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GOVERNMENT PREPAREDNESS AND RESPONSE TO A TERRORIST ATTACK USING WEAPONS OF MASS DESTRUCTION

HEARING

BEFORE THE

SUBCOMMITTEE ON TERRORISM, TECHNOLOGY AND HOMELAND SECURITY

OF THE

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UNITED STATES SENATE

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GOVERNMENT PREPAREDNESS AND RESPONSE TO A TERRORIST ATTACK USING WEAPONS OF MASS DESTRUCTION

WEDNESDAY, AUGUST 4, 2010

U.S. SENATE,
SUBCOMMITTEE ON TERRORISM,
TECHNOLOGY AND HOMELAND SECURITY,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:03 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Benjamin L. Cardin, Chairman of the Subcommittee, presiding.

Present: Senators Cardin and Kyl.

OPENING STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND

Chairman CARDIN. Good morning, everyone. The Subcommittee on Terrorism and Homeland Security of the Senate Judiciary Committee will come to order. Our hearing today deals with Government preparedness and response to terrorist attacks using weapons of mass destruction. I particularly want to thank Senator Kyl for his interest in this subject. He has requested this hearing. I think it is an extremely important hearing for us to hold. It is obviously a subject we do not really want to talk too much about because it, quite frankly, is rather frightening. And I think all of us very much want to make sure that we do everything we possibly can to prevent a terrorist attack, any terrorist attack in this country, but particularly those that use weapons of mass destruction.

The 9/11 attacks shocked the Nation as we witnessed the slaughter of thousands of Americans from all walks of life. The U.S. Government and the international community responded quickly and in unison to defend freedom and democracy from al Qaeda and terrorist organizations around the world. That struggle continues today against an enemy determined to strike again in the United States using more powerful and terrifying weapons.

The 9/11 Commission wrote that, and I quote: "We need to design a balanced strategy for a long haul to attack terrorists and prevent their ranks from swelling while at the same time protecting our country against future attacks. We have been forced to think about the way our Government is organized. The massive departments and agencies that prevailed in the great struggles of the 20th century must work together in a new way so that all the instruments of national power can be combined."

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It has been nearly 9 years since the 9/11 attacks, and the U.S. Government has undergone a dramatic change. Congress created the Department of Homeland Security which involved the largest reorganization of Government since the creation of the unified Department of Defense after the end of World War II. We have created an array of new intelligence and law enforcement agencies designed to disrupt, prevent, and respond to a terrorist attack in the United States. We have seen a sharp increase in the amount of classified information and programs in the U.S. Government, which requires careful oversight by this Subcommittee, the Congress, and the courts.

In today's hearing we will examine one piece of our Government's preparedness and response to a terrorist attack. Specifically, the Subcommittee will examine what would happen if the unthinkable happens: Terrorists are successfully able to launch an attack within the United States using a weapon of mass destruction. A weapon of mass destruction attack can occur through the use of chemical, biological, radiological, or nuclear weapons.

Before introducing our panelists, let me turn to the Ranking Republican Member, Senator Kyl, for any comments that he might wish to make.

STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator KYL. Thank you, Mr. Chairman, and, again, thank you for holding this hearing.

Our preparedness for an attack by weapons of mass destruction is an issue of vital importance. Unfortunately, as you noted, with the passage of time it receives little attention. While unfriendly nations have had the ability to inflict great damage with weapons of mass destruction and terrorist groups have sought the capacity to do so for some time, our Government is not sufficiently prepared for such an attack.

One threat to which the Government is particularly ill-equipped to respond is the threat posed by an electromagnetic pulse, or an EMP attack. When a nuclear weapon is detonated hundreds of miles above the Earth, the resulting radiation would react or interact with the Earth's atmosphere to produce an electromagnetic pulse. The resulting EMP waves could cause severe damage to electronic devices, and just a single weapon could affect much of the United States. People aboard planes and those on life support systems at hospitals would be the first casualties. Without power for medical care, food refrigeration, gas pumps, water purification, the death toll could climb to staggering proportions.

Unfortunately, a successful EMP attack would not require a high level of military or nuclear sophistication. A relatively crude nuclear weapon mounted on a Scud missile, for example, could be launched from a ship in U.S. waters and inflict massive damage on the United States.

In 2001, Congress established a commission known as the EMP Commission To Assess the Threat to the United States From an EMP Attack. The Commission investigated the potential impact of such an attack and released its findings in 2004. Shortly thereafter, this Subcommittee held a hearing to review the Commission's

findings and recommendations. Chief among them, the Commission concluded that several classes of potential adversaries, including terrorist groups, have or could acquire the capability to attack the United States with an EMP weapon and potentially inflict great damage.

As the Commission stated in its report, "Depending on the specific characteristics of the attacks, unprecedented cascading failures of our major infrastructures could result. In that event, a regional or national recovery would be long and difficult and would seriously degrade the safety and overall viability of our Nation."

The Commission also found that the damage to our vulnerable infrastructure would be catastrophic and the recovery process would be lengthy and challenging.

While there are many topics that will be discussed today, I look forward to hearing an update from our witnesses on the current risk we face from an EMP attack as well as the steps we may need to take and have taken to prepare for such an attack. And I hope the Subcommittee will continue to pursue this matter and do our part to ensure that the Federal Government can respond to such an attack or any other attack of weapons of mass destruction.

Thank you.

Chairman CARDIN. Thank you, Senator Kyl.

Our first panel consists of three witnesses. On our first panel is Glenn Fine. Mr. Fine is the Inspector General of the Department of Justice. He has worked for the Department of Justice Office of the Inspector General since January 1995, which recently released a report entitled "Review of the Department's Preparation to Respond to a WMD Incident," which I am sure will be of great interest to this Committee.

We also have on this panel James Baker. Mr. Baker is an Associate Deputy Attorney General at the Department of Justice with responsibility for national security matters. He began his career in the Department of Justice in the Criminal Division as a Federal prosecutor during the Clinton administration.

And, last, we have Steward Beckham. Mr. Beckham is Director of the Office of the National Capital Region Coordination of FEMA and has 26 years of experience as a leader in both the public and private sector. As we know, the National Capital Region is one of the prime areas of concern and interest.

We very much welcome all three of you here to the Committee. You may proceed as you wish. We will ask that you hold your comments to 5 minutes, and your entire statement will be made part of the record.

Mr. Fine, we will start with you.

STATEMENT OF GLENN A. FINE, INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. FINE. Thank you, Senator Cardin, Senator Kyl. Thank you for inviting me to testify about the Department of Justice Office of the Inspector General's recent report regarding the Department of Justice's readiness to respond to a potential weapons of mass destruction attack.

The potential use of a WMD poses a serious threat to the United States. One of the greatest concerns is that a WMD would fall into

the hands of terrorists or that terrorists will develop their own WMD.

Because of the importance of this issue, the OIG evaluated the readiness of the Department of Justice and its components to respond to a potential WMD attack. We also examined the readiness of Department field offices in the Washington National Capital Region to respond in a coordinated way to a potential WMD attack.

In my testimony today, I will briefly summarize the findings of our report as well as the Department's response to it.

First, our report concluded that the FBI has taken appropriate steps to prepare to respond to a WMD attack. The FBI has developed a WMD Directorate to manage the FBI's WMD operational response and other activities.

The FBI has developed plans and handbooks to guide its staff in responding to a WMD incident. The FBI regularly participates in exercises and provides training specific to WMD incidents.

In contrast to the FBI, however, we found that the Department as a whole did not have adequate policies or plans for responding to a WMD attack. We concluded that the management of the Department's response program was uncoordinated and fragmented. In addition, we found that Department personnel other than in the FBI received little training in the unique requirements associated with responding to a WMD incident.

While the Department and its components conducted some training on continuity of operations and all-hazards response, little of the training focused specifically on a WMD operational response. Planning specifically for a WMD incident is important because the actions taken to ensure public safety and security may differ from those taken when responding to an incident involving conventional explosives, for example.

Under the National Response Framework, ESF–13, the Department of Justice is designated as the lead agency for coordinating the use of Federal law enforcement resources to maintain public safety and security if local and State resources are overwhelmed during an incident. The Department delegated the responsibility for implementing these activities to the Bureau of Alcohol, Tobacco, Firearms, and Explosives. However, we found that the Department and the ATF were not prepared to coordinate Federal law enforcement activities under ESF–13. Our conclusion was confirmed by ESF–13 staff, one of whom told us that in the event of a WMD incident "we are totally unprepared...right now, being totally effective would never happen. Everybody would be winging it."

Because the Washington area is a potential target for terrorists, we also examined the preparations of Department field offices in the region to respond to a WMD attack.

In this region, Department components regularly work together to prepare to respond to various incidents that may occur during special events, such as Presidential inaugurations and visits by heads of state. However, outside of special events, only the FBI had a WMD response plan and had conducted WMD-specific training. When we asked officials from ATF, the DEA, and the U.S. Marshals Service in the National Capital Region if they were familiar with the FBI's WMD response plan, they said they were not. Some officials were not even aware of ESF–13 or ATF's role as the De-

partment's coordinator in the event of an ESF–13 activation. This lack of awareness is problematic because it could inhibit a coordinated response and valuable time could be wasted in providing needed resources.

Our report made five recommendations to help the Department better prepare to respond to a WMD incident, such as designating a person or office at the Department level with the authority to manage the Department's WMD response program; updating WMD response policies and plans; and establishing effective oversight to ensure that the Department and its components maintain WMD response plans and participate in training and exercises.

In response, the Department stated that the fundamental conclusions of our report were sound and that the Department concurred with all our recommendations.

Since the report, the Department has created a committee, the Emergency Preparedness Committee, and five subcommittees to address emergency response issues throughout the Department, including WMD response issues.

In general, we believe the Department is taking our report seriously, and the Department's actions can help improve its preparedness to respond to a WMD attack. However, we believe it is essential that the Department aggressively and expeditiously address the deficiencies identified in our report so that it will be better prepared to respond if a WMD attack should occur. For our part, the OIG intends to continue to monitor the Department's progress in this critical area.

That concludes my prepared statement, and I would be pleased to answer any questions.

[The prepared statement of Mr. Fine appears as a submission for the record.]

Chairman CARDIN. Thank you very much, Mr. Fine.

Mr. Baker.

STATEMENT OF JAMES A. BAKER, ASSOCIATE DEPUTY ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. BAKER. Mr. Chairman, Ranking Member Kyl, and members of the Subcommittee, thank you for the opportunity to testify here today on the Department's role in responding to a WMD attack. I have submitted a written statement for the record.

I would like to just make a few brief points in my oral remarks today and then respond to any questions that you might have.

First, preventing terrorist attacks on the United States, including those that involve WMDs, is the highest priority of the Department of Justice.

Second, should such an attack occur, the Department must be prepared to respond immediately and effectively in the aftermath of such an event.

Among the various components of the Department of Justice with WMD-related responsibilities, the FBI has the lead in preventing such attacks from occurring and responding directly to such an attack should one occur. The Inspector General's office has concluded that the FBI is generally well prepared to respond to a WMD attack. The Inspector General has also concluded that the rest of the

Department is not as well prepared as it should be to respond to a WMD attack. We agree with that conclusion.

In addition, the Inspector General has made several recommendations on how we should improve the readiness of the Department to respond to a WMD attack. We agree with all of his recommendations.

Currently, as he mentioned, we are in the process of implementing those recommendations, and my written statement describes in detail what we are doing, including the Committee that the Inspector General referenced.

But let me be clear that we will not be satisfied unless and until the Department is fully prepared to respond appropriately to a WMD attack. The American people are entitled to expect nothing less.

We are marshalling a great deal of resources on this issue. Further, we will put into place an organizational structure and oversight mechanisms to ensure that we maintain a proper state of readiness as long as the WMD threat persists. Unfortunately for all of us, we expect that to be a long time.

We also look forward to working with the Subcommittee and the full Committee on all of the Department's emergency preparedness issues, and we appreciate the opportunity to discuss those issues here today.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Baker appears as a submission for the record.]

Chairman CARDIN. Thank you very much for your testimony.

Mr. Beckham.

