

THE ROLE OF STATE AND LOCAL GOVERNMENTS IN HOMELAND SECURITY

Written Testimony for the Senate Committee on Homeland Security and Governmental Affairs

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Since September 11, 2001, homeland security has been seen first and foremost as a job for the federal government, especially in terms of guarding borders, protecting the country's most valuable infrastructure during heightened alerts, and developing antidotes to possible biological attack. The role of state and local governments as well as the nation's first responder community has been viewed largely as providing quick reaction and consequence mitigation to any attacks that occur despite the best effort of the federal system to prevent it. Any effort to address preparations within the national capital region or any other metropolitan region needs to begin with some framework for assessing whether this image of the role of local authorities is correct.

In fact, this image is not correct; local governments must do a great deal more than prepare for the consequence management role. In particular, they must also pay a great deal of attention to prevention efforts.² To date they have not done nearly enough in this regard.

This argument is not intended as a sweeping indictment of everything that has been done at the state and local level. Consequence management is indeed an important mission. The programs to prepare first responders to deal with chemical, biological, or large-explosive attack date back to 1996 and the Nunn-Lugar-Domenici legislation following the Oklahoma City tragedy. While these programs have not always been efficient or focused, they have improved, and are funded at a level of resources roughly appropriate to the task at hand.

But preventive efforts have been quite lacking, especially outside of New York City. No police forces in the country except New York's have created more than skeletal counterterrorism units to integrate their normal police work with counterterrorism efforts. The FBI has some capacity for these types of efforts, but it is limited. The nation's larger cities also need their own dedicated counterterror teams, and the federal government should help fund the creation and operation of such units.

The First Responder Community and Consequence Management

In recent years, many have called for allocating \$10 billion to \$20 billion in additional annual resources to the first responder community—police, fire, and rescue units—to provide them equipment and training to help mitigate the damage caused by any successful terrorist attack. These include protective gear against weapons of mass destruction, large-scale specialized

¹ This testimony is based on ongoing research from a Brookings team project also involving Michael d'Arcy, Paul Light, Peter Orszag, Jeremy Shapiro, and James Steinberg.

² For a similar argument, see James Jay Carafano, Paul Rosenzweig, and Alane Kochems, "An Agenda for Increasing State and Local Government Efforts to Combat Terrorism," *Heritage Foundation Backgrounders*, No. 1826 (February 24, 2005).

training, more teams to handle possible building collapse, and radio systems that are interoperable between different types of responders within a given jurisdiction.³

Such ideas go too far. For example, it is not necessary to equip all three million first responders in the United States with state of the art chemical protective gear or interoperable communications systems. Equipping specialized teams within each major jurisdiction with such capabilities, and creating several mobile communications headquarters with interoperable technology, are less expensive and more quickly doable propositions.⁴ It is not necessary that every fireman's radio can talk to every police officer's radio; a certain number of mobile interoperable communications vans that can be quickly deployed to a problem site are a more cost-effective solution. They can allow quick coordination and cross-communication through the squad or team leaders of each type of organization (that would have been enough to save many firefighters on September 11, 2001 in New York). A large city could purchase several dozen, at \$1 million each, for a reasonable cost of several tens of millions of dollars.⁵

Preexisting shortfalls in local police, fire, rescue, and hospital capabilities for traditional missions must not be confused with homeland security needs. Nor should they be funded with homeland security dollars.⁶

Considering training and equipment needs, and using actual expenditures in New York and some proposals for expenditures in other large cities as a guide, current national spending in the range of \$5 billion a year is roughly adequate for first responders. Actual disbursements to state and local governments are also starting to flow at more appropriate rates than in the immediate post-9/11 period.⁷

This is not to say that all important tasks concerning consequence management are already being undertaken effectively. For example, it appears that very little work has been done developing clear and realistic evacuation plans for parts of major urban areas, should a nuclear explosion produce a cloud of radioactive debris that puts tens of thousands of lives at risk in addition to those lost in the initial blast (though national capital area authorities wisely tested a new approach after the July 4, 2005 fireworks display on the mall). But proper planning for such scenarios is less a matter of increased resources being spread among hundreds of thousands of first responders, and more a question of proper planning and coordination.⁸

³ See Warren B. Rudman, Richard A. Clarke, Jamie F. Metz, and an Independent Task Force, *Emergency Responders: Drastically Underfunded, Dangerously Unprepared* (New York: Council on Foreign Relations, 2003).

