

Chapter Six

Domestic Preemption

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This chapter's focus is the preemption of acts of Domestic Terrorism (DT). The last fifteen years, from a historical perspective, have recorded a substantial and devastating number of "mass casualty" terrorist attacks both here and abroad. This pattern of activity will not change appreciably over the next ten to fifteen years because the United States is and will remain the foremost military power on the globe. With that basic thought in mind consider the hypothesis that terrorist adversaries, whether they are directed by forces at home or by forces abroad, will find ways to punish the United States through various forms of violent acts. Such acts will include both conventional and non-conventional attacks that cause maximum casualties with minimum risk.

While there is no standardized definition of terrorism, the Federal Bureau of Investigation (FBI), "defines terrorism as, the unlawful use of force or violence against persons or property to intimidate or coerce a Government, the civilian population, or any segment thereof, in furtherance of political or social objectives."¹ Beyond this definition the FBI further breaks terrorism into two distinct categories. They are Domestic Terrorism (DT) and International Terrorism (IT).

- Domestic terrorism involves groups or individuals who are based and operate entirely within the United States and Puerto Rico without foreign direction and whose acts are directed at elements of the US Government or population.
- International terrorism is the unlawful use of force or violence committed by a group or individual, who has some connection to a foreign power or whose activities transcend national boundaries, against persons or property to intimidate or coerce a government, the

civilian population, or any segment thereof, in furtherance of political or social objectives.²

The information contained in this chapter falls mainly under the DT definition and should be considered by the reader in that light. Thus, the above DT definition frames the discussion as we consider the topic of preemption of terrorist operations. Preemption is one of the most difficult aspects of countering terrorism. It is particularly difficult when dealing with domestic groups or individuals that are almost always US citizens.

From 1993 through 1998 there were fourteen acts of domestic terrorism recorded within the United States. During this same time period twenty-six acts of domestic terrorism were preempted through aggressive and careful law enforcement actions. This nearly two-to-one ratio may seem astounding to some, however within law enforcement circles these statistics are well known. At the end of 1998 there were some eighteen FBI Joint Terrorism Task Forces (JTTF) spread strategically around the country. The JTTFs are staffed by members of the local, State, and Federal law enforcement family and are financially supported by the Department of Justice, through the FBI. Many of these task forces have been in place for over ten years and all have contributed to countering the domestic terrorism threat. Without question preempting or preventing acts of terrorism is the highest of priority within the United States counterterrorism community.

Four investigations are highlighted below to illustrate for the reader the “high profile” dangers and difficulties that arise as law enforcement engages in terrorist preventions:

- In late 1995 and early 1996 the FBI, working with State and local authorities, initiated an investigation of an organization known as the Freemen. This organization had engaged in extensive use of white-collar criminal actions over the course of many months. The Freeman considered themselves as sovereign citizens who filed illegal liens and threatened to arrest several local and Federal officials. An FBI undercover operation was begun for the purpose of developing evidence

against the group. An Agent posing as a follower of the Freeman successfully penetrated the group. Based upon his investigation and other law enforcement activity the leaders of the Freeman were arrested without incident on March 25, 1996. Following these arrests several other members of the Freeman barricaded themselves within a ranch compound near Brusett, Montana. An 81-day standoff ensued than ended peacefully with the surrender of some 16 people on June 13, 1996. Although the Freeman had not engaged in serious violent behavior, their surrender ended what was viewed by many in the local community as a reign of terror. Several convictions were obtained in this case.

