

**Testimony of
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for Terrorism Involving Weapons of Mass Destruction**

**Before the
Joint Hearing of the
U.S. Senate Select Committee on Intelligence
And the
House Permanent Select Committee on Intelligence
On the
Joint Inquiry into the September 11 Attacks**

October 1, 2002

Mister Chairmen, Senate Vice Chairman, House Ranking Member, and Members of the Committees, I am honored to be here today. I come before you as the Chairman of the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction. Thank you for the opportunity to present the views of the Advisory Panel.

The Advisory Panel was established by Section 1405 of the National Defense Authorization Act for Fiscal Year 1999, Public Law 105-261 (H.R. 3616, 105th Congress, 2nd Session) (October 17, 1998). That Act directed the Advisory Panel to accomplish several specific tasks. It said:

The panel shall--

1. assess Federal agency efforts to enhance domestic preparedness for incidents involving weapons of mass destruction;

2. assess the progress of Federal training programs for local emergency responses to incidents involving weapons of mass destruction;
3. assess deficiencies in programs for response to incidents involving weapons of mass destruction, including a review of unfunded communications, equipment, and planning requirements, and the needs of maritime regions;
4. recommend strategies for ensuring effective coordination with respect to Federal agency weapons of mass destruction response efforts, and for ensuring fully effective local response capabilities for weapons of mass destruction incidents; and
5. assess the appropriate roles of State and local government in funding effective local response capabilities.

That Act requires the Advisory Panel to report its findings, conclusions, and recommendations for improving Federal, State, and local domestic emergency preparedness to respond to incidents involving weapons of mass destruction to the President and the Congress at three times during the course of the Advisory Panel's deliberations—on December 15 in 1999, 2000, and 2001.

The Advisory Panel's tenure was extended for two years in accordance with Section 1514 of the National Defense Authorization Act for Fiscal Year 2002 (S. 1358, Public Law 107-107, 107th Congress, First Session), which was signed into law by the President on December 28, 2001. By virtue of that legislation, the panel is now required to submit two additional reports—one on December 15 of this year, and one on December 15, 2003.

Panel Composition

Mr. Chairman, the events of September 11 and its aftermath have changed the lives of Americans for generations to come. But those attacks had special meaning for this Advisory Panel.

This Advisory Panel is unique in one very important way. It is not the typical national “blue ribbon” panel, which in most cases historically have been composed almost exclusively of what I will refer to as “Washington Insiders”—people who have spent most of their professional careers inside the Beltway. This panel has a sprinkling of that kind of experience—a former Member of Congress and Secretary of the Army, a former State Department Ambassador-at-Large for Counterterrorism, a former senior executive from the CIA and the FBI, a former director of the Defense Intelligence Agency, the head of a national academy on public health, two retired flag-rank military officers, the head of a national law enforcement foundation. But what truly makes this panel special and, therefore, causes its pronouncement to carry significantly more weight, is the contribution from the members of the panel from the rest of the country:

- Three directors and one deputy director of state emergency management agencies, from California, Iowa, Indiana and Virginia, two of whom now also serve their Governor’s as Homeland Security Advisors of the Deputy
- A state epidemiologist and director of a state public health agency
- A city manager of a mid-size city
- The chief of police of a suburban city in a major metropolitan area
- Senior professional and volunteer fire fighters
- A senior emergency medical services officer of a major metropolitan area

These are representatives of the true “first responders”—those heroic men and women who put their lives on the line every day for the public health and safety of all Americans. Moreover, so many of these panel members are also national leaders in their professions: our EMS member is a past president of the national association of emergency medical technicians; one of our emergency managers is the past president of her national association; our law officer is president-elect of

the international association; our epidemiologist is past president of her professional organization.

Read our reports and you will understand what that expertise has meant to the policy recommendations that we have made, especially for the events of September 11 last year.

In Memoriam

Those attacks continue to carry much poignancy for us, because they created an empty seat at our panel table. At a few minutes after 10 o'clock that morning, Ray Downey, Department Deputy Chief and chief-in-charge of Special Operations Command, Fire Department of the City of New York—the incident commander at the scene—perished in the collapse of the North tower of the New York World Trade Center. Although the impending disaster had to have been obvious to Ray following the prior collapse of the South tower, he knew and those around him knew their duty. With fearless disregard for their own personal safety, focused entirely on saving the lives of others, Ray and his colleagues all stayed at their post, doing their job. The result of that decision, clear now in retrospect, was the rescue of literally thousands of people from those towers. Ray and 342 of his colleagues paid the supreme sacrifice, and all humanity must acknowledge and be eternally grateful for their actions.

