

FDCH TRANSCRIPTS
Congressional Hearings
Oct. 25, 2001

Senate Armed Services Committee Holds Hearing on Role of Defense Department in Homeland Security

LEVIN:

Good afternoon, everybody.

The committee meets today to receive testimony on the role of the Department of Defense in homeland security.

The committee welcomes Tom White, secretary of the Army, who has been designated by Secretary of Defense Rumsfeld as the interim executive agent for homeland security. We welcome, also, Vice Chairman of the Joint Chiefs of Staff General Peter Pace -- General Pace.

We are joined by our two military leaders with direct responsibility for military contributions to homeland security, General William Kernan, commander in chief, U.S. Joint Forces Command, which includes the Joint Task Force Civil Support that coordinates military assistance to civilian authorities in the event of a major incident or attack on U.S. soil; and commander in chief, U.S. Space Command, General Ralph Eberhart, who joins us in his capacity as commander in chief of NORAD, the North American Aerospace Defense Command. And we welcome both of you.

On behalf of the entire committee, let me welcome each of you to the committee for a very important hearing.

We had planned to hold this hearing in the larger central hearing room in Hart Senate Office Building, but that building remains closed because of anthrax contamination.

LEVIN:

So our very setting today underscores the new threats facing the United States; the fact that we are unable to meet in the room where we had planned to meet.

This committee has focused on these threats for several years. In 1998, Senator Warner created -- with my support -- the Emerging Threats and Capabilities Subcommittee, chaired first by Senator Roberts and now by Senator Landrieu. In extensive hearings, the Emerging Threats Subcommittee is focused on improving the ability of the armed forces to meet nontraditional threats, including terrorism and unconventional means of delivering weapons of mass destruction.

In fact, based partly on those hearings, a combating terrorism initiative to improve the ability of U.S. forces to deter and defend against terrorism was approved by this committee in the national defense bill, which we voted to approve prior to the horrific terrorist attacks of September 11. So we had acted in that way prior to September 11.

But those September 11 attacks have prompted an unprecedented military role in ensuring the security of the United States and the American people. The extraordinary has become the ordinary. In their state capacity, National Guardsmen stand guard at airports throughout the nation. U.S. military aircraft, assisted by NATO AWACS surveillance aircraft, routinely patrol American skies. U.S. warships patrol our shores. These aircraft and warships are prepared to carry out a once unthinkable mission, if approved by the chain of command, to shoot down hijacked U.S. civilian airliners that threaten Americans on the ground.

These are extraordinary responses to an extraordinary threat, and require a reexamination of the proper role of the U.S. armed forces in helping to ensure the security of the American people. That reexamination and reorganization has already begun.

On September 30, the Department of Defense released its report on the Quadrennial Defense Review, which elevated the mission of homeland defense to the department's, quote, "highest priority," closed quote.

On October 2, the secretary of defense designated Army Secretary White as the interim Department of Defense executive agent for homeland security.

On October 8, the president designated Pennsylvania Governor Tom Ridge as the new assistant to the president for homeland security.

On October 12, the president designated Secretary White as the acting assistant secretary of defense for special operations and low- intensity conflict, or SOLIC.

The commander in chief of NORAD, General Eberhart, now exercises operational control of military aircraft over the United States to include their mission of flying combat air patrols over New York, Washington and other cities.

Under General Kernan, the Joint Task Force Civil Support stands ready to coordinate military assistance to civilian authorities in event of a major incident or attack on U.S. soil.

Overarching all of these efforts is the Posse Comitatus Act of 1878, a criminal statute that prescribes the limited circumstances under which the United States armed forces can be used to enforce the domestic law. That act states, quote, "Whoever, except in cases and under circumstances expressly authorized by the Constitution or act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws, shall be fined under this title or imprisoned not more than two years or both." It is because this act does not apply to National Guardsman in their state status that Guardsman are now being employed at airports.

This new environment requires careful consideration by the committee of some important questions. Among them are the following: What exactly is the definition of homeland security, and to what extent should the Department of Defense be involved in homeland security? How does the Department of Defense relate to the Office of the Assistant to the President for Homeland Security, Tom Ridge's new office?

Is the Department of Defense organized properly to deal with the many aspects of homeland security? For instance, is there a need for new commander in chief, or CINC, for homeland security to coordinate the various military contributions to homeland security? If so, how would that command interact with NORAD and the Joint Forces Command? And, is it appropriate for a service secretary to be in the chain of command?

LEVIN:

Another overarching issue: Should the Posse Comitatus Act be revised or repealed? If so, do we want the armed forces enforcing the law, as would be required in an insurrection? What impact would training our armed forces to make arrests, seize property and preserve evidence have on their capabilities and readiness to accomplish their war-fighting mission?

Should every state have a weapons of mass destruction civil support team, such as the 32 already authorized and 27 already established, to assist civilian authorities to respond to an incident or attack on U.S. soil involving weapons of mass destruction?

While there's been a tendency in the past to use the armed forces to support civilian authorities in such events, is that still realistic, given the armed forces involvement in a war that is likely to last for extended period of time?

Secretary White, we know that you and your colleagues do not have all the answers to all those and other questions yet. We're only six weeks removed from the attacks of September 11. We're 19 days into the military campaign against the Al Qaeda terrorist network and their Taliban protectors. But in times of national emergency, few questions are as important as the proper role of the U.S. armed forces in defending the nation and the American people, especially when that mission takes them not only overseas, but to the skies and to the streets of America itself.

And so, we look forward to hearing the options that you're now considering or the decisions that you have already made to address this new and evolving mission.

Senator Warner?

WARNER:

Thank you, Mr. Chairman.

Mr. Chairman, your excellent opening statement embraced much of the text that I have here, so I'll ask unanimous consent to put mine the record...

LEVIN:

It will be made part of the record.

WARNER:

... with several comments I'd like to make.

I'd like to read two sentences. I quote, "The protection of America itself will assume a high priority in a new century. Once a strategic afterthought, homeland defense has become an urgent duty." That was incorporated in a speech given by now president of the United States George Bush, then-Candidate Bush, at the Citadel University in South Carolina, September of 1999. We're fortunate that our president had the presence of mind, the foresight to look into the future to begin to prepare America for the exact task that's before us.

Our committee -- as my distinguished chairman acknowledged, we did establish a subcommittee some three years ago when I was privileged to occupy that chair. But it was a joint action by all senators around this committee. And we laid a solid foundation in those several years under Senator Roberts, Senator Bingaman and other members of that subcommittee.

The very teams that you referred to, the mass destruction civil defense teams, previously known as RAID teams, were an outgrowth of the work of the department and that subcommittee. Much has to be done now, and it's been entrusted to you gentlemen and your subordinates.

I cannot recall, really, in the history of the United States -- and I've been privileged to live longer than, I think, among everybody in this room -- when a greater challenge has posed a man and woman, whether they be the president or on down to our citizens, to meet this challenge and keep America strong and to keep America going.

Earlier, in this very room, the Subcommittee on Emerging Threats, under the chairmanship of Senator Landrieu, ranking member, held a hearing with the former chairman of this committee, Sam Nunn, on the potential threats with regard to smallpox, a disease that was eradicated when I was a young man. And yesterday the chairman and I had the privilege of sitting with the president of the United States and the vice

president and members of his Cabinet and several other members of Congress, as we worked with the new Cabinet officer, Governor Ridge, whom you referred to.

I just mention those things for the sole purpose of those citizens following this hearing should understand that there's no politics in this battle, in this war we're raging. Whether it's in Afghanistan by the superb leadership of the men and women of the armed forces or here at home, we're all in it together

WARNER:

And we cannot allow our lives not to go forward because of our children, future generations and because so much of the world depends on the United States of America to remain strong and free and to lead in the cause of freedom.

And you're here today to outline your initiatives with regard to following through on the president's speech given 13 months ago, and the foundations that the secretary and deputy secretary of defense have laid down and charged you with.

We wish you well, gentlemen, and generations will look back, hopefully gratefully, at your contributions and that of your subordinates.

Thank you, Mr. Chairman.

LEVIN:

Thank you, Senator Warner.

I've never seen a nation more united as they are in the war against terrorism. I've never seen the Congress as united as they are in this war. A huge burden has been placed on you gentlemen, and we're know you're up to it, but we're there to support you in every possible way that we can.

I want to just take 30 seconds for a scheduling note, which is important to all of us because it's so difficult for us to rearrange schedules, but here it goes. Tomorrow morning, we will meet in S-407 at 9:30 to receive an update briefing from the Office of the Secretary of Defense and JCS officials on the ongoing military operations in Afghanistan. Staff attendance will again be restricted because of the classification level.

This morning, at the conclusion of our conference meeting with the House, Chairman Stump and I agreed that we would make completing our conference our highest priority for next week. Members of the committee therefore can expect full conference meetings with the House throughout next week, starting on Wednesday morning. We are going to have a back-to-back conference on Wednesday, and then we'll continue on Thursday, hopefully finish on Thursday; if not, Friday. And, of course, we will get exact details of our schedule to members of this committee as soon as possible.

Thank you very much.

INHOFE:

Does that mean we're not going to be doing the late Tuesday afternoon meeting we had previously discussed?

LEVIN:

That is correct.

INHOFE:

Thank you.

LEVIN:

Secretary White?

WHITE:

Mr. Chairman, Senator Warner, distinguished members of the committee, I appreciate this opportunity to appear before you in my role as interim Department of Defense executive agent for homeland security, along with my colleagues who you have already recognized: General Pace, vice chairman of the Joint Chiefs of Staff; General Eberhart, commander in chief, North American Aerospace Defense Command; and General Kernan, commander in chief, U.S. Joint Forces Command.

Mr. Chairman, I would like to make a brief opening statement on behalf of all of us, and then respond to any questions that the committee may have, if that's acceptable to you.

LEVIN:

That will be fine. Thank you.

WHITE:

Before I begin, I would like to make one thing very clear. The 2001 Quadrennial Defense Review published last month restores the defense of the United States as the department's primary mission. Put another way, homeland security is the number one job for the United States military, and it has our full attention. I want to assure the members of the committee and the American people that we will spare no effort in our endeavor to protect this nation from aggression.

The attacks of 11 September and since provide beyond doubt that terrorism is a permanent part of our future. Our traditional response to terrorism at the Department of Defense level has been to organize around crisis management and consequence management functions, with the former being an activity managed by the assistant secretary of defense for special operations and low-intensity conflict, while the latter is principally accommodated by the director of military support within the Department of the Army.

