

THE 9/11 COMMISSION'S HUMAN CAPITAL RECOMMENDATIONS

TESTIMONY BEFORE THE GOVERNMENTAL AFFAIRS SUBCOMMITTEE ON
OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE
AND THE DISTRICT OF COLUMBIA

UNITED STATES SENATE

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Thank you for inviting me to testify today on the human capital recommendations of the 9/11 Commission. The Commission's report has outlined the essential elements of a more effective intelligence community and homeland security effort. It is now up to Congress and the president to exercise their best judgment on whether and how to proceed, whether through reorganization or long-overdue improvements in key human capital systems, or both.

I believe the Commission was quite right to note the heroic work that many federal employees do every day in the effort to illuminate impending threats and address longstanding vulnerabilities. The vast majority of federal employees are dedicated, hard-working, and deeply committed to making a difference. However, we often ask our employees to succeed in spite of their organizations. As the Commission noted in its report, "We know that the quality of the people is more important than the quality of the wiring diagrams. Some of the saddest aspects of the 9/11 story are the outstanding efforts of so many individual officials, straining, often without success, against the boundaries of the possible. Good people can overcome bad structures. They should not have to."¹

We have seen time and again in agency after agency, federal employees face serious shortages of virtually every resource they need to succeed, be it access to training, technology, information, or enough employees to do the job successfully. They are also trapped in personnel systems and bureaucratic towers that were designed for a more leisurely world—one in which the federal government could afford to wait months to classify and fill positions, assess and reward high performance, and discipline poor performers.

The world has changed, of course. We can no longer afford to fight our agile adversaries with turf-conscious agencies, dense thickets of needless bureaucracy, and ancient systems. In bureaucratic terms, this nation cannot defeat the networks of terrorism with the stovepipes of traditional hierarchy. As the Commission argues, we have a system in which good people and critical information are trapped in bad systems and redundant bureaucracies. It is time to act.

Doing so would be easier if we were building from scratch, of course. We could erect a new intelligence organization with ease, putting the pipes and windows exactly where we wish. But we are dealing with existing structures, with all the peril that comes from past remodeling, outmoded technologies, creaky stairwells, and a patchwork of top-heavy structures, antiquated personnel systems, competing priorities, and incompatible protocols.

I do not need to remind this committee that the overhaul now proposed would continue the task that began three years ago when Congress created the new Department of Homeland Security, and continued with the Defense Department personnel reform. You worked hard to smooth the bureaucratic boundaries in the new department, and give the senior leadership the tools to build a performance-sensitive personnel system. So have the senior leaders of the new department. They deserve great credit for avoiding the

needless layering that plagues so many federal agencies, including many directly affected by this hearing.

As you requested, I am here today to address the three recommendations of the 9/11 Commission regarding human capital reform. I agree wholeheartedly with the spirit of the recommendations, though have my own suggestions for improvement. Before turning to the specifics, however, I must urge this Subcommittee to think beyond the four corners of the Commission's report to the more general problems facing presidential appointees and civil servants across the entire federal establishment. I simply do not see how we can fix the presidential appointments process for one group of officials without fixing it for all; nor do I believe we can improve the security clearance process for some without fixing it for all. In a sense, every federal employee, political or career, is now responsible for the nation's security. To restrict our efforts to the relatively small numbers involved in intelligence is to deny the reality that the current systems are sapping our agility across the entire hierarchy. This is not to say that the effort could not be phased in as clearance staff is added, with the most critical positions taking priority.

With this broader mission in mind, let me sort the Commission's three human capital into two categories, the first dealing with presidential appointments and security clearances, and the second addressing the FBI's human capital authorities. I will then turn to a third area which was beyond the 9/11 Commission's mandate.

1. Presidential Appointments

In testimony last July before the Senate Governmental Affairs Committee, 9/11 Commission Chairman Tom Kean expressed particular concern about the need to improve the presidential appointments process, which was highlighted by Secretary Rumsfeld as a contributing factor to the 9/11 tragedy.

