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SPEAKER:  
CHAIRMAN

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WITNESSES:  
(PANEL 1), HONORABLE PAUL MCHALE, ASSISTANT SECRETARY OF DEFENSE FOR, HOMELAND SECURITY  
(PANEL 2), MAJOR GENERAL RAYMOND F. REES, ACTING CHIEF, NATIONAL GUARD BUREAU  
MAJOR GENERAL TIMOTHY J. LOWENBERG, ADJUTANT GENERAL, DIRECTOR, WASHINGTON MILITARY  
DEPARTMENT

BODY:

HOUSE ARMED SERVICES COMMITTEE: SPECIAL OVERSIGHT PANEL ON  
TERRORISM, UNCONVENTIONAL THREATS AND CAPABILITIES HOLDS A  
HEARING ON FORCE PROTECTION: HOMELAND SECURITY

MARCH 13, 2003

SPEAKERS:

U.S. REPRESENTATIVE JIM SAXTON (R-NJ)  
CHAIRMAN

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U.S. REPRESENTATIVE FRANK LOBIONDO (R-NJ)

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SAXTON: Good afternoon. The subcommittee on terrorism, unconventional threats and capabilities meets this afternoon for the first time in formal session.

Although we have had several informal meetings and briefings, today marks the first public hearing of this important new body, which I am honored to lead in conjunction with our distinguished ranking member, Marty Meehan of Massachusetts.

As I've said in private, but now want to put on the record, I want to sincerely thank all the members who have volunteered to serve on this subcommittee, and look forward to working with you as closely as we can together, as we help the Department of Defense and the military services to fight the scourge of terrorism.

I have proposed and my colleagues support an active agenda and an active agenda it will be, as there is much to be done. Despite the ever-growing nature of the terrorist threat at home and abroad which culminated in the tragic events of September 11th, the Armed Services Committee has never before established a standing committee to address the many issues involved.

It is our duty to be diligent, and very diligent we will be, while recognizing that we cannot accomplish everything immediately, despite our collective sense of urgency.

Our first hearing is a fitting start. We not only begin with the general view of the Department of Defense, which is logical, but there is an interesting contrast of the old and new in the distinguished positions that our witnesses hold.

Let me explain.

Our first witness, the Honorable Paul McHale, while a gentleman of extraordinary abilities, experience and common sense, occupies a brand new senior policy making office in the Department of Defense. He is the Assistant Secretary of Defense for Homeland Defense and is testifying today for the first time in that capacity.

As part of his responsibilities, he will help to oversee the work of the Department's newest combatant command, Northern Command, whose commander testified before the full committee earlier today.

Both Secretary McHale and General Eberhart, in turn, are under the nurturing and watchful eye of this body, the newest standing committee concerned about force protection and homeland defense. That's our new part of the equation I referred to earlier.

Now to the old, at least in lineage. I find great comfort in the fact that an enduring institution of this great country, indeed, the institution that fought for our freedom before we were a nation, is in the forefront of the effort.

I'm talking, of course, about the National Guard, or militia, as it was known in the revolution. The guard was there at our nation's birth and continues to perform critical duties in protection of our homeland.

Yes, we have some technical questions about how the missions will be performed, and we will address those. But I first want to recognize the fundamental and continuing importance of the National Guard to American freedom and ideals.

This is the first of a series of hearings we will conduct before our markup in late April, and it sets the stage for those that follow. Our objective today is to begin to get an understanding of the issues that face the Department of Defense as it commences its coordination efforts with the new Department of Homeland Security, in an attempt to learn how we can help the process, either legislatively or through the budget.

Secretary McHale, I don't think you will find a more open invitation of support during your tenure, and we certainly look forward to renewing our friendship and working with you.

I would like at this time to turn to my friend and colleague and partner, Marty Meehan, for any comments he may have.

MEEHAN: Thank you very much, Mr. Chairman. I join you in welcoming our witnesses today, particularly our former committee colleague, Paul McHale.

Secretary McHale, it is great to see you again. You were an outstanding member of Congress. You have been an outstanding public servant over the course of your career and I look forward to working with you in this new position.

Mr. Chairman, in that statement, you pointed out correctly the challenge before us. The Defense Department and this committee must struggle with the harsh realities ushered in by September 11, 2001.

We must remain vigilant in our efforts to deter any threats against America, both at home and abroad and be prepared to respond to any contingency. It is my hope that the discussion today will assist in this endeavor.

Secretary McHale, you step into a brand new position created only recently by the defense authorization process. You have daunting challenges, yet great opportunities. It is you that shape the duties of your new role.

As you embark on this effort, I hope you will consider a few particular areas of interest. First, as I know you agree, intergovernment coordination is of utmost concern given the structure and nature of this nation's public institution.

Our federal system necessarily brings with it a layered approach to crisis response and consequent management with federal, state and local officials all representing a key part of the effort to combat terrorism at home.

In efforts to operationally coordinate, the Department of Defense and the newly created Department of Homeland Security will, I am sure, prove daunting. Secretary McHale, please let us know how we can assist you in this effort.

Second, the role and mission of the Reserves and National Guard is a large concern. The Guard and Reserve component is an untapped resource in many ways. Perhaps it holds the answer to several of our present day problems. I look forward to hearing the views of all of our witnesses in this area and working further on the matter in the future.

Finally, functional coordination will be important as well. Both the Department of Homeland Security and the Department of Defense have responsibilities for developing effective response technologies, but at the moment, DOD seems better positioned for success in this area, particularly in the area of chemical and biological defenses.

Secretary McHale, during your tenure as assistant secretary of defense, I hope you can implement a vision and a working solution for effective coordination of research and development activities.

Mr. Chairman, I thank you for calling this hearing. I look forward to working with you on these and other matters.

SAXTON: Thank you very much, Mr. Meehan.

Let me just say at the outset that there are — we organized the subcommittee structure on the Armed Services Committee and we now have six subcommittees and we have found that in scheduling it is virtually impossible not to have conflicts develop between hearings that the subcommittees are holding.

The Forces Projection Subcommittee is holding a hearing next door and obviously, some members are members of both committees and both subcommittees, I should say. So, that is the reason that you see some empty seats here.

We have two panels of witnesses for our proceedings this afternoon. I would like to welcome our first witness, obviously the Honorable Paul McHale, assistant secretary of defense for homeland defense.

As I noted in my opening remarks, Paul McHale is not only a former member of Congress, but a distinguished former member of the Armed Services Committee as well. We are pleased that he is serving in this new capacity and we welcome his testimony.

I also note that he is a Marine and am very proud to say that my nephew is a brand new Marine who is currently at the school of infantry at Lejeune. And so, Paul, welcome. We look at you as part of our family. We look forward to your testimony and I will state without objection, your prepared statement will be entered into the record.

Mr. Secretary, the floor is yours.

MCHALE: Thank you, sir.

Mr. Chairman, Ranking Member Meehan, distinguished members of the subcommittee; it is a pleasure and an honor

to return to this historic room. It is indeed a privilege to appear as the very first witness of this subcommittee.

As noted, Mr. Chairman, I have submitted my formal statement for the record. What I would like to do with your permission is briefly summarize the content of that statement as previously presented to the subcommittee.

President Bush has said that the world changed on September 11, 2001. We learned that a threat gathers on the other side of the earth and can strike our own cities and kill our own citizens. It is an important lesson, one we must never forget.

Oceans no longer protect America from the dangers of this world. We are protected by daily vigilance at home and we will be protected by resolute and decisive action against threats abroad.

Mr. Chairman, at the outset, we should recognize that America's first line of domestic defense really begins overseas and results from the capabilities of our forward deployed forces. In that sense, Secretary Rumsfeld has correctly noted that the annual homeland defense budget of the department is, in reality, \$380 billion.

In fact, every dollar that we spend on defense ultimately protects our nation, whether that is spent on defenses that are located within the continental United States or reflected in the wartime activities of forward deployed forces on the other side of the globe.

Secretary Rumsfeld recognized in the wake of the barbaric events of September 11, that there was, indeed, a need to create a combatant command with the assigned responsibility to defend the United States of America, our citizens, our territory and most importantly, our freedoms.

The mission of Northern Command reads as follows: The United States Northern Command conducts operations to deter, prevent and defeat threats and aggression aimed at the United States, its territories and interests within the assigned areas of responsibility as directed by the president or secretary of defense, provides military assistance to civil authorities, including consequence management operations.

NORTHCOM's responsibilities essentially fall into two categories: the war-fighting defense of the area of responsibility and civil support. Mr. Chairman, we will fail in our mission if all we do is get better and better at cleaning up a successful enemy attack. Our first responsibility is to defeat that attack as far from our shores as possible.

MCHALE: NORTHCOM has that responsibility within its AOR.

If we are unsuccessful in the first instance and if an enemy attack is tactically successful, it is the responsibility of Northern Command, in cooperation with and in support of civil authorities, to provide the necessary military forces in order to guarantee an adequate response and to do so in a timely manner.

NORTHCOM's force structure is modest. There are very few forces permanently assigned, although appropriate units have been identified for possible assignment as needed.

The commander of NORTHCOM is Air Force General Ed Eberhart. It's my understanding that he testified before this committee this morning. He is a superb officer and has taken charge with tremendous focus and dedication of what I believe is a tremendously important military command.

His headquarters is located at Peterson Air Force base in Colorado Springs, Colorado. On October 1, 2002, NORTHCOM achieved initial operational capability.

In contention with the recognition that we needed to create a new combatant command to defend the United States of America, there is a similar recognition that we needed to create an appropriate office for civilian oversight.

Accordingly, the Defense Authorization Act of 2003, we created, you created, by statute, the position that I am now honored to fill: assistant secretary of defense for homeland defense.

We exercise oversight of all homeland defense activities of the Department of Defense. The initial focus, but not the only focus, is upon NORTHCOM. As members of this body will be quick to emphasize, there are portions of the United States external to the NORTHCOM AOR.

And so, we had the responsibility to exercise oversight not only with regard to Northern Command, but also with regard to Pacific Command, STRATCOM, TRANSCOM (ph) and indeed, all the combatant commands insofar as they interact with homeland defense responsibilities.

I was nominated by the president in January and confirmed approximately one month ago. One of the issues that

you will explore not only today, I suspect, but into the foreseeable future, is the perspective relationship between the Department of Defense and the newly created Department of Homeland Security.

We in the Department of Defense believe very strongly that close coordination; joint training and exercises must be carried out in order to guarantee that civilian authorities and military forces are properly coordinated into a single effort.

When we provide support to civilian agencies, it is indeed just that. The civilian agency in the United States will under almost all circumstances take the lead. We will provide support as appropriate. The military chain of command throughout that process will be preserved. There are no assigned forces in the Department of Homeland Security.

The military chain of command goes from the president of the United States to the secretary of defense to the combatant commander who is tasked with the responsibility. But we will support upon order of the president, those activities where the capabilities of the Department of Defense may be unique in that they don't exist within the civilian sector, or, under extraordinary circumstances, where civilian authorities may be overwhelmed by the magnitude of the task.

Finally, Mr. Chairman, in my opening remarks, let me touch briefly on the role of the National Guard. I have indicated in a number of prior statements that the National Guard must remain a balanced force. The National Guard historically has provided the strategic reserve with regard to overseas combat.

I believe that that responsibility will remain. I also believe that consistent with its force structure and end strength, we will see an enhanced homeland defense mission for the National Guard.

There are those who would argue that the National Guard should be exclusively dedicated towards overseas war fighting, or, in the alternative, exclusively dedicated toward homeland defense missions.

In fact, we must achieve both. The lesson that we learned on September 11 was that a determined enemy will attempt to attack the United States both abroad and at home. The National Guard can play an extremely important role, in fact, perhaps a central role in responding to those threats that manifest themselves within the United States.

