

LEAP

A LAW ENFORCEMENT ASSISTANCE AND PARTNERSHIP STRATEGY

Improving Information Sharing Between the Intelligence Community
and State, Local, and Tribal Law Enforcement



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Executive Summary

In its pivotal report detailing the federal government's failure to prevent the September 11, 2001 terrorist attacks, the 9/11 Commission cited a "lack of imagination" as a primary reason why officials were unable to connect the data dots and take action. As noted by the Commission, a secure homeland depends on the state, local, and tribal law enforcement officers in our communities. These individuals are the people best positioned not only to observe criminal and other activity that might be the first sign of a terrorist plot but also to help thwart attacks before they happen. Indeed, the evidence shows that terrorism financing, planning, logistics, and travel know no jurisdictional boundaries and involve a wide array of American communities whether urban, suburban, or rural. Accordingly, providing police and sheriffs' officers with the information and intelligence resources they need to make sense of what they encounter on the ground every day – and to share their observations and concerns with the federal Intelligence Community (IC) in response – would be a giant leap toward making the homeland more secure. Unfortunately, five years after 9/11, critical failures of imagination continue to leave these "first preventers" as a largely untapped resource in the war on terror. Quite simply, the federal government has failed to reach out and ask them how best it can help. This LEAP Information Sharing Strategy suggests seven new initiatives that should fulfill some of the key needs that police and sheriffs' officers are experiencing across the country and proposes concrete solutions that Congress should pursue immediately. They, and the American people, deserve no less.

First, police and sheriffs' officers believe that in order to be effective in preventing terrorism and related criminal activity, it is essential that they fully participate in the intelligence cycle at both the federal and non-federal levels and become advocates for law enforcement intelligence products that meet their requirements. Although most point to the concept of intelligence-led policing as the way forward, there is no national strategy to promote this idea. Consequently, the country needs a National Center for Intelligence-Led Policing to help develop and coordinate the necessary education, training, and professional services for a unified national approach to intelligence-led policing. Incorporating privacy and civil liberties protections, Congress should establish this Center to bridge the intelligence and law enforcement divide that is unnecessarily and dangerously impeding the flow of essential information.

Second, major city law enforcement executives agree that one of the best ways to help thwart terrorist attacks in this country is to send liaisons from their departments to their foreign counterparts in order to boost their understanding of how terrorists are operating internationally and to obtain on-the-scene situational awareness whenever attacks occur abroad. Such a liaison presence provides the kind of information that the state, local, and tribal law enforcement communities need in order to prepare for and respond to terrorism in this country. The New York Police Department (NYPD) is

often cited as a model for this kind of international outreach. Unfortunately, the majority of other jurisdictions lack the money and manpower to send staff to key cities around the globe. Some of them plan to pool their resources, however, by creating a joint international liaison program. This program will assign officers from different U.S. cities to different destinations overseas. The law enforcement intelligence that those officers will obtain through their liaison relationships will then be shared with all participating departments back home. In order to encourage participation by as many major cities and urban areas as possible, Congress should establish and fund a needs-based “Foreign Liaison Officers Against Terrorism (FLOAT) Grant Program” that will help defray the travel, housing, and related costs associated with this public safety mission.

Third, law enforcement officers speak highly of “fusion” centers that have been established at the state and local levels to analyze the millions of pieces of data available to them, state health authorities, local first responders, the private sector, and other homeland security players. One place where police and sheriffs’ officers have identified a need for such intelligence “fusion” is at our nation’s borders. As the June 2, 2006, arrest of suspected terrorists in Toronto, Canada, and news that al Qaeda has considered crossing the Mexican border to infiltrate the country both vividly demonstrate, America needs a shared “border intelligence” capability. Situational awareness at our ports of entry and all places in between would enable the Department of Homeland Security to partner more effectively with the state, local, and tribal law enforcement officers who serve as the “eyes and ears” against terrorism in border communities. Although it is widely accepted that officers armed with such “situational” information could be effective lookouts for terrorists, drug and human smugglers, and others who pose a threat to the nation, the Department currently lacks a consistent and effective border intelligence capability. Congress accordingly should direct the Department to deploy Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) resources to border state fusion centers – as part of a “Border Intelligence Fusion Center Program” – in order to generate timely border-related intelligence products that are relevant to law enforcement in those states.

