

Homeland Security and the Upcoming Transition: What the Next Administration Should Do to Make Us Safe at Home

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INTRODUCTION

If history is a guide, there will be a significant terrorist attack against the United States in 2009, or at least an attempted strike associated with the upcoming presidential transition. The first Bush Administration experienced the Pan Am 103 bombing in December 1988, a month before taking office. The 1993 and 2001 attacks on the World Trade Center towers occurred within weeks and months after the inaugurations of the Clinton and second Bush presidencies, respectively. If there is currently a plot, and it is as carefully planned as September 11 was, the cell that will try to carry it out could already be in the United States.

Attacks associated with elections have, in fact, become a staple of al Qaeda and its sympathizers, the one terrorist movement that has shown both the interest and the capability to attack the U.S. homeland. The Madrid train bombings in March 2004 came two days before Spanish national elections and contributed to the defeat of the ruling coalition. Two foreign physicians attempted to explode car bombs in central London and subsequently crashed a vehicle carrying propane tanks into a terminal entrance at Glasgow Airport in June 2007, three days after Gordon Brown succeeded Tony Blair as the British Prime Minister. Most recently, the Pakistani government blamed a shadowy figure associated with al Qaeda for the death of Benazir Bhutto as she campaigned to return as Prime Minister.

Terrorism did not play a significant role in the 2000 U.S. presidential election. The Bush Administration entered office primarily concerned with big-power relationships such as those with China and Russia rather than the threat posed by al Qaeda.¹ Despite increased intelligence “chatter,” the Administration was only beginning to develop its homeland security policy as September 11 dawned.² In response to this unexpected attack, President Bush declared war on all terrorists, not just al Qaeda, the organization responsible. The United States invaded Afghanistan, which was clearly linked to September 11, and Iraq, which was not. Since then, various actions and

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¹ JAMES MANN, *RISE OF THE VULCANS* 258 (2004).

² RICHARD A. CLARKE, *AGAINST ALL ENEMIES* 234 (2004).

critical mistakes have undermined U.S. credibility and generated an unprecedented degree of anti-Americanism.³ The federal bureaucracy has been reorganized multiple times, most significantly by the establishment of a new Department of Homeland Security. The Department's poor performance in the aftermath of Hurricane Katrina leaves open to question how capable this revised structure actually is.

If the Bush Administration was unprepared for the attacks on the Twin Towers and the Pentagon, the next Administration will have the opposite problem when it takes office in January 2009. It will inherit a "war on terror" in its eighth year, a strategy heavily weighted toward offensive military action and not defense, a dated conception of the on-going risk of terrorism, an overly narrow definition of homeland security, and an emerging gap between what government is expected to do to keep the country safe and its actual capabilities.

The homeland security challenge presents more questions than clear answers. While Iraq promises to be one of the dominant issues in the 2008 election, the most complex decisions the next President may face involve homeland security. The U.S. homeland has not been attacked since September 11, but is this because of, or in spite of, the prevailing strategy? While recent plots discovered in New York, New Jersey, and elsewhere demonstrate that the threat remains real, what are the most likely perpetrators actually capable of doing? Should we worry just about terrorism or about other challenges that could have an even more significant impact on our daily lives? Since the majority of national security funding today supports overseas military operations, what are the opportunity costs here at home? Are we as safe or prepared as we should be? Based on such questions, what should the next Administration do—and not do—to protect the U.S. homeland?

From the outset, the next Administration should make the U.S. homeland a central focus and concentrate its efforts in four areas. First, it needs to do whatever it can to prevent an attack associated with the upcoming presidential transition. Second, even while concentrating on terrorism in the short term, it needs to reassess what homeland security is and place terrorism within a range of risks that we will face in the future. Third, based on that assessment, the next Administration should set clear priorities. What is actually important to homeland security and why? And fourth, it must properly align requirements, roles, and resources at the federal, state, and local levels and create incentives to encourage the private sector to place a higher value on security.

The next Administration should develop a balanced and sustainable approach; it should make wise security investments that enhance our ability to counter the terrorism threat, build the right capabilities in the right places, and where appropriate support far-reaching systemic improvements that will

³ DANIEL BYMAN, *THE FIVE FRONT WAR 2* (2008).

better position the United States to cope with major disruptions regardless of the origin—terrorism, a pandemic, a natural disaster, or a man-made event.⁴

I. THE TERRORIST THREAT

Given recent history, it is fair to suggest that there is an elevated potential for an attack on the U.S. homeland over the next twelve to eighteen months. This does not mean that terrorists will be successful. Nor does it mean that we should immediately restock our household supplies of duct tape and plastic sheeting. What is required is a clear assessment of the nature of the ongoing threat, its actual capabilities, and its potential targets and an analysis of where government action can achieve the greatest return on investment to both reduce the threat and mitigate potential consequences.

Even with the immediate increase in risk associated with the transition, many of the assumptions made in the immediate aftermath of the September 11 attacks merit review and revision.

The existing approach to homeland security lumps all terrorist networks and groups into one basket and fails to distinguish how or whether a particular movement threatens our country and its interests. On September 11, President Bush declared a “war against terrorism,” even though terrorism is a tactic, not an adversary.⁵ The world will always confront terrorism, used as a political weapon by an inferior adversary against a superior opponent.⁶ The “war on terror” construct is neither realistic nor sustainable. Terrorism can be contained but not completely eradicated. The next Administration would do well to retire the term “war on terror” and identify a more definable challenge that can actually be met.⁷

The key terrorist threat to the United States today is still “al Qaeda Central.”⁸ It may now be less capable of executing a spectacular attack of the scale of September 11, but it remains the only terrorist network that has demonstrated both the intent and the ability to attack the U.S. homeland.⁹ Osama bin Laden and Ayman al-Zawahiri, its leaders, are believed to be in a new safe haven in Pakistan’s tribal areas and remain nominal leaders,

⁴ The concept of homeland security is broadening to include national preparedness, promoting the concept of ‘resiliency’ as an effective means of coping with a variety of disaster scenarios. See STEPHEN FLYNN, *THE EDGE OF DISASTER* 9 (2007).

⁵ President George W. Bush, Statement by the President in His Address to the Nation (Sept. 11, 2001) available at <http://www.whitehouse.gov/news/releases/2001/09/> (follow hyperlink to “Statement by the President in Address to the Nation”).

⁶ ROBERT A. PAPE, *DYING TO WIN* 4–37 (2005).

⁷ Then-Secretary of Defense Donald Rumsfeld attempted to promote a new term, the Global Struggle against Violent Extremism or G-SAVE, which was rejected by the President himself. Peter Beinart, *The War of the Words*, WASH. POST, Apr. 1, 2007, at B7.

⁸ Mark Mazzetti, *The Reach Of War; New Generation Of Qaeda Chiefs Is Seen On Rise*, N.Y. TIMES, Apr. 2, 2007, at A1.

⁹ BYMAN, *supra* note 3, at 2.

sources of inspiration, and perhaps sources of financial and technical support for a global insurgency.¹⁰

Since September 11, al Qaeda has changed in significant ways, expanding from a discreet group to a global movement.¹¹ Local extremist groups are seeking identification with the al Qaeda “brand,” as occurred recently in the Maghreb.¹² Regional grievances directed at host governments, the “near enemy,” could become intertwined with al Qaeda’s focus on the United States and the West, the “far enemy.”¹³ The suggestion that veterans of the Iraq insurgency will follow U.S. forces home as we reduce our commitment is an exaggeration. However, these veterans do represent a new generation of terrorists with considerable experience in urban warfare and, if ignored, could pose a potential long term threat to the United States in the same way that the mujahadeen of the Afghan civil war eventually did under bin Laden’s leadership.

