

Advance Questions for Mr. Paul McHale

Defense Reforms

More than a decade has passed since the enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 and the Special Operations reforms.

Do you support full implementation of these defense reforms?

Yes, I fully support the implementation of these reforms. The focus on “jointness” outlined in the Defense Reorganization Act of 1986 has significantly enhanced the readiness and warfighting capabilities of the U.S. armed forces.

What is your view of the extent to which these defense reforms have been implemented?

These reforms have fundamentally changed the way the Department of Defense works by strengthening civilian control of DoD activities, improving military advice given to the President and Secretary of Defense, enhancing the role of the Chairman of the Joint Chiefs of Staff, and modernizing the warfighting chain of command.

What do you consider to be the most important aspects of these defense reforms?

From my point of view, the most important aspects include the clear responsibility, authority, and accountability given the combatant commanders for mission accomplishment; the increased attention to formulation of strategy and contingency planning; and the creation of a strong, direct, and unambiguous chain of command.

The goals of the Congress in enacting these defense reforms, as reflected in Section 3 of the Goldwater-Nichols Department of Defense Reorganization Act, can be summarized as strengthening civilian control over the military; improving military advice; placing clear responsibility on the combatant commanders for the accomplishment of their missions; ensuring the authority of the combatant commanders is commensurate with their responsibility; increasing attention to the formulation of strategy and to contingency planning; providing for more efficient use of defense resources; enhancing the effectiveness of military operations; and improving the management and administration of the Department of Defense.

Do you agree with these goals?

Yes, I support the goals of the Congress in enacting the reforms of the Goldwater-Nichols legislation and, if confirmed, will support their continuing implementation.

Relationships

Please describe how you envision your working relationship, if confirmed, with the following:

The organization that I will lead, if confirmed, will be a policy-based organization focused on building and improving DoD's efforts in supporting the nation's homeland security requirements. The organization will unify DoD's homeland defense, military support to civil authorities, and emergency preparedness activities by providing focused management, oversight, and supervision of policies, programs, and resources. Additionally, it will be an advocate in the DoD resource allocation process for resource requirements to support these activities.

If confirmed as the ASD (HD), I will maintain close working relationships with the Principal Staff Assistants throughout DoD who hold responsibilities for capabilities relevant to homeland defense, civil support, and emergency preparedness. I envision my relationships with key officials as follows:

The Under Secretary of Defense for Policy

- The ASD (HD) will function under the authority, direction and control of the USD(P).

The Assistant Secretary of Defense for Special Operations and Low Intensity Conflict

- ASD (SO/LIC) will maintain oversight with regard to DoD's international counter-terrorism activities.
- The ASD (HD) will coordinate closely with the ASD (SO/LIC) on matters related to domestic counter-terrorism executed in support of lead federal law enforcement agencies.
- The ASD (HD) will maintain careful situational awareness regarding SO/LIC's counterdrug efforts worldwide.

The Under Secretary of Defense for Intelligence

The USD (I) is responsible for assuring that senior DoD leadership and combatant commanders receive the warning, actionable intelligence, and counter-intelligence support needed. The ASD (HD) will maintain a close relationship with the USD (I) to assure support for homeland defense intelligence needs. The USD (I) will be a conduit to the intelligence community, providing an opportunity for ASD (HD) feedback regarding intelligence tasking, processing, exploitation, and dissemination as it affects homeland defense users at various levels. Competent intelligence, properly disseminated, is the first line of homeland defense.

The Assistant Secretary of Defense for Command, Control, Communications and Intelligence

The ASD (HD) will interact with the ASD (C3I) regarding the work of components of C3I that perform DoD and interagency policy formulation, and planning on critical infrastructure protection and cyber security, in the context of the National Strategies addressing these areas. Routine, effective coordination between ASD (HD) and ASD (C3I) will be essential to a unified defense strategy.

