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## Homeland Security

### Looking Forward To A National Security Strategy: Governor James S. Gilmore, III Of Kelley Drye & Warren LLP

*The Editor interviews The Honorable James S. Gilmore, III, Former Governor, The Commonwealth of Virginia, and Partner, Kelley Drye & Warren LLP. Governor Gilmore served as Chairman of the Congressional Advisory Panel To Assess Domestic Response Capabilities for Terrorism Involving Weapons Of Mass Destruction (a.k.a., the Gilmore Commission).*

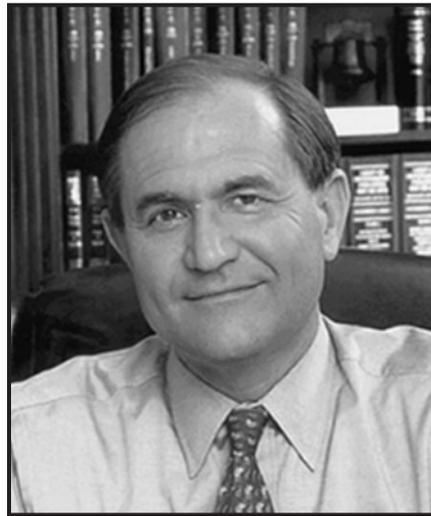
*In the July 2003 issue of The Metropolitan Corporate Counsel Governor Gilmore provided our readers with a background report on the work and purpose of the Commission. Its primary focus was to encourage Americans to be resolute in a drive on terrorism through coordinated efforts among national, state and local officials as well as urge all levels of government to act as partners in protecting civil freedoms.*

**Editor:** While the Gilmore Commission was established in 1999, I understand that it was extended until February of 2004. What were some of the recommendations that won enactment by Congress?

**Gilmore:** During the first four years, we had about 144 recommendations, about 125 of which were implemented in whole or in part by congressional action.

In the first year we assessed the threat of an attack and determined that the chance of a conventional attack on this country using an explosive or hijacking was highly probable. We warned that there needed to be a coordinated national strategy with clearly defined roles for each level of government to determine who was in charge and how to deal with those kinds of issues.

In the year 2000, we recommended that there be a national strategy involving federal, state and local governments, not just a federal strategy. We recommended that there be an office established in the White House to manage these issues and that it have real authority to coordinate the work of the other



**The Honorable James S. Gilmore**

offices. The office would have budgetary certification authority in order to bring the other parts of government in line. Our thinking was that it would give this office a coordination role that was superior to cabinet offices, using the direct authority of the President. We also recommended a review of the intelligence community. We were deeply concerned that there was little communication among FBI, CIA, NSA and other federal organizations relating to national security and that culturally there was no communication up and down the chain among federal, state and local officials.

In 2001, we believed the Commission's work was concluded. In summing up our findings, we developed a plan for a national strategy. We focused our attention on how to use federal, state and local authorities and fit them into the national strategy. We also examined the public health system with an eye to such matters as making certain that there are sufficient hospitals to handle a biological attack. Border control was also a critical issue. There were concerns among the

Commission members about how to use the military in a domestic setting which we considered highly dangerous in a time of crisis. The final issue we considered was cyber security.

The 9/11 attack occurred while our last report was being finalized. Congress extended our mandate for two more years until February 2004. During the fourth year we assessed the intelligence community's effectiveness and determined that an intelligence fusion center was needed. This became in time the Terrorism Threat Integration Center run through both the CIA and FBI. We recommended a change in intelligence collection domestically and that there be an independent organization to do counterterrorism in the U.S.

Our last report of December, 2003 expressed concerns that after the five years there was still not a national strategy coordinating all the levels of government. We expressed great concern with the potential dangers to civil freedoms in the U.S. by an overreaction by government and others to another attack. We tried to point to what we considered (and hoped) would become a new normalcy – a heightened security but not with such an obsessiveness that it would destroy the economic base or the civil freedoms of the country. We filled out what should be the ultimate goal of the national policy, concluding under statute our work of five years.

**Editor:** So you feared, among other things, domestic use of the military?

**Gilmore:** Yes. The Posse Comitatus Act of 1878 prohibits the use of the military for law enforcement activities in the homeland. There is a concern that a weapons of mass destruction attack within our borders would result in the use of the military to maintain order regardless of its dangers. Without due caution on our part, the enemy could drive us into a state of virtual martial law.

*Please email the interviewee at [jjgilmore@kelleydrye.com](mailto:jjgilmore@kelleydrye.com) with questions about this article.*

**Editor: Do you believe that the 9/11 Commission report will validate and extend many of your recommendations?**

**Gilmore:** We do not know what their final report will say. We think that the 9/11 Commission is very different in their focus, looking retrospectively in trying to find flaws historically while we were always looking ahead prospectively to future improvements in the system. We tried to offer constructive solutions and directions for developing homeland security, much of which has been adopted. The 9/11 Commission is different also in that it is bipartisan with both Democrats and Republicans having their roles. Our Commission was nonpartisan, having been made up of representatives of states, localities, fire, municipal and health care workers as well as representatives of the intelligence community, former military officers and the former State Department representative for terrorism (L. Paul "Jerry" Bremer – former State Department Ambassador for Counterterrorism who is now serving as the Chief Administrator in Iraq.)