The United States is not immune to the homegrown threat that has emerged in Europe, even though a significant homegrown threat is not evident today. A radicalized American convert, familiar with and able to function within society with little suspicion, would be of enormous value to terrorist groups. Unlike many European countries, the United States has been far more successful at integrating foreign-born and first-generation citizens into American society. Unfortunately, the current immigration climate threatens to create barriers to integration, which could alter what has heretofore been a national asset.¹⁴

Even though the threat is evolving, the nature of attacks both on and since September 11 tells us a great deal about the risk to the United States and what our priorities should be now. While al Qaeda’s strategy could change over time, the parameters of the threat to the United States for the foreseeable future are well-defined. To disrupt the national or international economy and ultimately affect our political process, terrorists are most likely to strike in or near major urban centers, at well-known critical infrastructure that we rely upon every day, where large numbers of people work or gather.

¹⁰ MARC SAGEMAN, *LEADERLESS JIHAD* 126–128 (2008).

¹¹ *Id.* at 29–32.

¹² Bruce Riedel, *Al Qaeda Strikes Back*, *FOREIGN AFF.*, May–Jun. 2007, at 24, 33.

¹³ BYMAN, *supra* note 3, at 230.

¹⁴ According to the FBI, the number of anti-Islamic hate crime incidents jumped from 28 in 2000 to 481 in 2001. See FBI, *HATE CRIMES STATISTICS* 7 (2000); FBI, *HATE CRIMES STATISTICS* 9 (2001). The number declined by two-thirds in 2002, FBI, *HATE CRIMES STATISTICS* 9 (2002), but has remained at roughly the same elevated level ever since, including 156 incidents in 2006, the last year for which statistics are currently available. FBI, *HATE CRIME STATISTICS* (2006), available at <http://www.fbi.gov/ucr/hc2006> (click “Incidents and Offenses” and then “Table 1”) (last visited May 13, 2008). Likewise, the number of anti-Hispanic hate crimes rose by more than 20% between 2004 and 2006, which coincides with an increasingly vitriolic national debate on immigration policy. See *id.*; FBI, *HATE CRIMES STATISTICS* (2004), available at <http://www.fbi.gov/ucr/hc2004/openpage.htm> (click “Section I” and then “Table 1”) (last visited May 13, 2008).

Future targets could also include softer commercial sites, as we have seen in attacks in Indonesia, Jordan, and other countries. Terror networks continue to test new technologies, such as the employment of chlorine gas tanker trucks as weapons in Iraq.¹⁵ Prevention, response, and mitigation efforts must keep pace, improving security around critical infrastructure, adapting operations to close existing vulnerabilities and reduce risk, and enhancing our ability to respond to a major event and minimize its economic and social disruption. A mix of security measures, even if less than perfect, can influence the calculation of the attacker, who values success above all else. It can have deterrent value.¹⁶

II. REDEFINING HOMELAND SECURITY

Even with the elevated threat of another terrorist attack, the next Administration must put terrorism in context. In a sense, this requires redefining what homeland security is and how risk associated with terrorism compares with a wider range of challenges such as natural disasters and infectious diseases that can also have significant impacts on the U.S. homeland.

The existing National Strategy for Homeland Security, released by the White House in October 2007, defines homeland security very narrowly:

Homeland Security is a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks that do occur.¹⁷

While acknowledging the importance of emergency preparedness, the strategy specifically *excludes* response to natural disasters from its definition of homeland security. This overriding emphasis on terrorism reflects the very mindset that contributed to the ineffective response to Hurricane Katrina in August 2005. Planning and procedures geared for a terrorist attack, which involve significant federal control, were not effective when dealing with a traditional disaster like a hurricane, which normally involves federal support but local control. As one example, the revised and overly complex National Response Plan failed in New Orleans in large part because it attempted to impose Washington-centric solutions on an otherwise decentralized process.¹⁸

¹⁵ Damien Cave & Ahmad Fadam, *Iraq Insurgents Employ Chlorine in Bomb Attacks*, N.Y. TIMES, Feb. 22, 2007, at A1.

¹⁶ MICHAEL LEVI, ON NUCLEAR TERRORISM 96 (2007).

¹⁷ HOMELAND SEC. COUNCIL, THE WHITE HOUSE, NATIONAL STRATEGY FOR HOMELAND SECURITY 3 (2007), available at <http://www.whitehouse.gov/infocus/homeland/nshs/2007/index.html> [hereinafter NATIONAL STRATEGY FOR HOMELAND SECURITY].

¹⁸ CHRISTOPHER COOPER & ROBERT BLOCK, DISASTER: HURRICANE KATRINA AND THE FAILURE OF HOMELAND SECURITY 82–83 (2005).

Since Katrina, the Department of Homeland Security (DHS) has given greater emphasis to all-hazard planning. However, while there is considerable overlap, capabilities procured in the name of security do not always apply to public safety or public health. For example, in its FY2009 budget submission the Bush Administration requested more than \$2 billion for Project BioShield, a program to develop countermeasures for biological agents that can be easily weaponized.¹⁹ The development of biological defenses has grown significantly in the aftermath of the still unsolved 2001 anthrax attacks. Given finite resources, however, this could mean that fewer resources are available to cope with naturally occurring diseases, such as avian flu.²⁰ For instance, the President's proposed budget cuts funding for public health surveillance, which is intended to detect and control an outbreak regardless of the source.²¹

Since borders and natural barriers like oceans no longer protect us as they once did, homeland security needs to be broader and incorporate other challenges that can threaten us every bit as much as, if not more than, a terrorist attack can. A major hurricane fueled by global warming will be more destructive and disruptive than a terrorist attack based on the existing or foreseeable capabilities of a group such as al Qaeda. A pandemic will endanger far more lives and stress government capacity at all levels more than September 11 did. The United States remains woefully unprepared for these risks.

The United States has suffered at least two significant infrastructure related failures over the past four years—the Northeast blackout in 2003 and the bridge collapse in Minnesota in 2007—which reveal a “brittle” society due to under-investment, functional obsolescence, and neglect.²² The U.S. economy and society are still unacceptably vulnerable to the same cascading costs and impact experienced during September 11 seven years ago.²³

In short, despite the call to create a “national culture of preparedness,” there is no agreement as to what the country should prepare for—a catastrophic hurricane that will inevitably happen, a pandemic that could happen, or nuclear terrorism that is unlikely to happen but would permanently damage the country if it did. DHS has developed fifteen national planning scenarios to help communities understand the types of plans and capabilities that may be necessary to deal with a range of risks. Included in these scenarios are not only nuclear, biological, and chemical weapons attacks, but also

¹⁹ OFFICE OF MGMT. & BUDGET, ANALYTICAL PERSPECTIVES: BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2009 29 (2008), available at <http://www.whitehouse.gov/omb/budget/fy2009/pdf/spec.pdf>.

²⁰ DAVID P. FIDLER & LAWRENCE O. GOSTIN, BIOSECURITY IN THE GLOBAL AGE 159 (2008).

²¹ Michael Abramowitz & Jonathan Weisman, *President's Spending Plan Would Rival 2004 Deficit*, WASH. POST, Feb. 3, 2008, at A6.

²² FLYNN, *supra* note 4, at 3 (2007).

