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AMERICA STILL UNPREPARED–AMERICA STILL IN DANGER: THE OCTOBER 2002 HART–RUDMAN TERRORISM TASK FORCE REPORT

HEARING

BEFORE THE

SUBCOMMITTEE ON TECHNOLOGY, TERRORISM, AND GOVERNMENT INFORMATION

OF THE

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UNITED STATES SENATE

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THURSDAY, NOVEMBER 14, 2002

UNITED STATES SENATE,
SUBCOMMITTEE ON TECHNOLOGY, TERRORISM,
AND GOVERNMENT INFORMATION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:03 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Dianne Feinstein, Chairman of the Subcommittee, presiding.

Present: Senators Feinstein, Leahy, Schumer, Kyl, Hatch, and DeWine.

OPENING STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Chairperson FEINSTEIN. Senator Kyl has indicated he will be here shortly, but since I have this distinguished panel here, I thought I might at least start my remarks.

This is going to be the last hearing of this Subcommittee in this Congress, and probably the last hearing I chair for the next 2 years. I did want to thank my ranking member, Senator Kyl, who has really exhibited leadership and cooperation, all with the highest marks. It has been a great privilege for me to work with him this Congress, and now I look forward next year to our positions reversing.

This Subcommittee has held 13 hearings this Congress. That makes it the most active Subcommittee on the Judiciary Committee.

I see we are about to be joined by the ranking member, who will shortly become the Chairman of the full Committee. We are delighted to welcome you, Senator Hatch.

Senator HATCH. Thank you very much.

Chairperson FEINSTEIN. Perhaps you would take Senator Kyl's seat until he is able to be here.

A number of the hearings of our Subcommittee resulted in legislation. I would like particularly to mention the Enhanced Border Security and Visa Reform Act, and the Public Health Security and Bioterrorism Preparedness Act. Parts of both of these bills came right out of this Subcommittee.

Also as a result of Subcommittee hearings, for example, Senator Kyl and I were able to get the provisions in the bioterrorism bill establishing strict new security requirements for labs that handle dangerous pathogens. Those provisions became law in June.

Many of our meetings were on the need for more coordination and consolidation of the agencies that combat terrorism, an issue which is very much on the minds of Members of Congress this week.

For example, back in April of 2001, we held a hearing on the report of the United States Commission on National Security in the 21st Century, more popularly known as the Hart-Rudman report. At that hearing, we heard testimony from our distinguished former colleagues, Senator Warren Rudman and Gary Hart, and I am just delighted that Senator Rudman, who has been really wonderful in coming to these meetings, is back before the Subcommittee today.

While some may complain about commission reports gathering dust on the shelves, there can be no question about the influence of the original Hart-Rudman report. That report proposed a new Homeland Security Department that would combine four Federal agencies—FEMA, the Coast Guard, Customs, and Border Patrol. Many experts dismissed the idea of creating such a department as too ambitious and too politically unrealistic. But right now, Congress seems very close to passing historic legislation that would combine some 22 Federal agencies, with about 200,000 Federal employees.

The original Hart-Rudman report was a wake-up call for the Nation, but one that we actually heard too late. In the report, the commission warned, and I quote, "Attacks against American citizens on American soil, possibly causing heavy casualties, are likely over the next quarter century," end quote. Less than 6 months after that, a group of Al-Qaeda terrorists killed almost 3,000 people in New York, Virginia, and Pennsylvania.

Now, Senators Hart and Rudman have joined up with a distinguished group of former government officials and private sector leaders to research and write a new report. Members of this new 17-member Hart-Rudman Task Force include two former Secretaries of State, two former Chairmen of the Joint Chiefs of Staff, and two Nobel laureates.

The task force report is chilling to read, and its conclusion is even more disturbing. It reads, and I quote, "A year after September 11th, America remains dangerously unprepared to prevent and respond to a catastrophic terrorist attack on U.S. soil. In all likelihood, the next attack will result in even greater casualties and widespread destruction to American lives and the economy," end quote.

To reduce this vulnerability, the task force makes a number of useful recommendations, focusing particularly on how we can protect relatively neglected areas of our economic infrastructure such as seaports, power plants, oil refineries, railroad, and urban centers.

The task force's conclusion is especially worrying because it seems more and more likely that America will face a catastrophic terrorist attack. Both Senator Hatch and I serve on the Joint Intelligence Committee and we heard the DCI, George Tenet, come be-

fore the Committee just before we broke and say with a very ominous tone that they are coming at us again. And we know that the intelligence chatter is up and that the threat is real and it is serious.

Since September 11, though, the Congress has passed major antiterrorism legislation in the areas of law enforcement, intelligence, aviation security and, as I mentioned previously, border security and bioterrorism.

Last summer, Senators Kyl, Hutchison, Snowe and I introduced the Comprehensive Seaport and Container Security Act of 2002. This legislation would really thoroughly address the issue of port security from the point that cargo is loaded in a foreign country to its arrival on land in the United States.

We had hoped to be able to get that included in the conference report of the seaport security bill that was just voted on this morning. Although I voted for the bill, as did, I think, virtually every other member, it is still a very weak bill. My staff worked with the conference committee on the legislation, and I am hopeful that we will be able to continue to work next year. In particular, I look forward to working with Mr. Thomas in the House in this regard. We must have a strong seaport security bill, particularly for my State, which receives about 40 percent of the cargo coming into this country. If something deadly or radioactive is going to be smuggled into the United States, the most obvious way is through our seaports on a container.

In addition, Senators Bond, Leahy and I filed an amendment to homeland security with respect to creating a successful National Guard program. And I am delighted that you are here, Mr. Chairman, or almost-Mr. Chairman, because I think that this is something hopefully we can work on next year.

It has the support of the National Governors' Association, and I would like to place their letter in the record at this time, as well as the letter of the National Guard Association of the United States, and also the relevant comments from the United States Commission on National Security for the 21st Century, again known as the Hart-Rudman Commission. I am hopeful that this Committee will continue to proceed in this area.

Something that this report discusses indirectly relates to legislation that is now sponsored by Senator Jeffords and Bob Smith. It authorizes $3.5 billion to help State and local governments buy equipment and improve training for responding to a terrorist attack, and it passed the Senate Environment Committee.

One of the things that this panel is going to make clear is the fact that the States are still left out in the cold. For example, the task force report has a very significant recommendation to create a 24-hour center in each of the States that can be responsible for interoperable communication systems between various agencies. Then if we were able to get the National Guard involved, they, who would already be trained to use such systems, would be able to be a first responder in certain situations. So there is a lot of work left to be done.

Just before I introduce the panel, I would like to ask the ranking member of the overall Committee and the future Chairman, some-

one whom I greatly respect, Senator Hatch, if he would like to make some comments.

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Well, thank you, Madam Chairman, and I certainly want to welcome all of you here as witnesses here today.

Madam Chairman, thank you once again for holding this important hearing on the Hart-Rudman report on terrorism. I think you and Senator Kyl have shown tremendous leadership in the areas of terrorism and homeland defense, and you both have had a tremendous impact in the Senate and throughout the Congress in this area.

Well before the attacks of September 11, both Senators focused this Subcommittee's efforts on our Nation's national security, and I think I speak for all members of the Committee in commending both of you for your great leadership in this area.

Let me also take a moment to welcome back to the Senate a dear friend and former colleague, Senator Rudman.

I am really pleased to see you again, Warren, and I want to thank you again for devoting your time and energy to the public in helping to produce this very important report. And I want to thank the rest of the witnesses for coming down here today to discuss your thoughts with us.

Having reviewed the Hart-Rudman report, I am intrigued by many of the recommendations it makes. In particular, let me focus on two specific recommendations. First, the Hart-Rudman report emphasizes the immediate need to create the Department of Homeland Security. Our President and the American people have made it abundantly clear that we need to enact this long-stalled legislation to create the new Department of Homeland Security.

I am encouraged by recent reports and efforts to move this legislation, and I fully expect that the Senate will soon join the House in passing this important legislation so that the President can sign it and get started on creating this new and vitally important agency. As I have said before, this issue cannot fall prey to partisan politics. Our country's security and the safety of our people depend on enacting this legislation.

Second, the Hart-Rudman report notes that 650,000 State and local police officials continue to operate in a virtual intelligence vacuum without meaningful access to critical intelligence information.

In previous hearings before the Senate Select Committee on Intelligence, I have indicated my concerns about the absence of effective intelligence-sharing. The PATRIOT Act was a giant step forward in breaking down barriers to intelligence-sharing among law enforcement and intelligence agencies, and it was negotiated right here at the table our witnesses are sitting at.

Yet, in my view, there is still more to do in this area. Specifically, there are existing restrictions on law enforcement's ability to share critical information with State and local law enforcement, as well as foreign law enforcement agencies, all of whom can play and may play a very important role in our united fight against terrorism.

I look forward to hearing from today's witnesses on the Hart-Rudman report, and other matters as well. This hearing is a good place to start and listen to viewpoints on this subject.

We all have a common goal to protect our Nation from the devastating threat of terrorism. The devil, as usual, is in the details and I am well aware of the fact that there are a myriad of different opinions on this issue, as there are on other issues of great weight and importance. But, of course, some opinions are more persuasive than others, and I feel privileged to be here today to listen to some of the most distinguished and knowledgeable people on this subject.

Again, I want to thank all of you who are testifying today, and I certainly want to thank you, Madam Chairman. I think you have done a terrific job on this Subcommittee. I have watched you over the years and I think you do a terrific job on the Committee as a whole and I just feel very honored to be able to work with you.

[The prepared statement of Senator Hatch appears as a submission for the record.]

Chairperson FEINSTEIN. Thank you very much, Senator Hatch.

We are also joined by Senator Schumer and DeWine. Following the early bird rule, I will go to Senator DeWine next and then you, Senator Schumer.

STATEMENT OF HON. MIKE DEWINE, A U.S. SENATOR FROM THE STATE OF OHIO

Senator DEWINE. I will be very brief. I just want to thank you for holding this hearing. Through your service on this Committee, as well as your service on the Intelligence Committee, I think you well understand the importance of this report, and I am just looking forward to hearing the panelists' comments.

I am particularly interested in the report's recommendations in regard to the National Guard, and I will be anxious to hear Senator Rudman's comments as well as our other panelists. We are looking forward to that very much.

Thank you.

Chairperson FEINSTEIN. Thanks, Senator.

Senator Schumer.

STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Thank you, and I want to thank you, Madam Chairperson, for the job you are doing on this Subcommittee, which has been terrific. Thank you for that.

I want to thank our panelists, and particularly I want to come to thank Senator Rudman and Senator Hart for the report that they issued. You are really the Paul Reveres of this rather sorry situation, in my judgment, in terms of homeland security.

I think, as a whole, our Nation is doing an excellent job in fighting the war on terrorism overseas, and I have been generally supportive of that war. But at the same time, as good a job as we are doing focusing on the danger that terrorism presents overseas, we are doing a poor job on homeland security, an unbelievably poor job, in my judgment, given the dangers that we face.

Let me tell you a few little points here that I am concerned with. To me, one of the great dangers we face—and your report, Senator

Rudman, brought it out—is that a nuclear weapon could be smuggled into this country on one of the large containers that come by the thousands into our ports and over our Mexican and Canadian borders, covered by trucks.

Senator Warner and I have put together legislation that would allow our scientists to create a detection device. Right now, you can't detect it; you can with a Geiger counter, but you can't go on each container. A Geiger counter only works three feet away from the radioactive source. But we could develop such a device.

We put the legislation in, and $250 million, a small cost, it seems to me, to deal with such a great danger. We can't get that legislation passed because in both the port security bill which just passed and in the homeland security bill, there is a rule that nothing can cost money.

Well, you can't fight the war on domestic terrorism unless you are going to spend some dollars, and we are not. Whether it is the ports or rail or cyber terrorism or any of these other places, there are gaping holes in our security. Now, no one expects them to be fixed overnight, but we are not even making a start on them.

Your report and that of Senator Hart, Senator Rudman, has really alerted the Nation, and I would just hate to think that, God forbid, there would be another terrorist incident and then we would all say why didn't we heed the admonitions in that report.

There are so many areas where we are doing virtually nothing. We either don't have the will, or more importantly—it is an anomaly to me why we are willing to spend $40, $60, $80, $100 billion to fight terrorism overseas—again, I have been supportive of that—and not willing to spend $2 or $3 billion to support the war here at home.

So I thank you for having this hearing, Madam Chairperson. I think it is crucial.

And I want to thank you, Senator Rudman, for sending out the warning, and my message to you is please don't stop. This Nation needs to be alerted to the danger and this Government better get on the stick and start dealing with the danger—something we are not doing now.

Thank you, Madam Chairperson.

Chairperson FEINSTEIN. Thanks very much, Senator Schumer.

I would now like to turn to our ranking member. We are joined by Senator Kyl.

Before recognizing you, I just want to thank you. I couldn't have a better colleague, a better ranking member. Hopefully, when our positions will switch, we will be able to continue as we have. You indeed have been quite wonderful and I am very appreciative of that.

STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator KYL. Thank you very much, Senator Feinstein. I have to echo the comments.

I hope that those of you in the audience who are not familiar with this Subcommittee will appreciate the fact that for 8 years now, Senator Feinstein and I have gone back and forth as Chairman and ranking member of this Subcommittee in a seamless ef-

fort, I believe, to try to do our very best to try to deal with the kinds of problems that are identified, among other things, by this report.

We will continue to do that, irrespective of which party happens to be in the majority, and that is one of the great things about the time that I have been able to serve here in the U.S. Senate. These are trying times, important times, with big problems in front of us, and this Committee has a responsibility to understand everything we can.

Fortunately, we have a very prestigious panel in front of us here, and therefore I will put my statement in the record and look forward to hearing from the people whom we can here to learn from.

Thank you very much, Madam Chairman.

Chairperson FEINSTEIN. Thanks very much, Senator Kyl.

We are also joined by the Chairman of the Judiciary Committee, and I want to thank you for being here today and I want to thank you for your leadership, and would like to turn it over to you.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Well, thank you, Senator Feinstein. I want to thank you and Senator Kyl for having this hearing. When you first raised this with me a couple of weeks ago, the idea of having the hearing, I thought it made a great deal of sense.

I know a number of the people who are here, and I might just say as a personal matter I served with Warren Rudman. We were the twins across the river, and when you speak of bipartisan work, I cannot think of a single issue that involved that part of our country that we didn't work together on, and a whole lot of other issues that we worked very closely on, national security matters, some of which, as Senator Rudman knows, I can't discuss here in this open hearing. But I think we accomplished a lot because it was never an issue of partisanship.

I would tell one story, which was one time on an attack submarine, Los Angeles class—and if any of you have ever been on one of those, the controls for the submarine are right in the center. There is the accounting tower and the periscope, and the controls are there in the center and it is like an airplane.

Senator Rudman is a very accomplished pilot, and they were going to let each one of us take turns, with one of the pilots in the co-pilot's seat, to actually make this move underwater. And I turned to the skipper and I said, "Skipper, Senator Rudman has bet me $50 that I cannot do a barrel roll with this."

Now, it was at that point I realized that those trained by the legendary Admiral Rickover were not picked for their immediate sense of humor, and both Warren and I had to tell them immediately that we were joking. The rest of the reason for our being there, though, was a matter of significance and I appreciate that.

I could say the same about Gary Hart. Senator Rudman and Senator Hart have done far greater service to this country than most people in this country know and that most people have not yet reflected on. I wish more would. Your report shows a pragmatic, clear-headed approach, one devoid completely of politics, but one

that reflects only one overall interest, and that is the security of our country.

Warren, you and Gary—I have always been proud of the fact that I served with both of you. But as an American, I couldn't be more proud of what you have done in this.

Senator Feinstein, you and Senator Kyl do that kind of service in having the hearing and I commend both of you.

I would like to just mention three key suggestions. The report makes important recommendations on how we help first responders in our rural and urban communities plan and train. This is extremely important. We made progress when we established domestic preparedness grants in the USA PATRIOT Act. So far, there is only one such center. We need to do better.

We have authorized several new centers in the Department of Justice Authorization Act that the President signed a couple of weeks ago. Whether it is urban areas or rural areas, each face different issues. In rural areas, I have got to tell you we really need help. The report recommends that the National Guard be better equipped to deal with the domestic defense mission and help first responders. That is absolutely so. We have to give them the equipment to do it.

Second, I agree with the recommendations in the report that we need to improve our border security, particularly with our largest trading partner, Canada. In the PATRIOT Act, we called for the tripling of border security agents and the deployment of enhanced security technology. That is very important, and I hope everybody reads that part especially.

And then, last, increased information-sharing. We have got to get better in cooperation. Senator Rudman was attorney general of his State and I was State's Attorney in mine. One of the things I hear over and over again in this Committee is we need better sharing.

We saw it in the early part of the sniper rampage here in Washington, D.C., and the efforts to start sharing, and realized the inadequacies we have here. Fortunately, things started to come together and somebody has been charged now. But we have got to make sure we have the ability to share real, timely information.

Madam Chair, in the interest of time I am going to put the rest of my statement in the record, but I wanted to make those points. And I did want to commend my good friend from New Hampshire, Senator Rudman. I wanted to commend what he and Senator Hart have done, and all of the rest of you, I hasten to add, but I served with both of them. And you have to understand this is a matter where they used to be very lonely voices in the Senate dining room and in the closed meetings and in the cloak rooms long before September 11th, saying wake up.

[The prepared statement of Senator Leahy appears as a submission for the record.]

Chairperson FEINSTEIN. Thanks very much, Mr. Chairman. I appreciate that.

I would like to begin now and introduce our four distinguished panelists. We very much appreciate your being here, and I will begin with Senator Rudman.

He was a United States Senator for 12 years and served on several Committees, including Intelligence, Appropriations, and Gov-

ernmental Affairs. He has been very active since leaving the Senate. He serves as Chairman of the President's Foreign Intelligence Advisory Board and as vice Chairman of the Commission on Roles and Capabilities of the United States Intelligence Community.

He has been the recipient of numerous awards in honor of his years of devoted public service, including the Department of Defense's Distinguished Service Medal, which is the agency's highest civilian award.

If I might, I will just introduce the other three at this time and then we can just go right down the line.

Our next witness will be Stephen Flynn. He is the Jeane Kirkpatrick Senior Fellow in National Security Studies at the Council on Foreign Relations. He is a former commander of the Coast Guard and his experience deals directly with homeland security missions. He is the former director of the Office of Global Issues at the National Security Council. Dr. Flynn has been very helpful to my staff in a collaborative effort to create comprehensive seaport security legislation, and your expertise, I want you to know, is very, very valued.

Mr. Philip Odeen is the Chairman of TRW, Incorporated, and a member of the board of directors. In addition to his nearly 30 years in the private sector, he has built an impressive record in the public sector as well. He served as Principal Deputy Assistant Secretary of Defense, and later led the defense and arms control staff for then-National Security Advisor Henry Kissinger.

He was also selected by former Secretary of Defense William Cohen in 1997 to chair the National Defense Panel. He is currently a member and former vice Chairman of the Defense Science Board, as well as a member of the Chief of Naval Operations Executive Panel.

Colonel Randy Larsen is an ANSER vice president and the director of the Institute of Homeland Security. Colonel Larsen is an expert on the issue of homeland security, having studied, written, and taught extensively on asymmetric and biological warfare and the 21st century challenges to homeland security. He has served as a government advisor to the Defense Science Board, and he was the co-developer of the nationally acclaimed Dark Winter exercise. That exercise simulated a major bioterrorism outbreak in the United States. Colonel Larsen retired after 32 years of service in the Army and Air Force, and has been awarded numerous military decorations for his service.

Those are our panelists, and now we will begin with the distinguished former Senator and someone who is always—every time we have asked, he has come to this Subcommittee, and I want you to know how grateful we are, Senator Rudman.

STATEMENT OF WARREN RUDMAN, CO-CHAIR, INDEPENDENT TERRORISM TASK FORCE, WASHINGTON, D.C.

Senator RUDMAN. Madam Chairman, Senator Kyl, soon-to-be-chairman Hatch, Chairman Leahy, Senator Schumer, and my good friend Mike DeWine, I am privileged to be here. I know better than most the burdens that you bear, and they are substantial.

The 435 members of the House, the 100 members of the U.S. Senate, and the President of the United States and his Cabinet

have in their hands the security, the safety, and the well-being of 250 million Americans. It is not easy and there are varying views, but I must say to you, Madam Chairman, that this Committee has been seamless in its approach to this issue.

I could never tell who was a Democrat and who was a Republican. This Committee has truly done wonderful work, and I can tell you that the United States Commission on National Security, which I was honored to co-chair with Gary Hart, has recognized that, as well as the work of other Committees in the Senate and the House that have tried valiantly to address the issue.

I want to address just a few of the comments made in opening statements. I would say to Senator Hatch that we rejoice—the 14 members of the National Security Study Commission who spent 3 years of our lives on that report and recommended essentially the structure that eventually became the legislation rejoice that it is finally going to become law.

Let the past be the past. Why did the delays happen? They happened. The important thing is it is now going to become law, and I must say that nothing is more important than integrating the 43 agencies and divisions of agencies into a cohesive unit under strong leadership to start to organize homeland security.

Senator Schumer, I would agree with you that a lot that should have been done has not been done. I have looked at this for a long time. I think the administration reacted very rapidly with the appointment of Tom Ridge. I am very familiar with what they are doing, and I must say that they have done a great deal. I think the Congress has done a great deal. The PATRIOT Act was an important piece of legislation. Other legislation was important.

I understand, being on the Appropriations Committee, how difficult these issues are in a time of scarce resources. But I think that although there is certainly some truth to what you say, I would tell you that what we say in this report that essentially if you take an aircraft carrier steaming at 30 knots and you try to turn it around, it takes a little time to get that done.

This has been a tough assignment because until September 11, in spite of not only our report but other reports, people did not take seriously the fact that the great Pacific and Atlantic Oceans no longer protected us from adversaries that presented an asymmetric threat to anything that we had ever looked at.

So I just wanted to make those comments to some of the statements made here. By the way, thank you all for your gracious personal comments. I watch what you all do with great interest, no regret, but with great interest.

I want to just add to Senator Feinstein's introduction of the panel that, in addition to those that she mentioned, we also had, of course, Bill Webster, former head of the FBI and the CIA. We had a number of scientists and academics and a number of very prominent businessmen.

The genesis of this panel is very interesting. All of you know, I know, are familiar with Les Gelb or know him personally. Les was on the originally Hart-Rudman commission and about two-and-a-half months ago he called me and said, you know, it is now more than a year later; a lot has been done, but let's pick six or seven key issues and see if we can get everybody's attention.

Well, we surely got everybody's attention. This got more coverage by a factor of 10,000 than the original report which was 3 years in the making. And so what you see before you is our prioritization of what we think is absolutely vital to get done, and to get done soon.

I must say that I have been very pleased with the reception of this latest report. Without naming names, I will tell you that I have received calls from six of the highest-ranking people in this administration thanking us for the work that we did. That pleases us because it means that they are looking at it, and they are.

I have received invitations from a number of the Cabinet agencies to look at what they are doing. And, of course, I have accepted those because to the extent that we can add anything, we will.

I want to thank Commander Flynn, who was a major resource on the original Hart-Rudman. He was then an active Coast Guard officer and was on temporary duty to, I believe, the council at the time. And we borrowed him and he did enormous work, and he staffed this for us. This was put together in about a 9-week period because we had so much to work on and so many things on which to base our work.

I know Commander Flynn has a substantial statement to read. Mine is informal. Let me just highlight a few things that I think you have talked about in your opening statements and I think are absolutely critical.

It is absolutely essential that the Judiciary Committee and the Intelligence Committees get together with the FBI and the CIA and find a way to filter out sources and methods and be sure that important information gets to the chiefs of police, whether it be in Barry, Vermont, or Syracuse, New York, or Cleveland or Salt Lake City or Phoenix.

I was in Cleveland on Tuesday night and spoke to a large audience at Baldwin-Wallace College, and then in the morning to a large business group in Cleveland. And I will tell you, Senator DeWine, something I am sure you know. The people of this country are very concerned; they are very concerned. And wherever I go, people are waiting for visible action, which I know will start to happen soon with the creation of this department.

Recommendation one: There must be more intelligence-sharing. You know that. There are ways to do that without compromising sources and methods. Those of us who have been on the Intelligence Committee know how that is done. I don't subscribe to the notion that we need a new MI5, along the British model. I think that will simply postpone action. I think we have got the resources, we have got the collection, we have got the people. Now, it is a question of focusing their mission.

Second, with all of the screeners at the airports—and some will disagree with this—I think if it had been a port attack on September 11, we would have put all the money into the ports. However, it wasn't, so we are putting something like $200 million a month, a delta above the normal expenditure, into airport security.

With all due respect, with the scarcity of funds, there are so many things that have to get done that I question whether that is a wise expenditure of resources. Not that we shouldn't have secure

airports, but we seem to be putting all of the money into the TSA and very little into other places which are absolutely critical.

Next, something that you all know. New York City was very fortunate. It has an extraordinary fire and police department—they are huge on a per capita basis—and marvelous emergency medical response. They were prepared to do many things. I wonder whether or not we could say that about most American cities. In fact, I have looked at numbers and I think the answer is probably it would not be up to the standards that New York City exhibited on 9/11.