STATEMENT OF STEWARD D. BECKHAM, DIRECTOR, OFFICE OF NATIONAL CAPITAL REGION COORDINATION, FEDERAL EMERGENCY MANAGEMENT AGENCY, U.S. DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, DC

Mr. BECKHAM. Chairman Cardin, Ranking Member Kyl, and distinguished members of the Subcommittee, I am Steward Beckham, Director of the Office of National Capital Region Coordination, NCRC. NCRC is located in the Department of Homeland Security's Federal Emergency Management Agency. Thank you for inviting me to appear before you today to discuss preparedness in the National Capital Region.

The NCR is the fourth largest metropolitan area in the United States, encompassing the District of Columbia and parts of Maryland and Virginia. Under the Homeland Security Act of 2002, Congress created NCRC to oversee and coordinate Federal programs for and relationships with State, local, and regional authorities within the NCR to enhance domestic preparedness.

To fulfill its mission, NCRC has built and continues to foster strong partnerships and collaboration with State, local, and regional authorities in the NCR. As an example, I represent DHS and FEMA as a member of the Senior Policy Group. The Senior Policy Group is comprised of the homeland security advisers and chief emergency managers of Virginia, Maryland, and the District of Columbia. The Senior Policy Group plays a key role in sustaining a coordinated regional approach to homeland security and

in strengthening integrated decisionmaking and planning in the NCR.

To ensure adequate and coordinated all-hazards and catastrophic planning, the NCR has invested in regional planners who work on a series of plans, including some that are relevant to a weapon of mass destruction event in the NCR. Further, NCRC has partnered with the Office of Personnel Management to draft the NCR Federal Concept Plan of Catastrophic Planning Assumptions in fiscal year 2011. The CONPLAN will facilitate increased collaboration and integration of Federal planning efforts with those of State, local, and regional partners. Within FEMA, the National Continuity Programs Directorate, a sister office of NCRC, is the lead agent for continuity planning for the Federal executive branch, ensuring continuity of national essential functions under all hazards. NCP also provides continuity planning materials, training, and assistance to the NCR, as well as alert and warning information to the American public.

Homeland security partners across the NCR also pursue coordinated communications and information sharing, equipment purchases, and training and exercises. This close alignment strengthens the region's capabilities to address all hazards, including weapons of mass destruction.

Examples of the NCR's commitment to concerted action include:

Regional interoperability, where the NCR is currently working on two infrastructure projects: the Interconnected Government Networks and the Data Exchange Hub. These two projects represent technology advancements that provide responders with the data they need, anytime and anywhere.

Second, Metrorail Tunnel Response Operations. This program will provide emergency equipment caches at each underground Metro station and design the prototype for a tunnel rescue cart.

Third, the NCR Syndromic Surveillance Network, ESSENCE, is a disease surveillance system that captures health department data to provide early detection capability. The system has been fully operational since 2004.

Fourth, the NCR has installed an information-sharing system called LinX. This system links local, State, and Federal law enforcement data bases. Currently there are 25 NCR agencies participating. The NCR partnered with Baltimore and the Hampton Roads area to expand LinX and joined the three urban areas together in March of this year.

FEMA and the Department of Homeland Security have provided over $600 million to NCR partners since the inception of the Department, through UASI, the State Homeland Security, and other grant programs. These programs support planning, training, equipment purchases, and exercises for WMD and all-hazards preparedness. This is in addition to significant preparedness efforts funded by the individual jurisdictions in the NCR.

Additionally, NCRC and other SPG members have developed the NCR "First Hour Checklist" to guide coordinated actions during the initial response to an incident in the NCR.

With NCR partners, the NCRC plans or participates in exercises and drills for both anticipated and unanticipated events. Exercises are administered and coordinated by the NCR Exercise and Train-

ing Operations Panel, known as ETOP. This group's frequent planning and cooperation serves to integrate and strengthen all-hazards preparedness, whether for natural, man-made, or terrorist-related incidents. Such coordination will be essential in the event of a terrorist attack affecting the NCR using a weapon of mass destruction.

In conclusion, NCRC'S established working relationships support broader FEMA efforts to maintain and enhance its relationships with State and local partners. During a response to an incident within the NCR, the NCRC would support FEMA Region III and the Federal Coordinating Officer by providing situational awareness and participating in the Unified Coordination Group. If needed, we would send agency representatives to operations or communications centers to facilitate information sharing. In the event of an incident in the NCR, NCRC stands ready to support FEMA's core mission and our Federal, State, and local partners.

Building on decades of regional collaboration, we work every day to build and sustain an integrated effort to prepare for, prevent, protect against, respond to, recover from, and mitigate all hazards, including WMD terrorism.

Should an incident occur in the National Capital Region, FEMA has established a course of action to mobilize and coordinate a well-organized response and recovery.

Thank you for allowing me to testify, and I am happy to answer any questions that the Subcommittee may have.

[The prepared statement of Mr. Beckham appears as a submission for the record.]

Chairman CARDIN. Well, let me thank all three of you for your testimony.

Let me start, if I might, about the seriousness of what we are dealing with. If there was a successful terrorist attack using weapons of mass destruction, it could not only cause a significant number of casualties, but it could very well compromise our infrastructure and ability to respond to the crisis. It would also create significant fear and panic within the community. And, therefore, it becomes even more critical to have clear leadership and clear control of the resources that are available for the response.

Therefore, I would particularly interested, Mr. Fine, in your report as to where we are with a single person in command and the types of preparations that were being done, the update of the plans. And, quite frankly, it is rather disturbing, Mr. Baker, to see that 9 years after the 9/11 attack we still do not have in place the proper functioning plans in the event of a successful attack using weapons of mass destruction in the United States.

So I understand they are good people, everybody is trying to do the right thing, and I mean that. The intentions here are clearly the right intentions. There are a lot of things going on in the Department of Justice. There are a lot of areas as far as protecting the safety of this country is concerned from all types of criminals and people who want to do harm. I understand that ATF has a lot of things that it needs to do and has been challenged a lot by what has been added to that responsibility by actions of Congress.

But I really want to focus in on how we are going to implement this. I hear, Mr. Baker, your comments saying that you accept the

IG's report and are moving toward implementing the five recommendations. Let me just give you a related issue. This Subcommittee held a hearing last week on passport fraud. It was not our first. We had several reports by Government agencies of failures, and when there were commitments made to correct that, they were not corrected.

So how are we going to be—what assurances can you give us, Mr. Fine and Mr. Baker, as to how you will both be proceeding to make sure that these agreed-to recommendations are, in fact, implemented?

Mr. FINE. Senator Cardin, I do think it is a critical issue, and I think it is important that we remain focused on this issue even as time goes on. As we get further and further from the 9/11 attacks, I think there has been a sense of complacency that has developed and that we need to be focused on this issue because, as you point out, the effects can be catastrophic.

We saw that the Department had plans, but they had not followed through with the plans. We saw that the Department had designated the ATF as the lead agency for handling ESF–13 activation, but they had not provided resources and leadership and oversight. And that is what needs to happen here. We hope our report will have some impact on that, and we think that this hearing can have an impact on that.

For our part, we will continue to monitor this. We will not simply do a report and then hope that the Department implements the recommendations. We will monitor the follow-up with the Department. We will ask for them to tell us exactly what they have done, exactly how they are going to implement the recommendations, exactly what the progress is. And we will follow through on a regular basis with updates of that, because we cannot let ourselves become complacent as time goes on. And we intend to follow through with the monitoring of the Department's reaction and response to our report.

Chairman CARDIN. Mr. Baker.

Mr. BAKER. Yes, Senator, thank you. I guess just to follow up on that, that is definitely—I have worked with the Inspector General's office now for many years on several different reports that they have prepared, reviewing activities that I have been involved in, and that has been my experience, that—they are very dogged in following up—issuing a report and then following up. And so they keep, you know, the agency's feet to the fire on all these different things. And so that is one thing that I know will happen and that I know that the Inspector General makes regular reports to you.

Obviously, the Committee having an interest in this, and the Subcommittee, I am sure there will be follow-up and there will be monitoring. You will be monitoring what it is that we do.

But in addition to that, receiving the Inspector General's report I can tell you was not a matter of happiness for the leadership of the Department. Obviously, the Attorney General and the Deputy Attorney General—it is filled by an acting person right now, Gary Grindler—are responsible for all the activities of the Department. The Acting Deputy Attorney General was not happy about receiving this report, and so I work directly for him, and he and our office are seized of this issue at this point in time, and we see it, I

think, based on the recommendations that the Inspector General made and, in addition, our own review of the Department's readiness, as first and foremost a management issue. We need to do a better job of managing this issue.

There are tremendous resources in the Department. There are extremely dedicated and conscientious people. But I think that the Department is a large place; there are many components that have different pieces of this as reflected in the report. The FBI has a critical piece of it and is actually well prepared to deal with this. But other components of the Department have responsibilities in this area, too, not only to respond to an attack should one occur and, for example, under ESF–13, to support State and local authorities. That is a critical responsibility that we have. We have to do that. But also we will have to be ready from a continuity of operations and continuity of Government perspective to carry on our business and to keep doing what it is that the Department of Justice does every day around the country should something happen, for example, as you have referenced in the National Capital area.

So all I can say is that we are seized of it, the leadership of the Department is seized of it, and we commit to do a better job. That is what we have to do.

Chairman CARDIN. Well, I thank you for that response. As you point out, it goes well beyond the implementation of these five recommendations. I think these five recommendations are a start, but it requires also, as you point out, the management structure, the commitment to keep this current and to fight off the danger of complacency as time goes on without incident. This issue may not be as front and center in the public's attention as it needs to be within the Department.

So I would just urge you to, first, Mr. Fine and Mr. Baker, keep us informed, this Committee, as to the implementation of the five recommendations so that we will expect regular reports as to the implementation of these five recommendations. But, Mr. Baker, as you point out, it does go beyond just the implementation of these recommendations.

Mr. Beckham, I want to ask you a little bit about what is going on in the Nation's capital. I am concerned about how well you are coordinated with the local governments. Prince George's County, Maryland, and Montgomery County are part of the region directly. I guess I have two questions for you. How do you coordinate a potential attack in the capital region with the local governments? And is there a strategy for how that is handled? If the attack were to occur, for example, in Maryland, would there be a different expectation of the response from the Maryland partners? Or how is that coordinated?

Mr. BECKHAM. Well, Senator, in terms of a WMD event, quite obviously it would be at the highest levels of the Federal Government in terms of the concern and the response. Our particular office, the NCRC, we work regularly with the homeland security advisers for the three State-level jurisdictions in the National Capital Region, so I would be reaching out in the first instance to the homeland security adviser for Maryland and giving him the appropriate information that we would have available, and not directly through my office, but I am certain that he would be in touch with those coun-

ty-level jurisdictions in trying to determine what their situation is immediately following the attack and what resources they need or what the condition is that is present at that time.

Obviously, again, since it is such a high-level incident, the President and the Secretary of DHS would be intimately involved, and most likely within the first hour after an incident like that, the Secretary at a minimum would be hosting a call with the homeland security advisers in the region—and it may even be nationwide because of the severity and significance of the attack—and would be giving out the information that would be available to her at that time. And she may have already been briefed by other departments throughout the Government.

Chairman CARDIN. Thank you. I am going to turn to Senator Kyl because it is my understanding that there may very well be a vote called in the next few minutes. If that is the case, I will leave as Senator Kyl is conducting his questioning, and when he has completed, he will take a brief recess, and we will reconvene as soon as I can get back from the vote.

Senator KYL. Mr. Chairman, that is what I was just out in the anteroom communicating about, and it is now unclear when the vote will occur, which was supposed to occur in 2 minutes, but now it will probably be delayed a little bit.

Chairman CARDIN. It is nice having someone from the leadership here. That is nice to know.

Senator KYL. Well, now I hear that it may be any minute, so we will move on.

[Laughter.]

Senator KYL. Mr. Beckham, again, my apology for having to step out. Given the catastrophic potential of an EMP attack, do you think that it should be included as one of the national planning scenarios?

Mr. BECKHAM. My understanding is that at the Department level, the DHS level, that particular scenario is on the list of incidents for the Risk Analysis Division. I do not know exactly what level or, I should say, degree of preparation they have taken to date, but I do know it is on that list that they have.

