



Office of the Inspector General United States Department of Justice

Statement of Glenn A. Fine
Inspector General, U.S. Department of Justice

before the

Senate Judiciary Committee
Subcommittee on Terrorism and Homeland Security

concerning

The OIG Report on the Department of Justice's Readiness to
Respond to a Weapons of Mass Destruction Attack

August 4, 2010

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Senator Cardin, Senator Kyl, and Members of the Subcommittee:

Thank you for inviting me to testify about the Office of the Inspector General's (OIG) recent report regarding the Department of Justice's (Department) readiness to respond to a potential weapons of mass destruction attack.

The use of weapons of mass destruction (WMD), whether by a hostile nation, a terrorist group, or an individual, poses a potentially serious threat to the United States. One of the greatest concerns is that a WMD may fall into the hands of terrorists or that terrorists will develop their own WMD.

According to a National Security Presidential Directive, a WMD includes any device intended to cause death or serious bodily injury to a significant number of people through the release of toxic chemicals, disease organisms, or radioactive material. In addition to mass casualties, a WMD could also disrupt vital infrastructure and disable communications, financial, and transportation systems.

Because of the importance of this issue, the OIG conducted a review to evaluate the readiness of the Department and its components to respond to a potential WMD incident. In addition, we examined the readiness of Department field offices in the Washington National Capital Region to respond in a coordinated way to a WMD incident. In May 2010 we issued our report describing the results of our review.

In my testimony today, I will summarize the findings of our report and then discuss the Department's response to our report.

I. BACKGROUND

To prepare to meet the threat of a WMD attack, the federal government has taken various steps, including the issuance of national policies such as the National Response Framework. This Framework was completed in January 2008 by the Department of Homeland Security and approved by the President. The National Response Framework established a comprehensive approach for a unified national response to both natural and man-made disasters, including WMD incidents.

The National Response Framework authorizes the Attorney General to appoint a Senior Federal Law Enforcement Official to coordinate and direct federal law enforcement support activities related to critical incidents. Further, the National Response Framework includes annexes, called Emergency Support Functions (ESF), that assign specific responsibilities to federal agencies in the event of a disaster. Under the National Response Framework, the Department of Justice is assigned by ESF-13 the responsibility for coordinating federal law enforcement activities in response to a critical incident, such as a WMD attack, and for ensuring public safety and security in the event such an incident overwhelms state and local law enforcement.

II. FINDINGS OF THE OIG REPORT

A. The FBI's preparations for responding to a WMD attack

Our report concluded that the Federal Bureau of Investigation (FBI) has taken appropriate steps to prepare to respond to a WMD attack. Part of the FBI's primary mission is to prevent WMD incidents and to investigate WMD threats. The FBI has a WMD response program managed by the FBI's Weapons of Mass Destruction Directorate. The FBI WMD Directorate manages WMD investigations, assesses and responds to incidents involving the use or threatened use of WMDs, and conducts exercises to test the FBI's ability to respond to a WMD incident.

Our review determined that the FBI has developed various plans, handbooks, and other resources to guide its staff in responding to a WMD incident. In addition, the FBI regularly provides its staff with training specific to WMD incidents. For example, the FBI gives WMD training to all new Special Agents during their initial FBI Academy training. FBI WMD Coordinators and Intelligence Analysts are also trained in specific WMD areas of emphasis. In addition, the FBI regularly conducts and participates in WMD response exercises.

However, it is important to point out that another OIG audit, issued in September 2009, also examined the FBI's WMD Coordinator program and found some deficiencies in this FBI program. See U.S. Department of Justice

Office of the Inspector General, *The Federal Bureau of Investigation's Weapons of Mass Destruction Coordinator Program*, Audit Report 09-36. For example, our audit determined that many FBI WMD Coordinators could not identify the top WMD threats and vulnerabilities that faced their particular field division. The audit also determined that the FBI had not established specific qualifications that WMD Coordinators need to perform their critical functions. Additionally, we recommended that the FBI improve WMD training plans to ensure that WMD Coordinators and WMD-assigned Intelligence Analysts acquired the skills necessary for their positions. In response, the FBI agreed with the recommendations in the report and has been taking action to address them.

