

**DEPARTMENT OF ENERGY COUNTERINTELLIGENCE,
INTELLIGENCE AND NUCLEAR SECURITY
REORGANIZATION**

HEARING
BEFORE THE
SELECT COMMITTEE ON INTELLIGENCE
OF THE
UNITED STATES SENATE
ONE HUNDRED SIXTH CONGRESS
FIRST SESSION
ON
DEPARTMENT OF ENERGY COUNTERINTELLIGENCE, INTELLIGENCE
AND NUCLEAR SECURITY REORGANIZATION

JUNE 9, 1999

Printed for the use of the Select Committee on Intelligence



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HEARING ON DEPARTMENT OF ENERGY COUNTERINTELLIGENCE, INTELLIGENCE, AND NUCLEAR SECURITY REORGANIZATION

WEDNESDAY, JUNE 9, 1999

U.S. SENATE,
SENATE SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC.

The Committee met, pursuant to notice, in room SH-216, Hart Senate Office Building, the Honorable Richard C. Shelby, Chairman of the Committee, presiding.

Committee members present: Senators Shelby, Kyl, Roberts, Al-
lard, Kerrey, Bryan, Graham, and Robb.

Also present: Senators Specter, Warner, and Bingaman.

Chairman SHELBY. The Committee will come to order.

The Committee is meeting today for the seventh time in a series of hearings and briefings on espionage and other counterintelligence problems at the Department of Energy's nuclear laboratories. Today we will hear testimonial proposals to reorganize the department's counterintelligence, intelligence and nuclear security functions. The counterintelligence threat to DOE labs and the counterintelligence problems that we're seeking to address are not new ones.

For many years this Committee, on a bipartisan basis, has been working to strengthen DOE's and the lab's counterintelligence programs. Today our first panel of witnesses will consist of Senator John Kyl, a distinguished member of this Committee; Senator Pete Domenici, Chairman of the Appropriations Subcommittee on Energy and Water Development and expert on the national laboratories and also Chairman of the Budget Committee; Senator Murkowski, the distinguished Chairman of the Energy and Natural Resources Committee.

They will testify on their proposed amendment to the fiscal year 2000 Intelligence Authorization Act to reorganize the Energy Department's counterintelligence, intelligence and nuclear security structure.

Our second panel will be the Secretary of Energy, Bill Richardson. Secretary Richardson has begun the implementation of a number of security and counterintelligence measures at the department. He will describe here today what he is doing at the department and he will provide us with his views on the Kyl-Domenici-Murkowski amendment.

STATEMENT OF THE HONORABLE SENATOR RICHARD C. SHELBY, A UNITED STATES SENATOR FROM THE STATE OF ALABAMA

The Committee is meeting today for the seventh time in a series of hearings and briefings on espionage and other counterintelligence problems at the Department of Energy's nuclear laboratories. Today, we will hear testimony on proposals to reorganize the Department's counterintelligence, intelligence, and nuclear security functions.

Our first panel of witnesses will consist of: Senator Kyl, a distinguished member of this committee; Senator Domenici, Chairman of the Appropriations Subcommittee on Energy and Water Development—and, an expert on the National Laboratories; and Senator Murkowski, the distinguished Chairman of the Energy and Natural Resources Committee.

They will testify on their proposed amendment to the fiscal year 2000 Intelligence Authorization Act to reorganize the Energy Department's counterintelligence, intelligence and nuclear security structure.

Our next witness will be the Secretary of Energy, Bill Richardson. Secretary Richardson has begun the implementation of a number of security and counterintelligence reforms at the Department. He will describe what he is doing at the Department, and will provide us with his views on the Kyl-Domenici-Murkowski amendment.

The counterintelligence threat to DOE labs and the counterintelligence problems that we are seeking to address are not new ones. In 1980, the General Accounting Office found that "safeguards and security at DOE's weapons facilities are still not adequate." In 1988, the GAO reported "major weaknesses in foreign visitor controls at weapons laboratories." In April 1992, at the request of this Committee, an Intelligence Community Working Group completed a classified assessment that identified a number of weaknesses in the DOE counterintelligence program.

In April 1997, a classified FBI assessment commissioned by this Committee found extensive problems and shortcomings in DOE's counterintelligence program, and directed 26 recommendations to DOE for DOE to implement.

In September 1997, the GAO found once again that "DOE needs to improve controls over foreign visitors to weapons laboratories."

In February 1998, building on the framework provided by the recommendations in the 1997 FBI report, the President signed PDD-61, a Presidential Directive designed to acknowledge and address the problems in DOE's counterintelligence program.

Subsequently, a number of steps have been taken to develop and put into place plans implementing PDD-61. In February 1999, a Counterintelligence Implementation Plan was delivered to Secretary Richardson. We look forward to learning the status of that plan today. Since then, on March 17 and May 11, the Secretary has announced additional counterintelligence and security reforms.

Meanwhile, in testimony in October 1998, the GAO found that "problems in DOE's Foreign Visitor Program persist."

In November 1998, according to the New York Times, an inter-agency counterintelligence report found that foreign espionage

services "rightly view DOE as an inviting, diverse, and soft target that is easy to access and that employs many who are willing to share information."

In the same month, Mr. Curran told the Cox Committee that the Department of Energy's counterintelligence program "does not even meet minimal standards . . . there is not a counterintelligence [program], nor has there been one at DOE for many, many years." I agree with Mr. Curran's assessment.

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. In the annual intelligence authorization acts—in 1990, 1991, 1992, 1994, 1996, 1997, 1998, and 1999—the Committee, working with the House Intelligence Committee, took steps to address those weaknesses, to improve the DOE and FBI's counterintelligence capabilities, and most important, to energize the Department of Energy to allocate the necessary resources, and take the necessary steps, to eliminate these vulnerabilities.

For example, following the April 1997 FBI report, the Committee directed the Secretary of Energy to report to the Committee on the status of DOE's implementation of the recommendations contained in the FBI report, to identify the resources required to implement those recommendations, and to provide those resources in the DOE's next budget submission.

After PDD-61 was signed in February 1998, the Committee noted that "the DOE will require significantly enhanced funding to subsidize these new counterintelligence enhancements and looks forward to reviewing these new requirements. The Committee intends to continue its strong and long-held support for the enhancement of DOE's counterintelligence capabilities."

In the conference report on the fiscal year 1999 Intelligence Authorization Act, the conferees noted that "success in addressing DOE's counterintelligence needs will ultimately depend on the Secretary's leadership in establishing and sustaining a Department-wide commitment to this important effort."

I am sure that Secretary Richardson recalls that in August 1998, before the Los Alamos case became public, we "strongly urge[d]" the incoming Secretary "to devote as much time, attention—and particularly resources—to the counterintelligence problem at DOE as possible."

We welcome our witnesses today—our distinguished colleagues, who have worked very hard to develop a constructive proposal to address counterintelligence and intelligence issues at DOE, as well as to address critical problems in the overall management of our nuclear weapons complex—and Secretary Richardson, who has been working hard, since taking office, to address the multitude of problems the Department of Energy faces.

Chairman SHELBY. Senator Kerrey.

Vice Chairman KERREY. Mr. Chairman, first of all I want to commend you for holding this hearing because this issue is the one that almost prevented us from getting a DOD authorization bill and I hope that we're able through this hearing to resolve our differences so that it doesn't end up torpedoing the intelligence authorization bill which could come to the floor as early as next week.

Mr. Chairman, as you pointed out, this amendment concerns a proposal to reorganize elements of the Department of Energy. And many parts of the amendment are outside the Intelligence Committee's jurisdiction. Thus I'm very pleased that our colleagues on the other Committees are here today that share jurisdiction over the Department of Energy so they'll have the opportunity to question the witnesses as well.

I hope that our focus today will be to get a comprehensive view of the proposed amendment and the expected result if the amendment is enacted into law.

Mr. Chairman, I'm very much certain that the amendment attempts to correct shortcomings, but I know from talking personally with the authors of this amendment that they are very much concerned about the shortcomings concerning counterintelligence problems at the national laboratories.

There have been enough public statements both from within and without the Executive branch to support the contention that DOE counterintelligence has needed substantial improvement. I want to publicly commend Secretary Richardson for the effort he has made to understand the counterintelligence situation and for the aggressive steps he has taken to correct the deficiency he found.

He showed himself to be someone ready to take drastic action when it is warranted. And the complete shutting down of the lab's classified computers is an excellent example of his aggressive but appropriate actions.

Mr. Chairman, I would like to also take the liberty in my opening statement to comment on some comments that Mr. Ed Curran made over the weekend on one of the national shows. I understand how it's possible to get ambushed by Cokie Roberts and Sam Donaldson. I understand how it's possible to get sort of hot under the collar. I have enormous respect for Mr. Curran. He was brought on board the Department of Energy to be the point person for counterintelligence and to the extent that he's making the point that this Administration and Congress have been working together to try to solve this problem since 1996, I think it's a point well taken.

But there were a number of things that he said during that interview and I have had a conversation already with the Secretary, so Mr. Curran knows I am going to make this comment. Not only do I disagree with some of the statements that were made but by—the way that he made his comments he left the impression that this has become a partisan issue at least on the legislative side and some of the comments appeared as if they were drafted by the political shop of the White House which I do not think contributes to our constructively being able to sort through fact and fiction in deciding what we ought to do.

I want to say that this Committee has operated in a bipartisan fashion on this issue since 1996. You can, if you want to, criticize what this Committee has done, but we tried to provide additional resources. There's been a 10-fold increase in spending on counterintelligence since 1996. There are counterintelligence professionals now running the programs. Mr. Curran is a premiere example of that. He's a fine professional. He is the best person that I could think of for the job. We've developed reports on the status of our counterintelligence posture. Our action was done in coordination

with the Presidential directive that was issued as well. So I think this Committee has attempted in a bipartisan way to respond when we've been asked to by the Administration to assist in solving counterintelligence problems and I just want to point out that I do simultaneously think Mr. Curran is a fine professional. I admire what he's done and the extent to which he is saying, we were working with Congress, I take the point. But there were some comments made on that show that I not only disagreed with but they had too much of a partisan edge for my taste and I think especially for a seasoned professional as Mr. Curran is.

Mr. Chairman, back to this amendment. As I understand it, it creates a new Administrator for National Security, Nuclear Security, and as I see it under law this individual would be enormously powerful. His or her authorities would have an effect on an area under our Committee's jurisdiction, counterintelligence, but it's also going to have effects in other areas not under our jurisdiction, that is to say the overall supervision, DOE supervision of contracting, health and safety measures, nuclear stockpile stewardship, patent policies, execution of chief financial office responsibilities and so forth.

So it does not appear to me this is a small amendment making changes at the margin. It gets right to the heart of the matter and I look forward to both hearing the witnesses as well as having an opportunity to ask them some questions, Mr. Chairman, about this amendment itself.

Chairman SHELBY. Senator Bryan.

Senator BRYAN. Mr. Chairman, I would like to thank you and the Vice Chairman for scheduling this hearing today. The issue before us is how to strengthen security at our national laboratories. It's a critically important one and one that deserves our very careful and thoughtful consideration. There can be no doubt, particularly in the wake of what we've learned from the Cox-Dicks report that there have been serious security breaches at our national labs.

Although the Cox-Dicks report has focused renewed attention on security lapses at our national labs, it is only the most recent in a string of highly critical reports dating back to the 1980s. The General Accounting Office and the FBI, at the request of various Congressional Committees including this one, have conducted a number of reviews of DOE's counterintelligence capabilities over the years.

All of those reviews, without exception, have found serious counterintelligence weaknesses at the labs. In other words, Mr. Chairman, this is not a new problem, it's been around for years, and the fact is several Administrations—both Republican and Democrat—have failed to effectively address it despite the urgings of this and other Congressional Committees in both the House and the Senate.

In its most recent attempt to strengthen lab security, the Committee this year included in its intelligence authorization legislation substantial additional funding to support improvements in the key area of cyber security at DOE facilities. A number of additional legislative proposals have been made including the one before us today.

I look forward, Mr. Chairman, to learning more about this proposal from our distinguished panel and hope that we can take ap-

appropriate action to protect our national security interest that operate at the labs.

Let me just parenthetically, there's been much said about the labs and there's no question, absolutely no question that serious security breaches occurred.

What has not been said clearly is that currently there is no evidence—no evidence that the security lapses that did occur; occurred as a result of the security breaches in Los Alamos. It may not have happened. But there are many people who have reached the conclusion that because of these various security lapses and they are egregious and ought to be addressed—but there is no evidence, Mr. Chairman, that I've seen sitting as a Member of this Committee, having attended every hearing that you have convened, having joined with you and a number of my colleagues here today, at Los Alamos and getting a brief directly from the lab, that the security lapses that occurred, occurred as a result of anything that happened at Los Alamos.

I think that perspective needs to be placed before us and as part of the record. That is certainly not to suggest that we ought not to be aggressive in addressing those security lapses and I believe that the amendment that you accepted, Mr. Chairman, and all the Committee agreed to that Senator Lugar and I offered to increase by \$30 million the amount of money available for cyber security is an important first step and I look forward to hearing our distinguished panel.

Chairman SHELBY. Senator Graham.

Senator GRAHAM of Florida. Thank you, Mr. Chairman. I have an opening statement that I'd like to file for the record.

Chairman SHELBY. Without objection.

[The prepared statement of Senator Graham follows:]

STATEMENT OF SENATOR BOB GRAHAM

Mr. Chairman, thank you.

I appreciate you and the vice Chairman conducting a hearing on this critically important issue.

I am very interested in hearing from the sponsors of this legislation and Secretary Richardson's responses. Mr. Chairman, before we recessed for Memorial Day, I offered an amendment to the Department of Defense authorization bill establishing a bipartisan commission that would examine, government-wide the counterintelligence problems facing our government today.

As I said at that time, I am afraid we are about to put into a position in which there is a rush to action. I appreciate having the opportunity today to more carefully examine the legislation that is being proposed.

There is no question that we are confronting serious counterintelligence issues in our national laboratories.

And we in Congress need to accept our responsibility and the importance of counterintelligence to our national security. The sponsors of this amendment should be commended for their attempt to think through some of those issues and offer solutions.

At the same time, I am concerned that we not develop piecemeal solutions to what is a very complex set of issues that go far beyond the Department of Energy and affect a number of other government agencies. Rather, we must evaluate the problem and construct a comprehensive and effective counterintelligence response.

I look forward to hearing from our witnesses.

Senator GRAHAM of Florida. But I would just like to make two points.

Today we are going to be focusing on the issue of counterintelligence within the Department of Energy laboratories. I think it is

very important that we keep this in context. The DOE labs are not the only area of the Federal government which are vulnerable to the types of incursions that we know have occurred within the DOE labs.

The Chinese are not the only peoples of the world or their government not the only government in the world which has an interest in our secrets. And while certainly we should look at this cancer that we know is there, we should not do it to the exclusion of a diagnosis that will find the cancers that we have not yet identified elsewhere in the Federal government and among nations beyond the PRC.

The second point relating specifically to the DOE lab. I think we need to ask some questions to try to understand the pathology of the situation at the DOE lab because as several have already commented, this is not the first time we've been here. In fact, in the late 1980s a commission appointed by then Senators Boren and Cohen looked at a variety of espionage issues and they identified the DOE labs as being particularly vulnerable to the kinds of circumstances and incidences that we know in fact occurred.

There's some suspicion that maybe the problem is more fundamental than what is being proposed. That maybe the fundamental error occurred in the 1970s when we took a single purpose agency, the Atomic Energy Commission and merged it into a multi-purpose energy agency, the Department of Energy. That when that occurred, we lost the focus of direction and leadership and lost the sensitivity to just what we were dealing with and its importance to our national security.

So as we look at this specific solution, I think we also ought to ask if there is not even a more fundamental solution that's required which is to excise from the current Department of Energy those activities that relate to its nuclear responsibilities and replace them as they had been as early as the mid to late 1970s in a separate agency that had that as its exclusive responsibility.

I'm not certain what the answer to that question is but I think that's a question which we should, and hopefully throughout the course of the hearing today will, explore.

Thank you, Mr. Chairman.

Chairman SHELBY. Senator Roberts, do you have an opening statement?

Senator ROBERTS. No, Mr. Chairman.

I would just like to say, however, I want to thank you and Senator Kerrey for having this hearing and I'm looking forward to the witnesses and their testimony. It's about a week after press reports of this whole matter that I was going out to take a firsthand look at the Urban Warrior Exercise conducted by the Marine Corps.

We stopped at Los Alamos. We got a very brief brief, if that's the word for it, and came back and talked to you and Senator Kerrey. I want to thank you for taking us out to Los Alamos and getting a firsthand look at that particular time. And I think it was obvious that in terms of the lack of cooperation or the lack of understanding between the agencies involved, primarily the FBI, CIA and the DOE, that we needed something. We needed a kind of an approach here to wrap this up so that it made sense on down the road. I think Senator Kerrey, at that time suggested statutory ap-

proach. We've done that. In the Intelligence Committee we have done that. In the Armed Services Committee the three distinguished Senators led by Senator Murkowski have put together, I think, an amendment that deserves our immediate attention.

It is that lack of coordination that I felt was most egregious in terms of what was happening. I won't go into the details of that but I want to commend you for your leadership. I look forward to the witnesses and will yield back.

Chairman SHELBY. Senator Allard, do you have an opening statement?

Senator ALLARD. Mr. Chairman, I don't have a prepared opening statement. I'll just briefly say that I had visited Los Alamos out there with you and several other Members and I think that the Kyl plan is a good plan. Basically that's operated by a university. They don't think intelligence and I don't think the FBI really thinks intelligence but I think we need to get a group set up there who will think about the security of this country who understand the issues related to intelligence and I think it's a step in the right way.

Thank you, Mr. Chairman.

Chairman SHELBY. All three of your opening statements will be made part of the record. Senator Kyl, you want to begin?

**STATEMENT OF THE HONORABLE JON KYL, A UNITED STATES
SENATOR FROM THE STATE OF ARIZONA**

Senator KYL. Thank you very much, Mr. Chairman, and Vice Chairman Kerrey, and other Members of the Committee. I think we can all agree that the current system is terribly broken. As the bipartisan Cox Committee report points out, security and counter-intelligence at U.S. Nuclear Facilities has been grossly deficient for many years, enabling China to steal virtually all of our nation's most sensitive nuclear secrets. And as Senator Bryan noted, the Cox Committee report is just the latest in just a long list of at least five internal DOE reviews, four outside studies, six GAO reports and three blue ribbon commissions over the past few years that have been highly critical of the management of DOE and the U.S. nuclear weapons complex.

The problems with DOE's management of the nuclear weapons complex are long standing and systemic and go to the very heart of the way the department is managed, structured and organized. Our amendment establishes the long needed management reforms that must occur to improve security in the operation of our nation's nuclear weapons facilities.

I'd like to disagree somewhat with my friend, Senator Bryan. In open session I think about all we can refer to is the significant circumstantial evidence that the secrets of our nuclear warheads did come out of the DOE labs. There's almost nowhere else that they could have come from. But it's sufficient to say that the long list of reports detailing problems with the labs ought to themselves be sufficient justification for our consideration of the reorganization that we consider here today.

Now let me briefly describe our amendment. It has three primary parts.

First, the amendment contains a provision codifying in law, Secretary Richardson's decision to create a new office of counterintel-

ligence at DOE. The amendment requires this office to be headed by a senior FBI executive selected jointly by the Director of the FBI and the Secretary of Energy.

Mr. Chairman, in response to concerns expressed by Secretary Richardson and others, we have modified the amendment somewhat in recent days to clarify the authority of the new director of counterintelligence. The amendment now contains a new passage stating explicitly that, and I quote, "the Director of Counterintelligence shall be the primary official responsible for counterintelligence and shall have primary jurisdiction over all such matters at the Department of Energy." Obviously that was designed to allay concerns that somehow the designation of the Secretary was being diminished by our amendment. That was not our intention. We're happy to confirm that.

The amendment also calls on this director of DOE counterintelligence to report biannually to Congress regarding—and let me just quote each of these things or cite each of them—first, the adequacy of DOE procedures and policies for protecting national security information; second, whether each DOE national laboratory is in full compliance with all departmental security requirements. And, if not, what matters are being taken to bring a lab into compliance. Thirty days prior to this biannual report, the director of each of the three labs would be required to certify that the laboratory was in full compliance with all national security information protection requirements or else submit a statement explaining why the lab was not in compliance; third, a description of the number and type of violations of security and counterintelligence laws and requirements at DOE nuclear weapons facilities as well as an explanation of the number, the type and location of foreign visitors to these sites.

Furthermore, the amendment calls for the head of DOE counterintelligence to report immediately to the President and the Congress on any actual or potentially significant loss, threatened loss, of national security information. The amendment would require every employee of DOE, the national labs or associated contractors to alert the director of DOE counterintelligence whenever they believe there is an actual or potential loss of national security information.

And finally, in order to address concerns that DOE officials were blocked from notifying Congress of security and counterintelligence breaches, the amendment contains a provision stating that the director of counterintelligence shall not be required to obtain the approval of any DOE official before delivering these reports to Congress. This clear reporting channel should assure that Congress is notified about security problems.

Now secondly, the amendment has a provision codifying the existence of an office of intelligence within DOE charged with analysis of intelligence information on foreign nuclear weapon systems and programs. Obviously this office would work very closely with the officer identified earlier. And finally, the amendment has a series of provisions to establish an organizational structure for the U.S. nuclear weapons complex that will enable lasting security, counterintelligence and management reforms to be made.

Our amendment would accomplish this by raising the stature of nuclear weapons program management within DOE by establishing a separate organizational entity called the Nuclear Security Administration, with clear lines of authority, accountability and responsibility and a clearly-demarcated budget. In effect, Mr. Chairman, what we've done, using the intelligence phrase, is to create a stovepipe within the Department.

