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COVERING THE WATERFRONT: A REVIEW OF SEAPORT SECURITY SINCE SEPTEMBER 11, 2001

HEARING

BEFORE THE

SUBCOMMITTEE ON TERRORISM, TECHNOLOGY AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

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COVERING THE WATERFRONT: A REVIEW OF SEAPORT SECURITY SINCE SEPTEMBER 11, 2001

TUESDAY, JANUARY 27, 2004

UNITED STATES SENATE,
SUBCOMMITTEE ON TERRORISM, TECHNOLOGY AND HOMELAND SECURITY, OF THE COMMITTEE ON THE JUDICIARY,

Washington, DC.

The Subcommittee met, pursuant to notice, at 11:15 a.m., in Room SD–226, Dirksen Senate Office Building, Hon. Jon L. Kyl, Chairman of the Subcommittee, presiding.

Present: Senators Kyl and Feinstein.

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

Chairman KYL. Good morning. This hearing of the Judiciary Committee's Subcommittee on Terrorism, Technology and Homeland Security will come to order.

Today, the Subcommittee will examine how to protect our seaports against terrorism. Even before the tragic events of September 11th this Subcommittee concerned itself with the protection of Americans from terrorist attacks within our shores. Senator Feinstein and I have worked to address the problem of identifying terrorists and stopping them from entering the United States. But we believe that the public needs to be made more aware that our seaports offer access points for terrorists and their weapons, including weapons of mass destruction, to enter the country with relative ease.

Consider the fact that an attack that shut down a major American port for even a few days could devastate the regional economy that it serves. In fact by one estimate a nuclear weapon detonated in a major seaport or Washington, D.C. would kill 50,000 to 1 million people and would result in direct property damage of $50 billion to $500 billion dollars, losses due to trade disruption of $100 billion to $200 billion, and indirect costs of $300 billion to $1.2 trillion.

This hearing is a follow-up to the one held by the Subcommittee in February of 2002, shortly after the 9/11 attacks. At that hearing we highlighted the importance of seaport security. For example, in response to the attacks of 9/11 the Transportation Secretary had to shut down virtually the entire airline industry for 4 days and to check every airplane to ensure the safety of air travel and prevent

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additional attacks. If we ever had a similar situation with shipping, if we had to shut down our ports and check all of our ships for terrorists, commercial shipping would be shut down for at least 4 months. As a representative of the Department of Transportation testified, if anything can bring our economy down, that can.

So today's hearing will determine what progress has been made and what more need to be done. Before the attacks the Coast Guard devoted not more than 2 percent of its operations to port security according to the Council on Foreign Relations. In the months immediately following September 11th it spent 50 percent to 60 percent of its time and effort defending U.S. ports. Since then that figure has fallen to between 20 and 30 percent because of other commitments and mounting costs. In fact Noel Cunningham. the Los Angeles port's chief of police said the Los Angeles Harbor remains wide open to terrorist attack.

The Subcommittee will hear from three experts today. Rear Admiral Larry Hereth of the United States Coast Guard is currently serving as the director of port security in the Marine Safety, Security, and Environmental Protection Director at the U.S. Coast Guard headquarters in Washington. As director of port security he oversees all aspects of the Coast Guard port security mission and coordinates activities with other Coast Guard programs, other Government agencies, and industry to improve maritime homeland security. He is a 1973 graduate of the United States Coast Guard Academy and has also received an MBA from the Florida Institute of technology. In his 29 years of service Rear Admiral Hereth has broad-based career with an emphasis on field operations and his assignments have taken him throughout the United States with multiple tours at East, Gulf and West Coast ports.

Director Gary M. Bald, acting assistant director of the FBI's Counterterrorism Division. He oversees the FBI's operations in international and domestic terrorism and its terrorist financing. Prior to this appointment Director Bald was the special agent in charge of the Baltimore division. In 1999 he was detailed to the criminal investigative division of FBI headquarters where he headed a high-profile organization crime corruption investigation. Director Bald has served in the FBI since 1977.

And finally, executive director Robert M. Jacksta is the executive director of border security and facilitation for the U.S. Customs and Border Protection. He directs the activities of border security and facilitation with policy oversight for day to day operations at ports of entry. Director Jacksta has been with the Customs Service since 1973 and has served as port director of Washington, D.C. and as the executive director of passenger programs. In 1999 he received the Commissioner's outstanding performance award. He has a bachelor of science in criminal justice from Buffalo State College in New York. I want to thank all three of you for being here today.

In conclusion, we are now aware of the economic fallout from the destruction of the World Trade Center Towers. Closing of any of the major 12 seaports would also have a severe economic effect, not only locally but throughout the country. It is increasing important that local, State, Federal and private entities make a coordinated effort to ensure the safety of our ports. We have a very distinguished panel of witnesses before us today, and we are interested

in examining with them how we can inspect a greater portion of containers without delaying the movement of goods through our seaports and what assistance Congress can provide to reach our objective of protecting our seaports, our economy and our citizens.

I want to thank Senator Feinstein, as usual, for assisting me. In fact this hearing was her idea, to give proper credit. We have always been able to work together on matters of interest relating to national security and this area is simply another example of that. So I certainly look forward to working with her not only at this area but in the follow-up that will be required as a result. Thank you.

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

Senator Feinstein.

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

Senator FEINSTEIN. Thank you very much, Mr. Chairman. I appreciate your words and I appreciate your focus and the fact that the two of us have been able to concentrate on this. We have cosponsored a bill which is in Commerce Committee which I hope to speak about in a moment. And I very much appreciate the working relationship.

It is my belief, ladies and gentlemen, that our ports are the soft underbelly of our Nation's security. I believe that it is really essential that our ports, working with the department, develop a security capability that are not only going to protect employees of the port but also the citizens of our Nation from a potentially devastating terrorist attack on our ports or the very real possibility that a weapon of mass destruction could be brought in in a container, either detonated in a port in a busy metropolitan area or shipped in by rail or truck into Arizona or the heartland of our Nation. So I think both of us here realize that the safety of our ports does not only affect the State where the port is located but in fact affects the safety of our entire Nation.

To understand more about this and to understand what the captains of the port are feeling, I had hoped to hear from someone with front-line responsibility. Thus, I was very disappointed that the department turned down our request that the captain of the port of Los Angeles/Long Beach, the busiest container port in the Nation, testify here today. I had hoped that the captain could give us an on-the-ground and on-the-water view of the problems that that port faces. We were told that the Admiral could do that just as well, so I appreciate that, but I am disappointed. It is the first time we have asked a witness, at least in the 10 years I have been here, like that to testify and been turned down.

There are a number of options, direct Federal funding, cost sharing with States and localities, user fees, and private funding to get the job done. A lot of these can be combined or modified. One area that I have been particularly concerned with, and this came directly from the Port of L.A./Long Beach is the need to have a long-term commitment of funds so that they can do those things that are necessary. They suggested such as a letter of intent which has been used by TSA with airports. We talked to Admiral Loy about

this and he tells me that it cannot be used in the context of port security. I had hoped to find out why it cannot be used in the context of port security today because I believe the need is there. I think it is very difficult for large ports like the port of L.A./Long Beach which has 40 percent of all the containers that come into this Nation to plan with large amounts of money and not know how they are going to be able to fund it long-term.

We also have to give those who are able to make the decisions the responsibility, and the legislation that Senator Kyl and I have introduced, the Anti–Terrorism and Port Security Act was introduced last year. It is now pending before the Commerce Committee. What we would do is address areas of criminal law where either the reach of the law is insufficient or the penalties are insufficient, such as piracy, or terrorist attacks on maritime infrastructure. Our bill would also clarify the responsibilities of the captain of the port, would strengthen mechanisms to learn about who and what is aboard the ships that are entering our ports, would mandate the development of security standards for shipping containers, would bring about personal identification systems for employees and those who use our ports, and ensure that the Secretary of the Department of Homeland Security takes into account traffic volume when allocating funds to our ports.

So these are the question lines that I hope to enter into and I hope the opening remarks of these gentlemen, where appropriate, will address the questions.

Thanks, Mr. Chairman.

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

Chairman KYL. Thank you, Senator Feinstein. Now let me turn to each of you. We have a clock that will let you know when you have spoken for 5 minutes. Obviously we will have questions but feel free to insert longer statements in the record, if you would like to do that. Let me just take each one of you in order and then we will do the questions after each of you have spoken.

We will start with Admiral Hereth.

STATEMENT OF REAR ADMIRAL LARRY L. HERETH, DIRECTOR OF PORT SECURITY, UNITED STATES COAST GUARD, ALEXANDRIA, VIRGINIA

Admiral HERETH. Thank you, Mr. Chairman. With your permission I will summarize my opening statement. I provided written copies for the record.

Good morning, Mr. Chairman and Senator Feinstein. It is a pleasure to appear before you today to discuss Coast Guard efforts to prevent and respond to terrorism and to improve maritime transportation security for our seaports. I will briefly highlight a few of the programs we are using to implement our maritime security strategy and provide any insight I can based on my experience as the director of Coast Guard port security and as a previous captain of the port in San Francisco during 9/11.

The United States and the world have come to recognize how valuable but also how vulnerable the international transportation system is to those who intend to do us harm. Valuable and vulnerable, these factors make protection of our maritime transportation sys-

tem a high priority in the U.S. maritime homeland security strategy. Working in concert with the Department of Homeland Security and its agencies we developed a strategic approach to maritime security that places a premium on identifying and intercepting threats well before they reach U.S. shores.

The Maritime Transportation Security Act of 2002 established a comprehensive approach to maritime security. In October 2003, within the demanding deadlines set by the MTSA, the Coast Guard issued final maritime security regulations that address vessel and facility security, address automatic identification systems and other security requirements. The Coast Guard collaborated extensively with the maritime industry in the development of these regulations, including eight public meetings and the consideration of thousands of public comments. The regulations also incorporate standards adopted by the International Maritime Organization. The international standards and the MTSA regulations come into force on July 1st, 2004.

The cost of implementing MTSA is shared by Federal, State, and local government and the maritime industry. The Federal Government is bearing the cost for increased security in our Nation's port through the creation and deployment of maritime safety and security teams, increased personnel, contract support for vessel and facility plan reviews, and the increased deployment of Coast Guard assets. We estimate industry's costs for implementing Section 102 of the MTSA to be about $1.5 billion in the first year and $7.3 billion over the next 10 years. We reconcile this cost against the devastating and long-lasting impact on global shipping, international trade and the world economy that a terrorist incident would cause.

For example, a West Coast major port closure for 1 month, as you pointed out, due to a maritime terrorist act could cost up to billions in economic loss to the United States. We are sensitive, however, to the cost to the maritime industry and developed the MTSA regulations to be performance-based, providing the majority of owners and operators with the ability to implement the most cost-effective security measures rather than imposing prescriptive, one-size-fits-all requirements.

It is important to note that a wide variety of security measures implemented to date has had no significant adverse impacts on the flow or velocity of maritime commerce. The security implemented by facilities and vessels under the regulations will also be augmented by a wider area maritime security Committee and area plan. Each Federal maritime security coordinator, the captain of the port in 47 areas around the country, has formed such a Committee comprised of Federal, State, local agencies and members of the local maritime industry. These committees will be critical in the development of the area maritime security plans to augment the security of vessels and facilities within the port environment.

With the average age of our cutters approaching 30 years, the Coast Guard's deep water program is very important. We must recapitalize Coast Guard assets to counter threats to U.S. security by providing the capability to board vessels before they reach port and respond to acts of terrorism or piracy well away from our shores while also developing a far more robust and effective maritime domain awareness system. Implementation of our security programs

will complement and reinforce the additional maritime transportation security improvements currently being developed through ongoing DHS initiatives to improve the security of containers and the entire cargo supply chain.

We have increased our uniform presence at waterfront facilities and critical infrastructure adjacent to the marine environment, but we need express authority to arrest a person who commits a Federal offense onshore and to carry firearms ashore in the performance of official law enforcement duties. As a top priority for the Coast Guard, the Administration's Coast Guard authorization act currently before Congress includes a provision that would grant clear that authority and we would appreciate the committee's support in that matter.

In conclusion, the Coast Guard will continue to take a leadership role in coordinating the multi-agency, public and private, national and international maritime security effort as part of DHS's larger national transportation system security plan. The men and women of the Coast Guard are committed to the continuing protection of our Nation's ports.

Thank you for the opportunity to testify before you today. I would be glad to take questions at the appropriate time.

[The prepared statement of Admiral Hereth appears as a submission for the record.]

Chairman KYL. Thank you, Admiral.

Director.

STATEMENT OF GARY M. BALD, ACTING ASSISTANT DIRECTOR, COUNTERTERRORISM DIVISION, FEDERAL BUREAU OF INVESTIGATION

Mr. BALD. Good morning, Chairman Kyl. Good morning, Senator Feinstein. Thank you for inviting me here to speak to you today on the topic of seaport security and the FBI's partnership with the Department of Homeland Security and the United States Coast Guard and local port authorities.

Recognizing the new profound threat that became evident to us on 9/11, the President directed the FBI to make prevention of terrorist acts our number one priority. This is in keeping with the President's strategy to defeat, deny, diminish, and defend against terrorism, and failure is simply not an option. In President Bush's address to FBI headquarters shortly after 9/11 he reemphasized to all FBI employees that the FBI has no greater priority than preventing terrorist acts against America.

Since the attacks of 9/11, the FBI has embraced this challenge and transformed itself to address the current threat facing this country. As part of a major reorganization, the FBI restructured its approach to counterterrorism to enhance analysis and information-sharing, improved analysis and operational capabilities, combined with increased cooperation and integration. These have enhanced the FBI's ability to investigate and prevent acts of terrorism.

This is especially trust as we address the complex issue of security of our Nation's seaports. The port system of the United States is the most extensive and complex port system in the world and as such is a national asset. While now two ports in the United States are exactly alike, many have shared characteristics such as being

close to major metropolitan areas, containing fuel farms, and having major roadways running into and out of the port are.

Ports not only affect the State in which they are located but also impact on neighboring States that depend on the port for foreign trade. The United States economy depends on the free flow of goods through these waterways and this elevates the risk of terrorist attack to maritime facilities. Ports are vulnerable because of their accessibility both to water and land, and the presence of recreational vehicles and the presence of chemical and natural resource storage facilities that are often located within close proximity.

