman when he says that future Secretaries of Energy have a national security background. I am concerned that fencing off, however, the Nation's nuclear weapons program would blur the cabinet Secretary's role.

Third, we should ensure that security and counterintelligence programs have a senior departmental advocate with no conflicts of interest. The only way to assure that 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 you can assure that security decisions are not shortchanged and that they are not competing for the time and attention of senior management as well as budgetary resources.

Fourth, we must ensure that stockpile stewardship does not lose its link to cutting edge science. Our ability to ensure the reliability and safety 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 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, active engagement with the other national laboratories, and contact with the international community, and it needs overall scientific excellence to recruit and retain the best and brightest scientific minds for the program.

Let me talk about some of the reforms that we have done. When I went through all the recommendations that the PFIAB proposes, 43 in number, I found that my new security plan embraces 38 of them. That is almost 90 percent, and we are working to implement and modify our differences on the other 10 percent. I think that is a lot of common ground on which we can work.

Let me quickly run through some of the reforms we have already put in place. On counterintelligence, in February 1998 the President ordered that the Department improve its security dramatically and implement an innovative comprehensive counterintelligence and cyber security plan. By November of last year, I approved a far-reaching, aggressive new plan improving background checks on visitors, document controls, use of polygraphs, and increases in our counterintelligence budget, which has grown by a factor of 15 since 1996. Senator Shelby, you are right, it should have been implemented right after it was approved in February.

In March we took additional steps for counterintelligence upgrades, security training, and threat awareness, and focused an additional \$8 million on further securing classified and unclassified computer networks. When I was informed of the serious computer transfer issue at Los Alamos, I ordered a complete standdown of the classified computer systems at our three weapons labs, Los Alamos, Livermore, and Sandia, to accelerate computer security measures already under way. The systems only went back on line when I was convinced that significant progress had been made.

As of today we have implemented 85 percent—I will repeat—85 percent of the key recommendations in the counterintelligence action plan.

Let me deal with security. I came to the Department of Energy after having served 14 years on the House Energy and Commerce Committee, where I came to understand the magnitude of the security management problems facing the Department. Chairman Din-

gell and many other Republican members had a number of hearings and GAO reports on this subject.

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. If you look at the chart on the right, that was the way the Department used to be organized. It made no sense. There was no security responsibility, there was no security czar. Each program was responsible for security, including the labs, and this is why security was not properly attended. If a program manager had a decision to make, do I spend it on programs or do I spend it on security, it would be on programs.

That reorganization was completed April 21. The chart on the left is the reorganization. On May 11 we took the next step needed to bring accountability and put some teeth into the security operation with the farthest reaching security reorganization in the Department's history. We established a new high level Office of Security and Emergency Operations, 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 first Director of the Office of Security and Emergency Operations. General Habiger brings to this job his experience as the Commander in Chief of Strategic Command, where he was in charge of the U.S. nuclear forces.

Members of the committee, General Habiger is on my right and there is probably no better person to deal with nuclear weapons. He dealt with them as the number one official at the Department of Defense. He was one of our nine CINC's, and he is now my security czar.

As security czar, the General will rebuild the entire Department's security, cyber security, and counterterrorism apparatus, as well as our emergency response operations. He will be the single focal point for security policy and 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 the General for being willing to serve his country one more time, and I believe that his accepting this job is an endorsement that the Office of Security and Emergency Operations will succeed.

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

But my point here is that more needs to be done, and I am looking forward carefully at the recommendations in the PFIAB report. I have been meeting with various members of this committee, with members of the House, as we try to sort out what additional steps are needed and which of these changes or measures we could codify to ensure that the changes are institutionalized and last beyond the tenure of any one Secretary of Energy or committee chairman.

Let me also say that I think Senator Rudman's recommendation on the Office of Intelligence, that it do more work related to the weapons labs, that it closely link the Department's missions with the national security function, makes a lot of sense. I think there

is much common ground. I think we can work from that common ground to build on what has already been accomplished and make even more sweeping Department reforms than the Advisory Board recommends.

Let me conclude with the need for oversight. I do have concerns about the creation of the autonomous or semi-autonomous entity, especially if we are trying to solve the security and company problems at the Department. Security and counterintelligence problems cut across all the Department's missions and are not limited to the weapons labs and production sites.

In other words, I want to improve security at all our complex and this is why it is necessary that we be careful about how we deal with this autonomous or semi-autonomous entity. We need to improve security at all sites and fencing off the weapons complex I do not believe is the answer. Plutonium located at our environmental management sites demands the same level of security as plutonium at Los Alamos, and classified research at Argonne National Laboratory in Illinois must be as secure from espionage as classified nuclear information at Livermore National Laboratory.

That is why we need oversight organizations in counterintelligence and health and safety and in security that make policy to cover the entire Department and that are separate from the office implementing security. This is the only, let me emphasize, the only effective way for senior Department managers and Congress to get independent information about what is going on within the Department. This is also the exact model the NSA, the NRO, Department of Defense, CIA, and others use.

The problems that we have had in the past have been directly related to the fact that there have not been strong independent organizations whose sole mission is counterintelligence or security. Security and counterintelligence competed against the requirements of the stockpile stewardship program for resources and the time and attention of senior managers. Security and counterintelligence did not have the clout to effect change.

We have taken action to correct the situation with the creation of an independent Office of Counterintelligence, Security, and Oversight reporting directly to me. It would be a step backward to put these functions under the thumb of the director whose operations they are supposed to be evaluating.

Let me illustrate one example. Chairman Thompson's Senate Governmental Affairs Committee is one of the most active oversight committees in Congress along with his ranking member, Senator Lieberman. Imagine how Department of Energy oversight would be hurt if Chairman Thompson and the ranking member were my employees. I would think that would be great: no hearings, no interviews, no document requests that I did not support. But it would not be good oversight, and I think we do need oversight entities to evaluate everybody, including myself.

Let me conclude by saying that organizational changes alone are not sufficient. The Rudman report states that: "Even if every aspect of the ongoing structural reform is fully implemented, the most powerful guarantor of security at the Nation's weapons labs will not be laws, regulations, or management charts. It will be the attitudes and the behavior of men and women who are responsible

for the operation of the labs each day. These will not change overnight and they are likely to change only in a different cultural environment, one that values security as a vital and integral part of day to day activities and believes it can coexist with great science."

That is an extremely important point. I think the Rudman report should be required reading for every employee at the Department of Energy and its national labs and in the Congress. I think it is a wakeup call.

Last week, after reading the report, I ordered all managers and employees at three nuclear defense national labs—Los Alamos, Livermore, and Sandia—to undergo a full-scale security immersion program. For 2 days, yesterday and today, the labs are focusing on training so that each and every employee knows their security responsibilities. In other words, we have stopped all nuclear weapons activities, computers, and operations at the labs to ensure that many of these security and cyber security initiatives are implemented.

Change will not occur overnight and our goal here today should be focused on how we can ensure that the changes will have lasting effect. There is a large patch of common ground here. We need to work together to find the best way to institutionalize changes that will ensure that this Department provides science and security at its best for a long time.

Thank you.

Chairman MURKOWSKI. Thank you very much, Secretary Richardson.

In order to accommodate the number of members that we have here—we have 32—I am going to depart a little bit and call Senator Rudman up for his statement, and then we will have questions after Senator Rudman's statement to both Secretary Bill Richardson and Senator Rudman.

So the seat is warmed up now, Senator Rudman, and you can trade, you can trade seats. We welcome you, Senator Rudman, and I trust that the staff will present a new nameplate to replace that that is there.

That has been done. Welcome, Warren Rudman. It is nice to have you back. You are living proof that there is life after the Senate. Please proceed.

**STATEMENT OF WARREN RUDMAN, FORMER U.S. SENATOR
FROM NEW HAMPSHIRE, CHAIRMAN, THE PRESIDENT'S FOREIGN
INTELLIGENCE ADVISORY BOARD**

Senator RUDMAN. Thank you very much, Senator Murkowski. Messrs. Chairmen and ranking members of this distinguished panel: Let me first thank you for the invitation to appear here. I served with many of you here. I think you know of my affection, esteem, and respect for the U.S. Senate as just a wonderful institution where I spent so many years. I say very sincerely it is truly an honor to be asked to appear here today.

Chairman MURKOWSKI. Would you pull the mike up a little closer, please.

Senator RUDMAN. It is truly an honor to have been asked to appear here today, and I thank you.

I know there is rarely enough time to discuss all the issues that are raised in a report such as ours, but I would like to make a few introductory comments that will take about 10 minutes and give you a brief synopsis of the PFIAB report, then move straight on to questions and answers.

Let me say first that we had one major objective. There is nothing more important to America's long-term national security interests than security of nuclear secrets, and that security has been atrocious for a long time. 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 these labs is handled.

I had our staff sit down and add up the number of reports that have found problems with the 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 2 decades. And here we are 20 years down the road, still battling with the same issues. I think you would agree with me that that is totally unacceptable.

Even more unacceptable to our panel would be adding this report to that list of more than a hundred 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 these many years. So our objective was to take the major security issues one by one, address them factually, directly, forcefully. I think we did that.

I want to commend my colleagues. It is referred to as the Rudman report. I want to point out to you we had three extraordinarily distinguished and experienced people, several known to you, on this panel: Dr. Sidney Drell, one of the country's foremost nuclear physicists; Ann Caracristi, former Deputy Director, in fact the first woman to be Deputy Director, of the National Security Agency; and Stephen Friedman, who has done a great deal of intelligence work for this country since leaving his post as Co-Chairman with Secretary Rubin of Goldman Sachs.

This was for many of us virtually a full-time job for the last 8 weeks. This was not an easy report to put together. But they and the staff and the adjunct staff, loaned to me by various Executive Branch agencies, put in the hours to get it right, to make sure it was rock solid, to make sure the facts before you are unimpeachable. I want to thank them publicly for that.

I also think President Clinton deserves a great deal of credit. I say that as a Republican. We had some very tough words for the administration in this report. They are before you. But he agreed to release it to the public, something that has never been done before in the entire 45-year history of the PFIAB, and he agreed to put this issue on the table.

I must say that when we briefed him last Monday he was very appreciative of the work that we had done, recognized the seriousness of the issue and recognized the importance of getting something done.

There is an old saying amongst New Hampshire and I expect Maine farmers, and you have heard it, I am sure, all over the country. That is that if it ain't broke don't fix it. Well, I have a corollary and it is simply this: It may be broken so badly that you cannot fix it; you ought to 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 is what it comes down to.

Senator Levin said it very well in his opening statement. It is not just about security. If you have been ever to these labs, and most of you have, you will agree they put up one hell of a fence. It is not about counterintelligence. It is 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 no Secretary of Energy or no 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 we should demand absolute accountability. So that is what this report has proposed, reasonable alternatives that we think will help the leadership impress the seriousness of this responsibility on the people within the organization.

Let me add parenthetically that we do not claim that our proposals are perfect. We think the Congress must look at these proposals in conjunction with the Secretary of Energy management experts and find ways, if they can be improved, to so improve them. But we gave the Congress two alternatives, which I am sure you have seen have you read our report.

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. I want to be clear that nothing we say in this report is intended as criticism of the scientific research and development at the laboratories, 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. First, it is an international enterprise. Second, it requires collaboration across bureaucratic lines. It involves public and private cooperation amid a culture of academic freedom and 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 until very recently. The Department has been distracted by other national imperatives, such as the cleanup of radioactive wastes and DOE's role in the national drive for clean and efficient energy, and those priorities are well important.

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

There has been report after report after report of serious security failings. Here are a few examples [indicating]. Now, back in law school they talk about the weight of the evidence. I am not sure this is what they had in mind, but it is pretty heavy.

1986, "DOE management of safeguards and security needs to be improved," done by the DOE.

1988, "Major weaknesses in foreign visitor programs at the weapons labs," done by the GAO.

1993, done by the DOE, "Lack of accountability for implementing security requirements."

1996, Defense Nuclear Facilities Safety Board, "Impediments to resolving problems are a result of a lack of understanding, experience, and personal involvement by upper echelons of DOE management."

1997, Office of Security Affairs in the DOE, "Fragmented and dysfunctional security management system in place at DOE."