The Assistant Secretary of Defense for International Security Policy

- The ASD (HD) will coordinate closely with the ASD (ISP) especially when technology transfer efforts involving other federal, state, and local agencies have implications for international security and counter-proliferation.
- The ASD (HD) will also coordinate closely with the ASD (ISP) on chemical and biological defense policy matters, including threat assessments, countermeasures and policy oversight of counter-proliferation R&D.

The Assistant Secretary of Defense for Reserve Affairs and the civilian officials of the military departments in charge of Reserve affairs

- The ASD (HD) will coordinate with the ASD (RA) and military service reserve officials on all issues related to USNORTHCOM's employment of the Total Force.
- The ASD (HD) will be an active participant in the comprehensive review of Reserve component contributions to national defense.
- The ASD (HD) will support the ASD (RA), as appropriate, in the oversight of Weapons of Mass Destruction Civil Support Teams.

The Chief of the National Guard Bureau and the Directors of the Army and Air National Guard

The ASD (HD) will work closely with the Chief of the National Guard Bureau and, through him, the Directors of the Army and Air National Guard through the Secretary of the Army and the Secretary of the Air Force, particularly regarding the roles, capabilities, and readiness of National Guard forces in support of homeland defense and civil support.

State Governors

The ASD (HD) will support DHS in this area as directed by the Secretary of Defense. I anticipate close tactical coordination between DoD, state emergency preparedness officials and first responders.

The Director, Defense Intelligence Agency

- The ASD (HD) will work with the Director, DIA concerning the planning, programming, budgeting, and use of intelligence resources for the collection and production of intelligence in support of homeland defense requirements.
- The ASD (HD) will review intelligence assessments and estimates concerning transfers of technology, goods, services, and munitions with possible implications for homeland defense.

The Assistant Secretary of Defense for Health Affairs

- The ASD (HD) will routinely and regularly coordinate with the ASD (HA) on all medical aspects of chemical and biological terrorism, including threat assessment, detection, countermeasures, and research and development.
- The ASD (HD) will maintain situational awareness of new techniques and technologies developed or adopted under the purview of the ASD (HA) to assure that they are made available to other federal, state, and local agencies, as appropriate.

The Chairman of the Joint Chiefs of Staff and the Joint Staff

The ASD (HD) will coordinate both formally and informally, on a daily basis, with the Chairman, the Joint Chiefs and the Joint Staff regarding the roles, capabilities, and readiness of the military services and combatant commands in support of the homeland defense mission.

The Director of the Defense Threat Reduction Agency

In coordination with the Under Secretary for Acquisition, Technology & Logistics, the ASD (HD) will work closely with DTRA, particularly regarding efforts in the following areas:

- Domestic chemical, biological, radiological, and nuclear threat reduction and defense
- Counterproliferation
- Technology security policy
- Emergency response support and training

Duties

What is your understanding of the duties and functions of the Assistant Secretary of Defense for Homeland Defense?

Public Law 107-314, the Fiscal Year 2003 National Defense Authorization Act, amended Title 10 to establish the position of the Assistant Secretary of Defense for Homeland

Defense, who will have “as his principal duty the overall supervision of the homeland defense activities of the Department of Defense.” If confirmed, I will perform those duties prescribed by Secretary Rumsfeld for the position.

I expect that Secretary Rumsfeld will establish duties and functions of the Assistant Secretary of Defense for Homeland Defense that will include leading, supervising, and focusing the Department’s activities in this area, ensuring internal coordination of DoD policy direction, providing guidance to U.S. Northern Command, U.S. Pacific Command, and U.S. Southern Command for their homeland defense mission and their military activities in support of homeland security, to include support to civil authorities, and all necessary DoD coordination with the Department of Homeland Security, the Office of Homeland Security, and other government agencies.

More specifically, if confirmed, I expect that Secretary Rumsfeld will make me responsible for developing and supervising the implementation of the Departmental strategic planning guidance for DoD’s role in homeland security; developing force employment policy, guidance, and oversight; supervising DoD preparedness activities to support civil authorities in order to achieve an integrated national emergency response system; providing DoD support, as appropriate, to assist in developing capacities and capabilities of civilian agencies requisite to conducting homeland security missions; and direct DoD domestic crisis management activities.

