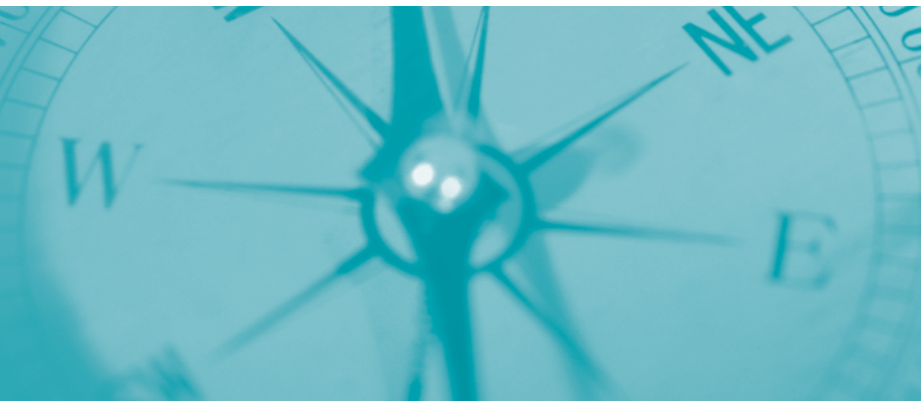


A Brief History of Law Enforcement
Intelligence: Past Practice and
Recommendations for Change



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CHAPTER THREE

A Brief History of Law Enforcement Intelligence: Past Practice and Recommendations for Change

Controversies have surrounded law enforcement intelligence because of past instances where the police maintained records of citizens' activities that were viewed as suspicious or anti-American, even though no crimes were being committed. This, of course, violates fundamental constitutional guarantees and offends the American sense of fairness with respect to government intrusiveness. Unfortunately, the boundary is not precise regarding the types of information the police can collect and keep. Some legal guidelines appear contradictory and the application of law to factual situations is often difficult. Beyond the legal ramifications, early intelligence initiatives by the police typically lacked focus, purpose, and process. Important lessons can be learned from these historical experiences that provide context and guidance for law enforcement intelligence today.

Aggravating these factors has been the tenuous relationship between law enforcement intelligence and national security intelligence that has changed continuously since the mid-20th century. These changes have been both politically and legally controversial, responding to changing socio-political events in American history and most recently through post-9/11 counterterrorism efforts. As a result, there is value in understanding selected portions of history from both types of intelligence to gain context and understand the lessons learned.

Law Enforcement Intelligence: The Years of Evolution

Early law enforcement intelligence units, notably going back to the 1920s, borrowed an old method from the military known as the “dossier system.” Essentially, intelligence files were nothing more than dossiers—files with a collection of diverse raw information about people who were thought to be criminals, thought to be involved with criminals, or persons who were thought to be a threat to the safety and order within a community. Bootleggers during prohibition and many of the high-profile criminals of the early twentieth century – for example, Bonnie and Clyde, the Barker Gang, Machine Gun Kelly, Al Capone – were the typical kinds of persons about whom police agencies kept dossiers.

During the depression of the 1930s, little was done in the law enforcement intelligence arena. Other priorities were simply higher; the pervasive threat to the country was the economy, not criminality. Circumstances began to change in the latter part of the decade as Communism – or the “Red Scare” – became predominant. The police relied on the only system they had used: the dossier.

In 1937, U.S. Representative Martin Dies (D-Texas) became the first chairman of the House Committee on Un-American Activities. Dies, a supporter of the Ku Klux Klan, fueled the fire of concern about Communism in the United States, including labeling people as Communists that often resulted in their loss of jobs and functional displacement from society. Concern about Communism was pervasive, but was of secondary interest

in the 1940s because of World War II. After the war, when the Soviet Union was formed and built its nuclear arsenal, the Red Scare re-emerged with even greater vigor.

... local law enforcement agencies began creating INTELLIGENCE DOSSIERS on persons who were suspected Communists and Communist sympathizers, these often became known as "RED FILES."