We know that the presidential appointments process failed the nation in the weeks and months preceding September 11. As of July 11, 2001, just 54 of the 164 positions involved in the war were filled by a duly sworn, Senate-confirmed appointee. The vacancies included the Undersecretaries of the Air Force and Army, the Assistant to the Secretary of Defense for Nuclear, Chemical and Biological Defense Programs, the Director of the National Institutes of Health, the Commissioner of the Food and Drug Administration, the Deputy Director of the Federal Emergency Management Administration, and the Deputy Administrator of the Federal Aviation Administration

I should note that the problems were hardly restricted to the war on terrorism. Although the Bush White House made more nominations in its first six months than any administration in history, it had more nominations to make in the first place. By the time its cabinet and sub-cabinet was finally in place, the average post had remained vacant for roughly eight-and-half months, or three months longer than during the Reagan administration, and six months longer than during the Kennedy administration.

Even if the various intelligence agencies had connected the dots before September 11, it is not clear that the information would have made it to the right person. From late 1998, when Clinton administration officials began the mass exodus out of office, to September 11, 2001, when the attacks occurred, the federal hierarchy was riddled with vacancies that created a kind of “neckless” government in which information was easily lost or misinterpreted.

Of particular concern are the science, technology and engineering positions that are becoming increasingly difficult to fill, according to the National Academy of Sciences, this at just the time we may need them most.

The delays come at both ends of Pennsylvania Avenue, and reflect an accumulation of bureaucratic sediment that has grown with each appointee controversy over the past four decades. The process starts with 60 pages of forms that are filled with repetitive, nonsensical questions, almost all of which had to be answered on a typewriter until recently, when our project, The Presidential Appointee Initiative, helped to produce an online version. It continues with a Federal Bureau of Investigation background check that lasts a month or more, a financial disclosure process that requires so much detailed information that the result is tantamount to a net worth statement, and a Senate confirmation process that introduces an entirely new set of questions and forms to the process. Nominees still have to list every foreign trip they have taken over the past fifteen years, for example, give the dates and places of birthday of their parents and in-laws, and provide the name and phone number for a classmate from every school they attended since turning 18 years old, including high school. The relentless inquisitions of the McCarthy era may be over everywhere else in America, but not in the presidential appointments process.

Fixing this problem will take more than the ample dose of ridicule the current process has earned. It will require a long-overdue streamlining of the more than 230 questions every Senate-confirmed appointee must answer, a flattening of what has become a bloated, over-layered political hierarchy, and a commitment from the Senate to speedy action once nominations arrive. This Subcommittee could take a giant leap forward by simply adding the Presidential Appointments Improvement Act of 2003 (S.765) introduced by Senator Voinovich to whatever legislation it produces this fall. This act alone could easily trim 2-3 months off the current process by streamlining financial disclosure reporting. Nevertheless, passing the Presidential Appointments Improvement Act should be seen as only a first step toward more comprehensive reform. In the same spirit of bipartisanship with which the 9/11 Commission presented its recommendations, the recommendations that follow were first presented to the full committee in April of 2001, five months before 9/11, by former Republican Senator from Kansas, Nancy Kassebaum Baker, and former OMB Director in the Clinton administration, Franklin D. Raines. At the time they stressed that the “urgency of this task could not be greater,” and the same is true today.²

RECOMMENDATION 1. The Congress should enact legislation to establish a permanent Office of Presidential Personnel in the Executive Office of the President and to authorize staff levels sufficient to recruit the president’s appointees efficiently

and to provide them with transition assistance and orientation. This should include some career employees who retain appropriate records from one administration to the next and who are experts in the operations of all aspects of the appointments process.

RECOMMENDATION 2. The Congress should require a complete top-to-bottom streamlining of the forms that govern the appointments process toward a simplification and standardization of information-gathering instruments. The Senate should require its committees to do so as well. All forms should be made available for on-line downloading to assure a paperless, but secure process wherever possible, thereby accelerating the review of nominees.