Senator KYL. Would you take back a concern on my part that it should be considered and planning should exist for a response and appropriate action for such an attack?

Mr. BECKHAM. Yes, sir. I certainly will.

Senator KYL. I appreciate it.

Chairman CARDIN. Well, let me thank our witnesses. We will proceed then to the second panel. The record will stay open for questions from the Committee, and I would just ask you, in the event additional questions are asked, that you respond to them as promptly as possible. Once again, thank you all for your testimonies.

Mr. BECKHAM. Thank you very much.

Chairman CARDIN. Well, let me welcome our two witnesses on our second panel: Colonel Randall Larsen is Executive Director of the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism, also known as the WMD Commission. Before that appointment, he was the national security adviser to the Center of Biosecurity at the University of Pittsburgh Medical

Center from 2003 to 2009. As a graduate of the University of Pittsburgh, I welcome you here today.

We also have Dr. Michael Frankel, the former Executive Director of the Commission to Assess the Threat to the United States from Electromagnetic Pulse Attack, also known as the EMP Commission. The EMP Commission is charged with identifying any steps that should be taken by the United States to better protect its military and civilian systems from EMP attack.

We will start off with Colonel Larsen.

STATEMENT OF COLONEL RANDALL J. LARSEN, USAF (RETIRED), EXECUTIVE DIRECTOR, COMMISSION ON THE PREVENTION OF WEAPONS OF MASS DESTRUCTION PROLIFERATION AND TERRORISM, WASHINGTON, DC

Colonel LARSEN. Mr. Chairman, Senator Kyl, thank you for——

Chairman CARDIN. You need to turn your microphone on. Thank you very much.

Colonel LARSEN. Mr. Chairman, Senator Kyl, I am occasionally asked if testifying in the Senate is an intimidating thing. I said, "It can be in some cases," but to make sure I was not intimidated today, I decided to have a 6-foot-8 U.S. Army paratrooper sitting behind me. I am very proud to introduce Lieutenant David Lampin. He worked for us at the WMD Commission until he decided to join the army. I am very proud of his commitment to defend this Nation, and I am proud of all who serve in uniform today in this difficult long struggle.

Unfortunately, Mr. Chairman and Senator Kyl, I am not proud of the lack of progress in the field of biosecurity. I have been working in this field for 16 years. It is frustrating to watch this. Senators Graham and Talent on January 26th gave a report card from the WMD Commission for preparedness to respond to a biological act of terrorism. They assessed a grade of F.

You need to remember, in 2008 in their Commission report, they said bioterrorism is the most likely WMD. That bothers me after 16 years working in the field.

My prepared statement has a lot of details about things you can take a look at. In my summary, I want to point out two things, because we could have all sorts of authorization bills and appropriation bills, and the executive branch can have strategies and policies. But if we do not get these two things right then nothing else is going to work.

Senator Kyl, I assume you are a Cardinals fan, kind of following what they are doing in training camp. How many coaches do you suppose the Cardinals have? It is extraordinary in the NFL. You have a wide receiver coach. You have a running back coach. You have a quarterback coach. You have a linebacker coach. Actually, some of those have assistant coaches. And you have a training coach. All necessary to make a complex system work.

How do you think the Cardinals would do this year if they did not have a head coach? That is the problem we have in biosecurity in America. Senator Talent made that very clear when we released the report card. More than two dozen Presidentially appointed, Senate-confirmed individuals with some responsibility for biodefense, not one has it for a full-time job, and nobody is in charge.

Now, some witnesses will sit here and tell you, well, you know, this biodefense is very complex. It is DOJ, it is HHS, it is DHS, it is DOD, it is EPA. Well, as a former military officer and Chairman of the military department National War College, I will tell you the most complex thing the U.S. military ever did was the Allied invasion of Europe in June 1944. That was pretty complex. Do you think you could have told General Eisenhower it is too complex for one man to be in charge? He would not have believed that, and neither would I. We will not see significant progress until we have someone in charge, until you can have one person come sit at this microphone with authority, responsibility, and accountability—because today you have to call two dozen people up here to figure out what is going on to do your oversight responsibility, make sure we are spending money the right way.

The second thing that we have to get right are the fundamentals. Senator Cardin, I assume you are a Ravens fan. They have got probably one of the best defenses in the NFL, maybe one of the best ever. If Ray Lewis was sitting right here beside me today, here is what he would tell you.

You know, in training camp right now, there are a lot of discussions going on. Should we have a 3–4 or should we have a 4–3? When are we going to use cover 2? On second and long, when do we go from the nickel package to the dime package? That is all very important technical details, the kind of details they spoke about in the first panel, all that kind of stuff. But if Ray were here, he would tell you, you know, if you do not have the fundamentals down—tackling and ward off blocks—then all that fancy stuff does not count.

I do not think we have the fundamentals down, and the No. 1 fundamental is for the senior political leaders at both ends of Pennsylvania Avenue to understand the basic issue of biodefense. You cannot get the intelligence community up here to give you a briefing, and I explain that in my prepared statement, and I will be happy to address it in questions.

What you need is a briefing by the Department of Homeland Security Office of Science and Technology on the Population Threat Assessment. Have your staff call Dr. Beth George. Senators Graham and Talent, if they were here today, they would tell you that is the most impressive and important briefing they had in 2 years on the Commission: Population Threat Assessment, Dr. Beth George.

What that tells you is—is there any question what the intent is of al Qaeda to come here and kill a lot of Americans? The WMD Commission said bio is the best way to do it, easiest way to do it. What that Population Threat Assessment will tell you is what is possible. What could a team of six people do with $50,000 or $100,000? That is what you need to know. That is the best thing you can do.

I will be happy to answer your questions. Thank you very much.

[The prepared statement of Colonel Larsen appears as a submission for the record.]

Chairman CARDIN. Thank you very much, Colonel Larsen.

I am going to apologize. I am going to go over and vote so that we can keep the hearing open, and I will be back, hopefully before Senator Kyl has completed his questioning.

Senator KYL. Dr. Frankel.

STATEMENT OF MICHAEL J. FRANKEL, PH.D., EXECUTIVE DIRECTOR, COMMISSION TO ASSESS THE THREAT TO THE U.S. FROM ELECTROMAGNETIC PULSE (EMP) ATTACK, MCLEAN, VIRGINIA

Mr. FRANKEL. Mr. Chairman, Senator Kyl, thank you for the opportunity to come testify today. My name is Mike Frankel, and I served as the Executive Director of the EMP Commission during the entire span of its activities. I should mention that I am actually a physicist and not a lawyer, so if I blow some of the nuances, I beg your indulgence in advance.

The perspective of the EMP Commission was provided in our published reports. I do not want to go over them in any detail. What I would like to do today is simply briefly review some of the unclassified findings of the Commission, and in particular update you on the response to those findings by the Government.

Now, electromagnetic pulse is associated with any above-the-atmosphere detonation of a nuclear weapon. And that includes nuclear weapons of even unsophisticated designs. Since it is a geometrical line-of-sight effect, a detonation at a height of a few hundred kilometers will effectively span the entire United States in its footprint. For assessment purposes, a Scud, which might reach an altitude of about 100 kilometers, is sufficient to encompass a good part of the eastern seaboard with all its great density of people and infrastructure.

Such EMP has, in fact, been seen in the past briefly toward the end of the United States and Soviet Union testing experience when various electrical breakdowns were observed with high-altitude detonations, burnouts, power supply breakdowns, et cetera, et cetera.

The EMP generated on the ground from such a detonation would not immediately damage a human being; indeed, a person will not even feel it. But it will affect all of the electronic circuitry which surrounds and sustains him. Depending on the severity of the exposure, many thousands of components may need replacement in the power grid. Indeed, it was the assessment of the Commission that the power grid was likely to collapse from the cumulative damage that would be incurred.

Should that damage include numbers of high-voltage transformers, which are as big as a house and no longer manufactured in this country, recovery could take on the order of months to even years.

I should mention that it is not only ground-based systems that are endangered by an EMP, but our entire low earth orbit satellite infrastructure would be in danger as well. This is because—not, if you will, because of a direct EMP interaction, but because of a high-altitude detonation artificially pumps the radiation belts which are already up there or creates new ones, and subjects satellites to environments they were not designed to survive in. This has already happened. In 1962, toward the end of our testing program, the STARFISH detonation above the atmosphere detonation,

about a mega ton or so, essentially swept the sky clean of all commercially known satellites at the time. They all died within 6 months of the detonation, including Telstar, which was the first telecommunications satellite.

What I would like to take my last minute or so discussing is the response of the Government. There it is, if you will, bipolar. The response of the military infrastructure to the findings and recommendations was very positive. Most of the recommendations were concurred with by the Department. They kind of squirmed at the notion that we would want extra reporting requirements, but pretty much all the substantive recommendations were accepted. An action plan was promulgated by the Secretary. Funds were palmed against it, and activities are ongoing.

In contrast to that, the Department of Homeland Security for the civilian infrastructure recommendations, we could detect no resonance to the recommendations we directed at them. I would say the recommendations have simply languished. We could not find any individual or office at the confirmed level for which policy and direction for EMP matters was part of his portfolio. So there was no belly button, if you will, within the Department to address these significant issues.

I think it was already mentioned that even though the Department has identified 15 national planning scenarios for disaster planning, including a nuclear scenario involving smuggling in of a weapon, there is no thought given to the notion that the very same device might be launched at altitude and used in an EMP mode, if you will. So they have got a good chunk of the nuclear problem which they are addressing, but there is a component of it they are simply not addressing.

Protection of the Nation's critical infrastructures from an EMP threat is both feasible and well within the Nation's means and resources to accomplish. A number of these actions also reduce vulnerabilities to other serious threats to our infrastructures, thus giving forth multiple benefits.

I would like to thank the Committee for this opportunity to present my views of this most important issue. I have provided expanded remarks to the Committee as part of the record, and I invite any questions you may have. Thank you.

[The prepared statement of Mr. Frankel appears as a submission for the record.]

Senator KYL. Thank you very much, Dr. Frankel.

In about 3 minutes, I will have to leave for the vote, too, and then we will recess, and Senator Cardin will come back.

What I am going to suggest is that—I have got a couple questions that I can ask both of you for the record, but let me preview what they are. Both of you I think put your finger on a key problem that is obviously bugging you both, namely, lack of a specific person or group within the various agencies that are specifically responsible for dealing with these two threats. Biological probably is the most probable, as you have noted, Colonel Larsen, and an extraordinary amount of damage lasting months, as you said, to our entire country that could result in the event of an EMP attack, Dr. Frankel. We create commissions, and the work that is rec-

ommended is not followed up on, that your recommendations are languishing, as you say.

So the question I am going to pose to both of you, and not to try to necessarily answer right here, but both of you have some familiarity with the workings of Government by virtue of your service on these commissions. What recommendations do you have for this Subcommittee to procedurally effect the result that you are trying to achieve? In other words, do you think that it would take reorganization legislation? I always am dubious of rearranging the deck chairs. Do you think that administrative action within the administration is necessary? Does it have to come from the very top, the President?

In other words, both of you express some frustration that sensible recommendations have not fully been implemented because nobody is specifically in charge, and you must have some idea as to how we could solve that problem rather than just saying it is a problem.

In 30 seconds each—and then I will have to go, and we will recess until Senator Cardin gets back—a quick response.

Colonel Larsen.

Colonel LARSEN. In the letter that Senators Graham and Talent sent to President Obama last year about this time, they said WMD is such a serious long-term threat, you should make the Vice President the top WMD coordinator for the Nation.

There are only two people in this town that Cabinet Secretaries call "sir," and the President is too busy. And he can also speak on equal to Governors. If the Vice President—not just this Vice President, but every Vice President, as long as we have a WMD problem, if that was his primary charge, that would fix a lot of problems.

Senator KYL. He has got a lot of other responsibilities, too. He is in charge of—I have forgotten now—the jobs under the stimulus bill and in charge of the START Treaty and things like that. So does that still work? I mean, he also has a lot on his plate.

Colonel LARSEN. Can you think of any job more important than protecting America from weapons of mass destruction?