Ports have historically been vulnerable to a variety of criminal activity including drug trafficking, cargo theft, weapon and alien smuggling. The terrorist organizations we now face have learned from these traditional smuggling organizations and operations and are looking for holes in port security systems to exploit. Access into and around United States port facilities is difficult to secure without closing access to legitimate business and recreational port traffic. While the Federal Government has jurisdiction over navigable waters as well as the interstate commerce and foreign trade of our Nation's ports, local authorities are the primary regulators of the port's day to day operations.

Legislation passed since 9/11 has significantly increased the security requirements at port facilities. The Department of Homeland Security through the United States Coast Guard has overall Federal responsibility for seaport security. DHS is currently working to screen more shipping containers both entering and exiting the United States, and is assisting State and local authorities in implementing security plans for the ports. The FBI works in conjunction with the DHS in a coordinated response to the security concerns of the port authorities, primarily through a participation in the National Joint Terrorism Task Force which is located in the strategic information and operations center at FBI headquarters.

In addition to the National JTTF, the FBI has assigned supervisory special agents full-time to the Department of Homeland Security to assure a timely and effective response to any crisis that may arise.

Prior my current position I served as the head of the FBI's Baltimore field office and I can personally attest to the importance of these interagency partnerships. Prior to 9/11, the Baltimore office established a maritime team to provide proactive and reactive maritime responses in support of the counterterrorism program and of the JTTF. The primary goal was to enhance our ability to respond either overtly or covertly to maritime incidents, special events and other maritime issues.

After 9/11, the Baltimore office joined a partnership that existed between the U.S. Coast Guard and the city of Baltimore. This partnership was subsequently named the Maryland Maritime Security Group and has grown in terms of both other agency participation and in terms of an expanded statewide focus. The MMSG is co-chaired by the United States Coast Guard and the FBI and its members meet often to identify and share resources. U.S. Coast Guard Captain Curt Springer plays a strong leadership role in the MMSG and I enjoyed partnering with him in this important endeavor.

Every FBI officer that has a seaport in its territory participates through the joint terrorism task forces in similar information sharing initiatives and counterterrorism security working groups. Currently these types of maritime working groups have been formed in Los Angeles, Tampa, Boston, Houston, New York and Miami, in addition to Baltimore which I previously mentioned.

The institution of new security regulations and the cooperative approach to port security between the United States Coast Guard and the joint terrorism task forces have greatly enhanced maritime security in the United States. While port security may never be guaranteed due to the sheer size of the facilities and the areas they cover, the FBI and our partner agencies are striving to provide the most secure port facilities in the world. The FBI continues to pursue an aggressive proactive response to meet the challenges of terrorism and we remain committed to identifying and disrupting terrorist activities, particularly within the United States port system.

I want to emphasize to you, this issue has the full attention of Director Mueller and the FBI and I appreciate the interest that the Committee has shown in this matter and I look forward to working with you in the future. Thank you for the invitation to speak today and I will be happy to address your questions at the appropriate time.

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

Chairman KYL. Thank you, Mr. Bald.

Mr. JACKSTA.

STATEMENT OF ROBERT M. JACKSTA, EXECUTIVE DIRECTOR, BORDER SECURITY AND FACILITATION, OFFICE OF FIELD OPERATIONS, CUSTOMS AND BORDER PROTECTION, FAIRFAX, VIRGINIA

Mr. JACKSTA. Good morning, Chairman Kyl, Senator Feinstein. Thank you for the opportunity to testify on the subject of U.S. Customs and Border Protection, CBP, and its efforts to secure U.S. seaports, the vessels and the people who utilize them for work and travel. People, technology, automation, electronic information and partnerships are concepts that underpin CBP's port security and anti-terrorism initiatives. These concepts expand our borders and reinforce the components of our layered defense. These layers are interdependent and are deployed simultaneously to substantially increase the likelihood that weapons of terror will be detected. Today I would like to focus on how this layered defense works with regard to seaport security.

To effectively secure sea, land and air ports of entry, CBP must have access to electronic cargo and travel information in advance. It must have the automation technology to manage this information and it must have experienced personnel to evaluate and apply this information. Our national targeting center achieves these goals. The national targeting center has established a range of liaisons with other agencies responsible for securing U.S. borders. Many of these agencies have personnel assigned to our National targeting center.

For example, CBP and the Food and Drug Administration commenced around-the-clock operations on December 11th, 2003 in support of the Bioterrorism Act.

CBP's automation targeting system is a tool that permits the national targeting center to process advance information and focus CBP's inspection efforts on potentially high-risk transactions and travelers. In the cargo environment, the targeting system analyzes electronic data related to individual shipments to profile and rank them in order of risk. The scope and reliability of the cargo information currently received under the 24-hour rule is reinforced by the Trade Act final rule published on December 5th, 2003. This rule mandates advance electronic cargo information inbound and outbound for all modes of transportation.

Now I would like to talk about the container security initiative the reaches the waterfront in a concrete way. The container security initiative came into being as a direct result of September 11th. The purpose of this initiative is to expand our Nation's zone of security. Essentially, CBP screens and examines shipments before they leave the foreign port of lading. Nineteen of the 20 ports shipping the greatest volume of containers to the United States have committed to join CSI. These original 20 ports are points of passage for approximately two-thirds of the containers shipped to United States.

After September 11th, the trade community approached CBP to devise a joint strategy to protect the global trading supply chain. The Customs trade partnership against terrorism, C–TPAT, was developed to meet this need. Some of the basic tenets of the C–TPAT program are strengthening and enhancing supply chain security, developing a security conscious environment throughout the entire commercial process, and engaging trade associations and international organizations in developing global standards.

Participation in C–TPAT has grown. Currently there are over 5,300 participants. Today CBP teams are in the process of verifying the information submitted by the C–TPAT participants to ensure that appropriate measures are in place to help secure the supply chain. CBP is also working with the industry to have a smart and secure container that prevents and deters tampering, alerts Government and trade when tampering does occur, and is inexpensive.

Non-intrusive inspection technology and radiation detection technology is another cornerstone in our layered strategy. Technologies deployed to our Nation's sea, air and land ports of entry include large scale x-ray systems and gamma imaging systems as well as a variety of portable and handheld technologies. CBP is also moving quickly to deploy nuclear and radiological detection equipment including personal radiation detectors, radiation portal monitors, and radiation isotope identifiers. A portion of these large scale systems are deployed to seaports on both coasts and the Caribbean.

CBP has also initiated the deployment of radiation portal monitors in the maritime environment with the ultimate goal of screening 100 percent of all containerized cargo imported into the United States. This equipment used in combination with our layered enforcement strategy allows for CBP to screen shipments rapidly for weapons of mass destruction. At the same time, we are working

with stakeholders to ensure that radiation screening does not significantly impact operations within a port.

Customs and Border Protection has a history of cooperation and coordination with other law enforcement agencies by participating in many multi-agency seaport security working groups. Some of these groups include Operation Safe Commerce, the container working group, and work groups for the implementation of the Maritime Transportation Security Act. I believe CBP has demonstrated and will continue to demonstrate its leadership and commitment to port security efforts and we anticipate that working together we will further these efforts.

Thank you again, Chairman Kyl, Senator Feinstein, and members of the Subcommittee for this opportunity to testify. I would be happy to answer any questions if you have any.

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

Chairman KYL. Thank you very much. That is very helpful testimony. Let me begin by trying to paint a picture here. I am going to begin by asking Director Bald but either of the other two of you can add to the comments if you like. I do not want to know, Mr. Bald, how you know what you know and I do not want to know what you are going to do about it, or where you may have found something out. But I would like you to give us an idea of the types of threats that you've uncovered, and how serious they are, and what you expect in the future.

Mr. BALD. Thank you, Mr. Chairman. Difficult to phrase without going into the areas that you mentioned. I will do my best. The intelligence that we have certainly points to the ports as a key vulnerability of the United States and of a key interest to certain terrorist groups that we have under active investigation. The ports themselves are very vulnerable, as I mentioned in my opening remarks.

The presence of the recreational vessels complicates things tremendously. On the one side, looking at the commercial shipping is something that is perhaps easier to regulate than it is to regulate the vessels that do use the waterways around the country. That vulnerability and the potential for small boat attacks on larger vessels and commercial vessels is a particular concern, especially if we run into a situation where a major commercial vessel is sunk in a channel or a harborway. In addition to the ecological damage that it could cause, it will certainly have a tremendous economic detriment as well.

As I mention, the size alone is daunting to try and address, either investigatively or legislatively, so it is a tremendous task for all of us to put our heads together on to try and address.—

Chairman KYL. Let me see if I can get a little bit more specific. We have had FBI Directors testify before this Subcommittee before and others who have characterized the types of threats and degree of threat, and I will give an example of one way they have done it. They have pointed out that since September 11th, working with our allies the United States has actually thwarted a specific number of planned attacks, and they give us the range of numbers each year, abroad and note that they may have caught planning in the

earlier stages in the United States but there were no planned attacks specifically thwarted as a result of their activities.

But they not only discuss the vulnerabilities as you have done, clearly, but note the motivations and aspirations of the terrorist groups by commenting on the fact that specific incidents were avoided as a result of our intelligence activities, again noting that that was abroad, and then they will discuss sometimes the types of areas that are most vulnerable.

Those are helpful to us, to at least paint the picture of how serious the problem is. So I ask, can you be any more specific? Obviously we are not asking you to get into classified information here.

Mr. BALD. I can't be more specific as to the thwarting of potential plans for attacks within the United States specifically as it relates to harbors and ports. I can tell you that is something that we are aggressively addressing. We have received source information and investigative information that does indicate there is an interest in those areas here.

There is a variety of purchasing patterns that we are looking at to try and see if we can get ahead of the curve on those concerns and the surveillances that are conducted in those areas. But specifically I couldn't today address in this forum the specifics that I think you are referring to.

Chairman KYL. Okay, can I just summarize it this way and see if this is a fair statement, that information that you have leads you to conclude that given the interest of terrorists, the ability of putting together different kinds of attacks, and the vulnerability of the ports that it is a serious threat that this country needs to take very seriously?

Mr. BALD. Yes, sir, it is fairly characterized.

Chairman KYL. Okay, and would either of the other two of you wish to add anything to that?

Admiral.

Admiral HERETH. Yes, Mr. Chairman, just one thing. Absent perfect intelligence, which we may never get there, but wonderful efforts are being done in that area—but absent the hundred-percent surety that we are going to know what is coming down the pike, we have to do broad-based planning efforts.

So we felt it is an important common approach that needs to be pushed out both to industry and the government to look at all the threat scenarios that might occur in a port, and so we have established a port security risk assessment tool. It has been deployed around the country. It has some 200 scenarios attached to it that we expect all our captain of ports to visit with their port community and look at the threats that may be out there and then do some planning along those dimensions.

Chairman KYL. Let me just ask, Mr. Jacksta, you said that the goal obviously was to have a hundred percent inspection at some point. And there are many variables in the answer to the question, but could you give us an idea about when you think that might be possible if we committed the resources and attention to this that you think we need to?

Mr. JACKSTA. Sir, when I was speaking about a hundred percent, we were talking specifically about the screening through our radiation portal monitors. Our goal right now is to have these portal

monitors; we are starting to deploy them and we have funding to put them at 22 major seaports. That would represent somewhere in the area of about 90 percent of the cargo that comes into the seaports. That is our goal, to have that. Hopefully by the end of this calendar year, we should be in place.

Chairman KYL. And what would that presumably find or enable us to have some sense that we have checked for?

Mr. JACKSTA. Sir, what that would allow us to do is to have the cargo screened for any type of radiological emitter that might be of concern to the public. What we would do at that point is based on the cargo going through the portal monitor, if something is unusual, we would stop that shipment and then at that point do a full examination to ensure that there was nothing in there that was a concern.

Chairman KYL. Okay, great. Let me just ask one more question. I have a whole bunch of questions, but we will just go back and forth here. Just to give folks a sense of the magnitude of the problem and the progress we are making, can you give us a meaningful statistic with respect to inspections of containers in terms of percentage?

I have heard that it is a very low one-digit number in terms of the inspection that we are able to accomplish. But as of, let's say, this year or next year, with, you said, 19 of the 20 most significant ports in terms of imports to the United States allowing pre-inspection at the de-embarkation point rather than at U.S. ports participating with these other technologies that you are employing, and so forth, what general percentage of cargo containers do you think we should be able to inspect, let's say, in this year of 2004?

Mr. JACKSTA. Sir, in fiscal year 1903, we inspected approximately 5.4 percent of the containers that arrived at our ports of entry. And I think it is important to note that we believe this was the right 5.4 percent. Based on, as I discussed, our layered approach using our targeting system, using advanced information, having our inspectors with their personal radiation pagers available when the ships are offloading, allows us to basically be present when the cargo is coming in.

But specifically looking at shipments, looking at containers, we are doing about 5.4 percent in fiscal year 1903. That is an increase from fiscal year 1902 of 2.3. So you can see, as we get the equipment, as we get the additional personnel that Congress has given us, we are able to do a lot more in that area. But once again we believe that this is the correct 5.3 percent.

Chairman KYL. Right, but if you had the ability, you would increase that if you could?

Mr. JACKSTA. Yes, sir.

Chairman KYL. Yes, okay, great.

Again, I have more, but let me turn to Senator Feinstein now.

Senator FEINSTEIN. Thank you very much, Mr. Chairman. Let me begin with the Admiral, if I might.

Admiral by December 31 of 2003, security plans for facilities and vessels operating in our ports were to be submitted to you for review and approval. Of the 5,000 facilities and 10,000 vessels that you estimated would be required to have these security plans, how many plans have been received to date?

Admiral HERETH. Probably 60 percent of the facility plans and 75 percent of the vessel plans, although let me frame that. The way we are looking at it is those numbers were estimates. So this week, and actually last week, I met with all the captains of the port in the country to discuss that issue, and we are scrubbing all the data associated with that in our database to make sure that we have good denominator data to understand what the entire population would be, specifically asking the captains of the ports to identify all those vessels and all those facilities to which the regs are applicable.

So those were estimates based on a regulatory assessment that is required by the regulatory process. We will have some better numbers next week and I would be glad to share those with you.

Senator FEINSTEIN. I appreciate it because in June, at a hearing before the House Transportation and Infrastructure Committee, the commandant stated he would need $70 million to review these plans and he did not get the $70 million. So if I can conclude from your statement, you are able to do it without an additional appropriation.

Admiral HERETH. We reprioritized our base to deal with the surge activity and have issued a couple of contracts to provide some support and infuse some resources into the Coast Guard system to help us review those plans. And I can talk about whatever level of detail you would like on that, but I can assure you of both the facility review planning process and the vessel planning process. The review processes for that are tight. They have been scrutinized; they are up and running. We are ready to take on the thousands of plans that we have received and review them properly.

