

**CENTER FOR AMERICAN PROGRESS**

**TRANSFORMING THE RESERVE COMPONENT  
FOR THE 21<sup>ST</sup> CENTURY**

**PANEL 2: NATIONAL SECURITY AND  
THE RESERVE COMPONENT**

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P.J. CROWLEY: (In progress) – the next segment of our program. As many of you heard, the former governor of Minnesota where he said from his standpoint the purpose of the National Guard is to take care of our own backyard first. Well, that is in a way the subject of this panel, which is, you know, given what transpired on September 11<sup>th</sup> – and actually a lot of planning and thought that had been done before that – you know, what do we do to protect our own backyard?

We've entitled this block "The Three Front War," where the reserve component is being asked to battle insurgents in Iraq, protect critical infrastructure here at home, and be available for normal civil support missions such as helping the country deal with natural disasters – you know, Florida – back to back to back hurricanes.

Homeland defense, in many respects, is not a new mission. It has been one of the essential functions of government from day one. It's a bit sobering perhaps – there is a little bit of age here at this panel – to think that students here at Georgetown are now studying that historical period called the Cold War, when we spent decades manning DEW lines watching for incoming missiles and shadowing Bear bombers as they flew down the coast towards Cuba. Those of us who served at the Pentagon during the Cold War always understood that however remote the possibility, it could be attacked. We just expected if it ever happened it would be an ICBM not a commercial jetliner.

Reading Jim Mann's excellent book about the Balkans it's hardly surprising that the default response by the vice president and secretary of defense was to follow Cold War continuity of government procedures that they were intimately familiar with.

There's always talk about planning for the last war but during the 1990s the government and the military was in fact planning for the next war. There was a clear recognition that, given the overwhelming military strength of the United States, the country was likely to see the emergence of new threats, including cyberterrorism, chemical, biological, nuclear, radiological and conventional explosives in the hands of a non-state actor. Exercises such as Eligible Receiver demonstrate how reliant society and the military had become on critical infrastructure and computer networks, most of the resident in the private sector.

There were new links across the government, as, for example, the Departments of Justice and Defense held the so-called Cincinnati Exercise to evaluate the operational requirements and legal implications of the military support for civil authorities in the aftermath of a nuclear incident. Far-reaching legislation by Senator Sam Nunn, Richard Lugar, and Pete Domenici had put in place a training program to help the government organize teams to train first responders to recognize indicators of a weapon of mass destruction incident. Much of that capability is resident today in the National Guard.

Obviously in the aftermath of September 11, homeland defense has a new sense of urgency and a new integrated operational framework under Northern Command. More broadly, we also have the Department of Homeland Security, which has integrated 22 agencies and 170,000 people into a single department. DHS has identified six primary missions: intelligence and warning, border and transportation security, domestic counterterrorism, protecting critical infrastructure and key assets, defending against catastrophic threats, and emergency preparedness and response. The military, particularly the reserve component, could play a support role, perhaps, in virtually all of those mission areas.

DOD is in the process of defining its roles and missions for homeland defense. I hope the secretary will give us an update on that here today. But certainly as the Department of Homeland Security matures and its requirements become clearer, there will be further opportunities for cooperation between DHS and DOD, which is more than likely going to involve the National Guard and the Reserve.

To those of us who are concerned about the ability of the Department of Homeland Security to fulfill its mandate at current resource levels, there will also be a natural bureaucratic tendency – perhaps call it homeland security mission creep – for missions to gravitate ultimately where the money is. Already, outside of DHS, DOD spends almost as much on homeland security as the rest of the federal government combined.

The management group that put together the president's proposal on creating DHS took a hard look at the National Guard and whether it belonged in the new department along with the Coast Guard. The final judgment was that it could not be supported from a resource standpoint or sustained from a recruiting standpoint outside DOD. But there will be a strong bureaucratic force at work to provide major support as the Guard goes through – as the Guard has done through Noble Eagle. But there are logical areas – maritime surveillance, air and missile defense, low altitude air threats, intelligence, information sharing, and command and control – where DOD's role in connection with protection of the country and economy could grow. And we have two people with us today who could help us understand how the functions of homeland security and the mission of homeland defense will evolve in the next few years and what role the Reserve and National Guard will likely be.

First, the Honorable Paul McHale is the first person to serve as Assistant Secretary of Defense for Homeland Defense. He is a former congressman from the 15<sup>th</sup> Congressional District, a member of the Marine Corps Reserve and co-founder of the Guard and Reserve Caucus within the House of Representatives. He is also a graduate of Georgetown Law Center.

And Michael O'Hanlon is the senior fellow specializing in defense, homeland security, budget, and foreign policy issues at the Brookings Institution. Michael has a Ph.D. in public and international affairs from Princeton. He is a prolific author and does

as many media interviews as Paris Hilton. (Laughter.) He has extensively analyzed the structure and roles of homeland security and homeland defense since 9/11.

We're happy to welcome you both and we'll start with Secretary McHale.

PAUL MCHALE: Who's Paris Hilton? (Laughter.) I thank you, P.J., for that introduction. Michael, it is wonderful to see you again. Michael and I were friends and colleagues back about a half-dozen years ago and I'm delighted to be back in your company.

When I was a student at Georgetown on a beautiful day like this I would never have been indoors. I thank you for your attendance even though I question your judgment. I understand that, thanks to Governor Ventura, you are all now experts in the deficiencies of the two-party system. Is that correct? (Laughter.) And when P.J. told me that, I raised the question of the relevance of that to the transformation of the Guard, and we didn't quite get there, but hopefully we'll make that segue during this portion of the symposium.