Senator KYL. No, I cannot. I am just posing——

Colonel LARSEN. Well, I know he is a busy man. It is about priorities.

Senator KYL. OK. Good recommendation.

Mr. Frankel.

Mr. FRANKEL. Yes, what we found was that coming down from the top, direction from the top is just indispensable. We found many competent people within the various nooks and crannies of the DHS, some of them, in fact, knowledgeable, especially people who would come over from the National Communications System when it was absorbed into DHS. But without a requirement, without a direction from above, it is simply not going to happen.

So it really has to be—I mean, I would suggest that the Secretary have a reporting requirement that would force him to appoint someone. It has to be at the confirmed level in order to make things happen within the Department.

Senator KYL. Well, both of you raise a very difficult problem. I am working on it in two other specific areas I will not mention to

try to get—yes, there is a superficial commitment to a particular cause the Government has to address, and yet the depth of that commitment is highly questionable because there just does not seem to be the commander's intent flowing down with sufficient robustness that everybody else gets the message. And specific people assigned to carry out the responsibilities, therefore, have the priority to do that.

Let me recess the meeting. I will have some questions for the record, and then when Senator Cardin comes back, he can ask his questions and close the hearing. Thank you very much, both of you, for your testimony.

The Committee is temporarily recessed until the call of the Chair.

[Recess 10:54 a.m. to 10:56 a.m.]

Chairman CARDIN. The Subcommittee will come back to order. I want to thank Senator Kyl for filling in there for a moment.

I understand in response to one of his questions that, Colonel Larsen, you want to give the Vice President some more work to do.

Colonel LARSEN. Those are your former colleagues. Actually Senators Graham and Talent wrote that letter to President Obama about this time last year, not just this Vice President but every Vice President, and maybe it would take some action by Congress or whatever. Maybe you would need a larger staff or whatever. But I cannot think of an issue more important to the defense of America than protecting us from WMD. And by the President making that gesture, the Vice President is in charge of this, as we said when you were not here, there are only two people in this town that every Cabinet Secretary calls "sir," and the President is probably too busy. But the Vice President has a lot of political clout. He also speak on equals with Governors, which is very important in a lot of the homeland security things and WMD.

So maybe that is a bridge too far. That is what Senators Graham and Talent said. I would say, my opinion was at least we need to have the Biodefense Policy Coordinating Committee back, bringing the very senior leaders into the White House to look at this. That was there in the Clinton administration and the Bush administration, and it went away in the Obama administration.

There was also a Special Assistant for Biodefense in the Clinton and Bush administrations. There is not today. So if you cannot go to the Vice President, at least that level.

Chairman CARDIN. It seems to me we are talking at two levels, because the Inspector General's report was very complimentary of the FBI in the way that they have organized in regards to response to terrorist attack using weapons of mass destruction. The Inspector General's report points out that they have a person who is designated as the coordinator. They have done their training. They have taken this issue very seriously. That is not true in other agencies within the Department of Justice, and certainly not true within the Department of Justice generally.

But the point that I think you raise, Colonel Larsen—I am sorry, Dr. Frankel, I did not hear your testimony, but I certainly know of your written remarks—is that you need an overall coordination. In addition to the agencies being adequately prepared, you need

the force and authority of the administration and the President behind this issue. And I think that is very well pointed out.

The complexity here is that there are so many different types of weapons that could be used, and the unknown can be extremely frightening. I looked at the different scenarios, and the different scenarios predict the number of casualties from a few to huge numbers and the potential damage to our infrastructure from modest to extreme. So you really do need training. You need chain of command and you need training.

One of the disappointing parts was that the ATF training missions so far have not been concerning weapons of mass destruction. They have had training missions, but not dealing with the potential biological weapons or nuclear weapons or other types of weapons of mass destruction.

So I understand your recommendation for having a manager, having a coach, having a person who is looked upon with a great deal of respect and authority to be able to bring the type of importance in all agencies, both public and private, to the response.

Other than the point person in the administration, are there any other specific recommendations that either one of you would make that this Committee should be looking at so that we can be adequately prepared for any eventuality?

Mr. FRANKEL. I had made some recommendations in my—or I had noted some what I felt were lacks in my expanded remarks. The national planning scenarios, for example, the Department of Homeland Security has identified concern over a nuclear event. They have expended billions of dollars, in fact, developing sensors meant to interdict such smuggling operations at ports. There is a great deal of attention being paid to the problem.

It seems odd to us that a component of the nuclear problem is simply being ignored. The kind of EMP mode attack does not require the smuggling in with all the dangers that is required. It does not require very accurate aim. You just need to toss the thing up there, more or less. So there are certain advantages. I am not saying it is more likely or anything like that, but it is a component of the problem which simply seems to have been ignore, and we do not know what—we sent the letter to the Secretary asking him to augment the 15 planning scenarios or to augment the nuclear planning scenario to consider all of the nuclear scenarios. Have not gotten any particular response. And I think that goes to the other issue which was discussed while you were out for a moment: the lack of a belly button within the Department who has as part of his portfolio the setting of policy and direction for the Department.

My own recommendation was not as ambitious as to engage the Vice President, though surely I would like to do that as well. But there are surely other ways of identifying at the confirmed level in the Department someone with authority who would have as part of his portfolio these particular issues. And we were simply unable to make any progress with DHS, and we believe that in large part it was because of that. It was nobody's particular responsibility, and, therefore, recommendations languished.

By the way, I would not even say that they were, you know, rejected. They were just—nobody dealt with them.

Chairman CARDIN. Thank you.

Colonel LARSEN. Mr. Chairman, could I make a quick comment about EMP? The Commissioners did not specifically address EMP, but as the Executive Director, I had Dr. Peter Zimmerman do a study for me. He is former science adviser to the Senate Foreign Relations Committee. His conclusions, from several months' research agreed with most of what the EMP Commission said. But one thing that I think is being left out here is I think perhaps the most likely EMP threat to America is from that thermonuclear weapon out there at 93 million miles. We know that is going to happen. It is about 2 years until we are going to get a lot more solar activity? Whether we get a nuke and a Scud or something, I do not know if that is going to happen. Nobody can predict it. But I think an EMP from the Sun is more likely and the sort of damage the Commission is talking about and the sort of actions we need to take as a Nation to protect our electrical grid particularly, the sun can certainly do that, and there are several cases in history that I am sure it is in your testimony or report that I think we need to get that out. And it goes back to my point about fundamentals. If the senior leaders understand these issues better, then I think that they will take the actions as required.

Chairman CARDIN. Well, I thank both of you. I think your comments have been extremely helpful. This is not the last of our Subcommittee's interest or the Judiciary Committee's interest or the Senate's interest in the subject. This is a continuing oversight function that we hold very high on our priority list. Protecting Americans is our top priority, whether it is from terrorist threats or whether it is from other types of events. We know that we are not as prepared as we need to be. We saw that 9 years ago. We know we have made huge progress during the last 9 years. We have. We are better prepared today than we were before September the 11th. We know that. But we are not as prepared as we need to be, and it is still a work in progress. And I hope that this hearing will give us some of the information necessary to make sure that we do properly oversight the agencies that have this responsibility.

The hearing record will remain open for 1 week for statements or additional written questions from members of the Committee, and if there are additional questions, we would ask our witnesses if they would respond as promptly as possible.

With that, the Subcommittee will stand adjourned with our thanks to our witnesses.

[Whereupon, at 11:06 a.m., the Subcommittee was adjourned.]

[Questions and answers and submission for the record follow.]

QUESTIONS AND ANSWERS

Question#:	1
Topic:	EMP
Hearing:	Government Preparedness and Response to an Attack Using WMD
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: The Homeland Security Council developed 15 National Planning Scenarios to ensure that a strategy was in place for Federal, State, and local authorities to respond in the event of certain potentially catastrophic incidents. Do any of the response plans deal with circumstances similar to that of an EMP attack, or does an EMP attack present entirely new challenges?

Response: The 15 National Planning Scenarios (NPS) were selected after rigorous analysis and evaluation from Federal, State, and local subject matter experts. The intent was to identify a minimum number of scenarios that would encompass the full range of response capabilities to assist Federal, State, and local planners with developing plans for catastrophic disasters. If Federal, State, and local planners planned for the 15 scenarios, in theory, they will be capable of addressing the prevention, protection, response, and recovery requirements of other potential threats and hazards. Federal, State and local stakeholders are not precluded from developing additional scenarios if the jurisdiction identifies unique hazards (in scope, magnitude, and/or complexity) that are not addressed by the 15 National Planning Scenarios. The National Planning Scenarios were not meant to be an exhaustive list of scenarios for planning purposes.

The effects of an Electromagnetic Pulse (EMP) are discussed in Scenario 1: Nuclear Detonation – 10 Kiloton Improvised Nuclear Devise (IND). This scenario focuses on a terror group detonating a 10 kiloton nuclear device in a major urban area at ground level. In NPS 1, an EMP would be a secondary effect to the primary nuclear blast. In the scenario, while personal electronics may be undamaged, the infrastructures they depend on (electric grid, cellular towers, etc) are very susceptible to an EMP. Although the EMP effects of a 10 kilioton Improvised Nuclear Device would be minimized due to the low yield and altitude of the burst, Federal, State, and local planners would still be planning for a localized short term impact of the EMP as a complication to their overall response.

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Question#:	2
Topic:	NPS
Hearing:	Government Preparedness and Response to an Attack Using WMD
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: Many of the disaster response strategies mentioned in your testimony, such as the data exchanges, networks, and information links between federal, state, and local governments, rely on electrical power and would likely be affected by an EMP attack. Given this, and the catastrophic potential of an EMP attack, do you think such an attack should be included as one of National Planning Scenarios?

Response: The National Planning Scenarios were designed to provide a minimum number of scenarios that would encompass the majority of response requirements, informed by current intelligence on the most likely threats, to ensure that Federal, States, and locals were planning for the various contingencies that would require a joint effort. Given the current intelligence picture, the most plausible source of an EMP that would affect National capabilities would result from a surface, or near-surface, nuclear detonation, which recent research suggests will result in a temporary localized EMP effect due to shielding interaction with the local urban environment. Additionally, research suggests that most systems that would be severly disrupted by any EMP effect would be physically destroyed by the prompt blast effects of the nuclear device.

EMP will be added to the National Planning Scenarios at such time as intelligence information allows us to conclude the threat is significant enough to warrant its addition.

SUBMISSIONS FOR THE RECORD

Department of Justice

STATEMENT OF

JAMES A. BAKER
ASSOCIATE DEPUTY ATTORNEY GENERAL

BEFORE THE

SUBCOMMITTEE ON TERRORISM AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ENTITLED

"GOVERNMENT PREPAREDNESS AND RESPONSE TO A TERRORIST ATTACK USING WEAPONS OF MASS DESTRUCTION"

PRESENTED

AUGUST 4, 2010

Statement of
James A. Baker
Associate Deputy Attorney General

Before the
Subcommittee on Terrorism and Homeland Security
Committee on the Judiciary
United States Senate

Entitled
"Government Preparedness and Response to a Terrorist Attack Using Weapons of Mass Destruction"

August 4, 2010

Thank you, Mr. Chairman and Members of the Subcommittee. The Department of Justice appreciates the opportunity to appear at today's hearing to discuss its ongoing efforts to address the many important issues identified in the Inspector General's recent report concerning the Department's preparation to respond to an incident involving a weapon of mass destruction ("WMD").

The Department is grateful for the Inspector General's work in preparing the report and highlighting areas in which the Department can — and must — improve its planning to respond to a WMD incident and other catastrophic events. As we explained in our official response to the report, "The Department of Justice believes the fundamental conclusion of the report is sound: The Department should do more in order to formally and centrally coordinate emergency response activities of all appropriate [Department] components." In addition, we concur with the Inspector General's conclusion that every component in the Department, not just the FBI, must be prepared for a WMD incident. We agree that the Department should review its existing emergency preparedness policies and, as appropriate, tailor those policies to meet the unique challenges posed by WMD attacks. Finally, we also agree that the Department must ensure that it is prepared to meet its responsibilities under the National Response Framework, particularly its responsibility under Emergency Support Function 13 ("ESF-13") to coordinate the use of Federal law enforcement resources to maintain public safety and security if an incident overwhelms State and local resources.