Senator FEINSTEIN. That is terrific. I think you are required to complete the security assessments for all 55 of the Nation's most strategically important ports by December of 1904. Will you be able to meet that goal?

Admiral HERETH. We will, and we are in the process of improving that. That process started before 9/11 and is continuing to evolve. Before 9/11, almost no one had done assessments. Now, almost every port and many facilities have done assessments.

So we need to be careful about not duplicating those efforts, so we are trying to retool that and make sure that we add significant value to the port activity. And we are going to provide a tool and now we have a customer, the Area Maritime Security Committee, which is a broad-based port community Committee somewhat analogous to the area response committees and the Harbor safety committees that have developed over the years that have been very successful building on those strengths.

We are going to provide the Committee with some tools that will be very helpful in dealing with prevention and response to terrorist acts. And we think we have some great ideas that have been well received as we have vetted them around the country. So we are on our time schedule to complete those activities by the end of the year.

Senator FEINSTEIN. Well, that is terrific, very good.

Mr. Chairman, I would like to introduce into the record a statement by the ranking member, Senator Leahy, and Senator Biden.

Chairman KYL. Both statements will be received in the record, without objection.

Senator FEINSTEIN. Thank you.

I had an opportunity to read Senator Biden's statement, which is really excellent. I commend it to everybody because it is very precise, and among the things he mentions are some of the things that he covers in a bill with Senator Specter and that you and I cover in our port security bill.

Right now, it is not a crime if a ship or vessel that you are trying to stop fails to comply. The carrying of firearms is not restricted on port property. It is not a crime to smuggle a terrorist into a port aboard a ship. These are specific lacks of reach within our law.

I wanted to ask you, Admiral, what is your experience particularly with respect to your work at sea or I guess coming into a port if you try to halt a vessel? Have any refused or do they all just automatically comply?

Admiral HERETH. In my experience, I have never had anyone refuse a captain of the port order. Of course, we have additional assets to go out and pursue the vessel, not only Coast Guard, but, if necessary, offshore; we will call in DOD for assistance. So we have the wherewithal to use whatever use of force is necessary to compel compliance. But in my experience, I have never had anyone just not follow a captain of the port order.

Senator FEINSTEIN. Well, I think we should try to bring the law up to date so at least there is a crime attached to these things. So I was delighted to see Senator Biden's statement. Thank you.

Mr. Jacksta, I think it was about a year ago I spent the day at the Port of Hong Kong with the largest American container facility at the port. It was really quite amazing to see the size of that port and to review what they had been doing in terms of their strategic profiling. I met with some of your Customs people who were there then, because the Hong Kong port is such a big part of what comes into the West Coast of California.

What has the progress been particularly in the profiling? When I was there, they were having some problem with the river travel, the riverboats coming in. And I don't know if you have these figures offhand, but how many of their priority screens actually go through the x-ray?

Mr. JACKSTA. Thank you, Senator, for trying to address this issue. One of the issues that we have when we established CSI was those types of what we call feeder ships bringing in various commodities into the major ports.

When we initially went and started looking at various locations, we were concerned that a lot of these locations did not have the automated system or the manifest requirements that would allow us to make a decision on whether we should do a further inspection.

Based on the 24-hour rule that was published last February and then again the Trade Act that was just published—a final rule was published in December—we are going to require the carriers when they are shipping goods to the United States to be able to provide CBP this information electronically. There are about 14 various elements in this manifest requirement.

Once we get that information, that allows us to run it through our automated systems and make a decision if we need to do an examination overseas. One of the important parts of establishing a Customs presence overseas is that there is the capability to do that examination and there is the commitment from the foreign government to allow us to do the inspection.

Based on our experience over the last couple of months, we have found that those countries that are participating are willing to basically take containers that we have selected through our process, CBP offices overseas have selected, and do an examination for us.

So I can give you the exact numbers. I don't have them with me today, but I can tell you that it has improved considerably based on discussions between the commissioner and other foreign governments on this issue.

Senator FEINSTEIN. And the Chinese are cooperating with the Port of Hong Kong fully?

Mr. JACKSTA. I would tell you that they are cooperating, and I would tell you that we need as much cooperation as possible. I believe that they are much better today than they were months ago, and we will continue to make sure that we have all the information necessary to make that decision.

Senator FEINSTEIN. That is very helpful. Now, you said 5.3 percent of the 6 million containers that come into this country today are screened. Could you define for us the screening process? Does that mean they have passed through the x-ray device, or does that mean they are opened and searched?

Mr. JACKSTA. It is a 5.4 percentage.

Senator FEINSTEIN. Excuse me, 5.4.

Mr. JACKSTA. Basically, what happens with that is that, first of all, all cargo coming into the United States is screened through our automated targeting system, and that is the information that the carriers provide us to allow us to screen it against our enforcement systems.

That information and the automated targeting system selects various shipments for examination. Based on that selection process, we will have our inspectors go out to the container, use what we have. Our VACIS imagery systems, the big x-ray systems, will actually do a scan of the container.

Also, at that time we have a policy in place that all our inspectors that are doing primary inspections—and this is considered primary inspections—will have radiation pagers with them on their belt buckle that will allow us to determine whether there is some kind of radiation being emitted.

In addition to that, those containers that are a concern for us and that we target, we also bring out our extra equipment, what we call our RIID, our itemizer, which allows us to scan through the container and make a decision on whether there is any type of radiation being emitted.

And then based on those types of observations of the VACIS, based on the information that might be in the manifest, we make a decision on whether we actually want to bring that container to a location and do a hundred-percent de-vanning.

We also in certain locations, based on containers that may be coming empty, we will actually ask the vessel operators to crack

the container so that we can take a quick look into the container to see if there is anything concealed. So there are a number of different—as I mentioned earlier, a layered approach, a number of different efforts taken to screen those shipments that are selected, that 5.4 percent.

Senator FEINSTEIN. When a truck comes into the Port of Hong Kong, the drivers are computerized and their badges are all read and they go to a computer station and they are assigned to a specific place, where they go and wait until they are called. So there is nothing that is unexpected that comes into the port.

Is that the case in our ports?

Mr. JACKSTA. Well, I could tell you that we try to make sure that we regulate who is in the area. I know that the Admiral probably can explain a little bit more regarding the MTSA and how that is going to help us long-term. But, clearly, we want to know who is in that seaport area and what the purpose of them being in that seaport area is.

Senator FEINSTEIN. Admiral?

Admiral HERETH. Yes, ma'am. Generally, the new regulations that come into force on the 1st of July require in-advance kinds of procedures like you are describing. However, the identification is still an issue, and that was addressed, of course, in MTSA as a transportation security card requirement.

Those are still being developed and we are working as quickly as we can to move that ahead. TSA is leading that. They have a couple of pilot projects, one on the East Coast, one on the West Coast; actually, one out in LA/LB. Both of them are proceeding along. There are lots of technical issues that are being addressed, but that is an important piece of this equation, identity security.

Our regs will only take a step in that direction by requiring in-advance requirements to be established by the operators based on their port practices. They might vary a little bit, but generally the idea was to know in advance the cargo that is coming to your facility, and then when it passes through the gate look at it and see if it has been tampered with. That is generally where we are with the regulations.

Senator FEINSTEIN. With respect to individuals coming onto port property and vehicles coming onto port property, what identification requirements are in play now?

Admiral HERETH. Again, it attaches to the regulations which are just going into force. Now, many facilities have already adopted and are using access control procedures right now for vehicles. But the general principle is that within a facility that is owned by an operator, that company can define the sensitive areas where they handle cargo.

Within those sensitive areas, they are supposed to have very strict access control procedures and understand exactly the vehicles, exactly the people who are in that area at any point in time through a badging process and through an access control process.

Senator FEINSTEIN. I am particularly concerned with the Port of Long Beach/Los Angeles because it is so big, 15 miles, and I guess a third the size of the District of Columbia, and it has proximity to two nuclear power plants. I am very concerned about the secu-

rity at that port and that steps be taken as vigorously as possible to improve it.

Specifically, with respect to that port, what advances have been made?

Admiral HERETH. Well, California and the terminals in California led the way after 9/11, I think, in instituting a standard security protocol up and down the coast. LA/LB was really the leader in that whole development effort, working jointly with both agencies and with industry to develop some standards that were reasonable for the practices to protect that port. They have carried that many steps farther since 9/11, of course, with the regulations that will have a very defined, level playing field, with a very consistent approach to security throughout that entire port area.

Now, the size of the port area certainly is a challenge, but it is divided up into parcels by the terminals. And to some degree that size serves to benefit security. For example, the A.P. Mueller facility, Pier 400, that I am sure you are familiar with was just opened within the last year, a wonderful new facility, state-of-the-art security practices, in our opinion.

So I think they are leading in many ways, and oftentimes people visit to look at their security practices and see how it is being done out there. So it is serving as a good model. We are still not there yet, but the regulations do come into force the 1st July. Again, we are going to have that consistency along the waterfront that is very important and creates a reasonable climate in which business can flourish.

Senator FEINSTEIN. Could you respond to my concern about the ability of the port to plan long-term, specifically the letter of intent which Admiral Loy said was not feasible?

This whole area came to me directly from the Port of L.A./Long Beach and this is their concern that they be able to be assured that there is a funding stream that enables them to do the things they need to do over a period of time. And it doesn't have to be a letter of intent, but, say, a 5-year plan that they know is going to be funded, and if the Federal Government can't fund the entire thing that we work out some methodology, whether it is fees and funds or whatever, but that the security can move ahead.

Admiral HERETH. Sure. I think a long-term perspective is certainly a good thing and needs to be on the table for discussion. Up to this point, I think, as of the end of this fiscal year, fiscal year 2004, about $546 million worth of grant monies will have been handed out to ports. I think the figure is something like 95 percent of this last round will be handed out to regulated facilities, which you are talking about in LA/LB.

There is still some concern about long-term and how do we do some good planning, and that is certainly an issue of concern that is being discussed. There are a couple of grant programs where the department is discussing integration of the grant programs to make sure that they are focused on the right thing.

At the end of the day, the Coast Guard participates, along with MARAD and MTSA, in looking at every single project from a risk/management standpoint. Is the project being proposed contributing to a risk reduction in that particular port? That is the way the monies have been handed out, and again the focus of the effort has

been to address risk as quickly and as directly as we possibly can. Now, after the initial projects are completed, I think it is appropriate to retool and to look at, longer-term, how we are going to manage those process. Those issues are all on the table for discussion.

Senator FEINSTEIN. So you are willing to do that. Could you let us know what you decide and how soon would that be?

Admiral HERETH. I believe TSA will respond on the letter of intent issue.

Senator FEINSTEIN. They did; they said it was not feasible. So I am looking for them to come up with something that is feasible, whether it is a 5-year funding grant agreement or what, so that the ports know, particularly the big ports. I think you can give an annual appropriation to the smaller ports, but the big ports have to have that planning stream.

Admiral HERETH. Sure, I understand. Planning is a good thing and that is the way the system is presently. I know that those issues are on the table for discussion. The concept of a shared burden is important, and allocating those resources and how those burdens will be shared from a cost standpoint going forward is a difficult topic just because you are dealing in that risk/management world.

One person's view of risk is not necessarily consistent across the country, so it is a challenge to manage those programs. Again, I think the Department's intent is to try to integrate those programs and make sure that they are looking at risk and looking at issues from a long-term perspective.

Senator FEINSTEIN. One last question, if I may. Do you feel that the captain of the port has enough clearly-defined responsibilities to carry out this area of concern, which after all is a new area?

Admiral HERETH. In terms of grant management or in terms of risk—

Senator FEINSTEIN. In terms of grants, in terms of security, because in talking to some of them, a number of them believe they do not.

Admiral HERETH. In terms of authorities, I think we are well-positioned. We have, of course, MTSA and we have some prior legislation—the Ports and Waterways Safety Act, the Magnuson Act—that give us a lot of authority. Now, the challenge before us is to implement those regulations and implement and carry out that authority in a proper manner that is consistent around the country.

So the intent of our conference last week was—the centerpiece was consistency. We need to approach security in a consistent way that facilitates commerce and minimizes the impact of the flow and velocity of cargo movement throughout the country because of its importance to our economic situation in the United States. So our intent is to implement these security practices in a consistent way, minimize impact on cargo flow, trying to maintain the ports in a safe and secure manner.

Senator FEINSTEIN. And if a captain of a port does not feel that their authority is adequate, are they free to weigh in with this Subcommittee?

Admiral HERETH. Well, to be honest with you, I haven't heard a captain of the port express that. And having been a captain of the

port and served at several captain of the port offices, large ones around the countries, our authorities are fairly robust.

We have, under a couple of different statutes, quite a bit of authority and discretion, based on the decision of the captain of the port at the local field level, to require vessels and facilities to operate in a certain way, including ceasing operations, if necessary, or not coming into port.

So our authorities under the international codes, our authorities under the statutes presently that exist, are very robust. So we are pretty well-positioned from an authority standpoint. The law enforcement issue ashore is the only issue that is outstanding that is of concern to us.

Senator FEINSTEIN. So how would you handle that?

Admiral HERETH. We need the authority to carry weapons ashore, and we would be glad to work with you in a specific way on that provision of an authorization bill or something. That is a concern to us because we have had jurisdiction over waterfront facilities for a number of years now and we need the direct authority to carry weapons ashore, to make arrests, and carry out law enforcement functions ashore.

Senator FEINSTEIN. Thank you very much, and Senator Kyl and I perhaps can talk with you further about that and see what we can do to help.

Admiral HERETH. Thank you very much.

Senator FEINSTEIN. Thank you very much, gentlemen.

Chairman KYL. Let me ask a couple more questions.

Probably, Admiral, this is for you, but any of you can respond. On the proliferation security initiative which the United States is very much trying to push with allies around the world, do we do anything with that in our port areas? Presumably, we do and I am just wondering how much that has helped.

Mr. JACKSTA. One of the ways—and maybe this would be answering your question, sir—is that we are working with the Department of Energy for putting radiation portal monitors in locations where we have CSI locations. So that is an effort to try to once again extend the borders outward and to use our technology on containers before they get on the ships. So that is being controlled right now by the Department of Energy and I know it is moving forward.

Chairman KYL. Well, is it the Department of Defense that will have jurisdiction over the U.S. participation in the PSI around American ports or in American waters, or is it the Coast Guard?

