

ADVANCE EXECUTIVE SUMMARY

THIRD ANNUAL REPORT TO THE PRESIDENT AND THE CONGRESS OF THE ADVISORY PANEL TO ASSESS DOMESTIC RESPONSE CAPABILITIES FOR TERRORISM INVOLVING WEAPONS OF MASS DESTRUCTION

III. FOR RAY DOWNEY

31 OCTOBER 2001



THE ADVISORY PANEL TO ASSESS DOMESTIC RESPONSE CAPABILITIES FOR TERRORISM INVOLVING WEAPONS OF MASS DESTRUCTION

October 31, 2001

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To Our Readers:

The tragic attacks of September 11, 2001, and beyond clearly demonstrate the importance of preparing our nation to counter the threat of terrorism. These attacks underscore the urgency by which we must act to formulate a comprehensive national approach to preparedness. I am pleased to provide this Advance Executive Summary of the Third Report of the *Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction* to assist in making the United States more secure.

Today our nation and its Allies around the world are engaged in military actions overseas to eradicate the threat posed by terrorists with global reach. This is a crucial step towards ensuring the security of our own citizens and others beyond our borders. Efforts are also focused on our homeland. The combined work of all three levels of government and the private sector seek to both *prevent* additional attacks and to identify, arrest and prosecute those who committed these acts and continue to threaten our citizens. These efforts will not be finished quickly. It is imperative that America move forward rapidly and deliberately to strengthen its ability to prevent future attacks and to respond if more occur. Reducing the fear of our citizens and making our nation more secure must be the highest priority.

To this end, we present additional recommendations for consideration. We stress that these recommendations should be reviewed in concert with those delivered in our First and Second Annual Reports to the Congress and the President, in 1999 and 2000. We must:

- ✓ *Improve Health and Medical Capabilities*, both public and private, to ensure our ability to treat the full scope of potential casualties from a terrorist attack whether caused by a conventional weapon or a Weapon of Mass Destruction;
- ✓ *Improve Immigration and Border Control* to enhance our ability to restrict the movement, by all modes of transportation, of weapons, weapons components or potential terrorists into the country and eliminate their ability to operate within our borders;

Please address comments or questions to:

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- ✓ *Clarify the Roles and Missions on the Use of the Military* in support of both emergency response and law enforcement related activities to ensure uses are appropriate;
- ✓ *Improve Security Against Cyber Attacks* and enhance related critical infrastructure protection to ensure the security of essential government, financial, energy, and other critical sector operations against attack; and
- ✓ *Improve State and Local Capabilities*, especially among the brave men and women who will be on America's front line to provide immediate response services as well as resulting recovery actions following an attack.

We emphasize in the strongest possible terms that these recommendations must be considered in concert with others as part of a clearly defined national strategy. Our national strategy must be built from the "bottom up", in a collective partnership of our communities, the states, the federal government and the private sector. The challenges we face are daunting but are nonetheless achievable. Our nation must have a clear understanding of actions we must accomplish quickly to ensure the safety and security of the United States. Above all else, we *must* always ensure that implementation of these actions holds in strict regard the protection of our Constitution and the preservation of our civil liberties.

Our Panel will deliver its Third Annual Report to the President and Congress in December 2001 with considerably more detail. The complete report will attempt to place the attacks of September 11, 2001, and subsequent actions by government at all levels into the context of previous recommendations of our Advisory Panel. This interim report provides an expedited summary of our findings and recommendations from our third year of work, as agreed to by the Advisory Panel in principle prior to the attacks, to inform the Congress and Administration in their on-going deliberations.

Sincerely,

/s/

James S. Gilmore, III
Governor of Virginia
Chairman

IN MEMORIAM

On September 11, 2001, at a few minutes after 10 o'clock in the morning, Ray Downey, chief in charge of Special Operations Command, Fire Department of the City of New York, perished in the collapse of the North tower of the New York World Trade Center. Although the impending disaster was obvious following the prior collapse of the South tower, and with fearless disregard for his own personal safety, Ray stayed at his post with his people, all doing their job.

It is with increasing humility, but with a firm sense of our special privilege and high honor, that we dedicate the Third Annual Report to the memory of our great colleague and good friend, Ray Downey.

Preface

In its enabling legislation, the Congress required the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction to submit three separate reports to the President and the Congress—on December 15 in each of the years 1999, 2000, and 2001. After the terrorist attacks of September 11, 2001, the panel decided to publish this interim document to assist in informing the public debate, including the consideration of policy and legal changes by the President and Congress.

At its regular quarterly meeting, held 27-28 August 2001, the Advisory Panel adopted the conclusions and recommendations for its third report, which are set forth in this document in summary form. The Third Annual Report will include more detailed information on the Panel's findings as well as background information and explanations that inform the recommendations. That report will be delivered to the President and the Congress by 15 December 2001.

Following the attacks, the Advisory Panel held a special session on September 24, during which it reviewed and validated the conclusions and recommendations for the third report contained in this interim report. In addition, the panel reviewed the recommendations made in its second report, issued December 15, 2000, and determined that each recommendation in the second report continues to have direct and significant relevance in the current environment. This document, therefore, also includes a summary of the findings and recommendations of the Second Annual Report.