In the brief opening comments that I'm going to make there are just a number of fairly central points that I would emphasize. Number one, I believe that in the last 20 years the nature of war has fundamentally changed and that that change is best understood by comparison to the status quo ante, and that is during the 20<sup>th</sup> century the national security of the United States, we thought, could only be fundamentally threatened by the combined resources and capabilities of a hostile nation-state. And so during the more than three decades that I've been privileged to wear a uniform we trained much more often than not to confront the possibility of war with another country, or a coalition of countries – the Soviet Union or the Warsaw Pact.

I believe human nature is fairly constant and has changed relatively little, for better or worse, over many thousands of years. And so while the character of an adversary may be a constant, the capabilities possessed potentially by an adversary have changed quite a bit. In the 20<sup>th</sup> century we had to worry about a hostile nation state. In the 21<sup>st</sup> century, the more immediate – not the exclusive, but the more immediate threat is one posed by transnational terrorists, most especially transnational terrorists potentially possessing weapons of mass destruction. The kind of destructive power that in the past could only be acquired by a country can now be acquired by a small group of people or even individuals if they have access to the ever-proliferating destructive capabilities associated with weapons of mass destruction.

So because the threat has changed in the 21<sup>st</sup> century – rather dramatically – our defenses must be modified accordingly. We must be prepared to defeat hostile nation states, potentially peer-regional competitors who may be emerging over the next decade or two, but beyond that, and with a more immediate sense of importance, we must reconfigure our defenses so that we are just as capable in defeating transnational terrorists such as al Qaeda and the weapons of mass destruction that they seek to acquire, and I believe, if acquired, would seek to employ.

The 9/11 Commission described our activities on September the 11<sup>th</sup>, 2001, as, and I quote, “improvising homeland defense.” Improvisation is not longer acceptable. We can anticipate with some reasonable degree of detail the kinds of capabilities and threats that our nation is likely to confront over the next several decades, and we have to modify our defenses so that the capabilities that we possess are sufficient to detect and defeat those that might be possessed by our adversaries.

By comparison to September the 11<sup>th</sup>, quite a bit has changed in terms of our defense establishment. As P.J. indicated a moment ago, the United States Northern Command was created. The Unified Command Plan, the UCP, was altered to create an AOR, an area of responsibility, now assigned to a four-star combatant commander, geographic combatant commander, who has the moral and legal responsibility to physically defend the United States of America.

NORTHCOM’s mission statement is essentially divided into two parts. The first part of that mission statement relates to the warfighting capabilities that are inherent in any geographic combatant commander’s mission to defend the United States’ interests within his AOR.

The second half of the NORTHCOM mission statement, literally after the semi-colon, deals with the evolving and somewhat unusual mission assignment to provide support to civil authorities in a domestic setting if there is a challenge to our national security within the borders of our own country during which it is determined that civilian capabilities are insufficient or overwhelmed. In short, we are then prepared to provide support upon a declaration by the president – typically under the Stafford Act, that there has been a major disaster – and direction of the secretary of defense. We are prepared to provide military capabilities in a supporting role to assist a lead federal agency – under current authorities, that would typically be the Department of Homeland Security and most especially FEMA, the Federal Emergency Management Agency under DHS – to achieve that civilian-led mission requirement.

Now, let me just review for you, if I may, some of the capabilities that have been created or modified since September the 11<sup>th</sup>, the net result of which is, I think, a dramatic change and substantial improvement in our nation’s defensive capabilities.

On September 11<sup>th</sup>, 2001, we did not routinely fly air combat patrols within the domestic airspace of the United States. As we gather here today there are F-16s and probably F-15s in our own airspace prepared to defend against the kind of threat that manifested itself just a little over three years ago. As you can imagine, training to that mission requirement, anticipating the possibility that a commercial airliner, or some other kind of domestic aircraft, might be converted into a weapons platform requires sobering consideration of the kinds of very difficult choices that would have to be made.

Nonetheless, we are prepared to make those choices to save an even greater number of lives or protect vital elements of infrastructure. The choice has to be made to

engage a commercial airliner because, as a result of a terrorist takeover, it has become a weapons platform. Those F-16s are up today. They are prepared for that mission. They were not patrolling our airspace, and indeed we hadn't even envisioned that kind of mission requirement on September 11<sup>th</sup>, 2001.

Specifically with reference to the National Guard, most of those combat air patrols within our domestic airspace, the overwhelming majority in fact, are now flown by pilots of the Air National Guard. We could not execute that domestic mission under NORAD but for the complete and seamless integration of reserve component capabilities and we do anticipate that that requirement for domestic combat air patrols will continue into the foreseeable future.

In the land domain, we now have to anticipate the possibility that transnational terrorists might attack critical infrastructure within our own country, and therefore, fully recognizing that within our country domestic counterterrorism is ordinarily a primary mission requirement of civilian law enforcement. We do anticipate that – and it certainly is foreseeable – that a terrorist group such as al Qaeda might possess offensive capabilities that would exceed the defensive capabilities normally associated with police departments. Al Qaeda may be too powerful for police officers to effectively defeat the attack.

Because of that reality, we do anticipate that quick reaction forces initially drawn from the National Guard might well be required for rapid deployment in order to protect our nation's critical assets from the possibility of a terrorist ground attack. And Steve Blum, who is going to be meeting with you shortly – the chief of our bureau, Lieutenant General Blum has in fact established National Guard quick reaction forces in all of the states. Those soldiers are prepared to respond very quickly – almost immediately – to provide a ground defense that would augment and reinforce civilian law enforcement capabilities. Let's say if we had a credible threat to a nuclear power plant or some other piece of critical infrastructure.