The fires were fanned significantly in 1950 by Senator Joseph McCarthy (R-Wisconsin) who was using this national concern as the foundation for his floundering re-election bid to the Senate. McCarthy railed against the American Communist Party and called for expulsion from government, education, and the entertainment industry anyone who was an avowed Communist or Communist sympathizer. Because of fear from the Soviet Union among the American public, this war on Communism resonated well.

21 It was rationalized that such activities were warranted on the grounds of a "compelling state interest." This argument, however, did not meet political or constitutional scrutiny.

Responding to expressions of public and governmental concern, local law enforcement agencies began creating intelligence dossiers on persons who were suspected Communists and Communist sympathizers, these often became known as "Red Files." Thus, police agencies were keeping records about people who were expressing political beliefs and people who were known to sympathize with these individuals. The fact that these people were exercising their constitutional rights and had not committed crimes was not considered an issue because it was felt that the presence of and support for Communism within the nation was a threat to the national security of the United States.²¹

The dossier system had become an accepted tool for law enforcement intelligence; hence, when new over-arching challenges emerged, it was natural for law enforcement to rely on this well-established mechanism for keeping information. In the 1960s law enforcement met two challenges where intelligence dossiers appeared to be an important tool: the Civil

Rights movement and the anti-Vietnam War movement. In both cases, participants appeared to be on the fringe of mainstream society. They were vocal in their views and both their exhortations and actions appeared to many as being un-American. This was aggravated by other social trends: World War II baby boomers were in their teens and twenties, exploring their own newly defined world of “sex, drugs, and rock n’ roll” contributing to the stereotype of the “dope-smoking, commie-hippie spies” – a sure target for a police traffic stop.

An overlap among these social movements was viewed by many as conspiratorial. Moreover, rapidly changing values, stratified in large part along generational and racial lines, created a sense of instability that appeared threatening to the mainstream. Rather than being culturally unstable, as we have learned on hindsight, it was simply social evolution. Because of the dissonance in the 1960s and the largely unsupported assumption that many of the activists and protesters “might” commit crimes or “might” be threats to our national security, police agencies began developing dossiers on these individuals “just in case.” The dossier information typically was not related to specific crimes, rather, it was kept as a contingency should the information be needed in an investigation or prosecution. There is little doubt that law enforcement was creating and keeping these dossiers with good faith to protect the community from activities then viewed as threats; however, that faith does not mitigate unconstitutional practices.

22 Among the most often cited are *Miranda v. Arizona* - police must advise arrestees of their Fifth and Six Amendment rights prior to a custodial interrogation; *Mapp v. Ohio* - applying the Exclusionary Rule to the states; *Gideon v. Wainwright* - right to appointed counsel; and *Escobedo v. Illinois* - right to counsel when the process shifts from investigatory to accusatory.

There was additional concern during this time because of the activist nature of the U.S. Supreme Court during the era of Chief Justice Earl Warren (1953 – 1969). Many of the liberal decisions of the Warren Court were met with disfavor and the often-expressed belief that the Court's decisions²² were “handcuffing the police.” With regard to the current discussion, perhaps most important was that the Warren Court led a generation of judicial activism and expanded interpretations of the Constitution. Moreover, it symbolically motivated activist attorneys from the 1960s to try new strategies for the protection of constitutional rights. Among the most successful was reliance on a little-used provision of the Civil Rights Act of 1871, codified as Title 42 of the U.S. Code, Section 1983, ***Civil Action for Deprivation of Civil Rights***.

Commonly referred to as 1983 suits, this provision essentially provides that anyone who, under color of state or local law, causes a person to be deprived of rights guaranteed by the U.S. Constitution or federal law may be civilly liable. The initial lawsuits focused on whether a city, police department, and officers could be sued for depriving a person of his or her constitutional rights. The Supreme Court held that they could. A significant

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aspect of the case was that the police could be sued if there was “misuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.”²³ This opened the proverbial floodgates for lawsuits against the police (and correctional institutions).