This is responsive to the good point that Senator Graham made about the original purpose of the agency and in effect trying to stuff the nuclear mission into an existing structure, and it doesn't fit well—as Senator Domenici has said, having the same fellow that sets standards for refrigerators involved in nuclear weapons program standards. I mean, clearly creating a separate internal organizational structure within which all of the nuclear complex fits is the best way to ensure the integrity of that group and the nuclear weapon program.

This new organization would be headed by the Assistant Secretary of Energy for Defense Programs, who would be known as the Administrator. The amendment calls for the administrator to report and be directly accountable to the Secretary of Energy. And it empowers this person to manage all nuclear weapons production, design and test activities, including programs to ensure the safety and reliability of the U.S. nuclear arsenal.

The heads of each of the nuclear weapons production plants, the national laboratories and Nevada test site will report and be directly accountable to this administrator. The administrator would also be responsible for the appointment and supervision of all employees and contractors at the DOE nuclear weapons complex. Finally, the Secretary of Energy would be required to identify the portion of the annual budget request to Congress that was intended for the new nuclear security administration.

DOE would be required also to include with the submission a statement showing the amount requested by the nuclear security administrator to the Secretary and the amount requested by DOE to the Office of Management and Budget.

Mr. Chairman, in conclusion, our amendment I believe—and think my colleagues would certainly concur—is a sound approach to rectify the systemic problems that exist. Obviously we were disappointed that the reaction of the DOE senior officials, since as recently as April of this year the Secretary of Energy's own management review report stated, and I quote, "that significant problems exist in DOE and that roles and responsibilities are unclear, lines of authority and accountability are not well understood or followed. The distinction between headquarters, line and staff functions is unclear, and each is operating with autonomy."

And statistics also support this view. According to the GAO, from 1980 to 1996 DOE terminated nine of 18 major defense program projects after spending \$1.9 billion and completed only two projects—one behind schedule and over budget, with the other behind schedule and under budget. Schedule slippages and cost overruns occurred on many of the remaining seven projects ongoing in 1996.

And finally, Mr. Chairman, I would note that management problems cannot be divorced from security concerns. As the GAO noted

in testimony to the House less than two months ago, continuing management problems at DOE were and I quote, "a key factor contributing to security problems at the laboratory and a major reason why DOE has been unable to develop long-term solutions to recurring problems reported by advisory groups," end of quotation.

It's well past time to fix these problems. Failure to move forward on these critically-needed reforms will only further jeopardize our nation's security. Mr. Chairman, I thank you for the opportunity to testify on this important matter and for holding this hearing.

Chairman SHELBY. Thank you, Senator Kyl. Senator Murkowski.

**STATEMENT OF THE HONORABLE FRANK MURKOWSKI, A
UNITED STATES SENATOR FROM THE STATE OF ALASKA**

Senator MURKOWSKI. Thank you very much, Mr. Chairman. I appreciate the opportunity to be here before you. As you know our committee, the Committee on Energy and Natural Resources has held six hearings and one extended briefing.

On Sunday, May 30th, Mr. Curran appeared on ABC this week. In response to a question from Cokie Roberts, Mr. Curran said, and I quote, "I went up after the report"—referring to the report on counterintelligence at DOE—"and presented our findings to Senator Murkowski, who is the Chairman of the Energy and Water that provides DOE with our money. I explained to him—not to him personally but to his staff—very specific targeting of our cyber networks within the DOE by intelligence services. I was asking for more money. That was rejected. I did not get that money." End of quote.

Mr. Curran, did not contact me or any member of my staff. Obviously he was somewhat confused.

Chairman SHELBY. In other words that's basically—what he said is not true.

Senator MURKOWSKI. Senator Domenici reminded me, I don't give them the money anyway.

Let me put this in some sort of context if you will. Surveillance is not unusual among countries. They spy on us, we spy on them. The question we have before us is how did we allow the People's Republic of China to be so successful in their efforts to breach our national security? And where is the accountability?

Based on the hearings that we've had, I think it's fair to say that three conclusions can be reached, including the report from Congressman Cox. First, the Department of Energy has not adequately protected the nation's most vital secrets. That's how to build our nuclear weapons. Secondly, I think those of us in Congress have to ask the question, can we rely upon the Department of Energy to manage itself?

Third, if we expect our secrets to be protected, Congress must legislatively mandate accountability and responsibility. I think that's our job. If you look at the sequence of events in the succession of Secretaries from Secretary O'Leary to Acting Secretary Curtis to Secretary Pena to Acting Secretary Moler, there is a bridge of inconsistencies that we're all aware of as a consequence of the hearings.

And I think as we consider what to do we must keep in mind the old saying, "fool me once, shame on you, but fool me twice and

shame on me." That's the position I think that we're in. The Department of Energy has already fooled the American people, unfortunately, once. Congress must not allow the Department of Energy to fool the American people twice.

At our hearings, Mr. Chairman, we heard about former Energy Secretary O'Leary, who seemed to be more interested in openness and worker self image at the DOE labs, then apparently the security. As a consequence, all badges were the same color. The security exceptions were no longer uniform. We heard about former Deputy Secretary Curtis' security plan, a detailed plan that the Department of Energy's laboratory bureaucrats evidently saw fit to ignore and subsequently Secretaries of Energy following Acting Secretary Curtis were never told about his particular effort to bring about security changes in the labs.

Why was this not passed on? No apparent reasonable explanation. We heard that the DOE labs did not take even the most basic steps to prevent the downloading of classified material onto zip disks. Why? No explanation. We heard that the Department of Energy labs did not have in place any mechanism other than spot checks to prevent the removal of classified material. Why? No explanation.

We heard that the DOE labs did not have privacy warning banners on their computers. As far as I know, they still may not have them. We heard that even though DOE's then-Chief of Intelligence, Notra Trulock, was ringing the alarm bells as early as 1995 about possible Chinese espionage, nobody in senior management of the DOE or apparently the Administration was paying a great deal of attention.

We heard that the Department of Energy did not tell the FBI that Wen Ho Lee had signed a privacy waiver which would have allowed the Department of Energy and the FBI to look into his computer. No explanation. We were able to get a copy of that waiver, which was evidence at one of our hearings. We heard that senior DOE officials allowed Wen Ho Lee to continue to have access to the nuclear weapons secrets long after he was a prime suspect.

The bipartisan House Select Committee on China report confirmed the worse fears that we all had. It said and I quote, "counterintelligence programs at the national weapons laboratories today fail to meet even minimal standards." The Cox report goes on to say that even with all the efforts of the Secretary of Energy to date, and I again quote from the report, "security at the national weapons laboratories will not be satisfactory until at least some time into the year 2000."

Well, DOE is just one part of the problem, Mr. Chairman. I think the real problem is lack of consideration and concern by the Administration. This has changed under the current Secretary of Energy, Bill Richardson, and I commend him for the changes he's made. I think they've been very meaningful and positive. However, I think it's fair to point out what's happened in the past when we've had Secretaries that have expressed concern about security tightening and they've not been able to penetrate through the bureaucracy of the department.

We have seen a former senior DOE official who prevented Congress from being briefed because she thought that the information

would be used to criticize the President's policy on China. We have testimony that several times the FBI unsuccessfully tried to get a FISA search warrant authorized by the Justice Department and their direct appeal to the Attorney General was in effect either brushed aside or action wasn't taken.

We have the President's and the Vice President's national security advisers being briefed numerous times but not pushing the Attorney General and the FBI to vigorously pursue the case. We have our President, who even publicly denied ever having been briefed about the hemorrhaging of these secrets, even though it later proved that he was. In short, we seen the Administration was to some extent asleep at the switch.

The American people demand accountability—accountability by the Secretary of Energy, accountability by the FBI Director, accountability by the Attorney General, and accountability by the President. The Secretary of Energy recently announced a series of DOE security improvements at the labs. I commend him for that action. But the DOE bureaucracy in the past has proven time and time again that no matter how diligent the Secretary of Energy is, the DOE bureaucracy can outwait the Secretary. It can ignore the Secretary. It can do and it has done what it pleases without fear of punishment.

As a result, we have seen that past DOE security plans have had the lifespan of a fruit fly. Consider Victor Rezendes, a director of the General Accounting Office, who has closely followed the security initiatives at the labs. He made the following observation: "DOE has often agreed to take corrective action, but the implementation has not been successful."

David Ridenour, former head of security at Rocky Flats, said of the past DOE agency reforms, "if there is a problem, classify it; hide it; get rid of it; and get rid of the people who brought it up." In other words, kill the messenger; sweep the problem under the rug; and pray that nobody notices.

But the loss of our nuclear weapons secrets is too important to ignore. I understand that the Secretary opposes the changes that have been made in the Kyl-Domenici-Murkowski amendment. The Secretary has twice said in letters that he will recommend the President veto that legislation, which includes our amendment. But what does he want the Congress to do—wait to fix the problem after U.S.-designed nuclear weapons are operational in China?

The Kyl-Domenici-Murkowski amendment mandates accountability. It mandates responsibility for the protection of the national security at the Department of Energy. And by law, the amendment creates at the Department of Energy an Office of Counterintelligence, an Office of Intelligence, and a Nuclear Security Administration. And by law, it requires that the Department fully inform the President and the Congress, as well as the Secretary of Energy, about any threat to loss of our national security information. What in the world is wrong with that?

By law, it prohibits anyone in the Department of Energy or the Administration from interfering with reporting to Congress about any threat to or loss of national security information. What in the world is wrong with that?

By law, it requires the Department of Energy to report to Congress every year regarding the adequacy of the Department of Energy's procedures and policies for protecting national security information, and whether each DOE laboratory is in full compliance with all DOE security requirements. Is that not a prudent approach?

And by law, it requires each DOE laboratory director to certify in writing whether that laboratory is in full compliance with all the department's national security information protection requirements—certainly a reasonable request.

In short, by law it creates accountability, responsibility that cannot be ignored. It is only by requiring accountability and responsibility that we will ensure that our national security is protected. Senator Kyl has already indicated the changes that have been made in the amendment to complement the concerns of the Secretary, and I hope that we have satisfactorily met those concerns in altering our amendment.

I would urge your consideration. Gentlemen, I thank you for the opportunity to testify.

Chairman SHELBY. Senator Domenici.

[The prepared statement of Senator Domenici follows.]

**STATEMENT OF THE HONORABLE PETE V. DOMENICI, A
UNITED STATES SENATOR FROM THE STATE OF NEW MEXICO**

Senator DOMENICI. Mr. Chairman, members of the Committee, Vice Chairman Kerrey, let me first tell you, so far in this process, how proud I am of this Committee. You have not been having public hearings because that's not your job. But I have been with you on some of your visitations to this issue in private, and I believe you are handling this exactly the way it ought to be—a very big sensitive issue that clearly needs to be fixed, and that it's very hard to assess specific blame because so many things went wrong in so many areas—from the FBI, to the Department, to the laboratories.

And in talking with Senator Kerrey, I think I would summarize my concern—you said it a different way—that I believe there is not a chain of command in charge of security at the national laboratories that leads to somebody that can be asked what's going on and is responsible for every aspect of security.

Now secondly, I have come to the conclusion that we could avoid your job and not be here, and say "let us present this to another committee," because you don't have jurisdiction over all of this. But I am convinced that as security-concerned members of the Senate, that you must ultimately be concerned about the structure of the management within DOE. I submit that unless we structure it where there is more accountability, with one person that is accountable, I believe that no matter what security provisions you put in, that to try to with the matrix of rules and laws and sub-departments and other things within the department that act on this security at one place or another, it will once again become uncontrollable and unmanageable.

Now, I actually would do more of this if you want it, but I will just give you one example of how structure led to one part of the

laboratory not knowing what the other part was doing. I'll just give you one.

In 1989, the Department of Energy was first informed by the Office of Personnel Management that Wen Ho Lee had been polygraphed by the FBI in 1984. Instead of informing the laboratory or the Assistant Secretary for Defense Programs, because personnel security was handled by another office in DOE, Albuquerque attached a note to the top of the file that, based on FBI information provided by OPM, Albuquerque could not tell if Wen Ho Lee had been, and I quote, "turned"—in quotation marks—and forwarded the file to the Office of Nonproliferation and National Security.

That office misplaced and failed to act on the file for four years. And nobody bothered to ask its whereabouts or check it. It just had disappeared. Because personnel security was handled by another office, it was not until earlier this year that the then-director of the Los Alamos Laboratory was told about the 1984 polygraph, and yet people would assume that in fact he should have known and been suspicious of Mr. Wen Ho Lee.

Now, the reason I give you this is because I think, before we are finished, in order for you to feel assured that our security that you were concerned with is going to be adequately taken care of, you are going to have to be involved in analyzing with your good staff and others what structure have you put in place that does not make it once again a sieve where responsibility passes back and forth from one to another. And a matter of fact, I believe the more you search the record, the more you will find that this is caused by the maze of entities within a department that is bigger than nuclear defense, but which applies many of its management matrices to everything from refrigerators to nuclear weapons, with a big department handling all of it, instead of somebody being just concerned about nuclear weapons development and safekeeping.

And I will tell you, before we are finished, there will be a group who will not want it so streamlined. The Senator used "stovepipe." I would use chain of command. You've got to have a chain of command that has to do with just this aspect of the Department of Energy's activities.

There are some who are so concerned about our nuclear weapons development that they would like it to stay like it is, because they would like it subject to all kind of management matrices that don't necessarily have as their primary concern nuclear weapons safety and development.

Now let me tell you that two weeks ago we tried this on the floor. We had changed the bill somewhat. But some suggested that we didn't know enough. Some suggested that we ought to have more hearings. Now, let me tell you. We have now conducted so many commissions and reports on the laboratories that I believe we have already destroyed the equivalent of a major forest with the trees that have gone just into the studies on the DOE and management over the last 15 years, but predominantly over the last five.

We've done studies. We've held hearings. The House held hearings. The GAO did something. CRS looked at something. And let me just quickly review some of them to see if you don't think we're on the right track.

The Chiles Commission report earlier this year said in part: "Reorganization of the DOE is needed to eliminate excessive oversight and overlapping unclear government roles. The Assistant Secretary for Defense Programs"—and we've got one; he is generally understood as being the father of the science-based stockpile stewardship program, Vic Reis; we have one—it said that person "should be given direct line management over all aspects of the nuclear weapons complex, including corresponding elements of the DOE field structures."

This sort of recommendation is not new. When Senator Kyl was the ranking member of the House Armed Services Committee on DOE Defense Nuclear Facilities in 1990, the panel commissioned a study on nuclear weapons safety. Sid Drell, from Stanford University, who everybody here knows and my distinguished colleague Senator Bingaman knows very well—and I'm glad you're here today and would attest, as I will, to his being one of the best informed people on the nuclear condition of this country and its laboratories—reported in his report: "We concur with the recommendations of the 1985 Clark Task Group to 'strengthen DOE's management attention to its national security responsibilities.' These steps should include raising the stature of nuclear weapons program management within DOE, for example by establishing a separate organizational entity, that is, an administration with a clearly demarcated budget reporting directly to the DOE Secretary."

Three years ago, in the Appropriations Committee, we directed a review by the Institute of Defense Analysis that found that DOE's current management practices, and I quote, "are constituting the system." Now that's a way of saying that so many people have something to do with that part of DOE that is nuclear armament preparation and safekeeping that it is repeatedly stymied. And frankly, I think it lends itself to a kind of "nothing is very important because there's somebody else overseeing everything" attitude that may have been part of the problem that we were confronted with in these labs.

One might ask, in light of these studies and reforms, why haven't they been implemented? To respond, I would turn to another study, the one chaired by Bob Galvin, chairman of Motorola. He said "there have been many studies. As one reads these reports, one recognizes that the items which were recommended in previous reports are recommended in most subsequent reports. As each past study has taken place, people of good intentions make sincere efforts to fine tune the system. However, the Department and Congress should recognize that there has been little fundamental improvement as a function of past studies. We suggest that the country try one or more concepts that are more radical and maybe new in an effort to get to the heart of the problem."

Now I want to say today my friend Secretary Richardson—and he is my friend; he comes from my state; we were friends there; we are friends here—is implementing a new round of DOE reforms.

Mr. Chairman, you should know that while I have been critical of many of the past Secretaries for failing to give attention to these matters, Secretary Richardson is clearly indicating a willingness to tackle these issues. However, nothing Secretary Richardson can do

administratively can be ensured to last past the tenure of his head of this Department.

With some amusement and a bit of despair, I read a recent article in the National Journal that quotes Secretaries Richardson and Watkins. In the article, Secretary Richardson says, "I was told when I came here don't touch the management problems; they're insurmountable." But he goes on to say, "I'm dealing with them and I'm disciplining people. Nobody ever did this."

Secretary Watkins in the same article, interviewed at another time, said, "this isn't anything new. He's doing the same thing I did." Watkins said the problem is that "the overall management scheme evaporated the minute I left. And it will probably evaporate the minute Secretary Richardson leaves."

And I would submit that I'm not sure you can make the kind of changes necessary without legislation to make it possible that a Secretary can manage it better. My own experience is that every new Secretary, every new Assistant Secretary, recognizes that there are serious problems and tries to implement reform, beginning with Secretary Harrington. He was so eminently qualified to do this. He was a personnel director, Senator Bingaman. He was preceded by a dentist and subsequently we had Secretaries on the Democrat side that didn't know much about this. As you know, I've been critical of all of them. But a couple of them have been informed on both energy and defense and have tried very, very hard. But, beginning with Secretary Harrington, who created a separate assistant secretary for the environment, safety and health, the Department has increasingly been relying on structures to oversee other structures. That's what I mean by a matrix system—structures to oversee structures. We now literally have overseers overseeing the overseers, but nobody goes beyond what the first overseer found. It's paper shuffling from that point on.

Let me say, many DOE and contractor officials describe the defense program oversight as creating an inverted management pyramid, because the number of reviewers exceeds the number of hands-on workers. For example, contractors have cited examples where work done by two or three people becomes the subject of review meetings involving 40 or more defense program officials. Now that might be something you have seen as you reviewed other departments, but it is quite obvious that, if this is the case and it is pervasive, then you're not going to get to the bottom of security issues like we have here which require the FBI to be doing something and reporting to somebody and somebody reacting and getting things done.

So, when I look at what I found, my question is, who was in charge? And frankly, I'm finding a great deal of difficulty, as we review the breadth and scope of this very, very interesting espionage venture which is different than most. It is not like the Russians, who target one person, pay them a lot of money, and get them to deliver secret things. This is kind of a pervasive sort of thing with many, many people involved doing many things.

The myriad of oversight and review does not improve performance. Now frankly, I would ask that the remainder of my remarks be made a part of the record.

Chairman SHELBY. Without objection, it is so ordered.

Senator DOMENICI. And I would just close by saying I hope we have not bored you. I know sometimes these are—this takes too much time. But I believe if in fact the Chinese got what we think they got, we ought to all be willing to spend a maximum amount of time within our jurisdiction if it is part of the problem or in some composite group to try to fix it, probably it's more important than anything we're doing, including when we get carried away with budgets and appropriations and the rest. This is serious, serious business.

Thank you very much.

Chairman SHELBY. Thank you, Senator Domenici. I agree with you. This is probably the most profound thing we've been dealing with. Senator Kerrey and I have, as you know, been, with the other members of the committee, trying to address that.

I have just one question. Given the tremendous responsibilities of the nuclear security administrator, which encompasses the most important activities of the Department of Energy as I see it, have you considered elevating that position to the Under Secretary level rather than Assistant Secretary level? And would you consider amending the provision to elevate that position to the Under Secretary level? Senator Domenici, do you want to address that first?

Senator DOMENICI. Well, I would say, Mr. Chairman, I think the most important thing is that we determine what that person's qualities should be.

Chairman SHELBY. Absolutely.

Senator DOMENICI. And I think if the statute we prepared isn't right, we ought to fix it so you get somebody in where there's a high probability that they will be concerned about security and the performance of our scientists and developers for nuclear weapons.

But secondly, I think it's more important that we find out what authority we give that person. As to what we call them, whether we call them an assistant or an under secretary, it just depends on what you think those words mean. But the power they have is what's important in terms of who they are.

Chairman SHELBY. Senator Murkowski.

Senator MURKOWSKI. Well, I would simply identify the authority and the authority is to report not just to the Secretary, which has been the case since the inception of this process.

Chairman SHELBY. It can't just be a name; it's got to be a name with authority. But authority should come with it.

Senator MURKOWSKI. So the authority not only goes to the Secretary but it goes to the President and it goes directly to the Congress. And I don't think there's much of a higher calling here on Earth than those three. So, it seems to me that's the logical way to do it, and then there's nobody that falls in the crack.

Chairman SHELBY. Senator Kyl.

Senator KYL. Mr. Chairman, I agree with you that the elevation one level higher to under secretary level might be an appropriate way to emphasize the responsibilities.

Chairman SHELBY. But only with the authority.

Senator KYL. Absolutely.

Chairman SHELBY. Senator Kerrey.

Vice Chairman KERREY. Thank you very much, Mr. Chairman. First of all, just for the record, I do want to make the point that

I do think it's fair to say this Administration has attempted to respond to this problem. Again, I made some observations earlier about this, but we have a tenfold increase in counterintelligence funding. We've got Mr. Curran over at the Department of Energy running counterintelligence. And I do think it's fair to say that both with effort and with money we have a changed environment. The question is, do we need to do more?