And finally, we do have Title 10 capabilities on alert each day. Active duty soldiers, sometimes soldiers and Marines, prepare to deploy in order to provide a ground defense not as a form of law enforcement, but in a warfighting capacity to defeat terrorists if required on our own soil.

We have 32 civil support teams within the National Guard. Those civil support teams provide a WMD assessment capability that would likely be the first significant assessment capability available to determine the nature of an attack if we were to experience a domestic WMD attack. The first men and women in uniform – military uniform who would show up at the site of the attack following the use of WMD by terrorists would likely be National Guardsmen from those CSTs.

In addition, Steve Blum will tell you when he gets here that while our nation has one chemical/biological instant response force within the active duty Marine Corps, that capability is insufficient to serve the broader needs of the nation. CBIRF is a terrific

capability, but there is only one CBIRF at the present time, and so General Blum has proposed that we build on the capabilities of 12 National Guard CSTs in order that those expanded CSTs, to be called CIRFPs, would have the same types of capabilities now only found within the Marine Corps' CBIRF. Forgive all those acronyms.

The bottom line is we will be moving toward, in effect, 13 rapid response capabilities geographically dispersed throughout the nation in the various FEMA regions so that relying primarily on reserve component capabilities we will have a rapid and effective response to domestic WMD attacks.

With regard to the use of the National Guard, there is now statutory language being considered by the Congress; an amendment to Title 32 that would allow the National Guard to be integrated into national security missions consistent with – independent of, but consistent with NORTHCOM's advanced contingency planning so that the Guard could be employed to provide a ground defense within the United States; perhaps in the form of a quick reaction force, but at the expense of the Department of Defense. We would in fact be able to deploy National Guard forces under command and control of the governor at DOD expense in order to serve the broader national security interest.

And in fact we did just that by carefully following existing law at the G-8 summit at Sea Island, Georgia, and at the Democratic and Republican conventions where National Guardsmen, at the expense of the Department of Defense, contributed their capabilities under command and control of the governor in order to be integrated into a comprehensive national security plan. That is transformational in terms of the domestic employment of the National Guard.

And finally with regard to command and control, we recognize that it is entirely appropriate that National Guard forces in state status or Title 32 status will be under command and control of the governor, but those forces are likely to be operating in a shared area of responsibility in which we have deployed Title 10 active duty or reserve component capabilities.

In order to bring together into a unity of effort, if not a unity of command, those very different forces of the National Guard and Title 10, we have pursuant to existing statutory authority relied upon a provision of law that allows a senior National Guard commander to be dual-hatted so that in his Title 32 National Guard capacity responding to the governor of a state he or she will command National Guard forces while that same National Guard officer in simultaneous Title 10 status will be under command and control of NORTHCOM, ultimately responsible to the president of the United States. That, too, is a transformational change in terms of unity of effort combining the capabilities of both the National Guard and our active duty military forces.

I've gone about 12 minutes – 13 minutes – a little longer than I had expected, so let me bring my remarks to a conclusion simply by saying there has never been a chapter in the history of the National Guard where the National Guard played a more important

role in the guarantee of our nation's physical security. In the 21<sup>st</sup> century, to respond to that very different threat – the transnational threat – clearly the Guard will remain an important part of our strategic reserve, potentially employed as the Guard is today in overseas warfighting.

But if we are to be prepared to defeat transnational terrorists within our own airspace, within the maritime approaches, on our own landmass, the only way we're going to be able to do that fully consistent with the constitution and with the other statutory constraints upon the use of military authority within the United States is by having a focused and increased reliance on our reserve component capabilities. The next decade or two will be a tremendous opportunity for members of the Guard and Reserve to contribute to the enhanced national security of the United States.

MR. CROWLEY: Mr. Secretary, thank you.

Mike, you want to make some opening remarks and then we'll open it up for questions?

MICHAEL O'HANLON: Thanks, P.J. Thanks to all of you. It's an honor to follow Secretary McHale here. And that was an outstanding overview, I think, of what the Guard and Reserve are up to today, and very informative and actually possible to follow, which is not all that easy when you're talking about all these multiple lines of authority, so thank you. And I'm sure I speak on behalf of all of us for the very good primer.

What I want to do is just take one step back and also say – remind you all of the role you know the Guard and Reserve are playing overseas that Secretary McHale just mentioned as well, and ask just one question: how do we make sure the Guard and Reserve can keep doing that without hurting the other aspects of homeland security? Not the roles of the Guard and Reserve here at home, but the roles of the firemen, police officers, and other individuals how are often the very people how are called up in the Guard and Reserve to go overseas.

And this, I'm sure Secretary McHale would agree, is another big part of the challenge. It's not so much homeland defense in the sense of what the DOD is going to do here at home, but it's the way in which the DOD's other responsibilities overseas can actually risk depriving other homeland security agencies of the manpower they need to do their job right. And this is a very complicated situation because we obviously are going to continue to depend on brave and experienced and capable firemen, police officers, other local officials to be our reservists – even a congressman once in a while. And so since we have that and we depend on that and we want that in our reserve component, the question is how do we ensure that we don't hurt those police and fire and first responder communities when we call up forces overseas.

Let me say a couple of words by way of general background. I think it's of paramount importance that we continue to use the Guard and Reserve in overseas

military operations. We're probably overusing them right now, but we do need to use them. It's simply too expensive and I think undesirable for our country to rely exclusively on an active duty force to have all the capabilities we may need in a place like Iraq or Afghanistan or Bosnia, so I think we have to assume we're going to keep doing this and we have to assume that the kind of people who join the Guard and Reserve will also often be the people whose jobs back home are important for homeland security.