**Editor: Do you believe that your Commission report advocating a fusion of our intelligence forces will now be replaced by a totally new agency?**

**Gilmore:** We recommended that there be an independent stand-alone agency to do the fusion. In the end that function was placed in the CIA on recommendation of the Commission. We believe that all intelligence agencies need to have equal access to that agency. I believe that the fusion center will continue as a concept, but I doubt that there will be a new agency to do internal collection of intelligence. I believe that the FBI might have been a better choice, but the Commission reached a different conclusion.

**Editor: Do you see any improvement in an overall coordination of efforts by first responders throughout the country?**

**Gilmore:** All of the local responders understand their roles. They saw it in New York and in Northern Virginia. Everyone understands that they have work to do. I do think that there is a sense of frustration at the local level in that they do not know how they fit into the big picture. That work remains ahead of us and it is hard to integrate all parties in a federal system. I think that the Department of Homeland Security is doing its best, but it is a real challenge.

**Editor: Do you think that there is any one sphere of preparation that is taking precedence over others?**

**Gilmore:** When we recommended all-hazards preparation, we felt that the dollars that

were going to be spent for this preparation could be equally applied across all disaster areas – general diseases within the community, emerging pathogens, hurricanes, floods, fires, earthquakes – so that you would get a double hit for your money. There is also a lot of prospective planning that has to be done in order to prevent attacks and that work still has to be done as well. I think that the Department of Homeland Security at this point is trying to concentrate on border control. The government is spending a lot of time on bioterrorist issues, still some distance from solution. I believe there is much intense work going on with critical infrastructure protection but that begins to get you into issues of how to harmonize with the private sector. That is a real challenge that needs to be resolved.

**Editor: Do you see the state and the municipalities playing a subordinate role to the Department of Homeland Security?**

**Gilmore:** Probably, but they should not. The correct approach should be an equal partnership among all levels of government and that requires a clear understanding of everyone's respective roles in the national strategy. The truth is that the first responders in the time of crisis are going to be the local responders. They need to be coordinated and supported by the state emergency operation centers. The federal officials will come in much later but at the same time they have a role that crosses state borders and controls the coasts and airspace. There is a lot of coordination that needs to take place here.

**Editor: Do you think that more training, coordination and better management procedures are needed to protect emergency responders at the scene of disasters?**

**Gilmore:** Not yet. The central point is that we have to determine what we are guarding against and what type of training and equipment is appropriate. Once we make those decisions, we can proceed with an overall training program. I think that is still a work in progress. I do believe that there is a general recognition that conventional explosives on a massive scale are the typical destructive techniques to be dealt with. I would divert your answer by saying that our chief threat is the capability and intentions of the enemy. That means that intelligence is rising to the top here. That is what has to be reformed so that we understand the capabilities and intentions of the enemy.

**Editor: Do you feel that we should improve the information sharing systems?**

**Gilmore:** No question. As long ago as the year 2000 we were focused on the lack of coordination and information sharing. It is

clear that we have to break down this culture of secrecy. You can still have security of information but we have to coordinate to the point where we can share information among federal, state and local people and elements of the private sector.

**Editor: Do you think that we have learned lessons from Iraq in terms of civil defense?**

**Gilmore:** I think that we learned that people who are filled with rage, anger and resentment are able to get their hands on conventional explosives and set those off and create great chaos if they have the capability of doing it within a local area. But we do not see that replicating in the homeland. I think that the President's position is that we have to fight these battles overseas so that these types of attacks do not occur in the homeland.

**Editor: In your July interview with our paper, you were careful to stress how important it is to avoid losing sight of our hard-won liberties in our zeal to curb terrorism. Do you feel that there has been a greater erosion of our liberties in the last year?**

**Gilmore:** I think that we have a duty to be watchful of this. There is not evidence at this point that the Patriot Act is being abused, but it sets the stage for potential abuse and we have to be diligent. For example, searches, even with warrants, where you do not have to reveal that you were there, pose a danger. I think that there were additional proposals to extend the law in the Patriot Act to do some radical things, but fortunately opposition from the freedom-loving community defeated those proposals. We think that there is a risk that if our homeland tranquility is threatened there will be a typical overreaction advocating a curtailment of our freedoms in the name of safety and security. We believe that the philosophy is not either freedom or security, but we have to design programs that ensure both.

**Editor: I understand that you are the head of Kelley Drye's homeland security practice and are working with important clients on homeland security projects. Could you tell us about that?**

**Gilmore:** One of our principal clients is CSC Corporation, which is a major government contractor in the national security and homeland security field. They assemble teams to apply for government contracts about which we perform consulting work. In addition, I serve on the homeland security advisory committee at Lucent Corporation and Linux Works in California. I am consulting with national security companies in the Washington area and on a national basis.