What background and experience do you possess that you believe qualifies you to perform these duties?

For thirty years I have been directly and personally involved in a wide range of national security activities. These responsibilities have involved active and reserve military service in the U.S. Marine Corps, beginning as a rifle platoon leader in 1972 and culminating as an assistant division commander in 2002. That duty included active military service during operations DESERT SHIELD and DESERT STORM, as well as a one-year overseas deployment in the Western Pacific.

As a member of Congress, I served for six years on the House Armed Services Committee and was a conferee on the National Defense Authorization Act for five years. In addition, I am a former member of the Board of Visitors at the U.S. Naval Academy, a current adjunct professor at the U.S. Army War College, and a current member of the Board of Advisors at the U.S. Naval War College.

Following retirement from Congress, I returned to drilling status as a U.S. Marine Corps reservist where my assigned duties focused on rear area security at the joint and component levels. As a civilian, during this period, I participated in several classified wargames involving the domestic threat of weapons of mass destruction.

Roles and Responsibilities

The Department of Defense's combating terrorism activities are currently divided into four categories: Antiterrorism/Force Protection, Counterterrorism, Terrorism Consequence Management and Intelligence. Section 902 of the National Defense Authorization Act for Fiscal Year 2003, which established the position of Assistant Secretary of Defense for Homeland Defense, also transferred the responsibility for the overall direction and supervision for policy, program planning and execution, and allocation of resources for the Department's combating terrorism activities to the Under Secretary of Defense for Policy.

Please specify what activities within each of the four combating terrorism categories will be under the jurisdiction of the Assistant Secretary of Defense for Homeland Defense.

If confirmed, I would recommend the following:

Antiterrorism/Force Protection:

- Should remain the primary responsibility of the service components and installation commands, subject to ASD (HD) oversight.

Counterterrorism

- It is my expectation that the ASD (Special Operations/Low-Intensity Conflict) will continue to be responsible for DoD international counter-terrorism efforts.
- In extraordinary cases where U.S. military counterterrorism forces are called upon by the President to undertake a military operation within the United States, I anticipate that the ASD (HD) will serve as the principal advisor to the Secretary of Defense.

Terrorism Consequence Management:

- Military support to civil authorities, whether to mitigate the consequences of acts of terrorism, manmade or natural disasters will be one of my principal oversight responsibilities, if confirmed. Oversight and supervision of contingency planning for these missions will be a major ASD (HD) responsibility.

Intelligence:

My objective would be to ensure that homeland defense commanders at all levels lawfully acquire the best intelligence available on threats that impact upon homeland security and related DoD missions.

What DoD official or officials will be responsible for DoD combating terrorism activities not under your jurisdiction?

The Under Secretary of Defense for Policy, as stipulated in the 2003 National Defense Authorization Act, will exercise principal responsibility for the overall direction and supervision for policy, program planning and execution, and allocation of resources for the Department's combating terrorism activities. If confirmed, I anticipate that I will be USD (P)'s principal assistant regarding domestic counter-terrorism. I expect a close collaborative relationship with SO/LIC, who will continue to serve as the principal policy advisor regarding international counter-terrorism.

Additionally, I am advised that the newly authorized Under Secretary for Intelligence will be the principal intelligence oversight official within the Department. If confirmed, I will work closely with him on relevant counter-terrorism intelligence matters.

What steps will you take to ensure that the Department's efforts are focused and well coordinated in this critical area of homeland defense?

The Department has already taken the steps to create the U.S. Northern Command in order to improve command and control of DoD forces in those homeland defense missions as directed by the President and the Secretary of Defense. If confirmed, I plan to work closely with the combatant commanders, in concert with the Chairman of the Joint Chiefs of Staff, to ensure the full mission readiness of each command. I expect this to cover policy, program planning, mission readiness and execution oversight, and allocation of resources.

Coordination will of course be the key to achieving both our homeland defense and our homeland security objectives. Within the intergovernmental community at the Federal, state and locals levels, I intend to develop close and collaborative relationships to ensure that DoD's efforts, when appropriate, support and reinforce civilian contingency plans and resources.