So this is an inherent challenge. We can't just fix it by increasing the size of the active duty military by 400,000 people and never letting the reservists go overseas again. That's not a solution, even though it's sometimes actually proposed. It's too expensive, it's not really desirable even for the good of our military or society's role in feeling a part of big overseas missions. So that I would take as postulate number one.

Postulate number two is that as important as all these teams and special capabilities are that Secretary McHale has been discussing, our homeland security capabilities within other agencies are at least as important as DOD's role in homeland defense. In fact, I think that DOD's role, while critical, is perhaps – and this is meant to be somewhat simplistic, maybe oversimplistic – but actually I would put it as sort of tier one and a half or tier two in importance in terms of our overall national capability.

Now, if there's a biological or a chemical attack, the kinds of response teams we were just hearing about are going to be as important as anybody. I don't want to in any way underplay that. But day by day the kind of police counterterror units or FBI counterterror units that are trying to track and uncover and stop al Qaeda cells in cities around the country – the kind of officers in our Homeland Security Department at the borders who are trying to keep bad people and bad things out – these really are the front lines of homeland security and I think we have to assume that they will continue to be the bulk of what we need in the way of most of the people who will be involved in the overall homeland security mission.

In other words, we're going to need to protect these other agencies and their capabilities even as we deploy reservists overseas, recognizing that many of the people in these other agencies will be reservists. So most of our homeland security is still going to be provided by DHS personnel, by local fire and police, other people who may be part of the reserve component.

In fact, if you look at plausible scenarios for the National Guard and Reserve, and we can have a discussion about this – I hope we will if you like – most of the scenarios that I can think of will involve even in a fairly worst case, a few thousand or maybe a couple tens of thousands at most of reservists. If we're – even if we have to create martial law in a given moderately large city, you're probably talking about several tens of thousands of reservists, but the reserve component of the U.S. military is roughly one million, and 150,000 of them or so have been called up at any given moment in the last three years. So the bulk of the reserve component's work will continue to be in fairly traditional missions overseas and that's going to be true as long as we're involved in Iraq and probably thereafter.

So, again, I think we have to recognize that we have a reserve component that's going to continue to play these big roles in traditional missions that is important in certain generally smaller missions here at home for homeland defense and that sometimes risks robbing Peter to pay Paul when you call up the reservists to send them overseas and thereby deprive the local first responder communities or other counterterror agencies of their capability. Okay, that's all the background.

I don't want to spend too long on my solutions because all I have is some rough thoughts anyway, but let me start to suggest what they might be. First of all, individual units of the Reserve and the National Guard will inherently continue to be drawn from individual local communities or small groups of communities because that's the way the Guard and the Reserve train and pretty much the way they have to train. There is no way getting around the fact that if you have a certain unit in the National Guard and Reserve it's often going to be primarily made up of people from the national capital area or from the Florida panhandle or from Los Angeles and environs. This is the way the Guard and Reserve are going to continue to be structured, equipped, manned, and trained because you need these people in some proximity to each other to bring them together a weekend a month and two weeks in the summer and so forth to do the kind of training that we need to do.

That means you build in a problem because the problem is when you pull out that unit and you send it as a unit to Iraq, you deprive the Florida panhandle region or the LA region, or the national capital region, of capabilities that you might actually really need in a crisis.

How do you get around this fact? Well, to some extent you can have Ready Reserve units that can move from one part of a state to another or one part of a region to another and compensate for the unit that's been taken out and can no longer quickly respond to a local emergency. But you don't want to push that logic too far because what if there is a very urgent need for response? The National Guard typically – the Reserve typically are going to take hours or even a day to get to where you might be needing them. You're going to need the first responder communities to be the ones on the scene and therefore you don't want to build in a dependency on calling in a unit from northern Minnesota to go and restore order or otherwise respond quickly to the medical needs of a community in southern Minnesota or Iowa or where have you that has been afflicted by a terrorist attack. You need the capability to be to some extent in the first responder communities in the nearby locale.

So what I would suggest, and I think Secretary McHale can say more about his and what's going on already than I'm able to offer, but just to frame the problem, we need to have a way to make sure that any region of the country keeps most of its first responder capacity at any given moment even as we send some of it away to a given mission. What that may mean is you limit the number of people from a given first responder force that you are able to put into any one unit of the Guard and Reserve. In some cases, this can worsen your recruiting problem if you're actually turning away

people that you otherwise would be happy to accept, but you may have no choice because you cannot afford to build in a big vulnerability into that unit.

You may have to break some of the units down into somewhat smaller pieces so that you can call up some of them from Miami or some of them from Fort Lauderdale or the panhandle or LA, but leave the majority back where they were. In other words, let's say that there are 100 police officers from a given city in the military reserve broadly defined. What you really don't want to do is take all 100 of those people and send them to Iraq at the same time. You want to divide up their role in different units so that you never have to take more than X percent – 10, 20, 30 percent, making sure the other 70 or 80 percent are still there to handle a crisis.

This may require some restructuring of the Guard and Reserve in some cases into somewhat smaller units. Or you may have to ask certain people to go off and train with a different unit in a different city, even though it's less convenient to them. You may have to furnish the bill for their plane trip across the state. They may have to actually violate the postulate I laid out earlier and sometimes train with units that are not right in their city because you don't want to, again, have a single unit deprive a locality of the majority of its first responders, or even 30, 40, 50 percent.

So you may need to break units into smaller pieces. You may need to impose certain caps on the number of people from the first responder community who can join the Reserve, and you may even need to do a little bit of bussing or whatever the diversion might be called for military people to make sure that the first responders from a given city are distributed among different units in their state and region so that no one unit, when activated, deprives a city of the bulk of what it needs to respond to a possible terrorist incident.