- The West Virginia Mountaineer Militia (TMM), a right-wing paramilitary organization located in north central West Virginia, came to the attention of the FBI in early 1996. Critical information about the group and its intentions was developed by a confidential source. Based upon source information, the FBI developed an undercover operation to penetrate and develop evidence against the group. Based upon the undercover Agent's activity one of the leaders of the TMM paid \$50,000 for a package of photographs of the FBI's Criminal Justice Information Services facility in Clarksburg, West Virginia. There had been a number of discussions about placing explosive charges in critical locations at the facility in order to cripple it. After the payment was made several conspirators were quickly taken into custody. All have been convicted of their crimes.
- In early February, 1998, a white supremacist group calling themselves The New Order (TNO) planned to rob an armored car, kill a prominent civil rights attorney, poison the water supply of a large city, and conduct a wave of murders and bombings for their cause. After an intensive FBI-led investigation of their activities, several members of the group were

arrested. “Searches of their residences revealed explosive power, bomb-making materials, firearms, hand grenades and a pipe-bomb.”³

- Two members of the Republic of Texas were arrested in July 1998 after being charged Federally with threatening to use a Weapon of Mass Destruction. The Republic of Texas members had plotted to construct a device that would deploy lethal biological substances. The devices would be used to infect selected government officials. After obtaining sufficient probable cause, an interagency law enforcement team arrested both men without incident. Both men were found guilty in Federal court in late 1998.

Preventing terrorists from conducting a violent operation is a delicate and sometimes frustrating endeavor. The FBI, and FBI-led JTTFs, are required to conduct investigations within the Attorney General Guidelines on General Crimes, Racketeering enterprises, and Domestic Security/Terrorism Investigations established in 1976 by then Attorney General Levi. These Guidelines have been updated several times since 1976; however, they remain essentially the same.

The Guidelines were developed in order to protect the rights of all US citizens. Additionally, they serve to provide a way for law enforcement to act when domestic terrorists plan to attack our nation. Pursuant to the Guidelines there must be sufficient criminal predication present before investigators can begin to collect information relating to the activities of persons who may be engaging in or preparing for acts of domestic terrorism. Rhetoric alone will not trigger an investigative response by law enforcement unless other information is provided that reasonably indicates that criminal activity is being conducted or is about to be conducted. That is the fine line that various law enforcement agencies must walk when dealing with potential domestic terrorists.

Overall the Guidelines allow for the collection of criminal intelligence information against United States citizens when two or more individuals are

preparing for or engaged in a domestic terrorism attack in violation of state or Federal laws. Through this mechanism organizational, financial, structural and criminal activity of the organization can be developed and acted upon. Once there is sufficient predication to initiate a domestic terrorism investigation, standard investigative techniques including, but not limited to, background checks, physical and electronic surveillance, development of human sources, and undercover operations can be employed with appropriate administrative and judicial authorities.

The bombing of the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma on April 19, 1995 was of major historical significance in terms of domestic terrorist actions within this nation. Not only did it awaken the country as a whole to the fact that our own citizens could act in such a horrific manner, but law enforcement was caught off-guard, stunned, and deeply affected by this attack. The impact of this bombing served to educate our citizens about the potential magnitude of future attacks, and it provided law enforcement the realization that no one agency could “go it alone” in terms of managing the crisis and consequences of such a disaster. Like the bombing of the World Trade Center in 1993, fire, emergency services, medical, and many other organizations were called into service.

We have to do better a better job at preventing this kind of attack from ever happening again. While the JTTFs have done much to provide a mechanism for prevention, they do not cover the entire country. We remain vulnerable, particularly to the “loners,” the one or two persons that have the capability to mount a major bombing or other kind of terrorist operation.

After the Oklahoma City bombing Attorney General Janet Reno and FBI Director Louis Freeh conducted an intensive review of the overall domestic and international terrorism threat within our borders. There was a clear recognition within both the Executive and Legislative branches of the government that more needed to be done to counter the increasing threats we were facing as a nation.

Subsequent to the above review Director Freeh established the FBI's Counterterrorism Center (CTC) at FBI Headquarters (FBIHQ). Further, he asked the Congress to "double the shoe leather" with respect to the number of FBI Field Agents needed to counter this threat. The FBI's CTC included an infusion of well-educated analysts whose mission was to better support both FBIHQ and FBI field operations. Their skills have been put to excellent use over the past several years and they have proven their worth over and over again. With an increase of both FBI Agents and analysts post-1995, the FBI has had an increase of preventions. These preventions, in the writer's opinion, are directly attributable to the actions taken by Attorney General Reno and Director Freeh in the closing months of 1995.