Within the Department of Defense, I intend to initiate a similar degree of coordination. On matters such as research and development, health affairs, reserve affairs, and intelligence, I expect to integrate our Departmental efforts to ensure we maximize the full range of homeland defense capabilities.

Section 1511 of the Fiscal Year 2002 National Defense Authorization Act (NDAA) required the Department to submit a report on DOD's role with respect to combating terrorism and homeland security no later than 180 days after the date of enactment. Section 1404 of the Fiscal Year 2003 NDAA required the Department to submit a more detailed report on the Department's role with respect to homeland security, no later than March 3, 2003.

What is the status of those two reports?

I am advised that the report required by the Fiscal Year 2002 NDAA has been completed within DoD and is undergoing final review within the Administration. The report was delayed beyond its original due date because of changes affecting its content, such as the release of the National Security Strategy and National Strategy for Homeland Security, and the President's proposal to create the Department of Homeland Security.

I have been further advised that the report required by the Fiscal Year 2003 NDAA has been tasked to appropriate organizations throughout DoD in order to prepare a final draft.

Central Transfer Account

The Department has a central transfer account for its counterdrug activities. The Senate included a provision in its version of the FY2000 DoD Authorization bill that would have established a central transfer account for all DoD Combating Terrorism funds. However, that language was not included in the final version of the legislation signed by the President.

What advantage, if any, do you see in having a central transfer account for all DoD Combating Terrorism funds?

The Department of Defense advises me that it does not see any significant advantage to the creation of a Central Transfer Account for DoD Combating Terrorism funds, and believes that it would limit DoD's freedom to flexibly manage a comprehensive response to the terrorist threat. Combating terrorism is not a single budget or specified group of funds. It includes multiple programs for both CONUS and overseas operations for all DoD components. Various combating terrorism programs include antiterrorism activities such as force protection initiatives, intelligence activities, homeland security programs, consequence management, combat air patrols, continuity of government programs, and a variety of RDT&E efforts in chem-bio programs, the Armed Forces Radiobiology Research Institute, and many others. To require central budgeting and transfers would greatly complicate management, create delays, and require complex accounting efforts. However, if confirmed, I would be happy to examine this issue in consultation with the Committee.

Installation Security

The security of U.S. military installations – both at home and abroad – has been a longstanding priority for the Senate Armed Services Committee. Section 1402 of the National Defense Authorization Act for Fiscal Year 2003 directed the Secretary of Defense to develop a comprehensive plan to improve the preparedness of military installations for terrorist incidents.

What is the status of that plan and what steps do you plan to take to ensure that domestic military installations are secure from a terrorist attack?

I am advised that the Department of Defense is currently preparing a comprehensive plan for improving the preparedness of military installations, in order to prevent and respond to terrorist attacks as required by Section 1402 of the NDAA for Fiscal Year 2003. If confirmed, I will work with the appropriate offices within OSD and the military Departments to exercise supervision and civilian oversight in order to ensure that U.S. military installations are properly prepared to defend against attack.

Weapons of Mass Destruction Civil Support Teams

Section 1403 of the National Defense Authorization Act for Fiscal Year 2003 directed the Secretary of Defense to establish 23 additional Weapons of Mass Destruction Civil Support Teams (WMD-CSTs). This will provide for at least one WMD-CST in each state and territory. Section 1403 also contained a reporting requirement that required a review of whether the mission of the teams should be expanded.

Do you consider the WMD-CSTs an important asset in the event of a domestic terrorist attack involving a weapon of mass destruction?

Yes, I consider the National Guard WMD-CSTs to be key military assets, strategically positioned at the operational level, to support civil authorities at a domestic Chemical-Biological-Radiological-Nuclear-Explosive (CBRNE) incident site by identifying CBRNE agents/substances, assessing current and projected consequences, advising on response measures, and assisting with appropriate requests for state support. They are federally funded, and under control of respective state governors. Prior coordination and combined training with state emergency management officials and first responders in each team's area of responsibility significantly raises the effectiveness of the entire nation's emergency response system.