²³ Stephen E. Flynn, *The Brittle Superpower*, in SEEDS OF DISASTER, ROOTS OF RESPONSE, HOW PRIVATE ACTION CAN REDUCE PUBLIC VULNERABILITY 26 (Philip E. Auerswald et al. eds., 2006).

attacks with industrial chemicals, cyber attacks, food contamination, pandemics, and natural disasters.²⁴ But again, DHS has provided little guidance as to which among these threats is most urgent. The planning scenarios are skewed toward worst-case situations that we could confront over time but that are almost certainly beyond the capabilities of a sub-state group today.

The next Administration must clarify what homeland security is and what it requires, set priorities, and assess the degree to which the federal government, states, cities, and the private sector are meeting appropriate national standards.

III. DECIDING WHAT IS IMPORTANT

The Department of Homeland Security established seventeen critical infrastructure and key resource areas based on threat, vulnerability, and the potential consequences of a terrorist attack.²⁵ They include:

- Agriculture and Food
- Banking and Finance
- Chemical
- Commercial Facilities
- Commercial Nuclear Reactors, Materials, and Waste
- Dams
- Defense Industrial Base
- Drinking Water and Water Treatment Systems
- Emergency Services
- Energy
- Government Facilities
- Information Technology
- National Monuments and Icons
- Postal and Shipping
- Public Health and Health Care
- Telecommunications
- Transportation Systems²⁶

However, the federal government has not established a hierarchy based on which sectors are truly “critical.” In a sense, it has yet to determine what within the homeland is important and why—what facilities, systems, or ca-

²⁴ DEP’T OF HOMELAND SEC., NATIONAL PREPAREDNESS GUIDELINES 31 (2007), available at http://www.dhs.gov/xlibrary/assets/National_Preparedness_Guidelines.pdf.

²⁵ In support of its critical infrastructure mission, DHS created the National Asset Database or NADB, but until recently the database was not used to rank critical infrastructure according to criticality. DHS has begun to tier critical infrastructure but has yet to engage the private sector to ensure that sufficient security is in place surrounding priority facilities. See OFFICE OF INSPECTIONS AND SPECIAL REVIEWS, DEP’T OF HOMELAND SEC., PROGRESS IN DEVELOPING THE NATIONAL ASSET DATABASE (2006), available at http://www.dhs.gov/woig/assets/mgmt/rpts/OIG_06-40_Jun06.pdf.

²⁶ *Id.* at 41.

pabilities need to be protected because they are the most likely to be attacked or disrupted; what would be most disruptive to the functioning of society or government if lost; where the potential loss of life and property is most severe, balanced by the likelihood that the worst-case scenario will actually occur; and what areas are essential to our ability to respond to a disaster.

Based on a combination of factors, several sectors do stand out, including chemical security, transportation security, and public health and the healthcare system.

Acutely hazardous materials present at some 14,000 chemical manufacturers, water utilities, power plants, service companies, waste management facilities, and agricultural suppliers are pre-positioned weapons of mass effect. Across the country, approximately 450 of these facilities each potentially threaten more than 100,000 people, who would be at risk if the hazardous substances were suddenly released at any such facility.²⁷ A large chemical release would instantly threaten far more persons than perished on September 11. Acutely hazardous materials are regularly transported on a 170,000-mile freight rail line network that flows through our major cities, al Qaeda's most likely targets.²⁸ If graffiti artists can draw on rail cars, terrorists can blow them up.

Congress passed interim chemical security legislation in 2006 that will expire in late 2009. DHS is expected to regulate several thousand chemical facilities across the country through this interim authority, but the new rules are limited and overly focused on facility security rather than systemic change. The chemical industry continues to resist a more assertive policy that promotes adoption of more secure alternatives (generically called inherently safer technology or IST) that could reduce not only the presence of dangerous materials in major metropolitan areas, but also the need to ship them on freight rail lines or on highways across the country.²⁹ Due to committee turf battles, Congress exempted drinking water and wastewater plants from federal regulation, an obvious security loophole that future legislation needs to close.³⁰ It is questionable how aggressively DHS will exercise its new regulatory authority. DHS's chemical security budget for FY2008 is only \$50 million, and it has committed fewer than 100 employees thus far,

²⁷ PAUL ORUM, CTR. FOR AM. PROGRESS, PREVENTING TOXIC TERRORISM: HOW SOME CHEMICAL FACILITIES ARE REMOVING DANGER TO AMERICAN COMMUNITIES I (2006), <http://www.americanprogress.org/issues/security/homeland/> (follow hyperlink to "Preventing Toxic Terrorism").

²⁸ *Id.* at 9.

²⁹ *Hearing on Current Issues in the Rail Transportation of Hazardous Materials: Hearing Before the Subcomm. on R.R.s of the H. Comm. on Transp. & Infrastructure*, 109th Cong. (2006) (statement of Edward R. Hamberger, President & Chief Executive Officer, Ass'n of Am. R.R.s).

³⁰ Department of Homeland Security Appropriations Act, 2007, Pub. L. No. 109-295, § 550, 120 Stat. 1355, 1388 (2006).

many of them borrowed from other agencies, to oversee implementation of the new rules.³¹

Among transportation systems, the global aviation system remains a favored terrorism target. While a repeat of the September 11 suicide hijackings would be difficult due to many visible changes made since then, it is unclear if aviation security is staying ahead of the range of threats to the aviation system. Terrorists are once again trying to smuggle bombs on board aircraft. Richard Reid, the shoe bomber, was stopped by alert passengers and aircrew members in 2001. A terrorist cell was uncovered in Britain in 2006 that planned to place liquid bombs on multiple aircraft destined for the United States. Yet most air cargo loaded on passenger aircraft is not given the same level of scrutiny as passenger luggage, despite the fact that as far back as 1994, Ramzi Yousef, the bomber in the 1993 World Trade Center plot, attempted to place bombs in cargo shipments bound for the United States.³² More than 75% of the Transportation Security Administration's (TSA) \$5 billion budget and most of its workforce are devoted to aviation security, primarily passenger screening at airports. But only \$55 million and 300 agents are committed to securing air cargo that can travel on the same airplanes.³³ Even though Congress recently mandated that 100% of air cargo must be screened within three years, the Bush Administration plans to finesse the requirement by screening shippers rather than inspecting cargo.³⁴

The transit attacks in Madrid and London have not served as a wake up call to improve passenger rail security, another prime target. While there will always be risk associated with transit and passenger rail systems, which are open and accessible by design, federal support for rail security improvements has been inadequate given the risk. Technologies such as closed-circuit television are useful, although they are most applicable in identifying attackers and their methodology after an event. In terms of prevention, the most effective existing transit security "system" is the presence of police with canine units in stations and on platforms.³⁵ Yet federal grants tend to favor the purchase of equipment over the employment of people and generally limit the ability of police departments to use funds to offset personnel and operating costs.³⁶ Security costs are of particular concern to municipalities that operate most transit systems. Since most transit systems require

³¹ Tel. conference call with Dep't of Homeland Sec. staff regarding chemical security rule, in Washington, D.C. (Apr. 2, 2007).

³² P.J. CROWLEY & BRUCE BUTTERWORTH, CTR. FOR AM. PROGRESS, KEEPING BOMBS OFF PLANES 9 (2007), http://www.americanprogress.org/issues/2007/05/air_cargo.html.

³³ *Id.* at 7.

³⁴ Del Quentin Wilber, *Democrats and TSA Scuffle on Who Inspects Cargo*, WASH. POST., Sept. 8 2007, at D1.

³⁵ BILL JOHNSTONE, CTR. FOR AM. PROGRESS, NEW STRATEGIES TO PROTECT AMERICA: TERRORISM AND MASS TRANSIT AFTER LONDON AND MADRID 14 (2005), http://www.americanprogress.org/kf/transit_security.pdf.

