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## Homeland Security Office for Civil Rights and Civil Liberties: A One-Year Review

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The Department of Homeland Security (DHS) is a place of firsts. We were designed to be innovative and we are living true to that calling. For instance:

- We have, for the first time, housed together the major agencies responsible for protecting our border and our shores.
- We have established the newest member of the intelligence community—the Information Analysis and Infrastructure Protection directorate.
- We have established a center to stimulate academic research and innovation—the Science and Technology directorate.
- We have created an Office for Citizenship, which promotes among new immigrants an understanding of the civic principles upon which this nation was founded.
- We are instituting a revolutionary pay and performance system.

We have established an Office for Civil Rights and Civil Liberties (CRCL) to ensure that we protect both our physical safety and our American ideals. It is my privilege to lead that office. We have just submitted to Congress our first annual report.

### The Issues We Face

The intersection between America's homeland security and her vital civil rights and civil liberties is one of the most fascinating in all of the law. The questions are new and they are very timely. Our responses have serious consequences. Here are a few of the

### Talking Points

- The Department of Homeland Security (DHS) contains its own Office for Civil Rights and Civil Liberties (CRCL).
- CRCL advises senior DHS leadership on issues relating to civil rights and liberties, reviews allegations of civil rights abuses, and implements equal employment opportunities across DHS.
- Currently, CRCL is fulfilling its missions by such practical steps as developing a "Civil Liberties University" and providing guidance to law enforcement officers on the issue of racial profiling.

This paper, in its entirety, can be found at:  
[www.heritage.org/research/homelandsecurity/hl849.cfm](http://www.heritage.org/research/homelandsecurity/hl849.cfm)

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questions—the typical hypotheticals—that confront us:

- U.S. intelligence sources report that terrorists from a particular ethnic group are planning to use commercial jetliners as weapons by hijacking them at an airport in California during the next week. Would Transportation Security Administration personnel, and other federal and state authorities, be justified in subjecting men of that ethnic group to heightened scrutiny before being allowed to board commercial airplanes in California during the next week?
- A young woman gets off an airplane at the Baltimore/Washington International airport. She approaches the immigration officer, and in very halting English, stammers, “Asylum.” She has identification documents with her, but she tells the officers—again through hand gestures and limited English—that they are frauds. She claims to be from Iran and claims to be fleeing persecution. She has no family or friends here in the United States, and the majority of her family members are either dead or are living in remote regions of the country. Should she be detained? Should she have access to a lawyer? Should she be returned on the next plane?
- A 48-year-old man has multiple disabilities, including cognitive disabilities and severe hearing impairments. His parents have always been a significant presence in his life but they have now passed away. He has no other family. He is living on his own, in an apartment complex where other people with disabilities also live. He sees a newscrawl on television about some sort of warning; about terrorists; about having a shelter and having supplies. What should we do, if anything, to make sure this man is aware of our warnings and is prepared in case of a natural disaster, or—God forbid—a terrorist attack?
- A father, mother, and two teenage boys live in Dearborn, Michigan. The father and mother were born in Egypt but have lived in the United

States for 20 years and are now citizens. They work and worship and pay taxes and love this country. Since 9/11, the father and mother have seen their mother denied entry to the U.S. The local convenience store owner has been questioned three times by federal law enforcement on the subject of potential money laundering. Their teenagers respond poorly to the news they see on TV and in their community. How can the United States government generally (and the Department of Homeland Security, specifically) establish good relationships with our natural allies in the Arab and Muslim community—many of whom came here to escape the kind of people we are fighting now?

We all knew that these were the types of situations and issues that the homeland security effort faced. The open question was how the new department would address these issues.

### The Commitment to Personal Liberties

I am privileged to work for men and women who have taken issues like these very, very seriously. I am privileged to serve a President who has placed the pursuit of liberty at the forefront of the war on terror. President George W. Bush said recently, “We believe that liberty is the design of nature; we believe that liberty is the direction of history. We believe that human fulfillment and excellence come in the responsible exercise of liberty. And we believe that freedom—the freedom we prize—is not for us alone, it is the right and the capacity of all mankind.”<sup>1</sup> It is inspiring to serve a leader who would make a statement like this.

