DRAFT—1 JULY 2010

Advisory Panel on Department of Defense Capabilities for Support of Civil Authorities After Certain Incidents

MEETING MINUTES

DAY ONE: JUNE 2, 2010

LOCATION: RAND WASHINGTON OFFICE, ARLINGTON, VA

PERSONS PRESENT1:

Panel Members:

Steve Abbot

Jim Carafano

Dennis Celletti

Jim Greenwood

Jerry Grizzle

Ron Harrison

Frank Keating

Tim Lowenberg

Jim Metzger

George Nethercutt

Fred Rees

Dennis Reimer

Erv Rokke

OSD Staff:

Cathy Polmateer, Designated Federal Officer (OASD-HD&ASA) Manny Aponte (OASD-HD&ASA)

RAND Staff:

Mike Wermuth

Gary Cecchine

Andrew Morral

Scott McMahon

Nate Shestak

Keith Martin

¹ The following list includes all persons who were present in an official capacity, regardless of whether or not they stayed for the entire day's session.

Several members of the public were also in attendance

The meeting commenced with a call to order and welcoming remarks by **Chairman Steve Abbot**. He highlighted the preparatory reading materials put forth by the RAND staff and noted that this meeting would emphasize the chance to speak to key representatives from organizations other than the Department of Defense.

James Metzger asked if there was a plan in place to hold another meeting. Mike Wermuth responded that, while there is no meeting currently scheduled, if the panel were to feel strongly in favor of it, RAND is certainly amenable. He also mentioned the possibility of a "roll-out" meeting when the report is being finalized. He made a few other administrative announcements and called the panel's attention to the drafts of the recommendations and the candidate questions for the witnesses.

The **Chairman** called for motions to adopt the subpanel meeting minutes from March.

George Nethercutt noted Tim Lowenberg's email request to amend the meeting minutes from the full meeting of the panel on March, specifically passages on page 2 and page 11, whose content related to testimony given by Carl Wagner and the involuntary mobilization of Title 10 forces. Nethercutt moved to adopt the amendment proposed by Lowenberg, then moved to adopt the minutes as amended and Dennis Celletti seconded the motions. Both motions passed with all in favor and none opposed.

The **Chairman** asked for a motion to adopt the minutes from subpanels 1, 2 and 4 meetings in March. Each of the meeting minutes was adopted in turn, with each motion passing with all in favor and none opposed.

The **Chairman** then welcomed **Dr. Vahid Majidi**, Assistant Director, Federal Bureau of Investigation, Weapons of Mass Destruction Directorate.

Majidi opened by stating that while he speaks on behalf of the FBI, there is a significant amount of machinery behind him. He welcomed the panel's questions and noted that since he has a "30,000 foot view," he might have to get back to the panel with further details on very specific questions.

Frank Keating opened questioning by highlighting the recent negative press surrounding the Alcohol Tobacco and Firearms division within the Department of

Justice and a recent Inspector General's report that was critical of the FBI. Majidi responded that he was reluctant to speak at length on the subject because he works at the FBI, not the ATF. He noted that the report perhaps does the DOJ a bit of a disservice. He also highlighted the fact that the terminology and lingo used within the beltway is not often well understood in the field offices. Finally, he noted that when it comes to a terrorist incident with WMD, the FBI is in the lead. ATF is not. There is a need for more involvement from DOJ, but from his perspective, they have done what they are supposed to have done.

Metzger asked about the critical incident response group within the FBI, specifically inquiring about their role and their size. Majidi responded by saying that while he does not know the exact number, the group numbers in the hundreds. It responds to critical incidents, and they have a number of units—tactical teams, teams that can render CBRN items safe, units responsible for critical communication, etc. They are forward deployed in any case of a critical events scenario.

Metzger asked if these units train with some of the other special CBRNE response units such as CCMRFs and CBIRFs. Majidi responded by saying that while some of the answers to such a question are sensitive, a great deal of the schools that train aforementioned units also do the train the FBI. The FBI engages DoD extensively with regard to training. Because of sensitivity issues, Majidi made a deliberate point of not saying which particular units engage in this sort of training and with whom they train.

The Chairman asked about Majidi's view of DoD's support to various agencies. Majidi responded that DoD interaction is very positive, even in the face of interdepartmental challenges. When it comes to CBRNE response, the DoD and FBI work hand in hand on many issues, with the premise that DoD is in support of the FBI in the case of domestic issues. He specifically lauded this support when it comes to technical nuclear forensics, the use of DoD resources, DoD lift [transportation] of FBI when needed, and the use of DoD devices and instruments. The FBI counts on the DoD's CSTs quite extensively. While the two departments have had their differences – the 2001 anthrax mailings for example – their working relationship has improved significantly.

Nethercutt asked **Majidi** if he feels that the FBI is adequately informed of the relevant authorities that deal with the actions of the FBI in the event of one of these incidents. **Majidi** responded by saying that the applicable US Code sections are very well understood by everyone in the FBI. He noted that the relevant HSPDs and NSPDs are also well understood, but the designations themselves are not well

known. For example, he felt that understanding the action plan described in HSPD-8 and knowing exactly what to do when something happens is far more important than knowing that this plan emanates specifically from HSPD-8. Certain executive orders are very well understood. The final category of authorities—those involving programs within the Office of the Director of National Intelligence (ODNI)— are very well known in terms of their content and their responsibilities, but again, nomenclature used within the beltway doesn't always translate well to the field offices.

Dennis Reimer then discussed the intelligence piece of the FBI's job and asked if **Majidi** is able to put a demand in the system for intelligence requirements. **Majidi** noted that the FBI owns the Joint Terrorism Task Forces (JTTFs) that work on this issue. Every FBI field office has a local JTTF. Many JTTFs have people from the FBI WMD Directorate in them. **Majidi** noted that he has the opportunity to sit around the table with the director of the FBI and submit his office's collection priorities. FBI entities make sure that items that are truly critical to the success of a critical mission make it into final collection priorities.

Reimer asked whether information was properly flowing from top to bottom and bottom to top. Majidi noted that it is disingenuous to say that everything is working just fine because they are operating a massive machine with a lot of competing requirements. Counterterrorism, counterintelligence, criminal, and other collection requirements are all competing for resources. He then offered a glimpse of the structure of the intelligence component to the FBI and concluded that his office works on "finished products" with regard to intelligence.

Rokke asked if the witness was comfortable with a traditional, linear intelligence apparatus, which was originally based on a Cold War environment. He followed this question by asking about the potential challenges posed by the fact that the FBI has quite different ground rules for collection compared to DoD intelligence collection and this difference has in the past made it difficult to pass information legally. Majidi began his response with the caveat that since he is not an intelligence professional, he is somewhat out of his element. Nonetheless, he again offered an overview of the intelligence picture at the FBI, highlighting that the tactical and operational specialists deal with intelligence that develops very rapidly. This intelligence is not necessarily shared with everyone, but Majidi stated that he does not think that all of it should necessarily be shared with everyone. He noted that while he cannot fully comment on whether or not he is comfortable with how the system works, the way the FBI does things seems reasonable to him. In response to the Rokke's second question, Majidi stated that the FBI has all the legal authorities it needs for the passing of information. When

an organization claims it did not receive information from the FBI, what often is meant is that a specific component of the organization did not receive information from the FBI, but information was likely injected into that organization at some point in time.

Nethercutt asked Majidi to discuss his office's relationship with DHS. Majidi responded by saying that DHS is a giant organization and that the FBI has developed a significant partnership with various components of DHS. He can only comment from a WMD perspective. The DHS components that are engaged with his office are organizations that he uses for information sharing and indicators. While there are some friction points, the relationship is generally good.

Keating asked Majidi to what extent his office is involved in training state and local officials and first responders in CBRNE response. Majidi responded by saying that when it comes to dealing with local law enforcement, his directorate actually prepares its intelligence so it can be relayed to local levels, including an effort to bring down SECRET level documents to a "law enforcement sensitive" classification. A significant portion of his office's funding goes to training. It is absolutely essential to make sure that training local law enforcement is done effectively. There are numerous training programs and courses directed to state and local law enforcement.

Celletti asked Majidi whether he sees any gaps in DoD capabilities that it should be addressing. Majidi responded by saying that his office has identified gaps. He's personally met with OSD to identify areas where DoD could be a better team player with the FBI. Through OSD, they are addressing some of these issues. When pressed by Celletti to identify specific gaps, the witness stated that he was hesitant to do that because it would be unfair to DoD since it is currently working on them.

Rees asked if there is any special effort to see that DoD works with high-level state and local authorities. **Majidi** turned to his special assistant, **Jim Rice**, who stated that they have a very close relationship with actors at all levels, especially state and locals. He has personally worked with CBIRF. He sends his tactical people down to Ft. Bragg to work at the tactical level, and he always has maintained an active exchange program at all levels.