1999, DOE, "DOE's bureaucratic complexity is so great that it can conceal otherwise obvious and easily detected administrative flaws. The variety of relationships that exist between field offices, headquarters, and contractors will continue as a root cause of complexity, confusion, and lack of efficient and effective performance."

The Chiles report, mandated by the Congress, 1999, "A thorough revamping to institute streamlined efficient management would send a strong signal throughout the complex that DOE takes its weapons program seriously and is not willing to tolerate less than the best approach in its management."

Finally, 1999, GAO: "In the final analysis, security problems reflect a lack of accountability."

Now, there are 68 more, but I thought that would give you a flavor.

We found recent cases of foreign scientists visiting labs without proper background checks or monitoring, classified computer systems and networks with innumerable vulnerabilities, top-level bureaucrats who could not tell us to whom they were accountable, which I found remarkable, instances where secure areas were left unsecure for years, and finally, thousands of employees being granted security clearances without good and sufficient reason.

In the middle of all of this, as you know, there were confirmed cases of espionage and the true damage of these we may never know.

As you can see from the chart, it shows how long it took to fix even some of the very basic security problems. Some of the evidence that we found simply boggles the mind. There is a chart called "How Long Does It Take?" It was meant to introduce a bit of humor into the report, but you either laugh or you cry when you read that box, which is contained within the report that you have in front of you.

I mean, how can it be it took less than 3 years for this country to construct the first atomic bomb at Los Alamos, but it took in the

last several years 4 years for someone to fix a lock on a door protecting nuclear secrets? I mean, it is just, it is pathetic.

There is not a person in this room, and I would add there is probably not a person in DOE, who when confronted with that kind of a record would say it is tolerable. It is not. It is intolerable. In fact, it is a disgrace to this country. If that is the case, then why have these things been allowed to go on and on after years? There has got to be an explanation.

DOE has had so many overlapping and competing lines of authority that people are really held accountable for failure. I expect under Secretary Richardson that is going to change, but in the past we have not found too much evidence of it.

Just to give you an example, I want you to look at a chart that I brought. I would like you to look at the poster on the right. Now, with all due respect to current reorganizations, that is the most recent chart we could find, the one on the right, when we started this investigation. Obviously, the Secretary is making some major changes, but that is the accountability that existed until very recently. There was no accountability.

If anyone in this room can make sense out of that structure he ought to be a brain surgeon, not a member of Congress. There is no way to figure out who is accountable to whom on that particular chart.

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 who wish to 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 in some way the lines of authority so that the weapons labs and their security are in fact job number one within a substantially, in our view, semi-autonomous agency.

Even in the current uproar over the Cox Committee report and related events, PFIAB found as late as last week business as usual at some level at the labs. For example, there has been, in spite of the Secretary's best efforts, incomplete implementation of certain computer security measures and we believe foot-dragging on implementation of a good polygraph program. You need only read some of the press reports of yesterday in response to the Secretary's efforts.

If the current scandal plus the best efforts of Bill Richardson are not enough, only a fundamental and lasting restructuring will be sufficient. I would agree, it is up to the Congress to decide what that restructuring is. It should be done carefully and it should be a measured approach.

We believe the Congress and the President have an opportunity to do what none of their predecessors have done: step up to the plate, make lasting reform by fundamentally restructuring this part of DOE. We offer two alternatives, one semi-autonomous, and let me simply say to those who have problems with semi-autonomous agencies they were not invented by the PFIAB. I would sug-

gest you talk to the Secretary of Defense about NSA, the National Security Agency, or about DARPA, the Defense Department's Advanced Research Projects Agency—extraordinarily good agencies within the Department, but with a lot of autonomy, but reporting directly to the Secretary of Defense. Or for those of you who are familiar with NOAA, it is an independent agency within the Department of Commerce. It reports to the Secretary of Commerce, and it has worked and it has worked well over a long period of time.

If you want to look at a good independent agency, I would give you NASA, but we believe that, for reasons to some extent Senator Bingaman mentioned, we believe that it should be within DOE, but semi-autonomous, because of the important linkage of science. And I would commend to Senator Bingaman when he reads our report to see that we have linked science very much to this organization. We think it is of extraordinary importance.

I want to add something which I was asked to add, which I believe is very important to the Department of the Navy and to our nuclear propulsion program. 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 ANS should be the repository for all defense-related activities at 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, both a four-star admiral and a part of DOE. And I believe the Secretary would I am sure agree with that.

Someone asked me if it was merely a coincidence that the PFIAB's panel recommendations for a semi-autonomous agency were similar to those proposed by some in Congress. Foremost, I will state unequivocally and for the record 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. We sketched two alternatives.

Finally, none of the conclusions that we reached or alternatives that we considered, frankly, are new. You will find many of them in these previous reports. After looking at the hundred or so of these critical reports—and I am sure the members of Congress who did the Kyl-Domenici legislation looked at the same things—my conclusion is that the reason you reached a similar conclusion was a matter of destiny, not coincidence. You were destined to reach this conclusion looking at the same evidence.

In 1976 Federal officials studied the operations of the weapons labs and considered three possible solutions: placing the labs under the Department of Defense, making them a free-standing 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 the headquarters staff. When asked who was in charge of the field offices, the then-Secretary of Energy at the time said he would have to consult an organizational chart. So did we.

One employee said that DOE was about as well organized as the Titanic in the eleventh hour. This is from current employees who

came and unburdened themselves as to the problems they have had within the agency.

In fact, the best information we got came from employees of the agency. I would highly recommend to you, although I know it is impossible, you get so much more at closed hearings than you do at open hearings. Obviously, the Senate cannot do that, except the Intelligence Committee. But the frankness with which some of these employees spoke to us, and it is all documented, was startling. It was startling.

In 1985 the Reagan administration appointed a blue ribbon panel to study this. Congress and Federal officials waited. Some people said give it to the Department of Defense. Others said leave it where it is. The status quo prevailed.

In 1995 the former Chairman of Motorola issued the Galvin report. Here is what he said: "It is hard to reach any other conclusion than that the current system of governance 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.

Finally, in 1997 the Congress, the Armed Services Committee authorized, the Appropriations Committee paid for, this IDA report, which I imagine some of you may have seen. It is a terrific piece of work, done by a very respected agency. It was ignored by everybody, Republicans, Democrats, Congress, DOE—everybody.

I am almost done.

Every time a President or Energy Secretary or Congress run up against these bureaucrats, the bureaucrats have won. They are fully aware of that fact, and if you let them they will win again. It reminds me of what a current, fairly high ranking 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." And I said: "We be? What does that mean?" And he said: "Their attitude towards the leadership is: We be here when you came and we be here when you are gone. So we do not have to take you very seriously."

That is arrogance. That is the type of arrogance that I am sure the Secretary abhors. But it does enable bureaucrats in that agency to ignore direct orders from their highest authority in the Executive Branch, the President of the United States.

When PDD-61 was issued long before Secretary Richardson arrived there, the answer was not yes, sir, or even yes. It was maybe, and we have documented that from participants in the discussions. I have yet to meet a general who believes he could win a war with soldiers who will not obey orders and are not punished for failure to do their duty.

Let me say a few words about the Secretary. I have a very high regard for Secretary Richardson. I think he has been working very hard to carry out his duty. I would like to commend the Secretary for bringing both Ed Curran and General Habiger in to address the problems at the labs. They have impeccable credentials, they have a no-nonsense approach to their jobs, and they will get 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, and the lack of accountability in this Department. The problem is, Mr. Chairman and members of

this committee, that my good friend the Secretary will probably be gone from DOE in about 18 months, and it is not clear to anyone whether or not his successor will allow these two outstanding public servants to remain indefinitely.

In fact, if you want to look at history you will assume that everybody will be replaced at the upper levels. Maybe not this time.

Most of the events that precipitated this uproar occurred before Secretary Richardson arrived. Because he has been at the tip of the sword, so to speak, I would say it is fair to say he has been sensitized to these security problems and he has worked very hard to solve them. But one thing is certain: The next Secretary will have different priorities and be pulled in different directions by other emergencies. That is the way government works.

Secretary Watkins, for example, had excellent credentials on security issues. But when he became Energy Secretary he was besieged by the public outcry over the handling of environmental issues. Congress as well diverted its attention and addressed these issues, and rightly so. Unfortunately, the reality of it—and I can speak from someone who sat where you sit now—is that the entire body politic in this country lately has become a lot like a fire department. You respond to the latest emergency.

I said on television on Sunday morning, had the *New York Times* not broken this story all over the front page, I dare say you would not be here, I would not be here, and this report never would have been written. That is a sad commentary on how we oversee some of the Nation's critical problems. I do not say it critically. I say it as a matter of my own opinion.

Finally, I hope that you in this Congress, the President, the Secretary can work together. The PFIAB has no interest in this other than as individual citizens. We will help, but we have no constituency or authority. If we can contribute to a solution, we would like to.

Nothing about this is politically easy. There are jobs at stake in our plan and it is hard for people who have so much vested in the existing system to admit that it does not work. Witness the letter that Senator Kerrey spoke of this morning.

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. I think everyone will agree this is not a partisan issue in any way, shape, or manner. I believe that solving these security and counterintelligence problems within DOE will ultimately help the Department to better address its many other important missions.

Again, I am honored that you would ask me to come up here and testify. Thank you very much.

[Note.—The report submitted by Senator Rudman has been retained in committee files.]

Chairman MURKOWSKI. Thank you very much, Senator Rudman.

What I would like to do now is adjust the podium a little bit to accommodate Secretary Richardson. We have another mike that I believe is working.

From the standpoint of accommodating the 32 Senators that are here on questions, I would suggest we limit ourselves to one question each, the Secretary or Senator Rudman, and that way you can

prioritize your questions. If you have—if you want to address two questions to the same person, why, that is your option as well.

Senator INHOFE. How much time for each individual? That is more significant than the number of questions.

Chairman MURKOWSKI. I am going to keep this open until—I believe that we are going to have to break this at 12:30 at the latest.

Senator INHOFE. So maybe 3 minutes apiece?

Chairman MURKOWSKI. Yes. But I would suggest two questions, if you will.

First before I call on Senator Bingaman, my first question is to Senator Rudman. And I think we have certainly identified that we have a crisis, and a crisis suggests, Senator Rudman, action. On the other hand, the action should be intelligent, it should be well thought out, and it should be based on an evaluation of past experiences.

Now, you brought up several reports. I think you indicated there have probably been 100 in the last 20 years. What I am concerned with here is that in the interest of doing it right there is going to be more and more consideration given by members of the Senate to study this thing a little bit more, to get some more experts in. Your parting thoughts on the bureaucracy overwhelming us all is very real, because we have all seen it happen time and time again.

How do you suggest that we meet our obligation to ensure that any legislative fix to structure accountability is done in a thorough manner without getting into this trap that is very easy for us to fall in—well, we have got to get some more experts, we have got to study it some more—and as a consequence we do not get the action, we do not make the decision, and we do not face up to the crisis?

Senator RUDMAN. I will answer that briefly. I believe you have before you now really the tools and the reports you need to reach those conclusions. You have to reach, it seems to me, one fundamental decision, because there is not a lot of difference right now from what the Secretary has proposed—and we met last evening—and what was in our report.

The question is should it be semi-autonomous. I am very tough on that issue. I think it has to be. However, semi-autonomy does not in any way jeopardize the control that the Secretary will have. I think if you put it as the Secretary's most recent organizational chart shows, you have the possibility in the future of future Secretaries changing the way things are, moving around the deck chairs, if you will, and having no opportunity whatsoever to keep in place something that was thoughtfully adopted.

Now, I told the Secretary last evening and I will tell the panel, I think that you ought to decide first what you want to do. Do you want to have a departmental reorganization embodied by a statute or do you want it semi-autonomous? Once you decide that, it seems to me that there are enough knowledgeable staff and Senators and members of the House that can sit down and put it in the format it is in.

The Secretary has got some problems with some of the boxes we showed on the staff. I do not have a problem with that. He thinks the IG ought to be one IG. He is probably right about that.