What do we do about that? We know that these people need training in chemical and biological response. We know that they need equipment. We know that the health agencies need vaccines and equipment. I would submit to you that we are talking about a small amount of money, to take maybe the 100 largest cities in America and some of the States that are small, but at least you could centralize it, and start doing some training of these people.

Now, I know that that is supposed to happen when FEMA becomes part of the new Department of Homeland Security. But I hope the money is appropriated for it because we have just appropriated $349 billion for a Defense budget. And I fully support that, I always have. It is important. But with all due respect, the President has said that we are fighting two wars, one overseas and one at home. And it seems that we ought to be able to find resources to do what is basic to the defense of our population.

I want to talk about energy and infrastructure generally. Right now, based on the most current information that we have, America's energy resources, our computer networks with our financial system, and our transportation systems are not where they ought to be. It will take a good deal of Federal intervention and a private-public sector partnership to get it done.

We have recommended how to get it done. We hope that people take that seriously because you could do enormous damage to this country by shutting down our ports, our energy supply, our banking system, or our communications system. And all of that is vulnerable today. Although work is being done, in our opinion, it is not being done rapidly enough.

The National Guard. The original Hart-Rudman report made the following conjecture: We talk about forward deployment in the cold war. We had troops and equipment forward-deployed all over the world. We have the best-trained, best-disciplined first responders forward-deployed all over America. They are the National Guard men and women, citizen soldiers, who have equipment, transportation, communications, and skills.

Their primary mission is to aid the combat forces in time of war overseas. We believe they should have a dual mission, and we have got substantial agreement from many people on that subject. We believe they ought to have a mission of homeland security, with each unit trained in a different kind of discipline. That could be done in the next year.

So if, in fact, we had another event, let's say in New England, let's say in the State of Connecticut, you have Guard from Maine, New Hampshire, Vermont, New York, Rhode Island and Connecticut who could converge on the scene and give the local responders the kind of help they need. Not to do that with that kind

of a force in place is a terrible waste of resources. They train a great deal. Their training ought to concentrate for the next year on homeland security.

Finally, the other point that I just want to make is that we cannot overlook—and I address this, I think, as much to Senator Hatch as anyone, soon to be the Chair of the full Committee. We have heard from many people in the private sector who really want to work more closely together in some of the infrastructure problems that we know exist and that are outlined in the report. They are worried about antitrust laws and they are worried about the Freedom of Information Act.

They don't want their corporate secrets, if you will, which are legitimate, to be disclosed, if you will, because they are working with the Government in a public-private partnership. They don't want to be the subject of a public or private antitrust action because they are working with their biggest competitors to provide infrastructure protection. So I would commend to you that there are ways to fix that, and I would hope that the full Committee of the appropriate Subcommittee would look at that in the near future.

Let me conclude by simply making two observations. No. 1, I have heard a great deal about prevention and a great deal about intelligence that, if it was only good enough, it could prevent. Well, it can prevent something, but it cannot prevent everything.

Anyone who is familiar with U.S. intelligence or MI5 or MI6 or the KGB and their whole history will know that they are very good at predicting force structure and general intentions and very poor at predicting with certainty what will happen where it will happen. If it were any better, we wouldn't have had the Battle of the Bulge, we wouldn't have had Kuwait, and we certainly wouldn't have had Pearl Harbor.

So for those who want to put all of their eggs in the intelligence basket and figure that is going to fix it, frankly, to use an old Vermont expression, that is whistling in the cemetery. It just won't happen. I told a group the other day that in baseball if you bat .500, you are in the Hall of Fame. In intelligence, if you bat .750, you are a loser. And we are going to lose, so we have got to buildup the response side of this equation and understand that that is where it really counts.

Finally, Madam Chairman and members of the Committee, I served in this place long enough to know that if you had an intelligence report that was absolutely certain that a city in the United States would be the target of a biologic attack on a certain date in February in the year 2003, I have no doubt whatsoever that the local community, the Governor of that State, that legislature, this Congress, and this President would do whatever it took to get ready for that. It would spend whatever money it took; it would do everything to protect this Nation's citizens. My question is a very simple one: Why do we have to wait for that to happen? And I hope we don't.

Thank you.

Chairperson FEINSTEIN. Thank you very much, Senator, and thank you for your care, concern, and most particularly for your talent. We really appreciate it.

Dr. FLYNN.

STATEMENT OF STEPHEN E. FLYNN, MEMBER, INDEPENDENT TERRORISM TASK FORCE AND JEANE J. KIRKPATRICK SENIOR FELLOW, NATIONAL SECURITY STUDIES, COUNCIL ON FOREIGN RELATIONS, NEW YORK, NEW YORK

Mr. FLYNN. Thank you, Madam Chairperson. It is a real honor to be here today, Senator Kyl, Chairman Leahy, soon to be Chairman Hatch, Senator DeWine, and Senator Schumer. I can't express our thanks enough for how quickly you assembled this hearing to respond to the report that I had the privilege to direct with this very distinguished group of Americans who served—of course, the Co-Chair, Senator Rudman, who is such an extraordinary American, and also with us today, Mr. Phil Odeen.

Senator Rudman has touched upon many of the key findings of the report and I don't think I need to review them here for you, as I know you have looked through them. I just hope I can submit my written testimony for the record, and also if we might include the report itself, which is fairly brief, into the record.

Chairperson FEINSTEIN. If I may, would you go into your concept of the States' 24-hour-a-day centers and how you see those operating?

Mr. FLYNN. Absolutely. I just wanted to make a few opening statements and then I will speak directly to that.

I just want to reiterate what Senator Rudman has said and, of course, what the President has said, that we are a nation at war and we need to fight this war both overseas and at home. Clearly, our task force believes that we need to be acting on a war-time footing here at home, and frankly our view is that we are not.

In trying to assess where we are post-9/11, we obviously tried, as we reviewed here—and we do give enormous credit for the work that has been done by this body, by the President, and by Governors and mayors throughout this land. But we have to parallel our assessment about how much progress we make against the threat, and I would like to speak for just a moment about that threat.

September 11th, if our adversaries didn't know it, taught them something, two key things: one, that we are open as a society and largely unprotected. But, second, they also indicated the enormous disruptive potential you get from engaging in catastrophic terrorism as a means of warfare.

In my view, what we saw on September 11 is how warfare will be conducted against the United States for the foreseeable future. We must accept that. There is value to doing this because it is not just that we are such a target-rich society, but it is that when you engage in this form of warfare, we do unto ourselves a great deal of disruption. As long as that incentive persists and these vulnerabilities persist, I fear that we will continue to be targeted in this kind of way.

The second issue we have to be cognizant of, of course, is that Al-Qaeda is back and up and running. We certainly have heard an ample amount news of this, of course, just in the headlines today. I know the Director of Intelligence, George Tenet, spoke before the Intelligence Committee not so long and stated that it is unambiguous as far as he is concerned. And I know everybody in this room knows that Directors of Central Intelligence rarely say things are

unambiguous, and I think we need to take that very, very seriously.

The third fact of our modern life right now that I think led our group to be concerned that we are at a time of especially great danger is the fact that we are poised clearly to go to war with Iraq. And the nature of this adversary should give us great pause because he is not going to accept a Swiss villa with a pension as an exit strategy. He does have access to weapons of mass destruction, and we don't know what kind entirely here, and he may well have good links to Al-Qaeda, which again is operational.

The efforts we have made to date to improve our homeland security simply have not yet gathered enough traction. That is not a blame on anybody; it is just simply the reality. As Senator Rudman said, you can't turn a great nation of this size and complexity on a dime.

We are in this tenuous window where, as we embark on that overseas effort, our homeland remains extremely exposed, and there may be some incentive for our adversary, again knowing the benefits one gets from this warfare, which is the mass disruption you achieve, to pursue this line of line of attack. So this should not be a nation that should be complacent. This is a nation that should be very focused on both the need to deal with terrorism overseas, but clearly to deal with our tremendous vulnerabilities here at home.

Let me speak directly to this issue of local and State law enforcement—potentially 650,000 eyes and ears that routinely stop folks for speeding or pick up things along the course of doing their duties, as we expect them to do out in our communities, that give them pause. They do not know whether or not that hunch they may have is, in fact, something that should worry them because these folks are here intent to kill us in large numbers or topple critical parts of our infrastructure.

There is no means for routinely accessing the intelligence data bases of just the watch lists. We are not talking about getting into the nitty-gritty of source or methods. We are talking about a red light/green light. Should I hold this guy until the feds want to come and pick him up or do I let him go with a traffic ticket and come back to court three from now, and so forth?

They don't have that routine means. There is not an ability to punch, as they do into a local computer in the car, to say is this somebody I should hold? Now, there is a number that can be reached, but frankly if you call that number on a weekend, you are likely to get the INS up in Burlington, Vermont. Mr. Chairman, I am afraid you will probably get a voice mail.

Chairman LEAHY. No, you won't. In fact, in all likelihood—and this has happened on days at three o'clock in the morning. I remember one time at three o'clock in the morning, on a Sunday morning when we had just had a 14-inch snowfall, they were there; they were answering the phone.

Mr. FLYNN. The real challenge is not to take on INS at all.

Chairman LEAHY. I just wanted you to know I was listening.

[Laughter.]

Mr. FLYNN. Absolutely. They work well in Vermont in the snow.

The reality is that we are not resourced to take a routine call, and patrolmen on the streets know that. And without the mechanics, basically, that knowledge that if I pick up a phone, I am going to get a voice who can give me a yes or no answer right away, that becomes collective knowledge out there and they don't act on that.

So what we suggest is a 24-hour center each State maintains, and it may, in fact, parallel along the U.S. Attorneys' offices. Obviously, we need to make sure that we distribute the workload here, but basically a precinct has a hotline 24/7 to the key agencies that can tell them up, down, or indifferent here. It is the kind of thing we tried to put in the report here that we think can be done right away. It can be done with limited investment of resources.

Another key point we have to say that we picked up from so many States and localities is they have to balance the budget at the end of the year and this has not been a great year for State revenues. And the fact of the matter is resources have got to come at the Federal level to make this stuff move forward if we are going to get it to happen in a hurry. That is a critical, I think, set of issues that we must address if we are going to deal with these gaping wounds.

So I may conclude these opening comments by going back to the threat issue here. There is deterrent value in being able to maintain adequate homeland security. This isn't an act of fatalism focusing on these threats and vulnerabilities.

The good news is many of the things we do to make our Nation more secure have also very positive things for lots of other public goods. The same kind of response capability you try to put together to deal with a catastrophic terrorist event helps you deal with a hurricane, helps you deal with an industrial accident of enormous magnitude.

Our public health care system, we point out here, is broken. That is a problem because we face increasingly a world of global disease. We have to manage that. We have huge issues with regard to agricultural disease. It doesn't necessarily have to be malicious intent, but the issue of bioterrorism as directed in the agricultural sector is a huge set of challenges. We don't have a Centers for Disease Control equivalent in the agriculture sector. The result is we are apt to look like a bunch of keystone cops in coping with that kind of problem.

These are the kinds of threats that are out there that transcend terrorism. The investment in some of these capabilities will make us a better Nation, we believe, overall in handling these. But most important, when our adversaries know that engaging in these horrific acts does not lead to any tangible impact on U.S. power, has no real disruptive impact—they are just pariahs for being a mass murderer or vandal—our adversaries will reconsider this as a means of warfare.

It is not to say there aren't evil people out there who will not do this, but as a means of warfare we can chip away at the incentive by not being such an inviting target. We must essentially work in parallel with our overseas efforts and our homeland security efforts if we are truly going to have a serious war on a terrorism.

Thank you very much.

[The prepared statement of Mr. Flynn appears as a submission for the record.]

Chairperson FEINSTEIN. Thanks very much, Dr. Flynn. I appreciate your comments.

Mr. Odeen, welcome.

STATEMENT OF PHILIP A. ODEEN, CHAIRMAN, TRW, INC., AND MEMBER, INDEPENDENT TERRORISM TASK FORCE, ARLINGTON, VIRGINIA

Mr. ODEEN. Well, thank you very much, Madam Chairperson and members of the Committee. I really want to compliment you on bringing this issue to the front because it requires attention and you have done a great thing here in greater attention for this problem.

I want to thank the council also for sponsoring this effort. Senators Hart and Rudman did a terrific job and Steve Flynn did a great job in pulling together a good group and putting together a hard-hitting, focused, substantive report in a very, very brief period of time.

As you know, the report covered a number of issues, and a lot of them have been discussed today so let me just take a few minutes and focus on two issues that I think are of particular importance. They are, first of all, the first responder issue, and, second, the National Guard.

When we think of terrorism, we often think of the Federal agencies—the FBI, FEMA, the military, and so on. But in reality, the people who will make the biggest contribution in any terrorist event are, in fact, those on the local level that save lives and that help us recover from these events—the police, the fire, the emergency medical people, and so on.

To a large degree, they are the ones who, if they perform well, the severity of the incident will be minimized and many, many lives will be saved. And yet they get relatively little attention in this overall issue. If we are going to successfully manage future threats, we simply have to invest, provide support, training and equipment for the first responders. Everybody recognizes this, and yet very little has happened.

Let me just make a couple of comments on that. First, as Steve said, the timing is terrible. It comes at a time at which the States are facing very difficult budget problems. They are cutting out all kinds of critical functions—education, health care, and so on. And yet we are asking them to go back and find more money to invest in the first responders.

In reality, this is not going to happen unless the Federal Government steps in because they are the one source of funds that we have at this point in time that can invest in these capabilities, and we need that kind of support and we need it very rapidly.

Let me give you a couple of examples of the shortfalls. First of all, effective protective gear is absolutely critical in either a chemical or a biological attack, and yet very few States, cities or counties have this kind of equipment in any number at all. A recent survey of mayors said 86 percent of them said they were seriously short of the kind of gear they needed for a bioterrorism or chemical attack. Only 10 percent felt reasonably comfortable with the equip-

ment they have today. And, again, given the fiscal situation, Federal funds are going to have to be made available if we are going to remedy this problem in any kind of short period of time.

Second, robust, survivable communications are the most important infrastructure element for managing any kind of an attack. We found that out in spades in New York when the difficulty of communicating was brought out very clearly. State and local communications are stove-piped, they are vulnerable, and they are often very obsolete.

Interconnectivity is critical if we are going to cope with a major, complicated incident such as the one we saw in New York a year ago. In response to that, a number of States have plans to significant upgrade their communications systems and build robust interconnected systems to cover the State, local and county officials.

Yet, I think in almost every case these plans have been shelved because of the current crunch on cash, including New York State, which had a very major plan almost ready to roll out and has had to defer that. So we have a situation, because of lack of funds, where we are simply not making any serious investment in this kind of interconnected communications.

I should point out, Senator DeWine, Ohio is one exception. You actually have a very robust system, but very few States have this.

Second, the National Guard. The National Guard plays, as we have said, an absolutely critical role in all aspects of homeland security. They are trained, they are disciplined, they cover virtually every part of the United States. We have 5,500 units scattered across all 50 States. They have equipment that is of great value in their normal course of events. They have got trucks, they have got aircraft, they have got communications, medical equipment, and this can be of extraordinary value in any kind of emergency such as this.

And they play a unique role. Obviously, they report to the Governor, as well as to the U.S. military. They are always well-connected locally with local politicians and government officials, something that is not true if you bring in military units from the outside. Finally, they are exempt from the posse comitatus legislation, so they, in fact, can enforce civil law in crisis situations. So they do play a key role and will play a key role.

About 4 years ago, the Defense Science Board did a major study on homeland security and one of our critical recommendations was to create civil support units in the National Guard to handle chemical, biological and radiological attacks. In response to that, we have now formed 22 of these, scattered across the country.

This is an important step forward, but, in fact, we need far more. Our report suggests 66, which would give you one for every State, plus you would have 2 in larger, more populous States, Senator Feinstein, California being an obvious example where you would probably need several. So, again, we need to have more of these and we need to have them properly trained and equipped.

If the Guard is going to be more effective more broadly in its role, it needs more funds and it needs more training and more focus. As Senator Rudman said, it needs a second priority mission, and that is homeland security.

A few examples: We should be funding joint exercises with local agencies to ensure they are ready for a crisis. Only by doing this do you work out the kinks and the problems that always emerge when you get involved in a complex operation.

They should be funded to carry out very aggressive "train the trainer" programs. We need training across all these first responders, and the best way to do it very rapidly is to use the Guard and to cascade that training down to localities across the country.

Finally, because of the nature of the Guard, when they work for the Governor, they don't have job protection and their pay is often much less than it is if they are on normal military duty. These are things that should be remedied.

Madam Chairperson, these are just a few thoughts, and again I want to thank you very much for holding this hearing and putting focus on this truly critical problem.

[The prepared statement of Mr. Odeen appears as a submission for the record.]

Chairperson FEINSTEIN. Thanks very much, Mr. Odeen. We look forward to asking you some questions. Thank you.

Colonel Larsen.

STATEMENT OF RANDALL J. LARSEN, DIRECTOR, ANSER INSTITUTE FOR HOMELAND SECURITY, ARLINGTON, VIRGINIA

Mr. LARSEN. Thank you, Madam Chairman and distinguished members, for inviting the Institute for Homeland Security to give an assessment of this report.

In 1838, a young Abraham Lincoln commented, quote, "All the armies of Europe, Asia, and Africa combined...with a Bonaparte for a commander, could not by force take a drink from the Ohio,or make a track on the Blue Ridge, in a trial of a thousand years," unquote. That is still true today, but it is irrelevant, and I am not sure we all quite appreciate that.

It doesn't take a superpower to threaten a superpower. In fact, it doesn't even take a military force to threaten us anymore. Small nations, terrorist organizations, and even some transnational criminal organizations can threaten our homeland with weapons of incredible destructive and disruptive power.

Most people in this room agree with that statement, so why should I state the obvious? But if we all really believed it, and if all the people in Washington, D.C., believe that, why don't we have a Department of Homeland Security today? Why are State and local law enforcement officers still operating in a virtual intelligence vacuum? Why is it that the most dependable way to deliver a nuclear weapon to the United States is to rent a shipping container for $1,500 in a Third World nation? And why is it we are so unprepared for a biological attack?

In September of last year, Vice President Cheney asked me, what does a biological weapon look like? And I reached in my pocket and I pulled this out and I said, sir, it looks like this, and I did just carry this into your office. Now, this is not harmful, but it is weaponized Bacillus globigii. Genetically, it is nearly identical to Bacillus anthracis which causes anthrax, and we know what it did to the Hart Building last year.

This was produced with equipment bought off the Internet for under a quarter of a million dollars. This is a weapon of mass destruction that you don't have to be a superpower to get. I don't worry about a Timothy McVeigh doing this, but I certainly worry about Al-Qaeda doing that, and we are not prepared.

It is a weapon that can be used to frighten us, to disrupt us, like we saw with the Hart Building last year and the letters that came in here. Or potentially, with a sophisticated weapon and a contagious pathogen, it could threaten our survival.

These are the types of issues raised by this distinguished and independent task force. We at the institute agree with the vast majority of their findings. Most importantly, we agree with the President that we need the creation of the Department of Homeland Security. Five of the six critical mandates identified by Senator Hart and Senator Rudman in this report can best be resolved through the leadership of a Secretary of Homeland Security and the coordination of their staff.

While we agree that additional funding will likely be required for the National Guard, we are not ready to endorse the report's six major recommendations concerning roles and missions of the National Guard. These citizen soldiers are already stretched thin in preparing and executing a wide variety of missions.

We are gratified, but not surprised, that the Guard and Reserves continue to answer "can do" when additional homeland security missions are identified. But we are concerned that we are abusing their patriotism. Simply put, we are not convinced that the National Guard, as currently organized, trained and equipped, can meet the dual demands of preparing to support the Department of Defense in fighting major-theater wars and at the same time be fully prepared to support Governors in a homeland security role.

We realize that sometimes recommending a commission to study an issue merely kicks the can down the road. However, in this case the fundamental changes that may be required for the National Guard are so significant that a fresh look by an independent commission focused specifically on this subject is required.

I want to mention briefly three—and I will add a fourth additional point to respond to Senator Feinstein's request about a command center because I recently visited a great one—additional items.

First, the importance of improving America's preparedness for a bioattack is mentioned in the report. Dr. Flynn just mentioned it. We cannot over-emphasize the importance of rebuilding America's public health infrastructure.

Forty years ago, we had a world-class public health infrastructure in this country. I am not from the public health community—32 years in the military—but today I understand that public health is as important to national security as the Department of Defense, and I am very concerned with the state of our State and county and city public health offices.

Second, considerable funds are being spent on training first responders. We fully support that at the institute. However, we are not spending any money on executive education in all the exercises we have run, from Dark Winter to Crimson Sky, where Senator Roberts played the President of the United States and we simu-

lated for the Secretary of Agriculture a foot and mouth disease attack on the United States.

The people who make the important decisions in these scenarios and in the real world are not firefighters and police officers. They are senior elected and appointed officials. Who is educating them? It is all on-the-job training. We have to have a program.

It is like 1950 again. We haven't created the academic discipline of national security. That wasn't created until Dr. Kissinger and others and great schools came along. We don't have that system today. We think this is a serious deficiency. Executive education will be the cornerstone of a successful homeland security program.

Third, we must understand that homeland security requires a long-term commitment. We had Nunn-Lugar-Domenici, 120 cities. You mentioned 120 cities. That was a one-time effort. We go out and train these people, but what is the follow-on program? In the military, we understand continuation training. These skills go away if you don't continue the training program. So when you make a commitment to these programs, it needs to be long-term.

And I add a fourth point, Madam Chairman, because you asked about this 24-hour operations center. One of the things we really push at the institute is finding a good example somewhere and spreading that word around. We don't need to reinvent the wheel in 50 States.

The State of Iowa has done an incredible system. For 16 years, they have been building their command and control system. I visited it recently. To me, it is more exotic than strategic command out at Moffett Air Force Base. It is certainly more modern. They have 368 connections with video teleconferencing throughout the State, and I mean it is a quality of like the "CBS Evening News." It is not some fuzzy screen—every hospital, private and public, every county seat, every police department, sheriff's department.

The first time they ever had all 368 hooked up was last October at the height of the anthrax scare. They brought in some very senior officials and got all of them up there and said, this is what an anthrax attack will look like, this is the first thing you are going to see and here is the State plan to respond. If you want to see a good example of what that 24-hour command center looks like, go to Iowa.

To conclude, I concur with a majority of the recommendations in the report. If I had to pick one critical concern, it would be lack of preparation for biological attacks. If I had to pick one thing to add, it would be the need for executive education. If I had to pick one caution, it would be the importance of program sustainability. If I had to pick one key action, it would be establishing a Department of Homeland Security, with one person given the authority and resources to make decisions and to hold responsible. If I had to pick one issue not adequately addressed in the report or the proposed department or in my remarks, it would be the fusion of intelligence. That will be a tough nut to crack, but one we can do.

And one last comment. I know we were talking today about how we get that information down to one of those 650,000 police officers on the street. In a recent visit to the New York City Police Department, I was told about a program called Advanced Tipoffs. Everything is there they need to make it happen, except the money.

It is when a police officer pulls you over and goes into the National Crime Information Center, Advanced Tipoffs will link them to 17 terrorist watch lists. It won't allow you to look in there and see exactly what they want them for, but it will pop that flag up. And that is available today if we have the money to fund it and move forward.

I can tell you, talking to police officers on the street in New York City, they would really like to have it. Had we had that system in July of 2001, Mohamed Atta would probably not have been let go by that State trooper in Florida.

Thank you for the time to make my comments, Madam Chair. I will be happy to answer your questions.

[The prepared statement of Mr. Larsen appears as a submission for the record.]

Chairperson FEINSTEIN. Thank you very much, all four of you. I think the testimony was excellent and we are very appreciative.

Let me just begin with the subject of the National Guard. We drafted legislation, oh, I guess about a year ago to carry this out, and later my staff went to Senator Lieberman and Senator Thompson, to the Government Affairs Committee. They wanted Armed Services staff; to look at it. We could not get any interest in it by Armed Services staff.

I have it here. We can certainly beef it up a little bit. I think there is going to have to be some additional work by you gentlemen and by others on the issue of first responders. The Guard is already trained and Guard units could receive additional first responder training. Given the fact that we really have no adequate defense today against a biological, a chemical, or a radioactive attack, to me, the National Guard is the natural one to respond.

So I am trying to inveigle Senator Kyl to get involved in this, and Senator DeWine, and maybe we will try again next year. But clearly we are not going to be able to do it unless a group of experts come together and join us in saying that this is really the right thing to do, and I hope you will.

My question of any who would like to answer this is how do you see the concept of the 24-hour command centers meshing with tipoff type databases—what is your vision? Should we introduce legislation whereby the Federal Government would offer a match to State government to establish such centers? Would Governors do a plan? How do you see this being carried out?

Senator RUDMAN. Let me respond first because I have given this a great deal of thought during the pendency of this report and since it has come out. You know, you can learn from history, and I am sure you are both familiar—your staffs are too young to remember, but you will remember that in the—maybe, Senator Feinstein, you are too young to remember.

Chairperson FEINSTEIN. That was an after-thought, but I appreciate it anyway.

[Laughter.]

Senator RUDMAN. As I recall, back in the 1970's, under President Nixon, we established something called the Law Enforcement Assistance Administration, the LEAA, and it had some high moments and some bad moments. There was some corruption, but overall it did a lot of wonderful work.