Our loss is tempered by the extraordinary opportunity that we had in being informed and counseled by Ray. Ray Downey served as a dedicated member of the Advisory Panel during its initial three-year tenure, bringing insightful first-responders' perspectives and consistently providing invaluable counsel based on his years of training, unequalled leadership, and exceptional experience in the field.

Ray was not only a nationally recognized leader, author, and lecturer on rescue, collapse operations, and terrorism emergency response. He readily responded to the call for help in Oklahoma City, Atlanta, and other disasters outside his home jurisdiction. Frank Keating is better than I at revealing just how much a hero Ray is to Oklahomans as he is to his own city. Ray was never one to talk about his accomplishments. It has only become more widely publicly known since September that Ray was *the most decorated member* in the entire history of the FDNY—21 times for valor.

Yet, with all of his professional responsibilities, Ray made time to spend with his family, never missing a major school or sporting event of his five children. To the very end, he continued that amazing record with his grandchildren. Two of his sons are now officers of the Fire Department of the City of New York. All five, as well as two of his grandchildren, spoke passionately and eloquently at Ray's memorial service of his total commitment to his family.

It was with great humility but also with great pride that we dedicated our third report to Ray Downey. That report was issued, totally coincidentally—or perhaps providentially—on the same day that Ray's memorial service was held, December 15, 2001. On that day, thousands of firefighters and other first responders from New York and from all over the United States stood in frigid weather for more than three hours—in formation—outside Ray's small parish church on Long Island, while Ray's children and grandchildren, his colleagues, his commissioner, his mayor, his governor, and his president all paid tribute to this remarkable American hero.

Our memorial epitaph to Ray was simple but never more profound:

Ray Downey

Husband . . . Father . . . Patriot . . . Hero . . .

Friend

And in the final, most courageous moments of his duty-filled life . . .

Brother to all Humanity

Ray, we salute you; we know that you are still with us in spirit. With a renewed sense of profound commitment, we pledge on our honor that you and all the other victims of the attacks will not be forgotten and that the loss we have all suffered will not have been in vain.

Our Continuing Mission

Chairmen and Members, our mission remains urgent and clear: we must continue to bolster our capability to thwart terrorists wherever and whoever they are. Our collective call is to continue the momentum to secure our homeland and protect our citizens. While there is much more work to be done, I am confident that we will be successful. America's strength is in its people, our leaders, and our collective commitment, especially during times of crisis.

General Observations on Intelligence and Information Sharing

In the course of our deliberations, the Advisory Panel has been guided by several basic observations and assumptions that have helped to inform our conclusions and policy recommendations for improving our preparedness to combat terrorism.

First, all terrorism is “local,” or at least will start locally. That fact has a lot to do, in our view, with the emphasis, the priorities, and the allocation of resources to address requirements. September 11 was further proof of that basic assumption.

Second, a major attack anywhere inside our borders will likely be beyond the response capabilities of a local jurisdiction, and will, therefore, require outside help—

perhaps from other local jurisdictions, from that jurisdiction's state government or multiple state resources, perhaps from the Federal government, if the attack is significant enough to exhaust other resources. That principle was likewise validated last year.

Given those two factors, our approach to combating terrorism should be from the "bottom up"—with the requirements of State and local response entities foremost in mind.

Based on a significant amount of analysis and discussion, we have been of the view that few major structural or legal changes are required to improve our collective efforts; and that the "first order" challenges are policy and better organization—not simply more money or new technology.

Those principles have guided the panel's deliberations on policy recommendations throughout its tenure. And they are nowhere more clear than in matters of intelligence and information sharing.

The chart attached to this testimony is an attempt to depict graphically the magnitude of the problem and the necessary interrelationships that must exist among entities at the local, State, and Federal levels. It shows that integration must exist both vertically and horizontally among various functions and the agencies that have responsibilities for executing those functions. That interrelationship clearly identifies just how important intelligence and information sharing really is to the entire process, across all functions, and at all levels. It also emphasizes our view that simplistic categories such as "crisis management" and "consequence management" do not adequately describe the full spectrum of functions or responsibilities. We are pleased that the new National Strategy for Homeland Security has eliminated the use of those terms.

Moreover, the Panel has further refined its discussion to include the critical need for elements of the private sector to be involved in the sharing of information, especially where their roles have significant national security implications. Those interrelationships are not included in the attached chart.

Our Reports

In our first three reports, the advisory panel has, through its assessments and recommendations, laid a firm foundation for actions that must be taken across a broad spectrum of threats in a number of strategic and functional contexts to address this problem more effectively.