Initial lawsuits focused on various patterns of police misconduct; for example, excessive force and due process violations. The reach of lawsuits against law enforcement grew more broadly with decisions holding that the police chain of command could be held vicariously liable for the actions of those under their command. Moving into the late 1960s and early 1970s, this movement of lawsuits reached toward law enforcement intelligence units. It was increasingly discovered that police agencies were keeping intelligence files on people for whom there was no evidence of criminality. The practice of keeping intelligence dossiers on a contingency basis was found to be improper, serving no compelling state interest and depriving those citizens of their constitutional rights. As a result, the courts repeatedly ordered intelligence files to be purged from police records and in many cases police agencies had to pay damage awards to plaintiffs. The decisions also permitted citizens to gain access to their own records. Many activists publicized their intelligence files as a badge of honor, often to the embarrassment of the police.²⁴ Law enforcement intelligence operations were cut back significantly or

23 *Monroe v. Pape* 365 U.S. 167 (1961).

24 For example, it was not uncommon to find notations and even photographs of an “intelligence target” having dinner or attending a public event such as a movie or the theater. The citizen would then pose a rhetorical question, “Is this how you want your tax dollars spent?”

eliminated as a result of the embarrassment and costs associated with these lost lawsuits. The lessons learned from this era suggest caution in the development of intelligence files; information must be collected, maintained, and disseminated in a manner that is consistent with legal and ethical standards.

This lesson is reinforced by the findings of the United States Senate Select Committee to Study Government Operations:²⁵ the Church Committee, named after its chairman, Frank Church (D - Idaho),²⁶ which held extensive hearings on domestic intelligence, most notably the FBI's Counter Intelligence Program (COINTELPRO) which spanned the years of 1959 to 1971. The committee concluded that:

Domestic intelligence activity has threatened and undermined the Constitutional rights of Americans to free speech, association and privacy. It has done so primarily because the Constitutional system for checking abuse of power has not been applied.

25 United States Senate Select Committee to Study Government Operations. (1976). *Intelligence Activities: Final Report*. Washington, DC: Library of Congress.

26 Also alternately known as the Church Commission.

27 For an explanation of the Intelligence Community and those departments and agencies that are current members see, www.intelligence.gov/.

28 R. Best. & H.A. Boerstling. (1996). *The intelligence community in the 21st century*. House of Representatives 104 Congress: Permanent Select Committee on Intelligence. www.access.gpo.gov/congress/s/house/intel/ic21/ic21018.html

29 *Ibid*

Early Intelligence Recommendations

After World War II, the major focus of the Intelligence Community²⁷ (IC) was to direct intelligence activities at the Soviet Union to prevent the perceived threat of Soviet world domination.²⁸ Accordingly, the congressional commissions in charge of investigating the IC's operations at this time were largely concerned with the IC's efficiency in conducting such activities. The main focus of these investigations was to recommend ways to improve the IC's structure, organization, and coordination. Indeed, most of the recommendations made by the committees addressed deficiencies in coordination and organization.²⁹ Three specific commission investigations made recommendations that were particularly relevant to law enforcement intelligence.

In 1948, the Hoover Commission recommended developing better working relationships between the Central Intelligence Agency (CIA) and the rest of the IC. The commission had found a lack of coordination within the IC and of a lack of information sharing which led to redundant intelligence activities. In 1949, the Dulles Report recommended that the CIA provide

greater coordination for the rest of the community, particularly between the Director of Central Intelligence (DCI) and the FBI. The report also recommended that the director of the FBI become a member of the Intelligence Advisory Committee to help coordinate intelligence functions with the rest of the IC. Finally, results from the Schlesinger Report in 1971 recommended a reorganization of the IC. The report noted that failures in coordinating the IC and the lack of centralized leadership could be corrected by creating a Director of National Intelligence, increasing the authority of the DCI, and creating a White House position to oversee the entire IC.

Not all intelligence recommendations, however, have looked solely at improving the efficiency and effectiveness of intelligence operations. In the mid-1970s, a number of intelligence abuses surfaced indicating that both the CIA and the FBI had conducted intelligence operations that violated American citizens' civil rights. The CIA was charged with conducting questionable domestic intelligence activities, and the FBI was charged with abusing its intelligence powers, mainly within COINTELPRO.³⁰ These abuses, coupled with the public's frustration over the Vietnam War and the Watergate scandal, led to a shift in focus of the congressional committees' inquiries toward what is now referred to as the era of public investigations.