Thus, the Department agrees with the report's recommendations and conclusions, and, as explained below, we are already in the process of implementing those recommendations. I do not want to suggest, however, that every component in the Department should or will respond to the concerns identified by the Inspector General in an identical manner. Although every component of the Department must be prepared for a possible WMD attack, some components naturally have greater WMD expertise and responsibilities than others. The FBI, for example, has primary responsibility within the Executive Branch for preventing and investigating domestic WMD incidents. Given these critical responsibilities, the FBI's planning and training

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for WMD events will inevitably be different in some respects from other components, which are farther removed from the on-the-ground, day-to-day investigative response to a WMD incident. Similarly, though the report highlights steps the Department should take to improve its management of emergency preparedness issues, it would be unfortunate if these observations overshadowed the excellent preparedness work done on a day-to-day basis by career staff in components across the Department.

With those caveats, let me reiterate that the Department agrees with the Inspector General's essential conclusions and recommendations. The Department of Justice must improve its management of emergency preparedness issues, it must ensure that all components understand how to respond to a WMD incident, and it must fulfill its responsibilities under the National Response Framework and ESF-13.

Since the Inspector General issued his report on May 28, 2010, Acting Deputy Attorney General Gary Grindler has ordered a comprehensive, across-the-board review of the Department's emergency preparedness policies and procedures. The review includes, among other things, the Department's management of emergency preparedness issues, its plans for addressing a WMD incident, its roles and responsibilities under the National Response Framework and ESF-13, and its plans for continuity of operations in the event of a catastrophic event. The Acting Deputy Attorney General has been clear: The crush of other business is no excuse. The Department must review and resolve the issues identified by the Inspector General.

To manage this review, and to address some of the coordination concerns raised by the Inspector General's report, the Acting Deputy Attorney General ordered the establishment of a new Department committee, the Emergency Preparedness Committee ("EPC" or "committee"), which I chair. The EPC is comprised of representatives from every law enforcement component in the Department, as well as many of the Department's management, policy, and litigating components. The committee and its various working groups have been meeting throughout the summer to develop plans for addressing the issues identified by the Inspector General. The Acting Deputy Attorney General has instructed the committee to complete its review by October 10, 2010.

While the EPC's review is ongoing and, in many ways, evolving as it progresses, the committee is already taking concrete steps to address the issues raised by the Inspector General's report:

WMD: In June, the EPC appointed a WMD working group. This group is comprised of representatives from every DOJ law enforcement component, as well as the Office of the Deputy Attorney General, the National Security Division, and the Executive Office for U.S. Attorneys. The WMD working group is examining the Department's current all-hazard preparedness procedures and exploring how they might be adjusted to address a WMD incident. In particular, the WMD working group has begun using WMD scenarios (focused on the National Capitol Region) to test how our current plans would address a WMD attack. Some of the objectives of these exercises are to examine the adequacy of existing plans to deal with a WMD incident, to index specific assets that the Department might have available to handle a WMD response, and

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to determine how we might integrate and apply to other components the excellent WMD-specific planning and training already conducted by the FBI.

ESF-13: The EPC has also appointed a working group consisting of representatives from all law enforcement components in the Department, as well as some of the Department's senior leadership offices, to evaluate (1) the Department's roles and responsibilities under ESF-13, (2) whether the Bureau of Alcohol, Tobacco, Firearms, and Explosives, should continue to manage the Department's ESF-13 responsibilities (both during the next few months and on a longer-term basis), and (3) the type of resources the Department must devote to ESF-13 — both in the short-term and the long-term — to ensure that the Department is prepared at the national and regional level to respond adequately in the event of an ESF-13 activation. This group, which has been meeting on a nearly weekly basis, has already identified preliminary steps that the Department can take at relatively little cost to improve its ESF-13 posture. For example, to promote Department support of the ESF-13 mission, it has asked all law enforcement components in the Department to designate a primary representative for ESF-13 issues. In addition, it is increasing the Department's outreach to State emergency management officials to identify and resolve in advance as many issues as possible that may complicate the use of Federal law enforcement officials in the event of an ESF-13 activation.

COOP: The EPC has also established a continuity of operations ("COOP") working group and charged it with auditing components COOP plans to ensure that they are in compliance with existing National Response Framework and National Incident Management Systems requirements, as well as with identifying specific, relatively inexpensive steps the Department could take in the next few months to ensure that components are regularly testing their COOP plans and procedures, as they are already required to do. More generally, this group is in the process of reviewing the Department's internal authorities and delegations on preparedness issues to ensure they are up to date. We anticipate the Department will issue a number of new directives in the coming months regarding COOP issues.

Management and Coordination: As part of its review, the EPC is also exploring how the Department can better manage the numerous planning, policy, training, exercise, and interagency coordination requirements associated with emergency preparedness. While the creation of the Emergency Preparedness Committee is a solid first step for improving coordination, the consensus thus far in our review (which was also reflected in the Inspector General's report) is that the Department should consider establishing a permanent office (perhaps within the Office of the Deputy Attorney General) led by a senior-level Director with overall responsibility for coordinating and managing emergency preparedness issues on a daily basis.

Resources and Training: In an effort to better ensure that the Department is using all of its preparedness resources as efficiently as possible, the EPC is also conducting a comprehensive review of how the Department deploys those resources. Accordingly, the committee is reviewing the number of employees in the Department who currently work on emergency preparedness issues and the various preparedness-related committees and working groups in which components in the Department participate. Likewise, the EPC is reviewing the type of

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emergency preparedness training programs currently employed around the Department. Drawing upon this information, the EPC hopes to develop a basic emergency preparedness training program that could be used throughout the Department. Similarly, the committee is also in the process of collecting information from existing databases to identify all Department of Justice employees by geographic region, so that we are quickly able to identify the people and other resources the Department may have available (and may have lost) in the event of a catastrophic event, such as a WMD attack.

Certainly, these are initial steps, and they do not yet address all the issues identified by the Inspector General's report. The Department is determined to resolve the concerns raised by the Inspector General's report, and it is committed to working with the Inspector General and Congress until we are all confident that the Department is fully prepared to respond to a catastrophic event like a WMD attack.

Thank you again, Mr. Chairman, for the invitation to appear today. I am happy to answer any questions.

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STATEMENT OF

STEWARD D. BECKHAM, DIRECTOR
OFFICE OF NATIONAL CAPITAL REGION COORDINATION
FEDERAL EMERGENCY MANAGEMENT AGENCY
U. S. DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

SUBCOMMITTEE ON TERRORISM AND HOMELAND SECURITY

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

"Government Preparedness and Response to a Terrorist Attack Using Weapons of Mass Destruction"

WEDNESDAY, AUGUST 4, 2010

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INTRODUCTION

Chairman Cardin, Ranking Member Kyl and distinguished members of the Subcommittee, I am Steward Beckham, Director of the Office of National Capital Region Coordination (NCRC), located in the Department of Homeland Security's (DHS) Federal Emergency Management Agency (FEMA). Thank you for inviting me to appear before you today to discuss preparedness in the National Capital Region (NCR).

THE NATIONAL CAPITAL REGION AND THE ROLE OF NCRC

The NCR is the fourth largest metropolitan area in the United States, encompassing the District of Columbia and parts of Maryland and Virginia. It comprises twelve local jurisdictions, including the cities of Alexandria, Fairfax, Falls Church, Manassas and Manassas Park, as well as the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia, and Montgomery and Prince George's in Maryland. These include the municipalities of Bowie, College Park, Gaithersburg, Greenbelt, Rockville and Takoma Park.

Congress created NCRC pursuant to section 882 of the Homeland Security Act of 2002, in order to "oversee and coordinate federal programs for and relationships with state, local, and regional authorities" within the NCR. Congress further directed NCRC to coordinate with federal, state and local officials and the private sector to enhance domestic preparedness and also to provide information and technical support to its state and local partners against the consequences of terrorist attacks.

To fulfill its mission, NCRC has built and continues to foster strong partnerships and collaboration with state, local and regional authorities in the NCR. NCRC interacts daily with public, private and non-profit homeland security officials. As an example, the Director of NCRC represents DHS and FEMA on the NCR Senior Policy Group (SPG), comprised of the homeland security advisors and chief emergency managers of Virginia, Maryland and the District of Columbia. The SPG plays a key role in sustaining a coordinated regional approach to homeland security and in strengthening integrated decision making and planning in the NCR.

The SPG is just one example of effective NCRC partnership to enhance preparedness in the NCR. In addition, NCRC actively engages with chief administrative officers (e.g. city and county managers), public health officials, first responders, emergency managers, leaders from the private sector and non-profit communities, and many other federal, state and local partners in support of all hazards preparedness.

SELECTED NCR PREPAREDNESS ACTIVITIES

On behalf of DHS and FEMA, NCRC provides technical support and advises state, local and regional partners in continuously updating their own planning efforts and integrating federal planning efforts. To ensure adequate and coordinated all-hazards and catastrophic planning, the NCR has invested in regional planners who work on a series of plans, including some that are relevant to a weapon of mass destruction (WMD) event in the NCR, such as the Regional Emergency Coordination Plan, Special Medical Needs Sheltering Plan, Mutual Aid Operations Plan, NCR Mass Casualty Plan, Large Scale Critical Infrastructure Decontamination Plan,

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Regional Resource Management Plan, and Alternate Care Facilities. Further, NCRC has partnered with the Office of Personnel Management (OPM) to draft an NCR Federal Concept Plan (CONPLAN) of Catastrophic Planning Assumptions in FY 2011 – it will address the critical planning assumptions and anticipated coordinating instructions that federal departments and agencies will implement within the NCR during a catastrophic event. The CONPLAN will facilitate increased collaboration and integration of federal planning efforts with those of state, local and regional partners. FEMA's National Continuity Programs Directorate (NCP), a sister office to the NCRC, is the lead agent for continuity planning for the federal executive branch, ensuring continuity of national essential functions under all hazards. NCP also provides continuity planning materials, training, and assistance to the NCR, as well as alert and warning information to the American public. In the NCR, NCP also works closely with state and local personnel to formulate plans and approaches for use in the event of emergency situations. Exercises of these plans occur regularly with regional partners, in coordination with NCRC staff.

Homeland security partners across the NCR also pursue coordinated communications and information sharing, equipment purchases, and innovative training and exercises. This close alignment strengthens the region's emergency prevention and response capabilities to address all hazards, including WMD. For example, jurisdictions in the NCR have invested Urban Area Security Initiative (UASI) grant dollars in regional planners that have worked on a series of coordinated plans to address communications, information sharing, mass care, sheltering, critical infrastructure needs, and regional resource management, among others. Other examples of the NCR's commitment to concerted action include:

- Regional Interoperability: We are currently working on two infrastructure projects, the Interconnected Government Networks and the Data Exchange Hub. These two projects represent technology advancements that provide responders with the data they need, anytime and anywhere.
- Metrorail Tunnel Response Operations: This program will provide emergency equipment caches at each underground Metro station and design the prototype for a tunnel rescue cart.
- The NCR Syndromic Surveillance Network (ESSENCE) is a disease surveillance system that captures health department data to provide early detection capability. The system has been fully operational since 2004.
- The NCR has installed an information sharing system called LinX. This system links local, state, and federal law enforcement databases. Currently there are 25 NCR agencies participating. The NCR partnered with Baltimore and the Hampton Roads area to expand LinX and joined the three urban areas together in March of this year.

FEMA and the Department of Homeland Security have provided over $600 million to NCR partners since the inception of the Department, through the Urban Areas Security Initiative, State Homeland Security, Transit Security, Regional Catastrophic Planning, Port Security and other Grant Programs. These programs support planning, training, equipment purchases and exercises for WMD and all hazards preparedness. Additionally, federal partners such as the Department of Health and Human Services have contributed through their grant mechanisms to support many of these activities. This is in addition to significant preparedness efforts funded by the individual jurisdictions in the NCR.

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Additionally, NCRC and other SPG members have developed the NCR "First Hour Checklist" to guide coordinated actions during the initial response to an incident in the NCR. NCRC coordinates efforts to maintain interoperability and provides information and guidance on all-hazards risk to support stakeholders in making risk-informed decisions. .