I will confess I don't know how to do this. I don't have the detailed knowledge of the Reserve force structure to do it right. I'm just convinced these are the sorts of principles we need to follow in beginning to restructure some of the reserve component so that we don't, when deploying much of it overseas, as we've been doing for the last three years, deprive the local communities of the needed fire, police, health officials who I think are perhaps even more important to our homeland security than many of the capabilities within NORTHCOM's purview.

And with that opening set of comments, that I admit doesn't really lead me to any firm recommendations – and I wish I could do better – but I'll leave those thoughts and principles on the table and look forward to the discussion.

MR. CROWLEY: Let me use the moderator's prerogative here just to ask a couple of questions of the panel before we open it up. I promise to do it quickly.

For both of you, starting with Secretary McHale, do you see – what role is Homeland Defense playing in the resetting or rebalancing effort within the department already underway? Is it your presumption that as the Guard, for example, moves to a

brigade combat team set – you know, still geared towards combat, within that capability you can do homeland defense – all homeland defense requirements for NORTHCOM? So, do you see the combat role and the homeland defense role as being complimentary or in conflict?

MR. MCHALE: I think the two roles are largely complementary. The responsibilities associated with homeland defense and civil support are such that the kinds of units required generally fall into one of two categories. Either the mission requires general utility forces, typically infantry and other combat forces, that might be required to provide ground security at a specific site – for instance the ground-based defense of a nuclear power plant or a series of nuclear power plants that might be the subject a credible al Qaeda attack; or in the alternative, a category of highly specialized skills where the forces need to be trained to and equipped to complete very sophisticated missions that are at the high end of technology requirements – as an example, the response to a contaminated site following a WMD attack where the contaminant, again, for instance might be radiological in nature.

In the air domain, I believe that the current mix of capabilities and force structure can probably support the foreseeable requirement of combat air patrols into the distant future, measured at least in a decade, maybe several decades.

In the land domain, we need to ensure that our general utility forces in the Guard and Title 10 are properly trained to provide that ground defense that only under the most extraordinary but nonetheless foreseeable circumstance might be required to protect critical infrastructure under a circumstance where civilian law enforcement could not provide that defense.

The most significant area of change, I would think, in terms of force structure and mix, would be in the maritime domain. The naval forces of the United States, working in coordination with the Coast Guard, have been designed over the last century to confront and defeat hostile nation states. I think the more immediate concern of the 21<sup>st</sup> century is the maritime interdiction of transnational terrorists passing through international waters in possession of weapons of mass destruction en route to the United States where they would employ those weapons of mass destruction to attack our population.

Our maritime capabilities really have not been sufficiently well integrated into overseas surveillance, the detection of the maritime threat, and then the proper kinds of tracking and intercept capabilities that will be required to stop al Qaeda on the high seas and diffuse a weapon of mass destruction. So I think both in terms of force structure and mix there will be a modest but nonetheless measurable requirement to move from a Cold War approach to naval warfare to one that is better oriented to defeat al Qaeda and other transnational terrorists.

MR. O'HANLON: I'm just mulling over that last scenario. That's a fairly fascinating and foreboding set of thoughts. But it does strike me that what we are doing is developing a lot of the correct capabilities within the Reserve and National Guard we

didn't already have. So I'm very impressed with the overall restructuring, and I do think most of the capabilities you might need here at home are similar to those that you would need abroad to begin with. And so I would just maybe underscore the broader point that I'm most worried about the strain on people in the Reserve and Guard, mostly from the overseas mission and the way that may deprive us of capacity here at home for some of the local response we could theoretically need to do.

I think that really is the big challenge because many of these other specific gaps we may have had were modest in size to begin with and are being fixed and being addressed, and there are resources to improve capabilities, and we have, clearly, very smart people figuring out what scenarios to plan against. So I'm less worried there, but I just think the Guard and Reserve are facing a potential crisis in the demands on them from the overall set of missions that they're being given. And so our real, number-one vulnerability and Achilles heel is going to be keeping people in the reserve component and not driving them out by working them too hard. And so we can plan the details very well and still have that broader problem come back to haunt us.

MR. CROWLEY: Just one more question before we open it up. Mr. Secretary, the scenario that you portrayed in terms of an al Qaeda capability exceeding the ability of a local police department to respond and then having an affirmative military mission inside the United States under the moniker of homeland defense I think sounds to me like it crosses a threshold on at least the military's interpretation of Posse Comitatus and what that means. Did that require any – obviously did it require any change in the law but has that involved a change in how DOD perceives Posse Comitatus and what limitations or not it might hold?

MR. MCHALE: P.J., we believe that what I have just described is fully consistent with the intent and statutory history of the Posse Comitatus Act. Posse Comitatus is an 1878 statute that says that it is a criminal offense for an individual, typically a military officer – and active duty military officer to employ active duty – what we would call today Title 10 military forces – in law enforcement activities unless there is a specific constitutional or statutory authority to use the military in that manner.

The purpose was to recognize during reconstruction after the Civil War and to reemphasize that we are a civilian nation under a civilian constitution and that law enforcement is a civilian responsibility. In certain limited circumstances, for instance with regard to the threat of weapons of mass destruction and also with regard to formally declared civil disturbances, subsequent statutes have provided express authority to the Department of Defense and its officers to employ military forces in law enforcement related activities. But the default setting is you may not, under pain of criminal law, use military forces in the United States for law enforcement activities. However, the National Guard, in state status or in Title 32 status under command and control of the governor, is not covered by Posse Comitatus.

