

Comments of Police Commissioner Raymond W. Kelly
Fordham Law School Alumni Luncheon
Cipriani Wall Street
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Thank you, Judge Heitler. It's a pleasure to be here with this distinguished group of alumni. I want to start by thanking Fordham Law School for educating generations of public-service-minded attorneys. The school is an incredible resource for this city, whether it's the 150,000 hours of volunteer service completed by the graduating class of 2011 or the thousands of professionals who've gone on to do outstanding legal work, including in the ranks of the Police Department.

In recent years, as the NYPD has taken on the mission of counterterrorism, the legal questions we face have grown in complexity. We're constantly looking at how to safeguard civil liberties and defend society from acts of terrorism. In some ways, these are issues we could have and should have addressed years earlier.

Nineteen years ago, on February 26th 1993, I was New York City Police Commissioner. It was a Friday afternoon, and I was in my office on the 14th floor of Police Headquarters when a massive explosion rocked the World Trade Center. The blast tore a hole in the building seven stories deep. I remember seeing the smoke rise and the mass of emergency vehicles at the scene when I got there just ten minutes later. The bomb, which was detonated in an underground garage, killed six people and wounded more than 1,000. At the time it was said to be a miracle there weren't more fatalities.

That attack should have been a wake-up call for the nation and the city. It was not. The suspects—the first of whom was found when he tried to reclaim the deposit on the rental van used in the attack—were dismissed as incompetent.

In fact, their associates were already plotting another attack. The investigation of the World Trade Center bombing focused the attention of authorities on Sheikh Omar Abdel Rahman, an extremist cleric affiliated with a mosque in Brooklyn. He told worshippers it was their religious duty to fight enemies of god. Rahman, also known as the Blind Sheikh, was at the heart of a plan to attack the U.N., the Lincoln and Holland tunnels, the George Washington Bridge, and the FBI's New York office. That plot was thwarted by an informant who infiltrated the group.

Except for those who managed to escape the U.S., the participants in this plot and the World Trade Center attack were ultimately arrested, tried, and brought to justice. With that, the case was essentially closed.

We now know that by failing to understand the international context in which these events occurred, by failing to connect the perpetrators to a web of violent actors with a murderous mission and ample means, we lost a tremendous opportunity. As a country, we paid the price for that failure eight years later – in the death of 3,000 people, the destruction of the Twin Towers, damage to the Pentagon, and the devastating trillion-dollar cost to our economy.

When I returned as police commissioner it was January 2002, less than four months after 9/11. By then it was clear the city could not simply defer the responsibility of counterterrorism to the federal government. We'd have to work with them. But it was obvious we would need to make systemic changes in how we protect the city.

In January 2002, the NYPD became the first police department in the country to develop our own counterterrorism bureau. To lead it, we appointed Marine Corps Lieutenant General Frank Libutti, who once commanded all marines in the Pacific theater. To head our restructured Intelligence Division, we recruited David Cohen, a 35-year veteran of the CIA, who led both the operational and analytical branches of the agency. We increased our representation on the Joint Terrorism Task Force with the FBI from 17 detectives to 120. We found within our ranks fluent speakers of languages such as Arabic, Pashto, and Urdu, and reassigned them to counterterrorism duties. We posted senior officers in 11 cities around the world to form relationships with local police agencies and visit the scenes of terrorist attacks. We hired a corps of civilian analysts who are experts in foreign affairs and military intelligence. They study regions of the world we're concerned about and emerging methods of attack. We also cast a wide net for collaboration, working with law enforcement agencies throughout the northeast and mid-Atlantic, and partnering with 11,000 members of the region's private security industry through a program called NYPD Shield.

In recent months, some of our methods of intelligence gathering have been the subject of debate and, frankly, misrepresentation. So I want to take this time to discuss the strategies we use, the rationale behind them, and the legal foundation on which we rely.

Since 1985, the Police Department has been subject to a set of rules known as the Handschu Guidelines, which were developed to protect people engaged in political protest. After 9/11, we were concerned that elements of the guidelines could interfere with our ability to investigate terrorism. In 2002, we proposed to a federal court that the law be modified, and the court agreed.

Before I go into details let me say that we imposed on ourselves the strictest interpretation of political activity. One could easily argue that when we investigate terrorism, we are dealing with criminal, not political, activity. We go above and beyond by treating every terrorism investigation as subject to Handschu. Let me also say that no other police department in the country is bound by these rules, which restrict police powers granted under the constitution.

The guidelines begin with the statement of a general principle, which I'll quote. "In its effort to anticipate or prevent unlawful activity, including terrorist acts, the NYPD must, at times, initiate investigations in advance of unlawful conduct."

For some, the very act of gathering intelligence seems illegitimate when applied to the crime of terrorism. In fact, the Police Department uses many of the same methods to find and stop terrorists that we use to arrest drug dealers, human traffickers, and gang leaders. We develop detailed information about the nature of the crime and the people involved. We form partnerships with other government agencies, find sources, and make use of undercover officers.

This is what Handschu says about the broadest form of intelligence gathering: "The NYPD is authorized to visit any place and attend any event that is open to the public" and "to conduct online search activity and to access online sites and forums on the same terms... as members of the public." The department is further authorized to, "prepare general reports and assessments... for purposes of strategic or operational planning."

Anyone who intimates that it is unlawful for the Police Department to search online, visit public places, or map neighborhoods has either not read, misunderstood, or intentionally obfuscated the meaning of the Handschu Guidelines.