With NCR partners, NCRC plans or participates in exercises, drills and events (e.g., Presidential Inaugurations, National Security Special Events, state funerals, and large demonstrations) that occur with frequency in the NCR, to bolster information sharing and integrated planning. The region's training and exercise programs are administered and coordinated by the NCR Exercise and Training Operations Panel (ETOP). The ETOP is comprised of representatives from NCR federal, state and local entities. This group's frequent planning and cooperation serves to integrate and strengthen all-hazards preparedness, whether for natural, man-made or terrorist-related incidents. Such coordination will be essential in the event of a terrorist attack affecting the NCR using a WMD.

CONCLUSION

NCRC'S established working relationships support broader FEMA efforts to maintain and enhance its relationships with state and local partners. During a response to an incident within the NCR, the NCRC would support FEMA Region III and the Federal Coordinating Officer by providing situational awareness and participating in the Unified Coordination Group. If needed, it would send agency representatives to operations/communications centers to facilitate information sharing. In the event of an incident in the NCR, NCRC stands ready to support FEMA's core mission and our federal, state and local NCR partners.

Building on decades of regional collaboration, federal, state, local and regional partners remain committed to a common vision of working together toward a safe and secure National Capital Region. We work every day to build and sustain an integrated effort to prepare for, prevent, protect against, respond to, recover from, and mitigate all hazards, including WMD terrorism.

Should an incident occur in the National Capital Region, FEMA has established a course of action to mobilize and coordinate a well-organized response and recovery.

Thank you for allowing me the opportunity to testify. I am happy to answer any questions the Subcommittee may have.

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Office of the Inspector General
United States Department of Justice

Statement of Glenn A. Fine
Inspector General, U.S. Department of Justice

before the

Senate Judiciary Committee
Subcommittee on Terrorism and Homeland Security

concerning

The OIG Report on the Department of Justice's Readiness to Respond to a Weapons of Mass Destruction Attack

August 4, 2010

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Statement of Glenn A. Fine
Inspector General, U.S. Department of Justice

before the
Senate Judiciary Committee
Subcommittee on Terrorism and Homeland Security

on

The OIG Report on the Department of Justice's Readiness to Respond to a Weapons of Mass Destruction Attack

August 4, 2010

Senator Cardin, Senator Kyl, and Members of the Subcommittee:

Thank you for inviting me to testify about the Office of the Inspector General's (OIG) recent report regarding the Department of Justice's (Department) readiness to respond to a potential weapons of mass destruction attack.

The use of weapons of mass destruction (WMD), whether by a hostile nation, a terrorist group, or an individual, poses a potentially serious threat to the United States. One of the greatest concerns is that a WMD may fall into the hands of terrorists or that terrorists will develop their own WMD.

According to a National Security Presidential Directive, a WMD includes any device intended to cause death or serious bodily injury to a significant number of people through the release of toxic chemicals, disease organisms, or radioactive material. In addition to mass casualties, a WMD could also disrupt vital infrastructure and disable communications, financial, and transportation systems.

Because of the importance of this issue, the OIG conducted a review to evaluate the readiness of the Department and its components to respond to a potential WMD incident. In addition, we examined the readiness of Department field offices in the Washington National Capital Region to respond in a coordinated way to a WMD incident. In May 2010 we issued our report describing the results of our review.

In my testimony today, I will summarize the findings of our report and then discuss the Department's response to our report.

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I. BACKGROUND

To prepare to meet the threat of a WMD attack, the federal government has taken various steps, including the issuance of national policies such as the National Response Framework. This Framework was completed in January 2008 by the Department of Homeland Security and approved by the President. The National Response Framework established a comprehensive approach for a unified national response to both natural and man-made disasters, including WMD incidents.

The National Response Framework authorizes the Attorney General to appoint a Senior Federal Law Enforcement Official to coordinate and direct federal law enforcement support activities related to critical incidents. Further, the National Response Framework includes annexes, called Emergency Support Functions (ESF), that assign specific responsibilities to federal agencies in the event of a disaster. Under the National Response Framework, the Department of Justice is assigned by ESF-13 the responsibility for coordinating federal law enforcement activities in response to a critical incident, such as a WMD attack, and for ensuring public safety and security in the event such an incident overwhelms state and local law enforcement.

II. FINDINGS OF THE OIG REPORT

A. The FBI's preparations for responding to a WMD attack

Our report concluded that the Federal Bureau of Investigation (FBI) has taken appropriate steps to prepare to respond to a WMD attack. Part of the FBI's primary mission is to prevent WMD incidents and to investigate WMD threats. The FBI has a WMD response program managed by the FBI's Weapons of Mass Destruction Directorate. The FBI WMD Directorate manages WMD investigations, assesses and responds to incidents involving the use or threatened use of WMDs, and conducts exercises to test the FBI's ability to respond to a WMD incident.

Our review determined that the FBI has developed various plans, handbooks, and other resources to guide its staff in responding to a WMD incident. In addition, the FBI regularly provides its staff with training specific to WMD incidents. For example, the FBI gives WMD training to all new Special Agents during their initial FBI Academy training. FBI WMD Coordinators and Intelligence Analysts are also trained in specific WMD areas of emphasis. In addition, the FBI regularly conducts and participates in WMD response exercises.

However, it is important to point out that another OIG audit, issued in September 2009, also examined the FBI's WMD Coordinator program and found some deficiencies in this FBI program. *See* U.S. Department of Justice

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Office of the Inspector General, *The Federal Bureau of Investigation's Weapons of Mass Destruction Coordinator Program*, Audit Report 09-36. For example, our audit determined that many FBI WMD Coordinators could not identify the top WMD threats and vulnerabilities that faced their particular field division. The audit also determined that the FBI had not established specific qualifications that WMD Coordinators need to perform their critical functions. Additionally, we recommended that the FBI improve WMD training plans to ensure that WMD Coordinators and WMD-assigned Intelligence Analysts acquired the skills necessary for their positions. In response, the FBI agreed with the recommendations in the report and has been taking action to address them.

B. The Department's and its other components' preparations for responding to a WMD attack

In contrast to the FBI, which had appropriately prepared to respond to a WMD incident, we found that the Department as a whole did not have policies or plans for responding to a WMD incident. For example, we determined that Department personnel (other than FBI staff) received little training in the unique requirements associated with responding to a WMD incident. While the Department and its components conducted some training on continuity of operations, little of the training focused specifically on a WMD operational response. Planning for a response to a WMD incident is important because the actions taken to ensure public safety and security may differ from those used when responding to an incident involving conventional explosives.

Our review also found that no entity or individual had been assigned responsibility for central oversight of WMD response activities throughout the Department. We concluded that the management of the Department's response program was uncoordinated and fragmented. Some response functions were being handled by a Special Assistant to the Deputy Attorney General and others by senior staff at the National Security Division (NSD), the Executive Office for United States Attorneys (EOUSA), or the FBI. Various individuals we interviewed told us that they believed the Department's operational response program lacked leadership and oversight.

Our report noted that the Department had previously identified the need for coordinated emergency management at the Department level. In January 2006, the Department's Assistant Attorney General for Administration circulated a proposed DOJ Order that assigned responsibilities for emergency response to a Crisis Management Committee. However, this proposed Order was never made final.

We also found that the Department-level critical incident response policies and plans were not in compliance with national policies, were outdated, and did not specifically address a WMD attack. For example, the

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Department's critical incident response policies and plans do not incorporate principles and requirements of the National Response Framework or the National Incident Management System, which established a standardized approach for planning for and responding to all domestic incidents, including WMD incidents. In addition, the Department's Critical Incident Response Plan, which has not been updated since it was approved by the Attorney General in May 1996, does not address WMD incidents.

Additionally, the Department's critical incident response policies and plans had not been fully implemented. For example, in 1988 a Department policy established a Crisis Management Committee to determine the Department's on-scene response to an incident, and in 1996 the Attorney General established an Attorney Critical Incident Response Group to coordinate legal support during an incident. Although these policies remain in effect, our report found that neither of the critical incident entities existed.

Our review also found that no Department law enforcement component, other than the FBI, had specific WMD operational response plans. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Drug Enforcement Administration (DEA), and the United States Marshals Service (USMS) have groups that manage all-hazards responses, but these groups do not include specific preparations for WMD incidents.

We also found inadequate efforts among the Department's components to coordinate a response to a WMD incident. While the FBI is the only component with plans, handbooks, and other resources for responding to a WMD incident, officials from the other components told us they have not seen the FBI's response materials. The Assistant Directors of the FBI's WMD Directorate and Critical Incident Response Group said the FBI would not object to letting other Department components review the plans, but none of the components has asked to do so.

Except for the FBI, other Department components have provided little to no training for responding specifically to a WMD incident and have rarely participated in WMD exercises. The other components also did not regularly participate in National Level Exercises involving a WMD incident response or in WMD exercises at the regional, state, and local levels.

C. The Department's lack of preparation to fulfill its role, under the National Response Framework, to ensure public safety and security in the event of a WMD attack

As noted above, the National Response Framework established the Department of Justice as the lead agency under ESF-13 to coordinate the use of federal law enforcement resources to maintain public safety and security if local and state resources are overwhelmed during an incident. The

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Department delegated the responsibility for implementing its ESF-13 activities to ATF.

The Department's responsibilities under ESF-13 involve the use of federal law enforcement resources to maintain public safety and security if local and state resources are overwhelmed during an act of terrorism or natural or man-made disaster, such as a WMD attack. The National Response Framework assigns the Department 10 specific responsibilities related to ESF-13, including staffing management positions at headquarters and in field offices to manage ESF-13 activities; conducting evaluations of operational readiness, including a roster and description of public safety and security activities; coordinating backup support from other geographical regions to the affected area; processing mission assignments for agencies providing support and assistance; tracking resource allocation and use; and facilitating reimbursement to assisting departments and agencies.

Our review concluded that in the event of a WMD incident, the Department was not prepared to coordinate federal law enforcement activities to ensure public safety and security in accordance with ESF-13. Our conclusion was confirmed by ESF-13 staff, one of whom told us that in the event of a WMD incident "we are totally unprepared . . . right now, being totally effective would never happen. Everybody would be winging it."

In January 2008, ATF proposed a Concept of Operations Plan to provide a structure for the Department to implement its ESF-13 responsibilities. As of March 2010, however, that Concept of Operations Plan was still in draft, and several actions essential to the Department's ability to fulfill its responsibilities for coordinating the federal law enforcement activities in an ESF-13 activation remained incomplete. For example, the Department and ATF had not made necessary personnel assignments to manage ESF-13 activities. At ATF headquarters, the ESF-13 National Coordinator has been designated, but a Deputy National ESF-13 Coordinator has not been designated, and as of April 2010 ATF had not filled 6 of the 13 other positions it has dedicated to ESF-13.

In addition, ATF provided minimal training in implementation of ESF-13 responsibilities to ATF field office personnel, support agency personnel, and state and local emergency operations officials. According to ATF ESF-13 staff, ATF trained only its personnel in field offices that are in states prone to hurricane activity for an ESF-13 activation resulting from a hurricane.

ATF also did not develop a catalog of law enforcement resources – people and equipment – to be deployed from all ESF-13 agencies or Department components in an ESF-13 activation. ATF staff told us that other agencies had not responded fully to ATF's requests for information. However, because of the lack of staffing, ATF did not designate anyone to follow up on the requests and

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could not conduct the logistical resource planning if the data were made available.

Further, ATF had not tested its preparedness to carry out its ESF-13 responsibilities in any National Level Exercises or any other functional exercise involving a WMD incident. Finally, ATF was still in the process of determining how ESF-13 law enforcement personnel would be deputized as Deputy U.S. Marshals if ESF-13 is activated.

D. Preparations to respond to a WMD attack in the National Capital Region

Because the Washington National Capital Region (NCR) is a potential target for terrorists who could attempt to use WMD in an attack, we examined the preparations of Department component field offices in the NCR to respond to a WMD attack.