³⁶ Raymond Kelly, N.Y. Police Comm'r, discussion at the Ford Found., Washington, D.C. (Dec. 3, 2007).

some kind of public subsidy to encourage more riders, it is difficult to offset security costs through fare increases.³⁷

Maritime security is crucial to the U.S. economy, with more than nine million global cargo containers shipped through U.S. ports each year. Despite the risk that a port closure or disruption of global maritime supply chains could create billions or even trillions of dollars in economic losses worldwide, supply chain security is voluntary, and government oversight cursory. Customs officials screen cargo data, shipping manifests, and importer and shipper information before a ship leaves a foreign port, but less than five percent of cargo containers are physically inspected upon arrival in the United States.³⁸ Radiation monitors have been deployed at all U.S. and many overseas ports to deter the smuggling of a nuclear or radiological device in a shipping container—a worthwhile measure even though the current generation of detection equipment is vulnerable to false readings.³⁹ Better capabilities are needed to know with greater confidence what is “inside the box.” In 2007, Congress mandated that 100% of all shipping containers be scanned, which is a legitimate long term vision. But it cannot be accomplished within five years, the deadline Congress set. DHS only recently launched a test of the concept, and future actions should be informed by its findings.⁴⁰ Major trading partners have raised legitimate concerns, since not all ports—including U.S. ports if other countries adopt the same standard—can meet these new standards. In light of estimates that global trade will quadruple over the next twenty years, more needs to be done to manage post-disaster cargo flows to minimize the system disruption that attackers hope to generate.⁴¹

In the event of a biological attack, aptly described as “terrorism in slow motion,”⁴² or a pandemic, it is very likely that the public health system in almost every major city would collapse due to a lack of adequate hospital beds, vital equipment, medical staff, vaccines, or basic access to health-care.⁴³ The country simply does not have the necessary medical capacity or surge capability to deal with a crisis that involves thousands of patients and broad evacuations. More than 5000 hospitals currently split roughly \$415 million in federal funding to prepare for national emergencies. But according to the Center for Biosecurity at the University of Pittsburgh, at least \$5 billion up front and another \$1 billion per year are necessary to ensure that

³⁷ BRIAN D. TAYLOR, CTR. FOR AM. PROGRESS, TERRORISM AND TRANSIT SECURITY: 12 RECOMMENDATIONS FOR PROGRESS 7 (2005), http://www.americanprogress.org/issues/2005/08/12_recs.html.

³⁸ 152 CONG. REC. S9454, 9485–86 (2006) (statement of Sen. Menendez).

³⁹ LEVI, *supra* note 16, at 61.

⁴⁰ Press Release, Dep’t of Homeland Sec., DHS and DOE Launch Secure Freight Initiative (Dec. 7, 2006), available at http://www.dhs.gov/xnews/releases/archives/2006_decarch.shtm (follow hyperlink to “DHS and DOE Launch Secure Freight Initiative”).

⁴¹ STEPHEN FLYNN, AMERICA THE VULNERABLE 98 (2004).

⁴² RANDALL J. LARSEN, OUR OWN WORST ENEMY 43 (2007).

⁴³ IRWIN REDLENER, AMERICANS AT RISK 23 (2006).

hospitals have the planning, personnel, equipment, and supplies to deal with the patient load that would follow the outbreak of a serious disease or attack involving a weapon of mass effect.⁴⁴ Local communities do not have adequate plans to distribute needed vaccines and antidotes in an emergency.⁴⁵ Most state and local agriculture and natural resources departments lack the basic supplies to be able to detect and contain the spread of disease.

Hundreds of people became ill (and at least one individual died) across more than twenty states due to an *E. coli* bacteria outbreak involving fresh spinach.⁴⁶ However, there was insufficient information available to enable investigators to pinpoint the source of the problem, a lack which revealed a systemic weakness that a deliberate attacker could exploit. The United States is now dependent on overseas suppliers for a wide range of products from food additives to toys to computer chips. The presence of toxins in toothpaste and lead paint on toys imported from China highlights the limited capabilities of small agencies like the Food and Drug Administration, which are expected to assume increased security-related responsibilities.

IV. ALIGNING REQUIREMENTS, ROLES, AND RESOURCES

Once risks are appropriately identified, homeland security is clearly defined, and priorities are established, it is necessary to translate this effort into specific requirements, determine who is in the best position to do what is needed, and ensure that resource allocation supports a successful strategy.

This task begins at the federal level, where government must be willing to carry the most significant burden of our “common defense.” The next Administration must be prepared to demonstrate leadership, set higher standards (particularly during this period of heightened risk), and provide increased support to improve our security and capabilities and sustain stronger security over time.

What is presently lacking is clarity over who is responsible for what, and what is actually being done. A gap has emerged between what is expected and the actual capacities that governments have at all levels to do what is necessary today. The recent housing and financial crises have created new budget pressures for states, municipalities, and private companies, making it questionable whether even existing levels of security will be preserved and fully funded in the future.

⁴⁴ *Id.* at 231.

⁴⁵ LARSEN, *supra* note 42, at 115.

⁴⁶ *E. coli Spinach Scare Increases to 21 States*, CNN.com, Sept. 19, 2006, <http://www.cnn.com/2006/HEALTH/09/18/tainted.spinach/index.html>.

A. The Federal Government

While responsibility for homeland security is shared, it cannot be outsourced. The American people expect government, primarily the federal government, to do everything possible to protect the United States from risk. As stated in the 2002 National Security Strategy, “Defending our Nation against its enemies is the first and fundamental commitment of the Federal Government.”⁴⁷ Most would consider detecting pandemics, responding to hurricanes, and maintaining bridges from sudden collapse as fundamental responsibilities of the federal government as well. Particularly at a time of “war,” the need for federal leadership, initiative, and resources is clear.

This challenge falls primarily to the Department of Homeland Security, which will present the most complex management challenge the next Administration is likely to face. Created in 2003, when twenty-two separate agencies of varying degrees of competence were combined into a single department, DHS is not yet the effective agency it needs to become.⁴⁸ DHS is not governed by a clear set of priorities, which makes true risk management difficult to achieve. Other limiting factors include a lack of bureaucratic clout, of management systems, of unifying culture, of effective leadership, and of employee morale.

DHS’s responsibilities are growing faster than its capabilities, placing significant stress on many of its major components. When Katrina struck, the Federal Emergency Management Agency (FEMA), once one of the government’s most effective agencies, lacked professional leadership, sufficient staffing, functioning communications and modern logistics, and contracting systems. Unlike the military, which invests its operational capability in subordinate commands, FEMA has a weak regional structure, despite the fact that disaster response is primarily a state and local responsibility. Even with improvements over the past three years, it remains one of the smallest agencies within the federal government with just over 2,600 full-time employees, although the number of permanent positions is gradually increasing.⁴⁹ The vast majority of FEMA’s funding is provided *after* a disaster, which limits its ability to invest in pre-disaster mitigation that can limit loss of life, destruction of property, and social disruption—all of which have strategic significance whether one is trying to deter terrorist attacks or cope with natural disasters.

Next to the Army, no branch of the armed forces is more highly stressed than the Coast Guard. Even before September 11, the Coast Guard

⁴⁷ THE WHITE HOUSE, NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA 1 (2002), available at <http://www.whitehouse.gov/nsc/nss.pdf>.