Here is what it did: The Congress appropriated "x" number of dollars to that administration. Each of the States set up a commission to essentially have liaison and links with the LEAA. Each State made proposals to enhance its criminal justice system. Those were evaluated and money was allocated to the States on a formula basis to assure that they could do what they had to do.

For instance, in the State of New Hampshire two things were done. I was attorney general at the time and I sat on the group that had liaison. What we did with it was build at the time one of the finest communications systems in the country, linking our local, county and State police forces. We also used a great deal of the money in the courts, which we were allowed to do.

I would submit to you that there is a plan that might work, and probably the place it would go would be the Department of Homeland Security, and maybe FEMA in particular, a program of funding a number of objectives through overwhelming Federal money, with some State match to ensure that it got done and got done promptly.

I think that is a very good system. It worked very well. Now, there were some abuses in some States, but most people whom you talk to will tell you the LEAA did a great deal of good work in their States. I would say that is a good model.

Chairperson FEINSTEIN. Thank you very much.

Anyone else on this?

Mr. LARSEN. I will say, Madam Chairman, that the Iowa system was built exclusively with State funds, something they are very proud of. Of course, that was built in a period of time when they had a little bit more money out there, like many other States.

But we agree with matching funds, and national standards, we think, are one of the most important things that we have. They would be interoperable, particularly when we are talking about contagious pathogens. You know, most Governors and adjutants general we talk to say disaster are local. We agree with that when you are talking about tornadoes and hurricanes and earthquakes. If you are talking about a contagious pathogen or perhaps a radiological dispersal device, it is a regional issue. So I think it is very important that there be national standards and the regional centers are linked.

Chairperson FEINSTEIN. So you are saying set that in the legislation, the standards?

Mr. LARSEN. Absolutely. Of course, the States would love it if they sent all the money, but we think the matching funds are very important. But the national standards perhaps are the best thing that we can get out of the new department. They have to be interoperable.

Talking to Governor Keating recently, he was talking about his State police went out and bought new radios. They don't talk to the Texas State Police. We have got to get past that. These are going to be regional issues. NYPD and the State of New York are working with Connecticut and New Jersey. They have a regional intelligence center up there now where police reports that come in from New Jersey—people are seeing those in police departments in Connecticut, too. This regional thing we are also seeing in public health, so we think that is the positive direction they are going.

Chairperson FEINSTEIN. Dr. Flynn or Mr. Odeen?

Mr. FLYNN. I would just say that my vote is money has to vote quickly and I think the Federal Government has the means to turn on the spigot. We are a wealthy nation, we are a nation at war, and the State and localities are simply just being able to move in a kind of timely fashion.

The American people were forgiving of their Government after 9/11. I think they are going to be unforgiving post the next traumatic event because they are going to wonder what the heck did you do with the time that was available, when we still have virtually no major police department in this country that can talk to its own fire department, never mind county emergency planners or State police or Federal officials.

I was just in Houston just this past week talking with people from the mayors and at every Federal level. The Federal agency folks—INS, Coast Guard, Customs, and so forth—can't talk with their State counterparts. They can barely talk with each other. I mean, this just unsatisfactory. We have just got to move money. This is a nation at war.

Senator RUDMAN. Could I add just one point to that?

Chairperson FEINSTEIN. Please.

Senator RUDMAN. If you add up the amount of money that would be needed to get the first responders the proper chemical and biological equipment across this country, and add to that the communications we are talking about—if you add it all up, in terms of the kind of money that we appropriate every year it is not a great deal of money. And I would think those are two very high priorities, because if you don't have the equipment and you can't communicate, you are going to have a disaster.

Chairperson FEINSTEIN. Would this panel be willing to prepare a draft of national standards, since you have all studied this issue?

Senator RUDMAN. I think we probably could. If you would like us to, I am sure that we have the resources. Certainly, if you would like some assistance and for us to give you some recommendations, I am sure we could.

Chairperson FEINSTEIN. Good.

Senator RUDMAN. I can't speak for the Colonel.

Mr. LARSEN. Absolutely. The institute is for public service and if that is what you ask for, that is what we will provide.

Senator RUDMAN. I think we can work together and give you that, but it is not only standards for the centers, but standards for the kind of equipment that is needed and the kind of communications gear, and we have enough expertise to do that.

Chairperson FEINSTEIN. Excellent.

Senator KYL.

Senator KYL. Thank you all for your testimony. It is enlightening and it takes me back to two very general themes.

One of the themes, Dr. Flynn, is in your testimony you said something that I hope is not true. I have been saying it isn't true, but I am not positive. You say we seem to be slipping back to complacency. I have been impressed with the fact that over a year now the Nation still seems to be pretty focused and willing to support what the Government has asked be done.

You haven't seen the same kind of impatience that ordinarily characterizes Americans. With whatever we do, we want to get it over with right now. The President said in the beginning this is going to require a lot of patience, and I have seen a lot of patience on the part of the American people. So it bothers me to have you say you are beginning to see evidence of slipping into complacency, and I would like to have you talk a little bit more about that because we can't let that happen, and danger signs that you have observed I would like to be able to focus on.

I guess, by the way, you could first point to the United States Congress' inability to pass a Homeland Security Department bill within a timeframe that the President has recommended and which some of you have commented on. I mean, I suppose that is Exhibit A right there, and we are supposed to represent all of the people.

The second question, though—and this is the one that has always troubled me, and in every hearing we have had this is the question I get to. It is impossible in the United States of America—in fact, probably the only country you could do this with is North Korea, to really protect against any outside influences. I mean, we are such an open and dynamic country that it is literally impossible to protect against any threat.

Now, what terrorists do is to probe for vulnerabilities, and there are millions of vulnerabilities in this country. So then they set up a series of priorities of what is not only vulnerable, but they would get the most bang for the buck in terms of real terror out of what they do, and so on. And then they figure out what their target is.

We have to, on the other side, try to imagine what they might try to do first, second, third, and protect against those particular vulnerabilities. It is a cat-and-mouse game that to me is almost impossible for the defense to ever win, which is, of course, why the President has said—and I suspect all of you agree—you have got to take the fight to the enemy.

But that is another matter. That is not what you are focused on doing, and I understand that. You are focused on the hard stuff, which is, all right, after they have taken the fight to the enemy, what do we still have to do to protect the homeland. But it gets to this question of setting priorities.

Now, Senator Rudman, you said, relatively speaking, it wouldn't be that much money to provide the equipment that would be necessary to protect against what Colonel Larsen says is probably the most worrisome thing to him, and that is the biological threat. And we both naturally say, well, how much would it cost exactly? Who all would have to be furnished the gear? What are the standards, as Senator Feinstein asks, and so on? And that is important information for us to get.

All of this is a long way of asking a question not with respect to every specific kind of threat, but rather in a more general way, how do we set the priorities for what we have to do first, second, and third. Do you base it on what our last best intelligence tells us is being probed by the enemy? I mean, is that how you do it?

That is kind of tactical because you get different reports every month. Well, now, we see them casing petroleum refineries or we

see them casing this or that or the other thing. You can't possibly protect against everything.

And let me just add a final thought to that. One of you again—I think, Dr. Flynn, in your testimony you talk about the airport security. And, Senator Rudman, you said the same thing. We are focused kind of on the wrong thing. We fight the last war. Well, we are fighting airport security, but that may well not be where the terrorists are focused now. Excellent point. And, Dr. Flynn, you said monitoring based upon risk criteria. Is that really the risk now, passengers going through being screened?

I guess that is my question, and maybe the answer is we don't know. That is why we need to appoint some experts to try to do that. But is it intelligence-driven, I guess is part of my question.

Senator RUDMAN. Let me just take a quick review of that because, you know, we talked a great deal about the very question you raise. If you look at these six recommendations, they are broad recommendations which are designed to prepare local responders, States and localities, with the ability to respond to multiple threats.

If there is a terrorist attack, it will either be high explosives, as we have seen in Israel, Northern Ireland and other places in the world, or—and I say this with great reluctance, but it has to be said—chemical, biological, or nuclear.

So if you look at our report, we are saying here are six things that are on the response prevention side; that since we can't tell you where, when, what, how, here are some things you ought to do that, no matter what happens, you will be better off than you were yesterday.

Senator KYL. Dealing with it.

Chairperson FEINSTEIN. Yes.

Mr. FLYNN. Let me add that part of that, though, has deterrent value again. If the sense is that the Nation is going to capably respond to these incidents, then the value you expect to get fundamentally impacting on U.S. power is mitigated. So at least some of our adversaries might reconsider this, again, as a means of warfare.

But getting at this issue of how much security is enough and where do we get it, why I focus so heavily on the issue of ports and containers is going back to what happened on September 11. We had two airplanes from Massachusetts fly into New York City, and obviously one ended up in Washington. But we responded by grounding all aviation, closing our seaports, and effectively sealing our borders with Canada and with Mexico.

We did what no nation could expect to accomplish against a superpower; we imposed an economic blockade on our own economy. That was what an adversary would look to accomplish. Why did we have to do that? Because we had no means to filter the bad from the good in that heightened threat environment. We had to stop the world to sort it out.

Now, with planes, it took us 3 days to go through every single plane to verify there were no more terrorists or means of terrorism on them. And yet, on our seaports and borders we opened it back up, not because the threat went away or because we were more secure, but because we did the arithmetic that it was too costly to

keep it closed, so a sufficient security largely that when you have an incident, you can contain the incident.

A single container today used in a horrific act of terror—it is different from an industrial accident. If you had an industrial accident with a single refinery, you would say that is an isolated event. If you had it in a container which is so ubiquitous it moves 90 percent of all general cargo—6.5 million by sea, 11.5 trucks carry them across our land borders, 2.2 million by rail—and you say, wait a second, what is the baseline security that means another one of these isn't going to go up, the answer right now there is no standard for who gets to load what into them. There is no standard with regard to security on who gets to carry them.

If we even had hard intelligence that one is being used, that we had human intelligence that told us part of the Al-Qaeda network just loaded a weapon of mass destruction in this container and it is left on a lorry heading down the street, and the President convened his national security team and said where is the box, the response right now would likely be it could be coming into Vancouver or Seattle or Tacoma or L.A. or Long Beach or Oakland-San Francisco, coming through the canal or any one of our ports.

The only tool again would be to turn off the system to sort it out. So a sufficient security that when you have an incident—one is there is a credible baseline that people can look to and say, all right, you are managing this, you are not just giving away this core public good, safety and security, for the benefits that the system provides.

Second, you need the ability to do forensics after the fact. Is this just one event? You know, if we could identify it came from Karachi, we probably wouldn't have to close the Ambassador Bridge for incoming GM parts coming from Ontario. But if we don't know, we are apt to have to do that for an extended period of time.

So what the people who have built us this intermodal revolution will tell you is they gave us a low-cost, efficient, reliable system that allows us to move around the planet at incredible economic benefit to this country, but we never put security into the system. It was presumed to raise costs, undermine efficiency, and undermine reliability.

So we are in a world with increasingly integrated, sophisticated, concentrated networks where no security is put in, and what we now must be in the business of doing is retrofitting it in. The good news is they are also dynamic systems and they provide an opportunity for us to put security in at the outset. Just like we built safety into the aviation industry and safety in the chemical industry, we just now must build security into these same industries.

Senator RUDMAN. I would want to add on that point that Commissioner Bonner deserves a great deal of credit for his recent initiatives. Some of them are very controversial. Some of them came from the original Hart-Rudman report. Frankly, Commander Flynn drafted that section to start doing more of the inspection not at the point of debarkation, but the point of embarkation, to put Customs people overseas so we start to find out who is loading these containers.

There has been a great hue and cry from some of our trading partners that it is going to slow up commerce, but I must say that

the Commissioner, whom I have talked to on a number of occasions and looked at what they are doing—they are starting to try to do this, but this is a very daunting task. It will not happen overnight.

Mr. LARSEN. Senator Kyl, I agree with what Dr. Flynn has to say about a delivery system of ports. But if we made all of those containers completely secure, I can still come in the country, walk across the border, drive across the border, or fly in with this.

At the institute, the model that we look at is where do we spend our money. We can't protect everything. What threatens us the most? I remember Governor Gilmore and his initial commission sort of looked at the high-probability/low-consequence car bombs. The first Hart-Rudman report, I think, was more focused on the low-probability/high-consequence, and I think that is where we have to spend our limited national resources, is those things that can threaten our survival.

Even when you look at 9/11, a terrible tragedy for the families, the friends, 3,000 people died. In 2001, 6,000 people died of food poisoning in this country. 7,800 people died because they didn't take proper precautions in the sunlight and they got skin cancer. So we can't defend against everything, but those things that can threaten the survival of our Nation, threaten our economy—we saw in the Dark Winter exercise 2,000 people died in the 22 days of that exercise. Senator Nunn played the President.

Chairperson FEINSTEIN. Was that the smallpox one?

Mr. LARSEN. That was smallpox. Jim Woolsey played the CIA Director, Bill Sessions the FBI Director, a very distinguished panel. And it was so different. We had some of the greatest national security leaders sitting around that table and they said they didn't know what questions to ask.

It is so much different than a bomb coming in in a shipping container or an airplane crashing into a building. This is someone bringing an epidemic to America, and the people that respond are those public health officers. I just returned from 3 days in Philadelphia with the 103d conference of the American Public Health Association.

I have a minor mistake I would like to correct in my statement that I submitted where I said it was funded, this report I saw, by the Centers for Disease Control. People from the Centers for Disease Control participated, but it was actually funded by the Department of Justice.

They went out and looked at 2,200 city and county public health offices and they gave them grades like a university; 100 to 90 is an A, 89 to 80 is a B. Seventy-four percent of them flunked being prepared under 20 criteria they established for responding to a biological attack. These are your front-line troops now, OK? Seventy-four percent of this Nation's city and county public health officers are not prepared to respond. To me, that is a threat to national security, a serious threat, and that is where we have to focus our attention.

Chairperson FEINSTEIN. Thank you.

Senator DeWine.

Senator DEWINE. Thank you, Madam Chairman. This has been very interesting, very good testimony.

I would like to turn back, if I could, to the issue of the National Guard. The National Guard certainly is a great resource and it is a resource that we need to better utilize in regard to preparing and then responding to this war on terrorism. I don't think anybody doubts that. But there is a question of if they are doing that, what are they not doing? And I think the Colonel raised that issue.

We currently in Ohio have members of the National Guard in northwest Ohio helping clean up and deal with the aftermath of a number of very deadly tornadoes. I am sure that every State that got hit has Guardsmen doing that. When we have floods on the Ohio River, our members of the National Guard are down there. And I have been down there with them, and I am sure that Senator Rudman has been with his Guard as well in different tragedies. We currently in Ohio have members of the National Guard in the Middle East and in Bosnia.

So I would like maybe if we could have a little more discussion, and maybe start with Senator Rudman, about if they are doing this, Senator, and they have this new dual responsibility, how do we in a sense pay for it, not just with dollars, but within the question of their time and their resources?

Senator RUDMAN. Senator DeWine, let me say that I don't disagree with the predicate of your question, or for that matter with Colonel Larsen's concern. But let me simply lay out the way we looked at it and try to answer your question specifically.

The Guard people that I know are very proud of their combat mission. Factually, in the world we live in today, that combat mission is probably not apt to be called on in the foreseeable. That is not what we are facing. Certainly, they were called up for Desert Storm and they could get called up for a war in Iraq, but the call-ups are relatively few and far between, for which we are all thankful.

Meanwhile, they train for that mission. No matter what their unit is—artillery, military intelligence, hospital, military government—they train for that mission. All we are saying is they should get some dual training, and that dual training should be provided by skilled people provided by the Pentagon and by other Federal agencies to train them in some other skills that they have equipment and general training and discipline to deal with.

Now, how do you pay for that? Frankly, I think you have to pay for it with increased appropriations for the Guard because they are our greatest human resource right now, other than the 650,000 first responders, that we have, and they are located in all the right places.

I want to say just one other thing. I have talked to a number of Guard people around the country and they came up with something that I never even thought of, nor did our commission think of. They believe it will be a boon to recruiting, and the reason they believe it will be a boon to recruiting is because a lot of young people today—and I have talked to many; I talked to many in your State on Tuesday night at a wonderful college outside of Cleveland.

And it is interesting in talking to young, college-age students that they all, no matter what they say, usually have one question in common: "What can I do to help? I mean, I feel so helpless. The

President says we are all in this war together. OK, so what would you like me to do?" And, of course, nobody has an answer.

Many Guard people have told me that they believe it will aid in recruiting, and maybe we have to expand Guard units in some places. I don't disagree that they are right now probably overworked in many ways, but we are facing a major crisis in this country. It would be a terrible thing if we had a major incident of a weapon of mass destruction in a Midwestern State and there were 100 Guard units within 50 miles of that location who unfortunately weren't trained to do anything that could be helpful. That is our point, although we certainly agree with Colonel Larsen and with you that there are issues here. But we think the overriding issue is homeland security.

Senator DEWINE. Well, I appreciate your response. It seems to me as we look at this whole matrix of how we put this together, we clearly do need a cadre of people with very specific expertise who can move in a general geographical area. You probably can't afford to have those people in every community, but you need to be able to surge them into that area within a short period of time, and I think, Senator, your point is very well taken.

Our Guard in Ohio and every other State is set up to surge very quickly. You know, they are set up to go to the Ohio River very quickly. They are set up to go to Van Wert, Ohio, very quickly if they have to go to Van Wert, Ohio.

Colonel?

Mr. LARSEN. Go right ahead. Go ahead.

Mr. ODEEN. I think this has been a difficult issue for the Army and the Guard for a number of years, but I think it is changing. For a long time, as Warren said, they saw their combat mission as the critical thing they were doing, but that is really not true anymore.

We have transformed the active-duty military; we are in the process of transforming it. Heavy armored divisions and things like that just simply have a lot less of a role these days. The Guard and the Reserve that are actively involved with the Army day in and day out are not the guys driving tanks. They are people with medical, civil affairs, military police, these kinds of skills that are extraordinarily valuable in Afghanistan and Bosnia and places like this, but they are a relatively small part of the organization.

Doing this well, I don't believe, is a significant diversion of their capabilities. To have 66 or 70 or 80 of these weapons of mass destruction response teams, we are talking about a few thousand people. The numbers are small and you can make those available.

The other good thing about it is many of the units we have in the Guard today have equipment that is absolutely perfectly designed for responding to these things, but they have to have training and they have to have people that know how to coordinate and manage these things. But the trucks and the cargo aircraft they have and the engineering equipment is very useful and very relevant, but it takes planning, it takes training, it takes coordination.

This is not, I don't believe, a significant diversion of the capabilities of the National Guard. As Warren said, I think they will respond, and respond positively, and I believe it will be very good for

their support in their communities, as well, knowing they have this capability.

Senator DEWINE. Colonel?

Mr. LARSEN. My staff and I thought very carefully as we worded this to say that this was one area that we weren't ready to endorse from the Committee, but it didn't say we disagreed with it. We think it is more complex when you think about it. They are frontline troops and I am worried about abusing them.

In my last command as a military officer, I had 1,000 people working for me. I had a specific mission to do. We were organized, trained, and equipped for that mission, and that was what we focused our time on. So now I am a commander of a National Guard unit and I have 1,000 people. I am organized, trained, and equipped to go fight a war in southwest Asia. I have 2 weeks in the summer and 1 weekend a month, and it is very, very difficult to be prepared for that.

And now you are going to give me another mission. Well, we have some of the skills and the training and some of the discipline or whatever, but it is a different mission. And I think that maybe—and this is why we need to look at this—we may want to have more of a commitment to where that National Guard is organized, trained, and equipped to help that Governor in what he needs.

Madam Chairman, if you were the Governor of California, what would you want to have, F–16s and M–1 tanks in your Guard unit, or would you rather have transportation, medical units, communications, and military police? I know which one I would want. So I think it just needs to be looked at.

In the Top-Off exercise in Denver, in May of 2000, they simulated a plague attack. The Federal Government did their job. That push-pack, 94,400 pounds of antibiotics, arrived on that 747 freighter. The Federal Government said, we have done our job, Denver, and now you have 48 hours to get 2 million people little bags of antibiotics to protect them from plague.

So I don't need 19-year-old kids that can do a hundred push-ups and fire expert with an M–16. My 77-year-old mother could have helped do that. That is why I think if we had this sort of commission to look at this, volunteers would be a great help to us. We don't have to pay for the National Guard.

Organizations like the Rotary Club—and I am not a Rotarian, but I think they do wonderful work around the world in public health areas. Volunteer organizations in this country could do a lot of the things we need for critical responses.

There are certain things we could get from DoD and from the National Guard. I think we need to sit down and look at it seriously. I don't think the changes we need to make are on the margin. I think we are looking at some fundamental changes in the 21st century.

Mr. FLYNN. If I might just add one more, which is former Secretary of State Warren Christopher participated in our panel, as well, and he pointed out, of course, a situation we are worried about and was part of our matrix in looking at this issue.

You recall the riots of the late 1960's where we draw on the National Guard to do it and they just simply weren't trained to cope in that kind of circumstance. It was not the kind of situation we

want the National Guard in. The President has asked every single Governor to develop a homeland security plan for his State. Every single Governor is planning on drawing on his National Guard capability to respond to the contingencies that are developing. We don't want the National Guard to show up and not be able to deliver when we have these events. That is the reality we are in right now and we have to find some ways to work through this.

I certainly agree that I think this is really an issue that probably needs the commission. Give it a very short time fuse to really lay out the issues, but a mandate that we address this squarely is so essential.

Mr. LARSEN. Just one last comment, ma'am. When is the most likely time we are going to have a major attack on our homeland? Probably when we are at war somewhere else. How many of those National Guard troops are really going to be available?

I talked to some folks about a year ago from the Rhode Island National Guard. They were special forces units. We really need those in this war that has been going on in Afghanistan. They were deploying to Afghanistan. Now, the Governor of Rhode Island is sitting there thinking "I am going to use the National Guard if we have a big crisis." Sorry, they are in Afghanistan.

Senator RUDMAN. I would just make one observation to disagree with that particular comment. I have looked at the identification and mission and training of most of the Guard units in the country back during Hart-Rudman. I would agree with Colonel Larsen that those units which are armor, heavy infantry, mechanized infantry, airborne, special forces—probably, you might give them some dual training.

I am talking about the majority of those Guard units which are transportation, communications, military government, military police, military intelligence. There are a lot of units which do not have what I call primary combat missions. I think that obviously some of these units probably will not get into this matrix, but I believe that you can distinguish between the two.

Chairperson FEINSTEIN. And if I may for a moment, you can do double training for some troops. The people who are trained in the heavy mechanized and the special forces would stay with that. For others, you would add a homeland security mission.

My belief is that the opposition to this comes from the Pentagon and they don't want the mixed mission, so to speak. And yet the Guard already has such a mission. As Mr. Odeen pointed out in his remarks, 22 civil support teams trained to respond to a weapon of mass destruction, and this number is going to grow.

Mr. ODEEN. I hope so, yes, absolutely.

Chairperson FEINSTEIN. So I think it would be possible to enhance the Guards homeland security mission if we wanted to do it.

Senator DEWINE. Well, it certainly is a very interesting question. My time is up, but I think the discussion we got from the panel was a very excellent one.

Thank you, Madam Chairman.

Senator KYL. Just on that point, I would note that some of the very first units called were the very units that Senator Rudman was talking about—the police, the communications. In Bosnia and

in Kosovo, it was not the heavy mechanized. It was exactly the kind units that might receive this kind of training.

And, yes, you are right. It is the military that objects. They got whipsawed back about 12 years ago when I was on the House Armed Services Committee. The big decision was made that we would have folks back home who, when the whistle blew, could go into combat. That way, we didn't need as many active units. And so that is the direction we went.

Now that the whistle has blown and some of them have had to go, we have all kinds objections from employers, from families, from Governors who say, wait a minute, we want this help back home. There is always a tug and a pull, which is why we are going to need to continue to talk to you folks and think this thing through and get your recommendations because there is just no simple answer, obviously.

Chairperson FEINSTEIN. We structured our amendment to the homeland security legislation, which hopefully will become a bill in the next Congress, after the counter-drug mission of the Guard. So they currently do have another mission, as well. I think the point that was made out here is that they are in the right places and that they can be trained. Once trained, you can call upon them when you need them.

Mr. LARSEN. And it is not always a zero-sum game, is the problem. If you activate a particular unit, what are you taking out of that community? There are a lot of police officers that are also National Guardsmen. We found that in Dark Winter when Senator Nunn said let's activate all the reserve medical units.

How many doctors are you taking out of hospitals, and nurses out of hospitals that are already—and it turns out the Pentagon doesn't have that in a computer data base we can look at. If you activate a unit that is a medical battalion in Pittsburgh, what do you do to the hospitals in Pittsburgh? We need that information. That is why I say I think this is something that needs to be studied very specifically and in a very quick time span.

Mr. FLYNN. Let me just add, in Houston, again, if we do a rollout, do a major sealift operation to a war contingency plan here, the Coast Guard and the few limited resources that are trying to protect that channel and all the critical infrastructure, which is the bulk of our energy supplies for our Nation, will be drawn away to do escorts for those rollout things.

The Department of Defense is fully expecting that the Coast Guard will be providing that force protection capability during those rollouts. That will leave nothing left over for that other critical vulnerability. So these are the kinds of conversations that we have not had.