But the key is the semi-autonomous agency and this language, which I would just like to read to you, which it seems to me answers some of the major questions. And I suggest you talk to Secretary of Defense Cohen and the Secretary of Commerce to see how their agencies work within their Departments. It simply says: "Notwithstanding any other provision of this Act, the Director of the Agency for Nuclear Stewardship, who shall also serve as an Under Secretary of Energy, shall report directly to and be responsible directly to the Secretary of Energy, who shall be the Director's immediate superior"—which is exactly the way it works at Defense with NSA, DARPA, at Commerce with NOAA.

So that would be my answer.

Chairman MURKOWSKI. Thank you very much, Senator.

Secretary Richardson, I have only one question and it is relative to the legislation that Senator Kyl, Senator Domenici, and I intend to offer as an amendment to the intelligence authorization bill to put in law the recommendations of the Rudman report. Specifically, would you recommend that the President support this amendment if it is adopted or do you have some specific recommendations you want us to consider and include?

I believe you are familiar with our amended amendment, which almost verbatim takes the Rudman language, and we have attempted to work it out with your staff collectively.

Secretary RICHARDSON. Senator, we have not seen that language, but I do think, as Senator Rudman said, we are not that far apart. I think we have to be very careful in the next few days.

By the way, while I think you need to consult experts and you need to consult the Secretary of Defense and others, I think we should move hastily and correct this problem now with legislative codified language. I would be prepared and I think we would be prepared to accept the concept of an Under Secretary for Nuclear Stewardship that would have authority, that would have clear lines of responsibility, that would have accountability.

I think as Senator Rudman mentioned, I have a problem with one entity in my Department having its own general counsel, its own comptroller, its own Congressional affairs. I would oppose that because that undermines my authority and any future secretary of defense's authority.

I would want to discuss further the reporting of the security czar and the counterintelligence director. I think they should report to me directly. On counterintelligence that is what the PDD mandated. I believe we have a good plan with Ed Curran. It is being implemented. I think the FBI Director agrees with me there that this individual should have total access to me directly. I meet him almost once a week. There is a lot of ongoing counterintelligence issues that we need to follow up, that we need to implement.

Then, as I said, Senator, there is 70 percent of the Department that we have not taken care of that also involves security issues—nuclear materials, Rocky Flats plutonium, Los Alamos plutonium, science labs. There are scientists from sensitive countries that go to the science labs. We need to deal with those security problems.

So what I would want is the security czar, somebody like General Habiger, to have that authority, to report to me, to have an entity under him that gives him clout and responsibility.

So I do not think we are that far apart. We are talking about legislative tinkering. But I think since we are going to be codifying and we are going to be putting this permanently into law, we have got to be very careful. Again, I appreciate the Senators' drafting that language. I think that is paramount, that the Secretary be held accountable but have full authority. Otherwise there is no sense in having a Secretary without control over his or her programs.

Chairman MURKOWSKI. Thank you very much.

Let me just advise you then that Senator Domenici, Senator Kyl, and myself welcome the input of your Department on any specific recommendations you would like included, because we are going to move this language to the floor very shortly. I do want to, obviously, have your support because without it, why, we are going down the beach like a couple of crabs, and that is not in the best interest of mutually our objectives.

Senator DOMENICI. Mr. Chairman.

Chairman MURKOWSKI. Have you ever watched a crab go down the beach?

Yes, Senator Domenici.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator DOMENICI. Mr. Chairman, let me just say to the Senators, you know we drafted this legislation without the benefit of this report. He has just explained the coincidence, why they are kind of close. But it is not identical. So we are redrafting it—he has a draft of it now—and trying to make it much like his report.

But I believe we should add to this that it should be distributed to fellow Senators soon for their participation and their input. I am willing to do that as the one that is principal architect.

Senator KERREY. "Soon" meaning immediately, Senator? Can we get copies of the draft immediately?

Chairman MURKOWSKI. Well, the problem is trying to clear this with the four specific committees with jurisdiction.

Senator KERREY. Well, they are all here, are they not?

Chairman MURKOWSKI. We are working on it. It will be done before the end of the day.

Senator DOMENICI. Senator, we have a draft. We spent all night trying to make sure it had what he wants in it. He has a copy. If the sponsors want to circulate the draft, fine. I thought we would get his quick comments, then we would circulate it.

Chairman MURKOWSKI. All right. In the mean time, let us move on with the questions, because we are going to try and conclude each person in 5 minutes and we are going to have to really move.

Senator Rudman.

Senator RUDMAN. Senator Murkowski, I think I could just say one thing here that might clear this up a bit as to where we all are so you will know exactly. Do you have, do you all have our report?

Chairman MURKOWSKI. Yes.

Senator RUDMAN. On page 50, I think, of our report is that chart which—am I correct, staff? Is it page 50? Page 50 or 51, either one.

Here is the disagreement, which is very simple for you to address and may not be simple to resolve. The Secretary is saying that, I would like to have an Under Secretary there, but I do not want a separate agency. The PFIAB Board is saying we think it is important to have an agency or administration for the future, for a lot of reasons, to make sure that none of the other parts of DOE are able to reach in when they should not be.

However, the Secretary makes another comment. If you look to the right of that agency, it says "Staff Offices." His point is that he does not think that the general counsel, the inspector general, possibly others in that box, ought to be totally independent; they ought to be arms of his, the Secretary's office.

We do not have a problem with that kind of change in organization. So the real difference we have is to whether or not this is going to be a semi-autonomous agency, and we strongly think it should be.

Chairman MURKOWSKI. Thank you very much. This is page 50 you are referring to on that report?

Senator RUDMAN. Correct, correct.

Chairman MURKOWSKI. Let us try and move on and accommodate the Senators. I would appreciate your answers being as brief as possible, yet complete.

Senator BINGAMAN.

Senator BINGAMAN. Thank you both very much. Senator Rudman, thank you for your good work as always.

Chairman MURKOWSKI. I am going to time the light.

Senator BINGAMAN. Let me tell you a concern I have about your recommendation. I hear people talk about the science labs as distinct from the weapons labs and that makes me nervous. And I hear you talk about how we do not want other parts of DOE reaching into these areas that are covered by this semi-autonomous agency and that makes me nervous, because the only reason that these weapons labs are world class is because they do a lot of science other than nuclear weapons work. I am not interested in signing onto some kind of reorganization that makes it more difficult for them to do non-weapons work in those labs.

I do not want it to be more difficult for an Under Secretary for Science in the Department of Energy to have work done in the three weapons labs, than it is to do it at Argonne or somewhere else.

What is your answer to that? How do you solve that problem and still do what you are recommending?

Senator RUDMAN. Senator BINGAMAN, I evidently have not communicated too well, because let me tell you, if you think you have got to worry about that, you should hear Dr. Sidney Drell, a member of this panel, on the subject.

Senator BINGAMAN. Frankly, I was amazed that he signed onto the report because of that concern.

Senator RUDMAN. Well, you should not have a concern. Let me point two things out to you. We are very aware of that. In fact, we spent time at Los Alamos, at Sandia, at Livermore. We understand precisely what you are talking about.

Let me refer you first to page 47 of the report, in which we say at the very end, and I will not read the whole paragraph—we talk

about exactly the issue you are speaking about. Then we say: "In the semi-autonomous model, the Secretary will be responsible for managing and ensuring the effectiveness of the agency relations with the non-weapons labs."

We merge the science in. In our chart we show a direct line for that reason. Here is the Assistant Secretary for Science and Energy Resources, a direct line here. The problem now is that you have got literally accountability directly to both and we believe that is part of the problem. When you take the 18, 18 layers of management bureaucracy in that Department at this time and you take each of those and keep sifting up, and now you multiply it by two or three people to who you are accountable, so the science people have something to say, the weapons people have something to say—they both should have something to say, but through one accountable official, who is this deputy we put here.

Dr. Drell—and he is going to testify before the Armed Services Committee this week—is very comfortable with this organization. That is the main reason, I will tell you, Senator Bingaman, that we recommend you do not make this an independent agency. If you ever made it an independent agency like NASA, although we gave you the model, then your concern would be absolutely legitimate.

We believe that we have taken care of that issue. We do not want the science people to have any opportunity to in fact interfere with how these places are run, but they have every bit of accessibility that the Secretary wishes to give them.

Senator BINGAMAN. One of the more important issues that Secretary Richardson has to deal with is control of fissile nuclear material. You have plutonium at some sites. I think Secretary Richardson has referred to this a couple of times this morning. He has plutonium at Rocky Flats. There is plutonium at Pantex.

These are not facilities that would be under this semi-autonomous agency that you are proposing?

Senator RUDMAN. Pantex would, Senator Bingaman.

Senator BINGAMAN. Pantex would be?

Senator RUDMAN. Yes. It is Los Alamos, Livermore, Sandia, Pantex, Kansas City, and Oak Ridge Y-12 facility.

Senator BINGAMAN. Well, who would be responsible for defense programs plutonium at Rocky Flats?

Senator RUDMAN. That would remain within the Department as it is now, but not to this particular Secretary. Secretary Richardson would have that reporting however he wished it to report.

By the way, one of those is closing. What is it, Savannah or Rocky Flats?

Senator BINGAMAN. Could we ask Secretary Richardson—

Senator RUDMAN. The Secretary can tell you who would run that, but we would have it separate, not contained in here.

Senator BINGAMAN. How do you understand this situation, Secretary Richardson?

Secretary RICHARDSON. Well, Senator, this is what gives me concern. We are setting up a superstructure for defense programs, but we are not adequately dealing with security for Rocky Flats plutonium, fissile materials, and many other sites. That is the concern that I have.

What I have done with the security czar, with General Habiger, is have him in charge of the whole complex. Environmental management, which is the Rocky Flats type of plutonium, this is a budget, it is close to \$7 billion. It is huge. It is a lot of security problems. If you look at these GAO reports, if you look at reports that your committees have done, we also have security problems at these sites.

I in a way am going further than what Senator Rudman wants to do in the nuclear weapons complex. I think that we have an endemic security problem in the whole complex.

Now, let me also say that I am prepared in the nuclear—in the Under Secretary of Nuclear Stewardship to create some type of a structure that gives this entity strength. But I worry about making it so separate from the rest of the Department in dealing with many of these security issues and in dealing with the science.

When you go to Los Alamos, right next to the weapons complex they are doing biology, they are doing life sciences, they are doing physics. I do not want that part of our cutting edge science, which also contributes to nuclear weapons, to be hurt by a separation.

So I do not think we are that far apart, but the details here in how we have legislative language are going to be crucial.

Chairman MURKOWSKI. If I could encourage that we move on and timely answers.

Are you basically finished?

Senator BINGAMAN. Yes.

Chairman MURKOWSKI. Senator Warner. Senator Warner will be followed by Senator Levin.

Chairman WARNER. This dispute is like all others in the history of America. We find Congress and the Executive Branch locked in disapproval as to what should be done. Then the President made a wise decision, and that is he brought in your organization, Senator Rudman, the PFIAB—the first time any President has done that in 50 years. I think it represents a gutsy decision by the President.

I do not think he fully realized how well we knew you and the great respect that we repose in you, Senator Rudman, to do things fairly, objectively, and forthrightly. And that you have done.

My question to you is, we are still witnessing today a dispute between Congress and the Executive Branch as to how to redraw. The engine on the Senate side will likely be the Domenici et al. bill, which we do not have before us. My question then is will you ask the President to allow your organization to examine that piece of legislation and issue another report to us?

It would seem to me it would be helpful, because you have provided much of the bridging to get where we are today so that the two witnesses can say: Well, we are almost 90 percent in agreement.

Senator RUDMAN. I am not sure after this report anybody wants another one out of us. But I certainly, I certainly will say this, that we would be pleased to give you our view on whether your legislation meets the criteria that we set forth.

Chairman WARNER. All right, then that is satisfactory. It does not have to be a formal report.

Can you tell us exactly what the President did say and when did he say it with regard to your report? There was some press coverage to the effect that he wanted to accept it on face value.

Senator RUDMAN. Well, Senator Warner, having been a very distinguished former Secretary of the Navy, you know how people do not repeat things that presidents tell them. But I guess I can characterize. It was not a good time. The President wanted a briefing last Monday because he heard we were going to bring it out on Thursday and was leaving for overseas and has been very interested in the issues. So we briefed him last Monday.