30 For an illustration of the types of information collected during COINTELPRO, see the FBI's Freedom of Information website, foia.fbi.gov/.

Intelligence Recommendations in the Era of Public Investigations

During this era, investigations of the IC moved away from assessing the efficiency of intelligence operations and toward assessing the legality and the appropriateness of the actual operations conducted. As will be seen, the recommendations made by three congressional committees would result in major changes in both the jurisdiction and roles of IC members with respect to law enforcement and national security intelligence. This would lead to the separation of the two types of intelligence activities, the so-called "wall between domestic and international intelligence."

In 1975, the Rockefeller Commission recommended limiting the CIA's authority to conduct domestic intelligence operations. Furthermore, the commission also recommended that the DCI and the director of the FBI set jurisdictional guidelines for their respective agencies. In 1976, the House Select Committee on Intelligence (the Pike Committee, chaired by Representative Otis Pike, D - New York) also made recommendations to further limit the jurisdictional overlap between agencies responsible for national security intelligence and agencies primarily responsible for law enforcement intelligence. It was the recommendations of the Church Committee, however, that were the most important in developing the wall of separation.

The RECOMMENDATIONS of the Church Committee have been widely recognized as a PRIMARY REASON for the SEPARATION of law enforcement intelligence from national security intelligence. The call for this separation, however, DID NOT MEAN that the AGENCIES SHOULD STOP WORKING with each other.

31 L. Johnson. (1985). *A season of inquiry: The Senate intelligence investigation*. Lexington, KY: The University Press of Kentucky.

32 For a complete review of the recommendations made by the Church committee visit www.derechos.net/paulwolf/cointelpro/churchfinalreport/ld.htm or for a more complete review of the formation of the Church committee see note 14.

The Church Committee, an inquiry formed by the Senate in 1976, examined the conduct of the IC in a broader fashion than did the Rockefeller Commission.³¹ The recommendations made by this inquiry led to jurisdictional reformations of the IC. Most of the recommendations were directed at developing new operational boundaries for the FBI and CIA. Out of the committee's 183 recommendations, the following illustrate how law enforcement intelligence was separated from national security intelligence.³²

- The committee recommended that agencies such as the NSA, CIA, and military branches not have the power to conduct domestic intelligence operations (i.e., law enforcement intelligence functions). Specific

attention was given to the role of the CIA, noting that “the CIA should be prohibited from conducting domestic security activities within the United States.”³³

- The committee recommended that the FBI have “sole responsibility” in conducting domestic intelligence investigations of Americans.
- The FBI should “look to the CIA as the overseas operational arm of the intelligence community.”³⁴
- All agencies should ensure against improper intelligence activities.

The recommendations of the Church Committee have been widely recognized as a primary reason for the separation of law enforcement intelligence from national security intelligence. The call for this separation, however, did not mean that the agencies should stop working with each other. In fact, the Church Committee also recommended that the FBI and CIA continue sharing information and make a better effort to coordinate their initiatives. This was operationally complicated: How do the two agencies work together and coordinate initiatives when there are substantial limitations on the kinds of information that can be collected and shared? The result was increased compartmentalization between the agencies and within each agency.³⁵ Recommendations to improve law enforcement intelligence, however, have not been limited to the federal level. Such recommendations have also been made for state and local law enforcement agencies.

Law Enforcement Intelligence at the State, Local, and Tribal Levels

One of the first recommendations to address local law enforcement intelligence came from the Warren Commission’s 1964 report on the assassination of President John F. Kennedy. While the majority of the commission’s recommendations were directed at federal agencies, notably the Secret Service and FBI, it also recommended that these agencies work more closely with local law enforcement. Specifically, the commission called for increased information sharing and stronger liaison between local and federal agencies.³⁶

33 United States Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities. (26 April 1976). *Intelligence activities and the rights of Americans: Final report*. Book II. www.derechos.net/paulwolf/cointelpro/churchfinalreport/ld.htm. [6 April 2004].

34 *Ibid*

35 For example, because of the regulations - or at least the interpretation of the regulations - FBI agents working within the Foreign Counter Intelligence Division (FCI) were often barred from sharing information with agents working on criminal investigations.

