

Testimony of

The Honorable Patrick Leahy

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Even before the tragic terrorist attacks of September 11, this committee has been focused on improving the effectiveness of the U.S. Department of Justice, the lead Federal agency with responsibility for domestic security. This task has involved oversight hearings of the Federal Bureau of Investigation and the Immigration and Naturalization Service, as well as hearings on legislative proposals to enhance the legal tools available to detect, investigate and prosecute those who threaten Americans both here and abroad. In the weeks immediately after the attacks, Committee members worked in partnership with the White House and the House to craft the new anti-terrorism law, the USA PATRIOT Act.

We are delighted that Governor Ridge is with us this morning in his capacity as the Director of the Transition Planning Office for the proposed Department of Homeland Security. Director Ridge transmitted a specific legislative proposal last week, and we thank him for his hard work on this plan, and for all that he has done in service to the nation and its security.

There is bipartisan support for the concept of a cabinet-level officer to coordinate homeland security. Indeed, we were prepared to include such a provision in the USA PATRIOT Act last year, but we did not at the request of the White House. We hope to work with you now, Director Ridge, as we did with Attorney General Ashcroft last year, across party lines, in a bipartisan, bicameral partnership in which the Executive and Legislative branches can offer ideas and come up with the best collective legislative product that we can in the least amount of time.

It is important to begin by acknowledging what the President's proposal does not do. It does not address the problems inside agencies like the FBI or the INS - problems like outdated computers; hostility to employees who report problems; lapses in intelligence sharing; lack of translation and analytical capabilities; along with what many have termed, "cultural problems." Both the Administration and the Congress are going to have to work hard and work together to solve these problems.

To that end, this committee has unanimously reported the FBI Reform Act, S.1974, to improve the FBI, and I hope that the President will assist us in moving that legislation through Congress so that we help make the FBI as effective as it can be in the war against terrorism.

Knitting together a new agency will not by itself fix existing problems. In writing the charter for this new department, we must be careful not to generate new management problems and accountability issues. I am concerned that the Administration's proposal would exempt the new department from many legal requirements that apply to other agencies. The Freedom of Information Act would not apply; the conflicts of interest and accountability rules for agency advisors would not apply. The new Department head would have the power to suspend the Whistleblower Protection Act, the normal procurement rules and to intervene in Inspector

General investigations. In these respects, the Administration is asking us to put this new Department above the law and outside the checks and balances these laws are put there to ensure.

This is a proposal born in secrecy and rushed to the stage before the legislative plans were ready and on the same day this committee was hearing powerful testimony from a whistleblower about intelligence failures. Exempting the new department from laws that ensure accountability to the Congress and to the American people makes for soggy ground and a tenuous start - not the sure footing we all want for the success and endurance of this endeavor.

We must also be careful that in our effort to bolster our defenses against terrorists, we do not do damage to other important national interests. Many of the agencies proposed for transfer perform vital duties in addition to their responsibilities for security against terrorism. As agencies are moved to the new department, we need to make sure this does not force duplication of efforts, the downgrading of other important missions or unnecessary costs.

While the Administration has proposed cutting certain successful grant programs - like the COPS program - the troubling rebound in crime rates, rising last year after eight straight years of decline, shows us that focusing all our resources on fighting international terrorism cannot be our only goal. This committee does not want to hand back to home-grown criminals the hard-earned gains we have made in fighting crime over most of the last decade. We do not want to expose our neighborhoods and rural communities to rising waves of crime based on traffic in crack, heroin or ecstasy or to let down our guard against violent crimes like murder, rape and robbery.

The President's proposal centralizes many important functions. We have had a solid start by being able to work off the blueprint provided by legislation originally introduced by Senator Specter and others, and by the work of Senator Feinstein in the Committee's Terrorism Subcommittee. Today I hope to begin exploring the right balancing point between the general advantages of centralization and the specific benefits of localizing many activities and functions. We also will examine how the new Department intends to work with local law enforcement and grass roots agencies throughout the country to accomplish its goals.

As we begin this process, our former colleague, Senator Warren Rudman, has urged that we fix the FBI, not slice and dice it. The FBI is the only example of a single agency that has both broad intelligence and criminal jurisdiction all under one roof. Considering the problems with the FBI, however, I am interested in hearing from Governor Ridge whether separating the federal agents responsible for investigating terrorism in a separate agency from the FBI would be better or worse? Would it be better to spin off the FBI's counter-terrorism agents into some new organization or should we work with the current FBI to make sure it has the tools necessary to protect the American people?

Majority Leader Daschle and all of us want the Senate to produce a thoughtful and workable charter for the new department, as quickly as possible. One sure way to slow things down is to cobble together a collection of unrelated political items in the bill, under the heading of "management flexibility." I think most working Americans know enough to be cautious of that term. In particular, there are four things that I hope the Administration will not insist upon:

First, creating an ill-considered and overly broad new exemption to the Freedom of Information Act. Encouraging government complicity with private firms to indefinitely keep secrets about information on critical infrastructure vulnerabilities may reduce the incentive to find solutions and fix the problems. In the end, more secrecy may undermine rather than foster security.

Second, weakening whistle-blower protections. Senator Grassley and I made sure that the FBI Reform Act would end the FBI's special exemptions from whistleblower protections. We learned in the Rowley case that even in the most sensitive matters, national security is strengthened, not diminished, by strong whistleblower protection. I hope the Administration will not insist on moving backward on whistleblower protection.

Third, weakening safeguards for the gathering and handling of sensitive law enforcement information. We are setting up the new Department of Homeland Security to be a central repository for highly sensitive information. While the new department's role in domestic surveillance remains unclear, it is more important than ever that there be strong protections to ensure that such information is not gathered or used improperly.

And fourth, threatening job security for hardworking government employees. Director Ridge heard a lot about this last week in the Government Affairs Committee, but it bears repeating. The Administration should not use this transition as an excuse to cut the wages of the brave employees who have been defending the nation. That is not the way to encourage retention or recruitment of the vital human resources on which we will need to rely, and it is a sure way to destroy the bipartisanship we need.

Director Ridge, we welcome you, and we look forward to working with you in forging a charter that will make the new department all that the American people want and need it to be.

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