He listened very intently and made some comments that indicated to me that he was very aware of the extent of the problem and what we were saying, and thanked us a great deal, and then immediately took a call from Boris Yeltsin. So I think he did not have much time to tell us what he thought. Thereafter he left, and I have not talked to him because he just got back, I guess, or will be back today.

I do know that within the White House those who have talked to us who have these responsibilities like the report.

Chairman WARNER. Now, you also said your concern was that 18 months from now or whatever period of time it is likely to be a whole new team and we could slide back to this culture which dominated for so many years, a lack of accountability. We included in the Armed Services language the commission concept, for someone to have oversight through the years.

As a matter of fact, I put that legislation in several years ago and it was adopted by the Senate, but rejected by the administration and most specifically the Department of Energy killed it. I wonder where we would be today had that been accepted.

But are you prepared to continue to recommend in future legislation some continuing objective body that will oversee the implementation of such legislation as Congress enacts?

Senator RUDMAN. Senator Warner, if you will again look at our charts on page 50, you will note out to the left of the Agency for Nuclear Stewardship—

Chairman WARNER. I am aware of that.

Senator RUDMAN. That is your legislation, and that is why we put it there, because we think that is a very good idea.

The problem in the past has been, and the Secretary I know would agree with this, is that there have been outside independent boards, but they have not met very often and they have not been effective. The important thing is to make it small, put people on who really care about the issue, and make sure they do their work.

Chairman WARNER. So that will guarantee the oversight?

Senator RUDMAN. Absolutely.

Chairman WARNER. Lastly, on that chart I do not see the University of California. Yet they are the overall manager. They are paid a fairly handsome fee. You talked about accountability. To what extent do they have accountability with this problem? To what extent did they ever try—and I ask this question to both of you—to exercise through that management contract the responsibility that was necessary?

Senator RUDMAN. Well, of course the responsibility for counter-intelligence is a Federal responsibility. The responsibility for secu-

ity is a shared responsibility between the Federal Government and its contractor. Our report applies equally to them as it does to the DOE bureaucracy in terms of we thought a poor job of discharging their responsibilities, and in some cases resisting efforts, honest efforts by the Department.

Chairman WARNER. They were a part of the resistance also, in your judgment?

Senator RUDMAN. No question about it.

Chairman WARNER. Should they be continued in that role, then?

Senator RUDMAN. Well, I will leave that up to the Secretary. That has got to be a tough call. The University of California at, I believe at Los Alamos and at Livermore, Lockheed Martin at Sandia if I am correct, have done some extraordinarily good work. There also were things done that could have been done better, not in the scientific area but in the security and the CI areas.

So that is a question, Senator Warner, that I do not think I am equipped to answer. I think the Secretary is probably equipped to answer that.

Chairman WARNER. All right. Let the Secretary answer. That will conclude my questions.

Secretary RICHARDSON. Senator Warner, first of all—

Chairman WARNER. First, what was their responsibility as the overall manager, and did they exercise it and do they have some accountability?

Secretary RICHARDSON. The answer is yes, they have accountability; yes, they do better, they need to do better; yes, they are right now undertaking an evaluation of their own about their responsibilities.

Senator Warner, I want to just say to you I am ready to accept your independent oversight board. I regret it was not accepted by previous secretaries. I am ready to take it lock, stock, and barrel. In addition, I am ready within the Department to have a permanent staff of independent oversight. This was a recommendation made in one of the old reports. I have brought an entity into the Department. They are all doing—they are already doing reports that are independent, and I think that that independent oversight needs to be maintained.

On the University of California, Senator, let me just say that these are universities that do a lot of nonprofit managing of the board. Overall, the University of California right now is doing a good job in managing the labs. They are part of the change in culture that I have mandated to better security at the labs. They are doing a lot better.

Now, in terms of the future contract, I make that decision and I have a policy of as much as possible competing every contract. I think that is better for the taxpayer. It will be the same in the future when we deal with the University of California.

Now, I have not made that decision yet whether we compete or not. But a lot of the performance relating to security is also our contractors. But right now, Senator, the University of California, with the changes that we are making, the upgrades, they are co-operating, they are working with us, and I want to state that on the record.

Chairman MURKOWSKI. Let me call on Senator Levin, and again I am going to watch those lights.

Senator LEVIN.

Senator LEVIN. Mr. Chairman, thank you.

Secretary Richardson made reference this morning to a large patch of common ground and I think it is a very good description. I think it has actually grown right in front of our eyes. I think the patch is larger now than it was actually a couple of hours ago, and I want to just ask you each a question about that.

What the Rudman panel reports recommended was that we eliminate some of this bureaucratic complexity, the vagueness, the lack of accountability, and basically that we create a new Under Secretary and that that Under Secretary would have the responsibility for weapons programs and defense-related functions underneath that one person, in order to achieve greater responsibility and accountability. That person, of course, would still be under the Secretary, but nonetheless it would be a new position with those functions underneath it.

I think the Secretary, Secretary Richardson, has basically agreed to that approach. I think that we started with that kind of agreement, we must move in that direction, and that means reducing the impact and the involvement of field offices as well, because they very clearly diffuse the responsibility and the accountability here.

But the Secretary raised a question this morning, Senator Rudman, and it had to do with this. He said he has got to be the person ultimately responsible, he the Secretary; he has got to be accountable for security, and in order for that to happen the new security czar and the new counterintelligence director should be accountable directly to him and reportable directly to him, rather than to create a second box, in effect, as would be proposed on page 50 of your report.

You indicated, I believe, and I want to clarify this, that that change in your recommendation would be or might be acceptable to you, to make that function directly accountable to the Secretary so that we can hold the Secretary accountable, we can hold the Secretary responsible, if there is a lack of security anywhere in his Department.

I am wondering whether or not that is accurate. Did I hear you correctly on that?

Senator RUDMAN. Not completely, but close. And by the way, whether it is acceptable to me really is not very important.

Senator LEVIN. I understand.

Senator RUDMAN. It is whether it is acceptable to all of you.

Senator LEVIN. I would modify my question. What is your reaction to that?

Senator RUDMAN. I gave up my vote here voluntarily, Senator Levin.

If you look at the Agency for Nuclear Stewardship that you are referring to on page 50, there are two essential disagreements here and only two, and maybe one and a half. I would say that you have got to call it—whatever you want to call it, it ought to be in an administration or an agency, something that is directly reportable to the Secretary and only the Secretary.

I want to tell you that after long and tough debate—we looked at Secretary Richardson's idea. Obviously, we did not know it was his idea at the time, but one of the possibilities was to organize it the way he has reorganized it, with an Under Secretary. But we elected, no, there has been so much over the years, we want to give this agency status. We thought it would help.

All right, so that is one disagreement. No. 2, in the staff offices over on the right you will note that we have a whole bunch of things listed there, and I said that a number of them certainly could go the way the Secretary wants them to go. Here is a tough question for you to answer, and the Secretary is going to have to help you answer it. At the bottom there is the counterintelligence policy and security policy. The Secretary says to you: They have to report to me; I mean, I need them to report to me, because I need to have accountability over those folks.

Here is my question, which you will have to get an answer to at some point and you will have to think about. I would agree on security, which is what General Habiger is now going to do, that it probably ought to report to him, because security is a very wide responsibility, covering all of the Department. I do not disagree with that. Certainly the General could have a deputy sitting down in this box with this agency at the direction of the Secretary.

Counterintelligence, however, is a wholly different thing. I do not think that there is any counterintelligence concerns of a major nature—and I am familiar with the subject—other than in the weapons laboratories.

Senator LEVIN. Before my time runs out, then that is the one narrow difference in that whole box, and we are narrowing them significantly.

Mr. Secretary, on that one issue, why is it important, if we are going to hold you responsible for intelligence failures, that that person report to you rather than reporting to that new person that the Rudman panel is recommending? Or is it? That is for you, my last question, my second question, to you, Mr. Secretary.

Secretary RICHARDSON. Well, I think we are getting closer, but nonetheless I think it is essential in any government structure that you keep counterintelligence and security separate. Now, this is the way it is done at DOD, at the National Security Agency, the National Reconnaissance Office. I think that is good practice.

Now, my concern is that this PDD-61, which I think is working well, which this committee did a lot to, these four committees did a lot to push forward and fund the program, this is Ed Curran's office. Right now we have quadrupled the intelligence budget. He is doing the background checks. He is implementing 85 percent of the counterintelligence plan.

To all of a sudden put Curran now under an Under Secretary, that means he does not report to me any more. And I do think it makes sense to keep that CDD structure—the PDD structure of the President directly reporting to me. This is what I think the FBI Director wants. Our counterintelligence program affects all of our labs, our five labs. We have counterintelligence people at our other labs. And to all of a sudden subordinate a science lab counterintelligence program to a weapons Under Secretary I do not think is the way to go.

This would not diminish what I think Senator Rudman wants to do, and that is to give the weapons complex priority, bureaucratic strength, a higher hierarchy, and it would because there is not an Under Secretary in another area. But again, I think for good practices you want to keep security and counterintelligence policy separate.

But I am pleased that Senator Rudman has seen that the security component, General Habiger, at least would report directly to me.

Chairman MURKOWSKI. Thank you very much.

Senator Thompson.

Chairman THOMPSON. Thank you very much.

Senator Rudman, welcome. Good to see you again, my friend. Thank you for your work.

Many of us have been concerned about the standard that the Justice Department may be applying in issuing FISA warrants. Certainly with regard to recent events, it has been very controversial. Many of us have been in closed hearings with regard to this point and I think we have a much better understanding of it. We have also heard the case for probable cause that was set forth to the Justice Department. Many of us believe that there was more than adequate probable cause in the recent W-88 investigation, especially in light of the fact that we were dealing with national security matters and in light of the standard which we think Congress had in setting up that law.

But that warrant was turned down, for what I believe to be pretty much traditionally criminal law green eyeshade kinds of reasons. I was wondering if your people had an opportunity to look into that and to what extent you got into that and to what extent you may have an opinion with regard to that?

Senator RUDMAN. Senator Thompson, if you will look at page 31 of the report you will find indeed we spent a good deal of time on that issue, because we thought that was one of the most baffling issues we confronted in the President's charge to us to look at the security issue generally. We in fact talked to the current Director of OIPR and talked to the people from the FBI who had made the original presentation.

We have essentially said that we think both the Congress and the Attorney General ought to ask a number of questions, and those questions you find on page 31. Let me give you, I think, a view that most—I would say the panel shared, that the interpretation of the law by OIPR may be overly strict. Now, they would argue, in fairness to them, that there were constitutional issues of privacy, which you understand very keenly because of your prior life. These issues of privacy—

Chairman THOMPSON. They are always there when you are talking about a search warrant.

Senator RUDMAN [continuing.] Are extraordinarily important under the Constitution. But the Congress made an effort to lower that bar for these national security issues and still pass constitutional muster. So there is a very serious question in our mind as to whether or not that is being administered properly, whether or not they have not administratively raised the bar higher than the Congress wanted it raised.

So I say to the Congress in this report, we say, you have got to look at that issue. That is very important.

The second part of that, and I have discussed this with Director Freeh, I think is very important. In the course of either your committee or the Judiciary Committee's inquiry, you are going to find out something very interesting, which I cannot discuss here in open session, and that is the character of the information and the completeness of the information presented by the FBI to the OIPR at the time the application was made.

I would submit to you that it was not as complete as it could have been. That has something to do with the separation of the Los Alamos office from headquarters and probably not the right kind of information technology to transfer things electronically between those places back at the time that this happened. I will only say, without getting involved in something I should not in an open session, that some of the evidence was about 8 to 10 years old. But had that evidence been presented to OIPR, I think you might have had a different result.

There were also serious questions concerning computer security and the right that they really had to look at some of these things even without some of the constitutional requirements being involved. So my answer is yes and yes.

Chairman THOMPSON. Real quickly, Mr. Secretary, you state in your organizational plan that your goal is to have the appropriate labs report to the appropriate Secretary of Defense—weapons labs to the Assistant Secretary of Defense; and science labs to the Assistant Secretary for Energy Research. I was wondering about Oak Ridge National Laboratory. As you know, there are really three different missions down there. I believe your chart has Y-12 reporting to the Assistant Secretary for Energy Research.

Is that what you seek to do, and should they not in fact be reporting to the Assistant Secretary of Defense?