⁴⁸ “To a great degree, the department is still a collection of separate components operating under a common organizational umbrella.” DEP’T OF HOMELAND SEC. OFFICE OF INSPECTOR GEN., MAJOR MANAGEMENT CHALLENGES FACING THE DEPARTMENT OF HOMELAND SECURITY 2 (Dec. 31, 2003), available at <http://www.dhs.gov/xlibrary/assets/FY04managementchallenges.pdf>.

⁴⁹ Federal Emergency Management Agency, About FEMA, <http://www.fema.gov/about/index.shtml> (last visited Mar. 19, 2008).

was shouldering additional missions without comparable increases in manpower and budget. Personnel increases have not kept pace with wider responsibilities, however. The Pentagon plans to add 12,000 troops to its end strength in FY2009, even though a troop reduction in Iraq is likely this year and next. By contrast, the Coast Guard is forced to shift manpower from several missions, including drug interdiction, to meet its maritime security requirements.⁵⁰ The Coast Guard's equipment is outdated relative to its accelerated pace of operations. The service has launched a modernization effort called Deepwater but is struggling to manage it. Contract management is a problem throughout DHS.

A key challenge identified by the 9/11 Commission was the need for better intelligence, analysis, and information sharing, both across the federal government and down to state, local, and private sector officials. This remains a work in progress. Considerable effort has been focused on changing the management and organization of the intelligence community, while less effort has been spent on building an effective system to produce and share better threat information.⁵¹ The establishment of the Director of National Intelligence and the National Counterterrorism Center has added a new, but as of yet unproven, bureaucratic layer. Reforms altered the role of the Central Intelligence Agency but not that of the Department of Defense, which still controls the majority of intelligence assets. While progress within the FBI has been uneven, the agency has expanded cooperation through its locally-based joint terrorism task forces. DHS is also integrating more federal personnel into state-run fusion centers,⁵² but the pace is too slow.

B. State and Local Governments

The next attack is far more likely to be detected by a local policeman on the beat than by an intelligence analyst or federal agent in Washington. While states and communities have critical roles to play, it is unclear if their capabilities are keeping pace with their increasing responsibilities. Cities and states, having recovered from the recession earlier in the decade, are again facing budget shortfalls associated with the housing crisis.⁵³ Total state spending has declined by 5.4% since 2001.⁵⁴ Security requirements are increasingly in competition with other priorities, including education and healthcare.

⁵⁰ See DEP'T OF HOMELAND SEC., FISCAL YEAR 2009: BUDGET-IN-BRIEF 58 (2008), available at http://www.dhs.gov/xlibrary/assets/budget_bib-fy2009.pdf.

⁵¹ Gregory Treverton, *Intelligence Gathering, Analysis and Sharing*, in THE DEPARTMENT OF HOMELAND SECURITY'S FIRST YEAR: A REPORT CARD 72 (Donald F. Kettl ed., 2004), available at <http://www.tcf.org/list.asp?type=PB&pubid=451>.

⁵² DEP'T OF HOMELAND SEC., BUDGET-IN-BRIEF, *supra* note 50, at 4.

⁵³ Keith Richburg, *Governors Seek Remedies for Shortfalls*, WASH. POST, Jan. 13, 2008, at A3.

⁵⁴ IRIS J. LAV & ANDREW BRECHER, CTR. ON BUDGET & POL'Y PRIORITIES, PASSING DOWN THE DEFICIT: FEDERAL POLICIES CONTRIBUTE TO THE SEVERITY OF THE STATE FISCAL CRISIS 17 (2004), <http://www.cbpp.org/5-12-04sf.pdf>.

The Bush Administration's new homeland security strategy highlights the importance of "intelligence-led policing."⁵⁵ However, while a handful of large cities have significant local intelligence capabilities, investments elsewhere have been modest. In many cities, there are fewer police—the foot soldiers of the home front—on the streets today than six years ago. This includes New York City, the most likely target of a future terrorist attack, where the police force has been cut by 5000 officers since September 11.⁵⁶ While the federal government plans to add 92,000 troops to the military's land component, the Bush Administration cut support for the Community Oriented Policing Services Program (COPS), the principal federal program that supports police manning at the state and local levels.⁵⁷

Despite Katrina, the Bush Administration has proposed significant cuts in first responder support, elimination of grants that help metropolitan medical personnel cope with mass casualties, and reductions in grants to firefighters and states for improved planning, training, and intergovernmental coordination.⁵⁸ Scarce resources continue to be squandered on Capitol Hill as well. Urban area security grants to New York and Washington, D.C., the two cities attacked on September 11 and most likely to be struck again, were cut by forty percent in 2006. Congress still prefers to spread the wealth across all states rather than concentrate funding where the threats and consequences are most severe.⁵⁹

The federal government has levied significant requirements on states and municipalities in the form of unfunded mandates. An excellent example is REAL ID, which involves more stringent standards for state driver's licenses, including improved verification of "feeder" documents. DHS estimates that implementation of REAL ID will require four billion dollars over ten years,⁶⁰ although there are other higher estimates. However, federal grants will only cover a small percentage of the total cost. In addition, the stated federal interest, proof of identity and citizenship, potentially undermines a longstanding state interest, driver safety and proof of insurance and, according to security experts, the more it is used, the less secure it becomes.⁶¹

⁵⁵ NATIONAL STRATEGY FOR HOMELAND SECURITY, *supra* note 17, at 19.

⁵⁶ CLARKE, *supra* note 2, at 259.

⁵⁷ COPS is funded by the Department of Justice. The Administration requested \$164 million for FY2004, and Congress funded COPS with \$756 million. The Administration's FY2005 request is \$97 million, a 41% cut in its prior request, an 87% decrease from what Congress appropriated in FY2004, and 91% below what Congress appropriated in FY2003. See INT'L. ASS'N OF CHIEFS OF POLICE, IMPACT OF THE PROPOSED FY 2005 BUDGET ON STATE & LOCAL LAW ENFORCEMENT ASSISTANCE PROGRAMS 4 (2004), <http://www.theiacp.org/documents/pdfs/Publications/IACPBudgetReview.pdf>.

⁵⁸ DEP'T. OF HOMELAND SEC., BUDGET-IN-BRIEF, *supra* note 50, at 72.

⁵⁹ Interview with Michael Sheehan, Deputy Comm'r of Counter Terrorism, N.Y. City Police Dep't, in New York City, N.Y., (Jan. 30, 2004).

⁶⁰ DEP'T OF HOMELAND SEC., REAL ID FINAL RULE: QUESTIONS & ANSWERS, <http://www.dhs.gov/xprevprot/programs/> (follow hyperlink to "REAL ID"; then follow hyperlink to "Read the Questions & Answers") (last visited Apr. 13, 2008).

⁶¹ BRUCE SCHNEIER, BEYOND FEAR 193 (2003).

Another significant burden on communities involves extended use of the National Guard in Iraq and Afghanistan. The National Guard is no longer a Cold War strategic reserve, but an operational force with three competing missions—homeland defense, civil support, and combat overseas. While the National Guard has the personnel to fulfill these requirements, it possesses less than half the equipment required for expected readiness levels today.⁶² The Department of Defense and Congress are adding funding to address the National Guard's needs for equipment replacement and unit transformation, but the National Guard faces a projected twenty-four billion dollar funding shortage over the next several years.⁶³

C. Private Sector Security

The private sector is most likely to be the target of a future terrorist attack, since it owns eighty-five percent of what is considered critical infrastructure.⁶⁴ Additionally, an attack will create significant economic ripple effects as happened following September 11.⁶⁵ The government must do more to align the security wellbeing of the nation with the financial wellbeing of individual corporations. This alignment will not happen magically by itself, which is why government regulation, promotion of best practices, and financial incentives, where appropriate, will play a vital role.