Mr. Chairman and members, I can assure you that today, as always, America's men and women in uniform stand ready to defend our nation against any threat either at home or abroad.

Mr. Chairman, that concludes my opening statement. I would be more than happy to respond to your questions.

SAXTON: Thank you very much. Let me turn first to the ranking member, Mr. Meehan for any questions he may have at this time.

MEEHAN: Thank you very much, Mr. Chairman. Mr. Secretary, I visited Meick (ph) labs at our national protective center, they have been part of the federal effort to assist state and local law enforcement entities. What role does the Department of Defense play in transitioning military technology to the civilian first responder world and are there any examples that you could provide to the committee.

MCHALE: Mr. Chairman, the role is not only one that is based upon appropriate policy, it's a statutory obligation. The National Defense Authorization Act of 2003 required that the Department of Defense appoint an individual who would be responsible within the department for the transfer of technology, when appropriate, to civilian agencies.

We've not yet done that, but I anticipate that either I or a subordinate in my office will be tasked pursuant to the statute.

The area where I think there is an extremely high likelihood that technology developed within the Department of Defense would be both applicable and appropriate for transfer to civilian authorities relates to weapons of mass destruction and remote sensing capabilities.

We, obviously, within the department seek to develop the very best capabilities we can to detect weapons of mass destruction, whether they be radiological, chemical, biological and even perhaps nuclear. That same kind of detection capability has an appropriate and even an essential role in civilian society. And so, as we develop those kinds of remote WMD sensing capabilities for the military, I certainly anticipate that we will, consistent with the appropriate constraints and guidelines, make every effort possible to quickly bring that same capability to the civilian community.

I mentioned just a couple of moments ago that we will intervene, at the direction of the president or the secretary of defense, to provide civil support when we have a unique capability or civilian authorities are overwhelmed.

It is our hope that on fewer and fewer occasions will it be determined that we have a unique capability because it is

certainly our hope as a department, and I believe as the nation, that civilian capabilities will become more robust, that with that technology transfer, capabilities now only found within the Department of Defense will be seen found as well within the civilian community.

MEEHAN: I think, Mr. Secretary, there is enormous potential, as I visited with the national protective center. We've made great strides in terms of the uniform, the equipment that our soldiers wear and it is so applicable to — the firefighters ought to have the technology. They ought to have the technology to be able to identify a firefighter in a burning building, the technology to be able to measure what our firefighters', police officers' health condition is at every point in time.

I just think there is enormous potential and I look forward to working with you in making sure that transition works effectively for those first responders.

Mr. Secretary, discussions that we've had, you mentioned making the National Guard a more balanced force. As I understand it, that means ensuring that the Guard remains a strategic reserve for the military while at the same time providing substantial homeland defense capabilities.

What would be required to make sure that the Guard becomes a substantial homeland defense force?

MCHALE: Training, equipment and proper coordination with Northern Command. The National Guard brings enormous flexibility as well as talent to our ability to defend the United States at home. The National Guard is geographically dispersed throughout the nation. The National Guard brings military discipline and organization to a challenge at hand. The National Guard has flexibility in that it is under the command and control of the governor as opposed to the secretary of defense, and so, a governor can immediately respond to a crisis that might occur within his or her jurisdiction.

I believe that we need to look at the kind of support we provide, for instance, to the civil support teams to make sure that those teams that operate in a contaminated environment have both the training and equipment that is required.

And then, ultimately, we have to coordinate those guard forces, which are in state status or perhaps in what is called "Title 32 status". That is when the command and control is exercised by the governor, but the expense related to that military activity is paid for by the federal government.

But the Guard's activities, when the Guard is operating under the command and control of the governor have been properly coordinated with the overall concept of operations envisioned by the combatant commander, in whose AOR, the Guard had been deployed.

Those are the kinds of ways in which I think the Guard can provide tremendous utility. The best example I can give are the civil support teams. It is likely that if we were to have a domestic WMD event, the first chem-bio forces to respond would not be Title 10 United States forces. The first forces to respond almost certainly would be the CSTs under the governor's command and control.

MEEHAN: Well, as a follow up to that, if there was a weapons of mass destruction incident on our soil, Northern Command obviously would play a significant role in the government's response.

In your view and I kind of ask this question for Neal Abercrombie who is not here today, who has raised this issue in the full committee. In your view, what, if any, would the legal restrictions — what legal restrictions might hamper the Northern Command's ability to operate domestically.

MCHALE: I am familiar with Congressman Abercrombie's views. If I go afield of your question, please just let me know, Mr. Meehan.

MEEHAN: Oftentimes Congressman Abercrombie goes afield when he is raising these issues.

MCHALE: The first point I would want to emphasize is when it comes to military activity in the United States, in a civil support role; we are not the lead federal agency. It is very likely that in almost any scenario, a department, probably under the new Department of Homeland Security, FEMA, for instance, would take the lead.

We would provide the military chain of command and the capabilities, but it is only when a civilian agency is unable to address a challenge at hand that DOD capabilities would be brought into play.

And so, if we had a domestic WMD event, I think it is quite likely that first responders at the county and municipal level would be the ones to first arrive at the scene.

Shortly after that, depending upon the magnitude of the event, National Guardsmen, probably in state status would begin to arrive. Once it became apparent that a WMD event had occurred, civil support teams, again, in state status, federally funded, but in state status, would likely arrive to provide the initial response.

It would be hours, perhaps even a day later before the first significant Title 10 forces, under United States command, would begin to arrive and that really gets to your question. Once Title 10 forces arrive, what kinds of legal constraints are there in terms of the response.

If we were talking about a WMD, a weapon of mass destruction event, there are very few legal constraints that would inhibit, indeed, I can't think of any legal constraints that would inhibit the Title 10 response. That would be the type of catastrophic event where there would be an expectation that local, state; Guard and United States Title 10 forces would come together as a team to address the situation at hand.

Where there are legal constraints, and I know where Congressman Abercrombie has concern, is in the area of law enforcement as it pertains to Title 10 forces as opposed to consequence management activities, which I have been describing up to this point.

The 1878 statute, the Posse Comitatus Act, on its face makes it a criminal offence to utilize what we now call Title 10 forces for law enforcement, unless there is an express authorization for that activity in the Constitution or by statute.

The position that has been taken by the secretary of defense is that we in the department see no need to rewrite the 1878 statute and that in its current form, it does not pose an unreasonable restriction on what we would be able to do in the event of a catastrophic event or the requirement that we provide civil support.

In fact, the secretary has taken a very cautious approach to this issue and that we in the department have no desire or intent to enter into law enforcement activity which ought to be performed constitutionally and statutorily by civilian authorities.

And so, coming at the issue from a different direction, the position taken by the secretary of defense reaches a conclusion similar to Congressman Abercrombie in that the current statute is probably satisfactory.

The only caveat we place to that is this — in the other body, in the Senate, there has been some interest in conducting hearings on this subject. And although we are not advocating any change in the statute, we will fully cooperate with this body, with the Senate in any review that a member might want to initiate with regard to posse comitatus.

But we are certainly not seeking a change in that law.

MEEHAN: Thank you, Mr. Chairman.

SAXTON: Mr. Secretary, during the hearings preceding this hearing, particularly in the full committee, we have been hearing recurring themes in briefings and testimony.

SAXTON: One of the themes that you articulated as well in your opening statement is that we need to stop the bad guys, if you will, as far from our shores as possible and I would like to ask if you would expand on your vision of how your office in conjunction with Northern Command might visualize carrying out that part of the mission and also, the other recurring theme is that intelligence is critical to achieving our goals. Is there anything that needs to be done at our level or yours to better integrate intelligence with our operational capabilities?

MCHALE: The answer to that latter question, sir, is yes, and that activity is already underway within the Department of Defense. In the same piece of legislation that created the job that I am now privileged to hold, a new position was created for undersecretary of defense for intelligence. That position, which is now held by Secretary Cambone, or soon to be Secretary Cambone, he has been confirmed by the Senate. I'm not sure if Mr. Cambone has yet been sworn in. That position will be the senior position in the Department of Defense, with the responsibility to fuse intelligence sources worldwide.

I've already spoken with Mr. Cambone regarding the need to bring a homeland defense perspective to that intelligence fusion. It is one thing to collect raw data. It is something else to review it in terms of its potential impact on homeland defense activities.

I am confident that Mr. Cambone in his new position will move dramatically in the direction that I think is implied by your question.

Secondly, it was for a very specific reason that I read the mission statement of NORTHCOM during my opening statement. That statement says, as I noted earlier, that NORTHCOM has the responsibility to deter, prevent and defeat threats and aggression aimed at the United States.

In the wake of what happened on September 11, there was an understandable, but I think, short-term focus on the exclusive portion of the mission that deals with consequence management. And that remains an important responsibility for Northern Command.

But we will fail if all we do is get better and better at cleaning up after an attack has been successful. The American people expect more than that from us, from all of us. Northern Command understands the responsibility to develop a strategy that effectively defeats enemy attacks before they come to our shore.

And so, as you look at the component parts of Northern Command, although it is not a formal part of Northern Command, General Eberhart has a dual command in that he is the commanding officer of NORAD as well as the commanding officer of NORTHCOM. NORAD provides the protection of our airspace not only above the United States, but above Canada as well.

NORTHCOM incorporates that kind of responsibility and supplements it with the additional responsibilities related to maritime defense and land defense. For reasons that we discussed earlier, it is unlikely that NORTHCOM will be assigned significant land forces because the AOR covers the continental United States, where we believe the counterterrorism activity should be led by civilian law enforcement authorities.

But with regard to the maritime defense and without going into great detail, I believe that there is an urgent need to create within the maritime buffers on either coast of the United States the same kind of comprehensive defense in depth that has been created over our air space and implemented by NORAD.

And so, my hope would be that with very serious commitment of planning and resources, we could establish a maritime defense in depth that would create upon the oceans the same kind of defensive capability we have already established within the airspace of the continental United States and over Hawaii, Alaska and the territories of our nation.

SAXTON: Thank you.

If the efforts to keep the threat at a distance, in fact, fail and there is a successful tactical attack, do you feel comfortable that the command and control arrangements are in place to enable the appropriate agencies to respond?

MCHALE: Mr. Chairman, if I ever used the word "comfortable" as it relates to my position, I will probably resign immediately thereafter. I am not comfortable, but I believe an extremely diligent effort has been made not only with regard to command and control, but also with regard to the operational capabilities.

We can always get better and we will be focused with an urgency to get better every day to a degree that I think will meet with the satisfaction of this committee.

In terms of command and control, we had to explore relationships that had not previously existed. This is a new combatant command. The forces, for the most part, have not yet been assigned to that command.

With regard to land capabilities, those forces will not be permanently assigned, so we had to establish a command and control structure that enabled a combatant commander to reach across service boundaries and influence the training and equipment of forces that have not yet been assigned to him. He has to influence those forces because although today they belong, for the most part, to a service, tomorrow, in the wake of an event, an attack, those forces could become his.

And then, lastly, we have to coordinate command and control so that it is compatible with the lead federal agencies that we are likely to support in the event of a domestic attack.

And so, the coordination is not only within the military, it is external to the Department of Defense across the theme that we intend to close between the Department of Defense and the Department of Homeland Security.

But I can tell you today that command and control capabilities are the best that we can possibly achieve, considerably better than they were a year ago, significantly better than they were six weeks ago. But they can always get better.

SAXTON: In my first question, I asked about intelligence and you responded, I think, very appropriately. There is also a domestic intelligence piece, which I would hold up as an example in asking this question.

We task a federal agency, DARPA, to find a way to help federal agencies communicate better within the structure which currently exists and between themselves. The system that came out was called the total information awareness system. And (inaudible) difficulty in making some changes that we ultimately need to make to enhance our ability to correct and share information.