In my view, that construct no longer works. It's far more useful to view homeland security as an overarching effort that includes two simultaneous and mutually supporting functions. First is homeland defense, a DOD-led task involving protection of the United States in areas where we in the Department of Defense have unique military capabilities, such as air defense. The fighter aircraft flying combat air patrols over Washington and New York City, under the operational command of General Eberhart, are a prime example of the homeland defense mission.

WHITE:

Second is civil support, where DOD provides assistance to a lead federal agency, which can range from the FBI for domestic counterterrorism attacks to Health and Human Services for biological attacks. Key to this civil support effort is a layered approach, beginning with local and state first responders, progressing through deployment of state-controlled National Guard units, and then finally to application of federal assets, including unique DOD capabilities on an exception basis.

Above all, homeland security demands a comprehensive approach to accommodate evolving threats in the reality of finite resources. Properly focusing on this complex mission in providing the coordination necessary for joint and interagency integration, requires, in my opinion, a reorganization of DOD efforts.

From my perspective, there are three fundamental tasks that must be accomplished if we are to be successful. First, DOD must consolidate its efforts in homeland defense into a single staff organization.

This will enhance the coordination of policy planning and resource allocation responsibilities that relate to homeland security. By focusing our efforts, we can avoid gaps and duplication in capabilities while dramatically improving the quality of our planning and responsiveness.

Second, we must develop operational arrangements for the future. Currently the military responsibilities for homeland security are assigned to several of the unified commanders on an interim basis, pending revision of the unified command plan. And that, of course, includes North American Air Defense Command, Aerospace Defense Command and Air Defense, Space Command and Cyber and Info, Land and Maritime with Joint Forces Command.

I'll defer operational details to the other members of the panel, but I want to emphasize a key point. As we look to the future, apportionment of forces must be balanced between meeting war-fighting requirements abroad and the need to defend America at home. And this is a concurrent activity, obviously, from what we're doing today. This is a threshold event with, in my opinion, profound implications for the military.

The last task we must improve is the interagency coordination process to guarantee timely and efficient cooperation among the many federal, state and local organizations that have or share homeland security responsibilities.

I've already met with Governor Ridge, as you have stated, the president's special assistant for homeland security, and I've assured him the department will fully assist his office in the execution of his mission. While doing so, DOD will continue to focus on its broad and critical responsibilities: defending our nation against acts of war and terrorism; providing capacity to respond to chemical, biological, radiological, nuclear and high-yield explosive events, the so-called weapons of mass destruction, whether intentional or unintentional; and supporting lead agencies in the event of natural disaster.

The victims of a disastrous event do not necessarily distinguish between whether the event was the result of actions of non-state terrorists or state actors engaged in war or just an unfortunate accident. What matters to the American people is the knowledge that our homeland is secure against any and all threats.

We in the Department of Defense stand ready to do our part to meet that challenge.

Thank you, Mr. Chairman for this invitation. This concludes my statement. I look forward to the committee's questions, along with my colleagues.

LEVIN:

Thank you, sir.

General Pace, do you have an opening comment?

PACE:

Mr. Chairman, thank you very much.

Members of the committee, I do deeply appreciate the opportunity to appear before you again today and to have one more opportunity to say thank you for the very strong, sustained bipartisan support of this committee for all the men and women in your armed forces.

If I may, Mr. Chairman, I'd like to have my written statement entered into the record, and save the time to answer your questions.

LEVIN:

Thank you very much.

General Eberhart, do you have a comment?

EBERHART:

Sir, in the interest of time, I will submit my statement for the record also. And I add my thanks to those of the vice chairman for your continued support over the years and more so for your support in the upcoming weeks and months as we challenge this task ahead of us.

LEVIN:

General Kernan?

KERNAN:

Sir, I'd just like to echo the thanks of all our military for this committee and all of Congress' staunch support. And in the interest of brevity, I'd like to submit my written statement for the record.

LEVIN:

Thank you very much, General.

We'll follow the usual procedure here. We'll have an early-bird rule with a six-minute round.

Secretary White, can you describe what your authority is as the DOD executive agent for homeland security? For instance, does it extend to authority over the combatant commanders or the forces assigned to them?

WHITE:

Senator, my authority as executive agent is to act on behalf of the secretary to organize and get moving the whole business of homeland security. I do not view myself as having any operational authority or being a part of the chain of command. I will make recommendations to the secretary and he'll exercise those authority.

LEVIN:

When you say you don't view it, is it clearly established that you're not in the chain of command?

WHITE:

No, I do. The secretary is the chain of command, along with the president. And I, as his executive agent, make recommendations to him. But I don't exercise command authority.

LEVIN:

Thank you.

Mr. Secretary, will you describe what you understand your relationship with Governor Ridge in his office is going to be? How would, for instance, good faith disagreements resolved between the two agencies? I know that in your opening testimony that you intend to fully assist him, but there will be differences from time to time. And the question is are they resolved -- when they're not resolved, who wins? Who prevails? I know truth and justice will win, but who will prevail?

WHITE:

Well, you know as well as I that the charter that Governor Ridge has for homeland security directly from the president. We have had excellent initial meetings with Governor Ridge. We have detailed a senior officer of the department who has extensive experience on homeland security to serve on his staff.

If there are differences of opinion between the department and Governor Ridge, I would presume that they would be resolved like any disputes in the executive branch; either at the principals' level, or at the Cabinet level, or ultimately with the president himself.

LEVIN:

I'd like to comment on Posse Comitatus. Mr. Secretary, could you give us your position with respect to the suggestion that the Posse Comitatus Act needs to be revised?

WHITE:

I think, Senator, that at this stage our view is that, in general, the act is fine the way it sits. It reflects a longstanding tradition of not using federal forces in a law enforcement role that I think serves the nation well.

The General Consulate Department, in response to your communication, you and Senator Warner, is studying it in more detail to see if there are revisions that need to be made to certain aspects of it either for flexibility or to deal with a new situation. But in general this longstanding tradition is one that we would like to see prevail. But there may be minor revisions necessary.

LEVIN:

All right. Is part of that consideration -- are you looking at what the impact of training and using our armed forces to enforce the law would have on their war-fighting capabilities, their readiness? Is that all being considered as part of this review, or is it just a legal issue?

WHITE:

It's principally a legal review of the law against the current situation. The broader issue that you raised gets to the whole fundamental question of having a common force pool of active and reserve components that have longstanding primary missions in support of the combatant commanders in chief, but that also have important homeland security responsibilities, either on a state or a federal basis. And the question is -- and obviously with the current events these challenges are on us concurrently.

As we sit here today, the 29th Division from the Virginia Guard is deployed in Bosnia. And consequently, the elements that are in Bosnia are not available to the governor of Virginia for Title 32 purposes for homeland security.

So as my colleagues and I go about the business of the operational planning for homeland security, one of the issues that has to be dealt with is force apportionment, and how much time will be focused on homeland security and how much time will be focused on normal war-fighting activities.

LEVIN:

Thank you.

General Eberhart, there's been some confusion about the sequence of events on September 11 that maybe you can clear up for us. The time line that we've been given is that at 8:55 on September 11, American Airlines flight 77 began turning east, away from its intended course. And at 9:10, flight 77 was detected by the FAA radar over West Virginia heading east. That was after the two planes had struck the World Trade Center towers.

Then 15 minutes later, at 9:25, the FAA notified NORAD that flight 77 was headed toward Washington. Was that the first notification -- the 9:25 notification -- that NORAD or the DOD had that flight 77 was probably being hijacked? And if it was, do you know why it took 15 minutes for the FAA to notify NORAD?

EBERHART:

Sir, there is one minor difference. I show it as 9:24 that we were notified, and that's the first notification that we received. I do not know, sir, why it took that amount of time for FAA. I hate to say it, but you'll have to ask FAA.

LEVIN:

And do you know if that was the first notification to the DOD?

EBERHART:

Yes, sir. That's the first documented notification that we have.

LEVIN:

Either NORAD or any other component of the DOD?

EBERHART:

Yes, sir.

LEVIN:

If you could -- for the record, I have a number of other questions relative to that issue which should be clarified, and I'm going to ask you those questions for the record to clear that up. We should get -- it seems to me we all should have a very precise not only timetable, but a precise indication as to why other agencies, entities were not notified by FAA, if they weren't.

Perhaps you could make that inquiry for us, or we'll ask the FAA directly if you prefer; and also as to what notification was considered to the buildings in Washington once the concept was clear that this plane was headed toward Washington. But we'll save those for the record.

Senator Warner?

WARNER:

Mr. Chairman, you asked of our distinguished witness a very important question. I'm going to deviate from my planned opening here to say I guess I'm a little bit stunned that you don't know why that delay occurred. I would have thought by now all of you in this chain would have gone back, rehearsed these things, figured out what happened, what went wrong so that we ensure it won't happen again. If it was that significant delay and you can't tell us why, how do we leave with an assurance that you and your subordinates have taken steps so that it won't happen again?

EBERHART:

Sir, I assure you that we have, and we practice this daily now, and now it takes about one minute from the time that FAA sees some sort of discrepancy on their radar scope or detects a discrepancy in terms of their communication before they notify NORAD. So that certainly has been fixed.

I think at that time, the FAA was still thinking that if they saw a problem it was a problem that was a result of a mechanical failure or some sort of crew deviation. They weren't thinking hijacking. Today, the first thing they think is hijacking, and we respond accordingly.

WARNER:

So working with the FAA, NORAD had not rehearsed the possibilities of an aircraft being seized for some terrorist activity?

EBERHART:

Sir, FAA is charged with the primary responsibility in terms of hijacking in the United States of America. We are charged with assisting FAA once they ask for our assistance. As you know, the last hijacking of a commercial aircraft in the United States of America was 1991. So although we practice this, day in and day out, the FAA sees on their scopes scores of problems that are a result of mechanical problems, switch errors, pilot errors, et cetera, and that that's what they think when they see this.

Although we have exercised this, we have practiced it, in most cases it's a hijacking like most of the hijackings, all of the hijackings I'm aware of, where we have plenty of time to react, we get on the wing, and we follow this airplane to where it lands and then the negotiations start. We were not thinking a missile -- an airborne missile that was going to be used as a target -- a manned missile if you will.

And in most cases when we practice this, regrettably we practiced it -- the origin of this flight was from overseas and we did not have the time-distance problems that we had on that morning. We had plenty of time to react. We were notified that for sure there was a hijacking and we were notified that they were holding a gun to the pilot's head and telling him to fly toward New York City or Washington, D.C. So that's how we had practiced this, sir.