Private sector security is subject to the lowest common denominator. By every indication, private security spending has leveled off following a brief spike after September 11.⁶⁶ In this just-in-time world, publicly traded companies have prospered on Wall Street by squeezing overhead to a bare minimum. Efficiency has trumped security. Businesses that do exercise enlightened self-interest risk placing themselves at a competitive disadvantage.

In its policy choices, the Bush Administration has been too deferential to the interests of corporations.⁶⁷ Its faith-based belief in voluntary action is contradicted by market forces that favor efficiency and reduced overhead, not security. The government has devoted significant funding to protecting

⁶² Lieutenant General Steven Blum, Remarks at Center for Strategic and International Studies (CSIS), Mayflower Hotel, Washington D.C. (May 24, 2007).

⁶³ 153 CONG. REC. S5824, 5831–33 (2007) (statement of Sen. Leahy).

⁶⁴ NATIONAL STRATEGY FOR HOMELAND SECURITY, *supra* note 17, at 28 (2007).

⁶⁵ See ROBERT W. HARTWIG, INS. INFO. INST., 9/11 AND INSURANCE: THE FIVE YEAR ANNIVERSARY (2006), available at <http://www.iii.org/media/research/sept11anniversary/>. Osama bin Laden, in a videotape released right before the 2004 election, claimed \$500 billion in economic impact from the September 11 attacks. More typical is an estimated \$200 billion impact, attributed to the Milken Institute. *Id.*

⁶⁶ ROBERT HOUSMAN & TIMOTHY OLSON, CTR. FOR AMER. PROGRESS, NEW STRATEGIES TO PROTECT AMERICA: A MARKET-BASED APPROACH TO PRIVATE SECTOR SECURITY 6 (2006), <http://www.americanprogress.org/kf/fecreport.pdf>.

⁶⁷ NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., 9/11 COMMISSION Report 37 (2004).

government facilities but has not established meaningful incentives to spur private sector security investments.⁶⁸

D. *Need for a Different Investment Strategy*

We suffer from a strategic disconnect—the strategy we are currently pursuing places too much emphasis on military intervention and not enough on instruments of national power that are more likely to reduce the threat of terrorism over the long term. We also suffer from an investment disconnect—our budget fully funds the military component of security at the expense of other agencies with capabilities that are more likely to be required in the future.

Homeland security has been undercapitalized from the outset.⁶⁹ The homeland security budget is literally dwarfed by the defense budget.⁷⁰ The national security budget for FY2008 is approximately \$740 billion (see chart).⁷¹ It displays a large disparity between funding available for functions more associated with “offense” (the Department of Defense, its intelligence agencies, and on-going operations in Iraq and Afghanistan) than “defense” (State, Homeland Security, and other non-military departments). In fact, expenditures for Iraq alone now exceed the combined total of what the federal government spends on homeland security and diplomacy. In the most recent supplemental funding bill, while the Pentagon received more than \$100 billion in *emergency* spending; DHS received just over \$2 billion, less than half of what even the Department of Agriculture received for *emergency* funding for farmers. This imbalance has important implications in terms of policy options and related capabilities. At the current “burn rate” of more than \$12 billion per month on Iraq there are severe opportunity costs—the siphoning away of finite resources from dimensions of national security that could be

⁶⁸ See OFFICE OF MGMT AND BUDGET, ANALYTICAL PERSPECTIVES, BUDGET OF THE U.S. GOVERNMENT, FISCAL YEAR 2008 26 (2007).

⁶⁹ CLARK KENT ERVIN, OPEN TARGET: WHERE AMERICA IS VULNERABLE TO ATTACK 225 (2006).

⁷⁰ STEVEN M. KOSIAK, CTR. FOR STRATEGIC AND BUDGETARY ASSESSMENTS, OVERVIEW OF THE ADMINISTRATION'S FY2007 REQUEST FOR HOMELAND SECURITY 5 (2006), http://www.csbaonline.org/2006-1/3.Publications/Publications_List.shtml.

⁷¹ Budget figures are based on FY2009 Department of Defense base budget of \$515.4 billion, excluding \$17.6 billion in Department of Defense homeland security funding. OFFICE OF THE UNDERSECRETARY OF DEFENSE, NATIONAL DEFENSE BUDGET ESTIMATES FOR FY 2009, at 8 (2008), available at http://www.defenselink.mil/comptroller/defbudget/fy2009/fy2009_greenbook.pdf; DEP'T OF DEFENSE, FY 2008 GLOBAL WAR ON TERROR FUNDING REPORT 56 (2007), available at http://www.defenselink.mil/comptroller/defbudget/fy2008/Supplemental/FY2008_October_Global_War_On_Terror_Amendment.pdf (reporting Iraq and Afghanistan funding estimates); OFFICE OF MANAGEMENT AND BUDGET, ANALYTICAL PERSPECTIVES: BUDGET OF THE UNITED STATES GOVERNMENT FISCAL YEAR 2009, at 20 (2008), available at <http://www.whitehouse.gov/omb/budget/fy2009/pdf/spec.pdf> (reporting total homeland security funding); U.S. DEP'T OF STATE, INTERNATIONAL AFFAIRS FUNCTION 150 FISCAL YEAR 2009 BUDGET REQUEST 1–4, available at <http://www.state.gov/documents/organization/100014.pdf> (reporting the Department of State operations and international affairs budget excluding homeland security funding).

decisive in reducing the risk from terrorism, including homeland security.⁷² The gap between funding for military operations and homeland security requirements is expected to grow in future years (see chart).⁷³

V. EIGHT PRIORITIES FOR THE NEXT ADMINISTRATION

The United States must aggressively mobilize its defenses at home and eliminate known vulnerabilities before the next attack occurs. By taking the following eight steps, the next Administration can make the country safer, can be well positioned to deal with a range of risks that the United States is likely to confront in the coming years, and can improve and sustain our national capabilities over time.

A. *Accelerate the Presidential Transition Process*

The next President must use the transition effectively and have a new national security team (with high-level security clearances, by itself a two-month process) ready to take charge from the outset. As is traditionally done for the Secretaries of Defense and State, the nominee to be Secretary of Homeland Security should be confirmed and sworn in on Inauguration Day. Congress will need to do its part and accelerate its confirmation process for key appointees.

The President's first national security directive should reorganize the national security structure within the Executive Office of the President, combining the currently separate National and Homeland Security Councils and merging their staffs. A Deputy National Security Advisor for Homeland Security, Intelligence, and Counter-Terrorism with the rank of Assistant to the President should be appointed to oversee domestic security policy development and the coordination of relevant national security departments through a more effective interagency process.

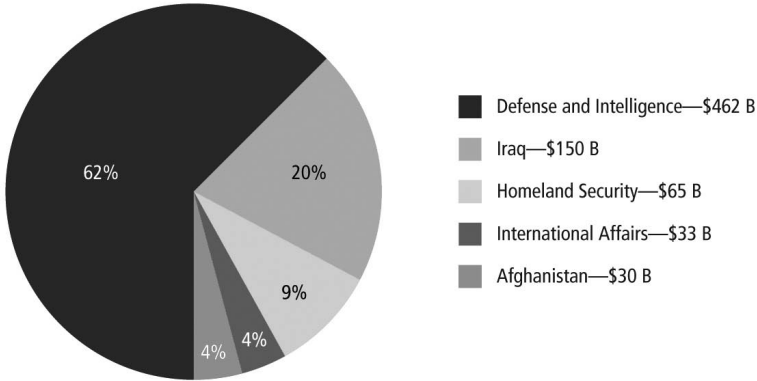
The next Administration must use the Congressionally mandated Quadrennial Homeland Security Review (QHSR), roughly equivalent to the Quadrennial Defense Review, which the Pentagon has developed since the early 1990s, to properly align a long term analysis of the threat to the homeland with the strategy, capabilities, structures, and resources necessary to deal with it. The QHSR, due in December 2009, should be the process through which the Administration makes significant organizational and mission changes at DHS. The intelligence community should provide a new national intelligence estimate on the terrorism threat, with particular empha-

⁷² Walter Pincus, *Wars Cost \$15 Billion a Month, GOP Senator Says*, WASH. POST, Dec. 27, 2007, at A7.