I guess my question is holding TIA, TIA up as an example, where you would be making recommendations as to how we change the way we do business, not just with collection and sharing of information, but, for example, if the FBI needs to have a more robust something and you recognize it. Will you be making recommendations along those lines or if FEMA needs to do their job in a different way, will you be making recommendations along those lines. Or, if we need to restructure the way military departments work together, will you be making recommendations along those lines. Just as some examples.

MCHALE: The answer is "yes". If the improved operational capability relates to the ability of the Department of Defense to conduct a military mission in support of a lead federal agency, we will join with that lead federal agency in seeking the resources and the guidance from the Congress to make sure that the necessary change takes place.

This is a partnership. One of the lessons learned, I think, by September 11 was the need for open and cooperative communication among governmental entities. Not only at the federal level, but intact at the state and local level as well so that within appropriate constraints related to operational security, we all need to talk to each other in greater detail so that when operational capabilities have to be employed, those capabilities can be brought together in a unified effort.

And so, with regard to, for instance, information sharing. It may well be that the Department of Defense has the unique ability to develop technological capabilities for communication that no one else, by definition, would have. I think as was proposed with TIA and might be proposed with regard to other programs, the department would likely develop the technology, but then not operationally employ it.

Once the technology for communication is developed, if there are policy based sensitivities, the likely course of action would be for that kind of technology to be transferred to a civilian law enforcement agency subject, perhaps, to judicial oversight and certainly subject to congressional oversight so that the use of that technology would then be in conformity with the law.

We have technological capabilities, including R&D capabilities within the Department of Defense that are extraordinary, better than you might find almost anywhere else. We are dedicated to developing that technology and when inappropriate for DOD use, openly transferring it to a civilian agency subject to congressional oversight and operational employment.

SAXTON: Thank you. I'll ask one final question then turn to Mr. Turner.

This is an observation and I'll just make the observation and ask you to make an observation subject to the topic, which happens to be intelligence, once again, because I think you will probably agree with me that this is one of the most important issues that we have to deal with for the following reason.

During the Cold War, we developed a robust intelligence collection agency that was developed and geared to meet the threat of the Cold War. That threat involved an enemy that was not hard to see who was, which was, in many ways, quite predictable. We knew their tactics. We basically knew what their hardware looked like and in many respects, we knew what to expect and the intelligence was there which gave us the capability to deal with it.

Along about 1992 or 1993, as was expressed back at that time by our vice president, who was then secretary of defense, he said, "I've got good news and bad news. The good news is that the Soviet Union is going to go away. The bad news is that the threat isn't, it's just going to change some."

Beginning in about 1993, soon after the vice president made that statement, we collectively took advantage of an opportunity to relax our intelligence capabilities some — some think too much. I happen to be in that group.

At the same time, the new threat was developing, or the threat was changing so that we no longer had — we had relaxed the old capability and in relaxing, we were not developing a new capability, nor did we even recognize, maybe, that we needed a different kind of intelligence.

Today, as has been pointed out, we need a smaller force to deal with the threat that we normally talk about in this group, at least, terrorism; you need a much different military capability. And I would make the point that we might need a much different intelligence capability, much different than it was during the Cold War, much different than it was during

the '90s and I believe — I happen to believe that that is one of our very basic and most important challenges.

Would you respond and let us know how you see that situation.

MCHALE: Mr. Chairman, you and I have known each other for quite some time in the context of congressional representation. But in other parts of past activity, I have been an infantryman for almost 30 years.

I don't want the enemy to get into my wire. I want to reach out and defeat an enemy threat as far forward of my position as I possibly can. I will use every weapon available to me to accomplish that mission at the greatest possible distance.

With regard to INTEL (ph), I believe that as we have a defense in depth established to protect the United States of America, the very first layer of that defense is a worldwide intelligence capability, robust capability involving both technological means of information collection and human intelligence as well.

That has to be a profoundly robust capability, capturing every conceivable threat, which might ultimately impact upon the United States of America. And then once we gather that data in as powerful a methodology as possible, we need to bring to it, really for the first time in our nation's history, a homeland defense perspective so that we not only have the information, we analyze it in a way that makes clear how that information may be threatening to our fellow citizens, our territory and our freedoms.

We cannot wait for the enemy to get into the wire. And so, I believe that the position of undersecretary of defense for intelligence combined with the terrorist threat integration center, that was proposed by the president in his state of the union address, we will, for the first time, recognize that a terrorist threat potentially possessing weapons of mass destruction is out there, that that threat can become imminent and that we need to bring to the collection of that INTEL (ph) a homeland defense perspective that was not common, if at all in existence, during the Cold War.

MCHALE: As a practical matter, I begin each day with an intelligence briefing. When those briefings began, a common phrase from me was, "What does this information mean as gathered on the other side of the world in terms of its potential impact on the United States of America. So, it's not only a better collection, it's better analysis and I think the new position of undersecretary of defense for intelligence in cooperation and in coordination with the terrorist threat integration center will dramatically improve that process.

SAXTON: Thank you, Mr. Secretary, thank you very much. I appreciate those answers.

Mr. Wilson?

WILSON: Thank you very much, Mr. Chairman.

SAXTON: The gentleman from South Carolina.

WILSON: Thank you. And I, Mr. Secretary, appreciate you being here today and I had heard of your service with the Marine Corps Reserve and I heard about it in the right way, from a Marine Corps officer who was bragging about you. So, it was a very positive situation.

Of course, I am particularly honored. I represent Paris Island where we trained the chairman's nephew. And so, that's where he got the excellent training at Paris Island.

MCHALE: In the Marine Corps they say, "We win battles and make Marines" and that is a happy equation.

WILSON: It means a lot to our state to participate in the defense of our country through training. I particularly appreciate your background as a reservist, because you know of the capabilities of the National Guard and Reserve.

This has been an extraordinary day for me. And then General Eberhart was very clear of the central role as you also indicated, of the National Guard and the recognition that the National Guard is familiar with communities. It knows the geography. It knows the people. There is networking with people, people with civilian backgrounds. Knowing the communities is just so helpful, particularly in a time of catastrophe.

So, I want to thank you all for recognizing that. I know the Guard is trained, willing and is prepared for that role. I just want to thank you for what you have done to promote that.

A concern, though, that I do have is really the one of chairman and that is intelligence. Probably the questions need to go to Secretary Cambone, but I am concerned about connecting dots. And from your perspective, do you believe that the intelligence agencies are coordinating enough in trying to address the concerns that people have.

MCHALE: This really comes back to the kind of comment that I made earlier in response to the chairman's question. The cooperation is dramatically better. But, the lesson...

SAXTON: If I may just interrupt you for a minute. We're going to have a 15-minute vote and then a five-minute vote. My suggestion to the members would be that we stay here until — I figure we've got about five minutes left in the first vote and then we'll go and be back shortly.

Please.

MCHALE: I think there is a shared conviction that all of the relative agencies, those within the Department of Defense, those external to the Department of Defense but within the federal government and those law enforcement agencies at the state and local level need to share information more effectively.

What I am sensing is a dramatic change in attitude and culture brought upon us by the enemy attack on September 11. No one, no one I have met has acted in the least way parochially since I have been in this position. There is a strong desire on the part of all concerned to make sure that information essential to a stronger defense is shared by all those who possess it.

The hesitation that you heard earlier grows out of the intense commitment in our office that we will get better and better and better every day. And so, when we have a change in attitude that is a significant improvement and a change in technology that allows for the sharing of information more expeditiously, we will then look at the status quo and see how we can make it better.

And so, I want to communicate to you a sense of satisfaction that the sharing of information, the sharing of intelligence, is much better today than it has been historically, but it is an ongoing mission requirement where we can, in fact, achieve improvement.

Even if — we are the best in the world at this. Even if the Archangel Gabriel came in here today and said, "By my side, this is the best information sharing system that human beings can at the present time create," we would try to do better.

WILSON: I'm delighted to hear that, because it just concerns me so much that we've got great intelligence but trying to put it all together and getting it to the right people is just going to be so crucial.

In line with technology, it's my understanding that two information technology efforts are being fielded within DOD that could be better suited for the Department of Homeland Security. The homeland security command and control systems sponsored by the Northern Command and Protect America are vetting (ph) data and sharing system. Should DOD be developing these systems, or DHS?

MCHALE: That's project Protect America that you are referring to?

WILSON: Yes.

MCHALE: DOD should be developing that system, but the recommendation that I have provided is that we should not operationalize it. There are technologies that can only be developed at the present time by the Department of Defense. I think it is reasonable. I hesitate to speak in any way that reflects a judgment regarding the capabilities of the Department of Homeland Security, but my sense is that the Department of Homeland Security probably could not today develop that kind of information sharing technology.

I think you would find almost a consensus that only the Department of Defense or certain high-end developers in the private sector might have that kind of capability. But I have also said that if we develop that kind of technology consistent with the testimony I gave to the Senate with regards to TIA, once the technology is developed, because of the policy issues that are involved, it probably ought to be migrated for operational purposes out to a civilian law enforcement agency subject to statutory constraint, judicial and congressional oversight.

And so, the issue on the first instance is should DOD develop the technology? My answer would be "yes". Should the Department of Defense operationalize it? Probably not. Should it be operationalized by a civilian agency such as the Department of Homeland Security? Yes.

WILSON: Thank you very much.

SAXTON: Thank you.

Mr. McIntyre?

MCINTYRE: Thank you, sir.

Welcome, Secretary McHale. We are very proud of you and pleased to have served with you on the Armed Services Committee.

I know recently you were in North Carolina at Camp Lejeune and you may also be familiar with the North Carolina National Guard Program. They currently have an academy of counterterrorism that has worked extremely effectively that already has the facilities, that already has the training program. It already has the opportunity to help share that perhaps as a role model we hope nationally.

I'd like to offer to you and to ask you in this need to train over 1.5 million law enforcement line officers to find a solution that we could go ahead and start moving to implementation, if the North Carolina National Guard Program that is already established with a curriculum and a capability that could be fielded within 90 days, would be of assistance to the Department of Homeland Security, that would be a possible offering that our North Carolina National Guard could make to help you.

MCHALE: My hope is that the folks that are attending the hearing with me today from our staff are writing vigorously behind us. I can't see them but perhaps you can. That's a hint, guys.

I'm not familiar with that program, but it certainly seems to me that like some other programs in North Carolina, with which I am familiar, it could serve as a model. We would obviously need to review it more carefully.

I just note very briefly that when I was in Onslow County, North Carolina and visited with the Emergency Management personnel within the Onslow County-Jackson area, I become familiar with another example of this kind of coordination, that they call the military/civilian task force for emergency response.

And I frankly felt when I looked at that example of what could be achieved in terms of military/civilian coordination; it seemed to me that that precise example might well be a nationwide model. They call it a MCTFFER — Military Civilian Task Force For Emergency Response. In fact, we are now actively looking at the possibility of proposing such MCTFFERs at the state level in every jurisdiction. And the model that we looked toward was the one that I first became familiar with when I visited Onslow County.

MCINTYRE: That's wonderful. Thank you. And I hope that this additional resource, the North Carolina National Guard, the Academy of Counterterrorism that is already established and they're already underway and does have the facility to help. We offer that and hope that you all will gladly follow up with us.

MCHALE: Sir, if I may, let me just make a brief point. This highlights the value and the flexibility of the National Guard. Counterterrorism within the United States is not a military mission, at least in terms of Title 10 forces, meaning the Army, the Navy, the Air Force, Marines. Counterterrorism within our country is typically led by the FBI and other law enforcement agencies.