36 The Warren Commission Report. (2003). *Report of the president’s commission on the assassination of President John F. Kennedy*. New York: Barnes and Noble, Inc. [Originally published in 1964].

With the increased problems associated with organized crime and domestic terrorist threats, more recommendations to improve state and local law enforcement intelligence were made throughout the 1960s and 1970s. In 1967, the President's Commission on Law Enforcement and Administration of Justice recommended that every major city police department have an intelligence unit that would focus solely on gathering and processing information on organized criminal cartels. Furthermore, it recommended staffing these units adequately and evaluating them to ensure their effectiveness.³⁷

In 1971, the National Advisory Commission on Criminal Justice Standards and Goals (NAC) was created to make recommendations for increased efficacy of the entire criminal justice system. "For the first time national criminal justice standards and goals for crime reduction and prevention at the state and local levels" were to be prepared.³⁸ Included in the commission's report were recommendations directed at establishing and operating intelligence functions for state and local law enforcement agencies. These recommendations included the following:

37 The President's Commission on Law Enforcement and Administration of Justice. (1967). Task force report: Organized crime. Washington, DC: U.S. Government Printing Office.

38 National Advisory Commission on Criminal Justice Standards and Goals. (1973). Police. Washington D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration.

39 *Ibid*

40 National Advisory Commission on Criminal Justice Standards and Goals. (1976). *Report of the task force on organized crime*. Washington DC: U.S. Department of Justice, Law Enforcement Assistance Administration.

41 *Ibid*

42 *Ibid*

Establishing Intelligence Functions

- Each state should develop a centralized law enforcement intelligence function with the participation of each police agency within the state.³⁹
- States should consider establishing regional intelligence networks across contiguous states to enhance criminal information-sharing processes.⁴⁰
- Every local law enforcement agency should establish its own intelligence function in accordance with its respective state's intelligence function.⁴¹

Intelligence Function Operations

- Each state and local intelligence function should provide support to federal agencies.
- Operational policies and procedures should be developed for each local, state, and regional intelligence function to ensure efficiency and effectiveness.⁴²
- Each agency should have a designated official who reports directly to the chief and oversees all intelligence operations.

- Each agency should develop procedures to ensure the proper screening, securing, and disseminating of intelligence-related information.⁴³

Although the recommendations provided by the NAC were made to strengthen law enforcement's capabilities to fight organized crime, by the mid-1980s, criminal enterprises had grown dramatically and encompassed a diverse array of illegal activities, from drug trafficking to counterfeiting consumer commodities. Investigators and intelligence units had neither the expertise nor the personnel to contain the problem effectively. This was aggravated by a failure of law enforcement to generally understand the nature of the problem and by poor information sharing between law enforcement agencies at all strata of government.⁴⁴ Organized crime was characterized as a "rapidly changing subculture" that was outpacing the capability of law enforcement to control it. Increasingly, state and local law enforcement viewed it as a federal responsibility. As a result, law enforcement intelligence units were often relegated to being little more than an information clearinghouse or, in some cases, viewed as a failed initiative.⁴⁵

Despite the lack of success, many within the law enforcement community still viewed the intelligence function as important to police agencies. As a result, new critical assessments of the intelligence function resulted in more recommendations to improve its operations. A primary limitation of state and local intelligence units was their inability to move beyond the collection of information to a systematic method of analyzing the collected data. The solution, then, was to have "the analytical function...guide the data collection [procedure]" rather than vice versa.⁴⁶

Another limitation of law enforcement intelligence was that many police executives either did not recognize the value of intelligence and/or did not have the skills necessary to use intelligence products effectively. Furthermore, intelligence personnel did not possess the analytic (and often reporting) skills needed to produce meaningful intelligence products. The need for training was considered an important solution to this problem.

Another issue was that intelligence units tended to be reactive in nature, often viewed as a repository of sensitive information rather than a

43 National Advisory Commission on Criminal Justice Standards and Goals. (1976). *Report of the task force on disorder and terrorism*. Washington DC: U.S. Department of Justice, Law Enforcement Assistance Administration.