If confirmed, what role would you play with regard to the oversight, training, and stationing of the WMD-CSTs?

I am advised that the policy and fiscal oversight of the WMD-CST Program rests with the Assistant Secretary of Defense for Reserve Affairs. I expect to be working closely with the Assistant Secretary on matters of mutual concern with respect to the WMD-CSTs, with particular emphasis upon training activity, contingency planning, and operational readiness.

Do you believe that the mission of the teams should be expanded beyond detection to include some cleanup or containment capability?

I am advised that the National Guard is currently reviewing recommendations from a Weapons of Mass Destruction Civil Support Team Force Management Analysis. The

results of the National Guard's review will form the basis for the Department's analysis of the team's existing mission and the potential to expand that mission. That response will be provided to the Congress by June 2, 2003, as required, to meet Congressional direction in the 2003 NDAA.

Are there other appropriate and feasible ways to expand the current team mission?

As previously mentioned, the results of the National Guard's review will form the basis for the Department's analysis of the team's existing mission and the potential to expand that mission. That response will be provided to the Congress by 2 June 2003 to meet Congressional direction in the fiscal year 2003 NDAA. If confirmed, I would fully cooperate with the Committee in reviewing this issue.

Chemical Biological Incident Response Force

The Department currently has a single Chemical Biological Incident Response Force (CBIRF), a Marine Corps unit that is capable of mass decontamination in the event of terrorist attack with a weapon of mass destruction.

Is a single CBIRF adequate?

I do not consider a single CBIRF to be adequate. The development of similar capabilities within the Reserve Components, state or local authorities, or other possible alternatives, in order to effectively respond to domestic CBRNE events should be considered. In addition, the Department of Homeland Security should be encouraged to review the possible development of these technical capabilities within the civilian emergency response system.

In the event of a conflict in the Persian Gulf, is it likely that CBIRF would deploy to that theater and therefore be unavailable to respond to a domestic WMD incident?

I am advised that CBIRF is tasked to provide sensitive site exploitation teams for use in support of potential conflicts in the Persian Gulf. CBIRF will also maintain its CONUS commitment to provide an initial response force to a CBRNE incident. Deconfliction of the two missions is an ongoing responsibility of U.S. Joint Forces Command and the Joint Staff, subject to OSD policy guidance.

National Guard Role in Homeland Defense

There is currently considerable debate about the role the National Guard should play in defending the homeland. The U.S. Commission on National Security/21st Century (the Hart-Rudman Commission) recommended that the National Guard be given homeland security as a primary mission.

Do you believe that defending the homeland should become the National Guard's primary mission?

My personal opinion is that the National Guard should remain a balanced force, trained for both overseas and domestic missions. The appropriate roles and missions of the Total Force—Active, Guard, and Reserve—in all areas including homeland security and the global war on terrorism are currently under review. Defending the citizens, territory and domestic resources of the United States is the highest priority of the Total Force, including the National Guard.

The National Guard is clearly capable of conducting selected homeland defense missions, such as the Air National Guard's preeminent role in continental air defense. However, the National Guard is also combat ready to conduct overseas military operations and is relied upon by combatant commanders as part of a strategic reserve. As the Department reviews how best to deal with the challenge of the new security environment, it is mindful of the need to properly balance the application of the total force to: defend the homeland, contribute to the global war on terrorism, meet military commitments abroad, and, if necessary, participate in a major theater war.

What type of role do you envision the National Guard and Reserve ultimately playing in homeland defense?

The Department of Defense is currently conducting a study mandated by the Congress in the FY 2003 National Defense Authorization Act to determine the "proper balance" of force structures, proper roles and missions, and command relationships with the National Guard.

Relationship with U.S. Northern Command

U.S. Northern Command was established in October 2002 with the mission of conducting operations to deter, prevent, and defeat threats and aggression aimed at the United States, its territories, and interests within the Command's assigned area of responsibility; and, as directed by the President or Secretary of Defense, to provide military assistance to civil authorities, including consequence management operations.