I think that is why it is so important to get the Department of Homeland Security on board and running, because that kind of issue will then be rising to the top. It is not an agency head trying to struggle with it in a morass. It will be something that you get some policy resolution on.

Chairperson FEINSTEIN. Any other questions, Senator Kyl, Senator DeWine?

Senator KYL. Madam Chairman, I just look forward to continuing to work. We keep saying, well, could you come back one more time

and could you keep giving us information? But I really appreciate the effort of everyone here. Your staff, I know, has worked very hard as well, and I do look forward to continuing to get your advice. It is very helpful.

Chairperson FEINSTEIN. It has been requested and the price is right, so we expect to get some standards.

Senator DEWINE. Madam Chairman, one last comment, and I am not going to ask for a response today. But one of the things I found interesting, Senator Rudman, was your recommendation in regard to looking at the antitrust exemptions for private companies. I would like to look at that as far as what actually the need is.

As you know, Senator Kohl is currently the Chairman of the Subcommittee. I am the ranking Republican on the Subcommittee. It is possible that in January I will still be there and I will be the Chairman. So that is something that we will want to work with you on.

Senator RUDMAN. We would very much like to give you some material on that. We don't think it will be very controversial because it really will be doing something that the Government is going to mandate them to do. So we will get something to you.

Senator DEWINE. We look forward to working with you on that.

Senator RUDMAN. And I want to say to the Chairman—you asked a question, how much would it cost? I did a quick calculation. For instance, if you wanted to give chemical-biological protection equipment to every one of those responders, all 650,000 of them, it would cost about $500 million. Well, that is a lot of money in one sense, but it isn't in another sense. Besides, that is not what you would do. You would have a certain number of units in each community that would be equipped. They would be a response unit.

So we are not talking the kind of dollars that would we are talking when we talk about a defense budget or an entitlement program. I mean, to buy that kind of equipment, communications equipment, we are talking several billion dollars, but we are not talking about the kind of mega numbers.

When I was on the Appropriations Committee, I always used to remember Everett Dirksen's great line, except I changed it from a million to a billion. A billion here, a billion there, eventually it adds up to real money. Well, the fact is that $2 to $3 billion in homeland security, properly spent, would give this Nation a terrific amount of preparation for what we are literally naked right now facing these threats, which is what the Colonel has said. It is what Phil Odeen has said. It is what we believe. I know that is a hard sell, but it will be a lot harder sell if something happens and we are not prepared.

Chairperson FEINSTEIN. There is a bill that has just come out of the Environment Committee that authorizes $3.5 billion for first responders.

Senator RUDMAN. Madam Chairman, I had a lot of experience with authorization. It is the appropriation I care about.

Chairperson FEINSTEIN. I know.

Mr. FLYNN. If I may, just one final thing, which is security is always a curve of diminishing returns. To get that hundred percent is an exponentially lot of effort and energy. The first 70 percent

often is affordable. The key is to build layers of 70-percents that gets you within the mix.

We are focused on single-point security that we want 100 percent that always looks prohibitively costly and that will fail, likely. It is changing the mentality that it is either/or, no sense trying because we can't get a hundred percent, to realizing that there is relatively low-lying fruit.

And if there is anything that we try to identify in this group, it is, in the scheme of our threat and vulnerabilities, relatively low-cost investments can be done quickly and can make us an order of magnitude more secure. This is a difference between potentially hundreds of American lives lost and tens of thousands, and that should be clearly something we would be willing to invest in.

Chairperson FEINSTEIN. Absolutely. Thank you, gentlemen, very, very much. Very good panel. We are very grateful.

I would like to put in the record a statement by Dr. Elaine Kamarck and the Hart-Rudman Task Force Report.

Thank you, and the hearing is adjourned.

[Whereupon, at 3:50 p.m., the Subcommittee was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

Statement of Senator Maria Cantwell
Senate Judiciary Committee Markup
November 14, 2002

Thank you Chairman Leahy:

Today we are voting on two very controversial nominees, Michael McConnell to the Tenth Circuit Court of Appeals and Dennis Shedd to the 4th Circuit Court of Appeals. After careful consideration I will support Professor McConnell's nomination, but I will be voting against the confirmation of Judge Shedd.

I have made my decision only after arduous consideration of these nominees. As a member of this Committee I take my responsibility to advise and consent on nominees to the federal judiciary extremely seriously. Further, because these positions are lifetime appointments, I believe that a thorough and careful review of nominees, particularly nominees to the Circuit Courts is one of the most significant responsibilities of the Members of this Committee. The Judiciary Committee and our Chairman have recently been cast as obstacles in the nomination process. However, I believe when we are confronted with controversial divisive nominees such as those before us today, it is our duty to take the time to thoroughly and carefully evaluate these nominees in reaching our own decisions about whether we trust them to be ethical, impartial, and fair minded.

Michael McConnell

With regard to the nomination of Michael McConnell, Professor McConnell has one of the longest and most detailed records of opposition to the constitutional right to choose of any nominee who has ever come before this Committee. He has signed documents urging reversal of Roe and Casey, he has urged passage of a constitutional amendment that would make exercising the right to chose to terminate a pregnancy a criminal act, and he has published writings that state that "no text history or tradition" underlies the right to privacy articulated in the Roe decision.

Professor McConnell's opposition to this constitutionally protected right to privacy in decisions concerning one's own body is obviously a guiding principal for him. Thus, his views raise genuine questions about whether he would be able to serve as an impartial arbiter in determining how the case precedents apply to the specific facts of cases before him when a woman is seeking to exercise her right to choose.

However, at his hearing, Professor McConnell conceded that indeed "there are many rights of privacy" under the Constitution. Further, in follow up questions, he acknowledged that the courts have recognized constitutional limitations on government authority to interfere with "basic decisions about family and parenthood and bodily integrity." Although he disagreed with the Supreme Court basing these rights under the Fifth and Fourteenth Amendments, Professor McConnell nevertheless vowed, in that same statement, to uphold them as a Court of Appeals Judge.

Further, at his hearing, I was also genuinely impressed with Professor McConnell's forthright answers and by his assurances that he believes that the Casey decision more properly creates a legitimate constitutional underpinning for the right to privacy. I found Professor McConnell to be a very thoughtful, intelligent nominee, and one who was forceful and sincere in his commitment to precedent. I was also impressed by the support that Professor McConnell's nomination has in the academic and legal community.

In evaluating judicial nominations, I consider a number of factors including whether the nominee demonstrates the highest level of professional ethics, integrity and judicial temperament, and whether the nominee possesses the ability to distinguish between personal ideology and the issues that might come before that nominee as a judge. Having listened to Professor McConnell at the hearing, and having had a chance to question him, I do believe he possesses such integrity and temperament. I continue to be very concerned by his narrow view of the constitutional right to privacy and by his record of advocacy in support of reversing the Roe v. Wade decision, but it is my opinion that Professor McConnell possesses a willingness to follow controlling precedent as a Circuit Court Judge, even when it is precedent with which he strongly disagrees.

It is my sincere hope that Michael McConnell does not cause me to regret this vote, and that he does indeed prove to be a thoughtful jurist who brings a fair and open mind to every case before him. In lending my support to a nominee, who holds views so diametrically opposed to my own on the issue of privacy, I sincerely hope that I am not putting at risk the ability of women to exercise their constitutional rights within this Circuit. Although I have decided to support elevating Professor McConnell to the Circuit Court, this is no way signifies any further support should he be considered for nomination to the Supreme Court.

Dennis Shedd

Turning to the nomination of Dennis Shedd, who currently serves as a District Court Judge in South Carolina, at his hearing in July, a picture began to emerge of Judge Shedd as an individual who went to unusual lengths to dispose of cases through summary judgment, to suggest motions to defense counsel and to generally limit the ability of plaintiffs to bring claims before a jury.

In addition, his hearing demonstrated Judge Shedd's narrow view of Congressional power. In 1997 he issued a ruling striking down the federal Driver's Privacy Protection Act of 1994, a bill that required states to provide basic privacy protections for the personal information held by Motor Vehicles Departments, an opinion that was ultimately overturned 9-0 by the Supreme Court. It is striking that this bill was enacted in part because of efforts by opponents of the right to choose seeking personal information about providers from drivers' license records.

In the wake of his hearing, I posed questions to Judge Shedd about four cases where plaintiffs had alleged that they had been sexually harassed. In each of these cases despite compelling evidence, Shedd overruled the Magistrate Judge assigned to the case and granted summary judgment for the defendant employer. In fact, in his answers to my questions, in his eleven years on the bench, Shedd was able to point to only two case alleging gender based discrimination that reached a jury. A similar pattern appears in cases alleging employment discrimination. Of eleven published employment discrimination cases, Judge Shedd held for the employer in every one; his summary judgments have resulted in continued victory for the employer in a wide range of discrimination claims. Of the 54 discrimination cases included in unpublished opinions, summary judgment for the defendant was granted in over eighty percent of the cases. This is a record that I find extremely troubling, particularly given the history and composition of this Circuit.

The Fourth Circuit is probably the most conservative Circuit Court in the country, and its rulings particularly in the area of federal power have represented an attack on the ability of the federal legislative branch to legislate under the Commerce and spending clauses. Further, numerous civil rights and labor issues, such as affirmative action, voting rights, employment discrimination, and class actions have come before the Fourth Circuit; it is a Court at the heart of our fight to achieve

racial justice in this nation. These are critical issues to me and to my constituents and this court has had a profound effect on reducing or rolling back these rights that so many gave so much to achieve.

It is against this backdrop, that I have made the decision not to vote to elevate Judge Shedd to the Fourth Circuit. My decision is based on our extensive review of his controversial record as a District Court Judge for the past eleven years. Adding to these concerns is the fact that the Committee has also heard from hundreds of people, both lawyers and ordinary Americans in South Carolina and throughout the Fourth Circuit, who strongly oppose elevating Judge Shedd to the Fourth Circuit. I have also heard from many of my own constituents and from leaders in the African American community in my state who have voiced very serious concerns about elevating a nominee with a record that indicates he will work to roll back of significant legal progress in an area with a history of racial strife. At the same time, the lack of the voices of those who know him and practice before him advocating for Judge Shedd's elevation is strikingly absent.

With such significant legal matters at stake, I cannot support a nominee who has worked so hard to keep ordinary Americans from having their day in court.

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America Still Unprepared — America Still in Danger

Report of an Independent Task Force
Sponsored by the
Council on Foreign Relations

Gary Hart and Warren B. Rudman,
Co-Chairs

Stephen E. Flynn,
Project Director

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FOREWORD

Attacks against Americans on U.S. soil that may involve weapons of mass destruction are likely, but the structures and strategies to respond to this serious threat are fragmented and inadequate. So warned the U.S. Commission on National Security led by former Senators Gary Hart and Warren Rudman in their final report released on March 15, 2001. Hardly anyone in Washington or the mainstream media paid any attention. They should not make the same mistake twice by overlooking the key finding from this Task Force report, again co-chaired by Senators Hart and Rudman: "A year after September 11, America remains dangerously unprepared to prevent and respond to a catastrophic terrorist attack on U.S. soil."

This chilling conclusion comes on the eve of what now appears to be a pending war with Iraq to dethrone Saddam Hussein. It was arrived at by a bipartisan group that includes two former secretaries of state, three Nobel laureates, two former chairmen of the Joint Chiefs of Staff, a former director of the CIA and FBI, and some of the nation's most distinguished financial, legal, and medical authorities. Of the dozens of Independent Task Forces that have been assembled during my decade-long tenure as president of the Council on Foreign Relations, no report has been so timely or important.

Around the anniversary of September 11, we were saturated with one-year retrospectives. If there are Americans on Main Street or in the halls of government who have concluded that it is now time to get back to our "normal" lives, this report is mandatory reading. As the Task Force participants conclude, we are entering a time of especially grave danger. We are preparing to attack a ruthless adversary who may well have access to weapons of mass destruction. Yet we will not see the full effect of many of the post–September 11 initiatives undertaken by the president, Congress, governors, and mayors for some time. This is no one's fault. It simply reflects the fact that you cannot turn a nation as large and complex as this one on a dime.

Still, given the stakes—potentially the loss of thousands of innocent American lives and the mass disruption of America's economy and society—there are things we must be doing on an emergency basis to reduce our vulnerabilities here at home. Let me stress that the Task Force report does all this without thinking about or placing political blame for what has not been done to prepare our nation against terror attacks. The Task Force was conceived and dedicated to creating a necessary sense of urgency and to helping get the necessary things done. This Task

Force lays out a series of recommendations that should help guide the nation's efforts in the weeks and months ahead.

My deepest appreciation and admiration go to Senators Warren Rudman and Gary Hart for agreeing to lead this Task Force. The Council and the nation owe a debt to them and all the distinguished Task Force members who brought their vast and diverse professional expertise to this enterprise. They selflessly agreed to serve on very short notice to prepare this report with the same sense of urgency that our current circumstances clearly warrant. On a personal note, having served with the two formidable former senators on their National Security Commission, I can think of no more qualified people to take on this responsibility. My thanks also go to Council senior fellow Stephen Flynn, who served as project director, lending his considerable expertise, draftsmanship, and independence of thought to crafting and informing what follows. He was very ably assisted by the Council's Army military fellow, Colonel (P) Sal Cambria, and research associates Rob Knake and Uday Ram.

This Task Force has made an outstanding contribution to informing how we should proceed in the post–September 11 security environment. Shame on us if we do not pay heed both to the warning and wisdom of what is outlined on the pages that follow.

Leslie H. Gelb
President
Council on Foreign Relations

ACKNOWLEDGMENTS

When Les Gelb approached me in late July with the proposal that I serve as project director for an Independent Task Force on Homeland Security Imperatives, I voiced some trepidation. His aim was for the Task Force to operate essentially on a wartime footing—something our homefront rightfully should be on, given the likelihood of a second catastrophic terrorist attack more deadly and disruptive than what we suffered on September 11, 2001. I wondered aloud if we could assemble a blue-ribbon task force with just a couple of weeks notice and demand so much of their time and energy in the following sixty-day period. As soon as he told me that Senator Warren Rudman and Senator Gary Hart had agreed to co-chair the Task Force, my doubts evaporated. I had the privilege to serve with them while they were at the helm of the now famous Hart-Rudman U.S. Commission on National Security. There could be no better chairs for this initiative as events over the ensuing weeks proved. I count it as a highlight of my professional career to have again been afforded the opportunity to work with them.

I have drawn added inspiration from the generosity of intellect, wisdom, and time of all our distinguished Task Force members. What a special experience it has been to be a part of an enterprise with these most extraordinary Americans. Secretary George Shultz, Secretary Warren Christopher, General John Vessey, Admiral William Crowe, General Charles Boyd, Judge William Webster, Dr. Joshua Lederberg, Dr. Harold Varmus, Dr. Steven Weinberg, Dean Ann-Marie Slaughter, Mr. Phillip Odeen, Mr. Donald Marron, Mr. Stephen Friedman, and Mr. James Kallstrom—thank you for your grace and responsiveness in the face of draconian deadlines, and a steady stream of late night e-mails, faxes, and phone calls.

My debt to Les Gelb extends beyond his affording me the opportunity to serve as project director—he also made every possible Council resource available to support me. He was instrumental in sharpening the focus, structure, and language of the initial concept paper that got us launched. Most importantly he assigned my colleague, Colonel (P) Sal Cambria, to serve as the Task Force coordinator. Colonel (P) Cambria has flawlessly tended to the innumerable details to get the Task Force from its starting point to the finish line. Finally, I have received extraordinary research support from two of the Council's brightest and most energetic research associates, Rob Knake and Uday Ram. In short, if this Task Force report misses the mark in contributing substantively to the national conversation on this vital issue, the responsibility lies

completely with me since no project director has been afforded more ingredients for potential success.

Stephen E. Flynn
Project Director

EXECUTIVE SUMMARY

"When you see the multiple attacks that you've seen occur around the world, from Bali to Kuwait, the number of failed attacks that have been attempted, the various messages that have been issued by senior al-Qaeda leaders, you must make the assumption that al-Qaeda is in an execution phase and intends to strike us both here and overseas; that's unambiguous as far as I am concerned."

—George Tenet, Director, Central Intelligence
Testimony before the Senate Select Committee on Intelligence, October 17, 2002

A year after September 11, 2001, America remains dangerously unprepared to prevent and respond to a catastrophic terrorist attack on U.S. soil. In all likelihood, the next attack will result in even greater casualties and widespread disruption to American lives and the economy. The need for immediate action is made more urgent by the prospect of the United States going to war with Iraq and the possibility that Saddam Hussein might threaten the use of weapons of mass destruction (WMD) in America.

The Task Force recognizes that important and generally salutary measures have been undertaken since September 11 to respond to the risk of catastrophic terrorism, including pending legislation to create the Department of Homeland Security, which should be enacted on an urgent basis. Yet, there is still cause for concern. After a year without a new attack, there are already signs that Americans are lapsing back into complacency. Also, a war with Iraq could consume virtually all the nation's attention and command the bulk of the available resources. President Bush has declared that combating terrorism requires a war on two fronts—at home and abroad. The Task Force believes the nation should respond accordingly. It outlines a number of homeland security priorities that should be pursued with the same sense of urgency and national purpose as our overseas exertions.

Among the risks that the United States still confronts:

- 650,000 local and state police officials continue to operate in a virtual intelligence vacuum, without access to terrorist watch lists provided by the U.S. Department of State to immigration and consular officials.
- While 50,000 federal screeners are being hired at the nation's airports to check passengers, only the tiniest percentage of containers, ships, trucks, and trains that enter the United States each day are subject to examination—and a weapon of mass destruction could well be hidden among this cargo. Should the maritime or surface elements of America's global transportation system be used as a weapon delivery

device, the response right now would almost certainly be to shut the system down at an enormous cost to the economies of the United States and its trade partners.

- First responders—police, fire, emergency medical technician personnel—are not prepared for a chemical or biological attack. Their radios cannot communicate with one another, and they lack the training and protective gear to protect themselves and the public in an emergency. The consequence of this could be the unnecessary loss of thousands of American lives.
- America's own ill-prepared response could hurt its people to a much greater extent than any single attack by a terrorist. America is a powerful and resilient nation, and terrorists are not supermen. But the risk of self-inflicted harm to America's liberties and way of life is greatest during and immediately following a national trauma.
- An adversary intent on disrupting America's reliance on energy need not target oil fields in the Middle East. The homeland infrastructure for refining and distributing energy to support the daily lives of Americans remains largely unprotected to sabotage.
- While the overwhelming majority of the nation's critical infrastructure is owned and operated by the private sector, significant legal barriers remain to forging effective private-public partnerships on homeland security issues. These include potential antitrust conflicts, concerns about the public release of sensitive security information by way of the Freedom of Information Act (FOIA), and liability exposure.
- Domestic security measures must be pursued within an international context. The critical infrastructures that support the daily lives of Americans are linked to global networks. Efforts to protect these systems will fail unless they are pursued abroad as well as at home.
- The National Guard is currently equipped and trained primarily for carrying out its role in supporting conventional combat units overseas. The homeland security mission can draw on many of these capabilities but it requires added emphasis on bolstering the capacity of National Guard units to respond to biological attacks; acquiring protection, detection, and other equipment that is tailored for complex urban environments; and special training to provide civil support in the aftermath of a large-scale catastrophic attack.

KEY RECOMMENDATIONS

- Empower front-line agents to intercept terrorists by establishing a twenty-four–hour operations center in each state that can provide access to terrorist watch list information via real time intergovernmental links between local and federal law enforcement.
- Make first responders ready to respond by immediately providing federal funds to clear the backlog of requests for protective gear, training, and communications equipment. State and local budgets cannot bankroll these necessities in the near term.
- Recalibrate the agenda for transportation security; the vulnerabilities are greater and the stakes are higher in the sea and land modes than in commercial aviation. Systems such as those used in the aviation sector, which start from the assumption that every passenger and every bag of luggage poses an equal risk, must give way to more intelligence-driven and layered security approaches that emphasize prescreening and monitoring based on risk-criteria.
- Fund energy distribution vulnerability assessments to be completed in no more than six months, fund a stockpile of modular backup components to quickly restore the operation of the energy grid should it be targeted, and work with Canada to put in place adequate security measures for binational pipelines.
- Strengthen the capacity of local, state, and federal public heath and agricultural agencies to detect and conduct disease outbreak investigations. The key to mitigating casualties associated with a biological attack against people or the food supply is to identify the source of infection as early as possible.
- Enact an "Omnibus Anti-Red Tape" law with a two-year sunset clause for approved private-public homeland security task forces to include: (1) a fast-track security clearance process that permits the sharing of "secret-level" classified information with non-federal and industry leaders; (2) a FOIA exemption in instances when critical infrastructure industry leaders agree to share information about their security vulnerabilities with federal agencies; (3) an exemption of private participants in these task forces from antitrust rules; (4) homeland security appropriations to be managed under the more liberal rules governing research and development programs in the Department of Defense rather than the normal Federal Acquisition Rules; and (5) liability safeguards and limits.

- Fund, equip, and train National Guard units around the country to ensure they can support the new state homeland security plans under development by each governor. Also, triple the number of National Guard Weapons of Mass Destruction Support Teams from twenty-two to sixty-six.

Quickly mobilizing the nation to prepare for the worst is an act of prudence, not fatalism. In the twenty-first century, security and liberty are inseparable. The absence of adequate security elevates the risk that laws will be passed immediately in the wake of surprise terrorist attacks that will be reactive, not deliberative. Predictably, the consequence will be to compound the initial harm incurred by a tragic event with measures that overreach in terms of imposing costly new security mandates and the assumption of new government authorities that may erode our freedoms. Accordingly, aggressively pursuing America's homeland security imperatives quickly and immediately may well be the most important thing we can do to sustain America's cherished freedoms for future generations.

Preparedness at home plays a critical role in combating terrorism by reducing its appeal as an effective means of warfare. Acts of catastrophic terrorism produce not only deaths and physical destruction but also societal and economic disruption. Thus, as important as it is to try and attack terrorist organizations overseas and isolate those who support them, it is equally important to eliminate the incentive for undertaking these acts in the first place. By sharply reducing, if not eliminating, the disruptive effects of terrorism, America's adversaries may be deterred from taking their battles to the streets of the American homeland.

TASK FORCE REPORT

INTRODUCTION

A year after September 11, 2001, America remains dangerously unprepared to prevent and respond to a catastrophic terrorist attack on U.S. soil. In all likelihood, the next attack will result in even greater casualties and widespread disruption to American lives and the economy. The need for immediate action is made more urgent by the prospect of the United States going to war with Iraq and the possibility that Saddam Hussein might threaten the use of weapons of mass destruction in America.

This report's recommendations are intended to focus the nation on what must be done on an emergency basis to prevent attacks and to limit the consequences of these attacks should U.S. prevention efforts fail. The Bush administration, Congress, governors, and mayors around the country have taken important measures since September 11 to respond to the risk of catastrophic terrorism. Legislation creating the Department of Homeland Security should be enacted on an urgent basis, and initiatives to improve U.S. intelligence operations must go forward. But the United States will not see the full effect of these fundamental changes for several years. In the meantime Americans cannot afford to become complacent. Our enemies are not idle.

The Task Force identified six critical mandates that deserve the nation's immediate attention:

- Empower front-line agents to prevent terrorist attacks and make first responders ready to respond; 650,000 local and state law enforcement officers are operating in a counterterrorism information vacuum, and first responders are not nearly ready enough to respond to catastrophic events.
- Make trade security a global priority; the system for moving goods affordably and reliably around the world is ripe for exploitation and vulnerable to mass disruption by terrorists.
- Set critical infrastructure protection priorities; some potential targets pose a graver risk for mass disruption than others.
- Enhance America's public health system so that it is able to quickly detect and respond to biological attacks.

- Move quickly to clear federal obstacles to forging effective private-public security partnerships by addressing industry concerns with respect to potential antitrust conflicts, public release of sensitive security information by way of the FOIA, and liability exposure.
- Fund, train, and equip the National Guard to make homeland security a primary mission.

UNDERTAKING THE HOMELAND SECURITY IMPERATIVE

The nation must accept three facts of life after September 11. First, America is in a war against terrorists who want to attack its homeland, and it must act urgently to reduce its most serious vulnerabilities. Second, bolstering America's emergency preparedness in the near term is essential to minimizing casualties when an incident occurs on U.S. soil. Third, America's own ill-prepared response can do more damage to its citizens than any single attack by a terrorist. America is a powerful and resilient nation, and terrorists are not supermen. But the risk of self-inflicted harm to America's liberties and way of life is greatest during and immediately following a national trauma. Accordingly, preparing for the worst is an essential investment in preserving America at its best.

On September 11 we witnessed how warfare will likely be conducted against the United States for the foreseeable future. Prudence requires we assume America's adversaries, including Saddam Hussein, have learned from the attacks on the World Trade Center and the Pentagon, as well as the anthrax mailings, the extent to which the U.S. homeland is unprotected. They will also have observed that relatively low-cost terrorist operations directed at civilian targets can inflict extensive damage and profound disruption. In short, as long as catastrophic attacks are likely to yield tangible results in undermining America's economy and way of life, undertaking these attacks will be attractive to those who regard America as their enemy.

The Task Force identified several overarching considerations that should guide the nation's approach to homeland security.