I am privileged to serve a great public servant like Tom Ridge, who has pledged that “our strategy and our actions [will be] consistent with the individual rights and civil liberties protected by the Constitution.” The leaders of this department feel so strongly about this issue that they have prominently incorporated these principles into our first strategic plan. Leaders like Asa Hutchinson repeatedly state that the protection of our American ideals is at the very core of what our department is all about. The com-

1. President George W. Bush, remarks to the 20th Anniversary of the National Endowment for Democracy, November 6, 2003.

mitment to appropriately address the types of hypotheticals that I laid out a few minutes ago has been clear and strong.

### Initial Decisions

In Section 705 of the Homeland Security Act, Congress established something called an “Officer for Civil Rights and Civil Liberties.” There is no other title like this in the federal government: There are no models to follow. In addition, the terms of the statute are quite broad. It did not specifically describe the roles and functions of this new officer. Secretary Ridge had to define this position, to build this Office. Like any good architect, he started with a strong foundation, with sturdy cornerstones. We laid the foundation for the Office for Civil Rights and Civil Liberties on three cornerstones.

First, we observed that there are many who investigate and expose abuses by government agencies. For example, the Inspector General very ably investigates cases of this sort and he has a staff of several hundred investigators spread around the country. The media, Congress, and the courts also probe the actions taken by government agencies. Our first decision was that the missing piece of the puzzle is not so much an after-the-fact analysis of things that have allegedly gone wrong, but a player at the table on the front end; helping to shape policies in ways that are mindful of the Constitution and our civil liberties. Why not prevent trouble rather than investigate it after it has already occurred? Secretary Ridge decided that this new department needs someone to help advise the senior leadership about the full range of issues that have implications for our civil rights and civil liberties.

Second, the issues involved here are significant enough that this individual must be appointed by the President and report directly to the Secretary of DHS.

Third, the equal employment opportunity (EEO) issues this department will face offer it rare opportunities to do great good. The Secretary has repeatedly stated his commitment to create a model government agency. EEO policies are integral to that effort. Moreover, as we confront a number of external issues, the EEO program can play a signif-

icant role. For example, the hypothetical parents from Dearborn, Michigan, would be thrilled if this new department aggressively recruited young men, such as their sons, for careers in law enforcement. Our law enforcement and intelligence components would also be thrilled because it is very hard to come by talented Arabic linguists who are also American citizens, are invested in this country, and are thus able to pass security clearance checks. The third brick is that the EEO program should be consolidated into the work of the new Office for Civil Rights and Civil Liberties.

As a result of these decisions, Secretary Ridge created a unique model of decision-making. The Department of Homeland Security is the only federal agency that has a senior policy advisor appointed by the President and reporting directly to the Cabinet Secretary whose sole focus is to help the senior leadership shape policy in ways that enhance the personal liberties of all persons protected by our laws—both those inside the agency and those outside. Let me say it another way: This agency, which largely (but not entirely) has a law enforcement/intelligence mission, is unique because it has placed a civil libertarian into the senior leadership.

There are many Offices for Civil Rights in the government. However, those offices are primarily concerned with making sure that federally funded activities are carried out in accordance with civil rights laws—an external function. My office primarily has an internal function—assisting the senior leadership to develop policies in ways that protect and enhance our civil liberties. I would note one other unique aspect of my office: While there are many Offices for Civil Rights in the government, this is the only one that includes “and Civil Liberties” in the title, recognizing that many of the issues facing our country today represent a confluence between traditional civil rights concerns and 21st century civil liberties questions.

### Creating the Infrastructure

Before I talk specifically about our work, I must take a minute to talk about the mundane issues involved in establishing an office like this. Much of the first year of our work was spent striving to

establish an infrastructure to make our efforts successful down the line—work that those outside the agency will never see or hear about. It is enormously time-consuming. It is not glamorous but it is absolutely essential. I think that people often forget that the Department of Homeland Security is brand new: Every time we do something, from major policy initiatives to buying a three-hole punch, it has never been done before. That is one reason I have loved being involved with this department. It is an environment that rewards entrepreneurs and those who relish the chance to tackle new challenges.

Let me also say that when people criticize the homeland security effort, please remember that it is easy to toss criticisms from outside, but it is an entirely different thing to be on the ground daily trying to get the job done. All of the great accomplishments of this department are impressive compared to those of any federal agency, but they are absolutely incredible given the context. Remember that eighteen months ago we did not have offices, we did not have computers, we did not have cell phones, we did not have staffs, we did not have staplers or pads of paper. I often think that if the American people could see the hard work and smart work that is being done on a daily basis they would be very pleased.

