

STATEMENT OF

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BEFORE

**THE HOUSE GOVERNMENT REFORM
SUBCOMMITTEE ON
NATIONAL SECURITY, VETERANS AFFAIRS,
AND INTERNATIONAL RELATIONS**

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ON

**COMBATING TERRORISM:
FEDERAL RESPONSE TO A BIOLOGICAL WEAPONS ATTACK**

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Good afternoon Mr. Chairman and distinguished members. On behalf of the nearly 6,000 men and women who comprise the Connecticut National Guard and State Military Department and the over 400,000 men and women of the National Guard, I want to begin by thanking you for inviting me to testify and participate in this very important hearing on combating terrorism. I will focus my remarks today on the role of the National Guard during state emergencies, which include biological weapon attacks similar to Dark Winter. In doing so, I will address the following areas:

1. My responsibility as The Adjutant General of Connecticut and the relationship I have with the Governor, state and federal officials during state emergencies;
2. How Connecticut, typical of any state, is organized to respond to emergencies;
3. The Governor's role, responsibilities and authority;
4. The National Guard's unique role as a forward-deployed force to respond to scenarios similar to Dark Winter;
5. Observations from the Dark Winter exercise.

As the Adjutant General of Connecticut, I am entrusted by the Governor with the authority necessary to carry out all provisions of our state statutes regarding the Militia, the Connecticut National Guard and the Office of Emergency Management. I serve as the principal advisor to the Governor on military matters, emergency operations, and civil support. As Adjutant General I have two main responsibilities. My federal responsibility is to serve as the custodian of the Commander in Chief's (CINC's) forces. I must provide combat-ready soldiers and airmen when the President federalizes units. In my state capacity as Adjutant General, I am the senior emergency management official for Connecticut. I exercise this authority through our Connecticut Office of Emergency Management. Additionally, in May of 2000, the Governor directed the Military Department to be the coordinating agency in Connecticut for counter terrorism domestic preparedness.

Connecticut, along with 22 other states, has the Office of Emergency Management (OEM) organized within the State Military Department and under the control of the Adjutant General. The OEM serves as the principle liaison and coordinator to the Federal Emergency Management Agency (FEMA) and law enforcement officials. We divide Connecticut into five emergency-management regions. Each regional

office maintains region-specific emergency plans and serves as the principal liaison and coordinator to all 169 cities and towns throughout Connecticut. In order to maintain an appropriate level of preparedness, the Connecticut Military Department develops and regularly exercises unified emergency operation plans for a number of potential state emergencies. We maintain and implement plans for nuclear-preparedness safety, natural and manmade disasters, and civil disturbance. Next month, we will conduct our third hurricane exercise in two years and we are planning a second weapons-of-mass-destruction (WMD) exercise this fall.

In recognition of the uniqueness of each state, I offer my comments as specific to the state of Connecticut, however you will find the roles, relationships and responsibilities that I describe consistent throughout the 50 States. In Connecticut, emergency response contingencies mirror the Federal Response Plan, and most state agencies have a role during state emergencies.

Our Governor's role is clearly outlined in both the United States Constitution and General Statutes of Connecticut. Though the Governor expects and appreciates the efforts of the federal government in preserving the welfare of our citizens and the infrastructure of our communities, ultimately, during emergencies, it is the Governor who is responsible for restoring normalcy to the citizens of his state. Politically, and I think most of my Adjutant General colleagues will agree, Governors consider the emergency response aspect of their overall duties paramount to maintaining public confidence and trust. Its my experience that during state emergencies, my Governor, Governor John G. Rowland, is very involved in the decision making; he leads from the front and is sensitive and protective of his emergency powers and authority.

The National Guard is a unique asset to this country and we are ideally suited and positioned to play an essential role in a Dark-Winter scenario. Reliance on the National Guard has been a cornerstone of American foreign and domestic policy for over 360 years. I submit that the National Guard has played a vital part in executing homeland security throughout our rich history. When missioned and properly resourced, the National Guard has proven to be a significant national asset. Accordingly, homeland security becomes an additional mission, but not the only mission of the National Guard. As we develop our nation's comprehensive plan, National Guard forces, with nationwide span of nearly 3300 locations in 2700 communities, should be recognized as the "existing" forward-deployed military force in this country.

