

THE NATIONAL HOMELAND SECURITY AND
COMBATING TERRORISM ACT OF 2002

TESTIMONY BEFORE THE UNITED STATES SENATE
GOVERNMENTAL AFFAIRS COMMITTEE

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I am delighted to appear before this committee to discuss the creation of a Department of National Homeland Security and the National Office for Combating Terrorism. Before turning to the specifics of this proposal, let me start by noting that this Committee has long taken its responsibilities regarding government organization very seriously. It does not legislate lightly when it creates a new department or agency, and has been the resting place for hundreds, if not thousands, of proposals that would have created new federal entities of one kind or another. But for this Committee's discipline, the federal organization chart would be even more cluttered than it currently is.

Thus, it is in the spirit of your past commitment to due diligence that I present this testimony. Simply summarized, I believe the key question facing this Committee, indeed Congress and the president, is not whether to create a new cabinet-level agency to address homeland security, but when and how. I have no doubt that the federal government will eventually have such a department or agency, and congratulate the Chairman for his willingness to take a highly-credible first cut at the organization chart.

However, I think there is still work to do regarding both the timing of the reorganization and its specific components. That is why I recommend a national commission on executive organization as a first step toward making the hard choices needed to make the tough choices needed to ensure that the new department has all the authorities and units it needs to be successful. Such national commission could complete its work quickly, and could give this Committee the guidance to restructure the federal government's approach not just to homeland security, but to a host of issues facing 21st century government.

My testimony is built around three points. First, I believe a cabinet-level department meets the traditional tests that have been used to judge the merits of creation. Second, I believe such a department should not be created until we have conducted a comprehensive, yet quick, review of the existing executive structure to make sure we have designed the most effective department. And, third, I strongly support the proposal to create a National Office for Combating Terrorism, but do not believe Congress need wait any longer to provide a statutory base for this critically-important unit.

The Case for a Department of National Homeland Security

The decision to create a new federal entity or reorganize existing agencies is not bound by a hard calculus, however. Rather, it involves a balancing test in which one must ask whether the nation would be better served by a new sorting of responsibilities. Simply asked, if a cabinet-level department or agency is the answer, what is the question? At least five answers come to mind.

1. Creating a cabinet-level department can give a particular issue such as homeland security a higher priority inside the federal establishment. That is certainly what Congress intended when it elevated the Veterans Administration to cabinet status in 1988. Although the bill did not originate in this Committee, its members eventually concluded that veterans policy merited the heightened visibility and importance that would come with a statutory seat at the cabinet table, and the perquisites that come with it. In a town of tea-leaf readers, creating a cabinet-level department matters.

It is worth noting in this regard that there is a difference between statutory cabinet status and invitational status. The head of the Veterans Administration was invited to all cabinet meetings throughout the Reagan

administration, just as the current administrator of the Environment Protection Agency is invited to all cabinet meetings today. The president is free to invite whomever he pleases to the cabinet meeting. But cabinet status is not something that can be conveyed by the president through executive order or mere invitation. It is confirmed in statute by placement in Title 5 U.S.C.

2. Creating a cabinet-level department can also integrate, coordinate, or otherwise rationalize existing policy by bringing lower-level organizations together under a single head. That is clearly what Congress intended in creating the Department of Energy in 1977. Congress and the president both agreed that the nation would be better served with a single entity in charge of energy policy than a tangled web of diffuse, often competing agencies. That is also what Congress tried to accomplish in establishing the Department of Defense in 1957.

It is important to recognize that not all Energy agencies and functions were transferred to the new department. Congress saw fit to leave elements of energy policy in the departments of Agriculture, Interior, and Commerce, as well as the Environmental Protection Agency and General Services Administration. A reorganization does not have to combine every last element of existing policy or every last administrative unit.

3. Creating a cabinet-level department can provide a platform for a new or rapidly expanding governmental activity. That is what Congress did in creating the Department of Housing and Urban Development in 1965. Although the federal government was involved in housing long before HUD, the new department was built as a base for what was anticipated to be a rapid rise in federal involvement. Once again, however, Congress did not place all housing programs within the new department.
4. Creating a cabinet-level department can help forge a strategic vision for governing. That is what Congress expected in creating the Department of Transportation in 1966. The federal government had been involved in building roads and bridges for almost two hundred years when Congress created the department, but needed to coordinate its highway programs with its airports, airways, rail, and coastal programs. By pulling all modes of transportation under the same organization, Congress improved the odds that national transportation planning would be better served. Congress expected the same in not disapproving the reorganization plan that created the Environmental Protection Agency in 1970.
5. Finally, creating a cabinet-level department can increase accountability to Congress, the president, and the public by making its budget and personnel clearer to all, its presidential appointees subject to Senate confirmation, its spending subject to integrated oversight by Congress and its Office of Inspector General, and its vision plain to see. Although it is tempting to believe that such accountability is only a spreadsheet away, cabinet-status conveys a Abully-pulpit@ that little else in Washington does. One should never discount the impact of perquisites in the political island called Washington, D.C. That is certainly what Congress intended to convey in not disapproving the reorganization plan that created the Department of Health, Education, and Welfare in 1953. It is also what it intended twenty-five years later when it split the Department of Education from that entity.

