

NEW AMERICAN STRATEGIES FOR SECURITY AND PEACE  
OCTOBER 28-29, 2003 - WASHINGTON, D.C.  
MR#7 - PANEL 4 - IS AMERICA PREPARED?

LOG: JH=Jane Harman; RL=Randall Larsen; EG=Mayor Ed Garza;  
MH=Margaret Hamburg; JK=Juliette Kayyem

FS: Thank you to John Podesta for finding a way to feature the Democratic voice on security and peace. I was a Smith College classmate of Mary Podesta. Little did we know that a thousand years later a roller coaster addict named Skippy would play such a prominent role in the Democratic Party. I also want to say about those days -- the Kennedy Administration -- and my first exposure to politics was as a high school student who got on the floor of the 1960 Democratic Convention in Los Angeles.

I'd like to say that Ted Sorensen who is here and who I know spoke to us yesterday has in my mind contributed more to the rhetoric and vision of the Democratic Party on security and peace issues than anyone else. Ted, it's so wonderful (Applause) to have you here.

0 Thank you also too an old friend, Bob Kuttner. I read the *American Prospect* every time. It doesn't always

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love what I do, but it will learn. Let me say about Democrats and security and peace, issues that I have focused on throughout my Congressional career, that we add value to the discussion of those issues. I am perhaps a poster person because when I ran for Congress my first office after running for Junior High School Treasurer -- which I lost -- I ran in a Republican leaning district in Los Angeles which I then called the aerospace center of the universe.

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It was where all the aerospace firms in California are located. There are now few of them but they're still there. All of our intelligence satellites are made there. At any rate, when I ran I learned the defense and security issues. I sought membership on the House Armed Services and Science Committees. I was elected by 7% in 1992. Remember, that was the year of the woman. But then I was reelected in 1994, the year of the Gingrich revolution, by 812 votes out of 225,000 and I stayed in office in the 90's. Then ran for governor of California. Not this time, last time.

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0 Gave up my seat and came back in 2000. My point is that I am a Democrat who has faced some very tough competition, but I have held my ground on defense and security issues, and I would just put out there that we have very good ideas which are winners on these issues, and it really is a good thing that the whole conference is being devoted to this. I thank Skippy for that.

0 He's going to kill me. This panel knows a ton about this issue, and what I really want to do is introduce it briefly and get out of the way. You've heard that I will have to leave because Governor-elect Schwarzenegger is coming to the Hill.

Well, let's talk about this. In my view Americans have been fortunate that another terrorist attack has not taken place on our soil since 9-11-01. Is that because we've been successful or because we've been lucky? Maybe a little of both. In my view though we are still deeply deficient in at least three areas. First and most important strategic thinking and planning about homeland security.

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0           Second, adequately funding our homeland security  
priorities. Third, keeping our promise which Congress  
made in the 90's to provide adequate bandwidth and  
support for horizontal and vertical interoperable  
communications which are absolutely needed should we  
have another horrific terrorist attack. As was true  
when I testified before the Senate Government Affairs  
Committee more than two years ago, the Homeland  
Security Department still has not completed a national  
vulnerability and threat assessment.

0           As a result we still don't have a strategy for  
protecting the homeland. Example: the largest and  
busiest ports in the nation are the ports of Los  
Angeles and Long Beach, right next to my home turf  
which handle 43% of the nation's container traffic.  
Containers, as we all know, are extremely vulnerable  
objects and receive less than three million dollars in  
grants when they identified the need for over sixty-  
five million.

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0 Again, it's not just a straight line projection of how much money are they asking for. But if we don't protect our largest container ports what are we protecting? How secure could our homeland possibly be? I often say that terrorists will not check our party registration before they blow us up. But it appears with the passage of time since 9-11 that sadly partisan politics has come in to shape the federal government's counter-terrorism and homeland security policies.

0 This is tragic. How else can one explain the House Republican leadership's statement that no Democrat will get for example a public health appropriation's earmark if they haven't towed the administration's line. Well I don't think that my request to the House Appropriations Committee for a five million dollar pilot program to fund a state-wide public education curriculum to teach students age-appropriate emergency skills should be held hostage to the percentage of times I agree with this administration. Do you?

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0 I've used the analogy of a dinosaur, a big body and a tiny brain, to describe how we're managing homeland security. Our capabilities are nowhere more prehistoric than in the area of interoperable communications. Imagine a scene of chaos and confusion. Sirens wail. Buildings burn and collapse. Parents become separated from their children. Office workers search for exits in elevators and darkened stairways.

0 Police officers, firefighters and emergency response personnel frantically attempt to communicate with each other and cannot. Well, you all know that describes September 11<sup>th</sup> in New York and at the Pentagon. We know that hundreds of New York City firefighters died because the helicopters circling overhead which knew that the buildings were going to fall down could not reach them by their walkie-talkies or cell phones.

0 It was also true on the same day that firefighters from three counties in Virginia couldn't talk to each other responding to the Pentagon disaster and literally communicated by physical runner. That

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problem has been substantially fixed with respect to interoperable communications between fire departments. But guess what? Ed Plogger (ph.) who is still fire chief for Arlington County says that he cannot talk as of now with his federal counterparts, the Department of Homeland Security, the FBI, the ATF, or other federal agencies just down the road which obviously will and must play a critical role if we have other attacks in this area.