We, within the Department of Defense pursuant to the statute that Mr. Meehan raised earlier, the Posse Comitatus Act of 1878 cannot normally become involved in law enforcement activities. But, the National Guard, which is not a Title 10 force, when retained in state status, may, at the direction of governor and historically has at the direction of governors, been involved under emergency circumstances in law enforcement activities.

MCINTYRE: Right.

MCHALE: So, as we look at counterterrorism in law enforcement, that is an area for appropriate National Guard activity subject to state law and that is precisely where National Guard forces can be used and in which federal Title 10 forces may not lawfully be employed.

MCINTYRE: Thank you. Thank you, Mr. Secretary. Thank you, Mr. Chairman.

SAXTON: Thank you. Undersecretary, as you know, but others may not, we are having two votes. The first one is 15 minutes and there should be five or six minutes left, so we'll go over and get that vote and then there'll be a five-minute vote. We'll come right back. We should be back in 15 minutes.

MCHALE: Yes, sir. That's fine.

(RECESS)

SAXTON: Mr. Larsen, would you like to ask your questions at this time, please.

LARSEN: Thank you, Mr. Chairman. It's the value of rushing back from a vote. I hang around long enough, no matter how far down the guy that you're sitting, if hang around long enough, you get a chance. I appreciate the chance to do questions.

Mr. Secretary, with regards to — talk about weapons of mass destruction and preparing for that. How big do you think the threat of cyber attacks are and what role do you have in that. What role should DOD have in preventing cyber attacks and enhancing cyber security for a lack of a better term? If you could help me out with that, I would appreciate it.

MCHALE: There are a few areas that could logically be placed within homeland defense that, because of their jurisdictional responsibility have been assigned elsewhere.

The cyber defense of the United States could, obviously, be included in a list of homeland defense responsibilities, but in fact, a policy decision has been made in this area and a few others, reflecting, in most instances, the highly technical issues that are involved, to assign, instead, the responsibility to someone other than the assistant secretary of defense for homeland defense the responsibility or assign the responsibility to a combatant command other than NORTHCOM.

So, let me answer the question, I guess, in reverse order. NORTHCOM generally does not have a responsibility to defend the nation against a cyber attack. To the extent that the military is engaged in that mission, I believe it has been assigned to STRATCOM, the strategic command.

Now, it has not yet been determined the degree of oversight that will be exercised by my office, assistant secretary of defense for homeland defense, because as I said earlier, we have, by statute, the overall supervisory responsibility for all homeland defense activities of the Department of Defense.

I can tell you that STRATCOM will take the lead in terms of the assigned combatant command, but it has not yet been determined to what degree my office will exercise oversight with regard to STRATCOM's activities.

That, obviously, is real. Forgive me. I should have emphasized that at the beginning of my answer. And STRATCOM, I am confident, will make a vigorous effort to address that threat in terms of defensive capabilities.

LARSEN: Does your answer mean that you're in the running, or that — OK. So, where else might it go in terms of providing oversight to STRATCOM?

MCHALE: It is conceivable that the undersecretary of defense for intelligence might have the primary responsibility for that oversight. The kind of areas, as an example, the coordination and development of missile defense could conceivably have been assigned to the assistant secretary of defense for homeland defense and could conceivably have been assigned to NORTHCOM. But that was not the decision made because of the immense complexity and the established record of activity with regard to missile defense. The decision was made to assign the development and coordination responsibility for missile defense to STRATCOM.

In a few areas where you have an overlap between substantive activity and geographic relationship, the decision was made to assign the responsibility on the basis of the substance of the activity. I didn't phrase that very well, but I think it is quite likely that among other offices being considered, the undersecretary of defense for intelligence may well have the primary oversight responsibility with regard to cyber defenses.

Clearly, the decision has already been made that STRATCOM rather than NORTHCOM will have that responsibility.

LARSEN: I guess I will go back to a comment you made earlier about total information awareness. You mentioned that operationally, if and when that is developed, the program is developed operationally it be somewhere outside of DOD, do you have — and some of the concerns have been expressed about total information awareness have been how would it be used. Is it appropriately — can it be appropriately used.

Do you have any thoughts about walls, safeguards, parameters under which it could be used in the field? That seems to be one of the — one set of questions being asked about it. (Inaudible) set of questions I am asking about it.

MCHALE: If I may, let me put it in context. The total information awareness program has been a matter of some considerable debate going back over a number of months.

If, in fact, we had credible evidence that terrorists had brought into the United States a weapon of mass destruction and if we could not, at that point, locate such a weapon, the kind of data mining capabilities that TIA would provide could prove to be enormously important in locating and defeating such a weapon of mass destruction.

The technology has been under development at the Department of Defense. The concern, really, has been on two levels. Should we have the technology? My answer to that question is yes, we should. Should the Department of Defense operate it? No. And that has not been the intent from the beginning. Once the technology is developed utilizing the resources of the Department of Defense, the intent has been to transfer that technology out to the civilian community, particularly to civilian law enforcement agencies, for their employment in order to, in this instance, locate that weapon of mass destruction.

The Department of Defense does not intend to operate TIA in major part because of the sensitivities reflected in the vote on the Wyden Amendment and the desire that this kind of intrusive but perhaps essential capability be operated by civilians, not be military personnel.

Now, to come back to your question — if I were still in Congress, I would probably have some thoughts as to how the legislation should be written to provide restrictions that would guarantee privacy, yet allow us to use that technology when appropriate in light of an imminent threat.

There are ways in which we have judicially and statutorily limited this kind of activity in order to protect privacy in the past. But as a Department of Defense official, it would be inappropriate for me to begin to pick and choose among the various types of constraints we have traditionally employed in order to protect not only our security, but also our privacy.

LARSEN: Thank you, Mr. Chairman.

SAXTON: The line of questioning, I think, was excellent. I have one final question, Mr. Secretary and let me just ask it generally. In terms of medical response, we face some issues here that are really quite unique, particularly in terms of biological attack. And I've heard discussions — discussions about discussions that are ongoing in DOD about what the appropriate DOD role might be.

Do you see it as a training role? Do you see it as a function, perhaps of the National Guard? Do you see it as some combination thereof? Would you just give us your thoughts at this point?

MCHALE: We will bridge the gap between the status quo and where we hope to be in the not too distant future. In this area of responsibility at the present time, only the Department of Defense has certain capabilities to provide assistance in a highly contaminated environment involving a weapon of mass destruction.

And so, Mr. Chairman, this is precisely the kind of area where the unique capabilities of the Department of Defense are now available to the nation if the situation warrants such a response. If we have a catastrophic event involving a weapon of mass destruction, the high-end WMD response capabilities of the Department of Defense at the direction of the president or order of the secretary of defense will be made available to the nation.

Our hope is that in combination with a short-term operational commitment, we have an immediate training opportunity so that capabilities that we have within the Department of Defense — I'll give you an example. The Marine Corps' chemical and biological instant response force — CBIR — where some of the extraordinary capabilities of SPCCOM within the Army, should, in the not too distant future, be replicated in civilian society at the state and local level and perhaps within other federal civilian agencies so that what we have today, which is unique, might be shared and made more effective within the civilian community. If it were to happen now and if it were a high-end event, DOD forces would likely be committed and we do have contingency plans to support civilian authorities under those extraordinary circumstances.

But I would hope five years from now the kind of WMD response capability, including biological, chemical, radiological, even nuclear response capabilities could also be found within civilian society so that we in the department would no longer be unique and we truly would be a backstop for more robust civilian capabilities.

SAXTON: Would you see current DOD capabilities migrating — when you say civilian, are you talking about the first responder community or are you talking, perhaps, guard community.

MCHALE: Well, I was thinking, frankly, of the civilian community in the sense of first responders. Our first responders today have limited capabilities in terms of a WMD response.

We would hope to transfer technology so that in terms of equipment and training, first responders without imperiling

their own lives, would become more effective in reacting to a domestic WMD event.

I would certainly hope that more robust capabilities could be found at the state level of the emergency management agencies at the state level and then, I would also hope that within the federal government, some of these capabilities could become more robust within civilian agencies. Without commenting for the moment on the current capabilities of any of those agencies, I think there is a clear recognition we've got to get better.

And then, lastly, the Department of Defense ideally would provide those capabilities that were unique or required by an event so overwhelming that even more robust civilian capabilities would be deemed inadequate for an effective response.

Right now, we do the job, because we can do it and because we have the capability and because the nation needs it. And the Department of Defense will not stand by when the nation needs a response. But our hope is that we become the response of last resort and that we become more effective in a WMD response within our own civilian agencies, state and federal.

I share with you the desire — let me put it this way. In the defense community, it is always good to find ways to migrate various functions to other places other than the military so that we — so that the military can do what the military has to do and other people can do some other things.

MCHALE: We are war fighters.

SAXTON: Yes, sir. But to the extent that that migration takes place, it seems to me there has to be some significant level of training to help those capabilities migrate and that would be a DOD function as well.

MCHALE: Yes, sir. And I missed a portion of your question in my response. You asked about the Guard. The Guard plays an extremely important role in this area today. The Congress has now mandated by law that there be 55 civil support teams, at least one in every state and territory.

Those civil support teams have exceptional but limited capabilities. Training is good, but not great. We're going to work with the Guard to take a current level of capability which is quite good and make it even better and we will work with the Guard to examine the range of missions assigned to the civil support teams.

Right now, the civil support teams essentially assess a contaminated area. They go in with the appropriate personal protection gear and the correct equipment to assess the nature of the contaminant. They determine what kind of contaminant has been released and they bring with them a communications package that allows integration of their assessment capability into more robust follow on forces.

MCHALE: The issue is, should they be limited to assessment and communication? That is where they are at right now. That's something that along with a lot of other issues we'll be reexamining in the future.

SAXTON: Mr. Turner?

TURNER: Thank you, Mr. Chairman.

SAXTON: Mr. Turner, incidentally, is the — in the last term we had a panel on terrorism which had no legislative authority. Mr. Turner was the ranking member, so we've enjoyed an opportunity to get to know each other in a forum very near to this forum, very close to it.

We look forward to your questions.

TURNER: Thank you, Mr. Chairman.

Mr. McHale, thank you for being here. You were an outstanding member of Congress and I know you're going to do an outstanding job in your position at the Department of Defense.

I wanted to follow up on some of the earlier questions and responses that you gave that related to the ability of the department to respond based on the Posse Comitatus Act limitations and the various statutes that, in some cases, governors would have authority over the Guard and those kinds of things.

I wanted to pose a hypothetical for you to give you the opportunity not only to talk and think through with us that issue regarding who would respond, who has the legal capacity to respond, but also to allow you to share with us your understanding of the various resources — state, local, federal that could be brought to bear in the event of a terrorist threat. And the hypothetical that I wanted to give you was one that would — goes something like this.

Let's assume on April 1, the FBI decides, based on intelligence that they have been gathering regarding a terrorist cell in Albany, New York, that they wanted to go ahead and move on that cell and see if they could take that cell out. In the process of doing so, let's assume they discovered several computers that revealed certain information that was valuable, one of which was the information that on that same date, a terrorist attack was planned on Washington, D.C. by driving a tanker — a tractor trailer rig from New York down the New Jersey Turnpike.

The information revealed that the contents of that tanker could be conventional explosives. Plans were also there for the use of chemicals, let's say phosgene (ph) could have been carried in the tank and an explosive device attached to the underside and detonated by the driver of the vehicle. Plans were also there to carry a nuclear bomb, so all three were possibilities. And learning that information, immediately the FBI sent word to local law enforcement, put everybody on notice up and down the New Jersey Turnpike to look for this tanker. In the information revealed it was likely to be a Diamond Shamrock transport tanker. So, they gave everybody notice of what the identification would be.

Let's assume that after the word went out through the New Jersey state police and other law enforcement agencies that someone working at the toll booth at the New Jersey Turnpike spotted such a truck, picked up the phone and made a call and said, I think I've seen a truck like the one has been described.