This entire task has been so successful because we have the opportunity to work with truly gifted people who have been dedicated to taking care of the management and administrative issues DHS faces—people such as our remarkable Under Secretary for Management, Janet Hale, and dozens of people in her office who do not get or seek headlines, but deserve them. We are also fortunate to have the assistance of our partners in the components that make up this department.

We have spent a great deal of time this year:

- developing a budget;
- working with our procurement office to put in place a number of contracts that we need;
- developing computer software that will enable us to track cases that are filed with us;
- procuring basic equipment and supplies;
- hiring attorneys and staff;
- creating a Web page; and
- locating office space that meets the needs of a growing office.

This investment of time is well worth it. I think I speak for all of the senior leaders at DHS when I say that we are very focused on being good stewards of this task that has been handed to us. As a group, we believe that we are involved in an endeavor that is historic. This effort includes:

- the founding of a major new cabinet agency;
- the largest reorganization of the federal government in decades; and
- a mission that is really critical to the lives of our friends and neighbors.

As a group, we believe that we have been given a “calling.” This isn’t merely a job to hold for a time. We are very aware of the need to lay a solid foundation for this agency, one that future leaders of this department will appreciate. On a daily basis, we all have a short-term focus (to address that day’s fires) and also a long-term focus that examines the following:

- What does today’s fire tell us about the future of this agency: Is this isolated or are there more fires like it to come?
- If we resolve this fire in a certain way, will it set a good precedent for the future?
- What is the process through which we are addressing this fire: Is the right person looking at it? Do we have the resources in place to address it in the future?

Again, these are the types of issues that may be humdrum, but they have consumed our lives for more than a year and I would not be giving an accurate picture of our work without addressing them.

### CRCL’s Functions

Substantively, the Office performs three functions. First, we advise Secretary Ridge and the senior leadership of the department on issues as they relate to our civil rights and civil liberties. We have been involved with issues such as:

- The effective implementation of the Attorney General’s Guidance Regarding the Use of Race



in Federal Law Enforcement—in other words, prohibiting racial profiling while permitting the proper use of race or ethnicity in law enforcement activities. I have co-chaired a DHS working group seeking to ensure that President Bush's directive prohibiting racial profiling is fully implemented;

- Establishing policies and procedures to ensure that aliens detained in connection with a national security/immigration-related investigation are provided timely notice of the charges against them, are given an independent review of the strength of the evidence against them, and are considered on an individual basis regarding whether they are eligible for bond and whether immigration hearings should be closed. This is all work done to demonstrate responsiveness to the Department of Justice Inspector General report regarding the investigation of the 9/11 detainees;
- A variety of issues in refugee and asylum law;
- The need to better integrate people with disabilities into the emergency preparedness effort;
- The need to develop a program to comply with Section 508 of the Rehabilitation Act, which requires the federal government to ensure that electronic and information technology is accessible to persons with disabilities; and
- The use of unmanned aerial vehicles.

Our second major area of work involves reviewing matters in which there is an allegation of abuse. Under Section 705(a)(1) of the Homeland Security Act, this office is required to “review and assess information alleging abuses of civil rights, civil liberties and racial and ethnic profiling.” Moreover, our office is responsible for reviewing matters that arise under a variety of federal civil rights statutes, such as Section 504 of the Rehabilitation Act of 1973 and Title VI of the Civil Rights Act of 1964. Therefore, although we are structured to be part of the policy-making team at DHS, we are also obligated to review certain matters. This presents an interesting challenge.

Consider the following:

- We are within the very agency that we are charged to investigate. When the Civil Rights Division of the Department of Justice goes to work, it is in the context of a private citizen who has a problem with a business, state, or local government agency. The case is styled *Jane Doe v. Harris County* or *John Smith v. ACME Employment Agency*. By contrast, the matters we are reviewing are allegations by individuals against our own agency.
- The statute does not give us the ability to provide anyone with remedies, monetary or injunctive.
- We have a staff of six attorneys: The Inspector General has several hundred. Our office has 20 positions; 13 are dedicated to the EEO program, 5 are attorneys, one is the Officer and the last is the Officer's special assistant.
- There are already a number of entities within DHS that receive, investigate, and resolve complaints from private citizens. We spent months researching how it currently addresses such complaints and found over a dozen different components within DHS that play this role. There is the Inspector General, offices of internal affairs or professional responsibility, the Transportation Security Administration's Office of the Ombudsman, and the Customs and Border Protection's Office of Field Operations (which has a Customer Satisfaction Unit).