We found that in the NCR Department components regularly work with each other, with other federal agencies, and with state and local law enforcement to prepare to respond to various incidents that may occur during the frequent special events in the NCR, such as Presidential inaugurations and visits by heads of state. This regular coordination for special events builds knowledge and relationships that help prepare components for responding to incidents in the NCR. NCR field office staff told us they are aware of other agencies' roles and the resources that are available from them if a WMD incident should occur during a special event.

However, outside of special events, only the FBI had conducted WMD-specific planning or training in the NCR. The FBI's Washington Field Office is the only NCR field office that provides WMD training to its response personnel and regularly participates in WMD exercises. The FBI's plan identifies how the FBI will work with federal agencies outside the Department, state and local law enforcement, and emergency response agencies, although it does not include any stated role for the NCR field offices of the Department's other components.

While other Department component NCR field offices' preparations for special events include some planning for WMD incidents, preparations for a WMD incident that could occur at times other than during a special event were lacking. When we asked if they were familiar with the FBI's WMD response plan, officials from ATF, the DEA, and the USMS in the NCR said they were not familiar with the plan and had not asked to see it. Additionally, FBI data showed that the FBI Washington Field Office participated in 29 WMD exercises with state and local law enforcement, as well as other federal agencies, from fiscal year 2005 through fiscal year 2009. Other Department of Justice

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components in the NCR did not participate in these or other WMD response exercises.

We also found that some component officials in NCR field offices were not even aware of ESF-13 or ATF's role as the Department's lead coordinator if ESF-13 is activated. When we asked 12 NCR field office managers about ESF-13 requirements and assignments, only 6 knew about ESF-13 and only 3 were aware of ATF's designation as the Department's lead coordinator.

This lack of awareness on the part of field office managers regarding ATF responsibilities and ESF-13 is problematic. Field office managers should be familiar with how their components would participate in a coordinated national response to a WMD incident. Although requests for support would most likely come from component headquarters to the field offices, effective coordination of the federal, state, and local response would be critical during an ESF-13 activation. The lack of familiarity regarding national plans, such as ESF-13, could inhibit a coordinated response, and valuable time could be wasted in providing needed resources, as was seen during the response to Hurricane Katrina in 2006.

Therefore, we concluded that although law enforcement agencies in the NCR coordinate regularly because of the preparations and cooperation required for frequent special events, improvements were needed to ensure NCR field offices were prepared to quickly and safely respond to a WMD incident. In a WMD incident, agencies' roles are not specified and resources are not pre-positioned as during a special event. The hazard presented by a WMD – as opposed to conventional or improvised explosives or natural disasters – is unique. Moreover, the lack of awareness regarding the Department's ESF-13 responsibilities, and ATF's designated role to serve as the lead coordinator for those activities, could delay a coordinated federal law enforcement response to a WMD incident. Because the component field offices in the NCR other than the FBI had no WMD-specific response plans or training and have not participated in WMD-specific exercises, we concluded that it was uncertain that they were fully prepared to safely and effectively contribute to the Department's overall response in the event of a WMD attack.

III. OIG RECOMMENDATIONS AND DEPARTMENT RESPONSE

Our report made five recommendations to help the Department better prepare to respond to a WMD incident and to fulfill its responsibilities under ESF-13. We recommended that the Department:

1. Designate a person or office at the Department level with the authority to manage the Department's WMD operational response program.

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2. Update the Department's response policies and plans to conform them to the National Response Framework and the National Incident Management System.

3. Require Department components to update their own policies and plans to reflect the updated Department guidance, and to reflect the need for adequate coordination among Department components in responding to a WMD incident.

4. Establish effective oversight to ensure that components maintain WMD response plans, participate in training and exercises, and implement a corrective action program in response to such exercises.

5. Ensure that the Department is prepared to fulfill its emergency support function responsibilities under the National Response Framework, including reviewing the designation of ATF as the Department's lead agency to coordinate public safety and security activities, approving a Concept of Operations Plan, and staffing national and regional coordinator positions.

In response, the Department stated that the fundamental conclusions of our report were sound and that the Department concurred with all of our recommendations.

In addition, the Department's response stated that it intended to implement a process to establish "a clearer and more formal system to ensure that all Justice Department emergency response functions, continuity of operations programs, and continuity of government programs are up-to-date, aligned with national policies, and well-coordinated with the Department."

Since then, the Department has assigned the Associate Deputy Attorney General for National Security responsibility for coordinating all Department policies associated with continuity of operations, continuity of government, and emergency response at the scene of an incident.

In addition, the Department created a committee, the Emergency Preparedness Committee, to address emergency response preparedness issues throughout the Department, including WMD response issues. This Emergency Preparedness Committee, which is chaired by staff from the Office of the Deputy Attorney General, includes representatives from a wide spectrum of the Department's components, including the FBI, ATF, DEA, USMS, the Federal Bureau of Prisons, EOUSA, the Justice Management Division, and NSD. The committee, which meets biweekly, is seeking to address issues raised by the OIG report and to develop policy, training, and strategies to ensure that the Department as a whole is ready to respond to a WMD event.

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In addition to the main committee, five subcommittees were formed to focus on specific issues. These subcommittees, which also meet biweekly, are reviewing the Department's Continuity of Operations Plan; identifying the training, equipment, and funding needed to ensure that the Department is prepared for a WMD event; ensuring the Department-wide understanding and support for the Department's responsibilities under ESF-13; reviewing and assessing the Department's functions within the National Response Framework; and developing operations and management to oversee the Department's response to a WMD or other catastrophic event.

Other witnesses will provide in their testimony more detail about the work of these committees. However, we believe the Department is taking seriously the deficiencies we identified in our report, and the Department's actions should improve the Department's preparations to respond to a potential WMD attack.

IV. CONCLUSION

Our report identified significant deficiencies in the Department's preparations to respond to a WMD attack. While the FBI had taken appropriate steps to prepare to respond to a potential WMD attack, the Department as a whole, and other components within the Department, had not implemented adequate WMD response plans. As a result, we concluded that the Department was not fully prepared to provide a coordinated response to a potential WMD attack. These deficiencies could have disastrous consequences because the use of a weapon of mass destruction poses a serious potential threat to the United States.

We believe it is critical that the Department aggressively and expeditiously address the deficiencies identified in our report so that it will be better prepared to respond if a WMD attack occurs. We also believe that the Department has taken our findings seriously and is taking important steps to seek to remedy the deficiencies we identified. However, the Department needs to remain focused on this issue, and we appreciate the Subcommittee holding this hearing. For our part, we will continue to monitor the Department's progress in ensuring that it is adequately prepared to respond to a potential WMD attack.

This concludes my prepared statement, and I would be pleased to answer any questions.

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TESTIMONY OF DR. MICHAEL J. FRANKEL

SENATE JUDICIARY COMMITTEE

SUBCOMMITTEE ON TERRORISM AND HOMELAND SECURITY HEARING

GOVERNMENT PREPAREDNESS AND RESPONSE TO A TERRORIST ATTACK USING WEAPONS OF MASS DESTRUCTION

SENATE DIRKSON OFFICE BUILDING, ROOM 226

AUGUST 4, 2010

Mr. Chairman, Members of the Committee, thank you for the opportunity to testify today on the matter of nuclear generated electromagnetic pulse (EMP), one aspect of a broader nuclear threat to the Homeland, and the government's preparedness to respond to it.

My name is Michael Frankel and I served as the Executive Director of the EMP Commission, commencing with its authorization in the Floyd Spence National Defense Authorization Act of 2001 and culminating with its sunset and delivery of its final, classified, report to the Congressional oversight committees in February of 2009. Presently, I am a consultant for national and homeland security activities. I am a physicist by training and have spent many years developing technical expertise in nuclear weapon effects and managing WMD related programs for the Department of Defense in a career that spanned research work for the Navy, the Defense Nuclear Agency, the Defense Threat Reduction Agency, the Office of the Secretary of Defense, and private industry. What I should like to do today is briefly review some of the unclassified findings of the Commission and, in particular, update you on the response to those findings by the government.

The perspective of the EMP Commission was provided in some detail in the unclassified volume *"Critical National Infrastructures"* released by the Commission in November of 2008 and in an earlier unclassified overview: *Report of the Commission to Assess the Threat to the United States from Electromagnetic Pulse(EMP) — Volume 1: Executive Report* (*2004*). The Commission also prepared and submitted to the Congress and the Administration several classified reports addressing military, nuclear weapon, and intelligence aspects of the subject. The Commission's assessment was informed by its own testing and analysis activities as well as information from a number of Federal agencies and National Laboratories. We requested and received information from the North American Electric Reliability Corporation, the President's National Security Telecommunications Advisory Committee, the National Communications System (since absorbed by the Department of Homeland Security), the Federal Reserve Board, the Department of Homeland Security, the Department of Defense, and the Central Intelligence Agency.

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An electromagnetic pulse is associated with any above the atmosphere - above about 40 kilometers height - detonation of a nuclear weapon. And that includes nuclear weapons of even "unsophisticated" designs. Since it is a geometrical line-of-sight effect, a detonation at a height of a few hundred kilometers would encompass within its line of sight essentially the entire United States, with the effect growing weaker the larger the distance from the burst point. For assessment purposes, a SCUD class missile launched from a nearby offshore location might reach a height of about 100 kilometers, sufficient to encompass within its effects footprint most of the eastern seaboard, with its great density of people and infrastructure.

Such EMP has been seen before during the U.S. and Soviet atmospheric test programs. In 1962, during the U.S. STARFISH nuclear test at an altitude of about 400 kilometers above Johnston Island, electrical systems in the Hawaiian Islands, 1400 kilometers distant, were affected, causing the failure of street lighting systems, tripping of circuit breakers, triggering burglar alarms, and damage to a telecommunications relay facility on the island of Kauai. In Soviet testing the same year they reported damage to overhead and underground buried cables at distances of 600 kilometers. They also observed surge arrestor burnout, spark-gap breakdown, blown fuses, and power supply breakdowns.

The EMP generated on the ground from such a high altitude detonation will not immediately damage a human being, indeed a person will not even feel it. But it will affect all of the electronic circuitry which surrounds and sustains him. While there is a range of effects that may be induced on any individual electronic components, ranging from minor bit flipping to permanent physical damage or even burn out, it was the Commission's assessment that the power grid was likely to fail due to the cumulative effects of the expected damage. Grid collapse may well extend beyond the immediate area exposed to the EMP footprint as electrical effects may propagate from one region to another, as has been the regularly observed pattern of grid beak downs over the past decades. Depending on the severity of the exposure, many thousands of components many need replacement. If many large high voltage transformers, about the size of a house and no longer manufactured in this country, were permanently damaged – as has already happened to small numbers of transformers in severe solar electrical storms of the past - full recovery could take months to years. Many thousands of control systems – SCADAs – would be affected, as would be any elements connected to wires or metal structures that might gather the EMP energy and conduct it into the sensitive electronics components.

Due to the growing interdependence of all our critical infrastructures, and the ubiquitous dependence of all infrastructures on power, this will eventually affect all the elements that undergird and sustain our system of life – delivery of energy, access to financial services, water and food, etc. In the current era when the

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power grid is on the cusp of technological change as we transition to a "smart grid" architecture, with its expected explosion in numbers of computerized control and monitoring systems, this unaddressed vulnerability to such electronic disruption will commensurately grow.

We should mention that it is not just ground based electronic systems that are endangered by an EMP producing detonation, but our entire low earth orbit satellite infrastructure as well. A nuclear detonation at high altitude will increase the intensity - "pump up" - the natural radiation belts already circling the earth, or create temporary new radiation belts by pumping electrons and other particles into orbit. Our orbiting satellites will encounter a much more hazardous radiation environment than they were built to withstand and will, in relatively short order, all cease to work. This too has already happened. In 1962, following the STARFISH above the atmosphere detonation, at a time when we did not really understand or anticipate the physics of such phenomena, there were reportedly about thirteen unclassified satellites in orbit. Within six months there were none. This includes Telstar, the first telecommunications satellite which, it is now agreed, was the most famous STAFISH victim. There were also a number of intelligence assets in orbit, but their fate is classified.