And as I understand it—you correct me if your understanding is different—section 213 and 214 of your bill have already been accepted in the Armed Services bill that passed, the defense authorization bill that passed week before last in the Senate. So, we're really talking about only—

Senator KYL. Mr. Chairman and Mr. Vice Chairman, parts of it have been, and our intention was for stylistic purposes to include that language in this bill. That's correct.

Vice Chairman KERREY. What parts were not included? The Administration does not object to section 213 through 214, which create an office of counterintelligence and an office of intelligence in the statute.

Senator KYL. Mr. Chairman, as to the part that the Armed Services Committee dealt with, and of course that's only the first part of our bill, among the things not included in the Armed Services, according to staff, were the reporting requirements and the nuclear security administration.

Vice Chairman KERREY. Right. The nuclear security—that's section 215. Section 215 is the nuclear security administration.

Senator KYL. Correct. That's the new section.

Vice Chairman KERREY. It looks like the rest of it, though—we could check that out later. But again, the point is that for a significant piece of this bill, there is no real disagreement. There may be some reporting language.

Senator KYL. Excuse me. Mr. Vice Chairman, my staff has pointed out, there are some additional items. But to your basic point, there is no disagreement about the items that were taken from the DOD authorization bill. Absolutely correct about that.

Vice Chairman KERREY. Okay. So I can focus my attention on section 215, which is the nuclear security administration, without having to worry about the other two, because they're basically incorporated with perhaps some—

Senator KYL. There are some additional requirements.

Vice Chairman KERREY [continuing]. Some reporting requirements that were not in the—

Senator DOMENICI. Senator, could I just—

Vice Chairman KERREY. Were they left out for a reason, do you know?

Senator KYL. Please?

Vice Chairman KERREY. The reporting requirements. Were they left out for a reason?

Senator KYL. We have not had an indication as to why, I am told.

Vice Chairman KERREY. Is there any opposition from the administration on 213 or 214?

Senator DOMENICI. I don't know. But I wanted to say something, Senator, if you would let me. I believe I said in my remarks, if not

as direct as you, inferentially, and make them directly now. Secretary Richardson is trying. I said that. The problem is, I don't believe he can do all the things that this bill would have us do. And secondly, I think this has a tendency, once you get over the crisis, to mellow out. And we'll be back here with the next generation of Senators looking at the same thing, and somebody will say they tried.

Vice Chairman KERREY. Yes. By the way, Senator, I do not disagree with that. I mean, I disagree not at all that somebody's saying we'll make a good faith effort is not enough. But I want to make the point that two sections of this bill, of your amendment, dealing with an office of counterintelligence and an office of intelligence would under statute be created. And you couldn't backslide off of that. There may be some reporting requirements, some additional things that need to be in there. But those are almost not controversial.

What is controversial, and I'd like to talk about this. Let me first of all ask, I'm a little bit uncomfortable because I don't have the—this committee does not have the Armed Services, Energy or Government Affairs jurisdiction. There are some changes in here that get into sort of government operations questions.

And I'm wondering, are you all—do you intend to ask for those other committees of jurisdiction to hold a hearing on this proposal for a new nuclear security administration position?

Senator MURKOWSKI. Well, it says the committee—

Vice Chairman KERREY. Do you think you could persuade the Chairman to hold a hearing, Senator?

Senator MURKOWSKI. We've had many hearings. I'm not of the opinion currently that in order for this legislation to move it would necessitate a hearing before our committee. We have jurisdiction, with the exception of the nuclear weapons, as Energy and Natural Resources. But it seems to me that we've had a good deal of debate on the floor. And while I could hold a hearing, it seems to me—

Vice Chairman KERREY. I'll give you an example, Senator, of the kind of question that I've got. It's not really an intelligence question. It may not be an intelligent question, for that matter. But in section 215, it says "the administration will be responsible for the executive administrative operations of the functions assigned to the administration, including functions with respect to (a) the selection, appointment and fixing of the compensation of such personnel as the administrator considers necessary."

Now, does that mean the nuclear security—it looks like the nuclear security administrator would have the power to select, appoint and fix the compensation of anybody he wants to bring on board. So maybe if he hires me, can he set my compensation at a quarter of a million dollars? Does this mean that he does not have the same sort of rules that other administrators would have?

Senator DOMENICI. Well, what we are trying to establish here within the Department of Energy is a kind of an agency within the department, and we really want to give that administrator as much authority as we can.

Vice Chairman KERREY. Boy, it seems to me you have. Again, a later section that says "the Secretary shall assign to the administrator direct authority over and responsibility for the nuclear weap-

ons production facilities and the national laboratories. The functions assigned to the administrator with respect to nuclear weapons production facilities in the national laboratories shall include, but not be limited to, authority over and responsibility for strategic management, policy development and guidance, budget formulation guidance" and on and on and on. There's 10 or 12 things.

And then it goes on to describe in a later section what this refers to, what he will control—he or she will control—as used in the section. The term "nuclear weapons production facility" means any of the following facilities—the Kansas City, Kansas plant, the Pantex plant in Amarillo, Texas, the Y-12 plant in Oak Ridge, Tennessee, tritium operations in Savannah, the Nevada Test Site, Nevada. The term "national laboratory" means Los Alamos, Lawrence Livermore, Sandia. The term "specified operations office" means Albuquerque operations office, Oak Ridge—I mean again this is not, this is outside of my pay grade here as far as the intelligence committee is concerned, trying to evaluate whether or not the Government Affairs Committee and the Energy Committee and Armed Services Committee have evaluated what these new authorities would do to other functions that we're trying to get done, including—I mean what we're concerned about as national security as you said, Senator. And I appreciate very much the complimentary remarks about the way this committee has conducted its business.

But I'm concerned about whether or not the Intelligence Committee has the expertise and the experience to be evaluating some of the questions we ought to be evaluating if we are to pass the bill.

Senator DOMENICI. We'll be glad, Senator, to go through this in detail with your staff who can report to you.

I would tell you, for instance, that language about how powerful he is, is borrowed from the Federal Energy Regulatory Commission, which, believe it or not, is a carveout within the Department of Energy, and the chairman there has that authority. We just said, if they had it maybe we ought to have the same authority in that person heading up our nuclear weapons development and research.

So, this is not all new. There are two other structures within the government, albeit not as big. There is DARPA within the Department Defense, which you will be hearing more about as others study this. It's something like this. If DARPA was going to work it could not be subject to the myriad of procurement and other aspects of the Department of Defense and so it's got its own kind of agency structure. And I think there's another similar one in government.

And then, you know, you asked the appropriate question, should it be independent and freestanding? Well, obviously that option we had. We elected to leave it in the Department because there is some relationship between other things the Department does that we did not want to disassociate the laboratories from.

Vice Chairman KERREY. Have you had discussions with former Senator Rudman? I know he's been assigned to make recommendations. Have you had discussions with him about this amendment?

Senator DOMENICI. Well, Senator, I have not gone over there and talked with him, nor have I talked with him at length. I have

found out from him that he's ready to report and I have found out enough to know that they're totally familiar with all these reports that we cited here today, that maybe are 25 in number.

Vice Chairman KERREY. When is he going to report?

Senator DOMENICI. In two weeks. I think two weeks.

Senator KYL. Mr. Chairman, if I could respond, I can't wait for the Rudman report to come out in terms of its endorsement of the kind of thing that we're recommending here. Can't say what it's going to say. Haven't seen it. But I strongly suspect, based upon the direction that he's taken, what he's reviewed and what he's familiar with, that he will not be uncomplimentary of the effort that we've made here.

I think, if I could, Mr. Vice Chairman, your point is very well taken about the fact that the organizational structure of the Department crosses several committee jurisdictional lines. Certainly Senator Murkowski's Energy Committee, the Government Operations Committee, Intelligence is a part of it, the Armed Services Committee. Somebody has to grab this and go with it.

And the other part of the implication of your question, which was absolutely correct, this is a major, major difference from the way business is done. There is huge authority put in this person who reports directly to the Secretary, and the Secretary's still responsible of course. He's ultimately responsible, as he is today.

But this way, there's one person below him that has charge of the entire nuclear program, and it should redound not only to the security, to the benefit of security of that program, but also some of the other management problems that have been noted in some of the other reports that I alluded to and Senator Domenici cited.

The nuclear weapons program generally has in some respects been treated as a stepchild. It needs to have laser-like focus of the Secretary and some person immediately below him who has the total responsibility. And if that means that some of the other rules and regulations of the Department about hiring and firing and budget and acquisition and all of that don't apply the same to this sole entity as it does to others, then so be it. That's the whole point. As Senator Domenici said, everybody's business becomes nobody's business. Somebody has got to be in charge here. And the model is not unique, and we have borrowed from some other sources.

But the idea here—I described it as a stovepipe—is to put within the Department a group that does all of its work, and it doesn't have to answer to anybody else except the Secretary and the President. And in that regard they know who's responsible, and hopefully, not only with respect to the job they do, but security, we won't have the kind of continual criticisms that have come out over the years with all these other reports.

Chairman SHELBY. Senator Bryan.

Senator BRYAN. Thank you very much, Mr. Chairman. I thank our witnesses for their thoughtful presentations to us this afternoon.

Let me ask a basic question. It strikes me that we all start from the same baseline here, that what has occurred with respect to counterintelligence activities in the labs for decades has been ap-

pallingly ineffective. There's no fundamental disagreement with that.

Now what you all have proposed strikes me as being something that is without precedent, or limited precedent—may be the way to go. My first question is, what kind of public hearings, public testimony, has been taken, both by those who would endorse your proposal and those who might raise some thoughtful concerns about whether this is the way to go? Have we had any public hearings on this?

Senator KYL. Mr. Chairman, if I could, I'm not sure what public hearings over the years have dealt with different aspects of this.

Senator BRYAN. But I mean currently, Senator, I mean, we all know, as you pointed out—

Senator KYL. Well, I am not aware of a public hearing. I mean, our amendment was simply drafted a few weeks ago. But, as you know, in closed hearings in this very committee—and I'll be a little oblique here because I'm not exactly sure how far we can go with this—but you are well aware of the fact that the person in charge of security at DOE didn't even know that certain material was in a file of Wen Ho Lee that the FBI desperately needed to know.

It turns out that it was in another file somewhere else in the Department, and it's a perfect example of how the left hand doesn't know what the right hand is doing. So it may be that this has not been the subject of public hearing, but I cite just this one example to illustrate how in private hearings—in classified hearings—we've discussed some of these matters.

Senator BRYAN. Well, let me ask—and you may all be right; I haven't made a judgment as to what we ought to do here—what is the objection to having a public hearing in which we invite people that have expertise or background on this to comment, as opposed to processing this as we attempted to do on the floor in the way of an amendment?

I'm sorry, Mr. Chairman. I didn't mean to interrupt my distinguished colleague.

Senator MURKOWSKI. Oh, I'm sorry. You were proceeding with a question.

My concern here is, we need action and we need action now. This problem is one that the complexities of the confidentiality is associated with so much of our information, so much of our testimony. As you know, on the Intelligence Committee very little can be shared with the public relative to the reason for such an unusual, if you will, departure from a procedure that simply hasn't worked.

Now we've got a crisis on our hands relative to our national security associated with the procedures in the laboratories, and we have to take action now. And to open it up to public hearing, I really question what the contribution will be simply because, in order to educate the public, you almost have to talk in smoke signals because so much of the material is of a confidential nature.

So what we have designed here is simply a legislative proposal of accountability, reporting in such a way to ensure that the mistakes that happened previously cannot happen again under this structure. So to me, public hearings would serve, as opposed to any other governmental activity, virtually no purpose other than further delay.

Senator BRYAN. Let me give our colleague, Senator Domenici—let me just say parenthetically, Senator, that I'm not averse to considering this. I just don't quite understand why it has to be done in the context of an amendment on the floor, why we can't have some people who have looked at this agency over this years come and share their view as to whether or not they think this the appropriate way to go, and those who might have a different point of view might not be able to give us some guidance. Senator Domenici, I interrupted you as you were about ready to enlighten me and the other members of the committee.

Senator DOMENICI. First let me say to you, Senator, your question is a terribly good one, and I'm not going to sit here and say that there's no merit to having a hearing. I think there is a little problem and I think we ought to all face up to it: The jurisdiction is pretty split around here. It's who ought to be conducting a hearing. You could pass that on to another committee. There would have to be two of them, which kind of is frustrating over time. It has been to me.

But I would just say that we've relied upon the absolute best experts that the United States of America can produce on this subject, and for the record I would just ask that the list of experts and a small part of their background on the task force on "Alternative Futures for DOE" be submitted in the record. It has some of the finest names around, including Mr. Galvin, who was the chairman, and that's who we rely on.

There's this commission on maintaining the United States nuclear weapons expertise. You know, when we finally get down to it, that's what we're all worried about. We may be worried about some collateral issues, but this is what we're worried about. And here are the names.

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ROBERT GALVIN - Chairman



Mr. Galvin is the Chairman of the Executive Committee at Motorola. He started his career at Motorola in 1940, and held the senior leadership position in the company from 1959 until January 11, 1990. He continues to serve as a full time officer of Motorola. He attended the University of Notre Dame and the University of Chicago. He is currently a member and past chairman of the Board of Trustees of the Illinois Institute of Technology. Mr. Galvin has been awarded honorary degrees and other recognitions, including election to the National Business Hall of Fame and the National Medal of Technology in 1991. Motorola was the first large, company-wide winner of the Malcom Baldrige National Quality Award, which was, presented by President Reagan at a White House ceremony in November, 1988.

BRADEN ALLENBY



Dr. Allenby is currently the Research Vice President, Technology and Environment, for AT&T. He graduated cum laude from Yale University in 1972, and received his Juris Doctor from the University of Virginia Law School in 1978 and his Master in Economics from the University of Virginia in 1979. Dr. Allenby has worked as an attorney for the Civil Aeronautics Board and the Federal Communications Commission, as well as a strategic consultant on economic and technical telecommunications regulatory attorney, and was an environmental attorney and Senior Environmental Attorney for AT&T from 1984 to 1993. During 1992, he was the J. Herbert Holloman Fellow at the National Academy of Engineering in Washington, D.C. He is currently the Chair of the American Electronics Association Design for Environment Task Force, and the Vice-Chair of the IEEE Committee on the Environment. Dr. Allenby is co-editor of a volume of papers on Design for Environment and industrial ecology resulting from a 1992 National Academy of Engineering workshop, to be published by the National Academy Press this fall, and co-author of an engineering textbook on the same subject to be published by Prentice-Hall in spring of 1994.

BOB BOYLAN



Mr. Boyland is one of America's leading presentation trainers and leadership consultants. He authored three books, *What's Your Point?*, *The Leading Role is Always a Speaking Part*, and *Rebalance Your Tires*. His company, Successful Presentations, delivers 'training that takes,' because his ideas are easily understood, memorable, and realistically actionable. After graduating from the University of Minnesota in 1958, two years as an Army officer, and seven years selling for Container Corporation of America; Bob's been self employed as a co-owner of an advertising agency and for the past twelve years as a trainer/consultant/author. Mr. Boyland is married and has five children. He and his wife Judy spend half of each year living at their residence in Aspen and the other half in Minneapolis.

LINDA CAPUANO



Dr. Capuano was a founding employee of Conductus, Inc. Conductus' mission is to commercialize superconductive electronics and is developing and selling products in magnetic sensing, magnetic resonance imaging, wireless communications, and digital electronics. Her responsibilities include developing external collaborative and technology transfer relationships with universities, national laboratories, and industry. She has negotiated relationships with Hewlett-Packard, IBM, AT&T, TRW, and several DOE national labs. Dr. Capuano joined Conductus after ten years with the IBM General Products Division where she held various technical and management positions in advanced memory disk product development, including the successful development of the 3380 and 3380E

magnetic memory disk. She holds a B.S. from S.U.N.Y. at Stony Brook, a B.S. and M.S. from the University of Colorado at Boulder, and an M.S. and Ph.D. from Stanford University.

RUTH DAVIS



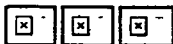
Dr. Ruth Davis is President and CEO of The Pymatuning Group, Inc. which specializes in industrial modernization strategies and technology development. Dr. Davis is Chairman of the Aerospace Corporation. She serves on the Boards of Air Products & Chemicals Inc. BTG, Inc.; Consolidated Edison Company of New York; Ceridian Corporation; Giddings & Lewis, Inc.; and the Institute for Defense Analysis. She has also served on the Board of Regents of the National Library of Medicine from 1989-1992 and as Chairman of that Board from 1991-1992. Dr. Davis was Assistant Secretary of Energy for Resources Applications and Deputy Under Secretary of Defense for Research and Advanced Technology. Prior to 1977 she served as Director of the Institute for Computer Sciences and Technology at the National Bureau of Standards and as the first Director of the National Center for Biomedical Communications in the Department of Health, Education, and Welfare. Dr. Davis received all her degrees summa cum laude in mathematics. She obtained Ph.D. and M.A. degrees from the University of Maryland, and her B.A. degree from American University.

MARYE ANNE FOX



Dr. Fox is the M. June and J. Virgil Waggoner Regents Chair in Chemistry at the University of Texas at Austin. Dr. Fox is a member of the National Science Board and a chair of the of the National Science Board Committee on Programs and Plans as well as the Executive Committee. She is the Associate Editor of the *Journal of the American Chemical Society*. Dr. Fox is the recipient of the 1993 Southwest Regional Award from the American Chemical Society and a 1993 Fellow with the American Association for the Advancement of Science. She received her B.S. in Chemistry from Notre Dame College, M.S. in Organic Chemistry from Cleveland State University, Ph.D. in Organic Chemistry from Dartmouth College and a Postdoctoral at the University of Maryland.

BENJAMIN HUBERMAN



Mr. Huberman is President of Huberman Consulting Group in Washington, D.C. He received his A.B. and B.S. degrees from Columbia University and a Diploma from Imperial College of Science and Technology of the University of London, which he attended as a Fulbright Scholar. Mr. Huberman formerly served as Deputy Director of the Office of Science and Technology Policy in the White House; Director of Policy and Evaluation for the Nuclear Regulatory Commission; Deputy Director for Program Analysis on the National

Security Council staff; and served in the United States Navy for six years. He was a member of the U.S. delegations which negotiated the Non Proliferation Treaty and the SALT I agreements. He also served as Chairman of the Technical Advisory Committee to the U.S. Space Command. Mr. Huberman is a member of the Chief of Naval Operations Executive Panel, NASA's Space Station Advisory Committee, the Council on Foreign Relations, and the Board of Directors of the Zycad Corporation.

SHIRLEY JACKSON



Dr. Jackson has been a Professor of Physics in the Department of Physics and Astronomy at Rutgers University and a consultant in semiconductor theory at AT&T Bell Laboratories since 1991. She attended the Massachusetts Institute of Technology where she received a S.B. and Ph.D. She was the first African-American woman to receive a doctorate from M.I.T. in any field. Dr. Jackson was a research associate at the Fermi National Accelerator Laboratory and later a visiting scientist in the Theoretical Division of the European Center for Nuclear Research in Geneva, Switzerland. Dr. Jackson later joined AT&T Bell Laboratories. Dr. Jackson is a Fellow of the American Physical Society and a Fellow of the American Academy of Arts and Sciences. She has been the recipient of numerous scholarships, fellowships, and awards including the Salute to the Policymakers award from Executive Women of New Jersey in 1986, and in 1988. She is the founding member of the New Jersey Commission on Science and Technology, created in 1985 to foster university-industry collaboration, technology areas of importance to the New Jersey economy, thereby spurring job development. Dr. Jackson serves on several boards and committees.

LYNN JELINSKI



Dr. Jelinski is the Director of the Center for Advanced Technology and Professor of Engineering at Cornell University. She received her B.S. in Chemistry from Duke University and Ph.D. in Chemistry from the University of Hawaii. She was formerly with AT&T Bell Laboratories as the Head of the Biophysics Research Department and has held two postdoctoral appointments at the National Institutes of Health and Johns Hopkins University. She is a member of several societies and committees including the American Chemical Society, American Association for the Advancement of Science, National Research Council Panel on Biomolecular Materials, and the National Science Foundation Biophysics Review Panel.

HENRY KENDALL



Dr. Kendall is the Stratton Professor in the Department of Physics at the Massachusetts Institute of Technology. He received his B.A. in Mathematics from Amherst College and his

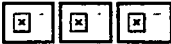
Ph.D. in Nuclear and Atomic Physics from the Massachusetts Institute of Technology. Dr. Kendall was formerly a Research Associate, Lecturer, and Assistant Professor at the Stanford University Physics Department. He is a Director and founding member of The Union of Concerned Scientists. He has published a number of technical analyses including one book dealing with reactor safety problems and another book for modeling reactor safety. He has also appeared as the chief witness for the inventors in the AEC rule making hearings on emergency core cooling systems. Dr. Kendall is a member of the National Academy of Sciences Subcommittee on Nuclear Constants, The Arms Control Association Board of Directors, as well as several others.

DANIEL KERLINSKY



Dr. Kerlinsky is an attending Child Psychiatrist at the University of New Mexico Children's Psychiatric Hospital (CPH) and the President of the New Mexico Physicians for Social Responsibility (PSR). He was Acting Medical Director of Children's Psychiatric Hospital in 1986 where his work has focused on child abuse, family dysfunctions, brain disorder, aggression and psychopharmacology. His undergraduate degree is in experimental psychology from Harvard University, where he graduated with advanced standing, and he received his medical degree from Tufts University. Dr. Kerlinsky is a recipient of the Rensselaer Medal for Achievement in Mathematics and was a Harvard Scholar from 1971-1972. He has been a Board Member of the New Mexico chapter of Physicians for Social Responsibility since 1982 and a member of National PSR's House of Delegates/Board of Directors since 1986.