B. The Department's and its other components' preparations for responding to a WMD attack

In contrast to the FBI, which had appropriately prepared to respond to a WMD incident, we found that the Department as a whole did not have policies or plans for responding to a WMD incident. For example, we determined that Department personnel (other than FBI staff) received little training in the unique requirements associated with responding to a WMD incident. While the Department and its components conducted some training on continuity of operations, little of the training focused specifically on a WMD operational response. Planning for a response to a WMD incident is important because the actions taken to ensure public safety and security may differ from those used when responding to an incident involving conventional explosives.

Our review also found that no entity or individual had been assigned responsibility for central oversight of WMD response activities throughout the Department. We concluded that the management of the Department's response program was uncoordinated and fragmented. Some response functions were being handled by a Special Assistant to the Deputy Attorney General and others by senior staff at the National Security Division (NSD), the Executive Office for United States Attorneys (EOUSA), or the FBI. Various individuals we interviewed told us that they believed the Department's operational response program lacked leadership and oversight.

Our report noted that the Department had previously identified the need for coordinated emergency management at the Department level. In January 2006, the Department's Assistant Attorney General for Administration circulated a proposed DOJ Order that assigned responsibilities for emergency response to a Crisis Management Committee. However, this proposed Order was never made final.

We also found that the Department-level critical incident response policies and plans were not in compliance with national policies, were outdated, and did not specifically address a WMD attack. For example, the

Department's critical incident response policies and plans do not incorporate principles and requirements of the National Response Framework or the National Incident Management System, which established a standardized approach for planning for and responding to all domestic incidents, including WMD incidents. In addition, the Department's Critical Incident Response Plan, which has not been updated since it was approved by the Attorney General in May 1996, does not address WMD incidents.

Additionally, the Department's critical incident response policies and plans had not been fully implemented. For example, in 1988 a Department policy established a Crisis Management Committee to determine the Department's on-scene response to an incident, and in 1996 the Attorney General established an Attorney Critical Incident Response Group to coordinate legal support during an incident. Although these policies remain in effect, our report found that neither of the critical incident entities existed.

Our review also found that no Department law enforcement component, other than the FBI, had specific WMD operational response plans. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Drug Enforcement Administration (DEA), and the United States Marshals Service (USMS) have groups that manage all-hazards responses, but these groups do not include specific preparations for WMD incidents.

We also found inadequate efforts among the Department's components to coordinate a response to a WMD incident. While the FBI is the only component with plans, handbooks, and other resources for responding to a WMD incident, officials from the other components told us they have not seen the FBI's response materials. The Assistant Directors of the FBI's WMD Directorate and Critical Incident Response Group said the FBI would not object to letting other Department components review the plans, but none of the components has asked to do so.

Except for the FBI, other Department components have provided little to no training for responding specifically to a WMD incident and have rarely participated in WMD exercises. The other components also did not regularly participate in National Level Exercises involving a WMD incident response or in WMD exercises at the regional, state, and local levels.

C. The Department's lack of preparation to fulfill its role, under the National Response Framework, to ensure public safety and security in the event of a WMD attack

As noted above, the National Response Framework established the Department of Justice as the lead agency under ESF-13 to coordinate the use of federal law enforcement resources to maintain public safety and security if local and state resources are overwhelmed during an incident. The

Department delegated the responsibility for implementing its ESF-13 activities to ATF.

The Department's responsibilities under ESF-13 involve the use of federal law enforcement resources to maintain public safety and security if local and state resources are overwhelmed during an act of terrorism or natural or man-made disaster, such as a WMD attack. The National Response Framework assigns the Department 10 specific responsibilities related to ESF-13, including staffing management positions at headquarters and in field offices to manage ESF-13 activities; conducting evaluations of operational readiness, including a roster and description of public safety and security activities; coordinating backup support from other geographical regions to the affected area; processing mission assignments for agencies providing support and assistance; tracking resource allocation and use; and facilitating reimbursement to assisting departments and agencies.

Our review concluded that in the event of a WMD incident, the Department was not prepared to coordinate federal law enforcement activities to ensure public safety and security in accordance with ESF-13. Our conclusion was confirmed by ESF-13 staff, one of whom told us that in the event of a WMD incident "we are totally unprepared . . . right now, being totally effective would never happen. Everybody would be winging it."