44 President's Commission on Organized Crime. (1987). Washington, DC: U.S. Government Printing Office.

45 F. Martens. (1987). "The intelligence function." In Herbert Edelhertz (ed.), *Major Issues in Organized Crime Control*. Washington, DC: U.S. Government Printing Office.

46 *Ibid*

proactive resource that could produce information critical for preventing crime and apprehending offenders. Similarly, intelligence units tended not to produce consistent, specifically defined products. Instead, intelligence reports tended to be written on an ad hoc basis to address critical matters.

A final limitation was that intelligence products were not disseminated in a timely or comprehensive manner. This, perhaps, was the greatest setback because the character of organized crime was constantly changing: different commodities were being trafficked, methods of operations tended to change, and participants in the operation of the enterprise changed. The need for timely and relevant information was seen as a necessary component to improving law enforcement intelligence operations.

While the majority of the past recommendations focused on the development and operations of intelligence units, recommendations have also been made regarding the ethical issues associated with state and local intelligence operations. Similar to the concerns that led to the formation of the Church Committee at the federal level, potential abuses of power was also a concern at the state and local levels. Accordingly, recommendations were made to ensure citizens' civil rights remain intact.

47 Commission on Accreditation for Law Enforcement Agencies. (1998). *Standards for law enforcement agencies*. 4th ed. www.calea.org/newweb/newsletter/no79/criminalintelligence.htm.

...the development of the INTELLIGENCE-LED POLICING concept and the creation of the NATIONAL CRIMINAL INTELLIGENCE SHARING PLAN have been important milestones in the evolution of law enforcement intelligence.

For example, the Commission on the Accreditation of Law Enforcement Agencies (CALEA) has recommended that every agency with an intelligence function establish procedures to ensure that data collection on intelligence information is “limited to criminal conduct that relates to activities that present a threat to the community” and to develop methods “for purging out-of-date or incorrect information.”⁴⁷ In other words, the CALEA standard identified the need for law enforcement agencies to be

held accountable for abuses of power associated with their intelligence activities.

As will be seen later, the development of the Intelligence-Led Policing concept and the creation of the National Criminal Intelligence Sharing Plan have been important milestones in the evolution of law enforcement intelligence. By creating both an overarching intelligence philosophy and a standard for operations, state, local, and tribal law enforcement intelligence is becoming more professional. It is embracing more sophisticated tools, developing greater collaboration for one voice from the law enforcement intelligence community, and moving with a greater sense of urgency because of 9/11.

Recent Developments: Law Enforcement Intelligence and the 9/11 Commission

Most recently, the issue of information sharing was addressed both in public hearings and in a staff report from the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission). One issue of concern was the effectiveness of information sharing by the FBI with state and local law enforcement. The commission's staff report stated, in part:

We heard complaints that the FBI still needs to share much more operational, case-related information. The NYPD's Deputy Commissioner for Counterterrorism, Michael Sheehan, speculated that one of the reasons for deficiencies in this information sharing may be that the FBI does not always recognize what information might be important to others. . . . Los Angeles Police Department officials complained to us that they receive watered-down reports from the FBI. . . . We have been told that the FBI plans to move toward a "write to release" approach that would allow for more immediate and broader dissemination of intelligence on an unclassified basis.⁴⁸

48 National Commission on Terrorist Attacks Upon the United States (2004). *Staff Statement No. 12: Reforming Law Enforcement, Counterterrorism, and Intelligence Collection in the United States*, p. 8. http://www.9-11commission.gov/hearings/hearing10/staff_statement_12.pdf.

Both of these issues are being addressed through the National Criminal Intelligence Sharing Plan (NCISP) and more specifically through the

creation of Intelligence Requirements by the FBI. Moreover, FBI Executive Assistant Director for Intelligence Maureen Baginski specifically stated in remarks at the 2004 annual COPS community policing conference that included in the initiatives of the FBI Office of Intelligence was a revised report-writing style that would facilitate information sharing immediately, including with those intelligence customers who did not have security clearances.⁴⁹

Interestingly, the 9/11 Commission's staff report on reformation of the intelligence function included many of the issues and observations identified in previous commission reports over the previous 40 years. The difference, however, is that substantive change is actually occurring, largely spawned by the tragedy of September 11, 2001.

