

**Testimony of Sheriff John Cary Bittick
President, National Sheriffs' Association
before the
House Committee on the Judiciary
Subcommittee on Crime
March 7, 2002**

Introduction:

Mr. Chairman, I am Sheriff John Cary Bittick and I appear before you as President of the National Sheriffs Association. The National Sheriffs' Association is surprised and deeply concerned about the proposal by OMB to eliminate the Office of Domestic Preparedness (ODP) at the U.S. Department of Justice, and to shift these responsibilities to the Federal Emergency Management Agency (FEMA).

This is a time when the American people need continuity and coordination, not the disruption of unnecessary reorganization. For this reason, I appear before you today to add the voice of the Nation's Sheriffs to other law enforcement organizations that likewise oppose this OMB proposal. While we appreciate the efforts of OMB to consolidate functions and enhance efficiency, this proposal would unintentionally undermine the efforts of American law enforcement.

I will submit for the record a formal resolution adopted by the National Sheriffs' Association last week, in which we set forth the reasons for our opposition to the proposed reorganization.

Let me explain each of the reasons for our opposition to the OMB proposal:

Experience With Counterterrorism:

Sheriffs have worked with the Department of Justice on funding for anti-crime efforts since the Safe Streets Act of 1968. Over these 34 years, the Department of Justice has established expertise that cannot be replicated by an agency that is new to law enforcement. Nothing more need be said here, as it is apparent that there is no substitute for these 34 years of relationships and experience.

Contradiction of the Patriot Act:

The Sheriffs of our Nation applaud your courage and leadership in passing the Patriot Act. But we are confused by the OMB proposal, since it seems to repeal sections of the Patriot Act even before some of those provisions have been implemented. For example, the OMB proposal seems to re-write Sections 1005 and 1014, which direct the Attorney General, not FEMA, to make grant to Sheriffs for first responders, terrorism prevention and anti-terrorism training.

Law Enforcement Responds to a Deadly Threat, Not FEMA Agencies:

Look at the record of terrorist attacks around the globe. Terrorists attack with automatic weapons, bombs, and often take hostages. Side-by-side with Federal law enforcement, we will face the terrorists, most probably with deadly weapons. We will never ask nor can we expect our Fire, EMS or Health personnel to face gunfire, explosives or other deadly assaults. That is the job of police and sheriffs, and it is ours alone. Once the threat has been addressed and public safety has been restored, only then it is possible to turn over the scene to the FEMA agencies. To do anything else would be contrary to a Sheriff's oath of office and contrary to the laws of the States. To subordinate our crisis response to FEMA would compromise the statutory obligation of law enforcement officials to protect their communities. Mr. Chairman, we are grateful that your

committee has rightly acknowledged that this is the reality of both policy and practices across the Nation.

“The Committee is concerned that FEMA is not the appropriate agency for these responsibilities. A terrorist attack is a criminal event, not a natural disaster.”¹

FEMA Role is Limited to Consequences Management:

The prevention, detection and apprehension of terrorists are law enforcement functions, and it is not appropriate for training and coordination to be assigned to the FEMA regime, where there are no such responsibilities. If there were to be another terrorist attack, responding to the immediate crisis would be a law enforcement responsibility. Sheriffs and Chiefs of Police are shocked that OMB would propose that FEMA should assume responsibility in these areas, where there is neither experience nor legal authority to act. Perhaps most confusing is the contradiction of the January 2001 United States Government Interagency Domestic Terrorism Concept of Operations Plan, known as the CONPLAN, which states:

“Crisis management is predominantly a law enforcement function and includes measures to identify, acquire, and plan the use of resources needed to anticipate, prevent, and/or resolve a threat or act of terrorism. In a terrorist incident, a crisis management response may include traditional law enforcement missions, such as intelligence, surveillance, tactical operations, negotiations, forensics, and investigations, as well as technical support missions, such as agent identification, search, render safe procedures, transfer and disposal, and limited decontamination. In addition to the traditional law enforcement missions, crisis management also includes assurance of public health and safety.”²

Contradiction of Presidential Decision Directives:

Presidential Decision Directives 39, 62 and 63 direct the Attorney General, not FEMA, to assume lead responsibility for the Federal Government. It is the U.S. Department of Justice, and not FEMA, that serves as the central agency in a crisis. This is what our

local laws now reflect and this is how our personnel have been trained. The Nation's Sheriffs and Police have established operational agreements with ODP and the FBI at the Department of Justice, and we should not be asked to scrap all of our policies, plans, and agreements so that we can work under the authority of an agency that has no law enforcement role.

Disruption of Current Programs Threatens the Public:

Last year, the House raised the funding for the ODP from \$250 Million to \$650 Million, and we are now engaged in the planning for allocation of these funds to law enforcement. Just as we are launching these new programs, OMB would have us terminate the effort and move everything over to FEMA. The disruption that such a shift would cause is nothing less than catastrophic at a time when the safety of the American people is at risk. As elected Sheriffs sworn to protect the public, we cannot support a recommendation that may cause enormous disruption and a potential hiatus during this period of unprecedented threats to public safety in America.