Admiral HERETH. It will be the Department of Energy working with Defense on the proliferation issue. We provide support to both organizations.

Chairman KYL. Okay. Is it important to know at any given time where a particular ship is? There has been a suggestion that they should have a GPS kind of identifier on board to be able to track them.

Admiral HERETH. Yes, sir. The Coast Guard it is important and we have proposed that internationally. That is going to be discussed this May. There is an issue on the table for long-range tracking of all vessels around the world. We think that is an impor-

tant provision that needs to be moved forward and we are pushing that very hard.

Maritime demand awareness—i.e., knowing what is out there and coming our way—is very important to us. We think we need to build maritime demand awareness in a more complete fashion over the next few years. We need to have a common operational picture that all agencies have access to that need it. So from a law enforcement or intelligence or other perspective, everybody is kind of looking at the same picture and has the same model.

Chairman KYL. Do you all need any additional authority or resources from the Congress to effectuate even more aggressively the cooperation of other countries in pre-inspections at their ports prior to the transportation of goods to the United States? And then I will ask you a follow-up question, Admiral.

Mr. JACKSTA. Sir, as I indicated earlier, we do have 19 countries that have intended to become part of our CSI program. Also, the commissioner has identified 20 additional locations which we would like to be moving out, and we are now in discussions with those foreign governments. So there is a process in place. We have identified those ports overseas that we think are the right ports for us to actually do examinations before the freight starts on its way.

Chairman KYL. So you would call this good progress and continuing progress, and if you need anything else from us, you will ask.

Mr. JACKSTA. That is correct, sir.

Chairman KYL. Okay, good. Now, another question about potential needs. You mentioned the age of the Coast Guard fleet, and clearly boarding vessels long before they get to port is another option and an important part of the inspection process. And you do it, and I gather you want to be able to continue to do that and perhaps even increase the use of that technique.

Obviously, we would like to know what the Coast Guard thinks it needs in that regard, and I would specifically ask whether, in lieu of the larger Coast Guard cutter vessels, smaller vessels that I know some countries use—granted, it may be in closer to port, because you are meeting these ships sometimes quite a ways out. But would it be possible and perhaps more affordable to use some smaller vessels to achieve that function?

Admiral HERETH. Yes, sir, and we have proposed and built, actually, and deployed about 200 more small boats, I think, ranging anywhere from the very small 25-foot harbor craft, up to 87-foot patrol boats, since 9/11; a very important part of the equation, but also supplemental to the deep-water effort, which is based on the larger aircraft and vessels that we need to be able to sustain offshore operations.

Senator FEINSTEIN. On that point, could I ask a quick question?

Chairman KYL. Yes, sure, go right ahead.

Senator FEINSTEIN. The fast boat, for example, the narcotics-carrying fast boat—do you have corollaries which can chase and catch a fast boat?

Admiral HERETH. We do. We have new equipment that has great speed, but we also have helicopters now that are armed. And certainly that presents a big threat to the drug smugglers and is used pretty routinely down in the Caribbean. That is a capability that

needs to be expanded, we think, in a much broader way around the country. It is a capability that is useful not only for smuggling operations, but also potential terrorist operations.

Senator FEINSTEIN. And if you tell a boat to put into port or you have to put into port in another country, are they cooperating with you in terms of quick refueling? There was a problem a while back getting your boats quickly refueled and out.

Admiral HERETH. I haven't heard any problems that have surfaced in the last year. I think our bilateral arrangements pretty much with all the countries that we deal with that are close are very excellent now.

Chairman KYL. Let me just ask one more question. In the hearing back in 2002, one of the problems raised was the discrepancy between what is reported on a manifest and what the cargo actually may contain. You have put a lot of emphasis on the electronic data, checking the manifests early, and so on.

How do you maintain the correlation, or determine the correlation between what the manifest says and what is really in there, and how good is this data? How well can we rely upon it and how do we check to make sure it is correct?

Mr. JACKSTA. Senator, that is a very important issue for CBP. If we don't have good information, our systems don't work and our inspectors can't take the appropriate action.

Once again, going back to the 24-hour rule that we put in place in February, we started a phased approach where we actually had our inspectors at the ports of entry working with the vessel operators, the brokers, and had them reviewing the manifests.

What we did was that if the manifest did not have the appropriate information, we would tell the carrier that they could not load that container on a vessel to the United States. So that is why we wanted the information 24 hours before it was laden on board. That is one of the things that we do.

The other important action that we take is at the port of arrival, when we do our examinations, we make sure that we review the manifests and we do spot-checks to verify if there are any type of discrepancies. Are there containers on the ship that should not be on the ship? Are there containers that things are manifested that were not manifested in the actual—and we have a penalty provision that allows us to do a number of things. We can actually seize the goods, we can actually penalize the carriers for not properly manifesting.

I can tell you personally that since February of last year, the industry has taken actions to correct this. They recognize the concerns and they recognize that we are there, first of all, telling them whether they can load the container on or not, and then we are there at the port entry and if it is not correct, we can penalize them. So there are mechanisms that are in place and we feel it is very important that for our systems to be successful, we have to have the proper information.

Chairman KYL. I think for the American people it is important for us to make the point that these processes are achieving results. So let me just ask you as a very general proposition—and, Mr. Bald, maybe this question is first directed to you—do we find contraband, do we find things that shouldn't be in the cargo, and do

we, in fact, even perhaps sometimes find materials that could relate to acts of terrorism?

In other words, are all of the inspections that we are doing, are all of the checking of the manifests that we are doing, and so on, resulting in—are we just coming up absolutely dry, but it is good to check? Or are we, in fact, finding stuff that shouldn't be there and it encourages us to continue to enhance our efforts?

Mr. BALD. As intelligence gets better, we will do a better job, obviously, in the future. The JTTFs working with CBP have come up with a number of successes. The actual items that are discovered fall under CBP, and I would defer to them to clarify or amplify on that.

Mr. JACKSTA. Yes, sir, we definitely believe that the equipment that we are putting out there has shown tangible effects. First of all, we have made a number of seizures regarding contraband. I think I can report that the good news is that we haven't discovered any weapons of mass destruction, but we have been able to discover shipments where people are still trying to smuggle narcotics into the United States.

We are also finding, using our VACIS system, our imagery system, containers where once again it is manifested as one commodity and when our inspectors take a look at the image, they realize it is not what it is supposed to be. So there are clearly still shipments where the manifests are not properly notated and things that people try to bring into the United States not properly declared, not having the right license.

So in that area, the seaport environment, we have been very successful, and I can tell you also as a result of the technology that we put in place both at the southern border and the northern border, we have also been able to use that to discover narcotics in areas that we probably might not have been able to discover without having the equipment that is available for us.

Chairman KYL. Thank you.

Senator Feinstein, anything else?

Senator FEINSTEIN. Thank you.

Mr. Jacksta, has the immigrant smuggling in containers been abated, do you believe, worldwide?

Mr. JACKSTA. I would say that we still discover individuals that are stowaways on ships, and so therefore it is still a threat and a concern for us. Once again, we do not know exactly who these individuals are, and any time someone is smuggled onto a vessel and into a container and we discover it at a port of entry, or the vessel operator discovers it, it is a concern for us. So the threat is still real.

I think what we are trying to do is work very closely with the Coast Guard. Within CBP, we are trying to use the Border Patrol and our inspectors to actually go and when a ship arrives to make sure that there is nobody that is a stowaway or an absconder on the boat. So I do not know whether the problem of immigration smuggling through the seaports has been alleviated. I think we have taken some actions to try to address this concern.

Senator FEINSTEIN. [Presiding] One last question. Credentialing of employees is somewhat controversial. What kind of credentialing system has been decided upon?

Admiral HERETH. You are familiar when we talked about the transportation security card before that it is still under development. There is another provision in MTSA that deals with credentialing, I think, to what you are referring, the enhanced mariner credential.

There are really two aspects to that. Number one, the law requires that we develop that. Now, the Coast Guard took that forward on the international front and has now worked with the ILO, the International Labor Organization, to develop a new, enhanced mariner document.

ILO 185 was passed back in June, and agreed to by the countries involved. The United States supported that provision, even though it has a provision that may prevent ratification. Nevertheless, the document itself is a better document. It has a biometric indicator on it and it has a better database that we will have access to. So, overall, we view it has a security enhancement to the United States.

The second part of the law requires us to set requirements for visiting vessels, for example. And we intend to do that through a regulatory project probably over the next year, but that is an important part, again, of security. Fraud is rampant throughout the world, and so we need to take some steps to further tighten that up. But those are the steps that have been accomplished so far and we believe that is a significant step forward.

A multilateral approach is certainly the strongest approach to ensure that we don't have reciprocal problems confronting U.S. mariners going overseas. So that is why we use the forum the International Labor Organization.

Senator FEINSTEIN. Do you feel that the system that is in place is adequate to prevent individuals from being smuggled in and avoiding Customs and others at the port of entry?

Admiral HERETH. Let me just comment from two perspectives on that. Number one, when the regulations go into effect—and I think the powerful thing about the position that we are in is that we have negotiated an international agreement that is very much like the MTSA requirements.

So, essentially, all the countries in the world, all the vessels and all the facilities, have to enact standards that are very similar to the United States standards. So that is good from a consistency standpoint. We don't want the United States to be at a competitive disadvantage vis-a-vis other countries. That is happening the 1st of July.

There are provisions in the international code that require access control and all the things that will help prevent smuggling of people and hopefully reduce that problem, reduce absconding, reduce smuggling and things like that. So it is our hope that as those regulations go into effect that problem will hopefully be addressed by both facilities and vessels.

The other thing I will say is that as vessels approach the United States, we have a 96-hour advanced notice of arrival requirement. That requirement is probably three dozen items' worth of information that have to be provided to the Coast Guard. All that information is vetted and we screen for any security risks for the vessel, the cargo, or the crew.

If we find any security risks related to the crew, we work with CBP to issue a captain of the port order to the vessel to provide us a security plan to make sure that those folks, those security risks, the crew members that we are concerned about, are, in fact, detained on board as they are ordered by CBP. That means they have to hire additional security guards that are U.S.-based companies and do things like that to ensure that those people don't get off.

So absconding and stowaways, and so forth, are a concern to us, but they are being addressed on those two fronts, the regs and then additional provisions under captain of port orders on specific cases.

Senator FEINSTEIN. Are there any specific protocols for specific ports, say, Karachi; specific manifests, say—I don't know if he still owns them, but Osama bin Laden owned some freighters.

Admiral HERETH. Yes, and I can't go into any classified material. We would be glad to talk with you offline on that, but any of those concerns are tracked by our Intelligence Coordination Center that is collocated up in Suitland with the Office of Naval Intelligence. They, together, form the National Maritime Intelligence Center, and any vessels of concern are tracked worldwide.

Senator FEINSTEIN. With respect to port employees, what kind of credentials or I.D.s will they have?

Admiral HERETH. Port employees are envisioned to have the transportation security card or the TWIC, the transportation work identity card. Anybody that works on the waterfront is envisioned to have a transportation security card.

Senator FEINSTEIN. And are there any criteria by which that card is denied?

Admiral HERETH. There are. There are provisions in the law and those are being discussed. As you mentioned, that is still underway.

Senator FEINSTEIN. Right. Well, let me thank you very, very much, and let me say something, Mr. Jacksta. I know your department, in particular, has been very burdened and it has been hard on some of the ports. But from what I have seen, I think you are really doing an excellent job. I think it is a very good idea sending Customs people to these critical ports and working with the country to try to see that we have got a seamless system, because if you are going to push the boundaries out and that is going to work, I worry very much about that manifest system, the shipper system; you know, who is reliable and who isn't, and whether you can kind of obfuscate in the protocol that is put together.

But from what I have been able to see, I think Customs is really doing a good job and I just wanted to say that.

Mr. JACKSTA. Thank you very much, Senator.

Senator FEINSTEIN. I thank you, too, Admiral. And, Mr. Bald, thank you for your comments and for your work. I know this is an unforgiving area because if something does happen, it would be catastrophic.

Chairman Kyl has returned. I will stop filibustering.

Chairman KYL. Well, I know you have thanked our panel, too, and we have a great panel here. I appreciate it. There are a lot of questions we could ask, and I would leave the record open for a

brief period of time so other members, as well as Senator Feinstein and I, might pose additional questions to you.

We probably will want to revisit the issues we have raised here. Perhaps we can do it informally and not necessarily have to have a hearing. But as our legislation moves forward and as others try to deal with the follow-up on all the different things that we have put in place to get this job, we will want to exercise our oversight to make sure that it is being done, that we are doing everything we can, and if there is anything that you all need so that we can together accomplish this objective, that we provide those resources or those legal authorities or whatever it might be.

So, again, thank you very much. Thank you for what you are doing to help provide security to our country.

If there is nothing further, this hearing is adjourned.

[Whereupon, at 12:32 p.m., the Subcommittee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 7, 2004

The Honorable Jon Kyl
Chairman
Subcommittee on Terrorism, Technology, and
Homeland Security
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for inviting Gary Bald, Acting Assistant Director, Federal Bureau of Investigation, U.S. Department of Justice, to testify at the January 27, 2004, hearing on "Covering the Waterfront - A Review of Seaport Security Since September 11, 2001," before your committee. Attached are the responses to follow-up questions you submitted to the Department on February 25, 2004. Please do not hesitate to contact this office if we may be of further assistance.

Sincerely,

William E. Moschella

William E. Moschella
Assistant Attorney General

cc: The Honorable Dianne Feinstein
Ranking Member

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary

The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary

Responses of the Federal Bureau of Investigation
Based Upon January 27, 2004 Hearing Before the
Senate Committee on the Judiciary
Subcommittee on Terrorism, Technology and Homeland Security
Re: Covering the Waterfront - A Review of Seaport Security
Since September 11, 2001

Questions Posed by Senator Feinstein

1. Cargo theft, drug smuggling, and stowaways are some of the maritime crimes that have plagued container shipping. How is the terrorist threat similar or different from these other illegal activities? What are the lessons learned in efforts to prevent this type of conventional crime?