And so, if you want to provide a ground-based defense of a nuclear power plant, you can use the National Guard for missions that would be potentially improper were you

to employ active duty forces to accomplish that same mission. So what that means is if you have a threat to a nuclear power plant in a given community, you can call out the National Guard in that community to work side by side with law enforcement officers in order to ensure an adequate defense of that nuclear power plant.

Now, when I talked about Title 10 quick reaction forces, what I would emphasize is the deployment of those forces – and we do have such forces on alert today to respond to a potential terrorist attack within our own nation – those forces would not be employed for the purpose of executing a law-enforcement related activities; they would be deployed for a military purpose and that is not to arrest terrorists but to defeat them militarily on our own soil. The constitutional authority for that has existed since 1787. This city in which we meet was attacked by the British in 1814 and we defended it with military forces. That same constitution governs the lawful use of military force today.

Now, because of transnational terrorism we have to think about threats that have not really existed on our own soil for a long time, but the legal authority to defend the United States using military force – not to engage in law enforcement activities but to physically defeat foreign threats on our own soil – is a matter of recurring constitutional authority. And so that's really the hierarchy that we see. First and foremost, the physical protection of United States citizens within our own country is a civilian law enforcement function. If that capability cannot be executed by law enforcement, the National Guard, consistent with Posse Comitatus, in state status or Title 32, may engage in law enforcement related activities. But ultimately, if the nature of the threat is so severe that a military defense on the ground is required, then for a military purpose, not law enforcement, those missions may be executed.

MR. CROWLEY: And in that last scenario, who makes that call?

MR. MCHALE: The president of the United States.

MR. CROWLEY: And not below – not delegated below? Who makes the determination that this requires a military response as opposed to having local capability or police capability?

MR. MCHALE: The general counsel of the Department of Defense made me promise that I would not practice law while serving in my current position. (Laughter.) I can tell you the authority belongs to the president of the United States under Article 2 of the Constitution, as commander-in-chief, to defend our nation, including a potential defense within our own country, against foreign adversaries. That authority can and is routinely delegated to the secretary of defense. The legal issue is whether or not the secretary of defense would have current delegated authority that would allow him to deploy, for instance, a quick reaction force based on the authority that he already possessed.

I'm not sure there is a clear answer to that question, but I can tell you as a practical matter, the secretary of defense would confer with the president and seek the

president's guidance before he would deploy military forces within the United States, and the authority ultimately is that of the president.

MR. O'HANLON: I think even Mr. Rumsfeld would do that. (Laughter.) I'm just kidding. Actually, I'm learning so much from Secretary McHale I actually want to not claim to have anything to add, but just ask a question.

The National Guard units that were sent to the conventions, were they put there under Title 32 for this very reason, that it was the only way in which they could be in a law enforcement support capacity was if they were under the governor's control as opposed to the president's?

MR. MCHALE: Well, that was certainly one of the major considerations, Michael, that we looked at when the decision was made. The Guard brings tremendous utility – the National Guard is already forward deployed, geographically dispersed throughout the nation, and when we were looking at security for the G-8 summit at Sea Island, Georgia, and then later when we looked at the same issues or similar issues that came into play in Boston and New York at the conventions, we realized that the defense that was being provided, whether it was to be provided by the National Guard or active duty military forces on a contingency basis, would ultimately be tailored to defeat a foreseeable al Qaeda threat.

And so, taking Georgia as an example, would it have been reasonable to expect the state of Georgia, using its National Guard, at its expense, to defend against an international, a transnational threat from a terrorist organization that might be targeting world leaders who happen to be gathering in the state of Georgia? And it seemed to me, and ultimately it was concluded by the secretary of defense, that the security requirement was really part of a broader national security effort and that the taxpayers of the state of Georgia should not be tasked exclusively with the burden of that cost. And so, we thought Title 32 was an excellent concept of operations to meet the mission requirement while spreading the burden of the cost.

And so, the National Guard in Georgia, under command and control of a National Guard officer who was dual-hatted, both in Title 32 and Title 10, executed a Title 32 security mission under command and control of the governor, but at DOD expense, in order to ensure that any attack that might have been mounted by al Qaeda could be defeated. And one of the issues we looked at was the tremendous utility of the Guard in Title 32 to be able to work closely with law enforcement authorities because the Guard in Title 32 would not be covered by Posse Comitatus. And that, again, is a transformational assessment by the Department of Defense in terms of what is required in the 21<sup>st</sup> century to defeat transnational terrorism. The expense to the Department of Defense was approximately \$15 million to pay for the cost of that security provided by National Guardsmen and Title 32 status.

In short, we had the best of both worlds. We had the flexibility of Title 32 employment while recognizing that the expense was really a national expense and should be paid for, therefore, out of national tax dollars, not local tax dollars.

MR. CROWLEY: At this point we'll welcome questions from the floor. We've got microphones here flanking on either side.

Q: Thank you. My name is Lorelei Kelly. I work in the House of Representatives. This last exchange, it upset me in a couple of ways, and possibly it's because I am on a pretty rapid learning curve on Guard and Reserve issues, but I think that what P.J. mentioned with Posse Comitatus is going to really define a lot of issues for Americans as the soul of our country. This is a really important civil-military issue that we really haven't had to talk about very much, mostly because a lot of the challenges to Posse Comitatus came up with American troops serving in peacekeeping missions, which is not really a conversation that we've had yet.

But this exchange that you all just had reminded me of a conversation I had with a friend of mine who's an Air Force Reserve pilot, and he flies these civil air patrols. And we had a conversation that brought up the whole idea of priorities and whether or not the caps are really an efficient or wise use of money right now, given that so many of our challenges in homeland security are really down to earth – no pun intended – and they're enormously expensive on the one hand, but on the other hand we have real problems funding our own domestic police right now. That's a tremendous tradeoff if you look at it that way.