First Report—Assessing the Threat

The Advisory Panel produced a comprehensive assessment in its first report of the terrorist threat inside our borders, with a focus on chemical, biological, radiological, and nuclear (CBRN) weapons. The very thorough analysis in that report can be summarized:

The Panel concludes that the Nation must be prepared for the entire spectrum of potential terrorist threats – both the unprecedented higher-consequence attack, as well as the historically more frequent, lesser-consequence terrorist attack, which the Panel believes is more likely in the near term. Conventional explosives, traditionally a favorite tool of the terrorist, will likely remain the terrorist weapon of choice in the near term as well. Whether smaller-scale CBRN or conventional, any such lower-consequence event—at least in terms of casualties or destruction—could, nevertheless, accomplish one or more terrorist objectives: exhausting response capabilities, instilling fear, undermining government credibility, or provoking an overreaction by the government. With that in mind, the Panel’s report urges a more balanced approach, so that not only higher-consequence scenarios will be considered, but that increasing attention must now also be paid to the historically more frequent, more probable, lesser-consequence attack, especially in terms of policy implications for budget priorities or the allocation of other resources, to optimize local response capabilities. A singular focus on preparing for an event potentially affecting thousands or tens of thousands may result in a smaller, but nevertheless lethal attack involving dozens failing to receive an appropriate response in the first critical minutes and hours.

While noting that the technology currently exists that would allow terrorists to produce one of several lethal CBRN weapons, the report also describes the current difficulties in acquiring or developing and in maintaining, handling, testing, transporting, and delivering a device that truly has the capability to cause “mass casualties.”

We suggest that that analysis is still fully valid today.

Second Report—Toward a National Strategy for Combating Terrorism

By the second year, the Advisory Panel shifted its emphasis to specific policy recommendations for the Executive and the Congress and a broad programmatic assessment and functional recommendations for consideration in developing an effective national strategy.

The capstone recommendation in the second report was the need for a comprehensive, coherent, functional national strategy: *The President should develop and present to the Congress a national strategy for combating terrorism within one year of assuming office.* As part of that recommendation, the panel identified the essential characteristics for a national strategy:

- It must be truly *national* in scope, not just Federal.
- It must be comprehensive, encompassing the full spectrum of *deterrence, prevention, preparedness, and response* against domestic and international threats.
- For domestic programs, it must be *responsive to* requirements from and fully *coordinated with state and local officials* as partners throughout the development and implementation process.
- It should be *built on existing emergency response systems.*
- It must *include all key functional domains*—intelligence, law enforcement, fire services, emergency medical services, public health, medical care providers, emergency management, and the military.
- It must be *fully resourced* and based on *measurable performance.*

Of course, the Panel recognizes that in light of September 11, 2001 this objective has been difficult to achieve. However, the principles contained within this strategy and their requirements remain the same.

The Second Annual Report included a discussion of more effective Federal structures to address the national efforts to combat terrorism. We determined that the solutions offered by others who have studied the problem provided only partial answers. The Advisory Panel attempted to craft recommendations to address the full spectrum of issues. Therefore, we submitted the following recommendation: *The President should establish a senior level coordination entity in the Executive Office of the President.*

The characteristics of the office identified in that recommendation included:

- Director appointed by the President, by and with the advice and consent of the Senate, at “cabinet-level” rank
- Located in the Executive Office of the President
- Authority to exercise certain program and budget controls over those agencies with responsibilities for combating terrorism
- Responsibility for intelligence coordination and analysis
- Tasking for strategy formulation and implementation
- Responsibility for reviewing State and local plans and to serve as an information clearinghouse
- An interdisciplinary Advisory Board to assist in strategy development
- Multidisciplinary staff (including Federal, State, and local expertise)
- No operational control

We included a thorough explanation of each characteristic in our Second Annual Report. For instance, we determined that this office should have the authority to direct the creation, modification, or cessation of programs within the Federal Interagency, and that it have authority to direct modifications to agency budgets and the application of resources. We also recommended that the new entity have authority to review State and geographical area strategic plans and, at the request of State entities, to review local plans or programs for combating terrorism for consistency with the national strategy.

Although not completely structured around our recommendations, the model for the creation of the Office of Homeland Security came from this recommendation.

To complement our recommendations for the federal executive structure, we also included the following recommendation for the Congress: *The Congress should establish a Special Committee for Combating Terrorism—either a joint committee between the Houses or separate committees in each House—to address authority and funding, and to provide congressional oversight, for Federal programs and authority for combating terrorism.* The philosophy behind this recommendation is much the same as it is for the creation of the office in the Executive Office of the President. There needs to be a focal point in the Congress for the Administration to present its strategy and supporting plans, programs, and budgets, as well as a legislative “clearinghouse” where relevant measures are considered. We recognize that Congress is still in the process of working towards this objective.