The **Chairman** asked **Majidi** if he could provide the panel with any insight as to how the government could improve its performance in the wake of a WMD incident given the complexity of organizations working on the issue. **Majidi** responded by highlighting three pieces: first, exercises are important to gauge

readiness. Second, actual events that occur offer insight into the state of readiness. The third item is embedding personnel in other agencies. Embedding needs to happen more. Perhaps DoD can send FBI more personnel.

Majidi was thanked for his time by the Chairman and the rest of the panel.

The **Chairman** introduced Governor **James Douglas** of Vermont and Governor **Chris Gregoire** of Washington. Both serve as co-chairpersons of the Council of Governors.

Gregoire opened by stating that their agenda and responsibility is to safeguard people and property of their states. She offered some background and history on the creation of the Council of Governors. She also noted that having looked at section 1082 of Public Law 110–181, it would appear that the Congress has given the Council of Governors similar responsibilities to the panel, but unlike the panel, their work would not conclude in September.

Douglas noted that they met Secretary of Defense Robert Gates, Secretary of Homeland Security Janet Napolitano and other federal participants at the Pentagon in February and will likely meet with the Secretaries and other federal representatives at the next Council meeting in July . The witness also noted that the Council of Governors decided to set up five subcommittees focused on the following areas:

- Unity of effort
- CBRNE response forces
- Recapitalization of Army and Air National Guard
- End strength, full time staffing, and accounting for students and other temporarily non-deployable personnel
- Military construction

He noted that the adjutants general of the states on these subcommittees also support the Council's work.

Gregoire noted that at the council's first meeting, shared responsibility was agreed upon. Their emergency powers transcend that of the President. She discussed her authorities and stated that when she, as commander and chief of her state, elects to deploy military force, her decision is final, incontrovertible, and unimpeachable.

Douglas then stated that Governors are directly affected by the authorities and capabilities of DoD so it is important that they can depend on National Guard forces, including CERFPs. They look forward to the implementation of the HRFs, and Gregoire's forces will lead the development of these units.

Gregoire noted concerns about the adequacy of DoD's interaction with other federal agencies. They have little or no information about the capabilities of federal components, and there is little in the way of sharing of plans.

Douglas then noted that he hopes and expects that the formation of the Council of Governors will address some of these problems. He also noted that the National Governors Association wants Title 10 forces to operate under the tactical control of governors.

Gregoire highlighted that when Arnold Punaro was asked about this issue (Title 10 forces) before the panel, he said that DoD had a cultural resistance to allowing the governors such control. She noted that the US had signed a Canada-US agreement that places US forces under Canadian tactical control. OSD general council reviewed the plan and approved it for signature by Gen. Renuart. During the 2010 Olympics, DoD committed to giving tactical control of US forces to Canadians, but was unwilling to do so for U.S. governors.

Douglas discussed decisions made about dual use equipment and how little the Council of Governors and adjutants general are consulted on this issue. There is not enough information sharing between the DoD and the Council of Governors and adjutants general. When representatives of the National Guard Bureau are invited in to decision-making forums, they are required to sign non-disclosure statements pledging not to share the information with the governors or adjutants general.

Gregoire turned to the topic of CSTs and noted that the Council of Governors believes that a determination about the location and number of CSTs should be based on population, population density, an informed threat assessment, and consideration of response time. The CSTs should be right sized. CSTs are currently organized only one man deep so that there is no allowance for unexpected absences. However, if each CST were augmented by 5 persons, there would be room to allow for unexpected absences, cross training, promotion, and preparation for next deployment. Finally, CST equipment is becoming dated and should be upgraded.

The **Chairman** thanked the Governors for their opening statement. He posed the first question, asking the witness' view of the adequacy of agreements between states for support in the event of a CBRNE incident. **Douglas** stated that during the 2005 hurricanes, virtually every state provided some National Guard resources to the Gulf Coast states at one point in time. Vermont sent military police. Washington sent air support. **Gregoire** added that sending this support took no more than a telephone call. Other states sent supplies. In effect, the governor is in the position to make that determination and provide National Guard assets.

James Carafano asked whether or not the Governors know of any organization that has a repository of continuity of government plans within DoD. **Gregoire** stated that they have very little contact with DoD on this front. She said she always felt that if she was not capable, she could call on fellow states or call the President and ask for DoD assistance. In the meantime, she spent five years prepping for the Olympics and at no time was there ever a sharing of plans and at no time was TACON given to governors.

James Greenwood asked the Governors how confident they are that states have plans on how to respond to a biological attack and if and when to call in DoD. Douglas responded that he feels confident in his emergency planning efforts in Vermont. With help from DHHS, he had an exercise on biological events in his state, and he feels good about the planning effort. There is always room for improvement. He also noted that he did an exercise with Canadian forces. Gregoire noted that they exercise on an annual basis and have also done regional and cross-border exercises. Like Douglas, she is hesitant to say that she is perfectly and completely confident for being ready for anything. However, the Olympics prepared her well and taught her a lot. There exists a need to continue to do tabletop exercises and live exercises. Overall, she stated that she feels confident, but she takes nothing for granted. She noted the need to remain vigilant every day.

Rees asked the Governors if they would be comfortable to share their plans with DoD through working with the National Guard and the adjutants general. **Gregoire** responded by saying that her adjutant general has had contact. She stated that she believes that sharing is critical, but there is a bit of reluctance on behalf of governors to share when they are not being shared with in return. However, she noted that the first meeting with Secretary Gates and Secretary Napolitano was very productive. They showed concern on this issue, and she is cautiously optimistic that this will change. **Douglas** seconded this statement.

Keating asked the Governors about the challenges associated with having a

potentially incompetent civilian authority at the state level. **Douglas** responded that governors are elected by all of the residents of their states and if that service is unsatisfactory, there is a remedy at the ballot box the next time around. He noted that he has seen what Keating was referring to, but he felt that we have to respect who is in charge. He stated that, by and large, governors are developing the leadership capability to fulfill these responsibilities. **Gregoire** noted that she took the appointment of her adjutant general extremely seriously—it was her first appointment—and that she is held accountable by the public.

Nethercutt asked if the Governors had recommendations on the disconnect regarding plan sharing. Gregoire responded by saying that out of the five subcommittees, she and Douglas co-chair the unity of effort subpanel. This is a critical issue. The DoD goes to Capitol Hill and asks that legislation be passed that allows them to take over the governors' authority in the event of a disaster. Every single governor opposes this. Secretary Stockton put a new idea on the table in the form of the "direct support initiative." However, the governors do not care for this idea all that much. She noted the need to resolve this issue but stated that it involves more than just sharing plans. To have DoD come in without coordinating and just take over is not something governors will ever accept. Douglas stated that the relationship has not been as cordial as it might be. Every year the governors pass a resolution asserting the governors' roles and authorities and DoD sees things a different way. It remains a major point of friction.

Celletti described a scenario of a multiple state incident in which there is a fear that one state might not send sufficient resources to another state out of concern that its state might be affected by the same or similar incident and find itself unprepared. Douglas responded that Utah and New Hampshire each at one point had roughly 75% of their National Guard deployed overseas and shortly after that a protocol was worked out whereby no more than 50% of a state's National Guard forces should be deployed at any time, to preserve capabilities in each state. He stated that he felt that there are certainly plenty of assets deployable. Gregoire responded that early in her first term, she had drought conditions and potentially looming forest fires. During this incident, much of Montana's National Guard was deployed. An agreement between the two states was reached whereby each state could pull its forces out of a state if it became overwhelmed back home.

Celletti noted that such a concept almost falls under the same constructs as the HRFs. He then asked if the Council of Governors were comfortable with the HRF structure. **Gregoire** stated that she embraced the idea. Along with Ohio, Washington is going to help lead in the development of HRFs. **Douglas** then

discussed the flooding and Vermont and New Hampshire. While they did not involve the National Guard in either case, there was a lot of interstate cooperation.

Harrison discussed the possibility of a large turnover in governors and asked how they might best be trained on CBRNE response with respect to the federal government. Douglas acknowledged that a big turnover is predicted. The National Governor's Association has a seminar for new governors. While it has not involved a specific session on these issues in the past, it plans to have one this year. Gregoire agreed that the concern is well placed.

Jerry Grizzle asked the Governors if they believe that every state should have a CST. Gregoire stated that the primary concern right now is that the ones that we have are adequately staffed and funded before we think about adding any others. She suggested adding five people to each one and updating the equipment first. She also suggested looking at population density and risk. In response to concerns over whether a "small" state needs a CST, Douglas added that the he fears a scenario in which al Qaeda operatives are directed to strike New York City but are redirected to hit a softer target along the way.

Metzger asked the Governors to comment on a scenario where a 10 kiloton nuclear device is planted in Lincoln tunnel between NYC and NJ. OPCON is given to USNORTHCOM and the adjutants general of NYC and NJ have TACON. Gregoire responded by saying that she hopes that in this scenario, unlike what has happened historically, there would be a call between the governors and the President and that they would work it out. The position of the Council of Governors is that the governors have TACON. If the capability that is needed is thousands of miles away, then a conversation needs to take place between the governors and the President. Douglas responded by saying that states will work together and each individual case will differ. His hope is that the Council of Governors will be able to come up with a more specific answer.

