

THE WASHINGTON INSTITUTE
FOR NEAR EAST POLICY

DEFENDING THE CITY:
NYPD'S COUNTERTERRORISM OPERATIONS

WELCOME AND MODERATOR

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SPEAKER

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ROBERT SATLOFF: Good afternoon. Welcome to The Washington Institute. As you know, for quite some time now, the Institute has been hosting a series of our nation's leading experts and policymakers on counterterrorism. This is within the Stein Program on Counterterrorism and Intelligence.

We have hosted people from all major federal agencies, some wonderful public servants, people who have been leading the fight against terrorism inside the government, here and abroad.

Here we spread out a bit. We're very delighted today to be able to extend the reach of our lecture series to the city in America that not only has regrettably felt the long arm of international terrorism more than any, but to its great credit, has done more than any other city to address this problem and prepare, prevent, deter, and, do what is necessary to ensure that the terrible events of 2001 are not repeated. We're very delighted that today's guest is Dr. Richard Falkenrath, who is the deputy commissioner for counterterrorism of the New York Police Department.

I am very pleased that Richard could come on down and be with us today. Richard brings a lifetime of academic and policy experience to this job. He served in the Bush White House as the deputy homeland security advisor, assistant to the president for these responsibilities. He has experience in the policy analysis world; he was the director of the Belfer Center at the Kennedy School of Government. He is an expert in weapons of mass destruction and their threat here and abroad, the author of *America's Achilles Heel: Nuclear, Biological, Chemical Terrorism and Covert Action* as well as *Avoiding Nuclear Anarchy*, books whose titles are as relevant today as they were when they were first published before Richard entered government service.

I am reminded that it was eleven years ago that he spoke previously from this platform. We were just looking—I was just looking at the summary of a presentation that he gave with Mike Eisenstadt in 1998 on Iran's nuclear ambitions and suggestions for a series of U.S. and European policy initiatives to deal with them.

And you were prescient; the world was slow. We're still dealing with the same problems, and your recommendations are still very much appropriate. Today Richard is going to speak in prepared remarks that are on the record. Usually we don't have such candor from people talking about these issues, but here we have somebody who can address all of the questions, answer all of the answers, and still leave something on the side for private discussion.

I did want to thank very much one person who helped make today possible and that is another deputy commissioner of the New York Police Department, David Cohen, deputy commissioner for labor relations, whose more important claim to fame in the Institute is that he's the father of one of our sterling research assistants, Lauren Cohen, who will soon be completing her service here. So thank you very much, David, and thank you, Lauren.

And, ladies and gentlemen, it's my pleasure to introduce Richard Falkenrath of the New York Police Department.

(Applause.)

RICHARD FALKENRATH: Thank you very much, Rob. It's a real pleasure to be here, to come back. I don't come down to Washington, D.C., all that often anymore from New York. We stay home a lot, but this is one of the really foremost research centers in the country—if not the world—and the series of lectures that I've been asked to join here really has some very impressive speakers, whom I'm honored to be included among for this talk.

And I wanted also to thank David Cohen, my colleague and friend from the NYPD, for joining us here. We see each other every other day at a staff meeting, and it's nice to see him in a different venue.

I thought I'd begin by giving you an overview of the NYPD counterterrorism program, because it is a little unusual and, for those of you who studied it before and know a lot about it, bear with me. But I think there are many folks who don't understand what this program is, how it works.

The foundation of it is really the commitment of the mayor and the police commissioner, Raymond Kelly, to have a counterterrorism and intelligence program to essentially fill the gaps that are left by the federal government. And that is not a knock on the federal government; that's a commentary about our system of government.

And our system of government, the federalism system, gives the federal government only those powers expressly conferred to it by the Constitution or by an act of Congress. Everything else lies with the states or their subunits, the cities. And this is a very important point. And I start off with—this may sound a little academic, but I think it's important to understand where the NYPD fits in.

The NYPD has something called plenary police power. It's a broad-ranging authority to maintain public order and enforce the law and keep the citizenry safe. The federal government in the United States has no such authority. The federal government's law enforcement authority is very specific. There are certain federal crimes, there are certain offenses which the federal government has the authority—in some cases, preemptive authority—to investigate. And it brings to bear extraordinary resources on those investigations.

But really nowhere outside of specific federal reservations like airports or ports or courthouses or the White House or Congress, really nowhere out in America does the federal government provide day-to-day security and day-to-day policing and responsibility—and our system of government that lies at the local level.

Now, in most of America, law enforcement agencies are rather small. There is something on the order of eighteen thousand law enforcement agencies. And the jurisdictions tend to be small and overlapping. So an average police department in America will have a couple of hundred police officers who patrol the area, investigate crimes, provide general police functions.

About a hundred years ago, the city consolidated the five boroughs of New York City into one large corporate entity, the City of New York. And then in 1995, two other police departments, the housing department, the housing police, and the transit police were consolidated into the NYPD. And the result is by far the largest police department in the country. Right now there are about fifty-three thousand employees of the New York Police Department; that's down substantially from the height after 9/11,

for various budgetary reasons, but it's a very large department—and roughly a \$4 billion budget, \$8 billion if you include the fully loaded costs of all of the personnel.

So it's big. So when you take that size and the commitment of the leadership, the police commissioner, to do something different, he is able to essentially allocate a fraction of those resources, say, about 1 percent, to do something very specialized and very focused, which is counterterrorism and intelligence.

And really, that's what's happened. But it took those two things; it took size and it took the commitment at the top. It also takes a third thing, which is—the main responsibility of any police department is to fight crime, and the crime rate in New York City has been reduced very substantially in the last twenty years, making it the safest big city in America. So the fact that crime has fallen so far gives the police commissioner room to do a program like this, which after 9/11 everyone agreed was a good idea to do.