Full copies of the First Annual Report (December 15, 1999) and the Second Annual Report (December 15, 2000) as well as copies of minutes of all Advisory Panel meetings, its enabling legislation, its current membership, and related information are available online at <http://www.rand.org/nsrd/terrpanel>, or in hard copy by written request to:

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INTRODUCTION

The conclusions and recommendations included in this document are the result of almost three years of research and deliberation. The Advisory Panel began its work in 1999 by an in-depth consideration of the threats posed to the United States by terrorists, both individuals and organizations. A key finding in the first annual report was the urgent need for a comprehensive national strategy for combating terrorism.

By the second year, the Advisory Panel shifted its emphasis to specific policy recommendations for the Executive and the Congress, and a broad programmatic assessment and functional recommendations for consideration in developing an effective national strategy. These conclusions and recommendations are presented in detail in the Second Annual Report, published 15 December 2000, including the comprehensive research and analytical foundation for each recommendation.

For the past year, we have focused on several functional challenges to protecting the United States against terrorism in five specific areas:

- Health and Medical Capabilities
- Immigration and Border Control
- Roles and Missions on the Use of the Military
- Security Against Cyber Attacks
- State and Local Capabilities

To understand the key conclusions and recommendations in this interim report, it is important to place the recommendations in the context of our previous research and analysis. Therefore, this interim report begins with a brief summary of the recommendations contained in our Second Annual Report.

SECTION I: SUMMARY OF RECOMMENDATIONS IN THE SECOND REPORT

The capstone recommendation in the second report was the need for a comprehensive, coherent, functional national strategy:

The President should develop and present to the Congress a national strategy for combating terrorism within one year of assuming office.

As part of that recommendation, the panel identified the essential characteristics for a national strategy:

It must be truly national in scope, not just federal.

It must be comprehensive, encompassing the full spectrum of deterrence, prevention, preparedness, and response against domestic and international threats.

For domestic programs, it must be responsive to requirements from and fully coordinated with state and local officials as partners throughout the development and implementation process.

It should be built upon existing emergency response systems.

It must include all key functional domains—intelligence, law enforcement, fire services, emergency medical services, public health, medical care providers, emergency management, and the military.

It must be fully resourced and based on measurable performance.

The Second Annual report included a discussion of more effective federal structures to address the national efforts to combat terrorism. We determined that the solutions offered by others who have studied the problem provide only partial answers. The Advisory Panel has attempted to craft recommendations to address the full spectrum of issues.

The structure proposed by the Commission for National Security/21st Century (also known as the Hart-Rudman Commission) is one example. That commission proposed placing the U.S. Customs Service, the U.S. Coast Guard, and the Immigration and Naturalization Service's Border Patrol under the Federal Emergency Management Agency (FEMA). This recommendation would not solve the broad strategic challenge of bringing together numerous other Federal agencies under a comprehensive strategic umbrella. Its focus is on the Federal operational response and does not include roles for all the other Federal, State, and local response entities that are critical components of the national effort. Therefore, we submitted the following recommendation:

The President should establish a senior level coordination entity in the Executive Office of the President.

The characteristics of the office identified in that recommendation include:

- Director appointed by the President, by and with the advice and consent of the Senate, at “cabinet-level” rank
- Located in the Executive Office of the President
- Authority to exercise certain program and budget controls over those agencies with responsibilities for combating terrorism
- Responsibility for intelligence coordination and analysis
- Tasking for strategy formulation and implementation
- Responsibility for reviewing State and local plans and to serve as an information clearinghouse
- Include an interdisciplinary Advisory Board to assist in providing broad strategic guidance
- Multidisciplinary staff (including Federal, State and local expertise)
- No operational control

We included a thorough explanation of these characteristics in our Second Annual Report. For instance, we determined that it is essential that this office have the authority to direct the creation, modification, or cessation of programs within the Federal interagency. It must also have strict authority to direct modifications to agency budgets and the application of resources. Only through such a process can there be any prospect of coherence and effective execution of implementation plans to support a national strategy once it is developed.

A critical role for this new entity is the coordination and advocacy for related foreign and domestic intelligence activities, including the development of national net assessments of threats. The entity must have authority and responsibility for tasking related intelligence collection and analysis, compiling related intelligence products from the various agencies, providing national threat assessments as a part of the national strategy, and for producing composite products for dissemination to designated Federal, State, and local entities as appropriate.

In addition to certain authority over the Federal Interagency, we recommended that the new entity have authority to review State and geographical area strategic plans, and at the request of State entities, to review local plans or programs for combating terrorism for consistency with the national strategy.

Finally, we determined that this entity does not need to be “in charge” of operations to combat terrorism. As the attacks of September 11 have clearly demonstrated, that responsibility will fall, at least initially, to State and local jurisdictions. The Federal Response Plan, which provides for Lead Federal Agency and functional responsibilities, works. That process does not need to be supplanted.

To complement our recommendations for the federal *executive* structure, we also included the following recommendation for the Congress:

The Congress should establish a Special Committee for Combating Terrorism—either a joint committee between the Houses or separate committees in each House—to address authority and funding, and to provide Congressional oversight, for Federal programs and authority for combating terrorism.