Therefore, we have been working through how we review allegations with integrity (without duplicating what others are doing) and also maintaining our role as part of the policy-making team. After months of research and consultation, we settled on a process that we believe is effective and innovative. First, when we receive allegations of abuse, we offer all matters to the Inspector General, with the understanding that they will select as many as they feel appropriate to investigate, per criteria set forth in the Inspector General Act. If the matter is returned to us, we:

- review the facts to determine if the factual allegations in the complaint can be verified;

- determine if the verified facts lead to a conclusion that the Constitution, a federal statute, or a DHS policy has been violated; and
- decide what steps the agency should take to address the matter if a violation is found.

At the conclusion of our review, we produce a report that identifies specific steps that the leadership of DHS can take to address the matter and to ensure that this is the model agency that we want. This is similar to an internal audit. While this is an internal process, we must and will communicate closely with the private individual throughout. At the conclusion, we provide the individual with a description of how the matter has been resolved and addressed by the agency.

To date, we have received approximately 55 matters. We have referred many of these to the various responsible component agencies but we have retained a significant number for our review. We are reviewing allegations in a number of areas, including:

- an allegation of discrimination based on disability filed by employees of companies that have contracts with DHS;
- an allegation of racial profiling from an airline passenger who was subjected to heightened scrutiny by TSA airport screeners; and
- an allegation from a Sikh individual who sought to enter a federal building but was told that certain symbolic religious items would have to be removed prior to being granted entrance.

We expect to begin seeing results from these reviews in the upcoming weeks and months. Again, our goal is to address these matters with integrity with a review that fully addresses the allegations of the individual and that produces appropriate and constructive recommendations for improvements within the agency.

Our third function involves the equal employment opportunity work of the department. I have touched on this already, but let me say that I have been privileged to work with a truly outstanding group of people in the EEO office. They know their business, they work hard, and they have been dedicated to finding innovative approaches to the

issues we face. Each of the component agencies has its own EEO offices, and one of the real assets we have is the experience and expertise of the leaders of these offices and their fine staffs.

### Examples of Our Work

Let me conclude by giving you two concrete examples of the type of work we do.

You have heard the term “high-value target.” We identified one early on. Secretary Ridge asked me to look at the issue of training: How can we strengthen the training that seeks to teach a respect for the Constitution and our civil liberties? There are very few of us and so we might be able to hit a “home run”—in the words of the Secretary—if we can devise a strategy to spread the department’s commitment to these issues through training programs.

Here is what we did. We first prepared a list of topics that we thought would be welcomed by law enforcement and intelligence officers in the field. We then took our humble first thoughts to the Federal Law Enforcement Training Center (FLETC), which is our law enforcement academy in Glynco, Georgia. FLETC trains approximately 40,000 law enforcement personnel every year, so obviously they have a level of experience and expertise that we can’t match. We had a number of excellent brainstorming sessions with people in the leadership at FLETC and found new topics for training.

We also met with the department’s nascent “e-learning working group,” the people across the department who are responsible for developing and implementing computer-based training techniques. We also brainstormed with the EEO/Civil Rights directors from the components.

Based on all of this background work, we have developed “Civil Liberties University,” which we hope will be a comprehensive library of distributed learning courses. The backbone of the project will be Web-based training, but it will be supplemented with CD-ROMs, DVDs, classroom sessions, and printed media. Civil Liberties University will include courses such as:

- “Civil Liberties 101”—a basic introduction to the department’s commitment to the protec-

tion of civil rights and civil liberties as described in the new Strategic Plan;

- an introduction to the department's policy prohibiting unlawful racial profiling;
- training on the Fourth Amendment requirements governing searches and seizures; and
- various topics to develop awareness of the cultural issues facing the department's law enforcement and intelligence officers, such as an introduction to the Arab and Muslim communities in the United States.

The training curriculum will expand in future years to meet the needs of the department and to cover additional topics, such as the use of race or ethnicity in specific law enforcement settings; instructions for law enforcement officers who interact with people with disabilities (such as those with hearing impairments); and introductions to the cultures of various ethnic groups in America that department personnel frequently encounter.