So now let me describe the program to you a little bit. It has two main elements—the counterterrorism bureau, which I have the privilege to lead, and the intelligence division, which is led by my friend and colleague, another deputy commissioner, David Cohen, who is a thirty-five-year veteran of the Central Intelligence Agency. The counterterrorism bureau has about 350 personnel assigned to it and has broken out into five or six main units. The first is about 130 detectives and investigators who were assigned to the Joint Terrorism Task Force.

Now, a short digression: The Joint Terrorism Task Force (JTTF) is the focal point for counterterrorism investigation inside the United States under federal authority. It is led by the FBI, but since 1980 the FBI has recognized that these investigations need to be done jointly with other agencies and with local government. And so in New York, which is the oldest JTTF, we have a very large contingent of NYPD officers assigned to it with their full command structure in place, all the way up to a one-star chief.

So they are completely marbled into federal counterterrorism investigations both in New York and extraterritorially. The—as you know, and I'll talk about this a little bit at the end—the federal government and the FBI have extraterritorial jurisdiction over certain terrorist offenses, and the New York field office is responsible for Africa and Europe and some parts of the Middle East.

And so what that means is the NYPD detectives who were assigned to it end up participating in these international missions and operations, extraditions, questions, that sort of thing.

We also have fanned out across the federal counterterrorism community and have four officers deployed full time in Washington, or actually in Virginia, inside the FBI and its supervisory operations section, one at the NCTC and one at the national JTTF. And we have officers across the river in the Newark Joint Terrorism Task Force, and we will soon have them upstate in the Albany Joint Terrorism Task Force. All NYPD officers were kind of spreading out, which we think is a good thing do.

The second main element of the counterterrorism bureau is what we call the counterterrorism division. It's essentially a collection of extremely specialized programs that focus on particular topics of interest to us. So we have a counter-WMD section, which focuses primarily on radiation detection and managing the biowatch program, which is looking for bioterror agents in the air. We have a critical infrastructure protection agency or office, which reviews diagrams of new buildings, critical

infrastructure, and makes recommendations to the owners about [how] to remedy deficiencies that we find.

We have a training section, which is essentially a specialized university training members of the NYPD and other agencies in everything from how to handle a confidential informant all the way down to how to conduct a proper bag search at a vehicle checkpoint. We train about ten thousand members of the service or other agencies per year in that program and now.

We have a special projects unit, which operates very specialized equipment, like two harbor launches equipped with radiation detection equipment and then a lot of vehicle interdiction devices and that sort of thing. That is the counterterrorism division.

The third major unit is the lower Manhattan security initiative. This is a totally novel approach to close-in urban security where we are combining police information, a control over police patrol resources, state-of-the-art technology, and the day-to-day involvement of the private sector. So we have invited in stakeholders from the largest companies in lower Manhattan into our facility, where they work side by side with us.

That invitation actually just reached a milestone on Monday when we brought them in to the facility for the first time. They are there now; they are going through training. The lower Manhattan security initiative seeks to provide state-of-the-art domain awareness of what's going on in lower Manhattan and increasingly across the city as a whole.

A fourth major element is the citywide counterterrorism coordinator, which runs daily counterterrorism operations throughout the city using patrol resources that are temporarily assigned to the counterterrorism bureau. So we basically levy a tax on all the different precincts in the city—and there's over eighty—and they send us one radio car with two police officers in it and their command structure from the borough, and they come under an inspector whose sole job is to run counterterrorism operations in the city, and they deploy them out across town.

And if you come to New York City you're likely to see them. Their purpose is to be very visible and to provide a police presence in the areas most likely to be cased, surveilled or attacked by terrorists. This is important because those areas tend to be low-crime.

And the natural thing to do when you're a police department is to put the police officers where the crime is. And what we know is that those are not most often the areas that are going to be attacked, so you need another program to put the police officers in the areas of terrorist interest.

They are also a ready reserve for us. So at a moment's notice we can move them anywhere we need to. If there is a disaster of some kind, an incident, an attack, a mobilization, whatever we need, we have them there with just a radio call away.

And then, finally, we have a group of analysts, civilian analysts, extremely highly qualified, who provide intelligence support to myself, the police commissioner, Commissioner Cohen, on a range of strategic topics, tactical topics, and particularly terrorist tradecraft. They also provide policy support to me as we're dealing with Congress and the federal agencies on budgets and grants and that sort of thing.

So that—and then finally we have a doctor who’s an infectious disease specialist who does support on bioterrorism issues, anthrax events, and that. That’s really the counterterrorism bureau, that’s half of it—that’s the half I lead. My colleague, David Cohen, leads the intelligence division. I’m not going to go into it, but essentially the intelligence division under separate municipal authorities, monitors leads and threats in and around New York City and using techniques that are really—some of which have been pioneered at the NYPD with a full range of assets available to it. And, when appropriate, passes the information to the federal government for further investigation and in some cases for prosecution. We work together every day with the federal government. Our most common partner is the FBI. We are completely cohabitant of the city with the FBI, and information flows seamlessly back and forth constantly.

We hear a lot about information sharing, and I will tell you [that] in New York City we are fairly satisfied with the quality of information sharing that we get from the federal government. There [are] a few little niches every once and a while where we think we can do a little better, but basically it’s quite good. And myself, Commissioner Kelly, Commissioner Cohen, are all former federal officials, so we are fairly familiar with the products that the federal government has to offer at all levels. And we’re quite comfortable with the access that the federal government affords to us on a routine basis. So that’s a success, I think.

Now, let me talk a little bit about the threat and issues related to radicalization. We take the threat very seriously, obviously. The whole city of New York takes it seriously. I think the country as a whole is taking it less seriously. I think the country in the last three, four, five years has really started to relax a lot.

And part of me thinks that’s okay. I don’t want the general public to feel fearful. What matters here is that the agencies in question have well-run, well-resourced programs to deal with the problem we have. And the problem we have is serious, but I don’t believe it’s cataclysmic. I’m not a sort of Chicken Little, the-sky-is-falling counterterrorism official.

