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LAW ENFORCEMENT IN A NEW CENTURY AND A CHANGING WORLD

*Improving the Administration
of Federal Law Enforcement*



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National Criminal Justice Reference Service (NCJRS)
Box 6000
Rockville, MD 20849-6000

**Report of
the Commission on the
Advancement of Federal Law Enforcement**

COMMISSION ON THE ADVANCEMENT OF FEDERAL LAW ENFORCEMENT

January 2000

The Honorable Strom Thurmond
President Pro Tempore
United States Senate

The Honorable Tom Daschle
Minority Leader
United States Senate

The Honorable J. Dennis Hastert
Speaker
United States House of Representatives

The Honorable Richard Gephardt
Minority Leader
United States House of Representatives

The Honorable William Rehnquist
Chief Justice of the United States

Gentlemen:

Public Law 104-132 (Antiterrorism and Effective Death Penalty Act of 1996) provided for the establishment of a Commission on the Advancement of Federal Law Enforcement. The Commission, created as an independent advisory body, was asked to report to Congress and the American People on a wide variety of matters related to Federal law enforcement.

Section 806 of the legislation created this five-member Commission—one each to be appointed by the President Pro Tempore and Minority Leader of the Senate; one each by the Speaker and Minority Leader of the House of Representatives; and one to be appointed Chair by the Chief Justice of the United States.

In addition to authorizing the Commission to hold hearings in pursuit of its mandate, to sit and take testimony, to administer oaths to witnesses appearing before

it, and to secure information directly from any department or agency of the United States, the statute directed the Commission to submit a report to the Congress and the public within 2 years. I am pleased to submit that report.

I want to acknowledge the diligence with which my colleagues on the Commission pursued the complex and wide-ranging mandate incorporated into our statute. The Commission took its responsibilities seriously, determined to be vigorous in its discussions, candid in sharing its views and opinions, and straightforward in its recommendations on what needs to be done. Although individual members sometimes emphasized different issues, the Commission was unanimous in supporting the broad themes and recommendations presented in this document.

I would also like to thank each of you for your confidence in the Commission's ability to complete this challenging assignment. Your support helped the Commission complete its task on schedule. Finally, I would like to acknowledge the Commission staff—working under the able leadership of Executive Director Dr. Lee Colwell, General Counsel Michael E. Shaheen Jr., and Director of Research Richard J. Fera—for their unfailing service.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "William H. Webster", with a long horizontal flourish extending to the right.

William H. Webster
Chairman

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EXECUTIVE SUMMARY

When its review of the data and testimony and its deliberations were completed, the Commission on the Advancement of Federal Law Enforcement reached broad agreement on several major themes and directions for the future. First and foremost, Commission members found that Federal law enforcement agencies are currently among the finest in the world and that most Americans share in that view.

(The Commission defines Federal law enforcement as the entire range of activities and operations, at the national level, that are intended to prevent crime, apprehend and prosecute offenders,¹ and maintain the country's corrections system.)

Second, Commission members believe that law enforcement stands at the threshold of a new century and a changing world, and that, as the Nation moves into a new era, several challenges threaten its capacity to maintain and improve its system of Federal law enforcement. These challenges are as follows:

- 1. Difficult coordination challenges.** Within the spectrum of Federal agencies involved in law enforcement, it is not always clear which organization has responsibility for handling specific types of crimes. Managing diverse agencies, their missions and priorities is a constant challenge. Although many examples of excellent coordination exist across Federal agencies—and among Federal, State, and local agencies—equally valid examples of poor coordination are also easy to find. The United States lacks clearly articulated, easy-to-understand policies that dictate which agencies have responsibilities for which areas of criminal activity and how the many Federal agencies and officials with law enforcement responsibilities should coordinate their activities. In addition, poor integration of domestic and foreign intelligence capabilities limits effective law enforcement and is a menace to the national interest.





2. **Terrorism.** The threat that the easy availability of weapons of mass destruction poses to American citizens is real. These devices—including conventional, biological, chemical, and even nuclear weapons—have the potential to enable individuals and groups to inflict the kind of damage on communities and civilians that was once the exclusive power of nation-states. Although incidents of terrorism have decreased in recent years, the lethal power of these types of weapons leads to more casualties. Moreover, the purposes for terrorist acts have changed. Historically, terrorists have sought political attention and influence, and their acts resulted in few deaths. Today, the goal of many terrorists is to kill large numbers of people.
3. **Globalization of crime.** Criminal enterprises in Asia, Europe, Latin America, and the Former Soviet Union are an increasing threat to American citizens and our national interests. Criminals are increasingly demonstrating an ability to cooperate with each other across national borders in areas such as narcotics and money-laundering. Their access to and skill in using advanced technologies often put U.S. law enforcement agencies at a disadvantage. Modern telecommunications and computers make large-scale theft and fraud possible through keyboards located anywhere in the world.
4. **Federalization of crime.** Over the years, the growth in the number of crimes considered “Federal” is startling. In 1789, perhaps a dozen crimes were considered sufficiently serious to warrant Federal attention; today that total exceeds 3,000. Federalizing common crimes—crimes that historically were the responsibility of State and local law enforcement agencies—has placed U.S. society in danger of having Federal law enforcement resources spread much too thinly. If the trend continues, the United States will develop the type of national police force that we have traditionally avoided.
5. **Maintaining professionalism and demonstrating accountability.** As the new century dawns, the challenge of maintaining public confidence in the integrity and competence of Federal agencies is an urgent priority. The lack of common standards that govern Federal law enforcement agency professionalism, integrity, and public accountability needs to be addressed. In

addition, Federal law enforcement agencies must upgrade the technological skills of officers, and the technologies available to them, if the officers are to perform as effective law enforcement professionals in a new century.

POLICY CONCLUSIONS

Based on its investigation, the Commission came to five broad policy conclusions about the performance of the Federal law enforcement system.

Conclusion 1. Coordination

Of necessity, the Federal law enforcement apparatus is large and complex; in the face of this complexity, the Government's capacity for oversight and coordination is weak and needs improvement. In addition, the proliferation of small agencies should be discouraged and the function of Inspectors General reviewed.

Different agencies quite properly have different missions, as well as the need for quite distinct skills and areas of jurisdiction. Nonetheless, better coordination of operations is necessary and desirable, and some consolidation of agencies is required.

Coordination among agencies (and with State and local law enforcement officials) has improved in recent years. Nevertheless, in significant areas such as terrorism, bombings, and complex transnational crime, jurisdictional confusion exists and needs to be addressed. With citizen safety and national security at stake, effective cooperation and greater clarity of roles and responsibilities should not be left to chance. Moreover, despite the 30-year existence of Executive Order No. 11396, which designated the Attorney General as the focal point of Federal law enforcement, little has been done to implement the Executive Order.

The sheer number of small agencies presents a coordination challenge in itself. Because of the complexity of agency missions and functions, the Federal Government has encouraged a proliferation of small Federal law enforcement agencies—many with their own investigative or policing powers and concepts of appropriate procedures and policies.





A clear need also exists to examine coordination problems that stem from the growth and role of the Inspector General (IG) function in agencies with law enforcement powers. This examination should consider the extent to which it is appropriate for IG offices to combine program review functions for purposes of public accountability (rarely a true Federal law enforcement issue) and internal affairs functions for allegations of misconduct on the part of law enforcement officers.

Conclusion 2. Terrorism

Terrorism, domestic and foreign, threatens the Nation's security.

Keeping America secure in a new century will require additional resources and assets for intelligence collection and analysis, long-term research on how to improve domestic preparedness for terrorist threats, and an enhanced commitment from Federal intelligence-gathering agencies (domestic and international) to share information, as appropriate, with other Federal law enforcement agencies and with State and local law enforcement officials.

Conclusion 3. Globalization of Crime

Transnational crime presents extraordinary new challenges to law enforcement at all levels. Narcotics trafficking is a breeding ground for such crime.

The problem of confronting transnational crime is not a lack of laws at the Federal level, but rather the explosive growth in global crime and the lack of focus on attacking global crime as a national priority. Effecting the existing policy commitment to improve coordination among Federal, State, and local agencies to deal with global crime is urgently needed.

Narcotics trafficking, in particular—a breeding ground for international crime and terror—is a problem that has the potential to destabilize U.S. allies and destroy American communities. Despite a record number of seizures and a flood of legislation, the Commission is not aware of any evidence that the flow of narcotics into the United States has been reduced. The Nation needs a multitiered approach to drug trafficking that is as sophisticated as the approaches employed by the cartels that

control narcotics and incorporates both demand (domestic) and supply (international) policies and actions.

Conclusion 4. Federalization of Crime

Congress and the President are in danger of federalizing common crime.

Forty percent of Federal crimes have been put on the books since 1970. The enumeration of Federal crimes has grown from perhaps a dozen in the 18th century to more than 3,000 today.² Federal crimes now range from the heinous (treason and terrorism) to the absurd (disrupting rodeos³). This situation threatens to overwhelm Federal law enforcement capacities, just as dramatic and serious new law enforcement challenges grow in intensity. Steps must be taken to repair the damage to the law enforcement community at the Federal, State, and local levels caused by federalization of common crime.

In this context, it appears to the Commission that the United States Criminal Code (Title 18) has become too complex. Nearly 200 years of additions and revisions to the Federal Criminal Code have created an unwieldy and complex body of law, riddled with overlap, redundancy, inconsistencies, and unnecessary accretions.

Conclusion 5. Professionalism, Integrity, and Accountability

Agency professionalism, integrity, and accountability can be improved; policy and practice among agencies should be standardized to a greater degree.

Preserving agency integrity and professionalism requires constant vigilance. Public confidence in Federal law enforcement can be enhanced by appropriate review. The Commission believes that too often external review is haphazard and is frequently put in place after-the-fact, rather than before. Program accountability, personnel integrity, and professionalism can only be strengthened through greater engagement with the larger public and a clear commitment to review procedures that are fair, firm, and applied with consistency.

Training has not received the long-term commitment required. Although it is generally accepted that law enforcement training should be a high priority at the





Federal level, no formal policy exists to ensure that adequate budget and personnel resources are devoted to such an effort. Effective strategies for sharing experiences on training matters among agencies, or for establishing minimum standards for officer training, have yet to be developed.

It is also imperative that the Government develop standardized procedures and operations in areas such as: classification and use of data; recruitment, selection, and training; surveillance of citizens and issues of privacy; forensic laboratory management; rules of engagement; and the use of force, including deadly force. Lack of standardization in these areas compromises effective law enforcement.

Continual upgrading of the technologies and the technological skills of officers is critical to ensuring agency professionalism. Support for the use of computers, telecommunications, and other state-of-the-art technologies and equipment is uneven across Federal agencies. Although some Federal law enforcement agencies can point to state-of-the-art technologies and equipment, others labor with equipment and methodologies that were out-of-date a decade ago.

RECOMMENDATIONS

In this report, the Commission presents a five-part action agenda that deals with the concerns described above. Commission recommendations emphasize the need for the President and Congress to:

I. Make it clear that the Attorney General has broad coordinating authority for Federal law enforcement and for minimizing overlap and duplication.

We recommend that the President and Congress improve the administration of Federal law enforcement, and its effectiveness, by making it clear that the Attorney General has broad authority for oversight and coordination and by minimizing overlap and duplication of agency functions.

To accomplish this, the following actions are suggested:

- A. Strengthen Executive Order No. 11396,⁴ updating it through presidential or congressional action if necessary, to reflect the new global and national

realities. Revise Executive Order No. 11396 to incorporate the kind of broad coordinating authority for the Attorney General that the Director of Central Intelligence possesses with regard to intelligence matters under Executive Order No. 12333. Executive Order No. 11396 should be reissued to ensure that the Attorney General becomes the focal point of Federal law enforcement. This revised Executive Order should provide the Attorney General with explicit authority to:

- Act as the primary advisor to the President on law enforcement matters;
- Develop and implement objectives and guidance for the law enforcement community;
- Promote and ensure the development and maintenance of services of common concern to Federal law enforcement agencies;
- Formulate and implement policies and procedures regarding law enforcement;
- Ensure that the law enforcement community establishes common security and access standards for managing and handling data and intelligence;
- Ensure that programs are developed to protect information, sources, informants, methods, and analytical procedures;
- Establish appropriate staffs, committees, and other advisory groups to assist in the execution of the responsibilities of the Attorney General;
- Monitor agency performance and, as necessary, conduct program and performance audits;
- Provide for policies that ensure uniform procedures for responding to citizens' allegations of misconduct on the part of Federal law enforcement agencies or officers;
- Reduce unnecessary overlap or duplication among agency programs and missions; and
- Submit an annual report to Congress about accountability, citizens' complaints, and their resolution.





- B. Transfer responsibility, authority, and personnel associated with enforcement of firearms and explosives laws to the Federal Bureau of Investigation (FBI), within the Department of Justice, leaving tax collection, licensing, and civil regulation within the Department of the Treasury.
- C. Transfer the Drug Enforcement Administration's budget, statutory authority, and personnel to the FBI, creating it as a new separate division.⁵
- D. Encourage the President and Congress to look toward a long-term solution that would rationalize and realign Federal law enforcement and security agencies in the Executive Branch into several broad functional areas:
 - Criminal activity and national security;
 - Protective and border security;
 - Financial and regulatory enforcement;
 - Corrections enforcement; and
 - Natural resources enforcement.
- E. Encourage the President to establish a permanent Interagency Advisory Board on Federal Law Enforcement. This 19-member advisory board, made up of representatives of the 14 major law enforcement agencies examined in this report and five additional representatives from other Federal law enforcement agencies, should be directed to provide the Attorney General with advice in two areas: the needs of small agencies; and the growth and role of the function of the Inspector General.

II. Provide the intelligence and information needed to combat terrorism.

We recommend that the law enforcement and intelligence communities review their procedures and policies to ensure that the President, Congress, and the National Security Council have adequate resources to coordinate activities and to pursue the information that Federal, State, and local law enforcement agencies need to combat terrorism.

- A. Provide adequate resources and assets for intelligence collection and analysis, including efforts to:
- Upgrade the technological sophistication of law enforcement;
 - Develop expertise in the cultures and languages of other nations;
 - Strengthen cooperative relationships with other nations, including extradition and mutual legal assistance treaties;
 - Improve counterterrorism training for local agencies (the preferred “first responders”); and
 - Support long-term federally funded research on how to improve domestic preparedness for terrorist threats.
-
- B. Respond to the threat of cyberterrorism by implementing national security policies to address the new realities of the Information Age. This response should include:
- A policy review of coordination among law enforcement and intelligence agencies with regard to information security and cybercrime;
 - Plans to ensure that critical services such as national defense; emergency services; defense readiness; law enforcement; air travel; and power, water, and fuel distribution systems can be maintained securely against threats from hackers and terrorists; and
 - Work with the private sector to ensure that commercial telecommunications and information systems are secure from external attacks.
- C. Develop policies and procedures for collecting, disseminating, and sharing data and intelligence through interconnected communications systems with other Federal agencies and with State and local law enforcement officials.
- D. Ensure that the legitimate needs of law enforcement agencies to override encryption systems are balanced by judicial supervision to protect the privacy and civil liberties of citizens.





III. Make global crime a national law enforcement priority.

We recommend that the President and Congress expand the attack on global crime, narcotics trafficking, and cybercrime with new determination and energy.

- A. Implement the Administration's May 1998 International Crime Control Strategy with respect to global crime.
- B. Develop an integrated counternarcotics policy that can be incorporated within the Nation's strategic planning and reinforce the Federal Government's efforts against international crime.
- C. Cooperate with other nations in developing multilateral approaches to attacking transnational organized crime.
- D. Insist that the Department of Justice, the Department of State, CIA, and other law enforcement and intelligence agencies coordinate their capabilities and activities across agencies so that each draws on the expertise of the other in the most effective way.
- E. Expand research on, and upgrade technologies to combat, transnational crime.

IV. Reverse the trend toward federalization.

We recommend that Congress and the President enact a new "Federalization Prevention Act" to minimize Federal intrusion into State and local law enforcement and reverse the recent trend toward "federalizing crime."

- A. Enact a new "Federalization Prevention Act" that requires the Congress and the Executive Branch to provide a "law enforcement impact statement"—in addition to the existing budget impact statement—on all law enforcement legislation.
- B. As part of the new act, conduct a review of the Federal Criminal Code (Title 18) over a 5-year period by a fully staffed, full-time, nonpartisan expert commission that is directed to recommend changes in Title 18 to Congress and the President.

- C. The new act should also contain a sunset provision, a requirement that new provisions that define crimes as Federal expire after 5 years unless Congress acts to extend the definition.

V. Focus on professionalism, integrity, and accountability.

We recommend that the President and Congress insist that Federal law enforcement agencies establish new standards for professionalism, integrity, and public accountability.

- A. The Attorney General, working with the Interagency Advisory Board, identified in Recommendation I-E, should be directed to accelerate the process of standardizing procedures and operations, including the development of common standards in areas such as investigative guidelines, recruitment, training, classification and use of data, rules of engagement, and the use of force, including deadly force.
- B. Policy and training regarding the use of deadly force should be standardized across all Federal agencies.
 - 1. The wording of Federal law enforcement policies regarding the use of deadly force should be identical, providing the same policy and guidance to law enforcement officials in all Federal agencies.
 - 2. Variations in policy statements should relate to unique agency requirements only (e.g., the use of warning shots on open water).
 - 3. Training on the use of deadly force should be standardized across Federal agencies.
 - 4. Annually mandated continuing education courses on the use of deadly force should be required for all Federal law enforcement officers and should be differentiated from firearms requalification training.
- C. Congress should promote professionalism and enhanced accountability by:
 - 1. Requiring that the curriculum governing training in core law enforcement functions (e.g., constitutional rights, use of force, and protection of crime





- scenes) be standardized across all Federal agencies while it is simultaneously supplemented by discrete training in agency-specific issues;
2. Creating a Federal Law Enforcement Officer Training Board (made up of law enforcement experts from Federal, State, and local agencies, along with academics and private training specialists) to review training, certify the adequacy of both basic and in-service training programs; identify innovative training programs and curricula; and recommend needed additional training programs to agencies;
 3. Requiring Federal law enforcement agencies to periodically undergo accreditation by outside agencies. Every Federal crime laboratory should also seek accreditation as a matter of course;
 4. Requiring the development of standardized procedures for responding to citizens' complaints about Federal law enforcement agencies and officers—e.g., all complaints will be recorded; all will be investigated as appropriate; due process will be provided for officers; records and results of such investigations may be made public; and results should be provided to officers under investigation; and
 5. Conducting vigorous oversight to ensure that the Attorney General develops and implements the policies called for in Recommendation I-A—policies defining procedures for resolving citizens' complaints about Federal law enforcement agencies and officers.
- D. Bring Federal law enforcement into the 21st century with support for the acquisition of the latest computers and telecommunications technologies, and crime-fighting equipment. The Attorney General should work with the new Interagency Advisory Board on Federal Law Enforcement to ensure a high level of ongoing support for providing, maintaining, and updating computers and telecommunications equipment.
- E. The Attorney General should also be authorized by Congress to build on recent progress in advancing analyses of DNA and trace evidence by supporting an ongoing national conference, workshop, or seminar on forensic science.

- F. The President and Congress should require the Office of Personnel Management (OPM) to work with the Attorney General, the President's chief law enforcement advisor, to examine the need for personnel system reforms for all Federal law enforcement agencies, including minimum standards for recruitment, training, promotion, salary and benefits, and other scope of employment issues.
- G. Annual budgets should provide a line item for each law enforcement agency and the President and Congress should ensure that each such agency is led by an experienced public manager, preferably with experience in law enforcement.

TOWARD A NEW CENTURY AND A CHANGING WORLD

This Commission believes that the Nation will face grave law enforcement challenges in the years ahead. Its five-part action agenda is designed to address those challenges. Members of the Commission believe that the public understands the need for these actions and will support policymakers as they work to put them in place. The Commission urges the Congress and the President to move forward with this agenda.



INTRODUCTION

Global crime, cybercrime, and terrorism in new and evermore dangerous forms will threaten the safety of Americans and the security of the United States in the next century. The Nation should move now on an urgent basis to prepare to detect these criminal activities at the source, counter them in all appropriate ways, and protect Americans to every extent possible.

Globalized crime knows no borders; it can undermine business competition, corrode economies, and destabilize political systems. Cybercrime can assault any country's physical and information infrastructure. Terrorists can kill and destroy for maximum effect. In addition, increasingly sophisticated drug trafficking uses advanced information and telecommunications technologies to import and distribute illegal drugs without detection.

Each day, Federal law enforcement is confronted with these emerging forms of international crime, undertaken by individuals who operate from nearly every corner of the globe and employ the latest in computer and telecommunication technologies to achieve their ends. As Federal law enforcement becomes internationalized, it enters a new arena where problems in coordination and operations are likely to be more pronounced. The potential victims of international crime, cybercrime, and terrorism are not only individual citizens, but also the country's institutions and its national security apparatus.

The Federal law enforcement community is structured to cope with the crimes of the past, not the emerging crimes of the future. A vast Federal law enforcement establishment has been built up over many years, but it is unwieldy, not adequately prepared to meet the rising threats, and—most of all—not sufficiently marshalled or coordinated. Serious questions arise about who is in charge of what in Federal law enforcement. At critical moments, such as Waco and Ruby Ridge, how these ques-





tions are answered becomes a matter of life and death. Furthermore, the proliferation of crimes that have been federalized burdens Federal law enforcement with tasks they do not want or need and are not equipped to carry out.

The Federal law enforcement establishment must be made ready to meet its challenges in the new century.

REFORMS ARE NEEDED IN SIX MAJOR AREAS

To sharpen the ability of Federal law enforcement to deal with these emerging crimes, in addition to its ongoing responsibilities, reforms are needed in six major areas to:

- Combat global crime, cybercrime, and terrorism;
- Make it clear that the Attorney General has broad coordinating authority for Federal law enforcement, and minimize overlap and duplication;
- Provide the intelligence and information needed to combat terrorism;
- Make global crime a national law enforcement priority;
- Reverse the trend toward federalization; and
- Focus on professionalism, integrity, and accountability.

A central executive should coordinate Federal law enforcement activities, and that executive should be the Attorney General. Cooperation with State and local law enforcement agencies must be greatly improved, and overseeing that task should also fall to the Attorney General.

Timely use of intelligence and other information is critical to contemporary law enforcement, and not just within the Federal law enforcement establishment. State and local law enforcement agencies must receive far better intelligence and other information if they are to do their part.

At the structural level, to deal better with global crime, drug enforcement activities should be centralized within one agency of the U.S. Department of Justice, and that agency should be the Federal Bureau of Investigation. Thus, most activities of the current Drug Enforcement Administration should be transferred to the FBI.

Similarly, the law enforcement responsibilities of the Bureau of Alcohol, Tobacco, and Firearms should be transferred out of that organization and into the Department of Justice, namely, the FBI, where these responsibilities are more compatible with the overall FBI mandate. The remaining regulatory functions of ATF should remain within that agency in the U.S. Department of the Treasury.

In addition, the trend toward federalization of crime must be slowed and, where appropriate, reversed. Acting with understandable concern for American citizens, and with understandable desire to deploy the vast Federal law enforcement establishment on their behalf, Congress has now created more than 3,000 Federal crimes, many of which intrude deeply into areas far better left to the States. Common crime, the kind that most worries the citizen on the street or at home, the student at school, or the business person in the office, is still overwhelmingly a State and local matter, and should be left to the capable law enforcement agencies at those levels. Federalization is not a new issue, but it is an important one and should be addressed promptly.

Finally, accountability, integrity, and professionalism in Federal law enforcement must be significantly improved. Policy standardization in Federal law enforcement should become a goal of all appropriate agencies. Policies on such critical subjects as the use of deadly force should be standardized, so that training of Federal officers from different agencies can become more uniform and these offices can better work together.

REPORT OF THE COMMISSION

These findings, conclusions, and recommendations constitute, in brief, the report of the Commission on Advancement of Federal Law Enforcement. For the first time in recent history, a Congressional Commission has set out to study the integration of widely disparate and often conflicting issues to strengthen the law enforcement fabric of the Federal Government while protecting democracy and the rights and liberties of individual citizens.

The Commission saw its role as calling the Nation's attention to the broadest concerns in national and international law enforcement. It also urges the Nation and





its Federal law enforcement establishment to break down the barriers of institutional thinking and find new ways to approach the challenges of crime in the new century.

In creating the Commission, Congress issued a broad mandate of issues for study. From the outset, the Commission determined that conducting an in-depth study of Federal law enforcement, with all of its complexities, was impossible within the mandated reporting period. Thus, it decided to synthesize the main issues that will distinguish law enforcement in the next century from law enforcement today.

In summary, global crime, cybercrime, and terrorism pose the new, emerging security threats to the Nation and challenge the Federal law enforcement community. This report is a call for an open mind, for a rethinking of current law enforcement approaches, for a willingness to move forward so that Federal law enforcement can safeguard the Nation's citizens and protect the Nation's security in the years to come.

COMMISSION MANDATE

Section 806 of Public Law 104-132 (Antiterrorism and Effective Death Penalty Act of 1996) provided for the establishment of a five-member Commission on the Advancement of Federal Law Enforcement and mandated that the Commission report its findings to Congress and the general public within 2 years.

CHARTER

The Commission charter directed it to examine 10 factors related to Federal law enforcement:

- Federal law enforcement priorities for the 21st century, including capabilities to investigate and deter terrorism;
- The manner in which significant Federal criminal law enforcement activities have been conceived, planned, coordinated, and executed;
- Standards and procedures of Federal law enforcement, including their uniformity and compatibility;
- The investigation and handling of specific Federal criminal law enforcement cases, selected at the Commission's discretion;

- The need for the current number of Federal law enforcement agencies and units;
- The location and efficacy of the office with direct responsibility for inter-agency coordination—aside from the President of the United States;
- The degree of assistance, training, education, and other human resource management assets devoted to enhancing professionalism;
- The existence and efficiency of independent accountability procedures;
- Coordination among law enforcement agencies with regard to international crime; and
- Coordination of Federal law enforcement activities with those of State and local enforcement agencies.

An additional charge in Section 806 authorized the Commission to examine any other matters it considered appropriate.

COMMISSION ACTIVITIES

The Commission wrestled with its complex and sweeping mandate throughout its tenure, ever mindful that its deliberations were taking place in the shadow of the five recent major events that involved law enforcement—the bombings of American embassies in Kenya and Tanzania; the bombing of the World Trade Center in New York; the destruction of the Alfred P. Murrah Federal Office Building in Oklahoma City; the deadly inferno that ended the confrontation with Branch Davidians in Waco, Texas; and the tragic standoff at Ruby Ridge, Idaho. The specifics of the Commission’s charge, and the larger issues in which they are embedded—issues of personal safety and security, freedom from unreasonable search and seizure, and protection against domestic and foreign terrorism—affect every man, woman, and child in the United States. (See box, page 20-21.)

Over its 2-year tenure, the Commission met more than 20 times and took verbal and sometimes written testimony from some 70 witnesses, including two members of President Clinton’s Cabinet and numerous presidential appointees. Its work was also informed through several other sources of data. For example, at the direction of the



Federal Law Enforcement in Eight Prominent Law Enforcement Events

Event & Year	General Description and Disposition
Pan Am Flight 103 (1988)	On December 21, 1988, a Pan American jet bound from London to New York exploded over Lockerbie, Scotland, killing all 259 people on board and 11 more on the ground. British investigators shortly reported that a bomb in the luggage compartment caused the crash. Nearly 3 years later the United States and Britain announced criminal charges against two Libyan intelligence officers for the bombing and suggested Libyan leader Moammar Gadhafi was involved as well. ⁵ Various investigations and court cases concluded that "seriously flawed" aviation security systems in Europe and "willful misconduct" by Pan Am in airport security contributed to the disaster. In April 1999, the two Libyan suspects were turned over to Scottish authorities for trial before a Scottish court convened in the Netherlands.
Ruby Ridge (1992)	Randy Weaver, who had turned down an offer to become an ATF informant in the late 1980s, was subsequently cited for weapons violations and announced he would never show up in court. An arrest warrant was issued and surveillance of his rural Idaho home began. In August 1992, a shoot-out developed involving U.S. Marshals and Weaver's 14-year-old son Sammy and a friend, Kevin Harris. Sammy's dog was killed, Sammy died, and a U.S. Marshal was killed by a shot from Harris. An FBI hostage rescue team arrived. (The orders and rules of engagement are the subject of intense dispute in the ongoing litigation that has resulted from this matter.) During the confrontation that ensued, Randy Weaver was shot: he survived. (What Weaver was doing while he was shot is also the subject of dispute in the case.) An FBI agent shot at one of three armed individuals who had emerged from the Weaver cabin. His shot penetrated the cabin door and hit Weaver's infant and wife, Vicki, who, unbeknownst to the agent, was standing behind the door. Both were killed. (There is vigorous dispute as to whether she was holding her infant at the time she was killed.) Subsequently, 12 FBI agents, none of them members of the hostage rescue team, were disciplined. The Department of Justice paid \$3.1 million to the Weaver family. FBI Director Freeh admitted that certain mistakes had been made. The head of the FBI's violent crimes section pleaded guilty to obstruction of justice in destroying an official document. (He admitted destroying an after-action report that assessed the situation at Ruby Ridge.) An Idaho jury acquitted Weaver of murder and conspiracy, but Weaver served 1 year in jail on the original charges. Ongoing internal investigations clearly indicate that the Ruby Ridge confrontation raised a host of law enforcement issues that have yet to be resolved.
World Trade Center (1993)	On February 26, 1993, a rented Ford Econoline van packed with explosives detonated in the parking garage beneath the World Trade Center in New York killing six, injuring more than 1,000 and leaving a 100-by-100-foot crater in the garage. A massive investigation involving the FBI, ATF, and the New York City Police was launched immediately. Within 6 days, investigators took into custody a Muslim fundamentalist, Mohammed Salameh, who came to their attention because he insisted on demanding a refund for the Ford Econoline van, which he had rented in New Jersey and claimed had been stolen. In March, five additional suspects were charged; in June another eight were arrested, all apparently part of a fundamentalist conspiracy involved with the World Trade Center or plans to bomb the United Nations and Manhattan commuter tunnels. In July, Sheik Omar Abdel Rahman, thought to be the mastermind behind these plans, was arrested. Subsequently, four Arab defendants were convicted for the World Trade Center bombing; a fifth pled guilty to a bombing conspiracy and agreed to testify against the others; Sheik Rahman and nine of his followers were convicted in October 1995 of plotting bombings and other acts of terror.
Waco (1993)	On February 28, 1993, the Bureau of Alcohol, Tobacco, and Firearms (ATF) made an unsuccessful attempt to execute an arrest warrant for the leader of the Branch Davidians,



David Koresh, related to violations of Federal firearms laws and a search warrant for the Davidian compound at Mount Carmel, outside Waco, Texas. A massive firefight ensued, during which four ATF agents and six Davidians were killed. The Davidians barricaded themselves inside the compound, and the FBI assumed control of the scene. On April 19, 1993, following a 51-day standoff that included constant attempts to negotiate the surrender of the Davidians, the FBI inserted tear gas into the compound to force the Davidians' exit out of the compound. A fire began and quickly engulfed the entire building. Although 9 adult Davidians escaped the blaze, 86 others died within the compound, including Koresh. Five of the surviving Davidians were convicted of the voluntary manslaughter of the four ATF agents, and violations of Federal firearms laws; two others were convicted solely on firearms charges. Following this event, the FBI overhauled its procedures for such crises by forming the Critical Incident Response Group (CIRG), which integrates FBI hostage negotiation functions with its capacity for an immediate and decisive hostage rescue response.

