

**Statement of John McKay  
Former United States Attorney  
For the Western District of Washington**

**Before the**

***Subcommittee on Intelligence, Information Sharing  
And Terrorism Risk Assessment***

**Committee on Homeland Security  
United States House of Representatives**

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Good afternoon Madam Chair and members of the Homeland Security Subcommittee on Intelligence, Information Sharing and Terrorism Risk Assessment. I am John McKay, the former United States Attorney for the Western District of Washington. I am currently Visiting Professor of Law, Seattle University School of Law. I am pleased to appear before you to present information regarding “Building a Partnership Strategy: Improving Information Sharing with Local and State Law Enforcement and the Private Sector”.

It has been my distinct pleasure to serve the citizens of the State of Washington and the Department of Justice as the United States Attorney for the Western District of Washington from 2001 to 2007, when I resigned along with a number of my colleagues from around the country. I was honored to serve with professional men and women in the United States Attorney’s Office in Seattle and Tacoma, and with the many extraordinary professional law enforcement personnel from the various local, county, state, tribal and federal law enforcement agencies throughout the State of Washington and around the United States.

One of my most rewarding experiences while serving as the U.S. Attorney was to help lead the development of an extremely effective law enforcement information sharing effort known as the Law Enforcement Information Exchange (LInX). I first became involved in the development of a program to enhance information sharing among law enforcement agencies following the tragic events of September 11, 2001. It soon became apparent after that fateful day that an extraordinary effort would be required to improve information sharing among law enforcement agencies at all governmental levels if we were to be successful in mitigating another devastating terrorist attack on our homeland. As the U.S. Attorney in Seattle, I sought to facilitate the development of an effective information sharing strategy among scores of law enforcement agencies to both mitigate another terrorist attack, and effectively combat rising organized crime in my district.

In early 2002, I was invited to attend a pilot program sponsored by the FBI in St. Louis, Missouri. This program, known as the Gateway initiative, was an effort by the

FBI to demonstrate that local, county, state and federal law enforcement agencies could effectively break down the cultural barriers and obstacles to information sharing, and develop a cost effective technology among their disparate information management systems. During the demonstration of this program, I met with Executive Assistant Director Dale Watson of the FBI, Director David Brant of the U.S. Naval Criminal Investigative Service, and a variety of other U.S. Attorneys to discuss a strategy to expand the Gateway initiative outside of the St. Louis area.

The Puget Sound area of Washington State serves as a vital homeport to the strategic resources of the United States Navy. We have nuclear powered aircraft carriers, ballistic missile submarines and a large civilian and military workforce which are strategic assets in the defense of our country in the Pacific, and which have played a vital role in our military response in both Afghanistan and Iraq. The U.S. Naval Criminal Investigative Service is responsible to provide felony criminal investigative, counterintelligence and counterterrorism support to the Department of the Navy, and to the strategic assets in the Western District of Washington. Following my positive impression of the FBI Gateway Program, I approached Director Mueller and Director Brant to consider a law enforcement information sharing pilot program in my district to enhance our law enforcement and counterterrorism strategies.

The Naval Criminal Investigative Service (NCIS) eagerly accepted my request, and then Director Brant devoted resources to develop what has come to be known as the LInX program. This is more than a technology project; it is in fact a law enforcement and counterterrorism operational capability. The LInX effort in Seattle began with the effective organization of senior law enforcement executives, to include Chiefs of Police, Sheriffs and Special Agents-in-Charge from thirteen critical agencies. NCIS provided the funding to develop the technology to permit the electronic sharing of law enforcement records, to include criminal incident data, traffic summons, computer assisted display (CAD) data, criminal arrest histories and other law enforcement records that are legally retained and shareable by and among these law enforcement agencies. NCIS also provided resources to assist me in formally organizing the leadership of these law enforcement agencies who actually owned and were responsible for the collection of this data. We formed a LInX Board of Governance, which was comprised of this executive level leadership of local, county, state and federal agencies. My office provided direct legal oversight of this program to ensure that all federal guidelines, to include the Federal Privacy Act was complied with in the development of this program.

The NCIS simultaneously initiated LInX Programs in other geographical areas vitally important to the Department of the Navy, and sought to enhance their criminal investigative and force protection support to the Navy through the enhancement of information sharing with regional law enforcement agencies. NCIS developed LInX projects in the Hampton Roads area of Virginia, the Gulf Coast of Texas, Hawaii, Northeast Florida and Southeast Georgia, the National Capital Region of Washington, DC and in New Mexico. In each of these regions, the local United States Attorney was personally involved in the oversight and participation of the LInX project. From 2003-2006 we expanded the Northwest LInX project to include more than one hundred fifty

(150) agencies throughout the State of Washington, and most recently to include the Portland, Oregon Police Bureau, which includes seventeen local and county agencies. I believe in total, the LInX Program, now deployed to seven regions throughout the United States, has developed an effective law enforcement information sharing effort with more than 350 agencies.

Throughout my involvement with the LInX Program, I had the opportunity to meet frequently with leaders in Washington, DC, to include the Secretary of the Navy, the Deputy Secretary of Defense, the Deputy Attorney General of the United States and the Deputy Secretary of Homeland Security. In partnership with the Director of NCIS, I offered that LInX has fostered an extremely harmonious environment among law enforcement leaders in the Northwest, bringing them together to plot a strategy for effective information sharing. We successfully overcame those artificial barriers between agencies, which had become a part of the law enforcement culture prior to the events of September 11, 2001. More importantly, with the direction of these law enforcement leaders and their operational personnel, NCIS developed a technical solution for the sharing of electronic data that directly led to law enforcement successes in my District. I received reports from virtually all agencies involved in this effort that their personnel had solved criminal investigations that previously would not have been solved, or would have required extensive resources to pursue.