Department of Justice Should be Commended:

The National Sheriffs' Association believes that Congress should commend the Attorney General, the FBI and ODP for a job well done, and not consider the transfer of their duties to agencies that lack the experience, training and authority to get the job done. As directed by Congress, the Department of Justice has worked with all 50 states on preparedness plans, and I am advised that 44 have been received. Relying upon decades of experience with review and approval of such State plans, ODP has already approved 40 of these State Strategy documents. I asked the Department of Justice to provide me with a listing of what they have done to assist law enforcement and first responders, and I am pleased to submit these figures for the record.

Equipment

ODP has made \$607.04 million dollars available to state and local jurisdictions for the procurement of specialized WMD equipment.

ODP developed a Pre-positioned Equipment Program (PEP) to strategically locate emergency response equipment around the nation for response to terrorist incidents.

Training

From FY97 through FY01, ODP has trained over 96,600 state and local emergency responders from more than 1,548 different jurisdictions.

A total of 33 training courses are offered through ODP including a range of specialized courses, from basic awareness to discipline-specific advanced level training and directed toward a variety of disciplines including fire, hazardous materials, law enforcement, emergency medical services, public health, emergency management, and public works.

At its Center for Domestic Preparedness (CDP) in Anniston, Alabama, ODP operates the nations only state and local live agent training facility, where emergency responders can test their skills in a live contaminated environment.

Working in partnership with the Combating Terrorism Technology Support Office/Technical Support Working Group and the FEMA Emergency Education Network (EENET), ODP provides regular awareness level training to the emergency response community through two satellite broadcast programs: Consequence Management News, Equipment and Training (CoMNET) and Live Response.

Exercises

In May 2000, ODP National Exercise Program conducted the Top Officials (TOPOFF) exercise, the largest Federal, state and local full-scale exercise that simulated chemical, biological and radiological attacks around the country. ODP has begun planning for the Congressional mandated TOPOFF II Full-Scale exercise, to be conducted in the spring of 2003.

A total of 93 exercises have been conducted by ODP to date. It is estimated that ODP will complete 220 exercises in FY02, including the NLD DP Program Exercises.

Working with the Department of Energy, ODP has established a Center for Exercise Excellence at the Nevada Test Site (NTS), creating a national WMD exercise training program which assists state and local emergency response agencies with the planning and conduct of domestic preparedness exercises.

Technical Assistance

ODP has reconstituted the Domestic Preparedness Helpline, a non-emergency, toll-free, 1-800 number resource available for use by state and local emergency responders. The Helpline provides general information on the characteristics and control of WMD materials, technical information on response equipment, mitigation techniques, ODP programs and services, and available Federal assets.

Partnering with the U.S. Army's Pine Bluff Arsenal, ODP offers mobile technical assistance teams that provide on-site assistance and training to ODP grantees with the calibration, operation and maintenance of WMD response equipment.

Nunn-Lugar-Domenici Domestic Preparedness Program

ODP is responsible for completing the Nunn-Lugar-Domenici Domestic Preparedness Program that was transferred from DoD, effective December 21, 2000. As of January 31, 2002, ODP has completed: 22 Biological Weapons Tabletop Exercises (BWTTX)

- 6 Chemical Weapons Full Scale Exercises (CWFSE)
- All NLD DP final 15 cities Initial Meetings
- 13 of 15 Senior Officials Workshops for the remaining cities
- 12 of 15 Program Implementation Meetings for NLD cities 106-120
- 36 training courses for 8 of the final 15 NLD cities

Conclusions:

For all the reasons set forth here, the National Sheriffs' Association commends the Committee for your position that these functions must remain at the Department of Justice.

“The Department of Justice is clearly authorized to provide grants to states and locals for crisis and consequence management training, equipment and technical assistance. FEMA does not appear to have the same authorization. More importantly, FEMA is not in the business of crisis management and the Department of Justice is. Because of the primacy of crisis management, the Department of Justice has been designated the lead agency in establishing a single entity to oversee both crisis and consequence management in the event of a terrorist attack.”¹

At this time of national crisis, Sheriffs want to support the efforts of the President and Governor Ridge. However, we cannot support the OMB recommendation to remove the Office of Domestic Preparedness from the U.S. Department of Justice and transfer this function to FEMA. While this plan may *appear* to serve the interests of efficiency, it fails to recognize the reality of law enforcement responsibilities at the time of a terrorist attack. This sort of forced consolidation can only lead to confusion, and that is not what our Nation needs right now.

Mr. Chairman, let me conclude by offering my assurance that the National Sheriffs’ Association strongly endorses the words of your Committee,

“A case has neither been made for the current proposed transfer of the Office of Domestic Preparedness nor for the prior transfer of the National Domestic Preparedness Office. Accordingly, the Committee believes it would be appropriate to direct the \$3.5 billion to the Department of Justice for coordination, training, technical assistance and equipment for state and local first responders.”¹

Notes:

¹ House Committee on the Judiciary, Subcommittee on Crime. “Amended Views and Estimates”

² January 2001 United States Government Interagency Domestic Terrorism Concept of Operations Plan