Oklahoma City (1995)

On April 19, 1995, a powerful, sophisticated homemade bomb, hidden in a truck, was detonated outside the Alfred P. Murrah Federal Office Building, killing 168 people, including children in a daycare center. McVeigh, a Gulf War veteran and antigovernment activist, was arrested within hours for driving an automobile without a license plate. While in custody, local police noted his resemblance to the police sketch of a suspect in the Murrah investigation. Shortly, it turned out that the rental truck used in the bombing had been rented by McVeigh. Subsequently, McVeigh was convicted in Federal court on 11 counts of planning and carrying out the bombing; he was sentenced to death in August 1997. Nichols was convicted of conspiracy and involuntary manslaughter by a Federal jury and sentenced to life in prison, without parole. In March 1999, the Oklahoma County District Attorney charged Nichols with 163 State counts of murder and conspiracy, opening up the possibility that Nichols could yet be sentenced to death.

Unabomber (1996)

The FBI arrested Theodore Kaczynski at his cabin in Montana in 1996 (based on a tip from his brother), thus ending an 18-year manhunt for the notorious "Unabomber," a serial murderer responsible for killing three people and injuring 23 with homemade bombs distributed through the mail. A task force involving the FBI, the Office of the Postal Inspector, and ATF spent more than \$50 million tracking Kaczynski over the years. Subsequently, in a 1998 plea bargain, Kaczynski pled guilty to three murders; spared the death penalty, he was sentenced to four life sentences, plus 30 years in prison.

Montana Freemen (1996)

In June 1996, following an 81-day standoff, 14 "Freemen" surrendered to the FBI after the agency cut off electricity to the ranch where they had holed up since March. The Freemen had refused to pay mortgages, taxes, or any government levies since the 1980s. FBI Director Louis J. Freeh described the agency's new policy for dealing with such volatile confrontations as "patience and fortitude." Subsequently, there were 21 convictions involving at least 3 members of the Montana Freemen on numerous offenses including conspiracy, bank fraud, and threatening a Federal judge.

Atlanta Centennial Park (1996)

On July 27, 1996, security guard Richard Jewell noticed a suspicious knapsack in Centennial Olympic Park. Before it could be removed, the knapsack exploded, killing one woman, injuring more than 100 people, and leading to the heart-attack death of a Turkish television cameraman. Initially hailed as a hero, Jewell became the center of a media frenzy when it was revealed that he was a prime suspect in the investigation. Three months passed before he was cleared and questions arose immediately about violations of his constitutional rights. A Special Agent was suspended for 5 days without pay for failing to properly provide Miranda warnings to Jewell, and two Special Agents in Charge were censured for managerial deficiencies. Director Freeh described the agents' decision to interrogate Jewell in that fashion as a "major error in judgment." Another fugitive is now suspected of the crime, but it has still not been solved.

Sources: Public documents and accounts collected in Commission Background Material Books numbered 128 through 132.





Commissioners, staff—with assistance from the survey research firm, QS&A Research—conducted a nationwide public opinion survey. In addition, more than 140 leaders of Federal agencies with responsibilities in some facet of law enforcement were asked to respond to a 31-question survey prepared and administered by Commission staff. From the 37 completed survey responses received, staff prepared a detailed analysis of data from the 14 agencies considered to be the primary Federal law enforcement entities.

In the main, the Commission's interest focused on agencies that employ "1811 series" employees—and other personnel with the authority to investigate, carry firearms, and make arrests.⁷ Even this more limited definition of the Commission's task describes a formidable law enforcement apparatus, totaling in the aggregate some 88,747 sworn officers with combined annual budgets of more than \$6.8 billion.⁸

In addition, Commission staff conducted an extensive review of the literature on law enforcement, Federal law enforcement, and the administration of justice. Finally, the Commission contracted for papers on specific issues—such as terrorism, transnational crime, narcotics trafficking, and the nature and origins of Federal law enforcement in the United States—from the academic community. This combination of surveys, literature review, and academic papers represents one of the most extensive examinations of Federal law enforcement in recent history.

BACKGROUND

The connection of the work of the Commission on the Advancement of Federal Law Enforcement to the well-being of the American people is direct and simple.

The initial concept for the Commission was developed following the disasters at the Branch Davidian Compound and Ruby Ridge—events that raised serious questions about the quality of Federal law enforcement.

The interests that motivated policymakers to launch the Commission's study varied, sometimes quite dramatically. Some policymakers wondered about the Federal Government's capacity to protect American citizens from foreign terrorists acting on U.S. shores. Others were concerned that policy on essential aspects of law

enforcement, such as the use of deadly force, was either unclear or ignored, a situation fraught with peril for citizens and officers alike. Still others worried that too many Federal law enforcement entities had been created, making coordination among them, and with State and local law enforcement agencies, difficult, if not impossible. Almost certainly, just as many people were intent on using the two tragic incidents listed above, to criticize Federal law enforcement as were committed to examining any mistakes made to determine how to prevent similar tragedies in the future.

All in all, the range of views that accompanied the initial conceptions of the Commission were disparate. Some were perceived—fairly or unfairly—as charged with ideological overtones from all sides of the political spectrum. As a consequence, when Section 806 was finally enacted, initial plans for the Commission’s budget and term of office were cut back. Months passed before an appropriation for the Commission’s work was enacted and almost 2 years went by before the full, five-member complement of Commissioners was appointed.

In the years that intervened between the initial conception of the Commission and its authorization, funding, and creation, the United States passed a lethal watershed, witnessing one of the most brutal terrorist acts ever carried out on American soil—the destruction of the Alfred P. Murrah Federal Office Building in Oklahoma City. In April 1995, two Americans, Timothy McVeigh and Terry Nichols conspired to detonate a powerful and sophisticated homemade bomb hidden in a truck parked outside the building. Their bomb killed 168 people, including children in a daycare center.

Rapid police communication led to the holding of McVeigh, who had been apprehended immediately after the bombing on an unrelated traffic offense. Effective law enforcement agency coordination led to a powerful prosecution that resulted in the conviction of the two primary culprits. During the course of that investigation, however, the climate under which the Commission’s mandate was framed changed dramatically.

Federal agencies, fairly or unfairly, derided for poor performance at Ruby Ridge and Waco, were perceived to have performed with praiseworthy professionalism in





Oklahoma City. Within minutes of the explosion, the building and the surrounding crime scene were secured. Within hours, a sketch of a suspect (drawn with sufficient accuracy to alert the local police officers who had arrested McVeigh) was in the hands of police forces around the country. Within a day, a vehicle identification number attached to a bit of a truck axle discovered a block from the explosion, led investigators to a local truck rental agency. And, within a week, a fairly complete picture of the recent comings and goings of McVeigh and Nichols was available—a picture tying McVeigh irrevocably to the barbarous act and to his jail cell. The Federal law enforcement system, illuminated in the glare of intense international publicity, had carried out its functions responsibly, professionally, credibly, and well.

The success of investigators and other law enforcement personnel in apprehending and developing evidence against McVeigh and Nichols transformed public perceptions of Federal law enforcement and the perceived role for the Commission. Instead of serving as a vehicle for criticizing Federal law enforcement agencies, the Commission was now encouraged to examine strengths and weaknesses. The Commission's mandate, broad as it was, laid out the possibility of an investigation that recognizes that perfect performance, however much desired, is also well-nigh impossible. The specifics of the Commission's charge and the larger issues in which they are embedded—issues of personal safety, freedom from unreasonable search and seizure, and protection against the threat of domestic and foreign terrorism—are compelling as law enforcement enters a new century and a changing world.

CENTRAL CONCLUSIONS

Because of the complexity of its charge, this Commission does not want its central conclusions obscured by the amount of detail in the document that follows. Based on a study that involved approximately 70 witnesses, a comprehensive literature review, and a review of papers and surveys commissioned for its use, the Commission wishes to state its conclusions as directly and simply as possible. It believes that:

- Federal law enforcement agencies are among the finest in the world and that most Americans share that view.

- Of necessity, the Federal law enforcement apparatus is large and complex. Different agencies have different missions and quite distinct areas of jurisdiction. Better coordination is necessary and desirable, and some consolidation is required.
- The capacity for oversight and coordination is weak and needs improvement. As a policy matter, it is difficult to know who is in charge of what. With issues of citizen safety and national security at stake, effective cooperation, greater clarity of roles and responsibilities, and agreement on uniform standards should not be left to chance.
- Law enforcement officers will confront vastly more sophisticated and complex crimes in the 21st century than ever before. The Federal law enforcement community must prepare for this new reality.

The remainder of this document expands and explains these views.



CHAPTER ONE. A LARGE AND COMPLEX SYSTEM

Knowing full well that, in the words of James Madison, “nothing human can be perfect,” the Framers of the United States Constitution saw that document and its Bill of Rights as the most nearly perfect solution ever devised for aligning the relationship between free citizens and the state. The Founding Fathers, asserting a claim to freedom and independence on the basis of certain “self-evident” truths, sought to bring into being, not simply a new Nation, but also a remarkable new experiment in what George Washington, like the Anglo-Irish parliamentarian Edmund Burke, thought of as “ordered liberty.” In this ideal experiment, individual freedom and liberty would be accompanied and protected by a level of order and decency that served the common good.

Despite the many times the United States has fallen short of that ideal, permitting rights guaranteed under the Constitution to be overridden or ignored, the Constitution and its Bill of Rights (see sidebar, page 28) remain brilliant public inventions. They illuminate much of what is distinctive in American life, provide realistic and appealing alternatives to totalitarianism and repression around the world, and define the limits of police powers in a modern state.

The Bill of Rights enshrined essential principles in the United States Constitution: freedom of religion, assembly, and speech; freedom from unreasonable search and seizure; the right to due process and to a speedy and public trial by jury; prohibitions against excessive bail and cruel and unusual punishment; and reservation of rights not delegated to the United States to the States and to the people.

These rights are as much a strategic insurance policy as they are a statement of principle. Early Americans, led by George Mason, demanded this statement of rights because they knew firsthand what it was to be subjects of a state that routinely





THE BILL OF RIGHTS

The first 10 amendments to the Constitution, ratified by the States on December 15, 1791, are universally known as "The Bill of Rights." These amendments were developed after George Mason, author of the Virginia Declaration of Rights, left the Constitutional Convention a vocal opponent of the new Constitution because, "It has no declaration of rights." Mason's views prevailed when James Madison drafted these amendments.

Amendment I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II. A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III. No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Amendment VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

violated their rights—compelled religious belief, proscribed speech, or permitted warrantless entries and searches of homes. Against that history, early Americans understood that the only way to protect their own rights was to protect the rights of every other citizen as well, because a constitutional solution applied to every citizen.

A FINE BALANCE

Americans have always had an ambivalent relationship with their national government—eager for its benefits and protection, but wary of its scope and reach. No-

where is this ambivalence more apparent than in the field of law enforcement. As Frederick S. Calhoun, former historian of and currently an operational research analyst at the U.S. Marshals Service, wrote in a paper prepared for the Service:⁹

The triangular relationship between the individual citizen, the State, and the Federal Government provides the best standard to gauge the reach of Federal power. The Federal Government has always had a rather precisely defined role in American society, jealously protected by the carefully balanced distribution of power among its three branches and further delimited by the powers reserved to the States and, ultimately, to the people. In the original conception of the Federal system, the States carried more weight than the National Government. All powers not explicitly granted the Federal Government by the Constitution remained resident in the States [and in the people].

The fine balance described by Calhoun was once defined more pithily by Abraham Lincoln: “It has long been a grave question whether any government, not too strong for the liberties of its people, can be strong enough to maintain its existence in great emergencies.”¹⁰ Although Lincoln framed his “grave question” in the context of the great emergency of 19th century America, it is equally relevant in the context of the great law enforcement challenges that face the United States as it enters the 21st century—global crime and international terrorism.

Contemporary public opinion about this triangular relationship was demonstrated quite clearly in a telephone survey of 805 Americans conducted for the Commission in February 1999 QS&A Research and Strategy.¹¹ According to the findings:

- Respondents are more likely to report “a great deal of confidence” or “quite a lot of confidence” in local (60 percent) and State (66 percent) law enforcement agencies than in their Federal counterparts (50 percent).
- Confidence in major Federal agencies compares favorably with confidence in State and local agencies. The Federal Bureau of Investigation and the U.S. Secret Service receive very high marks, 59 percent and 55 percent, respectively. Two other Federal law enforcement entities, the National Park Service and the U.S. Forest Service, each received identical confidence level ratings of 62 percent.





- The low confidence levels associated with agencies such as the Bureau of Indian Affairs (23 percent), the Immigration and Naturalization Service (28 percent), the Internal Revenue Service (29 percent), the Bureau of Prisons (30 percent), and the Bureau of Land Management (31 percent) appreciably lower the overall assessment of confidence in Federal agencies.
- People are more concerned about violent crime, violent crimes involving juveniles, the sale of illegal drugs (and the violence accompanying the drug trade), and corrupt public officials than they are crimes against property, or violations of immigration, or environmental laws—essentially crimes against society in general.
- Computer crime and white-collar fraud elicit almost as much public concern as carjacking and organized crime, with approximately half of all respondents citing high levels of concern about all four issues.
- In general, respondents believe that Federal law enforcement agencies are best equipped to deal with crimes of a “national” nature—acts of terrorism; computer crime; violations of immigration law; corrupt politicians, judges, and Government officials; and organized crime.
- In a similar vein, the public believes that local police and, to a lesser extent, State police are better equipped to deal with local crime, including crimes against property and most violence—street crime, juvenile violent crimes, carjacking, drive-by shootings, possession of handguns by juveniles, and use of a gun to kill another person.

There is much to celebrate in these findings. A solid majority of the public surveyed appears to hold the most prominent Federal law enforcement agencies—the Federal Bureau of Investigation and the Secret Service—in high regard. To the extent people in certain regions are troubled by Federal agencies, their concern appears focused on those with unpopular mandates and regulations to enforce—the Bureau of Indian Affairs, the Immigration and Naturalization Service, and the Internal Revenue Service.

Moreover, the general public appears to have a pretty clear picture in its head as to the appropriate jurisdiction for Federal law enforcement on one hand, and State and local law enforcement on the other: Federal agencies should concentrate on interstate and international criminal activities, leaving most violent crime and crimes against property to local law enforcement officers.

Survey findings indicate that most respondents believe that Federal law enforcement is doing well, and that Federal law enforcement officers are well trained and highly professional. It also concluded that the public believes Federal officers are doing a good job solving crimes, apprehending criminals, and protecting law-abiding citizens. In brief, on most major areas of assessment, the public's perceptions are relatively positive and highly encouraging.

Still, these generally positive findings must be balanced against some negative and critical public attitudes. The corollary of ambivalence is that the public is unwilling to write a blank check for Federal agencies. Many Americans apparently harbor reservations about Federal law enforcement. In particular:

- Only 36 percent of respondents agree that Federal law enforcement agencies do a good job monitoring their own activities.¹²
- More than three-quarters of the respondents (78 percent) support outside monitors for Federal law enforcement agencies—monitors authorized to report any abuses of power. And, fully 58 percent of respondents feel strongly about this.¹³
- Only one-third of respondents (33 percent) agree with the statement that Federal agencies get along with, and cooperate with, local and State police when they work together.¹⁴
- Respondents are about equally split on whether Federal law enforcement agencies treat citizens fairly.
- Residents of the Mountain States consistently rated Federal law enforcement lower on professionalism than residents of other regions, part of a pattern of negative attitudes that appeared to be driven by concerns about abuse of





police power, rather than concerns about big government. Mountain State residents (and, to a lesser extent, those in the South and Southwest) tended to worry more about abuse of citizen rights than residents of other regions.¹⁵

In short, although survey data indicate that most respondents believe Federal law enforcement agencies are doing well, it is equally clear most believe these agencies can do much better.

These reasonably favorable attitudes must be understood in the context of overall public attitudes about the American system of justice. By coincidence, just as the Commission was drawing its evidentiary hearings to a close, the American Bar Association (ABA) released a survey of 1,000 people concerning public perceptions of the U.S. justice system.¹⁶ The findings indicate that, in general, Americans strongly support the system. According to the survey:

- People strongly believe in the system—80 percent of respondents agree that “in spite of its problems, the American justice system is still the best in the world.”
- Despite support for the overall system, confidence in individual components of the system is mixed. Half of respondents have strong confidence in the U.S. Supreme Court and about one-third are extremely or very confident of other Federal courts and judges. Still, only 18 percent express strong confidence in the Congress.
- Those with the greatest knowledge of the system express the greatest confidence, and males with higher incomes and higher levels of education express the greatest confidence of any demographic group.
- People’s confidence in key components of the justice system has increased in the past 20 years. The level of confidence in courts of all kinds has improved, as has confidence in local police. (At the same time, confidence in doctors, organized religion, public schools, Congress, and the media has decreased, according to the survey.)

Although the ABA survey did not query respondents about Federal law enforcement, it provided troubling evidence on issues that need to be addressed in the Nation’s legal system. Among substantial elements of the general population, the

level of legal literacy is low. For example, an astonishing one-third of respondents believe that in a court of law, it is the defendant who must prove his or her innocence rather than the prosecutor who must prove the defendant's guilt. Demographic differences in responses are also disturbing. White Americans, men, individuals who earn \$75,000 or more a year, and respondents with postgraduate degrees generally are more knowledgeable about the justice system than minority Americans, women, and respondents from lower income brackets and with less education.

Of gravest concern to members of the Commission is the finding that women, nonwhites, and persons with lower incomes and less education are generally inclined to disagree that the justice system affords equal treatment to men and women, the wealthy and the poor, and members of racial and ethnic groups.

Despite disquieting findings such as these, the general positive public attitude is noteworthy. The belief that the American system of justice is the best in the world (whatever its shortcomings when measured against our best standards) is a powerful asset that should be nurtured in the effort to advance Federal law enforcement.

In addition, the sophisticated public understanding of the relative strengths and weaknesses of Federal law enforcement is encouraging. It understands the high level of professionalism in the Federal system. It is capable of making powerful and useful distinctions among the appropriate scope of responsibilities of Federal agencies, on one hand, and State and local police, on the other.

Above all, the public seems to grasp intuitively that one of the great managerial challenges that faces Federal law enforcement is the task of maintaining agency integrity and professionalism in the face of the two great temptations that are present in police work everywhere: abuse of police power and corruption.

DEFINITION AND SCOPE OF FEDERAL LAW ENFORCEMENT

If asked to name agencies that are involved in Federal law enforcement, most Americans would likely identify the Federal Bureau of Investigation. Many would also mention the Department of Justice, the U.S. Secret Service—and perhaps the Bureau of Alcohol, Tobacco, and Firearms (ATF), the Immigration and Naturalization





Service (INS), and the Drug Enforcement Administration (DEA). The Commission doubts, however, that many citizens would identify the Internal Revenue Service, the United States Customs Service, the Bureau of Indian Affairs, the Bureau of Land Management or the National Park Service as Federal law enforcement agencies, which, of course, all are.

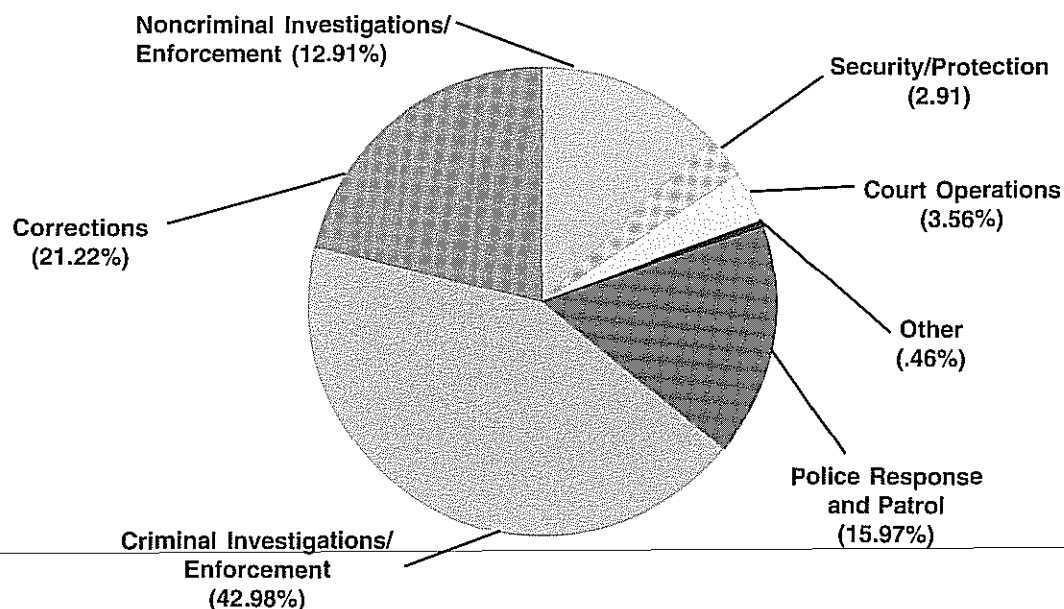
The following question arises naturally in an investigation of this sort: What is included under the umbrella of Federal law enforcement? Writ large, by Federal law enforcement, this Commission defines Federal law enforcement as the entire range of Federal Government activities and operations intended to prevent crime, apprehend and prosecute offenders,¹⁷ and maintain a corrections system. The Commission distinguishes this national apparatus for law enforcement from the much larger enterprise devoted to State and local law enforcement, which is defined as the 17,000 jurisdictions in the country at the State, county, and municipal levels and the approximately 620,000 sworn officers they employ—State and local police, sheriffs, and special policing units.¹⁸

In the aggregate, the Federal law enforcement system is an enormous and complex array of agencies—148 in all—that exercise law enforcement functions in the name of the people of the United States. A limited survey conducted by the Bureau of Justice Statistics indicates that, as of June 1996, Federal agencies employed about 74,500 full-time personnel who were authorized to make arrests and carry firearms.¹⁹ (A complete list of all Federal agencies with law enforcement responsibility is provided in Appendix C.)

As Figure 1 demonstrates, 80 percent of Federal law enforcement personnel, excluding prosecutors, are involved in just three areas: criminal investigation and enforcement (almost 43 percent), maintaining prisons and other correctional facilities (more than 21 percent), and police response and patrol (about 16 percent). All told, the Federal enterprise spends some \$26 billion annually on law enforcement priorities.²⁰ To the layperson, the sheer scope and scale of the effort across the entire Federal Government staggers the imagination.

Although the Commission heard testimony from representatives of many agencies, because of time and budget constraints, its analysis focused on large agencies. Specifically, the Commission concentrated on 14 of the largest law enforcement

Figure 1. Percent of Federal Officers Authorized to Carry Firearms and Make Arrests, by Function



Source: Bureau of Justice Statistics, U.S. Department of Justice, "Federal Law Enforcement Statistics." (<http://www.ojp.usdoj.gov/bjs/fedle.htm>) Note: These percentages correspond to the 74,500 full-time personnel as of June 1996.

agencies at the Federal level. In the main, its interest lay with those agencies that have a great deal of face-to-face contact with the American people and that employ large numbers of "1811 series" employees—and other individuals with the authority to investigate, carry firearms, execute search warrants, and make arrests.²¹

Even this more limited definition of the Commission's task describes a formidable law enforcement apparatus, totaling in the aggregate some 88,747 sworn officers and combined budgets in excess of \$6.8 billion annually.²² (See Figure 2.) Indeed, some estimates indicate that the Department of Justice and the Department of the Treasury, combined, account for 90 percent of all weapons-carrying officers in the Federal Government. In the Department of Justice, these agencies include the Federal Bureau of Investigation, the Drug Enforcement Administration, the Immigration and Naturalization Service, U.S. Marshals Service, and the Federal Bureau of Prisons. In the Department of the Treasury they include the Secret Service, the Customs Service, and the Bureau of Alcohol, Tobacco, and Firearms, and the Criminal Investigation Division of the Internal Revenue Service.²³

What the Commission has found is a very mixed bag. By definition, Federal law enforcement must cover a broad spectrum. The agencies involved are necessarily



Figure 2. The 14 Primary Law Enforcement Agencies (FY 1998)

Department and Agency	Personnel*	Budget** (in millions)
Department of Justice		
Federal Bureau of Investigation	11,710	\$1,911.0
Drug Enforcement Administration	4,246	674.0
Immigration and Naturalization Service	17,573	29.0
United States Marshals Service	2,924	43.4
Federal Bureau of Prisons***	28,390	70.9
Department of the Treasury		
Bureau of Alcohol, Tobacco, and Firearms	1,775	317.2
Internal Revenue Service	3,292	415.9
United States Customs Service	11,910	2,591.0
United States Secret Service	3,613	500.0
Department of Agriculture		
United States Forest Service	614	48.9
Department of the Interior		
Bureau of Indian Affairs	307	78.5
Bureau of Land Management	196	14.7
National Park Service/National Park Rangers	1,596	58.6
National Park Service/United States Park Police	601	60.0
Total	88,747	\$6,813.1

Sources: Commission on the Advancement of Federal Law Enforcement Survey, 1999.

* Personnel authorized to carry firearms.

** Dollar amounts refer to personnel costs for those authorized to carry firearms.

*** The Federal Bureau of Prisons (BOP) personnel figure (28,390) represents employees who meet annual firearms qualification requirements and are currently certified. Thus, the figure includes BOP employees who are not correctional officers but who can carry and use firearms if required. The number of full-time correctional officers is estimated to be 12,600. See footnote 25 and Appendix G for additional information.

complex. At a minimum, the Government of the United States is responsible for investigating and bringing to a satisfactory resolution all violations of civil and criminal law that occur during the course of interstate commerce. Federal law enforcement agencies must also, among other obligations, secure U.S. borders, eliminate smuggling, enforce the Federal Government's laws regarding immigration and naturalization, protect Federal courts, and ensure that the Nation's tax system is enforced fairly and efficiently. In addition, Federal agencies are expected to protect members of the public visiting the Nation's parks and great monuments and also to protect high-ranking Government representatives, who might otherwise be subject to assault or assassination for no other reason than their prominence in carrying out their responsibilities as public officials.

No one can deny that those are all necessary and appropriate Federal roles. This Commission is aware of no responsible point of view holding that State or local units



of government should assume these responsibilities or are capable of shouldering these burdens.

Of necessity, the Federal law enforcement apparatus is large. As Figure 3 indicates, each agency has quite distinct responsibilities. The FBI, for example, with investigative jurisdiction over violations of more than 200 categories of Federal

Figure 3. Agency Investigative Responsibilities

Department and Agency	Illustrative Types of Investigative Responsibilities
Department of Justice	
Federal Bureau of Investigation	Priorities: counterterrorism; drugs and organized crime; foreign counterintelligence; violent crime; and white-collar crime.
Drug Enforcement Administration	Enforces provisions of Federal law that govern controlled substances and drug-trafficking.
Immigration and Naturalization Service	Prevents improper entry of people into the United States and deports illegal aliens.
United States Marshals Service	Handles bond defaults and probation and parole violations; and enforces bench warrants from Federal judges.
Federal Bureau of Prisons	Administers Federal penal facilities.
Bureau of the Treasury	
Bureau of Alcohol, Tobacco, and Firearms	Enforces laws governing alcohol, tobacco, firearms, explosives, and arson.
Internal Revenue Service	Investigates violations of the U.S. Tax Code.
United States Customs Service	Interdicts and seizes narcotics and other contraband at or near U.S. borders.
United States Secret Service	Protects the President and other high officials; investigates crimes related to money, banks, and counterfeiting.
Department of Agriculture	
United States Forest Service	Engages in routine patrols and response to calls.
Department of the Interior	
Bureau of Indian Affairs	Engages in routine patrols and response to calls on tribal lands.
Bureau of Land Management	Engages in routine patrols and response to calls on Federal lands.
National Park Service/National Park Rangers	Engages in routine patrols and response to calls in national parks.
National Park Service/United States Park Police	Engages in routine patrols and response to calls at and near national monuments.

Sources: Commission on the Advancement of Federal Law Enforcement Survey (1999); and General Accounting Office (Sept. 1996), *Federal Law Enforcement: Investigative Authority and Personnel at 13 Agencies*, Washington, DC: GAO (GAO-GGD-96-154).





crimes, has assigned top priority in recent years to five areas: (1) counterterrorism; (2) drugs and organized crime; (3) foreign counterintelligence; (4) violent crime; and (5) white-collar crime. The Immigration and Naturalization Service, by contrast, concentrates on preventing improper entry into the United States and apprehending and removing illegal aliens. While the United States Marshals Service enforces the writ of Federal courts, the United States Secret Service protects the President and others under its care, and the Bureau of Alcohol, Tobacco, and Firearms administers laws regarding distilled spirits, beer, wine, tobacco, firearms, explosives, and arson.

The missions and jurisdictions of each of these agencies are different, and properly so, and the skills required to carry out these functions are likely different too, and appropriately so.

This is not to suggest that the current organization of Federal law enforcement is perfect and needs no change. As will be evident in the remainder of this report, the Commission strongly believes that the current organization of Federal law enforcement needs to be changed. At the same time, however, it is our conclusion that the effort to comprehend the challenges to Federal law enforcement is not helped by easy references to the number of agencies, or, in the case of these 14 agencies, the size of their budgets. The key questions are not whether there are too many law enforcement entities or whether their budgets are too large. They are, first, whether the mission is sufficiently distinct; second, whether each of these agencies is able to carry out its assignment responsibly and well; and, third, whether these entities are capable of cooperating with each other when the need for joint operations arises. Finally, the unprompted question from the Commission's citizens' survey rises to be asked: Are Federal law enforcement agencies capable of effective collaboration with State and local entities when called upon?

HISTORY OF FEDERAL LAW ENFORCEMENT IN BRIEF

The original role of Federal criminal law enforcement was distinctly ancillary to that of the States. Federal law enforcement addressed matters of specific Federal concern, almost without exception matters beyond the reach and competence of State and local

law enforcement officers. For years after the Constitution was adopted in 1789, States defined and prosecuted almost all criminal conduct. One recent American Bar Association analysis pointed out that originally the Federal Government “confined its prosecutions to less than a score of offenses,” including treason, bribery of Federal officials, perjury in Federal court, theft of Government property, and revenue fraud.²⁴

But the tradition that crime should be understood to be primarily a responsibility of State and local law enforcement agencies has come under severe strain in recent decades. The Commission will return to this issue below; here it wants only to note that, in recent years, national politicians of both parties, in the Executive Branch and the Congress, have developed a predisposition to federalizing common crime.

In a paper prepared for the Commission, Stanley E. Morris, a former senior official with the Departments of Justice and the Treasury, usefully divided the development of Federal law enforcement into five periods:²⁵

- **Foundations** (1789-1860), when the basic mission of the Federal Government and the relationship between Federal, State, and local law enforcement evolved.
- **Federal structure emerges** (1861-1918), when the Civil War, westward expansion, and the industrial revolution made new demands on Federal law.
- **Reform** (1919-1945), when the first real efforts to establish professional, well-trained Federal law enforcement entities were made and the Nation went through the Prohibition Era.
- **New problems** (1946-1972), when issues of the loyalty of Government employees and related alarm about espionage developed during the Cold War, along with increased sophistication of organized crime, growth in drug trafficking—and the consequent pressures these developments placed on law enforcement.
- **Complexity and challenge** (1973-present), presenting issues of the growing federalization of crime, the impact of technology and globalization on criminal activity, and the need, amidst the growth of Federal law enforcement, to improve its coordination.