Even if one can find ample history to support the creation of a department of homeland security, it is important to note that cabinet-making is not a panacea. Merely combining similar units will not produce coherent policy, for example, nor will it produce greater performance, increase morale, or raise budgets. It most certainly will not make broken agencies whole. If an agency is not working in another department, there is no reason to believe that it will work well in the new agency. Bluntly put, garbage in, garbage out. Conversely, if an agency is working well in another department or on its own as an independent agency, there is no reason to believe that it will continue to work well in the new agency. Bluntly put again, if it ain't broke, don't break it.

Caveats noted, I believe the case for a department of homeland security is compelling and was well made in the Hart-Rudman report: (1) homeland security demands the highest possible attention, not just now, but well into the future; (2) there is a desperate need for coordination, integration, and rationalization across the many agencies involved in the endeavor; (3) there is little doubt that the federal response will expand greatly in coming years; (4) there is a clear need for a strategic vision of how best to defend our borders; and (5) there is pressing need for greater transparency and accountability in homeland security policy. A department of homeland security could provide the platform for the

integrated policy this nation needs.

An Intermediate Approach

Despite my general support for the Chairman's draft, I am not convinced that this particular proposal offers the right combination of the right agencies at the right time. Should elements of the Immigration and Naturalization Service be included? What about the Transportation Security Administration? Does the Coast Guard really belong? On the one hand, the Immigration and Naturalization Service is so badly damaged that it might well drag down any department into which it was merged. On the other hand, the Transportation Security Administration is developing so effectively within the Department of Transportation that it could be damaged by being moved.

In all candor, the federal organization chart is a mess. The fact that we have nearly 70 agencies that spend money on battling terrorism is but one indication of the steady diffusion of accountability that has occurred over the past half century. Much as I support the basic instinct that underpins Title I of the proposed legislation, I believe the creation of a cabinet-level department of homeland security would be more likely to succeed if it follows, not precedes, a top-to-bottom analysis of the basic structure of the federal hierarchy. It has now been fifty years since we last assessed the overall condition of the hierarchy in anything more than an ad hoc fashion. The result is a federal organization chart that was invented at the dawn of the Cold War for a nation and world that have long ago moved on.

As the Chairman and former Chairman know, proposals for creating a national commission on executive organizations have been introduced in every Congress since the 100th in 1987, and have passed this Committee at least three times. Indeed, an early version of a commission was enacted into law as part of the 1988 Department of Veterans Affairs Act. status. The Committee considered the commission as an essential component for passage, and would have given President George H.W. Bush the analysis needed to reorganize the federal hierarchy. To the Committee's chagrin, the president killed the commission before it was appointed, missing a long-overdue opportunity to bring some common sense to the federal organization chart.

Fourteen years later, the federal hierarchy still defies common sense. It is choked with overlapping jurisdictions, duplicative programs, and redundant agencies, each one no doubt created for a salutary purpose, but notoriously resistant to reform nonetheless. Just as the mouth of the Ulongo-Bora bedeviled Humphrey Bogart and the African Queen, the government's organization chart serves more to exhaust and cultivate leeches than generate competition or innovation.

A national commission on executive organization could give this Committee an up-to-date analysis of the federal organizational chart, thereby providing a guide for potential consolidation. No one knows for sure just how many employment and training programs there really are, nor how many federal employees are laboring in different corners to produce essentially the same goods and services. By mapping the bureaucratic terrain, such a commission would introduce a needed dose of reality into the anecdote-driven debates about organizational reform.

Second, a commission could give this Committee desperately needed criteria for reshaping the existing hierarchy, whether for homeland security, food safety, or defense against bio-terrorism. Although its primary goal would be to reorganize toward strength, such a commission would have that once-in-a-lifetime opportunity to recommend the kind of flattening that might give the federal government a fresh start in both doing its job and recruiting the next generation of public servants. Done with care, the flattening could help agencies create career paths that fit with the much more flexible economy of today, while giving Congress a reason to adjust federal salaries to keep pace with the market.