I certainly wish we had practiced it differently, but I really think that, for sure in the first two instances, and probably in the third, the time and distance would not have allowed us to get an airplane to the right place at the right time.

WARNER:

Let me just ask the following. You are now the commanding officer in charge of the CAP missions being flown over our various communities, which so far as I know have functioned exceedingly well and served, I think, a strong deterrent. It's being performed by Guard and regular aviators; am I not correct?

EBERHART:

That's correct, sir.

WARNER:

Are the missions for the Guard any different than the missions for the regular aviators?

EBERHART:

No, sir.

WARNER:

They fly the same.

EBERHART:

Yes, sir.

WARNER:

And in essence, if an aircraft begins to deviate and such security measures as are on board fail, whether it's an armed guard or so forth, then the plane -- your aircraft is instructed with certain procedures to fire and take that plane down. That's basically it.

EBERHART:

When given the proper authority, yes, sir.

WARNER:

Here's my problem, and it's one of the reasons that I raise this Posse Comitatus situation. I've done some independent research on this matter. The Air Guard person is up there within the law of Posse Comitatus. I was concerned -- it's a criminal penalty, as our chairman stated. By what authority is the regular performing the duty that the Air Guard is doing, so as we get around Posse Comitatus?

EBERHART:

Sir, I believe, in this case, it is not a law enforcement action. I believe it's a national defense action.

WARNER:

Well, you say that. It could be a bunch of drunks on the plane who have caused it. I mean, there are scenarios by which it could not be terrorism, in which it -- in other words, that's one of the reasons I raised this.

I've been criticized roundly for bringing this up, and first in a question to deputy secretary of defense, who acknowledged that that time in the hearing that he felt it ought to be reviewed. It's a subject of considerable debate in a national journal, and I don't mind taking criticism. But I really think somebody better look through this very carefully, because what that aircraft is doing is supplementing what the armed guard is doing on the plane. And if that measure fails, and other measure fails, then and only will the aircraft then perform its really awesome mission. And I just think we'd better look at this Posse Comitatus.

We also got to look at it because we could have situations where enormous number of our citizens are afflicted in some way, in some disaster. And the military post that may be nearby could come in and help the police just establish some law and order if only to protect the citizens in some way against further harm. So I'm glad at least somebody is taking a look at this situation of Posse Comitatus.

I agree with you, Mr. Secretary. It's a doctrine that's served us very well. But there comes a time when we've got to reexamine the old laws of the 1800s in light of this extraordinary series of challenges that we're faced today. And I would take a look at -- have your lawyers take a look at that situation, because in Europe, I'm told by the Department of the Air Force, that they're referred as to as air police that fly CAPs. Have you ever heard that term in Europe applied?

WHITE:

No, sir.

WARNER:

Take a look at it.

Have you General Eberhart?

EBERHART:

No, sir. I have not.

WARNER:

Well, you ought to have a chat with one or two of the other four-stars around the hall. They told me about that. And we got to clarify it.

To you, General Pace, the secretary of defense, in consulting with Senator Levin and myself and other members of the House, talked about proposals by which to either modify a current CINC's responsibility and, or maybe even the creation of another CINC to deal with the homeland defense. And also, within the Department of Defense, the possible need for an additional, say, deputy secretary of defense to be the counterpart for Governor Ridge and such other individuals in other agencies' departments will begin to form the structure to deal with these important challenges of homeland defense. To what extent can you elaborate on that for us?

PACE:

Senator, thanks.

As you know, the unified command plan is the plan that lays down the individual authorities of the individual combatant commanders and as you also know, it is the chairman's responsibility under Title 10 to recommend to the secretary of defense changes to those authorities.

As we speak, the individual service chiefs and the combatant commanders are proposing changes to the unified command plan.

PACE:

They will be in to the chairman by the end of October. The chairman will quickly synthesize all those and go forward to the secretary with his recommendations for changes. One of the key elements in there is the requirement for a CINC specifically designated for homeland defense.

If I may go back to your previous question, sir, just to elaborate on the airmen who are flying right now. Because the authority to shoot down that airplane must come from either the president or the secretary of defense, and because the president has emergency powers to use his armed forces in that capacity, the particular pilot who is ordered to take that action would not be, in my judgment, subject to criminal...

WARNER:

It's important. There is this exception in there, and I think you raise a very important aspect of it. By virtue of the president ratifying the subordinate commander's recommendation that the shoot-down occur, he then would be operating under that exception of Posse Comitatus.

PACE:

Yes, sir. And we should certainly take a look at that sir, but we don't have a servicemember today in any jeopardy of being out of...

WARNER:

But you know, I mentioned a bunch of people who were intoxicated; it could be a mentally deranged person on the plane (OFF- MIKE) time which are apart from terrorism.

LEVIN:

Thank you very much, Senator Warner.

Senator Cleland?

CLELAND:

Thank you very much.

I'd like to pursue this question of Posse Comitatus. I'm not a lawyer, but I really agree with Senator Warner that I think the events of September 11 have given us a new demarcation here in our reaction as a defense team or as a defense system.

And I will say I think it was proper in 1947 for the U.S. War Department to then be called the Defense Department. Since 1947, we've all been in the defense business. The defense of what? The defense of NATO, certainly; the defense of Bosnia, sure; the defense of South Korea, certainly; but certainly ultimately the defense of our homeland.

So I think the number one lead agency in the defense of America is the Defense Department. I mean, I just start off there. That's where we put our money, our time, our energy. We ask young Americans to risk their lives in harm's way in America and all over the globe for that purpose. So that's where I'm coming from.

Posse Comitatus to me, the date says it all -- 1878. In my understanding, that's when President Grant asked Sherman's troops to leave Georgia, and said, "Don't come back." I mean, that was the era where we had, for 10 years, federal occupation of a number of states in America. There was great resentment to that. So I think the Posse Comitatus law that you couldn't, in effect, nationalize the American armed forces and have them go somewhere and occupy somebody, I think that was a direct reaction to that particular era.

The point is when it came to the war on drugs in 1980, we amended the Posse Comitatus law to allow the American military to do what? Defend our homeland. And hello, now American blood has been shed on American soil by a foreign foe -- September 11. And now we're under attack by germ warfare.

I don't think we need much more evidence to understand that we're not in a crime. If this was a crime, you know, we'd put the FBI Sherlock Holmes detectives on it and we'd nail Timothy McVeigh and execute him. This is war. So I'm not quite comfortable with the FBI leading the war against terrorism and being the lead agency, when we've got the entire Department of Defense out there, you know, taking second seat.

So I think we've got to figure out a new Posse Comitatus amendment that allows the Department of Defense to step forward and defend America. It's interesting that when the commander in chief was faced with that on September 11, he said not only, "Yes," but, "Definitely yes, and put your aircraft in the air, General Eberhart," without batting an eye. So in reality, that Posse Comitatus went out the window real quick. The commander in chief says so. And he had a right to say so and he did the right thing.

So I don't think we're in a crime scene here. I think we're in a war. If we're in a war, I think the Department of Defense ought to be the lead dog here.

CLELAND:

If we work from that premise, then everybody else can follow in and follow along and be part of a homeland defense team, but I've been looking for a leader in this thing.

We just got a briefing here from Senator Nunn, who sat in that chair, Mr. Secretary, and just a few hours ago he played the president in a Dark Winter exercise -- a germ warfare attack against the United States. And what did he find? He said, "I found myself getting very impatient with bureaucracy." In other words,

he found that agencies weren't coordinating with one another, weren't cooperating with one another, and that that's where we are today.

So I think we're in search of defining exactly what we want to do as a nation here. If we want to defend ourselves, especially our homeland -- the lead agency ought to be the Department of Defense -- I think there should be maybe a CINC for the homeland area to work closely with the homeland guard or the homeland czar or whatever. But I'm beginning to see that we need somebody to step up to the plate, and I think that's the Department of Defense.

Now, I know it wasn't popular to be involved in counterterrorism and so forth, and the American military wanted to be engaged elsewhere. But up till September the 11th, counterterrorism was buried over there in the Justice Department and the FBI somewhere. Now we realize it's homeland defense. It's what we're in the business of: survival.

So I just thought I'd throw that out.

Mr. Secretary, have you thought about any -- I want to ask you one question. If the president mobilized the Air Force within a matter of hours to defend our nation and said, "We're in a war against terrorism," the Coast Guard in a war comes under the Department of Defense. Have you thought about asking for the authority since we -- the president says we're in war, to put the Coast Guard under the Department of Defense now?

WHITE:

On a permanent basis, not in a national emergency. But as a...

CLELAND:

I would settle for a national emergency basis

WHITE:

Well, that's a good question. And there has been thought on that, obviously, because if you look at the events of the 11th of September, the Navy and the Coast Guard have worked very, very closely for maritime and coastal defense, as they have for a long time.

And the commandant of the Coast Guard regularly attends coordinating meetings in the tank with the other leaders of the military. So there is close coordination, albeit, at this point, not direct chain of command authority.

CLELAND:

Because the Coast Guard currently is under the secretary of the Department of Transportation.

WHITE:

Correct.

CLELAND:

I mean, in so-called peacetime that's quite adequate. But I mean, this not peacetime, this is war, and we've been made painfully aware of that.

Mr. Secretary, I'd suggest you look at that as one step toward DOD becoming more engaged in the war on terrorism.

Thank you very much, Mr. Chairman.

LEVIN:

Thank you, Senator Cleland.

Senator Inhofe?

INHOFE:

Thank you, Mr. Chairman.

WARNER:

Senator Inhofe, would you yield?

INHOFE:

Yes.

WARNER:

Just to suggest to our witnesses, in reference to the remarks made by our colleague, there is a very good piece written by Paul Stevens, "U.S. Armed Forces Homeland Defense: The Legal Framework." I would urge that those who haven't had a chance to refer to it. It covers some of the points that our distinguished colleague just reviewed.

Thank you.

INHOFE:

Thank you, Senator Warner.

WARNER:

And that's not to be taken from his time.

INHOFE:

General Eberhart, there's been -- quite a few questions have been asked about length of time it's taken to respond to certain requests. And I think that some of us are not as familiar as we should be with just -- and I'm actually concerned, we had the 5073 fueling (ph) is involved in all of this out in Oklahoma. Have you ever just sat down -- in a very, very short brief way, describe what the decision-making matrix is for this process of having to make a shoot-down.

EBERHART:

Yes, sir. First, we're cued by the FAA now that cuing is a lot easier as I alluded to earlier. We're actually up on a hotline -- a chat line with FAA all the time. So as soon as the FAA realizes there's a problem, we realize there's a problem simultaneously.