From 1996 until the end of 1998 the writer served as Chief of the Domestic Terrorism/Counterterrorism Planning Section, National Security Division, at FBIHQ. It was during that time that the FBI began to enter into a new era in terms of its ever-expanding Counterterrorism mandate. Field investigators, ever mindful of the Oklahoma City bombing and the challenging nature of Counterterrorism investigations, began to develop more and more expertise in both domestic and international terrorism matters. At the same time new threats, the threats of the new century, were beginning to emerge.

As we considered the future we looked to the past and tried to learn from history. In 1986, then Vice President George Bush issued a report on terrorism. Within this document, for the first time, there was a discussion of the potential for attacks on our critical infrastructure as well as attacks on our population using unconventional weapons of mass destruction. Until that time there had been little thought about the kinds of future world threats the Counterterrorism community might face in the years to come. The report was prophetic in many ways. Beginning in 1988-1989 efforts were begun in a small way to come to terms with attacks against the critical infrastructure and unconventional weapons.

Infrastructure is the system of interdependent networks which is made up of identifiable industries and institutions that provide a continual flow of goods and services essential to the security and welfare of this country. The critical infrastructures include electrical power, gas and oil, transportation, telecommunications banking and finance, continuity of government, water supply systems, and emergency services.⁴

What started as a small program to protect the physical infrastructure of the nation has emerged now as an expanding interagency program to help prevent attacks by terrorists at home. Today a large entity within the FBI called the National Infrastructure Protection Center (NIPC) has been established and funded by the Congress. With the emergence of the Internet and the technology boom of the past few years much of the Center's business is focused on cyber terrorism and cyber crime.

On March 10, 2000 Michael A. Vatis, Director, NIPC, appeared before the Senate Armed Service Committee, Subcommittee on Emerging Threats and Capabilities. Mr. Vatis testified that today we are faced with a broad spectrum of threats against the information technology portion of our critical infrastructure. The major sources of these threats are: 1) Insiders—disgruntled former employees of companies; 2) Hackers—persons who attack networks mostly for the thrill of it; 3) Virus Transmitters—people who insert computer viruses into systems; 4) Criminal Groups—persons and groups who use technology to steal and exploit information from various sources; 5) Terrorists—who for some time have used the Internet to communicate, and for other related purposes; 6) Foreign Intelligence Services—who use cyber tools to collect intelligence against both friends and foes; and 7) Information Warfare—foreign militaries who are devising ways to use information technology to attack our critical infrastructures in time of war.

The above testimony certainly is a look into the future, as we now battle a new form of terrorism. The ability to prevent these kinds of attacks has not been refined, and presently law enforcement and the intelligence community are developing the tools and technology that will be needed in this

century to counter this new area of threat. This demands new organizations, interagency cooperation, and cooperation from private corporations and the public at large. Perhaps the most interesting part of this new information-driven Internet world is that after all is said and done, the investigator is left with following a high-tech trail back to identify the perpetrator. Investigations will still involve a lot of traditional work in the field. However, with the advent of cyber attacks against our critical infrastructure, the stakes from an economic, social, and military standpoint are greater than ever. Thus, the issue of preventing attacks before they happen, and/or mitigating an attack, looms larger than ever for the law enforcement and intelligence community.

The challenges ahead will require support from the Executive and Legislative Branches of Government. It is critical that the American people not be fooled by a booming economy. Enemies remain with new tools of terror.

¹ Terrorism in the United States 1995. Terrorist Research and Analytical Center, National Security Division, Federal Bureau of Investigation, ii.

² Ibid.

³ Terrorism in the United States 1996. Terrorist Research and Analytical Center, National Security Division, Federal Bureau of Investigation, 19.

⁴ Terrorism in the United States 1998. Terrorist Research and Analytical Center, Counterterrorism Division, Federal Bureau of Investigation, 5.