



# Port Security

California's Exposed Container Ports:  
The Case for More Post-9/11 Protection



California Senate Office of Research

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The Case for More Post-9/11 Protection

by Max Vanzi

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California Senate Office of Research • Don Moulds, Director

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## Executive Summary

Five years after the 9/11 terrorist attacks, a great concern persists that more terrorists—or their weapons—will arrive on a ship in a cargo container from a foreign port and unleash hell on American soil once again. The concern centers on the widespread fear voiced by critics in the security field, in Congress, and by security directors on the waterfronts that, despite defenses in place to prevent it, American container ports remain vulnerable to just such an attack.

California stands out as a potential target on the basis of cargo volume alone. Containers stuffed with imported goods pour in daily through the ports of Los Angeles, Long Beach, and Oakland at volumes higher than anywhere in the country. Terrorists sizing up targets could choose ports big or small—though the largest ports offer the greatest opportunities: the more containers passing across the docks, the more likely one will slip past unnoticed. An attack on any of the big California ports would not only cripple port operations but could cause a large death toll in surrounding communities and wreak havoc with the American economy.

Government and industry personnel, equipment, regulations, and plans form the basis of the security shield needed to protect these valuable economic resources and the ports that keep the cargo moving to market. Sharing security responsibilities are, among others, (1) port authorities, which serve as branches of local governments; (2) private-sector operators at the several terminals within each port; and (3) federal agencies largely responsible for cargo security, principally U.S. Customs and Border Protection and the Coast Guard.

This report examines perceived weak links in port security defenses, focusing in particular on how they're configured to prevent a terrorist attack at the Los Angeles, Long Beach, and Oakland ports. Federal agencies run various security programs to protect and check U.S.-bound container cargo, but at nearly every stage, the protections are deemed by some to be inadequate and prone to failure as cargo moves across land and sea toward scattered destinations.

Also contributing to that weakness are the federal grant funding programs that port-authority security directors have depended on since the events of September 11, 2001. Protecting port real estate is the job of the local government-based port authorities. Although the federal government recognized that its process for providing annual grants to port authorities was flawed and took steps to correct it in 2005, not all of the security-measure weaknesses at U.S. container ports were acknowledged and eliminated—a concern addressed at length in this report.

Frustrated port-authority security directors complain they are still underfunded, and there are too many restrictions imposed on existing grants. On top of that, starting in 2006, local port authorities are required to match funds for 25 percent of the cost of approved projects. Furthermore, the distribution of federal money varies, often wildly, from one year to the next, leaving the port directors dependent on a funding stream they can't count on and don't control.

At the Port of Los Angeles, for example, a federal grant from the U.S. Department of Homeland Security's Office of Domestic Preparedness (now named the Office of Grants and Training) that totaled more than \$10 million in 2003 dropped to less than 3 percent of that amount the next year to \$281,325, then shot back up to more than \$11 million the following year. In 2006 the total dropped again, to \$4.6 million. Gyration like this have prompted the lament by the Los Angeles port security chief that, not knowing what may be coming next, he can't implement plans effectively over time.

As for overall funding, federal grants are said to fall short by tens of millions of dollars for subsidizing what could be the best possible port protection. As noted by the Long Beach port security director, waterways and public roads weave in and around port properties, presenting security challenges that cannot be addressed given present resources. At all three of California's major container ports, security directors state that if the federal government grants them funds, the money then comes with strict conditions that bar its use for hiring or training staff or even maintaining the very projects the federal government has provided.

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*Despite portents of a course correction ahead, an acute threat festers around the nation as long as financial resources don't match security requirements.*

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As of this writing, most of these controls and restrictions remain in place as the price that must be paid by local port authorities for federal subsidies. And the subsidies continue to arrive at California's ports in amounts lower than what's needed. New risk-based criteria determining whether a port is eligible to receive a grant worked to the advantage of California's ports in 2005, as the state's grant amounts went up that year. However, they decreased again this year—and in one case Washington, D.C., refused to put a check of any amount in the mail. Los Angeles and Long Beach ports received less than half of their 2005 grant amounts, while the Port of Oakland, even though its security directors applied for \$6 million in grant funding, was denied any grant money. After repeated attempts to learn why Oakland was ignored this year, a Port of Oakland official said, "We still don't have a good explanation."

Meanwhile, a renewed interest in protecting U.S. ports gained traction in Congress this year, fueled in part by concerns over foreign shipping interests seemingly "taking over" several East Coast ports. One port

bill, the Safe Port Act of 2006, authorizes increasing the total federal grant pool by tens of millions of dollars and, in an effort to smooth out the gyrating port-security grant sums, stipulates that Congress will authorize similar amounts from year to year. However, there remains no guarantee that certain ports can be assured of larger grants, even with the increase in the total port-security grant pool; the total pool can grow by an act of Congress, but the proportions doled out to individual ports nationwide are still determined by bureaucrats, such as those who elected to award the Port of Oakland zero dollars for 2006.

The congressional legislation that became law set deadlines for adopting developing technologies, such as “smart card” credentials designed to identify and check backgrounds of persons entering restricted port areas—a security upgrade, no doubt, but at the same time a possible sticking point for truck-driver employment issues and efficient cargo movement. Yet the legislation did put into motion the beginnings of a more effective process for examining U.S.-bound cargo for hidden dangers all along the sea routes, from the loading to the unloading stages.

Also in 2006, early signs of support for port security appeared from a source other than the federal government. For the first time, the California State Legislature committed to a major role to help protect the state’s big container ports. The Legislature voted to put on the November 2006 ballot a multifaceted state bond package that includes a \$100 million provision for port security. The Legislature sought to go even further by passing a measure in both houses that, among other things, would have generated another \$150 million *each year* for security at the Los Angeles and Long Beach ports by imposing a per-container surcharge on the shipping industry, but the measure was vetoed.

This report explains how state money could be put to work to upgrade seaport protection from a terrorist attack—including the possibility of using the 2006 bond funds, if approved by voters, to help satisfy the



new 25 percent matching requirement from ports receiving federal grant security program funding. The Port of Oakland, for one, has already broached this possibility with the federal government by asking if the port might have better luck next year with its funding application to the Department of Homeland Security (DHS) if it were to offer even more than a 25 percent match. The port's manager of governmental affairs explained to federal officials that the port would rely on prospective bond funds to help absorb the higher costs, and the DHS officials said they found the idea "interesting."

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*Only a small percentage of the millions of containers entering the U.S. each year are subject to physical inspection.*

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Despite these portents of a course correction ahead, as matters stand now, a fundamental unfairness persists—and an acute threat festers around the nation—as long as financial resources don't match the requirements needed to make security, while never perfect, at least as good as it can be at the state's large container ports. And the experts agree that the Los Angeles, Long Beach, and Oakland ports still present opportunities for terrorists who see the container cargo chain as a way to penetrate defenses standing in the way of reaching their next target.



## A Flood of Imports: Cover for Terrorists?

California is well-known for being first in many things: agriculture, aeronautics, Internet technology, the movie business, even havoc and loss from mudslides and earthquakes. Another number-one ranking the state can claim is perhaps not as well known but is no less important on a very broad scale: Into this state come shiploads of goods in metal containers that are almost equal in number to all other container imports entering the U.S. combined.<sup>1</sup> And all but a trickle of this California-bound cargo—electronics, clothing, furniture, toys, wood products, consumer goods of all kinds—makes landfall at just three seaports before its dispersion and onward journey inland, more than half of it to out-of-state destinations.<sup>2</sup>

With such a massive quantity of goods constantly traversing through the ports of Los Angeles, Long Beach, and Oakland, security concerns abound in this post-9/11 world. As recent history has shown, terrorists often pick targets in and around transportation systems. To date there has been no attack at U.S. ports or on their connecting cargo carriers—ships, trucks, and freight trains. But evidence suggests that terrorists considering future targets are not ignoring this option, and already have tested the possibilities.

As recounted by a U.S. customs commissioner, five weeks after 9/11 authorities in Italy found a suspect Al Qaeda operative who had concealed himself inside a shipping container that had departed from

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<sup>1</sup> California receives 46 percent of all U.S. container imports. Port Import/Export Reporting Service (PIERS), “U.S. Container Ports—U.S. Imports” (2005).

<sup>2</sup> California transships up to 77 percent of its container imports out of state. Robert C. Leachman, “Final Report: Port and Modal Elasticity Study,” September 7, 2005, p. 9, <http://www.scag.ca.gov/goodsmove/pdf/FinalElasticityReport0905.pdf>.

Port Said, Egypt, and was bound for Chicago via Canada. Airport maps and, presumably to gain easier access to an airport, a forged aircraft-mechanic certificate valid for Chicago's O'Hare and New York's Kennedy airports were found with him.<sup>3</sup> In another incident, in March 2004, suicide bombers who had concealed themselves inside a cargo container entered the southern Israeli port of Ashdod and killed or wounded two-dozen people within the port complex.<sup>4</sup>

Closer to home, in June 2006 at Port Hueneme, north of Los Angeles, dockworkers found this message scrawled on the framework of a cargo hold on a ship that just arrived with bananas from Guatemala: "Nitro + glycerin a gift for G.W. Bush and his Jewish gang." The port was closed while investigators searched for a suspect, and while neither explosives nor the author of the threat was found, the episode demonstrated that someone had made a threat with terrorist implications on board a ship, and the threat had not been discovered until the ship arrived at a U.S. port.<sup>5</sup>

Other events, even if not at the hands of terrorists, also have been indicative of the ease with which intruders hiding in containers are able to slip into major U.S. ports. Twice in 2005, Chinese nationals trying to enter the U.S. concealed in containers—32 stowaways the first time, 29 the second time—were discovered at the Port of Los Angeles.<sup>6</sup> Then a similar incident took place at the Port of Seattle in April 2006 when 22 Chinese nationals emerged from hiding in two containers and

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<sup>3</sup> Stephen S. Cohen, Berkeley Roundtable on the International Economy, University of California, Berkeley, "Boom Boxes: Containers and Terrorism," ch. 4, *Protecting the Nation's Seaports: Balancing Security and Cost*, Public Policy Institute of California (PPIC), p. 106; Robert C. Bonner, commissioner, U.S. Customs and Border Protection, speech to the Council on Foreign Relations, January 11, 2005, [http://www.cbp.gov/xp/cgov/newsroom/commissioner/speeches\\_statements/archives/2005/01112005\\_foreign\\_rel.xml](http://www.cbp.gov/xp/cgov/newsroom/commissioner/speeches_statements/archives/2005/01112005_foreign_rel.xml).

<sup>4</sup> Bonner, U.S. Customs and Border Protection, speech to the Council on Foreign Relations, January 11, 2005.

<sup>5</sup> Gregory W. Griggs and Scott Gold, "Port Is Shut Down After Threat Found," *Los Angeles Times*, June 27, 2006, p. B3.

<sup>6</sup> Greg Krikorian, "Chinese Smuggled Into Port Arrested," *Los Angeles Times*, April 5, 2005, p. B4.

were caught, not by cargo security scanners or federal agents, but by private security guards who happened to find them wandering around the secure port premises.<sup>7</sup> The people smuggled in from China were not terrorists, but the fact that container screening procedures were defeated serves as vivid examples of port security failures.

Another event illustrates how weapons of mass destruction could enter the country, in this instance by land routes. Undercover teams from the Government Accountability Office (GAO), who were testing the effectiveness of border-patrol security, carried radioactive material used to make dirty bombs into the U.S. at border crossings twice in December 2005. Afterward, officials told a congressional panel that while border-patrol officers detected the material in their rental cars at crossings in Texas and Washington, each time the undercover teams were able to talk their way into the country, taking the radioactive material with them.<sup>8</sup>

If terrorists were to target California's large container ports in a manner similar to cases on record, they would have many options to choose from: Los Angeles, Long Beach, and Oakland ports sprawl over tens of thousands of acres where ships bring in enough cargo every year to fill the equivalent of 7 million 20-foot-long containers (if these containers were lined up from end to end, they could circle the Earth at its widest point).

Security needs for ports with those vast dimensions arguably exceed the needs of other ports. At a smaller port, for instance, a bomb could be secreted in a cargo container, perhaps one of hundreds that pass over the docks each day, and detonating the undetected bomb could cause widespread destruction. However, at the Los Angeles, Long Beach, or Oakland ports, a bomb could be hidden in one of several

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<sup>7</sup> Sam Howe Verhovek, "22 Chinese Stowaways Found at Cargo Facility in Seattle: The Apparent Human Smuggling Incident Revives Questions About Security at U. S. Ports," *Los Angeles Times*, April 6, 2005, p. A5.

<sup>8</sup> Spencer S. Hsu and William Brannigan, "GAO: Customs Failed Dirty Bomb Test," *Washington Post*, March 29, 2006, p. A2.

*thousand* containers. An explosion or biological or chemical release could cause greater levels of devastation and, with the port's sudden closure, arguably deal an economic blow on a national scale.