A broad base of knowledge is critically important to our ability to investigate terrorism. It was precisely our failure to understand the context in 1993 that left us vulnerable in 2001. The members of the 9/11

Commission note this fact in their final report. Of the 1993 bombing they write, "The successful use of the legal system had the side effect of obscuring the need to examine the character and extent of the new threat facing the United States." We won't make that mistake again – on Mayor Bloomberg's watch, or mine.

As part of our counterterrorism activities, we try to determine how individuals seeking to do harm might communicate or conceal themselves. Where might they go to find resources or evade the law?

Establishing this kind of geographically-based knowledge saves precious time in stopping fast-moving plots.

In a similar vein, we know that while the vast majority of Muslim student associations and their members are law-abiding, we have seen too many cases in which such groups were exploited. Since 9/11, some of the most violent terrorists we've encountered were radicalized or recruited at universities. In 2006, after a series of al Qaeda plots involving university students and members of Muslim student associations in the U.K., we began a six-month initiative to search open sources for signs of such activity in our area. We did not look at these groups on the basis of their religious affiliation. We looked at their public communications on the basis of examples like the 2005 London transit bombing and the 2006 plot to detonate explosives on transatlantic airliners, both of which involved active members of Muslim student associations in Britain. We concluded our research in May of 2007, but not before we found a few items of concern here in New York.

Now, in order for the department to follow up on a lead, conduct a preliminary inquiry, or launch a full investigation, the Handschu Guidelines require written authorization from the Deputy Commissioner of Intelligence. An internal committee reviews each investigation to ensure compliance, and every single field intelligence report generated through an investigation is evaluated by a legal unit based in the Intelligence Division.

Undercover investigations begin with leads, and we go where the leads take us. As a matter of Police Department policy, undercover officers and confidential informants do not enter a mosque unless they are following up on a lead vetted under Handschu.

Likewise, when we have attended a private event organized by a student group, we have done so on the basis of a lead or investigation reviewed and authorized in writing at the highest levels of the department, in keeping with Handschu protocol. Some leads have taken us to very dangerous individuals.

Last month, Jesse Curtis Morton, a graduate of Columbia University's School of International and Public Affairs, pleaded guilty in a federal court in Virginia to conspiracy to solicit murder. He admitted to encouraging others to kill the writers of South Park after they depicted the prophet Mohammed dressed in a bear suit. Morton also urged violence against an artist who organized Everybody Draw Mohammed Day in reaction to the threats.

The Police Department had been watching Morton for some time after he was found to be an advocate for violence. We took note when, in November 2006, he visited Stony Brook University's Muslim student association to speak and recruit. The following year he founded the website Revolution Muslim, which became a platform for murderous ideology and a meeting place for various violent actors. On his website, readers could find the contents of Inspire magazine, a publication put out by al Qaeda in the Arabian Peninsula, and which included articles such as "How to Make a Bomb in the Kitchen of your Mom".

That's the document Jose Pimentel used to learn to make pipe bombs last year. When we arrested Pimentel in November, he was an hour away from completing the first of a series of bombs with which he planned to attack the city. On Wednesday, Pimentel was indicted on charges of weapons possession and conspiracy as terror crimes. Pimentel had been in touch with Morton to tell him how much he liked his website.

Over the years, a total of ten people who've been arrested on terrorism charges have been in contact with Revolution Muslim. This list also includes Mohamed Alessa and Carlos Almonte. In June 2010 we stopped these men at JFK Airport on their way to join the terrorist organization al Shabaab in Somalia. This marked the conclusion of a three-and-a-half year investigation by the FBI and Joint Terrorism Task Forces in New York and New Jersey, the New Jersey Office of Homeland Security and Preparedness, the U.S. Attorney's office, and the New York City Police Department. The case against Alessa and Almonte was developed through the careful work of an NYPD undercover officer who made contact with the men in 2009 and became a trusted confidante.

Our intelligence program was built to facilitate exactly the kind of regional collaboration that enabled us to succeed in this case. Through Operation Sentry, an initiative to share terrorism-related information, we partner with 140 other law enforcement and criminal justice agencies, including 31 in the state of New Jersey. Through Securing the Cities, a program to stop a radiological threat from entering the city, we work with another 150 agencies.

The notion that the Police Department should close our eyes to what takes place outside the five boroughs is folly, and it defies the lessons of history.

The plot against the London transit system in 2005 was hatched 180 miles away in the city of Leeds. Faisal Shahzad, who tried to set off a bomb in Times Square in 2010, developed his plot in Connecticut. Najibullah Zazi, who conspired with two high school classmates to bomb the subway system in 2009, assembled his explosive ingredients in Colorado. And the bomb that blew up in the World Trade Center 19 years ago was constructed in New Jersey.

25% of the people killed on September 11th—746 individuals—were residents of New Jersey. If terrorists aren't limited by borders and boundaries, we can't be either. It is entirely legal for the Police Department to conduct investigations outside of city limits, and we maintain very close relationships with local authorities.

Since 9/11, New York City has been targeted by terrorists in 14 different plots. Thanks to the work of the Police Department, the FBI, and a good deal of luck, none of these plots have succeeded. In fact, while the city saw terrorist attacks in the 1970s, 80s and 90s, no attack has taken place in the past ten years.

We are proud of this fact. We're also very clear about the nature of the threat we face. It is persistent and it is dangerous. The Police Department will not apologize for our lawful efforts to protect New York, and we will not change our methods to satisfy those who would impugn them without understanding them. We have a responsibility to protect New York, and we uphold the law in doing so. We appreciate all of your support in this endeavor.

I want to thank Fordham Law School and the alumni association for having me here today. Thank you for all that you do as legal professionals and alumni, and keep up the outstanding work.