Secretary RICHARDSON. Senator, they, as you well know since this is your entity—we have a defense mission that does support under—report under my organization to, directly to Defense Programs, the Assistant Secretary of Defense Programs, and in this case an Under Secretary. But there is also a science component in the complex that I believe needs to report to the Assistant Secretary for Science.

We have this throughout our weapons complex, reporting requirements to two entities. I think if you have three or four that is a problem. But you will agree that the main component, the defense component, is now very clearly with Defense Programs. It was not before. It was all scattered on the—well, those are not my charts, but it was all scattered in previous reporting. But now it is very clear it is in Defense Programs.

Chairman THOMPSON. We will have a chance to talk about this some more. Thank you very much.

Chairman MURKOWSKI. Thank you, Senator.

Senator Kerrey.

Senator KERREY. Mr. Lieberman.

Chairman MURKOWSKI. Lieberman goes with Shelby.

Senator LIEBERMAN. Very gracious of you, Senator Kerrey. I understand the confusion.

Chairman MURKOWSKI. I am not confused, but go ahead anyhow.

Senator LIEBERMAN. Well, I just want to point out for the record that I am Chairman Thompson's ranking member. We all look alike down this side of the table, though.

Chairman MURKOWSKI. It was supposedly the order they came.

Senator LIEBERMAN. I thank Secretary Richardson and Senator Rudman for their work.

I want to talk a little bit about the so-called culture of the labs. As you point out in your report, Senator Rudman, it is hard to get a clear definition of culture at the labs, but everybody agrees it is distinct, it is pervasive, and it has an effect on the problem we are talking about. You use some pretty harsh language to describe the attitude there, the bureaucratic culture: cynicism, disregard for authority, cavalier attitude toward security, bureaucratic insolence.

At one point in the report you say that one facet of the culture may be "arrogance born of the simple fact that nuclear researchers specialize in one of the world's most advanced, challenging and esoteric fields of knowledge."

So my conclusion from all this and from what you have said, Secretary Richardson, is not that you are saying that these labs are, if you will allow me, dens of spies. These are labs of independent, bright people who bridle at regulations, but in doing so have made themselves very vulnerable to espionage.

If that is at the root of part of the problem, along with the bureaucratic maze in DOE that you talk about and the fact that very few people in DOE suffer for failure, my question is how the various alternatives for reform that we have talked about and we have focused on here—autonomous, semi-autonomous agency, who reports to the Secretary, who does not—how do those various alternatives hold a higher or a lower probability of altering this culture?

Or have all the revelations of the last several months had an effect on the folks there and do they now get it, do they now understand that, perhaps not intentionally, they have made themselves vulnerable to espionage that goes to the core of their work and to our national security?

Senator Rudman.

Senator RUDMAN. Is that to me?

Senator LIEBERMAN. Yes.

Senator RUDMAN. That is a terrific question, for which I do not necessarily have a terrific answer. This is very tough to do. But if you know you have that kind of a culture—and let me define the culture so we all know what we are talking about. You defined it pretty accurately, but let me just kind of make an example.

You know, if you talk about the culture in the U.S. Marine Corps or, to refer to your colleague on your left's former occupation, the culture of Navy SEAL's, it is probably a little different from the culture of the people who cut checks at the Pentagon, probably a little different culture.

The culture within these laboratories are extraordinarily talented people what believe in academic freedom, who care about this Nation, who are patriotic, who do not knowingly or willingly give away secrets, unless they are obviously in the employ of a foreign power. But they do not have the same mind set as people have going through training at Fort Benning in terms of discipline.

So here is what we say. We say we know that you are not going to change that culture. You probably cannot change some of the arrogance that comes with the certain knowledge that you are probably smarter than anybody else, and you are probably right. So what do you do? What you do is you put in place a system of accountability, with excellent counterintelligence and excellent security, that you are in a position to detect if anybody is getting off the reservation, A; and B, you make every effort to imbue people with the view that what they are doing is not only very important and it should be discussed with their colleagues, but it must be protected at all costs.

I do not think that has been done, and I think that the Secretary would probably agree with that statement.

Senator LIEBERMAN. Can you argue that one or another of the recommendations for reform here, semi-autonomous, autonomous, is more likely to alter that culture?

Senator RUDMAN. Well, I think autonomous is virtually off the table. I think we are now talking about a semi-autonomous agency, as I hear the debate up here, which is what we have recommended, or the Secretary's proposal for a reorganization with an Under Secretary without a semi-autonomous agency.

Let me respond this way. To be totally honest with you, I think the one thing the semi-autonomous agency gets you that his proposal does not is that people know in the future when the new Secretary comes in this is an entity essentially with its own name. Although it is responsible to the Secretary, it has these responsibilities. Nobody else in that bureaucracy ought to much around in it unless the Secretary directs them to. I think that is a great advantage in the area of accountability, culture, and all of those things.

Senator LIEBERMAN. Secretary Richardson.

Secretary RICHARDSON. Senator, the labs are getting it.

Senator LIEBERMAN. They are getting it.

Secretary RICHARDSON. They are at this moment undertaking a security standdown, the second one I have ordered. In other words, all lab operations stop to make sure our security is 100 percent. It will end this afternoon. This is the second standdown we have done.

Lab officials are cooperating. They have recognized the problem. Lab employees—yes, in the past the labs resisted many of these counterintelligence reforms. But one of the problems is secretaries did not give policy direction to the labs. And I am going to say to you here, the labs report to the Secretary of Energy and I am their boss, and they will get more oversight and direction from me than previous secretaries have.

Some of these reforms they have not liked, but that does not mean they are not implementing. They operate on academic scientific freedom, but I can tell you that they are cooperating. We have counterintelligence operations at each of the labs. Ed Curran's people are at each of the labs. We are enforcing accountability.

One of the problems is they were not getting direction from Washington and secretaries of energy. We have a zero tolerance policy. We are upgrading security across the board. We still have a ways to go, but these are men and women that are patriotic, that are hard-working, and they have been tainted unfairly by one or

two individuals that have abused the system. But overall they are cooperating extensively with these reforms and these upgrades.

Senator LIEBERMAN. Thank you.

Chairman MURKOWSKI. Senator Shelby.

Senator SHELBY. Thank you, Mr. Chairman.

Senator Rudman, your report suggests that Secretary Richardson may have overstated the case when he said, and I will quote Secretary Richardson: "Americans can be reassured our Nation's nuclear secrets are today safe and secure." Senator Rudman, are our nuclear secrets safe today? Are our labs safe today? And if not, why not?

Senator RUDMAN. They are not safe today because—in fairness to Secretary Richardson, we have had some discussions about this. I think that statement was made, but the Secretary has since made a number of other statements. In his defense and in fairness to the Secretary, that is not his current feeling, I know.

I think that the Secretary would agree with me that what has been done so far is certainly a major step in reform, but we have a long way to go. And no matter how far you go, there is no way to guarantee against espionage. After all, we lost the atomic bomb at Los Alamos. We lost the trigger to the hydrogen bomb at Los Alamos, and who knows what else we have lost at Los Alamos.

So no matter how good you are, you are still going to have failures. But certainly that is not to say you should not try very hard to have as few as possible.

Senator SHELBY. Secretary Richardson, with respect to the order governing foreign visitors, can you tell us today what the outline of the revised order will be and what the obstacles are, and why it is taking so long?

Secretary RICHARDSON. Well, Senator, we have implemented an extensive foreign visitors program reform. I can tell you right now that we do 100 percent. In other words, every foreign scientist from a sensitive country—Russia's, China's, India's, Pakistan, etcetera—have background checks performed on them now. That means extensive contacts these individuals have with intelligence agencies.

We have under my security plan created a separate Office of Foreign Visitors under the security czar. Mr. Curran, who is here, is implementing a very vigorous program, which I believe is done.

The order—are you talking about the signing of the—

Senator SHELBY. That is right, the order governing foreign visitors. What is the outline of the revised order? I understand there is a revised order.

Secretary RICHARDSON. Well, it is going to be done next week.

Senator SHELBY. Okay.

Secretary RICHARDSON. But we are already implementing these reforms.

Senator SHELBY. What are the obstacles that you envision that will be here? Structural resistance?

Secretary RICHARDSON. Well, there is limited resistance. Some of the labs want to be sure, Senator, that they are not penalized and scientific interchange is not harmed. Our science, we do not want it to suffer. We want to balance security, counterintelligence, and our science. Now, if we have to choose we have decided to choose on the side of security because of the problems.

But what they want to be assured of is that, for instance the Russian program, which is essential to our security—many Senators have worked on this, Bingaman, Domenici—to make sure that scientists do not, from Russia, do not go to other countries, that we talk to them about nuclear safety, nuclear nonproliferation issues, that we find ways that we talk to the Indians and Pakistanis about nonproliferation.

So you do not want to send a message—and there is one provision in the House law, but not in the Senate, that has a 2-month moratorium on foreign scientist exchange. I think that is not a good idea, because if you get people out for 2 months you wonder whether they will come back.

We do not want the security measures that we are taking to have a chilling effect on the scientific exchange that helps our security that is essential to our labs. I think your legislation in the Intelligence Committee is a good balance, but going beyond that is not what I think we should do.

Senator SHELBY. Do you think, as Senator Kerrey had suggested in his language, that the net assessment which will come back is very, very important to what is going on at the labs?

Secretary RICHARDSON. Yes, absolutely, I think that net assessment is key.

Senator SHELBY. Thank you, Mr. Chairman.

Chairman MURKOWSKI. Thank you very much.

Senator Kerrey. Got it right this time?

Senator KERREY. Yes, sir.

First of all, I am so glad that the culture of the Senate does not produce insolent and arrogant behavior, or we would all be in trouble.

Chairman MURKOWSKI. You might have different views on that, but that is neither here nor there.

Senator KERREY. First of all, it seems to me that we are now down to drafting differences, and I hope that we can get a process of drafting language that at least most of us can support. The concerns that I have, and I am looking now at the sponsors of the amendment, is I do think that the counterintelligence function needs to report directly to the Secretary, and I think we have to be very careful—and I know Senator Warner understands this very well—that you do not give whoever is the Secretary of Energy the responsibility for all of this and then deny that individual the authority necessary to implement the policy.

So we have to make certain that we match that responsibility with the authority needed to execute the mission. But it seems to me that we are very close, and I hope that in the drafting of it that we will give due consideration to the 11 changes in the law that are proposed in the Defense Authorization Bill, including the very important section 3152, which is the commission that Senator Warner was referencing earlier. That is a new commission and I think it will add significantly to the national security, and with that in place I think it does change as well the context that we are now discussing for further reorganization.

Senator Rudman, I would like to pursue a line of inquiry with you and perhaps just a question and you can respond. After the walk-in delivered the documents to the Central Intelligence Agen-

cy, as reported in the press, an investigation was launched. By all public accounts, that investigation very quickly and continues to focus on a single individual, an employee at Los Alamos.

I know that you have got a great deal of experience in prosecuting and a great deal of experience in setting up the beginning of a case and trying to decide how to proceed. I wonder, both for the sake of this joint committee hearing as well as for the entire Congress, if you could give us your own evaluation of how this investigation was done and how you would have done it differently.

Senator RUDMAN. Well, Senator Kerrey, I will try to be very brief because I know we are running out of time.

On page 30 and 31, you know we address this issue in our report. This is an open session, but let me choose my words carefully. As anyone on this panel who has ever done any criminal investigating knows, when a crime is committed you look immediately for people who have motive and who have opportunity.

In this case, for reasons that mystify me, all of the attention was focused on a single individual, who may or may not be guilty. Whether that person is guilty or not is really not the important question to me. The important question to me from an investigative point of view at the beginning of this is why did the responsible parts of our government charged with that job ignore many others who had opportunity and then decide whether or not they had motive?

I do not think that our Federal law enforcement agencies covered themselves with glory in this investigation. I say that, Senator Kerrey, as someone who has been a long-time admirer of the FBI. I think they generally do an extraordinary job. I think in this particular case that, between the Energy folks who looked at this and the FBI, they all came to a very rapid conclusion that they had their suspect. And we do not know to this day whether or not there are not others who are complicit in this.