The final 9/11 Commission report issued a wide range of recommendations related to intelligence. Cooperative relationships, the integration of intelligence functions, and a general reengineering of the intelligence community were at the heart of the recommendations. In commentary, the commission noted the role of state, local, and tribal law enforcement agencies, stating the following:

There is a growing role for state and local law enforcement agencies. They need more training and work with federal agencies so that they can cooperate more effectively with those authorities in identifying terrorist suspects.⁵⁰

The commission went on to recognize that:

The FBI is just a small fraction of the national law enforcement community in the United States, a community comprised mainly of state and local agencies. The network designed for sharing information, and the work of the FBI through local Joint Terrorism Task Forces, should build a reciprocal relationship in which state and local agents understand what information they are looking for and, in return, receive some of the information being developed about what is happening, or may happen, in their communities.⁵¹

49 Maureen Baginski, FBI Executive Assistant Director for Intelligence. Remarks in a keynote address to "Community Policing for America's Future: National Community Policing Conference", Office of Community Oriented Policing Services, Washington, DC (June 22, 2004).

50 National Commission on Terrorist Attacks Upon the United States. (2004). *The 9/11 Commission Report*. Washington, DC: U.S. Government Printing Office, p. 390. Also available in full online at www.9-11.commission.gov/report/911Report.pdf.

51 *Ibid.*, p. 427.

The commission also recommended creation of a new domestic intelligence entity that would need to establish "...relationships with state and local law enforcement..."⁵² In proposing a new National Counterterrorism Center (NCTC), the commission stated that the center should "... [reach] out to knowledgeable officials in state and local agencies throughout the United States."⁵³ Implicit in the commission's recommendations is that terrorism is a local event that requires critical involvement of state and local government in prevention and response.⁵⁴

Implicit in the [9/11] COMMISSION'S recommendations is that TERRORISM is a local event that requires critical involvement of STATE and LOCAL GOVERNMENT in prevention and response.

LESSONS LEARNED

While we have evolved in our expertise and professionalism, many of the same issues remain. What are the lessons learned from history?

- Building dossiers full of raw, diverse information provides little insight; analysis is needed to give meaning to the information.
- The improper collection of information can have a negative impact on our communities, including a "chilling effect" on the constitutional right of freedom of speech.
- To be effective, intelligence units must be proactive, developing unique products and disseminating the products to appropriate personnel on a consistent and comprehensive basis.
- A clear distinction is needed between law enforcement intelligence and national security intelligence. While there is information that can support the goals of both forms of intelligence, the competing methodologies and types of information that may be maintained in records mandates that the distinction remain clear and that overlap

52 *Ibid.*, p. 424.

53 *Ibid.*, p. 404.

54 *Ibid.*

occurs only for clear purposes of public safety, including the apprehension of offenders and prevention of criminal and/or terrorists' acts.

- Targeting people is unlawful...without some evidence of a criminal predicate:
 - If the reason for the target is the support of an unpopular cause.
 - If they are being targeted because of their political beliefs, religion, race, ethnicity, or other attribute or characteristic that is inherently lawful.
 - Targeting without lawful justification can result in civil rights suits and vicarious liability lawsuits which can be both costly and embarrassing to the police department.
- Monitoring an individual's behavior is proper if reasons can be articulated that reasonably support the notion that:
 - The person may be involved in criminality now or in the future.
 - There is a reasonable threat to public safety.
- Retaining information in intelligence files about an individual is improper if there is no sustainable evidence of his or her criminal involvement, unless that information is used only as noncriminal identifying information and is labeled as such.
- A full-time law enforcement intelligence function should be organized professionally and staffed with personnel who are specifically trained in analysis and intelligence product preparation.
- There must clear lines of communications between the intelligence unit and decision makers.
- Law enforcement intelligence units must be evaluated regularly to ensure functional utility and operational propriety.
- Information sharing remains an important priority with few major improvements since the original recommendations in the 1964 Warren Commission.