How likely it is that terrorists would pick a port for their next attempt at attacking the U.S. is unknown, but the prospects such a target presents for striking at the nation's economy are surely tempting. As recently noted in a significant Public Policy Institute of California (PPIC) report on seaport vulnerabilities and consequences of a terrorist attack, a goal of Al-Qaeda's titular leader, Osama bin Laden, is to hit the U.S. economy with "every available means."<sup>9</sup>

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*A successful Bin Laden strike at one of California's three major container ports would inflict damage on immense infrastructures.*

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Given the opportunity for an attack using cargo containers as a vehicle, how extensive have efforts been to prevent it? Resources put in place after 9/11 to meet the challenge remain inadequate to the task, as asserted by many experts, including elected representatives and port officials in charge of security at California's three major ports. It's conceded that no amount of achievable protection can guarantee port security impervious to a terrorist attack. However, in the opinion of these safety experts, there is ample room to plug many of the holes in the port security shield.

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<sup>9</sup> Jon D. Haveman and Howard J. Shatz, editors, *Protecting the Nation's Seaports: Balancing Security and Cost*, Public Policy Institute of California (PPIC), 2006, p. 2, quoting a 2001 news report from Agence France Presse.

## The Infrastructure

A successful Bin Laden strike at one of California's three major container ports would inflict damage on immense infrastructures. The Port of Los Angeles hosts 27 cargo terminals registered by the U.S. Coast Guard; seven of these are working container terminals, each consisting of vast stretches of storage space, cranes, and docks configured exclusively for handling container-borne cargo. At just one of these terminals, Pier 400, ships tie up to docks and temporary storage space sprawling over 484 acres, making it one of the largest freight-moving facilities in the world.<sup>10</sup> Next door at the Port of Long Beach, six more container terminals, hundreds of acres in size, expand this two-port complex consisting of the adjacent Long Beach and Los Angeles port properties.<sup>11</sup>

The Port of Oakland is the smaller of the Big Three California container ports, with eight terminals that handle less than 25 percent of the import volume of either Los Angeles or Long Beach, but it's the fourth busiest container port in the nation.<sup>12</sup> And this port assumes a role the others do not because it includes Oakland International Airport within its boundaries. The Port of Oakland also physically covers more ground than its container-port counterparts in Southern California, as it spreads along 19 miles of the San Francisco Bay waterfront.<sup>13</sup>

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<sup>10</sup> George Cummings, director, Homeland Security, Port of Los Angeles, interview with author, February 2005, and author observations during site visit, February 2005.

<sup>11</sup> Cosmo Perrone, director of security, Port of Long Beach, interviews with author, February to June 2005.

<sup>12</sup> "Port of Oakland Maritime Activities: Major Source of Jobs, Business Revenue, State and Local Taxes," press release, July 10, 2006, <http://www.portofoakland.com/newsroom/pressrel/view.asp?id=34>.

<sup>13</sup> Ray Boyle, general manager, Maritime Operations and Port Facility Security Officer, Port of Oakland, and (following Boyle's December 2005 retirement) Marilyn Sandifur, communications director, Port of Oakland, interviews with author, February 1, 2005, to March 5, 2006.

## Pinch Points in the Container-Cargo Chain

The Los Angeles, Long Beach, and Oakland ports comprise the busiest collection points of seagoing cargo in the nation; this is where nearly half of all container cargo entering the U.S. is funneled and sorted for transshipment after its journey from primarily Asian countries.

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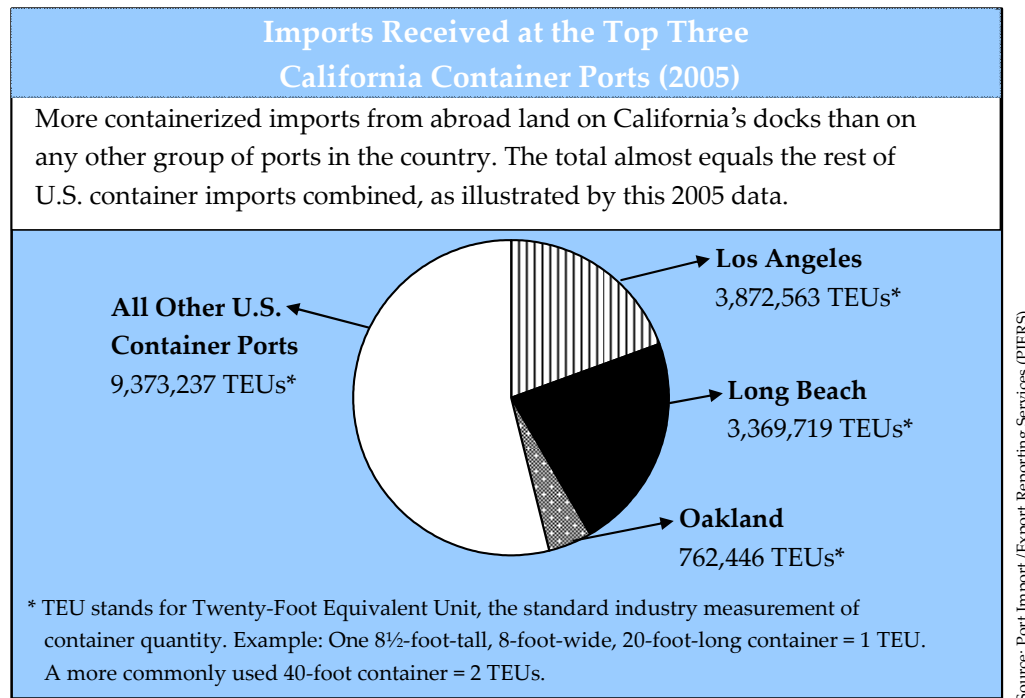
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At each of the three ports' marine terminals, containers stacked several units high await movement inland while other containers at the docks stand empty, awaiting shipment back to Asia to take on another load of goods destined for the U.S. market. On the same docks, containers loaded with wheat, wastepaper, plastics, raw cotton, pet food, and scrap metal are hoisted onto outbound ships by the same cables dangling from cranes up to 240 feet high that were used hours earlier to unload the big metal cargo boxes.<sup>14</sup>

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<sup>14</sup> Perrone, Cummings, Boyle/Sandifur, interviews with author, February 1, 2005, to March 5, 2006; author observations during site visits, February 2005; and online information from the Los Angeles Port Authority [http://www.portoflosangeles.org/facilities\\_Container.htm](http://www.portoflosangeles.org/facilities_Container.htm), Long Beach Port Authority <http://www.polb.com/about/overview/default.asp>, and Oakland Port Authority [http://www.portofoakland.com/maritime/facts\\_operations.asp](http://www.portofoakland.com/maritime/facts_operations.asp).





All of this port activity generates security concerns that extend even beyond the confines of the ports. There are issues with the thousands of trucks hauling imports, one container at a time, over roads and bridges five to six days a week to inland transshipment points in California where the cargo is then moved by truck or rail to other cities and states.

## Risky Business

Terrorists have not attacked the nation's seaports. But security officials warn that such a day could come—and come to California, given the large volume of cargo handled by the otherwise highly efficient method of shipping goods in closed containers. The equivalent of more than 7 million containers a year stream into just the Los Angeles and Long Beach ports (see the imports chart above), and each port consists of thousands of acres and dozens of shipping channels. With activity of

this magnitude, the Coast Guard cites these California ports as prime terrorist targets requiring maximum vigilance.<sup>15</sup>

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*The span of conceivable weapons includes radiological dirty bombs, nuclear weapons, and chemical or biological bombs, all capable of causing death and destruction over vast areas.*

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One fear is that terrorists posing as crew members will enter the U.S. aboard a cargo vessel destined for a U.S. port. As cited earlier, terrorists already have attempted using containers as a gateway to a target more than once. Another possibility: a lethal device concealed in a container shipped from a foreign port will be detonated after it has been unloaded onto a U.S. dock or perhaps transshipped to an inland destination. The span of conceivable container-borne weapons includes radiological dirty bombs, nuclear weapons, and chemical or biological bombs, all capable of causing death and destruction over vast areas. To cite one conceivable outcome: a chemical attack with the fertilizer compound ammonium nitrate packed into a cargo container could produce an explosion 10 times greater than that of the 1995 federal-building bombing in Oklahoma City.<sup>16</sup>

The success of these forms of attack would depend on the ability of terrorists to secretly smuggle their deadly payload into a container destined to move through the cargo chain to American soil—and then detonate it. Shipping manifests would need to be falsified but “this is not such an infrequent occurrence,” says Stephen S. Cohen, a University of California economics professor who notes that a

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<sup>15</sup> Lt. Jg. Tony Migliorini, public information officer, Sector Los Angeles/Long Beach, U.S. Coast Guard, interview with author, October 18, 2005.

<sup>16</sup> Cohen, *Protecting the Nation's Seaports: Balancing Security and Cost*, Public Policy Institute of California (PPIC), 2006, p. 98.

globalization promotion group based in Paris, Organisation for Economic Co-operation and Development, cites two such events, though neither was terrorist related. In November 2002 a container on a ship at sea blew up, caused by spillage of improperly documented fireworks and bleaching agents; in January 2002 volatile chemicals spilled inside containers on a ship caught in a storm off the east coast of the U.S. In both cases, someone prepared manifests that did not correctly identify the cargo, “thus hiding the dangerous nature of [the] contents.”<sup>17</sup>

If terrorists at an overseas location attempted to arm a container for an attack on the U.S., they might encounter a seal that shippers commonly attach to container doors to discourage tampering. But, as shown in documented cases of criminals stealing container contents, seals can be circumvented easily. According to a 2003 RAND study, “there are several ways to do this, many of which are even illustrated on the Internet.” Thieves are believed to have entered containers within 20 minutes *without* disturbing the seal.<sup>18</sup>

## Busy Ports: The Economic Factor

In June 2006, when the Public Policy Institute of California (PPIC) published its 271-page volume on port security,<sup>19</sup> the authors analyzed economic and other implications of terrorist attacks, concentrating their research primarily on the container seaports of Los Angeles and Long Beach. As their findings indicate, the flow of goods at these two ports keeps growing as more ships move more cargo between the U.S.

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<sup>17</sup> Cohen, *Protecting the Nation's Seaports: Balancing Security and Cost*, Public Policy Institute of California (PPIC), 2006, p. 98.

<sup>18</sup> Maarten van de Voort, Kevin A. O'Brien, et al., “Seacurity, 'Improving the Security of the Global Sea-Container Shipping System,” RAND, 2003, p. 9, [http://www.rand.org/pubs/monograph\\_reports/2005/MR1695.pdf](http://www.rand.org/pubs/monograph_reports/2005/MR1695.pdf).

<sup>19</sup> Jon D. Haveman and Howard J. Shatz, editors, *Protecting the Nation's Seaports: Balancing Security and Cost*, Public Policy Institute of California (PPIC), 2006, p. 5.

and its trading partners across the Pacific. Today, the two ports handle 111 million tons of seaborne trade a year, making it the largest port complex (measured by volume of cargo handled) in the U.S. and the fifth largest in the world.<sup>20</sup>

If a terrorist's explosion interrupted this frenzy of trade activity, the economic disruption would be felt throughout the country, according to security specialist Stephen Flynn, author of *America the Vulnerable: How Our Government Is Failing to Protect Us From Terrorism*.<sup>21</sup> How severe the repercussions could be is subject to debate.

One study cited in the PPIC report states that stop-work actions by labor unions at U.S. ports in the 1960s had little effect on the national economy, and the authors speculate that the economy would similarly survive intact if terrorists attacked the ports of Los Angeles and Long Beach.<sup>22</sup> The local economy would "suffer from a port closure of two months . . . [but] the loss of a major industry — such as aerospace — would be far more threatening to the health of the local economy."<sup>23</sup>

Yet another study in the PPIC report that more closely analyzes the potential effects of a specific terrorist action at California's ports concludes that an interruption of cargo movement would inflict an economic toll costing billions of dollars. For example, by blowing up the three highway bridges and one rail bridge connecting Terminal Island to the nearby mainland, thereby cutting ground transportation links to the island, terrorists could knock out about 55 percent of the

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<sup>20</sup> Peter Gordon, James E. Moore II, Harry W. Richardson, University of Southern California, and Qisheng Pan, Texas Southern University, "The Costs of a Terrorist Attack on Terminal Island at the Twin Ports of Los Angeles and Long Beach," ch. 3, *Protecting the Nation's Seaports*, Public Policy Institute of California (PPIC), p. 73.

<sup>21</sup> Stephen Flynn, security specialist, senior fellow at the Council on Foreign Relations, and author of *America the Vulnerable: How Our Government Is Failing to Protect Us From Terrorism* (New York: Harper Collins, 2004), p. 30-33.

<sup>22</sup> Edward E. Leamer, Christopher Thornberg, University of California, Los Angeles, "Ports, Trade, and Terrorism: Balancing the Catastrophic and the Chronic," ch. 2, *Protecting the Nation's Seaports*, Public Policy Institute of California (PPIC), p. 33.