If confirmed as Assistant Secretary of Defense for Homeland Defense, how do you anticipate you would coordinate roles and responsibilities with the Commander, U.S. Northern Command?

Combatant Commanders report directly to the Secretary of Defense. ASD(HD) will assist and advise the Secretary of Defense in refining policy guidance and then manage his prioritization of resources to accomplish assigned roles and responsibilities. ASD(HD) should provide DOD-wide supervision, oversight and coordination for all homeland defense matters on behalf of the Secretary of Defense. Furthermore, ASD(HD) will

integrate the staff efforts of the Joint Staff, the Combatant Commands, and interagency staffs, particularly the OHS and DHS.

How do you anticipate that the Assistant Secretary of Defense for Homeland Defense and U.S. Northern Command will coordinate with civilian law enforcement authorities including the Federal Bureau of Investigation?

If confirmed, I anticipate that a senior ASD (HD) official will coordinate with civilian law enforcement authorities, to include the FBI, within prescribed legal constraints and subject to the Secretary of Defense's approval. When appropriate and when authorized by the Secretary of Defense, U.S. Northern Command will coordinate with civilian agencies on operational and planning issues.

Relationship with the U.S. Strategic Command

The role of U.S. Strategic Command will expand to include responsibilities such as coordinating intelligence-sharing and information operations that support the overall Defense Department mission of defending the homeland.

How will you coordinate your activities with the Strategic Command and the OSD C3I organization?

I am informed that the coordination of intelligence-sharing and information operations within the Department of Defense is currently the purview of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence. If I am confirmed, I will develop and maintain a close professional relationship with the leadership of that organization, especially on matters relating to homeland defense.

Relationship with the Department of Homeland Security

The establishment of the Department of Homeland Security is one of the U.S. Government's largest cabinet-level reorganizations. Despite this reorganization, the Department of Defense will continue to play a critical role in homeland defense.

What role do you expect to play, if confirmed, in the coordination of DoD activities with the Department of Homeland Security?

The Secretary of Defense has made a public commitment to work closely with the new Department of Homeland Security in order to coordinate the respective responsibilities. I fully support that effort. In general, the Department of Defense is responsible for homeland defense missions – to defend the land, maritime, and aerospace approaches from external threats – while the Department of Homeland Security will be responsible for major elements of domestic security and civil preparedness. DoD will also provide military assistance to U.S. civil authorities in accordance with U.S. law, as directed by the President and the Secretary of Defense. For example, such assistance could include

support for consequence management operations led by the Department of Homeland Security when authorized by the President or the Secretary of Defense. There will be an ongoing requirement for U.S. Northern Command to coordinate plans, exercises and training with the operating components of DHS.

Homeland Security Science and Technology Issues

In recent years, the Department of Defense has devoted significant science and technology resources to efforts – such as chemical and biological defense technologies – that have potential utility for both military and homeland defense purposes.

In what manner, if any, do you believe that the Department should coordinate these science and technology efforts with the new Department of Homeland Security?

I believe that effective coordination between the Department of Defense and the Department of Homeland Security regarding scientific and technological development is essential. Moreover, the rapid transfer of new capabilities to civilian officials is imperative.

What role do you expect to play, if confirmed, in such coordination efforts?

ASD (HD) will be responsible for situational awareness and coordination of homeland defense and homeland security-related research and development efforts with the Department of Homeland Security, the Department of Defense, and other elements of the Department of Defense.

Section 1401 of the National Defense Authorization Act for Fiscal Year 2003 requires the Secretary of Defense to designate a senior official to identify, evaluate, deploy, and transfer to Federal, State and local first responder's technology items and equipment in support of homeland security.

In what manner will the designated official coordinate this effort with appropriate officials at the new Department of Homeland Security?

