

TESTIMONY OF JANET RENO
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The National Commission on Terrorist Attacks Upon the United States

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I. INTRODUCTION

This Commission is performing a function of the utmost importance to our Nation's future, and I thank you for giving me the opportunity to offer my views and perspectives based on my service as Attorney General. We understood from early in the Clinton Administration that terrorism posed a grave threat to Americans on American soil. The bombings at the World Trade Center in 1993 and at the Murrah Building in Oklahoma City in 1995 made that chillingly clear. While we were conscious of the threat and worked diligently to improve our Nation's readiness, no one aware of the events of September 11, 2001 can think that we did enough. Thousands of American lives were shattered that day, and our Nation was shaken and made acutely aware of its vulnerability. I have asked myself repeatedly since that terrible day what I and my colleagues could have done to prevent it or make it less likely to have occurred, and, perhaps more important, what the Nation should be doing now to prevent another day like that one. I will offer you my thoughts on those subjects, and I wish you all success as you reach conclusions and make recommendations on which the Nation and its leaders will rely in the future.

Just two weeks before I was sworn in as Attorney General, a truck bomb exploded in the World Trade Center garage, killing six people – the first major foreign terrorist attack on U.S. soil. I focused on the case and was briefed on it soon after taking office. The case was being handled by the United States Attorney for the Southern District of New York and the FBI Office in New York. The investigation led to others who had supported the effort, including Sheik Omar Abdel Rahman, and then to another group that planned to bomb the Lincoln and Holland Tunnels, the United Nations Building and other sites. The U.S. Attorney and the FBI briefed me on the case of the Sheik, and I personally made the decision to charge him. Subsequently, with the conviction of the Sheik and Ramzi Yousef, who had masterminded the first World Trade Center bombing, the connection to Osama bin Laden and al Qaeda became clear.

However, it's important to be clear that Islamic terrorists in general, and al Qaeda in particular, were not our only focus. Initially, domestic terrorism loomed as large as international terrorism, particularly after the 1995 Oklahoma City bombing. Further, there were a number of foreign terrorist organizations of concern, including Hezbollah and Hamas. Indeed, Osama bin Laden was initially viewed mainly as a financier of terrorist acts, and the name "al Qaeda" did not even come to our attention in the Department of Justice until late 1995 or early 1996. With bin Laden's call in February 1998 for attacks on Americans, and with the Embassy bombings in August of 1998, the magnitude of the threat posed by al Qaeda and bin Laden became clear.

The Department of Justice plays an essential role in counterterrorism efforts – efforts that focus on preventing attacks, as well as on building prosecutions of those who commit these acts.

Additionally, the Department's work on immigration matters inevitably raises important issues of national security. Further, the Department must also provide legal advice throughout the Executive Branch on national security issues of profound importance both to the defense of the Nation and to the rule of law. At the same time the Department has an important role to play in protecting the civil liberties that are the cornerstone of our freedom. In all of this, it is critically important that the Department constantly re-evaluate how it is performing and that it exercise its best judgment – each and every day – about how to reconcile the competing demands that it faces and about how best to serve and protect the public.

II. PRIORITY OF COUNTERTERRORISM EFFORTS

A. Budget and Organizational Priorities

Counterterrorism was a top priority for the Department of Justice. This priority was reflected in the Department's Strategic Plan, budget requests to OMB and the Congress, as well as in new organizational structures and policy initiatives and in the way I spent my time as Attorney General.

In 1994, we created the Executive Office for National Security (EONS). We recognized that the Department was increasingly involved in national security issues, including not only counterterrorism, but also counterintelligence, defense issues, and foreign policy. Prior to the formation of EONS, the Department lacked any formal mechanism to ensure coordination among the many different affected components, to participate effectively in interagency policy deliberations, and to aid in the development of Department policy in these areas. EONS filled that void.

In 1995, as discussed at greater length below, we addressed the need for greater coordination between the intelligence and law enforcement communities by creating the Intelligence Community-Law Enforcement Policy Board, chaired by the Deputy Attorney General and Deputy Director of Central Intelligence (DDCI), and the Joint Intelligence Community-Law Enforcement Working Group (JICLE). Among their charges was to identify any legal impediments to greater cooperation, and recommend ways to improve their information-sharing and coordination.