Carafano noted that USNORTHCOM seems to be moving toward a model of anticipatory response, which sounds great, but they do not always anticipate wisely. He stated that it does not seem that the DCO/DCE is the best tool for this job because they lack capacity and expertise. He asked for the witnesses' thoughts on anticipatory model and DCO/DCEs. Douglas responded that they have not talked about these questions as a Council of Governors yet. The DCO in their region was well-trained. Gregoire stated that while she finds the concept very interesting, she has never interacted with a DCO in her six years as governor, and she has overseen a number of disasters.

The Chairman stated that based on his own military experience, the US military has generally benefited from a very systematic planning process where the potential for a particular scenario to occur was thought through actually to the point of deciding what resources would be needed. The plans that were developed were shelved and rarely ever utilized, but the fact that the thorough coordination and planning took place substantially improved the crisis response.

Douglas and Gregoire were thanked by the Chairman and the rest of the panel.

The panel then held a working lunch with LTG Guy Swan, Commanding General, U.S. Army North (Fifth Army). The Chairman introduced Swan, highlighting the detailed SITREPs produced by him during his time in Iraq.

Swan opened by stating that this was his third opportunity to serve within the USNORTHCOM family. He has had great mentors from National Guard with the adjutants general. He considers himself a friend and advocate of the Guard. He offered a brief background on US ARNORTH, noting that it was formed in 2006. He stated that ARNORTH's mission is to conduct:

- Homeland defense
- Civil support operations
- Theater security cooperation activities

In October 2008, his office stood up USNORTHCOM's Joint Force Land Component Command. It created a culminating training event at Ft. Leavenworth, which puts leaders through a scenario involving a 10 kiloton nuclear device. Last November, ARNORTH had a CBRNE training exercise in central Indiana with the Indiana adjutant general. In this event, they brought in the entirety of a CCMRF. They plan to conduct another exercise involving another CCMRF at the end of July and he welcomed the panel to observe the training exercise July 12-20.

From **Swan's** perspective, CSTs are a national treasure. They represent the best trained force for reconnaissance and determination of the extent of a CBRNE incident. Each CST is evaluated and trained by ARNORTH on a recurring basis. He gave further metrics on the number of training events conducted by various special units, including CSTs, CERFPs, and CCMRFs, over the past year.

Swan noted that the transition from CCMRFs to HRFs will require continued training by Civil Support Training Activity. ARNORTH also helps run the DSCA course that USNORTHCOM offers to train local authorities all the way up through

federal responders on how DoD supports civil authorities. FEMA has recognized the value of this course. The course has also been tailored to specifically train the CCMRF.

Swan turned to the DCO/DCE program, describing it as DoD's critical link between DoD and local level authorities. DCOs are permanently co-located with FEMA staff. It is his office's responsibility to maintain a high state of readiness among DCOs. He gave further statistics on the total number of exercises involving the 10 DCOs, all of whom are colonels and all of whom are handpicked former brigade-level commanders.

Swan discussed command and control of response forces and how this is run through Joint Task Force-Civil Support (JTF-CS) or one of two Contingency Command Posts (CCPs). He spoke about the 167th Theater Sustainment Command, Alabama National Guard, a multi-component headquarters dedicated to coordinating the sustainment demands for any incident and for conducting JRSOI for major exercises.

Swan discussed two areas where the panel's review and recommendations may assistant the USNORTHCOM Combatant Commander in the conduct of his mission. The first is access to the Service [Title 10] Reserve Forces—as opposed to the National Guard. Second is what he perceives as gaps in what the Army should be providing to a domestic theater as enablers—theater-committed intelligence and signal capability.

Swan thanked the panel for the opportunity to speak and welcomed questions.

Celletti opened by noting how there are very few training events or sites to support mass exercises. In light of this, he asked Swan if he supports additional training sites. Swan responded that they have invested heavily in these sites and that their goal would be to train regional response forces at a big site in their region so that they can train with regional first responders and authorities rather than train somewhere very distant. He agreed with the need for more sites capable of hosting mass training.

Nethercutt referenced Gregoire's earlier testimony about the lack of interaction from her DCO and asked Swan's thoughts on the level of interaction from DCOs. Swan responded that DCOs don't normally interact with governors. He noted that it varies by region and highlighted the excellence of the DCO for South Carolina. He said he would not take the state of Washington as the example for the whole country.

Greenwood asked what Swan thinks of the push from DoD to get TACON over state forces. Swan responded by saying that the issue of command and control comes up frequently. He does not see himself going in and taking charge of anyone in a given state. He said that he is always operating in support of a lead federal agency. In most cases, that is FEMA. He works collaboratively with National Guard forces and noted that he would never do anything that runs counter to what the governor or the incident commander is trying to accomplish. The debate of command and control will continue as each incident is different. A parallel command structure exists in some cases.

Metzger asked if CCMRFs and CSTs use the same equipment. He also asked about the extent of standardization of equipment among all of these special CBRNE response forces. Swan stated that over the past couple of weeks, he has sat down with representatives from USNORTHCOM and other stakeholders and has built a joint mission essential equipping list. He stated that he is not satisfied with the current state of equipping. He noted that some equipment is commercial, off the shelf and there is a lot work that needs to be done to make it all interoperable.

Rokke discussed how civil authorities are not providing crisp, specific requirements for the support that DoD is expected to provide. He asked a) to what extent does this hamper DoD's effectiveness and b) if civil authorities were to come up with such a list, would DOD have enough slack in terms of operational tempo to fulfill the requirements that it likely would contain.

Swan responded twofold:

- 1. Whether or not we are getting what we need quickly enough varies by event. In the event of an incident, the DCO will actually validate the requirement and send it up through the chain for DoD approval. This process has streamlined dramatically since Katrina. The most important thing is to get that mission assignment into the hands of the DCO. Swan stated that he is confident that this is improving.
- 2. With regard to tempo and overseas operations, overseas operations definitely have an impact on these forces. He would like to see a closer relationship between these forces and the USNORTHCOM commander. He stated that if we can get allocated and dedicated forces in place for somewhere between six months and two years, we would be in better

shape. Giving a USNORTHCOM commander whatever is available in the event of one of these incidents is not the best way to go.

Keating asked about interstate events and whether or not they are sufficiently modeled and murder-boarded. Swan stated that he has seen a greater emphasis within USNORTHCOM to anticipate response missions. The aim is to share information and to share where there are gaps. He stated that we have never seen the level of transparency that we're seeing today. The USNORTHCOM commander is given significant authority to move and preposition things at no cost to the state. Still, he could use a little more congressional and budgetary authority in the future. He made a particular point that he was not usurping any state official in any way. He would never second guess an elected official; his job is to make them look good.

Rees asked two questions:

- If there was any concern on behalf of governors about the planning process. He asked what role the National Guard plays in this process.
- 2. If there needs to be a significant change in programming to make sure that what is needed gets fully resourced.

In response to the second question, **Swan** emphasized that any additional mandates and responsibility must come with additional resources. If we want to make the CSTs successful, we need to fund them, train them and man them full time. We must make sure the resourcing is commensurate with the importance. The tasks performed by these forces are no-notice, expensive, difficult tasks. You cannot short change them when you give them those missions.

In response to the planning question, the National Guard has run several planning exercises. National Guard leaders laid out shortfalls in a forum so that fellow National Guardsmen could see these shortfalls and anticipate the needs of their fellow states in event of a future incident. He stated that when it comes to hurricane planning, we are far better than we used to be a year ago.

Swan was thanked for his time by the **Chairman** and the rest of the panel.

The Chairman welcomed A.D. Vickery, David McBath, and Jamie Turner, members of the InterAgency Board (IAB) of Equipment Standardization and Interoperability.

McBath stated that the job of the IAB is to make sure everybody has the tools needed to get the job done. The key is to ensure that everyone is "talking the same language" and using equipment that is interoperable. The IAB has worked to improve operability since its founding in 1998. It was conceived out of a concern that nation's first responders were not doing a good enough job on equipment standardization. They have created a standardized equipment list. He offered further background on the IAB and then invited questions.

Nethercutt opened by asking the IAB officials to assess the overall equipment readiness of first responders across the country. Vickery stated that it is important to keep in perspective where we started after 9/11 and where we are now. In big, densely populated areas, we are probably at 70-75% percent readiness. Rural America is not prepared. From a strategic standpoint, it is lower risk and thus not the best place to push resources. However, you also need to push equipment into a place that can sustain the equipment.