We've taken what we call air battle managers -- you're familiar with them from the AWACs, they're at Tinker Air Force Base. And we put air battle managers out there in the FAA sectors. So they're present for duty there, and they're there to coordinate and facilitate. We also have increased FAA presence at our regions and our sectors.

EBERHART:

So most important thing is this cuing, so that we know that there's a problem, which allows us to work the time-distance problem I alluded to earlier.

Secondly, we have continuous CAPs, as you know, over Washington, D.C., and New York City, which, obviously, allows us to respond very quickly in those locations or up the northeastern seaboard. We also run random CAPs throughout the United States of America over population centers and key infrastructure. Our goal there is to be unpredictable and to have would-be terrorists know that we might be there, so your chances of success are not very good.

And then finally, we've improved the communication lines between the pilot to the sector, the regional controllers and to me. And we've exercised this almost daily to make sure that once we see this problem, once we get in a position where we can take action, that all information is relayed up to the National Command Authority and we get the authority to take the action that they deem is appropriate. Hopefully, that's the action that we've recommended to them.

INHOFE:

Thank you, General, that's very specific. And I do appreciate that.

Talking about the CAPs program, the role of the Guard, there's been some discussion on the changing of equipment. For example, I understand that the F-15 would perhaps perform those duties better than the F-16. But a lot of these changes in this program since the 11th of September are going to cost money. Are these in the QDR? Are you working on that now? First of all, do you think there will be a substantial increase because of the changes in the emphasis and equipment?

EBERHART:

Sir, I think there's changes that are appropriate as modernization programs that are appropriate. We're reviewing those, as we speak. Some of those programs were included in the department's request for the supplemental.

First and foremost, I think we need to focus on our command and control systems. Matter of fact, our command and control systems are '70s and '80s technology in NORAD. It really hasn't kept pace over the years. So we need to bring those into the 21st century.

There are other things, in terms of an additional radio for the F-15s -- another VHF radio, which you're very familiar with. Then fighter data link. Those kinds of things, right now, we're weighing the benefit analysis of each of those for this mission. And I'm sure those will be part of the supplemental that came in and will be part of the '03 requests.

INHOFE:

And you are working on that now.

EBERHART:

Yes, sir, we sure are.

INHOFE:

General Pace or anyone else who feels comfortable in answer it, I came in here, kind of, disagreeing with some of the things that Senator Cleland said, but he made a very persuasive argument, in terms of the use of our military. Historically, before this time I've always opposed the use for some specific reason we haven't talked about here today, and that is that we are currently in a crisis, in terms of our deployments, in

terms of our force strength, which we've -- I know everyone gets tired of hearing this talk about -- but nonetheless it's true, that we're about one half of where we were back in 1991 -- and our deployments in places like Bosnia and Kosovo, where many of us don't believe we should have been deployed.

Nonetheless, if you're going to have an expanded role for the military into these areas -- and I contend that you don't have to change the act to do that. There is, recently, a study released on October 12, that's this year, by the Center for Strategic Studies here in Washington, D.C. And it says, "Neither the Posse Comitatus Act nor apparently any other statutes, purports to deny, limit or condition the president's use of the armed forces in response to a catastrophic terrorist attack on the United States." I guess, what I'm saying, I think it's going to happen anyway, regardless of what we do with that act.

My concern is, as it affects readiness. I spent five years chairing that committee and I've been concerned about the deterioration, because of the force strength modernization and our deployments. How is this going to negatively impact it and what can we do about that?

PACE:

Senator, as we do with all allocation of resources, allocation especially of service members, part of the process that delivers to the secretary of defense a recommendation to send troops to Bosnia or to allocate troops to a particular section of this country will include the impact on readiness for the next most likely employment of those forces.

PACE:

So when it goes forward to him, it tells him, "We need X number of troops to do this particular mission. If you send them on this mission, then we will need X number of months to get them back, retrained and ready to go for their most likely combat mission." So that kind of readiness equation is part of the process that tees up the decision for the secretary.

INHOFE:

And I understand that and I appreciate that, but that's on a specific mission or deployment. Right now we're dealing with unknowns, but we're establishing a policy whereby we may be using the military in some areas where we hadn't used them in the past. And I would just caution all of us to keep that in mind that somehow the cost of that is going to have to be transmitted to us and we're going to have to act on it. Unfortunately, it may be after -- you know, it may be too late.

So we need to prepare as much in advance if anything new is going to be imposed upon our military than they're already in their overloaded condition doing -- performing today.

WHITE:

Well, I suppose airport security is a classic example. We have today 6,000 guardsmen that are deployed in 430 airports across the country, augmenting the security forces. That's all under state control, but that comes out of the same force pot that we send to Bosnia and we have federal purposes for.

INHOFE:

Exactly.

WHITE:

And that's the real challenge that we have to deal with here.

INHOFE:

Thank you very much.

LEVIN:

Thank you.

Senator Carnahan?

CARNAHAN:

Thank you, Mr. Chairman.

I will submit my remarks for the record.

Secretary White, I'd like to follow up on a question that the chairman asked earlier and ask you to elaborate. What steps are being made to coordinate your activities with the new Office of Homeland Security headed by Governor Ridge?

WHITE:

Senator, I have met with Governor Ridge, and laid out for him in some detail how the department operates in support of homeland security, both the civil support side and the defense side. We have assigned a senior officer and other staff to his office. The former commander of the Joint Task Force for Civil Support in Joint Forces Command, who has extensive experience in homeland security, will be a part of Governor Ridge's office. And I look forward to detail coordination with him as we go forward.

CARNAHAN:

All right. Thank you.

General Kernan, there are currently 27 National Guard WMD civil support teams in existence. As you know, 10 of these teams have been certified to assist in detecting the presence of chemical or biological agents. What are the roles of civil support teams in the event of a chemical or biological attack? And how else could these teams be of assistance as civilian first responders in the event of such attacks?

KERNAN:

Senator, the civil support teams come under state Title 32 responsibilities to the governor. They are the first responders. They possess 14 different specialties. They're commanded by a lieutenant colonel. They have a mobile, analytical van and a mobile communications suite.

What they do is they come in, they assess, they validate, they analyze and they facilitate the military support that may be required to a catastrophic incident in the state.

But they initially work for the governor. If additional military support is required to a weapon of mass destruction incident or high-yield explosive in the United States, they would then facilitate the military support coming in to stop the dying, prevent further injury and reestablish critical infrastructure and facilities.

WHITE:

May I add that of the 10 that we have, since the 11th of September every one of them has been employed for a variety of tasks by their governors, to include early on the team in New York under the control of Governor Pataki. So we have found them already to be enormously useful and we are accelerating the training and certification of the additional teams.

CARNAHAN:

Thank you.

General Eberhart, you are responsible for overseeing the security of American skies. Would you describe the new procedures that are in place to respond to hijacking of commercial aircraft, and if there are additional resources that you feel are needed in intelligence or command and control to further support this mission?

EBERHART:

Yes, ma'am. In terms of the new procedures in effect, we've done everything from increased our connectivity with the FAA so, in fact, as I said earlier, we're on a chat line with them 24 hours a day, 365 days a year.

EBERHART:

So when they see a problem, we simultaneously see that problem.

Secondly, up until this time, we were looking out. We were looking external to the United States of America for the foreign threat. And aerospace warning, aerospace control were our missions. That was redefined on 11 September because now aerospace warning and aerospace control means the unthinkable. It means looking inside the United States for this terrorist threat that developed at that time.

So now we are deploying additional radars. These radars come in the form of Coast Guard airplanes, Navy airplanes, additional AWACs, to include NATO AWACs. Five NATO AWACs are part of our team now. They're temporarily deployed to Tinker Air Force Base.

We're also moving ground radars throughout the United States to fill areas where we didn't have good internal coverage in terms of the military coverage. And we're also linking some of the FAA radars into our command and control, our sectors and our region in NORAD command posts to make sure that we're seeing, again, what FAA is seeing. So we're able, therefore, to increase our situational awareness and decrease greatly the reaction time, again, to work this time and distance problem.

CARNAHAN:

Thank you very much.

LEVIN:

Thank you, Senator Carnahan.

Senator Allard?

ALLARD:

Thank you, Mr. Chairman.

As you know, General Eberhart, I am very interested in NORAD and so I'm particularly interested in how NORAD might interact with our various agencies, particularly the FAA. And I appreciate the question that was asked by Senator Carnahan, but I'm going to ask a little more detail. On September 11, my understanding is we had aircraft at least up in the air with the second plane to hit the twin towers; is that correct?

EBERHART:

Yes, sir.

ALLARD:

And so what I'm interested in knowing is, what was the process there and then how was that follow-up with the other aircraft that you identified that were coming or heading toward Washington, and how you responded? And how was the FAA interacting with NORAD in that whole situation, starting with that first plane that you deployed heading toward New York City?

EBERHART:

Yes, sir. The first flight I think was American flight 11. The FAA, once they notified us and we issued a scramble order almost simultaneously to the first crash, tragically. That flight of two out of Otis Air Force Base, out of Cape Cod...

ALLARD:

Let me understand -- so right at the time the first aircraft was hitting the twin towers, you were being notified by FAA that you had another plane headed toward the towers, you just routinely brought another aircraft...

EBERHART:

No, they notified us of the first hijacking just about the time that that airplane was hitting the tower.

ALLARD:

OK.

EBERHART:

And at that time, we issued a scramble order for the two F-15s out of Otis Air Force Base. We continued to send those airplanes toward New York City because initially, as we worked with the FAA, we weren't sure if that was the hijacked airplane. I mean, I hate to admit this, but I'm sitting there hoping that someone has made a mistake; there has been an accident; that this isn't the hijacked airplane, because there is confusion. We were told it was a light commuter airplane. It didn't look like that was caused by a light commuter airplane.

So we were still trying to sort this out, so we're moving the two F-15s and we continue to move them. They're flying toward New York City. In fact, they are eight minutes away from New York City when the second crash occurs. We didn't turn around. We didn't send them back.

ALLARD:

They hadn't made a sighting of that...

EBERHART:

Again, it's time and distance. It took them only six minutes to get airborne. Once we told them to get airborne, it took them six minutes to get airborne. I think this talks about the professionalism and training of these individuals. Tragically, there was just too much distance between Otis and New York City to get there in time to...

ALLARD:

Did FAA then notify you that you had a second hijacked plane somewhere in there, and the planes up there were...

EBERHART:

During that time, yes, we were notified, and again we'll provide the exact time line for the record.