RICHARD LESTER



Dr. Lester is professor of nuclear engineering at the Massachusetts Institute of Technology and director of the MIT Industrial Performance Center, an Institute-wide interdisciplinary center for the study of productive performance and industrial competition in the United States and other advanced economies. Professor Lester has served on the MIT Faculty since 1979. He holds a bachelor's degree in chemical engineering from Imperial College, London and a Ph.D. in nuclear engineering from MIT. His current research focuses on the organization of complex technological enterprises. He has also been active in teaching and research on advanced nuclear power systems and the management and disposal of radioactive waste. Professor Lester has served as an advisor or consultant to corporations, governments and foundations in the United States and abroad. He is the author or co-author of numerous articles and books, including the recent study by the MIT Commission on Industrial Productivity, *Made in America: Regaining the Productive Edge*.

ROGER G. LITTLE



Mr. Little is Founder, President, Chief Executive Officer, and Chairman of the Board of Spire Corporation, a \$20M Bedford, MA company specializing in thin film technologies for biomaterials, optoelectronics, and photovoltaics. He received his B.A. in Physics from Colgate University and his M.Sc. in Physics from Massachusetts Institute of Technology. Mr. Little has served on many committees and advisory boards related to photovoltaic research, the commercialization of technology, the worldwide growth of the photovoltaic industry, and the development of sound renewable energy policies. He is presently a member of the Department of Energy Defense Programs Technology Transfer Advisory Board, and the White House Conference on Small Business Innovation and Technology Task Force, and is the Chairman of the Solar Energy Industry Association. In 1990, Mr. Little received the John Ericsson Award in Renewable Energy for commercialization of photovoltaics technology. Mr. Little is the author of more than 40 technical papers and holds 19 patents on equipment and processes related to photovoltaics and semiconductor processing.

EDITH MARTIN



Dr. Martin is Vice President and Chief Information Officer at International Telecommunications Satellite Organization (INTELSAT), which owns and operates a global commercial communications satellite system that serves more than 125 countries. She is responsible for all information infrastructure operations and customer service as well as the development and support of products to service spacecraft launch and control; earth station monitoring and control; and planning and operations. Dr. Martin is also responsible for all information support functions including language services and conference services. Previously she was Vice President of the Boeing Company, with line responsibility for the Boeing High Technology Center. Prior to this, she was Director of the Computer Science and Technology Laboratory at the Georgia Institute of Technology, Executive Director of the Government Systems Division of Control Data Corporation and Deputy Undersecretary of Defense for Research and Advanced Technology. Dr. Martin graduated from Lake Forest College and earned her master's and doctoral degrees at Georgia Institute of Technology. She has received numerous awards including the Distinguished Service Medal from the Department of Defense, the first Susan B. Anthony Award for Leadership in Industry and she was selected as one of the one hundred top corporate women by *Business Month*, and as one of the twenty most powerful women in corporate America by the magazine *Savvy*.

JAMES MCCARTHY



General McCarthy is the Olin Professor of National Security Studies at the U.S. Air Force Academy. He retired from the Air Force on December 1, 1992 after completing 35 years of service. He earned his B.S. degree from George Washington University. General McCarthy was formerly a special assistant for M-X matters in the Office of the Deputy Chief of Staff for Research, Development and Acquisition at Air Force Headquarters; Director of Legislative Liaison, Office of the Secretary of the Air Force; Deputy Chief of Staff for plans,

developing policies, programs and requirements for the command; Deputy Chief of Staff for programs and resources, Air Force Headquarters; and Deputy Commander in Chief, European Command, Stuttgart, West Germany commanding all U.S. forces in Europe. The General is a command pilot holding many military decorations and awards including, the Defense Distinguished Service Medal, Legion of Merit with two oak leaf clusters, Distinguished Flying Cross with oak leaf cluster, Presidential Unit Citation, National Defense Service Medal, Air Force Unit Award with V device and five oak leaf clusters, and Republic of Vietnam Gallantry Cross with Gold Palm.

MARK MURPHY



Mr. Murphy is President of Strata Production Company and is a fourth generation independent oil and gas producer. He began his career at the age of seventeen when he worked as a roustabout in the oil and gas fields of Southern New Mexico and West Texas. Since that time, he has worked in virtually every aspect of the oil and gas industry in most of the major producing areas of the United States. Mr. Murphy attended Southern Methodist University and then transferred to the University of Texas at Austin where he majored in Petroleum Geology. Mr. Murphy is active in numerous business and civic organizations. He serves as Vice Chairman of Independent Petroleum Association of America Petroleum Technology Transfer Council Task Force, Vice President of the Independent Petroleum Association of New Mexico, as well as several other advisory committees and councils.

RICHARD NELSON



Dr. Nelson is the George Blumenthal Professor of International and Public Affairs, Business and Law, Columbia University. He received his B.A. from Oberlin College and Ph.D. from Yale University. Formerly, he was an Assistant Professor at Oberlin College and the Carnegie Institute of Technology. He was an Economist with the RAND Corporation and a Senior Staff Member of the Council of Economic Advisors. Dr. Nelson has also been a Professor of Economics at Yale University, and Director of the Institute for Social and Policy Studies at Yale University.

EDWARD ROBERTS



Dr. Roberts is the Faculty Chairman at the Massachusetts Institute of Technology Program, Chairman of the Management of Technology and Innovation Group at M.I.T., and Co-Director of the M.I.T. International Center for Research on the Management of Technology. He received his S.B., S.M. and Ph.D. from the Massachusetts Institute of Technology. Dr. Roberts has held numerous positions at M.I.T. including: Director of the M.I.T. Joint Program in the Management of Technology and Chairman of the Executive Committee,

M.I.T. Whitaker College Program in Health Policy and Management. He is a member of the High Level Advisory Panel, U.S.-Israel Science and Technology Commission and National Research Council Task Force on the Management of Technology. Dr. Roberts has authored and co-authored numerous publications.

BEN ROSEN



Mr. Rosen is Chairman of the Board of Compaq Computer Corporation. He is also chairman and partner of Sevin Rosen Management Company, a venture capital firm managing a several-hundred-million-dollar portfolio. Sevin Rosen has invested in more than 60 computer, software, telecommunications, electronics, health care, energy and other technology start-up companies. Mr. Rosen received a B.S. from California Institute of Technology, an M.S. from Stanford, and a M.B.A. from Columbia Business School. He is a former founding director of Lotus Development Corp. and currently a director of Axion Pharmaceuticals, NoMac Energy Systems, and chairman of Rosen Motors. Previously, Mr. Rosen was vice-president and senior electronics analyst at Morgan Stanley & Co. He is vice-chairman of the Board of Trustees of the California Institute of Technology, a member of the Board of Managers of Memorial Sloan-Kettering Cancer Center, and a member of the Board of Overseers of Columbia Business School.

HARVEY SAPOLSKY



Harvey Sapolsky is Professor of Public Policy and Organization at the Massachusetts Institute of Technology (MIT); the Director of the MIT Defense and Arms Control Studies Program, an interdisciplinary research and graduate educational program in international security studies; and the MIT Communications Forum, an Institute-wide seminar series in communications technology and policy. Professor Sapolsky specializes in the interaction of government and technology in various areas of public policy including defense, health and science. In the defense field, he has served as a consultant to the Commission on Government Procurement, the Office of the Secretary of Defense, the Naval War College, the Office of Naval Research, and the RAND Corporation, and has lectured at all of the service academies, most recently as the Olin Visiting Professor of Political Science at the U.S. Military Academy at West Point.

WILLIAM SPENCER



Dr. Spencer has been President and Chief Executive Officer of SEMATECH since 1990. Before joining SEMATECH, he was group Vice President and Senior Technical Officer at Xerox Palo Alto Research Center, and Director of Systems Development at Sandia National Laboratories. Dr. Spencer received as A.B. degree from William Jewel College in Liberty,

Missouri, and his M.S. in Mathematics and Ph.D. in Physics from Kansas State University. He was awarded the Regents Meritorious Service Medal from the University of New Mexico in 1981. He is a member of the National Academy of Engineering, a Fellow of the Institute of Electrical and Electronic Engineers, and serves on numerous advisory groups and boards.

VICTORIA TSCHINKEL



Mrs. Tschinkel is the Senior Consultant for Environmental Issues at Landers & Parsons in Tallahassee, Florida. She represents a wide range of clients before state and federal agencies and the legislature. Her specialty is advising clients on compliance with environmental permitting requirements and managing technical consultant teams for clients with environmental problems. Mrs. Tschinkel was educated at the Lycee Moliere in Paris, France, and received her undergraduate degree in Zoology from the University of California at Berkeley. She is a member of the Board of Directors of Resources for the Future, the Environmental and Energy Study Institute; the German Marshall Fund of the United States; the National Commission on the Environment; and the Phillips Petroleum Company. Mrs. Tschinkel is Chair of the Advisory Council of the Gas Research Institute and a fellow of the National Academy of Public Administration. She serves on numerous national advisory committees, including the National Academy of Science Panel on Policy Implications of Greenhouse Warming. She is Vice-Chair of the Florida Communities Trust, and Director of 1000 Friends of Florida Audubon Society.

HERBERT YORK



Dr. York is the Director Emeritus of the Institute for Global Conflict and Cooperation, a member of the University of California President's Council on the National Laboratories, and a trustee of the Institute for Defense Analysis. He was formerly the Director of Lawrence Livermore National Laboratory from 1952-58, Chancellor of the University of California, San Diego, an Ambassador on the Comprehensive Test Ban Negotiations from 1979-81, and a member and vice-chairman of the President's Science Advisor Committee during several administrations. Dr. York received his Ph.D. in Physics from the University of California, Berkeley and his Masters and Bachelors degrees from the University of Rochester. He is a recipient of the E.O. Lawrence Award. He is author of numerous books including *Race to Oblivion*, *Arms Control*, and *Making Weapons, Talking Peace*.



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Senator BRYAN. And, Senator, if I might ask, are you indicating—and I have not read the publication that you make reference—are you saying that they have concluded that this is what we need?

Senator DOMENICI. Well, the Galvin report had a number of alternatives, but clearly suggests that we ought not leave it like it is, and it ought to have more—

Senator BRYAN. Well, I don't think anybody's suggesting that. I think we've agreed to have the Office of Counterintelligence and the Office of Intelligence. And I don't disagree with that.

But I guess, again, a question, if I might, to the members of the committee. Senator Kyl did, I thought, an extraordinarily good job of documenting the number of studies, reviews, analyses; that have occurred over the decades. I guess my question to the three of you is do any of those reports or studies or analyses suggest that the reorganization—if they make such a recommendation—ought to take the form which you propose in this amendment?

Senator MURKOWSKI. Yes.

Senator BRYAN. They do. And which one of you could cite that?

Senator MURKOWSKI. The Galvin report.

Senator BRYAN. The Galvin report. I just thought that Senator Domenici indicated that there were a number of alternatives. I've not read the Galvin report, so I confess that I'm not able to discuss it as fully and completely as you.

Senator MURKOWSKI. Well, the fact that it's one of the alternatives speaks for itself, Senator.

Senator BRYAN. So the Galvin report, one of the alternatives—and there were others that were suggested.

Now let me, Senator Murkowski, you pointed out that we do need to take some action, and I do think that's right. I don't disagree with that. Now, if I understand correctly from the colloquy that the Vice Chairman had with you, the Sections 213 and 214, those are the ones that deal with the Office of Counterintelligence and the Office of Intelligence, that there's no objection to those, if I understand the record.

Now, reading further, it seems to me that that does at least address part of the concern. I'm not suggesting—but it says, for example, that "the Director of the Office of Counterintelligence shall report immediately to the President of the United States, the Senate and the House of Representatives, any actual or potential significant threat to or loss of national security information."

Admittedly, we did not have that process in place before, and although there is some dispute in the record, it is fair to say that at least one version is that an acting Secretary did refuse to allow an individual to offer testimony to the Congress. She has denied that. I don't know what the facts are, but one could conclude that that was an obstruction, if one believes the testimony of Mr. Trulock.

It's also a part of the Office of Counterintelligence, Section 214, that "the Director of the Office of Counterintelligence shall not be required to obtain the approval of any officer or employee of the Department of Energy for the preparation or delivery to the Congress of any report required by this section, nor shall any officer or employee of the Department of Energy or other federal agency

or department delay, deny, obstruct or otherwise interfere with the preparation or the delivery to the Congress of any such report required by the section."

So I guess I would say, at least in part, Senator, I'm not suggesting that that addresses all of the issues which you and many others have raised. At least we do have in place now a process by which the Office of Counterintelligence has direct access to the President, to the Congress. No prior permission, consent can be required. And no delay shall be permitted.

And that part I understand is generally agreed. I don't think there's any fundamental disagreement. If there is, please disabuse me of that.

Senator DOMENICI. Senator, let me just say I tried in a generic way, and I can't be any more specific. I believe my efforts have been kind of catalogued as being of pretty long duration in this area. I said a while ago that you can do these things piecemeal, but essentially what's wrong is that the Department is not chain-of-command oriented enough to make sure that those entities that you've just outlined are effective because it's too entangled with the delays and the oversight and the overseers beyond what you have referred to that will mess it up sooner or later.

And whether you all think this is the right structure, we're willing to proceed with other hearings; but I think I can tell you, sooner or later, the time is now to fix this structure, and it will get fixed either this way or in due course, and it will get fixed even with more deference to the idea of getting it out of the Department of Energy totally.

Senator KYL. Mr. Chairman, Senator Bryan, might I specifically respond to your question?

Senator BRYAN. You certainly may.

Senator KYL. If you want to turn to page two of the bill, I can detail for you exactly what is added in this amendment that is not in the DOD bill. Specifically—

Senator BRYAN. What page is that, Senator?

Senator KYL. This on page two of the bill.

Senator BRYAN. That would be tab F?

Senator KYL. Well, I don't have your paper, but it is page two, parenthesis—beginning on line nine. The paragraph that begins with parenthesis number two.

Senator BRYAN. Yes.

Senator KYL. All right. That paragraph, paragraph four, five, six—all the way through page three, and all the way through page four, down to line 19, the new section Office of Intelligence is new material not in the DOD authorization bill portion.

So that's why I said before I didn't get into the specifics, but much of the guts of this is new in our amendment, but the basic office identified in the DOD bill is incorporated.

Senator BRYAN. And I appreciate it and the Chairman is indicating that others have waited long and I apologize. Is there objection to that language which is contained in the OCI—

Senator MURKOWSKI. Not that we're aware of.

Senator BRYAN. So, basically that's something that we could agree on.

And just, if I might, Mr. Chairman, and thank you very much, I know the last thing that the distinguished members of our body would have in mind is any kind of competing bureaucracies, but I would ask you to think about this scenario.

We create this new agency, or carveout. We have a new Office of Counterintelligence. What if there is a fundamental disagreement between the two of them? Do we then have a competing bureaucracy in which the doctrine of unintended consequences applies, and what we have done may have been counterproductive, although I know that is not your intention.

Senator MURKOWSKI. The Secretary of Energy would make that call. He's in charge.

Senator KYL. And Mr. Chairman, Senator Bryan, one is clearly in charge of the foreign intelligence operation. The other is in charge of the domestic operation. So you have two separate responsibilities in effect which should minimize any potential conflict.

Chairman SHELBY. Senator Bryan—

Senator BRYAN. I thank my friends. Thank you very much.

Chairman SHELBY. I know Senator Domenici has been very generous with his time. But I want to just observe, before I call on Senator Allard that, as I read it, we've got the Chairman of the Energy Committee, we've got a distinguished member of our committee, Senator Kyl, we've got the Chairman of the Budget Committee, but he's also a member of the Energy Committee and he chairs the Appropriation Committee over the labs. I don't know of anybody that could come in here and contribute more than you three have today, or would.

And I believe it's incumbent upon us on the Intelligence Committee. We don't have a lot of open hearings, as you well know, and we can't, but to air this, and the time is now. We can't wait. And what I want to do is get with Senator Kerrey and Senator Bryan and other members of the Committee and work a solution to this that will be done statutorily and that will be in place forever, because the American people demand it and they should demand it.

Senator Allard.

Senator ALLARD. Mr. Chairman, I don't have any questions for the panel, so I'll yield back my time. I would just state, as I did in my opening remarks, that I think we need to be moving forward in a most urgent manner, and I hope that this isn't unnecessarily delayed in the process.

Chairman SHELBY. I agree with that.

Senator Bingaman has joined us today. Do you have any?

Senator BINGAMAN. Mr. Chairman, thank you very much. I'll just make a brief statement, and then if anybody wants to comment, they can. One of the things that strikes me is that when we had the discussion of this in the Armed Services Committee we had a different premise that we started from. And I think our premise there was pretty straightforward, based on the testimony we have gotten over many years.

The testimony has been that the nuclear weapons program was being well managed. I mean, that was the information we get, and we've gotten it as recently as this year, about the nuclear weapons program, the Stockpile Stewardship Program that is managed by Vic Reis. We have the Commanders-in-Chief of the Strategic Com-

mand come in and tell us that they believe it's well managed, they believe the stockpile is reliable. We require the lab directors to certify each year that the stockpile is reliable. So that's been the information, the premise we worked from.

What we also believed, and what I believe this Committee and the sponsors of this amendment are certainly in agreement on is that a lot of this classified information had not been adequately protected and had been compromised and stolen, and that that part of it—the management of the information, but not the management of the weapons system or the weapons program itself—needed fixing.

Now, maybe people don't think that's a valid distinction, but it seems to me that that is something worth discussing before we reorganize the way the entire weapons program is managed. So I just throw that out, and I know that our sponsors of the legislation need to be going on, so I will raise that with Secretary Richardson.

Chairman SHELBY. Thank you.

Senator DOMENICI. Mr. Chairman, may I comment on that?

Chairman SHELBY. Go ahead, Senator.

Senator DOMENICI. Senator and Mr. Chairman, let me suggest, I would almost say that statement is true, in spite of ourselves. And I would ask that any of the detailed reports from these distinguished people be looked at to see if they think the Department of Energy's nuclear weapons program is being managed properly.

If you put enough money and enough experts, you can overcome all kinds of delays and all kinds of hangups within the Department, but you will find in the Galvin report the overregulation of the nuclear weapons activity is found to be almost unbearable by the people that wrote that, among America's best.

So it is coming out all right. We've now got a problem with security. But I think it's fair to say that we could do a lot better if we structured it so as to perform better.

I thank you for having us.

Senator KYL. And, Mr. Chairman, if I could just respond to that, I'd even go a step further. I think those reports identify a lot of real red flags. And even though I wouldn't necessarily want to put Vic Reis on the hot seat, you might ask some of his predecessors, because I think that there are some really serious questions.

Senator DOMENICI. Yes.

Senator KYL. Senator Bingaman, for example, do we want, as is the current plan, do we want Los Alamos to become, instead of a pure research facility, a fabricator of nuclear warheads? Because of no other alternatives, that's what's going to happen.

Do we want to have absolutely no leeway, no margin of error in the acquisition of tritium to be reintroduced in the warheads that require tritium for—to be effective? We are at a situation now in tritium production where there is essentially no more margin of safety.

There are some other issues like that, and I think Senator Domenici put it well: in spite of ourselves, maybe we've gotten by so far. But I would not suggest that there are not some serious potential problems at the Department of Energy created by years of neglect and inattention and constraints on the way that they've had to do their business.

Senator DOMENICI. Thank you very much.

Chairman SHELBY. Thank you. Thank you.

Senator MURKOWSKI. Thanks, gentlemen.

Vice Chairman KERREY. Before you all leave, it may not be relevant to—

Senator MURKOWSKI. Are you going to swear us in?

Vice Chairman KERREY. Yes. Could I get you to raise your right hand? [Laughter.]

I mean, just for the record, I do think it's important that the public understands that in addition to the two sections that I referenced earlier that is in the Armed Services bill, the Senate has already acted on a full—I think it's title—it's title D, subtitle D of the Armed Services bill that is called "Safeguards, Security and Counterintelligence at the Department of Energy Facilities."

And there are 10 subtitles including the one that has the two new offices. There's a lot of—in other words, what I'm saying there's been a substantial response by Congress already. I didn't want to leave the impression, the public impression, that Congress has done nothing yet while we're trying to consider whether or not to do this.

You've made some very good points as to why we need to do some additional things, but I want to make the point that a considerable amount has been already been incorporated into the Armed Services bill.

Senator MURKOWSKI. Thank you very much.

Senator DOMENICI. Senator, that's a perfect observation and I would like to close with one for you personally. I think if you look at the last six or seven years, one of the real problems is the timeliness of things getting reported to where they ought to get reported and something being done about it. And I'm hopeful that, whatever we do, we can answer the question that, as so many of these things took so long to reach any kind of maturity, have we done something that might expedite that.

Vice Chairman KERREY. I would say, Senator, one of the innovative things that's in this bill, Section 3152, is something I don't think exists today. And that is a bicameral commission. It's called the Commission on Safeguards, Security and Counterintelligence at the Department of Energy. The Chairman of the Armed Services Committee in the Senate as well as the ranking member, they appoint two plus one. The House appoints two plus one. A representative from the Department—the Secretary of Defense appoints a person to it. The FBI appoints a person. The DCI appoints a person. It lays out all the responsibilities that they have to do including—it's basically a regular—not only bicameral but Executive branch-Legislative branch commission that evaluates security, makes recommendations for improvements.

I mean that's just one of 10 different titles that's in these ten sections, that's in this title that I think goes an awful long ways towards improving the security at the labs.

Chairman SHELBY. We are joined by Senator Warner. Do you have a comment?

Senator WARNER. Well, just as a footnote of history—and I commend you for taking the time to have this important hearing—I had this same thing in two years ago and it was passed by the

United States Senate. It went to a House-Senate conference committee and it was killed by the Department of Energy. Killed.