RECOMMENDATION 3. The Congress should urge the president to issue an executive order reducing the number of positions for which FBI full-field investigations are required and adapting the length and depth of full-field investigations to the legitimate security concerns of each position where they continue to be required. The Congress should also urge the president to issue an executive order streamlining the clearance questionnaire used for all national security positions. *(In addition, I strongly recommend that Congress establish a minimum staffing level for the FBI's investigation unit, which conducts the full-field review to assure timely review of all appointee materials. This unit should be a specialized group of experts given the significant national security implications of their work)*

RECOMMENDATION 4. Congress should undertake a comprehensive review of the ethics requirements currently imposed on political appointees. Its goal should be to strike an appropriate balance between legitimate concerns for the integrity of those who hold these important positions and the need to eliminate unnecessarily intrusive or complex requirements that deter talented Americans from entering public service.

RECOMMENDATION 5. The Congress should amend the Postal Revenue and Federal Salary Act of 1967 to ensure annual changes in executive-level salaries equal to changes in the Consumer Price Index.

RECOMMENDATION 6. The Congress should reduce the number of presidential appointments subject to Senate confirmation to only those positions of genuine management authority and to the judicial and ambassadorial positions for which it has constitutional responsibilities

RECOMMENDATION 7. The Senate should adopt a rule that limits the imposition of "holds" by all Senators to a total of no more than 14 days on any single nominee.

RECOMMENDATION 8. The Senate should adopt a rule that mandates a confirmation vote on every nominee no later than the 45th day after receipt of a nomination. The rule should permit any Senator, at the end of 45 days, to make a point of order calling for a vote on a nomination. A majority of the Senate may postpone the confirmation vote until a subsequent date. *(The 9/11 Commission recommends that this be done within 30 days for national security nominees only.)*

RECOMMENDATION 9. The Senate should adopt a rule that permits nominations to be reported out of committee without a hearing, upon the written concurrence of a majority of committee members of each party.

RECOMMENDATION 10. The Congress should enact legislation requiring each department and agency to develop a plan for reducing the number and layers of political appointees by one-third. Such reductions, wherever feasible, should limit political appointments requiring Senate confirmation to the assistant secretary level and above in each department and to the top three levels only in independent agencies. Schedule C and other non-confirmed political appointees should be similarly reduced in number. *(It is my understanding, yet to be confirmed through further investigation, that there has been a significant increase in the use of limited-term appointments as another mechanism for the deployment of political appointees. If true, I strongly recommend that this Subcommittee ask the Government Accountability Office to conduct a study of the practice, methods for appropriate designation of these positions as presidential appointees, and tools for legislative oversight of their use and possible abuse.)*

RECOMMENDATION 11. The Congress should grant the president renewed executive reorganization authority for the limited and specific purpose of de-layering the senior management levels, both career and political, of all executive departments and agencies. *(See my discussion of this authority below.)*

As the Subcommittee will note, several of these recommendations deal with the clearance process. While The Presidential Appointee Initiative did not address this issue for non-Senate-confirmed positions, it did make a strong case that the current form is filled with irrelevant questions, and requires needless inspection. I agree with the Commission's proposal for creating a separate unit for security reviews, but urge you to make sure that unit is allowed to streamline the forms it must review. I also agreed with the Commission's recommendations regarding pre-clearance for lists of potential candidates.

Let me add that I do not endorse the Commission's blanket recommendation that the Senate exempt all Executive Level IV and V positions from Senate confirmation, and assume that the Commission would have done so with additional time and resources. I believe the decision to remove assistant-secretary and administrator-rank positions from confirmation should be made on a case-by-case basis. There are many EL IV and V posts that demand Senate review, including the assistant secretaries listed earlier in my testimony, as well as general counsels, inspectors general, chief financial officers, and so forth. These positions are too important to exempt through a blanket process.

Thus, I strongly encourage Congress to enact legislation requiring the president to submit a list of proposed exemptions for further consideration by this Subcommittee. Because the delays in the appointments process exist at both ends of Pennsylvania Avenue, ideally, the Congress and the President should work together to form a pact, or treaty of some sort, that would restore reason, respect and dispatch to the appointments process.

2. Human Capital

This Subcommittee clearly understands both the nature and urgency of the human capital crisis in government. You have held hearing after hearing outlining the problems, and developing legislative solutions. Whatever you decide regarding reorganization of the intelligence community, I believe you must give agency directors greater authority to recruit and manage their workforces—authority modeled on the performance-sensitive approach adopted in the recent Defense Department personnel reforms and embedded in the Department of Homeland Security statute.