Also in 1995, pursuant to Presidential Decision Directive (PDD) 39, I led a Cabinet-level committee to assess the vulnerability of our Nation's critical infrastructures to terrorist attack and to make recommendations on how to secure them. This assessment led to the first recognition that our Nation was vulnerable not only to physical attacks like those seen in the first World Trade Center attack in 1993 and the Oklahoma City bombing in April 1995, but also to cyber attacks against critical information systems involved in the operation of critical infrastructures such as telecommunications, banking and finance, energy, and government operations. Our recommendations ultimately led to the creation of the President's Commission on Critical Infrastructure Protection in 1996 and PDD-63 in 1998, which established the first government-wide policy on infrastructure protection.

Also in 1998, at the request of Congress, the Department led the development of a 5-Year Counterterrorism and Technology Plan to serve as a baseline for coordination of national policy and operational capabilities to combat terrorism.

In 1999, the FBI created a new Counterterrorism Division in order to consolidate the Bureau's counterterrorism initiatives under one senior executive and to ensure that counterterrorism received sufficient focus and priority.

The Department also participated in interagency exercises and "war games" to improve the Department's, as well as the entire government's, crisis and consequence management capabilities. In particular, the Department co-sponsored with FEMA the "TOPOFF" exercise in 2000. TOPOFF ("Top Officials," as senior officials participated in the exercise) involved three simultaneous scenarios: a chemical incident in Portsmouth, New Hampshire; a bioterrorism event in Denver, Colorado; and a nuclear device incident in Washington, D.C. Significantly, we ensured that TOPOFF involved state and local first responders in addition to federal entities.

During my tenure as Attorney General, we nearly doubled the number of FISA applications handled by the Office of Intelligence Policy and Review from 509 in 1993 to 1,005 by 2000. Because I knew the demands on this critical office would continue to grow significantly, I sought an increase of 10 positions for it. The increase would have increased its staffing from 29 to 39; a significant increase for this relatively small office reflecting the importance of its mission in supporting the Department's counterterrorism and intelligence efforts. I also thought it was essential that the lawyers in OIPR be involved in training FBI agents. Unfortunately, I was not able to secure the additional resources from the Congress for this important staffing increase. As we all realize, the expeditious processing of FISA applications is a critical tool in the Government's intelligence and counterterrorism efforts.

In September 2000, we submitted the Department's Strategic Plan for fiscal years 2000-2005. Terrorism was a Tier 1 priority. The strategic objective for terrorism specifically noted:

Usama Bin Laden (UBL). UBL, a Saudi-born multimillionaire, and his organization, Al-Qaida, constitute a threat to U.S. persons and interests around the world. On February 23, 1998, Bin Laden issued a "fatwa" claiming that it is the duty of all Muslims to kill American "civilians and military" whenever possible. UBL and his associates are currently under

indictment in the Southern District of New York for various charges relating to the killing of U.S. nationals employed by the U.S. military who were serving in Somalia and on the Arabian peninsula, as well as the killings of U.S. nationals employed at the U.S. Embassies in Nairobi, Kenya, and Dar Es Salaam, Tanzania. The FBI is aggressively pursuing an investigation of UBL and his associates and considers investigation of Al-Qaida a top priority of the Counter-terrorism Program.

B. Legislation

We recognized that we needed additional legal authorities to deal with terrorism and sought such authority from Congress on several occasions. In 1994, at our request, Congress passed the first statute prohibiting the provision of material support to terrorist activities. After the bombing of the Murrah Building, the Department developed a comprehensive anti-terrorism package, which Congress passed the next year as the Anti-Terrorism and Effective Death Penalty Act. This law established a much broader prohibition on the provision of material support to terrorist organizations; provided expedited procedures for the removal of alien terrorists; tightened regulation of potential weapons of mass destruction; made terrorist activities predicates for violations of the money laundering statutes; and authorized increased funding to federal and state law enforcement agencies for antiterrorism activities. As I was also extremely concerned with ensuring that state and local authorities were adequately trained and equipped to deal with the consequences of a terrorist attack, the Office of Justice Programs established and ran several training centers, as well as provided grants to, state and local first responders. We continued to seek additional authorities such as pen register authority under FISA, which we were not able to get passed during my tenure, but that ultimately became part of the Patriot Act.