Response:

Potential terrorists could use existing criminal methods to gain access to the United States and maritime transportation to import terrorism-related contraband through our port facilities. Incidents in which stowaways have entered the country indicate that terrorists could also exploit this method, entering the country illegally and unnoticed. Likewise, cargo ships modified to conceal drugs could as easily conceal weapons or other terrorist equipment. Aware of this, Federal, state, and local agencies are working together to share intelligence information about known individuals and groups that have exploited maritime transportation in the past. While in the past efforts to thwart breaches at port facilities have competed for funding, the importance of this effort to homeland security has resulted in increases in the resources dedicated to combat this weakness. New programs within the Department of Homeland Security (DHS), such as the U.S. Customs and Border Protection's Container Security Initiative and a number of other initiatives taken by the United States Coast Guard, are working to reduce vulnerability. These, along with increases in interagency coordination and funding, coupled with recent international and national mandates that affect maritime transportation, will aid greatly in reducing future exploitation by terrorists.

2. In recent years we have seen the expansion of the concept of the Joint Terrorism Task Force, often called "JTTFs," as a good mechanism within which multiple federal agencies, as well as state and local authorities, can cooperate on terrorism issues. Can you describe the integration of port security officials into JTTFs, using the port of Baltimore as an example?

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Response:

The Joint Terrorism Task Forces (JTTFs) continue to grow with the addition of a number of local, state, and Federal officials representing maritime activities. The Coast Guard continues to assign both Coast Guard Investigative Service Agents and active duty Coast Guard members to the JTTFs. Additionally, the Coast Guard has established Field Intelligence Support Teams, which work at port facilities to provide immediate response to suspicious activities in and near the ports and report these incidents to intelligence, law enforcement, and other appropriate authorities. The FBI, together with the Coast Guard, is developing the Maritime Liaison Agent (MLA) Program, which will mirror the Aviation Liaison Program already in place at our major airports. The goal of the MLA Program is to create a specialized core of individuals within the JTTFs who are familiar with port facilities and points of contact, and are therefore able to respond quickly and effectively to maritime threats. The program has been approved and an initial working group meeting is anticipated in the near future.

Through the JTTFs, agencies within the Baltimore, Maryland, area developed the Maryland Maritime Security Group. This group consists of the FBI, Coast Guard, Maryland State Police, Baltimore Police, and others. Members of the group have trained together to be able to work as a team during a terrorist incident. The Coast Guard has provided survival equipment for a vessel used in their maritime responses, and this concept has been used as a model for other port cities. Funding has been requested to support this effort in other areas of the country and the FBI is coordinating standardized training for these units.

3. Can you describe how the information provided by the Coast Guard and the Department of Homeland Security makes its way to the FBI, which, as I understand it, is the Intelligence Community entity now responsible for keeping the list of known and suspect terrorists?

Response:

Law enforcement information and intelligence are disseminated to the FBI via established message traffic channels. These messages alert the JTTFs and National Joint Terrorism Task Force (NJTTF) to ongoing suspicious situations. The NJTTF, which includes representatives of 32 federal agencies, works closely with DHS and other members of the intelligence community in sharing information critical to monitoring or responding to a terrorist threat. In addition to sharing information directly with the FBI, Coast Guard, and DHS, information regarding potential threats is also sent to the Terrorist Threat Integration Center, where it is synthesized with other information, analyzed, and disseminated to the FBI and other agencies.

The extensive, close working relationships fostered over the past two years have significantly increased the flow of critical information both to and from the FBI. Information is passed at various levels. The Coast Guard is increasing the capability of its field elements and Marine

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Safety Officers to handle and store classified information through the use of secure information technology systems, such as SIPRNET, permitting a better exchange of information with JTTFs. Also, the Coast Guard makes available to the FBI and other agencies advance information on vessels arriving in U.S. ports, including information regarding hazardous cargoes.

4. In October of last year Secretary Ridge announced "significant steps in enhancing maritime security." His announcement noted that the rules were developed by a team from the Coast Guard, Transportation Security Administration, Customs and Border Protection and the Department of Transportation. Did the FBI participate? Have you reviewed these new rules to determine whether they fit into the overall counterterrorism program?

Response:

The FBI is aware of several initiatives to enhance maritime security. We have had the opportunity to review and comment on these initiatives where appropriate. Both the International Ship and Port Facility Security Code and the Maritime Transportation Security Act will exert positive impacts on port security by enhancing international and domestic port facility security requirements, including security measures required of ships entering our ports.

These new mandates, in concert with the existing 96-hour advance notification requirement, will provide responsible agencies with the means of identifying and tracking suspect vessels and otherwise increasing maritime safety. For example, working together with members of the cruise industry, the FBI has established a protocol for domestic cruise lines to electronically send all passenger and crew manifests to the National Targeting Center, in conjunction with the Terrorist Screening Center, six hours prior to departure, which permits the matching of cruise line manifests against a single terrorist database immediately before a cruise ship leaves port.

Question Posed By Senator Leahy

In his testimony, Mr. Bald makes a strong case that U.S. ports, which are run by state and local authorities, are critical to the nation's economy but are inherently vulnerable and an attractive target for terrorists. He also states that "one significant challenge is the limited amount of funding and resources available to the state and local agencies, including the port authorities, to address the many issues involved in securing our ports from terrorist attacks." According to U.S. Coast Guard estimates, ports will need to spend $5.4 billion over the next ten years on infrastructure and personnel to comply with new federal regulations mandated by the Maritime Transportation Security Act (MTSA) ($1.125 billion just in the first year).

1. If ports are a national security priority, why hasn't the Administration done more to seek and provide financial assistance for these state and local government entities?

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2. Specifically, why did President Bush not seek funding for port security grant funding in his proposed budgets for Fiscal Years 2003 or 2004?

Response to Questions 1 and 2:

The FBI defers to the Administration for a response.

3. Despite President Bush's decision not to seek such funding, should Congress have provided more generous funding for port security grants than it has?

Response:

The FBI is not in a position to provide general comments regarding the amount of funding provided for port security, because that funding, and mission, belong primarily to DHS. The FBI is collaterally involved in the funding of port security through NJTTF initiatives. The FBI works with the Department of Justice to identify funding needs and determine what funding will be requested in light of the many activities competing for resources.

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QUESTION FROM SENATOR LEAHY

TO REAR ADMIRAL LARRY HERETH, ROBERT JACKSTA,

AND GARY BALD:

In his testimony, Mr. Bald makes a strong case that U.S. ports, which are run by state and local authorities, are critical to the nation's economy but are inherently vulnerable and an attractive target for terrorists. He also states that "one significant challenge is the limited amount of funding and resources available to the state and local agencies, including the port authorities, to address the many issues involved in securing our ports from terrorist attacks." According to U.S. Coast Guard estimates, ports will need to spend $5.4 billion over the next ten years on infrastructure and personnel to comply with new federal regulations mandated by the Maritime Transportation Security Act (MTSA) ($1.125 billion just in the first year). (A) If ports are a national security priority, why hasn't the Administration done more to seek and provide financial assistance for these state and local government entities? (B) Specifically, why did President Bush not seek funding for port security grant funding in his proposed budgets for Fiscal Years 2003 or 2004? (C) Despite President Bush's decision not to seek such funding, should Congress have provided more generous funding for port security grants than it has?

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SUBMISSIONS FOR THE RECORD

Testimony of Gary M. Bald
Acting Assistant Director,
Counterterrorism Division,
Federal Bureau of Investigation,
before the
Senate Judiciary Committee,
Subcommittee on Terrorism, Technology, and Homeland Security
January 27, 2004

"Covering the Waterfront - A Review of Seaport Security Since September 11, 2001"

Good morning Chairman Kyl, Senator Feinstein and members of the Committee, thank you for inviting me here today to speak to you on the topic of seaport security and the FBI's partnership with the Department of Homeland Security, United States Coast Guard, and local port authorities.

Recognizing the profound new threat that the events of September 11 represented to national security, the President directed the FBI to make prevention of terrorist attacks its number one priority. This is in keeping with the President's strategy to defeat, deny, diminish, and defend against terrorism. Failure is simply not an option. In President Bush's address at FBI Headquarters, he re-emphasized to all FBI employees that "the FBI has no greater priority than preventing terrorist acts against America." Since the attacks of September 11, 2001, the FBI has embraced this challenge and transformed itself to address the current threat facing this country. As part of a major reorganization, the FBI restructured its approach to counterterrorism to enhance analysis and information-sharing. Improved analysis and operational capabilities combined with increased cooperation and integration have enhanced the FBI's ability to investigate and prevent acts of terrorism. This is especially true as we address the complex issue of security in our nation's many seaports.

Complexities and Vulnerabilities of Ports

The Maritime Transportation Security Act of 2002 (MTSA 2002), signed on November 25, 2002, by President Bush, is a landmark piece of legislation that is designed to protect the nation's ports and waterways from a terrorist attack. The MTSA 2002 significantly strengthens and standardizes the security measures of our domestic port security team of federal, state, local and private authorities. The MTSA 2002 requires the establishment of maritime security committees, and security plans for facilities and vessels that may be involved in a transportation security incident, among its many measures. Port Security Committees had already been informally established around the country after the terrorist attacks of September 11, 2001 and

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the new regulations officially established Area Maritime Security Committees that address the complex and diverse security needs of each of the nation's 361 ports. Area Maritime Security Committees are made up of other federal, state and local agencies, industry and others, to assess the specific vulnerabilities in each port and develop plans for security requirements within the port areas. The FBI is a full participant in these committees. In addition, the International Maritime Organization now requires all ships and port facilities to have security plans, making a new worldwide standard.

The port system of the United States is the most extensive and complex port system in the world and, as such, it is a national asset. While no two ports in the United States are exactly alike, many have shared characteristics; such as being close to major metropolitan areas, containing fuel farms, and having major roadways running into and out of the port area. Ports not only affect the state in which they are located, but also impact neighboring states that depend on the ports for foreign trade. The United States' economy depends on the free flow of goods through these waterways, but with the free flow of goods comes the inherent risk of terrorist attacks. Ports, because of their accessability to both water and land, together with the chemical and natural resource storage facilities that are often located within close proximity, are inherently vulnerable.

Ports have historically been vulnerable to a variety of smuggling ventures, from the drug trade and alien smuggling, to cargo thefts and weapons smuggling. The terrorist organizations we now face have learned from these traditional smuggling operations, and are looking for any holes in the port security system to exploit. Access into and around United States port facilities is difficult to secure, without closing access to legitimate business and recreational port traffic.

Multi Jurisdictional Approach to the Security of Seaports

While the federal government has jurisdiction over navigable waters, as well as the interstate commerce and foreign trade at our nation's ports, local port authorities are the primary regulators of the ports' day-to-day operations. Legislation passed since the tragedy of September 11, 2001, has significantly increased the security requirements at port facilities. The Department of Homeland Security, through the United States Coast Guard, has overall federal responsibility for seaport security. The Department of Homeland Security is currently working to screen more shipping containers both entering and exiting the United States and assisting state and local authorities in implementing security plans for their ports. The Federal Bureau of Investigation works in conjunction with the Department of Homeland Security towards a coordinated response to the security concerns of the port authorities, primarily through participation in the National Joint Terrorism Task Force (NJTTF), which is located in the Strategic Information and Operations Center (SIOC) at FBI Headquarters. In addition to the NJTTF, the FBI has assigned Supervisory Special Agents, full-time, to the Department of Homeland Security to assure a timely and effective response to any crisis that may arise. Also, the FBI continues to manage Joint Terrorism Task Forces (JTTFs) in each of our 56 field offices throughout the United States. Within these JTTFs, critical security information is exchanged on a daily basis, as representatives

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of the participating federal agencies work side-by-side with their counterparts in the local law enforcement community to ensure that sea ports and other national assets are safely guarded.

One significant challenge is the limited amount of funding and resources available to the state and local agencies, including the port authorities to address the many issues involved in securing our ports from terrorist attacks. We have attempted to address this challenge by pooling our resources.

Prior to my current position, I served as the head of the FBI's Baltimore Field Office, and I can personally attest to the importance of these interagency partnerships. Prior to the 9/11 attacks, the Baltimore office established a maritime team to provide proactive and reactive maritime responses in support of the counterterrorism program and the JTTF. The primary goal was to enhance the ability to respond either overtly or covertly, to maritime incidents, special events and other events that affected law enforcement. After 9/11, the Baltimore office joined a partnership that existed between the USCG and the City of Baltimore. This partnership was subsequently named the Maryland Maritime Security Group (MMSG), and has grown in both other agency participation (for example, the US Navy, US Army Corps of Engineers, Bureau of Immigration and Customs Enforcement, Maryland State Police, Department of Natural Resources, Transportation Authority Police, Maryland Emergency Management Agency, Baltimore City Police and Fire Departments, local area county Police Departments, the Maryland Port Authority, Maryland Pilot Association and the Calvert Cliffs Nuclear Power Plant) and to include a state-wide focus. The MMSG is co-chaired by the USCG and the FBI and the members meet often to identify and share resources, exchange intelligence and jointly develop and implement maritime strategies to combat terrorism.

Every FBI office that has a seaport in its territory participates, through the JTTFs, in similar information sharing initiatives and counterterrorism/security working groups. Currently these types of maritime working groups have been formed in Los Angeles, Tampa, Boston, Baltimore, Houston, New York and Miami, to name just a few.

The Tampa Division of the FBI has been a participant in the Tampa Bay Port Security Working Group, led by the United States Coast Guard, since it was established in April 2000. The FBI regularly participates in the Port Security Working Group meetings and heads the Terrorism Sub-Committee. The FBI's role in these committees is to provide threat analysis and to disseminate intelligence that affects+ safe operation of the port facilities. Somewhat unique to this forum is the integration of private industry and Fire/Hazmat chiefs of both the City of Tampa and Hillsborough County as members of the FBI's Joint Terrorism Task Force.

The Miami Division of the FBI has been actively participating in the Area Maritime Security Committee and holds a seat on the Executive Steering Committee. This committee is a United States Coast Guard initiative, which brings together members of the law enforcement community with executives of the various maritime industries. One of the pilot projects being worked on by the Miami Joint Terrorism Task Force is the "Manning Agency Screening

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Initiative" which provides limited database checks on the agencies providing the staff members to cruise lines operating globally. At present the "manning agencies" providing the staff for the various cruise lines are not screened by any United States law enforcement agency and are merely licensed to do business in their respective countries.