Although I believe that there is no level of the current human resources system that does not need immediate reform, including the FBI, I am particularly concerned about problems on the front lines of government where non-supervisory personnel bear so much of the burden for the inefficiency. They are the ones who have to wait months for replacements to work their way through the process, and the ones who must deal with the layer-upon-layer of needless managerial oversight.

The challenge are particularly apparent in the war on terrorism, where dozens of task forces, commissions, and study groups over the last two decades on the need for fundamental public service reform, be it in the Departments of Defense or State, the intelligence agencies, or government as a whole. None have been more blunt in describing the problems than the U.S. Commission on National Security/21st Century, co-chaired by former Senators Gary Hart and Warren Rudman.

As it enters the 21st century, the United States finds itself on the brink of an unprecedented crisis of competence in government....This problem stems from multiple sources--ample private sector opportunities with good pay and fewer bureaucratic frustrations, rigid governmental personnel procedures, the absence of a single overarching threat like the Cold War to entice service, cynicism about the worthiness of government service and perceptions of government as a plodding bureaucracy falling behind in a technological age of speed and accuracy.³

Although many talented Americans have been called to service by the war on terrorism, they still confront a government hiring process that is frustrating at best. And once in government, they often complain of antiquated systems, needless hierarchy, and broken promises. Again, it hardly makes sense to create new coordinating mechanism for handling information if the human capital that produces the information is not given the tools to do its job well.

That means we must have a personnel system that is agile, responsive, and performance-sensitive. That might also mean the creation of a new intelligence service corps that can provide the pay and incentives needed to assure a steady stream of talent as the retirement wave begins to cut into the core capacity of our intelligence community.

Thus, while I believe we should endeavor to give the FBI increased personnel flexibility, I can think of no time better than the present to simply expand this authority government wide. Having already done it at Defense, IRS, Homeland Security, and NASA in a piecemeal fashion, I believe it is time to do it across government using a clear template that would give authority to every agency of government to convert its personnel system under a set of requirements that would assure a common commitment to merit principles, equal opportunity, collective bargaining, and fair, but speedy review of disciplinary action. I see no reason to continue pecking at this issue one agency at a time.

3. Reorganization Authority

There is an obvious and palpable sense of déjà vu in these hearings for anyone who follows government organization and reform. Strike the word “intelligence” from the conversation about duplication and overlap, and we could substitute a hundred other areas of responsibility in which that would ring just as true. We have seen the same problems in foster care, job training, food safety, nuclear security, trade policy, education, children’s health care, and so on down a long list of concerns.

As we saw three years ago in the case of homeland security, reorganization offers a significant opportunity to align agencies by mission rather than constituencies. If done well, which I believe has been the case in homeland security, it can strengthen accountability, reduce wasteful duplication and overlap, tighten administrative efficiency, improve employee motivation, and provide the kind of integration that leads to impact.

The question before Congress in the coming weeks is not whether reorganization can provide needed improvements in government performance, however, but whether Congress should give the President of the United States reorganization authority of some kind. This is not a new question, and I believe the answer is absolutely yes.

I am not the first to make this recommendation, however. As noted earlier, Senator Kassebaum Baker and Director Raines made the same recommendation on behalf of the Presidential Appointee Initiative advisory board in April 2001 when they urged Congress to “grant the president renewed executive reorganization authority for the limited and specific purpose of de-layering the senior management levels, both career and political, of all executive departments and agencies.”⁴

Former Federal Reserve Board chairman Paul Volcker made the same recommendation on behalf of the second National Commission on the Public Service in January 2003 when he testified before the House Government Reform Committee. Recognizing that reorganization is among the most difficult tasks facing a legislative body, Mr. Volcker and his colleagues urged Congress to create a procedural presumption in favor of reorganization through enacted of a “fast-track” or expedited authority. Such a presumption would not assure that all presidential reorganizations would succeed, but it would certainly give them a fighting chance.

The threshold question in restoring some form of reorganization authority is whether there is any reason to believe that such authority holds the promise of better government performance, whether in the intelligence community or more broadly across government. Based on the historical record, I believe the answer is “yes.”