A Primer on the Development of Federal Law Enforcement

After the First Congress established the framework for the American judicial system in 1789, landmark elements in the development of Federal law enforcement included:

- Expanding the duties of the Attorney General during and after the Civil War to give that officer jurisdiction over U.S. Attorneys and Marshals and to provide the office Cabinet-level status.
- Creating the United States Secret Service after the Civil War to address currency counterfeiting.
- Providing law enforcement authority to both customs and immigration officers between 1865 and 1900 and assigning protective duties to the Secret Service.
- Guaranteeing Federal officers the latitude to enforce Federal law without interference from local law enforcement officials in the 1890 Supreme Court Case, *In Re Neagle*.
- Establishing the first Federal prisons in 1891 (prisoners previously had been housed in State facilities).
- Assigning U.S. Marshals and the military to maintain order in the West after the Civil War and granting arrest authority to Park Rangers and Forest Service personnel in 1905.
- Establishing the Bureau of Investigation in 1908 within the Justice Department, which during World War I, was called on to enforce the controversial "Palmer Raids" during the Red Scare. Subsequently J. Edgar Hoover was appointed director and set out to professionalize the new Federal Bureau of Investigation.
- Appointment of the Wickersham Commission by President Herbert Hoover in 1929 to rationalize Federal law enforcement and encourage a more coherent and professional approach.
- Creating new Federal crimes in the 1930s and 1940s—kidnapping, the use of wire communications for criminal activity, racketeering and extortion, transportation of stolen property across State lines, robbery of Federal banks, unlawful flight to avoid prosecution or incarceration, and trafficking in firearms.
- Establishing in 1935 the FBI's National Academy for training agents and select State and local officers.
- Increasing the sophistication of FBI laboratory and fingerprint divisions from 1940 to date.
- Growing Cold War concerns about Communism, loyalty of Federal employees, and espionage threats.
- FBI creating "Ten Most Wanted" program in 1950; U.S. Marshals helping integrate the University of Mississippi in 1962; and establishment of the Federal Law Enforcement Training Center in 1970 in the Department of the Treasury.
- Beginning to attack organized crime with Organized Crime Strike Forces and the help of the Racketeer Influenced and Corrupt Organizations Act (RICO)—the racketeering statute enacted in 1968.
- Creating the Drug Enforcement Administration in 1973; convening of Senate hearings detailing abuses by FBI and intelligence agencies.
- Growing concern about violent crime in the 1980s resulted in laws making use of a firearm in the commission of a crime a Federal offense and giving Federal courts jurisdiction over violent repeat offenders, even for repeat crimes of local offenses.
- Creating additional jurisdiction to address new technologies—credit cards, computers, and the Internet.
- Expanding mutual legal assistance and extradition treaties involving Treasury and the State Department to deal with globalization of crime in the 1980s.
- Coming to grips with the growth of terrorism at home and abroad in the 1990s.

This analysis makes it clear that, although the framers of the Constitution were satisfied with creating the Supreme Court, the first Congress was determined to establish the foundation of Federal law enforcement. In fact, the very first bill introduced in the first session of the first United States Senate would become the Judiciary Act of 1789, creating district and circuit courts, establishing the office of the Attorney General of the United States, and providing for United States Attorneys and the United States Marshals Service. The foresight of that first Congress can be appreciated in that, more than 200 years later, the general structure it laid down continues to function. And it continues to function reasonably well.

What we find in the Morris analysis and others is a sense that the scope of Federal law enforcement has expanded, particularly in recent decades (see box, “A Primer on the Development of Federal Law Enforcement,” page 40). As that scope has enlarged, Congress and the Executive Branch have struggled repeatedly with the challenge of how best to organize the agencies exercising law enforcement powers.²⁶ The period covering approximately the past quarter century, in particular—a time when the Nation witnessed the expansion of the war on drugs, the creation of the Drug Enforcement Administration (DEA), the changes associated with post-Watergate reforms, the astonishing pace of technological change, the rise of terrorism, and the development of a global economy in which international criminals treat national boundaries with contempt—has proven to be a period of profound challenge and adjustment for Federal law enforcement.

Overall, it is clear that the Federal law enforcement community has grown, as the needs and expectations of citizens toward what they expect from their Federal Government have increased. But growth has come at great cost. The simple truth is that these expectations have added immeasurably to the difficulty of executing the variety of Federal law enforcement missions effectively and efficiently. Although overlap and duplication among Federal agencies are often criticized, this condition is in many ways inevitable (in some ways, it may even be desirable) given the complexity of the crime problem any modern society faces.





But inevitability does not mean that efforts to improve the situation are thankless or fruitless tasks. Such efforts have never been more sorely needed than today. In the past, some measure of redundancy and duplication might have been acceptable, both as a fail-safe strategy and simply as part of the inescapable nature of bureaucratic life. With the rapid pace of change today, however, what cannot be accepted is any indication that toleration for redundancy and fail-safe features leads to lack of clarity about who's in charge of what, who's responsible, and who's accountable for performance.

Performance that was acceptable 30 or 50 years ago, in an age when time itself appeared to move more slowly (because communications, by today's standards, were so relatively slow), is no longer tolerable. In an age when communication is instantaneous, borders are more porous, and criminal activity is both more high-tech and international, the response of Federal agencies must be similarly up-to-date. The world of Federal law enforcement has been stretched to new limits in the past quarter century. Undoubtedly, it will be stretched even further in the next.

HELPING PEOPLE DO WHAT THEY CANNOT DO FOR THEMSELVES

Federal law enforcement faces five great challenges: coordinating many Federal agencies with diverse missions, functions, priorities, and even cultures; terrorism at home and abroad; globalization of crime; the federalization of crime; and the imperative to maintain professionalism and demonstrate agency accountability.

The Commission believes that the definition of the appropriate function of the National Government was well defined by President Abraham Lincoln more than a century ago. That definition serves in law enforcement as it does in other areas of our national life. President Lincoln said: "The legitimate object of government is to do for the people what needs to be done, but which they cannot by individual effort do at all, or do so well, for themselves."

Maintaining an effective Federal law enforcement capability requires defining and putting in place a system that helps the American people, and the States and localities serving them, do what they cannot do for themselves, or do as well. The

difficult part of the task is to accomplish that goal without creating an overbearing national police presence. In the following chapters, the Commission lays out a five-part agenda to help the Federal law enforcement community respond to the challenge defined by President Lincoln.



CHAPTER TWO. COORDINATION: WHO'S IN CHARGE OF WHAT?

One of the gravest concerns of this Commission following its 2-year study is coordination at the Federal level. Although successful coordination efforts in the form of task forces of one kind or another can be identified (see sidebar), it is no exaggeration to state that continued inattention to this situation runs the risk of seriously jeopardizing both public safety and national security.

In the face of the grim realities of large-scale modern crime, it is sometimes hard to know who is in charge of what areas of law enforcement at the Federal level. Although we find some excellent examples of cooperation between Congress and the Executive Branch and of coordination across Federal agencies (and between Federal and State and local agencies), several shortcomings in coordinating policy and practice are readily apparent as well.²⁷

First, we find that the large number of Federal agencies involved with law enforcement presents a challenge to efficient and effective administration. Second, we find that many of these agencies and officials are unable to point to readily understood policies about how they are to coordinate their activities, amongst themselves or with State and local agencies. Third, we find considerable confusion about agency roles and missions. All of these problems hinder the effective and efficient administration of justice. They are difficult policy problems to which Congress and the Executive Branch have a responsibility to respond.

EFFECTIVENESS AND EFFICIENCY

Most Americans, convinced that devotion to individual liberties and constraints on Federal power have circumscribed the growth of Federal law enforcement, will perhaps be startled at the size of the enterprise described in Chapter One. The



Coordinating Diverse Agencies at the Federal, State, and Local Level

The challenge of coordinating the investigations of 14 major Federal agencies with the ongoing work of police and investigative agencies in 17,000 State and local jurisdictions is sometimes made easier by task forces and strike forces of various kinds. Some examples:

Border Coordination Initiative	For many years, the Immigration and Naturalization Service and the Customs Service have worked together at U.S. borders. In recent years, particularly at the Southwest border with Mexico, joint manning of border booths has created some friction with regard to who is in charge. About 18 months ago at the San Ysidro border crossing from Tijuana, involving some 24 lanes of traffic, INS and Customs initiated a Port Quality Improvement Committee to encourage managers from both agencies to get together regularly to discuss how to improve coordination. The effort is working so well that the Attorney General and Secretary of the Treasury are considering institutionalizing the approach at all 31 major ports of entry at the border. The effort will address the mechanics of how traffic approaches the border as well as cooperation regarding who crosses the border, investigations, intelligence gathering, and training.
Interdiction Committee	Made up of leaders of Customs, the Coast Guard, DEA, and others, this committee reviews policy on interdicting and seizing narcotics shipments. Dividing the drug world into three spheres—the source zone of South America; the transient zone of the Caribbean; and the arrival zone, roughly 100 miles from the U.S. shoreline—law enforcement assigns different agencies to different zones. Customs planes might observe planes or ships leaving the source zone; observe drops in the transient zone, where the Coast Guard might pick them up; and when the contraband reaches within 100 miles of U.S. shores, Customs officials are able to make arrests.
Safe Streets Task Force	Beginning in 1992 when the FBI was directed, for the first time, to become involved in violent street crime, the agency has helped establish some 166 Safe Street Task Forces in every one of the agency's 56 divisions. These task forces involve about 800 FBI Special Agents working with 1,200 State and local law enforcement officials, and agents from other Federal agencies, to address gang violence, fugitives, bank robbery, and narcotics.
Southwest Border Initiative	This activity, an enormous initiative ranging from San Diego to Texas, is an effort to deal with large and very powerful drug cartels smuggling narcotics, money, and illegal immigrants between Mexico and the United States. At the heart of this highly successful effort is a partnership between the DEA, Customs, and the FBI, an "almost seamless" integration of effort, according to participants, that would have been unheard of a decade ago—including co-location of offices, DEA supervision of FBI agents, and FBI supervision of DEA personnel.
Terrorism Task Forces	In recent years the FBI has created 18 terrorism task forces around the country, unique efforts involving the FBI, CIA, DEA, ATF, Customs, INS, and other Federal, State, and local officers charged with preventing and reacting to terrorist acts. In addition, the FBI established a Counterterrorism Center in 1996, staffed by experts from some 18 different law enforcement agencies, intelligence organizations, and the military.
Technical Working Groups	This effort, first developed for DNA analysis, credits Federal law enforcement agencies, particularly the FBI, with encouraging quality assurance in forensic analysis in Federal, State, and local laboratories. Designed to bring together forensic scientists at all levels to improve methods and develop consensus standards for analysis of physical evidence, these working groups are now examining analytical protocols for drugs, materials, trace evidence, fingerprint identification, documents, and other areas.
Ad Hoc Interagency Cooperation	Many examples demonstrate that interagency cooperation among law enforcement organizations, at all levels of government, can work smoothly and successfully. One example arose during the civil disorders that occurred in Los Angeles in April 1992. ²⁶ With a remarkable sense of urgency and appropriateness of response, the President signed an emergency Executive Order, the Attorney General designated the FBI as the lead agency, the FBI mobilized a Command Center onsite (in Westwood), and an interagency Federal Task Force consisting of more than 1,200 Federal agents, was rapidly assembled from resident and nearby bureaus. Agents and other personnel were drawn from the FBI, ATF, Bureau of Prisons U.S. Customs Service, and Immigration and Naturalization Service. They assisted the Los Angeles Police Department and provided other law enforcement services during and after the disorders in a textbook example of how Federal agencies can work together, on short notice, under extraordinary challenging conditions.

Sources. Statements of Louis J. Freeh (FBI), Jami St. Clair (Columbus Forensics Laboratory), and Raymond Kelly (United States Customs) before the Commission; Commission survey of 14 agencies.



members of this Commission certainly were. It turns out, however, that the phrase “nearly 150 Federal law enforcement agencies,” although technically accurate, conceals as much as it reveals.

The 148 agencies listed in Appendix C include every Federal department and agency with a police officer or investigator anywhere on its staff. The list includes every Office of Inspector General—in 14 Cabinet and subcabinet-level Departments and in 46 “Independent Establishments and Government Corporations,” such as the Board of Governors of the Federal Reserve System, the National Archives and Records Administration, and the National Endowments for the Arts and the Humanities.²⁹ The list includes four separate police forces and investigative services serving the Legislative Branch of Government (General Accounting Office, Government Printing Office, Library of Congress, and U.S. Capitol). Separate law enforcement entities protecting the Judicial Branch and quasi-official agencies (such as Amtrak and the Smithsonian Institution) are also included in the mix. So, too, are military police functions and protective services in every branch of the Armed Services. In short, the number “nearly 150 agencies” includes practically every agency of any size at all in the Federal Government.

Policymakers seriously concerned about overlap and duplication in the number of Federal agencies with law enforcement authority could readily reduce that number by 40 percent, practically overnight. It could be accomplished with little more than a stroke of the legislative pen, by consolidating the 60 different Offices of Inspector General into a central administrative entity that would, in turn, detail its employees back to their current assignments. On paper, everything would look tidier, different, and more efficient, but in the world of Federal law enforcement, nothing would change.

This Commission offers that observation not to make light of the work Inspectors General perform in rooting out fraud, waste, and abuse. It is offered to bring a more realistic frame of reference to the discussion. When policymakers and the American public express concern about Federal law enforcement, their concerns do not usually turn on whether college graduates repay their student loans, or a professor of philosophy misspends a \$10,000 grant from the Humanities Endowment, or why each of two





separate Branches of Government literally across a street from each other, Congress and the Supreme Court, has its own distinct police force.

Although each of those situations raises real questions of law enforcement, they are questions about administration and program accountability that rarely concern most members of the public. When citizens worry about Federal law enforcement, as the Commission's survey confirms, they concentrate on quite clear and basic concerns. They worry about whether they can depend on these agencies to protect them. They question whether Federal law enforcement personnel are able to coordinate their own activities effectively and cooperate efficiently with State and local entities when that is required. And they apparently have quite serious reservations about the dual possibilities of corruption and abuse in Federal law enforcement activities. These are serious, fundamental policy issues. They go to the very heart and soul of the charge laid before this Commission. When the issues are so serious and fundamental, policymakers cannot afford to let the conversation be sidetracked and distracted by numbers that, in themselves, mean very little.

Our conclusion is that, of necessity, the Federal law enforcement apparatus is large and complex. We also believe that insufficient attention has been paid to making sure that coordination is as effective as it can be.

Conception and Planning of Operations

Congress asked the Commission to examine the issue of how well Federal law enforcement operations are conceived, planned, coordinated, and executed. The Commission approached this charge from a policy, not an investigative, perspective. With the Commission's limited resources of time, staff, and budget, it found itself ill-equipped to investigate specific law enforcement operations and reluctant to second-guess either official inquiries or the judgments of officers on the firing line. (See pages 20-21 for an outline of the Commission's review of the public evidence about eight recent, highly visible Federal law enforcement operations.)

From the Commission's review of the public record, its own hearings, and the survey of major Federal law enforcement agencies, several conclusions appear clear.

First, when agencies enjoy the freedom to conceive and mount major operations, in which law enforcement officers define the issue and seize the initiative, such operations are likely to be well-planned, well-conceived, and well-executed. Time, foresight, and initiative are law enforcement's great allies. With them, Federal agencies enjoy the luxury of thinking carefully about how to proceed and how best to use the talents of everyone involved.

Second, problems are most likely to develop in situations where planning, conception, and scope of the operation are by definition almost entirely absent—that is to say when Federal agents are responding to a crisis after-the-fact, either to rapidly deteriorating situations or situations that have already spun out of control. Pressure, tension, and loss of initiative are law enforcement's great enemies.

In times of unexpected emergency, Federal performance appears mixed in the public eye. Much criticism, for example, accompanied what appeared to be a bungled Federal investigation of the 1996 Olympic bombing in Atlanta; but members of the public and the media applauded Federal agency performance after the Oklahoma City disaster.

Third, the wisdom of the old adage that the mark of professionals in law enforcement is their ability to use the breaks that develop is well borne out in many of these incidents. The World Trade Center case was broken because a terrorist, whose rental truck was destroyed in the blast, did something truly bizarre: he pretended that the truck had been stolen, demanded a refund from the rental agency, and refused to take “no” for an answer. Responsibility for the Oklahoma City Federal Building bombing was quickly pinned down because the major perpetrator carelessly exposed himself to arrest by leaving the bombing scene in an unregistered automobile without license plates. The millions of dollars and years of effort spent pursuing the Unabomber accomplished little until the bomber's brother came forward with his suspicions. Chance and the human factor worked in law enforcement's favor in each of these situations.

The Commission's judgment is that Federal law enforcement agencies possess a growing and reliable body of knowledge and experience about how to improve



operational planning and implementation. We are also convinced that insufficient attention is paid to these lessons in training programs in some Federal agencies. As we note below, moreover, the record indicates that development of common policy in critical areas such as use of deadly force leaves a lot to be desired.

COORDINATION

During its hearings, the Commission heard testimony from F.T. Davis, Jr., a policy scholar of Federal law enforcement administration who served, at one time, as general counsel and head of the law enforcement section of the President's Reorganization Project under President Jimmy Carter.³⁰ Mr. Davis estimated that, in the course of the past 30 years, Congress and the Executive Branch have been adding Federal law enforcement agencies at the rate of 2.3 agencies per year. This startling growth, generated in the main by the establishment of offices of Inspectors General in some 60 agencies and by the expansion of legislation governing such matters as the environment and employee safety, inevitably creates problems of coordination.

With so many agencies to coordinate, it is often hard to know who is responsible for doing what. According to Mr. Davis, the difficulty is compounded many times over in the field, where what looks to be reasonable and straightforward (on paper and on organizational charts at headquarters) has to be put into effect. Hence, although agency officials can often distinguish their missions reasonably well—the FBI, for example, deals with terrorism and the ATF is responsible for explosives, firearms, and arson—in the real-world, things are not as clearly divided. After the explosion at the Atlanta Olympic Games in 1996, for example, FBI and ATF agents were reportedly in disagreement for some time with respect to which agency had authority to conduct which parts of the investigation—and who had lead authority.

Making these determinations is far from simple. In fact, Attorney General Reno commented on precisely this issue when she told the Commission:

It is frustrating when one agency is designated as the principal agency for the investigation of terrorist activities and another agency is designated as the principal agency for the investigation of bombings. And then they have a to-



do between the two that comes up to Washington and I hear about it. I hope that this is quickly becoming a thing of the past.

This Commission hopes so, too. But it doubts that, without some explicit action on the part of Congress and the Administration, this desirable state of affairs will come to pass easily or soon.

Examining what is in place now, it is difficult to define the Federal role. Because of federalization of crime, Federal law enforcement responsibilities have expanded into every nook and cranny of State and local criminal codes. Perhaps even more troubling, it is equally difficult to understand who's in charge of what.

The Commission's concerns were not alleviated by reviewing the answers submitted by the 14 major Federal law enforcement agencies that were the principal focus of this Commission. According to the Commission's survey:³¹

- Crises potentially bring agency missions into conflict. It's not clear who's in charge of responding to terrorist bombs in the United States—the FBI or ATF. Abroad, similar crises will also involve the Central Intelligence Agency, the Department of State, and the Department of Defense, with accompanying confusion about who's responsible for what.
- A number of agencies define their mission as “enhancing their own position” or becoming “the lead agency” in particular areas of crime. (The United States Secret Service, for example, speaks of enhancing its “position as the lead protective agency” and becoming a “leading law enforcement agency in financial crime.”)³²
- Such self-serving statements of purpose are consistent with the observation above that mission statements are directed more at internal constituents than the public. They do little to advance the public interest and the Commission believes that goals should be framed around pursuit of anti-criminal objectives, not bureaucratic self-interest.

The Commission was asked to examine two issues with regard to overall coordination: the location and efficacy of the office or entity directly responsible for coordinating Federal law enforcement (apart from the President of the United States),



and the quality of coordination in the area of international crime—and whether deployment of resources overseas diminishes domestic law enforcement.

Executive Order No. 11396

Even as far back as 1978, testified F.T. Davis, Jr., the President's Reorganization Project identified 1,200 instances of duplication in law enforcement assignments, as multiple agencies were often involved in enforcing the same law. Although this Commission has no reason to believe this state of affairs is any worse today than it was 20 years ago, we are convinced it is no better.

This situation is all the more difficult to understand because a clear Federal statement about the importance of coordinating Federal law enforcement activities with each other, and with State and local law enforcement agencies, has existed for more than 30 years. The Commission refers to Executive Order No. 11396, signed by President Lyndon Johnson in February 1968. (The Executive Order is reproduced in Appendix D.)

That order, developed more than a quarter-century ago, might have been written last week. Citing the challenge of crime in America, the need for greater coordination among Federal agencies, the equally compelling need to assist State and local law enforcement entities, and the clear responsibility for the Attorney General to serve as “chief law officer” of the Federal Government, Executive Order No. 11396 charged the Attorney General with coordinating all law enforcement and crime prevention activities of all Federal departments and agencies. It also directed the Attorney General to coordinate Federal activities as they relate to State and local law enforcement. Finally, it directed “each Federal department and agency...to cooperate with the Attorney General” in the performance of the functions under the Order.

Had that directive been carried out, this Commission believes that many of the coordination problems troubling Federal law enforcement today would have been put to rest. Unfortunately, the Executive Order itself was put to rest, probably the casualty of a combination of events, including prosecution of the War in Vietnam, an election resulting in a change of Administration within a matter of months of the



Order's appearance, and agency hostility to its contents. In 1994, the importance of the Attorney General's coordinating role resurfaced. The National Performance Review recommended the "...designation of the Attorney General as the Director of Law Enforcement to coordinate Federal law enforcement efforts [and] changes in the alignment of Federal law enforcement responsibilities."³³ The GAO report on this and other recommendations "...supported the need for greater coordination of the numerous agencies involved in Federal law enforcement. The decentralized operations, including the 93 U.S. Attorneys and the various investigative agencies within Justice and Treasury, complicate efforts by the Department of Justice to coordinate and direct a wide variety of initiatives and programs to fight crime."³⁴

The Commission also notes that the need for common coordinating procedures extends to issues of terrorism and international crime. In light of the global nature of the modern economy and modern crime, law enforcement is not a zero-sum game. Resources devoted to criminal threats from abroad are not provided at the expense of effective law enforcement at home. Effective efforts on- and offshore are required, a truth clearly evident in our national struggle with narcotics, almost all of them developed and exported from abroad but consumed within our borders.

Urgently needed, in our judgment, are measures to improve the coordination of Federal law enforcement domestically and internationally.

Coordination with State and Local Agencies

This Commission is equally troubled by what appear to be major problems providing effective coordination with State and local jurisdictions, one of the issues that led to development of Executive Order No. 11396.

Throughout its tenure, the Commission received a great deal of evidence detailing the challenges involved in creating workable models of Federal-State-and-local cooperation and coordination.³⁵ Much of this testimony was positive. Jami St. Clair of the American Society of Crime Laboratory Directors, for example, applauded the real partnership and sense of cooperation that exists between local law enforcement forensic scientists and laboratory directors and their Federal counterparts.³⁶ She





noted that local forensics laboratories depend on research and development and technology transfer from Federal labs, pointing out, for example, that the FBI's role in developing and promulgating DNA standards benefited the entire criminal justice community. Ms. St. Clair had similar high praise for the FBI's Drugfire Program and the ATF's BULLETPROOF program. Drugfire is a multimedia database and imaging system that automates the comparison of images of bullet cartridge cases, offering matches in minutes instead of the hundreds of hours that might be required to compare manually cartridge markings with microscopes. The system permits firearm examiners to retrieve quickly cartridge images from unsolved case files. BULLETPROOF (and BRASSCATCHER) offer similar possibilities of linking previously unlinkable crimes. Ms. St. Clair also noted, however, that the two agencies had difficulty cooperating around these programs and that their competing "self-interests" marred the programs' initial implementation.

In similar fashion, Chief Richard W. Myers (Appleton, Wisconsin), Bob Ricks (Oklahoma Commissioner for Public Safety and a former senior FBI official), and A.N. "Bubby" Moser (Executive Director of the National Sheriffs' Association), spoke of the value of cooperative relationships with Federal law enforcement entities. Chief Myers commented on the value of the training he received at the FBI Academy as an indication of the benefits of national professional development activities. He also complained about the federalization of criminal offenses and cautioned that Federal assistance should not be thrust on local agencies without joint discussion about how best to proceed. Mr. Moser testified that his association and its members have an outstanding relationship with many Federal agencies—praising in particular agencies of the Department of Justice and the Department of the Treasury and the technical assistance they provide to State, county, and municipal agencies on an ongoing basis.

Mr. Ricks reported that the FBI's success in Oklahoma City depended on cooperation from local law enforcement agencies. Still, he cautioned, nationwide many local law enforcement entities feel trapped in a tug-of-war between competing Federal agencies that is so severe that local officers feel they have to make a choice.

And, he cautioned, local officers have long memories. At one point, as an FBI agent in New Jersey in the 1970s, Mr. Ricks recalled that he ran into difficulty obtaining the cooperation of the State police superintendent. As it turned out, the official was angry at the FBI over an incident that had occurred 40 years before: The New Jersey State Police had turned over to the FBI the ladder used in the 1930s kidnapping of Charles Lindbergh's child and the FBI had never returned it.³⁷ Forty years later, the discourtesy still rankled.

Although the Commission finds these acknowledgments of Federal assistance gratifying and doubtless sincere, it remains troubled. An undertone of criticism accompanied several presentations and the Commission's doubts grew after reviewing answers about mission and function submitted by the 14 agencies in response to the Commission's request. In these comments, attention to State and local issues is almost nonexistent.³⁸ With respect to State and local law enforcement, the statements reveal two things:

- First, most mission statements are quite parochial, often couched in terms that have little to do with State and local law enforcement officials; and
- Second, reference to relationships with State and local law enforcement officials is conspicuous by its absence in most of the mission statements, a clear indication that such relationships are not viewed as part of the central mission.

The Commission's hearing record provides abundant evidence that leading Federal officials understand the dimensions of the challenge involved with improving coordination with State and local law enforcement entities. FBI Director Freeh, for example, spent much of his time with the Commission reviewing the many areas where cooperation and coordination among Federal, State, and local officials is essential to effective law enforcement. He testified to the "critical need for the continued integration and cooperation by all of our Federal, State, local, and foreign law enforcement agencies...that spills over into the intelligence community."³⁹ Attorney General Reno spoke to the same needs. With regard to cybercrime, cyberterrorism, weapons of mass destruction, and credible forensic standards, the





Attorney General suggested that Federal agencies might be able to help State and local units of government through regional efforts to provide the training and technology that local agencies otherwise could not afford.

In truth, veterans of law enforcement remember a time when cooperation and coordination between Federal and State and local law enforcement officials counted almost as unacceptable professional behavior at both ends of the spectrum. Cornelius J. Behan, former police chief in New York City and Baltimore, told the Commission:⁴⁰

Because I span more than 50 years in law enforcement, I remember when the cooperation between a Federal and local law enforcement agency was very weak. Information was a one-way street. When we gave anything to them, it was like it was going into a Black Hole. Competition was fierce and the level of trust was marginal at best.

But, continued Chief Behan:

Now, cooperation between Federal and local police agencies has never been better. We work together on criminal investigations. We have joint training programs....[Local police] work with INS, DEA, the FBI, Secret Service, Customs, other Federal and local police to prevent and solve crime....[T]ask forces exist all over the country. Without the Federal police, these forces could not be effective. In fact, they may not exist at all.

The Commission is convinced that cooperation between Federal law enforcement agencies and their State and local counterparts is today better than it has ever been. But establishing a benchmark against the poor performance of the past is insufficient. Given the gravity of the challenges ahead and the stakes involved, quantum improvement is called for in this entire area.

CONFUSION ABOUT ROLES AND MISSION

With respect to agency roles and missions, several key problems stood out in the Commission's review of responses to its survey of 14 agencies:⁴¹

- Mission statements show little uniformity in terms of the information they provide or the functions they describe;
- Most mission statements are quite parochial, often couched in terms that make more sense to the internal constituents of the agency than to other agencies of the Federal Government, the general public, or State and local law enforcement officials;
- Although prevention emerges as a primary issue in testimony and conversations about the Federal role, it receives little attention in mission statements, which for the most part focus on stopping crimes about to occur or launching investigations after the fact;
- If mission statements were taken at face value, one might conclude that either the DEA or a part of the FBI is unnecessary because both agencies seem to have the same mission with respect to illegal narcotics.

Other data revealed in the Commission's survey are equally troubling, offering many opportunities for serious law enforcement problems in the years ahead. In this regard, the responsibilities listed under agency mission appear to be far beyond the staffing capabilities of many agencies. In fact, there appears to be little relationship between agency responsibilities and the capacity to carry them out. The Commission wonders, for example, if the Bureau of Indian Affairs is not understaffed for its responsibilities and whether the U.S. Secret Service is prepared to deal with what might become an explosion of counterfeit money around the globe in the years to come as con men harness the ubiquitous power of the computer to the age-old task of creating something out of nothing.

Given the current and projected growth in international crime, the uncoordinated nature of these activities in the international area is especially troubling. An in-depth 1996 review of the roles and capabilities of the United States intelligence community concluded:⁴²

[T]here is no single coordinator for the law enforcement community.

Whether the issue concerns formulating an overall U.S. response to global crime, facilitating cooperation with the Intelligence Community, or coordi-



nating law enforcement activities abroad, there is no single focal point within the law enforcement community authorized to represent its views. This makes policy decisions more difficult and coordination more burdensome.

INSPECTORS GENERAL

Additionally, the Commission is concerned about the dual jurisdictional authority of the various Office of Inspectors General (OIGs) in the Federal Government. This dual authority carries with it genuine potential for confusion about role and mission. Since passage of the Inspector General Act of 1978, some 60 OIGs have been established. The OIGs not only investigate waste, fraud, and abuse, but also have law enforcement authority to conduct criminal investigations and to make arrests. As Inspector General Michael R. Bromwich stated in 1997 regarding criminal investigations procedures, "The procedures we follow in conducting a criminal investigation are the same as those followed by any other law enforcement agency within the Department of Justice."⁴³

Law enforcement authority with the OIGs extends not only to Federal employees but also to others outside Government. The independence of OIGs as mandated by Congress from program operations and from management within a department can become a future problem area without coordination and oversight of IG actions.

Vice President Al Gore's *Report of the National Performance Review* (1993) made the following observations on reorienting the Inspectors General:⁴⁴

At virtually every agency he visited, the Vice President heard Federal employees complain that the IGs' basic approach inhibits innovation and risk taking. Heavy-handed enforcement—with the IG watchfulness compelling employees to follow every rule, document every decision, and fill out every form—has had a negative effect in some agencies.

For fiscal year 1996, the General Accounting Office reported a total of 1,834 full-time Federal officers authorized to carry firearms and make arrests in 20 offices of the Inspector General. In 1997, the Inspector General for the Department of Justice reported that the OIG employed 129 Special Agents. That office has jurisdiction to



conduct or oversee misconduct investigations in most components of the Department. The Office of Professional Responsibility has jurisdiction for investigating misconduct allegations against departmental attorneys, but the FBI and DEA retain their respective Offices of Professional Responsibility. The Inspector General of the Department of Justice must receive permission from the Deputy Attorney General to investigate an FBI or DEA matter.⁴⁵

OIG operations outside the Department of Justice are similarly large and complex. At the Department of Housing and Urban Development (HUD), for example, the OIG may have between 200 and 260 Special Agents by the end of 1999.⁴⁶ OIG Special agents in HUD investigate possible violations of criminal statutes using techniques such as interviews, surveillance, electronic monitoring, search warrants, and subpoenas.⁴⁷ These agents participate in tactical operations with local police and other Federal agents to eradicate drugs and respond to criminal acts in Federal housing.⁴⁸ In HUD and elsewhere, the danger exists that the benchmark for success in OIG offices may soon turn from the soundness of administrative investigations to the number of arrests.

CONCLUSIONS

Based on its review, the Commission concludes that:

- **Of necessity, the Federal law enforcement apparatus is large and complex.** Different agencies often properly have different missions, and the need for quite distinct skills and areas of jurisdiction. Better coordination is necessary and desirable, and some consolidation is required.
- **Capacity for oversight and coordination is weak and must be improved.** As a policy matter, it is difficult to know who is in charge of what. Coordination is relatively effective because the people involved are determined to make their agencies work. Nevertheless, with issues of citizen safety and national security at stake, effective cooperation and greater clarity of roles and responsibilities should not be left to chance. Despite the 30-year existence of Executive Order No. 11396, which designated the Attorney General





as the focal point of Federal law enforcement, little has been done to implement its provisions.