Fourth, state, local, and tribal law enforcement participation in state and local fusion centers advances the cause of intelligence-led policing by involving officers in the intelligence process on a daily basis; helping them build relationships across every level and discipline of government and the private sector; and ensuring that law enforcement intelligence and other information is shared with their home communities. Unfortunately, many local and tribal police and sheriffs’ officers lack the resources to participate fully in fusion centers. A dedicated funding stream to maximize their involvement would promote the development of more robust fusion centers nationally and would make the country safer. Congress consequently should establish a “Fusion and Law Enforcement Education and Teaming (FLEET) Grant Program” that would provide local and tribal communities with the funding they need to send personnel to these facilities, to train them about the intelligence cycle at both the federal and non-federal levels, and to ensure effective communications both within their region and across the country.

Fifth, another information sharing challenge cited by many law enforcement officers is the lack of sufficient amounts of specific and actionable information that might help them detect and thwart a potential terrorist attack. Congress accordingly should establish and fund a “Vertical Intelligence Terrorism Analysis Link (VITAL)” – at the National Counterterrorism Center (NCTC) – to facilitate information sharing and to ensure that law enforcement intelligence is written in a way that is actually useful to police and sheriffs’ officers. VITAL should encourage state, local, and tribal law enforcement departments to detail appropriately cleared officers to the NCTC, where they would help intelligence analysts identify what terrorism-related intelligence is actually of interest to local law enforcement, help produce reports which can be disseminated to officers in the field, and serve as a point of contact for law enforcement agencies and officers who have information to share with the IC. VITAL would help the IC leverage existing ties with non-federal law enforcement partners. In addition, it would help invigorate the two-way information flow that the 9/11 Commission identified as so critical to our homeland security efforts.

Sixth, where intelligence information cannot be “sanitized” to an unclassified law enforcement sensitive level, law enforcement executives need security clearances so they can access data that is relevant to protecting people and places within their jurisdictions. Many such executives complain, however, that the process for obtaining “Secret” or “Top Secret” clearances takes too long, is confusing, and is otherwise too expensive. Others note that a clearance granted by one agency won’t necessarily be recognized by others – causing many to question the value of getting a clearance in the first place. To overcome this obstacle, Congress should direct the U.S. Office of Personnel Management, the Department of Homeland Security, and the FBI to create a program – the “Moving Urgent Security Clearances for Law Enforcement (MUSCLE) Program” – to speed the process by which police chiefs, sheriffs, and other heads of state, local, and tribal law enforcement agencies get the security clearances they need to protect their communities.

Seventh, to ensure that these information sharing initiatives work, Congress should establish and fund a benchmark and biennial survey of intelligence-led policing around the nation. This “Targeting Intelligence-Led Policing Satisfaction (TIPS) Benchmark Survey” would review the quality of information being shared, would gauge its usefulness to a variety of state, local, and tribal law enforcement agencies, and would publicly identify areas for improvement.

We are long overdue in providing police and sheriffs’ officers with the basic information they need to take on the critical homeland security role that the 9/11 Commission and others have identified for them. Establishing a National Center for Intelligence-Led Policing; helping major city chiefs defray the costs of a foreign liaison detail program; developing a “border intelligence” resource at border state fusion centers; funding local and tribal participation at those centers; establishing VITAL to create law-enforcement friendly intelligence products; getting security clearances to the law enforcement executives who need them; and tracking the progress of these and other intelligence-led policing efforts over time are important first steps in the right direction.