The philosophy behind this recommendation is much the same as it is for the creation of the office in the Executive Office of the President. There needs to be a focal point in the Congress for the Administration to present its strategy and supporting plans, programs, and budgets, as well as a legislative “clearinghouse” where relevant measures are considered. There are at least 40 committees and subcommittees that have some jurisdiction over the issue of terrorism. No existing standing committee can or should be powered with these responsibilities, because each existing committee is limited in its jurisdictional scope. Despite some attempts in this direction by the leadership of both Houses, no such entity has been created. In the House, the “Speaker’s Working Group” on terrorism was transformed, following the September 11 attacks, to a regular subcommittee of the House Permanent Select Committee on Intelligence—a useful first step. In the Senate, the leadership has only established an informal working group, although at the time of this writing there appears to be some movement toward a special committee. Under this recommendation most existing committee authorities can be preserved.

Functional Recommendations

In conjunction with these structural recommendations, the Advisory Panel made a number of recommendations addressing functional requirements for the implementation of an effective strategy for combating terrorism. The recommendation listed below are discussed thoroughly in the Second Annual Report:

Enhance Intelligence/Threat Assessments/Information Sharing

- Improve human intelligence by the rescission of that portion of the 1995 guidelines, promulgated by the Director of Central Intelligence, which prohibits the engagement of certain foreign intelligence informants who may have previously been involved in human rights violations
- Improve Measurement and Signature Intelligence (MASINT) through an expansion in research, development, test, and evaluation (RDT&E) of reliable sensors and rapid readout capability, and the subsequent fielding of a new generation of MASINT technology based on enhanced RDT&E efforts
- Review statutory and regulatory authorities in an effort to strengthen investigative and enforcement processes
- Improve forensics capabilities to identify and warn of terrorist use of unconventional weapons
- Expand information sharing and improve threat assessments

Foster Better Planning/Coordination/Operations

- Designate the senior emergency management entity in each State as the *focal point* for that State for coordination with the Federal government for preparedness for terrorism
- Improve collective planning among Federal, State, and local entities

- Enhance coordination of programs and activities
- Improve operational command and control of domestic responses
- The President should always designate a Federal civilian agency other than the Department of Defense (DoD) as the Lead Federal Agency

Enhance Training, Equipping, and Exercising

- Improve training through better coordination with State and local jurisdictions
- Make exercise programs more realistic and responsive

Improve Health and Medical Capabilities

- Establish a national advisory board composed of Federal, State, and local public health officials, and representatives of public and private medical care providers, as an adjunct to the new office, to ensure that such issues are an important part of the national strategy
- Improve health and medical education and training programs through actions that include licensing and certification requirements
- Establish standards and protocols for treatment facilities, laboratories, and reporting mechanisms
- Clarify authorities and procedures for health and medical response
- Medical entities such as the Joint Commission on Accreditation of Healthcare Organizations should conduct periodic assessments of medical facilities and capabilities

Promote Better Research and Development and Developing National Standards

- That the new office, in coordination with the Office of Science and Technology Policy, develop a comprehensive plan for RDT&E, as a major component of the national strategy
- That the new office, in coordination with the National Institute for Standards and Technology (NIST) and the National Institute for Occupational Safety and Health (NIOSH) establish a national standards program for combating terrorism, focusing on equipment, training, and laboratory processes

SECTION II: APPROVED RECOMMENDATIONS FOR THE THIRD ANNUAL REPORT

This section highlights our recommendations to the President and the Congress, from the third year of our deliberations, which should be incorporated into a national strategy. They build on the recommendations in our first and second Annual Reports.

IMPROVE HEALTH AND MEDICAL CAPABILITIES

The nation's health and medical systems, and their related public and private components, are under-prepared to address the full scope of potential terrorist attacks. The full integration of the public health community, emergency medical service providers, physicians, and hospitals into the entire emergency response process is required on an urgent basis.

We recommend that Federal, State, and local entities, as well as affected private-sector organizations, fully implement the American Medical Association (AMA) "Report and Recommendations on Medical Preparedness for Terrorism and Other Disasters."

In our second report, we recommended that the new office in the White House establish a national advisory board composed of Federal, State, and local public health officials and representatives of medical care providers, as an adjunct to the new office in the White House, to ensure that health and medical issues are an important part of the national strategy. The first principal recommendation in the AMA report calls for the creation of a collaborative public-private entity at the national level to:

- Develop medical education on disaster medicine and the medical response to terrorism;
- Develop information resources for the health and medical communities on terrorism and other disaster responses;
- Coordinate with Federal and State entities, professional organizations, and the private sector to develop model plans for terrorism and other disaster response; and
- Address the issue of reliable, timely, and adequate reporting of dangerous diseases.

The second recommendation in the AMA report encourages State, local, and specialty entities of the Federation of Medicine to become more involved in terrorism and other disaster response planning, training, and education. That recommendation directly supports our emphasis on the need for more close coordination among all entities with responsibilities for combating terrorism. We therefore recommend that the new office in the White House encourage this participation.

We recommend that States fully implement the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) Revised Emergency Management Standard.

This JCAHO standard (effective 1 January 2001) requires that accredited facilities establish and maintain a comprehensive plan for response to disasters and emergencies, including terrorism, within an all-hazards framework. The standard also requires that the plan address all aspects of response, including coordination with other response entities, reporting and other

communications processes, and training of critical personnel; and it includes an annual evaluation of the plan.