In conjunction with these structural recommendations, the Advisory Panel made a number of recommendations addressing functional requirements for the implementation of an effective strategy for combating terrorism. The recommendation listed below are discussed thoroughly in the Second Annual Report:

Enhance Intelligence/Threat Assessments/Information Sharing

- Improve human intelligence by the rescission of that portion of the 1995 guidelines, promulgated by the Director of Central Intelligence, which prohibits the engagement of certain foreign intelligence informants who may have previously been involved in human rights violations
- Improve Measurement and Signature Intelligence (MASINT) through an expansion in research, development, test, and evaluation (RDT&E) of reliable sensors and rapid readout capability and the subsequent fielding of a new generation of MASINT technology based on enhanced RDT&E efforts

- Review statutory and regulatory authorities in an effort to strengthen investigative and enforcement processes
- Improve forensics capabilities to identify and warn of terrorist use of unconventional weapons
- Expand information sharing and improve threat assessments

Foster Better Planning/Coordination/Operations

- Designate the senior emergency management entity in each State as the *focal point* for that State for coordination with the Federal government for preparedness for terrorism
- Improve collective planning among Federal, State, and local entities
- Enhance coordination of programs and activities
- Improve operational command and control of domestic responses
- The President should always designate a Federal civilian agency other than the Department of Defense (DoD) as the Lead Federal Agency

Enhance Training, Equipping, and Exercising

- Improve training through better coordination with State and local jurisdictions
- Make exercise programs more realistic and responsive

Improve Health and Medical Capabilities

- Establish a national advisory board composed of Federal, State, and local public health officials and representatives of public and private medical care providers as an adjunct to the new office, to ensure that such issues are an important part of the national strategy
- Improve health and medical education and training programs through actions that include licensing and certification requirements
- Establish standards and protocols for treatment facilities, laboratories, and reporting mechanisms
- Clarify authorities and procedures for health and medical response
- Medical entities, such as the Joint Commission on Accreditation of Healthcare Organizations, should conduct periodic assessments of medical facilities and capabilities

Promote Better Research and Development and Create National Standards

- That the new office, in coordination with the Office of Science and Technology Policy, develop a comprehensive plan for RDT&E, as a major component of the national strategy
- That the new office, in coordination with the National Institute for Standards and Technology (NIST) and the National Institute for Occupational Safety and Health (NIOSH) establish a national standards program for combating terrorism, focusing on equipment, training, and laboratory processes

Our Third Annual Report to the President and the Congress builds on findings and recommendations in our First and Second Annual Reports delivered in 1999 and 2000. It reflects a national strategic perspective that encompasses the needs of all three levels of government and the private sector. It seeks to assist those who are dedicated to making our homeland more secure. Our recommendations fall into five categories:

- ✓ *Empowering State and Local Response* by ensuring the men and women on the front line of the war against terrorism inside our borders have the tools and resources needed to counter the murderous actions of terrorists;
- ✓ *Enhancing Health and Medical Capacities*, both public and private, to help ensure our collective ability to identify attacks quickly and correctly, and to treat the full scope of potential casualties from all forms of terrorist attacks;
- ✓ *Strengthening Immigration and Border Controls* to enhance our ability to restrict the movement into this country, by all modes of transportation, of potential terrorists and their weapons and to limit severely their ability to operate within our borders;
- ✓ *Improving Security Against Cyber Attacks* and enhancing related critical infrastructure protection to guard essential government, financial, energy, and other critical sector operations against attack; and
- ✓ *Clarifying the Roles and Missions for Use of the Military* for providing critical and appropriate emergency response and law enforcement related support to civilian authorities.

Mister Chairmen, I should note that the substance of all of the recommendations contained in the third report were approved by the panel at its regular meeting held on August 27 and 28, 2001—Tuesday the 28th being exactly two weeks prior to the attacks of September 11. Although we thoroughly reviewed those recommendations subsequently, the panel unanimously agreed that all were valid and required no supplementation prior to publication.

The recommendations contained in that report, listed below in summary form, are discussed in detail in the body of the report, and further supported by material in the

report appendices, especially the information from the nationwide survey of State and local responders covering an array of preparedness and response issues.

State and Local Response Capabilities

- Increase and accelerate the sharing of terrorism-related intelligence and threat assessments
- Design training and equipment programs for all-hazards preparedness
- Redesign Federal training and equipment grant programs to include sustainment components
- Increase funding to States and localities for combating terrorism
- Consolidate Federal grant program information and application procedures
- Design Federal preparedness programs to ensure first responder participation, especially volunteers
- Establish an information clearinghouse on Federal programs, assets, and agencies
- Configure Federal military response assets to support and reinforce existing structures and systems