- **The proliferation of small agencies needs attention.** Because of the complexity of agency missions and functions, the Federal Government has encouraged a proliferation of small Federal law enforcement agencies, many with their own investigative or policing powers and their own concepts of appropriate procedures and policies.
- **The functions of Inspectors General have not been well integrated into Federal law enforcement activities.** A clear need exists to examine the growth and role of the function of the Inspectors General in terms of duplication of effort, whether the Inspectors General should exercise arrest functions, and adequacy of training. This examination should also consider the extent to which it is appropriate for the OIGs to combine functions of program review for purposes of public accountability (rarely a true Federal law enforcement issue) and “internal affairs” functions for allegations of misconduct on the part of law enforcement officers.

The Commission bases its conclusions and recommendations in part on these findings.

CHAPTER THREE. TERRORISM

If the death of six people and the injury of more than 1,000 from a car-bomb planted by Islamic fundamentalists in New York's World Trade Center in 1993 were not a sufficient wake-up call, Americans were reminded of the terrible new reality of domestic terrorism the following year. On April 19, 1994, an American veteran of the Persian Gulf War destroyed the Federal Building in Oklahoma City, killing 168 people, injuring hundreds, and wreaking untold havoc on the Nation's sense of self, sense of security, and confidence in government.

Little is new in terrorism. It has always been a weapon of those attempting to effect change through violence. It provides very high leverage at very low cost, enabling nations, international groups of various kinds, and subnational, even marginal, groups to bypass traditional, political, diplomatic, military, and economic channels and demand a place at the table. Despite how the press has treated recent incidents, the United States has been struggling with terrorism of one kind or another for decades. In fact, at the international level, although the number of people killed as a result of terrorism increased in the 1990s, the number of terrorist incidents actually declined.

What is new, however, are the implications for the United States. Although terrorism experts debated for years the likelihood and possibility of major terrorist incidents within the United States—including the use of weapons of mass destruction—the arguments have now ceased. The bombings at the World Trade Center and in Oklahoma City, the sarin gas attack in Tokyo, and the ricin scare in Wisconsin ended the debate. The issue is no longer whether such attacks can be launched, but how to prevent them. A major threshold has been crossed, at great cost to the American sense of self and confidence in national security.





Terrorism has changed in recent years, marching in lockstep with larger changes in the world. A growing number of new international terrorist organizations (some abetted by nation-states and a growing number of domestic special interest groups intent on pursuing ideological agendas within the United States appear to have become more violent in their methods. One of the most troubling aspects of these new developments is the increasing sophistication of terrorism, both at home and abroad, in terms of technology, operations, and financing—a sophistication that Federal, State, and local law enforcement agencies are often hard-pressed to match.

The face of terrorism, once considered in popular imagination to be largely foreign, and grounded in xenophobia and religious fundamentalism, is now revealed to be equally at home in America, where it appears to be grounded in a violent, antigovernment, paramilitary subculture on the extreme Right. This subculture demonstrates a xenophobia of its own, convinced that their beliefs are at risk in a modern state that intends to abrogate their definition of their rights.

Domestic terrorism in America has come full circle. Antigovernment violence in the United States in the 1960s and 1970s had been characteristic of the radical Left, of such groups as the Weathermen and the Black Panthers. The Left was inclined to speak of the United States as fascist, employing such symbolic terms as “Amerika” to make its point. The most radical of these groups and individuals thought nothing of creating potentially violent confrontations during the years of the Vietnam War or of destroying facilities associated with “Amerika’s war-making capacity,” such as a mathematics building on the campus of the University of Wisconsin.

But the new domestic terrorism comes mostly, but not exclusively, from the Right. (See sidebar, “Terror and Violence in America: A Catalog of Horrors,” for some sense of the breadth and extent of this threat, which also includes damage to property from animal rights and environmental activists.) And in a peculiar inversion of roles and language, the U.S. Government again finds itself charged with destroying citizens’ rights and maintaining jack-booted troops, only this time the charges are leveled by a variety of groups, including skinheads and neo-Nazis who have purloined the Left’s language for their own purposes.

Terror and Violence in America: A Catalog of Horrors

Recent years have borne witness to a startling increase in terrorism and violence in the United States. Examples of such incidents include the following:

- 1992** White supremacist Gordon Sellner wounds a deputy in Montana and becomes an "open fugitive" on his ranch; the Bureau of Land Management building in Reno, Nevada, is bombed; eight members of the Pilot Collection Society—the Nation's largest tax protest group—are arrested for defrauding people of millions of dollars; Vicki and Sammy Weaver, the wife and son of Randy Weaver, are shot and killed during a standoff with Federal agents at Ruby Ridge, Idaho. Deputy U.S. Marshal William Degan was also shot and killed.
- 1993** Mir Aimal Kasi kills two and injures three outside CIA Headquarters in Virginia; a car bomb at New York's World Trade Center kills six and injures 1,000; the 51-day siege at the Branch Davidian compound ends with a death total of 92, including four Federal agents; eight suspects, from a variety of neo-Nazi groups, are arrested in Los Angeles for plotting to start a race war; pipe and fire bombings of the NAACP building and a gay bar in Tacoma, Washington, are accomplished by American Front Skinheads; the Animal Liberation Front fire bombs several major department stores in Chicago.
- 1994** California clerk/recorder Karen Matthews is brutally beaten at her home by a group of antigovernment extremists when she refuses to file their bogus legal documents; four members of Blue Ridge Hunt Club in Virginia are arrested for planning to attack National Guard bases if the Government ever plans gun confiscation; two members of the Minnesota Patriots Council are convicted for planning to use a toxic biological substance, ricin, to kill Federal law enforcement officers; Timothy McVeigh and Terry Nichols bomb the Murrah Federal Building in Oklahoma City, killing 168 and injuring hundreds.
- 1995** Members of the North American Volunteer Militia are arrested for threatening judges in Montana; a pipe bomb destroys the car of a Forest Service official in Nevada; four members of the Oklahoma Constitutional Militia are arrested for plotting a bombing campaign against gay bars, abortion clinics, and welfare offices.
- 1996** Louis Edward DeBroux, a "constitutionalist," pleads guilty to plotting to kill a Georgia judge as a warning to other judges in the State; prosecutions begin against the Aryan Republican Army for its role in 20 bank robberies in the Midwest to finance a revolution; 11 members of the Constitutional Common Law Court are charged in Tampa, Florida, with threatening Federal judges; Federal and State authorities endure an 81-day standoff, in remote eastern Montana, before arresting 24 members of the Montana Freeman; 12 members of the Arizona Vipers militia are arrested on weapons and explosives charges; four members of the Washington State Militia and four "freemen" are arrested on bomb-making charges; a bomb explodes in the midst of the Olympic Games in Atlanta and an antigovernment extremist Eric Rudolph, still at large, is named a suspect in that bombing.⁴⁹
- 1997** In Tulsa, three "common-law court advocates" plead guilty to filing bogus liens and "arrest warrants" against IRS agents and other Federal officials; the Kehoe brothers, convicted for their roles in two shootouts with Ohio police, are charged with murder in their attempt to establish an Aryan People's Republic; the FBI arrests four members of the Texas Klan group for planning a gas refinery bomb attack and armored-car robberies to finance activities; Federal agents arrest members of the Colorado First Light Infantry on weapons and explosives charges; the IRS field office in Colorado Springs is bombed; "sovereign citizen" Carl Drega embarks on a murderous rampage in New Hampshire, killing two State troopers, a part-time judge, and a newspaper editor, before dying in a firefight at his home, which contained a huge arsenal of explosives and pipe bombs.
- 1998** Several members of the North American Volunteer Militia are arrested for criminal activities in Montana, including threatening judges; four members of the Oklahoma Constitutional Militia are arrested for plotting a campaign of bombings against gay bars, abortion clinics, and welfare offices; members of the white supremacist group, The New Order, are charged with a wide-ranging plot to bomb public buildings across the country; three Texas white supremacists are charged with killing a black man by dragging him behind their truck until his body tears apart; a bomb-laden pickup truck is discovered in the basement of the courthouse in Tippecanoe County, Indiana; an Internet web-page begins soliciting for the assassination of four Federal officials.
- 1999** Two teenagers enter Columbine High School in Littleton, Colorado, and launch a lethal fusillade of gunfire and explosives, killing 14 students and one teacher, before taking their own lives, the sixth school shooting around the country in the past 36 months.

Sources: State/Local Anti-Terrorism Training Program and Harvey W. Kushner (1998), *Terrorism in America*, Springfield, IL: Charles C Thomas Publishers, Ltd.





Our law enforcement capabilities, Federal, State, and local, have been struggling with these issues for some time and are likely to be troubled with them well into the future. Now the challenge becomes more complex. The situation poses a real threat to American citizens, one turned violently real in recent years at such diverse locations as the World Trade Center, Oklahoma City, and Kenya and Tanzania.

The relatively easy access that determined terrorists have to weapons of mass destruction (chemical, biological, even nuclear) has been demonstrated any number of times in recent years. The truck bomb detonated in Oklahoma City was made up largely of common chemical fertilizer wired with detonators. The 1994 conviction of members of the Minnesota Patriots Council revolved around their plan to manufacture and use a deadly biological toxin, ricin, to kill Federal law enforcement officers. A possibility that unnerved many law enforcement specialists around the world was the poison gas attack involving sarin launched in the Tokyo subway system in March 1995. That attack was launched by a secretive religious cult, *Aum Shinrykio* (Supreme Truth), headed by Shoko Asahara. It left 12 dead and made 5,000 ill.

If the notion of criminal access to nuclear devices appears farfetched to the average citizen, the idea is not at all outlandish to law enforcement officials and academic experts. According to a paper prepared for the Commission by terrorism experts Frank J. Cilluffo and Michael Paul Palaschak:⁵⁰

The barriers to the acquisition and deployment of nuclear devices are difficult, but have been significantly lessened by the end of the Cold War. This is particularly true with respect to a crude radiological device, which would not require a sophisticated delivery system. Perhaps the single easiest method for a terrorist group to acquire a nuclear or radiological device would be to purchase or steal it from a nation with current stockpiles.

Several tactics appear to characterize most domestic terrorist activities: assaults on law enforcement officials; assembling illegal weapons and weapons caches; bombings; financial crimes, including counterfeiting and bank robbery, to finance extremist activities; intimidation of judges and other public officials; and standoffs involving antigovernment extremists.

INTERNATIONAL TERRORISM IN THE UNITED STATES

Meanwhile, the threat of international terrorism within American borders continues unabated. In discussing these issues with the Commission, Attorney General Reno expressed the view that terrorism—both domestic and international—is clearly going to be one of the frontline issues for Federal law enforcement in the years ahead.⁵¹ FBI Director Freeh reiterated this view to the Commission: “With respect to current activities, terrorism, both international and domestic, has become a critical part of an expanded FBI mission.... This has given to the country and to the FBI... vast new challenges....”⁵² In response to these challenges, he reported, the FBI has created 18 joint Terrorism Task Forces around the Nation, unique entities made up of the FBI and other Federal, State, and local officers assigned to the task of, first, preventing acts of terrorism, and, second, responding to them if they do occur.

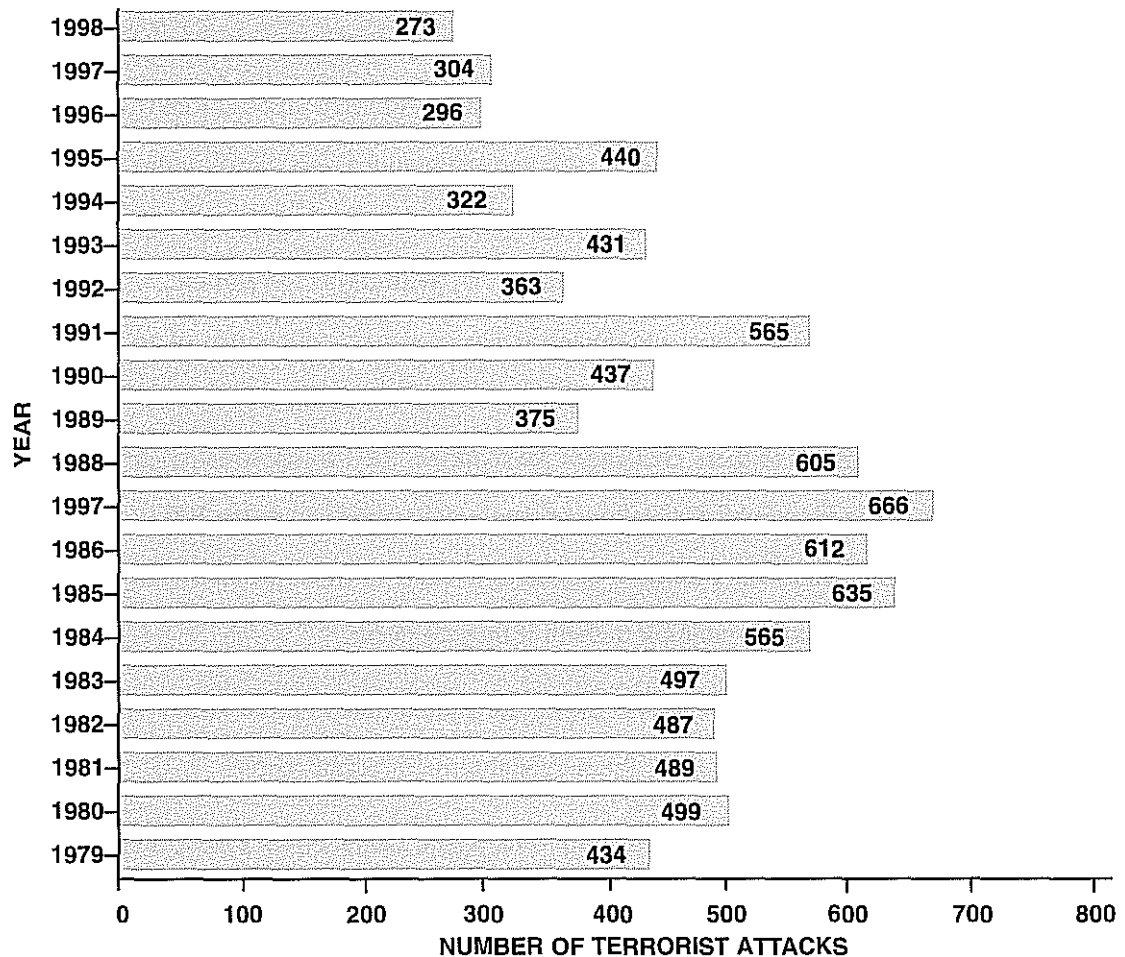
According to the Cilluffo and Palaschak paper, the United States and its allies need to worry about three major kinds of international terrorist organizations:

- State sponsors of terrorism, such as Iraq, Iran, Syria, Libya, North Korea, and others, that use terrorism as a tool of statecraft;
- Formal terrorist organizations, often transnational in nature, with political, national, ethnic, and religious agendas; and
- Loosely affiliated extremists and freelancers, perhaps the most difficult to define and defend against because they build ad hoc alliances and organizations and are nearly impossible to penetrate.

It appears quite clear that international terrorism has also changed dramatically. Just a decade ago, most terrorist organizations were linked indirectly or directly to the former Soviet Union and nations allied with it. Terrorism across the globe reached its peak 10 years ago; the past several years have seen the lowest levels of terrorist activities, internationally in 2 decades (see Figure 4). Through diplomacy, intelligence operations, military strikes, and law enforcement, the ability of outlaw States and groups such as Libya to engage in terrorism has been reduced and groups such as the Irish Republican Army and Basque terrorists have reduced their activities.⁵³



Figure 4. Attacks by International Terrorists, 1979-1998



Source: U.S. Department of State Publication 10610, Office of the Secretary of State, Office of the Coordinator for Counterterrorism, released April 1999. "Patterns of Global Terrorism." See <http://www.state.gov/www/global/terrorism/1998Report/p.gif>.

"Things indisputably are better today than they were in the mid-eighties when we saw airplanes blown from the sky, embassies bombed, and ships hi-jacked," said a former U.S. ambassador to Colombia with 34 years of Government service.⁵⁴

According to Cilluffo and Palaschak:⁵⁵

While state-sponsored terrorism (most notably from Iran) continues to be an important issue, more often than not today's international terrorist lacks the political agenda of their classical counterparts. Religious divisions, ethnic hatreds, and sheer financial profit are also strong motives for terrorism, ushering in both a new era in destruction and a nonlethal form of terrorism, cyberterrorism.



The Secretary of State has designated some 30 groups (ranging from the Armed Islamic Group and the Democratic Front for the Liberation of Palestine-Hawatmeh Faction to the Revolutionary Armed Forces of Colombia and Shining Path) as foreign terrorist organizations. In addition, target selection has shifted from Government facilities toward U.S. business interests. Department of State figures indicate that more than 75 percent of global terrorist incidents in 1995 and 1996 targeted business operations, corporate personnel, or both. Cilluffo and Palaschak conclude that “by continuing to ratchet up security at embassies and other high-profile Government facilities..., the risk is merely displaced, forcing terrorists to...select from the endless number of other soft targets.”⁵⁶

What has always plagued antiterrorism efforts in the United States is the lack of coordinated leadership as a policy matter and sustained attention to the issue over the long term. Unlike many of its allies, the United States has not faced sustained terrorist campaigns, but rather a number of isolated, yet traumatic, events. As a whole, the country tends to react immediately after a terrorist event, sometimes overreacting with nonstop headlines, the enactment of emergency new legislation, and center stage for the issue within the Washington Beltway. Weeks or months later, however, American policymakers, concern about terrorism behind them, have moved on to the latest crisis of the day.

Anti-American Terrorism Abroad

Terrorism against Americans abroad, although perhaps not as widespread as terrorist incidents at home, is equally troubling. Violent terrorist bombings on August 7, 1998, against U.S. embassies in Kenya and Tanzania killed 247 people in Nairobi (including 12 Americans) and 10 in Dar Es Salaam, all local people. The two blasts injured thousands of people between them.

Coordination Challenges

Although the Commission received no testimony from U.S. intelligence agencies, it seems clear that a number of sources of conflict exist between the law enforcement





Terror Around the World: A Global Catalog

The incidence of terrorism around the globe demonstrated a steady increase from the late 1970s through the later years of the 1980s, with incidents such as the Lockerbie air disaster that shocked the sensibilities of the world. Since then, a fairly steady decrease has been in evidence, thanks in part to diplomacy, the development of extradition treaties and transnational agreements, and reduced activity on the part of some organizations, such as the IRA and several Middle Eastern organizations, with a history of relying on terror as a means of advancing their ends. In sheer numbers, the incidence of terror is now the lowest in 2 decades.

Fewer incidents, however, do not mean less terror. Although State Department figures for 1998 record the lowest number of attacks since 1971, the number of persons killed and wounded in that year was the highest on record (741 dead and 5,952 injured). Recent examples of terrorist activities around the globe include:

1996	2/9/96	IRA claims responsibility for detonating a bomb in a parking garage in the Docklands Area of London, killing two people and wounding more than 100, including two American citizens.
	2-3/96	Suicide bombers from the Islamic Resistance Movement (HAMAS) blow up buses in Jerusalem, killing 35 and injuring scores, and engage in a suicide bombing outside a Tel Aviv shopping mall that kills 25. At least five American citizens are killed in the three attacks.
	6/25/96	A large fuel truck explodes outside the U.S. military's Khubar Towers apartments near Dhahran, Saudi Arabia, killing 19 Americans and wounding 500 others.
	12/17/96	Peru's Tupac Amaru Revolutionary Movement takes over the Japanese ambassador's residence in Lima and holds 500 hostages—428 of the hostages are freed quickly. It is 4 months before a Peruvian assault team ends the siege, freeing the remaining 78 hostages and killing their captors.
1997	2/23/97	The body of U.S. mining consultant Frank Pescatore is discovered some 2 months after he is taken prisoner by the Revolutionary Armed Forces of Colombia.
	2/23/97	A gunman intent on punishing the "enemies of Palestine" enters the observation deck of New York's Empire State Building and opens fire on tourists. A Danish visitor is killed and tourists from Argentina, France, Switzerland, and the United States are wounded before the gunman turns his gun on himself.
	4/97	Just hours before Pope John Paul II lands in Bosnia, police discover and defuse 23 landmines set along the route he is scheduled to travel to Sarajevo.
	11/12/97	Four U.S. citizens, employees of Union Texas Petroleum, and their Pakistani driver are shot and killed one mile from the United States consulate in Karachi.
	11/17/97	Six gunmen enter the Hatsheput Temple in Luxor, Egypt, and for 30 minutes methodically shoot and knife tourists trapped in the temple's alcoves. The murdered include 58 foreign tourists, 3 Egyptian police officers, and 1 Egyptian tourist guide.
1998	8/98	Devastating bombings occur at the U.S. embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania, killing 291 and injuring some 5,000 in Kenya, with 10 fatalities and 77 injuries in Tanzania.
	8/98	The "Real IRA," a splinter organization disaffected with the parent group's participation in talks about peace and forming a government, detonates a car bomb in a crowded village in Northern Ireland, Omagh, killing 35 people and injuring hundreds.
	Year-long	A multinational oil pipeline regarded as a U.S. target by Colombian terrorists is bombed 77 times.

Source: U.S. Department of State, annual reports on global terrorism; and U.S. Department of State Publication 10610, Office of the Secretary of State, Office of the Coordinator for Counterterrorism, released April 1999. "Patterns of Global Terrorism." <http://www.state.gov/www/global/terrorism/1998Report/p.gif>

and intelligence communities.⁵⁷ The expansion of the presence of law enforcement agencies overseas, principally the FBI, creates its own set of tensions. In fact, the Commission received testimony that as many as 2,000 Federal law enforcement agents are operating overseas, frequently without effective coordination with either the intelligence agencies or the Department of State.⁵⁸

Cyberterrorism

Finally, the issue of cyberterrorism needs to be acknowledged. New information technologies have revolutionized professional and middle-class lives around the world, transforming the way people learn, shop, entertain themselves, and manage their financial affairs. Moreover, the pace of change is so rapid that personal computers are literally becoming twice as powerful, at half the cost, about every 5 years. College students today have more computing power on their desks than was available to the scientists and generals who put men on the Moon and waged war in Vietnam a generation ago.

In this environment, clear risks accompany the evident benefits. In the following chapter, the Commission will touch on the extent to which the Nation's power grids and systems such as finance, banking, and transportation are susceptible to transnational crime. Here we want simply to note that they are likewise vulnerable to international terrorists.

CONCLUSIONS

Based on its review, the Commission concludes that:

- **Terrorism threatens the Nation's security.** Keeping America secure in a new century will require additional resources and assets for intelligence collection and analysis, long-term research on how to improve domestic preparedness for terrorist threats, and a commitment from Federal intelligence-gathering agencies (domestic and international) to share information, as appropriate, with State and local law enforcement officials.



- **Coordination abroad among agencies and law enforcement officials must be improved.** Effectively administering law enforcement and protecting American citizens from the threat of terrorism demands better coordination of Federal law enforcement officials and agencies abroad.
- **Responses must be long-term instead of crisis-oriented.** Congress and the President must develop policy-relevant, long-term responses rather than yielding to the temptation to ignore these issues until a crisis develops and emergency responses are required.

The Commission proposes reforms to address these concerns in its recommendations in Chapter Seven.



CHAPTER FOUR. GLOBALIZATION OF CRIME

Like American crime syndicates, criminal enterprises in Europe, Asia, Latin America, and the former Soviet Union have brought a new capacity for organized, large-scale crime to their own citizens. Frequently cooperating with each other across national borders in areas such as narcotics, weapons, money-laundering, transportation of illegal aliens and criminal fugitives, prostitution, stolen automobiles, and counterfeit goods, these national syndicates have created a criminal counterpart to the globalization of commerce.

International crime carries with it very high costs for nations and societies. It is a threat to global trade and undermines international investment. The cost to society is enormous, and growing public concern about the implications of transnational crime has encouraged governments to focus on law enforcement strategies designed to deter and minimize it. According to recent reports from international organizations, the United Nations and the International Monetary Fund estimate that drug trafficking alone generates up to \$500 billion annually in criminal proceeds. Much of this money, laundered through numerous fake companies and anonymous bank accounts, finances additional criminal and terrorist activity.

Witnesses before the Commission suggested that global crime may be fast becoming the gravest threat to law enforcement not simply at the Federal level in the United States but at all levels of law enforcement here and elsewhere. Commenting on the growth of transnational crime, then Secretary of the Treasury Robert E. Rubin testified that, although for the purposes of law enforcement, the concepts of national boundaries and nation-states appear to be sensible, they obviously mean nothing at all to criminals.⁵⁹ In a similar vein, Attorney General Reno told the Commission:⁶⁰





I think borders are shrinking. In some instances, they are being eliminated. It is imperative that law enforcement be prepared to deal with crime and its international consequences. If the computer becomes the tool rather than the gun, the FBI is going to have to be able to work with agencies around the world to track down where the intruder is, who's doing it. We're going to have to develop common statutes and common laws to address the problem. We're going to have to have common understandings as to who prosecutes and ensure that there is prosecution.

Oliver B. Revell, a 30-year veteran of the FBI with experience in national and international security matters, told the Commission:⁶¹

I truly believe that, in the 21st century, transnational crime...is going to be perhaps the preeminent threat to the United States and in fact...the democracies of the globe. Very frankly, we are ill-prepared to deal with that. Not only do we have [approximately] 17,000 local agencies, [which] are primarily focused on crime in their neighborhoods, and in their municipalities and counties...but we have...the proliferation of...Federal statutes...[that] have diminished the significant role the Federal law enforcement [agencies] must play in those areas beyond the reach and scope and jurisdiction of local and State agencies.

Some countries are virtual safe havens for organized, transnational criminal groups. "Perhaps the most astonishing attribute of transnational crime today," report Cilluffo and Palaschak, "has been the ability to form alliances between criminal counterparts throughout the world." They continue:⁶²

Russian mobsters were arrested meeting with senior Italian organized crime figures at a ski resort in Italy in April 1997, allegedly to plan more efficient means of laundering the illicit proceeds of their narcotics sales in Western Europe. In 1996, investigators for the U.S. Customs Services found Burmese suppliers shipping heroin to Chinese middlemen, who included some counterfeit software and shipped it to the United States, where it was distributed by Vietnamese street gangs. In April of 1998, Colombian drug smugglers

were arrested in Russia as part of a complex scheme to smuggle cocaine by ship through Sweden and Finland and by air from Italy.

Because of its immediate frightening impact and potential for large numbers of casualties, terrorism receives more public attention by far in the United States than the internationalization of crime. Nonetheless, transnational crime may be the more insidious, long-term, domestic threat. Invisibly operating behind the scenes, it threatens to undermine the American financial system, disrupt our borders, put our streets at risk, victimize low-income and immigrant communities in the United States, and strain relationships among allies. A national-level declaration of transnational crime as a direct threat to national security must not only be articulated but implemented.

NARCOTICS AND GLOBAL CRIME

Narcotics and narcotics trafficking is one of the engines driving international crime. By any standard, the criminal narcotics industry ranks among the wealthiest and most powerful multinational “business” enterprises in the world, grossing an estimated \$500 billion annually. Its leaders are inventive, flexible, and ruthless. They are primarily motivated by profits and greed, although in some instances they pursue political power to protect their criminal empires or, in rare cases, to support larger ideological, even terrorist, objectives.

Given the immense profits to be made in narcotics, drug cartel leaders have pumped extraordinary amounts of time and money into efforts to protect their profitable bases of operation from risk. Although practice varies from group to group, recent findings indicate increased sophistication in the protective capabilities of the narcotics industry. These sophisticated efforts include, but are not limited to:⁶³

- Bribery, corruption, and intimidation of government officials at all levels, including law enforcement and border patrols, security services, defense agencies, and community and national political leaders
- Assassination, coercion, and extortion;
- Acquiring top-of-the-line weaponry, training militias and security personnel, providing other forms of physical security, and supporting a variety of operational security measures and countermeasures;





- Procuring state-of-the-art technologies, frequently export-restricted technologies, and recruiting specialists to launder money, create and manage sophisticated databases and telecommunications systems, manage countersurveillance, and perform other intelligence-collection activities;
- Employing the latest information-security applications and cryptography to secure command, control, communications, and logistics data;
- Creating logistical infrastructures, including personnel, in source countries, transit zones, and destinations, including the United States; and
- Responding flexibly to U.S. law enforcement measures and countermeasures.

These cartels act like mini-governments in their nations of origin. In many ways, that's what they are.

In the face of these developments, although the Nation's counternarcotics efforts continue to increase annually, spending priorities have been changing dramatically. Cilluffo and Palaschak note that, with the fall of the Soviet Union and the rise of democracy in Latin America, U.S. drug-related aid in Latin America has fallen precipitously. Between 1992 and 1995, for example, drug-related aid to the Andean region fell from \$470.3 million to \$131.8 million. The thinking appears to have been that, because these nations were no longer targets for Soviet subversion, their leaders could handle the problem without additional assistance. Moreover, the intelligence community appears to view narcotics trafficking as a health or law enforcement issue, not as a security issue.

Narcotics are, of course, a health and law enforcement issue, but they are a security issue as well. Few problems affect our society as deeply as drugs. They divert funds from productive activities, encourage violence, and corrupt American institutions. More than 14,000 people die each year in the United States from the scourge of drugs. About one-third of all AIDS cases are drug-related, at a cost to the U.S. taxpayer of about \$70 billion annually. And one-third of all crimes, including more than 70 percent of violent crimes, are drug related.

Unfortunately, common protocols for dealing with these new situations have yet to be developed. In the main, neither American law enforcement agencies nor those

in other countries are prepared to deal with these consequences of international crime, largely because most of these developments are so new. And American law enforcement agencies are further distracted from these grave new responsibilities by the need to enforce statutes creating Federal offenses out of such things as street crime and domestic violence.⁶⁴

Cyberspace—A New Frontier

Criminality in cyberspace is the new frontier of law enforcement. As a new century dawns, cybercrime and cyberterrorism, even cyberwarfare, loom as distinct threats to Federal law enforcement, and to law enforcement at all levels—Federal, State, and local. In the face of these challenges, too many citizens, public officials, and law enforcement leaders act as though the tools and techniques that carried this Nation through the 20th century will suffice in the 21st. In the judgment of this Commission, they will not.

The process of maintaining community tranquillity, individual security, and personal property can no longer be defined solely by police officers on the beat, FBI agents conducting interviews, or Customs officials at airports and border crossings. New information technologies can outflank and out maneuver every traditional law enforcement technique. Putting more police officers on American streets will do little to deter criminals like the “hacker” who stole millions of dollars from a bank in New York with little more than a few key strokes from a personal computer in St. Petersburg, Russia.

The Internet may be the new Information Superhighway, but it also offers a broad thoroughfare to criminal riches. As millions of Americans open on-line trading accounts and surf the Web, professional looking sites cleverly dangle phony get-rich-quick schemes in front of them. Technology and Internet scams and crimes are proliferating:

- The SEC’s Internet cyberforce investigates approximately 100 complaints about scams daily. Many of these frauds (such as the Web site that touted a phony high-tech startup, complete with SEC approval and a partnership with Microsoft) are extremely sophisticated.⁶⁵ The phony site in question pulled in





\$190,000— including \$10,000 wired from Hong Kong—before it was shut down.