<sup>23</sup> *Ibid.*, p. 61.

two ports' trade. The cost to the economy for closing port operations on Terminal Island: up to \$90 billion over a two-year period (actual costs would depend on the amount of time needed to build replacement bridges). Consequences are therefore "significant and costly," this study reports, justifying a heavy investment in efforts to prevent such an attack.<sup>24</sup>

## The Payoff of Prevention: In the Trillions?

Economists have speculated on the cost-benefit ratios of financing port security nationwide. By one measure, although subject to "limited data and . . . assumptions that are subject to error," the Coast Guard in 2003 estimated it would cost \$7.3 billion over 10 years just to meet the requirements of the Maritime Transportation Security Act (MTSA) of 2002, the principal law calling for the expansion of port security protections to meet credible threats.<sup>25</sup>

While calculations on the cost of preventing an attack on U.S. ports are in the billions, assessments on the cost of absorbing the losses from an attack that might have been prevented have measured in the trillions. The Coast Guard's \$7.3 billion estimate for protecting the nation's ports over a 10-year period makes the investment appear worthwhile if it leads to the prevention of an attack that could result in losses of up to \$10.6 trillion, a calculation reported in the PPIC report and in a Federal Register cost-benefit analysis.<sup>26</sup>

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<sup>24</sup> Gordon, Moore, Richardson, Pan, *Protecting the Nation's Seaports*, Public Policy Institute of California (PPIC), p. 72.

<sup>25</sup> Government Accountability Office (GAO), "Maritime Security: Substantial Work Remains to Translate New Planning Requirements into Effective Port Security," June 2004, <http://www.gao.gov/new.items/d04838.pdf>.

<sup>26</sup> Haveman, Shatz, *Protecting the Nation's Seaports*, Public Policy Institute of California (PPIC), p. 193; Federal Register, vol. 68, no. 204, October 22, 2003, Rules and Regulations, p. 60,467.

As noted in the PPIC report, the accuracy of such calculations is difficult to assess and the means of arriving at them are “somewhat murky.” However, the report’s authors state these published estimates “could be close to accurate if some type of highly catastrophic event were likely — such as a multiple detonation of nuclear devices at U.S. ports—and if the MTSA measures had a high probability of stopping the event.”<sup>27</sup>

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*At the Port of Oakland, little stands in the way of a terrorist using a small boat to launch an attack inside the harbor.*

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## The Threat on Water

One potential point of access for an armed intruder or a terrorist’s weapon is represented by the thousands of pleasure boats and commercial fishing boats moving in or near the Los Angeles, Long Beach, and Oakland container-port areas. Inside the Port of Los Angeles, for instance, as many as 4,000 pleasure boats tie up at four marinas near the commercial terminals. There are no security checkpoints for this fleet of pleasure craft passing in and out of the harbor area.<sup>28</sup>

Likewise, at the Port of Oakland, little stands in the way of a terrorist using a small boat to launch an attack inside the harbor. Unlike the Los Angeles and Long Beach ports, Oakland’s port does not have its own waterborne harbor police force. Boat patrols are conducted by the

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<sup>27</sup> Haveman, Shatz, “The Government Response: U.S. Port Security Programs,” ch. 7, *Protecting the Nation’s Seaports*, Public Policy Institute of California (PPIC), p. 192, 193.

<sup>28</sup> Cummings, interview with author, February 2005.

Oakland Police Department, Alameda County Sheriff's Department, and outside the harbor by the Coast Guard. The port has requested and received federal approval to install in 2008 round-the-clock security cameras to observe pleasure craft on the Oakland Estuary near container terminals.<sup>29</sup>

But according to a security expert, because the port authority lacks its own patrol unit, terminal operators are concerned about how easily a small boat could move through the port, its purposes unknown, heading toward a container vessel.<sup>30</sup> (This was the strategy of the terrorists who used a small bomb-laden vessel to come alongside the American-guided missile destroyer USS *Cole* in the port of Aden in Yemen in October 2000. The explosion the terrorists set off killed 17 U.S. sailors, injured 39, and severely damaged the ship.)

In addition to risks associated with containers, there are other challenges in defending against terrorists or others bent on causing catastrophes at California's large ports. For example, of the 27 registered dockside facilities at the Port of Los Angeles, 20 are berths where either imported motor vehicles and other goods are off-loaded or passengers arrive and depart on cruise ships; nine of these 20 berths accommodate vessels carrying bulk liquids, including a berth that handles liquefied propane gas, a highly hazardous substance when moved within any transportation system.<sup>31</sup>

## The On-the-Ground Threat

Other concerns relate to ground transportation routes. The Los Angeles and Long Beach ports occupy contiguous mainland properties and, except for restricted access to leased terminal operations, open

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<sup>29</sup> Boyle, interview with author, January 27, 2005.

<sup>30</sup> Ibid.

<sup>31</sup> Cummings, interview with author, February 2005.

roads allow public access to both ports. Container terminals in each port line the shoreline and are located on shared sections of Terminal Island. As noted earlier, three public-access highway bridges and one railroad bridge provide land access to Terminal Island. Though off-limits to the public, some terminal space lies directly below the highway bridges carrying public vehicle traffic overhead. That's another security concern, particularly for the longest bridge, the Vincent Thomas, which passes over terminal property and connects Terminal Island with San Pedro, a seaport community within Los Angeles.<sup>32</sup>

At the Port of Oakland, several highway and access streets open to the public lead in and out of the port area. Access is restricted only to its eight leased terminals.<sup>33</sup>

## Railways and Highways

Port security does not end at the container docks. Also vulnerable are the transportation systems that move cargo over railways and highways. Goods transported by train in California follow more than 5,700 miles of track. And more than 164 million tons of freight moved across California by rail in 2004.<sup>34</sup> Most freight is hauled by two carriers: BNSF (Burlington Northern and Santa Fe) Railway Company and Union Pacific.

Security for freight rail, including trains carrying ocean-shipping containers, is managed primarily by the railroads themselves. As explained by John Allen, captain of the Union Pacific railroad police

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<sup>32</sup> Cummings, interview with author, March 2005.

<sup>33</sup> Boyle, interview with author, March 2005.

<sup>34</sup> Association of American Railroads, "Railroad Service in California 2004," December 2005, [http://www.aar.org/PubCommon/Documents/AbouttheIndustry/RRState\\_CA.pdf?states=RRState\\_CA.pdf](http://www.aar.org/PubCommon/Documents/AbouttheIndustry/RRState_CA.pdf?states=RRState_CA.pdf).



department, freight-rail safety is maintained by strategic planning and careful monitoring of susceptible cargo.<sup>35</sup>

In California, BNSF Railway and Union Pacific maintain staff peace officers, who have arrest powers, to patrol railroad properties and conduct cargo inspections. In the case of containers, the focus is on ensuring that seals on locked doors have not been broken, which would indicate someone may have tampered with a container's contents. (As noted earlier, tampering could occur anyway with the seal left intact.)

Moving goods by road to and from container ports provides another range of possible terrorist targets. Trucks and their loads, such as container boxes, flow through the transportation system in huge volumes. In 2002, California was both the origin and destination for more than 1.5 billion tons of freight moved by truck—more than any other state.<sup>36</sup> The security concern is that a single bomb hidden in one vehicle en route to detonation might elude detection. To prevent such an outcome, antiterrorist security responsibilities fall primarily to the California Highway Patrol (CHP), supplemented by Highway Watch, a volunteer observation program administered by the American Trucking Associations.<sup>37</sup>

The CHP has about 7,000 officers to patrol approximately 14,000 miles of California highways and interstates and 90,000 miles of streets and roads. To address post-9/11 security concerns, such as moving imported cargo by truck on California roadways and bridges, CHP officers are trained to identify and respond to suspected terrorist activities.

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<sup>35</sup> Captain John Allen, regional security chief, Union Pacific railroad, interview with author, February 2005.

<sup>36</sup> Bureau of Transportation Statistics, "Origins and Destinations by State and Metro Area by Mode," [http://www.bts.gov/publications/freight\\_in\\_america/html/geography\\_of\\_us\\_freight\\_shipments.html](http://www.bts.gov/publications/freight_in_america/html/geography_of_us_freight_shipments.html).

<sup>37</sup> Highway Watch, "Are You Prepared?" <http://www.highwaywatch.com>.

The CHP also employs specialists at highway weigh stations who conduct inspections of goods transported by truck and assist in watching for terrorist suspects. These specialists inspect trucks regularly for weight and other vehicle-standards compliance issues (including hazardous-materials conformity), and they check drivers primarily for proper licensing requirements. The CHP immediately pulls out-of-compliance vehicles from service right at the scales; drivers are not permitted to continue their trips if questions arise over their identity or credentials.<sup>38</sup>

## The Federal Role

For the most part, federal agencies determine, supervise, and conduct cargo safety checks at California's container ports. All federal security operations come under the jurisdiction of the Department of Homeland Security and the Department of Justice. The ports operate under a constant state of alert that can be increased in stages depending on the seriousness of a security threat.

For port security emergencies on land, the lead federal agency is the FBI; for emergencies on water, the Coast Guard and the FBI are the lead federal agencies. Compliance with regulations governing port security is under the jurisdiction of the Coast Guard. Screening and inspection of cargo is in the hands of the U.S. Customs and Border Protection (CBP) agency, while the screening of crew and passengers is carried out by both Immigration and Customs Enforcement agents and the Coast Guard.<sup>39</sup>

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<sup>38</sup> Lt. William Perlstein, legislative unit, California Highway Patrol, interview with author, July 14, 2005.

<sup>39</sup> Paul R. Martin, Jr., port security specialist, Sector San Francisco Bay, U.S. Coast Guard, interview with author, April 6, 2006.

Port security is based on procedures custom-designed to prevent an attack targeting the container-shipping industry. The authority and requirements to implement these procedures are set out mainly in the federal Maritime Transportation Security Act of 2002 and the Coast Guard and Maritime Transportation Act of 2004.<sup>40</sup>

## The Maritime Act and Other Strategies

Several requirements both by law and less formal agreements illustrate the federal government's protective strategies:

- At foreign ports, 24 hours before a ship is loaded with cargo destined for the U.S., the shipper is required to electronically transmit to the U.S. Customs and Border Protection agency the cargo manifests, which are reviewed by customs intelligence units. An “assessment of risk” is conducted in this way for every shipment entering the country. If documentation is not in order upon arrival at U.S. ports, containers may be checked using X-rays or gamma rays or they are physically searched. Customs officers conduct inspections of individual containers based on suspect manifests and other factors in about 6 percent of the containers entering the U.S.
- A shipper also must notify the U.S. Coast Guard 96 hours before cargo is due to arrive in a U.S. port, during which time the Coast Guard examines crew lists and cargo manifests to decide if the container vessel may proceed to docking and unloading.<sup>41</sup>

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<sup>40</sup> Paul R. Martin, Jr., port security specialist, Sector San Francisco Bay, U.S. Coast Guard, interview with author, April 6, 2006.

<sup>41</sup> 33 Code of Federal Regulations § 160.212 (2006).

- Armed Coast Guard personnel board select vessels as the vessels approach U.S. ports. Crew credential checks are also conducted.<sup>42</sup>
- With the agreement of foreign governments, U.S. Customs and Border Protection assigns American agents to foreign ports where container ships embark for U.S. destinations. About 92 agents are spread out among 42 foreign ports in 24 countries to spot-check U.S.-bound containers.<sup>43</sup> About two-thirds of all containerized cargo entering the U.S. passes through a foreign port where U.S. cargo inspectors are stationed, per the Container Security Initiative's provisions.<sup>44</sup>
- The Maritime Transportation Security Act requirements also apply to owners and operators of vessels and tenants at container terminals. Vessel and facility owners must create and submit plans for deterring a terrorist attack on their leased terminal properties.<sup>45</sup> Privately provided security guards posted at roadway entrances to the ocean-container terminals are the most visible feature of the plans implemented at container ports in California and elsewhere. Access to the terminals is restricted, unlike the open roads and streets that the public may use elsewhere within the port areas.
- As an additional safety feature (which is not a federal regulatory requirement), many bar-pilot associations have agreements with Coast Guard captains of the port stipulating that if there were a security emergency aboard an inbound ship, a code word may be passed to shore to alert the Coast Guard. This arrangement is

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<sup>42</sup> 33 Code of Federal Regulations § 6.01-6.19 (2005).

<sup>43</sup> U.S. Customs and Border Protection, "CSI in Brief," February 15, 2006, [http://www.cbp.gov/xp/cgov/border\\_security/international\\_activities/csi/csi\\_in\\_brief.xml](http://www.cbp.gov/xp/cgov/border_security/international_activities/csi/csi_in_brief.xml).

<sup>44</sup> Haveman, Jennings, Shatz, Wright, "The Container Security Initiative and Ocean Container Threats," Public Policy Institute of California (PPIC), working paper, February 2006, p. 4-5. Used with permission.

<sup>45</sup> Maritime Transportation Security Act of 2002 (Public Law 107-295).

determined privately on a port-by-port basis and the identity of participating ports is not made public.<sup>46</sup>

- Other safety and inspection tools at U.S. container ports include radiation portal monitors (installations are complete in Oakland and close to completion in the Los Angeles and Long Beach ports);<sup>47</sup> radiation devices hand-held by customs inspectors; dogs trained to detect explosives and other dangerous or illegal contraband; and, recently mandated by Congress, tamper-proof credentials for those with access to restricted port areas.<sup>48</sup>
- Besides federal law requirements, U.S. Customs and Border Protection also partners with the seaborne-cargo trade to encourage voluntary security upgrades to port and vessel properties. As an incentive, the Customs–Trade Partnership Against Terrorism (C-TPAT) program extends “green-light” status to cooperating companies, allowing shipments to move through customs more quickly. To qualify for the incentive program, ship and terminal operators at first only had to agree to conduct their own thorough assessments of supply-chain security. Later, in 2004, the terminal operators’ security procedures required approval by U.S. Customs and Border Protection. Such security components as property and personnel protection, gate controls, and scrupulous manifest maintenance are among the considerations to qualify for the program.<sup>49</sup>

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<sup>46</sup> Martin, port security specialist, interview with author, 2006.