Nethercutt asked if the 25% that is not ready is a function of money, attention, or lack of concern. Vickery stated that the 25% figure emanates from the sustainment component. The development and evolution of risk and threat is changing constantly, which makes it extremely difficult to get to 100%. Another area to explore is how to get citizens to prepare themselves. In major, high density populations, the ability of the civilians to care for themselves is a challenge. He stated that he thinks Swan "gets it." In terms of the CBRNE spectrum, Vickery stated that a chemical attack necessitates a very quick response. In the event of a radiation, we are very poorly educated. A nuclear event will require DoD because many resources will be gone, vaporized. For a biological attack, he is not sure America can be mobilized quickly enough. It is going to require DoD resources. He stated that his folks do not drill together enough, exercise together enough, and plan together enough with DoD. In terms of high yield explosives, we are gaining expertise in Iraq and Afghanistan. While most exercises are table-tops, there is only so much a table-top can do for you. The DoD will not buy their participation so they do not train together enough. Overall, though, he feels that DoD is a great partner. Vickery stated that he does not have enough resources unless he partners with DoD. He feels that we are getting closer on equipment, but much more progress must be made and be made rapidly.

Reimer asked if we should be adopting a tiered approach to training. **Vickery** agreed with Reimer wholeheartedly. He felt that there should be a couple of national training centers where we can leverage DoD training facilities and it should be all hazards, not just terrorism.

The **Chairman** asked about the total number of first responders in the country. **Vickery** noted that most firefighters are volunteers. **McBath** stated that there are approximately 750,000 policemen in the country. However, the average police department is quite small: 12 people. He has worked a great deal with CSTs and both sides found the collaboration quite productive.

Keating asked about difficulties with interoperability, especially with regard to interstate acquisitions. Turner agreed that purchasing remains an issue. Regionalization of equipment is happening in his area. Vickery stated that there is a DoD model that exists for this problem. DoD has a DoD-wide communication plan. However, state and local forces do not have the resources of the DoD. There is not a lot of money to be made in making equipment that lasts 20 years or more, yet having a long term outlook is critical. There is no simple solution to this problem. McBath then talked about procurement and state contracts and further discussion ensued.

Rokke asked how interoperable we are today with regard to the equipment of first responders. **Vickery** responded that we are much more confident in the equipment, but manufacturers are focused on preserving their proprietary edge and thus interoperability is still slow. From the standpoint of the civilian environment, he cannot operate like DoD. He cannot buy equipment in such large quantity. He felt that we are only 30% interoperable.

Carafano mentioned personal protective equipment and training and certification for responders that are not formal responders (construction workers, etc). He asked:

- 1. Is this an issue that the IAB has looked at all?
- 2. Does IAB see a role for DoD in this grea?

Vickery stated that OCEA has a course that focuses on the training of non-formal first responders and FEMA has tied funding to completion of the course. The IAB does not have such a program itself. If there were to be a change, he would ask the panel to recommend updating a 30 year old training program on this issue.

Vickery, McBath, and Turner were thanked by the Chairman and the rest of the panel.

The Chairman introduced Under Secretary Thomas D'Agostino, Joseph Krol Jr., and Carl Pavetto of the National Nuclear Security Administration, U.S. Department of Energy.

D'Agostino opened by stating that they would speak unclassified about how the NNSA participates in nuclear response teams, its support to civil authorities, and its work in taking care of the nuclear stockpile and underground testing—which helped NNSA develop a capability that is germane to the work of the panel. He then spoke about their nonproliferation program. After that, he talked about a shift in the NNSA from focusing strictly on nuclear weapons to a broader focus on nuclear security. What his agency does is essentially render-safe programs. They possess a dedicated 24/7 technical support capability. Their response teams do not deploy on their own. Rather, they are essentially the glue that provides the technical background to the FBI (CONUS) or DoD (OCONUS).

D'Agostino stated that he thinks the capabilities of his office have evolved nicely over the past nine years. By no means is it perfect; he noted the need for exercises, including table-top exercises, and training programs to maintain readiness. They rely on DoD to provide personnel, surveys, assets, and transportation to move materiel and expert personnel.

D'Agostino concluded by stating radiological material is available and easy to for terrorists or others to acquire.

Greenwood followed up on the final point about the ubiquity of radiological material, asking D'Agostino to comment further on it. D'Agostino stated that he may be slightly less concerned than most people about this issue, and made note of the fact that exposure to this material could kill whoever takes it. There is a robust office of close to 400 federal agents with specialized equipment to move material around.

Metzger asked about the standards for cleanup after an incident. D'Agostino stated that the cost associated with cleanup depends on the level of cleanup desired. He stated that there is the question of reasonableness, which delves into the emotional side of things. How easy will it be to get Americans to move back into a neighborhood that was once contaminated? Krol stated that the biggest problem is that EPA sets the federal standard. EPA standards from the 1970s are extremely stringent. The Congress resists raising those EPA standards to something more reasonable. Pavetto stated that the EPA does have very conservative standards. There is a difficult debate about raising the standards.

Nethercutt asked for any recommendations that might be useful from the panel on this issue. **D'Agostino** suggested investigating this standards question with a cost model. There might be a reasonable cost to achieve a safe level but then costs spiral upward when you go beyond that. **Krol** stated that this is a very, very difficult argument that involves the perception of the public.

The Chairman asked about international elements that might come into the U.S. as a result of a crisis to assist us and our capacity to incorporate them. D'Agostino stated that we have sizeable capability in the US. Russia is the only country close to us in terms of their ability to respond to something radiological. We have very good communication with our counterparts in other countries. We have active engagement at the appropriate level. France and the UK could also provide ample support. However, D'Agostino said that the US does not game this out from an international standpoint. He stated that our focus is to make sure that we have a solid domestic capability that works well. Krol stated that his agency has operated in Mexico and Russia, but the Chairman's point is an excellent one, because the U.S. has not thought about how it might integrate international elements in an incident in the homeland.

Metzger asked the witnesses to comment on a scenario where a 10 kiloton nuclear device is planted in Lincoln tunnel between NYC and NJ. OPCON is given to USNORTHCOM and the adjutants general of NYC and NJ have TACON. He asked what the witnesses would like DoD to do. Krol stated that the FBI is clearly in charge in the case of a domestic event. The NNSA is only a primary support organization. USNORTHCOM would be a major support organization in either case. Even if it was a small incident, it would produce thousands of "walking wounded." No single entity could handle these people without DoD assistance. He stated that the US is not in too bad a shape in this area since USNORTHCOM has participated in national level exercises. It is fair to say that we have a fairly well developed idea of how that would work. There was further discussion as to who would be in charge between Krol, Metzger, Carafano, and Keating.

D'Agostino, Krol, and Pavetto were thanked by the Chairman and the rest of the panel.

The Chairman introduced **David Kris**, Assistant Attorney General for National Security, U.S. Department of Justice, and **Jordan Strauss**, Director of Preparedness and Response for the National Security Division, U.S. Department of Justice.

Kris opened by offering background on his office and position within DOJ, noting that it started by statute in 2006. He stated that his office deals with terrorism, espionage, and other threats to national security. It was overhauled internally and reorganized in 2008. Its main function is to develop synergies that one could get by combining intelligence and law enforcement and connecting the dots. He concluded his opening statement by stating that the statutory framework that exists is basically sound. Still, there is room from improvement and the inspector general noted that.

Keating opened by highlighting the recent Inspector General's report. **Kris** stated that the DOJ agrees with the report and was pleased that his office was commended in the report. **Keating** then discussed recent negative press surrounding the ATF. **Kris** stated that he did not know how ATF became the main actor in ESF-13. He thought that the FBI has developed good relationships with state and local authorities.

Metzger asked the witness' view of DoD in terms of CBRNE support. **Kris** stated that he thinks their CBRNE support is very impressive. If there was one area for improvement, it would be in the process of plans development.

Metzger brought up the issue of Hurricane Katrina. **Kris** stated that the hurricane highlighted the lack of unity of command and coordination challenges. **Strauss** noted that Katrina brought up two key questions:

- 1. Should there have been a different or more effective method for state officials to request federal forces? It is the DOJ's position that it would be problematic for there to be a direct state-to-DoD interface, specifically from a logistical and chain of command perspective.
- 2. Should there have been an insurrection act invocation? There were very significant, high level talks that took place on this subject, and there has been a continuing and healthy debate about whether they should have utilized it.

Harrison asked the witnesses if they could characterize what kind of planning and coordination they do with DHS. Kris responded that if one looks at division of authority in HSPD-5, one sees DHS with primary responsibility for mitigation and dealing with the outcome and DOJ serving in an investigative role. There is a gray area between these roles. He stated that he thinks that overall the interaction and relationship is good; DOJ has a lot of interaction with DHS. Strauss seconded these statements.

Harrison asked about the DoD-DHS relationship. **Kris** stated that he lacks visibility on it.

The Chairman discussed broader interagency planning and how it has not yet progressed to maturity, specifically referring to HSPD-8. Strauss stated that he does not know what the time frame is for a new planning directive to be released. Until then, the old HSPD-8 governs. The Chairman referenced interagency plans, specifically ones that involve all of the federal government. Strauss stated that there are currently two plans, both of which are classified.