What agencies — state, local or federal would be called on to respond to intercept, disarm that threat and what legal issues would be raised regarding who had the authority to be called upon to do it.

MCHALE: Mr. Turner, as you posed the question, I think there would be few legal issues. The issues for the most part would be operational. All of the entities that I can think of which could come into play would be free to do so within the parameters of the law.

The issue would be, who could most effectively intercept the truck as you have described it. The primary responsibility for the intercept of the truck would probably fall to the FBI. The truck, by virtue of the nature of the threat and also the fact that state lines were crossed by the terrorists would clearly bring the threat within the jurisdiction, the counterterrorism jurisdiction of the FBI.

The FBI does possess certain high end, very capable operational techniques and equipment to conduct such an intercept. My expectation is that the team assigned that responsibility would be deployed.

Now, with regard to the Department of Defense. We would not normally have a role to play in domestic law enforcement activity even of this nature with the exception that the Department of Defense does provide certain classified technical assistance regarding some weapons of mass destruction. Those capabilities would be available if civilian authorities were unable to respond.

Lastly, while the FBI would probably intercept the vehicle and the Department of Defense would provide contingent support, depending upon the nature of the WMD threat, we would certainly notify all of our consequence management commands, such that if there were to be an actual WMD event, as opposed to a threat, we would be fully prepared to provide support to civilian authorities during the consequence management following the detonation of any device.

That's the way it would work out. Law enforcement, even involving counterterrorism would be a civilian function. Technical capabilities to defeat the threat would be made available if the FBI or the Department of Justice requested such a support and lastly, if the take down of the vehicle proved to be unsuccessful, we would immediately put on notice our response capabilities so that these very well trained, very technical capabilities within the Department of Defense would immediately be available at the direction of the president and secretary of defense to reinforce civilian consequence management activities.

TURNER: I was under the impression that — maybe incorrectly informed that if there was a threat of a nuclear terrorist attack, that the president had greater authorities to utilize military forces than he would in the event that the threat was a conventional explosive.

MCHALE: Yes, sir. He does and that is highly classified and I would be more than happy to return to the committee on another occasion and discuss that in detail. Your statement is correct, but to go beyond that, I think, would raise some significant issues of operational security.

TURNER: One of the issues that I think the hypothetical raises is the issue of how to apply what I call the "A team" to such a crisis.

MCHALE: I'm sorry. Apply...?

TURNER: What I call the "A team". The best, most prepared, best equipped, best-trained unit to do the intercept. And I have concerns that we may not be to the point yet in our planning that we have made those determinations. In many cases, the Department of Defense, as you have suggested in your earlier remarks today, does have the superior force by way of technology, by way of personnel and their training and what I am concerned about and would like to have your help in thinking through and resolving is we want to be sure that in the event we have such a threat, that we know that we have deployed the "A team" to do the intercept to try to prevent the incident.

I'm not convinced that we don't have the possibility, if not likelihood of sending the "B" team to do the intercept and not be able to accomplish the task. Obviously, in DOD with the technology that you have special forces, capability, I suspect we would be better prepared to intercept such a tanker in Pakistan than we would be in New Jersey. I think that that's an issue that we need to try to determine on how to ensure that that is not the case.

MCHALE: Mr. Turner, in an unclassified setting, let me give you an absolute reassurance that the kind of capability you seek to have does exist. It is well trained. It is routinely exercised. It is a mature operational capability that goes back many years. Some of the very best warriors we have in uniform have trained for a long period of time to go into precisely the kind of situation you have described when there are certain types of WMD threats.

I think, if I were to meet with you in private and discuss with you in detail just how well trained these forces are and how prepared they are to move very quickly to eliminate such a threat, you would find the answer to be satisfactory.

I would not want to leave the impression at this hearing today, particularly I would not want our enemies to believe that we are unprepared to respond. We are fully prepared to respond to that type of event and we have practiced to do so for many, many years.

TURNER: Well, I am reassured to hear that. And because of the classified nature of the information, it also raises the concern that in order to utilize it and make it available, that some of that information may have to be shared with local law enforcement in the event the capability needs to be deployed.

MCHALE: That capability is fully shared with the FBI. The FBI in this kind of situation would have the lead response assignment with regard to counterterrorism. And the FBI routinely trains with and consults with and compares operational capabilities with the military forces that I generally described during an earlier portion of my answer.

Let me assure you that if this required capabilities beyond those embedded in the FBI response, military forces highly trained, very specialized would be available to assist the FBI and for many, many years, the FBI and the Department of Defense have coordinated a response to the kind of scenario that you have presented.

TURNER: Thank you.

SAXTON: Thank you. I appreciated the gentleman's question and I would say two things. The first is that we will be delving into this and we have already made plans to do so. So, in upcoming events, Mr. Turner, that we have already planned, we'll be looking at these kinds of things.

The second observation — the second reason that I appreciate your hypothetical; I would have appreciated to hear more if you had only designated a different route.

Ms. Susan Davis, please.

DAVIS, S: Thank you, Mr. Chairman. I appreciate your response to that. The thing that — can you talk a little bit about some of the ambiguities in terms of who would be responsible. I think you tried to answer someone earlier, but we had a discussion, I guess it was yesterday, in here. We've had so many hearings that I can't remember which one it was.

But I had taken part in the National Defense University and we did the table top (ph) exercise. And there were a number of concerns, ambiguities in terms of first responders versus the National Guard and other entities in trying to work with the local communities.

Are there some areas where you think we do have some serious ambiguities that really need to be addressed? I'm just wondering how are they being resolved now. How do we work through that?

MCHALE: The answer to your question is "yes". I wanted to reassure Mr. Turner that the ambiguity does not exist at the high level of response that would be required in his hypothetical. But the ambiguity certainly exists and that is why we

created a department of homeland security. That is why NORTHCOM was created and that is why my office was created.

The real challenge is to make sure that in terms of how an event would actually evolve. I came into government on a planning commission in my hometown borough. I spent time in the state legislature, then the Congress and now here, so I know what it is like at the lowest level of municipal activity.

MCHALE: If we had a terrorist event, it is likely that the first responders within that community would be one the ones, who, by definition, got there first. You'd have local firefighters and EMTs and other local personnel who would respond and I am not entirely confident. In fact, I am not confident that we have adequately addressed the safety and operational challenges at that level of response.

We have a tremendous first responder system in the United States. If someone is injured in an automobile accident, we know what to do. But if there is a chemical attack, we are working through the appropriate response. We are doing so diligently and quickly, but a great more needs to be done, particularly at the local level. You move beyond that and the governor in the state, as soon as he finds out that it is a DMW attack, a terrorist attack, is likely to call out the Guard forces in the area. They'll be under state command and control. They won't be part of the Department of Defense at that point.

The governor is likely to call out simultaneously his civil support team. That team is also under state command and control, though it is paid for by the federal government. They are in what is called Title 32 status. But then, at the next step, if it is a major attack and it is beyond the capabilities of first responders and emergency management personnel, the Guard and the CSTs, then the governor may well call the president of the United States and indicate that the problem is beyond the capabilities of local authorities, at which point the president may make a decision to commit Title 10 U.S. military forces.

We have forces that can respond. They are organized and ready to go. I visited many of those forces in recent days. And if a governor made such a call and the president directed, the Department of Defense in that extraordinary circumstance, would be prepared to respond.

Now to come to your question. You now have local first responders, state emergency management personnel, Guard personnel, civil support teams and potentially U.S. military forces co-occupying the same area. And what really has to be worked out is the coordination among those response capabilities.

We are, in fact, much better today than we were on September 11, 2001, but I do have to tell you, there is considerable work ahead.

DAVIS, S: I appreciate that, because I think that certainly at the local level, people want to make a strong contribution in that regard. And there is some concern, perhaps, that (inaudible) in the communities. I just wanted to state that as well.

I also had a chance to talk to (inaudible) recently about some kind of joint harbor operations center, where you utilize a (inaudible) system like a (inaudible) surveillance system. Is that anything that you are working with? I guess I would just ask you to please take a look and see what they are doing around that and to seek your support for that as well.

I appreciate that. Thank you. Just one other question. The folks at Coronado Island — I represent San Diego, are concerned about the security if the aircraft carriers there at North Island and I have to assume that we are looking out for their security, but what are we doing differently there that perhaps wasn't done September 10.

MCHALE: When the threat condition became more severe approximately a month ago at the time, as you may recall, when the Department of Homeland Security went from yellow to orange. The Department of Defense, in terms of force protection condition in the United States, went from Alpha, which is the less restrictive category, to the more restrictive category of Bravo — "B".

When the Department of Homeland Security, in consultation with the Department of Justice decided to lower the threat level from orange back to yellow, we did not make a similar decision with regard to force protection conditions. We stayed at Bravo and although that subject of ongoing review, I don't anticipate in the near term that that force protection condition at a higher level will be diminished in any way.

One of the differences between NORTHCOM and the other combatant command is that ordinarily a combatant commander establishes the force protection condition within his AOR, his area of responsibility. The decision was made that again, because NORTHCOM is a little different and that the AOR covers the continental United States, that the force protection of an installation including the ships in San Diego would remain with the service that had jurisdiction over those

components.

And so, the Navy ultimately is responsible, under current law, for the protection of those carriers, but the overall condition in the United States has been raised to a higher level and is not likely in the near term to be lowered.

I also would point out we have, without going into detail, we also have air coverage that is provided that is called the "air cap" that is provided by NORAD over the continental United States, so the air cap is significant and the land protection is at a heightened level and so, although it is not the highest level of force protection, we believe that at this point, in terms of world events, it is the appropriate level.

SAXTON: Mr. Secretary, thank you very much.

I'm sorry, Ms. Davis. Do you have another question?

DAVIS, S: No. I just wanted to thank you.

MCHALE: Thank you.

SAXTON: In bringing this portion of the hearing to a close, I would just like to thank you for being here and just say to you that throughout the afternoon, both here in this room and when we went to vote, people came up to me, one after another and said how pleased they were that you are in the position you are in and just generally expressed the view that we couldn't be better served.

We thank you for what you are doing. We know you made some sacrifices to do this and we look forward to working with you. We'll be following your leadership as we move forward with these issues.

Thank you very much.

MCHALE: Thank you, sir.

SAXTON: We've had two distinguished military officers sitting in the wings and as Secretary McHale leaves, let me just introduce our second panel this afternoon. This panel will provide an outline of the issues facing our nation's Guard participation in homeland defense. Our witnesses are Major General Raymond F. Rees, the acting chief of the National Guard Bureau and Major General Timothy J. Lowenberg, adjutant general of the state of Washington and chair of the Homeland Security General Association of the United States.

Let me just say, General Lowenberg, that Mr. Larsen will return. He has an obligation until 4:00 and he'll be back to be with us in just a few minutes.

At this point, we are ready to hear your testimony, General Rees and General Lowenberg, please proceed as you see fit.

REES: Yes, Mr. Chairman. I am General Rees, as you said, the acting chief of the National Guard Bureau. It is a pleasure to be with you and the distinguished members of your committee and certainly on this auspicious occasion of the first hearing for your committee.

I am pleased to be here with my colleague, General Lowenberg who has been a very significant leader regarding homeland security among the adjutants general.

We're grateful for this opportunity to be with you and share our perspectives.

I have prepared a written statement that provides detail but would like to just highlight a few key points.

SAXTON: Yes. That would be great. We will include it in the record in its entirety.

REES: Thank you.

The Guard prior to September 11 was providing an unprecedented level of support to overseas military operations in the various combatant commands. Here at home, many people talked about what the National Guard could do for homeland security.

In the aftermath of September 11, however, actions spoke louder than words. The Guard has proven itself once again by rapidly, competently and with great agility performing both overseas and domestic missions, both federal and state. You are familiar with these successes.