I am advised that the Department of Defense is currently in the process of designating a senior official to carry out the functions as identified in Section 1401 of the National Defense Authorization Act for Fiscal Year 2003. One responsibility of the senior official would be to facilitate the timely transfer of appropriate technology items and equipment to Federal, State, and local first responders, in coordination with appropriate Federal Government officials outside the Department of Defense, including the Department of Homeland Security.

What role do you expect to play, if confirmed, in such coordination efforts?

If confirmed, I would be responsible for maintaining situational awareness and coordination of homeland defense and homeland security-related research and development efforts, and would be the focal point for ensuring that effective coordination is accomplished among DoD, the Department of Homeland Security, and other Federal departments and agencies for projects of mutual interest.

The Defense Advanced Research Projects Agency (DARPA) has developed a “Total Information Awareness” program, to develop and integrate information technologies that would enable the government to sift through multiple databases and sources to detect, classify and identify potential terrorist activities.

What legal constraints, if any, would impact the deployment of such a system within the United States?

I have been advised that the Total Information Awareness (TIA) program at DARPA is not an operational system and no decision has been made to deploy such a system in the future. Neither the development nor operational deployment of TIA would be under the office of the ASD (HD). Without more detailed knowledge about the TIA program, I am unable to provide specific comments concerning the legalities of any potential deployment of the TIA program.

Do you believe that it is appropriate for the Department of Defense to play the leading role in developing such a system?

I believe it is appropriate for the Department of Defense to research, develop, and demonstrate innovative information technologies to detect patterns of terrorist planning and potentially hostile activity directed against American citizens. However, I also firmly believe the deployment of any such systems must be in strict accordance with relevant U.S. laws, and should be carried out, if at all, by civil law enforcement agencies subject to judicial oversight.

Use of Active Duty and Reserve Personnel for Homeland Defense/Posse Comitatus

Following the terrorist attacks of September 11, 2001, National Guard personnel were ordered to active duty to provide airport security. Subsequently, Guardsmen were activated to augment federal agencies to perform border security functions.

What is your understanding of the legal issues and authority associated with using National Guard and Reserve personnel in security roles within the United States?

There are a number of legal issues and authorities that may be associated with using the National Guard and Reserve in security roles in the United States. Each particular situation - such as state status, Title 32, and Title 10 - may trigger different legal issues

and authorities. For example, in order to order the National Guard and Reserve to active duty, or to call the National Guard into Federal service, the President must exercise one of several possible legal authorities. Potential legal authorities include his Constitutional authority and statutory authority under, for example, sections 12301, 12302, 12304 or 12406 of Title 10, United States Code. Once on active duty or in Federal service, legal issues and authority include ensuring a clear chain of command, providing appropriate use of force rules, and complying with the Posse Comitatus Act if the military mission includes providing support to civilian law enforcement in executing the laws of the United States. A more detailed discussion of legal issues and authority depends upon the particular fact pattern of a specific situation.

In your opinion, does the Posse Comitatus Act (18 U.S.C. § 1385) or chapter 18 of title 10, U.S.C. (which regulates the use of the armed forces in civilian law enforcement and related activities) require amendment to deal with the present homeland security situation?

As you are aware, last year Governor Ridge and Secretary Rumsfeld indicated that they believed that the Act appropriately addressed the use of the military to support civilian law enforcement; that changes to the Act were unnecessary at that time; and that they remained open to further study of the issues involved as necessary. Although I am in agreement with the position taken by Secretary Rumsfeld and Secretary Ridge, should I be confirmed and appointed as Assistant Secretary, I will fully cooperate with any exercise of legislative oversight in this manner.

Last fall, in response to requests from the Federal Bureau of Investigation, the Department of Defense provided aerial platforms and camera equipment to a law enforcement task force seeking to apprehend the sniper suspects in the Washington, D.C. metropolitan area.

Under what circumstances do you believe that it is appropriate for the Department of Defense to provide assistance to law enforcement authorities in response to a terrorist event? What about a non-terrorist event?