Commissions are not self-implementing, however. Otherwise, the nation would already have a department of homeland security built upon the recommendations of the Hart-Rudman Commission. That is why any comprehensive assessment of the federal hierarchy should be coupled with an action-forcing mechanism modeled on the type used under the Base Realignment and Closure Commission.

The Case for a National Office for Combating Terrorism

Whatever my reservations about Title I of the draft legislation, I share no such reluctance regarding Title II. Congress

should establish a statutory foundation for the White House office of homeland security. Such a foundation is essential for strategy, authority, and, perhaps most importantly, accountability. Contrary to those who see Governor Tom Ridge's role as merely a domestic version of the National Security Advisor, he has substantial coordinating, policymaking, and planning responsibilities that go well beyond the National Security Advisor's role. His is an office that behaves much more like the Office of Management and Budget, the International Trade Representative, and the ADrug Czar, all of whom are lead by (1) Senate-confirmed appointees who (2) control substantial resources based on (3) statutory authorities.

Late last October, Senator Bob Graham and I set seven basic tests for measuring Governor Ridge's success as the president's Homeland Security chief. Although we were skeptical that he could do his job without statutory authority, we believed that he should be given the benefit of the doubt in carrying out his extraordinary mission.

Almost six months into his task, Governor Ridge has had both success and frustration. He clearly has access to the information needed to do his job, which was our first criterion for evaluating his office. But that information is still muddy, its sources many, and its usefulness often mixed. Ridge may be getting most of the information from inside government that there is, but perhaps not enough of the information he needs.

Governor Ridge has also had access to the principals, our second criterion. What he has not had is success in making his case on the need for sweeping reorganization of the nation's troubled homeland security agencies. No one knows for sure just what he believes about the need for reorganization--as a White House staffer, he has not been given permission to testify before Congress. But reports are that he wants much more than mere tinkering with the Immigration and Naturalization Service, Border Patrol, and Customs Service. If true, he has not been successful in making his case.

Governor Ridge has had a significant impact on the budget and personnel process, our third criterion. Homeland security agencies received more money and headcount under the new Bush budget than they could ever have expected during ordinary times. But as Governor Ridge has argued in making the case against testifying before Congress, he has no power to spend, obligate, or audit money. At the end of the day, agencies must put their trust in the president's budget office for the dollars and personnel they need.

As for staff, executive office space, and a role in selecting key presidential appointees, our fourth-sixth criteria, Governor Ridge has had mixed success. He is still running a small, if talented, operation, and is still looking for office space within shouting distance of the Old Executive Office Building, which he calls home. But it is not at all clear that he has had a role in selecting key personnel such as the new Surgeon General or the director of the National Institutes of Health.

Governor Ridge may have had his least success on being involved in the management reviews of the homeland security establishment, our seventh and final criterion. As the recent events at the Immigration and Naturalization Service suggest, the problem with homeland security is organizational. Many of the agencies involved in the effort are under-trained, under-resourced, and under-performing.

Despite his own opposition to a legislative base for his White House office, Governor Ridge may have made the most persuasive case for the creation of just such a statutory homeland security agency. Addressing state and local emergency management officials last February, Governor Ridge complained about the need for more coordination, better technology, and simple accountability. As part of our consideration of the new 21st-century border, we are presently considering a range of options that goes from simply a new technology architecture that puts it all on the same database to a series of consolidations that could ultimately involve four or five departments, he told the National Emergency Management Association (NEMA). There is no line of accountability. As you take a look at 21st-century borders, you have got to have somebody in charge.

The Chairman's current proposal would do just that. It would give Governor Ridge and his successors the authority they need to design, implement, and sustain the investments and strategy needed to protect this nation from foreign threat. It would also give the American public what they clearly desire: on-the-record access to the federal government's most important policy-maker on homeland security.

I believe that Title II should be strengthened in at least two ways. First, the director should be given authority to make

determinations regarding personnel needs of homeland security agencies. Under current policy, all federal agencies must submit workforce plans to the Office of Management and Budget. However, there is no policy regarding the use of those plans for shaping personnel budgets, nor for determining what, if any, positions should be exempted from the Federal Activity Inventory Reform Act job competitions currently underway.

Second, the director should be given authority to review the performance plans that agencies must submit to the Office of Management and Budget under the Government Performance and Results Act. Every federal agency submitted their annual plans just two weeks ago, though there was absolutely no acknowledgment of that fact by either the administration or the media. In theory, those plans contained detailed information on what each agency intends to do in the coming year, as well as the measurements needed to hold each agency accountable. But the plans can hardly have that effect if they are never reviewed, let alone read. I believe the National Office for Combating Terrorism should be given prime responsibility for reviewing and certifying the performance goals, measures, and actual success of each agency engaged in homeland security.