I think that in many respects this problem is manageable. We know we can be attacked at any time at any place with any weapon and that strategic surprise is a real possibility. But I think we can take some comfort in the fact that we have devoted as a nation very large resources to this problem and [that] there are thousands of people that come to work every day trying to prevent its occurrence. And we’ve seen, lately, a series of plots and attempted plots against the United States that really haven’t gotten that far [before] they’ve been preempted. Now, that’s not to say there can’t be a plot that we don’t know about that slips through. That’s always a possibility. But I, for one, think that we, as a counterterrorism community—the New York City Police Department working with its federal agencies—are making some traction on this problem.

The threat is both external and internal. The external threat, I think, is best understood by the federal government and by the Beltway experts. I think the internal threat—the homegrown threat—is far less well understood by counterterrorism experts in Washington. And there’s a reason—which is that our entire counterterrorism intelligence collection process in the United States requires predication. It requires various conditions to be met in order for the FBI or the other agencies involved to proceed with their investigations.

Now, that predication is usually foreign intelligence of one kind or another. And when we get it, the federal government is well positioned to proceed with counterterrorism investigations. It's far more difficult when there is no connection to a foreign terrorist organization, and when there's no connection to any terrorist organization—when it's just an individual or a small number of individuals who may be watching television or downloading videos or getting on Web sites, but not actually connected to anyone who we know to be bad, but who might themselves decide to go try something.

And in other countries, we've seen this occur. Britain has a very bad problem—homegrown terrorism problem—but there have been other cases, particularly in Europe, and it could happen in the United States. The events of last month in the Bronx—in the Riverdale section of the Bronx, which is where I happen to live, illustrate that. And what happened there was four individuals from outside of New York City—from the Newburgh area of New York—decided to carry out a terrorist attack against two synagogues in the Riverdale part of New York.

Now, they were working with someone who we now know—it's all been revealed—was a confidential informant of the federal government, and of the New York JTTF. And that was very fortunate for us, because the JTTF was essentially able to control that operation from the beginning to end—a few spots in the middle, we didn't quite control it perfectly—but by the end, it was very well controlled. There was never any risk to the residents of Riverdale. And these individuals literally carried out their act and put what they believed to be viable bombs in front of these two synagogues, after which they were promptly arrested by the emergency services unit of the NYPD and arraigned in federal court.

And so what that shows you is that we do have, in this country, people who are willing and interested in carrying out these sorts of attacks. These four are not the only ones like that. So far, we've been fortunate. There have been no major terrorist attacks that have been successfully carried out by homegrown terrorists, but we need to be constantly vigilant. And the law enforcement agencies like the FBI and the NYPD, the New York State Police, the others that are involved—that's their job, to be constantly vigilant and to investigate these threats when they come along.

The analysts who follow radicalization have a number of different theories about what is driving this, and as a former academic—a former professor—I must say I'm not yet persuaded as to which theory is right. The NYPD intelligence division put out a very important report about two years ago on radicalization laying out its analysis of ten major cases of homegrown radicalization and the steps that the individuals went through. And we think that's a pretty good framework for evaluating these different plots.

It fits reasonably well to the Riverdale plot, but there are some variations that it doesn't fit exactly well. There were some steps that these individuals went through that, you know, were not fully anticipated. So on the radicalization part of the problem, I'd say we still have a long way to go as researchers and intellectuals following this to really get a handle on what is going on in the hearts and minds of these individuals.

The sort of root causes theory of radicalization is, in my judgment, very unpersuasive. When you look at the sort of—or try to describe, you know, the environmental, economic, social circumstances from which these individuals came and explain their terrorist intentions as emerging from that, I really think it doesn't hold water, because there's so many people coming from the exact same environmental or

social or economic background who decide not to do that, or who never think to become a terrorist. So that doesn't go very far with me.

I think you need to get further in, sort of close to the individuals themselves, and try almost psychologically to understand what is going on in their minds that leads them down this path, without trying to generalize across large swaths of the population. And for that, I think we don't have a good theory yet. Some of the statistical work that I've seen on, for example, suicide bombers in the Middle East—Palestinian, primarily, attacking Israeli targets—I thought is a little bit stronger on a statistical sense, but among the homegrown terrorists that we've seen in the United States or people who have terrorist intent, I've yet to see a really persuasive, close-in psychological study of what's going on in their minds to make them think that this is a good idea, that this is something worth carrying out.

And I hope that emerges out of the sort of great analytic engine that we have in Washington and in federal agencies and think tanks like this. We continue to watch it at the NYPD, and we think our framework is one of the better ways to think about the problem. But as new ideas come along and as more evidence comes forward, it may require modification. The counterterrorism bureau and the intelligence division of the NYPD do not, themselves, directly engage in counterradicalization, and that's in stark contrast to the United Kingdom, where our counterparts at New Scotland Yard are directly responsible for counterradicalization and they will reach out to the communities.

We don't do that in New York. We have a community affairs bureau of the NYPD that reports to Commissioner Kelly, and he is in charge of it. But the counterterrorism deputy commissioner and the intelligence deputy commissioner are not responsible for community outreach. In part, we don't want to stigmatize the interaction with these communities, and if the counterterrorism deputy commissioner or the intelligence go to a community meeting or a mosque, it sort of sends the message that the reason we're here is we think there's a threat. And that's not the message we want to send, because the vast majority of the people from these communities—the vast, vast majority—are no threat at all and simply want to live in peace and enjoy everything the city has to offer, which is a lot.