⁴ Homeland Security Advisory Council, U.S. Department of Homeland Security, *A Report from the Task Force on State and Local Homeland Security Funding* (Washington, D.C.: June 2004), p. 13.

⁵ See Michael O'Hanlon and Jack Weiss, "Prepare Our Cities for War with Iraq," *Washington Times*, December 31, 2002. Another estimate is that national costs could be \$350 million in all for the necessary investment. See Michael Pan, Amanda Terkel, Robert Boorstin, P.J. Crowley, and Nigel Holmes, "Safety Second," *New York Times*, August 8, 2004, p. WK11.

⁶ James Fossett, "The Current State of Homeland Security," in *The Role of 'Home' in Homeland Security: The Federalism Challenge* (New York: Rockefeller Institute of Government, 2003), p. 31; and Gilmore Commission, *Implementing the National Strategy*, p. 35.

⁷ Statement of William O. Jenkins, Jr., Director, Homeland Security and Justice Issues, General Accounting Office, "Emergency Preparedness: Federal Funds for First Responders," GAO-04-788T, May 13, 2004.

⁸ John Mintz, "U.S. Called Unprepared for Nuclear Terrorism," *Washington Post*, May 3, 2005, p. A1.

Poor Resource Allocations and Other Financial Problems

When homeland security dollars are used in an unfocused way and largely to redress pre-existing shortfalls in traditional first responder capabilities, other problems ensue as well. Notably, in the first years after 9/11, the funding formulas devised for helping states with homeland security created a situation where a lightly populated state such as Wyoming received \$10 per capita from DHS for emergency preparedness while New York, much more likely to be a target, received just \$1.40.⁹ Indeed, this incongruous situation persisted into 2004, with funding that year providing \$19 million to Wyoming but only \$177 million to California and \$104 million to New York—a per capita differential of more than five to one in the wrong direction.¹⁰

This situation was partially rectified in the 2005 budget. Of the \$3.5 billion fund for local preparation, about \$830 million is being allocated directly to cities and particularly to high-profile cities. (New York will be allocated 25 percent of that \$830 million total, Washington 9.3 percent, Los Angeles 7.4 percent, Chicago 5.4 percent and Boston 3.1 percent—together, these five cities will receive half the funds in this account.)¹¹ But outside this Urban Area Security Initiative, other funds are still allocated by non-threat based criteria that favor states of low population density.¹²

States and localities also need ways to gain relevant equipment and training more efficiently once they gain access to funds. Relevant measures include forming municipal or state-wide cooperative arrangements to buy relevant equipment in bulk—something the federal government should encourage by allowing municipalities (not just states) to apply for funding.¹³ They also include developing legal instruments such as standing purchase orders that allow for rapid acquisition of needed materials, and establishing national standards on proper equipment and training practices that can guide states and localities.¹⁴

⁹ See Rudman, Clarke, Metz, and an Independent Task Force, *Emergency Responders: Drastically Underfunded, Dangerously Unprepared*, p. 18.

¹⁰ See 9/11 Commission, *The 9/11 Commission Report: Executive Summary*, p. 20; and Department of Homeland Security, Office for Domestic Preparedness, *Fiscal Year 2004 Homeland Security Grant Program* (July 23, 2004), available at www.ojp.usdoj.gov/odp/docs/fy04hsgp_appkit.pdf.

¹¹ Eric Lipton, "Big Cities Will Get More in Antiterrorism Grants," *New York Times*, December 22, 2004, p. A20.

¹² Shawn Reese, *First Responder Grant Formulas* (Washington, D.C.: Congressional Research Service, December 20, 2004).