Nethercutt then asked about 18 USC § 831 and if there are plans in place to execute the DoD support of DOJ under search and seizure and arrest. Kris responded that at the strategic level (how the Attorney General and the Secretary of Defense interact), the protocols and plans are clear. At the tactical level, the plans are clear as well. The "middle space" could be improved. Strauss noted that this involves a classified plan.

Nethercutt followed up by asking if it would it be helpful to have the panel weigh in on this question. **Kris** stated that DOJ would welcome the panel's opinion on this question.

Rees asked for an opinion on the efficacy of fusion centers and then asked about National Guard and DoD potentially collecting intelligence on U.S. citizens. Kris stated that along with JTTFs, fusion centers bring in a broader range of state and local resources. By and large, they are a good thing. In response to the second question, this is something where Executive Order 12333 sets out clear guidance, and that basic framework makes sense, if it is properly coordinated and done through the relevant authorities.

Reimer asked if the President can send federal forces into the states without the declaration of an insurrection act. **Kris** responded in the affirmative, stating that there are a number of other specific statutes that allow for this.

Reimer asked if is there anything that the witnesses might suggest that might improve unity of effort and unity of command.

Kris stated that he is a little less pessimistic than some on these issues. He felt that we are moving in the right direction. He felt that if we keep pressing and insisting and forcing people to focus on these things, there is room for improvement to make it work.

Metzger discussed the issue of standards, specifically the difference in standards between the EPA and DoD in the even of a radiological contamination. Kris acknowledged the discrepancy in standards between the EPA and the DoD, but stated that he was not sure that he has enough expertise to comment further on this. Strauss said he saw the same cleanup issue when it came to standards in Katrina.

Rees asked about the joint interagency task force concept in a CBRNE context. **Kris** stated that it can done at both a policy level and at an operational level. In fact, this has to be the model at some level. You do not want endless complexity, especially in light of the fact that such an incident will bring in numerous agencies.

The **Chairman** asked if there is any provision in U.S. law for martial law to be declared. **Kris** stated that such a question is sufficiently complex and important that he would have to give the panel an answer in writing after he consults with other DOJ lawyers. The **Chairman** said that the panel would interested in such material, and is worried about the public's response if there is a real crisis and meanwhile the government has not quite figured out the answer to this question .

Metzger asked about the legal implications that preclude the President from declaring an event a national disaster and placing USNORTHCOM in charge rather than the FBI. Kris stated that such a scenario depends on what exactly is needed to be done. If it involves keeping order, DoD can do that in a certain capacity. If one is talking about something a little broader, it depends what consequence you are managing. If there is a real catastrophe, there will be a need for and a capacity within DoD. Metzger asked for clarification. Strauss stated that under the national response framework, the President can choose whomever he wants.

Keating discussed a scenario involving an interstate event, asking who would be in charge, and how we might best coordinate and respond. He asked the witnesses what are the legal parameters or amendments to the law that will give finality and clarity to the law. **Kris** stated that the DOJ does not think a major overhaul is necessary on this issue. There is a gradual ramping up that occurs. He feels that the basic framework is okay, and a graduated response makes sense.

Kris and Strauss were then thanked by the Chairman and the rest of the panel.

The **Chairman** called the panel's attention to the prepared draft recommendation items in the panel's resource books.

In response to the first recommendation on command and control, **Metzger** initially suggested narrowing the panel's focus to a CBRNE incident, and then possibly broadening it later if the panel so desired. This was discussed by the panel, with **Rokke** saying that he thought the panel deliberately "left the door open" earlier. The broader use of the phrase "incident response" was discussed. **Grizzle** discussed a "dual hated approach" that would apply across not just CBRNE events but others. The **Chairman** agreed with **Grizzle**.

Nethercutt brought up the lack of sharing of state plans between the states and the National Guard. The Chairman stated that he thought it was a severe shortcoming. This was discussed by the panel. There was discussion about whether or not there should be an additional recommendation related to whether DoD should share their planning with state and local officials. Celletti discussed the notion of supporting states coming to the aid of other affected states and the challenges associated with that situation.

Metzger asked about potentially recommending that DoD appoint a National Guard member as the commander of USNORTHCOM. Harrison stated that he thinks that Secretary Gates would like to get to that arrangement eventually. Keating stated that while having a National Guard figure would be reassuring, what they're really looking for is a competent individual. Further discussion ensued on this point.

Moving on to the recommendation, the **Chairman** asked if the panel would be recommending something that is simply not achievable in our federalist system. **Rees** brought up the HRF concept and questioned who was coordinating it, and who is directing them. What is their role and responsibility? Further discussion ensued surrounding HRFs.

The **Chairman** stated that he thought it would be beneficial if the panel members spent further time individually on the draft recommendations that evening.

Rees asked about the possibility of future VTC meetings. Wermuth stated that they would be possible. **Keating** and the **Chairman** suggested that the panel address as many recommendations as possible between 0830 and 1030 the following day.

The panel concurred, and the **Chairman** asked for a motion to recess. **Metzger** moved and **Harrison** seconded. With the exception of **Celletti**, all were in favor. The panel stands in recess until 8:30 AM ET on June 3, 2010.

RECESS UNTIL JUNE 3 AT 8:30 A.M. EASTERN DAYLIGHT TIME

MEETING MINUTES (CONTINUED)

DAY TWO: JUNE 3, 2010

LOCATION: RAND WASHINGTON OFFICE, ARLINGTON, VA

PERSONS PRESENT2:

Panel Members:

Steve Abbot

Jim Carafano

Dennis Celletti

Jim Greenwood

Jerry Grizzle

Ron Harrison

Frank Keating

Tim Lowenberg

Jim Metzger

George Nethercutt

Fred Rees

Dennis Reimer

Erv Rokke

OSD Staff:

Cathy Polmateer, Designated Federal Officer (OASD-HD&ASA) Manny Aponte (OASD-HD&ASA)

RAND Staff:

Mike Wermuth

Gary Cecchine

Andrew Morral

Scott McMahon

Nate Shestak

Keith Martin

Several members of the public were also in attendance

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² The following list includes all persons who were present in an official capacity, regardless of whether or not they stayed for the entire day's session.

Chairman Abbot opened by stating that he had conferred with Vice Chairman **Keating** about how the panel might get through the draft recommendations in a more orderly fashion than that of the previous day. He suggested provisional acceptance of the findings first and then a consideration of the exact language later. The rest of the panel agreed with this approach.

Keating moved to approve the first draft recommendation, which addressed command and control issues, as amended by discussion yesterday. **Lowenberg** asked for clarification about the amendment, and it was provided by the **Chairman**. After this clarification and on motion made and seconded, the panel provisionally adopted the first draft recommendation.

Harrison asked for clarification about the process for the provisional adoption of these recommendations. The **Chairman** stated that he envisioned two additional opportunities for review of each draft recommendation by the panel. RAND staff will continue to modify the draft recommendations based on panel discussions and will seek subsequent approval from the panel.

The **Chairman** then presented a draft recommendation about the concept of a common operating picture. **Harrison** stated that this finding first arose out of subpanel four and their visit to USNORTHCOM. The subpanel believes that there is not a common operating picture for all levels of government. The **Chairman** suggested that the panel postpone discussion on this point until **Carafano's arrival** later that morning.

The **Chairman** then turned to the third finding related to CSTs, noting it was a specific task given to the panel in its enabling legislation and that the panel leadership has met a Congressman who supported the addition of at least one CST.. **Rees** recalled the governors' testimony asking for each CST to be augmented by five additional members.

Metzger, Wermuth, and Grizzle discussed the potential for future events that might impact this recommendation and whether the panel's recommendations should be based on today's events or potential future events. It was agreed that the introductory chapter of the panel's report would state that the findings and recommendations are based on today's current information.

There was further discussion on whether or not six additional personnel would be sufficient.

The finding, discussion, and recommendation were provisionally adopted on motion made and seconded, with the decision that the panel would recommend not fewer than six additional personnel be added to each CST.

The **Chairman** then presented the next finding related to determining requirements for CBRNE response. As for the genesis of this recommendation, **Cecchine** stated that it came out of the panel's very first meeting. **Keating** stated that during Dark Winter it was learned that very few doses of smallpox vaccine were available. In addition, at the local level, the nature of the CBRNE threat is not well understood.

Nethercutt requested greater specificity as to whom the President is directing in the recommendation. It was agreed that the President would be directing DHS to include explicit definitions of requirements and capabilities necessary to respond to CBRNE incidents.

The finding, discussion, and recommendation were provisionally adopted on motion made and seconded.

The Chairman then presented a finding related to DoD guidance for DSCA. Keating asked if "outdated" is the correct term, and Wermuth stated that it was. Rees concurred. Referring to the discussion section, Rokke asked why the panel would recommend that a publication that appears to be so problematic have a high priority. He recommended deleting the final sentence about DoDD 3025.dd being "in coordination for five years and only consolidates two of the seven key directives" and rewording the recommendation: "That the Secretary of Defense immediately consolidate all directives dealing with Defense Support of Civil Authorities into a single source document." Discussion ensued on this point. Keating and the Chairman also discussed the immediacy of consolidating all documents into a single source document.