But our community affairs bureau does have this responsibility, and we're blessed in the NYPD with incredible ethnic and linguistic diversity. And this is a real strength. The personnel of the police department come from all walks of life and an incredible number of different countries where they were born. One of the graduating classes we attended at Madison Square Garden had, I think, sixty-five different nations represented; the cadets had been born in sixty-five different countries. And so they spoke their mother tongue and they spoke English, and we in the counterterrorism bureau and intelligence division make use of that from time to time, but it gives us terrific linguistic and ethnographic expertise when we call upon it.

Now, I want to conclude with two points about the federal government's counterterrorism effort. And the first about prosecution and the second about grant funding to communities like New York City. On the prosecution side, there were very few high-profile prosecutions in the United States for the last seven years. That was because the Bush administration had decided, really, not to use the criminal justice system to deal with the terrorists that it had captured or detained—instead, to enroll them in the military tribunal process, in some cases, to render them to third countries—but by and large, not to indict them in federal court and bring those cases forward.

And what we're seeing now, in the last—the first six months of the Obama administration—is an increasing tendency to bring these higher-profile cases into federal court for indictment prosecution. So one of the architects of the bombings in East Africa in 1998, Ghailani, has now been brought to the southern district of New York from Guantanamo, where he had been held for almost five years, and has been indicted and will be tried there. This is raising a lot of very difficult issues for the investigators, who now find themselves required to support these prosecutions.

And as, I think, the administration brings more and more high-profile terrorism cases into federal court, you will see an increasing drain on investigative resources from new investigations that haven't resulted in arrest and indictment to supporting prosecutions, because once something is before a federal judge in a federal court, the Department of Justice does not want to lose that case, understandably. It's their job to win those cases, and they are going to be very demanding about investigative support from the JTTF.

And so one of the things I think the new administration really has to watch out for is the resource commitment involved in bringing these cases forward in federal court. I'm not against that by any means; I'm just saying this is a resource management issue that the Department of Justice and the FBI need to take seriously. We watch it at the NYPD because our people happen to be marbled into that; they're doing their job and they're going to support that prosecution completely. But if you get too many high-profile cases in too many courthouses, I think there's a risk that we will have less resources to pursue new leads as they come along. And that is something to watch out for.

There's also the risk that we're going to lose these cases. You know, that's the thing about coming into federal court, is you don't always win, and we need to be prepared for the consequences of an indictment and a prosecution that goes badly and results in the release of someone whom we really do not want released in the United States. Our prosecutors are very good, and they're going to do everything in their power to make sure that doesn't happen, but that's something that we just need to bear in mind as a possibility.

And finally, I am worried that some of the grant funds which have supported homeland security and counterterrorism activities across the country for the last seven years are not receiving the sort of high-level attention in Washington that they should be. We've seen these budgets slowly trickle down. The levels are shrinking; the competition for grant funding is becoming more fierce; and frankly, the bureaucracy and the bureaucratic process that we have to go through to actually get the monies dispersed and spend them is becoming ever more onerous.

Furthermore, I see a gradual redefinition of the purpose of many of the grants that come out of the federal government. They don't seem to be focused on counterterrorism so much, at least as I understand it, but on preparedness. I think preparedness is very important. It's a federal responsibility in the Department of Homeland Security and in FEMA, and both those agencies learned an important lesson at Katrina.

But preparedness is not the same as prevention, and what I am finding in a number of different grant programs that the federal government administers is [that] mid-level and low-level grant administration offices are increasingly disinclined to fund prevention activities and preferencing preparedness activities at the expense of preventative functions, like the things that we do at the police department. And I think that would be bad.

I think a pure focus on preparedness and getting ready to clean up the consequences of an attack should not crowd out the things that the country, and particularly the American law enforcement community, can do to protect the country in the first place. And I've seen this, now, in about a half a dozen different grant programs in DHS, and I'm worried about it. The law enforcement lobby in Washington, for whatever reason, seems to be less effective than the preparedness lobbies in Washington. I don't really understand why, but that just seems to be the case.

And I'm not arguing against funding preparedness activities, but I do think it's important that policymakers in the federal government understand that there is a lot state and local agencies can do to prevent attacks in the first place and that those sorts of activities need to be supported at the federal level. So with that, Rob, I'll conclude, and if we have time for any questions, discussion, I'm happy to take it on.

(Applause.)

ROBERT SATLOFF: Thank you very much for that overview of the work of the counterterrorism division. If I can open up a question-and-answer session by asking you this, Richard: When you look out—you and your partners and the intelligence side of this—when you, together, look out at threats, what do you see? What are the most serious and urgent threats in the terrorist realm that you face?

RICHARD FALKENRATH: So I think the most serious threat remains international terrorism and of that, al-Qaeda and its affiliates. This is essentially Sunni extremism based in the Persian Gulf area and in South Asia, particularly Pakistan. And the possibility that this will successfully exported into the continental United States—again, we know that there is strategic intent to do that by the remnants of al-Qaeda and its fellow travelers.

So far—knock on wood—in the United States they have not been successful with that, but I think that carries with it the highest risk of mass casualties. Second, and sort of the threat that doesn't get as much attention but from a capability perspective is probably worse, is Hizballah. Hizballah, at the strategic level, with its state sponsors, more or less decided not to attack the United States interests directly in the continental United States at all.

And that is good that they haven't done it. But our assessment is, if they ever change their minds, they have the capacity to inflict terrible damage on the United States, and I worry about that a lot. We haven't seen it yet, but I don't like to be in a position where our defense lies in the strategic decision of a terrorist organization. I would have greater comfort if we really had understood the capabilities of this organization better, and particularly their ability to project power into the United States.

So in terms of international terrorism, those are the ones that we can articulate the best. In terms of the homegrown threat, it's the things we don't know about. It's a small group of individuals who embark on a path of radicalization that leads them somehow into contact with weapons of one kind or another and then the willingness to carry out an attack. And it's very difficult to describe.