We recommend that the Congress provide sufficient resources to the U.S. Department of Health and Human Services (DHHS) for full implementation of the “Biological and Chemical Terrorism: Strategic Plan for Preparedness and Response” of the Centers for Disease Control and Prevention (CDC).

This plan defines the critical steps to prepare public health agencies for terrorist attacks. These include enhancing epidemiologic capacity to detect and respond, establishing surveillance for critical biologic and chemical agents, enhancing training of public health professionals, enhancing communication and public education programs, and encouraging research.

We recommend that the Congress provide sufficient resources to the DHHS for full implementation of the “Laboratory Response Network for Bioterrorism” of the CDC.

This “collaborative partnership” of various Federal agencies, public health and emergency management entities, professional associations, and academia is precisely the approach envisioned by the advisory panel in its previous recommendations. The program’s mission involves developing critical laboratory capacity in the public health laboratories, fostering appropriate linkage with clinical laboratories, and integrating these capacities into overall emergency preparedness. The goals of the program are rapid detection, analysis, and communication of the findings to appropriate health and medical entities nationwide.

We recommend that the Congress provide sufficient resources to the DHHS for full implementation of the CDC Health Alert Network.

The network is specifically designed to improve communications within the public health community and with other emergency response entities, especially law enforcement and emergency management agencies. We encourage the further development and fielding of this and other communication networks, such as Epi-X and Pulsenet, to address the need for better vertical and horizontal communications, especially for chemical, biological, radiological and nuclear threats.

We recommend that the DHHS, in coordination with the new office in the White House, develop standard models for medical responses to a variety of hazards.

Planning, training, and exercise tools must be developed, particularly mindful of the need to improve pre-hospital emergency medical services (EMS), especially for better coordination and communications with other response entities. They must also focus on the requirement to include rural communities. The planning tools should be designed to be community-based, tailorable to an individual jurisdiction’s unique requirements and capabilities, and should focus on EMS asset management, pre-hospital treatment and stabilization of patients, transportation, communications, and other coordination requirements that may span multiple hospitals and numerous response entities.

We recommend that the DHHS reestablish a pre-hospital Emergency Medical Services program office.

That action is necessary to support state and local EMS provider organizations for professional development, evaluation and planning processes, and other issues of EMS systems and operations. Presently there is no office at the Federal level that is responsible for addressing those issues.

We recommend that the Congress increase Federal resources available for those exercises that are informed by and targeted at State and local health and medical entities, both public and private.

More and better exercises are critical: to determine the adequacy of focused training; to test and improve the plans and capabilities of individual hospital facilities; to test coordination between health and medical entities; and that span the range of response entities. Exercises are especially important where biological agents are involved. Those exercises must be requirements-based from State and local input. Equally important, exercises must include evaluations, after-action reports, and statements of lessons learned, to assist in decisions for resource allocation and to guide future training.

We recommend the establishment of a government-owned, contractor-operated national facility for the research, development, and production of vaccines for specified infectious, especially contagious diseases.

The private sector is unlikely to be the answer to some of the more difficult vaccine issues. Direct government ownership or sponsorship is likely to be the only reasonable answer for producing vaccines for certain bio-organisms—anthrax and smallpox being at the top of the list. Limited production capabilities for small-market (i.e., military useful) vaccines are currently the largest hurdle facing DoD. That problem is significantly compounded for civilian bioterrorism preparedness.

We recommend that the new office in the White House, with advice from its related National Advisory Board and in coordination with the DHHS and Veterans Affairs (VA), review and recommend appropriate changes to plans for the stockpile of vaccines and other critical supplies.

The availability of vaccines and other critical medical supplies—at the right place and the right time—is likely to make a dramatic difference in the level of casualties that result from an attack. The Department of Veterans Affairs has certain responsibilities for stocking such supplies; the CDC and other HHS entities have other responsibilities. It is not clear that there has been adequate coordination and comprehensive planning for the execution of those responsibilities, especially with states and communities who will be responsible for ensuring the security and distribution of critical stockpiles and related activities. Those responsibilities and implementation plans should be clarified, coordinated, and transparent to all affected response entities in the health, medical, and emergency response communities.

We recommend that the new office in the White House, on the advice of its related National Advisory Board, and in coordination with the responsible Federal agencies, develop a comprehensive plan for the full spectrum of medical and health research for terrorism related medical issues.

That program must cover all aspects of detection, diagnosis, prophylaxis, and therapeutics. In developing such a plan, we again suggest the approach be, to the extent feasible, one of multi-purpose, broad-spectrum applications.

We recommend that the Secretary of HHS, in conjunction with the new office in the White House and its related National Advisory Board conduct a thorough review of the authorities, structures, and capabilities under Metropolitan Medical Response System (MMRS) and National Disaster Medical System (NDMS).

It has been more than five years since a comprehensive inventory of medical capacities under the National Disaster Medical System has been conducted. It is by no means certain that “current” information on surge capacities developed under the NDMS agreements, such as available bed space, is valid. There continue to be issues of structure, location, and capabilities of the entities organized under the MMRS, and the Disaster Medical Assistance Teams, established under the NDMS.