In January 2008, ATF proposed a Concept of Operations Plan to provide a structure for the Department to implement its ESF-13 responsibilities. As of March 2010, however, that Concept of Operations Plan was still in draft, and several actions essential to the Department's ability to fulfill its responsibilities for coordinating the federal law enforcement activities in an ESF-13 activation remained incomplete. For example, the Department and ATF had not made necessary personnel assignments to manage ESF-13 activities. At ATF headquarters, the ESF-13 National Coordinator has been designated, but a Deputy National ESF-13 Coordinator has not been designated, and as of April 2010 ATF had not filled 6 of the 13 other positions it has dedicated to ESF-13.

In addition, ATF provided minimal training in implementation of ESF-13 responsibilities to ATF field office personnel, support agency personnel, and state and local emergency operations officials. According to ATF ESF-13 staff, ATF trained only its personnel in field offices that are in states prone to hurricane activity for an ESF-13 activation resulting from a hurricane.

ATF also did not develop a catalog of law enforcement resources – people and equipment – to be deployed from all ESF-13 agencies or Department components in an ESF-13 activation. ATF staff told us that other agencies had not responded fully to ATF's requests for information. However, because of the lack of staffing, ATF did not designate anyone to follow up on the requests and

could not conduct the logistical resource planning if the data were made available.

Further, ATF had not tested its preparedness to carry out its ESF-13 responsibilities in any National Level Exercises or any other functional exercise involving a WMD incident. Finally, ATF was still in the process of determining how ESF-13 law enforcement personnel would be deputized as Deputy U.S. Marshals if ESF-13 is activated.

D. Preparations to respond to a WMD attack in the National Capital Region

Because the Washington National Capital Region (NCR) is a potential target for terrorists who could attempt to use WMD in an attack, we examined the preparations of Department component field offices in the NCR to respond to a WMD attack.

We found that in the NCR Department components regularly work with each other, with other federal agencies, and with state and local law enforcement to prepare to respond to various incidents that may occur during the frequent special events in the NCR, such as Presidential inaugurations and visits by heads of state. This regular coordination for special events builds knowledge and relationships that help prepare components for responding to incidents in the NCR. NCR field office staff told us they are aware of other agencies' roles and the resources that are available from them if a WMD incident should occur during a special event.

However, outside of special events, only the FBI had conducted WMD-specific planning or training in the NCR. The FBI's Washington Field Office is the only NCR field office that provides WMD training to its response personnel and regularly participates in WMD exercises. The FBI's plan identifies how the FBI will work with federal agencies outside the Department, state and local law enforcement, and emergency response agencies, although it does not include any stated role for the NCR field offices of the Department's other components.

While other Department component NCR field offices' preparations for special events include some planning for WMD incidents, preparations for a WMD incident that could occur at times other than during a special event were lacking. When we asked if they were familiar with the FBI's WMD response plan, officials from ATF, the DEA, and the USMS in the NCR said they were not familiar with the plan and had not asked to see it. Additionally, FBI data showed that the FBI Washington Field Office participated in 29 WMD exercises with state and local law enforcement, as well as other federal agencies, from fiscal year 2005 through fiscal year 2009. Other Department of Justice

components in the NCR did not participate in these or other WMD response exercises.

We also found that some component officials in NCR field offices were not even aware of ESF-13 or ATF's role as the Department's lead coordinator if ESF-13 is activated. When we asked 12 NCR field office managers about ESF-13 requirements and assignments, only 6 knew about ESF-13 and only 3 were aware of ATF's designation as the Department's lead coordinator.

This lack of awareness on the part of field office managers regarding ATF responsibilities and ESF-13 is problematic. Field office managers should be familiar with how their components would participate in a coordinated national response to a WMD incident. Although requests for support would most likely come from component headquarters to the field offices, effective coordination of the federal, state, and local response would be critical during an ESF-13 activation. The lack of familiarity regarding national plans, such as ESF-13, could inhibit a coordinated response, and valuable time could be wasted in providing needed resources, as was seen during the response to Hurricane Katrina in 2006.