We focus mostly on Muslim communities, since this is where the propaganda on the Internet and the television imagery seems to have the greatest resonance, but we are not blinded to the possibility of a homegrown threat from non-Muslim sources. And that's happened periodically, the most graphic example being Oklahoma City.

MR. SATLOFF: And given your own special expertise in weapons of mass destruction, can you tell us anything about the extent to which you see this as being—or this means as being a higher priority for the adversary?

MR. FALKENRATH: The means of carrying out WMD attacks—mass destruction attacks—are becoming increasingly available with time. And we've known this for a very long period of time; it's been apparent for over a decade that the ability to acquire biological agents, chemical agents, toxic industrial chemicals, radiological agents and even possibly fissile material, is essentially growing. And the expertise needed to assemble that into a viable weapon is disseminating, and as a consequence of globalization and improved education around the world, more and more people are going to be capable of assembling this and carrying out such an attack.

So there's nothing we can do about that. The sort of background threat—the latent capacity of non-state actors to carry out an attack like that is rising and that rise is more or less inexorable. Intent is also there, at least among certain sectors. We've had fatwas out of al-Qaeda-affiliated imams on this, endorsing the use of weapons of mass destruction. In Afghanistan, we discovered an anthrax laboratory. After the fact, we know quite a bit about al-Qaeda's anthrax program, its biological weapons program. And we have seen some evidence of increased and residual interest among extremists worldwide in these capabilities.

The threat here is derived really from the consequences, not from the likelihood. If I had to place a bet on what did I think was the most likely attack, I would say it would be using a conventional weapon of some kind, a normal explosive, a gun, an attack on a transit system or something like that. We do not want that; we would regard that as catastrophic in New York City. But we know that the consequences would be far worse if the adversary used a weapon of mass destruction, which is harder to do, and therefore I think not as likely. But the consequences are such that we have to take it pretty seriously.

So what we do in New York City is, working with the federal government and our health department, we maintain a network of atmospheric samplers looking in the air for the main bioterrorism agents. The health department works very closely with hospitals and pharmacies to monitor syndromes, looking for evidence of a biological attack. We have special systems in the subways and other mass transit systems to monitor for mass symptomology. And we have the largest and most sophisticated network of radiation sensors anywhere in the world in New York City—a system that we've put in place with the help of one part of the federal government that's called the Securing the Cities Program.

Regrettably, the Obama administration elected to zero that program out in its 2010 budget, something that was hard for us to understand, given that President Obama had called the threat of nuclear terrorism the most pressing threat we face. And we are working with Congress in hopes of restoring some fraction of that in the FY10 appropriations bill.

MR. SATLOFF: Thank you. With that, I'll turn the floor over to your questions, if you could be kind enough to use the mike in front of you, make sure the button is pressed in the middle where it says push and identify yourselves so we can all know who you are. Yes, sir.

Q: I'm Marc Randall with the Congressional Research Service. I wanted to follow up on a comment you made about criminal predication and some of the challenges in the domestic context. As you know, of course, the attorney general guidelines were revised last year and have been characterized as lowering the threshold to some extent for predication for starting investigations in these cases. I wanted to ask your view about whether or not you think that's a move in the right direction to give better investigative capabilities or the opportunity to do that. And I also wanted to just ask how do those guidelines compare to what NYPD's guidelines are for doing similar investigations?

MR. FALKENRATH: Okay. First—I'll take the second part first. The NYPD does have its own guidelines, which are modeled on the attorney general guidelines, but they are based on the consent decree issued by federal court governing the intelligence activities of the NYPD on an old case called Hanshu, that's over a decade old. That consent decree was modified somewhat after 9/11 to deal with the new threat. The attorney general guidelines come required by executive order and now enshrined in statute—the requirement to have attorney general guidelines. In my judgment, the guidelines very badly needed to be revised, and the administration—I was pleased that the Bush administration did get that revision out. That should have probably been done earlier.

So far—I guess it's about a year that's gone by—I have perceived no discernable change in the activity at the kind of working level as a result of those changes in the attorney general guidelines. And I believe one of the causes of that is that the A.G. guidelines are really just the capstone guideline on an extraordinarily complex and hard-to-interpret set of rules and procedures that govern JTTF investigations.

And the A.G. guidelines are put out by the Department of Justice, which is the parent agency of the FBI, but the FBI itself has its own set of lawyers in the national security division, and they have various implementing protocols and procedures and handbooks and rulebooks. And the challenge of the agents and the detectives in the JTTF to interpret those rules, follow them, is really, very substantial. And so to do relatively simple investigative techniques in the JTTF, there's often quite an approval process that has to be followed before it can be done.

Once that approval process is completed, the powers are substantial. But for every different type of investigative target and technique that is used there is a different and idiosyncratic set of approvals that need to be gone through—different documentation has to be prepared; predication has to be presented—the end result being a system that is usually not very nimble. And the times when it moves fast are usually the times when the senior-most management are directly engaged and have basically determined that this is a super-high-priority investigation, at which time the system can move fairly quickly.

MR. SATLOFF: Thank you. Josh, here on my right? Is the button—right where it says PUSH.

Q: Josh Meyer from the *L.A. Times*. I read the intelligence report from two years ago; it was very interesting. And there were the case studies. And one of the things that you guys have tried to do,

which is groundbreaking, is identify traits or characteristics or just suspicious behavior at the early stages so you can try to nip attacks or plots in the bud. Can you go into the challenges that you've had trying to balance the liberties and also try to get at criminal behavior or terrorist attacks before they're launched? I know it's—you guys spend a lot of time trying to balance those. But can you discuss that a little more?

MR. FALKENRATH: Yeah. Essentially the intelligence division follows leads. And so if there is a lead that brings it to look at something more closely, it's able to do that. But it's not a dragnet; that would go too far, and the Hanshu consent decree makes that very clear. And so predication is required for NYPD investigations, as it is for federal investigations. And that's appropriate; that's our system of criminal justice.