ALLARD:

I'm not interested in exact time lines as much as I am just how the FAA reacted with NORAD during this time period.

ALLARD:

And then you had the other two planes heading out. Then FAA continued to notify NORAD that you had two other potential hijackings, these headed for Washington; is that correct?

EBERHART:

Yes, sir. The initial hijacking of the one, I think it's 77 that crashed into the Pentagon, we were working that with the FAA and we launched the airplanes out of Langley Air Force Base as soon as they notified us about hijacking. At that time it took those airplanes, two F-16s, again, six minutes to get airborne. They were approximately 13 minutes away from Washington, D.C., when that tragic crash occurred. Six minutes to get airborne, but still 13 minutes to it.

Now the last flight was a little bit different. I think it's flight 93 -- United Airlines flight 93 in Pennsylvania. At that time we were trying to decide, initially, if that flight was going to continue west and if there was some other target for that flight. Was it Chicago? Was it St. Louis? And what might we do to launch an aircraft to intercept it?

ALLARD:

So FAA knew before it deviated its flight pattern that it was hijacked.

EBERHART:

Yes. What we really knew is it was headed west, sir. It dropped off their radar scope. So it was headed west. And then they reacquired it. And at that time it became obvious to us that -- we thought it was headed probably for Washington, D.C., but maybe New York City.

We elected at that time to keep the airplanes that were doing the combat air patrol over Washington, D.C., and New York City right where they were in case there was another airplane coming. And then our intent was to go out and meet that aircraft and destroy it if we needed to if it entered either Washington, D.C., or New York City airspace.

ALLARD:

My understanding now that NORAD has made some effort to get direct access to FAA radar data. In the past, you've not had access to that? What's the status of that?

EBERHART:

Yes, sir. Again, in the past, we've had access to what we call the Joint Surveillance System, which is that system that rings the United States and looks out. It looks for that foreign threat. It looks for someone coming into our airspace that's not authorized.

We've not been charged, we've not been concerned with aircraft that originate inside of our airspace, because we believe that that, in fact, is an authorized aircraft on a flight plan authorized to be in the United States of America. So we've been looking out.

So we've had access to the Joint Surveillance System. But we've not taken all the radars internal to the United States, imported those into our command and control centers.

As you know, back in the '50s we actually owned and controlled all those radars in the United States Air Force. And in 1958, when we stood up to the FAA, we have been moving those radars to the FAA. We have helped pay for them, purchase them, and we've actually moved manpower on the order of about 200 people over the years to the FAA to operate these radars.

But we were looking out and we used the radars that the FAA uses to look out. We both use those radars.

To answer your question: We have figured out a way to take these internal radars and net them into our command and control centers.

ALLARD:

OK. Well, I just want to thank you and your people for, I know, I think a tremendous effort in light of some totally unexpected circumstances. And at least, I, for one, appreciate, you know, the readiness that was displayed.

I think that when you think about getting in that plane and taking off in six minutes, there had to be a lot of hustle there. And I recognize that. And we're searching for better ways in which we can even do a better job, but yet recognizing that you did a superb job at the time. So I want to thank you and your people, General, for that.

And I see that my time has expired.

LEVIN:

Thank you, Senator Allard.

Senator Dayton?

DAYTON:

Thank you, Mr. Chairman. And I appreciate your convening this hearing. This has been a day of very impactful and instructive testimony.

I want to thank our witnesses here, too.

This morning we had the subcommittee chaired by Chairman Landrieu and, with the involvement of ranking member, Senator Roberts, just a mind blowing testimony about the threats under the category of bioterrorism. We discovered then that there are other categories -- I discovered then, others have known it before, of possible threats in the area of agricultural terrorism, chemical terrorism.

DAYTON:

We're now, this afternoon, reviewing the acts of civilian airplane hijacking turning them into, as you said, manned missiles. In between we had a top secret briefing from the director of the FBI and the director of the CIA, and since those were top secret, all I can say is there were areas discussed there that, again, to a new senator, are revealing and mind-boggling.

And so, I guess I want to say, following up on what Senator Allard said, that the magnitude and the enormity and the complexity and the multidimensional nature of what we're now calling homeland defense or homeland security is staggering. So, and it's one thing to come in, you know, with perfect hindsight -- and I'm not saying that we shouldn't do so to learn the lessons for the future, but, you know, we're talking about a Dark Winter simulation; we've been a dark fall reality and we're still in the midst of the one right now with the anthrax situation, which is changing on a daily, if not hourly, basis, and may have other unfoldings that we're -- you know, that have already taken affect and we're just not aware of them yet.

So, I think we've got to, you know, take all of this both with the respect and appreciation for all you're doing and, as I say, be probing for those areas where we can improve because we always can improve, but recognizing, as I said, you know, we're always preparing for the last war. I mean what constitutes homeland defense we've learned through a \$359 billion national defense budget and then we're in the midst of a legitimate debate about how much more we put into the national missile defense development. And lo and behold, we've got some very astute and very determined, to the point of self-sacrifice, enemies, who are looking for exactly what it is we're not focused on, that we're not prepared for. And that's where they're going straight next, not where we're prepared for.

So, all I can say is, Mr. Secretary, you know -- and we don't want to scare the American people. On the other hand, we don't want -- no one's complacent anymore. How do we cope with all of this? And how do we do so without spending more money? And I guess I go back to that because we just passed a tax cut issue. We thought that was the right thing and people thought that was the right thing to do, with all respect. We thought we had a surplus, now we find we have a diminishing surplus and we have these greater needs.

We were told this morning that our public health system is seriously inadequate to address those potential threats, and those real threats now in affect.

How do we gear ourselves up across the board for all of this, much less coordinate it?

WHITE:

Well, I think, Senator, we are geared up. We have a great deal of work to do.

For example, the key to homeland security to me is the confidence in the capabilities of the first responders. There are 11 million first responders in this country -- state police, emergency medical technicians, local hazardous material teams.

The question is if you look at the threats that you're just talking about, what are the gaps in their capabilities? And then how do we fill those gaps in either on a interim basis with assets of the Department of Defense, either reserve component or active? And then on a long-term basis, how do we build the confidence of the first responders to fill in those gaps so that we can not take all the resources on the department because our worldwide challenges are not going to go away?

And there's a concurrency to this effort between what we do on the homeland and what we're doing in CENTCOM or other regions of the world that all address the same set of forces.

I don't think there's any way, with the increased operational tempo that we're currently facing, like the air CAPs that General Eberhart is directing, that you're going to be able to do this in the same resource ceilings that we were talking about before the 11th of September, because the operational tempo is just significantly escalated. And that is our national challenge is to how to come to grips with that.

DAYTON:

Any of the others of you care to answer that?

KERNAN:

Sir, I would just echo what Secretary White said that you know we've got some tremendous capability right now. And we've refocused it. And everybody's energized and we're looking to get the synergy that we need. A fusion of this interagency arena, a fusion of intelligence and information out there, the ability to do the collaborative planning is going to allow us to be much more predictable -- predict what the threat is, allow us to be much more proactive.

We'll have to look at reducing those seams and gaps that you talked about.

KERNAN:

We're assessing what command relationships make the best -- the most sense.

I think we need to look at the authorities that Guard, reserve and active components have and who can work for whom, and under what conditions can you maximize the flexibility within the state.

The key is the responsiveness of the first responders, as Secretary White said. The more prepared we are for them to be employed and engaged and deter, I think the better we're going to be able to protect our citizens.

PACE:

Senator, I would simply add that part of a good defense is a great offense. And we have a tremendous country. It's an open society. We want to keep it an open society. There are many, many parts of it to defend. A good way to defend it is to keep the other guy off balance by attacking him where he lives.

DAYTON:

Well said.

Thank you, Mr. Chairman. My time has expired.

LEVIN:

Senator Dayton, thank you.

Senator Hutchinson?

HUTCHINSON:

Thank you, Mr. Chairman.

We've had several who have made reference to the very excellent hearing that the Emerging Threats Subcommittee under Chairman Landrieu conducted this morning. It was a pretty chilling presentation, at least in my mind, what we heard.

In that presentation, Senator Nunn made the comment that smallpox was the -- he expressed it as being that which was the least likely to be used, but the most catastrophic if used as a threat to our population. Then he went on to say that Health and Human Services is moving very aggressively to find multiple sources of smallpox vaccine. Later in the hearing, the question was posed to the entire panel, "If smallpox is the least likely weapon to be used, what is the most likely?" And the answer was anthrax, perhaps on a wider scale, a more sophisticated scale, but anthrax was the most likely bioterrorist threat that we faced.

Hearing that, the question arose in my mind and the question that I posed to the panel was, "Well, if the least likely is smallpox and we're seeking multiple sources for smallpox vaccine, and the greatest threat -- at least the greatest in the sense of likelihood of being used -- is anthrax, what is the logic behind us having

one source for anthrax vaccine? What is the logic?" And Dr. O'Toole responded immediately by saying, "It is not logical, nor is it defensible." And I think she's exactly right, and it is a concern that I've had for a long time.

The BioPort facility -- the Michigan facility, my first question is, can the vaccine that is produced there, the anthrax vaccine, presumably, hopefully that it will be approved quickly by the FDA and that we can see production begin again -- how can the civilian population access that? Will it be only for force protection? We're talking about homeland security. What kind of prospects are there that the production of anthrax vaccine could be available for protection of the general population should that be needed?

WHITE:

Well, the anthrax vaccine, Senator, was a single source -- was in a single source because the only people we felt necessary to protect with the vaccine were those people in the Department of Defense who would have an immediate concern with anthrax.

HUTCHINSON:

Which obviously was a misguided strategy, since we don't have the vaccine for our troops today going into the arena of harm's way.

WHITE:

Yes, given the events since the 11th of September.

But I would say two things. I was in Houston last Friday and met with the emergency health services people. The doctor there said, "If you're really worried about a biothreat to this country, get your flu shot this year, because 30,000 people a year die of the flu in this country." The Health and Human Services, under Secretary Thompson, is going to move anthrax vaccines and the business and production of it to a national program because the interests of...

HUTCHINSON:

OK. If I might interrupt you, Secretary White, my understanding is it's 36 months before any commercial firm will be able to produce anthrax vaccine. So even if they move very aggressively, for 36 months there's no protection unless there's some means of accessing the DOD production.

WHITE:

Well, the principal treatment for anthrax today is antibiotics, and that depends upon early detection.

WHITE:

But the strain that started here is 100 percent treatable with antibiotics.

HUTCHINSON:

I don't mean to be argumentative, but I have been told that there are strains of anthrax that are resistant to antibiotics. Is that accurate?

