

The Department of Health and Human Services is working on regulations to finalize medical privacy rules this summer. I understand that for the most part those rules would set up a mechanism so individuals would have to opt into the procedure of giving permission for their medical information to be disseminated—opting in meaning that you have to actually say, I give permission for my medical information to be used in such and such a way, as opposed to kind of an opt-out situation where your personal medical information will be disseminated unless you say it can't be disseminated. From that standpoint, the Department of Health and Human Services rules, which they say will actually come out this way, will be in agreement with the goals of our amendment. I see the need to allow the process in the Department of Health and Human Services to finish.

The current draft of our amendment explicitly will not interfere with those rules and the rulemaking process now going on, and it also does not apply to entities subject to those proposed rules, such as health plans and providers.

Our amendment gets at those commercial health web sites to which the protections of Health and Human Services rules will not apply. But having said that, our amendment is pending.

Having made clear that our amendment does not interfere with the Department of Health and Human Services rulemaking now going on, I want to put President Clinton on notice, if it turns out that the final Health and Human Services rules are inadequate from the standpoint of protecting the personal privacy of health information of individuals, having this amendment in the bill as a placeholder will provide those of us in Congress who are concerned about this issue of privacy of medical health information a vehicle to strengthen the HHS rules legislatively in the future if necessary. There should be ample time for that because realistically we all know that more work will have to be done on Internet privacy before final enactment.

Senator TORRICELLI and I are open to ideas on how to improve the amendment. But let me make clear that I am adamant on the point that people should have a basic right to control their medical information, and to control it from the standpoint of making a separate individual decision as to whether that information can be disseminated—not from the opposite point of view that if they fail to say it can't be used it can be legally disseminated. I believe that very strongly.

We all know there are special interests out there that do not agree with us. I happen to think they are wrong. I look forward to having this issue aired fully in the committee. We should protect citizens' most confidential information from those who misuse it. I suppose there is a lot of confidential information other than just medical information about an individual that we

ought to be concerned about. But I can't think of anything more personal or that could be more destructive to the individual than medical information.

We should also arm our citizens to make a thoughtful and informed decision on how their health information will be used—even educating them about the possibility that because they use the Internet certain health information about them can be disseminated. I am not so sure that we don't take the use of the Internet and technology so much for granted today that we often don't think about what we are doing and what we are putting into it about ourselves, and who might be making use of that. It is important for us to be informed about the possibilities. Once we have done that, I think the American people can be assured that they can go online without having surrendered their privacy rights.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Thank you, Mr. President.

SECURITY BREACHES AT NATIONAL LABS

Mr. KYL. Mr. President, one of the reasons we have time today is to discuss the breach of security at the National Laboratories. I want to address that subject for a moment this afternoon.

We are all aware of what happened in the last couple of weeks regarding the lost computer disks at the Los Alamos National Lab, and the news that those disks have now been found. But the questions remain about what happened to them during the time they were gone—whether or not they were copied and whether or not in any event our National Laboratories are, in fact, secure.

Let me go back in time to about a year ago when we were debating the Defense authorization bill of last year. One of the portions of that bill was an amendment that I offered, along with Senators DOMENICI and MURKOWSKI, to create a new semiautonomous agency at the Department of Energy, the Department of Energy Reorganization Act. That was in response to the recommendation of one of the President's own commissions, a group called the President's Forward Intelligence Advisory Board, or the so-called PFIAB Act.

Former Senator Rudman chaired the President's Foreign Intelligence Advisory Board and made some recommendations concerning the creation of this semiautonomous agency in response to the effect of the theft of some of our most sensitive nuclear secrets from the Los Alamos Lab a few years ago.

We discovered that the Chinese Government had possession of what were, in effect, the blueprints for some of our Nation's most sophisticated nuclear weapons ever built. We didn't know

how those blueprints were obtained by the Chinese Government, but we believe they had to have been obtained from the Los Alamos nuclear lab. We determined that we needed to make some changes in security practices at the laboratory.

It was believed that a scientist there by the name of Wen Ho Lee had taken charge of these documents and had somehow gotten them to someone representing the Chinese Government—a matter that has not yet been proven. We wanted to get to the bottom of it, and to make sure there would never again be a security breach at our National Laboratories.

By way of background, these National Laboratories, two of them—Lawrence Livermore and Los Alamos—are technically run by the University of California at Berkeley. But they do their weapons work under the auspices of the Department of Energy.