We recommend that the new office in the White House develop an information and education program on the legal and procedural problems involved in a health and medical response to terrorism, and in coordination with the Department of Justice and the American Bar Association, consider the efficacy of model laws or other programs to enhance future responses to such events.

Policy-makers and response entities are faced with thorny issues, such as quarantine, containment, isolation, mandatory vaccination and other prescriptive measures, and scope of practice and other legal issues. There are significant civil rights and civil liberties issues involved, such as privacy matters, arrest procedures, and search and seizure authority. These activities create the potential for conflicts between local, State and Federal authorities. Some problems reflect a lack of knowledge about current law and regulation. Others arise from the disparity of the laws and the various procedures that may be required to implement them. The implementation of this recommendation should help to close both gaps.

We recommend that the new office in the White House develop on-going programs as part of the implementation of the National Strategy for public education prior to terrorist events about the causes and effects of terrorism; and for the coordinating public pronouncements during and following an attack.

The attacks of September 11, and other recent events, highlight the importance of adequate preparation and effective execution of a public information strategy. Development of a public awareness program on the causes and effects of terrorism should include media representation. Public information programs for the coordination of initial and continuing public pronouncements during and following an attack should focus on the requirement for coordinating

with every affected response entity at all levels of government in order to avoid confusing or contradictory statements.

IMPROVE IMMIGRATION AND BORDER CONTROL

The movement of goods, people, and vehicles through our border facilities is characterized by vast transportation, logistics, and services systems that are extremely complex, essentially decentralized, and almost exclusively owned by the private sector. The sheer length of our land borders allows hundreds of thousands of people annually to enter our country illegally. Enforcement efforts are hampered by the level of current resources and by a lack of full connectivity and information sharing among enforcement agencies at the Federal, State and local levels. Given the nature and complexity of the problem, the panel recognizes that we as a nation will not likely find the “100% solution” for our borders. We should, nevertheless, direct our efforts to make it harder to exploit our borders for the purpose of doing harm—physical or economic—to our citizens.

We recommend that the President ensure that all agencies with border responsibilities are included as full partners in the intelligence collection, analysis, and dissemination process, as related to border issues.

Relevant, timely intelligence is crucial in the campaign to combat terrorism, especially to enhance the security of our borders. Better ways must be developed to track terrorist groups and their activities through transportation and logistics systems. This process is a “two-way street;” all entities involved must be willing to share information, horizontally and vertically between local, State, and Federal agencies. This will represent a departure from the current “culture” of many agencies to cloister information.

We recommend that the new office in the White House create an intergovernmental border advisory group, as part of the new office, with representatives of the responsible Federal agencies, and with State, local and private sector partners from jurisdictions with significant ports of entry.

Better cooperation is essential among those Federal agencies with border responsibilities, with State and local entities, with the commercial transportation and shipping industries, and with other private sector organizations. The entity that we propose could be modeled on the Border Interdiction Committee formed in the late 1980s to address the problem of drug trafficking across U.S. borders. This advisory board could assist the new White House office in developing immigration and border control programs and resource priorities without causing upheavals in existing organizational structures.

We recommend that the new office in the White House facilitate the full integration of affected Federal, State and local entities, including “port captains,” representatives of airports of entry, and border crossing communities, into local or regional “port security committees,” as well as into any adjacent Joint Terrorism Task Force (coordinated by the FBI), or other interagency mechanisms.

At the operational level, Federal, State and local agencies must act collectively and share critical information on all aspects of immigration and border control. Creating structures and mechanisms that will facilitate closer coordination of enforcement and related operations are essential.

We recommend that the new office develop a coordinated, fully-resourced plan for research and development, and for fielding and integration of sensor and other detection and warning systems.

Individual agencies have activities underway that are intended to enhance enforcement capabilities, through the use of static or mobile sensors and other detection devices. Valuable research and development is also underway in many agencies to improve those capabilities, especially in the area of non-intrusive inspection systems. There is, however, no comprehensive, prioritized plan among related agencies for critical aspects of such activities.

We recommend that the new office in the White House create a “Border Security Awareness” database system to collect and disseminate information about immigration and border control; and Congress should mandate participation of relevant Federal agencies and provide adequate resources to fund it.

The system could be modeled on an existing program of the U.S. Coast Guard called Maritime Domain Awareness. That system could be expanded to create an interactive and fully integrated database system for “Border Security Awareness.” It should include participation from all relevant U.S. government agencies, and State and local partners.

We recommend that the Congress enact legislation requiring all shippers to submit cargo manifest information on any shipment transiting U.S. borders at a minimum simultaneous with the arrival of such goods at any U.S. port of entry, with the imposition of severe penalties for non-compliance.

The United States must insist on strict compliance with reasonable identification and reporting requirements on the movement of people and things across our borders. Allowing after-the-fact reporting and waivers of these requirements is no longer acceptable. In the “Information Age,” the vast majority of cargo manifests—outbound bills of lading and related documentation—are in electronic format and readily transmittable to authorities.

We recommend that the President direct the establishment of “Trusted Shipper” programs within the relevant agencies of government.