Some would criticize this training focus as a "September 10th" mode of thinking about civil liberties, but it isn't. It is about helping our agents and officers become more effective. We are not interested in making our agents and officers more touchy-feely; we are not interested in what some call "sensitivity-training." Rather, the goal is to teach them new skill sets that will help them better navigate unfamiliar cultural landscapes. At the same time, members of various ethnic and religious groups—whose help we need in the war on terror—are more likely to work closely with us when they are assured that our law enforcement officers are fair and knowledgeable.

A second concrete example of the type of work we are doing deals with the Secretary's desire to develop an agenda for how the department can advance the interests of people with disabilities. Secretary Ridge has a strong commitment to the disability community. When he was governor of Pennsylvania he developed a statewide agenda on these issues. You should also know that my background is, in part, as a disability rights litigator. Therefore, we have been looking at a variety of ways that we can interact with the disability community.

The first way we identified is in the area of employment. Last August, I was having dinner with my wife and rambunctious little boys when my cell phone rang. I picked up the phone and from the other end came, "Hi, this is Tom Ridge. Do you have a minute?" He said to me, "Dan, I am looking around this department and we don't have enough people with disabilities working here. We've got to do something about this." He told me that he was going to raise this issue with all of the Under Secretaries and wanted me to supply him with some ideas.

We went to work. Working with the Human Capital office (part of the Management Directorate), we put in place all the tools that managers will need to successfully employ people with special needs. The tools include:

- the appointment of a "Selective Placement Coordinator" who is identifying highly qualified people with disabilities and bringing those résumés to managers with open positions;
- creation of a "reasonable accommodations" policy to guide managers and employees to work through situations where an employee believes he or she needs a reasonable accommodation to successfully perform the essential functions of the job;
- a partnership with the Department of Defense's Computer/Electronic Accommodations Program (CAP) program, which provides (free to DHS) assistive technologies that employees with disabilities may need; and
- a partnership with the Employer Assistance Referral Network, a nationwide free referral and technical assistance service for employers.

We have also begun working closely with the Department of Veterans Affairs and the Department of Defense to tap directly into their vocational rehabilitation and employment placement programs for disabled veterans. We want to let disabled veterans know that if they meet the job requirements, there is a place where their fidelity to the nation will be rewarded and where they can continue their service in defense of our country. Our efforts here are already being rewarded with a flow of résumés from qualified disabled veterans.

These are only a few examples of the extensive infrastructure we have created, at the Secretary's direction, to help DHS managers locate highly qualified individuals with disabilities.

The Secretary then took an additional step. He ordered all managers within DHS headquarters to take a training course on how to hire and work with people with disabilities. We developed a ninety-minute session that helped managers to increase their comfort level (personally and professionally) with the Secretary's commitment to aggressively provide equal employment opportunity for people with disabilities. In the past two months, over 150 managers have gone through this training course.

The Secretary also directed that each directorate and office work regularly with interns with disabilities and that they work closely with the Selective Placement Coordinator.

Secretary Ridge also directed that each component design a similar, but customized, strategy. In other words, he directed that this offer of equal opportunity to people with disabilities should be made throughout the country—through all of the roughly 180,000 positions we have, rather than only the 2,000 or so positions that we have at DHS headquarters.

This initiative is unparalleled in the federal government. Why does affording people with disabilities equal opportunity to compete for jobs matter so much? The answer is simple. In meeting the

grave threat posed to our nation by lawless terrorists and rogue regimes, we cannot afford to ignore the talents of millions of our citizens.

### Conclusion

Let me leave you with this. I think often about 9/11. We all should. I often remind myself that my agency, the Department of Homeland Security, was born out of the ashes of that day. Out of that experience we gained a renewed appreciation for, and understanding of, what it means to be an American. We were attacked that day by an enemy that has no regard for that which makes us American. Our enemy has no regard for the rights of the individual, for religious freedom, for a free press, for all the ideals and rights and privileges that are guaranteed to Americans by the Constitution of the United States.

We are still threatened by that enemy, and the Bush Administration, through the Department of Homeland Security and other federal agencies, is facing that threat head-on. In doing so, we have honored the innocents lost that horrible day in 2001 by honoring that which binds us as a people—our respect for civil rights and civil liberties. It is that, after all, that drew our ancestors to this great nation.

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