The PFIAB reports found that the culture of the laboratories to promote good science and develop all of these new technologies relating to nuclear weapons was such that it would be very difficult to reform from within, for either the Department of Energy or the laboratories themselves to put into place the security measures necessary to protect these secrets.

As a result, the Foreign Intelligence Advisory Board recommended the creation of an autonomous agency, totally separate and apart from the Department of Energy, under which this work is done, or, at a minimum, the creation of a semiautonomous agency within the Department of Energy for this weapons work to be done. Some called it a stovepipe; in other words, an organization within the Department of Energy that was totally enclosed, that would be run by an Under Secretary, and would be very much focused on security at the labs.

The Secretary of Energy, Bill Richardson, didn't like this idea. He wanted to remain in charge. On the debate just about a year ago, my colleagues on both the Democrat and Republican sides of the aisle concluded that the President's own Foreign Intelligence Advisory Board was correct, that we should create a semiautonomous agency and take that out of the Secretary's direct control. The Secretary was so much opposed, he tried to get the President to veto the bill over that, because we passed it in the Senate and the House of Representatives passed it. It became part of the Defense authorization bill for last year. The President signed the bill, and it became the law.

The Secretary continued to fight it, maintaining he should maintain the jurisdiction over this nuclear weapons program, that he could do the job. As a result, the President did not send up the name of this Under Secretary to head this new, semiautonomous agency, and Secretary Richardson did not implement the new law. He did virtually nothing to see that the new law was put into place. He kept maintaining that he was in charge and that so

long as there was not an Under Secretary, he would still personally be in charge.

In fact, he testified last October before the Congress that he would remain in charge until a new person was put in charge. He specifically said: The buck stops with me. He said: The President has asked me to remain in charge until there is a new Under Secretary, and the President will hold me accountable, and I intend to be held accountable.

Senator FITZGERALD asked him a specific question as he said: The buck stops with me. Senator FITZGERALD asked the Secretary: If, God forbid, there should be a security breach at one of the laboratories, you would assume full responsibility, is that correct? And Secretary Richardson said: Yes, I will assume full responsibility.

Now, that was then and this is now. We know there was not an Under Secretary appointed, that Secretary Richardson continued to maintain control over the situation, to take the responsibility for it, to assure the American people that our weapons labs were safe and secure. In fact, he said last year: I can assure the American people that our nuclear laboratories are safe and secure. Because he was in charge.

But what we now know is this past April and May, or presumably during that period, sometime in April, at the Los Alamos Nuclear Laboratory, two hard drive disks containing some very sensitive information relating to both U.S. and other countries' nuclear weapons were taken from the vault, from a portion of Division X of the nuclear program at Los Alamos. They were missing. They were missing for several weeks. They were believed to have been found in the last few days behind a copy machine in Division X. But the FBI has not yet disclosed its findings with respect to how the disks were removed, how they were returned, and what might have happened to them in the interim.

The Secretary said he believes an employee was trying to cover up the fact that he had the disks and that there is no evidence they have been copied. The fact is there is no evidence either way. It is very difficult for the FBI to determine whether or not these hard drive disks were, in fact, copied. We may know more about that in the next several days. Whether they were, whether someone also has that sensitive information or not, there was still a significant security breach and lapse at the laboratories, revealing that they are still not safe and secure; there are still problems. We have to figure out what to do about it.

What would happen if that information had been obtained by someone else? In addition to telling that person or country a lot about our nuclear weapons and how they work, it would have provided an opportunity for them to understand how we intended to dismantle or disable a nuclear weapon because these disks were in the posses-

sion of the team we have put in charge of disarming a terrorist nuclear weapon. There is a special kit prepared, and these disks are part of that kit. If we find that there is a nuclear device somewhere in the country, these experts will immediately take that kit to the site and begin to try to dismantle the weapon. The hard drives contain information which is helpful to them in determining how to dismantle the weapon. Obviously, if you have that, you have some ideas about how to prevent the dismantling and how to boobytrap it if you are a terrorist. It is an important piece of information.

What happened from the time Secretary Richardson maintained he was in charge until now?

Finally, last month, the President sent up the name of Gen. John Gordon to become the Under Secretary and head up this agency. But the Senate still hadn't confirmed General Gordon until last month. Why? Because Democrats were still trying to change the underlying law, at Secretary Richardson's request.

A member of the Senate minority had held up the confirmation vote on General Gordon for several weeks, almost a month, trying to get us to make changes in the law that were acceptable to Secretary Richardson. It wasn't until the embarrassment of last week that they finally agreed to have a vote. Of course, when we took the vote, his confirmation was approved 97-0. Presumably, he is on the job as of today. I have a great deal of confidence in General Gordon, if Secretary Richardson will allow him to do his job. That remains the question.