WHITE:

Well, I'm not an expert. And so, I don't think I should offer an opinion. I think the point is, we need something far greater than the BioPort single source.

I know that Secretary Thompson, in working with the FDA, is pushing to, number one, certify BioPort's production; and, number two, to expand those that are in the business of it as rapidly as he can.

HUTCHINSON:

Mr. Secretary, are there pathogens beyond anthrax and smallpox that our troops, our forces face as potential risks, potential dangers in the future?

WHITE:

I would say yes.

HUTCHINSON:

Apart from -- the surgeon general of the United States has endorsed the idea of a GOCO, government-owned, contractor-operated, facility, because there are pathogens out there that are not going to forever -- they'll never be commercially feasible. Will the Department of Defense, working in conjunction with HHS and working in conjunction with the surgeon general, move expeditiously toward a GOCO?

WHITE:

Well, absolutely. If the GOCO is the right way to produce it, with all the experts, than we are -- would obviously support that.

We are heavily involved in the research on this, as you know, up at Frederick at Fort Detrick. We have a leading research laboratory there on biological terrorism and threats, and will be an active part of the solution.

HUTCHINSON:

Senator Nunn, one of the comments that he made -- one of the suggestions he made was the hiring of Russian scientists who -- it was a very constructive idea. My question is, after this amount of time, is it too late for those Russian scientists that worked in biological warfare, created a lot of the weapons that are unfortunately out there -- is it too late for us to endorse that kind of a policy where we try to take some of those that may be a potential threat and utilize them and their expertise in trying to fight these biological threats to our country?

WHITE:

Well, that's a good question. We have an enormous research capability in this area already, both in the Army and in the Center for Disease Control in Atlanta. And those two facilities work very closely together. And I know on the Army's side, and I'm sure in Atlanta, they are looking to recruit talent in these highly specific areas.

But as we sit on the ground today, we think we have the finest technical base in the world to deal with these things.

HUTCHINSON:

I don't think it's sincerely a reflection on our lack of talent, but trying to get that talent out of the potential of working for our enemy.

WHITE:

No. That's a good point.

HUTCHINSON:

Thank you, Mr. Chairman.

LEVIN:

Thank you, Senator Hutchinson.

Senator Akaka?

AKAKA:

Thank you very much, Mr. Chairman.

General Pace, since September 11 and the declaration of war, many operations have been increased, and there's no question that there has been a burden on the present active forces that we have. And so, I'm concerned about the structure and training and personnel. Do you believe, General Pace, the increased operations, for example, increased air patrols over the United States cities and the use of National Guard personnel at airports -- do you think that they're likely to be maintained for a long period of time?

PACE:

Senator, I'm not sure what the definition of long period of time is, but certainly it must be maintained until further forces are available, whether it -- if it turns out to be a pure police function and a police force and can be built to take over that function, then naturally we would turn it over. I don't know who else in the United States could possibly do the CAP mission that General Eberhart's people are doing.

But I'd like to take the opportunity to tell you how fortunate we all are to have such a robust capability in our National Guard and in our Reserves. Those folks are critical to...

AKAKA:

I'm glad to hear that, but let me ask you this then. Do we have adequate force structure, training and personnel to sustain these operations on the long-term basis?

PACE:

Sir, it depends on how many other things we embark on. And quite honestly, we may not have enough active force structure. It also depends on the coalition of the willing -- there have been about 40 countries so far who have offered to assist us in many ways; some of them financial, others up to going into combat with us.

PACE:

So there are opportunities for our country to partner with our friends around the world to be able to share some of this burden. But as we go down this road, which is still very uncertain, we may very well need to change our force structure.

AKAKA:

General Pace, what, if any, is the impact of the department's current activities regarding homeland defense on our readiness for other missions?

PACE:

Sir, short term, we have not had a major impact from the allocation of resources to homeland defense. One area, however, is in the area -- the AWACS early warning aircraft. In fact, that aircraft has been in such demand that our NATO friends have sent five of their AWACS-type aircraft to assist General Eberhart in his missions.

So there are specific low-density/high-demand assets, primarily intelligence and air warning-type assets, that are in short supply and are being used more rapidly now than they were before.

AKAKA:

General Kernan, would you have a comment on that?

KERNAN:

Yes, sir. Unquestionably, there are some significant training and readiness implications to the crisis we find ourselves in today.

A lot of that has to do with the force protection levels, for instance, that we maintain to protect our military installations. If we go to Force Protection Charlie, it's about 60,000 people a day committed to just protecting our installations.

As General Pace said, right now it has not had any readiness impact. A lot of what we're being asked to do in the way of homeland defense are collateral tasks to our primary war-fighting missions. But obviously, OPTEMPO has increased. We still rely heavily on the Guard and Reserve. So the force structure issue is one that needs to be very carefully studied.

AKAKA:

Thank you.

General Eberhart, you said in your testimony that NORAD forces are now also focused on threats coming from within our own air space. Are these duties in addition to the prior focus on threats originally coming from external forces? And if so, how are you preparing to do both?

EBERHART:

Yes, sir, they are in addition to the aerospace warning/aerospace control focus that we had in terms of looking externally. We are preparing and training to do this through the means that we've talked about earlier in terms of additional radars in the interior of the United States, different netting and connectivity between the FAA, other agencies and NORAD, close cooperation with Pacific Command and with Joint Forces Command. In fact, on occasion, we've had operational control or tactical control of Navy ships or Navy airplanes to work these kinds of problems.

So, we're looking at any and all ways, as we fight this war on terrorism, to use the resources available and use them as smartly as we possibly can.

AKAKA:

Thank you very much, General.

LEVIN:

Thank you, Senator Akaka.

Senator Sessions?

SESSIONS:

Thank you, Mr. Chairman.

General Eberhart, the question that I would ask -- and I think this has been stated before. But by what authorities -- on what authority was it that your pilots had the authority to shoot down aircraft? Where was that given? And what leeway do you have to have before you can do that?

EBERHART:

Sir, the authority was from the National Command Authority. We never passed that authority, so we never gave a pilot that authority because we did not see that situation -- I hate to use the word opportunity, but we didn't see that necessity to do that. But it was from the National Command Authority.

Again, we have thought our way through this in exercises and worked with our lawyers and have decided over time that if we were convinced that the people on board the aircraft were going to die -- they're going to die regardless, and if we allow that airplane to continue others are going to die too, then we believe that that's persuasive.

That is difficult. I can't imagine a pilot living with that the rest of their lives. But we've talked to all of them. They all say. We're prepared to do this if we have to." And we know they're all hoping to God they never have to do that.

SESSIONS:

But is there -- has there been an agreed upon person or command authority that would approve that?

SESSIONS:

A pilot or...

EBERHART:

No, sir. It's well above the pilot. I don't want to go into specific details; the National Command Authority does not want us to discuss that in open testimony.

SESSIONS:

You have clarified it in your own mind. There's no doubt as to how you think that system (OFF-MIKE)?

EBERHART:

There's no doubt in the minds of our pilots and all of our intermediate commanders, right on up to the National Command Authority.

SESSIONS:

You know, a question about Posse Comitatus and the involvement in the defense forces in homeland defense is very, very troublesome. We had hearings several years ago on the (OFF-MIKE) willingly decided that they were going to give up that responsibility of training local police that was given to them. And we agreed to that, and the Department of Justice assumed that responsibility.

It seems to me that that is the right thing, Secretary White. We went through that before; that we want our military constantly ready at a moment's notice to be ready, committed and trained to do, and if we put too many domestic civilian training demands on them, it does undermine your core function, would it not?

WHITE:

Well, yes, it does.

SESSIONS:

Give me the legal and historical reasons for it -- for minimizing military involvement in domestic law enforcement.

WHITE:

Yes, Senator, it does. But at the same time, if we in the Quadrennial Defense Review have said that homeland security and homeland defense is the most important thing we do, it becomes a matter of balance. If we have deficiencies in first responders, and in coordination with Governor Ridge we have to figure out a way to fill in those gaps between ourselves and the states and the local communities to provide the necessary defense, then we're going to have to make decisions about how to apportion resources and allocate it because somebody has to do it.

For example, we have biological and chemical units in our structure because we face those threats on the battlefield, not because there might be a biological attack in New York City.

As we review this whole business of homeland security, we're going to have to revisit those questions of the appropriateness of the force structure to a balanced capability between what we do in homeland security and our traditional focus internationally, and the threats that face us, and make some decisions about priorities.

SESSIONS:

Well, I think that's exactly right. I guess my concern would be that we don't somehow look on the Department of Defense to become the base force for different communities. I think they can be a response force to call on in an emergency. And we need to know, I think, for example, that we have some chemical, biological teams that doesn't need to be duplicated elsewhere if yours are (OFF- MIKE).

Is that what Mr. Ridge is going to be working to do; decide what the needs are, what the gaps are, what the duplications are, and finally, what (OFF-MIKE) best cover our nation?

WHITE:

I think that's precisely the challenge. And to me, the cornerstone is to begin by looking at there are 11 million first responders in this country, and state and local organizations. The question is what are the gaps and how do we fill in the gaps? And what do we add to them? And until we can add it, what do we do in the interim?

And that, to me, is the essence of Governor Rich's challenge to sort out. And we aim to help him do that.

SESSIONS:

Well, I know (OFF-MIKE). And surely, anybody who saw what happened in New York, it was the police and fire that are first there. Now the Guard or the active duty would be called to supplement and would be...

WHITE:

And were.

SESSIONS:

Traditionally, under every plan it will be in the inferno will be local people (OFF-MIKE)

General Eberhart, I know General Pace has wrestled with this. Maybe I'll ask it again. In Southern Command they've got the drug effort and the law enforcement part of that and the military dimension is important.

SESSIONS:

As United States Attorney on the Gulf Coast for 12 years, I was aware that we were vulnerable to flights from South and Central America coming into the country pretty much undetected. We know we're trying to protect our major cities in the country (OFF- MIKE) do you think that we need increased effort to maintain security over our southern air space?

EBERHART:

Sir, we're doing radar coverage analysis as we speak, to include things like relooking the aerostats that we've used down their for years, that we were going to draw down before we do that to make sure that there's no value-added with this new mission of homeland that's looking to the interior. So we're doing that analysis to see what the value-added, and that should be available soon.

SESSIONS:

And I would add that the aerostats have not proven to be spectacularly successful in the drug effort. It may well be more for homeland defense.

REED:

Thanks, Senator Sessions.

Senator Landrieu?