Betsy Moler sat in my front office and just refused to let that provision be passed. So, I hope it becomes law.

Vice Chairman KERREY. The provision I just referenced?

Senator WARNER. Yes. If it had been enacted two years ago—

Vice Chairman KERREY. Why didn't you pass it and let them veto it?

Senator WARNER. The House wouldn't take it. Now this was two years ago, Senator, when we had it in, legislation passed by the United States Senate. And at a conference committee it was killed by the House at the direction of the Department of Energy and it was—the opposition was led by Betsy Moler.

Vice Chairman KERREY. I will point out, as you know, oftentimes the House will ignore what the Department of Energy wants as well.

Senator WARNER. Not this time.

Chairman SHELBY. Senator Warner, I believe that we're moving in the right direction. Senator Kerrey and I are working with Porter Goss and the chairman of the House and others. I think we're moving right now and I hope so. And we appreciate your support.

Senator WARNER. I thank the Chairman.

Chairman SHELBY. Our second panel will be Secretary of Energy Bill Richardson, who is here with us now.

Mr. Secretary, we welcome you to the Committee. We've had a pretty long afternoon already. But your written statement will be made part of the record in its entirety, without objection. And you proceed as you wish.

[The prepared statement and charts of Secretary Richardson follow.]

STATEMENT OF THE HONORABLE BILL RICHARDSON, SECRETARY OF ENERGY ACCOMPANIED BY: EDWARD J. CURRAN, DIRECTOR, OFFICE OF COUNTERINTELLIGENCE, DEPARTMENT OF ENERGY

Secretary RICHARDSON. Mr. Chairman, thank you. Thank you and members of the Committee for the opportunity to discuss the security and counterintelligence improvements we've implemented at the Department of Energy.

Senators, and Mr. Chairman, let me just say at the outset I will say all the very positive things about my three colleagues that have initiated this amendment. They are national security experts, strong supporters of the Energy Department, reformers. But on this amendment, they are wrong. This amendment would undermine my authority and the reforms that I've initiated at the Department of Energy.

And lastly, if this amendment stayed in, I would recommend a veto to the President. Ed Curran, who is here with me, the head of the Counterintelligence Office in the Department, I know shares my view. You can ask him any questions you want.

But again, Mr. Chairman, I think this is an extremely timely hearing. I want to work with this Committee on reforms of security at the Energy Department. But let me just say at the outset that I think the ability to work within a framework of this amendment,

which literally takes security out of my authority, is just not going to work.

Let me just say, Mr. Chairman, I understand that some modifications have been made to the amendment in the last day, which I think shows that the amendment was not carefully drafted. For the last two weeks since the amendment was surfaced, Mr. Curran and his Counterintelligence Office were under the Defense Security Agency. And I recall talking to Mr. Curran, who was extremely upset that there was another entity that he had to report to which would blur the access that he has to me. I understand the amendment is now changed and now the counterintelligence entity is reporting directly to me, probably because of the criticism or the concern of what this amendment would have done.

Let me just say, Mr. Chairman, that it is abundantly clear that security and counterintelligence have in the past been given short shrift at our weapons laboratories. I concede that. In the past, the Department's security operations were scattered, with accountability spread too thin across the entire complex. This practice was amplified by an ingrained lab culture which tended at that time to only tolerate security efforts, not embrace them as necessary part of a job well done.

This is no longer the case. I've said this many times since I was appointed as Secretary of Energy nine months ago. No mission has been more important to me than improved counterintelligence and security at the Department's national laboratories. In these nine months these national security safeguards have been vigorously fortified and improved.

What the Senators are proposing in the split organization called "the matrix" is in fact a security management strategy that I believe will not work. It is not a matrix but critical independence from the way that I have initiated changes for the purpose of avoiding the obvious conflict of interest in this proposal.

Mr. Chairman, let me just say that I have charts here that will easily explain what I am trying to convey in my testimony. On my left is the chart of the Department of Energy, the new organization, and I notice that Senator Domenici mentioned all these studies, the Galvin study, the others that have been made about Department of Energy security. The conclusions in these studies are true. But then I moved in and I changed the security arrangements to conform to many of these recommendations in Galvin and others.

So the criticism of the Department of Energy security has been in past security, not the way that I have already changed it in terms of direct lines of responsibility. That was a problem in the past.

I have seen improvement. In February of 1998, the President ordered that the Department improve its security dramatically and implement a new comprehensive counterintelligence and cyber security plan. We have seen dramatic improvements. By October, I had approved an extensive program that included mandatory background checks for all visitors from sensitive countries, more document controls at the laboratories, counterintelligence experts at our weapons labs, the use of polygraphs for Department scientists working in sensitive areas, and increases in our counterintelligence budget, which has multiplied by factor of 15 since 1996.

And, as all of you know, the department now has its Director of Counterintelligence, Ed Curran, a 37-year veteran of the FBI and the nation's preeminent counterintelligence expert.

In March of this year I announced seven new initiatives demanding further counterintelligence upgrades, security training and threat awareness, and directed an additional \$8 million to further secure classified and unclassified computer networks.

In April, when I was informed of the serious security breach at Los Alamos, I ordered a complete stand-down of the classified computer systems at our three major nuclear weapons labs—Los Alamos, Lawrence Livermore and Sandia. I allowed the system back up only when I was confident that our computers were secure and that each lab employee knew their security responsibilities.

Let me now deal with security. We're raising the bar further. Just under a month ago, on May 11, I announced the most sweeping security reform in the Energy Department's history. The central element in our security reform package is a new Office of Security and Emergency Operations, which clusters all Department security policy functions under one roof. The office will report directly to me. I'm looking for a czar for this office, a top general, who will have the clout, the funds and the tools to ensure security is taken seriously and that my reforms are carried out fully. Mr. Chairman, I'm pleased to report that our search has narrowed to two very distinguished generals and we will be making a selection shortly.

This reorganization has several components: security affairs consolidating all department physical security policy; the chief information officer who deals with computers, who will consolidate all the department's classified and unclassified cyber security; a foreign visits and assignments office to account for all foreign nationals within the Energy complex; a plutonium, uranium and special material inventory office to monitor all nuclear materials under Department supervision; and an independent office to evaluate security and emergency operations.

Mr. Chairman, what I am doing is I am adopting many recommendations by the GAO, by the Congress, by the FBI, by the CIA. This is how they do security. They centralize it under one roof, cross-cutting budgets, and developing clear lines of responsibility. What you are proposing in this initiative, is a new agency within an agency where I have no authority.

I've also enacted a zero tolerance security violations policy, where breaches or willful disregard for security procedures result in automatic suspensions. We're also clearing our backlog of background investigations. The FBI will now manage our most sensitive inquiries.

We're putting new cyber-intrusion detection systems in place, and we've created counterintelligence red teams which evaluate espionage threats, and act with fitting dispatch.

I've also asked the President to extend the automatic document declassification deadline for historical records. I know Senator Kyl has been a leader on this issue, to make sure our secrets are protected.

I was worried that things were moving a little too quickly. An extension will further ensure that declassified documents are searched for inadvertently co-mingled nuclear design information.

It's a balanced strategy that strengthens transparency with surety so that we can offer openness without jeopardizing our security.

I've also stated that I would accept Senator Warner's commission, which deals with having an independent review of our entire security structure by independent people, not people within the government. I will accept his provision for this commission lock, stock and barrel.

Let me also say that reorganization of security will be consolidated budgetwise and controlled by the security czar. Security funds will be separated from program funds, ensuring that security needs and priorities are not compromised by competing program missions. I'm working with OMB to identify offsets that will allow me to propose further increases for cyber and physical security in addition to the \$8 million increase the President requested some weeks ago. I look to have something to the Congress soon.

Finally, I've restructured our field-to-headquarters reporting relationship. Based on a number of reports on how to improve management, we have assigned lab sites and field offices to three assistant secretaries who will now be responsible for those entities.

In other words, take the example of the way I have changed defense programs. It is very clear that the labs that do weapons-related work report directly to the program here in Washington—the Defense Program. This did not happen in the past. We have now done that internally within the Department of Energy. It is very clear who is in charge and who is responsible. Based on a number of reports, we believe that initially our program of dramatic reorganization is working.

Now let me address the amendment offered by Senators Kyl, Domenici and Murkowski and why I strongly oppose this legislation.

Number one, it undermines progress in counterintelligence. First and fundamentally, this language simply undermines all the work we've done on counterintelligence. Under Ed Curran's leadership, this program will soon be second to none in the U.S. government and has received bipartisan support in the Congress. Making the Nuclear Security Administration a separate entity within the Department would effectively remove it from oversight by the new counterintelligence office—the wrong signal to send in the wake of the Cox report.

This committee, this Intelligence Committee, gave us the funds, gave us the authority to create Ed Curran's office. Now I believe you are having him report in this amendment to a new agency, although maybe I am wrong but I think this has been changed overnight. Nonetheless, it is a bad effort. Every effort of the past 15 months has been focused on uniting our programs under a strong, disciplined counterintelligence program. This proposal would dissolve this unifying campaign and throw the effort into chaos.

Secondly, this provision weakens safeguards and security. I have called handing security and safeguards oversight to the Nuclear Security Agency, as this amendment proposes, like having the fox guard the chicken coop. For some time, GAO reports have painted a bleak picture of Energy Department safeguards and security. One problem is program skimping on security to better fund projects that they find more attractive. As I mentioned earlier in my testi-

mony, I'm proposing a new security office, led by a czar, who will set security budgets for each of the programs.

The amendment, on the other hand, would eliminate the guarantee that security dollars will be spent where they must, and hands the budget power and oversight power to the administrator of the NSA. This is a bad idea.

Thirdly, this amendment threatens safety. The amendment also thwarts needed safety improvements. DOE problems are not just security; they're safety. Instead of an independent safety office, the amendment provides that the NSA will handle safety. Given the special materials handled by our defense programs, a rigorous independent safety program is essential.

I recently committed the Department of Energy to a strict regime of integrated safety management. This new agency would be exempt from this effort and from oversight by the Department's environmental, safety and health office. This is a blueprint for safety breakdowns, dangerous for our employees, and dangerous for your communities.

In addition, this provision weakens the national laboratories. The amendment's language states that the administrator of this new agency is assigned responsibility over the national laboratories. As I just mentioned, isolating the labs is unwise. If anything, we should bring the labs closer to what the Department of Energy and the Congress are doing, as it starves out these premiere research institutions of much of the interaction that they need to excel.

The labs' scientific health is also advanced through connections to other Department mission areas—fossil energy, science, renewable energy, and this will be weakened dramatically over time if the proposal is adopted. In other words, the labs also do science. They do biology. They do energy. And you're putting all of these under a security weapons structure and this does not make sense.

If I could ask you to look at the chart on my left, many of our critical scientific missions are cut off from the labs that support them. It weakens stockpile stewardship. This is something Senator Kyl is very positively involved in. Stockpile stewardship will be undercut. An entity within the Department will not be able to take a seat at the Cabinet table presently occupied by the Secretary of Energy. The Nuclear Security Administration has been set up as an independent entity and it will grow more independent as time moves on.

We don't need any more fiefdoms at the Department of Energy. We need an integrated structure that is properly managed. It will also be left without a voice in the highest levels of the administration. Budget influence will wane. This is the sixth reason. Budgetary influence will be eroded if budget making powers are given to this agency as suggested in this amendment. As I just mentioned, this agency will not be represented as a Cabinet agency at the White House. Instead, it would have to gain access as an entity within the Department, would have to obtain resources without the benefit of having the Secretary of Energy fighting for them.

Diminished accountability. Neither I nor any other Secretary of Energy will be able to hire and fire any employees of this agency. This returns us to "the lack of accountability issue" I have previously described, the same one that helped bog us down in the

quagmire we're digging ourselves out of. Accountability is the linchpin of good management, yet Congress will not be able to hold the Secretary of Energy accountable for any activities of personnel under this agency. Such an arrangement cannot and will not work.

End of contract accountability. This amendment proposes that this agency be given power over contracting. We have enormous contracting problems at the Department of Energy that we are trying to resolve. You have instituted numerous contract reform procedures for the Department of Energy. But the procedure outlined in this legislation would lead to less competition in contracting, running counter to what we need to do.

Loss of local control. The defense programs office at the Department of Energy has been advocating a so-called mega-contract which would take power away from communities in Tennessee, California and South Carolina—do all defense under one contract. If this proposal has merit—and we are studying it—this amendment would short circuit any debate on the merits of this proposal.

Mr. Chairman, this amendment also is a step to military control of nuclear weapons development. That is not our policy. The Nuclear Security Agency is the first step towards bringing nuclear weapons design and development under the control of the Department of Defense. This has not been our policy. This is not bipartisan policy.

This concept is as wrong today as it was 15 years ago when the Department's blue ribbon panel chaired by William Clark and Jim Schlesinger recommended in 1985 against transferring funding for nuclear weapons to the Department of Defense. The panel concluded that a transfer would quote "undermine the Energy Department's ability to nurture a technology base and to provide independent judgments on nuclear weapons safety, security and control."

Nuclear weapons design and development have remained within a civilian organization so that security and safety considerations are evaluated from a prospective independent of that of the end user of those weapons. To demonstrate the dangers inherent in changing our system, we need not only look at the Russian nuclear weapons program, where nuclear weapons design and development is under military control. Following such failed models is plainly not in our national security interests. I strongly agree with the 1985 panel that the disadvantages of such a transfer greatly offset any advantages.

Ultimately, this amendment is exactly the wrong tact to take in the wake of the Cox committee report. And by the way, we in the Administration are supporting a Cox amendment, cosponsored by Mr. Dicks today and the National Security Committee on the House floor which I think deals with a lot of good initiatives that this panel, in your authorization bill and in the Armed Services bill are contained, that deals with this issue on a bipartisan basis.

Some 50 years ago the first Hoover Commission laid the groundwork for a widely-accepted government principle that politically-accountable agency heads have legal authorities over their agency. This proposal runs counter to that, instead deepening the gap between senior management and the rest of the Department, exacerbating the management failures that led to the current crisis.

This is the wrong way to go in light of the recent espionage revelations. What is needed is more accountability, not less. What is needed is better oversight and better coordination Department-wide, not worse.

I need you Senators to help me do my job, a job that for the sake of our nation's security has to be done right. I do want to thank you for giving me this opportunity to express myself on this provision. And I look forward to working with you in the days ahead.

Chairman SHELBY. Thank you, Mr. Secretary.

Since PDD-61 was signed, Mr. Secretary, the Department has produced a number of plans to implement the PDD, including a 90-day study, a counterintelligence action plan, and a counterintelligence implementation plan. These plans contained a number of recommendations and proposed actions.

I understand that the majority of these recommendations and proposed actions are now in the process of implementation. Where are you on implementation today? By implementation, I'm referring to policies that are fully in place and in force a day-to-day basis.

Secretary RICHARDSON. Senator, I believe that 85 percent of the counterintelligence implementation plan, the top tier recommendations, are complete and by August we will be at 100 percent. Day-to-day, week-to-week I send teams out—I think I've sent close to 30 teams since we initiated the counterintelligence plan—to oversee the labs, to find out how we're doing. I believe we are very, very close to, by August, being 100 percent.

Now let me be specific. Mr. Curran, who I will turn to shortly, has completed background checks on sensitive country scientists 100 percent. In other words, we are now able to do background checks on scientists from all sensitive countries.

Polygraphs. We are implementing the polygraph proposal. There have been numerous people that have been polygraphed. We are not waiting for the rulemaking. We're proceeding with this. I know you recognize this as very controversial, but I am doing this because we want to make sure that individuals who have access to the sensitive information are properly polygraphed.

In cyber security, we've made dramatic improvements that deal with intrusion devices, detection devices, to prevent the transfer of classified to unclassified. Computer security is the area where I need the support of this committee to ensure that we move ahead and correctly act.

In counterintelligence, we have at each of our labs, our defense facilities, the five big ones, counterintelligence professionals like Ed Curran and his staff that are ensuring that counterintelligence is properly taken care of.

Mr. Chairman, could I turn to Mr. Curran?

PREPARED STATEMENT OF SECRETARY BILL RICHARDSON
U.S. DEPARTMENT OF ENERGY
BEFORE THE SENATE SELECT COMMITTEE ON INTELLIGENCE
JUNE 9, 1999

Thank you, Mr. Chairman and Members of the Committee, for the opportunity to discuss the security and counterintelligence improvements we've implemented at the Department of Energy, and why I believe the amendment offered by Senators Kyl, Domenici, and Murkowski to the defense authorization bill is exactly the wrong way to go in the wake of the Chinese espionage situation.

I understand that some modifications have been made to the amendment. However, let me be clear: if the amendment is included in the Intelligence authorization bill, I will recommend that the President veto it.

It is abundantly clear that security and counterintelligence have, in the past, been given short shrift at our weapons laboratories. In the past, the Department of Energy's security operations were scattered, with accountability spread too thin across the entire complex. This practice was amplified by an ingrained lab culture, which tended, at that time, to only tolerate security efforts -- not embrace them as necessary parts of a job well done.

This is no longer the case. I have said this many times since my appointment as Secretary of Energy, nine months ago: no mission has been more important to me than improved counterintelligence and security at the Department's National Laboratories. In these past nine months, these national security safeguards have been vigorously fortified and improved.

CRITICAL OVERSIGHT OFFICES

1. Counterintelligence

Our efforts to improve have been in motion for some time. In February, 1998, President Clinton ordered that the Department of Energy better its security dramatically, and implement a new, comprehensive counterintelligence and cyber-security plan.

I have seen improvement. By November, after I had been aboard three months, the Department had an extensive program in place that included mandatory background checks for all visitors from sensitive countries; more rigorous document controls at the laboratories; counterintelligence experts at our weapons labs; the use of polygraphs for Department scientists working in sensitive areas; and increases in our counterintelligence budget -- which has multiplied by a factor of 15 since 1996.

As you know, the Department now has as Director of its Counterintelligence Office Ed Curran -- a 37-year veteran of the FBI and the nation's pre-eminent counterintelligence expert.

In March of this year, I announced seven new initiatives, demanding further counterintelligence upgrades, security training, and threat awareness, and directed an additional \$8 million dollars to further secure classified and unclassified computer networks.

And in April, when I was informed of the serious security breach at Los Alamos, I ordered a complete stand-down of the classified computer systems at our three major nuclear weapons laboratories – Los Alamos, Lawrence Livermore, and Sandia. I allowed the system back up only when I was confident that our computers were secure and that each lab employee knew their security responsibilities.

2. Security

And we're raising the bar further. Just under a month ago – on May 11th – I announced the most-sweeping security reform in the Energy Department's history.

The central element in our Security Reform Package is a new Office of Security and Emergency Operations – which clusters all Departmental security functions under one roof. The Office will report directly to me. I'm looking for a Czar for this office – a top general who will have the clout, the funds and the tools to ensure security is taken seriously, and that my reforms are carried out fully.

Now, this reorganization has several components:

- security affairs, consolidating all Department physical security policy;
- the Chief Information Officer, who will consolidate all the Department's classified and unclassified cyber-security;
- a foreign visits and assignments office, to account for all foreign nationals within the Energy complex;
- a plutonium, uranium and special material inventory office, to monitor all nuclear materials under Department supervision; and
- an independent office to evaluate security and emergency operations.

I have also enacted a zero-tolerance security violations policy, where breaches or willful disregard for security procedures result in automatic suspensions.

We're also clearing our backlog of background investigations: the FBI will now manage our most-sensitive inquiries. We're putting new cyber-intrusion detection systems in place, and we've created counterintelligence "red teams," which evaluate espionage threats and act with fitting dispatch.

I have also asked the President to extend the automatic document declassification deadline for historical records. I was worried that things were moving a little too quickly. An extension will further ensure that declassified documents are searched for inadvertently commingled nuclear design information. It is a balanced strategy that strengthens transparency with surety, so that we can offer openness without jeopardizing our security.

An important part of this reorganization is the consolidated security budget controlled by the security Czar. Security funds will be separated from program funds, ensuring that security needs and priorities are not compromised by competing program missions. I am working with OMB to identify offsets that will allow me to propose further increases for cyber and physical security in addition to the \$8 million dollar increase the President requested some weeks ago. I look to have something to the Congress soon.

Finally, I have restructured our field-to-headquarters reporting relationship. Based on a number of reports on how to improve management, we have assigned labs, sites, and field offices to three assistant secretaries who will now be held responsible for those entities. This will increase accountability and will remove the maze of responsibility that plagued previous reform efforts.

THE KYL - DOMENICI - MURKOWSKI AMENDMENT

Now, let me address the amendment offered by Senators Kyl, Domenici, and Murkowski, and why I strongly oppose this legislation.

a) Undermines Progress on Counterintelligence

First -- and fundamentally -- this language simply undermines all the work we've been doing on counterintelligence. Under Ed Curran's leadership, this program will soon be second to none in the U.S. government, and has received bipartisan support in the Congress.

Making the Nuclear Security Administration (NSA) a separate entity within the Department of Energy would effectively remove it from oversight by the new counterintelligence office -- the wrong signal to send in the wake of the Cox report. Every effort in the past 15 months at the Energy Department has been focused on uniting our programs under a strong, disciplined counterintelligence program. This proposal would dissolve this unifying campaign, and throw the effort into chaos.

b) Weakens Safeguards and Security

Second: I have called handing safeguard and security oversight to the NSA -- as this amendment proposes -- like having the fox guard the chicken coop.