National Center for Intelligence-Led Policing

Police and sheriffs' officers across the country have long been the first line of defense for our communities against crimes of all sorts – ranging from petty theft and fraud to more heinous offenses like assault, rape, and murder. Since the 9/11 attacks, however, the demands placed on officers have evolved to include more complex criminal activity, upswings in multi-jurisdictional criminal matters, and an increased realization that terrorist activity is not confined by neat boundaries on a map. As a September 2005 report by the Department of Justice's Bureau of Justice Assistance noted, "a critical lesson taken from the tragedy of September 11, 2001, is that intelligence is everyone's job," and "everyone" now includes not only analysts within the federal government but also law enforcement officers hailing from the nation's largest cities to its smallest towns and rural areas.¹ Indeed, the need for new and better ways to develop and share law enforcement intelligence was among the first realizations in the immediate wake of the attacks.² "In my mind, it [information sharing] comes down to two things," FBI Director Robert Mueller stated later that fall.³ "First, giving you [local law enforcement] the information you need to make judgments about protecting your communities. And second, capitalizing on the 'force multiplier' effect that comes when we work together."⁴ As Eden Prairie, Minnesota, Police Chief Dan Carlson observed, "In this time of terrorist threats, higher demands on law enforcement and resources getting spread thinner and thinner, it is critical that we have quality intelligence to help

¹ United States Department of Justice Office of Justice Programs Bureau of Justice Assistance. Intelligence-Led Policing: The New Intelligence Architecture. (September 2005) at 1, available at <http://www.ncjrs.gov/pdffiles1/bja/210681.pdf>.

² "Law enforcement intelligence" or "criminal intelligence" refers to "the product of an analytic process that provides an integrated perspective to disparate information about crime, crime trends, crime and security threats, and conditions associated with criminality" and is primarily concerned with informing law enforcement decision making at both the tactical and strategic levels. See David L. Carter, Law Enforcement Intelligence: A Guide for State, Local, and Tribal Law Enforcement Agencies; Chapter 2: Understanding Current Law Enforcement Intelligence: Concepts and Definitions 9, 11 (November 2004) (citations omitted), available at <http://www.cops.usdoj.gov/mime/open.pdf?Item=1393>. Law enforcement intelligence is frequently mentioned during discussions of the role of state, local, and tribal law enforcement in homeland security. Id. at 9. National security intelligence, by contrast, is defined as "the collection and analysis of information concerned with the relationship and homeostasis of the United States with foreign powers, organizations, and persons with regard to political and economic factors as well as the maintenance of the United States' sovereign principles." Id. at 14. It embodies two categories of intelligence: (1) policy intelligence, which is concerned with threatening actions and activities of entities hostile to the United States; and (2) military intelligence, which focuses on hostile entities, weapons systems, warfare capabilities and order of battle issues. Id.

³ Robert S. Mueller, III, Director, FBI, Speech to the 108th Annual Conference of the International Association of Chiefs of Police in Toronto, Canada (Oct. 29, 2001), available at <http://www2.fbi.gov/pressrel/speeches/iacp.htm>.

⁴ Id.

us make the critical decisions in how we deploy our resources.”⁵ Although these sentiments have been echoed by many, they are often repeated with little realization of the kind of training that the state, local, and tribal law enforcement communities need to be truly effective homeland security partners.

Every day, police and sheriffs’ officers collect millions of pieces of information during the course of their work – the kind of information that, if properly analyzed and integrated, can form the basis of highly informative law enforcement intelligence reports. That is what “intelligence-led policing” or “ILP” is all about. Specifically, ILP refers to the “the collection and analysis of information to produce an intelligence end product designed to inform police decision making at both the tactical and strategic levels.”⁶ Michael Downing, Commander of the Los Angeles Police Department’s Counter-Terrorism/Criminal Intelligence Bureau, describes ILP as the next evolutionary stage in how police and sheriffs’ officers should approach their work:

American Policing has evolved . . . through four eras of policing [including the] political, reform, professional, and community policing era[s]. Arguably we have been in the process of institutionalizing community policing for the past twenty-five to thirty years in some parts of the country. The necessity to successfully shift into a fifth era, the intelligence-led policing era, with seamless precision has never been more important considering the great threat we face as a nation. The success and understanding of community based policing philosophies and community based government practices set the stage for local, state and federal law enforcement partners to construct the building blocks for shared and fused intelligence that will prevent, deter, disrupt and interdict planned terrorist acts targeting America. This intelligence model of policing should be robust enough to incorporate an “all crimes, all hazards” approach, resisting terrorism as well as crime and disorder.⁷