C. Legal Advice

The Department of Justice had an additional critical task in antiterrorism efforts by virtue of its role as legal adviser to the President and the Executive Departments. In some areas, processes were in place that required Department of Justice review for proposed counterterrorism efforts. At other times, review was sought to provide those involved with the security of knowing that any action that they would be asked to take was lawful and that they would not be subject to after-the-fact recriminations. Often, the legal issues presented were novel and difficult. But whatever the legal issue, operational necessity set the schedule, and we would provide our very best advice with the time we had. The Department devoted substantial efforts, moreover, to considering what legal issues might arise in case of an attack, and to having analyses of those authorities in place should the unthinkable occur.

III. COORDINATION AND SHARING

Throughout my tenure as Attorney General, it was clear to me that the fight against terrorism required much closer coordination and greater information sharing between the law enforcement and intelligence communities. Eliminating barriers to the free flow of information

was one of my greatest concerns as Attorney General. To that end, we undertook a number of initiatives to improve cooperation.

First, as noted above, we created an Intelligence Community-Law Enforcement Policy Board in 1995 to address issues of mutual concern to the two communities. This Board was chaired by the Deputy Attorney General (DAG) and the Deputy Director of Central Intelligence (DDCI), and included representatives from all the law enforcement and intelligence agencies and the Department of Defense. Reporting to that board was the JICLE working group, which was formed to address specific legal and policy issues that had been raised by one or both communities as real or apparent barriers to cooperation. The JICLE working group ultimately made dozens of recommendations to improve coordination, which we implemented. Notably, the group found that there were far fewer legal impediments to information sharing between the law enforcement and intelligence communities than many people in both communities had thought, and that the principal obstacles were ones of agency culture and lack of understanding. There are simply no walls or restrictions on sharing the vast majority of counterterrorism information. There are no legal restrictions at all on the ability of members of the intelligence community to share intelligence information with each other. With respect to sharing between intelligence investigators and criminal investigators, information learned as a result of a physical surveillance or from a confidential informant can be legally shared without restriction. While there were restrictions placed on information gathered by criminal investigators as a result of Grand Jury investigations or Title III wiretaps, in practice they did not prove to be a serious impediment since there was very little significant information that could not be shared. Notably, both of these restrictions have now been eliminated as part of the Patriot Act, so that Title III and grand jury information concerning terrorism can now be shared with the intelligence community.

In addition to these two bodies, we initiated other less formal but effective mechanisms to improve cooperation. For instance, we began regular biweekly meetings between the DAG and DDCI in order to ensure that any issues impeding cooperation were resolved, and all relevant information was shared across the communities. These meetings helped identify and address bureaucratic and cultural obstacles to cooperation. In addition, the FBI and CIA formed the so-called "Gang of Eight" to work through coordination issues at the operational level. This process began with meetings of senior officials from CIA and FBI headquarters, but ultimately included FBI Legal Attaches and CIA Chiefs of Station abroad.

The FBI and CIA also initiated during the 1990s a practice of detailing personnel to each other's counterterrorism organizations. This included an FBI agent to serve as the Deputy Chief of the DCI's Counterterrorist Center, and a CIA officer to serve as the Deputy Chief of the FBI's International Terrorism Operations Section. These details fostered a better mutual understanding of the agencies' culture and practices, and enhanced the flow of information.