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That's ridiculous, and Congress promised in the 90's to make available enough bandwidth so that the right technologies could communicate with each other both horizontally and vertically. I cannot think of a more urgent need in homeland security, and we are basically nowhere. Let me just put out there a couple of other issues. One, September 11<sup>th</sup> forced us to take on an emergency response to protecting the homeland against terrorism. Obviously this was required at the time. But should be still be in this ongoing broad emergency or should we now move on a bit to a program that has more ordinary characteristics?

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0 In his latest book, "Terrorism, Freedom and Security" Harvard Law professor and good friend - I'm sure a good friend of this group - former Attorney General Phil Hyman (ph.) questions whether we really want to exist in a state of war until we have tracked down every last terrorist. Hyman's view is that a war on terrorism broadly defined tends to obscure the differences among the threats we face and to distract attention from a careful analysis of what we can do, what the essential roles of other nations are and what mixture of desired and undesired effects is likely for each of our choices.

0 Let's remember that our founding fathers and mothers confronted something similar. They had just survived a truly existential threat and were acutely aware of the fragility of the new nation. In that uncertain environment they chose not, I repeat not, to consolidate power and restrict freedoms. But to devolve power to the people and protect civil liberties from encroachment.

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0 They recognized that civil liberties and security are mutually reinforcing. We need to make sure our homeland security strategy reflects these strengths. Another crucial step is to build more effective intelligence architecture for defending Americans at home. Gathering good, accurate information about threats is the heart of homeland security.

0 We need digital vision not analog systems, to see the new threats of the 9-11 world. There are impressive technology strategies such as those suggested by the Marcal (ph.) Foundation to go digital without compromising civil liberties. Let me repeat that. We can go digital. We can collect information without compromising civil liberties. Data mining - well designed - can cast a narrow net and find the bad guys before they find us.

0 Granted there've already been a lot of changes. Some good, some bad. There's the terrorist threat integration center. I'm sure you'll hear about this. There's a new intelligence operation at the Department of Homeland Security. There's been restructuring at

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the FBI and the CIA. Some of it works well. Some of it not. We can do better. But we are still missing a single integrated homeland security strategy to stitch together all the changes that have been made with the goal of connecting the dots.

0 I often say that in creating the Homeland Security Department the goal was not to rearrange the deck chairs but to create one deck, one national integrated strategy. Episodic improvements based on the squeaky wheel principle - he who squeaks loudest gets - is not a strategy. The President, and if he fails to do this, our party must undertake a full review to make sure that people and places are fitting together into a coherent, comprehensive strategy that identifies threats, connects them to vulnerabilities, concretely protects America, and America's values. To do otherwise is to press our luck.

0 Mayor Ed Garza, at the end there, was elected Mayor of San Antonio just before 9-11. I think he was then the youngest mayor in America. He's aged rapidly. Looks a lot older to me. He created this nation's first

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city-county emergency preparedness plan. By the way, as one who represents part of the largest county in the universe, it is critical that the cities be tied into county emergency plans, and we'll talk about that. His topic is homeland security, meeting the needs of America's communities.

0 Third, we will hear about preparing the worst. Are we ready for a biological or chemical attack? From Peggy Hamburg, who is a recognized expert on weapons of mass destruction -- especially biological weapons. She is now in a private foundation, formerly at the department of Health and Human Services. There was no Department of Homeland Security. And was head of the health department in New York City. She's also a member of the Aspen Strategy Group and educates me on these critical issues.

0 Finally, last but not least, is the wonderful Juliette Kayyem who will address the issue of missing the mark, targeting the real terrorists. I hope she will comment on some of the things I said. Juliette directs the Kennedy School Domestic Preparedness

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Program. She's a former legal advisor to the Justice Department. She and I were members together of the Bremmer Commission on terrorism which was making brilliant recommendations in 1999 and 2000. Bremmer is the guy who is now currently in Iraq and who is the chairman of that commission.

0 It makes the point that there were some good ideas out there pre 9-11. Sadly, policy makers weren't paying attention. At any rate, I think that this is a terrific crowd to dig deep into some of these issues. I know I will learn from them, and I trust that you will too. Please welcome our panelists. (Applause)

0 **RL:** I will keep my remarks to five minutes because the most important thing here is the exchange we'll have when we finish our first remarks. In the spirit of full disclosure I should say, John, I'm not a registered Democrat. The good news is I'm not a registered Republican either, which is why I guess I'm frequently invited up to the Hill to comment on different reports and pieces of legislation.

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0 I've been studying homeland security for ten years,  
and it's difficult inside the beltway to walk that  
line right between them. But this is one of the most  
important challenges the Americans will face. Not  
for just ourselves but for our children and  
grandchildren. I want to get down to some specifics  
here in the short time I have. But I must mention the  
strategy word that is the key to this - the key to the  
speakers you've heard this morning, and we do not have  
a national strategy.

0 We've been spending money on homeland security since  
1996. We do not have a strategy. I come from the  
National War College. There's a plaque on the wall  
where George Cannon wrote the doctrine of containment.  
That was a true strategy. It took a long time. It  
worked. It had bipartisan support. Hopefully there's  
someone sitting out there in the audience today or in  
a think tank here or in some university who is writing  
that document now that will lead us into the 21<sup>st</sup>  
century. It does not exist.

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0 In July of 2002 strategy for homeland security was released by the Administration, but even the own authors admitted it was not a strategy. It was a decent plan, a place to start. We need a strategy, a strategy that integrates the sort of things we're talking about here. How can we be prepared as a national to respond to a major disaster when we have a healthcare system that doesn't work?