In Los Angeles, the Area Maritime Security (AMS) Committee is scheduled to begin on Feb. 6, 2004. This new Committee is being established in response to the MTSA 2002 and will continue the positive and aggressive steps taken over the last two and a half years by all prior committees. The AMS committee will be chaired by the Captain of the Port, with the close involvement and leadership of the FBI JTTF Supervisor. It will be composed of approximately 12 voting members, each carrying a responsibility as Chair of one of the 12 subcommittees. The AMS committee, patterned around the widely accepted and existing Unified Command and Incident Command Systems (ICS), will meet to proactively address Port Security needs and concerns. The AMS will incorporate voices from private industry, labor, law enforcement, intelligence, emergency, medical, and fire assets. The AMS will subsume existing committees now operating within the Port community, to include:

Port Security Committee (PSC), (began in June, 2001)
Mayor's Task Force on Terrorism (began October, 2001)
Port Readiness Committee (used for military offloads and outloads)
Marine Transportation System (MTS)
Harbor Safety Committee (Los Angeles/Long Beach)
Harbor Safety Committee (Port Hueneme)

Beginning with the founding of the Port Security Committee in June, 2001, the FBI has been a main player in these committees and has filled a leadership role among the many agencies that make up the port community of Port of Los Angeles/Long Beach.

In addition to the Area Maritime Security Committees, "Operation Drydock", which was formally begun in January 2003, is a United States Coast Guard initiative, being pursued in cooperation with the FBI's NJTTF, to identify, classify, prioritize, and appropriately respond to national security concerns. As part of this effort, "Operation Drydock" is conducting a comprehensive review of more than 200,000 United States merchant mariners. To date, eleven individuals possessing United States Coast Guard issued merchant mariner documents have been identified as having a nexus to terrorism matters. All of these merchant mariners have been placed on the "No Fly" and "Watchlist" maintained at the Terrorist Screening Center (TSC). An additional 700 mariners have been identified as having issues related to law enforcement and maritime concerns. There are approximately 15,000 records left to be examined in this project.

On a related front, the FBI, working together with members of the cruise industry, has established a protocol for domestic cruise lines to electronically send all passenger and crew manifests to the Terrorist Screening Center six hours prior to departure. The Terrorist Screening Center enables the cruise line manifests to be run against a single terrorism database, instead of

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the numerous lists housed within a variety of government agencies. The FBI is also working towards establishing a permanent Maritime Liaison Agent (MLA) in each of its offices with significant port activity. The MLA position would streamline the flow of information coming from, and going to, the various ports around the country, with one consistent point of contact identified.

Conclusion

The institution of new security regulations and the cooperative approach to port security between the United States Coast Guard and the Joint Terrorism Task Forces have greatly enhanced maritime security in the United States. While port security may never be guaranteed due to the sheer size of the facilities and the areas they cover, the FBI, and our partner agencies, are striving to provide the most secure port facilities in the world.

The FBI continues to pursue an aggressive, proactive response to meet the challenges of terrorism. We remain committed to identifying and disrupting terrorist activities particularly within the United States port system. I want to emphasize to you, this issue has the full attention of Director Mueller and the FBI. I appreciate the interest of the Committee in this matter, and I look forward to working with you in the future. Thank you for the invitation to speak to you today, I am prepared to answer your questions.

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STATEMENT OF SENATOR JOSEPH R. BIDEN, JR.

Hearing before the Judiciary Subcommittee on
Terrorism, Technology and Homeland Security
"Covering the Waterfront – Reviewing Seaport Security
Since September 11, 2001"
January 26, 2004

Let me begin by commending my colleagues on the Judiciary Subcommittee on Terrorism, Technology and Homeland Security for holding this hearing today to review the state of seaport security. For some time now, I have been interested in, and troubled by, the threats to our transportation corridors. While my concern predated September 11th, it was certainly and unfortunately confirmed by those tragic events. That dreadful day served as a powerful wake-up call for many in this chamber – and, ironically, it has had the beneficial effect of driving the momentum that resulted in passage of the landmark Maritime Transportation Security Act, increased funding for certain homeland security activities, and renewed attention to important maritime security issues like the safety of seaport facilities and cargo containers. That said, despite the many laudable successes with respect to seaport security over the last 2 years, there remains much work to be done.

Annually, more than 141 million ferry and cruise ship passengers and unfathomable amounts of waterborne commerce (more than 2 billion tons of domestic and international freight and 3 billion tons of oil) move through U.S. seaports, and millions of truck-size cargo containers are offloaded onto U.S. docks. Yet, as an independent task force of the Council on Foreign Relations concluded, "only the tiniest percentage of [these] containers . . . are subject to examination – and a weapon of mass destruction could well be hidden among this cargo."

Indeed, there is no comprehensive system to screen containers for radiological or nuclear materials. Less than 3 percent of the nearly 6 million cargo containers that pass through the U.S. are inspected each year – and, according to some expert reports,

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only 30 percent of that cargo contains material that actually matches the cargo manifest, a required report intended to give federal agents some idea of a container's content. Under these circumstances, it is not simply possible, but probable, that some terrorist thug will try to deliver a weapon of mass destruction to our doorstep via ship, truck, or airplane.

Equally disturbing is the fact that a good many seaports are home to oil refineries and chemical plants, and nearly 7 dozen nuclear power plants are located along U.S. waterways. Just imagine the trouble and devastation a single terrorist could trigger if the security at one of these ports is compromised. The thought is unsettling. Yet, the *Interagency Commission on Crime and Security at U.S. Seaports*, a blue-ribbon government panel convened in 2000, concluded that we are woefully unprepared for such a possibility – security at seaports, the Commission determined, is "poor to fair and in few cases good."

Unfortunately, precious little has changed since the release of the Commission's report. Four years have elapsed, and many seaports are still protected by little more than a chain-link fence and, in far too many instances, have no or inadequate safeguards to ensure that only authorized personnel can access sensitive areas of the port.

The Maritime Transportation Security Act (MTSA), enacted more than a year ago with overwhelming support in both the Senate and the House of Representatives, was intended to mitigate many of these security concerns. However, as is now becoming clear, the challenge was not in passing the legislation – there was near universal agreement on that front. No, the true test can be found in the implementation and administration of Congress' wishes – and, sadly, the Administration leaves much to be desired on that front.

The Coast Guard has estimated that it will cost $7.3 billion in the next decade to implement the MTSA, including $1.1 billion in fiscal year 2004. It will take $4.4 billion,

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again according to the Coast Guard, just to improve aging facilities and strengthen security protocols. Despite this need (and, incidentally, no one has disputed the Coast Guard's need assessments), the Bush Administration devoted only 2 percent of the Transportation Security Administration's budget to maritime and land security, less than half what it requested for the organization's bureaucracy, and provided zero-funding for port security grants. These grants were authorized to help ports fortify their facilities, including perimeter security, yet the President's budget contained no dedicated stream of funds to continue these port security activities. And, despite our best efforts to add more funding, the final-passed homeland security appropriations bill contained a mere $125 million – a drop in the bucket when compared to the magnitude of the need, the enormity of the potential threat, and the disproportionate resources dedicated to other sectors.

If we are truly to protect the homeland, we need to invest the dollars necessary to make critical security improvements. Simply stated, we can't do it on the cheap.

At the same time, simply buying more effective security technologies or hiring more security personnel will not suffice. We need multiple and multi-layered solutions to what has become a complex, ever-changing problem – that being this new breed of international terrorism. It is both heinous and relentless – and, as lawmakers, we need to use every tool available to us to disrupt such bad acts at their source.

For more than a quarter century, I have served in this chamber and dedicated a good portion of that service to understanding and developing sound criminal policy. I know, more than anyone, that criminal law – while limited in some respects – has the power to discourage misconduct and, where that does not work, can be used to weed-out bad actors. It is a single tool in the toolbox, the value of which cannot be overstated – yet, in the maritime context, we have allowed antiquated laws to fester. While not glorious or headline-grabbing, the hard work of updating our criminal code to meet the demands of this century and to ensure that wrongdoers are treated appropriately under the law must be tackled.

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With that in mind, Senator Specter and I have again introduced legislation designed to update federal law to address critical security issues at U.S. seaports. Our bill, entitled the "Reducing Crime and Terrorism at America's Seaports Act of 2003," is crafted to address the 3 threats identified by the *Interagency Commission on Crime and Security at U.S. Seaports*: terrorism, serious crime, and inadequate cargo control.

Here is a summary of some of the pressing vulnerabilities that the legislation is designed to address:

First, the *Interagency Commission* concluded that "control of access to the seaport or sensitive areas within the seaports" poses one of the greatest potential threats to port security. Such unauthorized access continues and exposes the nation's seaports (and the communities that surround them) to acts of terrorism, sabotage or theft. In response, the Biden-Specter Bill would double the maximum term of imprisonment for anyone who fraudulently gains access to a seaport or waterfront.

Second, an estimated 95 percent of the cargo shipped to the U.S. from foreign countries (other than Canada and Mexico) arrives through our seaports. Accordingly, the *Interagency Commission* found that this enormous flow of goods through U.S. ports provides a tempting target for terrorists and others to smuggle illicit cargo into the country, while also making "our ports potential targets for terrorist attacks." In addition, the smuggling of non-dangerous, but illicit, cargo may be used to finance terrorism. Despite the gravity of the threat, we continue to operate in an environment in which terrorists and criminals can evade detection by underreporting and misreporting the content of cargo. In one review by the U.S. Customs Service, nearly 20 percent of surveyed carrier-arrivals were discrepant (i.e., carried more or fewer containers than were listed on the manifest). In an earlier review, Customs found a 53 percent discrepant rate. Even where authorities ultimately determine that the discrepancies are harmless, the misreporting needlessly diverts precious resources and attention away from the job of detecting terrorists and serious criminals. To deter this problem, the

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Biden-Specter Bill would increase penalties for noncompliance with certain manifest reporting and record-keeping requirements, including information regarding the content of cargo containers and the country from which the shipments originated.

Third, the Coast Guard is the main federal agency responsible for law enforcement at sea. Yet, its ability to force a vessel to stop or be boarded is limited. While the Coast Guard has the authority to use whatever force is reasonably necessary, a vessel operator's refusal to stop is not currently a crime. The Biden-Specter Bill would make it a crime for a vessel operator to fail to slow or stop a ship once ordered to do so by a federal law enforcement officer; for any person on board a vessel to impede boarding or other law enforcement action authorized by federal law; or for any person on board a vessel to provide false information to a federal law enforcement officer.

Fourth, the Coast Guard maintains over 50,000 navigational aids on more than 25,000 miles of waterways. These aids, which are relied upon by all commercial, military and recreational mariners, are critical for safe navigation by commercial and military vessels. As such, they are inviting targets for terrorists. The Biden-Specter Bill would make it a crime to endanger the safe navigation of a ship by damaging any maritime navigational aid maintained by the Coast Guard; place in the waters anything which is likely to damage a vessel or its cargo, interfere with a vessel's safe navigation, or interfere with maritime commerce; or dump a hazardous substance into U.S. waters, with the intent to endanger human life or welfare.

Fifth, each year, thousands of ships (including cruise ships, whose numbers have swelled enormously over the last half century) enter and leave the U.S. through seaports. Smugglers and terrorists exploit this massive flow of maritime traffic to transport dangerous materials and dangerous people into this country. The Biden-Specter Bill would make it a crime to use a vessel to smuggle into the United States either a terrorist or any explosive or other dangerous material for use in committing a terrorist act.

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Sixth, under current federal law, it is a crime to destroy an aircraft or aircraft facility. Incredibly, there are no equivalent federal prohibitions in the maritime context. Given the vulnerability of America's seaports, we should provide the same protection to seaports that we provide for airports. The Biden-Specter Bill would make it a crime to damage or destroy any part of a ship, a maritime facility, or anything used to load or unload cargo and passengers; commit a violent assault on anyone at a maritime facility; or knowingly communicate a hoax that endangers the safety of a vessel.

Seventh, according to the *Interagency Commission*, "at many seaports, the carrying of firearms is not restricted, and thus internal conspirators and other criminals are allowed armed access to cargo vessels and cruise line terminals." Currently, federal law prohibits carrying firearms into airports, which is a sensible step to protect against possible terrorist attacks or other criminal activity. We should provide the same protections currently afforded to airports to our seaports and passenger vessels. The Biden-Specter Bill would prohibit the carrying of a dangerous weapon, including a firearm or explosive, in sensitive areas at a seaport or on board a vessel.

And, *eighth*, the *Interagency Commission* concluded that existing laws are not stiff enough to stop certain crimes, including cargo theft, at seaports. The Biden-Specter Bill would increase the maximum term of imprisonment for low-level thefts of interstate or foreign shipments from 1 year to 3 years and expand the statute to outlaw theft of goods from trailers, cargo containers, warehouses, and similar venues.

This comprehensive anti-crime and anti-terrorism legislation is the product of informal collaborations with ports, industry and labor groups, as well as interested federal agencies. As a result of the contributions by these groups, we believe that we have developed a strong, bipartisan bill that, once passed, will significantly improve federal criminal law; expand the array of tools available to investigators and prosecutors; and ensure that federal resources are appropriately invested.

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Tellingly, the legislation has attracted the support of organizations – like the American Association of Port Authorities (AAPA), American Institute of Marine Underwriters, and the Inland Marine Underwriters Association – with special knowledge and expertise in seaport and cargo security. As revealing, it has also garnered the support of many of our colleagues here in the Senate whose interests and constituencies truly span the political spectrum. We have been delighted to receive such endorsements, which only affirm the adage that good government knows no political affiliation.

In closing, let me add my voice to the chorus of individuals who today will undoubtedly remind us of the importance of our seaports to the health of the nation. The 361 seaports in the United States serve essential national interests by facilitating the flow of trade and the movement of cruise passengers, as well as supporting the effective and safe deployment of U.S. Armed Forces. Yet, our attention to the security needs of seaport facilities and other marine areas, which cover some 3.5 million square miles of ocean area and 95,000 miles of coastline, has been lacking – to put it mildly.

The bottom-line is that we must undertake to do all that we reasonably can to discourage and/or frustrate another attack on American soil. Toward that end, I look forward to the testimony before this subcommittee today, welcome comments about the legislation that I have outlined above, and invite my colleagues to join my and Senator Specter's efforts to pass comprehensive, anti-crime legislation this Congress.

Thank you.

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News from . . .

Senator Dianne Feinstein

of California

FOR IMMEDIATE RELEASE:
Tuesday, January 27, 2004

Contact: Howard Gantman
or Scott Gerber 202/224-9629
http://feinstein.senate.gov/

Statement of Senator Dianne Feinstein on Protecting America's Seaports from Terrorism

Washington, DC *– U.S. Senators Dianne Feinstein (D-Calif.) and Jon Kyl (R-AZ) today convened a hearing of the Senate Judiciary Subcommittee on Terrorism, Technology, and Homeland Security to examine ways to prevent terrorist attacks on or through our nation's seaports. The hearing also focused on legislation sponsored by Feinstein and Kyl that would improve security at our ports by:*

Requiring that high-risk shipping containers be inspected in foreign ports – before they arrive in the United States;

Establishing a comprehensive container risk profiling plan to allow U.S. authorities to focus their limited inspection and enforcement capabilities on high-risk cargo; and

Increasing penalties to prosecute and punish terrorists.