Another set of problems arose out of the Foreign Intelligence Surveillance Act, which provides the authority for electronic surveillance and physical searches in foreign intelligence investigations, including terrorism investigations. Case law had created a "primary purpose" test for surveillance under FISA, meaning that we had to certify to the Foreign Intelligence Surveillance Court that the "primary purpose" of a FISA search or electronic surveillance was to gather foreign intelligence, not gather evidence for a criminal prosecution. It became apparent,

however, that parts of the Department and the FBI were adopting an overly restrictive reading of FISA and this case law which needlessly restricted the flow of information from FCI investigations to criminal prosecutors. To try to correct this, I issued memoranda in 1995 and 2000 specifically *requiring* that such information be provided to prosecutors whenever there was a reasonable indication of criminal activity (which was almost always the case in the investigation of a suspected terrorist), and allowing for the prosecutors to provide advice to the investigators within the bounds of the law as the courts had applied it. My memoranda, notably, were further reinforced by a memorandum in 2001 by Deputy Attorney General Larry Thompson. Ultimately, the primary purpose test was eliminated by the Patriot Act. But the Commission should recognize that we took steps, within the law as it was understood and consistently applied by the courts at the time, to maximize the information flow from the FCI side to the criminal side. In sum, then, despite the oft repeated assertion that “legal restrictions” impeded the flow of information between the FBI and the CIA, or within the FBI itself, in fact there were very few legal restrictions on information sharing.

Shortly after he took office, Attorney General Ashcroft invited me to have lunch with him. At that time, I shared my concerns about the FBI’s ability to identify and properly share information dealing with counterterrorism. I furnished to him a single set of memoranda I had written to Director Freeh on this topic. I understand that the Commission has been supplied with copies of these memoranda.

As important as all of these measures were, there remains, even after 9/11, an urgent need for more information sharing and coordination between the law enforcement and intelligence communities. As we learned from the JICLE work, and especially after the changes in the law effected by the Patriot Act, the principal obstacles to better cooperation between the two communities are not legal barriers, but traditional agency cultures and the lack of interoperable technology. At the FBI in particular, agents are not trained to share information with other agencies. Nor are they evaluated and rewarded based on their ability to generate and share information that other agencies might find useful. Given the vital role the FBI plays, and must continue to play, in gathering information domestically about terrorist plots, this must change. The FBI must see itself as both a collector and disseminator of information, and as a vital source of counterterrorism information for other agencies with counterterrorism missions and for policymakers. The FBI’s evaluation and reward structures should be adjusted to encourage personnel to develop information that can be shared with other federal and, significantly, state and local agencies who are normally going to be the first responders to a terrorist attack. I know that Director Mueller and DCI Tenet are continuing to work hard on these issues, and I would urge this Commission to make particular recommendations on how they might address this area more effectively.

IV. LIMITS ON CAPACITY OF FBI TO ANALYZE AND DISSEMINATE INTELLIGENCE

The FBI has evolved over the years as the Nation’s clearinghouse of law enforcement information. Whether it is the management of a system of over 40 million individuals fingerprints, its expanding DNA database, or information on organized crime and terrorist groups, it serves as the Nation’s major repository of law enforcement information.

One of the challenges the Bureau has faced is how it can effectively manage, utilize and disseminate the wealth of information it has. It has been faced with the daunting task of keeping up with the explosive advances in the amount of information available and the technology to collect, process and disseminate information. To its credit, the FBI undertook major programs such as IAFIS (Integrated Automated Fingerprint Information System) and NCIC 2000 to give the law enforcement community improved access to fingerprint and criminal history information. Queries that in the past would have taken weeks can now be processed in minutes or hours. Also, much of this information can now be queried by law enforcement from their patrol cars, something unthinkable only a few years ago.

However, one of the major difficulties facing the FBI and other law enforcement agencies during my tenure and continuing today, was their inability to effectively search, exchange and utilize the information they had available. The best way to view the problem faced by law enforcement systems is to think of them as individual stove pipes: information in one system could not be easily queried by another system and it was virtually impossible for systems in different agencies to query each other. Of critical concern, information within one system or location was at times not available to agents working on related issues in another agency or location.

Realizing it did not have the capability to manage the information it had available, to communicate effectively within and with the law enforcement community, and to incorporate the advances in technology, the FBI undertook what it then called its Information Sharing Initiative (ISI). Although it has been renamed several times, the major thrust of this program was to bring the FBI into the 21st Century, by providing an update to desk top computer system connecting all of its operations with state-of-the-art capabilities. The new system would have the ability to query the FBI's repository of information and the ability to exchange information with other systems and communicate with the other law enforcement agencies. The FBI had been working on this initiative during the last two years of my tenure. Unfortunately, the FBI had faced extensive delays and cost overruns in the deployment of its previous major technology programs, so it faced major challenges convincing the Congress to provide significant new funding for this initiative. Just before I left office, Congress released the first major increment resources for this effort. I understand, although facing some cost overruns and schedule delays, the FBI is about to complete this major effort.