0 Fifty million people without healthcare. We can't be prepared for homeland security until we have a proper healthcare system in this country. You know our emergency rooms are primary healthcare givers. That's not what emergency rooms should be about. To understand how integrated this is, and it's not the stovepipes that the governor was talking about. We have to look at this from the large prospective.

0 Now I'm very impressed with the panel sitting here. I'm honored to be on stage with them. But I tell you, a lot of the people I work with I think do not fully understand some of the challenges we have and how different they are. Now I agree with a lot of the

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work that Congresswoman Harman's doing. On some I disagree about the issue of borders.

0 Now I understand General Clark talked to you yesterday, and I heard him say we need to spend billions and billions on defending our borders. Well, last year the DEA said three hundred metric tons of cocaine entered the United States. We spent a lot of money trying to stop that. We haven't been very successful. Let me give you an example of what Dr. Hamburg is a real expert on.

0 A few days after 9-11 I was asked to brief Vice President Cheney about the biological threat. How serious was it? The Vice President said, "What's a biological weapon look like?" I reached in my pocket and I pulled out this test tube and I said it looks like this, sir. This is weaponized bacillus globeggia (ph.). It's a stimulant, but the process that made this is the same process that would make weaponized bacillus anthrace which causes anthrax.

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0 This was done in a small laboratory inside the United States with equipment bought off the internet. You don't need to bring this across the border. Even if you did if we can get three hundred metric tons of cocaine across how could you stop this? By the way, this is more material here than shut down the Senate Hart Office building for ninety days and caused \$27 million to clean up.

0 Where did Ramsey Yousef make his weapon he used to attack the World Trade Center in 1993? New Jersey. Where did Timothy McVeigh make his bomb? Kansas. Where did Am Shin Requil (ph.) make their serum? In Tokyo, not far from where they used it. We don't have to bring things across the border. They're already here. EPA says there's 123 facilities in this country that have enough chemicals in them that if attacked with a large truck bomb could create a plume that would threaten up to a million people. A million people. 123 sites that used to be identified on the internet. That's been taken off now. So we don't give targeting information to the bad folks.

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0           So what I'm worried about is when we try to build a  
Maginot Line along our borders we're going to  
seriously disrupt the economy as the governor was  
talking about. I spent a lot of time working with  
folks in Canada. 90% of their trade comes here.  
They're very worried about that. 25% of our trade  
goes to Canada. They're our single largest trading  
partner, and they're worried.

0           There's a major automobile manufacturer today who is  
moving a new facility to Illinois where all the parts  
suppliers have to come within 500 miles and nothing  
across borders, international borders, because they're  
worried about their just in time delivery system. So  
I'm worried about the unintended consequences.

0           In California today because we have put some barriers  
up now for people crossing the borders. The workers  
that come in illegally that we all know about, and we  
haven't quite addressed the immigration issues yet,  
but to pick the crops and fruits and San Joaquin  
Valley. It now costs \$1,500 dollars to be smuggled  
across the border. Guess what? The cost of commuting

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has become too high. So they're staying in San Joaquin Valley. They're bringing their families because they like to see them.

0 Guess what's happening to all the emergency rooms in the hospitals when they come in without healthcare insurance? And all the other social services? It's causing severe economic disruption in Stockton, California, the unintended consequences of this Maginot Line. So we have to be very careful. We have to have a better understanding of exactly how we're going to do this.

0 Since I only have five minutes I'm going to stop there. Obviously there's a lot of other issues I would like to discuss with you, and I hope we can do it on the panel. Thank you very much. (Applause)

0 **EG:** Well good morning and thank you Congresswoman for your remarks and introduction. As the Congresswoman stated I am the Mayor of San Antonio, one of the fastest growing cities in the country and a city that is very proud of its military history and the

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traditions. San Antonio has had the distinction of being known as Military City, USA. I think shortly after becoming mayor in June, 2001 and the events of September 11<sup>th</sup>, I quickly became not only very aware of what the military meant in San Antonio but the infrastructure that the military has provided us as a community in helping us be part of the dialog of homeland security.

0 Shortly after September 11<sup>th</sup> CNN recognized San Antonio as one of the most prepared communities in the country. In fact we were second only to New York City. That made us all pause for a moment to try and understand why we were recognized in this way. A lot of that I do believe goes back to the military. Well what it also demonstrated to me is although we were the second most prepared community we still had a significant gap. We still had and addressed an assessment of millions of dollars - sixty plus millions of dollars of need.

0 So that really said a lot to me as a community leader. But I think as cities across this country continue to

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articulate the message of the first responders, that front line that are in our cities whether it's our firefighters, our police officers, the heroes of September the 11<sup>th</sup>, it will be the cities that help to contribute to the dialog of the strategy that we're trying to develop.

0 I've had the opportunity to sit on the National League of Cities task force specifically for homeland security, and whether you're a city representing 2,000 in population or two million there's a common theme. Frustration on the part of funding and my observation has been in most of the cities in America today our attention has been on the issue of the frontline, certainly the foot soldiers that are fighting this issue of homeland security.

0 But what cities are not talking about and it's really being discussed at a very minimal level is how we develop the regional partnerships to address homeland security. It's gonna be our challenge as community leaders to stop looking at the measuring stick of how much certain cities are getting in homeland security.

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Rather looking at regional solutions and developing a plan to implement regional preparedness.