I summarize in the following way: It is clear we still have problems at our national labs. It is clear that General Gordon and his new semiautonomous agency needs to be allowed to get to the bottom of the situation and to put into place protections that will prevent further security breaches at our national labs.

I believe Secretary Richardson should step down from his position for two reasons. First, it was his choice to maintain personal responsibility over this for the last year. We afforded him the opportunity to put somebody else in charge. At one point I said to him: Mr. Secretary, cooperate with us. Let's get an Under Secretary nominated and put into place and let that expert run this semiautonomous agency and give him the responsibility for this. Secretary Richardson, in effect, said: No, I will remain personally responsible because I want to do it my way.

Because he wanted to take personal responsibility, contrary to the law that had been then signed by the President, and because he said he would accept full responsibility, it seems to me we should now take him at his word and allow him to assume full responsibility by taking the blame, rather than passing it on to other people.

The second reason he should step down is that I don't have confidence in

him allowing General Gordon to do the job even now. He has "dual-hatted" several employees in the Department of Energy, asking that current people be allowed to fill positions we created under this new law, positions we intended to be part of this separate, semiautonomous agency, not employees of the Department of Energy who would wear two hats—their regular Department of Energy hat and fulfill the responsibilities under this new law.

We don't think you can do both. Secretary Richardson didn't want to have separate employees. He wants to use his own employees under his control, and therefore he has been dual-hatting these employees. To this day, I don't know whether he will allow separate employees to be hired, whether he will allow General Gordon to bring his own team, or allow him to do the job as he sees fit, or whether Secretary Richardson will continue to maintain the fixation for personal control of the situation. I have no confidence in that. I call for him to step down and allow General Gordon to do the job. That is what the law provides. That is why the President signed the law. I think the American people want to know that our nuclear weapons laboratories will be secure. This is the only way they will be secure.

Finally, I heard a colleague on television yesterday say, back in his day, President Bush issued a regulation which changed some of the security procedures at the laboratories, as if somehow that had something to do with what has recently occurred. The point is this: If Secretary Richardson was in charge, then he had the full authority to change anything he didn't like, including any directives President Bush may have put into place. But Secretary Richardson's bent is to blame other people rather than accept the responsibility himself. So if he thought there was something wrong with the way President Bush did it, he could have corrected it since. Remember, he was in charge.

My purpose here is not just to point the finger at Secretary Richardson for political purposes but to say that until he steps aside, I don't have any confidence the situation is going to get any better because he has had a year now to correct the situation, and all he has found time to do is to criticize others when he himself had accepted the responsibility.

I am hoping, A, that the FBI will in the next few days get to the bottom of it, tell us exactly what occurred, and hopefully be able to assure us that no secrets have gone to an unauthorized party; B, that the people responsible for the breach in security will be found and will be properly punished; and, C, that General Gordon will be allowed to do his job, as Senator Rudman's commission, the President's advisory commission, and the Congress hoped when we passed the legislation creating his position and this new semiautonomous agency.

The American people deserve to know that our most important nuclear secrets can be kept safe and secure. Especially with the terrorist threat that confronts this country, we need to know we can disarm a terrorist nuclear weapon if we should ever be faced with that particular kind of threat. We need to know our ability to do it has not been compromised.

For that reason, I hope that the Secretary will step down, that General Gordon will be able to do his job, and that from now on our nuclear laboratories can operate in a way that protects the vital information they have been able to develop over these many years.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THOMAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KYL). Without objection, it is so ordered.

The Senator from Wyoming.

Mr. THOMAS. I thank the Chair.

LEGISLATIVE AND EXECUTIVE RELATIONS

Mr. THOMAS. Mr. President, I thank particularly the Senator from Arizona for his very thorough and accurate description of where we are and where we have been in terms of our nuclear security, in terms specifically of the Los Alamos matter, and more importantly, of course, where we are in terms of overall security, which has to be one of the most important things this Government has to do. The Senator is probably one of the more knowledgeable Members in terms of the military, in terms of intelligence, so I appreciate that very much.

Unfortunately, we have been through this now several times, the matter of having a system upon which we could rely for the security of our nuclear arsenal and secure military information. And even though this is a very trying thing we are involved in now, really the overall system is what is worrisome. If we are having these kinds of difficulties at Los Alamos—there are a number of places in this country where, of course, we are required to have security—and if we have that notion that there is no more security there than there has proven to be, then we have to wonder, of course, about the other facilities in this country which require the same kind of security.