For some time, GAO reports have painted a bleak picture of Energy Department safeguards and security. One problem is programs' skimping on security to better fund projects they find more attractive. As I mentioned earlier in my testimony, I am proposing a new security office, led by a "czar" who will set security budgets for each of the programs. The amendment, on the other hand, would eliminate the guarantee that security dollars will be spent where they must, and hands the budget power and oversight power to the administrator of the NSA. This is a bad idea.

c) Threatens Safety

Third: the amendment also thwarts needed safety improvements. Instead of an independent safety office, the amendment provides that the NSA will handle safety. Given the special materials handled by our defense programs, a rigorous, independent safety program is essential. I recently committed the Department of Energy to a strict regime of integrated safety management. The NSA would be exempt from this effort and from oversight by the Department's environmental safety and health office. This a blueprint for safety breakdowns -- dangerous for our employees, and dangerous for your communities.

d) Weakens the National Laboratories

Fourth: the amendment's language states that the NSA administrator is assigned responsibility over the national laboratories. As I just mentioned, isolating the labs is unwise, as it starves these premier research institutions of much of the interaction they need to excel. Our labs scientific health is also

advanced through connections to other Department mission areas – fossil energy, science, renewable energy – and this will be weakened dramatically over time if the proposal is adopted.

e) Weakens Stockpile Stewardship

Fifth: stockpile stewardship will be undercut. An entity within the Department will not be able to take advantage of the seat at the cabinet table presently occupied by the Secretary of Energy. The Nuclear Security Administration has been set up as an independent entity and it will grow more independent as time moves on. It will also be left without a voice in the highest levels of the administration.

f) Budget Influence Will Wane

Sixth: budgetary influence will be eroded if budget-making powers are given to the NSA, as suggested in this amendment. As I just mentioned, the NSA will not be represented as a Cabinet agency at the White House. Instead, it would have to gain access as an entity within the Department, and would have to obtain resources without the benefit of having the Secretary of Energy fighting for them. Considering our need to bolster our national security, this proposition does not reassure me.

g) Diminished Accountability

Seventh: Neither I nor any other Secretary of Energy will be able to hire and fire NSA employees. This returns us to the 'lack of accountability' issue I previously described – the same one that helped bog us down in the quagmire we're digging ourselves out of. Accountability is the linchpin of good management. Yet Congress will not be able to hold the Secretary of Energy accountable for any activities of personnel under the NSA. Such an arrangement can not, and will not, work.

h) End of Contract Accountability

Eighth: the amendment proposes that the NSA be given power over contracting. Congress has instituted numerous contract reform procedures for the Department of Energy. But the procedure outlined in this legislation would lead to less competition in contracting, running counter to what we need to do.

i) Loss of Local Control

Ninth: the Defense Programs office at the Department of Energy has been advocating a so called "mega-contract," which would take power away from communities (in Tennessee, California and South Carolina). The amendment, however, would short circuit any debate on the merits of this proposal. And local control over Department facilities and contracts would be vastly diminished if this proposal is implemented.

j) First Step Towards Military Control of Nuclear Weapons Development

And tenth: the NSA is the first step toward bringing nuclear weapons design and development under the control of the Department of Defense – as is being contemplated in the House of Representatives. This concept is as wrong today as it was 15 years ago, when the President's Blue Ribbon Panel – chaired by William P. Clark and Jim Schlesinger – recommended in 1985 against transferring funding for nuclear weapons to the Department of Defense. The panel concluded that a transfer would (quote) "undermine the Energy Department's ability to nurture a technology base and to provide independent judgements on nuclear weapons safety, security, and control."

Nuclear weapons design and development have remained within a civilian organization so that security and safety considerations are evaluated from a perspective independent of that of the end user of those weapons. To demonstrate the dangers inherent in changing our system, we need only look at the Russian nuclear weapons program, where nuclear weapon design and development is under military control. Following such failed models is plainly not in our national security interest. I strongly agree with the 1985 panel that the disadvantages of such a transfer greatly offset any advantages.

Ultimately, this amendment is exactly the wrong tack to take in the wake of the Cox Committee Report. One reason the China espionage problem festered at the Department of Energy -- from the late 1970's to the 1990's -- is that there was inadequate management structure and information to assure proper Secretarial oversight on Department programs and labs. For example, the reforms proposed by Deputy Secretary Curtis in 1996 were only partially executed by the program and by the labs.

Some 50 years ago, the First Hoover Commission laid the groundwork for a widely-accepted government principle: that politically accountable agency heads have legal authorities over their agency. The Kyl - Domenici - Murkowski proposal would run counter to this counsel, instead deepening the gap between senior management and the rest of the Department, exacerbating the management failures that led to the current crisis. This is exactly the wrong way to go in light of the recent Chinese espionage revelations. What is needed is more accountability, not less. What is needed is better oversight and better coordination, Department-wide, not worse.

I need your help to do my job -- a job that, for the sake of our nation's security, must be done right. I want to thank the Committee for giving me a chance to appear on this issue, and I will now gladly answer your questions.



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Los Alamos
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National Lab

Savannah River
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**DEPARTMENT OF ENERGY
PRIOR TO SECRETARY RICHARDSON'S
REORGANIZATION**



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**NUCLEAR SECURITY ADMINISTRATION
(NSA)**

- **No Independent Counterintelligence**
- **No Independent Security Oversight**
- **No Environmental Oversight**
- **No Health Policy or Oversight**

Public
Health

Public
Safety

Budget

Kansas City
Plant

Nevada
Test Site

Savannah River
Site

Oak Ridge
Y-12

Los Alamos
National Lab

Lawrence
Livermore
National Lab

Sandia
National Lab

PANTEX
Plant



**CRITICAL MISSION
RESPONSIBILITIES**

Counter-
Intelligence

Security Exec
Security Policy

Independent
Safeguards & Security
Oversight

Environmental
Management

Energy
Efficiency

Nuclear
Risk
Prevention

Science

*Research Isolated
from Labs*

Chairman SHELBY. Can I go on? And then you can refer to him. Today, are indices checks completed on all foreign visitors and assignees from sensitive countries or other foreign nationals who will have access to sensitive technologies prior to the beginning of their visits or assignments? And if not, why not, and when will you be 100 percent, if you're not?

Secretary RICHARDSON. We're 100 percent.

Chairman SHELBY. You're 100 percent. That's good.

Secretary RICHARDSON. Yes.

Chairman SHELBY. Secretary Richardson, would you describe the difficulty—and we know it is a difficulty—of overcoming the culture at the national labs, a culture that some of us feel did not embrace efforts to improve counterintelligence or security. Changing this culture, some of us believe, may be the most difficult part of your job. How do you intend to change it, and are you having any success?

Secretary RICHARDSON. Senator, we are having success. The culture has changed. It's changing. In the past, lab security was lax. With the counterintelligence programs, with the many initiatives that we've undertaken, with the President's directive, counterintelligence at the lab is dramatically improved. The culture is changing. In fact, I just would like to say Mr. Chairman, we have some very patriotic, some very effective—

Chairman SHELBY. Well, I know you do. I know.

Secretary RICHARDSON [continuing]. And efficient scientists at our labs that are conscious of this, that are working every day. The three lab directors have been supportive, have been part of the program. The culture is changing, but it was a problem, Mr. Chairman.

Chairman SHELBY. Mr. Secretary, I've just got just a minute. What I'm hearing from you regarding the proposed legislation that is the subject of talk here today, is that the amendment would rearrange the traditional fiefdoms within the Department and would reduce the authority of existing offices, and that there is opposition to this.

You know, we're not surprised at that. But the existing structure you know has not worked and has traditionally resisted change. Or it's been abandoned as soon as, say, a strong Secretary leaves the Department. And then we start all over again.

As I understand it, what Senators Kyl, Murkowski and Domenici are trying to do is do something statutorily where it will be in place when you're gone. Whoever succeeds you, we will have something in place that will work.

Secretary RICHARDSON. Well, Senator, I do think that some of the statutory changes that you are recommending, your committee, the Armed Services Committee, I think some of the first two parts of the Kyl-Domenici amendment are consistent with what we're trying to do with statutorily changing reporting requirements.

I have no problem with that. I think they're constructive. I think the language that you have placed on foreign visitors in the intelligence bill is a good start. I mean, I have some suggestions, but I don't have a problem—

Chairman SHELBY. And we're willing to work with you on this, as you know. We've talked about that.

Secretary RICHARDSON. I know, I know that. And you have been. But, Senator, to set up an agency, a new fiefdom in the department of fiefdoms is not what I need. What I need is your support for a czar that reorganizes the Department in many ways that the Congress and the GAO and other agencies have reorganized security.

What you are doing, or what this amendment does is just strengthen the defense component, make it more of a fiefdom, and not correct the problem. It also undermines my authority.

I have some language I will read to you that basically says that this agency doesn't have to report to me. I think that's a problem.

Chairman SHELBY. Mr. Secretary, I think we both are interested in security, and I hope we can go down the same road before the end of the day.

Mr. Secretary, I'm going to turn to Senator Kerrey.

Vice Chairman KERREY. Mr. Secretary, I bet you are glad to be up here again talking to us. I appreciate your testimony. Mr. Curran, earlier I took a wire brush to your statement, so you may not want to—I'll give you a chance to hear it directly, and what I said was, I appreciate very much what you and the Secretary have done, especially your service and your credentials and the Administration's decision to bring you over to run counterintelligence at the Department of Energy is one of the things I would cite as a serious commitment to try to tighten things up since this came to light in 1995 and 1996.

So, I've got very high praise for you professionally, but I did—in reading the transcript—I want to point out to you, you said some things on the air with which I disagree. And I said that one of the things that bothered me most about it is it carried a tone that sounded as if it was written by the political shop over at the White House.

I'm not accusing you of having gone in with a script that was written by the political shop at the White House, but it carries a partisan political edge to it that undercuts your ability to do your job. And you and I have spoken on the phone about this, but I wanted to publicly say that. Especially, there's a statement in here that says that Mr. Shelby back in September asked for the FBI to do a study. That was actually Senator Specter and I that asked for that. And there were 26 recommendations in there, and though it is classified, of the 26 recommendations, one is for Congress and 25 is for the Department of Energy.

And I want to give you a chance to respond. My sense of it is that this Committee has provided support for ramping up the counterintelligence efforts and that we've been trying to work with the administration since 1996, especially in the 1997 and 1998 budget authorizations, to give you the resources that you need to carry out this counterintelligence measure. Is that your understanding?

Mr. CURRAN. Yes, sir.

Vice Chairman KERREY. I'll give you a chance to respond here. I know it's been somewhat difficult for you to make eye contact with us up here at the beginning, and I want to sort of bring you into the hearing.

Mr. CURRAN. Well, I don't want to say anything that's going to make things worse here. So I have to—

Vice Chairman KERREY. No, no, you don't have to worry about that.

Mr. CURRAN. But I assure you my comments that were made were spontaneous. They had nothing to do with the White House.

Vice Chairman KERREY. It's pretty obvious they were spontaneous.

Mr. CURRAN. I think if Secretary Richardson and the White House knew exactly what I was going to say, I wouldn't have been on the show. They were spontaneous.

Obviously a lot of it has to do with frustration. For the last four months, I've been up here testifying two or three times a day before 14 oversight committees. I take a lot of pride in my work. I take a lot of pride in the structure that we have established now. And there are many people out there making a lot of different comments that I know at times are factually incorrect. So there's a great deal of frustration on my part, too.

Your Committee has certainly been very helpful over the years, with yourself and Senator Specter previous to that and Senator Shelby now. You are the first people we go to when we have a problem or we're asking for help. And that's always been the case and on the House side also.

Vice Chairman KERREY. I also want to, you know, for the record note that since Aldrich Ames was discovered and prosecuted, since that time, this Administration has been informing Congress on such a regular basis it feels like a fire hose of notifications coming up here. So, I'm—I'm going to get back to this subject of this hearing, I just—

Chairman SHELBY. Senator, would you yield for 10 seconds just to—

Vice Chairman KERREY. Sure. You're Chairman. I'll yield for longer than that.

Chairman SHELBY. Thank you. Thank you. But you're the Vice Chairman and my colleague.

Mr. Curran, you know that not just Senator Kerrey and Senator Specter, when Specter was Chairman—he was here a few minutes ago—and Senator Kerrey, I was long a member of the Committee. We have supported your efforts.

Mr. CURRAN. Absolutely.

Chairman SHELBY. You know also, and you've just acknowledged that, that I, working with Senator Kerrey on a bipartisan basis, we have supported you. We want you to succeed.

Mr. CURRAN. Absolutely.

Chairman SHELBY. We have—when you went over there, we said, gosh, you know, this is a good appointment. But when—your remarks, I thought, were out of bounds and off base and basically you were uninformed that day. Now some things that have come out since, we went back and checked the records. A lot of it's classified. I would not talk about it here. And I was a little surprised, so was Senator Kerrey.

Senator Kerrey.

Secretary RICHARDSON. Mr. Chairman, I think I'm going to make things worse, but let me just say to you that this is the best person in the country we have doing this job.

Chairman SHELBY. We've said that, haven't we?

Secretary RICHARDSON. All right. Number two, I agree that it doesn't make sense to do finger pointing.

Number three, I am not going to muzzle my employees. I want you to know that. I have had Mr. Trulock, a member of this Department, testify as openly about his feelings and views about anything. I am not going to do this with Ed Curran. Now he has said that maybe what he said he might have said differently. But I don't agree—

Chairman SHELBY. We don't want you to muzzle him. We want him when he says something to know what he's talking about, and there is a difference, Mr. Secretary. Just like you, or any of us.

Secretary RICHARDSON. All right, but I don't think any of us should be immune from criticism, and I'm not saying that anybody deserves any. All I'm saying, Senator, is that this is a highly charged political atmosphere out there, and some of us get frustrated when all of a sudden statements are made that this was done because of politics. You haven't done anything to improve security, and here's the man that has been working every day to deal with these problems.

All I want to say is, this won't happen again. But, as I said to you on the phone, there is no apology from me. And I don't want to—and I also want to say that—

Chairman SHELBY. Well, I wish I had a copy of the transcript of the phone. That sounded like an apology. I wish I had it.

Secretary RICHARDSON. Senator, I'm not apologizing—

Chairman SHELBY. You said it wouldn't happen again. You said, you said—wait a minute. You said that he was—that he shouldn't have done anything, said anything. He shouldn't. He didn't know what he was talking about.

Secretary RICHARDSON. No, I didn't say that.

Chairman SHELBY. That basically said he was wrong. We know he was wrong.

Secretary RICHARDSON. Well—

Chairman SHELBY. And you ought to admit it.

Secretary RICHARDSON. What I'm—there were some factual components in what he said that were incorrect. We corrected that.

Chairman SHELBY. That's true.

Secretary RICHARDSON. But, you know, there was also an inference by somebody on that show that there is—that law enforcement officials shouldn't say what he did. And I disagree with that.

Chairman SHELBY. I didn't say that.

Secretary RICHARDSON. No, you didn't. In fact a member of my party said it. And I disagree with that, too.

My point, Senators, let's end this. And I am saying to you that it's not going to happen again. But I don't want this career officer who has done a terrific job, to be pilloried and muzzled.

Vice Chairman KERREY. Again, like I said, Mr. Secretary, we have not been pillorying Ed Curran. The Chairman in his opening statement made no reference to it. I make a reference to it inside the context of high praise for Mr. Curran, his professional career and his willingness to tackle what is not only a very, very difficult job but, as you noted, a job that's right in the eye of the storm of a very, very contentious and politically charged issue.

So, I mean, I'm just passing this on in the FYI category that I don't want—Mr. Curran, I don't want your reputation to be tarnished as a consequence in getting engaged in political stuff. That's all I'm saying.

Mr. CURRAN. Sir, I'm a big boy. I can take the heat. But I would just like to close here, and not to make things worse, but if it's factually correct to say that the report was requested by Senator Specter, that's factually correct. But what I stand on is the FBI report, the GAO studies and the request for additional money. I'd be more than happy to discuss the factual basis of what I did say. I want to make that clear.

Vice Chairman KERREY. Sure. Okay. I appreciate it.

Chairman SHELBY. Go ahead.

Vice Chairman KERREY. Mr. Secretary, there may be a pretty big breakthrough I think here this afternoon in terms of the Administration's support of change and your statement that you're willing to support Section 3152 of Title D, Subtitle D, of the Senate Defense Authorization bill that was passed a week-and-a-half ago before we left on recess.

And I'd like to—that's the Commission on Safeguards, Security and Counterintelligence that Senator Warner referenced.

Secretary RICHARDSON. Yes. That is an Administration policy change, I'm hear to tell you. That's that commission?

Vice Chairman KERREY. Yes, sir. And it's a bit more than just that commission. I mean, I don't know every nook and cranny of government, but I know of no other commission—

Secretary RICHARDSON. Yes.

Vice Chairman KERREY [continuing]. In government that has on its—and it's not an advisory commission; it's a commission with significant oversight responsibilities, with three members of the House of Representatives appointed by the Armed Services Committee on the House side, three on the Senate, appointed by the Senate Armed Services Committee, a representative from the Secretary of Defense, a representative from the FBI, a representative from DCI as well.

Now, significantly, you are, Mr. Secretary, not represented here. Now, is that something you'd prefer not to be in?

Secretary RICHARDSON. I'd prefer—

Vice Chairman KERREY. You said earlier, lock, stock and barrel. I mean, are you saying that?

Secretary RICHARDSON. Senator, I prefer not to be represented. I think there should be oversight. These are public citizens. I think the Congress, in many cases, has made good recommendations of people to oversee us. There were some in my Department that wanted to make sure we had representatives from other agencies—CIA.

As far as I can tell, the security management board that exists now, that was a compromise from Senator Warner's group, is not working. We'd just as soon get rid of it and have a new panel. So, I am ready, I think, subject to technical changes—I don't know what else is in that provision—to say that we will support this independent panel as constituted.

And what I referred to, Senator, was some of the foreign visitors initiatives that are in your bill I think we can work with. I don't know if that's that provision.

Vice Chairman KERREY. No, it is not that provision. There are one, two, three, four, five, six—there are ten sections in subtitle D that make statutory changes, some of them that, my recollection is, Mr. Curran has recommended earlier as well. But the first one, this Commission on Safeguards, Security and Counterintelligence, as I said, is an unusual entity with, it seems to me, a capacity to, on a continuing basis, make recommendations to improve our ability to do the kind of oversight and maintenance for national security.

Secretary RICHARDSON. Senator, I'm ready to stand scrutiny by outside people. I think the Department should. And I'm ready to accept that commission.

Vice Chairman KERREY. Second is the—there is in here, Section 3153, dealing with background investigations. Have you looked at those recommendations?

Secretary RICHARDSON. Yes. I think they are technically okay.

Vice Chairman KERREY. And 3154, a plan for polygraph exams?

Secretary RICHARDSON. There's some language in the legislation that may be a little too broad that we'd want to work with you. But in principle, we would be prepared to support that.

Vice Chairman KERREY. Now, one of the things that the DCI Directors always have that you do not have—and it, I think in this instance, may have created some of the problem—and that is, you do not have the authority to remove, either temporarily or permanently, someone's security clearance who works at the laboratories. Is that correct, under statute?

Secretary RICHARDSON. I have that authority.

Vice Chairman KERREY. You have authority to remove, for cause, under—

Secretary RICHARDSON. Yes. Yes. For cause, yes.

Vice Chairman KERREY. Okay. Well, that's—

Chairman SHELBY. Mr. Secretary, is that statutory authority?

Vice Chairman KERREY. But is it not different than what DCI—

Secretary RICHARDSON. I don't believe it's statutory, I think it's the rules.

Vice Chairman KERREY. Doesn't the Director of Central Intelligence have more authority, Mr. Curran, than—

Mr. CURRAN. Yes, he does. Yes, as the head of the Intelligence Community, he has the authority over all components.

Secretary RICHARDSON. Senator, there are very many statutory codifications in some of the reform legislation that we are prepared to work with you and support.

Vice Chairman KERREY. When Senator Shelby led a tour out to— took the Committee out to Los Alamos, that was one of—we went out there together. We saw that as one of—thought that that might be one of the weaknesses, the differential in capacity to remove security clearances—that is, the differential between what DCI directors have and what you have, or what the Secretary of Energy has.

Secretary RICHARDSON. Well, I would welcome the statutory authority.

Vice Chairman KERRY. There may be a reason for not granting, too, for all I know. I don't know. I mean, I don't want to—

Chairman SHELBY. Senator Kerrey, would you yield for one second?

Mr. Secretary, would you work with us on some language in this regard?

Secretary RICHARDSON. Yes, yes.

Chairman SHELBY. That would strengthen what you can do statutorily?

Secretary RICHARDSON. Yes. Yes.

Chairman SHELBY. I just think it has a lot more—

Secretary RICHARDSON. And Mr. Chairman, let me just say in principle that the language I've seen from your bill is a good start.

Vice Chairman KERREY. I'll just try to roll through this fairly quickly. 3155 is civil monetary penalties for violations of regs relating to safeguarding and security of restricted data.

Secretary RICHARDSON. Yes.

Vice Chairman KERREY. Up to \$100,000?

Secretary RICHARDSON. We can support that.

Vice Chairman KERREY. And a moratorium on lab-to-lab work?

Secretary RICHARDSON. Well, I'm not sure about that. Is that the China lab—

Vice Chairman KERREY. Yes, it's a modification of the initial proposal that Senator—that the Chairman made. It basically calls for a study and an evaluation by the security agencies, I think the FBI and the DCI.

Chairman SHELBY. It's a net assessment you wanted.

Vice Chairman KERREY. Yes.

Secretary RICHARDSON. I think that's all right. A net assessment, a study. We'll work with you on that, yes.

Vice Chairman KERREY. And the rest of them were increased penalties for misuse of restricted data. Do you have any difficulty with that?

Secretary RICHARDSON. No.