Private sector operators of international transportation and other logistics systems already maintain extensive information that could be helpful in the early identification of terrorist activities to move people or things into this country. There are ways to use such information in a manner that will be advantageous to both enforcement officials and private sector entities. The underpinnings of the program will include providing incentives to those in the transportation and logistics sector who are willing to cooperate with enforcement authorities; implementation of industry self-policing procedures; advance provision of cargo manifest data; sharing existing “in-

transit visibility” data; and use of improved “smart” technology, such as tagging devices and other enhanced “machine readable” capabilities. In return, Congress should provide authority and resources to Federal enforcement agencies for granting incentives to Trusted Shippers, which could include facilitated shipping processes and financial assistance for enhanced technology.

We recommend that the Congress, in consultation with appropriate Executive Branch agencies, expand Coast Guard search authority to include vessels that are owned in majority percentage by U.S. persons.

In the past five decades, the percentage of commercial U.S. “flagged” vessels—those registered with a U.S. home port designated—has for a variety of reasons continued to shrink as a percentage of the total number of commercial vessels in service worldwide. Nevertheless, U.S. persons own fully or in majority percentage many commercial vessels flagged by other countries. Currently, the U.S. Coast Guard has statutory authority to inspect in international waters only U.S. “flagged” vessels. That authority must be expanded.

We recommend that the Congress increase resources for the U.S. Coast Guard for homeland security missions.

Coast Guard resources to perform its ordinary missions have been reduced in recent budget cycles, with no concomitant reduction in mission. With the increased requirement for enhanced homeland security, the Coast Guard must be provided adequate resources by the Congress to accomplish these critical tasks.

We recommend that the U.S. Government negotiate more comprehensive treaties and agreements for combating terrorism with Canada and Mexico.

Canada has been used by terrorists or would-be terrorists for attacks against the United States. In some cases, Canada has been unable under its current laws to take action against certain individuals who may, for example, be conspiring to perpetrate a terrorist attack against the United States. Country-to-country negotiations with both Canada and Mexico should be designed to strengthen laws and processes that will enhance our collective ability to deter, prevent, and respond to terrorist activities, to exchange information on terrorist activities, and to assist in the apprehension of known terrorists before they can strike.

CLARIFY ROLES AND MISSIONS ON THE USE OF THE MILITARY

Controversy, confusion, misunderstanding, and disorganization continue to surround the subject of the role of the U.S. Armed Forces to deter, prevent, or respond to a terrorist threat inside the borders of the United States. There are few comprehensive, carefully coordinated, well-understood plans and programs for how that may occur. Moreover, the structure and internal processes for accomplishing those ends is still fragmented and unclear. Most important, there are overriding civil rights and civil liberties implications.

We recommend that the National Command Authority establish a single, unified command and control structure for all functions for providing military support or assistance to civil authorities for natural and manmade disasters, including terrorism.

The command and control of military assets for deterring, preventing, or responding to terrorist acts is confusing. Some headquarters, such as Joint Task Force-Civil Support, only have responsibility for so-called “consequence management.” Others have very limited roles in a “crisis” situation. The creation of a single structure for all military activities in homeland security—an “all-hazards” entity--will greatly reduce confusion, and enhance coordination with other Federal entities and with State and local jurisdictions. A clearly defined, single chain of command will also facilitate better planning, training and exercises.

We recommend that the Secretary of Defense direct the development of more detailed plans for the use of the military domestically across the spectrum of potential activities, and coordinate with State and other Federal agencies in the creation of more State- or regional-specific plans.

There is currently insufficient planning to address the full spectrum of military activities—deterrence, prevention, response, mitigation, and recovery. Such plans are critical to address future threats and attacks.

We recommend that the Secretary of Defense direct the Military Departments to institute specific training in units most likely to be involved in support to civil authorities, and to expand military involvement in related exercises with Federal, State, and local civilian agencies.

Training and exercising to plans is how the military prepares for its missions. There is no difference here. The one additional requirement is conducting coordinated exercises with Federal, State, and local civilian agencies that can reasonably be expected to receive support from the military. All exercises must include comprehensive evaluations and capture lessons learned.

We recommend that the Secretary of Defense direct specific new mission areas for the use of the National Guard for providing support to civil authorities for combating terrorism.

The National Guard is a logical “bridge” between the military and civil authorities. The National Guard, in its Title 32 or “State” status, is subject to the control of the state governors. That allows them to be used for purely state missions, including in some cases being free of certain limitations imposed upon “Federal” military personnel. Elements of the National Guard are subject to being called into Federal service, alongside the Active Duty and other elements of the Reserve Components. National Guard units may need to be reconfigured to better support the “Homeland Security” mission. That will inevitably require new training doctrine, instruction, and exercises for Guard units.

We recommend that the Secretary of Defense publish a compendium, in layman’s terms, of the statutory authorities for using the military domestically to combat terrorism, with detailed explanations about the procedures for implementing those authorities.