0 Second area aside from just the basic public safety responsibilities that cities have in taking on a new dimension as it relates to homeland security and public safety is the issue of collaboration. The governor mentioned earlier this morning the importance of the public-private partnership. One of the statistics that I've heard time and time again is that 85% of the infrastructure in the United States is in the hands of the private sector.

0 But yet today the dialog, the responsibility, has been in the hands in the public sector whether it's the federal, state or local governments. We in San Antonio have been certainly trying to cultivate the relationship between the public and private sector not only in terms of the connectivity to the industry and the preparedness industry to homeland security and the preparedness issues but how do we better prepare our businesses - cyber security being one of the focus

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areas that we have spent enormous time and resources in Texas and in the San Antonio area.

0 But that will continue to be important as we focus on the infrastructure needs across the country and how cities can play a very important role in making sure that the businesses understand that message. In terms of communication I think the third and most critical area of cities and their responsibility is leadership because it will be the county judges, the mayors, that are in constant dialog with the citizens, the voters, the taxpayers, those that understand the value of public safety, those that are reluctantly understanding the value of homeland security.

0 But how do we communicate and inspire them to invest more, to focus on training initiatives in that pipeline of workers that will now be part of this security industry and be able to ask them the taxpayers and citizens to support the strategy that we're creating and evolving. I think one of the most frustrating things today that I hear in the community is not so much that we understand the needs of

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homeland security, but how we as local communities play a vital role in making that strategy become a reality.

0 So the strategy that is developed here, and I want to congratulate all of you who are participating because I think it's important that many different groups contribute to the strategy in a particular local communities that we get this message out to the citizens that need to be supportive and invest in this initiative in the future.

0 So I look forward to the panel discussion and certainly remind everyone in this room that we have to continue to involve the local communities both at the city, the county and the regional basis in order to make this strategy a successful one. Thank you.  
(Applause)

0 **MH:** I've been asked to address the topic of Preparing for the worst: Are we ready for chemical or biological attack? I have to confess, I'm also going to slip in a little bit about nuclear because believe me, that

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would be pretty bad. Concern about our nation's ability to respond to this kind of catastrophic terrorism has dramatically increased since the attacks of fall 2001.

0           Though some skeptics do remain, few can doubt that the threat is real. We know that terrorists groups are working hard to get these weapons. In fact Osama Bin Laden has said that acquiring weapons of mass destruction is in fact a religious duty. In addition we're seeing a new kind of terrorism where the goal is not to achieve a political solution but rather to kill large numbers.

0           As Jim Woolsey is fond of saying "terrorists no longer want to sit at the table, they simply want to blow it up". Following 9-11 one can only assume that if terrorists acquire nuclear, biological or chemical weapons they will use them. This is a frightening prospect as the consequences are horrific. Especially with nuclear or biological weapons the death, damage and destruction would likely dwarf what we experienced with the World Trade Center.

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0 Obviously there's an urgent need to address the complexities of preparing for such an unprecedented and uncertain yet potentially devastating event. Over the past two years substantial new sums of money, new organizational structures, new laws and new policies and programs have been targeted toward this looming threat.

0 There's been a lot of activity and no doubt we are somewhat better prepared today. But we remain dangerously vulnerable in far too many ways. In thinking about our nation's preparedness we must ask ourselves the question the day after a nuclear, chemical or biological attack what would we wish we had done and why aren't we doing it now?

0 At the outset it must be stressed that nuclear, chemical and biological threats are in fact very different from each other. Each requires different strategies for prevention, different strategies for intelligence, collection and analysis about the

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threats and different types of planning and preparedness to deal with an attack if it occurs.

0 Biological terrorism in particular, with its close links to naturally occurring infectious agents and epidemic disease requires different investments and different partners. Frankly, many of the early efforts in preparedness will compromise because threats were lumped together. We'll never effectively address these threats without the fundamental recognition of the important differences, yet that are some overarching concerns, and I'd like to just quickly mention a few priorities.

0 First, to echo the words of Congresswoman Harman and Colonel Larsen, there is just an urgent need for a true national strategy, one that recognizes our vulnerabilities, identifies both short and long-term goals, sets priorities, delineates essential roles and responsibilities, the various parts of government as well as the private sector and defines useful measures to assess progress towards our goals.

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0           Despite its title, the Administration's national strategy for homeland security offers none of these critical elements. We must have a more clearly articulated and integrated strategy to serve as the framework for action. Certainly the potential devastation of an attack using a weapon of mass destruction demands that we do everything we can to prevent an attack from occurring in the first place.

0           We must seek to secure dangerous weapons and materials both at home and abroad and keep them out of the hands of terrorists. This is surely the most effective and least expensive way to prevent nuclear terrorism. Once you have the right material making a highly enriched uranium bomb capable of disseminating huge populations is stunningly easy.

0           But acquiring such material is the hardest step for terrorists to take and the easiest step for us to stop. By contrast, every subsequent step toward a nuclear bomb is easier for the terrorists to take and harder for us to stop. If a bomb is deployed it is clearly too late. This is an area where we can make a

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huge positive difference. Cooperative threat reduction programs like Nunn Lugar have existed for some time, but they lack adequate funding and support.

0 We can do a lot more and do it faster. Similarly we must secure and destroy chemical weapons stockpiles. At the Chushiff (ph.) facility in Russia alone 1.9 million chemical weapon shells, enough to kill everyone on earth, are sitting in decaying buildings with minimal guard. This is just a small fraction of the weapons awaiting destruction around the world, where progress is slow because of technological disputes, bureaucratic delays and a lack of funding.