<sup>47</sup> Aileen Suliveras, assistant port director, tactical operations, Los Angeles–Long Beach seaport, Customs and Border Protection, U.S. Department of Homeland Security, interview with author’s researcher, October 19, 2006.

<sup>48</sup> Ibid.

<sup>49</sup> Kathleen M. Conway, director, cargo and conveyance security, Customs and Border Protection, U.S. Department of Homeland Security, interview with author, October 26, 2005; and Sean Strawbridge, vice president of business development, Embarcadero Systems Corporation, a subsidiary of Marine Terminals Corporation, interview with author, May 2, 2005.

## The Critics Find Fault

The federal government's container-cargo security measures, while upgraded since 9/11, nevertheless fail to fully answer the challenges of securing cargo and seaports as the terrorist threat has evolved, according to an array of critics.

Just the fact that only a small fraction of container cargo is physically inspected is often cited as a significant hole in the security network. Two recognized experts, Stephen Flynn, a senior fellow at the Council on Foreign Relations, a former Coast Guard commander, a former member of the White House National Security Council, and the author of a book on the nation's vulnerabilities to terrorist attack, and James M. Loy, former deputy secretary of the U.S. Department of Homeland Security and former commandant of the U.S. Coast Guard, find the present systems inadequate. They have called for an automated inspection system that scans "every single container destined for America's waterfront before it leaves port—rather than scanning just the tiny percentage we do now."<sup>50</sup>

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*U.S. customs agents in foreign ports are not likely to uncover concealed weapons of mass destruction.*

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Also raising questions is the value of the voluntary Customs–Trade Partnership Against Terrorism program. To receive permission to fast-track cargo security checks, shipping operators go through a process to confirm that their security measures are meeting U.S. customs' standards. But a Government Accountability Office (GAO) study found "several weaknesses" in this process. For example, many of the program's requirements are "jointly agreed upon" by the

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<sup>50</sup> Stephen E. Flynn and James M. Loy, "A Port in the Storm Over Dubai," *New York Times*, February 28, 2006, p. 19.

customs agency and the private operators benefiting from the more relaxed security rules. Additionally, only “a few” security measures are examined before a program is approved.<sup>51</sup>

Senator Norm Coleman, a Minnesota Republican and chairman of the Senate Permanent Subcommittee on Investigations, which addresses port security procedures, described the conditions divulged by the GAO report as “simply unacceptable.”<sup>52</sup>

The GAO also faults the way U.S. customs handles the process governing how U.S. agents stationed at foreign ports inspect U.S.-bound container cargo. The GAO’s April 2005 review of the Container Security Initiative (CSI) found that these agents are not able to examine as much as 35 percent of the cargo that should be inspected.

Explanations varied from a lack of the host government’s approval to “workspace constraints.”<sup>53</sup> Questions concerning the effectiveness of the high-tech instruments used to examine a container’s contents also contribute to the widely held view that U.S. customs agents in foreign ports are not likely to uncover concealed weapons of mass destruction.<sup>54</sup> For instance, when U.S. agents consider a container a high-risk candidate, if the foreign port’s authorities refuse an inspection of the suspect container, U.S. agents may have to wait until

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<sup>51</sup> Government Accountability Office (GAO), “Cargo Security: Partnership Program Grants Importers Reduced Scrutiny With Limited Assurance of Improved Security,” report to Congress, March 2005, <http://www.gao.gov/new.items/d05404.pdf>.

<sup>52</sup> Senator Norm Coleman (R) of Minnesota, chairman, Senate Permanent Subcommittee on Investigations, “The Container Security Initiative and Customs Trade Partnership Against Terrorism: Securing the Global Supply Chain or Trojan Horse?” opening statement at hearing, May 26, 2005, [http://www.hsgac.senate.gov/\\_files/OPENINGCOLEMANFinal.pdf](http://www.hsgac.senate.gov/_files/OPENINGCOLEMANFinal.pdf).

<sup>53</sup> Government Accountability Office (GAO), “Container Security: A Flexible Staffing Model and Minimum Equipment Requirements Would Improve Overseas Targeting and Inspection Efforts,” April 2005, <http://www.gao.gov/new.items/d05557.pdf>.

<sup>54</sup> Flynn, “Port Security Is Still a House of Cards,” Council on Foreign Relations, January 30, 2006, [http://www.cfr.org/publication/9629/port\\_security\\_is\\_still\\_a\\_house\\_of\\_cards.html](http://www.cfr.org/publication/9629/port_security_is_still_a_house_of_cards.html).

the container arrives in an American port before it can be inspected. A critical analysis of federal measures to protect container cargo prepared by consultants at the Public Policy Institute of California (PPIC) and Princeton University found that “this occurred most of the time but defeats the [Container Security Initiative (CSI)] goal of inspecting high-risk containers before they reach the United States.”<sup>55</sup>

A subsequent PPIC study analyzing threats to ocean shipping asserted that the CSI program devotes more attention to inspecting containers where the risk is lower for finding a bomb instead of where the risk is higher. The study notes:

“Although U.S. officials screen up to two-thirds of U.S. containerized imports before they ever leave their final foreign port, officials screen less than one-third of imports from the riskiest countries. Even to the extent that U.S. screening algorithms take [the] ultimate source country into account, this still means that high-risk imports from riskier countries are more likely to land on U.S. shores than are high-risk imports from less risky countries.”<sup>56</sup>

The study’s authors conclude that terrorists, aware of locations where U.S.-bound shipments are less likely to be checked, “will be more likely to ship from non-CSI ports and at least have a better chance of getting closer to the United States.”<sup>57</sup>

Security specialist Flynn has been quoted often by the media about his concerns for the nation’s state of preparedness in the event of a terrorist attack in the seagoing transportation system. Among Flynn’s observations:

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<sup>55</sup> Haveman, Shatz, Vilchis, “U.S. Port Security Policy After 9/11: Overview and Evaluation,” *Journal of Homeland Security and Emergency Management*, vol. 2, issue 4, 2005, p. 18.

<sup>56</sup> Haveman, Jennings, Shatz, Wright, “The Container Security Initiative and Ocean Container Threats,” 2006, p. 19.

<sup>57</sup> *Ibid.*, p. 21.



With the present technology, not everything can be personally inspected given that in 2002 alone, “over 400 million people, 122 million cars, 11 million trucks, 2.4 million rail freight cars, approximately 8 million maritime containers, and 59,995 vessels entered the United States at more than 3,700 terminals and 301 ports of entry.” Even so, “an appalling lack of engagement” and a “tepid, piecemeal approach” characterize the federal government’s demonstrated commitment to seaport security. “For too long, port and container security has been viewed by these players as a backwater problem to be hashed out by technocrats and security professionals. Right now the odds stand at about 10 percent that our current targeting and inspection practices would detect [inside an inbound shipping container] a device similar to a Soviet nuclear warhead surrounded by shielded material.”<sup>58</sup>

Flynn has seen no great improvements since the 2004 publication of his book on this subject. “Port security today is still a house of cards,” he told the *New York Times* in February 2006. “For each of [the federal government’s port security] programs, the bar is not very high and there is very little in the way of verification [amounting to] an effective deterrent.”<sup>59</sup>

Agreeing with conclusions reached, in part, by authors of the PPIC report, Flynn repeatedly refers to the devastating economic dislocation that would occur if terrorists attacked a major container seaport, followed by the government’s closure of the port. The private-sector shippers, both foreign and domestic, “simply cannot survive” with prolonged port closures. But to quickly restore a port’s functions would require “having a credible security regime in place with which to convince a traumatized American public that it is [again] reasonably

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<sup>58</sup> Haveman, Jennings, Shatz, Wright, “The Container Security Initiative and Ocean Container Threats,” 2006, p. 96.

<sup>59</sup> Hassan M. Fattah and Eric Lipton, interview with Flynn, “Gaps in Security Stretch All Along the Way From Model Port in Dubai to U.S.,” *New York Times*, February 26, 2006.

safe to move cargo.” Yet the government’s initiative in addressing such necessities “continues to be inexplicably modest.”<sup>60</sup>

Concurrence with Flynn’s doubts about the proficiency of container scanning devices can be found in formal studies, including those in which he participated with other experts. False positives in the scanner process—such as some Italian tile imports mistakenly triggering an alert for a dirty bomb—are frustrating. Even more disturbing: “It is not at all certain that passive radiation detectors can detect a well-shielded dirty bomb,” writes one expert,<sup>61</sup> while others claim that attempts to detect radiation using sensors placed inside containers have failed. “Even after seven days of testing in our model, the passive neutron sensor is unable to detect a plutonium weapon with the maximum amount of shielding . . . .”<sup>62</sup>

## Oversight Assessment: Room for Improvement

Given the immense volume of foreign imports pouring into the U.S. by sea, contrasted with the federal funding often considered inadequate to the task of protecting the cargo and its carriers from a terrorist attack, port security stimulates an ongoing debate in Congress. A prominent voice in the debate belongs to Representative Jane Harman (D) of San Pedro, whose district includes a portion of the Port of Los Angeles. Harman is a member of the House Homeland Security Committee and the ranking Democrat on the House Permanent Select Committee on Intelligence. Harman and Senator Susan Collins (R) of Maine, who is chair of the Senate Homeland Security Committee and coauthor (with Harman) of legislation

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<sup>60</sup> Flynn, *America the Vulnerable*, p. 12, 85, 96, 109.

<sup>61</sup> Cohen, *Protecting the Nation’s Seaports*, Public Policy Institute of California (PPIC), p. 115.

<sup>62</sup> Lawrence M. Wein, Alex H. Wilkins, Manas Baveja, Stephen E. Flynn, “Preventing the Importation of Illicit Nuclear Materials in Shipping Containers,” Stanford University and Council on Foreign Relations, 2004, p. 22.

calling for risk-based port funding, declared that port-security fund distributions have been grossly misdirected since the attacks of 9/11.

Just prior to the 2005 changes—when a more risk-based rationale determined which ports would receive federal support subsidies—Harman stated that so-called ports such as Martha’s Vineyard enjoyed the same status as major cargo-handling seaports when lining up for federal security funds.<sup>63</sup> Harman and Collins jointly declared that “there is no strategy” guiding the process.<sup>64</sup> Furthermore, according to Collins, the Coast Guard estimated that the cost of maintaining existing legally mandated port-security requirements stood at about \$7.3 billion over 10 years,<sup>65</sup> far more than the allotted funding to date.

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*“What keeps me up at night is the possibility of a radiological bomb or human terrorist entering our ports in an uninspected container.”*

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The rethinking of port security priorities in 2005 (no more grants just for the asking—instead the bigger ports would receive more security dollars) worked well for California’s big container ports. Federal dollars increased substantially for all three.

However, both Harman and Collins still found fault with the process. Harman declared, nearly four-and-a-half years after 9/11, that port security funding continued to lag. “When we focus nine out of 10 transportation security dollars on aviation security we fall into the trap

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<sup>63</sup> Office of U.S. Representative Jane Harman, “Threat Level Red? Security at America’s Busiest Ports Remains Severely Underfunded,” press statement, July 14, 2005.

<sup>64</sup> Harman and Senator Susan M. Collins, “Paying Now, Before We Pay Later,” undated draft, submitted for publication to newspapers in Maine and California, April 2005.

<sup>65</sup> Harman, “Harman and Collins Introduce Bill to Strengthen Port Security,” press release, April 20, 2005.

of fighting the last war instead of the next one,” she said.<sup>66</sup> “What keeps me up at night,” Harman said, “is the possibility of a radiological bomb or human terrorist entering our ports in an uninspected container.”<sup>67</sup> Collins calls for “better supply-chain security” and says improvements are possible “without hampering trade.”<sup>68</sup>

Senator Patty Murray (D) of Washington, a coauthor with Senator Collins of legislation requiring closer inspection of inbound containers, says that even today there remains “a gaping hole in America’s security when it comes to the cargo entering our ports each day.” Customs agents inspect only a small fraction of the containers off-loaded from ships entering U.S. ports, and for all the other inbound containers they inspect the shippers’ manifests, which supposedly list the containers’ contents. Senator Murray says the nation needs a system that “closes vulnerabilities” and keeps the trade moving efficiently.<sup>69</sup>

A final report from the official 9/11 Commission released in December 2005 assigned letter grades to government agencies for their responses to commission recommendations to improve homeland security; the highest grade received for port-security-related efforts was a “C–” and the lowest was an “F.” Among the commission’s grades, “cargo screening” and the airport baggage-check process received a “D” and the following comment: “Improvements here have not been made a priority by the Congress or the administration. Progress on implementation of in-line screening has been slow. The main impediment is inadequate funding.”<sup>70</sup>

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<sup>66</sup> Harman, “Harman Introduces Joint Resolution of Disapproval of Dubai Port Deal With Senator Susan Collins,” press release, February 28, 2006. Note: Other calculations offer a slightly smaller ratio of about eight out of 10 dollars.