There continues to be considerable misunderstanding about the legal bases for military activities, including the use of the National Guard, inside the United States. Some believe that the provisions of the “Posse Comitatus Act” provide a significant bar to many such activities. Yet several statutes provide for the use of the military for assistance to civil authorities in a variety of emergencies. The “Stafford Act”¹ provides broad authority for using the military domestically for responses to floods, earthquakes, hurricanes, wildfires, and other natural disasters and for intentional acts, such as terrorism. The “Insurrection Statutes”² provide significant authority for use of the military to suppress domestic insurrections, rebellions, and unlawful combinations and conspiracies in the various states. Other statutory provisions, originally designed for counterdrug operations, have been expanded to include counter-terrorism operations domestically.³ There is also special authority for use of the military domestically to assist in combating biological and chemical terrorist incidents, which may, under certain exceptional circumstances, include direct involvement in arrests, searches, seizures, and the collection of specific intelligence,⁴ as well as authority to provide assistance in nuclear terrorism cases, which may also include participation in arrest, search, and seizure activities.⁵

It is important that these statutes and their limitations be well understood by Federal, State, and local entities and by the uniformed military as well. That knowledge should be imbedded in military training and exercises, and in exercises with other Federal as well as State and local civilian agencies.

We recommend that the Secretary of Defense should improve the full time liaison elements located in the ten Federal Emergency Management Agency regions.

Although the Department of Defense now has liaison offices in the various FEMA regions, those have not been fully effective in coordinating with State and local emergency management agencies. Those liaison elements—known as Emergency Preparedness Liaison Offices—can assist in the necessary planning and coordination with State emergency authorities and through those authorities with local jurisdictions, including the development of fully integrated training and exercises to validate and improve response plans. The coordination of plans, training, and exercise should not be limited to “consequence management” functions, but should include the full spectrum of potential military activities. Those liaison elements should be staffed with a combination of active duty and Title 10 reserve personnel and National Guard personnel in a Title 32 status.

IMPROVE SECURITY AGAINST CYBER ATTACKS

Cyber attacks can be a mechanism for substantial injury, perpetrated either as the single method for destruction or disruption, or in conjunction with an attack with some other weapon. The problem involves national security, law enforcement, civil rights, and commercial and other

¹ 42 U.S. Code, Sections 5121, et seq.

² 10 U.S. Code, Sections 331, et seq.

³ 10 U.S. Code, Section 374.

⁴ 10 U.S. Code, Section 382.

⁵ 18 U.S. Code, Section 831.

private sector interests. Given the fact that more than 80% of information systems are owned by the private sector, any solutions will require an unprecedented partnership between government and private entities. Rapidly increasing technological changes will continue to compound the problem. We must, therefore, seek innovative solutions in this exceptionally complex area.

We recommend that the President direct that the interagency panel on cyber security issues include representation from State and local government representatives, as well as the private sector.

The White House recently announced new initiatives for cyber security, including the creation of an interagency cyber security panel that apparently will be composed only of the representatives of some 23 Federal agencies. Given the nature of the issues involved, that panel should also include significant representation from State and local governments and from the private sector. The panel can make recommendations for the development of a comprehensive cyber security strategy that reflects the needs of all relevant “stakeholders.”

We recommend that Congress create an independent commission, tasked to evaluate programs designed to promote cyber security, to recommend strategies for better security, and to report its recommendations to the President and the Congress

Such a federal advisory body can assist materially in the development of strategies, policies, and priorities by providing an independent, objective assessment of Federal programs. That commission should be modeled on our Advisory Panel. Alternatively, if our panel is extended beyond this year, consideration could be given to expanding its mandate to accomplish this task.

We recommend that the President establish a government-funded, not-for-profit entity that can represent the interests of all affected stakeholders, public and private--national security, law enforcement, other government functions, and business and industry interests and concerns--to provide cyber detection, alert, and warning functions.

In our second report, we noted that the National Infrastructure Protection Center (NIPC) at the Federal Bureau of Investigation (FBI) has been ineffective in fully executing its responsibilities for critical infrastructure alert, warning, and response coordination, including cyber attacks by terrorists. Since that report, others have expressed similar concerns—notably the General Accounting Office (GAO). The entity that we propose would serve as a “fusion center” and clearinghouse, at or near real-time, for information on impending or actual cyber attacks. That entity should be a not-for-profit organization or a consortium of not-for-profit entities with recognized expertise in the field.

We recommend that Congress and the Executive Branch convene a “summit” to address, on an urgent basis, necessary changes to a wide range of federal statutes, in order to provide necessary protection and incentives for enhancing cyber assurance.

The law has not kept pace with rapid changes in information technology and systems, nor the need for effective response against those who would exploit them. Changes to such outdated legislation as the Communications Act of 1934, the Defense Production Act, the federal criminal

statutes, the Freedom of Information Act, as well as others, are indicated. Several members of Congress have developed an understanding of the issues and have introduced legislation to address some of those problems. Progress has, however, been slow. Requirements to update statutory authority will not wait for the “business-as-usual” process of extended negotiations. Congress and the Executive have recently demonstrated, with quick passage of major legislation to combat other aspects of terrorism, that they can work together on an expedited basis. That same urgency and level of effort should now be applied to cyber security.

We recommend that the Congress create a special “Cyber Court” patterned after the court established in the Foreign Intelligence Surveillance Act (FISA).