¹³ House Resolution 3266 would allow for such funding mechanisms; see Select Committee on Homeland Security, "H.R. 3266—The Faster and Smarter Funding for First Responders Act," July 30, 2004, available at homeland.house.gov.

¹⁴ There are also some types of preparatory steps outside the realm of major budgetary expenditures that should still be considered. These could include designating schools as emergency medical treatment centers in advance of any attack, and making sure citizens know the very simple basics about how to respond to various kinds of possible terrorist attack. The trend among Americans away from carrying out basic preparations to deal with any attacks—like designating a meeting place away from home should there be a strike near their house—also needs to be addressed. Further development of citizen volunteer corps, for simple tasks such as helping guide people to disaster shelters or providing first aid or transmitting messages when communications systems are disrupted, is also a worthy area of activity (though not one we explore here in detail). See Stanley I. Greenspan, "We're Not Ready for a New 9/11," *Washington Post*, July 12, 2004, p. A17; Lynn E. Davis, Tom LaTourrette, David E. Mosher, Lois M. Davis, and David R. Howell, *Individual Preparedness and Response to Chemical, Radiological, Nuclear, and Biological Terrorist Attacks* (Santa Monica, Calif.: RAND, 2003), pp. xiii-xxiv; John Mintz, "Public Less Fearful of Terrorist

In addition, the federal government should provide more funds more quickly for overtime costs related to heightened alerts, and expedite reimbursement practices. At present, reimbursement procedures lead to long delays and only partial compensation for costs.¹⁵ It would also be appropriate to ease restrictions on the use of federal funds to hire personnel at the state and local level specifically focused on homeland security.¹⁶

It is entirely appropriate that federal dollars be used for homeland security purposes at the state and local levels, even if that winds up helping places deemed at higher risk. (Though as noted above, given present realities, it would constitute major progress just to have large cities funded equally on a per capita basis). The country needs its big cities, and cannot eliminate the vulnerabilities associated with them. So there is little logic in using "market-based incentives" to try to convince more people to live in smaller towns.

Emphasizing Prevention

At present, the FBI generally runs joint terrorism task forces in major American cities. And it is starting to do a better job of working with state and local police forces in such efforts. For example, a joint center operated by the FBI and New York state police opened in Albany in 2004 to provide police with quick checks of suspicious individuals to see if they might be on terrorism watch lists.¹⁷

But the FBI suffers from a number of limitations. First, it is rather small. With about 15,000 agents nationwide, it can devote no more than a modest number to any city. Some 1,100 are in New York, naturally the largest figure. (By comparison, New York is a city with 40,000 police, some 10,000 of whom can be realistically mobilized for specific acute needs such as protecting the Republican National Convention there in 2004.)¹⁸ Other large cities generally have at most a few hundred FBI officers. As the head of the FBI's law enforcement coordination office, Louis F. Quijas, put it, "We've got 11,000 FBI agents and 800,000 local cops. They are the force multiplier in the war on terrorism."¹⁹

Without enough raw numbers, it is impossible to walk the streets. For example, the FBI cannot realistically monitor events such as conventions of propane gas users and self-storage business

Attack," *Washington Post*, July 21, 2004, p. A12; See Amanda Dory, *Civil Security: Americans and the Challenge of Homeland Security* (Washington, D.C.: Center for Strategic and International Studies, September 2003), pp. v-ix, 70-75; and David M. Simpson and William Strang, "Volunteerism, Disasters and Homeland Security: The AmeriCorps National Civilian Community Corps and Community Preparedness," *Journal of Homeland Security and Emergency Management*, vol. 1, issue 4 (2004).

¹⁵ Homeland Security Advisory Council, U.S. Department of Homeland Security, *A Report from the Task Force on State and Local Homeland Security Funding*, pp. 1-3; General Accounting Office, *Homeland Security: Communication Protocols and Risk Communication Principles Can Assist in Refining the Advisory System*, GAO-04-682 (June 2004), pp. 34-36.