The LInX Program allowed each participating agency's law enforcement personnel to search and retrieve law enforcement records of other jurisdictions within the State of Washington. In addition, the Department of Justice joined the LInX Program in Washington, by developing a linkage to the DOJ Regional Data Exchange (R-DEX) program, which is an effort to share information between FBI, DEA, AFT, USMS and BOP. For the first time in the profession of law enforcement, detectives from Seattle to Spokane were able to share criminal files with each other, and they were able to query the DOJ criminal investigative components, and determine if any of those agencies had a file of interest to the local agencies.

Unique to the LInX system is the ability to conduct a comprehensive search of law enforcement records, retrieve both structure data and full text investigative narratives, to literally connect the dots to a crime. Most important to me from a strategic standpoint, was the ability of LInX to offer insight into crime committed at the local level, which could be a precursor to a future terrorist attack, or a terrorist support network. These are the dots that could not be connected prior to 9/11. We have developed a system, and a regional organizational structure of law enforcement leaders, which, if implemented on a national scale, could likely prevent the next terrorist attack on our country. Law enforcement information sharing should have the following characteristics:

- The system should include *all the legally shareable data* maintained in the record systems of each participating agency. Access controls must be included to protect sensitive information from widespread or premature dissemination.

- The system must permit partners full access to the relevant documents.
- The system must provide a technical analytical capability to “connect the dots”, by linking all variables associated with a subject and instantly providing a composite picture for the investigator.
- The system must meet the security standards of the federal law enforcement agencies.

I am convinced that the elements of the LInX program, and all of the standards that it embodies should be developed by the federal government on a national scale, building on the experience here and in the other NICIS funded pilots.

Deputy Secretary of Defense Gordon England proposed to Deputy Attorney General Paul McNulty and Deputy Secretary of DHS Michael Jackson, that we develop an inter-departmental effort between DoD, DOJ and DHS to implement a LInX effort on a national scale. Secretary England believed that it was more appropriate for either DOJ or DHS to lead such an effort, but certainly offered the full support of his Department, and of his law enforcement component in NCIS. As then Chairman of the Attorney General’s Advisory Committee on Information Sharing, I respectfully urged the Deputy Attorney General in a letter, co-signed by eighteen of my U.S. Attorney colleagues, to further expand LInX throughout the United States, under the auspices of each of the U.S. Attorneys who signed this letter. While the DOJ supported the efforts of the U.S. Attorney led LInX programs, it declined to take a leadership role in the further development of this vital capability.

Instead the Justice Department has taken three distinct positions that seriously compromise law enforcement information sharing in the United States. First, DOJ has retreated from its earlier standard that all legally sharable data be included in LInX or similar programs, and has substituted a far lesser standard that gives great discretion to agencies in what will be shared. Second, DOJ has refused to mandate technical and security approaches for information sharing – leaving that to local discretion and thus ensuring that only non-sensitive data will be shared with local law enforcement. And third, DOJ has chosen not to assume responsibility for leading, directing, supporting, or funding any regional information sharing system, preferring to let local interests and the market place determine the ultimate configuration of a national system. In a December, 2006 Memorandum by Deputy Attorney General McNulty, the Department of Justice withdrew from the LInX pilots and halted meaningful record sharing with state and local law enforcement. This is a tragic and harmful step backwards in local, state and federal law enforcement and cooperative counter terrorism efforts and puts our country at greater risk of terrorism attacks.

In spite of the failure of leadership at the senior level of DOJ, efforts have been made by DoD and NCIS to transition the LInX Program, which has been funded by DoD through FY’11, to the Department of Homeland Security. Former U.S. Attorney Debra Wong Yang of Los Angeles, working with Chief Bratton, Los Angeles Police

Department, Sheriff Baca, Los Angeles Sheriff's Department, and Sheriff Carona, Orange County Sheriff's Department, is attempting to implement a LInX project in the Central District of California. USA Yang submitted a formal proposal for the development of this program to DOJ, and requested DOJ invest funding, and partner with DoD/NCIS to develop LInX, however, her request was denied by the DAG. The leadership of the Los Angeles law enforcement agencies subsequently petitioned DHS for funding.

I am convinced that the standards of senior executive law enforcement leadership, a cost efficient technology, and a fervent commitment to share all legally shareable law enforcement records is the recipe for successful information sharing among our 18,000 law enforcement agencies in our country. This is an effort which must be led from the most senior ranks of government, and one which must meet the operational needs of our sworn law enforcement officers and analysts who are on the front line every day attempting to find the proverbial needle in the haystack that might lead them to a terrorist support network, or to quickly capture a serial pedophile, random rapist or violent criminal. Neither crime, criminals nor terrorists know any borders. In fact, they now know how to exploit our geographical borders and bureaucratic jurisdictions to their own advantage. We need a new weapon in our fight to preserve our freedoms, and I believe we may have found such a weapon in the deployment of the LInX program.

Thank you for this opportunity to address you and this important subcommittee. I look forward to answering any questions you may have for me.

John McKay  
Visiting Professor of Law  
Seattle University School of Law  
Seattle, Washington  
(206) 398-4068  
[jmckay@seattleu.edu](mailto:jmckay@seattleu.edu)