They range from airport security to our operations in Afghanistan. They are covered in the written statement and I would just move on from here to talk about the future.

The National Guard is poised; we believe, to play important roles in homeland defense, including the ground-based missile defense, air sovereignty and information operations among others.

In addition to these military missions here inside the United States, the National Guard Bureau will also facilitate military support to civil authorities by the Army and Air National Guard. This includes domestic disaster relief operations, counterdrug operations and incident management assistance such as would occur after terrorist use of a weapon of mass destruction.

As specified in Title 10, the National Guard Bureau serves the departments of the Army and the Air Force as their official channel of communications with the states on all matters pertaining to the National Guard.

Recently we have coordinated with the combatant commander of U.S. Northern Command, General Eberhart, to provide Northern Command with the same connectivity to the National Guard of the several states. Since the National Guard Bureau tracks state as well as federal call-ups of the National Guard, we are in a good position to provide General Eberhart with some key situational awareness of state command at National Guard operations.

This should augment his ability to effectively plan for and manage the overall role of his command. The Guard Bureau's capability is a two-way channel of communication to the National Guard of the several states is a valuable tool in our homeland defense and homeland security environment.

We are pursuing some discussions and initiatives inside the Department of Defense to better exploit that capability for all segments of the Department of Defense.

The protection of our homeland against terrorism is expected to be a protracted endeavor, much like the Cold War. To that end, many policy experts' reports and studies have advocated an expanded role for the Guard and homeland security.

Some have suggested that the Guard should be reoriented, reequipped and retrained predominately for the homeland security mission. The reality, however, is as Mr. McHale spoke to earlier that the guard is an integral part of the Army and Air Force total force mission capability vital to the survival of the nation.

In the past, the resources, personnel, equipment and training provided for the wartime mission were sufficient to allow the Guard to also support local and state civilian authorities in responding to disasters or other threats.

Times have changed. The threat posed by well-financed, sophisticated, and determined international terrorist groups has raised the bar as to what the National Guard must be able to do. While the National Guard will continue to maintain a high state of readiness for overseas military operations, it must also better prepare itself to respond to threats here inside the United States.

Both at the Bureau and in the States, the Guard is working hard to find ways to meet the increased demands of the homeland security mission while still maintaining its full capability to execute its total force requirements.

The Bureau is working with the states as they identify what homeland security capabilities they need. We plan to consolidate and validate the stated requirements and then work to help find solutions.

We believe the road ahead also includes a transformation of our current National Guard counterdrug efforts into an integrated counternarcotics/homeland defense counterterrorism program. These employ many of the same tactics, techniques and procedures as well as equipment training and skills. Therefore, a great deal of cross skill transfer could begin immediately once a change is put in place.

Such a transition between and cross mission sets will allow National Guard troops to take their places on the front line in the war against terrorism.

In the brief time we have here today, I have summarized a few of the ideas that we're currently working. I put more into the written statement and I would mention to you, there are a couple of other educational opportunities that your committee may want to take advantage of. First, at the Pentagon on 26 March there will be a civil support team there all day long demonstrating their capabilities. We can set up appointments for your members if they care to see that.

I've also brought with us a white paper on a concept of how the Guard could be used in homeland security and a short historical document of how the New York National Guard responded to the events of September 11.

In closing, the Guard has helped the Army and Air Force to fight America's wars overseas. The Guard has helped state and local authorities fight floods, forest fires and riots. The Guard has helped fight the fear and uncertainty surrounding weapons of mass destruction with its civil support team.

The Guard has helped in the war on drugs, its tie in with law enforcement. These successes would have been impossible without the visionary leadership and support we have gotten from the United States Congress over the years. We have every confidence that the same level of congressional leadership and support will ensure that the Guard achieves its full potential in helping to fight the scourge of terrorism as well.

Thank you for this opportunity. I look forward to taking your questions.

SAXTON: Thank you very much.

General Lowenberg?

LOWENBERG: Mr. Chairman and distinguished members of the committee. I thank you on behalf of the adjutants general of the United States for this opportunity to speak about the role of U.S. military forces in homeland security and ground troops as we see it from the front line, from our forward deployed positions in all of the states, territories and the District of Columbia.

The Adjutants General Association of the United States affirms and supports everything General Rees has related to you in his opening statement and in the remarks he has submitted that this committee has accepted for the record.

The adjutants general and the National Guard Army and Air Forces we command are already major players in states' response plans and are full partners for emergency management, law enforcement, fire, health and other civilian emergency responders.

We truly are the forward deployed military forces in America's own theater of operation. Many of us, in fact, a majority of the nation's adjutants general are dual hatted as our states senior emergency management official. For example, I not only command our military forces, I also directly oversee all statewide emergency management and an emergency enhanced 911 communications program.

A second, I coordinate the activities of our state emergency management council and our state committee on terrorism and the ongoing work of the 35 federal, state and local government agencies and private sector organizations, such as hospital associations, non-governmental volunteer organizations and the like, which work collaboratively to make our state safer from the threats of domestic and international terrorism.

I am a member of the FBI joint terrorism task force and the U.S. attorneys' antiterrorism task force.

In my third and distinct role as a state's designated homeland security director, I am responsible for our state's interaction with the White House Office of Homeland Security, the newly formed Department of Homeland Security and other federal agencies such as the Department of Justice and the FBI.

LOWENBERG: I also chair the weekly meetings and oversee the daily liaison among the governors' chief of staff and senior policy advisors and the domestic security members of the governor's cabinet and our independently elected state attorney general.

I point out these complex civil military rules and responsibilities not because they are unique to me or to the state of Washington. In fact, they are not. They are typical of most adjutants general in most states.

I point them out because they illustrate the National Guard's critical role in state response plans and state emergency preparedness strategies and secondly, because they reflect the daily roles, responsibilities and relationships with civil authorities that simply do not exist anywhere else at the American armed forces.

These key relationships should not be cast aside in our response to a national security event. They should be the very foundation upon which our department of defense fashions its contributions to the incident response.

With a new and expanding range of chemical, biological, nuclear and radiological threats, response time is critical. With field operations in more than 3,300 communities nationwide, we are the military forces that can react in time to make a difference from the very earliest stages of an emergency response. We're able to respond quickly and efficiently and with a minimum of overhead and administrative costs because of a standing joint state area command structure, which serves as the adjutant general's mobilization headquarters for all National Guard troop deployment.

When used properly, as they were for deploying thousands of guardsmen to more than 440 airports following the attacks of September 11, these state headquarters elements, by cost efficient force multiplier for the defense department. When not used, as was the case when the Army decided to federalize the National Guard for border security missions in mid-2002, the results are unnecessary costs, extraordinary time delays, operational inefficiencies and in many instances, degradation of our combat readiness.

Our state area headquarters are capable of playing a larger role in responding to domestic security events. As a member of the general officer work group at Northern Command, I, along with other adjutants general have been exploring operational courses of action with NORTHCOM that would take better advantage of this National Guard Resource.

Mr. Chairman, members of the committee, let me on a personal note just add my vote of confidence along with that previously expressed by Secretary McHale or General Ed Eberhart, the first Northern Command commander, an extraordinary individual and truly, the best American that I know to fill this critical role and a role, I might note, has not been filled in a sense. George Washington was a combatant commander for the continental United States, with superb leadership and an officer who truly understands the nuances and the complexities and the various statuses of the National Guard.

The leaders of the National Guard are ready and eager to contribute in an even more meaningful way to our homeland security, but as part of a dual mission set that includes our continued combat support and combat service support for military operations. Homeland security is an important mission, but it would be a grave mistake to try to make it the sole or primary mission of the National Guard.

I would note again that we speak with one voice with Secretary McHale in urging that we be dual missioned and dual resourced to serve the entire spectrum of the needs of American military forces and for both homeland defense and homeland security.

Although there may be a need for selected units, such as our civil support teams to be specially missioned or resourced primarily for homeland security purposes, homeland security can be most effectively and efficiently accomplished as a dual mission that complements, enhances and draws its essential strengths from the National Guard's continued combat force structure and combat training and overseas deployment experience.

I mentioned our civil support teams, so let me pause to emphasize that we believe strongly that every state and territory should have a civil support team. Only 30 states have a team at the present time with one other state, Kansas, anticipating certification of team by the end of this month. The lives of emergency responders and citizens in the 23 remaining states and territories are no less important.

Our association along with the National Guard Association of the United States National Emergency Management Association, International Association of Emergency Managers, council and state governments, the National Governments Association urge Congress to fund the 55 teams authorized, but not funded by the 107th Congress, thereby providing a team for every state and territory.

The Guard is clearly capable of doing more and should do more, but much of what we know needs to be done and much of what the reports of the Hart-Rudman Commission and the Gilmore Commission and other thoughtful advisory groups have advocated be done by the Guard can only be accomplished by having the secretary of defense recognize these domestic missions as being within the responsibility of the Department of Defense and by Congress authorizing and appropriating funds to carry out federally approved homeland security mission.

I would note that Senator Kit Bond of Missouri and Senator Feinstein and others have introduced legislation, Senate Bill 215 that is now before the Senate Armed Services Committee that would authorize the National Guard to execute missions in a governor's homeland security plan that would be approved by the secretary of defense.

The bill is patterned after the successful National Guard Counterdrug Act, but we are currently authorized and funded, as many of the committee members well know for a modest amount of additional training for quelling civil disturbances under the Garden Plot Operation.

This bill would enable us to do much more, from counterterrorism contingency planning and exercises with civilian authorities to protecting critical infrastructure and key assets. The Adjutants General Association of the United States and the National Guard Association of the United States urge for this legislation and swift passage.

As I have explained in greater detail in my prepared remarks, the National Guard for several states are able to respond

so efficiently to multi state and regional disasters because of the coordination role, or the fusion role, if you will, of the National Guard Bureau.

By statute, the National Guard Bureau is the channel of communications between the several states and the secretaries and the chiefs of staff of the Army and the Air Force. But the reorganization of the Department of Defense, including the creation of Northern Command, it's important that the chief of the National Guard Bureau be authorized by statute, rule and regulation to serve as our channel of communications between the states and the new military support to civil authority executive agents for DOD, Secretary McHale and the new action agent for DOD, the Joint Staff (inaudible). I pointed out the necessary statutory and regulatory changes in my written statement.

Finally, the Guard is unique in the number of legal statuses in which it can be engaged, from state active duty at state expense, for natural disasters and other state emergencies not involving federal interests, the Title 32 duty, under state control, but with federal oversight, at federal expense and for federal purposes, such as our counterdrug missions, our civil support team deployments and airport security and other such missions, and finally, Title 10 status under federal control and federal expense for federal purposes such as our role in 89 countries last year as part of America's globally deployed combat forces.

For the many operational and cost efficiency reasons that I have articulated in my formal remarks and the attachments to those remarks, the adjutants general of the United States and the nation's governors believe strongly that with rare exception, the National Guard forces are used for federal purpose within the United States, we should be in Title 32 status under continuing state control, albeit with federal oversight and at federal expense, because of the federal purpose for the domestic deployment.

I have given the committee a copy of the National Governor's Association resolution on use of the National Guard, which was adopted three weeks ago at the Governor's winter meeting in Washington, D.C. As previously indicated, Mr. Chairman and members of the committee, I have expanded on these and other key issues in my written statement, which I would ask to be incorporated in the record.

I look forward, along with General Rees, to responding to your questions. Thank you very much for what you do day in and day out to make America safe and to protect us from the scourge of international terror.

SAXTON: Thank you very much, Mr. Lowenberg and your statement will be included in full in the record.

We have been talking about the changed threat and changed functions of various units of the military. It seems to me that one of the most dramatic changes that we have seen, requirements that we have seen, affects the National Guard.