Health and Medical Capabilities

- Implement the AMA Recommendations on Medical Preparedness for Terrorism
- Implement the JCAHO Revised Emergency Standards
- Fully resource the CDC Biological and Chemical Terrorism Strategic Plan
- Fully resource the CDC Laboratory Response Network for Bioterrorism
- Fully resource the CDC Secure and Rapid Communications Networks
- Develop standard medical response models for Federal, State, and local levels
- Reestablish a pre-hospital Emergency Medical Service Program Office
- Revise current EMT and PNST training and refresher curricula
- Increase Federal resources for exercises for State and local health and medical entities
- Establish a government-owned, contractor-operated national vaccine and therapeutics facility
- Review and recommend changes to plans for vaccine stockpiles and critical supplies
- Develop a comprehensive plan for research on terrorism-related health and medical issues
- Review MMRS and NDMS authorities, structures, and capabilities
- Develop an education plan on the legal and procedural issues for health and medical response to terrorism
- Develop on-going public education programs on terrorism causes and effects

Immigration and Border Control

- Create an intergovernmental border advisory group
- Fully integrate all affected entities into local or regional "port security committees"
- Ensure that all border agencies are partners in intelligence collection, analysis, and dissemination
- Create, provide resources for, and mandate participation in a "Border Security Awareness" database system

- Require shippers to submit cargo manifest information simultaneously with shipments transiting U.S. borders
- Establish "Trusted Shipper" programs
- Expand Coast Guard search authority to include U.S. owned—not just "flagged"—vessels
- Expand and consolidate research, development, and integration of sensor, detection, and warning systems
- Increase resources for the U.S. Coast Guard for homeland security missions
- Negotiate more comprehensive treaties and agreements for combating terrorism with Canada and Mexico

Cyber Security

- Include private and State and local representatives on the interagency critical infrastructure advisory panel
- Create a commission to assess and make recommendations on programs for cyber security
- Establish a government funded, not-for-profit entity for cyber detection, alert, and warning functions
- Convene a "summit" to address Federal statutory changes that would enhance cyber assurance
- Create a special "Cyber Court" patterned after the court established in FISA
- Develop and implement a comprehensive plan for cyber security research, development, test, and evaluation

Use of the Military

- Establish a homeland security under secretary position in the Department of Defense
- Establish a single unified command and control structure to execute all military support to civil authorities
- Develop detailed plans for the use of the military domestically across the spectrum of potential activities
- Expand training and exercises in relevant military units and with Federal, State, and local responders
- Direct new mission areas for the National Guard to provide support to civil authorities
- Publish a compendium of statutory authorities for using the military domestically to combat terrorism
- Improve the military full-time liaison elements in the ten Federal Emergency Management Agency region

Second Report Recommendations on Intelligence and Information Sharing

Mr. Chairmen and Members, please let me expand on the prior recommendations that are directly related to the issues before this joint panel, and let you know what we are also now discussing in this area.

From the inception of our deliberations, we have said that “more can and must be done to provide timely information—up, down, and laterally, at all levels of government—to those who need the information to provide effective deterrence, interdiction, protection, or response to potential threats.”¹

In our Second Report, as noted above, we recommended that an entity be created in the Executive Office of the President similar to, but with much broader responsibilities and authority than, the Office of Homeland Security. As part of that recommendation, we specifically recommended certain responsibilities dealing with Intelligence Coordination and Analysis. We recommended that the office in the White House provide coordination and advocacy for both foreign and domestic terrorism-related intelligence activities, including the development of national net assessments of terrorist threats. We said that a critical task will be to develop, in concert with the Intelligence Community,² policies and plans for the dissemination of intelligence and other pertinent information on terrorist threats to designated entities at all levels of government—local, State, and Federal.

We recommended that there be an Assistant Director for Intelligence in that Office to direct the intelligence function for Combating Terrorism, who should be “dual-hatted” as the National Intelligence Officer (NIO) for Combating Terrorism at the National Intelligence Council. We said that the Assistant Director/NIO and staff would be responsible for compiling terrorism intelligence products from the various agencies, for providing national-level threat assessments for inclusion in the national strategy, and for producing composite or “fused” products for dissemination to designated Federal, State, and local entities, as appropriate. The Assistant Director/NIO should be delegated,

¹ First Report, p. 57.

² Including its Federal law enforcement components.

by Executive Order or in enabling legislation, tasking authority for terrorism-related intelligence collection and analysis. We recommended that that person serve as focal point for developing policy for combating terrorism intelligence matters, keeping the policymaking and operational aspects of intelligence collection and analysis separate. We argued that the Assistant Director would also be the logical interface with the intelligence oversight committees of the Congress. It is, in our view, important to have a senior-level position created for this purpose, and we recommended that the person initially chosen to fill the position be a current or former agent of the Federal Bureau of Investigation, and then be filled in rotation by appropriately qualified persons from law enforcement and the Intelligence Community. Importantly, we said that the intelligence office should be staffed with knowledgeable and experienced personnel, who understand collection, analysis, and assessment processes, from the various intelligence and law enforcement agencies.