This “all crimes, all hazards” focus is critical. For most law enforcement executives, rising crime is as serious a concern as the threat of terrorism. The good news is that ILP is not only an important strategic tool to thwart al Qaeda and other groups but also a practical one geared toward crime control and quality of life issues. In fact, the two are increasingly seen as inextricably linked. “At its core, ILP should mean that police are trained to gather and share situational awareness on threats and unusual behaviors related to all hazards, and that this intelligence is then used to re-direct police resources to areas of highest need or concern,” explains R.P. Eddy, Executive Director

⁵ Carlson, D. (2005, July 27). Intelligence Led Policing. Blog entry. Retrieved on August 14, 2006, from <http://edenprairieweblogs.org/dancarlson/post/112>.

⁶ United States Department of Justice Bureau of Justice Assistance and Global Justice Information Sharing Initiative. The National Criminal Intelligence Sharing Plan. (June 2005) at Appendix A: Glossary at 28, available at http://www.it.ojp.gov/documents/National_Criminal_Intelligence_Sharing_Plan.pdf.

⁷ Email from Michael Downing, Commander of the Los Angeles Police Department’s Counterterrorism/Criminal Intelligence Bureau to Thomas M. Finan, Counsel and Coordinator, House Committee on Homeland Security (Sept. 20, 2006 11:23:00 EDT) (on file with the Committee).

of the Center for Policing Terrorism at the Manhattan Institute.⁸ “It is axiomatic that policies and training that encourage police to improve their observation and pattern recognition will lead to the discovery of threats and crimes which directly impact everyday quality of life.”⁹ For example, Mr. Eddy adds, ILP helps root out the “precursor” crimes to terrorism – such as money laundering, false identification, burglary to raise funding, and theft of hazardous materials – which in turn are the crimes “that enable malignant criminal enterprises like drug creation and distribution, prostitution, and organized crime . . .”¹⁰

Some states and localities accordingly pursued independent ILP programs after 9/11 in order to improve law enforcement operations and community awareness within their respective jurisdictions. As Chief Ellen Hanson of the City of Lenexa, Kansas Police Department recounts:

*Local efforts to inform the public are an effective way to stay on top of information regarding possible terrorist activity. Here in Lenexa we have incorporated this element into our Crime Resistant Community Policing Program. We conduct regular trainings with the maintenance and rental staffs of apartment complexes, motels, and storage facilities. We show them how to spot and identify things like printed terrorist materials and propaganda and unique weapons of mass destruction like suicide bomb vests and briefcases. We build up a level of trust and familiarity that encourages them to pass on any suspicious information to our officers. They have confidence that the follow-up will be handled responsibly and they also understand that they have an opportunity to play an important part in local efforts to prevent acts of terrorism.*¹¹

Intelligence analysis nevertheless has been considered by most to be the exclusive domain of the federal government. Despite the vast potential that state, local, and tribal law enforcement represents, the country lacks a coordinated, national effort to encourage and streamline ILP everywhere. The fact remains that the vast majority of police and sheriffs’ officers have not been provided with any formal instruction about how to apply intelligence techniques to the data at their disposal – depriving them of an opportunity to make their own communities, and the country, safer. They likewise have not received adequate training in how to protect and preserve privacy and civil liberties as they initiate ILP programs in their communities.¹² This is unacceptable. “Stated simply, we need a comprehensive national strategy for intelligence-led policing with

⁸ Email from R.P. Eddy, Executive Director of the Center for Policing Terrorism at the Manhattan Institute to Thomas M. Finan, Counsel and Coordinator, House Committee on Homeland Security (Sept. 21, 2006 11:45:00 EDT) (on file with the Committee).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Email from Ellen Hanson, Chief of the City of Lenexa, Kansas Police Department to Thomas M. Finan, Counsel and Coordinator, House Committee on Homeland Security (Aug. 28, 2006 17:29:00 EDT) [Hanson Email] (on file with the Committee).