- The Internet offers regulatory safe havens that are potentially more lucrative than mere post office boxes located in the Caribbean, the South Pacific, the Mediterranean, or Southern Africa.⁶⁶
- Federal investigators have come across at least two virtual jurisdictions, nations that are not really nations but advertise all of the services of countries, including citizenship, identity papers, passports, banking, securities, telecommunications, and real estate services. One of them apparently was briefly recognized by the 1996 Atlanta Olympic Committee.⁶⁷
- When the Defense Information Systems Agency (DISA) launched 38,000 hacker attacks against its own systems to test their vulnerability, only 4 percent of the people in charge of the systems realized they were under attack and only 1 out of 150 reported the attack to their superiors.⁶⁸
- The Y2K phenomenon may become more than a technical problem, if criminal elements become involved in it. Evidence has surfaced that organized crime has recruited programmers who are hired out to “fix” Year 2000 computer problems so that the computers of unsuspecting customers can be programmed for theft or extortion.⁶⁹
- In a 1997 war game directed by the intelligence community, 35 computer specialists, using tools freely available on the Internet, “shut down” large segments of the Nation’s power grid and silenced the command-and-control system of the Pacific Command in Honolulu.⁷⁰

In light of these findings, it is hardly surprising that results from a survey conducted for the Commission show that in the United States, computer crime elicits almost as much public concern in the United States as carjacking or organized crime.⁷¹

HIGH-TECHNOLOGY CRIME

The rapid development of modern technologies supports the globalization of crime. As the 1990s dawned, the Internet scarcely existed as a means of public communica-

tion. But as the decade draws to a close, many law enforcement experts worry that it is rapidly becoming one of the greatest potential avenues for criminal activity ever created, encouraging confidence artists, scams of all kinds, child pornography, and new avenues for fraud and theft. It can also open new avenues for financial wrongdoing in the form of computerized theft, the manipulation of prices of stocks and bonds, and the development of fraudulent financial instruments and certificates. As electronic commerce continues to grow on line, it is safe to assume that criminal activity will grow with it.

It is already clear that modern telecommunications and computers make large-scale theft and fraud possible from keyboards anywhere in the world. A generation ago, FBI Academy students received a revolver with six rounds when they graduated. Today, they also receive a laptop computer. If a hacker in Bucharest or Dublin steals from a San Francisco bank by transferring funds illegally using computers, who is responsible for investigating, arresting, and prosecuting such fraud?

Offering examples of how new technologies and telecommunications equipment have expanded the possibilities for global crime, FBI Director Freeh reported to the Commission:⁷²

Beyond the terrorism area in organized crime...we are increasingly focusing on crimes of an international and transnational nature. A case recently [occurred] where an individual using a laptop computer in St. Petersburg, Russia, broke into a New York City bank and moved several millions of dollars before it was even detected. Another individual overseas using a laptop computer...broke into "911" [emergency police and fire] systems in northern Florida and shut them down for several hours.

Security was never a major consideration among the loose coalition of universities, think tanks, high-technology firms, and Defense Department supporters who put together the Internet and its predecessors such as ARPANET. Our ability to communicate has far outpaced our ability to protect new communications systems, and loopholes abound in the complex, jerry-built system of networks known today as the Internet, really an accumulation of networks tied into and built on top of each other.





Practically every major area of our national life today depends on computers and information technologies. Telecommunications systems themselves, power grids, finance and banking, transportation, health care, aircraft control systems, and so on—all depend on the computer and information lines. In consequence, the United States is not simply uniquely susceptible to computer crime, it is also uniquely vulnerable to cyberterrorism. It is well within the capabilities of talented “hackers” to bypass institutional security provisions and completely disrupt operations of financial institutions or major systems associated with local law enforcement or national security.

With respect to criminal behavior, we should think of the computer in the year 2000 as the equivalent of the automobile in the 1930s, suggested FBI Director Freeh to the Commission. Both the automobile and the computer are neutral objects, but both, in their time, represent the application of the latest technology to crime. Director Freeh said:⁷³

In some ways, the use by criminals and terrorists of the computer is similar, although much more dramatic, than the use in the early 1930s by bank robbers of automobiles. [Automobiles represented] a new technology at the time which was quickly exploited by the criminals to facilitate bank robberies, getting to banks quicker, getting away even quicker and eluding law enforcement officers, who had no jurisdiction from a State point of view (or a Federal point of view). The law enforcement reaction to that technology was to develop not just fast cars and motorcycles, but mobile radios to deal with what was then a very great challenge. In many ways, today the use of computer[s]...by criminals, terrorists, and others is directly challenging our ability to perform law enforcement functions and also challenging the ability of our State, local, and Federal partners.

The simple truth is that “anything you can digitize, you can steal,” as Jonathan Winer, Deputy Assistant Secretary of State, told the Commission.⁷⁴ As Mr. Winer described these developments to the Commission, cybercrime threats include Internet casino gambling, financial services crime, theft of intellectual property, fraud, and

regulatory arbitrage (Internet safe havens offering protection from national regulation), and penetration of U.S. securities markets. “Virtual banks” such as the nonexistent European Union Bank, threaten to defraud thousands of people, worldwide, of their investment. Modern communications have even created “virtual jurisdictions”—nations that are not nations at all, but simply web sites offering the services of sovereign countries, including citizenship and identification papers, passports, banking, real estate, and securities markets. These virtual jurisdictions, hardly likely to be recognized by national governments, continually seek recognition from legitimate nongovernmental groups.

In the face of the development of lightning-fast communications and powerful computing capacity on the part of a global criminal netherworld, Government responses are distinctly mixed. Mr. Winer pointed to several areas where Federal law enforcement efforts do not match the realities of international crime.⁷⁵

- International tax laws are administered by the IRS with only six agents located overseas;
- The Immigration and Naturalization Service is just now beginning to develop “lookout technologies”—databases to help deal with smuggling by aliens; and
- The border technologies available to the U.S. Customs Service need to be upgraded to improve random checking of automobiles and containers as they enter the United States.

The Commission found examples where the lack of electronic technology is due not to any lack of funding or expertise, but to specific limitations imposed by statute. One example is the important task performed by ATF in tracing firearms for other Federal agencies as well as for State and local law enforcement officials. The trace of each firearm must be done manually through a series of telephone calls, facsimile transmissions, and mailings. ATF is routinely criticized for its failure to computerize what is literally a universe of information about firearms and firearms owners. The fact is that ATF is not the custodian of the records of the millions upon millions⁷⁶ of acquisitions and dispositions of firearms moving in the stream of interstate commerce





through licensed manufacturers, importers, and dealers. All such records are prepared, kept, and maintained at all times at the premises of the licensee. ATF may inspect the records, and the licensees are required to provide the trace information to ATF, but ATF may not store firearms records nor enter any data obtained from firearms transactions records into any form of electronic database at any government facility.

18 U.S.C. 926(a)(3) provides in pertinent part:

No such rule or regulation...may require that records...maintained (by licensees) be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions...be established....

Despite these problems, the Federal Government can point to some notable successes. For example, late last year the FBI put into action its National Instant Check System (NICS). On the very first day of operation, NICS processed 2,100 requests for information. NICS is a combination of technologies that represent a major advance in the science and technology of law enforcement. It is of benefit to the FBI and to State, local, and even foreign partners because it provides near immediate access to criminal histories and fingerprint identification. When the system is fully operational in 1999, it will be possible to provide a 2-hour turnaround on criminal identification and a 24-hour turnaround on civil identifications, both of which even recently could take weeks or months. It is conceivable for fingerprint evidence to be sent from a laptop in a patrol car to the FBI, with responses returned in a matter of hours.

CYBERPRIVACY AND CYBERSECURITY

Among the major challenges confronting policymakers in law enforcement are how to preserve privacy in the Information Age while providing the tools to combat cybercrime. Executive Order No. 13010 (July 1996) established a commission to formulate a national strategy to protect the information infrastructure from outside

threats, either physical or technological.⁷⁷ After the release of that commission's 1997 report, Presidential Decision Directive 63 was issued to establish a "goal of a reliable, interconnected, and secure information system infrastructure by the year 2003 and significant increased security in Government systems by the year 2000."⁷⁸ The National Infrastructure Protection Center (NIPC) in the FBI became the focal point to serve "as a national critical infrastructure threat assessment, warning, vulnerability, and law enforcement investigations and response entity."⁷⁹

Since that commission issued its report, a number of problems have developed:

- Initially, a strong partnership with the private sector was envisioned. The Government planned to help by providing funds to help information-based industries establish Information and Analyses Centers (ISACs), with the NIPC to share information between industry and the NIPC. Some private sector executives are said, however, to be reluctant to share information about computer intrusions with law enforcement officials.⁸⁰
- Within the partnership concept, the major responsibility for protecting private sector telecommunications systems fell on the private sector. Richard Clarke, the Administration's lead for critical infrastructure protection, said: "We won't be satisfied if they do nothing. We can't fight a war without the private sector—90 percent of our power and most of our transportation is privately owned. The private sector has a responsibility to protect itself. We will be pestering and hectoring if you do nothing."⁸¹
- Some confusion remains about who in the Federal Government will be responsible for maintaining data. When the Government initially proposed a Federal Intrusion Network (Fidnet) to be established within NIPC under the oversight of the FBI, Congress refused to allocate startup funds for the network.⁸² The Administration then reported that the General Services Administration (GSA), not mentioned previously, would also have a role to play. Data from nongovernment networks would be collected by GSA (the Government's purchasing agent and landlord) and maintained in a separate location to keep the data "at arm's length from law enforcement."⁸³





A second major issue involving cybersecurity is the perception that privacy has taken a back seat to law enforcement. In April 1999, the first chief counselor on privacy was appointed, 3 years after the promulgation of Executive Order No. 13010.⁸⁴ Invasion of privacy, encryption countermeasures, and monitoring are matters of concern to many people. Civil libertarians reportedly view cybersecurity measures as a potential threat to privacy and other civil liberties; House Majority Leader Dick Armey denounced the Fidnet system as Orwellian.⁸⁵ More than 250 Members of Congress are on record as wanting to prohibit the Government from mandating “back doors” into computer systems, a position that would effectively prohibit law enforcement investigators from overriding encryption systems in major cases involving large-scale computer fraud or cyberterrorism.⁸⁶

In the face of these difficulties, the Commission believes misperceptions about cybersecurity policy must be clarified in a manner that both protects civil liberties and permits effective law enforcement. The Commission supports encryption as a means of ensuring citizen privacy, as long as it is implemented in a manner that permits law enforcement officials, under court supervision, to pursue legitimate investigations.

PERSPECTIVE ON THE RESPONSE TO GLOBAL CRIME

The Commission believes that Federal law enforcement is at a very early stage in the development of its responses to global crime. The Commission sees both the globalization of crime and the internationalization of Federal law enforcement on a level that is without historic precedent. International crime (in its various manifestations) has been declared a national security threat, which is in marked contrast to the period from 1948 to 1990 when threats to national security were mutually assured destruction and ideological in nature.

Since 1995, five major Presidential Decision Directives (PDD) have been issued:

- PPD 14 (1995), which authorized and emphasized drug enforcement program operation in source countries;
- PDD 39 (1995), which called for the development of terrorism response procedures;

- PDD 42 (1995), which focused on the need for coordinated responses to international crime;
- PDD 62 (1998), which called for a systematic approach to the threat of unconventional attacks and the fight against terrorism; and
- PDD 63 (1998), which focused on the need to protect the physical- and cyber-infrastructure of the United States.

These directives have led to the formulation of new plans, strategies, and coordination efforts, some of which have already been noted in this report. International crime has presented additional demands on the Federal law enforcement structure and its relationship with other entities. In 1995, for instance, the State Department's Bureau for International Narcotics and Law Enforcement Affairs (INL) adopted a dual function as a policy and as an assistance agency on drug control and funding of international programs. As more Federal agencies become internationally oriented, the State Department has an expanded role in coordinating law enforcement activities and ensuring policy coherence. Federal law enforcement cannot undertake a unilateral fight against international crime. It is essential that the United States assume its proper leadership role, inviting other interested nations to join and support the effort.

Moreover, response planning to terrorism is no longer just a matter of investigating an incident. Federal law enforcement is part of a larger team involving the State Department, the Federal Emergency Management Administration (FEMA), the Department of Defense, and State and local governments. New configurations for Federal law enforcement's use of sanitized intelligence information have been developed in an attempt to maximize information flow between law enforcement and the intelligence community. FBI plans for a super Information Sharing Initiative (ISI) have been developed but are encountering obstacles in the Congress.

As observed by the Commission, directives and strategies are not synonymous with full-scale implementation. Despite a major global crime pronouncement by the President at the United Nations in 1995, issuance of PDD 42, white papers, and a White House International Crime Control Strategy (1998), the International Crime Control Act of 1996 was presented to Congress again in 1998 where it remains in





Committee. As noted above, initiatives on cybercrime and countermeasures have been met with opposition by Congress, industry, and privacy groups. In perhaps one of the longest fights, the “war on drugs,” from the 1960s to the present, goes on. Billions of dollars and a variety of implementation and coordinating strategies have produced success stories in the fight against narcotics. Still, it is also accurate to say that narco-terrorism and trafficking have become institutionalized in foreign government structures, threaten their internal stability, and, as a result, pose an even greater national security threat to other nations, including the United States.

Full-scale implementation of international crime-fighting strategies is also a function of the budgetary process. Without the required funding, pronouncements, directives, and planning and strategies remain aspirations, not law enforcement programs. The costs are enormous. The Budget for Fiscal Year 2000 proposes some \$26 billion to control crime. More than 40 percent of the crime budget is directed to emerging criminal threats:

- More than \$8 billion for combating terrorism and weapons of mass destruction;
- Almost \$2 billion for fighting international crime, and;
- More than \$1 billion for critical infrastructure protection and cyber crime.⁸⁷

The fight against international crime in the 21st century was “born” in the 1990s. It is still in its infancy.

CONCLUSIONS

Based on its review, the Commission concludes that:

- **Transnational crime presents extraordinary new challenges to law enforcement at all levels.** The problem of confronting transnational crime is not a lack of laws at the Federal level, but rather the explosive growth in global crime and the lack of focus on attacking global crime as a national priority. Implementing the Administration’s International Crime Control Strategy policy commitment to improve coordination among Federal, State, and local agencies to deal with global crime is urgently needed.

- **Narcotics trafficking is a breeding ground for international crime and terror and has the potential to destabilize U.S. allies and destroy American communities.** Despite a record number of seizures and a flood of legislation, the Commission is not aware of any evidence that the flow of narcotics into the United States has been reduced. The Nation needs a well-funded, comprehensive approach to drug trafficking that coordinates effectively the efforts of Federal, State, and local law enforcement agencies. The fight against drugs must be as sophisticated as the cartels that control narcotics and should incorporate both demand (domestic) and supply (international) policies and actions.
- **Federal law enforcement is inadequately prepared to deal with these new challenges.** In many cases, Federal law enforcement agencies are waging a war against the criminality of the 1980s, not the year 2000. In too many cases, Federal law enforcement agencies lack the research and knowledge they need to proceed and are hampered in their efforts by out-of-date information systems and technologies.
- **The Government is struggling with how to respond to the challenges of cybersecurity and cyberprivacy.** Confusion about Government policy with regard to cybersecurity is widespread and evolving policy is ambiguous. At the same time, the Government has found it difficult to decide how to preserve privacy while providing the tools to combat cybercrime.

These are important issues that the Commission addresses in its recommendations in Chapter Seven.



CHAPTER FIVE. FEDERALIZATION OF CRIME

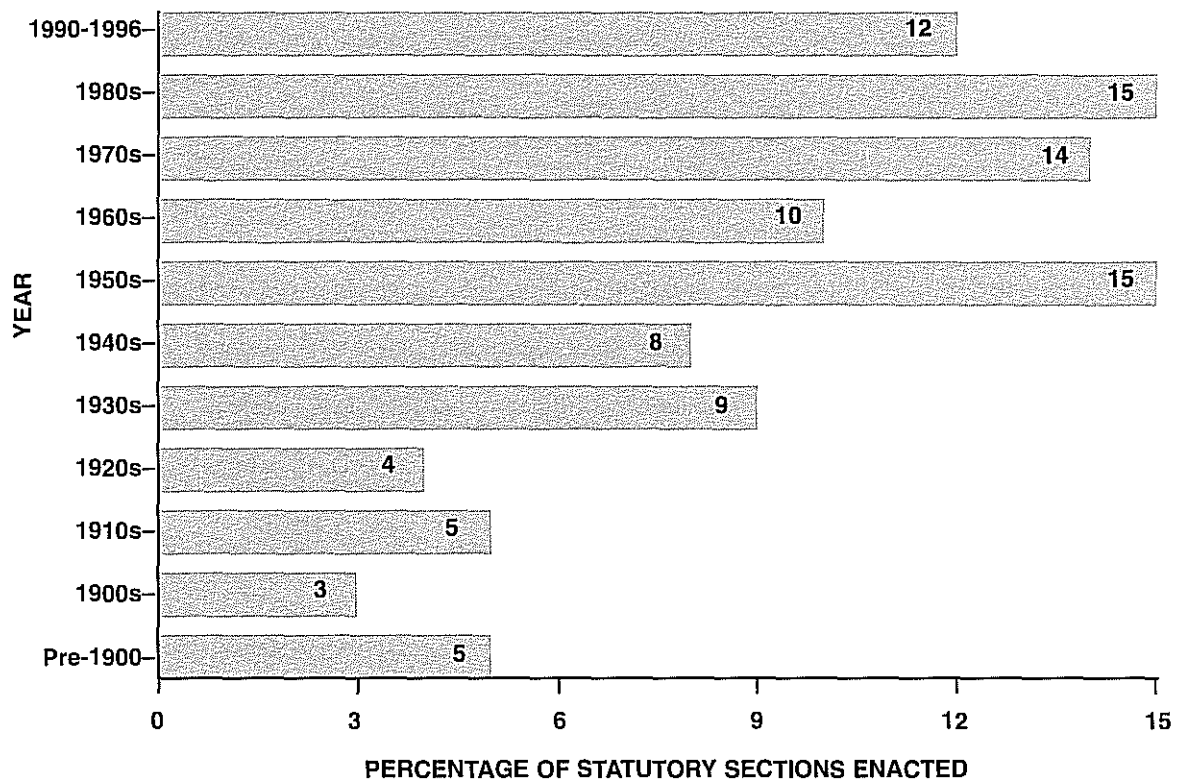
There has been a startling growth in the number of Federal crimes over the years. It is estimated that fewer than a dozen crimes were considered to be Federal offenses as the embryonic Republic was launched; today, more than 3,000 Federal offenses are thought to be on the books.⁸⁸ Perhaps what is most surprising is that more than 40 percent of crimes specified as “Federal” since the Civil War were designated as such in the past quarter century.

In reviewing the history of the federalization of crime in America, it is quite apparent that a growing Federal presence in law enforcement accompanied practically every significant era of social change in the United States. The constitutional challenges posed by the attempted secession of the South from the Union as one cause of the Civil War led Congress to expand the duties of the Attorney General. U.S. Marshals helped not only to police the West after the Civil War, but also to enforce the constitutional amendments outlawing slavery and granting voting rights to emancipated slaves.⁸⁹ Immigration challenges of the late 19th century called for expanded authority for customs and immigration officials. Isolationism accompanying the U.S. experience in World War I and reactions to the Bolshevik Revolution in Russia led to the “Red Scare.” A similar pattern of anxiety about the Soviet Union, accompanied by worry about the loyalty of Federal employees, led to a crackdown on spying after World War II. The growth of crime and illegality in the Prohibition era that followed enactment of the Volstead Act created an entire panoply of new Federal offenses—a phenomenon repeated in almost identical steps in the 1970s, 1980s, and 1990s as public concern about violent crime against individuals, and alarm about narcotics and the distribution systems established to supply them, have grown.

Tracking the growth in Federal enactments decade by decade demonstrates dramatically the appetite of lawmakers in the 20th century to federalize common



Figure 5. Percentage of Federal Statutory Sections Enacted, by Decade



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LAW ENFORCEMENT IN A NEW CENTURY AND A CHANGING WORLD

Source: Task Force on the Federalization of Criminal Law (1998), *The Federalization of Criminal Law: Defending Liberty, Pursuing Justice*, Washington, D.C.: American Bar Association, p. 9.

crime. As Figure 5 shows, fewer than 5 percent of the statutory sections on the books as of 1996 had been enacted prior to 1900. But in this century, two great surges of lawmaking, from 1930 to 1959 and from 1970 to 1996, have expanded the United States Code (and the agencies required to enforce it) to the breaking point. There are even “statutes behind the statutes” in the sense that large numbers of sanctions are dispersed in places outside the criminal code. According to the American Bar Association study, many nonstatutory sanctions are located in rules of court and thousands of administrative regulations promulgated, with congressional approval, by various Government agencies. The result, says the ABA: “So large is the present body of Federal criminal law that there is no conveniently accessible, complete list of Federal crimes.”⁹⁰

A former Attorney General of the United States, Richard Thornburgh, told the Committee on the Judiciary of the House of Representatives in 1995 that, “[T]he

traditional scope of jurisdiction has recently been expended to create Federal crimes involving, for example, carjacking, deadbeat dads, and certain types of domestic violence....Thus, the mission of Federal law enforcement officials is increasingly intertwined with that of their State and local counterparts.”⁹¹

In a presentation made to the Commission during the course of its hearings, Hubert Williams—former chief of police in Newark and now president of the non-profit research and technical assistance agency, The Police Foundation, confirmed Attorney General Thornburgh’s complaint. Chief Williams noted that there is hardly a crime, no matter how local in nature, that is beyond the reach of Federal criminal jurisdiction. Chief Williams said:⁹²

Federal crimes now range from serious, but purely local, crime—like carjacking and drug dealing—to trivial crimes, like disrupting a rodeo.⁹³ The 1994 crime bill alone created two dozen new Federal crimes, federalizing such crimes as drive-by shootings, possession of handguns near a school, possession of a hand gun by a juvenile, embezzlement from an insurance company, theft of a major art work, and murder of a State official assisting Federal law enforcement agencies. Although many of these crimes pose a real threat to public safety, they are already outlawed by the States and need not be duplicated in the Federal Criminal Code.

In sum, many crimes formerly considered to be the exclusive domain of State and local officials and their courts, investigators, and prosecutors—common crime, and aspects of arson, burglary, robbery, fraud, and crimes against individuals such as murder, rape, and even domestic violence—have now been superseded by Federal statutes, which of necessity have to be enforced by agencies of the Federal Government and its courts, investigators, and prosecutors.

The Commission wants to point out that the ramifications of this issue extend far beyond management, administration, agency preferences, and the like. They go to the heart of the administration of justice in the United States and the public’s confidence in our judicial system. As the recent ABA report noted, the federalization of crime challenges the Nation’s basic constitutional framework. It also adds huge practical





burdens to Federal courts and Federal law enforcement agencies, burdens that distract Federal law enforcement from very serious national and transnational criminal activity and may even bring criminal justice enforcement into disrepute.

The innate distrust of Americans of the idea that broad police powers should be entrusted to a national police force (as distinguished from local and specialized police agencies) argues against continued federalization of criminal activity, because each expansion of jurisdiction bestows new powers on Federal agencies. Although there are clearly appropriate areas of Federal jurisdiction, *ad hoc* Federal “incrementalism” is no way to make policy in this area, where both historic precedent and present-day common sense hold that police authority should lie primarily with State and local authorities, not the Federal Government.

Moreover, the Supreme Court has recently reminded Congress that the Constitution withheld from Congress “plenary police power that would authorize enactment of every type of legislation” (*United States v. Lopez*, 1995) and that both States and the Federal Government have distinct political capacities, each entitled to be “protected from incursion by the other” (*Printz v. United States*, 1997).

Wasted Effort

What is perhaps most surprising about all of this is that these efforts to “make a Federal case” out of common crime are largely wasted. The ABA analysis makes it clear that defining crimes as Federal has had little effect on violent crime because, in practice, Federal law enforcement efforts reach only a small percentage of such activities.

The key point to bear in mind here is that of all the prosecutions in the United States, the Federal Government is responsible for only 5 percent of them. State and local prosecutors bring 95 percent of all cases in the United States. Against that backdrop, asking Federal law enforcement agencies and prosecutors to assume larger and larger areas of responsibility flies in the face of the reality of which levels of Government are most involved in prosecuting common crime, violent or not. The ABA analysis also indicates that even the most frequently prosecuted Federal offense

(domestic drug trafficking), which accounted for 28 percent of all Federal filings in fiscal 1997, represented less than 2 percent of all prosecutions in the Nation. Drug caseloads account for one-third of the Federal caseload, yet of the million-plus drug arrests in the Nation, only about 1.5 percent are federally prosecuted.

Limited resources of investigative personnel, Federal prosecutors, and even courtrooms circumscribe how far a “federalization” strategy can go. Federal criminal law and resources can reach only a small number of local crimes at any given time. National lawmakers must ask themselves what they want to accomplish. Do they prefer to arrest and prosecute petty criminals selling drugs on the street? Or do they want to put large-scale drug distribution rings out of business? Do they want to arrest and prosecute every minor who comes into possession of a handgun? Or do they want rigorous enforcement of existing laws to ensure incarceration of criminals of all stripes (including minors) who use, carry, or discharge a firearm in the commission of a crime?

Both Congress and the President must come to terms with how to make policy that governs what crimes are designated as Federal. They must do so in the face of what this Commission considers to be a predisposition to enacting a statute for almost every conceivable criminal activity that disturbs the peace of an important constituency.

Practical Burdens

The day-to-day practical effects of the expansion of Federal jurisdiction also deserve attention. Simply in terms of applicable statutes, there has been a 40 percent increase in criminal activity requiring the attention of law enforcement officers, prosecutors, and courts since 1970. Accompanying this expansion, there may well have been a diminution in State and local authority.

At the same time, the potential strain on the Nation’s fabric occasioned by ever-increasing concentration of law enforcement power in national hands is compounded by the disturbing reality that Federal law enforcement’s ability to respond to genuine national problems such as terrorism, transnational crime, and cybercrime may be compromised. There are only so many hours in the day and, despite impressively





large budgets, Federal agencies can only do so much. Expanding areas of appropriate domestic Federal jurisdiction inevitably compromises the pursuit of other important agency purposes.

The Commission also believes that federalization of crime offers at least a possibility of bringing the criminal justice system into disrepute. Just as members of President Hoover's Wickersham Commission worried that the unenforceability of the Volstead Act during Prohibition in the 1920s led to declining confidence in law enforcement,⁹⁴ we might easily find that unenforced, or selectively enforced, Federal statutes in the year 2000 and beyond have the same effect.

Equally troubling is the possibility that federalization threatens the concept of "double jeopardy" in a very real, but not unconstitutional, manner. According to the ABA, Federal courts have consistently held that if the same conduct "offends two separate sovereigns—the individual State and the Federal Government" they are not the "same offense" for constitutional purposes and, hence, two trials do not constitute double jeopardy.⁹⁵ Despite the subtlety and importance of that distinction, it is likely that its widespread application could strike many Americans as unfair.

In addition, because prosecutors must inevitably select among the cases they will bring to trial, the existence of dual-track systems of justice means that citizens prosecuted in Federal court are subject to a set of sentences and consequences much different from those they face in State and local courts. In particular, the sentences for time to be served for Federal sentences in areas such as drug trafficking, drug possession, auto theft, burglary, aggravated assault, and robbery are all appreciably more severe than corresponding sentences in State courts.⁹⁶ It is noteworthy that in each of these areas, the Commission's survey indicates that the public believes State and local courts are better qualified to judge these matters than are Federal courts.

The Commission finds the ABA's conclusions with regard to dual-track justice compelling. Noting that the power to prosecute and punish citizens is among the most awesome of Government's powers, the ABA report concluded:⁹⁷

A dual system that affords the opportunity to prosecute essentially the same conduct as a Federal crime rather than a State crime, with starkly differing

consequences, should be as rational and principled as possible, and cogent reasons should justify Federal criminalization.

Although many Federal enactments rise to that standard, too many are justified more by emotion, political calculation, and the desire to do something and claim authority than they are by careful examination of the issues at stake and the best way of resolving them.

In the Commission's judgment, this long-term phenomenon has accelerated too rapidly in recent years. It seems apparent that the situation has come to the point that federalization of crime threatens to overwhelm Federal law enforcement capacities just as dramatic and serious new law enforcement challenges grow in intensity.

The Executive Branch and Congress continue to redefine what constitutes a Federal crime, and how law enforcement agencies are to pursue their missions. Clearly, Federal agencies do not possess the authority to define the appropriate scope of their jurisdiction or choose the methods by which they will pursue their missions, but they remain important in the policy determination process.

The fact is that Congress, the President, and, to a lesser extent, Cabinet officials establish agency missions (and often procedures) by developing and enacting statutes and promulgating regulations that require Federal enforcement. No one argues with that proposition when it involves matters of an interstate or transnational character. But the Commerce Clause of the Constitution and concern for civil rights can be used to justify Federal jurisdiction over practically any crime in a modern society. So the record is replete with examples of new expansions of Federal jurisdiction to incorporate drive-by shootings, possession of handguns near schools, possession of handguns by juveniles, murder of State officials assisting Federal law enforcement agencies, domestic violence and attacks on abortion clinics, and hate crimes of all sorts.

Each of these is a serious matter. Most of them pose real threats to public safety or the safety of individuals. Some of them are heinous. But most of these crimes have been federalized with very little rational consideration of the fact that they are already outlawed in State codes and may not need to be duplicated in the Federal Criminal Code. Of immediate concern, with regard to the enforcement of Federal





laws, all of them have been enacted with no consideration of any kind to their effect on the efficient administration of justice.

Urgently needed, in the Commission's estimation, are procedures requiring presidential and congressional consideration of the impact on the law enforcement system of existing statutes and the likely results of creating new categories of Federal crime. The consequences of congressional micromanagement of agency functions also requires attention.

CONCLUSIONS

Based on its review, the Commission concludes that:

- **Congress and the President are in danger of federalizing common crimes.** The enumeration of Federal crimes has grown from about a dozen in the 18th century to more than 3,000 today. Forty percent of Federal crimes have been put on the books since 1970. These crimes now range from the heinous (treason and terrorism) to offenses clearly of interest to State jurisdictions.⁹⁸ Steps to encourage greater consideration of the impact of federalizing crime are urgently needed.
- **Federalization of crime threatens effective law enforcement.** The federalization of crime challenges the Nation's constitutional framework, creates enormous practical burdens for Federal courts and Federal law enforcement agencies, distracts Federal law enforcement agencies from more serious criminal activity involving national interests, and may even bring the system of criminal justice into disrepute.
- **The Federal Criminal Code (Title 18) has become too complex.** Nearly 200 years of additions and revisions to the Federal Criminal Code have created an unwieldy and complex body of law. The Congress needs to identify overlap and duplication in the United States Criminal Code, weed out inconsistencies, and prune away unnecessary accretions.

These concerns are addressed in the Commission's recommendations in Chapter Seven.

CHAPTER SIX. PROFESSIONALISM, INTEGRITY, AND ACCOUNTABILITY

In the Commission's view, one of the most significant statements it received during its hearings was offered by FBI Director Freeh. Director Freeh pointed out that, in the changing world of law enforcement, national and local:⁹⁹

[I]t's very important that we maintain what we call our FBI core values—that we are careful in a changing world, in a changing field of responsibilities, that we maintain the core values of the FBI with respect to integrity and honesty, trustworthiness and fairness, and responsible use of our powers, which are quite significant.

As the Commission's survey indicated, the general public is alert to any indications of misconduct, corruption, or abuse of power on the part of law enforcement personnel or public officials. The entire span of issues contained in the phrase, "integrity and professionalism," is a serious law enforcement matter because so much of the public's confidence rests on that span.

As the world and the world of law enforcement face a cauldron of change, issues of law enforcement professionalism and integrity are more important than ever. Different agencies have different histories, origins, and cultures. Some, such as the FBI, are national, focused exclusively on law enforcement, and are known for breaking new ground in the profession and science of law enforcement. Others, such as ATF, starting out regional, are responsible for both regulatory and law enforcement functions.