0 It's not just weapons, as Colonel Larsen indicated. According to a recent report there are more than 3,000 chemical facilities where a dangerous chemical could put more than 10,000 people at risk. You indicated many thousands more. Yet we do not have clear guidelines and requirements to harden these potential targets against attack.

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0 Important as it is preventing a determined terrorist will be tough, so we must insure that actors at all levels are prepared to deal with an attack should it occur. In fact preparation is an important deterrent. But to be prepared we must strengthen a set of necessary infrastructures to deal with a wide range of possible dangers. Basic capabilities that still desperately need to be shored up include our emergency systems for local responsive coordination including interoperable communications as well as equipment and training.

0 Our hospitals need help to develop the surge capacity and specialized skills to deal with the WMD attack and the consequent mass casualties. Strong new partnerships are needed across agencies of government and levels of government as well as importantly with the private sector as Governor Warner mentioned. We need to do planning on a regional basis to identify all available assets and how we should use them, and we need to practice what we plan.

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0 In my view one of our most urgent requirements is to improve our biological defenses. The components of biological terrorism are frighteningly available worldwide. Public health represents the first line of defense. We must strengthen public health systems at home and abroad so we can quickly detect and contain disease outbreaks.

0 Upgraded labs, augmented personnel and training programs, enhanced hospital and healthcare support and improved communication systems are all central to insuring preparedness. Research and development for new diagnostics, vaccines and treatments must also be accelerated. I also just quickly want to mention agricultural terrorism and then I'll conclude.

0 Even without the loss of one human life, terrorists could produce widespread fear, economic damage and undermine confidence in government by an attack on animals or crops. In addition, the food supply is highly vulnerable to serious contamination and could cause a vast number of illnesses and deaths. These are enormously important concerns, yet agricultural

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terrorism may currently be the most under-addressed area with respect to biological threats.

0 My time is limited so I'll stop, but hope to talk more about these issues in the discussion. (Applause)

0 **JK:** Good morning. This morning I'm going to talk about a variety of different issues all sort of within the context of legal homeland security or domestic preparedness because I think the law is an important aspect of the discussion that we've been having today. Homeland security and domestic preparedness is not only about being safe but obviously about also feeling safe, that our government actually knows what it is doing, that it is not acting in desperate fashion collecting all sorts of people and information and some hope that we'll find a needle in a haystack.

0 So today I'm not gonna actually talk about specific issues in the sort of civil liberties national security debate that has come up in every panel speaker. There are too many to talk about in five minutes. Also in the legal community there's been

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just a tremendous amount of good work done on specific issues.

0 I commend David Kohl's book, *Alien Enemies*. The Lawyers Committee for Human Rights has a new report assessing the new normal which is fabulous. Joe Onnex, (ph.) here with the Constitution Project, they've done tremendous work on sort of specific issues regarding detentions, military tribunals and others. What I want to talk about is the structure of a legal and law enforcement regime in a war, using the term war on terrorism but in a long-term effort against terror and what it should look like.

0 There is a balance that needs to be achieved between national security and civil liberties, and even Democrats will disagree on where that line should be. Certainly Congresswoman Harman and I have had a lot of disagreements on sort of where that line should fall, and I think Democrats and Republicans of good faith will disagree on it.

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What is not the case is that there's no debate. The Republican administration strategy so far has been to sort of deny that in this effort against terrorism there's no debate between civil liberties and national security. They've done this with two techniques which are both kind of fun but also a little disturbing. The first is the argument that we already have these authorities already and so what we're just doing with the Patriot Act or Patriot II is codifying aspects of the law that we already had.

The truth is that is just simply not true. The administration sort of points to Section 215 which is what I call the librarians provision because it's sort of fun that librarians are sort of going after John Ashcroft. But it's the one where we give him authority to look at books and the collection of books and data. The administration has defended that as saying well we already had that authority. That's actually not true. They simply did not have that authority.

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We see that again with efforts for Patriot II in the administration subpoena, in the efforts to allow administrative subpoenas to collect information and files on commercial businesses. The administration is defending that saying well we already are permitted to have administrative subpoenas. That is true in the non-criminal context. What they're simply doing is sort of saying, well let's use it for the criminal context thereby undermining the Fourth Amendment.

So it just takes good lawyering to sort of say it's just simply not true that they already have these authorities. The second strategy by the administration in the civil liberties national security debate, I think, is a little bit more disturbing. It's the argument that you're starting to hear. I like to read a lot of sort of the right-wing media and the think tanks and stuff. It's an argument you're starting to hear -- and excuse the pun -- but here's the existential question.

If a civil libertree falls in a forest but no one's hurt by it is there any harm? And we hear this in the

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context one of military tribunals, right? No harm because no one's put before them although we'll probably see Zacharias Massoui soon sent there. We also see it in the context of Section 215 as well, when Ashcroft admitted well we've never gone after the librarians, right? We've never sought this information from libraries.

It's an attempt to say that the civil liberties national security debate is just being constructed by the left, and in fact the right is concerned about these privacy issues as well. But that in fact the administration is quite benign, and I think it's this benignness because we're not using these authorities I think is equally misleading.

In any event, what would this alternative legal regime look like, and one that I think that people on both sides of the aisle and of good faith can agree on. What we've seen over the course of the last two years is that the temporary measures that were put in place after September 11<sup>th</sup> have become part of our permanent legal regime.