One difference, though, is I think the bureaucracy at the NYPD is somewhat more compressed than it is in the federal government, which has field offices and headquarters of several different agencies involved in these things. At NYPD, it's really top-down and the relevant lawyers are very close to the deputy commissioner who makes the decisions. And so things can go pretty quickly.

I tell my friends in or from the federal government a story about working at the NYPD that often makes them chuckle. And it has to do with us having so little interagency process. So when you work at the White House or in a federal agency, you spend a huge amount of time going to meetings, trying to get consensus, get decisions made, get things documented properly. And you seem to spend most of your time in an interagency process of one kind or another.

And at New York, it's a very modest interagency process. Commissioner Cohen and myself spend an hour every day with the police commissioner—its just the two of us—we go through the entire range of issues we're working on and we're able to get decisions made very swiftly. And once we have that we just proceed and execute.

Q: Thank you, my name is Tom Diaz, I was co-author of a book called *Lightning out of Lebanon: Hizballah Terrorists on American Soil* and I have two questions about Hizballah, if you would. One, there's been a lot of public reporting about Hizballah increasing operations in Latin America and I'm wondering if that's influenced your assessment of Hizballah's capabilities? And secondly, the question has always been under what circumstances would Hizballah change its mind, given its infrastructure? Do you have a scenario in mind, or scenarios, or what do you think about the possibilities of Hizballah saying, okay, now we're going to do what we can do?

MR. FALKENRATH: I'm not a great expert on Hizballah or on Lebanon or Iran, but in terms of what could change it is a direct U.S. attack on Hizballah or its state sponsor, Iran. And if that happens then I think there is one school of thought that says they would change the rules of engagement. I don't know that for sure; there may be others—there may be other red lines, I've seen various intelligence assessments on this sort of red-line question, what, if we cross over, would cause Hizballah—but direct U.S. military operations against the Hizballah leadership are regarded as one.

I mean, on one puzzle that a lot of people who follow this is, how come there's been no apparent retaliation for the assassination of Mughniyeh, which I don't actually know who assassinated Mughniyeh. But somebody did and Hizballah presumably has a theory of who did, yet as far as I can tell

there's no obvious retaliation that's occurred. And the conventional analysis of Hizballah says there should be something. Maybe the shoe hasn't dropped and it's going to, or maybe they've tried and we've missed it—I don't know.

In terms of Latin America, what it says to us is they do have the capacity to operate across oceans into America. There is no question there in the tri-border region of South America—there's no question there's a connection to Venezuela. So they are demonstrating global reach, which we've known they've had, at least since Buenos Aires, and this brings it home again.

Q: Since you've just mentioned global reach, can you say a few words about NYPD's counterterrorism global reach?

MR. FALKENRATH: Yeah. So the NYPD intelligence division has 11 detectives assigned in foreign capitals, has liaison to other nations' law enforcement agencies. They do not work out of the embassy; they are connected to another nation's law enforcement agency. And they are at the invitation of that country. In addition, NYPD detectives will routinely deploy abroad in federal capacity through the JTTF when we have to do an extradition or take statements or Mirandize a witness, or whatever it may be. The practice in the New York field office is that the FBI agents and the NYPD detectives do it together.

MR. SATLOFF: Great. Mike Kraft.

Q: Thank you for your presentation. I had worked with one of your predecessors, Mike Sheehan, when he was in State Department. And in his book, *Crush the Cell*—excuse the plug—he described very interestingly how New York Police Department had a sort of a crash program for helping educate its officers at dealing with possible threats internally. Is that type of training still going on? And is it applicable perhaps to other big police departments? And then on weapons of mass destruction, you described some of the efforts to deal with bioterrorism threats. I'm wondering if you also—do you all try to do monitoring at airports or ocean liners coming in, or is that handled by another agency?

MR. FALKENRATH: The airports—there are three other agencies at the airports. It's TSA with the outbound traffic, CBP with the inbound traffic and international outbound and then the port authority which actually leases the airports from New York City and is responsible for their immediate policing. The JTTF has detectives assigned there when there is a case or when we want to investigate someone who's leaving or arriving.

For maritime traffic, once they arrive at the port, they are the responsibility of CBP and the port handler. On the water, the reigning authority is the Coast Guard but we work extremely well with the Coast Guard—the NYPD Harbor Unit has more resources in New York City harbor than the Coast Guard does. And so we do joint boardings together and we will conduct offshore radiological screens of incoming vessels that are determined to be at risk using a unique NYPD vessel that is equipped with advanced radiation detection equipment. So that's on the ports.

On the training, it's not a crash program anymore, as it was when Mike Sheehan really started it. It's now a daily activity, and the intelligence division and the counterterrorism bureau personnel are very

highly trained both by our own courses and we send them to other courses constantly, but we—every time we take cops off of patrol and run them in a counterterrorism capacity as I described before, we give them a series of briefings done by our civilian intelligence analyst

And their supervisors will turn them out, tell them what's going on in the world, what they need to look out for, prepare them for any questions they have. And the morning after the arrest in front of the Riverdale synagogues, we put these personnel—we call them CRV, critical response vehicles, in front of almost all of the synagogues in the city, anticipating that people would have questions about what happened the night before.

And at 5:30, 6:00 in the morning, we had our civilian intelligence research specialists explaining to all the inspectors and the lieutenants and the sergeants and the cops what had happened the night before, so that if they were approached, you know, they could give the right answer and we wouldn't get any misinformation out. So yeah, we train them constantly. Training is a very important mission for us. We do it all the time.

Q: Eric Schmitt with the *New York Times*. I wonder if you could address just a couple of the potential threats—just the seriousness—as you see them. One would be the Mumbai-style attack. NYPD sent a team shortly after that attack—did a very thoughtful assessment of that and how it might apply to American cities, including New York. Obviously, in the months since then, you've probably had time to digest that, look over those kinds of threats—maybe talk about that.