The finding, discussion, and recommendation were provisionally adopted on motion made and seconded.

The Chairman then presented the next finding, related to a central repository for DSCA data and lessons. Celletti and Cecchine provided clarification. Rees asked about the "crisis response operations" language and whether this repository should instead focus specifically on lessons learned from civil support operations. He and Keating discussed this point. Rees, Metzger, and Keating then discussed the role of Joint Forces Command's Joint Center for Operations Analysis. The Chairman voiced concerned that such an organization gets beyond the charter of

the panel and might not be sufficiently focused on DSCA operations. He and **Lowenberg** discussed this point.

Nethercutt then asked where such a central repository might reside. Keating stated that this question would be addressed in the recommendation. Further discussion about the Joint Center for Operations Analysis and the extent to which it draws lessons from DSCA operations ensued. **Harrison** brought up the need to ensure that lessons learned at the state level be captured.

Wermuth posited that the recommendation could be directed to the Secretary of Defense. The Chairman stated that the DSCA database should include lessons from the Coast Guard and from FEMA. Wermuth suggested a rewrite of the recommendation to reflect the Secretary of Defense establishing a repository within DoD for DSCA, but also a broader one that would establish a central repository for the whole of federal government. The Chairman concurred, directing the staff to produce such a draft recommendation for panel consideration.

The finding and discussion were provisionally adopted on motion made and seconded. The RAND staff will modify its recommendation in accordance with the wishes on the panel. This concluded the Council's morning work session, whereupon **Keating** introduced **Tara O'Toole**, Under Secretary for Science and Technology, U.S. Department of Homeland Security.

In opening remarks, O'Toole stated that the panel's work was of extreme importance to the nation and noted that she read the minutes of the panel's previous sessions. She stated that her post has the advantage of being able to see across all components of DHS.

O'Toole stated that she had participated in a number of conversations with the leadership of FEMA. There is a push to have DHS establish integrated requirements that identify capability gaps. Her impression is that DoD and DHS are very engaged and their partnership is going very well. She also stated that DHS is still very young and does not possess the same level of organizational and policy maturity as DoD.

O'Toole stated that the top priorities in DoD and DHS are nuclear and biological attack responses. On the matter of responding to such attacks, she made three statements:

• First, there is insufficient understanding and awareness of both the threat and the response in the case of a biological threat or an improvised nuclear

device. The threat is not understood at high levels of government, and it is even less understood at the local levels. While some governors are engaged, it remains difficult to highlight this issue on states' agendas given the current economy and states' planning capabilities.

- Training for a response to a CBRNE event is inadequate. Scenarios and
 exercises vary greatly in quality, and a number of them have predetermined outcomes, and as such, do not seem to teach much. Perhaps
 virtual games would be more cost effective and efficient. The nation needs
 to improve the quality of the training exercises and scenarios, not just
 increase their volume.
- DHS is also concerned with large-scale natural catastrophes. As the nation becomes more and more dependent on technology, and as these technologies become coupled together—for example, "downwind technologies" that would be affected if an electric grid was lost—we become more vulnerable. There will be cascading consequences. There will likely be more of these "normal accidents" in our future. Furthermore, we'll face cumulative events occurring simultaneously. We need to prepare for that. The world is becoming increasingly complicated and likely will yield more "normal accidents." We need to build these into our planning.

Following this statement, **Keating** thanked **O'Toole** and opened up the floor for questions.

Carafano asked O'Toole's perspective on whether the Missile Defense Agency could be used as a model for acquisitions. O'Toole responded that DHS only acquired an acquisition director this past December (2009). While such a model might be very attractive, a problem lies in that DHS is mostly interested in materiel that it will be using on a daily basis. Another problem lies in the fact that states used grants to buy a lot of materiel, some of which doesn't work, much of which is not needed, some of which they cannot maintain, train on, or replace. Carafano asked if the MDA model might be useful for DoD. O'Toole stated that she was unsure.

Nethercutt mentioned O'Toole's first point about our lack of preparedness and asked what the witness might recommend in an effort to solve the problems to which she referred. O'Toole suggested perhaps a new standing, interagency structure at a high level in government is needed to deal with these issues. [Department] Deputies are busy people, and this issue needs more sustained attention than the Deputies' meetings that already occur. Funding lines could also

be improved. Currently, many initiatives are funded at the project level in various bits and pieces and by different agencies. A liaison with the governors would also be helpful.

Lowenberg asked if **O'Toole** was suggesting something more rigorous than a JTF. **O'Toole** said yes and stated that she would start with the Interagency. She suggested bringing in NSC and possibly OSTP. She thought that the White House would be the appropriate place to chair such an agency.

Greenwood then raised a number of points made about the nation's unpreparedness for a biological attack. He attributed his points to the CEO of SIGA, and they included the possibility that DoD service members would not have access to medical countermeasures; that the nation is unprepared to provide countermeasures on a large scale; and that the U.S. Postal Service may be relied upon to deliver countermeasures to the public. O'Toole felt that the points mentioned were generally right, with the exception of the first one. She also noted that each point needs to be caveated. The President recognizes the problem with countermeasures. DHS has been working with DHHS on this issue. The Bush Administration tried to get the private sector engaged on this issue. However, it is tough to imagine how the private sector would do this in a profitable way... She discussed the difficulties with creating a drug and the complications with buying it for one-time use and distributing it. She noted the importance of the private sector on this issue. She said the good news is that there are many international partners who would like to support such an effort, but they lack the funds to do so. Greenwood stated that it would be unrealistic to store every imaginable countermeasure in a warehouse. Thus, we will need a quick response manufacturing capacity and quick diagnosis capacity. O'Toole agreed. She suggested that the panel speak to Nicole Lurie of DHHS for further information on this issue.

Lowenberg then discussed the witness' statements surrounding DoD's capacity to respond and asked **O'Toole** if she had any impression of the current ability of DoD to engage in a non-permissive environment. **O'Toole** responded that she did not.

Lowenberg asked about the efficacy of the Biowatch program, which has remained essentially unchanged. O'Toole stated that the program has not remained unchanged. She stated that the technology of the program is solid. The program does not yet have real time detection, but DHS is working on that. Her main critique of the program is that it was not well sewn into operational reality. The concept of operations did not mesh with the technology. Lowenberg stated

that the collection process remains unchanged. O'Toole acknowledged this point, stating that it still uses old data, but they are making incremental improvements.

Harrison asked about the coordination between DoD and other departments in the event of a mass casualty scenario, specifically citing Haiti. He referred to planning as it relates to burial processes. O'Toole stated that such a topic is understudied. While there is scholarly work on the subject, more could be done. She suggested two individuals at the Center for Biosecurity at the University of Pittsburgh Medical Center (UPMC) for further information.

The Chairman asked about O'Toole's view of the maturity of the deliberative planning process. O'Toole stated that she thinks that more deliberate planning would inform the policy process. It would speed it up as well. A DHS exercise on anthrax response was very interesting in learning what the department could really do and how fast it could do it. It remains very hard to imagine an improvised nuclear device attack. There are not a lot of concrete, proven, benchmarks to say "this is what's going to happen." She then discussed the anthrax scenario further and the contingencies that might go into planning. Finally, she concluded with discussing the recent H1N1 threat and the decisions made during that event.

Metzger asked about DoD capabilities with respect to CBRNE response. He asked O'Toole if she might suggest to the Secretary of Defense how DoD capabilities be strengthened. O'Toole stated that the natural turnover in the National Guard and the limited number of people that can interface with the local response planners presents a challenge. For a big event, she stated that she is not sure that there are enough people in DoD to handle medical care. She stated that DoD has special capabilities in communication and transportation, both of which would be extremely useful in the event of an improvised nuclear device attack. The states also need greater clarification as to what services DoD can provide.

Lowenberg asked what concrete steps are being taken toward leveraging virtual training activities and standing up a formal interagency steering group on this matter. O'Toole stated that the DHS S&T program is working on visual analytics and how it might grasp situational awareness. With regard to virtual training, such discussion is at an initial stage at DHS. She noted that both Secretary Napolitano and private groups are interested in this topic. However, such initiatives are expensive to get started and are tough to find a market. Her understanding is that the military has done a lot of work in the area and has funded some initiatives. She then discussed DHS support at the Air Force Academy and the use of interactive games to teach Air Force cadets about homeland security issues like pandemic flu and other attacks.

Grizzle endorsed O'Toole's earlier assertion about exercises being too shallow and not probing far enough. He brought up the example of push packages of pharmaceuticals from CDC arriving in 100,000 packages of loose pills and the challenges that presented. O'Toole agreed and stated that the scenarios need to be graded somehow. She stated that she has seen a lot of wrong or faulty scenarios. She said that scenarios must be improved.