In ATF and many smaller law enforcement agencies, law enforcement must compete with, and is sometimes secondary to, regulatory functions and even routine patrol and security work. "Enforcement" in the Department of Justice flows from the





singular mission of the Attorney General. Small, fragmented, regulatory responsibilities in the Department of Justice bear little influence on the Department's major law enforcement function. In other agencies, by contrast, "enforcement" work, however essential it is, is frequently collateral to the pursuit of other agency missions and goals.

The Commission came to regard the policy dimensions of enhancing professionalism and integrity in four parts: encouraging uniformity and compatibility in standards and procedures; ensuring that selection, training, education, and other human resource management issues are properly advanced and maintained; encouraging independent accountability procedures for agency performance; and providing access to the technologies required for professional performance in a new century. The Commission senses that problems exist in all four areas, a conclusion that will surprise none of the agencies that appeared before the Commission because they provided similar assessments themselves. In addition, the Commission received testimony to the effect that employees in different agencies are subject to different pay schedules and promotion policies, despite similar backgrounds, education, experience, and duties.

COMPATIBLE STANDARDS AND PROCEDURES

In a number of areas, significant progress has recently been made in ensuring some measure of uniformity and compatibility between standards and procedures from one agency to the next. Nonetheless, much remains to be done.

The Commission believes that policy regarding use of force, generally, and use of deadly force, specifically, must be so clear that law enforcement personnel in the field can harbor no doubts of any kind about when, where, and under what circumstances they are justified in using force against members of the public, or the taking of human life.

On October 17, 1995, the Department of Justice and Department of the Treasury issued standardized policies governing the use of deadly force by all law enforcement agencies in their respective departments. The Commission applauds the Department

of Justice's Office of Investigative Agency Policies (OIAP) for leading the development of this policy, which now governs about 90 percent of all Federal agents.¹⁰⁰

In fact, the Commission's survey indicated that most agencies have policies in effect governing use of force and use of deadly force.¹⁰¹ With respect to force, agencies usually adhere to requirements for the use of minimal force necessary to effect and maintain order, protect life, and ensure that arrests can be made safely. In addition, all 14 respondents subscribed to a general sense that officers "may use deadly force only when necessary, that is, when the officer has reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person."¹⁰²

A comparison of actual policies reveals differences, however, in details, content, guidance, and slight variation in the policies themselves. For example, Treasury Order 105-12 (Policy on the Use of Force) discusses the differences and provides policy guidance on the nuances of "imminent," "instantaneous," and "immediate" danger to a Treasury law enforcement officer. Treasury's order contains seven pages of policy and guidance. On the other hand, the Department of the Interior's *Departmental Manual* contains a much shorter policy statement consisting of three pages and does not contain any guidance about "immediate and instantaneous" danger to an officer. It is not self-evident that seven pages are necessarily any better than three; the Commission's point is that, in these two departments, common guidance on something as fundamental as the use of deadly force does not exist.

Differences also exist regarding the clarity with which different agencies describe the intended result of the application of deadly force. Policy at the Federal Law Enforcement Training Center (FLETC), where Treasury and other law enforcement officers receive training, is open to interpretation. FLETC policy states: "Firing a weapon should be with the intent of rendering the person at whom the weapon is discharged incapable of continuing the activity prompting the agent or police officer to shoot." It is unclear whether that intended result contemplates disabling or killing a suspect.





Treasury policy is more explicit. It states that “Deadly force is the use of any force that is likely to cause death or serious physical injury.” Treasury policy later makes it clear that shooting to wound or disable is not recommended: “Attempts to shoot to wound or to injure are unrealistic and, because of high miss rates and poor stopping effectiveness, can prove dangerous for the officer and others. Therefore, shooting merely to disable is strongly discouraged.” FBI documents for the same time period (1995-96) are similar to those of Treasury.

The firing of warning shots is normally prohibited because they pose a hazard to innocent people. Warning shots are proscribed in the policies of the FLETC, Justice (FBI), and the Department of the Interior. The use of warning shots is also forbidden in the Department of the Treasury, except in Secret Service protective missions and for Customs Service officials in open waters.

Popular culture and film images to the contrary, firing on moving vehicles (or at the operators of moving vehicles) is normally discouraged, but language in different agencies is open to interpretation. FLETC policy frowns on such actions, urging “utmost caution...when considering such action.” Policy at the Departments of the Interior and Justice (FBI) states that weapons may not be fired solely to disable a moving vehicle. Treasury policy states that: “Treasury law enforcement officers, in exercising the U.S. Secret Service’s protective responsibilities, may fire weapons solely to disable moving vehicles....” With regard to firing at vehicle operators, although FLETC training policy discourages such actions, policy at the Departments of the Interior, the Treasury, and Justice (FBI) states that weapons may be fired at the driver (or other occupant) under certain circumstances.

These differences may be related to distinct agency histories in the development of policy on the use of deadly force and variations between agencies in training protocols. For example, the FLETC policy made available to the Commission dates back to 1985 and draws on a 1973 policy document. In the Departments of the Interior and the Treasury, officers are required to undergo Basic Criminal Investigator training at FLETC prior to being authorized to carry or use a firearm. By contrast, FBI agents are trained at the FBI Academy. Since at least 1966, the Academy has

used a multistage approach to training with respect to deadly force: classroom instruction on policy and policy interpretation; classroom instruction using written scenarios to show how the policy applies to various situations; practical field exercises using paint or firing blank weapons; and mandated annual training.

The Commission's concern about policy on the use of deadly force is that standardizing policy across agencies does not mean uniformly written statements of policy. As a result, the policy documents are different and interpretations of them can also be different. Furthermore, the Commission believes the quality of training can vary depending on where the training takes place and whether continuing training specifically mandates revisiting the question of use of deadly force, rather than simply requalifying to use a firearm.

The danger of lack of clarity in policy in this whole area is perhaps best illustrated by FBI Director Freeh's testimony in 1995 regarding Ruby Ridge. Mr. Freeh stated that the "rules of engagement...were reasonably subject to interpretation that would permit a violation of FBI policy and the Constitution." Director Freeh went on to say that "SWAT personnel on-scene interpreted the rules as a 'shoot-on-sight' policy—which they knew was inconsistent with the FBI's deadly force policy." He declared that, "Never again will rules of engagement be open to an interpretation [that] expands the deadly force policy [of the Department of Justice]." ¹⁰³

This Commission understands the difficulty of developing coherent and standardized policy that is applicable to highly fluid and volatile situations. In these situations, policy and training cannot totally substitute for human judgment. Nonetheless, in a grave area such as the use of deadly force, policy and training should be as precise and uniform as possible for all Federal law enforcement officers.

The Commission's views about policies on the use of deadly force are:

1. A policy that governs 90 percent of law enforcement is commendable. A policy that covers 100 percent should be mandatory.
2. Examples of standard manuals and guidelines exist in the Federal Government. One can go to the Internet and see that the GSA maintains one standard set of travel regulations. The OPM has one set of generic job descrip-





tions for all types of Federal employees. For example, outside of Federal law enforcement in the sports world, the NFL rules are the same regardless of the field on which an NFL-sanctioned game is played. Nevertheless, one cannot go to the Internet or to a bookstore and find one standard book or manual on the use of deadly force that governs all Federal law enforcement agencies.

3. Any degree of difference among deadly force training curricula, in the competency of instructors, or in didactic methods is not acceptable on such a serious topic that affects the safety of officers and the application of deadly force policy.

On a number of other issues, it is clear that neither OIAP nor any other agency of Government has been able to develop, promulgate, and enforce uniform and compatible policies. On a remarkably wide variety of topics—how informants are treated and handled, the use of vests and other protective equipment, appropriate procedures for interrogation, training and internal professional development, preservation of crime scenes and evidence, forensics procedures, and standardized training protocols and follow-up on training—agency policy and procedures may vary dramatically. One experienced local police officer complained to the Commission that procedures for sharing information with local police agencies differs from agency to agency, in large part because, “each Federal agency classifies data differently... This could be easily remedied and updated by creating a multiagency examination of the kinds of data that must be restricted, and those that can easily be shared.”¹⁰⁴

Each of these topics represents, in the Commission’s judgment, an area ripe for advancing professionalism and integrity in Federal law enforcement.

HUMAN RESOURCES

Equally troubling to the Commission is what seem to be haphazard training and human resources policies within many Federal law enforcement agencies. This situation surprised the Commission because the Federal Government generally has a good reputation, well-earned, for the uniformity of its procedures and the amount and quality of training it provides to public employees. In Federal law enforcement, that

reputation may be equally valid in terms of general personnel issues and routine procedures, but it cannot be applied to the processes of law enforcement.

On the most basic issue imaginable—the existence of manuals and similar literature describing agency procedures—very diverse answers were received from the 14 law enforcement agencies surveyed by the Commission. The survey asked respondents to “provide a copy of your agency’s enforcement manuals or similar literature and data on Special Operations groups, if applicable.”

In response, the Commission learned that such manuals apparently do not exist in three agencies (the United States Forest Service, the Bureau of Indian Affairs, and the U.S. Secret Service). Two agencies reported that the manuals were available on request—but did not provide them in response to a clear request (National Parks Service and National Park Rangers); and one agency offered a confusing reply, reporting that the information was classified, but apparently available on request (United States Park Police).

In addition, the Federal Bureau of Prisons reported that its *Correctional Services Manual* is a “restricted” document and may not be reproduced; and the Bureau of Alcohol, Tobacco, and Firearms “redacted” sensitive information from some of the *Orders and Briefs* it provided the Commission and promised to provide a “redacted” version of the handbooks it was in the process of developing, as soon as they were finalized.

The Commission is disturbed by the fact that so many agencies had trouble with this straightforward request. For most agencies, manuals either did not exist or they were classified. The Commission believes that such manuals are essential to carrying out agency philosophy, mission, and programs. They should exist; in most cases, they should be clear and detailed guides to training and procedure; and, with other specific exceptions, based on adverse effects on an agency’s enforcement activities, they should, in a democratic society, be available to the public.

Each of the 14 law enforcement agencies in the Commission’s survey noted the importance of training in maintaining and improving the professionalism of Federal law enforcement. Most argued that expanding and improving training were the most





important components in improving professionalism, pointing to the need for additional resources, better managerial and leadership training, and improvements in procedures for recruiting, hiring, retaining, and promoting personnel. One agency (Immigration and Naturalization Service) has instituted a “competency-based” promotion system. Another, the Customs Service, has instituted a “360-degree” personnel assessment system (a technique borrowed from the private sector where everyone around the employee, including supervisors, subordinates, and colleagues, contributes to the assessment).

And yet, although the importance of training is universally acknowledged, the concept is universally violated the minute budgets are reduced. The temptation to support current services and operations at the expense of long-term investment in the human resources of law enforcement is for all intents and purposes irresistible.

INDEPENDENT ACCOUNTABILITY

The Commission notes that external accountability for Federal law enforcement agencies is, for the most part, notable by its absence.

Among the most sensitive issues in law enforcement at any level, in practically every society, are the procedures, policies, and actions of specific departments and officers.¹⁰⁵ The idea of independent scrutiny of law enforcement operations raises agency anxieties. Officers are human beings; they are forced to deal with ugly, frequently violent and brutalizing situations that most of the rest of society prefers to avoid; no matter how professional or well-trained, they will make mistakes; and their colleagues who work with them on a daily basis will be inclined to protect them from the consequences of their mistakes—fearing that perhaps some day the favor may need to be returned. Most Federal law enforcement agencies choose to investigate allegations of personnel misconduct internally. Complaints are generally assigned to a special unit (Internal Affairs, Office of Inspector General, or an Office of Professional Responsibility), normally separate from line agency responsibilities.

Other procedures for encouraging agency accountability are possible and advocates of these approaches discussed their merits with the Commission. One witness

suggested four different models for the Commission's consideration, all developed and implemented at the local level, at least on a pilot basis in recent years:¹⁰⁶ a civilian review agency to receive and look into complaints; an auditor to review the performance of internal affairs offices; community outreach in an attempt to explain law enforcement and the complaint process and to listen to community concerns; and quality assurance in the complaint investigation process itself. Other witnesses encouraged the development of community policing,¹⁰⁷ the establishment of permanent, independent, oversight bodies, external to each agency, to prevent law enforcement abuse,¹⁰⁸ and efforts to ensure that each Office of Inspector General is insulated from favoritism.¹⁰⁹

Several witnesses recommended to the Commission that it look favorably on accreditation through the Commission on Accreditation of Law Enforcement Agencies as a means of ensuring external accountability.¹¹⁰ Accreditation is a process of self-study and peer-review around some 436 standards developed around agency missions and mandates. Some 500 law enforcement agencies in the United States have been accredited since the program began in 1979. To the Commission's knowledge, the only Federal agencies actively pursuing external validation of their procedures are the United States Marshals Service and the United States Capitol Police, which are seeking accreditation.

Professionalism and Technology

Testimony from witnesses before the Commission and other information received by the Commission presented a mixed picture in regard to the technological sophistication of Federal law enforcement agencies. Some have clearly kept pace with developments and maintain state-of-the-art information technology and communications systems. Others lag seriously behind. In those agencies lagging behind, professional performance by employees can be seriously hampered by lack of access to the latest computers and communications equipment and technologies.

Recent advances in DNA technology are enabling law enforcement officers to solve cases previously thought to be unsolvable. To explore the extent to which this





technology is being applied nationally, Attorney General Reno commissioned the National Commission on the Future of DNA Evidence. The Commission has determined that for the full potential of DNA technology as a crime-fighting tool to be realized, law enforcement officers must be educated and trained to properly identify, document, collect, and preserve evidence that can be potentially subjected to forensic DNA analysis. To maximize the significance of this evidence to the criminal justice system, all law enforcement agencies, including those at the Federal level, should modernize education and training curricula to reflect the recent technological advances in DNA technology.

Technology is essential to combating terrorism and cybercrimes, both domestic and international. It is essential to the timely sharing of information at the operational level. The Federal law enforcement officer of the 21st century will require the best and most up-do-date technology available.

CONCLUSION

Based on its review, the Commission concludes that:

- **Federal law enforcement procedures, policies, and practices can be standardized to a greater degree.** It is imperative that the Government develop standardized procedures and operations in areas such as: classification and use of data; training; surveillance of citizens and issues of privacy; forensic laboratory management; and rules of engagement and the use of deadly force. Lack of standardization compromises effective law enforcement.
- **Policy and practice with regard to the use of deadly force should be standardized.** All Federal law enforcement policies on the use of deadly force should be stated in precisely the same words and interpreted in a consistent manner unless the agency's mission clearly supports variation. Each agency should provide the same content and guidance, with limited variations for unique agency missions (e.g., warning shots over open waters).
- **Personnel systems and scope of employment issues require careful attention.** The Commission received testimony to the effect that employees

in different agencies are subject to different pay schedules and promotion policies, despite similar backgrounds, education, experience, and duties. To the extent this situation exists, it requires urgent attention because it is likely to have significant implications for morale across agencies.

- **Public confidence in Federal law enforcement can be enhanced by appropriate external review.** Preserving agency integrity and professionalism requires constant vigilance. The Commission judges that external review is too often haphazard, frequently put in place after-the-fact, rather than before. Program accountability and personnel integrity and professionalism can only be strengthened by greater engagement with the larger public and a clear commitment to review procedures that are fair and firm and consistently applied.
- **Training has not received the long-term commitment required.** Although it is generally accepted that law enforcement training should be a high priority at the Federal level, there is no formal policy to ensure that adequate budget and personnel resources are devoted to it. Effective strategies for sharing experiences among agencies on training matters, or for establishing minimum standards for officer training, have yet to be developed.
- **Support for computers and the latest information technologies is inconsistent across Federal agencies.** Although some Federal law enforcement agencies can point to state-of-the-art technologies and equipment, others are laboring with equipment and methodologies that were out-of-date a decade ago.

The Commission's recommendations in these and other areas follow.



CHAPTER SEVEN. RECOMMENDATIONS

As the United States moves toward a new century, it faces law enforcement challenges unlike any it has faced in the recent past. We face global possibilities for terrorism and transnational crime that, for the first time, make it possible for individuals to wield the kind of destructive power once reserved for sovereign nations. The growth of Federal law enforcement agencies in the past 50 years, accompanied by the truly astonishing rate of increase in crimes deemed to be Federal offenses, is unprecedented in our Nation's history and strains a poorly coordinated system. Finally, the Commission's survey of public attitudes and the evidence it received during its exhaustive hearings demonstrate fairly conclusively that public anxiety about professionalism and the need for integrity in Federal law enforcement must be respected, taken up, and addressed.

The picture is not entirely pessimistic. As the Federal law enforcement community in the Executive Branch and Congress moves forward on the agenda we have defined, its members will find many positive features on which to build. Elected officials and the American people enjoy an unusual opportunity to retool the Federal law enforcement enterprise, confident in the knowledge that no other superpower stands in the wings capable of serious long-term disruptions to the Nation's well-being.

Beyond that, as we noted at the outset, the generally positive public attitude toward the American system of justice and major Federal law enforcement agencies is an asset of considerable value. Citizens hold the major Federal agencies in high esteem. Moreover, the public appears to grasp reasonably well the strengths and weaknesses of the large and complex Federal law enforcement machinery. The American people have a powerful, common-sense understanding of what the Federal Government is capable of doing and what is best left to State and local law enforce-



ment officials. Perhaps most encouraging, the public understands the significance of professionalism and integrity in Federal law enforcement operations and is likely to have the patience to support needed change. This Commission believes these public attitudes will serve the Federal law enforcement community well as it moves into a new century.

To deal with the challenges defined in this report, this Commission makes five major recommendations:

- Make it clear that the Attorney General has broad coordinating authority for Federal law enforcement and for minimizing overlap and duplication;
- Provide the intelligence and information needed to combat terrorism;
- Make global crime a national law enforcement priority;
- Reverse the trend toward federalization; and
- Focus on professionalism, integrity, and accountability.



I. Make it clear that the Attorney General has broad coordinating authority for Federal law enforcement and for minimizing overlap and duplication.

WE RECOMMEND that the President and Congress improve the administration of Federal law enforcement and its effectiveness by making it clear that the Attorney General has broad authority for oversight and coordination and by minimizing overlap and duplication of agency functions.

Implementing Recommendations

- A. Strengthen Executive Order No. 11396, updating it through presidential or congressional action if necessary, to reflect new global and national realities. Executive Order No. 11396 should be reissued to ensure that the Attorney General becomes the focal point of Federal law enforcement.

The revised Executive Order should incorporate broad coordinating authority for the Attorney General that the Director of Central Intelligence possesses with regard to intelligence matters under Executive Order No. 12333. The revised Executive Order No. 11396 should provide the Attorney General with explicit authority to:

- Act as the primary advisor to the President on law enforcement matters;
- Develop and implement objectives and guidance for the law enforcement community;
- Promote and ensure the development and maintenance of services of common concern to Federal law enforcement agencies;
- Formulate and implement policies and procedures regarding law enforcement;
- Ensure that the law enforcement community establishes common security and access standards for managing and handling data and intelligence;
- Ensure that programs are developed to protect information, sources, informants, methods, and analytical procedures;
- Establish appropriate staffs, committees, and other advisory groups to assist in the execution of the responsibilities of the Attorney General;
- Monitor agency performance and, as necessary, conduct program and performance audits;
- Provide for policies to ensure uniform procedures for responding to citizens' allegations of misconduct on the part of Federal law enforcement agencies or officers;
- Reduce unnecessary overlap or duplication among agency programs and missions; and
- Submit an annual report to Congress about accountability, citizens' complaints, and their resolution.

B. Transfer responsibility, authority, and personnel associated with enforcement of firearms and explosives laws to the FBI, within the Department of Justice,



leaving tax collection, licensing, and civil regulation within the Department of the Treasury.

- C. Transfer the Drug Enforcement Administration's budget, statutory authority, and personnel to the FBI, creating a new separate division.¹¹¹
- D. Encourage the President and Congress to look toward a long-term solution that would rationalize and realign Federal law enforcement and security agencies in the Executive Branch into several broad functional areas:
 - **Criminal Activity and National Security**, would be the principal focus of a strengthened FBI, which would incorporate the DEA and the law enforcement functions of the ATF, would possess significant overseas investigative and liaison authority, and would manage divisions responsible for terrorism, narcotics crime, and national security;
 - **Protective and Border Security** responsible for protecting American leaders, foreign dignitaries and diplomats, U.S. diplomats, Federal buildings and airports, the security of the Nation's borders, and the inflow of peoples and goods from elsewhere, this activity would include the Coast Guard, Protective Patrol (Secret Service, Park Service, Park Police, and the Federal Protective Service), Border Enforcement (INS enforcement, Customs enforcement, and Border Patrol), and the Secret Service (to protect American and diplomatic leaders);
 - **Financial and Regulatory Enforcement** would be the responsibility of the Treasury Department, which would oversee a Financial and Currency Enforcement Division and a Regulated Materials Enforcement Division, both drawn from IRS Enforcement, the financial and currency branches of the Secret Service, and the U.S. Customs Service;
 - **Corrections Enforcement** should continue to be the responsibility of the Federal Bureau of Prisons, an agency within the Department of Justice employing nearly one-third of all personnel authorized to carry firearms in the Federal Government; and



- **Resource Enforcement** would incorporate the functions of the Bureau of Land Management and the Fish and Wildlife Service (now in the Department of the Interior) with existing law enforcement functions from the Department of Agriculture.

E. Encourage the President to establish a permanent Interagency Advisory Board on Federal Law Enforcement. This 19-member advisory board, made up of representatives of the 14 major law enforcement agencies examined in this report and five additional representatives from other Federal law enforcement agencies, should be directed to provide the Attorney General with advice in two areas. The advisory board should be:

- Asked to look into the needs of small agencies, paying attention to the relationship between the Park Service and Park Rangers; duplication of police functions on Capitol Hill; the need to bring under-strength agencies up to strength; and the feasibility of providing joint support for managerial and administrative services for small agencies, freeing up resources for police work.
- Directed to examine the growth and role of the function of the Inspector General (in the Department of Justice and throughout the Federal Government) and to consider the wisdom and feasibility of consolidating these offices.

Commentary

Despite what appears to be the radical surgery contemplated in Recommendation I, with the exception of Implementing Recommendation I-D, all of the recommendations above have been put forward publicly and officially at one time or another by responsible Federal officials and law enforcement experts. The Commission is aware of the previous studies recommending merger and, based on testimony received, analysis, and the collective judgment of Commission members, concludes that this recommendation is responsive to the congressional mandate of the Commission. It is a sign of how difficult it is to bring change to large Federal agencies that they have



been able to withstand repeated calls from experts over the years for the kinds of structural modifications proposed above.¹¹²

The Commission is at a loss to understand why Executive Order No. 11396 has been ignored virtually from the day it was issued. Had that Executive Order been properly implemented, many of the coordination problems the Commission identified might have been avoided. In urging that the President review, amend, and reissue it the Executive Order, the Commission hopes to breathe new life into what appears to be sound public policy.

As it considered how to move forward with Executive Order No. 11396, the Commission debated the wisdom of reissuing an executive order or suggesting that the Executive Order's concepts and directives be enacted into law. Both approaches have merit. Putting the order into a statute puts the full force of law behind it, a formidable advantage. On the other hand, once enacted, improving and perfecting such a statute if changes were necessary would require additional legislative action. Putting the authority of the President of the United States behind the policy as an executive order is also a considerable advantage. This approach also has the additional attraction that future changes, if necessary, can be effected more readily. The Commission believes that strengthening and implementing Executive Order No. 11396 are best carried out by presidential directive; failing that, we conclude that a statutory solution will be required.

With respect to ATF, the recommendation the Commission makes above has been supported by virtually every formal review of ATF functions since gun control provisions became a significant feature of the agency's mandate in 1968. In 1993, Vice President Al Gore's National Performance Review, reciting the same concern about "too many cooks spoil the broth," had the following to say about this recurrent theme with ATF: "...we will move toward combining the enforcement functions of the Bureau of alcohol, Tobacco and Firearms (BATF) into the FBI and merge BATF's regulatory and revenue functions into the IRS."¹¹³

To put it as simply as possible: the collection of taxes and the regulation of the alcohol, wine, beer, and tobacco industries do not contribute to effective enforcement



of the Nation's firearms and explosives laws. ATF lacks a clear mission and sense of purpose because of the clash of disparate jurisdictional responsibilities. On the one hand, ATF enforces the firearms and explosives laws that are critical components of the Attorney General's public safety duties. On the other hand, ATF has responsibility for a traditional IRS function: the collection of taxes on luxury items, specifically, distilled spirits, beer, wine, and tobacco. This small agency has for more than 30 years attempted to reconcile the irreconcilable. The same organization houses functions that are at cross purposes, feeding internal competition for resources and detracting from a unified law enforcement policy. The task of enforcing firearms and explosives laws can best be carried out in the FBI.

In February 1968, in a message to Congress, President Lyndon Johnson wrote of his dissatisfaction that drug enforcement activities were split between the Department of the Treasury and the Department of Health, Education, and Welfare, based on the type of drug violation involved—marijuana or LSD. At that time, the President proposed consolidating drug enforcement within the Department of Justice.¹¹⁴

By 1973, Executive Order No. 11727 established DEA, abolished the Office of National Narcotics Intelligence and the Office for Drug Abuse Law Enforcement, and merged the duties of the abolished entities into the new drug enforcement agency. The Controlled Substances Act of 1970 is one of the principal pieces of drug law enforcement legislation for DEA because among other authorities, it gives the agency the right to apply its resources, extraterritorially, to certain criminal acts committed outside the United States. The creation of the Office of National Drug Control Policy (ONDCP) in 1988, provided the foundation for annual national strategies to reduce drug abuse, trafficking, and their consequences.

ONDCP is a continuing effort to rationalize the use of a large number of organizations involved in the fight against drug trafficking. For example, more than 20 Federal or federally funded organizations at the Federal level have key roles in collecting drug intelligence information, including the Department of Justice, Department of the Treasury, Department of Transportation, Department of Defense, Department of State, Executive Office of the President, and the Central Intelligence Agency.





In a little more than 30 years, drug crimes and Federal drug enforcement grew from a minor concern about marijuana and LSD to a multiagency, multibillion dollar effort that affects national security interests. This expansion has not gone unnoticed, and there have been continual efforts to try to mobilize law enforcement resources and improve working relationships as they relate to drug enforcement.¹¹⁵ A focal point of concern has been the concurrent jurisdiction of the FBI and DEA for enforcement of Federal criminal drug laws.¹¹⁶

How to deal with Federal statutes that involve violations of several laws that fall under the jurisdiction of several agencies was a subject of Vice President Al Gore's 1993 National Performance Review. That report stated:¹¹⁷

... a drug case may involve violations of financial, firearms, immigration and customs laws, as well as drug statutes. Unfortunately, too many cooks spoil the broth. Agencies squabble over turf, fail to cooperate, or delay matters while attempting to agree on common policies.

The first step in consolidating law enforcement efforts will be major structural changes to integrate drug enforcement efforts of the DEA and FBI.

The Gore report also stated that such integration would enable the "Federal Government [to] get a much more powerful weapon in its fight against crime."¹¹⁸ The Commission agrees with Vice President Gore's statement about turf battles and the failure to cooperate. It is precisely these types of situations that force observers to a critical view of what is perhaps the largest, most sustained, and most visible, law enforcement effort in recent decades. In this context, horror stories about infighting and multiple jurisdictional overlap between two of the most publicized law enforcement agencies—DEA and FBI—require critical judgments. The turf battles reported in the Mexico Raul Salinas investigation are just one example.¹¹⁹ A *New York Times* article ran the following title, "Tracing Money, Swiss Outdo U.S. on Mexico Drug Corruption Case," on a story about Raul Salinas, brother of former President of Mexico Carlos Salinas. Two notable quotes from the article were as follows:¹²⁰

...Washington's pursuit of Mr. Salinas has been troubled from the start, with turf battles among law enforcement agencies and Federal prosecutors,

disputes over the handling of witnesses and complaints from agents in the field of meddling and a lack of interest by higher-ups.

Drug enforcement officials said the reports [linking Salinas to Mexican cocaine smugglers] were startling, but not enough to merit a special inquiry. That view quickly changed after the discovery of the Swiss accounts, but after some bureaucratic struggle it was the F.B.I.'s office in New York, where Mr. Salinas had banked, that was finally assigned the investigation.

The Commission is convinced that the time to clarify responsibility for enforcing drug laws has arrived. Both the DEA and the FBI consider themselves to have essentially the same drug enforcement mission. Each has arrived at that conclusion by a different route, the DEA looking at drugs from the nature of the offense, the FBI examining the same crime based on the nature of the offender. Simply on the administrative merits of the argument, DEA should be lodged within the FBI. Numerous high-level examinations of Federal law enforcement have recommended combining the two. The globalization of narcotics and the worldwide nature of the challenge indicate that the time to bring the two agencies together has arrived.

The Commission also received what seemed to be quite credible suggestions for a long-term realignment of Federal law enforcement that would emphasize broad functional areas such as financial regulatory enforcement, criminal activity and national security, and protective and border security. Conceptually these suggestions are attractive; as a practical matter, implementing them inevitably presents managerial challenges of the gravest kind. The Commission believes that interagency task forces, presidential reorganization reviews, and congressional hearings should submit these suggestions to the most searching scrutiny. They are ideas for the long term, not for next month or next year, and long-term analysis of them will reveal whether they deserve to be supported.

Finally, the Commission wants to note that even an Attorney General strengthened in the full exercise of the powers contemplated in Executive Order No. 11396 will require advice and guidance on any number of matters. We believe the case for a permanent, independent, Interagency Advisory Board on Federal Law Enforcement is





persuasive. Among its first duties should be an examination of how to improve professionalism in small law enforcement agencies and a review of the roles and functions of the Office of Inspector General. The Commission is particularly concerned about the need to review the needs of small law enforcement agencies. In the course of our inquiry, we received testimony that many of these agencies are under-budget and under-strength, operating with limited resources, poor facilities, often without replacement automobiles or radios, and little support for training.

In the Commission's view, the function of the Office of the Inspector General should be to act as an Auditor General, not as a law enforcement entity. The advisory board should explore the degree to which the Inspector General's function duplicates the work of other Federal law enforcement agencies, whether these offices should exercise arrest functions, whether they should combine program oversight and law enforcement responsibilities, and the adequacy of training provided IG personnel. The Commission believes that to the extent Inspectors General are involved in law enforcement operations the cooperation of existing law enforcement officials from agencies such as Customs and the FBI to work with OIG officials is a better route than creating separate law enforcement entities within OIGs.

II. Provide the intelligence and information needed to combat terrorism.

WE RECOMMEND that the law enforcement and intelligence communities review their procedures and policies to ensure that the President, Congress, and the National Security Council that they have adequate resources to coordinate activities and to pursue the information that Federal, State, and local law enforcement agencies need to combat terrorism.

Implementing Recommendations

- A. Provide adequate resources and assets for intelligence collection and analysis, including efforts to:

- Upgrade the technological sophistication of law enforcement;
- Develop expertise in the cultures and languages of other nations;
- Strengthen cooperative relationships with other nations, including extradition and mutual legal assistance treaties;
- Improve counterterrorism training for local agencies (the preferred “first responders”); and
- Support long-term federally funded research on how to improve domestic preparedness for terrorist threats.

B. Respond to the threat of cyberterrorism by implementing national security policies to address the new realities of the Information Age. This response should include:

- A policy review of coordination among existing law enforcement and intelligence organizations with regard to information warfare, security policy, information security, and cybercrime;
- Plans to ensure that critical services such as national defense; emergency services; defense readiness; law enforcement; air travel; and power, water, and fuel distribution systems can be maintained securely against threats from both hackers and terrorists; and
- Work with the private sector to ensure that commercial telecommunications and information systems are secure from external attacks.

C. Develop policies and procedures for collecting, disseminating, and sharing data and intelligence through interconnected communications systems with other Federal agencies and with State and local law enforcement officials.