¹⁶ Kiki Caruson, "Mission Impossible? The Challenge of Implementing an Integrated Homeland Security Strategy," *Journal of Homeland Security and Emergency Management*, vol. 1, issue 4 (2004), p. 17.

¹⁷ David Johnston, "Terror Data to Be Shared at New Center Near Albany," *New York Times*, May 24, 2004.

¹⁸ David Johnston, "Fears of Attack at Conventions Drive New Plans," *New York Times*, July 5, 2004, p. 1.

¹⁹ Dan Eggen, "Bridging the Divide Between FBI and Police," *Washington Post*, February 16, 2004, p. A25.

entrepreneurs and apartment building owners and even mosquito sprayers. Terrorists might try to infiltrate such events to learn tactics or gain access to needed equipment, and a homeland security strategy emphasizing prevention should try to identify them in such situations.²⁰

Second, by most accounts the FBI remains slow to change its organizational ethos, which is carefully developing legally solid cases against specific suspects, and often hoarding information gained in the process of doing so. As one concrete example, according to former agent Mike German, the FBI has often been slow to make serious attempts to infiltrate suspected terrorist groups—even after 9/11.²¹ As another example, after the March 11, 2004 Madrid terrorist attacks, the NYPD reportedly had officers on the scene in Spain within hours looking for information of relevance to protecting New York, while the FBI took weeks to send representatives. There are still far too many reports of FBI stubbornness in dealing with local authorities, especially in terms of finding ways to share sensitive intelligence information.

The above problems are, at least in principle, fixable. But there is a more inherent limitation to the FBI, alluded to above, as well. It is not on the streets the way local police must be. The latter are conducting community policing activities, pursuing sham money handling operations, uncovering businesses that provide false IDs or facilitate smuggling or illegal immigration, and developing trusted sources and thereby often getting tips on suspicious characters. Police simply are often better placed to operate as general collectors of terrorism-related intelligence.

As such the country needs to beef up its local police intelligence and counterterrorism operations. New York devotes some 500 officers to these tasks, but it is an exception. Los Angeles has about 35 such personnel; Chicago less than 10. Yet these cities are far from immune to attack; indeed, Los Angeles was already targeted in the millenium plot.²² Part of the problem is that too many localities, even major ones, assume that they will not be targets in the future simply because they have not been the sites of successful attacks in the past. Part of the problem is money; given the dearth of federal funds for such preventive activities, municipalities must typically fund at least half of any such efforts out of their own coffers. At a time of generally tight budgets, additional local monies have been hard to find.²³

Dedicated counterterrorism personnel can help uncover terrorist cells. They can develop priority lists of possible targets requiring special protection during alert periods and, to the extent possible, better permanent protective measures (such as safeguards for parking garages, more use of shatterproof glass or protective window film in places, and protective cordons near air

²⁰ William K. Rashbaum, "Police Tactic Against Terror: Let's Network," *New York Times*, August 14, 2004, p. B1.

²¹ Eric Lichtblau, "Another F.B.I. Employee Blows Whistle on Agency," *New York Times*, August 2, 2004, p. A15.

²² The 9/11 Commission, *The 9/11 Commission Report: Executive Summary* (July 22, 2004), p. 4, available at www.9-11commission.gov.

²³ On the challenges faced by municipalities during alerts, see Jack Weiss, "Orange Crunch," *New York Times*, January 14, 2004, p. A19. Los Angeles spends \$1 million a week on overtime pay and related costs every time it goes on orange alert; see also Lisa Friedman, "Cities Still Aren't Prepared," *Los Angeles Daily News*, June 24, 2003. As another example, Amtrak spends \$500,000 a month for police overtime when on heightened alert. See General Accounting Office, *Transportation Security: Federal Action Needed to Help Address Security Challenges*, GAO-03-843 (June 2003), p. 21. And in a different type of example, just to illustrate the potential costs involved, security costs in Boston and New York at the Democratic and Republican conventions in 2004 were respectively in the range of \$50 million and \$75 million. See David Johnston, "Fears of Attack at Conventions Drive New Plans," *New York Times*, July 5, 2004, p. A1.

intakes).²⁴ They can work with developers and other officials and construction firms to ensure that new structures with likely appeal as terrorist targets implement common-sense safeguards.²⁵ Many such things are now happening in New York and to an extent Washington; few are happening in most of the rest of the country.

