

Testimony of Director James W. McMahon, Office of Public Security, before the Subcommittee on Crime, Terrorism, and Homeland Security of the Judiciary and Subcommittee on Intelligence and Counterterrorism of the Select Committee on Homeland Security.

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Chairman Coble, Chairman Gibbons, Congressman Scott, Congresswoman McCarthy, and the other distinguished members of the Subcommittee on Crime, Terrorism, and Homeland Security of the Judiciary and members of the Subcommittee on Intelligence and Counterterrorism of the Select Committee on Homeland Security, good afternoon and thank you for this opportunity to testify on such an important matter.

My name is Jim McMahon. I am the Director of Public Security for the State of New York. In this position I oversee the efforts of all of New York's State Agencies with regard to their capabilities to respond to, deter, detect and prevent acts of terrorism from occurring within the state. I was appointed to this post by Governor Pataki last year after serving 37 years in the New York State Police, the last 9 of which I served as Superintendent. I have been asked to testify today about the Terrorist Screening Center, or TSC, from the perspective of a state and local law enforcement customer. My testimony will begin with a chronological

brief on the evolvement of information sharing in order to better show the TSC's impact and how it has enhanced pre-existing law enforcement tools.

Throughout my career in public service, I have been fortunate enough to have worked with many of the 540 law enforcement agencies in New York State that are comprised of over 75,000 dedicated law enforcement professionals who are putting their lives on the line, each and every day.

I have also had a considerable amount of interaction, and an excellent working relationship, with my federal colleagues in the investigation of organized crime, robberies, homicides, and narcotics, crimes that have the potential of crossing jurisdictional boundaries and typify the importance of working together and sharing information.

These close cooperative relationships, many times informal, have been instrumental in reducing the incidence of violent crime in New York State to levels not seen since the 1960s.

The "backbone" formal information sharing system for state and local law enforcement during this time was the National Crime Information Center or NCIC. NCIC is a system that reaches law enforcement throughout the United States, and has the capability of providing information, through a patrol car radio, or an in-car computer, to nearly every officer across the nation out on patrol. The

information contained in this system is what we refer to as “hot” files: wanted persons, missing persons, stolen cars, and stolen property. In the year 2000, in New York State alone, law enforcement made 30 million inquiries into NCIC and received nearly 3.5 million positive “hits”. This is just a snapshot of the effective role state and local law enforcement, cooperating in the performance of routine duties, can play in reducing crime, and why it remains a critical role in the post 9/11 era.

On September 11, 2001, an organized terrorist group attacked our nation. This signaled a new era for our country, as well as for state and local law enforcement. This terrorist organization, and others like it, is determined to make our country its battlefield. In doing so, state and local law enforcement, 75,000 strong in New York State, and 700,000 nationally, have become our nation’s foot soldiers against domestic targeted terrorism.

In New York, as here in Washington, our first and foremost responsibility is to do everything humanly possible to prevent another terrorist attack by utilizing our 75,000 law enforcement officers. To facilitate this effort, we have built an intelligence center near Albany, New York, with direct connectivity to the New York City intelligence center. From these two points we have created a seamless information sharing system that reaches law enforcement in all corners of our state.

Our ultimate objective is to be able to provide timely, relevant and actionable terrorism intelligence to patrol officers and detectives, which could prevent a terrorist act or enhance a terrorist investigation by a federal agency. To accomplish this objective, our federal partners have worked closely with state and local law enforcement to enhance the exchange of relevant terrorism information.

NCIC is still the only national system able to reach the State and local patrol car. There are three scenarios that a state and local law enforcement officer can be faced with during an encounter with a person during a traffic stop or an ongoing investigation; the first is what we call a “red light” stop. In these cases, the patrol officer accesses NCIC with a name and date of birth inquiry and receives back information sufficient to arrest the subject, as he or she is a person wanted by a state or local jurisdiction or by the federal government.

The second situation involves a “green light” stop. This indicates, based upon the NCIC name and date of birth inquiry, that the person stopped is not actively wanted by any law enforcement agency. The third situation is the most complicated and most critical to ongoing terrorist investigations. This is what we refer to as a “yellow light” stop, or investigative inquiry. In this situation a police officer has someone detained or stopped, the person is not actively “wanted,” but the officer has suspicions about whether the individual is connected to a terrorist related investigation or has suspected links to terrorism. It is this “yellow light”

area where the 700,000 sets of eyes and ears can be most beneficial in assisting our federal investigative partners.