My friends and neighbors — incidentally, I've got two little statues in my office. One of them is a little soldier with an M-1 rifle kind of charging forward. We call him the "ultimate weapon". And right next to him, there is a statue of a Guardsman, and we call him the "ultimate patriot". So, we understand what you do and the people that work with you and for you and we appreciate that very much.

But the fact is, as I was saying a minute ago, the requirement for the Guard has changed very dramatically in the last several years. We used to tell our friends and neighbors, come on, sign up. Give us two days a month for training and a couple of weeks in the summer time and here is your benefit package and there is a retirement at the end of the road and people signed up for that duty, knowing that they might be mobilized and deployed for a short period of time, once or twice in their career.

It's not that way anymore, as you know better than I. I guess my question, then, comes to the question that has been raised in my mind and in others minds here by statements that the secretary of defense has made about changing in some ways, the role of the Reserves generally.

How do you see those potential changes affecting the Guard?

REES: Mr. Chairman, we certainly have been attuned to some of those statements and there has been a lot of discussion. Certainly, there is concern, but as we develop the conversation, we find that we think we've had the opportunity, excuse me, to actually hear from the secretary in conversation with the adjutants general here about two weeks ago where he very strongly stated that he fully supported and sees the National Guard and Reserve as a key element of the total force on into the future.

And so, there are needs for transformation to meet the realities of the 21st century, but it is not to the detriment of the

Guard and Reserve the way — in my interpretation of his remarks.

LOWENBERG: I would certainly concur with that assessment, particularly in our meeting with Secretary Rumsfeld a few weeks ago in Washington D.C. They all recognize that we spend about 3 percent of our nation's gross domestic product on our collective defense, but consider fundamentally reshaping the National Guard so that we play a lesser role in our combat — combat support and combat service support functions would require a truly radical change in the apportionment (ph) of resources by the federal government for our collective defense.

So, I think the adjutants general are confident that what Secretary Rumsfeld is contemplating is a balanced suggestion of roles and missions that don't really, fundamentally detract from the dual mission that we spoke of earlier in our opening statement.

SAXTON: Thank you.

The most likely changes that I have been able to identify in various conversations with various people have to do with the capabilities that are currently in the Guard and Reserve that are needed on a very frequent, sometimes long term basis by active — to supplement the active force. And perhaps there has been some thought given to taking some of the mission out of the active force and make some trades with various functions that are in the active force and Reserves.

Is that the kind of thing that you see being talked about.

REES: Mr. Chairman, I think that is exactly what is being looked at to find out what is the right balance. There is a very significant study going on right now in the joint staff in regards to that.

LOWENBERG: If I could comment, Mr. Secretary, some of those missions are within my mission set, my state. We provide part of the air bridge to air-to-air refueling for virtually any deployment of forces anywhere in the world for the U.S. military.

And so, in part, the answer to your question depends upon how we present forces and how we utilize the Reserve component. If we utilize the Reserve components in a kind of a cookie cutter approach that says you can only do your contribution by 170 (inaudible) nine-day commitment continuous deployment as opposed to rotating forces, then you get one answer.

If we think in a transformational way about how we present forces, how we use to preserve components, we come to a different answer. I would also note that there is a lot of discussion, for example, about too much civil affairs capability being in the Reserve component. That is missionary that I oversaw for the Air Force for nearly five years throughout the world to include operations for the UN peacekeeping office and operations in Bosnia to enforce the Dayton Peace Accords.

The fact is that the true expertise for reconstituting functioning civil society lie largely in the private sector and lie largely in the Reserve component.

So, we greatly diminish our ability to provide for America's needs abroad and to represent America's interest if we don't take maximum advantage of what is truly unique in the Reserve component.

SAXTON: Thank you.

Unless you have something further to add on the subject, I'll move on to another question. Thank you.

Secretary McHale talked about the important role of the Guard in meeting various contingencies because of the capabilities under Title 32, which leaves the command of the state guard in the hands essentially of the governor, correct?

REES: That's correct.

SAXTON: And I guess my question is this. In as much as we face a situation like none that we have faced in the past, vis a vis an attack on our civilian community by foreign entities, and in as much as the military function, if you will, of the guard will be carried out to provide for national security. It is an unusual situation and I don't say this in a disparaging way, but any governor or any governor's advisors, but the fact of the matter is, that there is a level of training that seems to me to be necessary in order to make or ratify the decisions that have to do with the activities and missions of Guard units around the country.

Are there changes that are necessary in the command and control structure so that we make sure that the input is there for the appropriate decisions to be made by people who are going to make those decisions, who aren't necessarily — almost

always untrained in these areas.

REES: Mr. Chairman, I think that is a very good question. In so many regards, this relates back to what General Lowenberg just talked about, the way of presenting the forces and what is really required.

If we're talking about force application as opposed to a civil support response humanitarian kind of event, then that clearly ups the ante as far as the training, knowing the rules of engagement, using the weapons properly, et cetera.

And I'll give you an example from your own state. Your New Jersey National Guard has a very good, very fine — their defense organizations — you have 16 organizations that have been flying combat air patrols over the United States.

SAXTON: We are proud of them. We made sure they were nowhere near the turnpike.

REES: There has been a structure put in place through the Air Force auspices — North American Air Defense First Air Force. Their operational readiness inspection capabilities to ensure that these individuals who are predominately in Title 32 status most of the time that when they are required to actually go into a force application mode, they transfer immediately to what we call "hip pocket orders" to Title 10 status and immediately report up the chain of command to First Air Force North American air defense command and perform the mission and perform it very well.

So, that is at one extreme. If, in fact, there were cases and requirements that the federal government saw that we needed to do the same thing and have our national guardsmen to be able to transition from Title 32 to Title 10 and meet that kind of rigorous standard, we could move out and get that accomplished.

On the other hand, we find that those lower end requirements that have to do with the sport of law enforcement, that have to do with the sport of state and local entities out there, we have a lot more flexibility under state law and without limitations such as posse comitatus, where the National Guard to participate in those events.

If, again, there is a requirement for a higher standard there, then certainly the National Guard Bureau, in conjunction with the Northern Command commander could establish those standards.

In fact, I would say that would be one of the greatest benefits of the Northern Command commander could have is using the adjutants general and the National Guard Bureau to establish better standards all across the country.

LOWENBERG: I might add that militia clause in the U.S. constitution provides for the military forces for the several states to serve in the service of the United States — that's a term of ours — in the service of the United States to enforce the laws of the Union, to repel invasions and to suppress insurrections. It sounds an awful lot like the description of homeland security.

And when we talk about military forces of the National Guard being used in Title 32 status, we're not talking about ad hoc state control, because the federal government has to be willing to receive those services. The federal government has to give the green light that says, yes, this proposed mission is in the service of and in the interest of the federal government. And therefore, just as we did with the Air Force security on no notice, 440 airports throughout the United States, we executed that mission according to the rules of engagement, the rules of force (inaudible) directions of the lead federal agent.

The advantages of utilizing the National Guard in Title 32 are really operational. During that six-month period in which we safeguarded the nation's airports, as the commander, I was able to allow people to serve near their homes of record. They were able to spend evenings with their families and still provide full military service. We managed their schedules so that they continued to do individual soldier and airman training with their units on drill weekend.

And so, there was no individual soldier or airman skill degradation and their units remained fully mission ready for any combat mission that they may have been tasked by the secretary of defense to engage in.

We were also able to make adjustments for both personal and employer hardships. None of that is possible when the National Guard forces are federalized.

SAXTON: Thank you very much.

Mr. Wilson?

WILSON: I have a couple of questions. I'll hold them until later so we can get our other colleagues in here.

UNIDENTIFIED SPEAKER: Thank you, Mr. Chairman. General Rees and General Lowenberg it is just a real honor

to be here with both of you. This has been a remarkable day, I think, in regard to the National Guard. It's National Guard Appreciation and Recognition Day.

We began early this morning with General Eberhart and his comments and his recognition of the role of the Guard now and in the future. It was really heartwarming. And then to know that General Bloom (ph) is his chief of staff is very helpful, too, because that is from personal experience.

And then to hear Secretary McHale reiterate the role of the Guard and the significance of the Guard, particularly General Rees' and your position with the National Guard Bureau, this has to make you feel really good. I'm proud for you and I'm grateful to be a part of the Guard myself and in particular, you all both embody what I like about the Guard and that is the esprit de corps, the positive attitude of life. In fact, two of my sons are in the National Guard nare (ph) one field artillery, the other one in the simultaneous drill fulcrum (ph) of ROTC. Unfortunately, one son has been waived. He is an ensign in the Navy, but possibly, maybe Naval Reserves some time.

SAXTON: We have — I like to say this every time I get a chance. When his kids were little, they only had to answer one question — which service will you join.

UNIDENTIFIED SPEAKER: And I still have a 15 year old. He may go Air Force. But I appreciate the Guard so much, particularly in our state. For me, when I was involved in the Guard, I knew how important it was, but it actually took Hurricane Hugo to make it clear how important in natural disasters the Guard was for recovery and backing up law enforcement, not at all, a concern about posse comitatus. We've very familiar how to live with that and work with it and respect it.

But Hurricane Hugo made a tremendous difference in 1989. Then in '91, when there was the federal deployment for the Persian Gulf, of the Air and Army Guard, there was tremendous respect and has been for the Guard ever since. It just makes me feel really good.

Now, another interesting point. As a JAG officer, it's almost like discussing the number of angels that dance on the head of a pin. We do sit around, Mr. Chairman, and discuss Title 32, Title 10. So, I appreciate the chart. I can't wait to take this back to the rear wall (ph).

But these are very important issues that generally are not heavily discussed. General Rees, could you review the advantages of keeping the National Guard forces in Title 32 status when conducting homeland security missions.

REES: Congressman, I'll go through this. I don't want to repeat what General Lowenberg said, but I think the key thing is this local control. These people know the area. They know what is going on. They are close to their homes and the adjutant general has the full capacity to be able to adjust the force as necessary to deal with the situation.

And as a result, you can not only perform your functions there that need to be performed, but you can also maintain the readiness of your Title 10 expeditionary force requirements at the same time.

UNIDENTIFIED SPEAKER: As we look to an increased role of the National Guard and homeland security, will that diminish the role as a Reserve to the Army and Air Force for other deployment?

REES: Mr. Congressman, I don't believe so. I feel strongly that the adjutants general will do everything they can to manage their force appropriately to maintain the readiness of their organizations. I know General Lowenberg here has been doing that extensively with many of the deployments that have come out of the state of Washington.

LOWENBERG: Very true. The circumstances, if you will, the description of Guard service that Chairman Saxton mentioned in the preamble to his questions, describe the Guard perhaps prior to the last decade and a half, but it certainly is not a descriptor of the Guard in the last decade and a half and I think everyone who enlists or accepts commission in the National Guard is fully aware of that fundamental commitment of patriots who are willing to devote substantial part of their lives, and their lives, if necessary, to carry out the missions of the United States.

WILSON: And General Lowenberg, you are best suited as an AG. Are there any impediments to the National Guard forces in Title 32 status at this time?

LOWENBERG: No impediments, Congressman Wilson, I think there are some questions about the scope and intent of 32 U.S.C. 502(f), which is origin in the law that provides Title 32 service. It speaks to the authority to order members of the National Guard with or without their consent to perform training or other duties. And there are those who don't want to see the National Guard involved in any — broadly in Title 32 who would question whether other duties has any meaning

or whether we are simply confined to doing training only in Title 32 status. That certainly bears policy clarification, if not statutory clarification, in my judgment.

WILSON: And finally, do Guardsmen in Title 32 status enjoy the same benefits and protection under the law as Title 10 counterparts?