As the forward-deployed military force, the National Guard is part of the full spectrum of resources available to Governors in their response to intrastate and interstate domestic security needs. This forward-deployed presence of the National Guard provides easily accessible resources, key infrastructure and power projection to communities, in addition to serving as deterrence to dissuade would-be adversaries from engaging in acts of terrorism. National Guard forces are already fully integrated into existing local, state and regional emergency response networks.

Additionally, the majority of states have interstate and regional compacts that provide Governors easy access for additional resources. The compacts place responding assets under the operational control of the requesting Governor, thus preserving the incident command structure and allowing a seamless transition to the existing state emergency management structure. These relationships make the National Guard uniquely qualified to perform a fusion role on behalf of the Department of Defense, in domestic security assurance. Reliance on the National Guard preserves the constitutional balance between state and federal sovereign interests, rights and responsibilities.

Though I did not participate in Dark Winter, I received extensive and candid feedback from some of my colleagues who observed it. In their eyes, although the exercise was useful and beneficial, it strayed from reality. Governor Keating played himself as Governor, but there was no person playing the Adjutant General, who, again in 23 states commands the State Office of Emergency Management and in the majority of states is a key participant who is familiar with FEMA and the Federal Response Plan. Furthermore, all Adjutants General participate in exercises in their states regardless of whether they control their state's emergency management office. During state emergencies, The Adjutant General is a key official for the Governor and he or she has a central, visible role.

My colleagues remarked that the exercise was federally centric in nature. They believed that the scenario drivers intentionally moved quickly beyond state capabilities to meet the demands of the President. They indicated that the scenario developed for Dark Winter lack an overall understanding of state emergency management structure and the responsibilities of the Governor, Adjutant General and local emergency officials. Were a Dark-Winter exercise conducted in Connecticut, state and municipal officials, and especially our first-responder community, would be very involved in order for the exercise to be credible. I submit that such involvement is not unique to Connecticut but reflects normal operating procedures throughout the states. The first-responder community is often overlooked but is essential to any planned exercise or real crisis.

My colleagues also stated that in defense of the scenario drivers, the federal players found it difficult and frustrating to deal with all the different states, with their differing capabilities and the various powers granted in state statutes regarding civil emergencies. The federal players wanted to operate as they always operate -- with one authority and uniform rules of engagement across the nation.

I can't emphasize enough the realities of what occurs in a state during emergencies. I know those who advocate a strong federal role often underestimate these realities. The Governor has the ultimate responsibility to restore normalcy to his or her citizens and should to the greatest extent resist relinquishing control. Dark-Winter proponents of a strong federal role clearly demonstrated a lack of understanding of statehood and political realities. Federal agencies must understand that the victims of Dark Winter, and the victims of any state emergency for that matter, trust their local and state governments for relief -- relief delivered by trusted neighbors, first responders and state Guardsmen -- as they have in past emergencies. When a strong state chain of command and control is maintained and

federal assets are integrated as needed, unnecessary federalization of the National Guard is avoided. The Governor maintains control.

Federalizing the National Guard would raise legal issues in respect to the Dark-Winter operation. The ability of the federal government to use the National Guard is limited by the Militia Clause of the Constitution Clause.^[1] The Militia Clause provides for the calling forth of the Militia to execute the Laws of the Union, suppress insurrections and repel invasions. Congress empowered the President, as the Commander in Chief, to call forth the Militia.^[2] The law, however, constrains the President in the federal use of the National Guard, limiting the use to when the President is unable to execute the federal law with regular forces.^[3]