¹² See David E. Kaplan, “Spies Among Us,” *U.S. News & World Report*, May 8, 2006, [available at](http://www.usnews.com/usnews/news/articles/060508/8homeland.htm) <http://www.usnews.com/usnews/news/articles/060508/8homeland.htm>.

consistent definitions, policies, and practices,” concludes Peter Modafferi, Chief of Detectives with the Rockland County, New York District Attorney’s Office.¹³ “It will take time, training and technical assistance, however, to introduce the hundreds of thousands of our nation’s law enforcement officers to this concept, understand their role in it, and to make it work consistently across the nation.”¹⁴

Leonard C. Boyle, Commissioner of Public Safety for the State of Connecticut, agrees. “While there will always be a place in law enforcement for the experienced ‘hunch’ or the veteran officer’s ‘gut,’ we must direct our scarce resources and establish our priorities on the basis of credible intelligence. But in order to persuade police agencies [to] join this effort, we must have a vehicle for sharing worthwhile intelligence that promises tangible benefits.”¹⁵

Absent such a vehicle, most state, local, and tribal enforcement agencies are ill-prepared to overcome on their own the obstacles to effective information sharing that persist to this day. Lisa M. Palmieri, the President of the International Association of Law Enforcement Intelligence Analysts, has identified three such obstacles.¹⁶ “Intelligence analysts and officers disseminate too much raw information, creating an environment of ‘white noise’. . . Vital information is still not accessible to law enforcement analysts, particularly at the state and local levels; [and] [1]aw enforcement officers and executives are not trained as consumers of intelligence.”¹⁷ Ms. Palmieri concludes that a national center addressing these shortcomings “could help get everyone on the same page, and create an environment where all levels and components of law enforcement can truly work together to protect our country.”¹⁸

Russell M. Porter, the Assistant Director of the Iowa Department of Public Safety and the General Chairman of the Law Enforcement Intelligence Unit (LEIU) – the oldest professional criminal intelligence organization in the U.S. – concurs:

The National Criminal Intelligence Sharing Plan urges every law enforcement agency to create an intelligence-led policing capability. But intelligence in law enforcement has historically been misunderstood, underutilized, and even misapplied. With 18,000 local and state law enforcement agencies in the U.S., there is a critical need for a national center to provide and coordinate education, training, and professional

¹³ Telephone Interview with Peter Modafferi, Chief of Detectives, Rockland County, New York District Attorney’s Office (Aug. 9, 2006) [Modafferi Interview].

¹⁴ Id.

¹⁵ Email from Leonard C. Boyle, Commissioner, Connecticut Department of Public Safety to Thomas M. Finan, Counsel and Coordinator, House Committee on Homeland Security (Aug. 17, 2006 12:05:00 EDT) (on file with the Committee).

¹⁶ Email from Lisa M. Palmieri, President, International Association of Law Enforcement Intelligence Analysts to Thomas M. Finan, Counsel and Coordinator, House Committee on Homeland Security (Aug. 30, 2006 08:48:00 EDT) (on file with the Committee).

¹⁷ Id.

¹⁸ Id.

*services related to intelligence-led policing. Such a resource will help ensure that law enforcement intelligence practices across the country are effective, professional, and carried out with the utmost respect for the protection of privacy and civil liberties.*¹⁹

“I believe it is absolutely vital that all law enforcement operate by the same standards . . . beginning from training all law enforcement officers on ‘basic intelligence collection and sharing 101’,” adds Theodore Quasula, Chief Law Enforcement Officer of the Las Vegas Paiute Tribal Police Department.²⁰ “The entire process needs to be coordinated so everyone is on the same page.”²¹

To meet these challenges, Congress should establish and fund a National Center for Intelligence-Led Policing (“Center”) with four primary functions:

(1) Marketing the law enforcement intelligence process and ILP in order to promote a common understanding of these concepts among police and sheriffs’ officers nationwide;

(2) Identifying best practices in these areas and sharing them with all law enforcement agencies;

(3) Providing training resources to educate officers about ILP and making it relevant to their daily work; and

(4) Establishing a technology and research development capability to assess existing technologies relevant to ILP and to identify needs currently lacking a technology solution.