To assist in that intelligence function, we recommended the establishment of a "Council to Coordinate Intelligence for Combating Terrorism," to provide strategic direction for intelligence collection and analysis, as well as a clearance mechanism for product dissemination and other related activities. It should consist of the heads of the various Intelligence Community entities and State and local representatives who have been granted appropriate security clearance. We said then, December 2000, that the Director of the Federal Bureau of Investigation and the Director of Central Intelligence should chair it in annual rotation.

Human Intelligence (HUMINT)

Recent events have emphasized the need for the best possible intelligence. Moreover, reliance on sophisticated “National Technical Means” or other high-technology systems is not always sufficient to provide the necessary and timely “indication and warning” to forestall or to defend against a terrorist attack.

In our Second Report (December 2000), we noted that certain procedures, well intentioned when implemented, were hampering the nation’s ability to collect the most useful intelligence. For that reason, we recommended the rescission of that portion of the 1995 guidelines, promulgated by the Director of Central Intelligence, which prohibited the engagement of certain foreign intelligence informants who may have previously been involved in human rights violations. Unfortunately, that recommendation was not acted upon before last September 11. It took Congressional action last fall to correct that situation.

Measurement and Signature Intelligence (MASINT)

As the potential grows for terrorists to use more unconventional and sophisticated weapons, especially with chemical or biological agents, our capability to detect such agents assumes greater urgency and requires new technology to provide needed capability.

To meet that challenge, we recommended an expansion and improvement in research, development, test, and evaluation (RDT&E) of reliable sensors and rapid readout capability, and the subsequent fielding of a new generation of MASINT

technology based on enhanced RDT&E efforts. Our goal for sensors and rapid readout technology for chemical and biological agents should be no less than our current capability for nuclear and radiological agents. Much is being done in that area; more is needed.

Statutory and Regulatory Authorities

With a full appreciation for our important and unique civil rights and liberties, we proposed, almost two years ago, important steps to improve intelligence collection, analysis, and dissemination.

We recommended a thorough review, by a panel of Department of Justice (DOJ) officials and knowledgeable citizens outside the Federal government, of the terrorism portion of the Attorney General's "Domestic Guidelines." We examined the guidelines, which establish conditions under which an FBI agent can open an inquiry into possible terrorist activity inside the United States. The guidelines appeared to us to be adequate in scope but have been rendered confusing and ambiguous by successive redrafting over the years, leading to misunderstanding and uneven application among law enforcement agents. We did not suggest that the guidelines be rescinded or that the underlying requirement for them is not sound. We recommended that the panel review the domestic guidelines for clarity, in the interests of strengthening them, while providing for the protection of civil rights and liberties. We also recommended that the guidelines provide examples of permissible and impermissible activity as further information for agents' decisions. Again, it took the events of last Fall to cause that to happen.

The Foreign Intelligence Surveillance Act (FISA) governs domestic national security investigations.³ The procedures in place in the year 2000 of the Office of Intelligence Policy and Review (OIPR) in the Department of Justice, required to present a matter to the special Foreign Intelligence Surveillance Court established under FISA, required far more justification than the Act does. We recommended at that time that the Attorney General direct OIPR to modify its procedures to conform to the FISA statutory requirements. That did not happen until after the events of last fall, and with additional prodding from the Congress.

Controls inside our borders that can hamper efforts of potential terrorists—be they foreign or domestic—by denying them their “tools of the trade,” can be established or strengthened without additional authority. We recommended that the Department of Justice, in consultation with appropriate committees of the Congress as well as knowledgeable members of the scientific, health, and medical communities, and State and local government, continually review existing statutory authorities and regulations. The purpose would be to propose specific prohibitions, or at least mandatory reporting procedures, on the domestic sale and purchase of precursors and special equipment that pose a direct, significant risk of being used to make and deliver CBRN weapons or agents.⁴ Some improvements have been made in this area; others are still urgently needed.

³ 50 U.S. Code, Sections 1801–1863.

⁴ An identification of such precursors and equipment should be made in an Executive Order or regulations, coordinated with all relevant Federal health and law enforcement agencies.

Forensics Capabilities to Identify Terrorist Unconventional Weapons

We have today effective forensic capabilities to detect and identify conventional weapons, including high-explosive devices and associated mechanisms, as well as sophisticated techniques for identifying perpetrators.⁵

Given the potential for terrorists to resort to chemical and biological weapons, developing a comparable forensics capability for such weapons is a clear priority. In 2000, we recommended that the federal government foster research and development in forensics technology and analysis. Those steps will involve either the development of a new program in a specific agency, or the consolidation of several existing programs. We also recommended the implementation of an Indications and Warning System for the rapid dissemination of information developed by enhanced forensics. If we can improve significantly our forensics capability, the new national alert system would much more effectively disseminate information on credible threats.