<sup>67</sup> Harman, “Harman Introduces Joint Resolution of Disapproval of Dubai Port Deal With Senator Susan Collins,” press release, February 28, 2006.

<sup>68</sup> Senator Susan Collins, letter to author, April 26, 2006.

<sup>69</sup> Senator Patty Murray, “Controversial Port Deal Highlights Critical Importance of Port Security,” press release, March 1, 2006.

<sup>70</sup> 9/11 Commission, “Final Report on 9/11 Commission Recommendations,” Washington, D.C., December 5, 2005, [http://www.9-11pdp.org/press/2005-12-05\\_report.pdf](http://www.9-11pdp.org/press/2005-12-05_report.pdf).

## Local Participation

The federal government is not alone in assuming responsibility for container port security. Many of the duties and costs fall to local agencies, primarily for the safety of land and water areas within the perimeter of a port's boundaries. The Port of Los Angeles, administered by a city-government-related port authority, maintains its own harbor police force of 65 sworn officers who conduct vehicle and boat patrols. The Port of Long Beach has 50 armed harbor patrol officers assisted by 20 Long Beach Police Department officers, among others. The Port of Oakland has no port police units, but as cited earlier the Oakland police and fire departments are "on call" to terminal operators for emergencies, and the Oakland Police Department and the Alameda County Sheriff's Department conduct some water patrols.

The port personnel coordinate security procedures with federal enforcement officers, California Highway Patrol units, county sheriff's offices, and private security personnel assigned to the ports. Joint training operations, on paper and in the field, are conducted under the auspices of the Joint Security Task Force and coordinated by the Coast Guard.<sup>71</sup>

In practice, coordination among agencies has its problems. For example, with the Los Angeles–Long Beach port complex, federal, state, county, and local personnel representing 15 separate agencies are responsible or partially responsible for security and emergency management. Because the ports are large, complex, and in many ways operate as separate entities, one study finds "it is likely that numerous agencies would respond to a terrorist attack and that these agencies would be poorly positioned to work effectively together." Who or what agency would take charge of "first responders" (those who arrive first

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<sup>71</sup> Lieutenant Commander Drew Cromwell, Sector Los Angeles/Long Beach, U.S. Coast Guard, interviews with author, June 2005.

on the scene) is among the unanswered questions.<sup>72</sup> And figuring out the answers is critical, as was painfully demonstrated by the Hurricane Katrina disaster.

## Funding and Needs

Funding issues have dominated port security considerations for years, in particular the port-security grant program administered by the federal government. The program has dispensed grants to seaports every year since the 9/11 terrorist attacks. Critics in Congress and elsewhere have complained that historically the distribution of funds has been out of sync with the needs of ports most at risk.

According to an audit by the U.S. Department of Homeland Security's inspector general, skewed grant distribution patterns from 2002 to 2004 included providing considerable federal port-security funding to locations that had either no true seaports or very small ports. For example, recipients of antiterrorist port-security dollars included the vacation and summer residence locations of Woods Hole, Nantucket, Hyannis, and, as previously noted, Martha's Vineyard in Massachusetts.<sup>73</sup>

While the U.S. Department of Homeland Security has not responded directly to these criticisms in its formal declarations, it has stated that its port-security funding has been “dramatically strengthened” since the pre-9/11 days. The department also said that in 2005 it spent \$1.6 billion on port security compared to just \$259 million in 2001.

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<sup>72</sup> Amy B. Zegart, University of California, Los Angeles, and Matthew C. Hipp, Seth K. Jacobson, Riordan Institute for Urban Homeland Security, Los Angeles, “Governance Challenges in Port Security: A Case Study of Emergency Response Capabilities at the Ports of Los Angeles and Long Beach,” ch. 6, *Protecting the Nation's Seaports*, Public Policy Institute of California (PPIC), p. 158.

<sup>73</sup> U. S. Department of Homeland Security, Office of the Inspector General, “Review of the Port Security Grant Program,” January 2005, p. 17, 23, 30.

However, that's a calculation that includes all federal port-security costs, not just grants to local government-affiliated port authorities; it includes the costs of port and cargo inspections carried out continuously by U.S. Customs and Border Protection and security patrols and other duties handled by the Coast Guard. In other words, it's mostly money the port authorities can't touch.

## California Ports: Big Burden, Small Payday

Eventually the funding prospects improved for the ports of Los Angeles, Long Beach, and Oakland when the federal government changed the eligibility rules for the nation's port authorities. But before the change took place, California's ports after 9/11 and through 2004 were severely underfunded if judged by the volume of cargo they imported. Of the \$564.4 million in the federal grant program distributed to port authorities from 2001 through 2004, those three ports received \$43.6 million—or less than 8 percent of the national total.<sup>74</sup>

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*As recent history has shown, terrorists often pick targets in and around transportation systems.*

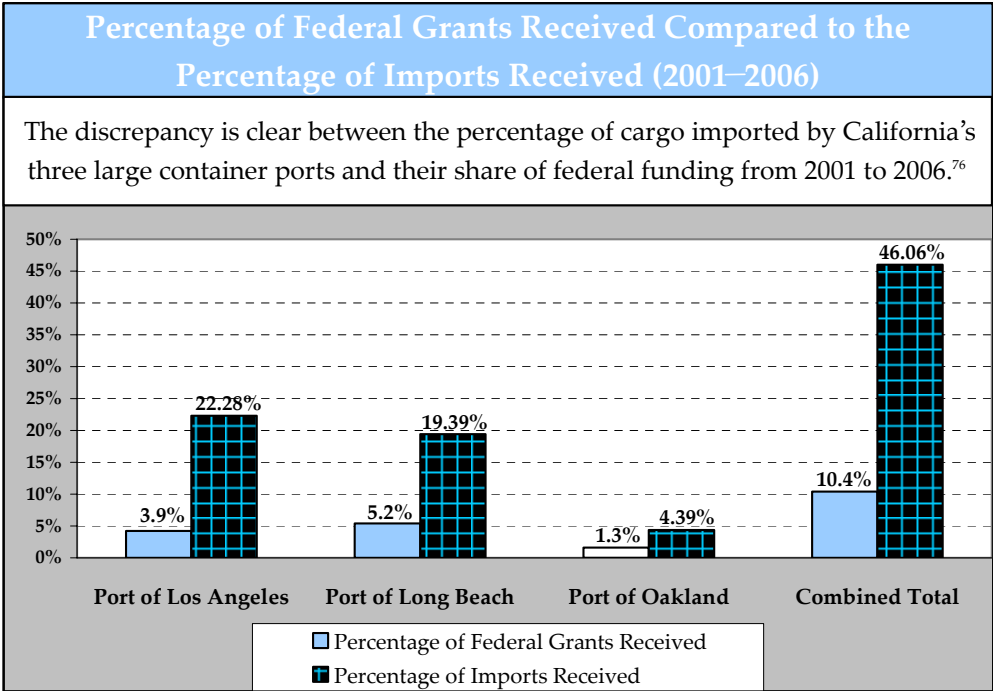
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Some acknowledgement of the importance of making California's ports more secure occurred in 2003 and 2005 when, in addition to federal block grants, the ports of Los Angeles and Long Beach received distributions totaling \$8 million in federal Urban Area Security Initiative (UASI) grants, a post-9/11 funding source primarily used for antiterrorism security needs in designated

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<sup>74</sup> U.S. Department of Homeland Security, allocation reports, 2001–2004.

medium to large cities. Seacoast cities could share portions of those funds with their seaports.<sup>75</sup>



Federal port-security grant funds also are distributed to private-sector terminal operators—that is, the shipping companies that lease the terminal areas of the port for docking their vessels and stacking containers while loading and unloading cargo. Over the first four-and-a-half years in which grants were provided to public-sector port authorities, private-sector terminal operators at the three major

<sup>75</sup> “Fiscal Year 2003 UASI Port Security Grant Program Funding Allocations,” [http://www.ojp.usdoj.gov/docs/fy03uasi\\_psg.pdf](http://www.ojp.usdoj.gov/docs/fy03uasi_psg.pdf).

<sup>76</sup> While the U.S. Department of Homeland Security also allocated funding to U.S. ports for Operation Safe Commerce, this allocation is not distributed directly to the port authorities, therefore it is not included in this chart. Also not calculated are once-only funds optioned to port security by the governor from 2005 federal grant funds.



California container ports received federal grants to improve security in the combined amount of about \$15 million.<sup>77</sup>

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*If terrorists were to target California's large container ports, they would have many options: Los Angeles, Long Beach, and Oakland ports sprawl over tens of thousands of acres where ships bring in cargo every year to fill 7 million 20-foot-long containers.*

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Even if grant funds for terminal operators are combined with the federal funding allotted to Los Angeles, Long Beach, and Oakland ports, port security officials claim the share of dollars that these ports received through 2004 fell far short of a fair and needed proportion.

## The Year the Rules Changed

In 2005, Congress reordered the distribution of financial resources to bigger and more inviting terrorist targets represented by the largest or most unprotected U.S. ports. Yet port security funding from federal grants took a nosedive that year; the grant total of \$141.9 million was 38 percent less than the year before and almost 42 percent less than the year before that.

Nevertheless, 66 U.S. ports became eligible to apply for funds in 2005 instead of the 130 or so that could line up for grants in the past. The eligibility list shrank because qualifying for a grant-program fund was based more heavily on a port's significant risk factors. That requirement worked to the advantage of California's three large container ports, as each was on the list of 66 eligible ports.

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<sup>77</sup> American Association of Port Authorities.

For California's ports, the advantage of joining a shorter list of recipients is evidenced by the funds received over the various "rounds" of grant distributions made in the past five years (referred to in port-security circles as Rounds 1, 2, et cetera.) By comparison, all three California ports received substantially more in 2005 than in any one year since 9/11:<sup>78</sup>

- Los Angeles, which received more than \$15 million over the first four years after 9/11, was awarded \$11 million in 2005.
- Long Beach received approximately \$21 million in Rounds 1 through 4 (2001–2004) and more than half that amount—more than \$14 million—in 2005 alone.
- Oakland received \$2.4 million in funds in 2005—equivalent to more than 30 percent of its previous four-year total.

Because the distribution of grant funds from the 2005 federal budget went to fewer ports on the nation's waterfronts, each received a bigger share than in prior years. But as previously noted, the fund pool itself was much reduced. Then in 2006, California's container ports underwent another reduction from the year before: funding granted to the ports of Los Angeles and Long Beach was less than half of the 2005 amounts, with Los Angeles receiving \$4.6 million and Long Beach getting \$7.4 million. As cited earlier, the Port of Oakland received no federal grant funds for 2006,<sup>79</sup> even though it had applied for \$6 million to upgrade video-surveillance equipment, obtain technology to track trucks passing through security-sensitive areas, and other equipment.<sup>80</sup>

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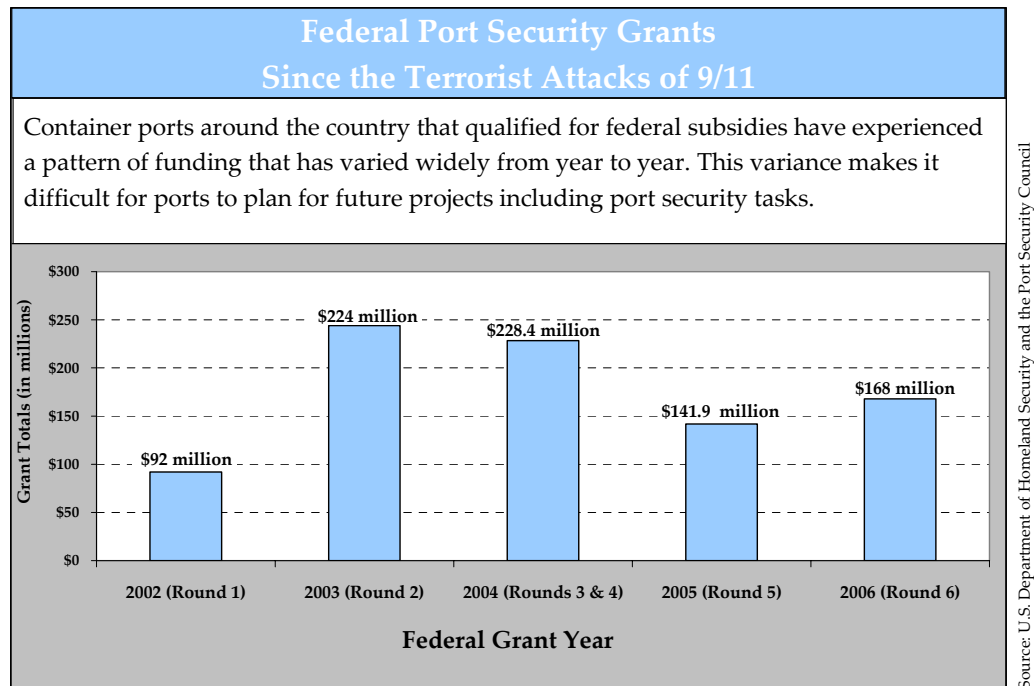
<sup>78</sup> The San Diego Unified Port District received more than \$6.4 million in federal funds for port security in 2005, however, container facilities are few in San Diego and therefore not analyzed in this report.