Harrison asked O'Toole if she was familiar with the effort to create a common operating picture, which is a DHS initiative. O'Toole stated that the initiative is extremely important, currently in progress, and very, very hard. Funding is a big problem. The speed at which the technology is progressing is not synchronized with federal acquisition cycles. She said that this is another one of those interagency issues that are important but not top priority items.

Celletti asked whether there is any effort to create a repository to capture lessons learned from the aforementioned scenarios. **O'Toole** responded that there have been conversations and it remains a subject of interest, but she does not know the answer to the question. FEMA may, however.

Metzger discussed the issue of standards, specifically the stringent standards set by EPA for radiological decontamination. **O'Toole** stated that standards are hugely important and should be agreed upon to avoid conflict following a radiological incident. She agreed with Metzger's discussion surrounding standards. She added that misinformation poses a major problem to resolving this issue.

Rees discussed the issue of the nation's resiliency toward, as the witness termed them, "normal accidents." He asked if civil defense organizations resembling those that the U.S. had during the Cold War in response to a nuclear attack might be a good model. He discussed the National Guard's focus on DSCA-related equipment and asked if it should be a continuing topic of conversation between DoD and DHS. In response to the second question, O'Toole said that such a conversation would be very helpful but it is hard to discuss these issues with the public. However, she said, in New York, Washington, D.C., and Los Angeles, that conversation is occurring. A lot was learned about H1N1 very quickly. In the case of an improvised nuclear explosives device, we are not there yet, so getting the public engaged is important.

Greenwood asked if in the event of a CBRNE incident there is any system in place for systematic collection of DNA for later identification of the deceased. **O'Toole**

stated that she was unaware of any. The topic was discussed after the 1995 Oklahoma City bombing and again after Hurricane Katrina, but she did not think that any agency is implementing such an initiative on a large scale.

Metzger discussed an anthrax scenario and noted that there is a vaccine for it. He asked O'Toole whether she felt that we should have other vaccines for any other specific threats and asked what legal impediments might arise that would prevent mandating such a vaccine. O'Toole responded that the current anthrax vaccine is 40 years old. We don't know if it actually works. You need a number of shots to get it to work—3 doses—and then you need to keep getting shots to maintain its effectiveness. She stated that we need a new anthrax vaccine. Such a vaccine is possible. It is the first thing we ought to spend funds on. However, vaccination is a controversial issue. Many healthcare providers refused the H1N1 vaccine because of concerns about autism or other side-effects.

The **Chairman** asked if we went through these same issues during the smallpox scare in 2002. **O'Toole** stated that he was correct; we did have the same issue. The one question Vice President Cheney asked then was how many people would die if we vaccinated the entire US population. The response received was something on the order of 1 in 300,000.

O'Toole was then thanked for her time by the Chairman, and she left the meeting.

The Chairman thanked Al Crawley, Nate Shestak, Natalia Weil, and Karen Echeverri of the RAND Facilities Services staff, for their continuing and valuable assistance in supporting the panel.

The **Chairman** proposed to the panel the establishment of an editorial committee composed of him, **Keating**, and other panel members to help edit future drafts as developed by the staff. He asked if there were any volunteers. **Rokke**, **Greenwood**, and **Rees** volunteered.

Lowenberg stated that there was one technical correction to the minutes of the previous meeting. He moved that the panel rescind the language that it adopted the previous day and substitute the following language as an amendment to the original text:

"Wagner noted that the agreement with the Canadians on TACON is constitutional, but is "problematic." When asked: "Is it a legally flawed agreement?" he responded, "There are flaws in that agreement."

On motion made and seconded, the panel adopted the meeting minutes as amended.

Nethercutt and **Wermuth** discussed authorities with respect to reserve components. The **Chairman** stated that the panel could include this topic as a stand alone finding if agreed.

Grizzle and Wermuth discussed CBRNE response capabilities. Greenwood stated that the panel would need greater specificity with regard to capabilities. He stated that he would be happy to work with the staff on the biological part of the issue, such as how to coordinate countermeasures. The Chairman asked if the finding might be acceptable if the recommendations were more specific. Greenwood stated that he thought the panel needs more examples. Simply saying stating the need to coordinate with the private sector probably is insufficient.

Rees proposed discussing the tenth finding, specifically the use of the term, "new constructs." He felt it was a very wide-open idea and almost beyond what he though should be the panel's charter. Wermuth stated that the recommendation was predicted by staff to be provocative but was based on earlier panel discussions. The Chairman agreed that it was a provocative statement. Rokke questioned whether the panel has any evidence that such a drastic recommendation is warranted. Rees stated that such a recommendation would be counter to some of the testimony the panel has received. Carafano stated that he felt that such a recommendation might not go anywhere, as the response paradigm is already established. On motion made and seconded, the panel tentatively rejected that draft recommendation.

The panel discussed the creation of an interagency task force or a standing interagency mechanism. Carafano, the Chairman, and others discussed the challenges and potential pitfalls with "operationalizing" the White House. Carafano raised the option of a lead federal agency model. Rokke stated his concerns with a recommendation put forth by the 9/11 Commission, establishing the ODNI, specifically the addition of what he thinks is another layer of bureaucracy.

Lowenberg advocated postponing discussion on this finding because the panel was due to hear more about HRFs and CERFPs later that day. The panel agreed.

The Chairman presented again a draft recommendation related to a common operating picture, noting that Carafano was now present. He noted that O'Toole stated that the problem is recognized, a solution is needed, and it has not been done. Carafano stated that it is important to note in the discussion the shift in USNORTHCOM doctrine towards anticipatory response. This drives their cost. He then asked where the panel is in terms of discussing continuity of government. Wermuth stated that the panel is not limited to discussing this issue in one place in the findings.

The finding, discussion, and recommendation were provisionally adopted on motion made and seconded.

Nethercutt stated that the panel ought to emphasize that additional training and better communication is necessary on authorities. **Lowenberg** concurred, stating that the authorities were adequate, but that they are not widely understood, according to those with whom the subpanel spoke.

The **Chairman** presented another draft recommendation, about the adequacy of the provision for DSCA in the force generation cycle.

Before discussing this issue further, the **Chairman** welcomed the final witness of the day, **Gerald W. Parker**, Principal Assistant Secretary, Office of the Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services.

Parker opened by offering an overview of the department and potential lessons learned from the 2009 H1N1 incident.

Parker first discussed the department's national disaster medical system during the late 1980s. He then discussed how the Aum Shinrikyo attack in the mid 1990s prompted the department to start thinking about biological defense. Following the attacks of September 2001, including the anthrax letter attacks, DHHS continued to develop the issue of preparedness for a biological attack. Then further legislation created the Bioshield Program. He discussed how the threat of H5N1 resulted in emergency supplemental funding to the department. Parker then discussed how recent hurricanes— Hurricane Katrina, Hurricane Wilma, Hurricane Rita, and others—prompted further legislation that affected his department. During the incident in Haiti, DHHS was confronted with an international crisis in Haiti and an international responsibility that was dealt with on an interagency level.

Parker then discussed the 2009 H1N1 pandemic. He stated that it allowed DHHS to use some of the plans that it had developed over the past five years.

Parker noted that some analogies can be drawn from the H1N1 pandemic to a bioterrorism attack. The nation will not be sure what the attack will look like and where it will occur. A lot of the partnerships that were developed during the planning for H5N1 were instrumental for H1N1 preparations. H1N1 underscored the fact that the nation is not likely to face the exact scenario in planning assumptions that it started out with. First, most thought it would arise in Southeast Asia. It didn't. It arose in Mexico. It was relatively mild compared to what we thought it would be like. DHHS had a hard time trying to define the disease scenario. Children were hit harder than the department expected. Overall, it really highlighted the need for scalable response, engagement of the private sector, and the ability to have adaptive policies and plans. In short, we need to build robust, every day systems. It remains very costly to develop medical countermeasures. Looking towards the future, we need to develop technology platforms and develop threat responses that we do not have today. Having a scalable manufacturing capability is a challenge, but it is a goal that we need to strive for.

The **Chairman** thanked Parker for his opening statement and opened the floor to questions.

Lowenberg asked about the national biological surveillance center. Parker stated that the CDC has many surveillance systems, and he mentioned one system, BioSense, put in place in 2003 or 2004 that looks at unusual disease patterns in a city region. There were a lot of criticisms initially about where the data was going initially and how it was not getting to state and locals originally. Lowenberg clarified, stating that he was referring to the newer system within the National Operations Center. Parker stated that as a DHS program, he would need to refer the panel to DHS for more information. While there is a connection to DHHS, DHS has operational responsibility for that system.

Metzger asked if Parker could think of any pieces that are lacking or should be strengthened with respect to DoD capabilities in response to a CBRNE event. Parker stated that he spent most of his career in R&D in the Army in biological defense, and thus he comes at this question from a unique perspective. He felt that we are still unprotected for a domestic catastrophic attack. It is challenging for both DoD and DHHS. Planning at the state and local level remains challenging. He stated that the U.S. lacks granularity, especially with respect to requirements, at

the state and local level. Yet, DoD is used to such detail for its planning. Some state and local plans are not very good.