LOWENBERG: I might answer that initially. For pay and allowances, retirement points, health care, reemployment rights and so forth, the Title 32 benefits are exactly the same as they are for extended Title 10. There are some areas like Tricare medical benefits, access to the commissary, some space available travel that by the same if you are performing missions part of operations a noble eagle (ph), but not if you are performing other homeland duty.

There are some differences at the margin.

REES: And Mr. Congressman, I'd like to emphasize a point here. We've had a number of visitations to various elements that have been called up and have served all over the country post-9/11. Many times, you will go into a circumstance where there are soldiers that are serving in Title 10 standing next to soldiers serving in Title 32. They're doing essentially the same duty and the question always comes up, why don't we have the same privileges and so on.

I think if we are going to move out and certainly take on a significant role in homeland security as currently envisioned that this is going to have to be addressed.

WILSON: Thank you very much. Thank you again. I've been to a number of deployments recently — send off programs and ceremonies and I've never seen the morale higher thanks to your leadership.

SAXTON: Thank you very much, Mr. Wilson.

Mr. Larsen of the great state of Washington.

LARSEN: Thank you, Mr. Chairman. Thank you for recognizing what we all recognize in Washington State — Washington State is a great state. I just want to apologize to General Lowenberg for not being here for your comments, but thank you for coming out here and providing comments to the subcommittee as well to General Rees for your comments as well.

General Lowenberg, I want you to actually give an opportunity to continue a thought that I think you started, but it's covered more completely in your testimony on page six with regards to the Title 10 and Title 32 issue, especially with regard to the issue we had in Blaine, Washington and comparing the experience of getting National Guards people to the border to help with INS and border patrol and customs as opposed to the issue that you have getting National Guards people to their airport in Washington state.

I think it is comparing and contrasting — you get a sort of details from the upside of how well it worked on one side, but not so much about the problems that we had with regards to deployment at the land borders after 9/11. Could you expand on that part of your testimony?

LOWENBERG: I'd be happy to, Congressman.

There couldn't be a starker contrast between the advantages and disadvantages of Title 10 and Title 32 for domestic deployment, a federal mission objective. We responded literally within days to the airport security request. It was a totally unanticipated request by the president of the United States during a press conference, and yet there was a universal spontaneous reaction throughout every state and territory to provide troops. Quite literally, we were only delayed by having to wait for the Federal Aviation Administration (inaudible) our agency to package a training set for our soldiers and airmen who were deploying, but we were still at 440 airports throughout the United States within five to six days. We had up to 8,000 airmen and soldiers going to the airports during the holidays. We deployed from home station. We didn't create any new command and control structure. We didn't incur any travel expenses. We deployed from home station to locations and duty assignments that were in some instances close to the members' homes of record.

They performed duties armed, fully able to execute the laws of the federal and state government with no restrictions at all on the scope of what they could do. They worked in many instances with agencies with which we already had working relationships because of the arrangements that I have previously described in our state.

By contrast, the deployment of forces were land border security was delayed for more than six months and required the creation of man structure out of whole cloth and required that soldiers selected for that duty deploy to one of two

mobilization stations — one on the west coast and one on the east coast for nearly a week of training and preparation.

Unless they were deployed, they could no longer train with their units, so the units from which they were drawn had their mobilization and readiness immediately and permanently degraded for the duration of that assignment.

We were unable to make any accommodations for employer contingencies that not be foreseen, employer emergencies. We couldn't make any personal or family accommodations for the members and they were required to serve, unarmed, ostensibly to provide security against the threat of terrorist intrusion into the land mass of the United States, but they were serving unarmed.

So as I was at the Blaine border crossing with the members of our congressional delegations, we had soldiers on duty, with border patrol customs and INS, fully armed. We've been working with those agencies for more than 12 years. We knew one another extraordinarily well in the counter-drug program and we had other soldiers unarmed in Title 10 duty supposedly for border security and the comment made to the members of our congressional delegation by the senior officials of border patrol customs and INS is, the last thing in the world they expected to be confronted with was the need to protect the National Guard soldiers who have been sent in supposedly to help.

So, our assessment was in our state, at least and I don't presume to speak for all states, that border security augmentation was marginalized and was affected to a significant degree.

LARSEN: I appreciate you expanding on your testimony, because I think it does provide a good compare and contrast to using Title 32 and using Title 10. Representing that district, I've had one or two phone calls from my office as well as a lot of other people receiving phone calls. How can we get the National Guard up there sooner rather than later, in large part because of non-back ups in large part because of the extreme concern about security, a fairly open border — relatively open border with Canada.

So, I just wanted to give you a chance to talk about that a little bit more for the committee so we could understand what that means on the ground.

The second issue, what I want to ask you about has to do with other missions. The National Guard in Washington State helps out local law enforcement with among other things, methamphetamine prevention, interdiction. In fact, Washington state is number three, I think, in the country in terms of states with methamphetamine interdictions and so, I want to ask you about the National Guard mission with regards to homeland defense mission and these other missions where the National Guard has been asked to step in and help out local law enforcement and do you see some of these other non-homeland defense missions being put on the back burner and if so, what might be a solution to address that?

LOWENBERG: Congressman, I don't think we can afford to put them on the back burner. One of the many things I worry about is the congruence of effort among terrorists and drug smugglers. If you wanted to get clandestine materials into the United States, making a pact with drug smugglers would be a very effective way of approaching that.

I think what General Rees testified to earlier was the approach, the transformational approach that takes maximum advantage of the relationship we've built in the counter-drug program and doesn't abandon that program but actually embellishes it so that it can be responsive to both homeland security and counter-drug needs, recognizing that those circumstances and the balance will be different and should be different in every state and territory.

LARSEN: Thank you very much. Thank you, Mr. Chairman.

SAXTON: Thank you. One of the questions that we always like to ask is what you need that we can — that we might be able to provide in order to enable you to better carry out your mission. We've got lots of demands on our resources, but we need to know what your priorities are for things that you need. You need protection equipment. You need communications equipment. You need better command and control. If you had a wish list, what would be on your wish list for us to try to provide for you?

LOWENBERG: Well, speaking for the adjutants general, Mr. Chairman, at the top of our wish list would be a recognition statutorily and in regulations of the role, the proper role of the National Guard Bureau being our channel of communication with the expanded players, senior players beyond the secretaries of the Army and the Air for homeland security. I was very specific in my written remarks of what regulatory and statutory changes would be involved with that.

That just cannot be overstated, the importance of that effective channel of communications — uninhibited channels of communication between the military forces in several states and the senior policy makers in the Department of Defense.

That would be very high on the list.

SAXTON: Explain to me the current situation and how you would like to see it changed.

LOWENBERG: Currently, by statute, the National Guard Bureau channels communications between several states and the secretaries and chiefs of staff of the Army and the Air Force. But literally there is no statutory authority to be a spokesperson or a channel of communications between the states and any one above, if you will, in the DOD hierarchy, the secretaries of those two respected services. So, we think it is quite important, for example, that the law recognize that the chief of the National Guard Bureau be able to be our channel communications for Secretary McHale, for example.

And with the adjutant agent of the joint staff...

SAXTON: And other federal agencies, FEMA.

LOWENBERG: I think it is appropriate to recognize that we have avenues of access to FEMA within the Department of Homeland Security and other agencies but within military channels. That's where we need to have the clarification.

SAXTON: Thank you. General Rees, anything?

REES: I would say that there are several things that were eluded to here earlier about training, equipping and so on need to be addressed. Certainly, we could provide you with them, more information on that.

It's very clear that the importance of Mr. McHale and General Eberhart in defining the mission and establishing what the standards are and the expectations are will be critical for us to be able to identify what we can do at the state level. Certainly, when it comes to the operations of the National Guard in a joint effort before immediate response, many of the things that we normally get through the Army and Air Force channels are not necessarily the missions that are going to correlate to this homeland security requirement.

So, the integrated priority list of General Eberhart's will be very critical to us. The mission described by Mr. McHale will be paramount.

I would say there is another area that you demonstrated a very intense interest in was the intelligence area. We think that there is a huge potential here for the National Guard to provide fusion between state and local and the national requirements of the Department of Defense within proper bounds.

SAXTON: Could you expand on that?

REES: As you know here, General Lowenberg is the head of state emergency management, has extensive relationships throughout his state government. A typical adjutant general has many of those same capabilities. So, they're going to have a situational awareness of what is going on in their state in relationship to other emergency agencies to law enforcement, et cetera.

They are going to be capable of providing information to the guard and Northern Command about the situation as it may exist in a certain state and certainly it could be a conduit for passing that same kind of information back from Northern Command to state and local authorities as appropriate.

SAXTON: So, the flow of information both ways, from the local level to the higher command level and back from information agencies in the federal government to the local level?

REES: That's correct.

LOWENBERG: We are participating, Mr. Chairman, in an advanced concept technology demonstration project in our state and this is the direction, our five year accelerated funded program that would create an IT architecture that would create seamless integration of both non-secure and classified information from the incident commander to General Eberhart in Northern Command.

So, again, the National Guard utilizing our GuardNET, WarriorNet (ph), IT systems, our distance technology training point programs and the advanced concept technology demonstration if it proves to be what we all hope it will be, will provide General Eberhart extraordinary situational awareness, real time situational awareness of conditions and the potential need for federal military forces to augment emergency responders in every state and territory.

SAXTON: You'll be pleased to know that DOD personnel have been on the Hill here the last — within the last 10 days seeking support for them to stand up a pilot program with that system here in the D.C. area.

LOWENBERG: We are participating along with the state of Louisiana, the state of Virginia. We've had that equipment placed in our military joint operations center and our state civilian emergency operation center and in the local jurisdiction emergency operation center, and so, that program is well on its way.

SAXTON: One final question. On the CST teams and Congress intent, I think it was last year, last year or the year before, Congressman Taylor sponsored an amendment which was successful in the House markup which became law, as you know, requiring the 50 states to stand up, for requiring CST teams to be stood up in the 50 states. And my recollection is, in fact, this is more my recollection, this is the staffer who wrote the amendment, provided for us to fund that and we are anxious to do so, but we required a plan from the Department of Defense, which, to my knowledge, we haven't received yet.

REES: Mr. Chairman, it is my understanding that that is still being worked on. They are working to meet your requirements. The latest version of it that I have seen indicates that they will start in fiscal '05 with a program that would take about 18 to 24 months to stand up to the rest of these teams.

SAXTON: Do you know when you anticipate that we may see it?

REES: The latest version that I had heard about was perhaps around the first of June.

SAXTON: We'll be marking up in April. I wonder if — maybe — could you pass along the urgency of the situation. We're going to be marking up our bill in April. I don't know when the Senate is going to mark up their bill. It would be nice if we had it in time to look at it and understand it before April, if that is possible.

I know that is fast, but we're anxious to get this done and we want to do it right. We want to provide the resources that are needed for the deal according to some plan and we'd really like to see it.

REES: Mr. Chairman, we'd be happy to take that message back to the individuals in the office that is responsible for putting that report together.

SAXTON: Thank you.

Mr. Wilson, further questions?

WILSON: No.

SAXTON: Mr. Larsen, do you have anything?

Listen, thank you for the job you do. Thank you for being here today. Your message was clear and articulate and we appreciate it very much. I hope you will pass the word back to the folks, your colleagues that you work with around the country, that members of this committee and the full committee and the Congress of the United States appreciate very much the job, the traditional job the Guard has done and the degree of flexibility that you have shown and the commitment that you have shown over the last months and particularly since September of '01.

Thank you for being here today. We've enjoyed it and benefited from it. I hope the country has as well. I am sure they have.

Thank you very much.

END

NOTES:

[????] - Indicates Speaker Unknown

[—] - Indicates could not make out what was being said.[off mike] - Indicates could not make out what was being said.

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