<sup>79</sup> U.S. Department of Homeland Security, "FY 2006 Port Security Grant Program, Awards by Port Area," p. 7.

<sup>80</sup> Sandifur, interview with author, September 26, 2006.

Port security funding<sup>81</sup> for California's big container ports over the entire span of allocations dating from the events of September 11, 2001, to October 2006 totals as follows:

- Los Angeles: \$32,046,576
- Long Beach: \$42,497,019
- Oakland: \$11,167,173



<sup>81</sup> U.S. Department of Homeland Security, Transportation Security Administration, Port Security Grant Program, attachment A; Cosmo Perrone, interview with author, 2006; Trinh Nguyen, accountant, Port of Los Angeles, e-mail to author, October 2006; Office of the California State Governor, Arnold Schwarzenegger, "Governor Schwarzenegger Announces \$5 Million Grant for Port Security," press release, July 27, 2005.

## More Changes: Another Bite Out of Port Resources?

Even before the actual distribution of port-security federal grant dollars in 2006, there already were indications that the ground was shifting beneath the risk-based standards used to distribute funds in 2005. The U.S. Department of Homeland Security's Office of Grants and Training announced that for 2006, 100 ports nominally qualified for the grants—not just the 66 ports that had qualified the year before. (Eventually, 50 ports received funding. Some ports did not get funding because they had not requested it, and, some, like Oakland's port, were denied).<sup>82</sup> Furthermore, the total 2006 amount shared by qualifying ports is \$168 million—not the \$175 million originally proposed in Congress.<sup>83</sup>

On top of these indications of thinned-out port security funding, a federal government rule change also made it likely that expenses would go up for some port authorities. As noted earlier, to receive port-security grant program funds, local ports are required, beginning with the 2006 distributions, to match allocations they receive from Washington with 25 percent of the cost of approved projects.<sup>84</sup>

Assuming that this funding process does not become politicized *ad absurdum*, a rational basis for distributing grant funds where the risk is greatest should favor California's large ports. To an extent, the Department of Homeland Security acknowledged elevated risks to the ports of Los Angeles and Long Beach in 2006 (even though it ignored the Oakland port). The two Southern California ports were

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<sup>82</sup> "DHS Awards \$399 Million in Grants to Secure the Nation's Critical Infrastructure," U.S. Department of Homeland Security, September 25, 2006.

<sup>83</sup> U.S. Office of Grants and Training, "FY 2006 Infrastructure Protection Program, Port Security," [http://www.ojp.usdoj.gov/odp/docs/FY06\\_PSGP\\_070306\\_FINAL.PDF](http://www.ojp.usdoj.gov/odp/docs/FY06_PSGP_070306_FINAL.PDF); Alice Lipowicz, "Port Security Dives Beneath the Surface," GCN.com, PostNewsweek Tech Media, [http://www.gcn.com/print/25\\_19/41255-1.html](http://www.gcn.com/print/25_19/41255-1.html).

<sup>84</sup> "AAPA Welcomes FY '06 Port Security Grant Changes," American Association of Port Authorities, news release, July 7, 2006. The port authorities at all three California container ports offered 25 percent matches before the matches became mandatory, in an effort to better leverage federal assistance.

placed in the top tier of ports at risk, along with the Houston and New York–New Jersey ports, that merited funding. Still, grants going to the Los Angeles–Long Beach port complex were reduced from the previous year and in 2006 received less than half the amount awarded to recipients at the New York–New Jersey ports, which together handle less cargo.<sup>85</sup>

As noted previously, terrorists no doubt know they are more likely to achieve maximum impact at the larger ports. That factor alone lowers the odds of detection for the terrorist and raises the potential for a successful act of terrorism: detonation with maximum impact inflicted on American goods, property, and population. And yet, though funding priorities increased in some years for some ports, numerous port-security officials say California’s ports are still vulnerable and still represent a viable terrorist target. As the experts put it: the threat remains credible, but the best protections have yet to be achieved.

## Funding Blocked for Ongoing Projects

Funding amounts are not all that concern container-port officials. The conditions Washington places on the money it distributes also present challenges, as the federal grants may be used only for security capital outlay and not for security operations. The security directors contend the funds could be used more effectively without the present restrictions.

- The Port of Los Angeles has used grants for adding two harbor police boats to its fleet, camera-surveillance systems, lighting, and fencing, and has applied for future grants to install more cameras, cargo screening devices, and a central security facility on Terminal

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<sup>85</sup> “FY 2006 Port Security Grant Program Award List,” [http://www.metrokc.gov/prepare/docs/Eric\\_Corner/06-11-10\\_PSGP\\_Award.pdf](http://www.metrokc.gov/prepare/docs/Eric_Corner/06-11-10_PSGP_Award.pdf).

Island. But the grants cannot be used for other security costs, such as increasing staff and maintaining security systems.<sup>86</sup>

- Port of Oakland security concerns include a need for additional staff funding and a desire to gain control over water patrols within the port's channels. Since the Port of Oakland does not support a port security staff, no one employed by the port authority is empowered to stop a boat from coming alongside a container terminal. Terminal operators complain that occasional water patrols by police boats represent inadequate security protection.<sup>87</sup>
- At the Port of Long Beach, the constraints placed on federal grant dollars mean the money cannot be used to offset the port authority's \$2.5 million annual cost for contracting with the Long Beach Police Department, which conducts patrols that augment the work of the port's non-sworn harbor patrol unit. Of the \$41.7 million in grant-fund awards this port has received, it spends an amount equal to one-third of those award funds for maintenance and personnel associated with the installation of grant-funded upgrades and new security equipment. After receiving the 2006 distribution of \$7.4 million for his port, the Long Beach security director, Cosmo Perrone, said, "We're still a long ways away" from adequate protection from a terrorist attack. The greatest need is for funding to improve perimeter controls and cover the repair and maintenance costs of capital acquisitions the port has received since 9/11.<sup>88</sup>

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<sup>86</sup> Cummings, interview with author, February 1, 2005.

<sup>87</sup> Boyle, interview with author, January 27, 2005.

<sup>88</sup> Bill Ellis, former director, Port of Long Beach, interview with author, February 1, 2005, and Perrone, interview with author, May 2, 2005.

## Other Grant Problems: The Strings Attached

Besides difficulties with the capital-outlay requirement, port security chiefs cite other problems with the grant process—and still other frustrations are expressed by the private sector because of conditions placed on grants apportioned to terminal operators.

- Continuity of multiyear planning is inhibited by patterns of erratic funding from year to year, as evidenced by this Port of Los Angeles tally: \$1.5 million in federal security grants for 2001; \$800,000 in 2002 (plus another \$2.5 million from another federal fund source);<sup>89</sup> \$10.4 million in 2003; then \$281,325—more than a \$10 million reduction—in 2004; back up to more than \$11 million in 2005; then down again to \$4.6 million in 2006, less than half of the prior year's amount. As the director of homeland security at the Los Angeles port remarked: implementing plans is still a challenge because “you don't know how much [grant money] is coming from year to year and which of your projects will actually be funded.”<sup>90</sup>
- At the Port of Oakland, former security chief Ray Boyle said, “we're competing against our tenants” for federal funds. Since appropriations are made separately to ports and terminal operators (the tenants) from limited grant fund sources, one is funded at the expense of the other. Money designated for a port project or a terminal project may be spent only for specific, preapproved purposes. Fund transfers are prohibited. In one instance, when the port brought in a road-barrier system for \$200,000 less than the grant, the port had to return the difference. Though that may be a common requirement of public financing, the Oakland security chief said he despaired over the fact that his hands were tied and he was unable to reallocate the unspent funds for other needed purposes.<sup>91</sup>

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<sup>89</sup> Urban Area Security Initiative (UASI), a nonrecurring grant administered intermittently.

<sup>90</sup> Cummings, interview with author, May 8, 2006.

<sup>91</sup> Boyle, interview with author, February 2, 2005.

- Speaking for the industry at large, Sean Strawbridge, a West Coast shipping analyst and vice president of business development at Embarcadero Systems, said that not only do terminal operators have a “tremendous need” for further funding, they also require a more rational allocation of federal dollars. Example: As of 2004, Seaside Transportation Services, a terminal operator at the Port of Los Angeles, had received \$4 million since the grant program began soon after 9/11. On an adjoining property, Yusen Terminals, comparable in size and port activity, had received nothing—and “for no rhyme or reason that we can discern,” Strawbridge said. And yet, Strawbridge points out that Yusen Terminals, like Seaside, is located close to the heavily traveled Vincent Thomas highway bridge, which connects Terminal Island to the mainland.<sup>92</sup> The Coast Guard describes the vulnerable Vincent Thomas Bridge as one of the port’s “areas of concern.”<sup>93</sup>
  
- A January 2005 report by the U.S. Department of Homeland Security’s Office of the Inspector General (OIG) criticized federal-grant distribution patterns and similar anomalies in the federal funding practices for private-sector port projects. OIG said the department “did not have a formal policy to govern financial assistance to private entities, including those that own and operate high-risk port facilities.” A year later OIG issued a follow-up report noting “significant changes” by the department, including their requirement that terminal operators make a 50 percent cash match of grant funds awarded to them to pay for security upgrades.<sup>94</sup>

All of the security experts’ complaints cited above coalesce around a common theme springing directly from their shared reliance on federal funding: the money comes with conditions that make it that much more difficult to improve a never-perfect state of dockside security.

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<sup>92</sup> Strawbridge, interview with author, May 2, 2005.

<sup>93</sup> Lt. Jg. Erik Sumpter, public information officer, Sector Los Angeles/Long Beach, U.S. Coast Guard, interview with author, May 9, 2006.

<sup>94</sup> Office of the Inspector General, U.S. Department of Homeland Security, “Follow-Up Review of Port Security Grant Program,” February 2006, p. 16.



Some port security officials in California believe they work at a far remove—almost like the literal 3,000-mile geographical remove between the coasts—from the funding decisions that affect the safety of their ports. Says the port homeland security director at the Port of Los Angeles: “Although we continue to receive funds through the grant program, the funding for high-priority projects that are not [yet] funded is still between \$30 million and \$40 million.”<sup>95</sup>

The policymakers who analyze post-9/11 security may want to view their task as a choice: do they believe that port security is so essential to the nation’s safety that rules made in Washington, D.C., occasionally may have to yield to judgments by those mounting the daily watch at container ports? Or should the policy remain fixed, treating issues such as rules governing funding as the prerogative of federal administrators?

## Along the Docks, Some Positive Steps

Although the adequacy of container cargo safety regularly comes under criticism, at least one push to improve it gets good marks within government and industry circles tasked with developing solutions. A federal program called Operation Safe Commerce was inaugurated in 2003 with a \$28 million grant from the U.S. Department of Homeland Security.<sup>96</sup> Since then, in a limited test program, directors have begun identifying and testing technologies to monitor cargo and examining where to place monitoring devices in the field.<sup>97</sup>

The program’s goal, if achieved, would remove one of the most often cited weaknesses in current container safety routines: the fact that only

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<sup>95</sup> Cummings, interview with author, March 8, 2006.

<sup>96</sup> Transportation Security Administration, “Secretary Ridge Announces the Awarding of \$28 Million for Operation Safe Commerce,” press release, July 24, 2003, <http://mmrs.fema.gov/PublicDocs/PrepNews2003-08-01.pdf>.

<sup>97</sup> White, interview with author, March 14, 2006.

a small percentage of the millions of containers entering the U.S. each year are subject to physical inspection.<sup>98</sup> Of the new systems in development, the more elaborate models include electronically inspecting the contents of all containers at all stages of seaborne cargo movement through the supply chain.

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*“An appalling lack of engagement” and a “tepid, piecemeal approach” characterize the federal government’s demonstrated commitment to seaport security.*

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As of this writing, details of Operation Safe Commerce remained either classified or withheld from public release pending approval of draft reports, but various sources identified likely methods, including some that reportedly have been deployed and are functioning. For example, Smart & Secure Tradelanes, an industry-affiliated cargo security program, explains in its brochures that the private sector and federal government are cooperating in the development of various electronic-reader technologies capable of examining the contents of closed containers. It also states that as of 2003 about 15 international ports and trade lanes participated in the Smart & Secure Tradelanes collaborative program, and “about 1,000” containers have been equipped with electronic tags linked to monitoring devices all along the shipping routes, from the loading to the unloading points. Among the technologies launched or tested, states the program literature, are “RFID [radio-frequency identification] hardware, GPS [global-positioning systems] . . . tracking and management software, anti-intrusion sensor systems, and automated video surveillance.”<sup>99</sup>

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<sup>98</sup> Martin, interview with author, March 6, 2006.

<sup>99</sup> “Smart & Secure Tradelanes,” SST White Paper, May 2003, [http://www.savi.com/products/casestudies/wp.sst\\_initiative.pdf](http://www.savi.com/products/casestudies/wp.sst_initiative.pdf).