The Center should be modeled on the successful National Children’s Advocacy Center (NCAC), which decades ago became a clearinghouse for standards and protocols on responding to and preventing child abuse and neglect. In a similar fashion, the Center should help develop and coordinate education, training, and professional services necessary to establish a common foundation for ILP across the country and should develop educational programs toward that end. Most importantly, the Center should provide police and sheriffs’ officers with a common and consistent understanding of the importance of contributing credible and relevant law enforcement information as part of the intelligence cycle at both the federal and non-federal levels; the process by which that information becomes useful and actionable intelligence; and a set of clear and consistent procedures to facilitate uniform sharing policies across the nation, including policies for protecting privacy and civil liberties.

¹⁹ Email from Russell M. Porter, Assistant Director, Iowa Department of Public Safety to Thomas M. Finan, Counsel and Coordinator, House Committee on Homeland Security (Sept. 15, 2006 02:53:00 EDT) [Porter Email] (on file with the Committee).

²⁰ Email from Theodore Quasula, Chief Law Enforcement Officer of the Las Vegas Paiute Tribe Police to Thomas M. Finan, Counsel and Coordinator, House Committee on Homeland Security (Aug. 17, 2006 17:11:00 EDT) [Quasula Aug. 17 Email] (on file with the Committee).

²¹ Id.

Creating a Center to do this work would finally place ILP at the heart of our nation’s antiterror efforts. “The National Center for Intelligence-Led Policing would be a huge step in the right direction by offering critical guidance, expertise, and educational opportunities necessary to make intelligence-led policing work,” adds Chief Modafferi.²² “It won’t succeed, however, without a sustained federal commitment to its mission and its success. Only with that support can we guarantee that intelligence-led policing efforts at the state, local, and tribal levels become a coordinated part of a national initiative for counterterrorism – making our communities and our homeland safer.”²³ Chief Quasula agrees:

*The NCI-LP [National Center for Intelligence-Led Policing] will certainly enhance intelligence efforts and sharing. It gives every opportunity for all law enforcement to work together for the good of all . . . coordination is important but just plain old ongoing communication is most important. There is nothing more aggravating to a police chief than having a law enforcement agency know something that has potential impact on another’s jurisdiction and not sharing it. The NCI-LP will force coordination and communication. It’s just another piece of the puzzle to having complete and effective law enforcement.*²⁴

Chief Hanson concurs, observing that a “National Center for Intelligence-Led Policing would be a helpful place where we could share our lessons learned while benefiting from the experiences of other law enforcement agencies nationwide to better our own efforts to protect people and property.”²⁵

²² Modafferi Interview, supra note 13.

²³ Id.

²⁴ Email from Theodore Quasula, Chief Law Enforcement Officer of the Las Vegas Paiute Tribe Police to Thomas M. Finan, Counsel and Coordinator, House Committee on Homeland Security (Aug. 18, 2006 12:53:00 EDT) [Quasula August 18 Email] (on file with the Committee).

²⁵ Hanson Email, supra note 11.

Foreign Liaison Officers Against Terrorism (FLOAT) Grant Program

Major city law enforcement executives agree that one of the best ways to help thwart terrorist attacks in this country is to send liaisons from their departments to their counterparts overseas in order to boost their understanding of how terrorists are operating internationally and to obtain on-the-scene situational awareness whenever attacks occur abroad. The New York Police Department (NYPD) was among the first U.S. police departments to dispatch officers internationally for these purposes.²⁶ “[W]hen a bomb goes off in Israel,” Mr. Eddy explained, “a New York police detective goes to the scene, collects firsthand information and data from the Israeli police, and writes a memo to his boss in New York that is used to determine whether action is needed there.”²⁷ In addition to Israel, the NYPD currently has officers stationed in Canada, England, France, Spain, Jordan, Singapore, and the Dominican Republic.²⁸ NYPD Police Commissioner Raymond Kelly describes this effort as central to the transformation of his department since 9/11:

Their [NYPD detectives’] presence abroad gives the NYPD the advantage of immediate, firsthand intelligence about the methods terrorists employed in attacking mass transit, hotels and synagogues in foreign cities. Armed quickly with information from the scenes of these attacks, we were able to redeploy our own resources to better protect New York’s subways and other potential targets.