Federal prosecutors and investigators are often impeded by the lack of direct and timely application of existing procedures for obtaining court authority to conduct certain investigative activities where criminal cyber conduct is involved. Authority to use investigative tools for “tapping” criminal electronic transmissions or tracing electronic signatures often comes too late or not at all. There is a lack of complete understanding among many in the judiciary at large of the nature and urgency of cyber security. A court that is dedicated to criminal cyber conduct can develop the expertise to recognize and act more quickly in approving or disapproving special authority for investigative activities. Such a court is more likely to ensure that civil rights and civil liberties are fully protected. We envision an electronic, real-time, on-line, secure method for U.S. Attorneys anywhere in the country to contact a cyber judge on very short notice, subject to a prior expedited review (using a process similar to FISA applications) by the Department of Justice.

We recommend that the President establish an entity to develop and implement a comprehensive plan for research, development, test, and evaluation to enhance cyber security.

We envision a government-funded consortium of not-for-profit entities with expertise in the field. The Institute for Security Technology Studies (ISTS) at Dartmouth College is providing resources to form the basis for establishing such an entity, including formal discussions with experts about the structure of such an organization; a comprehensive national needs assessment developed from a survey of stakeholders in government (Federal, State, and local), academia, and the private sector; and the development of a definitive near- and long-term agenda for RDT&E for cyber security. This is a significant first step toward establishing the type of entity we envision, and may be the logical nucleus around which the President could form such an entity.

IMPROVE STATE AND LOCAL CAPABILITIES

Key Observations Based on Survey Data

Federal equipment and training programs receive high marks for relevance and usefulness in improving preparedness at the State and local level, but low marks for adequacy.

Many Federal programs are not coordinated with the “customer base”, and often do not fit within State and local strategies and operational response plans.

Federal equipment and training programs are too oriented toward major metropolitan areas, with little or no consideration for rural communities. The “120 Cities Domestic Preparedness Program” is one example.

Federal efforts lack coordination, not only with State and local entities, but also within the Federal family; many programs should be consolidated within one agency.

Awareness of Federal programs to assist States and localities is the main factor limiting participation, especially among small cities and rural communities.

We recommend that the new office in the White House serve as a clearinghouse for information about Federal programs, assets, and agencies with responsibilities for combating terrorism.

Survey data supports this recommendation, which was made in our second report. State and local responders indicate strongly that they are confused about what is available from the Federal government, both in terms of programs and offices to promote preparedness, and specialized Federal assets to support response to an attack. This confusion and lack of awareness of the Federal programs inhibits preparedness at the State and local level. It also may delay or prevent the deployment of Federal support assets in the event of an incident. In the short term, as the Federal government continues to reorganize to effectively meet the terrorist threat, confusion about Federal preparedness programs and Federal response assets is likely to increase. The confusion could be reduced considerably through the creation and distribution of various information resources, including:

- Terrorism Preparedness Guide, including a listing of the various Federal programs that are available to State and local entities
- Terrorism Response Guide, including a full description of Federal assets and points of contact for requesting Federal assistance

We recommend that information and application procedures for Federal grant programs for terrorism preparedness be consolidated in the new office in the White House.

This action is necessary so that state and local responders can easily determine what is available. It can help to streamline and standardize the grant process to eliminate unnecessary application burdens. A common refrain from many state and local responders in the survey is that Federal grant programs for terrorism preparedness are uncoordinated, have different rules and requirements, and are unduly burdensome. This is consistent with earlier GAO findings and our previous reports. The variations in grant program requirements place an undue burden on local, particularly small rural and volunteer, organizations.

We recommend that Federal agencies with related funding and grant programs for States and localities coordinate those programs through the States.

State organizations in particular want Federal programs to be coordinated through state offices in order to ensure that they complement state-wide plans and requirements. While some improvements have been made in the last year, more outreach and coordination efforts are required. The haphazard Federal approach, which allows Federal agencies to provide assistance directly to localities, has caused significant coordination problems. It has also limited the ability of States to set comprehensive state-wide priorities and to ensure more effective allocation of resources.

We recommend that Federal agencies design related training and equipment programs as part of all-hazards preparedness.

State and local organizations that have participated in related Federal training programs tend to give them high marks for both relevance and usefulness. Nevertheless, they almost universally indicate that the training and equipment are not sufficiently comprehensive and is often exclusively devoted to “weapons of mass destruction.” More emphasis must be placed on designing training and equipment programs so that they are applicable to a broad range of hazards.

We recommend that Federal response assets be configured to support and reinforce existing State and local organizational structures and emergency response systems.

State and local survey respondents prefer that Federal entities perform supporting roles such as maintaining order and providing security logistics support. Federal response assets, including the military, must also be trained to operate within the Incident Command System (ICS) during response operations.

We recommend that related Federal training and equipment programs be redesigned to include sustainment components.

In most cases, Federal programs are designed to provide training and equipment support on a “one-shot” basis. Equipment programs must be designed to include spare parts and maintenance components, as well as replacement mechanisms. Refresher training for the initial training audience as well as cyclical training for new personnel is also critical.

ADDITIONAL TOPICS

This Panel will be meeting on November 12 and 13 to approve its complete Third Annual Report. In light of recent events, panel members have decided to examine a few additional topics and to consider adding them to the third report. These topics include: expanding and strengthening visa control and monitoring procedures, and enhancing entry controls and implementing exit controls; and locator tags, enhanced communications, improved vision capabilities, enhanced sensor technology, and more effective respirators for first responders.

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