These efforts should include Federal assistance to State and local forensics capabilities. Some terrorist threats or actual attacks may initially appear to be some other form of criminal conduct, and Federal involvement may not be implicated. Enhancements at State and local agencies will not only facilitate early identification, but will also support subsequent criminal investigations.

If terrorists know that the nation has the capability to detect and identify devices and perpetrators—so that the “return address” can be determined—deterrence is enhanced accordingly.

⁵ The FBI's internal laboratory and others available to it collectively are, without question, the best in the world.

Information Sharing and Improved Threat Assessments

Several agencies have made strides in enhancing information sharing. Notable examples include efforts by the FBI to implement fully its Joint Terrorism Task Force (JTTF) program and to provide information on combating terrorism to response entities through its web-based system, Law Enforcement Online (“LEO”), as well as the formation of the US Attorneys Anti-Terrorism Task Forces. The Panel has anecdotal evidence to suggest that these efforts, while well intentioned, continuing to be confusing, duplicative, non-standard, and bifurcated in both structure and implementation.

In 2000, we determined that a comprehensive dissemination system must be developed to provide information through expanded law enforcement channels, and through regional FEMA offices into State emergency management channels, for further dissemination to local response entities. As part of that process, we recommended the creation of a system for providing some form of security clearance to selected State and local officials nationwide, and methods for disseminating classified information to those officials in near real time. We said that one product of that process should be timely threat assessments, in which the FBI must be an integral part. The FBI had, in 2000, undergone a reorganization that consolidated several related entities into a new Counterterrorism Division, with an Assistant Director at its head. We said that that division needed more internal analytic capability. As a result, we recommended that the FBI consider implementing a “Reports Officer” or similar system, analogous to the process used by the Central Intelligence Agency, for tracking and analyzing terrorism indicators and warnings. Once again, it took the events of last year for that imperative to sink in.

To promote the broadest dissemination of information to the largest audience of response entities, we recommended, in December 2000, that the Federal government develop a protected, Internet-based, single-source web page system, linking appropriate combating terrorism information and databases across all applicable functional disciplines. The new National Strategy for Homeland Security now calls for exactly that type of system, consistent with our recommendation in the 2nd report.

Third Report Recommendations on Intelligence and Information Sharing

As noted earlier, the Advisory Panel held a regular meeting on August 27 and 28, 2001. Among its approved list of recommendations are those dealing with intelligence and information sharing, described below. At an emergency meeting of the Panel two weeks *after* the attacks, the Panel reconfirmed each of those recommendations approved before the attacks and did not add a single new one.

Sharing Intelligence

For that Third Report, we conducted a nationwide survey of state and local response entities. All State and local organizations surveyed strongly indicated that the Federal government should provide threat and risk assessment information and that the Federal government should provide intelligence about terrorist activities. As a result, we recommended that agencies of the Federal government increase and accelerate the sharing of terrorism-related threat assessments and intelligence with appropriate State and local officials and response organizations. Steps taken by the Attorney General for U.S. Attorneys to develop protocols for sharing more information developed at the Federal level with States and localities, provisions in the USA PATRIOT Act of 2001, and initiatives by the Congress could significantly enhance preparedness and response. In making the announcement of new Justice Department initiatives, the Attorney General

said, "Increased sharing of information among law enforcement and national security personnel at all levels of government are critical to the common effort to prevent and disrupt terrorist acts. To win the war on terrorism, Federal prosecutors and law enforcement personnel must develop and implement effective procedures for information-sharing and cooperation with their State and local counterparts."⁶ The challenge continues to be to put protocols effectively into practice. It is critical that procedures for sharing appropriate information with non-law enforcement entities also be developed. State and local agencies response agencies, including public health, must be equal and fully informed partners in the national effort to identify potential incidents and to respond effectively when they occur. For example, when a possible biological threat is identified, sharing information with public health entities, which can inform further communications with public and private medical care providers, will facilitate targeted disease surveillance, resulting in more rapid identification and treatment of potential victims. There continues to be anecdotal information about the difficulty and expense of getting state and local officials cleared to receive classified information.

Better Information

Our survey of state and local responders strongly indicated that they are not aware of what is available from the Federal government, both in terms of programs and offices to promote preparedness and, to a lesser degree, what specialized assets are available to support response to a particular type of incident. This lack of awareness of important Federal preparedness programs may inhibit the preparedness of State and local organizations. It also may delay the summoning of Federal support assets by local and

⁶ Memorandum from The Attorney General of the United States to all United States Attorneys, Subject: Cooperation with State and Local Officials in the Fight Against Terrorism, November 13, 2001.

State responders in the event of an incident. Furthermore, in the short term, as the Federal government reorganizes to combat the terrorist threat, confusion about Federal preparedness programs and Federal response assets could increase. As a result, we recommend that the Office of Homeland Security serve as a clearinghouse for information about Federal programs, assets, and agencies with responsibilities for combating terrorism.