LANDRIEU:

Thank you, Mr. Chairman.

Let me, if I could, submit for the record a fairly lengthy opening statement that would support many of the issues raised by Senator Cleland. I want to associate myself with the remarks that he made, and this statement goes into a lot more detail about that.

REED:

Without objection.

LANDRIEU:

Just a comment, and then I have three questions, if I could. One, it was said here on the record, and I'm not sure, but by one of the panelists -- and I thank you all for the excellent work that you're doing -- but we talked about being careful about expanding the role of DOD in light of this, sort of, domestic and homeland security. And I know there are resource issues and there are all sorts of issues that we really do have to address, and that they are legitimate.

But I want to get back, Mr. Secretary, to what you said and to try to affirm that it is the original role of the Department of Defense, the principal role, the central role, the entire reason of being that the Department of Defense would protect the life and liberty and well-being of the people on the homeland, as

well as people who have to temporarily travel off the homeland to go for whatever carries them away -- business or commerce or other endeavors.

But the central role of the Department of Defense is protection. And I think we are in a significant historic paradigm shift. And I think one of the roles of this hearing is to help us focus on that new paradigm.

And I, for one, am very happy to see in the Quadrennial Defense Review the words reemphasized about the primary role of the Department of Defense in protecting the homeland. I mean, we have had 6,000 innocent people killed. This is not a crime; this is an attack. This is not a crime scene; this is a battleground. Six thousand men, women and children, innocent people, have been murdered and killed by the hands of our enemies, using different weapons. It's an symmetrical attack.

And I think the faster we get clear about that, the better we will be able as a government to respond appropriately and quickly to prevent the further loss of life, prevent the further deterioration of individuals' well-being, and prevent the economic downturn for this nation that would have a dramatic effect not only on us, but everybody in the world, and to support what the president says about the urgency of that.

Now, I want to just refer us to something that is not new, because it was written in 350 B.C. by Sun Tzu, who says, "Know your enemy, know yourself, and you can fight 100 battles without disaster." I thank the chairman for calling this hearing because it's not only about knowing our enemy -- who he is or she is, or where he or she is, or what it is, a state of a terrorist cell, and where they might be, and what their motivations are -- but a very important thing about what we're doing today is knowing ourselves: Who are we?

LANDRIEU:

What have we become? What are our departments and what are our capabilities in how we are organized?

So along those lines, I just need to ask you, Secretary White, if I could, one of the ongoing difficulties I believe we face in this new era of asymmetrical warfare, which we are in and fully -- getting fully engaged. Precisely are we under -- when are we under attack? And when are we precisely at war?

We've developed a system for what we call low-intensity conflict. These actions were characterized by our interventions around the world to defend democracy during the Cold War. They're fairly well-defined. We reached a hazy compromise under the War Powers Act; it's by no means perfect, but it was the best option that we had to reflect a changed world.

After the Cold War, we switched gears to peacekeeping. And then the Pentagon has developed methodologies for what it calls operations other than war, meaning peacekeeping, humanitarian interventions. We're all familiar with this. It's worked pretty well because through the course of the Cold War it was developed. There are expected protocols that have been established here and through the international community.

But I think we find ourselves in this new war without a paradigm similar to the ones that we're familiar with. The Pentagon does not seem to know how to treat non-state actors. It doesn't seem to know what its proactive role is in defending the continental U.S. It's what we're debating.

My question is, can you describe for me a scenario in which a non-state actor would take actions within the United States in which you would anticipate would put the Pentagon on a war footing? Let me be clear. Could you describe for me a scenario in which a non-state actor would take actions within the United States in which you anticipate would put the Pentagon on a war footing?

WHITE:

Senator, I think we're on a war footing right now. I think we just observed a war-like act. As the president has clearly said, we are at war with international terrorism. If you look at what we're doing inside the department, we're on a wartime footing right now.

We had 174 people killed in our building. So we thoroughly understand that we are at war. And the gentlemen on my right or left, I think, understand that. And we are prosecuting that war, both domestically and internationally, to the full measure of our ability.

This -- domestically, as we said earlier in the hearing, the Quadrennial Defense Review cites our traditional role to protect the homeland as the number one responsibility that we have in the department. I absolutely agree with your comments on that.

But we are at war right now, both domestically and internationally. And I think we have the resolve and will and support of the American people in that activity. And we are going to prosecute it until it's finished.

LANDRIEU:

Well, I want to agree with you and say that I support that most strongly. And I'm also one of the members of the Senate that will try to provide the resources necessary to do that, because there is a leadership role that must be assumed. And the question about who assumes that leadership role I think is central to our being able to wage an effective and appropriate battle for what we are experiencing right now.

And there are many issues that have to be resolved. But I think that the people of the United States would welcome the military's leadership role, respecting the other roles that all the other government agencies have to play when we are, in fact, in a new kind of war, an asymmetrical battle where attacks come in different forms.

And I know I'm out of time, but you say, you know, the missile that was turned into a plane -- we've now been attacked through the mail. The next attack could come -- just as Senator Sessions or Senator Roberts, through the cropduster. The next attack could have come from some other place.

And if we're relying on the 11,000 -- or 11 million first responders who are like us, you know, hardworking, underpaid, you know, not getting paid for overtime, not trained the way the military department is, I think we may be relying on something that wasn't necessarily intended for the new paradigm that we're facing. Not to say that they haven't been fantastic and terrific.

So I'll save my other questions. My time is out. But I just think that the role of the military -- I think I want to support you in that central mission for the military.

REED:

Thank you, Senator Landrieu.

Senator Santorum?

SANTORUM:

Thank you, Mr. Chairman.

Mr. Secretary, I just want to maybe shift a little focus to some of the concerns that I have. When I think of Army, I think Army begins with R, and that's the word "resources."

SANTORUM:

And that's one of the big questions that I've had for a long time about the Army and the resources. And now you're here in front of us saying, "We've got a new mission, got a new responsibility, got all these things I've got to do now." And I think coming back to the Army that is underfunded; that is with the plan of 33 1/3 of capitalized, modernized units. And I'm just wondering how this new mission is going to be a drag on resources, that is I believe absolutely essential for the Army to finish, to begin the process and finish the process of something this committee has advocated for quite some time, which is the transformation of the Army.

And I understand and I, you know, support the designation of the Army as the leader of this homeland defense with respect to the military, but I've got to tell you I've got some huge concerns, and I'd like you to tell me how you're going to take what is an already underfunded Army to get to transformation, do an additional mission and still get to transformation.

WHITE:

Well, I think it's clear, just like the other services, there will be additional resources required for the additional OPTEMPO that we find ourselves in. I was making cases all summer long in the Quadrennial Defense Review that given the operational tempo of the Army at that point, with deployments to Bosnia and Kosovo and the other places around the world, that we were hard-pressed from a structure and resources point of view at that point.

We now have -- if you just take the Guard side of it, we now have 6,000 soldiers in airports across the country, dealing with that challenge. So I think clearly there are significant -- depending upon the duration of this activity, as the vice chairman has said, there are significant resources and structural implications to this level of operational tempo that we are addressing both in the '02 budget and the '03 that we're putting together as we speak.

We must, however, sustain the transformation that the chief of staff laid out two years ago and that you have supported in this committee. The transformation that makes us more agile, more strategically mobile than we have been in the past in my opinion is tailor made for the security environment that we find post-11 September. And so we have to sustain that transformation effort while we keep up with this increased operational tempo.

SANTORUM:

I agree with you. My question maybe is more specific, and that is, what challenges to you face, not just with the increased operational tempo, but the resources that that operational tempo demands, and still have the resources to invest in the transformation? And what is the impact -- well, just give me that. Can you give me how you believe you can allocate those resources?

WHITE:

Well, before the 11th of September, the allocation was very clear, I think. The allocation was to fully fund people, fully fund the readiness of the structure as it existed then, and to support transformation, both in the interim brigades and in the objective force at the expense of the legacy force, and Band-Aiding together our infrastructure and our installations, and those were the trades that we made to make it work.

Post the 11th of September, in our budget submits you've seen we've asked for more money for force protection. We've asked for more money for our intelligence resources, and the operational tempo that we're at will require more O&M money to support the tempo that we're at. And we've made those requests and we're in, of course, discussion with you right now as you go into conference.

SANTORUM:

Thank you, Mr. Chairman.

REED:

Thank you, Senator Santorum.

Mr. Secretary, you've testified today about the current plan for reorganization with respect to homeland defense. I understand that plan was developed at the highest echelons and came down through the Pentagon. Could you give your personal views based upon your extensive experience as a professional officer, as a business executive, as a thoughtful commentator? Is this reorganization plan effective? Does it go too far? Does it go far enough?

WHITE:

You means in terms of what we're doing in the Department of Defense?

REED:

Or perhaps overall, just your impressions would be very valuable, Mr. Secretary.

WHITE:

Well, my personal opinion is, number one, as I said earlier, we need a focus at DOD level in the department, most likely with a dedicated undersecretary.

WHITE:

And we need to collect all the bits and pieces from SOLIC and Policy and Health Affairs that have to do with homeland security, and we need to pull that all in one spot. The secretary -- I've made recommendations to him and he's considering precisely how he wants to do that. I think that's step number one.

Step number two is the operational planning that the joint commands are doing, number one, before we get the unified command out, so that we can clearly define what our homeland security requirements are and figure out what the apportioning of forces details are associated with that. And that's a big task, and ultimately it will mean changes to the unified command plan, as the vice chairman has discussed.

The third, and perhaps the greatest, is the interagency aspects of this which Governor Ridge will drive. And that's get down to practice, practice, practice against the realistic threats that we find ourselves in post 11 September.

There are parts of this that we do very, very well because we frequently exercise chemical spills and hazmats, the things that you find in a normal course. But we have an enormous challenge facing us in these new threats, and we have to train up on the interagency side. And I'm confident, having spoken with Governor Ridge, that he will drive that process.

And those are the things I think we need to do.

REED:

Well, thank you, Mr. Secretary. In fact, you've predicted my next question, which is an impression I have is that we have lots of good plans at every level. We have units that have been designed to implement some of these plans. But my impression is I'm not quite sure we know what we've got out there, because we haven't exercised vigorously. We haven't done the kind of command post exercise and operational exercises that will show, as you said before, the gaps. Do you have now a vigorous schedule of exercises?

And I should also add that this has to extend not just through DOD, through federal agencies, this has to go down to local police departments, local fire departments, the environmental managed agencies and

states. Are you thinking about those types of exercises? And do you have the resources to do them, Mr. Secretary?