Homeland security measures have deterrence value: U.S. counterterrorism initiatives abroad can be reinforced by making the U.S. homeland a less tempting target. We can transform the

calculations of would-be terrorists by elevating the risk that (1) an attack on the United States will fail, and (2) the disruptive consequences of a successful attack will be minimal. It is especially critical that we bolster this deterrent now since an inevitable consequence of the U.S. government's stepped-up military and diplomatic exertions will be to elevate the incentive to strike back before these efforts have their desired effect.

Federalism is a major asset: Given the size and complexity of the American society, there are no "one-size-fits-all" approaches to addressing the nation's most serious homeland vulnerabilities. Private sector leaders and local authorities who are most familiar with those vulnerabilities will generally have the best insights on the most effective solutions. National coordination, resource support, and leadership by the federal government are all essential. But encouraging the capacity for states, localities, and the private sector to experiment and to be flexible in adapting to local and regional circumstances will ensure that our nation's approach to homeland security will be as dynamic as the threat that confronts us.

Domestic security measures must be pursued within an international context: The critical infrastructures that support the activities of our daily lives are linked to global networks. For example, the Northeast is dependent on electrical power generated in Quebec, and much of the natural gas used to fuel the power plants on the West Coast originates in the western provinces of Canada. Computer viruses such as the "Love Bug" know no boundaries as they cascade around the Internet at the speed of light. Many of the goods that fill America's stores originate from far flung corners of the globe and arrive at U.S. borders in massive volumes via an extremely efficient and low-cost land, sea, and air transportation system. Efforts to protect these systems will fail unless they are pursued abroad as well as at home. The State Department, Treasury Department, Commerce Department, and Office of the U.S. Trade Representative all have a critical role to play in making sure that our allies and trade partners work with us to ensure a collective approach to protecting critical infrastructures as we did with the Year 2000 (Y2K) computer challenge.

Proceed with caution when embracing technological security "fixes": Technology can often serve as an enabler, but it must belong to a layered and dynamic system of defense that

incorporates the contribution of human intuition and judgment. Any proposed technological "solution" must be evaluated against the costs and consequences if it should be compromised. In the end, security is not just about protecting American lives. It is also about sustaining systems that support our way of life in the face of designs to exploit or target those systems. This means that the security protocol must be able to manage any suspected or real terrorist breach without imposing costs so high as to compromise the very network it is designed to secure. Ultimately, the end game must be to continue to live and prosper as an open, globally engaged society, not to become a nation trapped behind the modern versions of moats and castles.

Emergency preparedness can save lives—potentially a lot of lives: During the Cold War, the prevailing view among most Americans was that civil defense measures were futile—even self-defeating. Nuclear war was viewed as Armageddon, and preparations to survive a nuclear strike were seen as making nuclear war more probable because they eroded the presumed deterrence value of the "balance of terror." The contemporary security environment mandates that we put this anti–civil defense bias behind us. America's ability to strike back with devastating force will not deter terrorists. Meanwhile a nuclear, chemical, or biological weapon poses a grave danger not only to those who are immediately exposed, but also to the entire emergency response and medical care system in the areas where such a weapon might be used. Heavy losses of seasoned firefighters, emergency technicians, police, and medical personnel can easily compromise a community's long-term capacity to provide for public health and safety.

A proactive mindset is key: The federal government is dedicating an extraordinary amount of energy and resources in response to the specific character of the September 11 attacks. Congress was quick to rush into law the "Aviation and Transportation Security Act of 2001," which had the result of focusing the senior leadership in the U.S. Department of Transportation almost exclusively on hiring federal aviation passenger screeners and deploying new x-ray machines to the nation's airports. This kind of legislative response is understandable given the collective horror we shared in seeing hijacked commercial airliners used as missiles. Still, a reactive mindset is inevitably wasteful in terms of resources and can distract agencies from anticipating more probable future scenarios and undertaking protective measures.

Homeland security measures will almost always have derivative benefits for other public and private goods: Terrorists may acquire a weapon of mass destruction, but they will not have unlimited access to these weapons. Consequently, they have to be selective about where, when, and how they will carry out an attack. No mayor or industry leader will want to be caught unprepared if his/her city or critical infrastructure is targeted. But making a case for investing in security safeguards for low probability/high consequence events can be a hard sell to a tax-wary populace or CEOs under pressure to guard the bottom line.

Fortunately, many appropriate measures enacted to prevent and mitigate the consequences of a terrorist attack have other benefits. Bolstering the tools to detect and intercept terrorists will enhance the means authorities have to combat criminal acts like cargo theft, violations of export controls, and narcotics- and migrant-smuggling. The tools used to save lives and property in the wake of a catastrophic terrorist act are largely the same as those that would be used in the event of a tragic industrial or transportation accident or natural disaster. As a result, some of the costs may be offset by reduced losses and lower insurance rates. Public health investments will inevitably provide the United States with more effective tools to manage the rising incidence of global diseases and pandemics. In short, sustaining support for actions to confront the new security environment may not be as difficult as it first appears because many of these measures can tangibly improve the quality of life for our society as well.

IDENTIFYING HOMELAND SECURITY IMPERATIVES

The Task Force recognizes that many useful initiatives are now underway that will advance homeland security. The case for establishing a new Department of Homeland Security is a compelling one, and legislation to create this department should be enacted without delay. *The National Strategy for Homeland Security* released by the White House on July 16, 2002, makes a salutary effort to frame this complex mission and to sketch out priorities. Equally commendable is the extent to which the strategy recognizes the importance of bolstering intelligence and warning systems, improving border and transportation security, enhancing domestic counterterrorism, protecting critical infrastructure and key assets, defending against catastrophic threats, and improving emergency preparedness and response.

In addition to reviewing the president's new strategy, the Task Force reviewed other recent contributions to the homeland security dialogue, most notably the National Academies' June 30, 2002, report *Making the Nation Safer*.

In selecting the imperatives on which to focus, the Task Force decided to place its emphasis on issues that satisfied the following three criteria:

(1) the potential consequences of neglecting the imperative area are serious and well-documented;

(2) the recommendations for addressing the imperative can be acted upon quickly; but

(3) these recommendations are not being pursued on an emergency basis.

The six critical mandates summarized above and detailed in the following sections represent only a portion of the homeland security agenda for our nation. There are other issues that we examined and judged to be very important but decided the measures to address them were adequate. For example, the president's Critical Infrastructure Protection Board—created in October 2001—recently released a draft *National Strategy to Secure Cyberspace* for public comment. This plan—developed by a private-public partnership involving corporate and nongovernmental organizations—outlines a comprehensive strategy to protect against the disruption of the complex, interdependent network of critical infrastructure information systems that is essential to America's national and economic security.

Other issues require much more study before government actions should be taken on an expedited basis. For instance, preventive vaccinations of the general population against diseases like smallpox may be harmful and even fatal for a small percentage of healthy people and are not presently an option for the millions of Americans with weakened immune systems. In short, the Task Force's list is inevitably an incomplete one. Nonetheless, the Task Force believes that acting on the critical issues targeted in this report with the kind of urgency our wartime footing mandates would contribute significantly to U.S. security in the months and years ahead. The nation's leaders in Washington, state capitals, counties, city halls, and boardrooms should be working overtime to address them—right now.

ISSUES AND RECOMMENDATIONS

1. TAP THE EYES AND EARS OF LOCAL AND STATE LAW ENFORCEMENT OFFICERS IN PREVENTING ATTACKS; MAKE FIRST RESPONDERS READY TO RESPOND.

> *"Today, we are fighting a different kind of war—on two fronts. One front is Afghanistan, where we have the best technology, the best equipment, the best intelligence being sent right to the front, and no expense is spared. But for the first time in nearly 200 years, the second front is right here at home. And to date, it's where we've seen the greatest loss of life. Yet we have insufficient equipment, too little training, and a lack of intelligence sharing with federal authorities."*
>
> —Martin O'Malley, Mayor of Baltimore, April 10, 2002

There are an estimated 8.5 million illegal aliens living in the United States, including nearly 300,000 fugitive aliens who have opted for life as a fugitive rather than submitting to a final order of deportation. Stowaways arriving in U.S. ports and jumping ship are almost a daily occurrence. These illegal migrants find it easy to blend in among the tens of millions of foreigners who arrive legally in the United States each year to travel, study, or work. Compounding the problem is widespread trafficking in forged or fraudulently obtained passports, licenses, and other identification documents. Baseline documents such as social security cards, birth certificates, and driver's licenses are particularly subject to abuse.

With just fifty-six field offices around the nation, the burden of identifying and intercepting terrorists in our midst is a task well beyond the scope of the Federal Bureau of Investigation. This burden could and should be shared with 650,000 local, county, and state law enforcement officers, but they clearly cannot lend a hand in a counterterrorism information void.

When it comes to combating terrorism, the police officers on the beat are effectively operating deaf, dumb, and blind. Terrorist watch lists provided by the U.S. Department of State to immigration and consular officials are still out of bounds for state and local police. In the interim period as information sharing issues get worked out, known terrorists will be free to move about to plan and execute their attacks. And if a catastrophic terrorist attack occurred today, emergency first responders—police, firefighters, and emergency medical personnel—in most of the nation's cities and counties are no better prepared to react now than they were prior to September 11. The tools of emergency preparedness are in very short supply. For instance, according to a survey done by the U.S. Conference of Mayors earlier this year:

- 79% of mayors reported a funding shortfall for necessary threat detection equipment; 77% for emergency response equipment; and 69% for personal protective apparel.

- 86% said they did not have adequate personal protective apparel and only 10% were satisfied with the protective equipment they had in the event of a biological attack."

COMMUNICATIONS

In virtually every major city and county in the United States, no interoperable communications system exists to support police, fire departments, and county, state, regional, and federal response personnel during a major emergency. Radio frequencies are not available to support the post–incident communication demands that will be placed on them, and most cities have no redundant systems to use as backups. Portable radios will not work in high-rise buildings unless the buildings are equipped with repeater systems. Most U.S. cities have separate command-and-control functions for their police and fire departments, and little to no coordination exists between the two organizations. Furthermore, with few exceptions, first-responder commanders do not have access to secure radios, telephones, or video-conferencing capabilities that can support communications with county, state, and federal emergency preparedness officials or National Guard leaders.

PROTECTIVE GEAR

In the event of a chemical attack, a window of a few minutes to two hours exists to respond to the incident before morbidity and mortality rates skyrocket. Yet protective gear is often available only to a few specialized incident response teams. Most communities will run short of even the most basic emergency response resources (e.g., life-saving equipment, personal protection suits, oxygen, respirators, etc.) in six hours. Federal agency response teams can help but they will invariably arrive too late (i.e., no earlier then twelve hours after the attack).

DETECTION EQUIPMENT

Portable and hand-held detection equipment for highly explosive, chemical, biological, and radiological materials is in short supply and notoriously unreliable in urban environments. Department of Defense and Department of Energy sensors deployed to local first responders

have been issued without adequate personnel training on use and maintenance of the equipment, or guidance on what to do should the detection equipment register an alarm.

TRAINING

Major field exercises are important tools to test the adequacy of contingency plans, equipment, command-and-control procedures, and training. In all but America's largest cities, there is a paucity of resources and expertise to organize and conduct these large scale exercises. For example, from 1996 to 1999, the federal government was able to provide WMD response training to only 134,000 of the nation's estimated nine million first responders. Furthermore, only two percent of these 134,000 responders received hands-on training with live chemical agents. The Center for Domestic Preparedness in Anniston, Alabama, is the only facility in the nation where first responders can train with and gain first-hand knowledge of chemical agents. At peak capacity, it can train only 10,000 responders per year.

RECOMMENDATIONS

Our nation would not send its armed forces into harm's way without outfitting them with the right tools and skills. Our first responders and local law enforcement officers deserve the same investment—their lives and our lives depend on it. Therefore, the Task Force makes the following recommendations:

- Establish a twenty-four–hour operations center in each state that can provide a real time intergovernmental link between local and federal law enforcement. Field-level police would contact this center when they apprehend suspects to receive a red or green light to hold or release them based on a check of federal and Interpol databases.
- Step up efforts to rein in identity fraud by strengthening the anti-counterfeit safeguards in state driver's licenses and passports, passing state laws criminalizing identity theft, and mobilizing 120-day joint local, state, and federal agency task forces to investigate and target phony identification traffickers.
- Provide grants for states and cities to hire retired first responders on ninety-day renewable contracts to conduct comprehensive assessments on the status of urban emergency preparedness, including the state of protective gear, communications plans and equipment, and the availability of chemical antidotes.

- Fund the backlog of protective equipment and training requests by urban fire departments. This is a case where an immediate infusion of resources can make an immediate difference in reducing the risks to first responders and the morbidity and mortality of incident victims.
- Fund and deploy commercial off-the-shelf technologies that can integrate multiple radio platforms to support interoperable communications, including the ability to coordinate the flow of voice, image, and electronic information among responding agencies.
- Provide the national research labs with adequate funding to develop, field-test, and widely distribute new portable and hand-held sensor equipment suitable for urban environments.
- Ensure that the distribution of new technologies to first responders is supported by training and long-term maintenance contracts.
- The Federal Emergency Management Agency (FEMA) and the National Guard should collaborate with state and local officials to deploy threat-based simulation models and training modules to support local emergency operations center training. WMD field exercises should be funded in all the nation's major urban areas over the next eighteen months. Senior police and fire officials from smaller cities and localities should be included in these exercises.

2. MAKE TRADE SECURITY A GLOBAL PRIORITY.

> *"There is virtually no security for what is the primary system to transport global trade. The consequence of a terrorist incident using a container would be profound. . . If terrorists used a sea container to conceal a weapon of mass destruction and detonated it on arrival at a port, the impact on global trade and the global economy could be immediate and devastating—all nations would be affected. No container ships would be allowed to unload at U.S. ports after such an event."*
>
> —Robert Bonner, Commissioner, U.S. Customs Service, August 26, 2002

Immediately following the September 11 attacks, federal authorities ordered the closing of U.S. airspace to all flights, both foreign and domestic, shut down the nation's major seaports, and slowed truck, automobile, and pedestrian traffic across the land borders with Canada and Mexico

to a trickle. Nineteen men wielding box-cutters forced the United States to do to itself what no adversary could ever accomplish: a successful blockade of the U.S. economy. If a surprise terrorist attack were to happen tomorrow involving the sea, rail, or truck transportation systems that carry millions of tons of trade to the United States each day, the response would likely be the same—a self-imposed global embargo.

VULNERABLE SEAPORTS

Ninety-five percent of all non-North American U.S. trade moves by sea and arrives in 361 ports around the nation. Despite the vital role seaports play in linking America to the world, both economically and militarily, port vulnerability studies for the nation's fifty largest ports are not scheduled to be completed for five more years. Over the past few decades, container traffic and energy imports increasingly have been concentrated in just a handful of ports, making them inviting targets. For instance, forty-three percent of all the maritime containers that arrived in the United States in 2001 came through the ports of Los Angeles and Long Beach. As the recent West Coast port closures demonstrated, the cost to the economy of closing these ports totals approximately $1 billion per day for the first five days, rising exponentially thereafter. Nearly one-quarter of all of California's imported crude oil is offloaded in one geographically confined area. A USS Cole–style incident involving a ship offloading at that locale could leave Southern California without refined fuels within just a few days. The American Association of Port Authorities estimates the cost of adequate physical security at the nation's commercial seaports to be $2 billion. So far only $92.3 million in federal grants have been authorized and approved. Even then, the grants have not been awarded on the basis of a port's relative importance to the nation. The ports of Los Angeles and Long Beach requested $70 million in post–September 11 grants and were awarded just $6.175 million. The adequacy of such grant levels needs urgent reexamination.

TRADE DEPENDENCY ON THE INTERMODAL CONTAINER

There are an estimated eleven million containers worldwide that are loaded and unloaded ten times per year. Ninety percent of the world's general cargo moves in these boxes. The architects of the intermodal revolution in transportation never considered security as a criterion—lower transport costs and improved speed and efficiency were the driving forces. For example, a new

40' container costs on average $2,500 to build and holds up to thirty tons of freight. The cost of the ocean voyage for a full container from Europe or Asia is approximately $1,500. There are no required security standards governing the loading or transport of an intermodal container. Most are "sealed" with a numbered fifty-cent, lead tag.

If an explosive device was loaded in a container and set off in a port, it would almost automatically raise concern about the integrity of the 21,000 containers that arrive in U.S. ports each day and the many thousands more that arrive by truck and rail across U.S. land borders. A three-to-four-week closure of U.S. ports would bring the global container industry to its knees. Mega-ports like Rotterdam and Singapore would have to close their gates to prevent boxes from piling up on their limited pier space. Trucks, trains, and barges would be stranded outside the terminals with no way to unload their boxes. Boxes bound for the United States would have to be unloaded from their outbound ships. Service contracts would need to be renegotiated. As this system becomes gridlocked, so would much of global commerce.

TRADE DEPENDENCY ON A SMALL NUMBER OF BORDER CROSSINGS

The five major bridges and one tunnel that link Ontario to Michigan and New York account for seventy percent of all the trade between the United States and Canada—America's largest trading partner. The Ambassador Bridge, between Detroit, Michigan, and Windsor, Ontario, alone carries $250 million per day, which is twenty-seven percent of the total U.S.-Canada daily trade in merchandise. When these border crossings were effectively closed following the September 11 attacks, many of the "big three" automakers' assembly plants went idle within two days (the average assembly plant produces $1 million worth of automobiles per hour). Manufacturers and retailers depend on the unimpeded cross-border flow of trade to respond to "just-in-time" delivery imperatives. Despite this dependency, the U.S. and Canadian governments provide no security to these structures because they are either privately owned or controlled by binational bridge authorities. Since border inspections are done after vehicles cross the bridge or emerge from the tunnel, these inspections provide no protective value for these vital trade lines.

RECOMMENDATIONS

The Task Force makes the following recommendations:

- Develop a layered security system that focuses on the entire logistics and intermodal transportation network rather than on an unintegrated series of tactics aimed at addressing vulnerabilities at arrival ports or at already congested land borders.
- Develop standards for security at loading facilities for an intermodal container. Require certification of these standards and periodic independent audits for compliance as a condition for gaining access to an international transportation terminal.
- Identify and test commercial off-the-shelf sensors and tracking devices to assure in-transit visibility and accountability of container movements and conduct demonstration projects using volunteer commercial shippers to test their technological and commercial viability.
- Improve the accuracy, timing, and format for transmitting and sharing data about the contents, location, and chain of custody involving a container shipment.
- Accelerate the time table for the action plans agreed to in the U.S.-Canada and U.S.-Mexico "smart-border" accords.
- Work with Canada to implement adequate security measures for cross-border bridges and the Detroit-Windsor tunnel.
- Task the U.S. Department of State, U.S. Department of Commerce, and U.S. Trade Representative to actively promote rapid adoption of security standards governing surface and maritime transportation in bilateral and multilateral arrangements with America's trading partners. Work to advance these standards within appropriate international organizations such as the International Standards Organization, International Maritime Organization, and the World Customs Organization. Retrofitting security into the global trade system is not only about mitigating the risk of terrorists exploiting these systems to target the United States, but also about sustaining the system that underpins global commerce.

3. SET CRITICAL INFRASTRUCTURE PROTECTION PRIORITIES.

> *"We are convinced that our vulnerabilities are increasing steadily, that the means to exploit those weaknesses are readily available and that the costs associated with an effective attack continue to drop. What is more, the investments required to improve the situation—now still relatively modest—will rise if we procrastinate."*
> —The Report of the President's Commission on Critical Infrastructure Protection, 1997

Our adversaries can attempt to strike anywhere, but their choice of target will likely not be indiscriminate. There are some targets in the United States that are more high-value than others in terms of visibility and the disruptive potential. Not all critical infrastructure is equally critical. Decisions about what warrants the most immediate attention must be made on the basis of relative vulnerability and consequence. Many of the critical infrastructures that underpin our national economy and support our modern way of life remain as vulnerable to attack today as they were a year ago. In some instances, the U.S. government is just beginning the process of undertaking an initial inventory of these vulnerabilities. Greater attention has been paid to physical security—gates, guards, and guns—but few resources are focused on preparing to respond and restore critical systems should these protective measures fail. The Task Force reviewed the June 30, 2002, findings and recommendations contained within the National Academies' report, *Making the Nation Safer*. The areas that the Task Force finds most worrisome include:

VULNERABLE ENERGY DISTRIBUTION SYSTEMS

Crude oil must be refined and distributed if it is to be a meaningful source of energy. Power generation plants are worthless if the electricity cannot be transmitted to the factories, office buildings, and households that need it to power equipment and provide lighting and climate control. An adversary intent on disrupting America's reliance on energy need not target oil fields in the Middle East. The infrastructure for providing energy to end users is concentrated, sophisticated, and largely unprotected. Further, some infrastructure lies offshore in the Gulf of Mexico, on the continental shelf, and within the territories of our North American neighbors.

Sixty percent of the Northeast's refined oil products are piped from refineries in Texas and Louisiana. A coordinated attack on several key pumping stations—most of which are in remote areas, are not staffed, and possess no intrusion detection devices—could cause mass disruption to

these flows. Nearly fifty percent of California's electrical supply comes from natural gas power plants and thirty percent of California's natural gas comes from Canada. Compressor stations to maintain pressure cost up to $40 million each and are located every sixty miles on a pipeline. If these compressor stations were targeted, the pipeline would be shut down for an extended period of time. A coordinated attack on a selected set of key points in the electrical power system could result in multistate blackouts. While power might be restored in parts of the region within a matter of days or weeks, acute shortages could mandate rolling blackouts for as long as several years. Spare parts for critical components of the power grid are in short supply; in many cases they must be shipped from overseas sources.

VULNERABLE FOOD AND WATER SUPPLIES

The nation's food and agriculture industry represents a substantial sector of our economy and presents an inviting opportunity for biological attacks. As the recent foot-and-mouth disease outbreak among livestock in Great Britain illustrated, once a diagnosis of a contagious disease is made, the effect on domestic and export markets can be devastating. Similarly, there are vast numbers of pathogens that have the potential to wreak havoc on crops. Public anxieties over food contamination can undermine the demand for major foodstuffs for years. Yet, there is no CDC equivalent to provide a shared communications network among states and the U.S. Department of Agriculture. Nor is there an effective means to communicate and coordinate internationally. Confusion over reporting obligations, who has jurisdiction, and to what extent they can provide adequate response to a potential attack promises to seriously compromise America's ability to contain the consequences of attacks on U.S. crops and livestock. For example, one recent exercise found that by the time the Agriculture Department's foreign-disease laboratory on Plum Island, N.Y., would have confirmed the first case of foot-and-mouth cross-border contamination, the disease would likely have spread to twenty-eight states.

The system that provides Americans with a basic element of life—water—remains vulnerable to mass disruption. Water systems are generally owned and maintained by local water companies and authorities that are slow to adopt new technologies and protocols. America's water supply is extremely vulnerable to contamination. This problem is compounded by the fact that extremely limited laboratory capacity and legal liability issues have made the routine monitoring of public water supplies for dangerous contaminants the exception rather than the

rule. This lack of testing and monitoring capability can compound the consequences of a localized attack since there is no means to quickly reassure an anxious public across America that their drinking water is safe once a highly publicized incident takes place.

VULNERABLE CLEARINGHOUSE INFRASTRUCTURE TO SUPPORT FINANCIAL MARKETS

Over the past two decades, the securities and banking industries have moved toward relying on a small number of core organizations for their post–trade clearing and settlement activities. If these systems were targeted by terrorists, the concentrated nature of these essential services could translate into profound disruption of daily economic life, both inside the United States and abroad. For example, clearing and settlement activities for the proper functioning of the government securities markets are essentially managed by just two banks, JP Morgan Chase and the Bank of New York. These two banks each extend approximately $1 trillion in intraday credit to their dealer and clearing customers each day. The sudden loss of these services could create a serious liquidity problem and likely damage public confidence in America's financial institutions and the systems upon which they borrow, invest, spend and save.

RECOMMENDATIONS

The Task Force makes the following recommendations:

- Set critical infrastructure priorities by moving beyond a ranking of vulnerabilities within each sector. Instead, conduct a cross-sector analysis, placing a premium on addressing vulnerabilities that present the greatest risk of cascading disruption and losses across multiple sectors.
- Fund energy distribution vulnerability assessments to be completed in no more than six months.
- Fund a stockpile of modular backup components to quickly restore the operation of the energy grid should it be targeted.
- Work with Canada to put in place adequate security measures for cross-border pipelines.
- Bolster the capacity for the U.S. Department of Agriculture (USDA) to exercise control over detection and incidence management of plant and animal disease, drawing upon the best practices developed by the Center for Disease Control (CDC) for managing human

disease. Task USDA with immediately bringing online a shared communications network to link it with states and U.S. trade partners.

- Provide adequate funding to significantly enhance USDA's training in identifying foreign diseases and assume global leadership in devising a robust international system for monitoring the outbreak of animal and plant disease.
- Identify and remove legal liability constraints to routinely testing public water supplies for dangerous contaminants. Accelerate the development of adequate laboratory testing to serve local water companies and commissions.
- Create common integrated communication networks and real-time data/software backup repositories among the clearing banks, the Depository Trust and Clearing Corporation, dealers, and other key participants in the government securities market. Routinely test for recovery and resumption operations. The goal is to ensure that there are sufficient funds and securities available to market-makers in times of market stress so as to support the high level of liquidity required for trading.