The chapter in our December 2001 report on border security also contained recommendations for improving intelligence and information sharing. Having catalogued the complexity of the border problem we set forth explicit proposals for improvement.

Border Intelligence Collection and Analysis

We recommended that the Office of Homeland Security ensure that all agencies with border responsibilities are included as full partners in the intelligence collection, analysis, and dissemination process, as related to border issues.⁷

This process is a “two-way street;” all entities involved must be willing to share information, horizontally and vertically. This will represent a departure from the current “culture” of many agencies to cloister information. We again encouraged the Office of Homeland Security to consider the structure and procedures in our second report for the establishment of intelligence oversight through an advisory board under that office and

⁷ The Attorney General, in coordination with other Federal agencies, recently established the “Foreign Terrorist Tracking Task Force.” The purpose of the Task Force is to gather, coordinate, and disseminate information (including intelligence and other national security information) among law enforcement and other appropriate agencies (including the State Department) to enable them to have extensive, real-time information on potential terrorists and terrorist activities.

for the establishment of intelligence tasking, collection, analysis, and assessment capabilities in that office.⁸

Information Sharing

The full, timely analysis and dissemination of information among affected Federal, State, and local agencies may be critical in preventing the movement of foreign terrorists and their weapons across our borders. Some interagency agreements for border security do exist, notably the Memorandum of Agreement on Maritime Domain Awareness among the Department of Defense, the U.S. Coast Guard, the U.S. Immigration and Naturalization Service, and the Department of State.⁹ We said last year that the Congress needs to revisit the funding for such programs; all affected agencies are not involved in a fully coordinated and integrated process. As acknowledged by several Federal agencies:

[N]o single framework exists to effectively look at threats across the broad spectrum of issues. What is necessary is the establishment of an organization structure with the connectivity to create a virtual national data repository with the supporting analytical and communications capabilities to develop effective maritime awareness and coordinate appropriate response.¹⁰

As a result, we recommended that the Office of Homeland Security create a “Border Security Awareness” database system to collect and disseminate information about immigration and border control; and that the Congress mandate participation of relevant Federal agencies and provide adequate resources to fund it. The system could be modeled on the existing U.S. Coast Guard Maritime Domain Awareness program. That

⁸ *Second Annual Report*, p. 11.

⁹ See Appendix R.

¹⁰ *Ibid*, p. R-2.

program could be expanded to create an interactive and fully integrated database system for all border security matters.¹¹ It should include participation from all relevant U.S. government agencies, and State and local partners. These issues are now in large measure before the Congress in its consideration of the new Department of Homeland Security.

Our Current Deliberations

Chairman and Members, we continue to believe that improvements in intelligence and information sharing are central to the nation's efforts to combat terrorism. They are, as we see it, the most crucial and fundamental requirement. As a result, we continue to consider—including at a Panel meeting as recently as yesterday—ways to improve both structure and process in this area as we build our Fourth Annual Report to the President and the Congress, due December 15. The creation of the new Department of Homeland Security will not solve all of these issues. In some ways, it may in fact impede the appropriate collection, analysis, and dissemination of intelligence and information. It will, it appears, be yet another “customer” of intelligence for the Intelligence Community, and will have no collection and little analytical capability of its own. Its creation will, for example, also do little to solve the problem of the FBI recasting its efforts from purely law enforcement to detection and prevention.

Conclusion

The Advisory Panel will continue to be prudent and judicious in its recommendations, especially those dealing with intelligence and information, always

¹¹ James Ziglar, Commissioner of the Immigration and Naturalization Service, announced on December 6 that INS will enter the names of more than 300,000 foreign nationals, who have remained in the country illegally after they were ordered deported, into the FBI's National Crime Information Center database. Previously, the government did not pursue most people who ignored orders to leave the country.

considering as an overarching concern the impact of any legal, policy, or process changes on our civil rights and liberties. But we will also be decidedly outspoken on matters that we believe need to be addressed, and will be relentless in our pursuit of the best solutions.

Chairmen and committee members, this is not a partisan political issue. It is one that goes to the very heart of our national security, our public safety, and our uniquely American way of life. We have members on our panel who identify with each of the major national political parties, and represent views across the entire political spectrum. They represent all levels of government and the private sector, and all the key disciplines that are needed to address these issues effectively. We urge Members on both sides of the aisle, in both Houses of the Congress, to work with the Executive Branch to bring some order to this process and to help provide national leadership and direction to address these critical issues. The proposed Department of Homeland Security represents but one part of the issue. We must not let our focus on this one piece preclude our ability to look at the larger strategic picture in making America safer and more secure.

Thank you again for this opportunity.