D. Ensure that the legitimate needs of law enforcement agencies to override encryption systems are balanced by judicial supervision to protect the privacy and civil liberties of citizens.

Commentary

The end of the Cold War has dramatically changed the nature of the threats the United States faces. In the place of the possibility of the use of devastating military power





against the American people by another superpower, our society now faces smaller threats, from multiple terrorist sources, that are in some ways more difficult to assess and manage. They may even be more insidious, striking closer to home, threatening lives and property in geographic areas of the United States that are hard to identify in advance. As innumerable commentators pointed out after the Oklahoma City bombing, that event traumatized many Americans in part because it occurred in the American heartland, not in Washington, DC, New York City, or Los Angeles.

Although the Commission received no testimony from U.S. intelligence agencies, it did review several major public reports on intelligence activities, as they relate both to international crime and terrorism. It is clear that conflict exists between the law enforcement and intelligence communities.¹²¹ The two share a mutual reluctance to share potentially sensitive information. Intelligence agencies refuse to accept direct collection tasking from law enforcement agencies unless the request has a valid “foreign intelligence” purpose. And the expansion of the presence of law enforcement agencies overseas, principally the FBI, has created a third set of tensions. In fact, the Commission received testimony that as many as 2,000 Federal law enforcement agents are operating overseas, frequently without effective coordination with either intelligence agencies or the Department of State.¹²²

The result is that it is difficult to ensure that information about potential terrorist activities is shared with law enforcement officials at the Federal, State, or local levels—even when to do so presents little or no threat to national security or intelligence-collection activities. The Commission believes it is time this situation was changed.

In this respect, the Commission applauds the President and the FBI for recent progress in this area. In January, the President announced new responses to threats to the Nation’s security, particularly the possibility that rogue states or terrorists might attack the critical computer infrastructure of the United States. Providing for new budget authority, this new effort also assigned major responsibilities for law enforcement and related activities throughout the Government—law enforcement under the Attorney General and the director of the FBI; diplomacy and defense issues under the

Departments of State and Defense; better intelligence collection programs under the director of the CIA; and improved efforts to contain nuclear weapons proliferation under the Department of Energy.

The FBI has also recently announced a new ANSIR program (Awareness of National Security Issues and Response). ANSIR represents the “public voice” of the FBI for espionage, counterintelligence, counterterrorism, economic espionage, and cyber and physical infrastructure protection and all national security issues. It is designed to provide unclassified national security threat and warning information to Government agencies, law enforcement entities, and U.S. corporations. Using e-mail, fax networks, and each of the agency’s 56 field offices, ANSIR promises to break new ground in alerting nongovernmental and non-Federal agencies of various kinds about potential national security and terrorist threats. The Commission would be even more impressed with the effort if it could be demonstrated that it clearly involves cooperation and support from other Government intelligence agencies.

The Commission wants to stress the importance of providing additional funds for research and technology to deal with terrorist threats. To take but one example: encryption of information by criminals presents serious threats to public safety. Encryption may be used by terrorists (or by drug lords) to communicate their plans in secret, or to maintain records in a form that frustrates search warrants and wiretap orders. The Government and the private sector together must proceed with energetic efforts to protect the legitimate needs of citizens and businesses for electronic communication and electronic commerce, although preserving Government’s legitimate need to gain access to data and information as part of legally authorized search procedures.

In similar fashion, electronic commerce, “smart” cards, and Internet trading are fast becoming established as standard practice for financial and telecommunications services. Shifting from paper money to its electronic equivalents presents serious new international challenges for law enforcement at all levels. Additional research focusing on the vulnerability of these emerging technologies to terrorism and international crime needs to be undertaken.





Finally, the Commission notes that the Information Age brings with it new threats to national security and to a wide variety of critical public and private services. As recent analyses from the Center for Strategic and International Studies (CSIS) point out, the real possibility for an “electronic Waterloo” exists if public officials do not pay sufficient attention to threats to the Nation’s information security.¹²³ The Commission endorses the CSIS report and calls for the development of national security policies that respond effectively to the emerging threat of cyberterrorism and cybercrime. At the same time, the Commission is aware of recent criticisms that policies governing cybersecurity at times appear to be pursued without explicit consideration of potential threats to privacy and civil liberties. Law enforcement officials must understand that the techniques, procedures, and technologies at issue here are so powerful that Federal agencies must be alert to public anxieties about the potential for abuse, no matter how remote that potential may be.

III. Make global crime a national law enforcement priority.

WE RECOMMEND that the President and Congress expand the attack on global crime, narcotics trafficking, and cybercrime with new determination and energy.

Implementing Recommendations

- A. Implement the Administration’s May 1998 International Crime Control Strategy with respect to global crime, a policy that understands international crime as a potential threat to national security, defines an integrated counternarcotics program as part of Federal policy, and contemplates an International Crime Center under the direction of the Federal Bureau of Investigation, in cooperation with the Departments of State and Justice and the CIA.
- B. Develop an integrated counternarcotics policy that can be incorporated within the Nation’s strategic planning and reinforce the Federal Government’s efforts against international crime. The effort should be

multitiered, incorporating programs and policies to dissuade domestic consumption and interdict foreign supplies as well as efforts to encourage the coordination, consolidation, and networking of intelligence systems.

- C. Cooperate with other nations in developing multilateral approaches to attacking transnational organized crime.
- D. Insist that the Department of Justice, the Department of State, the CIA, and other law enforcement and intelligence agencies coordinate their capabilities and activities across agencies so that each draws on the expertise of the other in the most effective way.
- E. Expand research on, and upgrade technologies to combat, transnational crime.

Commentary

Many of the Commission's comments with respect to developing effective responses to terrorism apply with equal force to issues of global crime and narcotics trafficking, but the Commission also makes several additional observations. Global crime is likely to pose increasing danger to the American people as international criminals become more sophisticated and adept at employing new technologies to advance their aims. This becomes a particularly troublesome issue because it is not simply a law enforcement issue but also involves issues of diplomacy, defense, and national security. All of them are intertwined and the criminal aspects of global and transnational crime will not yield to a law enforcement solution alone.

In this regard, the Commission is troubled by indications of problems coordinating the law enforcement dimensions of these issues with agencies responsible for the Nation's intelligence, diplomatic, and defense activities. Thus, this Commission supports recent calls for high-level, presidential statements reaffirming that global criminal activities, including terrorism, drug trafficking, organized crime, and the proliferation of weapons of mass destruction are national security matters requiring coordinated, multiagency responses. The Federal law enforcement community by itself cannot respond effectively to these challenges.





It is also quite clear that law enforcement and intelligence agencies must recognize that the United States alone is not the only nation capable of taking on the challenges of organized transnational crime. As a recent international seminar on international crime and terrorism stressed, the need for international cooperation is paramount.¹²⁴ The days when individual nations could successfully fight crime, drugs, and terrorism on their own are over. Unilateral actions to address these challenges are insufficient; joint action across national borders becomes increasingly essential.

Because of the preeminence of American law enforcement and intelligence agencies, it is probably desirable for the United States to assume the leadership role in many transnational efforts; but it should also invite other interested nations to contribute to these efforts in a serious manner. Interpol (although not an investigative agency *per se*) may be one promising approach to encourage international approaches; the Commission also judges that the issue of transnational crime is so sensitive that it probably requires intensive discussions at the highest levels of Government in developing plans for proceeding.

The Commission was distressed to learn that the evident challenges to law enforcement agency coordination and cooperation within the United States are equally apparent abroad. A Department of State official spoke of learning, when he assumed his position, that some 500 relatively independent law enforcement officials were acting overseas without the knowledge of the Department of State. On investigation, that number turned out to be more than 2,000.¹²⁵ At the same time, in a borderless environment for trade and finances, it is not clear how effective traditional law enforcement methods will be in overseeing customs, maintaining border security, and enforcing financial regulations.

Although existing policy and practice provide that the "Chief of Mission" in each Embassy will be responsible for overall law enforcement coordination, it is also understood that liaison with law enforcement officials abroad is governed by the home agency. As a practical matter, according to the evidence the Commission received, U.S. law enforcement and intelligence agencies overseas (the FBI, DEA,

Customs, the CIA) compete with each other for access to foreign counterparts and foreign information; Chiefs of Mission are often inexperienced in issues of law enforcement; and Justice, Treasury, and other agencies rarely supervise their overseas agents as well as they are supervised at home. In consequence, key officials in a variety of Washington agencies may be unaware of critical information until it is too late.¹²⁶

The Commission believes that the President and Congress must take whatever steps are necessary to ensure greater coordination and cooperation between and among law enforcement and intelligence agencies operating overseas.

The Commission also wants to stress the importance of providing additional funds for research and technology to deal with the challenges of global crime. As is the case with terrorism, the Nation needs to upgrade the technological sophistication of Federal law enforcement to deal with international crime and continue to develop expertise in the languages and customs of foreign nations. Additional research to extend our knowledge of other nations—and how best to apply that knowledge through training and technology—is urgently needed.

IV. Reverse the trend toward federalization.

WE RECOMMEND that Congress and the President enact a new “Federalization Prevention Act” to minimize Federal intrusion into State and local law enforcement and reverse the recent trend toward “federalizing” crime.

Implementing Recommendations

- A. Enact a new “Federalization Prevention Act” that requires the Congress and the Executive Branch to provide a “law enforcement impact statement”—in addition to the existing budget impact statement—on all law enforcement legislation.
- B. As part of the new act, require a review of the Federal Criminal Code (Title 18) over a 5-year period by a fully staffed, full-time, nonpartisan expert



commission, that is directed to recommend changes in Title 18 to Congress and the President.

- C. The new act should also contain a sunset provision, a requirement that new provisions that define crimes as Federal should expire after 5 years unless Congress acts to extend the definition.

Commentary

The true role of the Federal Government in law enforcement, “the legitimate object of government” in Lincoln’s phrase, is not to appropriate the responsibilities and functions of local police officials, but to help State and local law enforcement agencies carry out their difficult tasks. In that context, this Commission is at least as concerned with the explosive growth of crimes deemed to be Federal as it is with the difficulty involved with coordinating many disparate agencies. Lack of coordination is a management problem that might threaten public safety and almost certainly reduces the effectiveness of the Federal law enforcement system. The federalization of many common crimes heretofore considered to be matters of State and local responsibility threatens to create two separate law enforcement systems, and, over the long term, carries significant risk of bringing law enforcement into disrepute. Citizens should not be subject to different, competing law enforcement systems, different penalties depending on which system brings them to trial, and an ever-lengthening possibility that they might be tried for the same offense more than once.

To bring these realities more into the consciousness of Federal officials, the Commission suggests establishment of a law enforcement impact statement in addition to the budget impact statements that now accompany every new Federal enactment. The law enforcement impact statement should outline the anticipated effect on law enforcement activities generally of defining criminal activities as Federal crimes and explain how each new crime brought under the purview of the Federal Government warrants being made a Federal crime.

The Commission also wants to emphasize the need to recodify the Federal Criminal Code. For at least 20 years, Congress has been trying to accomplish this,



with almost no success at all. The 2-year window during which each individual Congress has the opportunity to act (before a new Congress convenes and is forced to start all over again) is not sufficient time for this demanding task. Turnover among committee members over the years and changes in which party controls the House and Senate have probably exacerbated this institutional fact of life. The Commission is aware of no State effort to recodify State law that did not depend on expert outside help in the form of advisory groups and commissions of one kind or another. This Commission believes such an approach can usefully be employed at the Federal level.

With regard to the federalization of crime, the Commission believes only a few crimes should be statutorily defined as Federal in perpetuity. From a public policy perspective, it is appropriate to enact sunset provisions for newly defined Federal crimes, provisions requiring regular review and reaffirmation of the definition of what constitutes a Federal crime.

Finally, the Commission wants to stress the point with which it began this commentary: In pointing to excessive involvement of the Federal Government in common crime, the Commission is not in any way arguing that the Federal Government has no role in supporting State and local law enforcement efforts. The Commission believes the Federal interest lies in helping States, localities, and individuals do what they “cannot do for themselves, or do as well,” to use Lincoln’s language. In addition to the Federal Government’s inescapable responsibilities for national and transnational crime, it also has an obligation to help fund State and local efforts, provide technical assistance and training, and support research broadly applicable to law enforcement at all levels, Federal, State, and local.

V. Focus on professionalism, integrity, and accountability

WE RECOMMEND that the President and Congress insist that Federal law enforcement agencies establish new standards for professionalism, integrity, and public accountability.



Implementing Recommendations

- A. The Attorney General, working with the Interagency Advisory Board, identified in Recommendation I-E, should be directed to accelerate the process of standardizing procedures and operations including the development of common standards in areas such as investigative guidelines, recruitment, training, classification and use of data, rules of engagement, and the use of force, including deadly force.
- B. Policy and training regarding the use of deadly force should be standardized across all Federal agencies.
 - 1. The wording of Federal law enforcement policies regarding the use of deadly force should be identical, providing the same policy and guidance to law enforcement officials in all Federal agencies.
 - 2. Variations in policy statements should relate to unique agency requirements only (e.g., the use of warning shots on open water).
 - 3. Training on the use of deadly force should be standardized across Federal agencies.
 - 4. Annually mandated continuing education courses on the use of deadly force should be required of all Federal law enforcement officers and should be differentiated from firearms requalification training.
- C. Congress should promote professionalism and enhanced accountability by:
 - 1. Requiring that the curriculum governing training in core law enforcement functions (e.g., constitutional rights, use of force, and protection of crime scenes) be standardized across all Federal agencies while it is simultaneously supplemented by discrete training in agency-specific issues;
 - 2. Creating a Federal Law Enforcement Officer Training Board (made up of law enforcement experts from Federal, State, and local agencies, along with academics and private training specialists) to review training, certify the adequacy of both basic and “in-service” training programs; identify innovative training programs and curricula; and recommend needed additional training programs to agencies;



3. Requiring Federal law enforcement agencies to periodically undergo accreditation by outside agencies, a process enabling law enforcement leaders to assure members of the public that the law is being enforced professionally and well. Every Federal crime laboratory should also seek accreditation as a matter of course.
 4. Requiring the development of standardized procedures for responding to citizens' complaints about Federal law enforcement agencies and officers—e.g., all complaints will be recorded; all will be investigated as appropriate; due process will be provided for officers; records and results of such investigations may be made public; and results should be provided to officers under investigation.
 5. Conducting vigorous oversight to ensure that the Attorney General develops and implements the policies called for in Recommendation I-A—policies defining procedures for resolving citizens' complaints about Federal law enforcement agencies and officers.
- D. Bring Federal law enforcement into the 21st century with support for the acquisition of the latest computers and telecommunications technologies and crime-fighting equipment.
- The Attorney General should work with the new Interagency Advisory Board on Federal Law Enforcement to ensure a high level of ongoing support for providing, maintaining, and updating computers and telecommunications equipment. This examination should also include software, databases, and training needs. It should aim to develop policy—setting aside a specified percentage of agency budgets for needs that are likely to be ongoing as technologies mature and equipment becomes more powerful.
- E. The Attorney General should also be authorized by Congress to build on recent progress in advancing analyses of DNA and trace evidence by supporting an ongoing national conference, workshop, or seminar on forensic science. Such a continuous seminar or conference can help improve the science base of law enforcement at all levels, Federal, State, and local.



- F. The President and Congress should require the Office of Personnel Management (OPM) to work with the Attorney General, the President's chief law enforcement advisor, to examine the need for personnel system reforms for all Federal law enforcement agencies, including minimum standards for recruitment, training, promotion, salary and benefits, and other scope of employment issues.
- G. Annual budgets should provide a line item for each law enforcement agency and the President and Congress should ensure that each such agency is led by an experienced public manager, preferably with experience in law enforcement.

Commentary

These recommendations address the public's key concerns about agents' professionalism and agency accountability. Properly implemented, these recommendations can alleviate public concern about law enforcement corruption or abuse.

Even after the Commission's first four recommendations are implemented, and the Nation can look forward to better coordination of Federal agencies, a diminution of the Federal presence in common crime, and improved procedures for dealing with both terrorism and global crime, there will still be many Federal agents from many different Federal agencies working on distinct problems. That is simply the nature of the complex modern world in which law enforcement is forced to operate.

Against that background, there must be some standardization of policy and procedures affecting the public safety. As the 21st century dawns, it is no longer an acceptable situation for different Federal officials to be operating under different standards and procedures governing, for example, how interrogations are to be conducted or deadly force is to be employed. Discrepancies in areas such as these simply must be resolved, in the interests of the safety of both the general public and law enforcement officers.

The Commission considers several policies essential to maintaining public confidence in the professionalism of Federal agents and the accountability of Federal



agencies: common training in core law enforcement functions; certification of the adequacy of training programs; and accreditation of agencies and forensics laboratories. These are all sensible and needed improvements, that should have been implemented many years ago.

Equally urgent is the need to reassure the public that citizens' complaints about the performance of law enforcement officers and agencies will be professionally received, examined, and responded to, as appropriate. The Commission hopes to improve agency accountability in two steps. First, in Recommendation I, the Commission would require the Attorney General, under the mantle of Executive Order No. 11396, to develop uniform procedures for responding to citizens' complaints. Second, in the final recommendation, the Commission encourages vigorous congressional oversight of the adequacy of the complaint-resolution process.

With respect to computers and telecommunications equipment, the Commission believes that Federal law enforcement agencies must be at least the equal of the criminal enterprises that they confront and investigate. Given the large amounts of money devoted to Federal law enforcement activities, there is no excuse for Federal agencies to have less than the latest equipment, supported by the most advanced software and best training available. The same, of course, holds true for the latest in crime-fighting techniques and weapons.

Despite recent criticisms of the scientific procedures at the FBI Laboratory, law enforcement officials worldwide acknowledge the preeminent role of forensic science in Federal laboratories in the United States. This is clearly an area where a Federal leadership role is essential. The Commission supports a vigorous Federal leadership role in advancing the art and science of forensics for law enforcement agencies at all levels.

Because agent and agency morale hangs on the issue, the Commission points to the need for well-justified personnel policies across the entire spectrum of Federal law enforcement agencies. It is fundamentally unfair if differing policies create an uneven field for agents. The Commission has been warned that this is an issue requiring resolution. We are unable to confirm that it is a problem, or that it is not a



problem. We recommend that OPM, the Attorney General, and the Secretary of the Treasury examine this issue.

Finally, the Commission believes it is time to provide the law enforcement function a line item in the budget in each agency that lacks its own. It becomes very easy, particularly in small agencies, for law enforcement to become subordinate to other departmental and agency missions. The Commission actually experienced a great deal of difficulty determining precisely how much is spent on law enforcement at the Federal level, in part because so many agencies do not specify how much they spend on law enforcement. To clarify law enforcement expenditures (and to protect law enforcement funds), it is important to provide these funds in line items in the budget.

TOWARD A NEW CENTURY AND A CHANGING WORLD

As the United States moves toward the 21st century, grave law enforcement challenges lie ahead. This Commission has produced a five-part action agenda designed to address those challenges. Although this five-part agenda does not include every issue requiring attention, it does include the major problems we must address in a new, changing, and ever more dangerous world. The members of the Commission believe the public understands the need for these actions and will support policymakers as they work to put them in place.

We urge Congress and the President to move forward with these recommendations. As Edmund Burke pointed out, the only thing necessary for the triumph of evil is for good people to do nothing. Equally surely, justice and freedom will triumph if the American people, through their elected officials, put effective law enforcement at the top of the Nation's agenda.



ENDNOTES

1. The Commission recognizes that Federal prosecutors play a key role in the enforcement of Federal criminal law. The nature of the Commission's mandate, however, precluded extensive examination of the Federal prosecutorial role.
2. "[A]n exact count of the present 'number' of Federal crimes...is difficult to achieve and the count subject to varying interpretations....One statutory section can comprehend a variety of actions, potentially multiplying the number of Federal 'crimes' that could be enumerated. While a figure of 'approximately 3,000 Federal crimes' is frequently cited...the present number of Federal crimes is unquestionably larger....Ronald L. Gainer...speaking of the situation existing today [1998]...notes 'The Federal statutory law today is set forth in the 50 Titles of the United States Code. Those 50 Titles encompass roughly 27,000 pages of printed text. Within those 27,000 pages, there appear approximately 3,000 separate provisions that carry criminal sanctions for their violation.'" Task Force on Federalization of Criminal Law (1998), *The Federalization of Criminal Law: Defending Liberty, Pursuing Justice*, Washington, DC: American Bar Association, p. 93-94.
3. Ibid.
4. 5 U.S.C. § 905(b). The President's authority to reorganize the Executive Branch lapsed in 1984, when Congress imposed a provision that limited the effectiveness of Reorganization Plans to those presented before December 31, 1984.
5. To ensure that firearms and drug enforcement activities continue to have high visibility and access to law enforcement officials at the highest levels, the Commission believes each of these newly transferred functions should be headed by a senior official who reports directly to the director of the FBI.





6. Nicholas Rufford (May 23, 1999), "Government Gags Sunday Times," *Sunday Times (Britain)*, <http://www.Sunday-times.co.uk/news/pages/sti/99/05/23/stinwenws01029.html?000>.
7. "1811 Series" employees are defined by the Office of Personnel Management (OPM) and several sections of Title 4 of the United States Code. These sections of the Code enable 1811 employees to benefit from premium pay provisions and certain retirement benefits. These employees conduct criminal investigations of possible violations of criminal laws.

Examples of other OPM law enforcement occupational series (codes) include: Correctional Officers (0007); Park Ranger (0025); United States Marshal (0082); Police (0083); Security Guard (0085); Customs Patrol Officer (1884), and Border Patrol Agent (1896).
8. These figures represent the total number of sworn officers and combined budgets as reported in the Commission's agency survey.
9. Frederick S. Calhoun (undated manuscript), *A Question of Power: The Origins of Federal Law Enforcement in the United States*, Washington, DC: U.S. Marshals Service.
10. Abraham Lincoln (Nov. 10, 1864), Washington, DC.
11. QS&A Research (Mar. 26, 1999), *Opinions About Federal Law Enforcement: A Survey Research Report*, a report prepared for the Commission on the Advancement of Federal Law Enforcement.
12. Ibid, p. 36
13. Ibid, p. 38
14. Ibid, p. 36
15. Ibid, p. 7-8.
16. American Bar Association (Feb. 1999). *Perceptions of the U.S. Justice System*. Washington, DC: American Bar Association.
17. See Note 1.

18. See Bureau of Justice Statistics, U.S. Department of Justice (Dec. 1997). *Federal Law Enforcement Statistics, Summary Findings*, Washington, DC: U.S. Government Printing Office; and Hubert Williams, President, The Police Foundation (July 10, 1998), statement before the Commission on the Advancement of Federal Law Enforcement, Washington, DC.
19. See Bureau of Justice Statistics, U.S. Department of Justice (Dec. 1998). *Federal Law Enforcement Statistics, Summary Findings*, Washington, DC: U.S. Government Printing Office.
20. Sources: "8. Enforcing the Law." Budget of the U.S., FY 2000, p. 119-128. [Online via GPO Access]; and The White House, Office of the Press Secretary (Feb. 1, 1999), "President Clinton and Vice President Gore's FY 2000 Budget: Preparing America for the 21st Century." [http://www. Pub.whitehouse.gov/](http://www.Pub.whitehouse.gov/)
21. See Note 7.
22. The Commission's 1998 survey turned up 88,784 personnel authorized to carry firearms in the 14 agencies selected as a sample. Bureau of Justice Statistics (BJS) survey data for 1996 found 74,500 in 16 agencies.

Appendix G compares increases and decreases in personnel for the same 14 agencies. BJS reported a total of 61, 498 officers in 1996. By adjusting the Commission's total (88,784) to reflect only full-time Correctional Officers (see below), the adjusted Commission survey total would be 72,994 officers in 1998, an increase of 11,496 law officers since 1996.

In 1996, BJS reported 11,329 Correctional Officers. In the 1998 data provided to the Commission, BOP reported that 28,390 of its employees are qualified and certified to carry firearms. Still, not all 28,390 employees carry firearms in the normal course of their duties. The most recent OPM figure shows that 12,600 full-time Correctional Officers are authorized to carry firearms as a regular part of their duties.
23. Salvatore R. Martoche, former Assistant Secretary of the Treasury for Law Enforcement (Nov. 15, 1995), statement before the Subcommittee on Crime,





Committee on the Judiciary House of Representatives, *Nature, Extent, and Proliferation of Federal Law Enforcement: Part I—An Introduction and Overview*, Washington, DC: U.S. Government Printing Office.

24. Task Force on Federalization of Criminal Law, *Federalization of Criminal Law*.
25. Stanley E. Morris (Apr. 5, 1999), *A Brief History of Federal Law Enforcement, 1789-1999*, paper prepared for the Commission on the Advancement of Federal Law Enforcement.
26. See Frederick S. Calhoun, *Question of Power*; James D. Calder (1993), *The Origins and Development of Federal Crime Control Policy: Herbert Hoovers' Initiatives*, Westport, CT: Praeger; and Nancy E. Marion (1994), *A History of Federal Crime Control Initiatives, 1960-1993*, Westport, CT: Praeger.
27. Unfolding news accounts on the investigation of Russian money flowing through the Bank of New York illustrate the problems of coordination and of determining who is in charge. According to the *New York Times*, an obscure company (Benex) moved about \$7.5 billion from Russia through bank accounts in the Bank of New York, from 1996 to August 1999. Long-standing rivalry and differences in the thoroughness of investigative methods between the New York FBI office and the Manhattan District Attorney reportedly kept each from sharing case information with the other. Meanwhile, a State Department representative returned from London in March 1999 with information obtained from British investigators who had reportedly received sensitive information from the FBI. Upset that the FBI reportedly did not inform the Administration about the scale of the problem, the State Department then informed other agencies including the CIA and the Justice Department. The Manhattan District Attorney preferred to work with the Customs Service. The article also reports that the Attorney General was not briefed until after the *New York Times* reported the investigation in August 1999.

The title of Chapter Two of this report is "Coordination: Who's in Charge of What?" A subtitle in the *New York Times* article is, "The Rivals: Whose Turf is it, Contenders Ask." See Timothy L. O'Brien and Lowell Berman

(Sept. 29, 1999), "Law Enforcement Rivalry in U.S. Slowed Inquiry on Russian Funds," *New York Times*.

28. William H. Webster and Hubert Williams (Oct. 21, 1992), *The City in Crisis: A Report by the Special Adviser to the Board of Police Commissioners on the Civil Disorder in Los Angeles*, pp. 155-156.
29. One way to understand the role of an Office of the Inspector General is to think of the Inspector General as an internal policeman who monitors fraud, waste, and abuse in Federal agencies.
30. F.T. Davis, Attorney, Long, Aldridge & Norman, LLP (Jan. 14, 1999), statement before the Commission on the Advancement of Federal Law Enforcement.
31. See Commission on the Advancement of Federal Law Enforcement (Mar. 1999), *Analysis of Survey Respondents' Answers to Questions*, Washington, DC: Commission on the Advancement of Federal Law Enforcement (hereafter referred to as Commission Survey); see also, Cornelius J. Behan (Apr. 1999), memorandum for the Commission on the Advancement of Federal Law Enforcement.
32. Response from U.S. Secret Service, *Commission Survey*.
33. Vice President Al Gore (Sept. 7, 1993), "From Red Tape to Results: Creating a Government that Works Better and Costs Less." <http://www/npr.gov.library/>.
34. U.S. General Accounting Office (Dec. 5, 1994), "Implementation of NPR Recommendations: Justice Department, Part 1." <<http://www.calliope.hcsa.uiuc.edu/notes/homepage/240a.html>
35. See, for example, statements before the Commission on the Advancement of Federal Law Enforcement by Louis Cannon, Fraternal Order of Police (Oct. 5, 1998); A.N. "Bubby" Moser, National Sheriffs' Association (Aug. 24, 1998); Chief Richard W. Myers, Appleton, Wisconsin (Aug. 25, 1998); and Bob Ricks, Oklahoma Director of Public Safety (Aug. 25, 1998).
36. Jami St. Clair, Director, Columbus Crime Laboratory (July 9, 1998), statement before the Commission on the Advancement of Federal Law Enforcement.





37. The kidnapping of this American hero's son led directly to the designation of kidnapping as a Federal crime.
38. See Commission Survey and Cornelius J. Behan, memorandum for the Commission on the Advancement of Federal Law Enforcement.
39. Louis J. Freeh, Director, Federal Bureau of Investigation (Dec. 1, 1998), statement before the Commission on the Advancement of Federal Law Enforcement.
40. Cornelius J. Behan, Major Cities Chiefs Association (May 18, 1998), statement before the Commission on the Advancement of Federal Law Enforcement.
41. See Commission Survey and Cornelius J. Behan, memorandum for the Commission on the Advancement of Federal Law Enforcement.
42. Commission on the Roles and Capabilities of the United States Intelligence Community (Mar. 1996), *Preparing for the 21st Century: An Appraisal of U.S. Intelligence*, Washington, DC: Commission on Roles and Capabilities of the United States Intelligence Community. (http://www.access.gpo/su_docs/dpos/epubs/int/report.html) Note: The Commission on the Advancement of Federal Law Enforcement acknowledges and endorses the contributions and recommendations contained in the Commission's intelligence community report on the need for a coordinated response to global crime.
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of approximately 5 million to 6 million per year. On average, a firearm moves
between licensed dealers about 5 times before the first retail purchase. All of
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Further, the licensees pay all the storage costs, the filing costs, and do all of the
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102. U.S. Department of Justice, Office of Investigative Agency Policies, Resolution 14, "Policy on Use of Deadly Force," guided by *Tennessee v. Garner*, 471 U.S. 1 (1985) and *Graham v. Conner*, 490 U.S. 3896 (1989).
103. Louis J. Freeh, Director, Federal Bureau of Investigation (Oct. 19, 1995), Opening Statement before the Subcommittee on Terrorism, Technology, and Government Information, Committee on the Judiciary, Ruby Ridge Hearing, U.S. Senate, Washington. DC. It should be noted that the FBI sniper at Ruby Ridge testified that he followed the traditional FBI standards on the use of deadly force rather than the allegedly modified standards.
104. Cornelius J. Behan, statement of May 18, 1998.
105. Based on responses to its questionnaire, the Commission judges that approximately 550 citizen complaints about abuses by agency personnel are registered against Federal law enforcement officers annually.
106. Samuel Walker, Ph.D., University of Nebraska at Omaha (Aug. 24, 1998), statement before the Commission on the Advancement of Federal Law Enforcement.
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Clyde Davis, National Association for Civilian Oversight of Law Enforcement (August 24, 1998), statement before the Commission on the Advancement of Federal Law Enforcement.

109. Tanya Metaksa, National Rifle Association (Aug. 24, 1998), statement before the Commission on the Advancement of Federal Law Enforcement.
110. Sylvester Daughtry, Jr. and Richard Kitterman, Commission on the Accreditation for Law Enforcement Agencies, Inc. (July 9, 1998), statements before the Commission on the Advancement of Federal Law Enforcement.
111. To ensure that firearms and drug enforcement activities continue to have high visibility and access to law enforcement officials at the highest levels, the Commission believes that each of these newly transferred functions should be headed by a senior official who reports directly to the director of the FBI.
112. In the early 1980s, when William French Smith was Attorney General, Rudolph W. Giuliani, then Associate Attorney General, oversaw a study that recommended the merger of the DEA into the FBI. In 1993, Vice President Al Gore made the same recommendation in his report, *Red Tape to Results*.
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114. Lyndon B. Johnson: *1968-69 (Book I) (1970)*, *Public Papers of the Presidents of the United States*, Washington, DC: U.S. Government Printing Office, p. 197.
115. U.S. General Accounting Office (Mar. 21, 1990). "Justice Department: Coordination between DEA and the FBI." Washington, DC: U.S. General Accounting Office (GAO/GGD-90-59).
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117. Vice President Al Gore, *Red Tape to Results*. Note: GAO did not take a position as to whether the various law enforcement agencies should be consolidated in one or more agencies. ("Implementation of NPR Recommendations: Justice



Department Part 1,” Updated Dec. 5, 1994. DOJ 101 Section14:2.1.2)

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APPENDIXES

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APPENDIX A. BIOGRAPHIES OF THE COMMISSIONERS

William H. Webster, Chairman

William H. Webster has been a senior partner in the Washington, D.C., office of Milbank, Tweed, Hadley & McCloy since 1991. He was Director of Central Intelligence for the United States—sworn in on May 26, 1987—for the prior 4 years.