The Posse Comitatus Act prohibits the use of any part of the Army, Air Force, Navy, or Marines, including their reserve components, as a posse comitatus (“armed force”) or otherwise to execute the laws, except as authorized by the Constitution or Act of Congress. Congress has created a number of statutory exceptions to the Posse Comitatus Act, which fall into four major categories: (1) insurrections and civil disturbances, ^[4] (2) counterdrug operations, ^[5] (3) disaster relief, ^[6] (4) counter-terrorism and weapons of mass destruction.^[7] It is important to note that the legal authority to use federal forces in the context of a Dark-Winter operation does exist. Federal officials, however, would first be required to jointly make numerous determinations before using federal soldiers.^[8]

After the making of numerous time-consuming legal and factual determinations, little, if anything other than direct access to federal supplies, is gained by federalizing the National Guard for Dark-Winter operations. Federalization would effectively restructure the chain of command. While under state control, the chain of command remains exclusively with the state, ends with the Governor, and The Adjutant General, regardless of service component, is the commander of the state’s entire Army and Air National Guard. Federalization would replace the Governor, The Adjutant General and the State Area Command with a federal Army chain of command. This changing of command would create additional logistics and communications problems, as well as consume valuable time.

The major effect of federalizing is the removal of state control. State control is vital to operations within a state. The vitality arises from the trust, a unique aspect of mission efficiency, developed between state officials through their regular governmental functions, activities and exercises. Moreover, the Governor has more flexibility in the use of National Guard forces in emergency situations than federal commanders, who are constrained by federal law while conducting military/civil operations within the United States.

In Connecticut, the Governor, in a Dark-Winter scenario, may “proclaim that a state of civil preparedness emergency exists, in which event he may take direct operational control of any or all parts of the civil

preparedness forces and functions in the state.^[9] Under law, the Governor possesses emergency powers and is able to conduct operations necessary to cordon the infected areas, as well as evacuate and house the stricken population. As Commander in Chief of the Connecticut National Guard, the Governor may use the Guard to accomplish emergency-operation missions.^[10] Additionally, our interstate compact enables the Governor to utilize National Guard resources in surrounding states, vastly increasing the amount of personnel and equipment available for the operation.^[11]

If control is taken from the state, trusted local officials are no longer delivering relief and enforcing the laws. Rather, the federal government is in control of determining and delivering the relief. I am concerned that Dark Winter is an example of an exercise, developed by an institution having an important influence on our government's response plans, which fails to incorporate the most basic realities of state emergency response and state public policy. I would suggest for future exercises that we include a full spectrum of core emergency response officials at all levels. This would allow participants to exercise their plans and gain the realistic experience of integrating plans at all levels.

When dealing with and training for domestic emergencies a few points must be kept in mind.

- The Governor is in charge.
- We must channel adequate federal resources to our state and local first responders.
- State agencies possess unique skills and assets, which must be included the response plans.
- Future exercises, to be credible, should always include the National Guard, State and municipal agencies.

As a nation, much work still needs to be done in developing our plans to combat terrorism in our homeland. I suggest that the leadership of the National Guard is summoned to meet with this committee. The National Guard Bureau, in coordination with the Adjutants General Association, is prepared to provide a conceptual plan that describes the National Guard's integration into homeland security using as its guide the counterdrug model, which Congress has previously authorized.

In conclusion, as we continue to discuss and debate the role the National Guard can play during emergencies in facilitating the myriad of communication, coordination, command and control issues, I'd like to leave you with a thought from my good friend and colleague, Major General Tim Lowenberg, the Adjutant General of Washington and the Chairman of the Adjutants General Association Homeland Security Committee, of which I am also a member, "The National Guard ties every firehouse to the Pentagon and every State House to the White House."

Mr. Chairman, thank you once again for inviting me to testify before your committee and allowing a forum for candid discussion. I am prepared to answer any questions you or your distinguished colleagues may have.

[1] United States Constitution, Article 1, Section 8, Clause 15

[2] 10 USC 121, 12304

[3] 10 USC 12406

[4] 10 USC 331, et. seq.

[5] 10 USC 124, and 371, et. seq.

[6] 42 USC 5121, et. seq.

[7] 10 USC 374

[8] See specifically 10 USC 382

[9] passim, General Statutes of Connecticut §§ 27-9, 9a

[10] General Statute of Connecticut § 27-14

[11] General Statutes of Connecticut § 28-23a