The Smart & Secure program's solution to cargo inspections has had positive reviews. Federal and port authority personnel report that the technologies hold promise for improving container-shipping security. In Congress, Representative Chris Bell (D) of Texas has said, in reference to conducting tests at the Port of Houston, that Smart & Secure Tradelanes "is proving to be a real model" of government-industry solutions to seaborne-cargo security. He says it promises to allow just-in-time shipments "without disruption through our port facilities."<sup>100</sup>

Despite these prospective advances toward comprehensive noninvasive inspections of container content, the best of these technologies is not, to date, up and running at U.S. container ports. However, devices at, for example, the Port of Rotterdam in the southwest Netherlands, are capable of scanning containers at dockside that are then moved outside of the terminal gates on automated, driverless chassis, and they undergo a radiation inspection along the way. Transfers to trucks, trains, or barges take place afterward, so there is no danger of exposing truck drivers to possibly harmful X-rays used to test for radiation, which has been a concern among drivers. U.S. ports are "very, very far from such a degree of automation and technological sophistication" that is, for instance, characteristic of the Port of Hong Kong, according to Stephen S. Cohen, University of California professor and contributor to the PPIC report on port security.<sup>101</sup>

The Safe Port Act of 2006, signed by the president in October 2006, ramps up port security protections, most notably by increasing federal subsidies. The act, introduced by Representatives Harman and Dan Lungren (R) of California, authorizes \$400 million a year (almost double the highest appropriation of any one year so far—see the chart on page 43) for five years in the form of grant program funds that may

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<sup>100</sup> "Port of Houston Becomes Smart & Secure Tradelanes Partner," April 1, 2003, <http://www.houston.bizjournals.com/Houston/stories/2003/03/31/daily25.html>.

<sup>101</sup> Cohen, *Protecting the Nation's Seaports*, Public Policy Institute of California (PPIC), p. 114.

be allocated to the nation's highest-risk ports.<sup>102</sup> Yet this additional federal port-security funding comes with no guarantee that the "risk factors" used to establish subsidy amounts will be the same as the risk factors ranked high by local seaport administrators. Ports receive from Washington, D.C., whatever the Washington, D.C., officials decide to send.

Provisions in the Safe Port Act require the Department of Homeland Security to stop delaying and phase in the port-access Transportation Worker Identification Credential (TWIC) program between 2007 and 2009, starting with the riskiest ports first.<sup>103</sup> In the meantime, beginning 90 days after enactment of the new law, the truck drivers who pick up and drop off containers at marine terminals will undergo a "threat assessment screening," which includes determining immigration status and checking their names against terrorist watch lists.<sup>104</sup> This electronic credentialing system required by the new legislation is expected to impact many truck drivers who may be undocumented workers and could lose their jobs (see page 61 for more details). As a result, this could greatly slow the pace in which cargo is moved on and off the docks.

Another Safe Port Act provision addresses the concern that containers entering the U.S. are only sporadically checked for suspicious content. A pilot program will be established in three foreign ports that uses X-ray imaging and radiation-detection equipment to examine all container cargo bound for a U.S. port.<sup>105</sup>

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<sup>102</sup> The Safe Port Act of 2006, conference report accompanying House Resolution 4954, p. 85.

<sup>103</sup> *Ibid.*, p. 6-8.

<sup>104</sup> *Ibid.*, p. 17.

<sup>105</sup> *Ibid.*, p. 32.

## The State Steps Up: A \$100 Million Bond Proposal

At about the same time Congress recognized new needs for port security, groundbreaking commitments with similar goals developed in California. The California State Legislature sought to enact major funding mechanisms to improve security at the state's seaports.

With the Legislature's approval of a \$37.3 billion infrastructure bond package on May 5, 2006, the state's intention to become a significant participant in port security funding became clearer than ever before. The bond legislation proposes covering a variety of statewide improvements, including \$100 million for port security alone, and its approval is up to state voters in the November 2006 election.

The bill authorizing the statewide vote, Senate Bill 1266,<sup>106</sup> by Senate President pro Tempore Don Perata, states that bond funds would be available for the ports to buy an array of protective equipment, described in the bill in categorical detail. Featured on the prospective shopping list are video-surveillance equipment, scanners, and other devices to detect radiation and chemical, biological, and explosive agents in cargo containers. The ports could buy equipment to screen incoming vessels, trucks, and cargo and monitor the perimeters of harbors, ports, and ferry terminals. In addition, funds would be available to strengthen emergency response capabilities, detect suspicious cargo by weight factors, and develop disaster-preparedness plans. To keep tabs on its investment, the bill requires periodic reports from the state Office of Emergency Services itemizing how the funds are being used.

The bond bill also states that the funds provided to the ports would "not [be] limited to" hardware purchases, prompting dialogue on additional ways to make effective use of the money. Eve Grossman, the Port of Oakland's government affairs manager, discussed with the Department of Homeland Security the possibility of using state

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<sup>106</sup> Chapter 25, Statutes of 2006.

bond funds to help meet the new local financial match requirement outlined previously in this report, or to offer even more than the required 25 percent matching minimum if it could result in a better response to the port's funding requests. Grossman said that DHS "did not promise anything but found [the idea] interesting."<sup>107</sup>

It's notable that although there may be leeway on how ports may use state money for port security, no such flexibility applies to federal port-security grant program money, conditions the port administrators frequently find troublesome.

## Navigation Problems: Keeping the Port Money Flowing

The state's prospective entry into port security funding presents one other area where state and federal governments cross paths or, at this juncture, possibly collide. If the state steps in with contributions of its own toward port security, would the federal government then take a step back?

Federal port security grants are now competitive among ports. The largest awards supposedly go to the ports at greatest risk, and California's container ports rank, or should rank, among the highest-risk ports by any measure of risk factors. But theoretically—the script remains unwritten—federal grant distributors could define California as a special case. They could surmise that since California would, in part, be paying its own way for port security, the grants from Washington could be reduced to help balance out their total assistance package. Should this occur, not only would it be unwelcome news in California, many would proclaim it as unfair since the state's goal in pitching in with its own funds is to assist in the prevention of

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<sup>107</sup> Eve Grossman, interview with author, October 4, 2006.

a potential terrorist attack at a California port—not to simply make it easier for the federal government to maintain the state’s status quo.

None of these real or imagined perils, however, intervened to prevent California’s Legislature and governor from fulfilling a pledge (assuming voter approval) to make California’s ports safer. Certainly, the timing of events played a part. Immediately after 9/11, the federal government almost took complete charge of protecting America from another terrorist attack. Billions of dollars were authorized for recovery and prevention of a recurrence. An entirely new top-level bureaucracy came into being, and with widespread congressional and public approval, the Department of Homeland Security took over enforcing safety provisions throughout the nation.

But by the time California’s bond funds were provisionally approved by the Legislature in May 2006, there were indications that confidence in the federal government’s ability to cover all bases had been tapering off. Assumptions that the federal government had port security well in hand were under challenge by port officials, members of Congress, and an array of outside kibitzers. As noted earlier, the critics pointed to a lack of sufficient federal funding as a main reason for the many lapses. As a result, it hardly seemed unusual or misplaced for the state of California to join the mission to improve port security with a financial investment of its own. Nor were state leaders holding back for fear that California’s contributions to port security might jeopardize its future allocations of federal dollars. Indeed, the greater risk lay with a terrorist attack.

The decision by lawmakers to go forward with the infrastructure bond proposal placed California in new public policy territory. Previously, state government was notable for an absence of significant participation in port security, which became a major concern within the seaport community given the massive amount of cargo moving through California’s ports. For example, Gary Gregory, chief of the Marine Facilities Division of the State Lands Commission, declared at an informational hearing in February 2005 that the state not only lacks

a strategic seaport security plan, it has no plan that anticipates sharp increases in foreign trade growth. The state needs to get “heavily involved in these infrastructure issues,” he said.<sup>108</sup>

At the time of those remarks, no legislation had been approved to draw upon the state’s treasury or its credit worthiness, or require fees to help pay for port security. The default provider of security funding for port authority agencies, in California and all other seaport states, has been and still is the federal government. Besides aid to the ports’ proprietors, federal dollars also underwrite costs of the purely federal tasks at the ports such as Coast Guard protection and cargo checking by customs agents. The port authorities themselves, in part from revenues they receive from their terminal tenants, also pay substantial portions of the security bill—but in California that’s a local, not a state, government responsibility. A stipulated allocation of state assistance was never part of the funding formula for ports.

Some attempts were made in the California Legislature to give the state a voice in setting port security priorities. But in 2005, for example, a handful of seaport bills all failed passage or were vetoed. Alone among related measures approved that year was a nonbinding resolution asking Congress and President Bush to increase security at California’s ports by ensuring a funding source from federal customs revenue.<sup>109</sup> The request was ignored. The only other nod to port security in 2005 was a one-time commitment of federal funds provided at the discretion of Governor Schwarzenegger. In mid-year the governor authorized \$5 million in federal funding that he was able to distribute at his discretion, according to the state Office of Homeland Security.<sup>110</sup> The money was divided among 11 seaports,

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<sup>108</sup> Gary Gregory, chief, Marine Facilities Division, State Lands Commission, at a California State Senate Local Government Committee hearing on port security, chaired by Senator Christine Kehoe, February 16, 2005.

<sup>109</sup> Assembly Joint Resolution No. 21 (Karnette), Resolution Chapter 63, Statutes of 2005.

<sup>110</sup> Dan Jones, assistant deputy director for legislative affairs, California State Office of Homeland Security, interview with author, August 1, 2005.



with the largest single amounts of \$750,000 each going to Los Angeles, Long Beach, Oakland, and San Diego.<sup>111</sup>

In 2006, just four months after passing the infrastructure bond package, the Legislature passed Senate Bill 927, by Senator Alan Lowenthal, to help relieve congestion caused by rail movement in and out of the big container ports in Los Angeles and Long Beach, as well as improve environmental quality in these areas and upgrade security by upwards of \$150 million annually. The governor vetoed this subsequent port security measure.

However, in October 2006, the governor once again recognized the importance of port security with an executive order calling for the creation of the California Maritime Security Council to monitor and coordinate safety at the ports. Comprised of “top officials” from the Coast Guard, Navy, National Guard, and state agencies, the council is assigned to, among other things, identify threats, coordinate preparedness, improve various facets of security, and develop a state-centered maritime security strategy.<sup>112</sup>

At the end of the 2006 legislative year, two other bills addressing California port safety were signed by the governor:

- Assembly Bill 2237 (Karnette)<sup>113</sup> requires the Director of Homeland Security to report annually to the Legislature on the status of “policies, projects, and funding” aimed at protecting ports and harbors from harm.

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<sup>111</sup> Office of the California State Governor, Arnold Schwarzenegger, “Governor Schwarzenegger Announces \$5 Million Grant for Port Security,” press release, July 27, 2005, <http://gov.ca.gov/index.php?/press-release/1676/>.

<sup>112</sup> Office of the California State Governor, Arnold Schwarzenegger, “Governor Schwarzenegger Signs Executive Order Creating California Maritime Security Council,” press release, October 10, 2006, <http://gov.ca.gov/index.php?/text/press-release/4423/>.

<sup>113</sup> Chapter 503, Statutes of 2006.

- Assembly Bill 2274 (Karnette)<sup>114</sup> requires local, regional, and statewide emergency prevention and response agencies to work with harbor agencies to make sure all agencies are coordinated and prepared to join forces in the event of a harbor emergency, including an evacuation procedure.

## Homeland Security: The State's Role

In one important way, the state's participation in various homeland-security programs differs depending on the federal protocols that determine how money for security is distributed. The state plays a major role in the distribution of federal homeland-security funding to cities and counties statewide to train and equip police, fire, and medical emergency units—that is, the first responders to a catastrophic event such as a terrorist attack anywhere in California. Funds move from the federal Department of Homeland Security to the state Office of Homeland Security (OHS) and OHS distributes 80 percent of it to local agencies, keeping the rest for use by state agencies.<sup>115</sup>

With seaports, the money trail follows a different course. Federal grant funding does not pass through a state agency. It goes directly to the ports to meet, in whole or in part, security needs as outlined in requests to Washington prepared by the local port authorities.<sup>116</sup>

Nevertheless, OHS says it serves an important function for the ports by advocating for federal dollars. Mike Dayton, deputy director of OHS, noted that his agency, which is part of the Schwarzenegger administration, has been “actively pursuing additional federal funds

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<sup>114</sup> Chapter 859, Statutes of 2006.

<sup>115</sup> Jones, California State Office of Homeland Security, interview with author, October 2006.

<sup>116</sup> Jones, California State Office of Homeland Security, and White, U.S. Department of Homeland Security, interviews with author, May 24 and June 1, 2006.

from Congress...and working with the port authorities to make their grant applications more competitive.”<sup>117</sup>

The distinction between the state’s direct role in overseeing the needs of first responders and its supplemental role in addressing the ports’ security requirements illustrates, perhaps, one reason why the ports could benefit from a new infusion of cash from voter-approved bonds. To help confront the terrorist threat against California’s seaports, deciding factors for distribution of state money (as long as it lasts) would be determined only at the state level, and not the federal, conceivably yielding—from the port administrators’ perspective—better results from funds that are homegrown.

The Office of Emergency Services (OES) is the designated administrator should state bond funds become available. Working in conjunction with OES in assessing the ports’ needs would be the Office of Homeland Security, the same state office that oversees the distribution of federal money for first responders.<sup>118</sup>

## Needs and Costs: A Long Way to Go

In the meantime—and five years since 9/11—port security directors at California’s three major container ports and other smaller ports have identified a roster of security needs still outstanding. On the list are the installation of smart-card worker ID systems, terminal-traffic controls, and surveillance and monitoring upgrades. Some progress has been made but security experts claim more is needed.