And another one would be port security. How come we're paying so much for all of these flights across the United States, watching out for stuff on the ground or the possibility that another 9/11 might happen, although if you look at how terrorists have acted in the past, it's not really nearly as likely as something new.

MR. CROWLEY: But Lorelei, what's the question in particular so we can --

Q: Oh, okay, I'm sorry. What I was wondering is the Posse Comitatus issue, are there any – first of all, I guess, how much are you – what is the priority scheme? Do you compare these kinds of costs at the Department of Homeland Security with the military costs of the civil air patrols versus something like just basic domestic policing? And also, are you running into the same kinds of problems with our troops in Iraq and deployed overseas on these sort of peacekeeping, urban warfare missions, and is that going to have implications for how we interpret Posse Comitatus here domestically? Do you see the connections? Is anybody talking about that?

MR. MCHALE: There are some connections, and while not every piece of connecting tissue has been identified at this point, there are some – particularly in terms of technology – there are some overlapping and related considerations. But let me come back to the beginning of your question. We have made a judgment following the death of approximately 3,000 people on September the 11<sup>th</sup>, that we need to be able to defend our

airspace against what we hope will be the remote but still foreseeable possibility that another air attack of that type would be conducted by al Qaeda.

Frankly, we bring some acute sensitivity to that because we ought not to underestimate the cunning intelligence of our adversary. Having attacked us in the air on September the 11<sup>th</sup>, there would be a certain level of perverse gratification on the part of al Qaeda if they were able to replicate such an attack, despite our best efforts to defeat it. And so, we do fly – they're not really civil air patrols; they're combat air patrols. We put up F-16s and F-15s to defend our airspace. We vary that plan every day and we tailor it to the nature of the threat as we envision the threat environment during any given period of time. But I don't think the American people would forgive us if we failed to mount a vigorous defense of our airspace in light of what happened on September the 11<sup>th</sup> and the loss that we experienced because our defenses were not adequate on that day.

With regard to Posse Comitatus, the Department of Defense has consistently taken the position that we do not foresee a requirement to amend that 1878 statute. We do recognize that physical security in the United States on the ground is primarily a civilian law enforcement function, and we also believe that, to the maximum extent possible, our active duty military forces and their reserve components should remain available for what we call power projection – overseas warfighting. And to the extent that we dedicate those forces to a domestic mission, they're not available to defend our country's interests beyond our own borders.

So, to preserve the character of our nation as envisioned, for instance, by Alexander Hamilton in Federalist Eight and reflected in the Posse Comitatus statute and to make sure that we have maximum forces available for overseas warfighting, we have not taken a proactive role in terms of the use of Title 10 forces on the ground within our own country, but we do believe that the National Guard can fill that mission requirement very effectively, so that by using National Guardsmen at home, often, as Michael notes, within their own communities, working with police officers, we preserve the warfighting capabilities of our active duty military forces overseas.

MR. O'HANLON: I want to comment on the first part of your statement and maybe Secretary McHale will comment on the second part. I am worried about the pace at which we're asking people to serve, and I agree with you, ma'am, that there is a lot of patriotism coming through with people but I also think it's simply unrealistic to expect that we can call people up more than once in a five- or six-year period, and this is often the benchmark that General Blum and General Helmly and others have mentioned as perhaps a realistic pace that we could ask reservists to sustain, but some of them are doing more than that, and I'd actually be very curious – I'm looking forward to the end of the year statistics on retention and recruiting in the National Guard. Last I saw we were doing pretty well across the active force and pretty well in some parts of the Reserve, but there were some problems as well. I think General Schumacher testified in late July that at that time they were only at 88 percent of the number of National Guard recruiting enlistees they would have wanted for that part of the fiscal year.

And so we'll see what happens with the end of the year data, also on retention. In other words, who knows what the data will show but I think we're overusing the reserve component, and so my big concerns about the Reserves and the Homeland Security mission are: a) that we're going to potentially drive people out of the Reserve, and b) that we're sometimes depriving communities of much of their first responder force in one fell swoop when we deploy a given unit overseas. Those are my two big worries, as I've said before.

But as far as I can tell, the data does present some reason for continued concern and people aren't going to be indefinitely patriotic at the price of being loyal parents and members of their community and giving up their own normal lives if we keep asking them to go overseas every two or three years indefinitely.

MR. MCHALE: I'm afraid that my response can't be much more than anecdotal, and the fellow who can give you a much more detailed answer to your question is actually standing at the back of the room. Reverend Blum back there, who is overlooking the audience, has the detailed statistics with regard to retention.

I've been a Reservist off and on for 32 years and while there are some challenges associated with multiple rotations overseas, the fact is, at least anecdotally, the best morale that I have witnessed has tended to be within those units that are very actively engaged and that the desire to continue to serve is somehow – I think the ingredient is called patriotism. It's inversely proportional to how hard you use the unit. Sometimes the highest retention rates are within those units that have faced the toughest combat and the most frequent rotations.

Now, I don't mean to be a Pollyanna about that and I understand that there will be individual impacts and there will be those who choose not to sign new contracts because of stresses and pressures on personal lives and careers, but I'm going to wait and see what the numbers say when they actually come out because among those with whom I routinely have conversations, I have not sensed a loss of commitment or morale as a result of overseas assignments.

