

Testimony of
The Honorable Patrick Leahy

December 13, 2001

I want to thank Senator Feinstein for her work in organizing this important hearing.

As the co-chair with Senator Bond of the 85-member U.S. Senate National Guard Caucus, I am intensely interested in the emerging role that is being taken by the National Guard in homeland defense. In Vermont we take particular pride in our National Guard - the fabled Green Mountain Boys. In fact, Vermont leads the nation in the per capita number of reserves called up to fight the war on terrorism. If you have visited Ground Zero, you have probably run across citizen-soldiers from the Green Mountain Boys protecting the site or have seen the contrails overhead of the Vermont Air National Guard F-16 Fighting Falcons, which have flown continuous air patrols over New York City since September 11. They have handled these difficult and unprecedented assignments superbly and, while doing so, they and their families and their employers have made sacrifices for which the nation is grateful.

I welcome all of our witnesses to the Senate. Senator Bond, I appreciate your taking the time to be with us to introduce this subject. I appreciate our partnership together in working on National Guard Caucus issues, and I look forward to facing next session's challenges together. General Davis, I have enjoyed working with you over this past year, and I want to congratulate you on your approaching retirement. General Libutti, I appreciate your giving us a broader Army perspective on the emerging role of the Guard in Homeland Defense. I am especially glad we have an Adjutant General of the United States, General Paul D. Monroe of California, and the executive director of the National Guard Association of the United States, retired Major General Richard Alexander. Your insights will be critical to our deliberations. As always, I also value highly the counsel I receive from General Martha Rainville of Vermont.

On all fronts, the National Guard is performing incredibly well with the assignments given Guard units in the aftermath of the terrorist attacks. They are proving every day that they are the nation's premier homeland defense force. Guard Interceptors from New Jersey, North Dakota, the District of Columbia, and Massachusetts, in addition to Vermont, have flown continuous air patrols over New York City and Washington since September 11. Thousands of troops from the Guard are standing watch at our airports and, soon, at our immigration posts. What makes these contributions all the more impressive is that all of it has been done under longstanding authorities with little question about chains of command and local control.

While I am glad that we are convening today, I have to admit that I am concerned that - despite these real accomplishments since September 11 - the Administration is actively considering establishing a central, military homeland security command. Such a command has serious implications since it could have a negative impact on the Guard and the larger balance of powers between the federal and State government.

Basically, this approach does with the military domestically what the Goldwater-Nichols legislation did for structuring how we fight wars abroad. The Goldwater-Nichols law created a Unified Command Plan that invested responsibility for operational control in wartime with various regional commands. That legislation in the mid-1980s left homeland defense operations within the borders of the United States untouched because it raised too many objections about involving the military excessively in civilian affairs.

While we have seen the fruits of this landmark legislation in our ongoing fight against terrorism abroad, I wonder if we have really thought through the implications of extending the command plan to the United States. We need to ask what it would gain us - and what it would cost us - to impose such a change on the National Guard. Would Guard forces be called up continually under federal active duty status, becoming indistinguishable from their active counterparts? How would the nation's Governors and Adjutants General have control over the forces serving in their States?

Several of the concerns about creating a central homeland security command that uses the Guard mirror some of the issues raised by the recent discussions about bringing forces to supplement the INS along the porous 4000-mile Northern Border. There is question about whether to bring these force on under Title 10 status, which places Guard forces on federal active duty under an out-of-state command, and could conceivably result in bringing federal troops from distant locations to serve in place of state National Guard members. This action completely removes the Governor and the Adjutant General from any command and control over their own troops. Under Title 32 status, which is federalized for pay and allowances but with command and control maintained by the governors and states adjutant general, this would not be the case.

My own view on that question is that forces should be brought up under Title 32 duty because they have more flexibility to do the job. Additionally homeland security performed by state National Guard troops under the control of their own Governor and their own Adjutant General is much more acceptable to the citizens of each state. These are friends and neighbors of the citizen soldiers and they have come to expect and depend on Guard troops to perform these types of missions within their borders. These are missions the Guard was created for and trains for on a continuing basis. Under Title 32 - state controlled troops ensure Governors and Adjutants General remain in command and control of their own troops. Senator Feinstein, I would like to ask that a letter that the Vermont and Washington State Senate delegations sent to Governor Ridge on this subject be included in the record.

It seems to me that we may not need to make radical changes in the structure of the military and the Guard to carry out the homeland defense mission. All of our nation's governors are making homeland security and emergency response a priority. If there are skills in dealing with contingencies that they lack, then they can train to respond more effectively. Meanwhile, the National Guard has shown that its units can perform superbly when called upon. I question whether we are trying to find a solution for a problem that does not exist. Let's not reinvent the wheel here.

For the benefit of this committee, the Senate, the House and the Administration, I hope our witnesses will frankly address these issues in their testimony. I regret that I will have to leave at

some point to attend another meeting, but I look forward to reading their testimony. Thank you again, Senator Feinstein.

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