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<sup>117</sup> Mike Dayton, deputy director, California State Office of Homeland Security, e-mail to author, March 28, 2006.

<sup>118</sup> Jones, interview with author, June 2006.

Radiation portal monitors have been installed by U.S. customs at all international marine terminal road exits at the Port of Oakland,<sup>119</sup> and as of mid-October 2006 many of the monitors had been installed at the Port of Los Angeles and the Port of Long Beach.<sup>120</sup> The system's design calls for a scan of every container leaving a terminal bound for an inland destination.<sup>121</sup> However, not everyone is confident these devices are effective. Because nuclear weapons can be shielded from giving off measurable radioactivity, a security expert concludes it is "unlikely" radiation monitors at the ports would detect the presence of a well-concealed bomb.<sup>122</sup>

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*Critics also find fault with the cargo-inspection processes, charging that it's still too easy for enemies of the country to gain access through container ports.*

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Prototype Transportation Worker Identification Credential (TWIC) systems were demonstrated at the Los Angeles and Long Beach ports in February 2005, but as of late 2006, though Congress had voted to speed the process along, the systems had not been deployed, amid reports of political pressures in Congress to adopt alternative technologies.<sup>123</sup>

Adding to the uncertainties of this elaborate credentialing system, at the Los Angeles and Long Beach ports the International Longshore and Warehouse Union has challenged the fairness of a system that could

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<sup>119</sup> Boyle, interview with author, February 2005, and Sandifur, interview with author, March 2006.

<sup>120</sup> Cummings, interview with author, October 2006.

<sup>121</sup> Boyle and Cummings, interviews with author, February to June 2005.

<sup>122</sup> Flynn, "Port Security Is Still a House of Cards," Council on Foreign Relations, January 30, 2006, [http://www.cfr.org/publication/9629/port\\_security\\_is\\_still\\_a\\_house\\_of\\_cards.html](http://www.cfr.org/publication/9629/port_security_is_still_a_house_of_cards.html).

<sup>123</sup> Eric Lipton, "In Kentucky Hills, A Homeland Security Bonanza," *New York Times*, May 14, 2006.

jeopardize an employee's job if a past nonviolent offense were revealed. A union official said they would have no serious objections only if the vetting process sticks to possible links to terrorism or other threats to national security.<sup>124</sup>

Slowing the movement of cargo is another concern that comes up in discussions of TWIC technology. As reported in the *Journal of Commerce*, an international business periodical, industry representatives at public hearings noted that a typical marine terminal at the ports of Los Angeles and Long Beach handles the equivalent of 1 million 20-foot-long containers a year, requiring cargo transfers to approximately 3,000 trucks a day at just one of several terminals. They estimate that if truckers are required to use a TWIC card to enter a terminal, delays at the gates could be lengthened by a few seconds to a few minutes per truck. According to testimony by terminal operators as reported in the *Journal*, such delays could cumulatively "severely disrupt the flow of cargo."<sup>125</sup>

The potential problem is underscored in a report by the Government Accountability Office declaring that, before the TWIC system is launched, the Department of Homeland Security needs to "balance effects of the system with the potential impact that the program could have on the flow of maritime commerce."<sup>126</sup>

Another perhaps even greater TWIC system concern lies with the requirement for truck drivers to use an electronic ID card that will reveal their immigration status. This step could dramatically deplete the ranks of drivers and, in turn, slow cargo movement, especially at the Los Angeles and Long Beach ports. Of the low-paid drivers who

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<sup>124</sup> Mike Mitre, security director, International Longshore and Warehouse Union, Los Angeles and Long Beach ports, interviews with author, October 26, 2005, and April 19, 2006.

<sup>125</sup> Bill Mongelluzzo, "Terminals, Unions: TWIC Needs Tweak," *Journal of Commerce Online*, June 8, 2006.

<sup>126</sup> Government Accountability Office (GAO), "DHS Should Address Key Challenges before Implementing the Transportation Worker Identification Credential Program," p. 2, <http://www.gao.gov/new.items/d06982.pdf>.

drop off and pick up containers at the Southern California ports for short hauls to distribution points, approximately 90 percent are Latino, many of whom are presumed to be undocumented and unable to meet the legal residency requirements that would allow them to keep their jobs.<sup>127</sup>

## Financial Burden on a Local Level

Despite such post-9/11 protections as radiation portal monitors and, as promised, high-tech personnel identifiers at terminal gates, California's port security directors declare that the ports still remain tens of millions of dollars short of the financial resources needed to implement local security plans. The distance between needs and money begins with the fact that California's container port authorities, each an adjunct of a local government, bear costs that are not reimbursed through federal port security grants, as outlined below.

- In October 2005 Oakland's port security director said his port needs better fences, improved surveillance cameras, and a water-alarm system. Yet the cost of these and other upgrades is millions of dollars more than the port's federal grant program appropriations.
- Unlike California's other large container ports, the Port Authority of Oakland also is required to provide security personnel at the Oakland International Airport, which is owned and operated by the port. Portions of Oakland's port security funds are used to support an airport security department consisting of the Oakland Police Department, Alameda County Sheriff's Department, and private contractor personnel. Guard and patrol services are provided inside the passenger terminals, at runway gate checks, and other locations.

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<sup>127</sup> Miriam Jordan, "Port Security Plan, A Bid to Foil Terror, May Slow Deliveries," *Wall Street Journal*, October 17, 2006, p. 1.

- Apart from other nonfederal sources, post-9/11 security funds of \$11 million were provided in 2003 through federal programs for baggage-screening equipment at Oakland International Airport, and in 2004 \$13 million was allotted for cameras and the construction of new housing for technology equipment. But all costs for increased police and other security personnel were borne solely by the already financially taxed port authority, according to its security director.<sup>128</sup> And those costs have risen sharply. In 2000, the year before 9/11, the port's costs for airport security were about \$3.8 million; in 2005 they were \$14.2 million.<sup>129</sup>
- The presence of a sworn officer corps at the Los Angeles port pre-dates 9/11, but the number of officers has increased since then, thereby inflating port police costs to about \$2 million more per year than they were before 9/11. In addition, \$4 million was separately budgeted for 2004–2005 to meet the costs of a new Homeland Security division, which was created for the port authority. These and other associated port-financed functions for security protection have been totaling about \$10 million a year.
- Public roadways and bridges lead traffic unimpeded into all but the leased terminal properties of the Long Beach and Los Angeles container ports, leaving critical port operations exposed, says Cosmo Perrone, the Long Beach port security director. “A whole new way of thinking” involving major infrastructure changes and tens of millions of dollars is necessary if the ports are to reach an adequate level of security, he says.
- The Long Beach port's budget pays \$2.5 million a year for additional port patrols by the Long Beach Police Department. The port also covers the staffing and maintenance requirements

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<sup>128</sup> Boyle, interview with author, February 2005.

<sup>129</sup> Rosemary Barnes, aviation marketing department, Port of Oakland, e-mail to author, April 3, 2006.

associated with new functions and equipment funded by federal grants.<sup>130</sup>

## Problems in Common

For all three of California's largest container ports, the financial projections outlined above are needed to attain better security, yet if the projections were to be met, they would exact a heavy price on local port authorities. Part of the problem is the lack of federal money reaching the California container ports from the national pool of port security funds. Consistently, year after year, the California container ports have not gotten the proportion of federal grant funds that officials at their big and busy ports say is needed from the national totals, which are mostly distributed by the U.S. Department of Homeland Security's Office of Grants and Training (previously known as the Office of Domestic Preparedness). But the problem may be larger than a proportional adjustment could be expected to alleviate.

Arguably, by this collective reckoning, the federal funding schemes for security have treated the California container ports unfairly all along since 9/11. And now, projecting ahead, the numbers paint a picture of greater unfairness to come—absent efforts to alleviate shortages by the Legislature and Congress—as tens of millions of dollars will be needed to reach what many experts claim is a reasonable security standard, and many if not most of those millions will need to come from local resources.

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<sup>130</sup> Perrone, interview with author, October 2005.



## Bonds: How to Spend the Proceeds

Los Angeles, Long Beach, and Oakland port security officials each maintain lists outlining what they need to further protect their ports from the possibility of a terrorist attack.

The Port of Long Beach awaits its high-priority installation of the access-control program, and wants software to track “where the plume is going” in the event of an airborne biological, radiological, or chemical attack. Other technologies could alert response agencies to abnormal movement within the port. Creating practice drills also would be helpful for determining how to keep a port in operation if an attack were to occur.<sup>131</sup>

The Long Beach port security director, Cosmo Perrone, states that when and if bond proceeds become available, they could implement, for example, a five-year security plan being worked out with the adjoining Port of Los Angeles, and bring closer to fruition long-held desires to improve perimeter security around the port, including monitoring vehicle traffic and pleasure boats that enter the port. All of these upgrades can be “very costly,” he says, making the prospect of receiving security funding from additional sources greatly appealing.<sup>132</sup>

At the Port of Los Angeles, homeland security director George Cummings also says the new infusion of money might be used for the often discussed but never resolved problem of ensuring the identities and backgrounds of personnel with access to restricted areas. Whereas the federal government has announced the rollout of new identity applications in the near future, and Congress has acted to speed up the installations, meeting the cost of the reading devices and other technology for the TWIC system will be the responsibility of local port authorities. State funds would be useful for that purpose—not

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<sup>131</sup> Perrone, interview with author, March 2, 2006.

<sup>132</sup> Perrone, interview with author, May 31, 2006.

to mention better perimeter security at Long Beach. “We need more sophisticated ways of telling us what vehicles are coming and going [to and from all port areas],” Cummings said during a discussion of bond funds that might come his way.<sup>133</sup>

At the Port of Oakland, a pilot project is in progress that uses radio-frequency identification and global-positioning systems for security purposes. Protecting access to maritime facilities, tracking containers and trucks within the port, and verifying individuals as safe, legitimate employees or visitors are among the programs the port considers necessary. The Oakland port also needs better technology to detect intruders trying to enter restricted areas as well as technology designed to detect suspicious movement underwater.<sup>134</sup>

If bond money were made available to the Port of Oakland, as noted earlier, discussions are already under way about using the state funds to leverage better results when asking for federal funding. It would be used to complete various projects, such as upgrading systems to detect intruders and installing new tracking technology to monitor trucks entering and leaving secure areas. “This bond measure would provide much-needed funding to augment the port security grant program administered by the Department of Homeland Security, thereby improving the security infrastructure of California’s ports,” said the Port of Oakland’s executive director, Jerry Bridges. Bridges places high importance on security around seaports as “vital to deterring, detecting, and responding to a potential terrorist incident in the marine environment.”<sup>135</sup>

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<sup>133</sup> Cummings, interviews with author, May 8 and May 31, 2006.

<sup>134</sup> Sandifur, interview with author, March 1, 2006.

<sup>135</sup> Jerry Bridges, executive director, Port of Oakland, e-mail to author, March 1, 2006.

## Conclusion

To head off America's next 9/11, the mission on the home front is to sort through the likely possibilities and gather the forces to prevent another terrorist attack. High on the list of likely targets are container seaports and, particularly because of the cargo volume they handle, the big container ports in California.

This report's findings point to inadequate protective resources at these ports—where terrorists or their weapons could enter the country concealed in a metal box that looks exactly like the millions of other containers coming off the California docks after arrival by sea. As the security directors at the state's three major ports see it, the federal funding they depend on to hold the terrorist threat at bay has fallen short of the security protections assessed as necessary for these ports. Outside critics also find fault with the cargo-inspection processes, charging that it's still too easy for enemies of the country to gain access through container ports.

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*“A whole new way of thinking” involving major infrastructure changes and tens of millions of dollars is necessary if the ports are to reach an adequate level of security.*

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The priority given to port security is not static—it changes as attitudes and reactions to events change and influence the tax-dollar investments given to the ports and their defenders against attack. In 2005, federal funds for port security were more risk-based than previously and more rationally allotted, which meant a better share of federal dollars for the big California container ports. Yet the momentum didn't last, as shown in this report's analysis of the 2006 distributions.

California's elected officials have shown an increased willingness to become more committed to port security. Bond proposals approved by the Legislature and signed by the governor contain language acknowledging that port security has a rightful spot on the list of bond recipients, which would be a first for California if the bond measure is ratified by the state's voters. The Legislature also approved—but the governor vetoed—a more lucrative source of funding for the Los Angeles and Long Beach ports, based on a fee assessment that would have been charged to shippers based on their cargo volume.

Analysts in California who have been tracking the port security issue since its post-9/11 inception agree that much has been done to improve the situation as of mid-2006. But there's also a consensus that efforts to date are not enough to ensure that all is being done that is realistically possible to prevent America's next 9/11 from landing on the doorstep of the most populous state in the nation.

## California Senate Office of Research

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## Max Vanzi

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Since 2000, Max Vanzi has been analyzing public safety issues for the California Senate Office of Research. Prior to that he worked for the *Los Angeles Times* as an editor and reporter covering local and state government. Vanzi also worked with the UPI news agency as a regional editor and foreign correspondent in several Asian countries.