Senator KERREY. Well, Senator Rudman, to follow up, you are in a very unique position to assist this Congress in answering the question of what do we do from here? You have been a member of the Senate, you have been a member of the Senate Intelligence Committee, you are a former prosecutor, and you are now Chairman of the PFIAB. I would ask you if you would be willing to take the time in writing to answer the question, what would you think it would be appropriate for Congress to do at this stage in the game? Where do we go from here, is the question that I would put to you, not just in this particular case, but there will be other CI cases that we are going to have to pursue. I would appreciate any written instruction or advice that you could provide us.

Senator RUDMAN. I will be pleased to. I would refer the committee to the questions on page 31 and then the list of questions on page 34, which we posed for not only the committee and the appropriate committees, but frankly for the Attorney General and the Director of the FBI. But I will be happy to do that, Senator Kerrey.

Senator KERREY. I would request that you use the same animated and expressive language that you used in addressing Mr. Trulock's concerns with your recommendations.

Senator RUDMAN. We will endeavor to do that.

Chairman MURKOWSKI. Thank you very much, Senator Kerrey.

Next according to the order of appearance is Senator Hutchinson, followed by Senator Robb.

**STATEMENT OF HON. TIM HUTCHINSON, U.S. SENATOR
FROM ARKANSAS**

Senator HUTCHINSON. Thank you, Mr. Chairman.

I want to thank Senator Rudman for the service that he has done our country in this report and join my colleagues in praising your efforts and thanking you for the alarm bells that you have sounded for this committee, for Congress and for the Nation.

Now, as I listened to your testimony today and as I read the report, the phrase "pervasive disregard for security" reappeared and the phrase "culture of arrogance," which we have heard repeatedly, and which you have described very clear examples of that culture of arrogance.

There are those who have—this culture of arrogance as it has been described and as you have pointed out has survived over 100 reports and numerous efforts at reform. There are those who counsel that we ought not act rashly. I think sometimes saying do not act rashly is another way of saying do not act quickly, and I am afraid if we do not act quickly and decisively that in fact the lights will go off, the television cameras will focus elsewhere, and the national alarm that is now seen and evidenced across the country will wane, and again the bureaucracy will win and national security will lose and there will, I think you used the phrase, be a reversion to form and the status quo will prevail. That is my great concern.

Now, during the testimony today Secretary Richardson and yourself, Senator Rudman, I heard Secretary Richardson say repeatedly the phrase "not that far apart" and that we are very close and that there is an agreement with 80 percent, 90 percent, 95 percent. I think it was Senator Levin a few minutes ago that said that the patch of commonality is growing even over the last 2 hours.

Well, this is all very optimistic and I hope that is the case, but it seems to me that there is still yet one very fundamental difference, and that is over this issue of whether such an envisioned agency should be semi-autonomous or not. You have addressed, Senator Rudman, a number of the concerns in the fact that there would still be accountability to the Secretary and that he would be in control. I agree with your very strong conviction that that should be semi-autonomous.

Now, my question for Secretary Richardson is simply this. I think you were asked earlier what would be your recommendation to the President. But this Congress should pass a reorganization bill that takes the Rudman recommendations and makes this semi-autonomous and you in fact agree with 95, 99 percent of that bill and what it does, but you disagree with that provision dealing with the semi-autonomous provision of the Under Secretary, would you recommend that the President sign the legislation?

Secretary RICHARDSON. Senator, you know, I hate to answer it this way, but the devil is in the details. I say this because I want to engage in a constructive effort to see if we can get to 100 percent agreement.

I worry about future Secretaries of Energy. What if the next Secretary of Energy happens to be weak and an Under Secretary is

extremely strong? What you do not want is a blurring of the lines of authority. What you do not want is to create an empire that you later cannot control. What you want to do is separate. You have to be clear about making sure that science is not separated, that it be part of the cutting edge of the nuclear weapons component.

I do not think we are that far apart and I want to work with this committee. My hope, Senator, is—I know you are on several of these relevant committees—that through legislative language we can agree on a consensus amendment. That is my hope, and I prefer to give you that positive answer rather than talk about the 5 percent difference. If the 5 percent difference, if I feel it undermines my authority, then I would have difficulty. It depends on how you—I think we should just try to reach consensus.

Senator HUTCHINSON. One other point. I know my time is about up. Mr. Secretary, you have expressed concerns about the proposal, if I understood correctly, that while the weapons labs would be addressed, that there were pervasive security problems in other areas that would not be adequately addressed. Am I expressing that correctly?

Secretary RICHARDSON. Yes.

Senator HUTCHINSON. Is there anything, though, in the Rudman recommendations that would preclude you from addressing those other security problems administratively or internally as you would otherwise while the Congress moves ahead legislatively to ensure that the weapons labs are in fact secure?

Secretary RICHARDSON. I do not think the Rudman report precludes me. But what I would like to do, Senator, is since we are codifying a lot of these changes, I would like the codification to be comprehensive so that we deal with the entire problem. What we are addressing today is about 35 percent of the problem, a very serious and substantial 35 percent because it is our national security, and I would like, since we are moving towards reform, to address the entire security reform issue at the Department.

Senator HUTCHINSON. That is all fine and well, but I would like to see that 35 percent that deals with national security done and done quickly.

Thank you very much for your testimony.

Thank you, Mr. Chairman.

Chairman MURKOWSKI. Thank you very much.

Senator Robb is not here. Senator Campbell and Senator Bryan are not here. Senator Domenici is here. Senator Domenici.

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

I have two charts which are blow-ups from the Rudman report and I would like to just talk to you all a minute about that. First let me read two things and then let me suggest that we have a serious problem that we can only solve by either creating an independent—an independent entity that runs nuclear weapons, which I am against, or that we find a way to create within the Department an autonomous agency.

Now let me just read first. While your report is perhaps the best ever, this hearing and various proposals remind me of what the Galvin report said, and let me just read it, one paragraph:

“DOE has become bloated after 25 years of operation because each new set of government actors has added more governance to

the Department in the name of adding value. Each Energy Secretary and staff person responsible for interpreting these directives has protected himself or herself by adding even more. Micro-management and excessive auditing have become an ingrained practice."

Now, Secretary Richardson is not doing what this says previous Secretaries do. But I submit that you cannot fix this problem and leave the Department essentially like it is in terms of authority over nuclear weapons activity.

Now, this is an experience that I have had. For example, one example of bureaucracy, and I will tell you how it works and my you must fix it. For example, 2 years ago we discovered an earthquake fault under a building at Los Alamos. It turns out that if such an earthquake occurs—and I do not even want to state the amount of radiation that would be dissipated, but it would be a very significant and dangerous situation.

But it turns out that, because it takes so many reviews, legal, environmental, safety, programmatic, it takes 4 years for DOE to decide to replace the building. In fact, DOE has just yesterday said it will take 2 more years to make that decision. Once the decision is made, it will take 2 more years to design the building and 4 more years to build it.

Now, those who manage the nuclear weapons system of the United States under the current structure and the structure for the last 15 to 20 years are met with this kind of problem every time they turn around. The point we are missing today—and my friend Senator Rudman, you might not have even explained it too well today—is you look at that chart on the left, which is the current structure of the Department of Energy, and I might tell you that even that is a streamlined version, Chairman Rudman, of what is real.

Now, the point you have got to understand is that we do not have rules and regulations that run horizontal—no, excuse me, that run vertical. They run horizontal. They cross the Department. So you see all those boxes operate across the whole Department. Standing in the middle is nuclear weapons development, which is subject to the entire matrix of rules and regulations because they run this way [indicating] instead of this way.

Unless we find a way now to isolate nuclear weapons development from that maze of bureaucracy that runs horizontal, thus across everything they do—it is not as if it applies to one piece of what they do, but everything they do. So that this statement that I read has probably, they have probably cleared this with horizontal management schemes that may be sixfold in terms of responsibility as they determine what to do about a building that is on an earthquake fault that has significant radiation in it.

Now, that is the reason, Mr. Secretary. And I compliment you and you have done a great job and I do think we are going to work together. We will accomplish nothing in my opinion if we create some new bureaucracy and some new stop-over points, as powerful as they are, if we leave the horizontal bureaucracy that runs across the Department, if we leave it there effective against nuclear weapons and its entire array of activities.

Now, I would almost say—and this is very close from my standpoint to being irreligious—but I believe if we miss the point again of doing what the Galvin report said—the report you mentioned a while ago, Senator, came from the Appropriations Subcommittee. You mentioned, that came from the——

Senator RUDMAN. IDA.

Senator DOMENICI. Yes, IDA came out of the subcommittee in frustration because people wanted more field offices, and we said could we get a study. And we already have too many, that is what the study said.

So all of these reports are suggesting not where security ought to be. We can fix that. If the Secretary wants part of security under him, fine. But the point is we have got to change so that the Department of Energy's role in nuclear weapons is not subject to every rule and regulation in the Department which grew up over 25 years. Now, that is the real issue.

Frankly, I am as concerned as my friend Senator Bingaman about the laboratories being flexible. As a matter of fact, you will not believe, while we sit here and discuss flexibility and doing other work beyond nuclear, you will not believe what I have been through in my life when members of the House have even tried to take away certain research laboratories because it was not close enough related to nuclear weapons—I shared those with you when you were here, Senator Rudman—to which we answered: We have got to leave the flexibility in because if there are good biologists there because they studied Hiroshima, what is wrong with them working on the Genome Project? That is the kind of thing we are doing now.

If I thought we were going to eliminate that or tie a rope around it, I would be here saying throw out the Rudman report. But I cannot imagine that that is going to happen. In fact, it is just a matter of trying to get—trying to make sure you have organized it where they can get it.

Now, I want to close by saying to Secretary RICHARDSON. You are not one of those Secretaries that has been timid and unconcerned, but you and I know some who were, and there are many since Ronald Reagan's era, including one or two of his, that even if they would have tried they could not do what you are doing because they did not have either the concern or the skills.

That is what worries me. You might very well handle this great, but I think we need a structure in place that minimizes the interference with the nuclear weapons activity, including security, and we need to do it by way of statute law so that even a weak Secretary will not be reigning over a Department that does not know what in the world they are doing.

So I do not know that I have any questions, other than perhaps to ask you, Mr. Rudman, do you agree with my analysis?

Senator RUDMAN. I think that is a very good statement, Senator Domenici.

Senator DOMENICI. And Secretary Richardson, if you understand why I think some kind of autonomous agency must be created, it is precisely because I think the weapons system is subject to over-regulation, overburdened, and that yields all of this fuzziness that the Rudman report has indicated.

Secretary RICHARDSON. Senator, I think there is nobody that knows these labs better than you and Senator Bingaman, that represent the most of any members of this Congress. And I know exactly what you are saying, and I think codification to ensure security and better effectiveness of the nuclear weapons component is necessary, and I agree with you.

The only area that I want to work with you on, which means we have a slight disagreement, is in the area of oversight. I do not think anybody is perfect. I am not perfect, this committee is not perfect. I do not think the nuclear weapons complex is perfect. I would like to have junkyard dog types within my Department independent entity to be able to go into Los Alamos and Sandia and Livermore and say, you are not doing this right. And it may be in the areas of safety and health.

I will look into that 5-year, 4-year problem. I agree it is excessive.

Senator DOMENICI. I am not asking you to look into it. We are looking into it. Things are getting done. I am just telling you they cannot avoid it. They cannot do it any quicker.

Secretary RICHARDSON. But I think we can merge some of these differences. I just do not think you should create a complex that has no ability to be scrutinized. That is what I worry about.

Senator RUDMAN. If I could just simply say, you know, if you look at this report carefully, there is a disagreement here. Yeah, we are very close, but it reminds me of the fellow who said: The girl I want to marry, we are making progress; she says she is down to only two possible answers.

The bottom line is that we firmly unequivocally believe, with all of our regard for the Secretary and the people he has brought in, that a semi-autonomous agency responsible to the Secretary, with input from the science department through the Secretary, that is what we recommend. We think if you do not do that you are going to miss a golden opportunity, and when this Secretary is off doing something else 18 months from now and his successor decides that he has got somebody better than General Habiger, who probably will not be, and better than Mr. Curran, who obviously will not be, and brings them in because that is his political right to do, who knows where we go? We are back where we began.