4. BOLSTER PUBLIC HEALTH SYSTEMS.

> *"Our concern is that bioterrorism preparedness funding must be adequate, lasting, and reliable to enable local public health agencies to build and sustain permanent improvements in their ability to protect their communities twenty-four hours a day, seven days a week. Most communities do not now have this level of protection."*
>
> —Thomas L. Milne, Executive Director
> National Association of County and City Health
> Officials, April 18, 2002

Agents used in biological attacks often require several days before victims start exhibiting acute symptoms. Early detection is key to stemming morbidity and mortality rates. Yet, with the possible exception of New York City, America's urban areas lack the advanced public health warning systems or specialized equipment to make this determination. There are simply not enough resources available within existing state and local budgets to remedy this situation in a timely way. Most local public health departments are barely funded and staffed to run during a normal 9 a.m. to 5 p.m. work week. Medical professionals often lack the training to properly diagnose and treat diseases spawned by biological agents. Many of the states' public health reporting systems are antiquated, slow, and outmoded. It can routinely take up to three weeks for

a public health department to register a disease incident report in the national database. And there is no consensus on which language and diagnostic coding system should be used for a national database or how to safeguard that information.

Recent efforts in the federal government to respond to the bioterrorism threat may only add to confusion over responsibility and accountability. Responsibility for direction and coordination of public health efforts should rest with a substantially bolstered Centers for Disease Control with clear lines of communication to other departments and agencies such as the National Institutes of Health. Since much of the nation's research and most of the treatment capacity lie in the private sector, outreach is essential.

CHEMICAL VERSUS BIOLOGICAL ATTACKS HAVE DIFFERENT IMPERATIVES

In chemical terrorism, detecting an attack is generally not a problem. People will show symptoms immediately: vomiting, suffering from seizures, experiencing respiratory distress, etc. The real challenge is deciphering which antidotes are appropriate and delivering them to the victims. The window of opportunity to mitigate the consequences of these attacks is very small—between a few minutes and two hours.

Detecting that there has been a biological attack can be far more problematic since symptoms in a person do not show up right away. The window of opportunity for responding to the biological agent anthrax ranges from thirty-six to forty-eight hours and for small pox nine to eleven days. For hemorrhagic fever viruses such as Ebola, an outbreak can range from two to twenty-one days after the attack is launched. The problem of discerning the difference between flu-like symptoms and the onset of a deadly disease is compounded when physicians are unfamiliar with diagnosing and treating such diseases and lack the medications to prescribe in any event.

LITTLE TO NO CAPACITY TO CONDUCT OUTBREAK INVESTIGATIONS

Medical care providers who come in contact with victims are the first line of defense. Few of these professionals have received training on how to diagnose, treat, and report symptoms that are associated with a biological attack.

Most city and county public health agencies currently lack the resources to support emergency hotlines twenty-four hours a day. The National Association of City and County

Health Officials estimate that localities need 10,000 to 15,000 new employees to work in public health preparedness functions. Given these shortages, few localities have the ability to assemble a team to conduct an outbreak investigation.

Public health laboratories cannot support a surge in the number of tests to verify the existence of a biological agent. Seven months after the anthrax mailings, there was a backlog of thousands of unexamined specimens suspected of being contaminated with anthrax powder around the United States.

RECOMMENDATIONS

The Task Force makes the following recommendations:

- Ensure that major cities and counties plan and train for truly catastrophic attacks. While these scenarios strike many as too horrific to contemplate, imagining and planning for them can potentially make the difference between a twenty percent casualty rate and an eighty percent or higher casualty rate.
- Make emergency federal funding available to address the highest priority state, county, and city public health needs.
- Develop public health surveillance systems built around monitoring ambulance calls, pharmacies reporting an upsurge in the purchase of certain over-the-counter drugs, corporations and schools reporting a surge in worker or student absenteeism, and doctors and hospitals reporting an increase in walk-in patients.
- Develop and maintain call lists of retired nurses, doctors, and emergency medical technicians living in the community who can be mobilized in an emergency. Provide annual training for these nonpracticing professionals and create a process for activating a "good Samaritan" clause to override malpractice issues.
- Identify and maintain call lists of knowledgeable experts who can authoritatively speak to the media about nuclear, chemical, or biological agents, symptoms of exposures, and recommended safeguards. Develop communications strategies and prepare educational materials and media guides for radio and TV on survival fundamentals for attacks involving weapons of mass destruction.
- Recruit major corporations and schools to help provide medications during an emergency. While the federal government will soon have the capability to ship antibiotics

and vaccines from the twelve national pharmaceutical stockpiles to urban areas within six hours, there are currently no local distribution plans to get these medicines to the general population.

- Provide funding to hospitals to pre-wire and outfit certain common areas such as lobbies, cafeterias, and hallways to support a surge in patients. Negotiate arrangements with hotels and conference centers to provide bed space for spillover patients.

5. REMOVE FEDERAL GOVERNMENT OBSTACLES TO PARTNERING.

Obstacles for using our most potent resources for countering catastrophic terrorism must be identified and overcome.

—Committee on Science and Technology for Countering Terrorism
National Research Council, June 30, 2002

The burden of preparing and responding to catastrophic terrorist attacks lies primarily outside the federal government at the local and state levels and with the private sector companies that own and operate much of the nation's critical infrastructure. Most of the expertise about both the vulnerabilities and the most practical protective measures to save lives and avert mass societal and economic disruption rests at this level as well. The federal government must provide leadership by issuing the call to action, supporting forums convened to address these issues, and supplying as much specific information as possible to key decision-makers on the nature of the threat.

ENGAGING THE PRIVATE SECTOR

The barriers to greater information-sharing between the public and private sector are not simply bureaucratic and cultural. Private sector leaders have legal concerns with respect to liability. They also worry about violating antitrust laws and are apprehensive that sensitive security information may be publicly disclosed by way of the FOIA. For their part, government agencies find it almost impossible to discuss matters that may involve classified security information. Protecting the public's right to know and ensuring free and competitive markets are cornerstones of our democracy. Safeguarding classified material is essential to protecting sources and methods. As a practical matter, however, the current rules confound the ability of the private sector to share information with public authorities on vulnerabilities within critical infrastructure,

and preclude the ability of federal government officials to share anything but the most generic security and threat information.

The real value of sharing information is that it can encourage efforts to develop innovative security measures that involve all the relevant stakeholders. But innovation also generally requires the infusion of federal resources to support research and development. Here the sense of urgency required by the homeland security mission collides with the lethargic and arcane system governing federal procurement—the Federal Acquisition Rules (FAR). These rules, which run literally into the thousands of pages, may be tolerable for routine government purchases, but without a more streamlined process to move federal resources, change will be measured in terms of years, not in the weeks and months that taking emergency measures to address our most serious vulnerabilities requires. Also, private companies that agree to work with the public sector to assist in developing and providing security measures will require legal safeguards that appropriately reduce their liability exposure. Good faith efforts to advance security should not result in a risk of bankruptcy or huge litigation costs should these measures ultimately fail to deter or prevent terrorist attacks.

TAP INTERNATIONAL EXPERTISE

While terrorism may be a new and painful experience for most Americans, regrettably many American allies such as Britain, France, Spain, and Israel have been confronted by this challenge for some time. Countries such as Switzerland provide a model for how civil defense efforts can be coordinated and largely resourced at the national level and adapted and managed at the local level. The United States does not have a monopoly on insight and ingenuity. It should be keen to learn from others' experience by sending research teams abroad to identify the best practices that could be implemented quickly here in the United States.

RECOMMENDATIONS

The Task Force makes the following recommendations:

- Draw on private sector experts who are involved in the design and operations of critical infrastructures such as the electric-power grid, telecommunications, gas and oil, banking and finance, transportation, water supply, public health services, and

emergency services. Enlist their participation to conduct government-sponsored vulnerability assessments and to participate in red-team activities.

- Enact an "Omnibus Anti-Red Tape" law with a two-year sunset clause for approved private-public homeland security task forces to include: (1) a fast-track security clearance process that permits the sharing of "secret-level" classified information with non-federal and industry leaders; (2) a FOIA exemption in instances when critical infrastructure industry leaders agree to share information about their security vulnerabilities with federal agencies, (3) exemption of private participants in these task forces from antitrust rules; (4) permitting homeland security appropriations to be managed under the more liberal rules governing research and development programs in the Department of Defense rather than according to the customary Federal Acquisition Rules; and (5) liability of safeguards and limits.
- Fund and deploy survey teams in Britain, France, Spain, and Israel to conduct studies on managing urban terrorism, evaluating European airline security procedures, and examining private-public intelligence sharing arrangements.

6. FUND, TRAIN, AND EQUIP THE NATIONAL GUARD TO MAKE HOMELAND SECURITY A PRIMARY MISSION.

The National Guard will play a critical role when the next catastrophic terrorist attack happens on American soil, and it must be well trained and equipped. Governors will expect National Guard units in their states to help with detecting chemical and biological agents, treating the victims, managing secondary consequences, and maintaining civil order. The National Guard has highly disciplined manpower spread throughout the nation in 5,475 units. The men and women who make up its ranks often come from the local community in which their unit is based. When called up by governors, the National Guard can be used to enforce civil laws—unlike regular forces which are bound by *posse comitatus* restrictions on performing law enforcement duties. The National Guard's medical units, engineer units, military police units, and ground and air transport units will likely prove indispensable in helping to manage the consequences of a terrorist attack.

ADAPTING TO THE NEW HOMELAND SECURITY IMPERATIVE

Governors, charged with developing state homeland security plans, will look to their National Guard units to fulfill such needs as:

- State-of-the-art communications systems necessary for command-and-control during the chaos of a terrorist attack;
- Manpower in order to evacuate, quarantine, and protect residents as need be;
- Knowledge of chemical, biological, and radiological attacks and the capability to respond to them;
- The capacity to provide local medical centers with additional trauma and triage capabilities.

The National Guard is currently equipped and trained primarily for carrying out its role in supporting conventional combat units overseas. The homeland security mission can draw on many of these capabilities but requires added emphasis on:

- Responding to a biological attack—the National Guard's focus in recent years has been primarily on surviving and fighting in a battlefield where chemical weapons have been deployed.
- Acquiring protection, detection, and other equipment that is tailored for complex urban environments.
- Training to provide civil support in the aftermath of a large-scale catastrophic attack.

RECOMMENDATIONS

An aggressive approach to revamping the capabilities of National Guard units designated to respond to domestic terrorist attacks can in the short-term provide a more robust response capability while states and localities work to bring their individual response mechanisms up to par. In order for the National Guard to fulfill this mission, the Task Force recommends:

- Congress should authorize and fund additional training for National Guard units to work with state civil authorities and to conduct exercises with local first responders in support of the new homeland security plans being developed by each governor.
- Triple the number of WMD-Civil Support Teams from twenty-two to sixty-six teams, develop capabilities so that response times are reduced to within the narrow window

where their presence is still valuable, and reevaluate equipment and training programs in order to develop response capabilities for the full range of WMD threats in urban environments.

- Bolster the National Guard's "train the trainers" programs to quickly bring baseline training on the recognition and response to WMD events to localities around the country.
- Move away from using National Guard resources where their deployment has a minimal impact. National Guardsmen are too valuable to be assigned to borders and airports where they are limited in the functions they can perform. Instead, the agencies with the mandate in these areas need to be given the necessary resources to perform their missions without National Guard help.
- Redress the pay and job protection discrepancies between when National Guard units are called up by the president and when they are called up by a governor. When governors order an activation, guardsmen receive no protection that allows them to return to their civilian jobs as provided under the Soldiers and Sailors Civil Relief Act. In addition, when on state active duty they may be paid as little as $75 a day.

CONCLUSION

Quickly mobilizing the nation to prepare for the worst is an act of prudence, not fatalism. In the twenty-first century, security and liberty are inseparable. The absence of adequate security elevates the risk that laws will be passed immediately in the wake of surprise terrorist attacks that will be reactive, not deliberative. Predictably, the consequence will be to compound the initial harm incurred by a tragic event with measures that overreach in terms of imposing costly new security mandates and the assumption of new government authorities that may erode our freedoms. Accordingly, aggressively pursuing America's homeland security imperatives immediately may well be the most important thing we can do to sustain our cherished freedoms for future generations.

Preparedness at home also plays a critical role in combating terrorism by reducing its appeal as an effective means of warfare. Acts of catastrophic terrorism produce not only deaths and physical destruction but also societal and economic disruption. Thus, as important as it is to try and attack terrorist organizations overseas and isolate those who support them, it is equally important to eliminate the incentive for undertaking these acts in the first place. By sharply

reducing, if not eliminating, the disruptive effects of terrorism, America's adversaries may be deterred from taking their battles to the streets of our nation's homeland.

TASK FORCE MEMBERS

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STEPHEN E. FLYNN, who directed the Task Force, is the Jeane J. Kirkpatrick Senior Fellow for National Security Studies at the Council on Foreign Relations, and recently retired as a Commander in the U.S. Coast Guard. He served in the White House Military Office during the first Bush administration and as a Director for Global Issues on the National Security Council staff during the Clinton administration.

STEPHEN FRIEDMAN is a Senior Principal at Marsh & McLennan Capital. He is a retired Chairman of Goldman, Sachs & Company.

GARY HART, who co-chaired the Task Force, has been Of Counsel with Coudert Brothers since 1994. As Senator from Colorado from 1975 to 1987, Gary Hart served on the Armed Services, Budget, and Environment committees and was also a Congressional Adviser to the SALT II talks in Geneva.

Note: Institutional affiliations are for identification purposes only.

Statement on the Shedd and McConnell Nominations
Senator Richard J. Durbin
November 14, 2002

Today, regrettably, I am compelled to speak in opposition to two more of President Bush's nominees to the U.S. Courts of Appeals — Judge Dennis Shedd for the Fourth Circuit and Professor Michael McConnell for the Tenth Circuit. After a careful review of the public record, I have concluded that neither of these men warrants a lifetime appointment to sit directly beneath the Supreme Court of the United States.

Judge Dennis Shedd

I am opposed to the nomination of Judge Dennis Shedd on the basis of his twelve-year record as a federal district court judge. Time and again, Judge Shedd has favored states' rights over the national interest, employers over civil rights litigants, and the ever-expanding power of government prosecutors over fundamental rights for the accused. His confirmation will tilt the Fourth Circuit, already the most conservative federal court in the land, even more out of balance.

In more than any other area, the conservative judiciary has left its mark by ushering in an era of new federalism and reinterpreting the Constitution to limit federal power. The Fourth Circuit, still bearing visible scars from the civil rights struggle, has already pushed the Supreme Court to extremes in defense of states' rights. Yet on this issue, Judge Shedd is not a voice of moderation.

In a notable exercise of judicial activism, Judge Shedd invalidated the Driver's Privacy Protection Act of 1994 as exceeding Congress's legislative authority. That Act, which passed with overwhelming bipartisan support in both houses, restricts state governments from disclosing or selling private information contained in their motor vehicle databases. Congress acted in response to high-profile incidents in which stalkers and murderers identified their targets by accessing data originating in state DMV files.

Remarkably, Judge Shedd ruled that Congress was without constitutional authority to regulate the interstate traffic of personal information stored in motor vehicle databases. Even more remarkably, his holding was reversed 9-0 by the U.S. Supreme Court, a venue that normally greets federalism challenges quite favorably.

In a similar vein, Judge Shedd ruled that the Constitution does not allow Congress to cover state employees under the Family and Medical Leave Act, which entitles most workers to 12 weeks unpaid leave to care for a new child or ill relative. Once again, the nominee acted in the face of overwhelming bipartisan consensus — more than 70 Senators who voted in favor of the bill. Although he acted on his own to strike down an act of Congress, Judge Shedd did not even submit his opinion for public dissemination.

When it comes to civil rights, Judge Shedd's allegiances are plain. He routinely rules against employees in civil rights and sexual harassment cases — with the notable exception of

white plaintiffs who allege reverse discrimination. Of the 11 cases relating to employment discrimination available in the public record, Judge Shedd held for the employer in every one, including one case where he sat by designation on the Fourth Circuit. Of the 54 fair employment cases included in the unpublished opinions he produced, over 80% of them grant summary judgment in full to the defendants.

In the criminal arena, Judge Shedd has shown little inclination to protect the constitutional rights of the accused. His indifference is quite evident in his supervision of cases arising out of the illegal videotaping of a private conversation between a capital murder defendant and a lawyer. The South Carolina Supreme Court had characterized the incident as "deliberate prosecutorial misconduct which threatened rights fundamental to liberty and justice."

When it came time to punish those who violated the constitutional rights of the criminal defendant, Judge Shedd was lenient. He dismissed perjury charges against a state prosecutor who was present during the videotaping. He imposed a nominal fine on the deputy sheriff who conducted the taping and pled guilty to violating the defendant's civil rights. He even criticized the criminal defense bar for "trying to get prosecutors and law enforcement punished."

Judge Shedd was markedly less lenient towards the capital defendant's own lawyer, who was accused of leaking the videotape to a news reporter on the eve of trial. The Judge sentenced the lawyer to four months in federal prison and four months under house arrest, to be followed by 20 months of supervised probation. He also imposed a $39,000 fine.

In sum, I am convinced that Judge Shedd lacks the balance and moderation that are the hallmark of a good judge, and that are desperately needed on the Fourth Circuit.

Professor Michael McConnell

I also oppose the nomination of Professor Michael McConnell to the Tenth Circuit. Although his scholarly credentials are exemplary, his positions on religion, civil rights, and abortion are well outside the mainstream of American jurisprudence. If confirmed, his view of the law threatens to rewrite the Constitution in a fundamental way.

Professor McConnell is one of the foremost authorities on the religion clauses of the First Amendment. He has advocated for breaking down the traditional wall of separation between church and state, paving the way for direct government funding of religious education and even proselytizing. Although Professor McConnell is associated with a principle of neutrality — the belief that religious institutions should compete for government benefits on equal footing with secular organizations — he would interpret the First Amendment in a manner that actually privileges religious groups by insulating them from the regulatory responsibilities of the modern age.

For example, in Jimmy Swaggart Ministries, he argued that a religious entity is entitled to a special exemption from a sales and use tax with respect to the sale of religious merchandise. In Tony and Susan Alamo Foundiation, he argued that a religious organization engaged in ordinary

commercial activity — running service stations, motels, and hog farms — should not be covered by the minimum wage requirements and other labor guarantees of the Fair Labor Standards Act. Remarkably, every member of the Supreme Court rejected Professor McConnell's position in each case.

In practice, Professor McConnell does not even believe that religious liberty should yield to the compelling government interest in combating racial discrimination. In the notorious Bob Jones University case, the IRS moved to revoke the school's charitable tax exempt status on the grounds that the school forbade interracial dating among its student body. McConnell sided with extremists in the Reagan Administration against the IRS. All nine members of the Supreme Court believed that the decision to withdraw Bob Jones's tax exempt status was supported by a compelling justification and did not implicate the First Amendment. Professor McConnell later characterized the ruling as an "egregious" example of the Court's failing to "protect religious freedom from the heavy hand of government."

He also believes that membership organizations, whether religious *or* secular, should enjoy the freedom to evade our nation's civil rights laws. In defending the Boy Scouts of America from a lawsuit by a gay would-be scoutmaster, McConnell argued that groups should have unfettered discretion to exclude members, even if the exclusion bears little or no relation to the organizational mission. While the Supreme Court narrowly sided with the Boy Scouts in the case, none of the Justices adopted the extreme position that McConnell advanced.

When it comes to abortion, Professor McConnell stands at the very fringes of legal thinking. Many prominent individuals have questioned the reasoning of Roe v. Wade, but to my knowledge only McConnell has compared Roe to Dred Scott, Plessy v. Ferguson, and the Korematsu case. He would not be content with the overturning of Roe, a result that would leave to individual states to decide the conditions under which abortion would be legal. Rather, Professor McConnell believes that the Constitution should ban abortion across the land.

I can respect that Professor McConnell has strong personal views about the propriety of abortion, even though his views are different from my own. What causes me real concern is that he will struggle to put those views aside while serving as a judge. In a 1997 article, McConnell lauded a district court judge who acquitted two anti-abortion protesters even though they violated a court injunction and the Freedom of Access to Clinics Act. He described the judge's action as "an unpardonable act of courage in defense of conscience." While he conceded the judge's conduct was "not lawful," he proposed a punishment for the protesters that would have amounted to a slap on the wrist.

There are those who argue that the federal judiciary stands to gain from a person of Professor McConnell's intellectual firepower, whatever his personal views. After all, he has pledged under oath to follow the law and not his own policy preferences. In truth, as the abortion example demonstrates, it is quite difficult to wall off one's personal views. Judging, especially at the appellate level, involves a considerable exercise of discretion. As Professor McConnell himself wrote: "In hard cases, . . . sometimes judges may have no choice but to allow their own convictions and moral intuitions to guide the selection of which course to follow."

My own conviction leads me to the difficult conclusion that Professor McConnell will not serve as a Circuit Judge with the measure of moderation we should expect.

"America Still Unprepared—America Still in Danger"

Written Testimony before

a hearing of the

U.S. Senate Judiciary Subcommittee on
Technology, Terrorism, and Government Information

Stephen E. Flynn, Ph.D.
Commander, U.S. Coast Guard (ret.)
Jeane J. Kirkpatrick Senior Fellow in National Security Studies and
Director, Council on Foreign Relations Independent Task Force
on Homeland Security Imperative

Room 226
Dirksen Senate Office Building
Washington, D.C.

2:30 p.m.
November 14, 2002

Senator Feinstein, Senator Kyl, and distinguished members of the Senate Judiciary Subcommittee on Technology, Terrorism, and Government Information. On behalf of the Council on Foreign Relations Independent Task Force on Homeland Security, thank you for so quickly assembling this hearing on our recently issued report, "America Still Unprepared—America Still in Danger." I am honored to be appearing before you with one of our task force's co-chairs and a truly great American, former Senator Warren Rudman, and my fellow task force member, Mr. Phil Odeen.

Fourteen months after 9/11, America remains dangerously unprepared to prevent and respond to a catastrophic attack on U.S. soil. In all likelihood, the next attack will result in even greater casualties and widespread disruption to American lives and the economy. This is the core finding of our task force for which I was privileged to serve as director and which was led by former Senators Warren Rudman and Gary Hart—co-chairs of the now famous Commission on National Security that warned of such a terrorist attack three years ago. Our bipartisan Independent Task Force, which came to this sober conclusion and which makes recommendations for emergency action, included two former secretaries of state, three Nobel laureates, two former chairmen of the Joint Chiefs of Staff, a former director of the CIA and FBI, and some of the nation's most distinguished financial, legal, and medical experts. It is a finding which we believe the nation must respond to with the same level of intensity that we are investing in our overseas efforts to combat terrorism. Stated succinctly, we believe we should be operating essentially on a wartime footing here at home—and we are not. Indeed, we fear that there are worrisome signs that the nation is already slipping back into complacency.

Jumping directly to the agenda of this hearing today—what should Congress be doing to make the nation safer—two immediate actions are essential. First, the pending legislation to create the Department of Homeland Security should be acted on without delay. Second, Congress needs to immediately act to approve the remaining fiscal 2003 Appropriations Bills. Quite frankly, it is a disgrace that so many important measures we should be taking to address our many serious vulnerabilities are stalled because so much of the government is operating under the budgetary restrictions associated with the spending limits imposed by the rules governing continuing resolutions. In addition, we hope that the House and Senate will take a serious look at many of the recommendations for urgent action contained in our task force report which I attach to this statement and ask that it be included as a part of the official record of this hearing's proceedings.

In my opening statement this afternoon, I would like to stress why we believe that the nation is entering a period of especially grave danger with regard to the threat of a second catastrophic terrorist attack on the United States.

First, there the lessons of 9/11: (1) The homeland of the United States is largely open and unprotected, and (2) there is a vast menu of civilian targets which if exploited will lead to mass societal and economic disruption. In short, what we witnessed on September 11, 2002 is how

warfare will likely be conducted against the United States for the foreseeable future. We are the world's "Goliath," and our adversaries must become creative "David's" to challenge our power. Going toe-to-toe on the conventional military battlefield almost certainly would be a losing proposition.

Second, there is mounting evidence that al Qaeda is returning to an operational footing. In the words of George Tenet who testified publicly before the Senate Select Committee on Intelligence a month ago:

> *"When you see the multiple attacks that you've seen occur around the world, from Bali to Kuwait, the number of failed attacks that have been attempted, the various messages that have been issued by senior al-Qaeda leaders, you must make the assumption that al-Qaeda is in an execution phase and intends to strike us both here and overseas; that's unambiguous as far as I am concerned."*

Directors of Central Intelligence rarely use in public the word "unambiguous" alongside their intelligence assessments—this assessment deserves to be taken extremely seriously.

Third, there is the fact that we are poised to embark on a war with Iraq. Such a war will have at least two implications for the homeland security imperative. (1) It elevates the risk in the near term of an attack on the United States. We are preparing to attack a ruthless adversary who may well have access to weapons of mass destruction. Given Saddam Hussein's past track record, prudence requires that we assume he will resort to any means to hang on to power. This could well include sponsorship of terrorist operations against the United States, at home as well as abroad. (2) A war with Iraq will likely consume virtually all the nation's attention and command the bulk of the available resources, leaving little left over to address our many domestic vulnerabilities.