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The temporary measures immediately after September 11<sup>th</sup> – I really don't think a Democratic administration would have acted very differently in those immediate days and weeks after September 11<sup>th</sup>. Maybe on the peripheries of judicial review and other aspects. But I think for the most part a government would have responded pretty similarly including, we have to admit, the detentions which occurred during the millennium fear under the Clinton Administration.

What we're seeing now though is the sort of the temporary becoming permanent, most obviously in Guantanamo Bay. I personally thought Guantanamo Bay was actually quite smart and had troops engaged in armed conflict in Afghanistan. They were collecting men who we did not know who they were. Were they Al Qaeda? Were the Taliban or were they farmers? Under both international law and our own military justice system we need to determine who they were because then we need to figure out sort of what kind of punishment, and it was a different kind of punishment that would fall depending on what group these men fell into.

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So Guantanamo to get them out of the armed conflict, right, to get them away from the scene of where our armed forces were seemed smart at the time. But Guantanamo was supposed to be a process. It has become quite literally a place. I mean we are now starting to see the permanent structures being put on to Guantanamo for what we only can imagine is going to be a very long time.

No one in the intelligence community now, I think, believes that guys that have been held for two years have any sort of relevant or helpful information at this stage. So what should we be arguing for outside of the context of the specific issues I've mentioned from military tribunals to detentions? What should we be arguing for in terms of this alternative legal landscape?

I'm just going to use the words of Senator Clinton. We should be arguing for honesty, accountability and rule of law. Honesty. Attorney General John Ashcroft said that he was going to be like Robert Kennedy and

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sort of arrest any terrorist that spit on the sidewalk and indict them. The truth is if you look at the Department of Justice's arrests so far, basically we're indicting the spit.

Our cases are falling apart quite publicly in the Masauwi cases, but we really have not captured any sort of very helpful men in this war on terrorism. The *New York Times* recent story on the Lackawanna case is very telling in this regard. It isn't that these arrests are unimportant. Certainly if these men are guilty of aiding and abetting an enemy these may be possibly helpful arrests.

But we need to be honest about what is occurring here, which is arrests under sort of specious legal theories of men who are not even on the radar screen in terms of a terrorist threat. These arrests are occurring and they're not occurring here. They're occurring abroad. That's not a bad thing. We should do everything to support the legal efforts in France, Germany, even Russia.

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In a new report released by my colleague, Matt Bonn, he says for the first time a senior official of a Russian facility handling tons of potential bomb material has been apprehended recently for stealing nuclear materials with the intent to distribute them. That is a good arrest. That is a significant arrest.

What we should be doing is buttressing the sort of coalition that we had in the immediate days after September 11<sup>th</sup> for the law enforcement efforts that are going to I think be successful in countering terrorists.

The second issue is accountability. I'm all for judicial review. I'm all for Congressional oversight. But I do think there need to be more internal structures in place within the executive branch that are more helpful with making sure that the executive branch itself is accountable for the conduct it does. I wrote a little bit about this in the *American Prospect* article that's out now.

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To be specific, the Department of Homeland Security's Inspector General's office is not up to the task of assuring that a department like the Department of Homeland Security which has the potential to have a lot of influence in our lives and our sense of privacy is an effective, body of oversight in the Department of Homeland Security.

The Department of Justice recently, their Inspector General, came out with a very helpful report on how the FBI had been handling the detainees. It was an internal report. The FBI adopted most of the recommendations. I think in the event of another attack the experience of people caught up in a sweep will be quite different and it won't be quite as long. These are good changes. So I think in terms of the internal oversight accountability review we should be pushing for more of that within both the Department of Justice and the Department of Homeland Security.

Then the third, very quickly, is the rule of law. I guess I sort of just pose a question which law. We have subsumed our immigration policy into counter-

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terrorism at the expense of law abiding Arabs and Muslims. We need an internal tracking program. For people who arrive at this country I don't think it's a big deal to ask them that to stay within the parameters of their invitation. I don't think that's a very controversial proposition.

But need an internal tracking program to work. It must be developed so that it encourages compliance among law abiding targets. We've so alienated immigrant communities that what we now have is a system where we can't get compliance from the lawful people so as to weed out the unlawful or dangerous people. It's a long-term strategy that's actually not going to work.

I'm going to end with a pitch also because I think when we think about an alternative legal regime and the long-term law enforcement strategy for combating terrorism. If you look around this room -- and it's in my bio for this because it's something that I am working on now -- the problems occurring on Guantanamo Bay now with the possible espionage ring of

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translators and certainly the problems with the kind of intelligence we got from Arabs and Muslims about what post-war Iraq would look like, I think is due in large part to the fact that our national security and law enforcement communities are relatively white and relatively male.

I am an Arab-American. My family's from Lebanon. I think it is important for the Democrats and for those of us who are committed to these issues to do everything that we can as I think metropolitan police departments did in the 1960's and 70's to try to integrate these communities. I think our national security and intelligence about parts of the world that we don't know much about will be better served by such a strategy that embraces I think the full panoply of people out there that can help us in this effort. Thank you. (Applause)

**MS:** Congresswoman Harman had to take a break. She's going up to see Governor-elect Schwarzenegger. We are juggling Congressional schedules here this morning. Congressman Leach who is chairing the next panel is

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with us. We have time for a couple of questions. I think since I'm standing at the podium I'm going to ask Randy the first one as the mikes come out, which is Peggy raised the question of hardening targets internally. You talked about the futility of trying to harden the border as opposed to creating a greater risk reduction strategy.