Let us codify it like the NSA, like NASA, like any of these agencies, and give full authority to the Secretary, and at least feel secure that if there is a weak Secretary—I would pick up the Secretary on his point—that weak Secretary may well be thankful that he has got a strong Under Secretary to run these laboratories.

Nothing DOE does, nothing comes close to the responsibilities they have for these weapons and for the environmental cleanup that these weapon productions caused. So we may be close. We are not very close at all if this ends up in some other form, but obviously that is your choice, not ours.

Chairman MURKOWSKI. Thank you. I think we are out of time, gentlemen.

Our next—let us see. We have got two left here, Senator Akaka and Senator Inhofe. Senator Inhofe was here prior to Senator Akaka.

Please proceed, Senator Inhofe.

**STATEMENT OF HON. JAMES INHOFE, U.S. SENATOR
FROM OKLAHOMA**

Senator INHOFE. Thank you, Mr. Chairman.

Returning to my previous role as skunk at the family picnic, while I have enjoyed this love-in, I think we are not talking about some of the real tough things we need to talk about. First I want to say that I would echo everything that Senator Warner, Senator Domenici, and others have said about Secretary Richardson. Secretary Richardson and I served together in the House. I hold him in very high regard.

I think he has had a very difficult role to play. I characterized his role when I was with him on television as the curator of the White House spin, which is: Well, this has always happened before, other administrations, and we are going to get to the bottom of this, and there is enough blame to go around. And it is a difficult position to be in.

So as a result of that, we end up talking about what happened, when it happened, how do you keep it from happening again, when I believe in my own heart that it happened because of things that President Clinton and this administration have done.

I am going to ask the question of both of you, and when I ask the question I am not asking you to accept my premises, those things in which I believe. But if what I say is true or not true, if we should have a President in the future who has done what I believe this President has done, I would like to ask you what we could put in place that would preclude it from happening again.

No. 1—the four premises: number one, that it is not so important as to when it happened as to when it was discovered. Of the 17 compromises—and I have them all listed here, and I will defend these if anyone wants to challenge it—16 of the 17 were discovered since 1994. That is during this administration.

No. 2, many of them actually took place—and I will just read a few of them: the transfer of the so-called—this all happened during the Clinton administration—the transfer of the so-called legacy codes containing data on 50 years of U.S. nuclear weapons development, including over 1,000 nuclear tests; the sale and diversion to military purposes of hundreds of high performance computers, enabling China to enhance its development of nuclear weapons, ballistic missiles, and advanced military aviation equipment; the compromise of nuclear warhead simulation technology, enhancing China's ability to perfect miniature nuclear warheads without actually testing; the compromise of advanced electromagnetic weapons technology useful in the development of anti-satellite and anti-missile systems—all these happened during the administration—the transfer of missile nose cone technology, enabling China to substantially improve the reliability of its intercontinental ballistic missiles; the compromise of space-based radar technology, giving China the ability to detect our previously undetectable submerged submarines. And of course we know about many others, including the transfer of the missile guidance technology that allows China to substantially improve the accuracy of its missiles.

Now, the third premise on which I have come to my conclusion is that this administration has relaxed the safeguards that were in place by previous administrations, Democrat and Republican. It

was during this administration in 1993 that they removed all the color-coded security badges that had been used for years at the Energy weapons labs and claimed that they were discriminatory.

It was during this administration that career whistleblowers at the Department of Energy who tried to warn of serious security breaches, people like Notra Trulock and Ed McCallum, were thwarted for years by Clinton political appointees who refused to let them brief Congress and others about what they knew.

In the W-88 investigation, this administration turned down four requests for wiretaps. I do not know when that has been done in the past.

This administration put a hold on doing FBI background checks for lab workers and visitors, an action which helped to dramatically increase the number of people going to the labs who had previously not been able to have access.

I am running out of time. And then lastly, that the President knew of the security breaches and concealed them from Congress.

Now, as I said, whether or not you agree with these four conclusions that I believe I have come to from incontrovertible evidence, I would like to have you at least say hypothetically, if 10 years from now we should elect a President who would be guilty of the type of behavior that I believe this President has been guilty of, what could we possibly put in place that would keep the same thing from happening? Secretary Rudman—Senator Rudman?

Senator RUDMAN. I do not think it is only a question of who the President is. I think it is a question of who the Secretary is. It is a question of who the leadership is in the Congress. Quite frankly, Senator Inhofe, I think you all deserve some blame, all of you who had anything to do with this. You have had hundreds of pounds of evidence to act on and you have not acted on it. I hate to say that to my former colleagues, but, you know, I am going to be fair about this.

The President we criticize in this report for acting too slowly and not taking it seriously enough. Congress had all these reports which I showed a while ago. You have got a cast of thousands up here in terms of staff. I used to enjoy that once myself. They could have done something. Nothing happened.

So my answer to the question is you all, Presidents, Secretaries, Senators in leadership positions, ought to pay a lot of attention. Now, there is a good track record. A lot of people have tried. But nobody took them very seriously. So I do not think this is a question of the President or the Secretary or the Congress or the leadership. it is everybody.

Let me say one last thing, the saddest thing of all. Were it not for the media, who we all in public life like to criticize and kick around, had it not been for the *New York Times* breaking this story, we would not be here, and Ed Curran would not be on board and General Habiger would not be on board, and you would not get new legislation, which tells you something about the fact that independent oversight within the Congress probably could be improved, if you want my honest answer. It could have been improved when I was here and I am sure I could improve my own performance.

We collectively could do better. I think that is what I am saying. Senator INHOFE. Thank you, Mr. Chairman.

Chairman MURKOWSKI. Would Wen Ho Lee still be working?

Senator RUDMAN. I would doubt it.

Chairman MURKOWSKI. Senator Akaka.

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

I am certainly happy to have Senator Rudman back again and Secretary Richardson. Just to follow up on the conversation that was held now, Senator Rudman, in your report you state that the briefing to National Security Advisor Sandy Berger by DOE in April 1996, and I quote, "was insufficient for him to initiate a broad presidential directive." Could you elaborate on that for me?

Senator RUDMAN. Yes, I would be happy to in the time we have. We went through document by document and recollection by recollection the contents of that briefing. Of course, recollection is imperfect 3 years later, but people did the best they could.

Our sense was that the briefing in 1996 did not raise it to a level that alarm bells would have gone off and said, hey, we have got a real problem on our hands. When the next briefing came along, we thought that it was more than enough to achieve that. We thought the administration should have moved a lot more rapidly at that point, and we have said so.

Senator AKAKA. I was very interested in your comments to the point of saying that, we have tried hard but there is still more to go, we cannot take care of all the security problems that we have. It seems as though we have been concentrating on the Energy Department and also on particular labs, and yet we know that there are about 20 labs that do work that is important to the security of our country.

Pertaining to your feeling of not having answers to all of the problems, I just wonder about raising another concern that is not necessarily in your report. Another part that interested me was on your page 31, you mentioned that key technical information concerning nuclear weapons has been available to numerous U.S. Government and military entities since at least 1983 and could have come from many organizations other than the weapons labs.

Senator RUDMAN. That is correct, Senator.

Senator AKAKA. So we have private contractors out there as well to deal with when we think of security. So it is really huge, and you are right that we do not have all the answers.

So I want to focus in a little different direction, to the issue of peaceful cooperation and nuclear power. Senator Rudman, are there any security concerns relating to international cooperation on the peaceful uses of nuclear power? Should we be concerned, for example, about the American nuclear industry helping China's nuclear power program?

Senator RUDMAN. Senator, that is a little bit beyond what we looked at, but I will tell you that it is my view that the Department of Energy and its counterintelligence force must be extraordinarily mindful of any technology that is shared with any potentially hostile power that could be in any way helpful to a program for the production of weapons-grade material.

To that extent, I think the Department does have a responsibility, and I think under the so-called Nunn-Lugar legislation passed here a number of years ago that responsibility continues to exist.

Senator AKAKA. Senator Rudman, your report mentions that Chinese intelligence has become "very proficient in the art of seemingly innocuous elicitations of information." Does this mean that you believe we should cut off all contacts by our weapons scientists with the Chinese scientists? Should we end these contacts between these scientists having to do with our national weapons labs?

Senator RUDMAN. No, Senator, we did not say that. We did not say that at all. What we said was that the sophisticated nature of Chinese collection of intelligence is such that you have to be very clever and very mindful of their techniques and you have to have different programs in force. But I am confident that in Mr. Curran the Department has someone who knows how to deal with that.

We are not suggesting for a moment that you cut off discussions. Let me say this. There probably are some areas of discussion that probably ought not to go on, and the question is how do you deal with that. That is a whole separate issue.

Senator AKAKA. Thank you very much for your comments.

My time is up. Thank you, Mr. Chairman.

Chairman MURKOWSKI. Thank you very much, Senator Akaka.

I have one other member who is on his way down, Senator Kyl, and I believe he will be here shortly.

Let me ask you, Mr. Secretary, in view of the likelihood that we will take up the intelligence authorization tomorrow and we have pretty much given you the language of our proposed amendment, and we still have this question of the semi-autonomous issue and the division which has I think not grown further apart, but come closer as a consequence of time and the opportunity to hear from both you and Senator Rudman, it is important that we try and come together in the time remaining or we are going to lose another opportunity.

Now, to lose that opportunity may mean different things to different people, but I think we are all in agreement that we have a crisis here and we need to take some definitive action and we need a legislative fix. Now, can you give us some direction on how you propose to communicate collectively with those of us who are offering the amendment and your staff so that we can attempt to identify just how close we can come, recognizing that we have an opportunity tomorrow, Mr. Secretary?

Secretary RICHARDSON. Senator, I would propose that our staffs meet along with members of the minority and majority to see if we can merge our difference. I am hopeful, but again I want to be sure that what we are doing, since this might be the law that carries the day, that it is something that we can support.

Now, on the House side, which we have to, Senator Rudman in I have to go shortly, we have got other problems. There is quite a bit of concern—

Chairman MURKOWSKI. I would like to keep our two bodies separate. We are at the point of trying to get something done.

Secretary RICHARDSON. Well, I agree, but they have to concur, too.

Chairman MURKOWSKI. I understand.

Secretary RICHARDSON. I just want to be—

Chairman MURKOWSKI. You want to try to satisfy both from here.

Secretary RICHARDSON. I want to be cooperative. I hope we can reach agreement. But I think what I have laid out has been very clear. I think several Senators have agreed we have come closer. But again, we need to see the details. We need to see your amendment. We have not seen it.

Chairman MURKOWSKI. Well, I am under the assumption that you have had an opportunity to certainly understand that it is patterned pretty much directly after Senator Rudman's report. So you have the view, and you have also isolated, I think, the difference on the issue of the semi-autonomous vis a vis your concern relative to the role of the Secretary of the Interior. We feel the Secretary should have, obviously, accountability, but I think we need to codify this.

I guess what I am telling you, Mr. Secretary, is that we intend to proceed and we would like to have you with us so we could have a bipartisan response. But what we are not willing to do is simply delay for the sake of delay, because this thing has been pretty well exercised over a long period of time with reports that have lacked an administrative fix in the sense of a Congressional action, and we think it is time to take that action.

Secretary RICHARDSON. Senator, we will instruct our staff to meet with yours and the minority as soon as possible. If it takes an extra day to do it right, I will ask for that. I cannot deal with this this afternoon because I have to testify before the House. But I think we should be judicious. We should move fast, but if it takes another day, let us be sure we are doing it right.

Chairman MURKOWSKI. Well, we have got today and tomorrow. Senator Kyl.

STATEMENT OF HON. JON KYL, U.S. SENATOR FROM ARIZONA

Senator KYL. Thank you, Mr. Chairman.

Gentlemen, thank you very much. I am sorry I had to leave the hearing for a little while, but I was meeting with the Solicitor of the Department of the Interior on another matter that Secretary Richardson would certainly appreciate from his old days in the House.

The question that I would like to ask, primarily to Senator Rudman but to get the response of the Secretary if you desire, is really pretty much the same question that I asked in the Intelligence Committee when you testified about the basis for your recommendations. It was in response really to a friendly criticism by Senator Levin that our original bill was different from your committee recommendations. We informed Senator Levin that we had decided to conform our legislation to your recommendations as closely as we could possibly do that, and that one of the key reasons why our original legislation was different is that we were trying to accommodate a concern of the Secretary, namely that his security czar and counterintelligence person should not be within the line of responsibility and authority of the semi-autonomous agency, but rather should be an overarching Department of Energy security czar and counterintelligence person and should report directly to the Secretary.