Judge Webster began his career as a practicing attorney in St. Louis, Missouri, in 1949. He served as the U.S. Attorney for the Eastern District of Missouri from 1960 to 1961, was appointed as a judge of the U.S. District Court for the Eastern District of Missouri in 1970, was elevated to the U.S. Court of Appeals for the Eighth Circuit in 1973, and was named Director of the Federal Bureau of Investigation in 1978.

Over his more than half-century career, Judge Webster has been recognized on numerous occasions for his outstanding service. Some of his awards include: the Distinguished Intelligence Medal, the Presidential Medal of Freedom, and the National Security Medal in 1991; *St. Louis Globe-Democrat* Man of the Year in 1980; William Greenleaf Elliot Award from Washington University and the Riot Relief Award in 1981; the Jefferson Award for the Greatest Public Service by an Elected or Appointed Official in 1984; and the Freedom Foundation's National Service Medal and first recipient of the first annual Patrick V. Murphy Award from the Police Foundation in 1985. Judge Webster is a current a member of the American Bar Association, the Council of the American Law Institute, the Order of the Coif, the Missouri Bar Integrated, and the Metropolitan St. Louis Bar Association. He was also elected to active membership in the National Academy of Public Administration in 1981 and served as President of the Institute of Judicial Administration from 1985 to 1988.

Judge Webster earned his Bachelor of Arts from Amherst College and his Juris Doctor from Washington University Law School, St. Louis. He has been awarded an honorary Doctor of Laws from Amherst College. He served as a Lieutenant in the U.S. Navy during World War II and during the Korean War.

Donald C. Dahlin

Donald C. Dahlin is Vice President for Academic Affairs at the University of South Dakota, Vermillion, South Dakota, where he teaches in the Criminal Justice Studies Program as well. He is also a Fellow of the Institute of Court Management.

Dr. Dahlin has extensive experience in all aspects of the criminal justice system. Over the course of his career, he has held a variety of criminal justice-related positions, including: Management Analyst for the Law Enforcement Assistance Administration; Director of the Criminal Justice Studies Program, University of South Dakota; Secretary of Public Safety for South Dakota; member of the Governor's Corrections Commission; and Chair of South Dakota's Youth Advocacy Project. He has also taught at South Dakota's Law Enforcement Training Academy; served as a consultant to State and local criminal justice agencies; chaired the Section on Criminal Justice Administration of the American Society of Public Administration; and authored a number of articles on judicial administration, violence and the police, rural crime prevention, the role of the public defender, and jails.

Dr. Dahlin earned his Bachelor of Arts degree from Carroll College in Waukesha, Wisconsin, and his Ph.D. from Claremont Graduate School in Claremont, California.

Gilbert G. Gallegos

Gilbert G. Gallegos is National President of the Fraternal Order of Police. In that position, he is responsible for administration of the Grand Lodge, which is located in Washington, D.C., and, with its 283,000 members, is the largest law enforcement labor organization in the United States. In addition, as Drug Enforcement Coordinator for the Region I Drug Enforcement Council, Mr. Gallegos is responsible for



management of drug enforcement efforts of a multi-agency task force that includes both State and local agencies.

Mr. Gallegos has more than 34 years of experience in law enforcement, including labor and management relations, drug enforcement, criminal justice policy development, and employee rights. He spent 25 years of his career with the Albuquerque Police Department, retiring as Deputy Chief of Police.

Mr. Gallegos is a board member of the New Mexico Council on Crime and Delinquency, the National Center for Missing and Exploited Children, the Fraternal Order of Police Foundation, and the National Law Enforcement Credentialing Board, and is a member of the Latino Police Officers Association, the Chicano Police Officers Association, and the Fraternal Order of Police. He holds a Bachelor of Science in Criminology from the University of Albuquerque, and also graduated from the Southern Police Institute Administrative Course, University of Louisville, and the Federal Bureau of Investigation National Academy.

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LAW ENFORCEMENT IN A NEW CENTURY AND A CHANGING WORLD

Robert E. Sanders, Esq.

Robert E. Sanders is a criminal defense attorney with 40 years' experience in Federal criminal investigations, prosecutions, and criminal defense. He began to practice criminal defense law in 1984, after 24 years in Federal law enforcement as a Special Agent for the U.S. Department of the Treasury. Within the Bureau of Alcohol, Tobacco, and Firearms, Mr. Sanders held every supervisory, management, and executive position in law enforcement, including: Special Assistant on Law Enforcement Matters to the Assistant Secretary of the Treasury; first-line supervisor; Chief, Organized Crime Branch; Special Agent in Charge, Chicago, Illinois.; Regional Director, Midwest Region; and Assistant Director, Criminal Investigations. He also served with the Department of State as a Public Safety Advisor to the National Police of South Vietnam.

Mr. Sanders is a member of the Bar in Washington, D.C., and the State of Illinois. In addition, he is a life member of the International Association of Chiefs of Police and served for 10 consecutive years on its Organized Crime Committee and for 3

years on its Firearms and Explosives Committee. He is also a member of the National Association of Criminal Defense Lawyers and is a member of, and Associate Counsel for, the National Association of Treasury Agents. Mr. Sanders earned his Bachelor of Arts in History and Political Science from the University of Miami, Coral Gables, Florida, and his Juris Doctor from Northern Illinois School of Law, DeKalb, Illinois.

Robert M. Stewart

Robert M. Stewart is Chief of the South Carolina Law Enforcement Division (SLED)—the criminal investigative agency of the State of South Carolina—a position he has held since 1988. SLED has 600 employees, earned national accreditation through the Commission on Accreditation for Law Enforcement Agencies (CALEA), maintains a forensic science laboratory—which is accredited through the American Society of Crime Laboratory Directors (ASCLAD)—and has a Criminal Justice Information Services Center.

Chief Stewart has devoted his professional life to the law enforcement community and the State of South Carolina. He began his career at the age of 17 as a cadet in the Cheraw (S.C.) Police Department. He was named Director of Public Safety for that department at age 29 and joined SLED in 1975.

Although white-collar crime—especially corruption by public officials—has been an area of specialization, over the course of his career, Chief Stewart has: served as a member of the SLED SWAT Team; coordinated SLED's joint investigations with Federal law enforcement agencies, while assigned to the U.S. Attorney's Office; and served as SLED Coordinator with the Presidential Drug Task Force, which tracked down and prosecuted drug smuggling "kingpins" from the Caribbean to Australia.

Chief Stewart holds a Bachelor of Arts and a Master's in Public Administration from the University of South Carolina. He is also a graduate of the Federal Bureau of Investigation National Academy and the Federal Bureau of Investigation National Executive Institute.



B. SECTION 806: ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 (PUBLIC LAW 104-132, 104TH CONGRESS)

SEC. 806. COMMISSION ON THE ADVANCEMENT OF FEDERAL LAW ENFORCEMENT.

- (a) Establishment—There is established a commission to be known as the “Commission on the Advancement of Federal Law[[Page 110 STAT. 1306]]Enforcement” (hereinafter in this section referred to as the “Commission”).
- (b) Duties— Commission shall review, ascertain, evaluate, report, and recommend action to the Congress on the following matters:
- (1) The Federal law enforcement priorities for the 21st century, including Federal law enforcement capability to investigate and deter adequately the threat of terrorism facing the United States.
 - (2) In general, the manner in which significant Federal criminal law enforcement operations are conceived, planned, coordinated, and executed.
 - (3) The standards and procedures used by Federal law enforcement to carry out significant Federal criminal law enforcement operations, and their uniformity and compatibility on an interagency basis, including standards related to the use of deadly force.
 - (4) The investigation and handling of specific Federal criminal law enforcement cases by the United States Government and the Federal law enforcement agencies therewith, selected at the Commission’s discretion.
 - (5) The necessity for the present number of Federal law enforcement agencies and units.



- (6) The location and efficacy of the office or entity directly responsible, aside from the President of the United States, for the coordination on an inter-agency basis of the operations, programs, and activities of all of the Federal law enforcement agencies.
- (7) The degree of assistance, training, education, and other human resource management assets devoted to increasing professionalism for Federal law enforcement officers.
- (8) The independent accountability mechanisms that exist, if any, and their efficacy to investigate, address, and to correct Federal law enforcement abuses.
- (9) The degree of coordination among law enforcement agencies in the area of international crime and the extent to which deployment of resources overseas diminishes domestic law enforcement.
- (10) The extent to which Federal law enforcement agencies coordinate with State and local law enforcement agencies on Federal criminal enforcement operations and programs that directly affect a State or local law enforcement agency's geographical jurisdiction.
- (11) Such other related matters as the Commission deems appropriate.

(c) Membership and Administrative Provisions.—

- (1) Number and appointment.—The Commission shall be composed of 5 members appointed as follows:
 - (A) 1 member appointed by the President pro tempore of the Senate.
 - (B) 1 member appointed by the minority leader of the Senate.
 - (C) 1 member appointed by the Speaker of the House of Representatives.
 - (D) 1 member appointed by the minority leader of the House of Representatives. [[Page 110 STAT. 1307]]
 - (E) 1 member (who shall chair the Commission) appointed by the Chief Justice of the Supreme Court.





- (2) Disqualification.—A person who is an officer or employee of the United States shall not be appointed a member of the Commission.
- (3) Terms.—Each member shall be appointed for the life of the Commission.
- (4) Quorum.—3 members of the Commission shall constitute a quorum but a lesser number may hold hearings.
- (5) Meetings.—The Commission shall meet at the call of the Chair of the Commission.
- (6) Compensation.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day, including travel time, during which the member is engaged in the performance of the duties of the Commission.

(d) Staffing and Support Functions.—

- (1) Director.—The Commission shall have a director who shall be appointed by the Chair of the Commission.
- (2) Staff.—Subject to rules prescribed by the Commission, the Director may appoint additional personnel as the Commission considers appropriate.
- (3) Applicability of certain civil service laws.—The Director and staff of the Commission shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

(e) Powers.—

- (1) Hearings and sessions.—The Commission may, for the purposes of carrying out this Act, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate.

The Commission may administer oaths or affirmations to witnesses appearing before it. The Commission may establish rules for its proceedings.

- (2) Powers of members and agents.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.
 - (3) Obtaining official data.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chair of the Commission, the head of that department or agency shall furnish that information to the Commission, unless doing so would threaten the national security, the health or safety of any individual, or the integrity of an ongoing investigation.
 - (4) Administrative support services.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this title. [[Page 110 STAT. 1308]] (f) Report.—The Commission shall transmit a report to the Congress and the public not later than 2 years after a quorum of the Commission has been appointed. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with the Commission's recommendations for such actions as the Commission considers appropriate.
- (f) Termination.—The Commission shall terminate 30 days after submitting the report required by this section.



APPENDIX C. FEDERAL ORGANIZATIONS WITH SOME LAW ENFORCEMENT FUNCTIONS*

Executive Branch	Agencies
Department of Agriculture	Agricultural Marketing Service Agricultural Stabilization and Conservation Service Animal and Plant Health Inspection Service Federal Crop Insurance Corporation Federal Grain Inspection Service Food and Nutrition Service Food Safety and Inspection Service Foreign Agricultural Service Forest Service Office of Inspector General Packers and Stockyards Administration
Department of Commerce	Economic Development Administration National Institute of Standards and Technology National Marine Fisheries Services Office of Security Office of Export Enforcement Office of Inspector General
Department of Defense	Defense Intelligence Agency Defense Investigative Service Defense Logistics Agency Defense Mapping Agency Defense Protective Service National Security Agency Naval Investigative Service Office of Inspector General United States Air Force United States Army United States Marine Corps United States Navy
Department of Education	Office of Inspector General
Department of Energy	Federal Energy Regulatory Commission Office of Inspector General

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* Note: This list first appeared in the U.S. General Accounting Office report *Federal Criminal Justice System—A Model to Estimate System Workload* (Apr. 1991), Washington, DC: U.S. Government Printing Office (GAO GGD—91-75). The report listed 148 Federal organizations with some law enforcement functions. That report was, perhaps, the source for the more than 140 agencies with some law enforcement function that appeared in the Al Gore *National Performance Review* report of 1993.

Department of Health and Human Services	Alcohol, Drug Abuse, and Mental Health Administration Centers for Disease Control Food and Drug Administration Health Care Financing Administration Health Resources and Services Administration National Institutes of Health Office of Inspector General Social Security Administration
Department of Housing and Urban Development	Fair Housing and Equal Opportunity Office of Inspector General
Department of the Interior	Bureau of Indian Affairs Bureau of Land Management Bureau of Reclamation Geological Survey National Park Service Office of Inspector General Office of Surface Mining, Reclamation, and Enforcement United States Fish and Wildlife Service
Department of Justice	Antitrust Division Bureau of Prisons Civil Rights Division Criminal Division Drug Enforcement Administration Executive Office for U.S. Attorneys Federal Bureau of Investigation Immigration and Naturalization Service Land and Natural Resources Division Office of Inspector General Tax Division United States Marshals Service United States Parole Commission
Department of Labor	Employment and Training Administration Employment and Standards Administration Labor Management Services Administration Mine Safety and Health Administration Occupational Safety and Health Administration Office of Inspector General
Department of State	Bureau of Diplomatic Security Bureau of Oceans and International Environmental and Scientific Affairs Office of Inspector General
Department of Transportation	Federal Aviation Administration Federal Highway Administration Federal Railroad Administration Maritime Administration National Highway Traffic Safety Administration Office of Inspector General St. Lawrence Seaway Development Corporation United States Coast Guard United States Merchant Marine Academy
Department of the Treasury	Bureau of Alcohol, Tobacco, and Firearms Bureau of Engraving and Printing Financial Crimes Enforcement Network Internal Revenue Service Office of Inspector General





Department of Veterans Affairs	United States Customs Service United States Mint United States Secret Service Office of Inspector General
Independent Establishments and Government Corporations	Agencies
	ACTION, Office of Inspector General Agency for International Development, Office of Inspector General Appalachian Regional Commission, Office of Inspector General Board of Governors for the Federal Reserve System, Office of Inspector General Board of International Broadcasting, Office of Inspector General Central Intelligence Agency, Office of Security Central Intelligence Agency, Office of Inspector General Commodity Futures Trading Commission, Office of Inspector General Consumer Product Safety Commission, Office of Inspector General Corporation for Public Broadcasting, Office of Inspector General Environmental Protection Agency, Office of Criminal Investigations Environmental Protection Agency, Office of Inspector General Equal Employment Opportunity Commission, Office of Inspector General Farm Credit Administration, Office of Inspector General Federal Communications Commission, Office of Inspector General Federal Deposit Insurance Corporation, Office of Inspector General Federal Election Commission, Office of Inspector General Federal Emergency Management Agency, Office of Inspector General Federal Emergency Management Agency, Security Division Federal Home Loan Bank Board, Office of Inspector General Federal Labor Relations Authority, Office of Inspector General Federal Maritime Commission, Office of Inspector General Federal Trade Commission, Office of Inspector General General Services Administration, Office of Inspector General General Services Administration, Office of Physical Security and Law Enforcement Interstate Commerce Commission, Office of Inspector General National Aeronautics and Space Administration, Office of Inspector General National Archives and Records Administration, Office of Inspector General National Credit Union Administration, Office of Inspector General National Endowment for the Arts, Office of Inspector General National Endowment for the Humanities, Office of Inspector General National Labor Relations Board, Office of Inspector General National Science Foundation, Office of Inspector General Nuclear Regulatory Commission, Office of Inspector General Office of Personnel Management, Office of Inspector General Panama Canal Commission, Office of Inspector General Peace Corps, Office of Inspector General Pension Benefit Guaranty Corporation, Office of Inspector General Railroad Retirement Board, Office of Inspector General Securities and Exchange Commission, Office of Inspector General Small Business Administration, Office of Inspector General

	Tennessee Valley Authority, Land between the Lakes Patrol Tennessee Valley Authority, Office of Inspector General Tennessee Valley Authority, Public Safety Service United States Information Agency, Office of Inspector General United States International Trade Commission, Office of Inspector General United States Postal Service, Office of Inspector General
Quasi-Official Agencies	Agencies
	Amtrak Northeast Corridor Police Amtrak, Office of Inspector General Legal Services Corporation, Office of Inspector General Smithsonian Institution, National Zoological Park Smithsonian Institution, Office of Inspector General Smithsonian Institution, Office of Protection Services
Legislative Branch	Agencies
	General Accounting Office, Office of Special Investigations Government Printing Office Library of Congress Police United States Capitol Police
Judicial Branch	Agencies
	United States Supreme Court Police Federal Judicial Center
Total Departments and Organizations in all Branches	Total Agencies in all Branches
18	148

Source: United States General Accounting Office, *Federal Criminal Justice System: A Model to Estimate System Workload* (Report to the Committees on the Judiciary, U.S. Senate and House of Representatives, April 1991).



APPENDIX D. EXECUTIVE ORDER NO. 11396 OF FEB. 7, 1968

(Providing for the coordination by the Attorney General of Federal law enforcement and crime prevention programs)

WHEREAS the problem of crime in America today presents the Nation with a major challenge calling for maximum law enforcement efforts at every level of Government;

WHEREAS coordination of all Federal criminal law enforcement activities and crime prevention programs is desirable in order to achieve more effective results;

WHEREAS the Federal Government has acknowledged the need to provide assistance to State and local law enforcement agencies in the development and administration of programs directed to the prevention and control of crime;

WHEREAS to provide such assistance the Congress has authorized various departments and agencies of the Federal Government to develop programs which may benefit State and local efforts directed at the prevention and control of crime, and the coordination of such programs is desirable to develop and administer them most effectively; and

WHEREAS the Attorney General, as the chief law officer of the Federal Government, is charged with the responsibility for all prosecutions for violations of the Federal criminal statutes and is authorized under the Law Enforcement Assistance Act of 1965 (79 Stat. 828) to cooperate with and assist State, local, or other public or private agencies in matters relating to law enforcement organization, techniques and practices, and the prevention and control of crime:

NOW, THEREFORE, by virtue of the authority vested in the President by the Constitution and laws of the United States, it is ordered as follows:



Section 1. The Attorney General is hereby designated to facilitate and coordinate (1) the criminal law enforcement activities and crime prevention programs of all Federal departments and agencies, and (2) the activities of such departments and agencies relating to the development and implementation of Federal programs which are designed, in whole or in substantial part, to assist State and local law enforcement agencies and crime prevention activities. The Attorney General may promulgate such rules and regulations and take such actions as he shall deem necessary or appropriate to carry out his functions under this Order.

Section 2. Each Federal department and agency is directed to cooperate with the Attorney General in the performance of his functions under this Order and shall, to the extent permitted by law and within the limits of available funds, furnish him such reports, information, and assistance as he may request.

Source: The provisions of Executive Order No. 11396 of Feb. 7, 1968, appear at 33 FR 2689, 3 CFR, 1966-1970 Comp., p. 711.



APPENDIX E. COMMISSION MEETINGS AND WITNESSES

Meeting Date*	Presentations
May 18, 1998	<p>The Honorable Janet Reno, <i>Attorney General of the United States, U.S. Department of Justice</i></p> <p>The Honorable Robert E. Rubin, <i>Secretary of the Treasury</i></p> <p>Cornelius J. Behan, <i>Legislative Liaison, Major Cities Chiefs of Police Association</i></p> <p>Sheriff Fred W. Scoralick, <i>President, National Sheriffs' Association</i></p>
July 9-10, 1998	<p>Richard Dienst, <i>General Counsel, National Association of Treasury Agents</i></p> <p>Sylvester Daughtry, Jr., <i>Chairman, Commission on Accreditation of Law Enforcement Agencies, Inc.</i></p> <p>Frank Fitzpatrick, <i>President, American Society of Crime Laboratory Directors, Inc.</i></p> <p>James L. Jorgensen, <i>Deputy Executive Director, National Association of Treasury Agents</i></p> <p>Richard Kitterman, <i>Director, Commission on Accreditation of Law Enforcement Agencies, Inc.</i></p>

* All meetings took place in Washington, DC.



Gerard Lynch, *President, Regional Information Sharing System (RISS)*

Jami St. Clair, *President-Elect, American Society of Crime Laboratory Directors*

Oliver "Buck" Revell, *President, Revell Group International, Inc.*

Hubert Williams, *President, The Police Foundation*

August 24-26, 1998

Herman W. Young, *National Sheriffs' Association*

Clyde Davis, *National Secretary, National Association of Civilian Oversight of Law Enforcement*

A.N. "Bubby" Moser, Jr., *Executive Director, National Sheriffs' Association*

Robert Stewart, *Executive Director, National Association of Black Law Enforcement Executives*

Samuel Walker, *Kiewit Professor of Criminal Justice, University of Nebraska at Omaha*

Richard W. Myers, *President, Police Futurists International*

David B. Kopel, *Research Director, Independence Institute*

Gregory T. Nojeim, *Legislative Counsel, American Civil Liberties Union*

Bob A. Ricks, *Commissioner, Oklahoma Department of Public Safety*

William L. Tafoya, *Director of Research and Training, Police Futurists International*





Michael N. Becar, *2nd Vice President, International Association of Directors of Law Enforcement Standards and Training*

Ted Deeds, *Chief Operating Officer, Law Enforcement Alliance of America, Inc.*

James J. Fotis, *Executive Director, Law Enforcement Alliance of America, Inc.*

Robert Goldstock, *Chairman, American Bar Association*

Gerald B. Lefcourt, *Past President, National Association of Criminal Defense Lawyers*

October 5, 1998

Richard L. Cañas, *Director, National Drug Intelligence Center, U.S. Department of Justice*

Louis P. Cannon, *President, Fraternal Order of Police, DC Lodge #1*

Richard Woosley, *Park Ranger, National Park Service*

Clarence Thompkins, *Department of Defense Police*

Charles Stemple, *Fraternal Order of Police*

Peter Ward, *Fraternal Order of Police*

Tanya K. Metaskas, *Executive Director, Institute for Legislative Action, National Rifle Association*

Charles Rossotti, *Commissioner, Internal Revenue Service*

November 12-13, 1998

Michael R. Bromwich, *Inspector General, U.S. Department of Justice*

Floyd Clarke, *Vice President of Corporate Compliance,
McAndrews and Forbes, Inc. (former Deputy Director,
Federal Bureau of Investigation)*

Richard Gallo, *Federal Law Enforcement Officers
Association*

Raymond Kelly, *Commissioner, U.S. Customs Service*

Chuck Wexler, *Executive Director, Police Executive
Research Forum*

Robert Lummey, *Police Executive Research Forum
(former Chief of Police, Peel, Winnipeg, and Edmonton,
Canada)*

Thomas Constantine, *Administrator, Drug Enforcement
Administration, U.S. Department of Justice*

Kathleen Hawke Sawyer, *Director, U.S. Bureau of
Prisons, U.S. Department of Justice*

John Snyder, *Director of Public Affairs, National
Association of Chiefs of Police, Citizens Committee for
Right to Keep and Bear Arms*

December 1-2, 1998

John Imhoff, *Director, United States National Central
Bureau of INTERPOL*

W. Ralph Basham, *Director, Federal Law Enforcement
Training Center*

John Doohar, *Senior Associate, Federal Law Enforce-
ment Training Center*

Louis J. Freeh, *Director, Federal Bureau of Investigation*

Eduardo Gonzalez, *Director, U.S. Marshals Service*

Ray Havens, *Deputy Director, U.S. Marshals Service*





Joseph Briggs, *Management and Budgeting Division,
U.S. Marshals Service*

Panel of U.S. Attorneys

Denise O'Donnell, *Western District of New York*

Mark Calloway, *Western District of North Carolina*

Paul Warner, *District of Utah*

Panel from the Department of the Interior

John Berry, *Assistant Secretary, Policy, Management,
and Budget*

John Gannon, *Office of Management Risk and Public
Safety*

Chris Andress, *Chief, Ranger Activities Division,
National Park Service*

Robert Langston, *Chief, United States Park Police*

Thomas Riley, *Deputy Chief, Division of Law Enforce-
ment, U.S. Fish and Wildlife Service*

January 14-15, 1999

F.T. Davis, Jr., *Esquire, Long, Aldridge, & Norman,
L.L.P.*

David Nichols, *Criminal Investigator, Office of Law
Enforcement Services, Bureau of Indian Affairs, U.S.
Department of the Interior*

Milton E. Nix, Jr., *Director, Georgia Bureau of Investi-
gation*

James E. Johnson, *Under Secretary for Enforcement,
U.S. Department of the Treasury*

John W. Magaw, *Director, Bureau of Alcohol, Tobacco,
and Firearms*

William Baity, *Acting Director, Financial Crimes
Enforcement Network*

Ted Brown, *Assistant Commissioner, Internal Revenue
Service*

Panel from the Department of the Interior

Walter Johnson, *Chief, Bureau of Land Management*

John Gannon, *Office of Management Risk and Public
Safety*

Dennis McLane, *Deputy Chief, National Law Enforce-
ment*

Irving Tubbs, *Special Agent, Office of Management Risk
and Public Safety*

Thomas Riley, *Deputy Chief, Division of Law Enforce-
ment, U.S. Department of Fish and Wildlife*

February 10, 1999

James Calder, *Associate Professor of Criminal Justice,
University of Texas at San Antonio*

William F. Wasley, *Director, Law Enforcement Investi-
gations, U.S. Forest Service, U.S. Department of Agricul-
ture*

March 15 & 17, 1999

Norman J. Rabkin, *Director, Administration of Justice
Issues, U.S. General Accounting Office*

Weldon McPhail, *Assistant Director, U.S. General
Accounting Office*

Doris Meissner, *Commissioner, Immigration and Natu-
ralization Service*



April 12, 1999

Honorable Richard Clarke, *National Coordinator for Security, Infrastructure Protection, and Counter-Terrorism*

June 29, 1999

Jonathan M. Winer, *Deputy Assistant Secretary for International Narcotics and Law Enforcement Affairs, U.S. Department of State*

Michael Sheehan, *Acting Coordinator for Counterterrorism, U.S. Department of State*



APPENDIX F. EXPERT PAPERS AND ADVISORS

A Brief History of Federal Law Enforcement

Prepared for the Commission on the Advancement of Federal Law Enforcement
by Stanley E. Morris, April 1999.

A Question of Power: United States Marshals Service

By Frederick S. Calhoun (unpublished manuscript)

Analysis of Survey Respondents' Answers to Questions

Prepared for the Commission on the Advancement of Federal Law Enforcement
by Don Witham, Ph.D., March 1999.

Opinions about Federal Law Enforcement: A Survey Research Report

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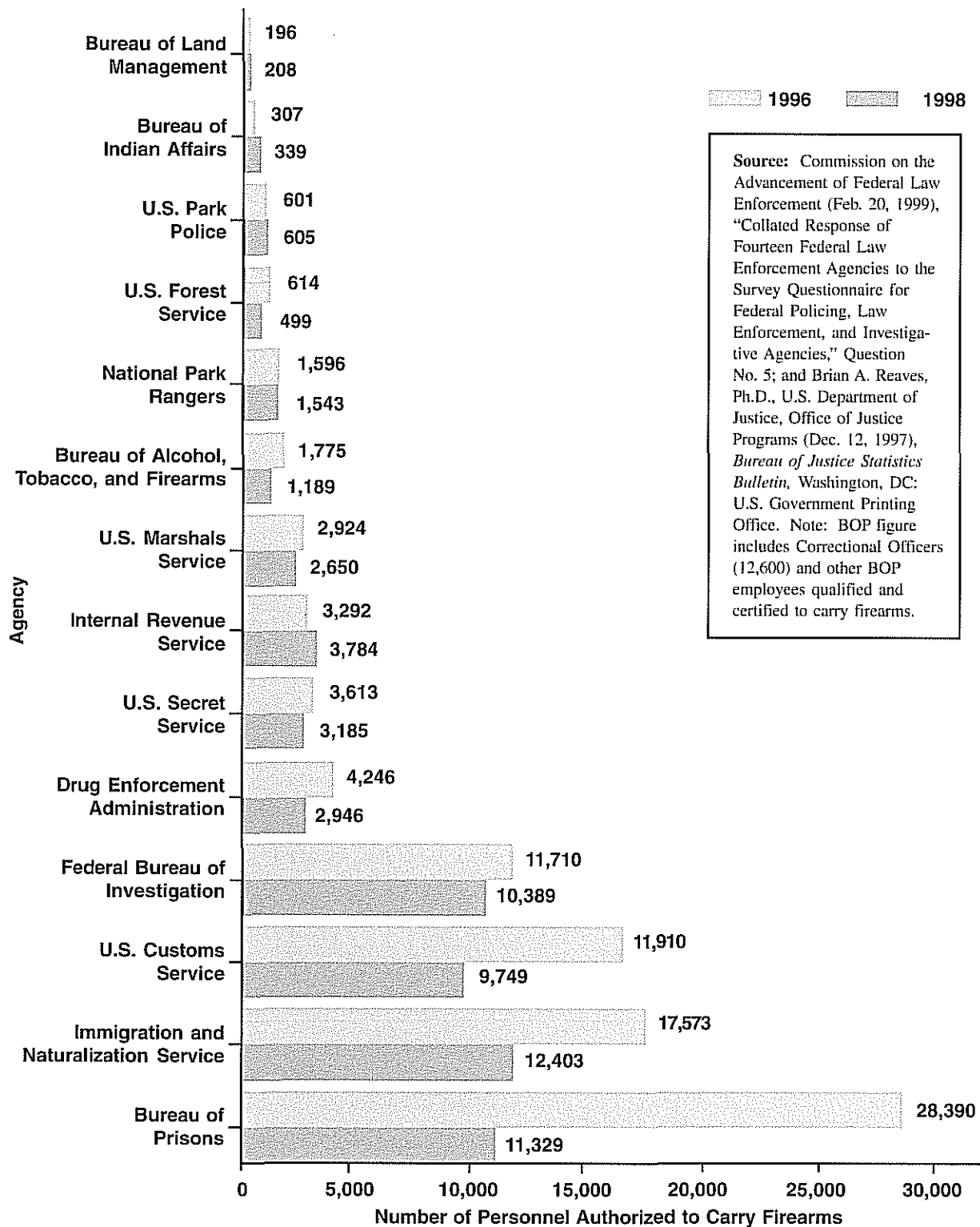
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APPENDIX G. PERSONNEL AUTHORIZED TO CARRY FIREARMS IN 14 FEDERAL AGENCIES





APPENDIX H. ACKNOWLEDGMENTS

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Unfortunately, a few persons, including some heads of Federal law enforcement agencies, declined the Commission's invitation to testify, thus depriving the Commission—as well as Congress and the American public—of valuable and useful information for this report.

The Commission particularly appreciates the contributions of the capable and hard-working staff that helped guide its work. Commission Executive Director Lee Colwell's experience as Director of the Criminal Justice Institute and the National Center for Rural Law Enforcement, University of Arkansas System, and as the former Associate Director of the Federal Bureau of Investigations was invaluable. Michael Shaheen, Chief Counsel and Deputy Executive Director, continuously helped to shape Commission thinking. Richard Fera, who turned into a one-man research department for the Commission, identified reference materials, organized materials, and responded to innumerable Commission requests, tirelessly.

Our support staff never failed us. Carmelita Pratt (Administrative Officer) provided superb administrative and logistical support for the Commission, and Jacqueline Mitchell (Executive Assistant) ensured that the Commission got from place to place, on time, and with the right agenda.

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