I believe, as the Senator mentioned, the real issue is that we went through this before, not very many months ago. I happen to be on the Energy Committee in which we listened to this a great many times; we listened to the Wen Ho Lee question, and we heard from the Secretary that now we were going to take care of this issue and

now you could rest assured we would have security.

The fact is we do not. The fact is that apparently there are some very simple kinds of things that could be done that would have alleviated this problem. It is difficult to understand that in a place such as Los Alamos, where you have secure storage for this kind of information, as someone said, you have less security than Wal-Mart in terms of checking in and out. That is really very scary.

So my point is that we really have to take a long look at the system. As the Senator pointed out, Congress established a while back a semiautonomous unit that was to have responsibility for nuclear security. The Secretary did not approve of that. The President, despite the fact that he signed it, did not approve it either, and therefore it was never inaugurated; it was never put into place. That raises another issue, of course, that is equally troubling to me, and that is that this administration has sort of had the notion that, if we don't agree with what the Congress has done, we simply won't do it, or, if we want to do something the Congress doesn't agree with, we will go ahead and do it.

That is really troublesome to me in that one of the real benefits of freedom, one of the real benefits of the operation of this country over the years, has been the division of power, the constitutional division among the legislative, the executive, and the judiciary. It is so vital, and we need to retain it. We find increasing evidence of the fact that some of it, of course, is in the closing chapters of this administration, but they are determined that if they don't happen to like what the Congress has done or can do something that Congress will not accept, they go ahead and do it. This is not right. This is really very scary.

We have, as you all know, a great many young people who come to visit the Senate, come to visit their Capitol, and I am delighted that they do. People want to see all the buildings, and they want to see the people who are currently filling these offices and in the White House. But the fact is that the Constitution is really the basis for our freedom. That is what other countries do not have, a Constitution and a rule of law to carry it out.

So when we threaten the division of power, then it really is worrisome, and I think we have the great responsibility to make sure that that does not in fact happen. In this instance, I think we have had a pretty patent rejection of the things the Congress has done and put into law and that have not, indeed, been implemented.

There are a number of important matters, of course, that are before us as we enter into what are almost the closing months of this Congress. We have accomplished a number of things that are very useful; we have some tax reform, some welfare reform; we have done some things for the military, to

strengthen it. There are a number of items, of course, yet to be done.

One of them, of course, that is imperative is the passage of appropriations, all of which have to be done before the end of September, which is the end of the fiscal year. One of the scary things for the Congress, I believe, again, with this sort of contest sometimes with the executive branch, is if we do not finish these things in time, the President would threaten, of course, as he did before, to shut down the Government and blame the Congress for doing that and use the leverage for the budget to be quite different from what the Congress would like it to be. Therefore, we need to move forward.

I was in Wyoming this weekend, as I am nearly every weekend. There is a good deal of concern about regulatory reform, the idea that, first of all, we have probably excessive regulation in many places. One of the most current examples, I believe, might be in the area of the price of gasoline where, without much consideration of where we were going and its result, we have had more regulations to control diesel fuel and gasoline, which is at least a part of the reason that gas prices are as high as they are, the lack of a policy in energy. We have allowed ourselves to become overly dependent on OPEC and the rest of the world by limiting or restricting, through regulation, our access to energy that could be produced in the United States so at least we were not 60-percent dependent, as we soon will be, on overseas production.

Those are the things with which we ought to be dealing in terms of excessive regulation.

One of the ways to fix that is to have a system whereby once the laws are passed by the legislature and are implemented by the executive branch through regulation, those regulations should come back to the legislative body to ensure the thrust of the legislation is reflected in the regulations.

This happens in most States. Most State legislatures have an opportunity to look at the regulations once they have been drafted to ensure it reflects the intent of the legislation.

We passed a law in 1996 to do that. Unfortunately, it has not worked. We have had 12,000 regulations. Very few have come back because they have to go through OMB to be scanned out, first of all. I believe there has been some effort to change five of them, but none of have been changed because the system does not work.

I introduced a bill 3 weeks ago that will give us an opportunity to look at the regulations and accept the responsibility that a legislature has to oversee the implementation of regulations to ensure the laws are carried out properly.

We have a responsibility for energy policy. I mentioned that. This administration does not have an energy policy. We have not dealt with the question of how to encourage and, indeed, should