Vice Chairman KERREY. And an organization that—you already indicated the two sections of Senator Kyl's bill—I think it was 212 and 213, or 213 and 214; yes, 213 and 214—there were some missing provisions that were not in there that Senator Kyl mentioned earlier when he was testifying.

Secretary RICHARDSON. I think in principle we can support them. There are some specifics that we'd want to work with you on.

Vice Chairman KERREY. A counterintelligence officer at each one of the facilities?

Secretary RICHARDSON. Yes.

Vice Chairman KERREY. Designated in law?

Secretary RICHARDSON. Yes.

Vice Chairman KERREY. Whistleblower protections?

Secretary RICHARDSON. Sure.

Vice Chairman KERREY. Investigation and remediation for reprisals, referencing whistleblower protections?

Secretary RICHARDSON. Yes, we're ready to accept that.

Vice Chairman KERREY. Notification of Congress of certain security and counterintelligence failures at the Department of Energy directly from you?

Secretary RICHARDSON. I'm not sure about that. No. [Laughter.] Of course.

Vice Chairman KERREY. Thank you, Mr. Chairman.

Chairman SHELBY. Senator Kyl.

Senator KYL. Thank you, Mr. Chairman. Mr. Secretary, I'm really astonished at your testimony. And I think that all of your criticisms result from a profound misreading of the clear language of our amendment. And it is my hope here, following—having you follow along word by word with me—to demonstrate why you should have no concerns about this. Because all of the concerns you've expressed are concerns about your authority. We do not mean to diminish your authority one iota. And let me make that crystal clear.

There's a whole series of things here—the budget influence will wane, diminished accountability, end of contract accountability, even a suggestion that this is the first step toward military control of nuclear weapons development, which is, of course, absurd. All of that is suggested by a comment you made—and I think I'm quoting you directly—when you said that we are creating, by this amendment, “an agency within an agency where I have no authority.” Now that was a direct quotation from what you just said in your direct testimony.

Let me read you the first and most important sentence of our amendment. And you can follow along. It's on page five, line five. The very first sentence of our amendment. “There shall be, within the Department, an agency to be known as the Nuclear Security Administration, to be headed by an administrator”—now let's follow along here—“who shall report directly to, and shall be accountable directly to the Secretary.” Period.

Secretary RICHARDSON. Yes.

Senator KYL. “Who shall report directly to, and who shall be accountable directly to the Secretary.” The assumption is that the Secretary picks the person. He supervises the person. This individual is directly to report to the Secretary, and to be accountable.

Secretary RICHARDSON. Can I respond, sir?

Senator KYL. Yes. But let me just make the point here. I mean, I don't know what could be clearer in our effort to say that this person works for you, Mr. Secretary. And so, when you say that we're taking away all of your authority here, and you even said that you could show where it says the administrator would not have to report to you, this language says he specifically shall report directly to you.

Secretary RICHARDSON. Well, let me, Senator, if I could—

Senator KYL. I don't understand your concern about the diminishment of your authority.

Secretary RICHARDSON. Well, let me also say, Senator, that I stand behind everything I said in my statement. Let me read you a provision of your bill—

Senator KYL. All right. Let me—before—let me interrupt you. And I hesitate to do this, but I wanted to make one other point. Since you stand behind everything, then I think we have something else to talk about here.

In the very beginning, you said that the changes that we made—we made two changes—show that our amendment was not carefully drafted. Now, I take personal offense at that. And I wonder

whether it suggests that this is what we get by trying to constructively cooperate with you. When you suggest that there are certain things that need to be changed, and we change them—and I want to, in a moment, go through those two things—that that shows that we weren't careful to begin with.

We were very careful to begin with. But because of concerns you expressed, we tried to respond to those concerns and do what you wanted us to do. So, I stand by what we did, too, Mr. Secretary.

Secretary RICHARDSON. Well, Senator, I'll stand by what I said to you on the phone. We tried to meet with your staff to give you our concerns, and there was no response.

Senator KYL. Well, we look forward to that meeting.

Secretary RICHARDSON. Well, let me just be specific. Let me read section 2.15(c)(1) of your provision. It says, "The administrator shall not be responsible to, or subject to the supervision or direction of any officer, employee or agent of any other part of the Department of Energy." Now, if that doesn't say that this individual—this is your own provision, 2.15(c)—

Senator KYL. Excuse me, Mr. Secretary, what—

Secretary RICHARDSON. 2.15(c)(1), page five of your initiative, "shall not be responsible," the administrator "shall not be responsible to, or subject to the supervision or direction of any officer, employee or agent, of any other part of the Department of Energy."

Let me also express another concern in that same page five, Senator.

Senator KYL. Mr. Secretary, could I please interrupt you, and say you're misreading this?

Secretary RICHARDSON. Well, that's what it says, Senator.

Senator KYL. Well, let's read it together. This is section 2.15(c)(1), is that correct?

Secretary RICHARDSON. Right.

Senator KYL. It reads—let's read along here—not the Secretary, not the administrator, but the word is—the noun of the sentence—the subject of the sentence is, "the personnel of the Administration." Is that correct? That's how it begins. "The personnel of the Administration, in carrying out any function assigned to the Administrator, shall be responsible to and subject to the supervision and direction of the Administrator, and shall not be responsible to, or subject to the supervision or direction of any other employee or agent of any other part of the Department of Interior, other than the Director of the Office of Counterintelligence"—the very person you wanted to ensure was the primary person in charge of intelligence.

So now, where does this take away your authority?

Secretary RICHARDSON. Well, very clearly, Senator, it—when you have employees in my Department, and you state that these employees, wherever they may be—the personnel or the administration or the Administrator—shall not be responsible to or subject to the supervision or direction of any officer, employee or agent of any other part of the Department, this gives me pause.

Senator KYL. Do you want it to say, "except the Secretary?"

Secretary RICHARDSON. Let me just go to another point.

Senator KYL. That's, of course, what it means. Would that satisfy the concern?

Secretary RICHARDSON. No. Senator, I don't like your provision.

Senator KYL. I need to understand the concern you're expressing. Are you saying that this suggests that you don't have the authority over these people?

Secretary RICHARDSON. Yes, it does.

Senator KYL. All right then, we'll say—

Secretary RICHARDSON. It does.

Senator KYL [continuing]. "Except the Secretary," of course. Would that then satisfy your concern with respect to this provision?

Secretary RICHARDSON. It—what about—what about the security czar? What about health? What about safety?

Let me read another provision that concerns me in your provision.

Senator KYL. Go ahead.

Secretary RICHARDSON. On page 5, line 14: "The administrator shall be responsible for the executive and administrative operation of the functions assigned to the administration, including functions with respect to the selection, appointment and fixing of the compensation of such personnel as the administrator considers necessary."

If I'm the Secretary of Energy, in other words, this administrator can hire all the people? What say do I have? What about the personnel system of the Federal government?

Senator, my concern is that you are setting up a superagency within the agency that, first of all, only deals with the weapons side but is not dealing with Rocky Flats, for instance. This doesn't deal with Rocky Flats because that's environmental management, it doesn't deal with health, it doesn't deal with the entire security structure of the Department, which is a problem.

Under the security czar, Senator, under the security czar, we deal with every facet of the Department. Defense programs, which are very dear to you, they would have now accountability and responsibility to deal with security, working with a czar that develops their budget policy, cross-cutting budget policy.

In the past, you correctly pointed out, Defense Programs had little line responsibility. I've changed that through an Executive Order. So we've corrected that problem of giving defense programs the priority that it deserves.

Senator KYL. Well, Mr. Secretary, you are correct that we, in the paragraph you just cited, specifically assigned to this person and this person only, subject only to your superior jurisdiction, the authority to do these various things, and that is precisely the purpose of this amendment so that the other rules relating to personnel or environment, whatever, don't apply.

Now, with respect to security, we make an exception, of course. And one of the two changes we made in the amendment to specifically deal with the concern you expressed, was to ensure the primary jurisdiction of your counterintelligence official. We added on page 2, line 2, the sentence: "The director of the Office of Counterintelligence shall be the primary official responsible for counterintelligence and shall have primary jurisdiction over all such matters at the Department of Energy."

So, clearly, that person, not this administrator, has the primary—

Secretary RICHARDSON. Senator, counterintelligence and security are different. And your amendment, your provision, doesn't take care of that problem.

Now, let me tell you, when I first saw the amendment—and you are trying to make a serious effort; I'm not trying to diminish that—but you had counterintelligence along with safeguards under this defense agency. You had Ed Curran reporting to an Assistant Secretary when he reports directly to me. Now you changed that.

Senator KYL. Well, we didn't have it there. You misunderstood that it was there. We changed it to make it crystal clear that that was never our intention. But go ahead—in any event now it's not, so it should no longer be a concern.

Secretary RICHARDSON. Well—

Senator KYL. Take yes for an answer.

Secretary RICHARDSON. No, I'm not going to give you yes, because this is not a good provision.

Senator KYL. No, I said yes to your concern and changed the amendment.

Secretary RICHARDSON. Well, you did it last night. I saw a change last night.

Senator KYL. Well, that's what I'm saying, take yes—I mean, we're trying to respond constructively.

Let me, since my time is up—and, Mr. Chairman, you'll want to allow this question—you made the point in your testimony that our amendment will hurt the independence of the labs, and I'm just going to say this, Mr. Secretary. If you're going to defend the existing degree of lab independence, then we have a fundamental disagreement here. Because I think most people who have looked at this believe that we should reduce the independence of the labs when it comes to national security. That's why much of what we're doing—and what I thought and what I know Mr. Curran is doing—is designed to do, to ensure that the labs are no longer independent of your control and of other people's control when it comes to national security.

Secretary RICHARDSON. Senator, what you're doing in your amendment is you're giving the labs more independence. We don't want to do that.

Senator KYL. No, sir, we're not.

Secretary RICHARDSON. Yes, you are. What you are doing is, you've eliminated an independent—

Senator KYL. You're—Mr. Secretary—

Secretary RICHARDSON. Senator, if I could—

Senator KYL [continuing]. You said, and I'm quoting, that "this amendment will hurt the independence of the labs," and you defended the necessity for the labs to have this independence so that they can continue to do their wonderful stuff, which of course, we all want a certain degree of.

Secretary RICHARDSON. Senator, what your provision does is eliminate a cornerstone of reform. We want to have independent oversight of all the security functions in the Department of Energy. My reform package creates an office of independent oversight which had been shunted across by past Secretaries of Energy.

Under your provision, the defense programs, this agency, has no oversight. They can do whatever they want. That is not right.

And when you said, "science in the labs," Senator, our labs don't just do weapons work. They do energy, they do climate change, they do biology, they do human genome research. They're multifaceted. And to all of a sudden set up a fiefdom within the defense component of the labs when we have had problems with lab culture and lab independence is only going to make the problem worse. You are setting up a superior structure of lack of accountability by this new agency within an agency that has so many fiefdoms.

And I'm—Senator, you are trying to deal with this problem, and I respect that. And you've made a lot of contributions to stockpile stewardship and many others, and classification, but I got to tell you, Senator, I have been there eight months and this provision—I have studied reorganization, and I am trying to reform the Department. This provision for this agency undermines my effort.

Mr. CURRAN. Sir, can I just add, from a counterintelligence point of view, one of the things we were resisting or we recommended in the present structure is that the Office of Counterintelligence reach out directly into the laboratories. That was resisted to a certain degree because, for instance, Brookhaven National Laboratory is owned by the Office of Science. The Office of Science wanted CI to go to the Office of Science for implementation, and they would then go to Brookhaven.

I absolutely rejected that idea. I need to have the ability to go directly to the laboratory without going to the program office. If I wanted to do something at Los Alamos or Sandia, that means, under this proposal, I would have to go to Vic Reis to implement or ask him to do something in Los Alamos. Under the present structure, I don't do that. I go directly into the laboratory and bypass the program office.

Senator KYL. Thank you, Mr. Chairman. That's just not true, Mr. Curran, and anything you want to write in here to make it crystal clear that the objection you just raised is not in fact true, I'll accept. In other words, again, take yes for an answer. That's not the intention. That's why we said that you have the—that he would the prime—or you would have the primary jurisdiction. And it's why we made the second change we made.

And I won't take anymore time to illustrate what the change is designed to achieve, but it's line 7 through 10 of page 5, which is designed to get to the other matter that the Secretary raised about other functions of the laboratories needing to have—where it says, "the Secretary may direct other officials of the department that are not subject to the authority of the administrator to review programs," and so on.

So, I mean, specifically designed to meet your objections.

As I said on the phone, I'm perfectly willing to sit down, and nobody from your Department has ever called us to talk about this.

Secretary RICHARDSON. Yes, we did, Senator. We called your staffer, the name of the person you told us.

Senator KYL. Mr. Secretary, let's set up—

Secretary RICHARDSON. You know, we're going to get into a—

Senator KYL. We'll set up a time where we can meet.

Secretary RICHARDSON. All right.

Senator KYL. And I will try to understand each of your objections, because, you're right. We want to seriously deal with this, we want to be cooperative. I hope I've demonstrated that by accepting suggestions that have been made, by trying to address concerns that have been made, and hope that when we do that, that we're not criticized on the basis that our original product was not well thought out. We'll do our very best to try to meet your concerns, I can assure you of that.

Thank you for allowing me to take more time than I was allotted, Mr. Chairman.

Vice Chairman KERREY. Well, Senator, it seems to me that what we need is some kind of a process. I mean, I've listened to the exchange between the two of you, and it seems to me there's willingness—you're both trying to get to the same place. And I wonder if—the Chairman earlier indicated that he felt we ought to be able to try to work this out when the three Senators were together making a presentation.

And I mean, I take the points that you're making, Mr. Secretary, very, very seriously, and I don't want to do—the reason I went through the list of things that are already in the Armed Services bill is I want to make the point that we've already got a pretty substantial response in addition to the things that you have implemented, and I just want to make sure in the panic we don't do something that's going to make things worse, and that seems to be what you're trying to do, that seems to be what Senator Kyl is trying to do.

Secretary RICHARDSON. Well, Senator, I think I'd rather be honest than say we can work these things out. I just—I want to work with the Senator, but creating an agency within an agency is just something that I cannot accept, and I want to say that very clearly.

Now maybe there are some improvements. Maybe I can convince the Senator, if he is open to taking a look at my proposal. Now my proposal has been endorsed by a lot of entities. I want to hear criticism of my proposal.

Vice Chairman KERREY. I appreciate that.

Secretary RICHARDSON. I want to hear—

Vice Chairman KERREY. I appreciate that, Mr. Secretary, but my preference is, and you no doubt recall in your past, I mean, from our standpoint we're writing a law here. We're talking about writing an intelligence authorization bill that I'd prefer, frankly, not to have vetoed. So—I mean, that's my goal. I'd prefer not to have the intelligence authorization bill vetoed. And I don't know if your recommendation is going to hold with the President, but I'd prefer to avoid that kind of confrontation if at all possible.

So it seems to me that, you know, you've raised your objections. You've made it clear what specifically your objections are. It seems to me that we ought to see if it's possible to work it out. Now, maybe we can't. You've made it clear that you are skeptical about that, and, you know, you haven't pulled your punches, you haven't been shy—as you normally are—in describing where your disagreements are with this amendment.

But it does seem that there's a good-faith willingness to try to accommodate, and I just would recommend that through this Committee we try to work a process that would see if it's possible to

come up with language that you at the end of the day might be able to support.

Chairman SHELBY. Mr. Secretary, I just want to add—I was out just a minute ago. But Senator Kerrey and I and other members of the Committee, we want to try to work with you, if we can. You've been in the legislative body. You know how it works. And what we're interested in is helping solve a tough problem here. And if you'll work with us, fine. If you can't, the process will work. But I think we do better working together, don't you?

Secretary RICHARDSON. Yes, Senator. And I have demonstrated that. I have taken many of your provisions, but when you make a proposal, or when someone makes a proposal, however well-intentioned, that I believe will not work, that undermines my efforts at security reform—

Chairman SHELBY. Well, we didn't make—Senator Kerrey and I hadn't made the proposal. We're just conducting the hearing on the proposal, as you know.

Secretary RICHARDSON. Senator, I just need support from the Congress for correcting a very serious problem.

Chairman SHELBY. And we want to do that.

Secretary RICHARDSON. And I don't want to be micromanaged. Just—just listen to me, Senator—

Chairman SHELBY. Okay.

Secretary RICHARDSON [continuing]. Because I've spent a lot of time on this, and I think we have to approach this in a bipartisan fashion. And we are ready to take constructive suggestions, and we are taking legislation and supporting it and making things better. But when I see a proposal that I believe undermines my security efforts at reforming the Department, that creates another fiefdom, that undermines my authority, that makes the bureaucracy worse, I have to tell you.

Now, there are some components that maybe we can work on that move in our direction, but again, we'll work with you. But I just want to be very clear how strongly I feel about it.

Vice Chairman KERREY. Let me be clear in response to what you said, Mr. Secretary. I mean, as you know, we're a nation of laws. You referred to this agency as yours several times, and it is, you know, you are the temporary—you are the Secretary of Energy for the moment and, you know, at some point you're not Secretary of Energy and somebody else is. We're trying to evaluate not how good a job are you doing. Every single one of us on this Committee has had high praise for what you have done since you've taken over as Secretary of Energy. The question is, what's the underlying law?

Secretary RICHARDSON. Well, I've—

Vice Chairman KERREY. What should the law be? Because it is the law that determines what kind of operating procedures we have at the various departments and agencies of government.

I mean, I'm with the Chairman. I have not supported this amendment. So I'm not asking you to participate in something that says that I'm on board with this amendment. But it just seems to me that we have three Senators, as you indicated, with a great deal of experience in this subject, who do want to try write the law to make the country safer, and it seems to me we ought to have

a process here leading to see if we can't get both a meeting of the minds and an agreement. If we can't, fine. We may not be able to.

Chairman SHELBY. Mr. Secretary, I just want to set the record straight, too, following up on Senator Kerrey. We are a nation of laws, and if we do something statutorily and you work with us and if this helps fix the problem, whether you're the Secretary or someone else is the Secretary, what we're interested in is security of the labs, security of the nation, and I think you are, too. I'm not interested in egos. You know who's going to be there. I'm interested in the country.

Senator Allard, you've been very patient.

Senator ALLARD. Thank you, Mr. Chairman. I'm going to change the subject just slightly, just kind of check out some areas while we're looking at the statute. And they deal with some of your counterintelligence measures that you've now implemented.

And you've now, in regard to the computer information, you put banners on the computers, or required that banners be put on the computers, to let the employees know that they are basically the United States' property and not anybody else's property. And now, will these steps definitely overcome privacy protections as defined in the Electronics Communication Privacy Act as well as existing case law?

Secretary RICHARDSON. Yes.

Senator ALLARD. What existing statutory impediments remain to DOE and FBI officials maintaining an immediate right of access to the files of computer users at the national labs? Are there any?

Secretary RICHARDSON. We don't think so, but we'll review that, Senator.

Senator ALLARD. Would you review that? I'd very much like to know if you have something there that we need to address. We'd like to do that.

Now, one of the things that you've implemented is audit, random audits of the individual computers to ensure compliance with proper security measures. And how often are the audits occurring?

Secretary RICHARDSON. I'm informed that we have an audit going on right now. But they're randomly done.

Senator ALLARD. So they're randomly selected?

Secretary RICHARDSON. Right, right, on a classified basis.

Senator ALLARD. But are you—so the auditing is going on continuously, and you're selecting computers at random to do that. Do I understand what you're doing?

Secretary RICHARDSON. Yes. I can get you more specific details.

All I know, Senator, is I have sent 31 teams since we announced our counterintelligence plan when I came on board to ensure that cyber security, computer security, including standing down at the labs, closing them down, to make sure that we have the best technology, the best training, to ensure protection of our secrets is something that is continuous and ongoing.

And I must say, it's the most complicated to resolve, despite the fact that at our labs, as you know, we have the best computers in the world. But we can get you some specific briefings on how we are dealing with some of these random classified exercises that we're doing.

Senator ALLARD. Well, I'd appreciate that. And do you have any idea, if you would include, you know, in your memo, how many lab employees are likely to be audited within a calendar year? If you don't have that information—I wouldn't expect you to have it with you—if you'd share that with us.

Secretary RICHARDSON. Okay. Yes.

Senator ALLARD. And now, what type of criteria are you using for your random selection? I suspect there might be more computers that may be more secure than others. Are you selecting them out more randomly than other computers? Or how are you setting about on your random selection?

Secretary RICHARDSON. We select the computers that have the closest access to the Internet. A lot of this information, Senator, is classified, and we can give it to you on that basis.

Senator ALLARD. Yes, Okay. If you'd also include that, I'd appreciate it.

Now, this raises a question. Instead of random audits, shouldn't employees of the lab with access to the most highly classified materials be watched more closely and thus audited more frequently?

Mr. CURRAN. Sir, I was going to try to respond to that.

Senator ALLARD. Okay.

Mr. CURRAN. There are procedures in place to address that, but I would feel a lot more comfortable if we go in classified hearing to discuss that.

Senator ALLARD. Okay.

Mr. CURRAN. We have procedures to address that specific question. The weapons laboratories have an ongoing automated process for computer system audits. Laboratories using the automated process conduct audits on a continuing basis. The weapons laboratories using fully automated audits cover all lab employees within a calendar year.

Senator ALLARD. Okay. Do you see any need for any statutory authority as far as your audits are concerned?

Mr. CURRAN. As far as we're concerned, from a counterintelligence point of view, we have the authority to go into the computers and do a search.

Senator ALLARD.: Review that closely, and if there's some help in that area, if you'd please let me know I'd appreciate it.

It looks like my light's red already. That went awful fast, Mr. Chairman. I yield back the time.