WHITE:

We have to. And I think everyone recognizes that. And everyone recognizes the key role that governors will play in this, and state and local responders.

In 23 of our states, the adjutant general of the state is also the emergency services coordinator for the governor. We will get to that and we will train to that because we don't have any choice. We have to have the operational capability that will be developed by the exercises. And as a former military officer, you understand what I'm talking about. If you don't train it, you don't exercise it, you don't have the capability.

REED:

I couldn't concur more, and I don't want to belabor this point, but is the money there for these exercises? Are you actively planning with a schedule, coordinating all the way down to the emergency management officer in the state and to the local fire departments and police departments?

WHITE:

I don't think the planning's laid out in adequate detail at this point. I know that that's a focus of Governor Ridge and his appointment brings to the government. And we will actively support him.

REED:

Thank you, Mr. Secretary.

One final point before recognizing Senator Warner for a second round. We recognize we're up against a very adroit adversary. They have struck us through our aviation system. One would assume that they would try to find an open door and knock on that, or just come through, which leads me to the issue, I think, could be very, potentially vulnerable. That's our maritime security, which the Department of Defense must play, and the Department of Transportation, a key role.

Could you, Mr. Secretary and your colleagues, comment upon maritime security in terms of your efforts, coordination, organization, just in general?

PACE:

Senator, if I could go at that in an unclassified way.

REED:

Absolutely.

PACE:

And then perhaps in another forum address it more specifically.

But, for example, some ships that were scheduled to deploy overseas have not been deployed, to be able to stay here. Some that were overseas are being brought home. The cooperation between the Navy and the Coast Guard is tremendous and they are working collectively in our major ports and our coastlines to provide the best security they can with the assets they have.

So, from the maritime perspective, I think if they Navy and the Coast Guard are working very closely and are reallocating resources to focus more on homeland.

REED:

Is this also a subject of the issue of the unified command; who is in charge with respect to Coast Guard, Navy and civil authorities?

PACE:

The unified command plan has as a primary objective -- the work that is going on now for changes has as a primary objective identifying a CINC responsible for homeland defense.

REED:

Thank you, General Pace.

And just, if I may, take this opportunity, there was some discussion, I think, previously about the Posse Comitatus and counter- drug efforts. And General Pace, you have a unique perspective of being the former SOUTHCOM commander. The understanding I have is that our participation in these operations supporting Colombia and other initiatives, that our legislation provides the secretary of defense the authority and the direction to ensure that members of the Army, Navy, et cetera, do not participate in law enforcement activities. So that there is a active regulatory stricture against those law enforcement activities where DOD personnel are doing military things. Is that a fear? Or could you comment on that?

PACE:

Sir, let me try and you can tell me if I miss the mark. The statute does, for routine daily activities, prohibit your military from acting as a police force. There are also, however, emergency measures that the president can invoke which allows us to do the things that we have been doing since -- on and since 11 September.

REED:

But again, and I think my question was brilliant, but slightly tortured, with respect to your operations in Colombia and elsewhere, you were performing a strictly military role.

PACE:

True, sir.

REED:

The regulations and the guidance you were giving the troops did not invite them to get involved in criminal justice activities.

PACE:

That's correct, sir.

REED:

Thank you.

Senator Warner?

WARNER:

Secretary White, you referred to our distinguished acting chairman here as a former military officer. He went to West Point. And we're very proud to have him on this committee. And he certainly handles things very well.

But I'm just curious. Who is senior at West Point, the secretary or yourself?

REED:

The secretary is senior.

WARNER:

Quite senior.

REED:

Quite senior. Quite senior. There's a separate issue...

WHITE:

Maybe not quite so senior.

REED:

Quite senior. There is separate effort of distinguishment. But senior is quite true.

WARNER:

Just take this question for the record, Secretary White and General Pace. But the -- we've done a lot of discussion here on Posse Comitatus and the related -- but there are some related statues which I'm informed by our staff that have directives which inhibit such things as the sharing of intelligence between law enforcement and local military organizations. And maybe we better take a look at that. I think what we did on the floor today, the Senate terrorism bill, may have gone part way in alleviating that.

But, boy, I come back to our president, who has handled this thing tremendous courage and I think foresight and brilliance, said we're all in this together and we've go to look at things that been in place for so long, like Posse Comitatus and maybe these good reasons for the military to have intelligence which they don't want to share with law enforcement at one time in our history, but I think after this hearing you've heard expression of a lot of our colleagues: We better look at it.

And I'm glad that you touched on the maritime security issue. Port security, which, of course, is with the Coast Guard, but we need to coordinate with the Coast Guard because we're bringing heavy tankers in. Our nation's so dependent on overseas petroleum. And if one of those tankers were somehow, by a terrorist, blown up in a port, you would have devastating effects. I would hope maybe that would be examined also.

Now, as we all fully understand, Secretary White and General Pace, our overseas combatant commanders -- we refer to them as CINCs -- established uniform standards within their geographic areas for force protection and threat warning conditions. Who is responsible for establishing such standards and issuing such appropriate warning information to our bases within the United States? And we have, obviously, Air Force bases, naval bases, and Army bases. It seems to me that should have a uniform examination.

Now, you can take that for the record, but does anybody got anything for the moment on that?

PACE:

Yes, sir. The service chiefs are the ones who set the force protection standards at the bases and stations in the continental United States.

WARNER:

Right, but is the -- with all due respect, is the chief of staff of the Army looking at the same level of force protection for a base that sits right next to the Norfolk Navy Base, and the chief of naval operations responsible for that?

PACE:

There are, sir. In fact, that was a discussion item in this week's tank session with all the Joint Chiefs. We do collectively look at that to make sure that we're on the same level. But your question for the record what we should do in the future.

WARNER:

And lastly, we're all moving out as quick as we can to solve these problems. And I think we've got to take a look, Mr. Secretary, at the procurement regulations which this committee, over the 23 years I've been here, worked on many reforms, and we've achieved, I think, some improvement. But right now, if there's a small firm out here somewhere or a collection of individuals that's making a product and you need that product like tomorrow morning, I'd hate to see you encumbered with a long procurement process of bidding the lowest bidding, best and final, review the bids. We don't have time to go through all that.

And I indicated yesterday in our discussion with the president that I think we ought to look at a statute which reposes a wide margin of discretion in the secretary of defense, and indeed, the secretaries of other departments and agencies -- and Governor Ridge acknowledges that he's going to look at this also -- whereby for a period let's say two years -- we'd sunset it after two years -- but if the Department of the Army wants to get out here and buy a product, go to it. And let's get that product and bring it in and utilize it in this war on terrorism.

We've had a good hearing, Mr. Chairman. And I thank you and all members of the committee who've gathered today.

REED:

Let me inquire if Senator Akaka or Senator Sessions have additional questions.

Senator Sessions?

SESSIONS:

Well, I would just like to make an observation. Having served as a United States attorney in the drug wars, on the early days of that, and saw the incredible difficulty of getting every agency that has a role to play in drugs working together in a harmonious way, I can understand the difficulty you're facing. The only thing I was concerned about was suggesting perhaps -- and I don't think it was meant to be that way -- that somehow the form of defense then might be involving being responsible for investigating mail ideas or is going to be responsible for security of airport terminals, or going to have to take over from the Coast Guard and now guard the ports of America.

We've got this tremendous investment over the years in all of these agencies which have a good deal of expertise, equipment, they're trained specifically, the FBI is to investigate cases -- I know every local police officer, and the things in their community that the Department of Defense doesn't have the facility to do. So what we've got to do is figure out how to draw on resources of the Department of Defense, make sure that they are readily available, on-call when needed, create an orderly process here some way, and then the problem, the challenge is a tremendous one involving I believe Mr. Ridge, primarily.

I don't favor a major change in the roles that you have, frankly. I just don't favor that. Yes, a murderer is a threat to the homeland. Drug dealers are threats to the homeland. But I don't think you want to carry all that over on to the Department of Defense now, in a time when you're trying to transform to be prepared to fight wars around the world.

So however we do that, Mr. Chairman, is going to be difficult. But a comprehensive plan is needed. This committee is doing the right thing in having hearings on it. And I would support that.

I just would say that we have to recognize every additional duty given to the Department of Defense. It is a 6,000 National Guardsmen that have been deployed, called up, had to be trained and paid for that purpose does drain your budget. It drains your readiness from the other missions that they were trying to do.

So I may submit some more questions for the record.

REED:

Thank you very much, Senator Sessions.

If there are no further questions, the hearing's adjourned.

Thank you, gentlemen.
The FDCH Transcript Service Oct. 25, 2001
List of Speakers

U.S. SENATOR CARL LEVIN (D-MI) CHAIRMAN

U.S. SENATOR EDWARD M. KENNEDY (D-MA)

U.S. SENATOR ROBERT C. BYRD (D-WV)

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U.S. SENATOR DANIEL AKAKA (D-HI)

U.S. SENATOR BILL NELSON (D-FL)

U.S. SENATOR BEN NELSON (D-NE)

U.S. SENATOR JEAN CARNAHAN (D-MO)

U.S. SENATOR MARK DAYTON (D-OH)

U.S. SENATOR JEFF BINGAMAN (D-NM)

U.S. SENATOR JOHN WARNER (R-VA) RANKING MEMBER

U.S. SENATOR STROM THURMOND (R-SC)

U.S. SENATOR JOHN MCCAIN (R-AZ)

U.S. SENATOR ROBERT C. SMITH (R-NH)

U.S. SENATOR JAMES M. INHOFE (R-OK)

U.S. SENATOR RICK SANTORUM (R-PA)

U.S. SENATOR PAT ROBERTS (R-KS)

U.S. SENATOR WAYNE ALLARD (R-CO)

U.S. SENATOR TIM HUTCHINSON (R-AR)

U.S. SENATOR JEFF SESSIONS (R-AL)

U.S. SENATOR SUSAN COLLINS (R-ME)

U.S. SENATOR JIM BUNNING (R-KY)

WITNESSES:

THOMAS WHITE, SECRETARY OF THE ARMY, INTERIM DEPARTMENT OF DEFENSE
EXECUTIVE AGENT FOR HOMELAND SECURITY

GENERAL PETER PACE, VICE CHAIRMAN, JOINT CHIEFS OF STAFF

GENERAL WILLIAM KERNAN, COMMANDER IN CHIEF, UNITED STATES JOINT FORCES
COMMAND

GENERAL RALPH EBERHART, COMMANDER IN CHIEF, UNITED STATES SPACE COMMAND/
NORTH AMERICAN AEROSPACE DEFENSE COMMAND