For example, information provided by a New York City detective on the scene after the commuter train bombing in Madrid gave us helpful insights into how the bombs were constructed and hidden, which was quickly reflected in how we directed patrols near Penn Station, Grand Central Terminal and other transportation hubs. Our liaison in London was en route to his office at Scotland Yard on July 7 last year when the mass transit system there was attacked. He reported immediately by telephone to Police Headquarters in New York, allowing us to double the number of police officers assigned to the subways in time for the morning rush hour.

²⁶ Patrick McGreevey, “Overseas Links Urged for LAPD,” Los Angeles Times (Sept. 9, 2006), available at <http://www.latimes.com/news/printedition/california/la-me-security9sep09,1,4513239.story?coll=la-headlines-pe-california>.

²⁷ Id.

²⁸ Raymond Kelly, “A Report from the Front,” New York Daily News (Sept. 10, 2006), available at http://www.nydailynews.com/news/ideas_opinions/v-pfriendly/story/450916p-379551c.html.

*The London attacks also invited a sobering reassessment of the vulnerability of mass transit and prompted us to quickly establish a program to inspect bags carried by commuters in the subway system.*²⁹

Many other cities – including Los Angeles, Miami, Las Vegas, and Chicago – see the value of New York’s approach and want to replicate it. The Los Angeles Police Department (LAPD), for example, has periodically sent officers to work with Scotland Yard in London and had one working there on July 21, 2005, during the second wave of subway bombings that followed the initial attack two weeks earlier.³⁰ According to LAPD Chief William Bratton, his officer there was able to provide first-hand information to him and police in other U.S. cities “hours before they had information from [the Department of] Homeland Security . . .”³¹ Chief Bratton reported a similar situation after the terrorist bombings in Bali last year.³² Australian police officials who had their own officers stationed on the ground there were able to quickly provide him with details about the attacks – before he heard from either the Department of Homeland Security or the FBI.³³

While the New York model has been and continues to be a success, other jurisdictions lack the resources to establish a permanent police presence at the key locations worldwide that they deem critical to their public safety mission. “Our 220 [officers] assigned to [our] Counter-Terrorism Criminal Intelligence Bureau with a budget of approximately \$24 million dollars a year – including grants – compared to NYPD’s 1000 [officers] assigned to counter-terrorism and their \$178 million budget per year dictates creativity and the leveraging of as many resources as possible,” notes Commander Downing.³⁴ The LAPD and other major city police and sheriffs’ departments accordingly plan to pool their resources by creating their own international liaison program that will (1) identify foreign cities where an American state, local, or tribal law enforcement presence is desired; (2) divide those cities up among the departments participating in the program; and (3) assign particular departments to “cover” each such city for information sharing purposes.³⁵ The departments so assigned will then share what they learn from their liaisons abroad with the other departments participating in the program.

This approach will help them not only to plan for potential terrorist attacks (and to thwart them whenever possible) but also to respond rapidly on the home front in the aftermath of an attack overseas. The program thus will become a valuable arrow in the

²⁹ *Id.*

³⁰ McGreevey, *supra* note 26.

³¹ Robert Block, “Miffed at Washington, Police Develop Own Antiterror Plans,” *Wall Street Journal* (Oct. 10, 2005) at B1, [available at](http://online.wsj.com/article/SB112889637083663974.html?) <http://online.wsj.com/article/SB112889637083663974.html?>

³² *Id.*

³³ *Id.*

³⁴ Email from Michael Downing, Commander of the Los Angeles Police Department’s Counterterrorism/Criminal Intelligence Bureau to Thomas M. Finan, Counsel and Coordinator, House Committee on Homeland Security (Sept. 22, 2006 11:16:00 EDT) (on file with the Committee).