The second has to do with continuing reports of Europeans—Caucasians, essentially—being trained in the Pakistani tribal areas going back into Europe, particularly the U.K., and possibly using it as a launch pad into the United States. How do you assess that type of threat as well? Thanks.

MR. FALKENRATH: If you had to put your finger on, I think, the consensus greatest risk of a high-casualty attack on the homeland, it would be what you just described, which is European-descent radicals who have sought training in Pakistan and are somehow reinserted into their homelands. That has happened in Europe a fair bit. In the United States, I think that is fair to say one of if not the highest priority counterterrorism intelligence priorities, is to monitor that risk.

And we've deduced that from the European experience where, you know, particularly in the United Kingdom, but also on the continent, they've had a number of pretty serious incidents that have come from European nationals going to Pakistan, completing the radicalization process in Pakistan, getting some training or last-minute motivation or whatever it is, taking it back out and then carrying out their attack.

Mumbai we looked at very closely, and the extraordinarily sophisticated assault on Mumbai—a terrible scene that went on for far too long over there—and we, immediately after Mumbai, as you've noted, sent a team over there to study it and then, ourselves, began internal exercises, including a tabletop at the highest level of the NYPD to work out how we would deal with a similar active shooter scenario involving multiple coordinated gunmen—a very difficult scenario for anybody to deal with. Commissioner Kelly has testified on this, so he's talked a lot about some of the changes that he has put in place in the department to better equip the NYPD in responding to that situation.

Q: Just a follow-up if I could: The commissioner, if I recall correctly, also floated the idea of talking to media organizations and imposing some kind of a news blackout during an operation like that. As you know, during Mumbai, that's how the terrorists kept track of a lot of what was going on and used cell phones and all that. How—what has happened to that idea or proposal?

MR. FALKENRATH: I mean, that's the sort of thing that would be handled during the incident, but clearly, if you thought that the terrorists were using the media to communicate with themselves or their handlers or their managers, you know, the relevant authorities would go to the news media and ask them to desist. I think that goes without reason, but in abstract anticipation of that, there's really not a lot to do.

It's like, if the circumstance dictates, such a conversation would occur, and it may be the NYPD that does it; it may be a federal agency that does it. But it would have to be a pretty specific circumstance to do that.

Q: Thanks.

MR. SATLOFF: Yes, please.

Q: Hi. James Meek from the *Daily News*. I have a radicalization question, but first, can you tell us if you've ever detected any of these white Europeans trained in the Pakistani tribal areas trying to visit the city of New York?

MR. FALKENRATH: Nothing that you haven't read about already in the paper.

Q: Okay. (Chuckles.) So you talk about the mystery of radicalization—the ongoing mystery—how do people get radicalized? How about rejection? Can you quantify at all, by a percentage or any other way, how often it's been the case in plots—such as Riverdale, where, you know, the court papers say that you had an informant who came forward with information—where you've had cases where people have come in—either walk-ins or informants already working with authorities—who said hey, I was in a mosque and this guy started asking me if I wanted to go blow something up, or whatever the tip-off was—tips, basically, that were actually legitimate. Is there any way to quantify how often that happens? I mean, is it quantifiable in these terrorism cases?

MR. FALKENRATH: If someone were to do it, I think it would be a very, very small percentage of the background. I've never seen data quantifying that that would satisfy me, as at all scientific. It's really more anecdotal at this stage.

Q: So you're not seeing any great rush of people who are banging down the doors to say, you know, we really don't want to have any part of this stuff and we want to let you guys know that there's some nefarious activity going on in our communities, among us?

MR. FALKENRATH: No, no—certainly no great rush. We see enough to be worried about, but this, again, is a tiny minority of the overall community who engage in this, and it's a small fraction.

Q: When you talk about the evolution of the threat—Europeans, for example, or different types of threats—are there certain powers or certain tools that you wish you had that you don't have that would help you address these threats?

MR. FALKENRATH: I think, at the federal level, which is where, certainly, most of the international investigations are happening, the powers are all there. It's the procedures to employ them that, I think, need constant attention, and that sometimes, they're too cumbersome. I don't see a need for any sort of great, new legislative change of counterterrorism and intelligence authorities, but I do think some of the procedures are excessively cumbersome.

And we found ourselves—I think it was a very difficult period after the revelation of the president's warrantless wiretapping program. There was a period there of a sort of chilling effect that went through the counterterrorism community and things were especially difficult. I think, now, with the FISA Modernization Act passing with a broad bipartisan margin in Congress that we're in a better place, and so I don't see a need for any great, new powers.

Just, I would like them to be better—somewhat more nimbly employed from time to time. And the same is true at the NYPD level; we're not seeking any new authorities. We think we've got good authorities and we have good safeguards in place to protect civil liberties and to maintain the justice and the sense of confidence that the city has in its police.

Q: Thank you.

MR. SATLOFF: Yes, David?

Q: Thanks, I'm Dave Pollock here at the institute, and thank you for the presentation. If I understood the recent report from DHS about homeland security, terrorist—or counterterrorist issues—at least, the way that it was played in the press, there was more emphasis on homegrown—not Muslim, but white supremacist, racist, other extremist kinds of activity and maybe violent activity, like the guy who shot up the Holocaust Museum or something like that. Could you comment on how you assess that different kind of terrorist potential in the New York City area? Thank you.

MR. FALKENRATH: That issue seemed to become sort of a tempest in a teapot down here. It wasn't a big issue up in New York. We see a lot of different products come out. You know, the DHS, the FBI and the intelligence agencies—they write a lot, they put a lot of things out—and that looked, to me, like just another kind of spotlight of one risk. And there are many different risks; there are many different communities that have an extreme element—a fringe—that occasionally crosses the line and carries out violent acts. White supremacists are one; the eco-terrorists are another. So there's a whole range.