Law enforcement's ability to effectively collect and query information and to exchange and disseminate information is critical. We can no longer continue to allow "turf battles" and the development of incompatible support systems to limit our ability to appropriately collect, analyze, and disseminate the information we have available.

V. BORDER CONTROL ISSUES

With bipartisan support, we were able to begin to address years of neglect and begin dealing with some of the major issues facing the former INS. The issues were not only efforts to secure our borders, but meeting service demands from individuals seeking adjustments to their immigration status. These efforts were further complicated by the immigration crises we constantly faced due to events in Haiti, Mexico, and Central America. By the time I left office, we had made significant progress in beginning to secure our Southern border. For example, when I arrived in 1993, the Border Patrol had 3,950 agents. By the time I left office the Patrol had increased by 147 percent to over 9,800 agents. Although the growth was impressive, the challenge of securing over 4,000 miles of Southern and Northern borders remains a daunting task. Our efforts along the border had been focused on the Southern border where we faced the greatest influx of aliens trying to enter the country. Much work still remains, but we saw real evidence that our efforts to take back control of the Southern border were paying off in many of the sectors. By the time I left office, with the progress we were making along the Southern border, we began to look at the issues and the complexity of our Northern border. As you know the number of agents assigned to the Northern border is still significantly less than that assigned to the Southern border.

INS also faced the some of same difficult automation issues as the FBI. Historically, much of INS' processes were manual, and the agency was buried in paper records. We began the process of introducing technology to address the tremendous backlog of immigration status adjustments as well using automated fingerprinting technology to support INS enforcement efforts. These efforts assisted INS in addressing its service backlog and in processing and identifying illegal entrants. Were the efforts complete and without problems? No. INS systems were not able to communicate with other federal law enforcement agencies, nor was INS service information readily available for the use of other agencies, including state and local agencies. However, the technology efforts, although more limited than I would have liked, were major improvements over the prior manual and paper systems of the past. I understand the new Department of Homeland Security is continuing to work on this critical need to exchange information between agencies.

VI. RECOMMENDATIONS

I was always impressed with the caliber and dedication of the career law enforcement and support personnel I had the opportunity to serve with as Attorney General. However, one of the systemic problems facing the Department was how to continue to entice individuals with the technical and language skills to meet the complex requirements of a modern law enforcement agency especially in an era where hostile forces and terrorist are using state of the art technology to thwart detection and apprehension.

As the cost of higher education continues to rise students are forced into greater levels of debt in order to finance their education. We must develop programs that allow students facing the prospect of paying off significant student loans to accept government careers in specialized technical fields, in return for the governments willingness to pay off greater portions of the student's debt. I realize government wage scales will always lag behind private industry and that

the large accumulated debts facing many students make it even more difficult for them to accept positions in the government. In order to be competitive in this situation, we need to adopt more generous loan forgiveness programs or even institute a technical or language civilian "ROTC" program. Without such enhanced efforts, it will be more difficult to continue to attract individuals with the requisite language and technical skills in this very competitive market.

It is also my firm belief that the answer does not lie in creating new offices or agencies or in separating domestic intelligence functions from traditional law enforcement functions. The goal must be to knock down walls, to promote the sharing of information, and to enhance collaboration in the fight against terrorism. Those who are charged with investigating terrorist threats must constantly keep an open mind, and they must follow the investigation wherever it takes them. Separating intelligence and law enforcement functions invites investigators and analysts to think of their case as a "criminal case" or an as "intelligence matter," and it invites conflict between those with different objectives. The best way to bring walls down, to better share information, and to make the best judgment about how to protect the public is to bring criminal and intelligence investigative functions together. We don't need "criminal investigators" and "intelligence investigators," but rather "terrorism investigators."