Chairman SHELBY. Do you have another question?

Seantor ALLARD. No, I think we're pretty well covered.

Chairman SHELBY. Senator Bingaman.

Senator BINGAMAN. Thank you very much, Mr. Chairman. I appreciate the chance to ask a few questions here since I'm not a member of the Committee. And I want to commend you for having the hearing so quickly. I think you and Senator Kerrey are doing exactly what needs to be done, and that is giving the Secretary a chance to respond and, of course, the proponents of the amendment a chance to explain their position.

Mr. Secretary, let me ask about your view of the nature of the problem. I have a real problem understanding how the proposed reorganization in the department, the establishment of this mini

agency within the department, how it relates to the problem we're trying to fix.

As I understand the problem that has caused so many hearings to happen and such concern, which I share, the problem is the transfer of secret, highly classified information by a physicist—or this is the allegation, at least—that there was a transfer of highly classified information by a physicist working on the most sensitive parts of our nuclear weapons program, an insider.

I've had trouble understanding how setting up this agency would solve that problem. The discussion we've had here in Congress, when we had the short debate on it a couple of weeks ago and again here today to an extent, is that perhaps if we eliminate some of the extraneous activity that goes on in the Department of Energy or keep that separate so that we don't have people working on refrigerator-efficiency standards impacting on this nuclear weapons activity that this insider problem that's occurred or is thought to have occurred at Los Alamos, wouldn't exist.

I don't know if you have any comment on that, but I just—I don't see the connection, quite frankly, between the reorganization proposal that we are discussing today and the problem of counterintelligence—inadequate counterintelligence—inadequate intelligence, inadequate security, which is what Mr. Curran's been focused on and what you've been focused on.

Secretary RICHARDSON. Well, Senator, I think that this provision that has been proposed would actually—would have hurt our ability to detect the physicist that you mentioned. Here's why. Under this provision, the Office of Independent Oversight, which is supposed to be a junkyard dog entity within the whole Department, would not have had access and oversight, would not have been permitted to look at this problem, which is within what is called the defense program of our department.

This is what I worry about. I think what you want to have is accountability. You want to have the programs accountable in security. You want to have a security component within the Department, a czar that oversees the entire security operation, but then you also want to have independent oversight. You want to be able to detect a problem at not just the defense program component of the labs but the environmental management, the Rocky Flats, plutonium, the entire complex that we deal with—science too. We have security requirements at our science labs that we should follow.

So what I believe, under my plan, which basically says there is a security czar, and that the Defense Program's chief, who now has direct accountability from all his programs including the labs, because of executive initiatives that we undertook two months ago, that now the security czar says to the Defense Programs, how much are you going to spend on security? It's a joint decision.

But then Defense Programs is responsible for making sure that these security provisions are followed, including the independent oversight, making sure that the computer infraction does not take place. So this is why I believe that the proposal that we have put forth, that has been part of many oversight committees of the Congress—the Dingell committee, the Commerce Committee, the GAO and many others, the Galvin Commission, which Senator Domenici cited. That is correct. The current security structure at the Depart-

ment of Energy, before we changed roles and responsibilities, was not working, but we've changed that.

Senator BINGAMAN. So you believe—

Secretary RICHARDSON. And we are statutorily to cooperate with this Committee to give it some permanence as long as we can work that out.

Senator BINGAMAN. One other concern I've had in the language Senator Kyl read is on page five, the next sentence after the one he read about the Department's Nuclear Security Administration being headed by the administrator reporting to the Secretary. It says "the Secretary may not delegate to any department official the duty to supervise the administrator."

I guess what came to mind there is that, Charles Curtis, who was the former Under Secretary, I believe is universally recognized as having done a good job in that position, and he did begin some initiatives on counterintelligence which evidently were not followed through with as they should have been. But this language would keep you, as the Secretary, from tasking the Under Secretary to do the very thing that Charles Curtis was trying to do, or keep you from tasking Ernie Moniz, who is expert in many of these nuclear weapons-related issues, as I understand it, from doing the kind of thing that needs to be done. Am I right?

Secretary RICHARDSON. That's right. It would keep the security czar out of being able to supervise the administrator. Why should this administrator have this kind of latitude when other administrators within the Department that deal with equally sensitive national security issues do not have that?

I believe—I just said to this Committee I'm ready to submit to a commission of individuals appointed by the Congress without the bureaucracy to supervise me. Why should this nuclear security agency not be overseen? The Office of Independent Oversight would not apply to this under this language. I think the essence of what we're trying to do is to have the Office of Independent Oversight deal with security.

They can come in at any time to any lab, to any facility and say, hey, you're screwing up. This is not working. We want that. We want that independence. That didn't exist before under present Department of Energy security structures. We now have that. I now have an Independent Oversight Office going out to all the labs all the time to implement the counterintelligence proposals that many of you have asked us to do, that we're doing.

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

Chairman SHELBY. Senator SPECTER.

Senator SPECTER. Thank you, Mr. Chairman, and thank you for including a round for questions.

Chairman SHELBY. Thank you for coming back, the former Chairman of the Committee.

Senator SPECTER. Thank you.

Chairman SHELBY. You're welcome.

Senator SPECTER. It's a good precedent. Someday, you'll be a former Chairman of the Committee perhaps.

Mr. Secretary, I congratulate you on your recognition for Notra Trulock with the cash award. And you and I had a chance to talk a few moments ago informally. And I asked you as to what his ac-

tivities were. I think it's very important that Mr. Trulock be commended for the disclosures which he has made.

And from my own experience in government, I have a concern that some might try to penalize him somewhere down the road for being candid. The so-called whistleblower syndrome is not regarded well in some quarters. And I'd just like for you tell us what he's now doing and your assurances that he will be recognized, not only in formal ways, but will be permitted to continue to do the important security work for the Department of Energy.

Secretary RICHARDSON. Well, Senator, as you mentioned, last week I gave Notra Trulock a cash award of \$10,000—\$7,200 after taxes, which surprised me. [Laughter.]

But I did so because of his—exactly what you said, his—I think the language stated his persistence and commitment to the national security, to his discovery of this problem. We had a ceremony. He was recognized. He has talked about having problems of access in the past. He is now the acting deputy director of intelligence.

Senator SPECTER. What is he doing specifically in that capacity?

Secretary RICHARDSON. Well he's the number two person in the Intelligence Bureau.

Senator SPECTER. And he has active assignments?

Secretary RICHARDSON. Yes, oh, yes. And he works hard and he's a member of my team and he can stay at the department. There's no plans for any kind of retribution. In fact, I recognized him with this award.

Senator SPECTER. He hasn't been set on the side? He has specific jobs to do?

Secretary RICHARDSON. Yes, oh, yes.

Senator SPECTER. Well, Mr. Curran, let me ask you a question about—perhaps the fastest way with limited time here—

Chairman SHELBY. Go ahead, Senator Specter.

Senator SPECTER. We had a hearing in the Energy Committee on May the 5th. And at that time we had Mr. Ken Schiffer, and we got into the question about the additional funds which were provided on the initiative of the Intelligence Committee back in 1996.

And I asked Mr. Schiffer these questions: Do you know what was done back in 1997 after these additional funds were provided? Mr. Schiffer responded: Yes. In 1997, the lab brought on two additional counterintelligence specialists, gave them training and brought them into the program to help shore up the counterintelligence program.

"Arlen Specter: Did it do any good?"

"Mr. Schiffer: Yes it did."

Then my follow-up question, "What did it do?"

And Mr. Schiffer responded, "Well, with the additional resources, Senator, we enlarged the briefing and debriefing program, addressed other counterintelligence needs, such as the awareness program, and also provided additional cooperation to the FBI in the investigation that was ongoing." And my final question for this purpose: "In your judgment, did it have any effect on improving security to cut back what we now see as a tremendous laxity and problems on security breaches and espionage?" Mr. Schiffer responded, "In my opinion, yes."

Would you concur that the funding which was provided in 1996 did have a significant positive effect on improving security, as Mr. Schiffer has testified?

Secretary RICHARDSON. I think overall, if this—if you're asking this as a specific example, my answer is no. Did the money help in other ways? It certainly did. If I can explain, when we did our 90-day study, Los Alamos was one of the areas we went to.

Senator SPECTER. When was that study done?

Secretary RICHARDSON. In April. We started, April, May of last—or 1998 and the report was submitted on July 1st. One of the more significant—

Senator SPECTER. Was that a follow-up to the study which, in 1996, the Intelligence Committee directed the FBI to do, which it submitted?

Secretary RICHARDSON. Ninety-seven, right?

Senator SPECTER. In 1997 submitted a 63-page report.

Secretary RICHARDSON. Yes. That was the predicate.

Senator SPECTER. April of 1997.

Secretary RICHARDSON. It was not just the FBI study in 1997.

Senator SPECTER. In coordination with CIA?

Secretary RICHARDSON. Right. It was—that study makes 26 recommendations. Very few of those had been implemented. It was also the four GAO studies that we looked at in detail.

Senator SPECTER. But that FBI study, which was finished in April of 1997 which the Intelligence Committee mandated in 1996, was helpful?

Secretary RICHARDSON. Absolutely it was helpful. And that was more or less the bedrock of our 90-day report. It included a lot more of the GAO study. We were also briefed on the previous Peter Lee case and the current case that we have going.

So the Intelligence—because that's what basically instigated the PDD 61. One of the significant findings that we had in that report was that the CI people out in the laboratories did not have the CI experience or background.

In this particular case, in my opinion, neither one of them had significant CI background. Mr. Craig was a computer analyst. Mr. Vrooman had some background with the CIA, but they did not meet the standards.

And in fact, I indicated at that time, they wanted to promote Terry Craig to the head person out there. I said absolutely not. He does not have the background.

Senator SPECTER. Do you think—

Secretary RICHARDSON. That was consistent throughout most of the laboratories, unfortunately.

Senator SPECTER. Well, do you think Mr. Schiffer was correct on what I just read to you, he testified to about the improvements which were made with those \$5 million?

Secretary RICHARDSON. I think that the improvements that were made were significant with those \$5 million because we basically had nothing to begin with. I mean that—I think the budget at that time was about \$2 million. With your five, it went up to \$7.6 million. So Los Alamos was only one area that additional funds were put into.

Senator SPECTER. Well I'm—it increased the security by fivefold, five times from the information which was provided to us. Is that consistent with your understanding?

Secretary RICHARDSON. For Los Alamos?

Senator SPECTER. For the national—yes.

Secretary RICHARDSON. I have a problem with that, in my opinion.

Senator SPECTER. Excuse me?

Secretary RICHARDSON. In my opinion, I have a problem with that.

Senator SPECTER. Well—

Secretary RICHARDSON. For Los Alamos only.

Senator SPECTER. For Los—how about otherwise?

Secretary RICHARDSON. Otherwise, I think the money went to very good places to put people out in the laboratories. But specifically, we had a problem, we identified a problem in Los Alamos where their background was very, very weak, but that was consistent in a lot of the other places.

Senator SPECTER. But that was because of the specific personnel there, not because—

Secretary RICHARDSON. Correct.

Senator SPECTER [continuing]. Inadequate funds had been provided?

Secretary RICHARDSON. Absolutely. Absolutely.

Senator SPECTER. So that's the qualification that you had with respect to the backgrounds of those people.

Secretary RICHARDSON. And again, at that time, DOE headquarters had no oversight responsibility, so they actually had no input as to who they could hire or not. Now we do have that.

Senator SPECTER. But aside from the limitations on the personnel and their background and qualifications, the funding was very helpful?

Secretary RICHARDSON. Absolutely very helpful.

Senator SPECTER. If I may ask one more question, Mr. Chairman. Chairman SHELBY. Go ahead.

Senator SPECTER. Mr. Secretary, we're searching for the right mix of independent oversight, and there have been a number of ideas and I discussed one with you briefly when we had a chance to talk in the anteroom.

Let me propound it and get your judgment for the record here—that we may refine some of the statutory proposals to have an advisory group reporting to the Secretary of Energy, and that advisory group would consist of personnel from the FBI and CIA and perhaps others, but the FBI and CIA would be there to evaluate counterintelligence and security and the visitors program and to give their insights and their inputs.

The Secretary would retain the authority to make the final judgments, but there would be a procedure that if the Secretary did not follow did not follow the recommendations of this select group, that it would be reportable to the oversight committee. That would be the Energy Committee, which has oversight on the Department of Energy, so that it would be similar to the provisions of the inspector general of the CIA where the inspector general makes a recommendation, the director of the CIA does not follow it, the inspec-

tor general then has a channel to come to the Intelligence Committee so that there can be congressional oversight and we can take a look at what we think ought to be done.

The final authority always rests with the Executive branch, but if it's sufficiently significant, then of course there can be legislation, going through all of the procedures which have to be adopted in that respect.

If you'd prefer to think about it, as opposed to giving a snap judgment, I would understand that. Or if you'd be prepared to comment, I'd be interested in your views.

Secretary RICHARDSON. Senator, let me think about it. Let me think about it. Although I will say that under the Shelby-Kerrey language and in the Armed Services Committee there are certifications of the FBI director, of the Secretary of Energy, of the Director of CIA, on whether we have satisfied certain counterintelligence measures. There's already—not in the books, but it's proposed—and we think that's constructive. But let me say that I would be very pleased to work with you to see how that happens.

I will also say to you, Senator, that you—you know, maybe I'm trying to convert you—but you were the author of the legislation that created drug czars, and you created this component within our national drug policy. That's what I'm trying to do.

Senator SPECTER. No, no—I'm converting you, Mr. Secretary. You have the conversion inverted. [Laughter.]

Secretary RICHARDSON. Well, I'm trying to do with a security czar what you did with a drug czar, so—so, anyway. I'll drop it. [Laughter.]

Chairman SHELBY. Thank you. Senator Domenici.

Senator SPECTER. I think that's a very fine idea when you reference my initiatives. Thank you very much.

Chairman SHELBY. Thank you. Senator Domenici.

Senator DOMENICI. Mr. Chairman, I've appeared on your panel before as inquiries were made.

Chairman SHELBY. You're knowledgeable about the labs, as much as anybody.

Senator DOMENICI. Frankly, I didn't think I was going to come back, you know, but I want Secretary Richardson to observe that I am smiling. I have—there's no Italian temper within my body today. But I might suggest, and I say this to the distinguished committee, there are some people other than Secretary Richardson who know something about the management of the DOE laboratories and the Department of Energy.

Chairman SHELBY. I think he knows that.

Senator DOMENICI. And frankly, I believe that there are study after study, none of which recommends that that will fix the Department of Energy. In fact, he can pick any of the major ones up and see if that will fix it, whether it's the Admiral's report, whether it's the report made by the former Motorola CEO. Nobody said the Department is burdened only by security problems. Security problems are made more difficult because the management scheme is not calculated to be very efficient and very chain-of-command oriented.

Chairman SHELBY. Senator, the Secretary's talking about one way. You, Senator Kyl and Murkowski have proposed another.

Senator DOMENICI. Right.

Chairman SHELBY. Senator Kerrey used the word, I believe, "permanence" earlier.

Senator DOMENICI. Yes.

Chairman SHELBY. Permanence is important here, isn't it?

Senator DOMENICI. It's very important. But I would also suggest one last thing. For anyone sitting in the Department of Energy as Secretary, as my friend Bill Richardson has for less—how long have you been in? A year?

Secretary RICHARDSON. Eight months.

Senator DOMENICI. Eight months—to be able to say that this permanent approach we have will ruin the laboratories, will create all kind of problems with our nuclear ability, you know, I had to come back down and say there just may be another view, and to make sure that I could say that since I wouldn't think the laboratories in the State of New Mexico would want to take his word singularly that what I'm suggesting will ruin the national laboratories. I thought I ought to come down and say that there are many who don't think it will, but rather will make sure that they are better than they are.

So my only concern—my second concern, and I close on this, I sent Secretary Richardson the amendment, my entire statement last night. I did not see his statement until today. I did not see these detailed charts. And I would just ask you if you would let us, Mr. Chairman, do a critical analysis of it and submit it to you and submit it to the Secretary, because many of the things he said about our amendment are just not so.

Chairman SHELBY. Absolutely, but I'd also on these charts, I would, Mr. Secretary—we'll give them back to you, but we'd like to keep them since they've been part of the record, so we can reduce them in size and then we will return them to you. Is that okay?

Secretary RICHARDSON. Yes, you can keep the charts.

Chairman SHELBY. Okay. Well, I think that's for the record. Go ahead.

Secretary RICHARDSON. If I could—

Chairman SHELBY. You want to respond?

Senator DOMENICI. Mr. Chairman, I am actually finished. I did not come down to inquire. I did not come down to ask questions.

Chairman SHELBY. Want to let him respond?

Senator DOMENICI. If he'd like to comment, that's fine with me. He's my friend.

Chairman SHELBY. Go ahead, Mr. Secretary.

Secretary RICHARDSON. Well, I do want to comment, because what Senator Domenici and I think Senator Kyl and others, when we deal with national security at the Department of Energy, we agree with about 90 percent. Here's the 10 percent where we don't agree. And I wanted to state that very clearly.

And I am not—the Senator mentioned a number of studies. Well, I can tell the Senator that Admiral Chiles' commission has endorsed the proposals that I have made to revamp Defense Programs. This is how DOD and CIA do it. This is how many internal boards, the GAO have said security should be reorganized.

I'd never heard of this Defense Security Agency approach until three weeks ago. The Senator was very gracious. Last night, he

called and sent me his statement. I appreciated that. He sent me the proposal. I was aware of the proposal already. It was debated on the Senate floor. The reason he didn't get my statement was I just finished it right before we came over here, but I wanted to be very clear. What I said, Senator, was I felt that—I didn't say it hurt—I said the current provision weakened the laboratories. I didn't say anything as drastic as you did.

So I want to work with you, but at the same time I am not acting out of just what I think is best. This new security structure—a lot of people in the Department worked on it. We consulted a lot of agencies. We consulted independent experts. We looked at GAO reports. We looked at past congressional legislation. And I think the criticism made by many of these boards that you cited were on the past structure of DOE, which is correct. You are right. But they didn't take into account the initiatives that we have taken to make sure defense programs, which I know are very important to you and to Senator Kyl, where we have clear lines of authority. But we've done that.

But to have a security czar that has cross-cutting responsibility through the entire complex at DOE is what we need. Security problems at DOE—it's not just the labs. It involves nuclear waste. It involves plutonium. It involves Rocky Flats, environmental management. It involves some of the science labs. It involves safeguards and security, truck bombs, terrorist problems.

We want to centralize the whole component around a security czar, with a counterintelligence czar, that deals with security and counterintelligence at the labs having direct access to me.

Senator DOMENICI. Mr. Secretary, Mr. Chairman, let me just say you ought to have your staff re-read the Chiles, Admiral Chiles report, and ask them to look at number six on page four: Six. Establish clear lines of authority within DOE; reorganize the Department of Energy to eliminate excessive oversight, overlapping, unclear government roles. The assistant secretary for defense programs should be given direct line management authority over all aspects of nuclear weapons complex, including corresponding elements of the DOE field structure.

Secretary RICHARDSON. Senator, that's exactly what I've done. And I'm going to get up and show you.

Senator DOMENICI. Look, I'm not going to sit around here and listen to that. You have not done that. In fact, we'll ask those who have written these reports if that's what that's done. And we'll ask others who have made these reports if that's what they've done.

This is just restructuring some things to take care of security. We're trying to say you can't have security with a laboratory system that is subject to what this Admiral just recited as being the problems in this department.

Chairman SHELBY. Senator Kyl, you have a question?

Senator KYL. Thank you, Mr. Chairman. Senator Domenici just made the point, and Secretary Richardson, the 10 percent that you say we disagree on, that fundamental disagreement is precisely where we are right here. The part of the Chiles report that Senator Domenici just quoted is precisely our amendment. Now, it is not what you have done.

You've taken issue with it. You've said that the assistant secretary for defense programs—we call that person the administrator—should not be given direct line management authority over all aspects of the nuclear weapons complex, including corresponding elements of DOE field structure—for all of the reasons that you've articulated.

Now, reasonable people could differ about whether the approach you've suggested is better, or this approach is better.

Secretary RICHARDSON. Senator, if we can agree on this, I think we've—if I can convince you, and I am ready to meet with you to show you that the Chiles report was issued to me in March, and in April—April 21st—I did a fundamental field realignment which puts defense programs in exactly the position that you've just said. And I will show it to you. I will show you the directives. I will show you the reorganization and the budget we did to implement that.

Senator KYL. Well, Mr. Chairman, obviously we have a fundamental misreading here, but we have both indicated—we have all indicated a willingness to sit down and try to work this out. You and the Vice Chairman Kerrey have—not admonished us—you've encouraged us to do that. And I know that Senator Domenici and I both are very willing to sit down with the first Secretary in a long time to begin to work on these problems, to further work on them.

And I've given him—I've given Secretary Richardson credit for tackling these problems. Reasonable people can differ about the exact way to tackle them. But we do want to have our proposal characterized correctly, and when we try to make changes to satisfy concerns, we'd at least like to have a little—well, at least not a suggestion that that shows we were wrong in the first place, but rather a suggestion that might be good to cooperate with the Secretary.

So we're willing to do that. And Mr. Secretary, we can't wait to get together with you and talk about it.

Chairman SHELBY. Mr. Secretary, first of all, we want to thank you for coming here today. Mr. Curran, you too. We've had a long afternoon. We've had a full and frank exchange of views, and out of this I believe there's going to be some good things for national security, and that's what we're all interested in, isn't it?

Secretary RICHARDSON. Yes.

Chairman SHELBY. Thank you. The hearing is adjourned.

[Whereupon, at 5:14 p.m., the hearing was adjourned.]