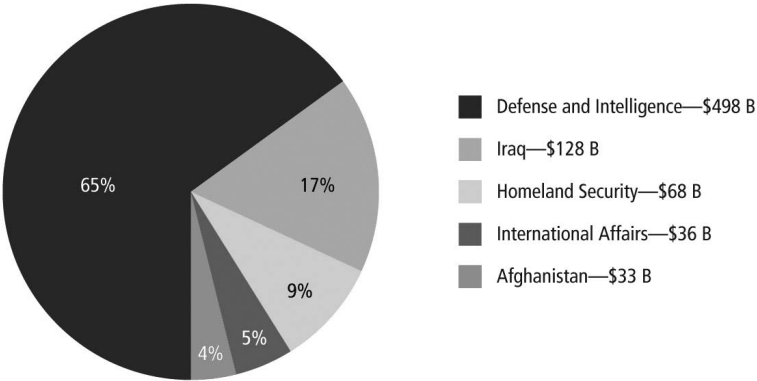
⁷³ P.J. CROWLEY, CTR. FOR AMERICAN PROGRESS, SAFE AT HOME 33 (2008), http://www.americanprogress.org/issues/2008/02/safe_at_home.html. Budget figures are drawn from the FY2009 President's Budget Submission. Estimates for Iraq and Afghanistan are from the Congressional Budget Office 2008 Budget and Economic Outlook.

NATIONAL SECURITY BUDGETS

FY2008 ESTIMATED NATIONAL SECURITY BUDGET—\$740 BILLION



FY2009 PROJECTED NATIONAL SECURITY BUDGET—\$763 BILLION



sis on the long term potential of homegrown cells of the type Europe is confronting now.

Finally, the next Administration should begin a White House-level dialogue with governors, mayors, and private sector officials to identify security requirements, set critical infrastructure security priorities, and improve these parties' existing relationships with the federal government. As part of this process, the President should pledge that the federal government will be less secretive in its dealings with its "partners"; release more information

related to threats and what is being done to counteract them; and more fully integrate the private sector into planning at the national, regional, and local levels. The next Administration should dramatically reduce the more than 100 existing categories of “sensitive but unclassified” information that inhibit effective homeland security collaboration.⁷⁴

B. Enact Permanent and Comprehensive Chemical Security Regulation

Since existing federal security regulation over a broad range of chemical facilities expires in 2009, the development of permanent comprehensive chemical security legislation should be the next Administration’s highest homeland security priority.

Federal regulation should cover the entire chemical supply chain from manufacturing and transportation (arguably the point of highest risk) to storage and use. This will combine existing overlapping authorities regarding chemical facility security, freight rail transportation, and port security into a single framework. All major hazardous chemical producers and users should be subject to regulation, especially drinking water and wastewater treatment facilities, which are currently exempted. The legislation should make clear that federal regulation does not preempt states from taking further action.

A viable risk-based strategy has to involve not just risk management, but risk elimination, including the promotion of inherently more secure chemical alternatives—less volatile compounds, new technologies, different manufacturing processes, or storage techniques—that would in essence remove such facilities from the terrorist target list.⁷⁵ Where safe and secure alternative routes exist, hazardous chemicals should be rerouted away from major population centers. This should especially apply to Washington, D.C., which has been enjoined from enforcing mandatory rerouting.⁷⁶

The Department of Homeland Security must have a sufficient staff within its National Protection and Preparedness Directorate to successfully implement its chemical security regulatory authority, including identifying the several thousand facilities nationwide that pose significant risk to the public, assigning them into appropriate risk tiers, reviewing and approving security plans, training new independent third-party security auditors, and aggressively overseeing an industry that has traditionally resisted federal mandates. This will require significantly more effort than the estimated 100

⁷⁴ Ambassador Ted McNamara, Program Manager, Info. Sharing Env’t, Statement before the House Committee on Homeland Security Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment, (Apr. 26, 2007), available at http://www.fas.org/irp/congress/2007_hr/042607mcnamara.pdf.

⁷⁵ PAUL ORUM, CTR. FOR AMERICAN PROGRESS, PREVENTING TOXIC TERRORISM, (2006), http://www.crtk.org/library_files/ChemicalSurvey.pdf.

⁷⁶ CSX Transp., Inc. v. Williams, 406 F.3d 667 (D.C. Cir. 2005).

people and \$63 million currently projected in the proposed homeland security budget for 2009.⁷⁷

C. Strengthen Air Cargo Security, Aviation's Remaining Vulnerability

Legislation in 2007 mandated 100% "screening" of all air cargo on domestic passenger flights within three years, but the task is easier said than done because of the limitations in existing technology and government capability. The TSA's current approach relies too heavily on a review of cargo data and certification of cargo shippers, rather than the actual inspection of cargo placed in the hold of a commercial passenger aircraft. Given that aviation remains a favored terrorism target, the security standard for air cargo should be consistent with the security standard for passengers, checked baggage, and carry-on luggage.

TSA should, as it has done for passengers and baggage, assume direct responsibility for air cargo security involving commercial passenger aviation. Its approach should be that all air cargo that can be inspected should be inspected. Using existing capabilities, TSA can double the volume of air cargo it now inspects by establishing government-run inspection facilities at major airports. However, since not all air cargo carried on commercial passenger flights can be effectively inspected through technology or canines, a certified shipper program is necessary to clear the remaining fifteen to twenty percent of cargo.⁷⁸ A different set of rules would apply to all-cargo carriers like Federal Express, since they do not share the same terrorism risk as passenger air carriers.

Solutions must be global. Placing a bomb in a shipment via global supply chains is a feasible means to bring down a U.S. airliner without having to board it or even enter the United States. Yet uninspected international cargo arrives every day at major airports in cities like New York, Los Angeles, and Chicago and is transferred to connecting domestic passenger flights, clearing customs only at its final destination. To be effective, stricter standards should apply to major trading partners, through bilateral agreements and international bodies, as was done for maritime security.

D. Improve Local Domestic Intelligence and Counter-Terrorism Capabilities

The United States does not need an American version of the British MI5 domestic security service. Our laws and traditions are different.⁷⁹ The

⁷⁷ The Bush Administration has proposed to increase chemical security funding from fifty million dollars for FY2008 to sixty-three million dollars for FY2009. See DEP'T OF HOMELAND SEC., BUDGET-IN-BRIEF, *supra* note 50, at 89.

⁷⁸ CROWLEY & BUTTERWORTH, *supra* note 32, at 19.

⁷⁹ See Louis Freeh, Former Dir., Fed. Bureau of Investigation, Testimony before the National Commission on Terrorist Attacks Upon the United States (Apr. 13, 2004), available at <http://news.findlaw.com/legalnews/us/terrorism/documents/index.html>.