Therefore, we concluded that although law enforcement agencies in the NCR coordinate regularly because of the preparations and cooperation required for frequent special events, improvements were needed to ensure NCR field offices were prepared to quickly and safely respond to a WMD incident. In a WMD incident, agencies' roles are not specified and resources are not pre-positioned as during a special event. The hazard presented by a WMD – as opposed to conventional or improvised explosives or natural disasters – is unique. Moreover, the lack of awareness regarding the Department's ESF-13 responsibilities, and ATF's designated role to serve as the lead coordinator for those activities, could delay a coordinated federal law enforcement response to a WMD incident. Because the component field offices in the NCR other than the FBI had no WMD-specific response plans or training and have not participated in WMD-specific exercises, we concluded that it was uncertain that they were fully prepared to safely and effectively contribute to the Department's overall response in the event of a WMD attack.

III. OIG RECOMMENDATIONS AND DEPARTMENT RESPONSE

Our report made five recommendations to help the Department better prepare to respond to a WMD incident and to fulfill its responsibilities under ESF-13. We recommended that the Department:

1. Designate a person or office at the Department level with the authority to manage the Department's WMD operational response program.

2. Update the Department's response policies and plans to conform them to the National Response Framework and the National Incident Management System.
3. Require Department components to update their own policies and plans to reflect the updated Department guidance, and to reflect the need for adequate coordination among Department components in responding to a WMD incident.
4. Establish effective oversight to ensure that components maintain WMD response plans, participate in training and exercises, and implement a corrective action program in response to such exercises.
5. Ensure that the Department is prepared to fulfill its emergency support function responsibilities under the National Response Framework, including reviewing the designation of ATF as the Department's lead agency to coordinate public safety and security activities, approving a Concept of Operations Plan, and staffing national and regional coordinator positions.

In response, the Department stated that the fundamental conclusions of our report were sound and that the Department concurred with all of our recommendations.

In addition, the Department's response stated that it intended to implement a process to establish "a clearer and more formal system to ensure that all Justice Department emergency response functions, continuity of operations programs, and continuity of government programs are up-to-date, aligned with national policies, and well-coordinated with the Department."

Since then, the Department has assigned the Associate Deputy Attorney General for National Security responsibility for coordinating all Department policies associated with continuity of operations, continuity of government, and emergency response at the scene of an incident.

In addition, the Department created a committee, the Emergency Preparedness Committee, to address emergency response preparedness issues throughout the Department, including WMD response issues. This Emergency Preparedness Committee, which is chaired by staff from the Office of the Deputy Attorney General, includes representatives from a wide spectrum of the Department's components, including the FBI, ATF, DEA, USMS, the Federal Bureau of Prisons, EOUSA, the Justice Management Division, and NSD. The committee, which meets biweekly, is seeking to address issues raised by the OIG report and to develop policy, training, and strategies to ensure that the Department as a whole is ready to respond to a WMD event.

In addition to the main committee, five subcommittees were formed to focus on specific issues. These subcommittees, which also meet biweekly, are reviewing the Department's Continuity of Operations Plan; identifying the training, equipment, and funding needed to ensure that the Department is prepared for a WMD event; ensuring the Department-wide understanding and support for the Department's responsibilities under ESF-13; reviewing and assessing the Department's functions within the National Response Framework; and developing operations and management to oversee the Department's response to a WMD or other catastrophic event.

Other witnesses will provide in their testimony more detail about the work of these committees. However, we believe the Department is taking seriously the deficiencies we identified in our report, and the Department's actions should improve the Department's preparations to respond to a potential WMD attack.

IV. CONCLUSION

Our report identified significant deficiencies in the Department's preparations to respond to a WMD attack. While the FBI had taken appropriate steps to prepare to respond to a potential WMD attack, the Department as a whole, and other components within the Department, had not implemented adequate WMD response plans. As a result, we concluded that the Department was not fully prepared to provide a coordinated response to a potential WMD attack. These deficiencies could have disastrous consequences because the use of a weapon of mass destruction poses a serious potential threat to the United States.

We believe it is critical that the Department aggressively and expeditiously address the deficiencies identified in our report so that it will be better prepared to respond if a WMD attack occurs. We also believe that the Department has taken our findings seriously and is taking important steps to seek to remedy the deficiencies we identified. However, the Department needs to remain focused on this issue, and we appreciate the Subcommittee holding this hearing. For our part, we will continue to monitor the Department's progress in ensuring that it is adequately prepared to respond to a potential WMD attack.

This concludes my prepared statement, and I would be pleased to answer any questions.