My question to you at that time, Senator Rudman, was whether those two views were essentially inconsistent, whether they represented inconsistent approaches, or whether we could, as I had been trying to do, compromise and accommodate the Secretary.

Your answer, I will just note my understanding of it and then ask you to please provide that answer again, was that, no, you have got two different management structures here and you have got to select one or the other.

Now, today you indicated that there might be some ability to take some of the personnel, like the congressional liaison and some of those folks, and deal with them the way the Secretary suggested, and that maybe even with regard to the security person who he reports—at least this is the way I would interpret your answer—that who he reports to is perhaps less important than where he is—in other words, he can report to the Secretary and perhaps also to the Under Secretary—but that he should be within this management structure with the accountability and responsibility for the nuclear weapons programs.

So I guess my question is then this. Underlying your recommendation there were two key bases, as I understood it. One you can find on page 45 of the report where, among other things, you say "We are stunned by the huge numbers of DOE employees involved in overseeing a weapons lab contract." And you were saying get all of that gone and just have the nuclear weapons program within one chain of command. And secondly, the responsibility for security oversight. Those are the two keys.

In your view, what has the Secretary—has the Secretary suggested to you any willingness to compromise on either of those two areas that seems to suggest possible progress from your point of view in reaching a consensus?

Senator RUDMAN. Senator, let me just say to you that we continue to believe that there has to be a major counterintelligence operation within this semi-autonomous agency. Although the Secretary says, and he is right, that there is other CI concerns, the overwhelming percentage of dollars on counterintelligence go towards to weapons labs, and we have that in their own data.

On the security issue, I do not have a problem with what he has said here this morning. I mean, if the Secretary says he ought to have security up here next to him, with a separate security liaison, if you will, down next to the new agency, that is not a problem. We do not have a problem with the counsel, inspector general, comptroller. He wants to have those as divisions of his staff; that is not a problem.

The serious problem we have to this moment is I have not heard anything the Secretary say that indicates that he really agrees with our absolutely solid position: This has to be an agency or an administration directly accountable to the Secretary of Energy, period. We do not think anything else would work, and we base it on looking at 20 years of reports. And I dare say, I will say to my friend the Secretary, I dare say I have read more of those reports than anybody in town. I do not want to read them any more. And they show me unless you are very careful in putting a lockbox around this you are going to have some more trouble down the line

after you are gone. I think that is what Senator Domenici believes. That is what I heard him say a few moments ago.

I would hope we could work this out because the rest of it, it seems to me, is bureaucratic. We are talking about a principle here.

Senator KYL. Any response, Secretary Richardson?

Secretary RICHARDSON. Senator, I do believe we have made some progress today with the security component reporting directly to me. I think that makes a lot of sense. That is what I have always wanted. I do not think—security and counterintelligence should not be in the new tier.

As I understood last week, you said that in your amendment you agreed with that, that counterintelligence should report directly to me. So I just want to be sure that—I know this is a hearing where you are questioning me—we are not going back on that.

Senator KYL. Let me make it clear that, in response to your concerns, I was saying I was trying to work with you to work that out. And I did not say that counterintelligence should be directly reportable to you, but I said it seemed to me that the security issues could be worked out. And I think that you and Senator Rudman are suggesting that that is the case here, although there still apparently is a disagreement about where the counterintelligence unit should reside.

But please go ahead.

Secretary RICHARDSON. Yes, that is correct. I believe the counterintelligence unit should report directly to me. But I thought that was your position, too.

Senator KYL. Again, it seems to me—and I would really be pleased to get both of your responses—that less important who these two people report to is the question of where they are. Here is what I mean by that. You want these people immediately subject to your supervision and when you call them you want them to come immediately and report directly to you. But there may well be a lot of times when you designate somebody else, your Under Secretary here, as the person to get most of their daily kinds of reports. In other words, my guess is that there will be other people in this loop. And so long as they have the ability to report directly to you and you have the ability to say that they report directly to you, I am satisfied with that, because my guess is that on a routine basis they may also be reporting to the Under Secretary here.

But the key is whether or not both security and counterintelligence has a line responsibility along the NRO model, which I thought Senator Rudman was right on target in pointing out. Effectively, when our satellites are built security is a component of them. It is not an add-on later, as the report notes. It is directly built in.

So I think the key here is whether these two people, the security and counterintelligence people, are directly in that line of accountability and responsibility for the nuclear weapons program.

Secretary RICHARDSON. Well, Senator, I hope we are not drifting apart. We may be, because I read your amendment that you said you have changed and that you had accepted our view that counterintelligence should report to me. Now, I do not think counterintelligence should report to the Under Secretary, and this may be

something that divides us as we move ahead on this very fast train.

I would like us to discuss this, but that is essential to me, that counterintelligence, security have their separate component. This does not diminish the Under Secretary concept. Again, I am willing to discuss an Under Secretary structure that reports to me with members of the majority and the minority, but I do not want to go back and revisit the counterintelligence issue, which I thought you as the main author of this amendment with Senators Domenici and Murkowski had already agreed should report directly to me.

Senator KYL. Mr. Chairman and Secretary Richardson, you are absolutely correct that in our version, in an attempt to accommodate you, we did that. We had a few words because we were trying to accommodate you and we got criticized for that. But when we asked Senator Rudman whether he thought that was a good idea, he said no. And in order to have a clear piece of legislation, we then took his recommendations as our bill.

But I accept your invitation and you have accepted our invitation to sit down and try to work this out, and I think people of good will working toward a common goal can do that.

I would just close by asking, we are in agreement, are we not, that in terms of all of the other DOE supervision, these field offices and contracting supervision and all of that sort of thing that the report talks about, that in that respect anyway there is no disagreement that this semi-autonomous agency would have the clear lines of responsibility and accountability, and there is no disagreement on your part with respect to that?

Secretary RICHARDSON. The Under Secretary structure, I hate this "agency" word. I abhor it, and I am willing to discuss another word, because it connotes something that is a separate entity within my own entity, within the Department of Energy entity. So let us not try to divide ourselves with some of these differences. Let us have our staff sit down and us sit down.

Senator KYL. We will sure do that, but I would just suggest that there is a fundamental point here and that is that it is exactly the recommendation of Senator Rudman and exactly the intent of the three Senators who are left up here that there be a semi-autonomous group, agency, division, whatever you want to call it, but an entity within the Department that has one responsibility, the nuclear weapons programs, and is not accountable to a whole bunch of other people within the Department as to their policies with respect to hiring and firing or environmental or contracting or any of these other things.

That is a fundamental point, and if we do not—if there is disagreement on that, then we are going to have to continue to disagree and just move our separate ways rather than move together.

Chairman MURKOWSKI. That is a point I want to make, and I think it has been made. We have got about so many seconds left on the vote.

Senator Domenici, do you have one question?

Senator DOMENICI. Yes, thank you.

I want to make this point to the Secretary. Mr. Secretary, you may abhor the notion, but the point of it is they determined in their report that we should have within the Department of Energy

an Agency for Nuclear Stewardship. That is what they called it. We are going to stop calling it anything else. We are going to call it an Agency for Nuclear Stewardship.

The truth of the matter is that Under Secretary is directly responsible to you, and the concern that it is so autonomous that you are not in charge is not well taken. It is in charge because it needs management and a straight line of command, not what we have got now that I will not explain another time.

So I hope we may be very far apart. If you are suggesting that we diffuse that by agreeing to the name of an Under Secretary with certain functions, then we will be very far apart because that puts us back to having accomplished nothing except set up another honcho in the Department, another person with a title. And we just tried desperately to tell you that that is what has been going on for 20 years, a title is created without changing the structure.

So I hope we do not disagree on that, but rather disagree on what is in that box, rather than that there is this new chain of command, this new order about things. If that is the case and we argue about what do you want to keep up there in your shop, then there is only one argument, one question: Do you move so much up there that you do not have autonomous, you do not have this Agency for Nuclear Stewardship? That would be a legitimate question to be asked as we negotiate.

Thank you, Mr. Chairman.

Chairman MURKOWSKI. Thank you, Senator Domenici.

Hopefully our staffs can work together to resolve this.

Senator Rudman, do you have anything to add in conclusion? I mean, we are really down to seconds.

Senator RUDMAN. Just one sentence. None of us on this panel, with all due respect, understand the Secretary's abhorrence to this word. I mean, we did not invent this. The reason that NSA and NOAA and DARPA sit as agencies, they are so totally different from the agencies that they sit in that it was the intention of the Congress to make them separate agencies, responsible to a Cabinet Secretary, but not to get mucked around with.

And I do not understand the opposition. It may have something to do with budget authority. I am not sure what it has got to do with. But it cannot be from this bureaucracy for the reasons stated, and I say that with all due respect. I do not understand the opposition.

Chairman MURKOWSKI. Mr. Secretary, shall we leave it at that?

Secretary RICHARDSON. Senator, my team would be ready to meet with yours: Mr. Falley, Mr. Angel, Mr. Roling, and Mr. Eddy. Those are my four. Again, I hope we can spend the afternoon with you and the minority staff and yourselves and try to resolve this. I want to work this out and I hope we do not go different ways. But if it takes another day, we ought to consider that.

Chairman MURKOWSKI. Well, as I indicated, the issue is going to come up tomorrow. So we have got today and a good portion of tomorrow to work it out. It sounds to me like we are very close, but there is a difference here. And I am having a little difficulty understanding your reluctance on the specifics. But we will try and work that out with the staffs.

But let us recognize that we have come this far and that is as a consequence of the efforts of both of you. I want to thank you, Senator Rudman, for your effort and the presentation by your colleagues in this very important report, and Secretary Richardson for your input, the changes, the responsibility that you have undertaken.

It has been a worthwhile hearing. We have gotten it over I think in a pretty fair time frame, considering we had some 60 members to contend with. Some of them did drop out, but most of them were here.

That concludes the hearing and I wish you all a good day.

[Whereupon, at 12:47 p.m., the hearing were adjourned.]

APPENDIX

RESPONSES TO ADDITIONAL QUESTIONS

RESPONSES OF SECRETARY RICHARDSON TO QUESTIONS FROM SENATOR DURBIN

Question. I have two Energy Department labs in my state of Illinois, the Fermi National Accelerator Laboratory and the Argonne National Laboratory in Chicago. How would the proposal to form a semi-autonomous agency including the big-three weapons labs as described in the Rudman report affect these multipurpose labs? How would they fit into the structure? How would this reorganization proposal affect the "pure science" that goes on at the other Energy Department labs?

Answer. It is of the highest importance to accomplishing Department of Energy that the multipurpose and basic science labs have the unencumbered ability to pursue their mission-based research, and that the existing collaborations between the weapons laboratories and the non-weapon multipurpose laboratories and basic science labs, which have been so profitable in the past, be allowed to continue. As we implement the new organization, we will pay particularly close attention to the ability of the different laboratories to continue to collaborate, consistent with the stricter security measures necessary at the weapons labs.

Question. What is your opinion of the proposal for a semi-autonomous agency? Just a couple of weeks ago you had called splitting off the labs and security programs for them like having the fox guard the chicken coop. Are you satisfied that the semi-autonomous agency outlined by the Rudman report would have security be sufficiently independent? Are you concerned that the proposal would isolate the weapons labs too much?

Answer. We are implementing the reorganization of DOE consistent with the legislation that established the semi-autonomous National Nuclear Security Administration (NSA) and in accord with DOE's NNSA implementation plan. This plan will help guide the organization to ensure that the weapons laboratories continue to perform scientific research for non-defense Energy Department programs and other government agencies, and that the NNSA operate in a manner that protects the environment and the health and safety of workers and the public. As the department implements this plan, it is very important that its across the board scientific work and collaboration, which encompasses all of the department's research facilities, not be compromised by the NNSA's creation. The Department will work to ensure that all of the missions of the department have access to the technical expertise and specialized facilities at all of the laboratories and sites.

○

ISBN 0-16-060498-2



9 780160 604980