And so I actually didn't follow that controversy that closely. I didn't read that paper. Maybe it was inartfully written, but putting out a paper saying that there's a possibility acts from that portion of the political spectrum doesn't seem that controversial to me, but then again, I didn't write it and I didn't read it real closely. Yes, sir?

Q: I'm Franz Mitter (ph) from the European Commission—the delegation here in Washington. You spoke about the reorientation of the new administration towards prosecution of terrorists in federal courts. I've read an article by the *L.A. Times*—perhaps by you—some time ago on the global justice initiative, which would place federal law enforcement agents, I think from the FBI, mainly, abroad to make sure the evidence is collected in the proper way so that it can be used in federal courts. Is this something where the NYPD is involved, as well? And is this on—I mean, is it more than a newspaper report?

MR. FALKENRATH: I don't know. I've never been briefed on this initiative; I read the same reports. I know that the administration doesn't like the term "war on terror" and was looking for a new sort of framework to describe it, and I guess global justice is it, but I'm not sure about that. But collecting information in a way that can be presented as evidence in future prosecution is an eminently sensible thing to do.

And one of the things we're finding is, in the Bush administration, in which I served, a lot of information was collected on an intelligence basis that's completely inadmissible, both in our court and in allied courts, so that when we try to return the Guantanamo detainees to foreign governments—the United Kingdom, others—or indict them in our court, the cases need to be reconstructed from scratch, which is very difficult.

So I find nothing objectionable whatsoever in collecting information in an evidentiary way, and indeed, it's been going on for some time. FBI agents are already all over the world on specific cases and investigations that come out of the New York office, they will sometimes be accompanied by NYPD detectives, and they are trained to collect information and to prepare it for possible use in a prosecution. And that's what they do. And it makes complete sense. And, as I said, one of the difficulties we're encountering is that it wasn't done for so long.

MR. SATLOFF: In the back, Jennie?

Q: Jennie Gromoll from the State Department. I'm very comforted, Rich, that from your bio background, you've instituted this, and obviously, your personal interest has had a lot to do with this. And I'm wondering, is Chicago, is Los Angeles—are there other PDs—I've met the LAPD commissioner and he's very, very aware of the scenario where there's an envelope of white powder sitting on the front seat and what does his guy do on the ground? So for all the policy we do, how does that actually work on the ground? But are you finding interest from the other PD departments on having a doctor on staff, having more training in this, or is it only sort of the biological –

MR. FALKENRATH: No, in most departments across the country, they leave HAZMAT operations to the fire departments and medical issues to the local health authorities. NYPD is relatively unusual that it has fully qualified HAZMAT teams and is in fact the lead agency on many types of HAZMAT incidents. That's quite unusual. So there's some that are interested, but I'd say it's other professions that typically focus more on emergency management and the public health community.

The real problem I see at the bio-detection area is essentially a loss of interest at the federal level, where we have a small, hard-working program at DHS, but it's really buried in the bureaucracy and the deadlines, the various development timetables for bio-detection systems have all slipped and the

funding for the programs just gets continually slashed and is really not strongly supported at the high levels of the Obama administration or the Bush administration, in its latter years, and certainly not among the appropriations subcommittees that appropriate the money. So bio-detection, bio-surveillance in major urban areas is a distant, low priority at the federal level, and we feel that in New York City a lot.

MR. SATLOFF: Yes, Robert. Right in front.

Q: Bob Kupic (ph) in the *Independent*. So this is a very sort of straightforward question, but it has to do with the levels of threat that are communicated—you know, red, orange, whatever. That, to me, does not make much sense, frankly. And I wonder is there a more meaningful way to designate a level of threat that the general public can understand, or is that just simply beyond the capability—

MR. FALKENRATH: Yeah, I'll—look, I was at the White House when that system was designed. In fact, I think I wrote the executive order that, uh—(laughter)—no, it's all right. And it was a product of its time, and at that time, what was happening was first, the attorney general and then, Tom Ridge—they were getting threat intelligence and they communicating to the public. So you know, they'd go out and they'd give a press conference and say well, we have some intelligence, we're very worried so be on alert.

And then a month later, they'd come back and say, so be on alert. And by the third time they did it, people were like, well, didn't you tell us that last time? What's new? And so it was—that tiered system and the colors are really a product of our time. I think the Bush administration had already started walking back from it in later years and the Obama administration undoubtedly has no great enthusiasm for it, either. But it is useful for operational agencies to have, kind of, levels to gear towards, and to have some notch that they can go up to temporarily, as long as they know they can come back to something. But the thing became sort of a laughingstock, and became more of a political liability for whoever had to go out and give the announcement. So they really stopped using it. And if I were in those shoes, I probably would have done the same thing.

MR. SATLOFF: (Chuckles.) If I can close by asking you this question: Regrettably, New York has been targeted on multiple occasions by international terrorist organizations—radical, Islamic terror. In the recent past, is there a way—do you gauge whether New York, itself, is as much, more or less a focus of the ideology, the objective, the discussion among radical terror organizations and their supporters? Is it still as high as it was before 9/11? Has it gone up; has it gone down? Would it be as great an achievement for these organizations to attack New York today, given what occurred eight years ago, or has the threat moved to some other great target?

MR. FALKENRATH: I think it's unchanged and New York remains at the very top of their list, both symbolically and in terms of physical consequences of a successful attack. And we don't have any statistical analysis of that question; it's anecdotal. But we continue to see it in intelligence reporting and detainee reporting. It comes up again and again. And so New York, unfortunately, has a very special place in the extremist mindset, and in a way, it's a function of the city's greatness, I think. But we certainly take it for a given. We wish it weren't so, but it seems to be the way things are.

MR. SATLOFF: Richard, thank you very much for joining us here today at the Washington Institute. Thank you. (Applause.)