Parker said that a Presidential executive order tasks DHHS with defining federal capabilities that could be brought to bear in the case of an incident. This is especially difficult in terms of biological attacks. It requires very creative thinking. This issue is manpower intensive, but it is not that medically or technically intensive. One of DoD's strengths is logistics. Preparing and responding to a biological attack comes down to logistics.

Parker stated that there is also a need to think more creatively within DoD. Prescripted mission assignments are helpful, but we still need to think creatively, atypically, and get out our comfort zone. Discussion on the use of the U.S. Postal System's distribution of antibiotics ensued as a potential example of creative thought.

The Chairman spoke about the Haitian earthquake and asked about international elements that might come into the U.S. as a result of a crisis to assist us and asked about our capacity to incorporate them. Parker stated that during Hurricane Katrina, there were a lot of offers of international assistance, and there were deployments from other countries. The State Department is in the lead with respect to those activities. In the health arena, there are some challenges associated with this problem. Medical countermeasures are very scarce, even though we are working with our allies on this issue. We need to encourage them to share in the development and procurement cost of some of these medical countermeasures. There will also be some limitations on what we could accept because of regulatory issues associated with the FDA, so it is important to work on these issues in advance.

Harrison asked about the DHHS relationship with state and local authorities. **Parker** stated that the CDC has personnel in every state. The Assistant Secretary for Preparedness and Response mostly operates at the regional level. DHHS tries to do its planning at a regional level. CDC is even closer at the state level. He then discussed the recent reports surrounding the health problems of workers working on the Gulf spill. **Harrison** asked specifically if at the state level, DHHS would be in support of a state. **Parker** said yes, stating that their incident command will be set up close by or within the state health command center. He said that the DHHS uses the principles in the National Response Framework.

Nethercutt discussed federal quarantine authority and asked whether plans existed between DHHS and DoD to enforce it. **Parker** responded by focusing on

the entry and exit screening at the border at first, stating that roughly 95% of international traffic only flows through 19-20 airports. Lowenberg asked if thermal scans were efficacious. Parker stated that at this point in time there is probably not a need to deploy these scanners in the U.S. due to concerns about the scientific efficacy. Nethercutt asked about a scenario in which a biological agent necessitates quarantine efforts at the state level. He asked Parker if he could or would request DoD support for such efforts and what the enforcement mechanism might look like. Would DHHS request DoD to enforce it? What about smallpox? Parker stated that he thought that "the system would ramp up real quickly." Extensive discussion ensued on this topic. As part of this process of ramping up, a request could ultimately be made to DoD or the VA.

Harrison discussed the subject of mass casualties and mass burials. He asked if a federal policy has been established to assist with the states in this regard. He also asked if there is any coordination between the private sector and the interagency. Parker stated that there is a lot more work to do in this area. There needs to be a little bit more delineation of roles and responsibilities. All of those components associated with problem are not under a single umbrella. Parker did not advocate that they be under a single umbrella, necessarily. DoD could bring resources to bear with group logistics.

Metzger asked Parker if he could conceive of a scenario that involves multiple states where the President should put DoD in charge. He also asked if such authorities existed. Parker responded that he did not think so, but that perhaps there could be an extreme, unusual situation. He stated that he thought we need to make sure that we are developing the systems that preserve continuity of government at all levels. He also reiterated that there is good regional planning between states and that we sufficiently plan for DoD support in DSCA operations. However, the extreme rare event where DoD might need to take over should not be the planning focus.

The **Chairman** returned to the issues surrounding mass burial, noting its complexity. He then turned to the issue addressed by Governor Douglas and Governor Gregoire regarding command in terms of TACON and OPCON with respect to DoD forces assigned to a state. He asked if there is any parallel for DHHS when they engage the issue of CBRNE response. **Parker** stated that since DHHS workers are federal, they work in the incident command center in support of a governor.

In closing, **Parker** noted the astuteness in the questions surrounding mass deaths and mass burials.

Parker was thanked for his time by the **Chairman** and the rest of the panel, and he left the meeting.

The **Chairman** presented a draft finding and recommendation dealing with how the QDR identifies homeland security as a significant mission, but how DSCA is not prominent in the force generation cycle. The **Chairman** stated that a potential panel conclusion that that "we're not up to it, and it doesn't have a really high priority" would be profound. Consensus was reached that DoD must be able to generate and manage forces as well as budget priorities to address homeland security and DSCA requirements, notwithstanding other ongoing missions.

Discussion ensued surrounding training and mission essential task lists. A consensus was reached that the discussion surrounding the mission essential task list should be left in the language. Carafano voiced concerns that the overall language did not sufficiently address equipment and was too focused on manpower. Celletti said that the phrase "force generation" encompassed equipment. Carafano asked if DOD has identified the roles and missions for CBRNE. If not, he said, he asked how DoD could propose a force structure in the QDR. The Chairman stated that he thought Carafano made some very reasonable points and suggested tabling discussion of this finding for a later meeting by teleconference.

The panel then considered a draft finding and recommendation about integrated planning. The Chairman asked whether DHS would respond by saying that the National Response Framework addresses the issue already. Carafano stated he thought that DHS would acknowledge that the issue is pending approval of the HSPD-8 rewrite, which is now in draft for coordination. He emphasized that states lack adequate planning capacity for CBRNE incident response. Harrison agreed and suggested that there should be some system of ensuring that planning is a high priority. Discussion ensued surrounding the Task Force for Emergency Readiness program between **Lowenberg** and the **Chairman**. Further discussion on the wording of the finding ensued, including a discussion surrounding the use of the language that was pulled from HSPD-8 directly. It was agreed that the panel would acknowledge the source of the language in its final report. Further discussion ensued between Carafano and Lowenberg on the Task Force for Emergency Readiness program. Carafano stated that he thought that the Army should develop a planning school to teach the planners. Wermuth responded that Swan said that he was planning to do so.

The **Chairman** decided to send this recommendation back to the RAND staff to redraft, based on panel discussion.

The Chairman presented a draft recommendation on the creation of an interagency task force. Wermuth stated that this finding came from a subpanel 3 suggestion and mostly was the contribution of Rees. The Chairman stated that without Rees present, it might be difficult to reach consensus on the issue. In addition, the governors might be uneasy about the phrasing. He also stated that, in his experience, this "would be a gigantic pill for DoD to swallow." Metzger agreed, stating his unease about the proliferation of standing JTFs. The Chairman also stated that FEMA would also find this recommendation problematic. Discussion about JIATF South and JIATF West arose, with Nethercutt noting that those JIATFs have day-to-day responsibilities, whereas the nature of a hypothetical JIATF-CBRNE would leave its day-to-day operations nebulous. Carafano also voiced concerns about calling for a standing JIATF.

The Chairman stated that his military experience led him to believe that this proposed organization's performance would be absolutely crucial in a CBRNE incident. It will have to be the best of the best. Harrison agreed, stating that it would have to be exercising all of the time. The Chairman then stated that this brings up the paradox that Carafano pointed out: one does not want to be deploying such a unit for every single minor incident, but at the same time such incidents provide them "a chance to fly the airplane." In essence, the Chairman stated he felt that it remains an important issue that needs a solution, but this particular solution has some real contradictions. Metzger stated that the Joint Task Force – Civil Support does a similar mission. He then posited that perhaps one could combine this with some interagency players and rename it Joint Interagency Task Force – Civil Support. Harrison reminded the panel that O'Toole recommended a national-level entity—something involving the interagency. Carafano stated that he understood O'Toole's point. However, he felt that any solution should separate the operational side from the policy side. The Chairman stated that it seemed to him that whatever the panel comes up with must have at its core an organization that is working every day in the same medium and developing the same situational awareness. Metzger asked if USNORTHCOM couldn't argue that they already serve this function. Lowenberg stated that a problem arises in that the statutory authorities reside in DHS.

The **Chairman** decided to send this recommendation back to the RAND staff to redraft.

The **Chairman** proposed that the staff schedule teleconferences in which the panel could work through the remainder of the draft recommendations, in June. He asked that the panel the members submit notes on the remaining recommendations in order to prepare for the teleconference.

The Chairman invited public comments. Mike Daly introduced himself and offered assistance on behalf of the National Guard Bureau and McKinley.

Harrison acknowledged Scott McMahon for his help with subpanel 4.

Metzger asked what was envisioned for a total number of recommendations. **Wermuth** stated that the panel may end up with thirty recommendations in total.

The **Chairman** asked if there was a motion to adjourn. On motion made and seconded, the panel stands in adjournment *sine die*, subject to the call of the chair.

ADJOURIN at 5pm ED1	
CERTIFIED AS CORRECT:	
CHECKY -	
With the state of	
Starra Alah at Charirman	Data: 7/2/2010
Steve Abbot, Chairman	Date: 7/2/2010