I believe that Congress has effectively delineated several areas where military support to civilian law enforcement may be appropriate, as specified in Chapters 15 and 18 of Title 10, United States Code. Those authorities apply to military support of the law enforcement response to both terrorist and non-terrorist events. In summary, DoD may lawfully provide support to civil law enforcement authorities to enforce the law under routine circumstances, on a reimbursable basis, in such areas as training, expert advice, and for operations and maintenance of equipment. Under emergency circumstances - for instance, involving a weapon of mass destruction - posing a serious threat to the United States in which civilian expertise and capabilities are overwhelmed, and as jointly determined by the Secretary of Defense and the Attorney General, DoD may provide special capabilities and expertise necessary to not only counter the threat posed by the weapons involved, but also to prevent the serious impairment of civilian law enforcement

authorities' ability to enforce the law and protect citizens. In this regard, the President and the Secretary of Defense would specifically direct the employment of these special DoD's capabilities.

What role do you expect to play, if confirmed, in making such determinations and making such assistance available?

If confirmed and appointed, I expect to play a significant role in advising the Secretary of Defense regarding the legality and operational effectiveness of military support to civilian law enforcement, oversight in monitoring such support when provided, and in establishing clear procedures to expedite DoD support when directed by the Secretary.

Contract Liability Risk

Liability risk has at times been a deterrent to the private sector freely contracting with the federal government to meet national security needs. To address this risk, Congress has acted in the past to authorize the indemnification of contracts for products that are unusually hazardous or nuclear in nature.

Do you see a need to indemnify contracts for homeland security or anti-terrorist products and services (to include biotechnology and information technology) that would not meet the "hazardous or nuclear" criteria, as a way to encourage private sector solutions to homeland defense requirements?

I have not studied this matter carefully enough to make an informed recommendation at this time. However, if confirmed, I am prepared to review the matter with DoD Office of General Counsel and provide appropriate comment to the Committee.

Coordination of Expertise between the Departments of Homeland Security and Energy

The personnel at the Department of Energy's (DOE) National Laboratories have expertise that may be useful to the Department of Homeland Security and to the Department of Defense in the execution of their homeland defense mission.

What mechanism do you anticipate will be put in place to expedite communication with the appropriate experts of the national labs to help respond quickly in the event of a national incident or emergency?

It is my understanding that the Homeland Security Act of 2002 created an Office for National Laboratories within the Directorate of Science and Technology of the Department of Homeland Security that will be responsible for the coordination and utilization of the Department of Energy's national laboratories and sites in support of homeland security activities. If confirmed, I will work to ensure that the Department of Defense coordinates fully with the Department of Homeland Security and the Department of Energy in order to maintain continuing awareness of the technical expertise at the

national laboratories, which may be available to support DoD's homeland defense mission.

Homeland Security and International Issues

If confirmed, do you anticipate that you will have responsibility for activities outside of the United States, such as nonproliferation activities, that would have a direct or indirect relationship to homeland security?

If so, what do you envision these responsibilities would be?

No. The responsible official within the Department of Defense for nonproliferation activities is the Under Secretary of Defense for Policy. Under Section 902 (b)(4) of the FY 03 NDAA, the Under Secretary of Defense for Policy now has overall direction and supervision for policy, program planning and execution, and allocation and use of resources for the activities of the Department for combating terrorism. While maintaining worldwide situational awareness, the ASD (HD)'s foreign responsibilities will be limited to the U.S. Northern Command's area of responsibility.

Congressional Oversight

In order to exercise its legislative and oversight responsibilities, it is important that this Committee and other appropriate committees of the Congress are able to receive testimony, briefings, and other communications of information.

Do you agree, if confirmed for this high position, to appear before this Committee and other appropriate committees of the Congress?

Yes.

Do you agree, when asked, to give your personal views, even if those differ from the administration in power?

Yes.

Do you agree, if confirmed, to appear before this Committee, or designated members of this Committee, and provide information, subject to appropriate and necessary security protection, with respect to your responsibilities as the Assistant Secretary of Defense for Homeland Defense?

Yes.

Do you agree to ensure that testimony, briefings and other communications of information are provided to this Committee and its staff and other appropriate Committees?

Yes.