Against this backdrop, where are we today with regard to advancing the security of the U.S. homeland? Our findings include the following:

- 650,000 local and state police officials continue to operate in a virtual intelligence vacuum, without a workable means to routinely access terrorist watch lists provided by the U.S. Department of State to immigration and consular officials.
- While 50,000 federal screeners are being hired at the nation's airports to check passengers, only the tiniest percentage of containers, ships, trucks, and trains that enter the United States each day are subject to examination—and a weapon of mass destruction could well be hidden among this cargo. Should the maritime or surface elements of America's global transportation system be used as a weapon delivery device, the response right now would almost certainly be to shut the system down at an enormous cost to the economies of the United States and its trade partners.
- First responders—police, fire, emergency medical technician personnel—are not prepared for a chemical or biological attack. Their radios cannot communicate with one

another, and they lack the training and protective gear to protect themselves and the public in an emergency. The consequence of this could be the unnecessary loss of thousands of American lives.

- America's own ill-prepared response could hurt its people to a much greater extent than any single attack by a terrorist. America is a powerful and resilient nation, and terrorists are not supermen. But the risk of self-inflicted harm to America's liberties and way of life is greatest during and immediately following a national trauma.
- An adversary intent on disrupting America's reliance on energy need not target oil fields in the Middle East. The homeland infrastructure for refining and distributing energy to support the daily lives of Americans remains largely unprotected to sabotage.
- While the overwhelming majority of the nation's critical infrastructure is owned and operated by the private sector, significant legal barriers remain to forging effective private-public partnerships on homeland security issues. These include potential antitrust conflicts, concerns about the public release of sensitive security information by way of the Freedom of Information Act (FOIA), and liability exposure.
- Domestic security measures must be pursued within an international context. The critical infrastructures that support the daily lives of Americans are linked to global networks. Efforts to protect these systems will fail unless they are pursued abroad as well as at home.
- The National Guard is currently equipped and trained primarily for carrying out its role in supporting conventional combat units overseas. The homeland security mission can draw on many of these capabilities but it requires added emphasis on bolstering the capacity of National Guard units to respond to biological attacks; acquiring protection, detection, and other equipment that is tailored for complex urban environments; and special training to provide civil support in the aftermath of a large-scale catastrophic attack.

Our key recommendations include the following:

- Empower front-line agents to intercept terrorists by establishing a twenty-four-hour operations center in each state that can provide access to terrorist watch list information via real time intergovernmental links between local and federal law enforcement.
- Make first responders ready to respond by immediately providing federal funds to clear the backlog of requests for protective gear, training, and communications equipment. State and local budgets cannot bankroll these necessities in the near term.
- Recalibrate the agenda for transportation security; the vulnerabilities are greater and the stakes are higher in the sea and land modes than in commercial aviation. Systems such as those used in the aviation sector, which start from the assumption that every passenger and every bag of luggage poses an equal risk, must give way to more intelligence-driven and layered security approaches that emphasize prescreening and monitoring based on risk-criteria.
- Fund energy distribution vulnerability assessments to be completed in no more than six months, fund a stockpile of modular backup components to quickly restore the

operation of the energy grid should it be targeted, and work with Canada to put in place adequate security measures for binational pipelines.

- Strengthen the capacity of local, state, and federal public heath and agricultural agencies to detect and conduct disease outbreak investigations. The key to mitigating casualties associated with a biological attack against people or the food supply is to identify the source of infection as early as possible.
- Enact an "Omnibus Anti-Red Tape" law with a two-year sunset clause for approved private-public homeland security task forces to include: (1) a fast-track security clearance process that permits the sharing of "secret-level" classified information with non-federal and industry leaders; (2) a FOIA exemption in instances when critical infrastructure industry leaders agree to share information about their security vulnerabilities with federal agencies; (3) an exemption of private participants in these task forces from antitrust rules; (4) homeland security appropriations to be managed under the more liberal rules governing research and development programs in the Department of Defense rather than the normal Federal Acquisition Rules; and (5) liability safeguards and limits.
- Fund, equip, and train National Guard units around the country to ensure they can support the new state homeland security plans under development by each governor. Also, triple the number of National Guard Weapons of Mass Destruction Support Teams from twenty-two to sixty-six.

In conclusion, it is the belief our task force that quickly mobilizing the nation to prepare for the worst is an act of prudence, not fatalism. In the twenty-first century, security and liberty are inseparable. The absence of adequate security elevates the risk that laws will be passed immediately in the wake of surprise terrorist attacks that will be reactive, not deliberative. Predictably, the consequence will be to compound the initial harm incurred by a tragic event with measures that overreach in terms of imposing costly new security mandates and the assumption of new government authorities that may erode our freedoms. Accordingly, aggressively pursuing America's homeland security imperatives quickly and immediately may well be the most important thing we can do to sustain America's cherished freedoms for future generations.

President Bush has declared that combating terrorism requires a war on two fronts—at home and abroad. The Task Force believes the nation should respond accordingly. Preparedness at home can play an indispensable role in combating terrorism by reducing its appeal as an effective means of warfare. Acts of catastrophic terrorism produce not only deaths and physical destruction but also societal and economic disruption. Thus, as important as it is to try and attack terrorist organizations overseas and isolate those who support them, it is equally important to eliminate the incentive for undertaking these acts in the first place. By sharply reducing, if not eliminating, the disruptive effects of terrorism, America's adversaries may be deterred from taking their battles to the streets of the American homeland.

Thank you and I look forward to responding to your questions.

Statement of
The Honorable Orrin Hatch
United States Senator
Utah

November 14, 2002

PRINTABLE VERSION

Madam Chairman, thank you for holding this important hearing on the Hart-Rudman Report on Terrorism. You and Senator Kyl have shown great leadership in the areas of terrorism and homeland defense. Well before the attacks of September 11, both Senators focused this Subcommittee's efforts on our nation's internal security. I think I speak for all of the members of the Committee in commending both of you for your great leadership in this area.

Let me also take a moment to welcome back to the Senate a dear friend and former colleague, Sen. Rudman. I am so pleased to see you again. Thank you for again devoting your time and energy to the public in helping to produce this important report. And I want to thank the rest of the witnesses for coming down hear today to discuss your thoughts with us.

Having reviewed the Hart-Rudman report, I am intrigued by many of the recommendations that it makes. In particular, let me focus on two specific recommendations.

First, the Hart-Rudman Report emphasizes the immediate need to create the Department of Homeland Security. Our President and the American people have made it abundantly clear – we need to enact long-stalled legislation to create the new Department of Homeland Security. I am encouraged by recent efforts to move this legislation and I fully expect that the Senate will soon join the House in passing this important legislation, so that the President can sign it and get started on creating this new and vitally important agency. As I have said before, this issue cannot fall to partisan politics – our country's security and the safety of our people depend on enacting such legislation.

Second, the Hart-Rudman Report notes that 650,000 state and local police officials continue to operate in a virtual intelligence vacuum, without meaningful access to critical intelligence information. In previous hearings before the Senate Select Committee on Intelligence, I have indicated my concerns about the absence of effective intelligence sharing. The PATRIOT Act was a giant step forward in breaking down barriers to intelligence sharing among law enforcement and intelligence agencies. Yet, in my view, there is more to do in this area. Specifically, there are existing restrictions on law enforcement' ability to share critical information with state and local law enforcement as well as foreign law enforcement agencies, all of whom play an important role in our united fight against terrorism.

I look forward to hearing from today's witnesses on the Hart-Rudman Report. This hearing is a good place to start and listen to viewpoints on this subject. We all have a common goal: To protect our nation from the devastating threat of terrorism. The devil, as usual, is in the details. I am well aware of the fact that there are a myriad of different opinions on this issue – as there are in other issues of great weight and importance. But, of course, some opinions are more persuasive than others, and I feel privileged to be here today to listen to some of the most distinguished and knowledgeable people on this subject.

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PRINTER FRIENDLY VERSION

Testimony before the Judiciary Committee of the United States Senate
November 14, 2002
By
Dr. Elaine Kamarck
John F. Kennedy School of Government, Harvard University

Good afternoon. Once again, former Senators Gary Hart and Warren Rudman, along with retired Coast Guard Commander Stephen Flynn, should be congratulated for alerting America to the danger it faces in the near future. Hopefully these new warnings will have more resonance than earlier ones.

As we draw closer to war with Iraq it is clear that there will be more and more attempts at a catastrophic terrorist attack on U.S. soil. We did not need Osama Bin Laden himself to warn us that this will be so. Thus it is time to evaluate the progress made on homeland security in the year and two months since the attacks of September 11.

Clearly there has been progress, arrests in the United States and in foreign countries show an increase in law enforcement cooperation in this country and around the world. Soon, the United States will have a new Department of Homeland Security. Large amounts of money have been appropriated to strengthen various aspects of the government. Nevertheless, as this report points out we remain, as a nation, "dangerously unprepared to prevent and respond to a catastrophic terrorist attack on U.S. soil."

The report by the Council on Foreign Relations outlines many things that should be done immediately but with a heavy focus on the critical role that state and local government will play in this regard. Rather than re-iterate what that report contains, allow me to offer suggestions in three areas that complement the recommendations in this report.

- FEMA, the Federal Emergency Management Agency, should be given more resources and the formal authority to act as CINC in the preparation and coordination of federal, state and local governments to respond to all kinds of terrorist events.

- The government should strengthen the public health system and create a network in every major metropolitan area in the United States dedicated to the instantaneous creation of emergency hospitals.

- The government should undertake a quick study of simple, easy things ordinary Americans can do in case of bio-terror attacks and educate members of the mass media as well as first responders so as to increase the probability of minimizing the effects of a bio-terror attack.

FEMA

Response to terrorist acts, (or any catastrophic events, for that matter), always involves all levels of government, since the first people on the scene are local police, fire and medics. In the

case of a bio-terrorist attack, the very definition of "first responders" - developed from more traditional catastrophes like fires and earthquakes - would have to change. "First responders" in a bio-terrorist attack would very likely be nurses, doctors and lab technicians. Only recently have we begun to consider that the public health is part of national security. In terrorism related budgets prior to September 11, the bulk of the money went to law enforcement and defense, with public health the poor sister. As the confusion around the anthrax attack in the fall of 2001 proved, the U.S. government is ill equipped to respond to bio-terrorist attacks. In a role playing episode at the end of the 1990s the Defense Department declared the right to seize command during a bio-terrorist attack. Posse Comitatus issues aside, the DOD has many capabilities but expertise in disease and contagion are not among them.

Thus in preparing for the future and for the need to respond to totally new and unexpected forms of terror, the United States needs to build a series of response networks that involve all levels of government and which have practiced reactions to scenarios that can only be imagined. Identifying the spread of a very rare disease such as smallpox or ebola on a national level, tracking its progress, acquiring and moving stocks of vaccine, communicating with the public, placing affected people in quarantine, shutting down travel -- the list of steps to be taken and the confusion that would result from missed steps -- is a nightmare in and of itself.

The only way to prepare is the way the military prepares, practice, practice and more practice. But the number of different entities involved is huge and each one has other, important, day to day responsibilities to the public. We know that in some communities relevant members of the response teams have not participated in exercises that have been held because they have either been too busy or have not had the money to pay people overtime. But all these various entities must be rehearsed and molded into a network that, when needed, can operate as one entity.

How to do that? Right before the September 11 attacks, Lieutenant Colonel Terrence Kelly published an article on homeland defense in which he suggested borrowing a concept from the military -- the CINC -- for homeland defense. The last major reorganization of the US military dealt with the traditional divisions (and rivalries) between the services and the need to make these historically separate bureaucracies into a coherent force in battle. As a result, the regional CINC (Commander in Chief) command structure in the Defense Department gives one person the power and authority to plan for and then, if necessary, command, the assets of the different parts of the military (air force, marines, navy, army etc.) Kelly was suggesting the CINC concept for a Homeland Defense Agency.

However, the CINC option has even more utility when applied to the need for coherent response. FEMA, the Federal Emergency Management Agency, should be given more resources and the formal authority to act as CINC in the preparation and coordination of federal, state and local governments to respond to all kinds of terrorist events. A modest start in that direction was made in President Bush's homeland defense budget where $3.5 billion out of the $37.7 billion was allotted to "first responders" and FEMA was given responsibility for coordinating training and response. But given the complexity of the task at hand, an agency, and FEMA is the most likely candidate, needs to have the resources and the authority to force other federal agencies

such as the Centers for Disease Control, and state and local governments, into an effective response network. The Senate has been reluctant to clear up the lines of authority in this critical area, insisting that FEMA share first response and training authority and grant making with the Department of Justice's Office of Domestic preparedness.

While some small steps have been taken, such as uniform grant applications, the existence of two departments in this area creates one more headache for the state and local authorities who have to game the federal system. As the simulation known as "Dark Winter" proved, a smallpox attack on the United States can cause massive confusion and death. In that exercise, the sticky issue of federalism arose. Former Senator Sam Nunn, who played the President of the United States in the exercise said, at one point, "We're going to have absolute chaos if we start having war between the federal government and the state government."

The sooner a CINC like authority is vested in FEMA the better. The creation of a first rate response network will also fulfill an important criteria of homeland defense reform. Improvement in the coordination of responses to terror will improve the coordination of responses to all sorts of catastrophes, whether or not they are the result of terrorist acts. In the 1990s FEMA went through one of the largest agency transformations in recent history. When the Clinton Administration came in, there were several bills pending in Congress to abolish FEMA. Thus it became an early candidate for the Clinton/Gore reinvention efforts and, under the leadership of James Lee Witt, went from a disaster itself to a government agency that elicited applause from the public for its outstanding performance after the Northridge earthquake in California. Organizationally FEMA is well equipped for the task but it needs a clearer mandate - both inside and outside the Federal government.

Public Health

Recent trends in medicine in the United States have resulted in less capacity to deal with a "surge" in demand for serious medical care than ever before. Innovations such as "just in time" inventory systems for equipment and drugs and the increase in "out-patient" care (as drug therapy has replaced surgery and hospitalization for some illnesses) means that the United States does not have the infrastructure to deal with mass injuries.

In addition, the health system in the United States finds itself under increasing financial pressure. Hospitals have been going broke, closing emergency services and trauma centers and having to deal with a nationwide shortage of nurses. The absence of "surge capacity" is serious when contemplating a high number of injuries resulting from a terrorist attack involving explosives; the absence becomes even more dangerous when contemplating the number needing medical care that could arise from a bio-terrorist attack. In a bio-terrorist attack everything from sterile equipment and clothing to isolation wards would run out almost instantly. Three authors from the Kennedy School of Government have warned that "Without proper action victims of a mass casualty disaster might end up in ambulances to nowhere".

Much of our public policy contains the presumption that hospitals will be key actors in emergency preparedness. But this is clearly not so. Our public policy also assumes that the

public health system will fill in the gaps in the private health care system. This assumption is also not true anymore. More and more Americans are falling between the cracks, they are too poor for the private system but too rich for the troubled pubic system.

In a speech in Washington on October 25, 2002, former Vice President Al Gore warned that the nation's public health system was dangerously weak and that this weakness posed a significant national security threat in case of an act of biological warfare. He proposed a "national defense public health act to responsibly address this imminent threat."

It is unrealistic to expect that an overburdened and increasingly expensive health care system can develop and maintain the capacity to treat massive numbers of victims of something like a terrorist attack. However, it is not unrealistic to expect that the government could lead the private sector in the development of a plan whereby the location of medical supplies would be known, plans for their delivery formalized and locations for makeshift hospital beds and isolation wards identified ahead of time. In other words, working with both the private and public health care sector the government could create a network in every major metropolitan area in the United States which would be dedicated to the instantaneous creation of emergency hospitals. In the immediate aftermath of the bombing of the World Trade Center in New York on September 11, 2001, an emergency medical unit was set up downtown and access to Manhattan was cut off to everyone - except medical personnel - who knew to come into the city. This had been practiced and planned because Mayor Giuliani had had some warning because of the World Trade Center attacks in 1993.

The Role of the Media

Another important element of response is the media. For days after the September 11 attacks, most of America was glued to their televisions. Especially in the case of a bio-terrorist attack, the media has a role to play in conveying useful information and preventing panic. Dr. Matt Meselsen, an eminent biologist and expert on bio-terrorism at Harvard University, pointed out that in thinking about a bio-terrorist attack we need to start by "thinking small." Creating a list of these "small things" that people can do to try and not spread disease and then working with national and local media to educate them on the likely course of a bio-terrorist attack - could save lives and prevent the panic that is often the goal of terrorists.

The importance of effective communications in responding to a terrorist attack -- especially a bio-terrorist attack -- was emphasized by former Senator Sam Nunn. Nunn played the role of President of the United States in a recent simulation of a small pox attack on the United States called "Dark Winter." In testimony before Congress on the lessons learned he said: "How do you talk to the public in a way that is candid, yet prevents panic knowing that panic itself can be a weapon of mass destruction?" My staff had two responses: "We don't know," and "You're late for your press conference." I told people in the exercise: "I would never go before the press with this little information, and Governor Keating, who knows about dealing with disaster, said: "You have no choice." And I went, even though I did not have answers for the questions I knew I would face." In the case of bio-terrorism, the President of the United States needs to know what to do but the public will need to see more than politicians, it will need to see trained

medical personnel who have useful, simple words of advice for a panic stricken and confused public.

Conclusion

We can no longer assume that war in Iraq, many miles away from our homeland, will not affect us at home. We must prepare the homeland with the same sense of urgency and focus that our military uses in preparation for battle. In addition to the recommendations in the Council on Foreign Relations' report, preparation for homeland defense requires unity of command, the mobilization of the public and the private health care sectors and a system of effective communication which involves the mass media.

Statement For Record
by
Colonel Randall J. Larsen, USAF (Ret)
Director, ANSER Institute for Homeland Security
Senate Committee on Technology, Terrorism, and Government Information
November 14, 2002

Hearing on
"America Still Unprepared-America Still in Danger:
The October 2002 Hart-Rudman Terrorism Task Force Report."

Introduction

Thank you for the opportunity to offer the Institute's assessment of the Council of Foreign Relations Task Force Report, "America Still Unprepared -- America Still in Danger."

In 1838, a young Abraham Lincoln commented, "All the armies of Europe, Asia and Africa combined ... with a Bonaparte for a commander, could not by force, take a drink from the Ohio, or make a track on the Blue Ridge, in a trial of a thousand years."

This is of course still true today, but unfortunately irrelevant. It no longer takes a superpower to threaten a superpower. In fact, America's enemies no longer require military forces to threaten our security. Small nations, terrorist organizations, even some transnational criminal organizations can threaten our homeland with weapons of incredible destructive and disruptive power.

Most people in this hearing room will agree with this assessment ... why restate the obvious? But the fact is, if we all truly believe this assessment, why do we not yet have a Department of Homeland Security? Why are our state and local law enforcement officers still operating in a "virtual intelligence vacuum"? Why is it that the most dependable delivery system for a terrorist nuclear or radiological weapon is to merely rent a shipping container for $1500 in some third world country? Why are we still unprepared for an attack with biological weapons ... the weapon that can seriously disrupt our lives and frighten our families when used on a small scale as we witnessed in October 2001, or potentially threaten the very survival of our nation in a large-scale, sophisticated attack using a contagious pathogen?

These are the types of issues illuminated by the Council on Foreign Relations Task Force. We, at the ANSER Institute for Homeland Security, agree with the vast majority of their findings. Most importantly, we agree with the Task Force members and with the President that the top priority must be the creation of a Department of Homeland Security. Five of the six critical mandates identified in this report can best be resolved through the leadership of a Secretary of Homeland Security and the management and coordination efforts of the Secretary's staff.

However, it is not enough to create a new organization and to mandate that certain reports be shared. It is insufficient to contemplate mere *reorganization* when what is required is true *transformation.* Fourteen months after the horrific attacks of 11 September we have yet to embrace the notion that non-conventional threats demand that there be a fundamental change in how this nation does business.

As we position the nation's efforts towards transformation, we must be guided by the principles of speed, sustainability and accountability. One-year stand-alone initiatives drain money and distract attention from required and fundamental systemic changes. Timeliness is essential, but we must assure systems of control, oversight, and evaluation. Responsibility and authority must be granted, but always with an eye toward maintaining the federated distribution of power across our nation.

The Report

The Council on Foreign Relations Task Force recommends six major areas for action, with many associated specifics. With but one major exception, we generally agree with the broad assessment of this report, and will offer only a few additional comments on each of the major sections.

I. "Tap the eyes and ears of local and state law enforcement officers in preventing attacks: Make first responders ready to respond."

Concerning law enforcement and intelligence:

The Commission makes some good points, but even their solutions do not address the fundamental problem: our habits of thought are still driven by Cold War patterns and processes. We have not yet developed a new strategic perspective to match the new strategic landscape. New observables are available, but we are not yet using them to identify emerging threats. New weapons have arrived, but we are not yet using new capabilities, like forensic pathology, to conduct our analysis. To our new enemies, culture, religion and history clearly matter, but experts in these areas are not yet fully informing our analysis. Yes we face major problems in receiving, fusing, analyzing, and distributing intelligence from multiple sources, from multiple levels and multiple jurisdictions, without an existing system for information classification. And I understand and support the Commission's desire to provide tactical solutions so our 650,000 law enforcement officials in the field can see immediate results. But fixing the process without updating the strategic perspective that drives the entire enterprise would be putting new wine in old skins. I know that a transition team is working hard to develop such expertise and perspective in the homeland security intelligence community. Before I fully endorse the report in this area, or recommend a specific solution, I recommend we wait to see what program is developed by the efforts now underway in the administration. I join the Commission in urging that the results of these deliberations must be turned into an operational program as quickly as possible.

Concerning first responder training:

Many valuable training programs already exist (such as the Center for Domestic Preparedness, in Anniston, Alabama), a number of excellent proposals for expansion await support from a new Department (such as the National Center for Disaster Decision Making in Portland, Oregon). And we certainly agree that funding should be expedited to reach the thousands of first responders anxious to improve their capabilities. However, we would also offer three brief warnings:

- We do need central standards (provided, again, out of a Department of Homeland Security).
- We need to provide mostly matching federal funds, making outright grants the exception rather than the rule (in order to promote accountability at every level) and,
- We need to make sustainment a fundamental consideration of every program we fund. Skills deteriorate and equipment must be maintained. We know that buying a new fighter plane without thinking about how to maintain it and train pilots and mechanics over the long haul would be foolish. The same is true of first responders and their systems. One-time fixes are just that – fixes for one moment in time. Yes, we need rapid improvement in this area – but those improvements must be sustainable as well.

II. "Make trade security a global priority"

Although trade is not our specialty at the Institute, creating responsive organizations is. Consequently, we concur with all these recommendations. And we can tell you that the Department of Homeland Security where these trade and security responsibilities will reside can only implement these recommendations if they have the ability to reallocate money during the fiscal year, and the flexibility to reallocate personnel in response to crises. Certainly, such authority requires oversight, and we would encourage Congress to require the Department Secretary to report on any such decisions taken each year. But if we are going to make securing our borders and international trade a priority, then we need the ability to fix problems on the spot and as they arise – not wait one to two years for proposed solutions to work their way through the annual budget process. Provide authority, then enforce accountability – that is the formula for rapidly addressing this problem.

III. "Set critical infrastructure protection priorities"

While energizing protection plans is important as the Task Force recommends, I am much more concerned with anticipating and preventing cascading systemic collapse than in the point defense of the 56,000 facilities considered by some to be "critical infrastructure." This requires that facilities be evaluated against intelligence analysis of the threats, and the potential impact on other critical infrastructure if they fail – not just as independent, stand alone targets. Setting priorities requires evaluation of the interaction of critical infrastructure, and this demands detailed simulations and exercises, not just academic review and estimates.

IV "Bolster Public Health Systems"

On this issue, the ANSER Institute's considerable expertise suggests that the Commission's concerns and recommendations are generally on the mark. We wish to emphasize

that biological agents pose the most serious threat we will face in the next two decades. This threat to our homeland includes the potential for use of such agents against a wide range of targets including: small and large-scale attacks on civilians, attacks on our food supply (primarily as a means to attack our economy), and attacks designed to disrupt the deployment of our military forces.

Research and development for new vaccines, antibiotics and anti-viral drugs; new capabilities in forensic biology (who sent the letter to Senators Daschle and Leahy?); expanded stockpiles and distribution mechanisms, and interoperable information systems capable of providing early notification: all are critical to a comprehensive biodefense program. However, no single element in this program is more important than a long-term commitment to improve America's public health infrastructure.

What was once a world-class capability has been allowed to atrophy during the past several decades. A recent nation-wide study funded by the Centers for Disease Control and Prevention highlighted the lack of preparedness for America's first responders during a biological attack. The results, presented on a scale used by many schools in America (100-90 = A, 89-80 = B, 79-70 = C, 69-60 = D, > 60 = F) were even worse then initially expected. Nearly two-thirds of America's state and county public health offices were included in the survey, and 74 percent received failing scores. Twenty individual areas of preparedness were assessed. The lowest rated area was for "Drills and Exercises." (On the scale of 100 to 0, the national average score was ironically 9.11.)

Too often, the term "first responder" is used to mean firefighters, police officers, and emergency medical technicians. In facing the potential of continued threats from biological agents – such as the anthrax attacks of 2001 - America's public health officials are the first responders and they must receive appropriate and successive levels of funding.