One area where I would put out a caution – because, again, anecdotally I think the impression given by Michael in complete good faith, may in fact be factually inaccurate. I think there are very few units – Reserve units – composed of a large percentage of first responders. I would not want you to have the impression – and if I'm wrong, Michael, I will readily admit it, but based on my experience – I was an infantry officer in Echo Company, Second Battalion 25<sup>th</sup> Marines, and the operations officer for Second Battalion 25<sup>th</sup> Marines in Garden City, New York, just outside New York City – kind of a quintessential Reserve unit where you would tend to attract the maximum number of police officers and firefighters out of a major metropolitan area. And while we did have police officers and fire fighters, including, I believe, two fire fighters who died on September the 11<sup>th</sup>, who were also Reserve Marines, it is very, very rare that you would have a unit with more than just a handful of first responders from that community.

Now, that's good news. I don't want to diminish Michael's concern. Many of our fire departments and police departments and paramedic units are quite small throughout the nation, so if you lose two of six paramedics, that's one third of your strength, and those are legitimate concerns and perhaps we ought to look at some of the issues that Michael has presented in terms of solutions. But you should not have an intuitive sense that most of our reservists are first responders, because I think if we did an actual calculation, only a very small percentage of the reserve component is drawn from the civilian first responder community.

And then lastly, with regard to training, I can assure you – my statutory duty – when my job was created I was given the responsibility for overall supervision of the homeland defense activities of the Department of Defense, and particularly for those forces that will be required to respond to multiple WMD attacks within our own country with the kinds of very technical skills – life-saving skills required. I can assure you that in terms of training for that mission and other homeland defense and civil support missions, my office will exercise vigorous oversight to ensure that we as a department are providing the kind of training that is needed in order to accomplish the mission in an effective, and to the greatest degree possible, safe manner.

MR. CROWLEY: Michèle, you're leading the last panel so if you want to ask a question first that's fine.

Q: I'm also cheating by asking a question. Michèle Flournoy from CSIS. And thank you all for an excellent panel.

Secretary McHale, my question is for you. I know your office has been working hard on a DOD homeland Security strategy and I'm assuming that part of that strategy is giving the department some guidelines for sizing and shaping the force for homeland security. How much is enough in terms of CBIRF capability or in terms of critical infrastructure protection capability and so forth?

Can I draw you out on what are the force sizing and shaping metrics that you're using? What are the planning factors? Are you assuming multiple, simultaneous contingencies in different parts of the country? And specifically, do you consider the outlier case – the worst case in my view, which is not massive critical infrastructure protection but a successful attack using contagious bio that actually spreads on a national basis, overwhelms a regionally focused response system and imposes all kinds of requirements for quarantine and so forth.

What are your planning factors, and do you also consider the sort of wildcard or outlier case that might overwhelm the system?

MR. MCHALE: Michèle, we in fact finished our draft of the Homeland Defense and Civil Support Strategy last week. It has not yet gone to the secretary of defense and so it's a good idea not yet born to fruition.

MR. CROWLEY: So you can't leave it behind.

MR. O'HANLON: I'll give it to him later. I'm going to see him later.

MR. MCHALE: A reporter approached me the other day and said, may I have a copy of it, and I said, sure, right after the secretary of defense approves it. We worked very hard on the strategy, and to respond directly to the elements of your question, we do believe that, consistent with past planning and execution of terrorist attacks by al Qaeda, that the likely method of attack to be employed by transnational terrorists would involve multiple, near-simultaneous attacks at geographically dispersed locations employing weapons of mass destruction.

And so with that as a premise in terms of the foreseeable capabilities and threat of our adversary, we do look at the force requirements and consequence management capabilities necessary to respond. And just very quickly, we build on those capabilities. First of all, we're not going to become engaged unless civilian authorities are overwhelmed, and in most cases, civilian authorities will not be overwhelmed. We have extraordinary capabilities, as Michael pointed out, in levels of government other than the national level, and we certainly have capabilities even at the national level that are very substantial beyond those in DOD – FEMA as an example.

But we then build a tiered system of response. Beginning with Steve Blum's CSTs, we're going to have – we now have 32; we're adding 12 more CSTs this year, and by statutory mandate, we will have 55 CSTs ultimately to ensure that there's at least one CST in every state and territory. That's an assessment capability. Then the next level will be the CIRFPs that Steve will talk to you about in a couple of minutes – CBIRF-like capabilities, much larger organizations that would bring decontamination and extraction capabilities following one or more WMD attacks.

And then lastly, within the Department of Defense, we will have multiple capabilities at the Joint Task Force level, one of which is dedicated to a domestic response, but the others may be employed overseas as well as within the United States so that if we experience multiple WMD attacks of the type that I described, we will have military forces trained and available for deployment to assist in a supporting role those civilian agencies, most notable DHS and FEMA, as they respond to terrorist attacks in our own country involving weapons of mass destruction.

In a maritime domain, what we call for is an assessment by the NORTHCOM combatant commander for him to determine – I say him because the new combatant commander has been confirmed by the Senate; it's Admiral Tim Keating. Admiral Keating will have the requirement to assess what kinds of maritime capabilities will be necessary to execute those WMD maritime intercept missions that I described earlier on.

And lastly, in the air domain, we think we've got a pretty good balance right now for the homeland defense mission. We have F-16s, F-15s, Air National Guardsmen, Air Force Reservists, and active duty capabilities that have been well integrated into a

NORAD plan to defend our airspace, and we believe that with modification, but modest modification, that basic concept of operations will successfully defend our airspace into the foreseeable future.

MR. CROWLEY: Gentlemen, thank you very much for a very insightful panel. We could do the rest of the afternoon on this topic but unfortunately we have one more to go to solve all of the issues we've been talking about all day.

What we'll do is we'll take a kind of a seventh-inning stretch in place as we switch out the panels and get started pretty quickly. Thank you very much.

(Applause.)

(End of panel.)