United States does need a domestic intelligence capability that rivals well established foreign and military intelligence agencies. The next Administration should launch an initiative to increase federal support for improved intelligence gathering, analysis, information sharing, and counter-terrorism activity centered on major cities.

Major city police departments must expand the number of personnel dedicated to counter-terrorism and intelligence activity. Given emerging economic realities, the federal government must be willing to help and should launch a COPS II initiative to fund police officers in security related roles. Closer attention must be given to recruitment and radicalization trends within the federal and state prison systems, a very likely breeding ground for a homegrown threat.⁸⁰ The private sector should pay private sector security guards more and improve their capabilities through joint training with local police departments. Wider federal government sponsorship of security clearances for state, local, and private sector security officers can promote more meaningful interaction and joint planning.

DHS should continue to integrate personnel within state and local fusion centers. The Director of National Intelligence must continue to develop the concept of the information-sharing environment and overcome persistent bureaucratic rivalries that inhibit progress and “jointness.”

E. Invest in Pre-Disaster Mitigation

Roughly fifty percent of the U.S. population now lives within fifty miles of a coast.⁸¹ Seven of the ten most costly hurricanes have occurred in the past three years.⁸² The United States could experience more storms in the future because of global warming, and those that do occur will almost certainly be more intense.⁸³ This reality, combined with the increased risk associated with terrorism, requires FEMA to adapt both its priorities and structure. FEMA needs a larger budget to be able to do more *before* disaster strikes. Greater emphasis must be given to pre-disaster mitigation, which delivers a four-to-one yield for every dollar invested.⁸⁴

FEMA must become less Washington-centric. Greater capabilities and responsibility must be placed in FEMA's ten regional offices to create a more effective system that is federally supported but locally based—one that develops plans and solutions negotiated from the bottom up, not dictated from the top down. The military, which gives its subordinate commands

⁸⁰ Robert S. Mueller, III, Dir., Fed. Bureau of Investigation, Address at The City Club of Cleveland (June 23, 2006), available at <http://www.fbi.gov/pressrel/speeches/mueller062306.htm>.

⁸¹ MICHAEL LIND, THE AMERICAN WAY OF STRATEGY 56 (2006).

⁸² INSURANCE INFORMATION INSTITUTE, INSURANCE FACT BOOK 2007, 113 (2007).

⁸³ KIT BATTEN ET AL., CTR. FOR AM. PROGRESS, FORECAST: STORM WARNINGS, PREPARING FOR MORE SEVERE HURRICANES DUE TO GLOBAL WARMING, 3 (2007), http://www.americanprogress.org/issues/2007/08/pdf/storm_warning.pdf.

⁸⁴ *Id.* at 2.

significant planning and operational responsibility, is the most effective model. A regional approach can improve coordination, cooperation, and integration among the Departments of Defense and Homeland Security and their subordinate components. Such a regional system must be supported by competent leadership, an adequate full time workforce, modern and transparent logistics capability, and plans that actually work and are frequently tested.

F. Make Homeland Defense the National Guard's Top Priority

A top priority for the next Administration must be not only to repair the National Guard, but also to reorder its primary purpose and structure.

Homeland security and homeland defense can no longer be treated as "lesser included" missions, that is, by-products of preparation for overseas combat. An effective homeland defense with corresponding support for civil authorities for natural disasters and other contingencies requires specialized personnel, equipment, and training. The National Guard's expanding role in chemical, biological, radiological, and nuclear response is an excellent example.

Thus, the National Guard should be designated as the primary force engaged in homeland defense, its original constitutional mission. This is the best way to deploy *both* federal and local authority in a crisis. The National Guard, rooted in the community, is best positioned to reinforce civil authority and continuity in the midst of a traumatic and confusing situation.

If homeland defense is its priority, then most funding for the National Guard should be dedicated to homeland defense and civil support, not overseas combat. The National Guard should be given a more prominent role within Northern Command, which is responsible for the military defense of the homeland. The National Guard's planning capabilities and operational structures should be enhanced. The National Guard's expanded civil support capabilities would still have application overseas, primarily for long term stabilization operations.⁸⁵ The National Guard could also manage a civilian homeland security corps that could be employed domestically as well as overseas in support of the State Department's Office of Stabilization and Reconstruction.

G. Use Market Mechanisms to Reward Better Private Sector Security

The Department of Homeland Security will oversee the development of a new industry of third-party security auditors that will monitor and certify compliance with mandatory and voluntary security standards. A primary objective should be establishing a market-based system that sets a security floor but also differentiates and rewards companies that go beyond the minimum. Rather than simply certifying compliance—a kind of security seal of

⁸⁵ LIND, *supra* note 81, at 209.

approval—the auditing process will produce an assessment that more closely resembles bond ratings, which will better enable financial markets to attach value to companies' security and resiliency efforts. This approach can help strengthen existing voluntary programs and give companies a better metric to evaluate the security of their supply chains.⁸⁶ It would enable the insurance industry to more effectively assess risk and offer lower rates for terrorism-risk and other commercial lines of insurance.

Publicly traded companies should be required to include in public disclosure statements to the Securities and Exchange Commission, shareholders, and the public a general security assessment of the threats, potential impacts, and compliance and regulatory issues related to their businesses. Privately held companies operating critical infrastructure would be required to make a comparable report to the Department of Homeland Security. To make this arrangement work, a broader range of basic private sector security information should be releasable and subject to public discussion. New "sensitive-but-unclassified" security classifications that inhibit the exchange of homeland security-related information and documents among relevant stakeholders should be reviewed and kept to a minimum.

H. Develop a National Security Budget

Ultimately, strategy and capability follow the money. Our current approach adequately supports the world's most capable offense, but not an adequate defense. Soldiers rightly get what they need to succeed overseas; law enforcement, emergency response, and medical personnel who keep us safe here at home do not.

The new Administration should develop a cross-cutting national security budget process within the Office of Management and Budget that fairly evaluates difficult tradeoffs across federal agencies. Future budgets must support a more balanced strategy. If the Pentagon plans to add military forces to its force structure, the President and Congress need to understand that this could mean subtracting police officers from a target city like New York. Given future budget pressures that are anticipated, leaders need better perspective to know where marginal increases in investment can yield the most meaningful security returns.

The new President's first budget should include an increase in funding for homeland security. The increase would be applied to homeland security grants to states and cities, especially for law enforcement, medical readiness, and public health surveillance, and it would also be used to support increases

⁸⁶ One such voluntary program is the Customs-Trade Partnership Against Terrorism (C-TPAT), which is a voluntary program involving U.S. Customs and Border Protection and businesses that operate global supply chains—importers, carriers, brokers, warehouse operators, and manufacturers. While conceptually sound, the program provides only a snapshot of supply chain security. The government reviews a security plan and then conducts a prearranged, one-time onsite inspection of the supply chain.

in personnel to improve government oversight of stronger federal regulations.

CONCLUSION

We must be realistic. The right homeland security strategy is not about preventing every attack—the price to our way of life would be too high. As we know that terrible events will happen, regardless of the cause, our strategy must be to improve our defenses and preparedness at home. All risk cannot be eliminated, but more can be done to put the right capabilities in place to cope with the dangers we are most likely to confront in the years ahead. We must take the right steps for the right reasons.

The next Administration should begin a shift in strategy; it should also build greater capacity within government and cooperation between government and the private sector. That is the essence of a partnership. Our political leaders must broaden what it means to be “strong on national security.” As a country, we need to recognize that while our military personnel should be supported, so too should the police, public health officials, first responders, security guards, emergency room physicians, and others who are vital to our long term wellbeing.