V. "Remove federal government obstacles to partnering"

Because the vast majority of America's critical infrastructure is owned and operated by the private sector, private-public partnerships will be essential if we are to maintain the fundamental character of the American system. The federal government must act mostly by incentives, information sharing and cajoling – although legal and regulatory levers are available in certain specific circumstances. The Task Force's list of actions is excellent, but allow me to emphasize two specific points: the importance of working out some sort of compromise on the broad sweep of the Freedom of Information Act (FOIA) and the Federal Advisory Committee Act (FACA) cannot be overstated. Full disclosure of problems and full sharing of potential solutions is a show-stopper for many industry leaders. They simply cannot allow their investments to be endangered by potential targeting by terrorists or lawsuits, based on information shared in private with government representatives, but later made public under FOIA and FACA requests.

We have encountered this need repeatedly over the past year as Institute personnel met with a wide variety of homeland security operators at every level (federal, state, local, and private sector) in many different venues. We are never going to cross the fault lines within

homeland security communities, if we cannot address the "stovepipes" of authority, responsibility and information in confidence.

VI. "Fund, Train, and Equip to make the National Guard a primary mission"

While we agree that additional funding will likely be required for the National Guard, we are not ready to endorse the report's sixth major recommendation concerning roles and missions of the National Guard in the 21st Century. These citizen soldiers already are stretched thin preparing for and executing a wide variety of missions in support of our military forces overseas. We are gratified but not surprised that the Guard and Reserves continue to answer "Can Do!" when additional homeland security missions are identified – but we wonder if it is strategically sound to continue to ask the same citizen soldiers to respond to an increasingly broad range of duties, even as we predicate our military planning on their availability. For example, we are not convinced that tripling the number of Weapons of Mass Destruction Civil Support teams is the most cost efficient and effective means of improving readiness for response to chemical, biological, radiological, nuclear and explosive (CBRNE) attacks. Maybe we need *more* Guard teams – maybe we need more teams from some other source. Maybe we need more teams reporting to the Guard but with some entirely different configuration and division of responsibilities and resources. But what we most certainly need is an independent evaluation of options and considerations in employing the Guard decisively, primarily, or exclusively against the new homeland security missions.

Simply put, we are not convinced that the National Guard (as currently organized, trained and equipped) can meet the dual demands of preparing to support the Department of Defense in fighting major theater wars, and at the same time be fully prepared to support governors in a homeland security role. Although recommending that a commission study an issue merely defers a decision, in this instance the fundamental changes that may be required are so significant that an independent commission may be warranted.

We believe that America is asking too much from our citizen soldiers. We must not be guilty of abusing their patriotism. These are great Americans who continue to step forward whenever asked. We must realize this is going to be a long war, perhaps as long as the Cold War. We must provide the National Guard a more focused mission and then ensure that it is properly organized, trained and equipped for that mission. We need a new commission to get this examination started – and to get it right.

Education

Based on our own experience watching many, many government and private organizations scramble to put homeland security into effect, we are convinced that the single greatest need is education -- and more specifically, executive education for leaders in both the private and public sectors. Too often we have seen well-meaning senior personnel unable to properly frame a key question, much less organize an effective response across jurisdictional boundaries. In fact, we are convinced that a large part of the inertia that so frustrates the Task Force and animates their report on widespread systemic inaction is simply a lack of education –

leaders do not know each other, they do not know their own authority, and they do not know what lessons others have already learned. They don't know what they don't know.

The US military has a sophisticated education system that involves officers and other leaders at every level of career progression. There is nothing comparable for homeland security – and most especially there is no national level organization to show the way to elected officials struggling with new responsibilities and limited resources. Over time, no doubt sophisticated civilian university programs will emerge as they have in national security. But such programs are slow to develop, and depend upon the production of academic faculties – a slow process that took a generation in the case of national security. We can't wait.

- We need a single point of contact for all such educational programs – located in the new Department of Homeland Security.
- We need a series of education programs NOW connecting various jurisdictional levels and stovepiped organizations
- And we need to establish these programs with the same sense of urgency prescribed by this Task Force report for other areas.

It would be wonderful to wait until all questions are answered, and build the curriculum slowly as academic expertise grows. But we do not have that luxury. The nation is at war. We need pilot programs to promote exchange across operational lines now.

Such programs should be funded and encouraged at every level, but especially for senior decision makers. They should be tied together at the national level with central collection and distribution of information and lessons learned – under the Department of Homeland Security. They should adhere to central guidelines but NOT central standards and accreditation – not yet. We should let ideas and approaches develop before choking them with regulation and standardization.

The program would surely change over time, but it could begin quickly with full funding for a few national level programs supervised by a single organization under the DHLS, and offers of matching funds – not full grants – to state and local programs managed through the governors. There is great opportunity here – and great peril, if every training and educational institution in America begins to scramble for federal funds by pressuring their representatives in the Senate and House directly. We need to relieve that pressure and provide some objectivity – by setting guidelines centrally at the Department of Homeland Security and providing matching funding equitably through the states and their governors.

Conclusion

In conclusion, we at the ANSER Institute for Homeland Security certainly concur with the call to action generated by this Task Force and their report. The danger to the nation is real, and America is not moving fast enough to meet it.

Given these concerns, if we had to pick one critical concern, we would pick meeting the threat of biological attack by improving public hearth. If we had to pick one thing to add, it would be the need for executive education for our senior officials and elected leaders. If we had

to pick one caution, it would be the importance of program sustainment – America cannot fix systemic problems with a one-time infusion of cash. If we had to pick one solution it would be instituting a single budget system to prioritize, stimulate and control the efforts of our key agencies involved in homeland security. If we had to pick one key action that would do the most to energize these solutions it would be establishing a Department of Homeland Security, with one person given the authority and resources to make decisions – and held responsible for the results. And if I had to pick one issue not adequately addressed in the report or the proposed department or my remarks, it would be creating a new strategic perspective for intelligence – a tough nut to crack and one we can discuss at greater length during questioning if you wish.

We are grateful for the foresight demonstrated by members of the task force, and the interest demonstrated by members of this committee. All of us want what is best for America. But we do not have much time. We must get it right – or close to right -- very soon. I cannot repeat often enough: America is at war. We need to act like it while there is still time to prepare.

Statement Of Senator Patrick Leahy
Chairman, Senate Committee On The Judiciary

"America Still Unprepared-America Still in Danger:
The October 2002 Hart-Rudman Terrorism Task Force Report"

November 14, 2002

I would like to express my appreciation to the members of the Council on Foreign Relations-sponsored Task Force for preparing the report. The Nation is lucky indeed to have the continued service of former Senators Warren Rudman and Gary Hart. I am sorry that Senator Hart could not be here today. The report that is the focus of this hearing reflects the pragmatism of its authors with clear, practical steps for the country to take at the federal, state and local levels to enhance our security.

The Task Forces' report highlights America's remaining vulnerabilities to terrorist attacks. This is of the utmost concern to all Americans. Although numerous security measures have been implemented by this Congress and other governmental entities in the wake of September 11, the report aptly illuminates that further efforts are needed to protect our homeland. We all hope that September 11 is an isolated event but we must not become complacent as that tragic day moves further into history without a subsequent attack. I thank Senator Feinstein and Senator Kyl for holding this hearing to make sure that we hear the recommendations of this Task Force report and continue to assess and address our vulnerabilities to terrorist attacks.

The Task Force's report underscores both the diversity of our vulnerabilities and the complexities inherent to their resolution. It will be important for us to keep in mind the big picture, to think broadly on the subject rather than myopically address a particular vulnerability at the expense of others.

I agree with many of the suggestions in the report. I want to mention just three key suggestions. First, the report makes important recommendations on how we should help first responders in our rural and urban communities plan and train for catastrophic attacks. We made important progress when we established domestic preparedness grants to support state and local law enforcement agencies and other first responders prepare for and prevent terrorist attacks in section 1014 of the USA PATRIOT Act (Public Law 107 56). This report notes that only one such Center for Domestic Preparedness currently exists to provide training to first responders on how to deal with a chemical attack. We need to do better. That is why the Department of Justice Authorization Act, which was enacted less than two weeks ago, authorized funding for additional Centers for Domestic Preparedness in Texas, New Mexico, Louisiana, Nevada, Vermont and

Pennsylvania, and added additional uses for grants from the Office of Domestic Preparedness to support state and local law enforcement agencies.

The Hart-Rudman Commission report recommends that the National Guard be better equipped to deal with a domestic defense mission and help first responders. I fully agree. The report correctly notes that the Guard is well-positioned to help civil authorities deal with terrorist attacks and catastrophic incidents when it serves under the command and control of the nation's governors. Under a governor's control, the National Guard is not bound by *posse comitatus* restrictions and can seamlessly integrate with local, state, and federal emergency response agencies. Yet, as the report acknowledges, the Guard still does not have the resources to adequately fulfill its domestic defense tasks. Several states, including Vermont, lack so-called civil-support teams that can quickly help alleviate the consequences of a weapons of mass destruction attack. While I believe the report goes too far in recommending that domestic defense become the *primary* mission of the Guard, the report makes positive overall recommendations that would help bolster the Guard's capability to protect our domestic security.

Second, I agree with the recommendations in the report that we need to improve our border security, particularly with Canada, which is our largest trading partner. That is why in the USA PATRIOT Act -- the anti-terrorism law that we passed in record time -- called for the tripling of border security agents and the deployment of enhanced security technology to improve border security with minimal adverse affect on legitimate commerce.

Finally, the report calls for increased information sharing. That is an important goal, but can be difficult to accomplish when the government is simultaneously trying to keep secret sensitive information that could aid terrorists who seek to harm this country. Yet, our best defense against terrorism is improved communication and coordination among local, state, and federal authorities; and between the U.S. and its allies. Through these efforts, led by the federal government with the active assistance of others involved, we can enhance our prevention efforts, improve our response mechanisms, and at the same time ensure that funds allotted for protection against terrorism are being used most effectively.

Unfortunately, the recent sniper rampage in the Washington, D.C. area demonstrated the dire need for such coordination. Fortunately, we were able to see the productive results of effective information sharing and coordination with the arrest of the snipers on October 31.

Information sharing does not mean information dumping. We want our law enforcement officials to have the information they need to do their jobs effectively and efficiently, with communications equipment that allows different agencies to talk to one another and with the appropriate training and tools so that multiple agencies are able to coordinate their responses to emergencies. We all know that we must have information-sharing, but we have to make sure we do not go overboard because that would be bad for security if the information is not accurate, complete, or relevant. And, it would be bad for privacy. We do not want the Federal government to become the proverbial "big brother" while every local police and sheriff's office become "little brothers." How much information should be collected, on what activities and on whom, and then shared under what circumstances, are all important questions that should be

answered with clear guidelines understandable by all Americans and monitored by Congress, in its oversight role, and by court review to curb abuses.

The legislation establishing the new Department of Homeland Security that was passed by the House of Representatives yesterday provides virtually blanket authority for information sharing without any clear guidelines. This is a big problem, but in the President's rush for legislation we will not likely be able to fix it until another day.

Information sharing between the government and private sector entities also raises complex issues. Encouraging cooperation between the private sector and the government to keep our critical infrastructure systems safe from terrorist attacks is a goal we all support. But, the appropriate means to meet this goal has been a matter of important debate and consideration.

The Task Force report recommends an exemption from the Freedom of Information Act (FOIA) "in instances when critical infrastructure industry leaders agree to share information about their security vulnerabilities with federal agencies," an antitrust exemption for participating industries and liability "safeguards and limits." I have serious concerns about this recommendation.

The FOIA already exempts from disclosure matters that are classified; trade secret, commercial and financial information, which is privileged and confidential; various law enforcement records and information, including confidential source and informant information; and FBI records pertaining to foreign intelligence or counterintelligence, or international terrorism. These already broad exemptions in the FOIA are designed to protect national security and public safety.

Indeed, an FBI official testified more than five years ago, in September, 1998, that the private sector's FOIA excuse for failing to share information with the government was, in essence, baseless because the FBI was able to use the confidential business record exemption under (b)(4) "to protect sensitive corporate information, and has, on specific occasions, entered into agreements indicating that it would do so prospectively with reference to information yet to be received."

Granting companies immunity from the antitrust laws, as the Task Force report recommends, is both unnecessary and dangerous. It is an invitation for anticompetitive conduct that may be hard to police by the Justice Department. It is also not necessary when the Justice Department's Antitrust Division already has a process in place to give comfort to private sector companies that seek to meet for the specific goal of protecting critical infrastructures. Such "business review" letters have in fact, been granted to some critical infrastructure-related companies.

Granting immunity from civil liability is also a bad idea. Such civil liability immunity is an invitation for companies to "game" the system by producing information or documents under the guise of protecting our national security only to block government regulators who may want to use the same information in an enforcement action. Such immunity risks tie the hands of the federal regulators and law enforcement agencies working to protect the public from imminent threats. It may give a windfall to companies who fail to follow federal health and safety standards and end up jeopardizing important public safety interests in the name of protecting our critical infrastructure.

Finally, an overly-broad FOIA exemption would encourage government complicity with private firms to keep secret information about critical infrastructure vulnerabilities, reduce the incentive to fix the problems and end up hurting rather than helping our national security. In the end, more secrecy may undermine rather than foster security.

I worked on a bipartisan basis with Senators Levin and Bennett to craft a more narrow and responsible exemption that accomplishes the goal of encouraging private companies to share records of critical infrastructure vulnerabilities with the new Department of Homeland Security, without providing incentives to "game" the system of enforcement of environmental and other laws designed to protect the nation's public health and safety. This compromise solution was supported by the Administration and other Members of the Committee on Governmental Affairs. The provision would exempt from the FOIA certain records pertaining to critical infrastructure threats and vulnerabilities that are furnished voluntarily to the new Department and designated by the provider as confidential and not customarily made available to the public. Portions of records that are not covered by the exemption would be released pursuant to FOIA requests. This compromise did not provide any civil liability or antitrust immunity that could be used to immunize bad actors or frustrate regulatory enforcement action, nor did the compromise preempt state or local sunshine laws.

Unfortunately, the version of the legislation establishing a new Department of Homeland Security passed, by the House of Representatives yesterday, jettisoned the bipartisan compromise on the FOIA exemption worked out in the Senate with the Administration's support. The House favored granting businesses the legal immunities and liability protections they sought so vigorously. Significantly, this provision will send to jail any FOIA officer or other federal government employee who discloses any "critical infrastructure" information. This will be an effective way to preserve government secrecy by criminalizing leaks – not of classified information or national security related information, but of information that a company decides it does not want public, particularly if disclosure of the information could bolster public safety and health. Should this provision become law, we will have to be vigilant to monitor its implementation to ensure that the risks this provision poses do not become a reality.

I look forward to hearing from the distinguished panel of witnesses this afternoon and continuing to focus our attention on how best to protect our Nation.

# # # # #

NATIONAL GOVERNORS ASSOCIATION

Paul E. Patton
Governor of Kentucky
Chairman

Dirk Kempthorne
Governor of Idaho
Vice Chairman

Raymond C. Scheppach
Executive Director

September 18, 2002

The Honorable Thomas A. Daschle
Majority Leader
United States Senate
S-221, The Capitol
Washington, D.C. 20510

The Honorable Trent Lott
Republican Leader
United States Senate
S-230, The Capitol
Washington, D.C. 20510

Dear Senator Daschle and Senator Lott:

The nation's Governors wish to commend you on your effort in developing and supporting a Department of Homeland Security. Nothing is of greater importance than to see that our citizens are safe and our country is protected from terrorist attacks such as witnessed last year.

As you consider activities for this new department, we encourage you to support an amendment to H.R. 5005, at Title VI, the "Guard Act of 2002," which is sponsored by Senator Dianne Feinstein. This amendment would permit each Governor to create a homeland security activities plan for his or her state and authorize the Secretary of Defense to provide funds for these planned activities through the National Guard of the United States.

In the wake of September 11, 2001 attacks, the National Guard has expanded its traditional role in homeland defense and security. National Guard activities include securing strategic facilities, such as airports, pharmaceutical labs, nuclear power plants, communications towers, and border crossings; and have been a cornerstone in protecting our citizens from domestic terrorism. The U.S. Department of Defense should reaffirm these activities as an integral part of the ongoing mission of the National Guard and ensure that they are provided funding, training, and other resources necessary to fully meet the additional responsibilities inherent in today's homeland defense environment.

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This amendment would provide the necessary resources for our National Guard in the states to assist in our efforts to coordinate and implement a comprehensive state-based strategy to detect, prepare for, prevent, protect against, respond to, and recover from terrorist attacks. We urge you to support this amendment, which is critical to assisting National Guard homeland security efforts in the states.

Sincerely,

Governor Paul E. Patton
Chairman

Governor Dirk Kempthorne
Vice Chairman

cc: The Honorable Dianne Feinstein, United States Senate
The Honorable J. Dennis Hastert, U.S. House of Representatives
The Honorable Richard A. Gephardt, U.S. House of Representatives

NATIONAL GUARD ASSOCIATION OF THE UNITED STATES

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September 19, 2002

The Honorable Diane Feinstein
Chairwoman
Subcommittee on Technology, Terrorism and Government Information
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Madam Chairwoman:

As the newly elected Chairman of the Board of the National Guard Association of the United States, I want to thank you for your continued support of the National Guard. I write to you today in support of your proposed amendment to H.R. 5005, the Homeland Defense Act of 2002.

Your amendment would provide the National Guard with the needed resources to conduct the homeland defense portion of its dual mission within our National Security Strategy. The National Guard represents a major capability enabling us to meet the public safety challenges produced by the tragedy of September 11, 2001, but only if it is properly resourced. Numerous reports, including those commissioned by Congress and studies performed by independent institutions, have recommended that the Guard be resourced for the homeland security mission. This mission is in addition to our warfighting capability. Your proposed "GUARD Act of 2002" would authorize federal funding assistance to the states for the discharge of homeland security activities by the National Guard. The legislation is modeled on the highly successful, congressionally supported National Guard counterdrug program.

In this post-September 11 world, we must be able to rely on the National Guard for both homeland security and conflicts abroad, and that means being given the necessary resources. We support your proposed amendment "GUARD Act of 2002," which provides the mechanism for resourcing the National Guard for the homeland security mission.

Thank you for your support of and commitment to our National Guard. I look forward to working with you in the future on other matters concerning the men and women of our National Guard.

Respectfully,

Gus L.Hargett
Major General, TNARNG
Chairman of the Board

Senate Committee on the Judiciary
Subcommittee on Technology, Terrorism and Government Information
on
"'America Still Unprepared-America Still in Danger': The October 2002
Hart-Rudman Terrorism Task Force Report"

Thursday, November 14th, 2002

Philip A. Odeen
Chairman, TRW Inc.
and Member, Independent Terrorism Task Force, Council on Foreign Relations

Since September 11, 2001, a great deal has been done to respond to the newly perceived threat to the American Homeland. The Council on Foreign Relations Task Force on Homeland Security was created to assess progress and point to further required actions. The focus was on near-term, high payoff actions that could be accomplished at an acceptable cost. The Task Force's co-chairs stated when this report was released that:

> "A year after September 11, America remains dangerously unprepared to prevent and respond to a catastrophic terrorist attack on U.S. soil."

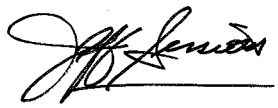
As the foreward to the report states: "...given the stakes – potentially the loss of thousands of innocent American lives and the mass disruption of American's economy and society – there are things we must be doing on an emergency basis to reduce our vulnerabilities here at home."

The Task Force report did not think about or place political blame for what has not been done to prepare our nation against terror attacks. Instead its goal was to create a necessary sense of urgency and to help get the necessary things done. This Task Force lays out a series of recommendations that should help guide the nation's efforts in the weeks and months ahead."

The report addresses six issue areas and has recommended actions in each area. They are:

1. Tap the eyes and ears of local and state law enforcement officers in preventing attacks; make first responders ready to respond.
2. Make trade security a global priority
3. Set critical infrastructure protection priorities
4. Bolster public health systems
5. Remove Federal Government obstacles to partnering
6. Fund, train and equip the National Guard to make homeland security a primary mission.

In my remarks before the Subcommittee, I will focus primarily on issue areas one and six.



STATEMENT OF SENATOR JEFF SESSIONS
HART RHUDMAN TERRORISM TASK FORCE
REPORT: "AMERICA STILL UNPREPARED – AMERICA STILL IN DANGER"

I would like to thank former Senator Warren B. Rudman and each of the panelists for being with us today and for working so diligently to provide this subcommittee with critical insights on the issue of Homeland Security. Senator Rhudman, time and again you and your colleagues have provided valuable insights to the nation's security problems. We are most indebted to both of you.

Their most recent report, "America Still Unprepared – American Still in Danger," is a plea for urgency that must not go unnoticed! It is imperative that we heed the strong warnings and recommendations that this report brings to our attention.

One of the protections for our homeland that the report calls for is immediate additional training for America's nine million first responders. Both the "key recommendations" section of the Task Force report and the "critical mandates" section of the report outline the need for this additional training.

On page 11 of the report, the Task Force lists seven key recommendations for reducing the risks that the United States still confronts.

The second "key recommendation" is to make first responders ready to respond by immediately providing federal funds to clear the backlog of requests for protective gear, training, and communications equipment. Mr. Chairman, for six years I have witnessed this backlog, and have agonized over our inability to move more quickly.

Our 1st Responders and our nation demand us to act. This report is a roadmap to make that happen.

Continuing on page 13, the report lists six "critical mandates" that must be given immediate attention. The first "critical mandate" calls for the empowering of front-line agents to prevent terrorist attacks and make first responders ready to respond – for as the report states, they are not nearly ready enough to respond to catastrophic events. We have exercised them, but much, much more needs to be done.

As we know, "first responders" are often the first line of defense when acts of terror occur in our communities. These firemen, police, Emergency Medical Technicians, and other community managers deserve to be well prepared for the situations they will possibly face.

This includes being prepared for chemical, nuclear, and biological warfare attacks. This is complicated training, not easily mastered at the advanced levels.

The Task Force report explains that first responders and local law enforcement officers deserve to be outfitted with the right tools and skills before being sent into harm's way. They are trained to respond. They are trained to wade into the crisis, never fearing what might be around the corner. We saw this fearlessness exhibited at the World Trade Center on 9/11. We also suffered the costs. In a crisis involving a weapon of mass destruction, responders must approach the crisis with a deliberate sense of caution, taking into account all possible contingencies, accepting, I think, less risks to themselves. Hence, the need for additional training at this time is immense.

Between 1996 and 1999, the federal government only trained 134,000 of our estimated nine million first responders to respond to a weapon of mass destruction event.

Of those 134,000, only 2% received hands-on training with toxic chemical agents. We give this type of training routinely to our military and even allied soldiers, yet our first responders do not have the full access to the only site in the nation which will provide them the same level of training with toxic chemical agents purposely built for this purpose.

Today, the only facility in the U.S. where first responders can train with and gain first-hand knowledge of toxic chemical agents is at the Department of Justice, Center for Domestic Preparedness located in Anniston, Alabama.

At present budget levels, the Center for Domestic Preparedness is capable of training only10,000 first responders per year. With additional funding, then could train many more.

Working with members of the Commerce, State, Justice Appropriations Committee and staff over these last five years we have taken a concept funded at $2M annually (with which we trained 480 responders) and have, without much Administration support, grown it to a level of $35.7M which will allow 10,000 resident 1st responders to be trained on site. By the end of this year over 25,000 1st responders will have been trained at the CDP with another 90,000 trained using the CDP model by State and Local trainers. We can and we will do more.

In the FY03 CJS bill we hope the level of funding will reach $50 million dollars, allowing the CDP to train 25,000 per year.

If the Administration and the Congress agree, I propose ramping the CDP's capability to the point where 430,000 1st responders can be trained either on site, via mobile training teams, and via distributive computer and web based training. Coupled with the capabilities of the Justice Department National Domestic Preparedness Consortium, we may them begin to turn the corner on addressing the needs of our responders in a worthwhile fashion. Short of that we are only putting a dent in the effort.

If funded, modern teaching methods using virtual simulation can compliment on-site training. Coupled with Mobile training teams nationwide, robust training exercises

at all levels from local to the federal level, I envision in time the standards we are setting becoming the norm across the country.

Coupled with quality equipment, and refresher courses, the dystem being implemented will meet 1st respnders training requirements from entry-level all the way up to and including the most advanced skills needed in our largest cities where the threat is the highest, and the potential loss of life and economic impact the greatest.

Moreover, as we evolve and refine interagency cooperation between the many 1st responder disciplines, equipment, such as communication systems, and training programs must be streamlined. The CDP has the expertise to provide this standardization across the broad spectrum of responder disciplines.

The threat at times is not that which we perceive might come from overseas, but Mr. Chairman, the threat comes as well from within. It comes in the form of lack of cooperation. It comes in the form of lines drawn by jurisdiction. It comes in the form of the haves looking down at the volunteers in the community who have less of everything.

The Center for Domestic Preparedness is not the cure all for what ails the country's 1st Responders, but it is a magnificent institution, efficiently utilizing millions of dollars of excess property at Ft McClellan, ably led, with training standards in place executed by a cadre of dedicated and experienced trainers serving a community hungry for challenge.

The need is before us. This vital report sets out the azimuth. We should pause today to listen closely. Time is not on our side.

Thank you Mr. Chairman, and I thank the panelists for taking the time to share their work with us.

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