The EMP Commissions' findings and recommendations were summarized in its final classified report to the Congress and in its published volumes. The nineteen findings and seventeen recommendations addressed to the Department of Defense were classified and cannot be summarized in this forum, but the reaction of the Department may be characterized as positive. In short, the Department concurred with almost all the findings and recommendations – non-concurring with recommendations which levied new reporting requirements – promulgated an action plan signed off by the Secretary, identified a pentagon office of primary responsibility for EMP matters – the ATSD (Nuclear, Chemical and Biological matters) - issued a new survivability Instruction, DOD Instruction 3150.09 for system acquisition which encompasses EMP, and POM'd funding to address the Commission identified deficiencies. Much of this positive effort redounds to the great credit of DoD management, the Office of the ATSD (Nuclear Matters), and the proactive leadership of US Strategic Command.

The Congress has taken at least one important step commensurate with its oversight responsibilities, although much more needs to be done. The House has recently passed HR 5026, the GRID Reliability and Infrastructure Defense Act, intended to decrease the vulnerability of the electric grid to terrorist attacks, cyber threats, electromagnetic pulse weapons, and geomagnetic solar storms, by authorizing the Federal Energy Regulatory Commission to take measures to address known and potential vulnerabilities.

The Commission also provided seventy five unclassified recommendations, mostly directed at the Department of Homeland Security (DHS), intended to mitigate vulnerability and increase resilience of the nation's critical

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infrastructures. Unlike the response of the DoD, there has been no detectable resonance as yet out of the DHS. While the Commission discovered a number of competent and knowledgeable individuals in the Department, particularly those who had been associated with management of the National Communications System at the time it was absorbed into the DHS, it was difficult for the Commission to find anyone at the "confirmed level" of management authority in the Department whose responsibility it was to establish policy and direction for EMP matters. As a result, the Commission's recommendations seem to have simply languished.

Along with ignoring Commission recommendations to DHS, the Commission noted a significant disconnect in the Department's planning response for nuclear terrorism. A "smuggled in" nuclear device and ground level detonation is one of the fifteen planning scenarios around which the DHS had organized its planned disaster response, which included the allocation of billions of dollars towards development of sensors that might interdict such devices at ports and other entry points. However, there has been no discernible planning that considers whether the same nuclear device might not be launched from offshore to produce an EMP, with no need to engage the dangers of detection at point of entry. While the smuggling scenario properly requires attention, once the intent to do harm with a nuclear weapon has been accepted by DHS, there seems little justification for ignoring one component of the threat.

Protection of the nation's critical infrastructures from an EMP threat is both feasible and well within the Nation's means and resources to accomplish. A number of these actions also reduce vulnerabilities to other serious threats to our infrastructures, thus giving multiple benefits. It is not feasible to reduce the consequences of an EMP attack to an acceptable level of risk by any single measure. However, in the view of the EMP Commission, it is possible to achieve an acceptable level of risk and reduced invitation to an EMP attack with a strategy that integrates several significant measures:

- Pursuing intelligence, interdiction, and deterrence to discourage EMP attack against the US and its interests;
- Protecting critical components of the infrastructure, with particular emphasis on those that, if damaged, would require long periods of time to repair or replace;
- Maintaining the capability to monitor and evaluate the condition of critical infrastructures;
- Recognizing an EMP attack and understanding how its effects differ from other forms of infrastructure disruption and damage;
- Planning to carry out a systematic recovery of critical infrastructures;
- Training, evaluating, "Red Teaming," and periodically reporting to the Congress;
- Defining the Federal Government's responsibility and authority to act;
- Recognizing the opportunities for shared benefits;

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- Conducting research to better understand infrastructure system effects and developing cost-effective solutions to manage these effects.

I wish to thank the Committee for this opportunity to present my views of this most important issue

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Statement of
Colonel Randall J. Larsen, USAF (Ret)
August 4, 2010
Senate Judiciary Committee
Subcommittee on Terrorism and Homeland Security

Thank you for the opportunity to share with you my thoughts and perspectives on America's state of readiness to respond to biological terrorism--and let me be direct—America is not prepared.

Mr. Chairman, since 1994 I have been studying both the threat of bioweapons and the technologies, organizations, and systems required to defend our cities, our communities, and our families. America has spent a lot of money in the past 16 years in the name of biodefense, but progress has been incredibly slow, disjointed, and misdirected. This lack of progress leaves us highly vulnerable. This vulnerability will increase in the years ahead as the biotechnical revolution provides capability to a growing number of non-state actors, both foreign and domestic.

I speak today on my own behalf, but based on knowledge I have acquired during the past decade. I previously served as the chairman, Department of Military Strategy and Operations at the National War College and the founding director of the Institute for Homeland Security. Last year, I served as the executive director of the Congressional Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism, and currently serve as the CEO of the WMD Center, a not-for-profit research and education organization that former Senators Bob Graham (D-FL) and Jim Talent (R-MO) created as a follow-on to continue the work of the WMD Commission—and there is much work to do.

As you know, The WMD Commission Report Card released on January 26, 2010 gave a failing grade to America for preparedness to respond to bioterrorism. Senators Graham and Talent thought this might be a wake-up call for the Administration and Congress. That has apparently not been the case. On July 1, the House of Representatives voted for a raid on the BioShield Strategic Reserve Funds (SRF). In a letter to President Obama, Senators Graham and Talent stated that removing funds from the BioShield SRF would "drive a stake through the heart of America's fledgling biodefense program."

The White House remained silent on the issue, but thankfully, a bipartisan effort in the U.S. Senate halted this attempted raid. This was not the first attempted raid on this vital national security program, and it will not likely be the last. While troublesome in itself, it is really a symptom of a much larger problem. Many leaders in this town, both Democrat and Republican, fail to understand the growing threat of bioterrorism.

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That was best demonstrated when the bipartisan leadership in Congress created the WMD Commission. The words biology, biological, and bioterrorism did not appear in the enabling language. It was as if the U.S. Congress thought WMD was an acronym for nuclear.

I was not part of the Commission's first year of work, and had no input to their December 2008 report, *WORLD AT RISK.* But since the term "teachable moment" has become popular in this town, let me explain the teachable moment from that report.

With enabling legislation solely focused on nuclear weapons, nine commissioners with strong backgrounds in national security and nuclear weapons, and a staff of 30-- with only two members with bioweapons backgrounds--one could have expected a report primarily focused on the nuclear threat. However, when nine highly-respected national security experts took the time to closely examine the WMD threat, they came to the unanimous conclusion that bioweapons were the more likely threat. They got it, but I am not sure that Congress and the Obama Administration do.

The Department of Justice Inspector General Report, released in May of this year, stated that the Department was poorly prepared to perform the duties assigned by Emergency Support Function 13 of the National Response Framework—"coordinating federal law enforcement activities in response to a critical incident, such as a WMD attack, and for ensuring public safety and security in the event an incident overwhelms state and local law enforcement." I was not surprised with this assessment. This critique was one additional example of the deficiencies highlighted in the Commission's failing grade.

The underlying cause for this failing grade is exactly the same across the board in all departments and agencies—leadership, to be precise, lack of leadership. Nowhere is that more evident than in the Department of Justice (DOJ). The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) was designated as the lead DOJ agency for WMD response, and yet, ATF has not had a director for more than four years. That makes a pretty easy argument for lack of leadership—both at ATF and for those responsible for putting a director in place and ensuring DOJ was ready to respond.

Unfortunately, this lack of leadership goes all the way to the White House. Both the Clinton and Bush Administrations had a Special Assistant to the President for Biodefense to coordinate efforts across the federal government. The Obama Administration eliminated this position and the Biodefense Policy Coordinating Committee that was the forum to ensure that US Government was focused on the problem. This leadership and senior-level coordination deficiency is critical since there are more than two dozen Presidentially-appointed, Senate-confirmed individuals in the executive branch with some responsibility for biodefense. However, no one has it for a fulltime job, and no one is charge. Perhaps that is worth repeating.

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There is not a single Presidentially-appointed, Senate-confirmed individual with fulltime responsibility for leading America's biodefense efforts. More than that, there is no place in the executive branch, other than in the person of the President himself, where the various lines of authority converge on a single individual. Imagine how these facts will read when some future Commission investigates the failed response to a biological attack on our homeland.

That, Mr. Chairman, is what I see as one of the two primary reasons for the failing grade assessed by the WMD Commission, and I have seen no perceptible progress on this issue in the past six months.

The second reason that resulted in a failing grade is the lack of understanding of the threat of bioterrorism. I am firmly convinced that if senior leaders in Congress and the Administration understood the threat, as Senators Graham and Talent do, we would be acting differently and aggressively addressing the vulnerabilities that confront us today.

I recommend all members of Congress and key leaders in the Administration receive the Department of Homeland Security Population Threat Assessment briefing. Frankly, I would not waste your time by recommending a briefing by the Intelligence Community (IC) on the subject of bioterrorism. They would tell you they have little or no information of any terrorist group developing biological weapons capability.

That should not be surprising. During 15 years of the cold war, the IC failed to appropriately identify the massive Soviet biowarfare program that consisted of 50,000 scientists and technicians working in scores of laboratories across 10 time zones. (This was the size of the Soviet's offensive biowarfare program after they signed the Biological Warfare and Toxin Convention.) The IC also missed al Qaeda's anthrax programs in Afghanistan and Malaysia, and they missed the Aum Shinrikyo biowarfare and chemical weapons programs. Thankfully, both of the Aum's weapons programs were plagued with technical errors when they went from small-scale to large-scale production.

Do we really think there is a high probability the IC will find a half dozen individuals working in a make-shift laboratory (standard bio lab equipment purchased on the internet in a facility no larger than a two-car garage) in a remote village in the tribal regions of Pakistan or Sana, Yemen or the suburbs of New York City? That is the size and scale of a facility required to produce bioweapons, according a study (BACUS) done by the Defense Threat Reduction Agency in 1999 that determined there would be no perceptible "intelligence signature" of such an operation.

For the threat of bioterrorism, the IC can provide us with sound strategic intelligence information on intent, but very little tactical level information: status of a bioweapons program of a specific terrorist organization or the time and location of a planned attack. That is why the Department of Homeland Security's Population Threat

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Assessment, which demonstrates capability, is the most valuable briefing you can receive.

I think we all understand that there are people and organizations out there that want to kill large numbers of Americans. The WMD Commission said there are two ways to do that, nuclear and biological, and by far, biological is easier. If the senior leaders in the Congress and Administration understood the biological capabilities now available--and even more troubling, what will be available in the next couple of years--to small terrorist groups, there would be no requirement for hearings such as these. Biodefense would be a top priority, and we would be making rapid progress in defending our cities, communities, and families.

Mr. Chairman, for the nation to effectively deal with the biological threats facing us, it is imperative that those responsible for shaping the strategy understand the true nature of the threats. The best way to improve this subcommittee's understanding of the threat would be for all members to receive the Population Threat Assessment briefing prepared by Dr. Elizabeth George at the Department of Homeland Security's Office of Science and Technology.

Senators Bob Graham and Jim Talent concur with this recommendation and asked me to tell you that one of the most important briefings they received during the two years of the WMD Commission was the Population Threat Assessment.

While my focus today has been on the capability to respond to a biological attack, I will close with one thought about DOJ's responsibility under ESF-13 of the National Response Framework for response to an attack with an improvised nuclear device (IND).

According to a two-year study by Brooke Buddemeier from Lawrence Livermore Laboratory, and work by the Center for Biosecurity-UPMC, the casualty figures from an IND in a large city, such as Baltimore, could be reduced by several hundred thousand--in some cases up to 500,000--if people took the proper actions. That is more Americans than died in World War II, the Korean War, and the Vietnam War combined. Law enforcement would play a major role in this effort and DOJ has the lead for the Federal government. If the leaders in DOJ and ATF understood how many lives they could help save, they might put a higher priority on their assigned mission.

Mr. Chairman, Senators Graham, Talent and I formed The WMD Center with two primary missions: First, because the threat of bioterrorism is increasing, we want to do all we can to assure that senior leaders across all levels of government—federal, state, and local--fully understand that threat and the actions needed to counter it. That is why Senators Graham and Talent wrote an op-ed for yesterday's Washington Post and why I am here today. Second, we want to ensure that America continues to build its capability to respond to acts of bioterrorism, so we will issue a second report card early in 2011. We sincerely hope that we will be able to assign a passing grade at that time.

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