Each year, approximately 13 million shipping containers come into U.S. ports, including six million from overseas. In total, U.S. ports handle over 800 million tons of cargo valued at approximately $600 billion. Excluding trade with Mexico and Canada, America's ports handle 95 percent of U.S. trade. To date, two of the busiest ports are in California: Los Angeles/Long Beach and Oakland.

Despite the high volume of cargo, fewer than three percent of the containers that come into our country are inspected. This translates into millions of tons of cargo moving through our ports, with absolutely no scrutiny. An attack at or through a port could cause massive loss of life and bring our nation's economy to a standstill.

The following is the text of Senator Feinstein's statement:

"Today the Subcommittee on Terrorism, Technology and Homeland Security takes up a matter of critical importance – seaport security. I want to begin by thanking Chairman Kyl for his work on this important matter, and for the focus which he has kept on this issue. Senator Kyl represents a state with no ports and no waterfront; I represent a state whose long coastline and active ports characterize its economic personality.

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It is essential that our ports, working with the Department of Homeland Security, develop a security capability that will protect the employees of the port, and the citizens of the Nation, from the potentially devastating effect of a terrorist attack on our largest seaports. In particular I am concerned about the very real possibility that a weapon of mass destruction, a so-called 'dirty bomb,' could be brought into our ports, and detonated there, with catastrophic effects on people, and our Nation's economy.

Both Senator Kyl and I realize that the safety of our ports does not only affect the States in which ports are located, but could have a potential impact on the entire Nation. A container off-loaded in Los Angeles for instance, will in many cases make its way, by truck or train, to Arizona and beyond – perhaps with deadly contents.

To understand this complex problem, I had hoped to hear from someone with 'front-line' responsibility. Thus, I was disappointed that we were not able to hear today from the Captain of the Port of Los Angeles/Long Beach – the busiest container port in the United States. I had hoped that the Captain could give us an 'on-the-ground' and 'on-the-water' view of the problems which face us.

I hope today's witnesses witness will speak about a critical aspect of the whole problem of port security – how we fund it.

There are a number of options – direct Federal funding, cost-sharing with States and localities, user-fees and private funding. These and other methods can be combined and modified. One area that I have been particularly concerned with is the potential use of 'Letters of Intent' to facilitate long-term funding for large-cost improvements to ports. This method is used in the context of airport security, and I understand has been successful. Admiral Loy, Administrator of the Transportation Security Administration, tells me that it cannot be used in the context of port security. I hope to find out today why not and how we can fix this problem.

We also must ensure that those given the responsibility to combat terrorism at our ports are also given the authority to carry out that responsibility. One example of this is legislation developed by Senator Kyl and me: the 'Anti-Terrorism and Port Security Act of 2003,' This bill, introduced last year, and now pending before the Commerce Committee, would address areas of the criminal law where either the reach law is inadequate, or the penalties are insufficient, such as piracy, or terrorist attacks on maritime infrastructure. It also would clarify the responsibilities of the Captain of the Port, strengthen mechanisms to learn about who and what is aboard the ships entering our ports, and mandates the development of security standards for shipping containers, personal identification systems, and ensures that the Secretary of the Department of Homeland Security takes into account traffic volume when allocating funds to our ports.

I look forward to hearing from our witnesses, and learning their views on these important subjects."

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DEPARTMENT OF HOMELAND SECURITY

UNITED STATES COAST GUARD

STATEMENT OF

REAR ADMIRAL LARRY L. HERETH

ON THE

ANTI-TERRORISM & PORT SECURITY ACT OF 2003

BEFORE THE

SUBCOMMITTEE ON TERRORISM, TECHNOLOGY & HOMELAND SECURITY

JUDICIARY COMMITTEE

U.S. SENATE

JANUARY 27, 2004

DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD
STATEMENT OF REAR ADMIRAL LARRY L. HERETH
ON
ANTI-TERRORISM & PORT SECURITY ACT OF 2003
BEFORE THE
SUBCOMMITTEE ON TERRORISM, TECHNOLOGY & HOMELAND SECURITY
JUDICIARY COMMITTEE
U.S. SENATE
JANUARY 27, 2004

Good Morning Mr. Chairman and distinguished members of the Committee. It is a pleasure to appear before you today to discuss Coast Guard efforts to prevent and respond to terrorism and improve maritime transportation security for our seaports.

The United States and the world have come to recognize how vulnerable our international transportation system is to those who intend to do us harm. Valuable and vulnerable… these factors make protection of our marine transportation system a high priority in the U.S. Maritime Homeland Security Strategy.

Working in concert with the Department of Homeland Security and its agencies, we developed a strategic approach to maritime security that places a premium on identifying and intercepting threats well before they reach U.S. shores. We do this by conducting layered, multi-agency, maritime security operations; strengthening the port security posture of our strategic economic and military ports; building on current international cooperative security efforts; and making risk-based decisions. These key elements form the basis of our Maritime Homeland Security Strategy, closely aligning with the President's National Strategy for Homeland Security.

MTSA Implementation
The Marine Transportation Security Act of 2002 (MTSA) established a comprehensive approach to maritime security. In October 2003, within the demanding deadlines set by the MTSA, the Coast Guard issued final maritime security regulations that address vessel and facility security, automatic identification systems, and other security requirements. The Coast Guard collaborated extensively with the maritime industry in the development of these regulations including the consideration of thousands of public comments. The regulations also incorporate standards adopted by the International Maritime Organization. The United States played a major role in developing these international standards, which help us to extend our borders out through partnerships with 108 foreign governments to improve the security of the global shipping industry. The international standards and MTSA regulations come into force on July 1, 2004.

Area Maritime Security Committees and Local Coordination
Each Federal Maritime Security Coordinator (FMSC) has formed an Area Maritime Security (AMS) Committee, which is comprised of other federal, state, and local agencies, as well as members of the local maritime industry in their areas of responsibility. These committees are enhancing the exchange of communication among the Coast Guard, local agencies, and maritime stakeholders. They also will be critical in the development of the Area Maritime Security Plans, which provide the details on how the local, state and Federal government will augment the security of the vessels and facilities within the port environment.

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MTSA Costs
The cost of implementing MTSA is shared by Federal, state and local government and the maritime industry. The federal government is bearing the cost for increased security in our nation's ports through the creation and deployment of Maritime Safety and Security Teams, personnel, and contract support for vessels and facility plan reviews, increased deployment of Coast Guard assets to escort certain vessels into port, the placement of more Coast Guard law enforcement teams aboard inbound vessels at the sea buoy, and more patrols by Coast Guard vessels, small boats, and aircraft. The Coast Guard is sensitive to the impact that increased security may have on legitimate commerce and the maritime industry. The wide variety of security measures implemented to date has had no significant adverse impacts on the flow of maritime commerce.

That said, we note that industry's cost for implementing Section 102 of the MTSA is estimated to be $1.5 billion in the first year and $7.3 billion over the next 10 years. While we clearly understand that the cost of these security regulations to the maritime industry is not insignificant, a terrorist incident against our marine transportation system would have a devastating and long-lasting impact on global shipping, international trade, and the world economy. To quantify this risk, a major port closure for one month due to a maritime terrorist act could cost up to $60 billion in economic loss to the United States. We have developed the security regulations to be performance-based, providing the majority of owners and operators with the ability to implement the most cost-effective operational controls, rather than more costly physical improvement alternatives. The Coast Guard will be vigilant in its Maritime Homeland Security mission and will remain sensitive to the impact of security measures on maritime commerce.

AIS and Long Range Vessel Tracking
The regulations, which implement MTSA, require certain commercial vessels to install an Automatic Identification System (AIS) by the end of 2004. The Coast Guard is on schedule to have AIS capabilities at each Vessel Traffic Service by then, and is diligently working towards our long-term goal of nation-wide AIS coverage. The Coast Guard has also instituted measures to expand surveillance beyond the reaches of AIS and to increase Maritime Domain Awareness – a combination of intelligence, surveillance, and operational information to build as complete a "common operating picture" as possible of the threats and vulnerabilities in the maritime realm. The Coast Guard is evaluating a variety of options for tracking vessels on the high seas, and will continue to work diligently within the International Maritime Organization on consistent international standards to ensure all SOLAS vessels have tracking equipment on board.

The Coast Guard has also established COASTWATCH, a process through which the national intelligence community analyzes the vessel notice of arrival reports to identify vessels of interest so that the Coast Guard and other agencies can institute appropriate control measures before those vessels reach port. The Coast Guard continues this practice today and has improved electronic sharing of notice of arrival reports and accompanying intelligence information with Customs and Border Protection (CBP), Transportation Security Administration (TSA), Information Analysis and Infrastructure Protections (IAIP) Directorate, Department of Defense, and other components of the Intelligence Community.

Deepwater
Our nation faces a growing array of threats from the sea that could harm maritime commerce, coastal population centers, and critical infrastructure within America's maritime borders. The Deepwater program is key to countering these threats by providing the capability to board vessels before they reach port, and respond to acts of terrorism or piracy well away from our shores, while also developing a far more robust and effective Maritime Domain Awareness system. The Coast Guard has begun the recapitalization of our inventory of major cutters, aircraft, and their support systems, which is a near-term national homeland security priority.

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Containerized Cargo
Implementation of our security programs will complement and reinforce the additional maritime transportation security improvements currently being developed through ongoing Department of Homeland Security initiatives to improve the security of containers and the entire cargo supply chain. The Container Security Initiative, the Customs-Trade Partnership Against Terrorism managed by CBP, and Operation Safe Commerce led by TSA, will work collectively in the overall interagency program to shore up the vulnerabilities plaguing the marine transportation system and the cargo supply chain.

Law Enforcement Authority Ashore
We have increased our uniformed presence ashore at waterfront facilities and critical infrastructure adjacent to the marine environment. However, we identified a gap in our authority ashore and have developed a proposal to close that gap. Although the Coast Guard is at all times an armed force and has broad authority to protect waterfront facilities and other shore installations under a number of statutes, we lack express authority to arrest a person who commits a Federal offense on shore and to carry a firearm ashore in the performance of official law enforcement duties. Gaining this authority is a top legislative priority for the Coast Guard, and the Administration's Coast Guard Authorization Act currently before Congress includes a provision that would grant clear authority. We would greatly appreciate the Committee's support in this matter.

Conclusion
The United States Coast Guard will continue to take a leadership role in coordinating the multi-agency, public and private, national and international maritime security effort as part of the Department of Homeland Security's larger National Transportation System Security Plan. The men and women of the Coast Guard are committed to the continuing protection of our nation's ports. Thank you for the opportunity to testify before you today. I will be happy to answer any questions you may have.

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STATEMENT OF SENATOR JON KYL
CHAIRMAN
SUBCOMMITTEE ON TERRORISM, TECHNOLOGY, AND HOMELAND SECURITY
SENATE JUDICIARY COMMITTEE

"COVERING THE WATERFRONT — A REVIEW OF SEAPORT SECURITY SINCE SEPTEMBER 11, 2001"

27 JANUARY 2004

Overview

Today, the Subcommittee on Terrorism, Technology, and Homeland Security will examine how to protect our seaports against terrorism. Even before the tragic events of September 11, this Subcommittee concerned itself with the protection of Americans from terrorist attacks within our shores. Senator Feinstein and I have worked to address the problem of identifying terrorists and stopping them from entering the United States. However, I think the public needs to be made more aware that our seaports offer access points for terrorists and their weapons, including weapons of mass destruction, to enter our country with relative ease.

Consider the fact that an attack that shut down a major American port for even a few days could devastate the regional economy that it serves.[1] Indeed, by one estimate, a nuclear weapon detonated in a major seaport or Washington, DC, would kill 50,000 to 1 million people and would result in direct property damage of $50 to $500 billion, losses due to trade disruption of $100 billion to $200 billion, and indirect costs of $300 billion to $1.2 trillion.[2]

This hearing is a follow up to the one held by the Subcommittee in February 2002, shortly after the attacks of 9/11. That hearing highlighted the importance of seaport security. For example, in response to the attacks of 9/11, the Transportation Secretary had to shut down virtually the entire airline industry for four days, and check each plane, to ensure the safety of air travel and prevent additional terrorist attacks. If we ever had a similar situation with shipping — if we had to shut down our ports and check all of the ships for terrorists — commercial shipping would be shut down for at least four months. As the Department of Transportation testified: "[i]f anything can bring our economy down, that can."[3]

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[1]Council on Foreign Relations, *Terrorism Q & A: Ports*, *at* http://www.terrorismanswers.com/security/ports_print.html (last visited Jan. 23, 2004).

[2]Abt Associates, *The Economic Impact of Nuclear Terrorist Attacks on Freight Transport Systems in an Age of Seaport Vulnerability,* Apr. 30, 2003, at 7 (executive summary).

[3]*Securing Our Ports Against Terror: Technology, Resources, and Homeland Defense: Hearing Before the Subcomm. on Technology, Terror, and Government Information of the Senate Comm. on the*

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Today's hearing will seek to determine what progress has been made and what more needs to be done. Before the attacks, the Coast Guard devoted not more than 2 percent of its operations to port security, according to the Council on Foreign Relations. In the months immediately following September 11, it spent 50 percent to 60 percent of its time and effort defending U.S. ports. Since then, that figure has fallen to between 20 percent to 30 percent because of other commitments and mounting costs.[4] In fact, Noel Cunningham, the Los Angeles Port's chief of police, said the Los Angeles harbor remains "wide open" to terrorist attack.[5]

Witnesses

The Subcommittee will hear from three experts.

Rear Admiral Larry Hereth, U.S. Coast Guard

Rear Admiral Hereth is currently serving as the Director of Port Security in the Marine Safety, Security, and Environmental Protection Directorate at U.S. Coast Guard Headquarters in Washington, D.C. As Director of Port Security, he oversees all aspects of the Coast Guard port security mission and coordinates activities with other Coast Guard programs, other government agencies, and industry to improve Maritime Homeland Security. He is a 1973 graduate of the United States Coast Guard Academy, and has also received an MBA from the Florida Institute of Technology. In his 29 years of service, Rear Admiral Hereth has had a broad-based career with an emphasis on field operations. His assignments have taken him throughout the United States with multiple tours at east, gulf, and west coast ports.