I wonder what your thoughts are with regard to especially vulnerable places that you talked about like chemical plant security, etc., whether hardening targets, putting more guard dogs at the gates is really an effective strategy?

**RL:** It was a while before we could laugh again as a nation after 9-11, but I remember some time in January or February of 2002 we finally decided it was okay. I remember when the *Onion* came out with a great story, for those of you who read it on the internet, about "Des Moines to Harden Satellite Libraries." How far do we go? I used to be the commander of all the VIP airplanes at Andrews Air Force Base for two years. I

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owned the passenger terminal out there where 360 heads of state each year came through.

My security people just kept putting up more barriers and all of this and I kept thinking okay, I understand that. You're making our life kind of tough. But the childcare centers, the two we had, you can still drive up in front of them. And the hospital you can still drive up in front of and the elementary school on base. If you understand Al Qaeda they go to pizza parlors on Saturday nights.

So I'm worried about that. I think our greatest threat as a nation is uncontrolled spending. I've already said I'm not a Republican or Democrat. It has nothing to do with that. We've been spending money on homeland security since 1996. We could spend ourselves into bankruptcy like the Soviet Union. We do have to establish some priorities. There's some legislation in the House right now that's talking about establishing those priorities.

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It's very difficult when it doesn't fall within your Congressional district. But we're going to have to be able to do that so that we have money for other very important things that I know are important to you. Priorities are the most important thing we're dealing with. We cannot defend this entire country.

MS: We had some hand up over there. I should emphasize that we are non-partisan research and education.

MS: I'm Harlin Almond. Thank you for your presentation and John thank you for an excellence conference. We've heard wailing and moaning about absence of strategy, so let me put it to you. What's your strategy? Or if you can't answer that directly George Marshall said, with due respect to you Randy, that if you get the aims right a lieutenant can write the strategy. You're a colonel. One of the aims should be underwriting the strategies that we look at.

RL: I don't think I can give you the strategy for homeland security and security in the 21<sup>st</sup> century in a

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sound bite. That's our greatest challenge. I heard Senator Cary talking about that on the radio yesterday. The most difficult thing with the presidential debates is okay, tell me your strategy for fixing healthcare and you've got forty-five seconds left.

I won't try to do that. I won't claim that I'm the person that can do it. But I think that there are people out there that can do it. I mean George Cannon did it. It worked, and we're not there yet. I think it's critically important. I think establishing standards. The whole thing with the Council of Foreign Relation and Senator Rudman's report that says we gotta spend 97 billion or 98.4 billion dollars more on first responders.

I like first responders too, but what are the standards we're building to? Until we determine that, but we can't get to any of that until we have the understanding of the threat we're really facing and then build that strategy. So it's gonna take more than just Randy Larsen in thirty seconds.

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**EG:** To follow up on the strategy question I think when thinking about a national strategy and incorporating the regional and cities' perspective it's important that there is that flexibility. In San Antonio, south central and central Texas, we are taking our model in the city/county. We thought we did a great job collaborating between the city and county. But quite frankly it fails miserably because we will be the community that has to respond to any natural or terrorist activity or biological activity probably for a twenty-five county region.

So it's important that as we develop a national strategy we really look at our states being then divided into regions and come up with the understanding that there will not be uniformity in the capacity of our first responders. There will not be uniformity in the infrastructure of our hospitals and our trauma centers. There will not be the uniformity in so many of the things that we define or measure what communities should have to be prepared.

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I think we really need to look at a regional approach and get that message communicated to the cities from the state and federal level that we have to do a comprehensive assessment and inventory of what we have in place today to be able to address specific emergency needs when it happens and collaborate on those needs as part of this national strategy.

MS: I think that Randy's right. This is a complex question that can't be answered in a sound bite. But we have to try. We have to lay out a plan that identifies where our vulnerabilities are and what is needed to shore them up. We have to look at the tools that we presently have in terms of systems and programs and policies that can make us safer in each of those areas of vulnerability. We also have to define what's still needed? What's our research agenda? What are the things that we still need to develop best practices for that can be shared at the state, local and regional level to make us safer and stronger?

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I think the strategy has to look at the full spectrum from prevention through early recognition of an attack and that initial response through consequence management and recovery. While we cannot clearly define every single goal and objective and every single role and responsibility of all the many and varied players involved I think we can move much, much closer to having a real blueprint for action.

MS: Yep. I've got my questioners bunched. Let's just take these last two.

MS: Dave Disenberg (ph.) with the British American Security Information Council to Mayor Garza. Most of the speakers including Governor Warner earlier alluded to the need for greater federal/local cooperation and yet most of the documentation on the issue of homeland security refers consistently to impediments either because the federal government is not delivering on its promises through funding or is making it difficult for people at the local level to get access to the information they want i.e., classified information or

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refusing to give officials - governors and mayors - access to information because they're not classified.

I was wondering what you considered to be the most important impediments to a better federal/local working relationship and what specific steps or policies maybe the top three that you'd like to see implemented to make things better.

**EG:** That would probably take about thirty minutes just to talk about some of the issues in terms of communication. I think initially most cities were giving the federal government the benefit of the doubt. We had to respond to a very serious situation and had to do so in a way that provided some sort of uniformity in terms of standards.

But I think now as money is starting to trickle down - I say the word trickle down because going through the state and cities across this country advocated that it go directly from the federal government to communities that were able to develop regional partnerships. I

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think the biggest impediment today still lies with a lack of flow of information.