1. *Reorganization can give greater attention to a priority such as homeland security or food safety.* That was certainly the case in the creation of the National Aeronautics and Space Administration following the launch of Sputnik in 1957, and to the creation of the Environmental Protection Agency in 1970.
2. *Reorganization can reduce overlap and duplication among widespread programs, thereby increasing accountability and efficiency.* Consider, for example, the potential impact of finding some way to integrate the 12 agencies currently involved in administering the nation's 35 food safety statutes, the 15 departments and agencies currently involved in administering more than 160 employee and training programs, or the 11 agencies and 20 offices involved in the federal government's roughly 90 childhood programs.
3. *Reorganization can force greater cooperation among large, quasi-independent agencies such as the Coast Guard and Federal Aviation Administration.* That was certainly the goal of the early reorganizations of energy agencies, which eventually spurred creation of the Department of Energy. And it was the goal in creating the Department of Transportation in 1966. This is particularly important given the flaws described in the 9/11 report regarding the FAA failures in communicating with the military on 9/11.
4. *Reorganization can create greater transparency in the delivery of public goods and services to and on behalf of the public?* That was clearly the goal in creating the Department of Health, Education, and Welfare in 1953, which was originally submitted as a reorganization plan before emerging as separate legislation, and is the case in the 9/11 recommendations.
5. *Reorganization can improve employee satisfaction and performance.* Surveys of federal employees suggest that roughly a third (1) cannot easily describe the mission of their organizations, and, therefore, (2) cannot easily describe how their jobs personally contribute to the mission of their organizations.⁵ Assuming that employees who know their mission are more satisfied and productive, reorganization can be a source of improved performance.

It is important to note that reorganization cannot compensate for poorly designed programs, inadequate funding, or contradictory statutes. Merely combining similar units will not produce coherent policy, 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 department. 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 department.

Recognizing the need to place constraints on the president's reorganization authority to assure congressional review, it is imperative that Congress give reorganization plans expedited consideration in the legislative process. Such consideration can be created under several options suggested by the Volcker Commission. It is relatively easy to construct a fast-track mechanism to give Congress enough time to review a reorganization plan, whether through a Base Closure and Realignment Act mechanism requiring an up-or-down vote on all elements of a plan, or through some kind of "most-favored" status requiring expedited consideration in the legislative process.

Ultimately, reorganization is best seen as merely one of several steps for improving organizational performance. It may create a greater presumption in favor of performance, but can only succeed if this and other committees are successful in helping the executive branch achieve its other management goals. At the same time, the executive branch cannot achieve its other management goals, most notably the strengthening of human capital, if it does not undertake the aggressive restructuring that reorganization authority would encourage.

Management improvement and reorganization are, therefore, two sides of the same coin. It makes no sense to improve recruiting systems if new employees are condemned to work in poorly structured departments with fuzzy missions and needless layers of political and career bureaucracy.

Conclusion

As this Subcommittee knows, reorganization is an important tool in improving government performance, and has been used in recent years to reduce duplication, waste, and the diffusion of accountability for what goes right and wrong in government. But reorganization is only one part of effective reform. Merely moving the organizational boxes without changing the systems and hierarchies that go with them is a recipe for continued confusion. I applaud your work in making sure that the current legislative effort includes meaningful improvements in *how* we operate our government. Without such improvements, we are only changing *where* the next mistakes will be made.

¹ The National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, (W.W. Norton & Company, 2004) p.399.

² The Presidential Appointee Initiative, *To Form a Government: A Bipartisan Plan To Improve The Presidential Appointments Process*, (The Brookings Institution, April, 2001).

³ U.S. Commission on National Security/21st Century, *Roadmap for National Security: Imperative for Change*, Phase III Report (U.S. Commission on National Security/21st Century, February 15, 2001), p. xiv.

⁴ The Presidential Appointee Initiative, *To Form A Government: A Bipartisan Plan To Improve The Presidential Appointments Process*, (The Brookings Institution, April, 2001) p.16.

⁵ Paul C. Light, *To Restore and Renew*, (The Brookings Institution, November, 2001).