Director Gary M. Bald, FBI

Director Bald is the Inspector-Deputy Assistant Director of the FBI's Counterterrorism Division. He oversees the FBI's operations in international and domestic terrorism, and in terrorist financing. Prior to this appointment, Director Bald was the Special Agent in Charge of the Baltimore Division. In 1999, he was detailed to the Criminal Investigative Division of FBI Headquarters, where he headed a high profile Organized Crime/Corruption investigation. Director Bald has served in the FBI since 1977.

Judiciary, 107th Cong., 2nd Sess. (Feb. 26, 2002), at 23 (statement of Captain William Schubert).

[4]Council on Foreign Relations, *Terrorism Q & A: Ports*, *at* http://www.terrorismanswers.com/security/ports_print.html (last visited Jan. 23, 2004).

[5]*About 12 Million Containers Enter U.S. Ports Annually; Only 4% Get Security*, WALL ST. J., Apr. 21, 2003, at B1.

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Executive Director Robert M. Jacksta, DHS

Director Jacksta is the Executive Director of Border Security and Facilitation for U.S. Customs and Border Protection. He directs the activities of Border Security and Facilitation, with policy oversight for day-to-day operations at ports of entry. Director Jacksta has been with the Customs Service since 1973. He has served as the Port Director of Washington, D.C., and as the Executive Director of Passenger Programs. In 1999, he received the Commissioner Outstanding Performance Award. Director Jacksta has a Bachelors of Science in Criminal Justice from Buffalo State College in New York.

Conclusion

We are now aware of the economic fallout from the destruction of the World Trade Center towers. The closing of any of the 12 major seaports would also have severe economic effects, not only locally but throughout the nation. It is increasingly important that local, state, federal, and private entities make a coordinated effort to ensure the safety of our ports.

We have a distinguished panel of witnesses before us today. I am interested in examining with them how we can inspect a greater portion of containers without delaying the movement of goods through our seaports, and what assistance Congress can provide to reach our objective of protecting our seaports, economy, and citizens.

I would like to thank Senator Feinstein for her hard work in putting together this hearing. We have always had an excellent working relationship, and I look forward to examining this issue with her.

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STATEMENT BY
ROBERT M. JACKSTA
EXECUTIVE DIRECTOR, BORDER SECURITY AND FACILITATION
OFFICE OF FIELD OPERATIONS
CUSTOMS AND BORDER PROTECTION

"COVERING THE WATERFRONT -- A REVIEW OF SEAPORT SECURITY SINCE SEPTEMBER 11, 2001"

JANUARY 27, 2004

Good morning Chairman Kyl, Senator Feinstein, members of the Subcommittee. Thank you for this opportunity to testify on the subject of U.S. Customs and Border Protection efforts to secure U.S. seaports: the waterfronts, the vessels, and the people who utilize them for work and travel.

People, technology, automation, electronic information and partnerships are concepts that underpin CBP port security and anti-terrorism initiatives. These concepts expand our borders and reinforce the components of CBP's layered defense. Today, I would like to focus on how this layered defense works with regard to seaport security.

- The National Targeting Center (NTC) – A single location for targeting technology and subject matter expertise;
- The Automated Targeting System (ATS) – The premier tool employed by CBP personnel to identify high-risk targets in the ocean, as well as other cargo environments;
- The 24-Hour Rule and the Trade Act of 2002 – New regulations that give CBP the authority and mechanisms needed to require advance electronic cargo information prior to arrival or departure from the United States.

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- The Container Security Initiative (CSI) – A means of pushing our borders outward by screening cargo overseas and working jointly with host nation customs agencies on exams prior to lading U.S. bound cargo;
- The Customs – Trade Partnership Against Terrorism (C-TPAT) – A vehicle for securing global supply chains and the development of smart and secure containers;
- And Non-Intrusive Inspection Technology – Advanced inspection equipment to screen shipments rapidly for WMD, nuclear or radiological materials, terrorist weapons, and other contraband.

These layers are interdependent and deployed simultaneously, to substantially increase the likelihood that weapons of terror will be detected. No single strategy could provide the level of security that CBP has worked to attain and maintain since September 11, 2001.

NTC

To effectively secure sea, land and air ports of entry, CBP must have access to electronic cargo and traveler information in advance, the automation technology to manage this information, and experienced personnel to evaluate and apply this information. The National Targeting Center encompasses these needs. The National Targeting Center initiated round-the-clock operations on November 10, 2001 and began the task of re-orienting narcotics based targeting methods and technologies for anti-terrorist and national security concerns. By January of 2003, the NTC staff relocated to a state of the art facility in Northern

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Virginia that accommodates representatives from all CBP enforcement, intelligence, and regulatory disciplines.

The NTC has established a range of liaisons with other agencies responsible for securing U.S. borders and commerce including, U.S. Coast Guard, the Transportation Security Administration, and the Department of Energy. Many of these agencies have liaison personnel assigned to the NTC. For example, CBP and the Food and Drug Administration commenced around the clock joint targeting operations at the NTC on December 11, 2003 in support of the Bio-Terrorism Act.

ATS

The Automated Targeting System is an automated tool that permits CBP to process advance information and focus its inspection efforts on potentially high-risk transactions and travelers. The ATS is a flexible, evolving system that integrates information from enforcement and commercial databases. In the cargo environment, ATS analyzes electronic data related to the individual shipments to profile and rank them in order of risk based on the application of algorithms and rules prior to arrival. The scores are divided into thresholds associated with further action by CBP such as document review and inspection.

ATS accesses and analyzes entry data when it is submitted electronically. Entry data is some of the most detailed and accurate information available for targeting.

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The industry data that feeds the ATS is substantial. The 24 Hour Manifest Rule requires detailed and accurate information for all shipments destined for the U.S. 24 hours prior to lading on the vessel overseas. This is key to CBP's targeting success in the sea environment. On February 2, 2003 CBP implemented the 24-Hour Manifest Rule Program, with phased-in compliance and enforcement monitored by the National Targeting Center.

The scope and reliability of the cargo information currently received under the 24 Hour Rule is reinforced by the publication of the Trade Act Final Rule on December 5, 2003 that mandates advance electronic cargo information inbound and outbound for all modes of transportation.

CSI

Now I would like to talk about initiatives that reach the waterfront in concrete ways. The Container Security Initiative (CSI) came into being as a direct result of the events of 9-11. The purpose of CSI is to extend our nation's zone of security. Essentially, CBP screens and examines shipments before they leave foreign ports of lading. Nineteen of the twenty ports shipping the greatest volume of containers to the United States have committed to join CSI. These original 20 ports are points of passage for approximately two-thirds of the containers shipped to the U.S. Primary benefits of greater security will result from:

- Forging relationships and liaisons with foreign customs counterparts to facilitate communication and coordination;
- Establishing security criteria for identifying high-risk containers based on advance information;

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- Pre-screening containers at the earliest possible point;
- Using technology to quickly pre-screen high-risk containers;
- And developing secure and "smart" containers.

CSI also uses both automation, the ATS, and advanced inspection technology as force multipliers. For example, CSI has requisitioned Personal Radiation Devices (PRD's), to be deployed as CSI locations become operational. Additionally, CSI has requisitioned Radio-Isotope Identifier Devices (RIID's) for deployment to operational CSI ports with host country approval.

C-TPAT

Following the events of September 11th, the trade community approached CBP to devise a joint strategy to protect the global trading network or supply chain. Some of the basic tenets of C-TPAT are:

- Strengthening and enhancing supply chain security by partnering CBP with the trade community to strengthen our borders while facilitating the flow of legitimate trade;
- Developing a seamless, security conscious environment throughout the entire commercial process;
- Providing a forum in which the business community and CBP can exchange ideas, concepts and information that are increasing the security of the entire commercial process from manufacturing through transportation and importation, to ultimate distribution;

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- Engaging a number of trade associations and international organizations in developing unique industry wide global security standards for specific sectors that will enhance security, not only locally, but globally as well.

Participation in C-TPAT has grown, almost exponentially. In the first year, C-TPAT enrolled 1000 members. Currently there are over 5300 participants or partners.

C-TPAT continues to progress. CBP teams are in the process of verifying the information submitted by the C-TPAT participants to ensure that appropriate measures are in place to help secure the supply chains.

Supply chain security is inextricably linked to our cargo security initiatives. Secure containers will be essential to achieving comprehensive supply chain security. CBP takes a multi-layered approach to container security:

- CBP supports ISO standards for the use of high security mechanical seals, specifically ISO /PAS 17712, which exceeds most industry standards for use on containerized cargo, such as the American Society for Testing Materials Level D rating.

- In order to be deemed "tamper evident," alternatives to the door handle locking mechanism shall be incorporated into the sealing process. This change to standardized high-security mechanical seals coupled with electronic Container Security Devices (CSD's) is designed to strengthen the integrity of containerized cargo throughout the importation process.

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- CBP is currently working with five (5) C-TPAT importers in order to implement Phase 1 of the CBP Smart Box initiative designed to deter and prevent legitimate cargo from being utilized to introduce contraband into the U.S., including weapons of mass destruction. As of January 5, 2004, Phase 1 participants began adhering to new sealing standards and incorporating container security devices into their standardized security.

The goal is to have a smart and secure container that prevents and deters tampering, alerts government and trade when tampering does occur, and is inexpensive.

Additionally, Customs and Border Protection is a long-standing member of multi-agency seaport security working groups. Operation Safe Commerce serves as a technology and business practice "test bed" for various government agencies and the trade to promote new security principles, recommendations, and practices. The Container Working Group addresses improving the security of sea containers through improved technologies, enhanced information, sound supply chain procedures, and coordination between industry and government.

CBP also participates in security initiatives resulting from the Maritime Transportation Security Act of 2002. MTSA furthers the security of international inter-modal transportation by advancing the evaluation and certification of security systems.

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Non-Intrusive Inspection and Radiation Detection Technologies

Non-Intrusive Inspection Technology (NII) is another cornerstone in our layered strategy. Technologies deployed to our nation's sea, air, and land border ports of entry include large-scale X-ray and gamma-imaging systems as well as a variety of portable and hand-held technologies.

NII technologies are viewed as force multipliers that enable us to screen or examine a larger portion of the stream of commercial traffic while facilitating the flow of legitimate trade, cargo, and passengers.

Today, CBP has large-scale NII systems deployed to our nation's air, land, and sea ports of entry. The systems include the Vehicle and Cargo Inspection System (VACIS), Mobile VACIS, Truck X-ray, Mobile Truck X-ray, Rail VACIS, Mobile Sea Container Examination Systems, and the Pallet Gamma-ray system. A portion of these large-scale systems are deployed to seaports on both coasts and the Caribbean.

CBP is also moving quickly to deploy nuclear and radiological detection equipment, including Personal Radiation Detectors (PRD's), Radiation Portal Monitors (RPM's) and Radiation Isotope Identifiers (RIID's) to our ports of entry.

CBP is also initiating the deployment of RPM's in the maritime environment with the ultimate goal of screening 100% of all containerized imported cargo for radiation. A variety of configurations have been developed and CBP is working with stakeholders to ensure that radiation screening does not significantly impact operations within a port.

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Additionally, CBP has deployed PRDs in quantities necessary for ensuring that there is 100% coverage at primary, the first point of contact. Used in combination with our layered enforcement strategy, these tools provide CBP with a significant capacity to detect nuclear or radiological materials.

Conclusion

CBP's has demonstrated and will continue to demonstrate unwavering commitment to port security efforts, and we anticipate that working together will further these efforts considerably. Thank you again, Chairman Kyl, Senator Feinstein and the members of the Subcommittee for this opportunity to testify. I would be happy to answer any questions you may have.

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Statement of Senator Patrick Leahy
Senate Judiciary Committee
Subcommittee on Terrorism, Technology, and Homeland Security
Hearing on "Covering the Waterfront – A Review of
Seaport Security Since September 11, 2001"
January 27, 2004

Our committee has great reason to be concerned about our seaport security and to bring Administration witnesses here today to question them about the progress they have made in protecting our seaports. I believe the Bush Administration's progress thus far has been inadequate to the magnitude and importance of the task involved.

More than 90 percent of the world's trade is moved in cargo containers. As "60 Minutes" reported last summer, fewer than 2 percent of the 16,000 containers coming into the U.S. every day are inspected. Stephen Flynn, who has testified before this committee before, is a former National Guard commander, a senior fellow at the Council on Foreign Relations, and a noted expert on seaport security. He told "60 Minutes" last summer that the information provided by shippers is frequently unreliable and vague, and said, "The fact of the matter is criminals have been operating in seaports a long time. The bad guys know how open the system is. The good guys don't seem to have a real command on it here because we haven't paid as much attention to this problem as we need to." Senators Hollings and Biden have pointed repeatedly to this problem and urged the Administration to do more. Thus far, the Administration's response has not been up to the challenge.

As the Democratic members of the House Select Committee on Homeland Security pointed out in their "America at Risk: Initial Findings" report, released earlier this month, the General Accounting Office has found that that the information that the Bureau of Customs and Border Patrol uses to determine which cargo should be searched is "one of the least reliable or useful for targeting purposes." In addition, radiation detection portals have been installed at only a few U.S. ports, leaving us vulnerable to the smuggling of a nuclear or radiological weapon. And although the Administration has issued port security regulations, and the Coast Guard estimates that ports will have to spend $1.1 billion to comply with those regulations, the President has not proposed *zero* funding for ports to improve security in his last budgets.

The President and his Administration have spoken a great deal about the Container Security Initiative (CSI), which is designed to prevent dangerous cargo from even making the journey to the United States. The President's commitment actually to fund the CSI, however, does not come close to matching his rhetoric. He requested *zero* funding for the CSI in his budgets for FY 2003 and FY 2004, despite the Customs Service's request for $67 million in funding. This followed his decision in August 2002 to veto $39 million for the CSI that was included in the FY 2002 supplemental appropriations bill. Perhaps this is why, as the "America at Risk" findings detail, agents working in the CSI project spend only 120 days in the foreign ports where they are assigned, which provides little time for them to obtain the information they need about the practices of foreign ports.

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In another area, the Customs Trade Partnership Against Terror (C-TPAT), the job is far from done. The government has inspected only 100 of the 4500 participants in the C-TPAT initiative, which allows companies that follow certain security procedures to receive expedited customs processing. Without such inspections, we cannot know whether C-TPAT participants have truly made improvements or are simply taking an easy path toward faster processing.

I hope our witnesses today can address these concerns and reassure the American people that we are moving in the right direction with all possible speed.

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