Certainly as the DHS has been created we have tried to understand if there's a template that we should follow which we really don't have today. The only thing we can respond to are the color bars that indicate what level security threat we're at today and what we as cities should be doing. But again it's a very general statement. So I think in order to improve on that DHS, our state governments, truly have to develop the capacity on a regional basis to be able to have a better line of communication.

Until we have that then we're gonna still see frustration from communities across the country. Speaking from a big city perspective again if we're feeling those frustrations I can only imagine what the other 80% of America and cities that are under 50,000 probably are feeling today in terms of not only getting information but the resources and to have a plan and to do an assessment of what they have in their community today.

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MS: Last question.

FS: I'm Paula Scolingee (ph.), and since I left government I've been working out in the regions to set up the public/private partnerships that we've been talking about today. I share a lot of the frustrations that the panelists have raised. The question is for Mayor Garza. It's very difficult to get the public and private sector stakeholders to feel comfortable and cooperate with each other.

The problem that I have seen is that dearth of federal attention and assistance has been part of the problem in not bringing together these stakeholders. What role do you see looking at the future with a Department of Homeland Security that was really effectively working to address these problems of public and private sector competition, lack of cooperation, etc.?

**EG:** I think again the efforts to date in terms of homeland security have been communicated from the

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public sector via the federal, state or local communities. As I stated earlier the biggest challenge will be to engage the private sector. Private sector, they have different issues. So we talked about civil liberties earlier, and when we put together a dark screen exercise, a cyber security scenario as an attack and we tried to engage the private sector—the financial institutions, the communication companies – there was a reluctance because they were afraid of the information that would be made available and that being subject to the Open Records Act.

That becoming a big impediment to allow that private sector to collaborate with the public sector in doing an assessment and even going through an exercise. So I think we have to better understand the private sector concerns and figure out can we apply the same rules that we're applying under a security umbrella for the country in talking about what perhaps civil liberties we have to give up on a public sector are those the same rules we're going to demand that the

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private sector as we continue to develop this strategy for a national security plan.

So I think there's a lot of fear in the private sector because they feel that it will create undo competitive advantages if information is shared and there's this collaboration that exists. So if we don't come over those basic issues we will not be able to adequately address the security needs of 85% of the infrastructure in the United States today.

MS: Peggy.

**MH:** I just wanted to add from the perspective of biological threats which is where I spend most of my time. The role of the private sector is absolutely fundamental - both the hospital and healthcare system and the pharmaceutical industry which will help us to develop the new diagnostics vaccines and drugs for bio defense. I repeatedly hear from my colleagues in the private sector to major concerns about their ability to really get on board with the national response to biological terrorism.

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One is that they really don't know how to connect with government activities. Perhaps as the Department of Homeland Security evolves it will become increasingly easy to have a point of connection that can link them into all the many activities that are happening throughout the federal government and that are important to an effective public/private partnership. But right now it's very diffuse, and people even when they want to engage have a hard time finding the right spot to connect and particularly to create a sustainable and meaningful collaboration.

The second is real issues about liability compensation and reimbursement for the hospitals which are operating at the margin on a day-to-day basis in terms of cost pressures. To make the kinds of investments in preparedness that are necessary is a huge commitment. The concern once an attack might occur about the vulnerability of their institutions over a longer term due to both stigma and true contamination raises huge issues for reimbursement and financial viability. So they want to know what kinds of legal

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measures to support fair compensation and reimbursement risks to their own employees, etc. It's all very vague.

We need to really examine the framework in which they will operate. Similarly the pharmaceutical industry. They operate with a certain bottom line pressure. They don't want to start making drugs and vaccines for diseases that don't exist unless they can be brought in to a partnership where they both can understand what are the credible threats? What are the agents that they should be developing, new pharmaceuticals against? We're beginning to create some of those linkages, but it's been a little slow in coming.

Then of course will there be a market for their product. So there's a whole set of issues that I think at least in the area that I know best need to be pursued, but the opportunity for a meaningful public/private collaboration and partnership is certainly there and essential. I think we're going to be better prepared.

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**MS:** I'm gonna give Juliet and Randy and last brief comment. Then we're gonna go to the last panel.

**JK:** I think you're exactly right that the legal structure needs to be examined in the context of not so much even before an event but certainly after an event. There is a good example, not totally helpful but certainly a lot of provisions of anti-trust law and FOIA information were re-examined during the lead up to millennium so that the government could find out what they sort of feared might happen with Y2K.

I think we need to start thinking about those kinds of exceptions in the legal context in the event of a terrorist attack so that we provide every incentive to the private businesses to get involved with this.

**RL:** Harlin, to answer part of your question, one key element of that strategy must be the regional approach, and I would just like to congratulate Mayor Garza on being the national leader in this. We cannot afford to put every piece of equipment we need in every firehouse in this country, as much as I'd like

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to do it, or every police department or every public health office.

He's leading the effort down there as what can Houston provide to San Antonio in a crisis? What can Austin? What can little San Marcos that may have a unique capability there understanding what's there, and to borrow a quote from Peggy Hamburg, "if we practice that way we won't be exchanging business cards on the first day of the next crisis". So the regional approach is one we can afford and it's one that'll be effective and I congratulate Mayor Garza on.

MS: Let me thank the entire panel for a great presentation. (Applause) We're gonna go directly to our next panel. I apologize for the lack of a break but again we're juggling Congressional schedules and they're obviously doing important work on Capitol Hill today too.

**(END OF TAPE)**