Let me provide a hypothetical yellow light situation. A patrol officer responds to a call of a suspicious person filming the perimeter of a nuclear power plant. The individual is not from the local area and has no apparent association with the immediate area. The officer is suspicious, and therefore conducts an inquiry into NCIC database.

Prior to December 1, 2003, the inception date of the Terrorist Screening Center, there was no systematic way to conduct a search of the various federal databases to ascertain if this suspicious person had any ties to an ongoing investigation. The inception of the TSC has provided state and local law enforcement, its customer, with an important tool to instruct a law enforcement officer in a non- custodial situation like the example I provided above as to what, if anything, he or she should do.

Returning to the nuclear power plant hypothetical, I will detail what now occurs. The patrol officer queries the name and date of birth of the suspicious person through the NCIC system. If the individual is a “person of interest”, the patrol officer receives a Violent Gang and Terrorist Organization File (VGTOF) “hit” that directs the officer to call a toll free number for additional direction from the Terrorist Screening Center.

Once the Terrorist Screening Center is contacted, additional information is provided which places that “hit” into any one of four (4) classifications; arrest, detain, investigate, or query. This interaction also expands to include the FBI’s Counter Terrorism Watch that has the ability to provide detailed direction and information on what action to take next in addition to providing further identifying data. The resulting conversation provides the law enforcement officer with the specific guidance necessary as to the type of action to take. This guidance could include observations to be made, the location and time of the observation, questions to be asked, or possibly, that no further action is required. This interaction, and the ensuing information that is obtained, are not only important for investigative purposes, but also for the safety of the officer.

In New York State there have been 41 confirmatory instances wherein a VGTOF “hit” was received through the NCIC system and involved the TSC. The most recent of which occurred with the New York State Police when a uniform trooper made a vehicle and traffic stop that resulted in a traffic ticket being issued and an inquiry was done through the NCIC computer to ascertain if the subject was wanted. This inquiry resulted in a VGTOF hit which put the investigating Trooper in touch with the Terrorist Screening Center who, in turn, advised the Trooper that the individual queried was the subject of an investigative “hit”.

The trooper was conferenced with the Counter Terrorism Watch, which was able to provide additional information to the trooper as to what action to take next. This, in turn, resulted in the notification of the local Special Agent of the FBI's Joint Terrorist Task Force. I am confident that this interaction provided valuable information to the FBI on a subject currently under investigation.

Lastly, I would like to mention a pilot program that complements the TSC and highlights the history of information sharing between federal and state law enforcement. Initiated by New York State and the FBI, this program commenced prior to the TSC in October of 2003. In this program, the patrol officer contacts our intelligence center concerning a suspicious or "yellow light" stop with no VGTOF hit. Our intelligence center then contacts the FBI's Counter Terrorism Watch in Washington, DC, to ascertain if the individual detained is a person of interest. The Counter Terrorism watch then queries the FBI's automated case system in addition to other databases, providing our state intelligence center with relevant information for the patrol officer. Director Robert Mueller assigned a Washington based Counter Terrorism watch agent to New York and local law enforcement initiated 114 inquiries, some of which resulted in investigation hits. New York State is working with the Federal Bureau of Investigation to formalize this pilot project and expand it into a regional ten state information sharing initiative. This ten state regional proposal is a concept that was previously introduced during July 2003 testimony given by James Kallstrom, senior Advisor

on Terrorism to Governor George Pataki, and submitted to the Department of Homeland Security. DHS endorsed the regional concept.

I truly believe that, together, we have come a long way in understanding the importance of involving state and local law enforcement, its capabilities and its needs in preventing terrorism. This would not have happened if it were not for the full cooperation of our federal partners. The Terrorist Screening Center, the NCIC, the VGTOF file, the FBI Counter Terrorism Watch center, the Terrorist Threat Integration Center and the JTTF expansion, including the national Joint Terrorist Task Force, all have built a foundation that will provide the integration necessary to protect our homeland from future attacks. I also believe our proposed regional concept will compliment the Terrorist Screening Center and will be instrumental to the Department of Homeland Security in providing specific threat based intelligence information to state and local partners.

In closing, I would like to thank each of you for allowing me to provide a state and local law enforcement perspective on this critical matter.