To spur more state and local efforts to get their law enforcement institutions into the terrorism prevention business, matching federal financing could be of great assistance in hiring more personnel. It might be provided through a "COPS II" program, modeled after the Clinton administration's idea to use federal funds to help pay for more local police around the nation.²⁶ The scale of the effort would be much smaller, however--about 10,000 officers nationwide--and hence much more affordable (under one billion dollars a year).

Most resources from such a program should flow to the nation's several dozen largest cities. Others do not have sufficiently large police forces to be able to set up dedicated counterterror cells efficiently. Moreover, they are somewhat less likely to be targeted by terrorists--the Oklahoma City experience notwithstanding--than are the international symbols of the United States, such as its ten largest cities. This is not to say that midsize cities should be cut off from a program entirely, only that they should not receive more than their per capita equal share of funds for such purposes. In fact, it may make sense that they receive substantially less than their per capita share, but since risk assessment is as much art as science, it will be impossible to determine a scientifically correct apportionment. As such, ensuring that smaller cities do not receive more than their per capita share of total funds is a reasonable starting point.

Smaller cities might be wisest to set up coordination centers with the FBI, or add short segments on counterterror training for some midcareer police officers. These types of approaches may be more practical than creation of dedicated counterterror units in places where a critical mass of personnel is not easily attainable. This will require better and faster coordination of terrorist watch lists, however, as well as much more serious efforts to make such watch lists available at the local level—and to allow local and state police to enter data into databases that can then be used to look for patterns of terrorism activity nationwide and globally.

There are other subjects requiring attention at the state and local level beyond the question of police counterterror capacity. Notably, the issue of gun regulation should be seen in part as a homeland security issue. At present individuals on terror watchlists often succeed in getting guns.²⁷ In addition, the so-called gun show loophole remains open, meaning that weapons sold by private distributors at gun shows do not require background checks of any kind.²⁸ In the age of terror, these oversights in the law need to be corrected.

²⁴ On protective window film, see Lauren Bayne Anderson, "Demand for Window Film Spikes After Terror Alerts," *Washington Post*, August 3, 2004, p. E1.

²⁵ William K. Rashbaum and Judith Miller, "New York Police Take Broad Steps in Facing Terror," *New York Times*, February 15, 2004, p. A1; and Patrick D. Healy and William K. Rashbaum, "Security Issues Force a Review at Ground Zero," *New York Times*, May 1, 2005, p. 1

²⁶ Michael O'Hanlon and Jack Weiss, "How Police Can Intervene," *Washington Times*, August 18, 2004.

²⁷ Government Accountability Office, *Gun Control and Terrorism: FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records*, GAO-05-127 (January 2005), pp. 3-5.

²⁸ Helen Dewar, "Gun Bill Dies After Sponsors Drop Support," *Washington Post*, March 3, 2004; and "Misfires on the Hill," *Washington Post*, December 31, 2003.

Conclusion

The main points of this testimony are threefold. First, local and state authorities must view their homeland security responsibilities as being at least as much about preventing attacks as cleaning up after them. This requires greater help from the federal government linking them with the types of databases that indicate the identities of terrorists and that can be used to search for patterns of suspicious behavior across jurisdictions. Second, despite the progress that has been made in this area of late, more resources should be dedicated to the nation's largest cities. At a minimum, overall resource flows need to provide them at least as much money per capita as smaller municipalities. And finally, though beyond the scope of this testimony, state and local authorities must work much more assertively with the private sector to encourage and help it to better protect its incredibly important yet often quite unprotected infrastructure.²⁹

²⁹ See the work by Peter Orszag in the forthcoming Brookings book, as well as chapter six in *Protecting the American Homeland: One Year On* (Brookings, 2005).