³⁵ Telephone Interview with R.P. Eddy, Executive Director of the Center for Policing Terrorism at the Manhattan Institute (Sept. 21, 2006).

state, local, and tribal law enforcement information sharing quiver that will complement other important sources of law enforcement intelligence. “The aim, Mr. Bratton says, is not to sever or supplant information from Homeland Security and the Department of Justice but to have a ‘multiplicity of channels of information that will allow chiefs of police to make decisions’ . . .”³⁶

In order to promote a wide international footprint for this initiative – and to encourage participation by as many major cities and urban areas as possible – Congress should establish and fund a needs-based grant program to help defray the travel, housing, and related costs associated with sending police and sheriffs’ officers to work in foreign countries. This “Foreign Liaison Officers Against Terrorism (FLOAT) Grant Program” should be open to all of the Department of Homeland Security’s Urban Areas Security Initiative (UASI) Eligible Applicants – including the Los Angeles/Long Beach, Miami, and Chicago Areas – and the 32 other regions that together encompass some 95 cities with populations of 100,000 people or more.³⁷ According to the Department, these regions are at a greater risk of terrorist attacks and other hazards than are other parts of the country – making participation by law enforcement officers from these regions especially critical.³⁸ To ensure maximum benefit to the homeland, moreover, the FLOAT Grant Program should also be open to Las Vegas and other large “at risk” cities that did not qualify for UASI grant funding for Fiscal Year 2006 but anticipate such funding in the future.³⁹

As Secretary of Homeland Security Michael Chertoff has noted, “We have to fight terror wherever it exists. People sometimes say that charity begins at home. But I would say that security begins overseas.”⁴⁰ Law enforcement intelligence is an essential part of that security that begins overseas. Funding the efforts of major cities to partner effectively with their law enforcement allies abroad makes sense and, in the end, will make us safer.

³⁶ Block, supra note 31.

³⁷ Press Release, Department of Homeland Security, DHS Introduces Risk-based Formula for Urban Areas Security Initiative Grants (Jan. 3, 2006), available at <http://www.dhs.gov/dhspublic/display?content=5317>.

³⁸ Shawn Reese, State and Urban Area Homeland Security Plans and Exercises: Issues for the 109th Congress, Congressional Research Service, March 3, 2006, CRS 1, available at <http://www.fas.org/sgp/crs/homesecc/RS22393.pdf#search=%22UASI%20%22natural%20disasters%22%22>; Associated Press, “NYC Anti-Terrorism Grants To Be Cut 40 Percent” (May 31, 2006), available at http://wcbstv.com/breakingnewsalerts/local_story_151104310.html.

³⁹ Earlier this year, Las Vegas – one of the Department’s “top six cities of concern” – was not included on a high risk assessment list used for distributing UASI grants. Press Release, Congressman Jim Gibbons, Gibbons Calls on Chertoff to Explain Funding Decisions; Why Was Las Vegas, One of the Nation’s Top 6 Cities of Concern, Not Found Eligible for Security Grant Program? (Feb. 16, 2006), available at <http://www.house.gov/gibbons/display-pr.asp?id=1818>. Secretary Michael Chertoff has acquiesced to re-examining the eligibility of Las Vegas for UASI funding next year. Id.

⁴⁰ Secretary of Homeland Security Michael Chertoff, Remarks to the Veterans of Foreign Wars and Ladies Auxiliary (March 6, 2006), available at <http://www.dhs.gov/dhspublic/display?theme=42&content=5526&print=true>.

Fusion Center Initiatives

In the wake of the 9/11 attacks, numerous state, local, and tribal authorities responsible for protecting the public and our nation's critical infrastructure established what have become known as information or intelligence "fusion" centers.⁴¹ Fusion centers have been defined as "effective and efficient mechanism[s] to exchange information and intelligence, maximize resources, streamline operations, and improve the ability to fight crime and terrorism by merging data from a variety of sources."⁴² Fusion centers generally work to prevent terrorist attacks while at the same time preparing officials to respond to and recover from them when they occur.⁴³ As Information Sharing Environment (ISE) Program Manager Ambassador Thomas E. McNamara has observed, "State and local fusion centers are a critical component of the ISE because they can dramatically enhance efforts to gather, process and share locally generated information regarding potential terrorist threats and to integrate that information into the Federal efforts for counterterrorism. Federal law enforcement is working closely with these Fusion Centers."⁴⁴

While the 43 fusion centers that exist today are each unique, their memberships typically include state, local, and tribal law enforcement authorities; state entities responsible for the protection of public health and infrastructure; private sector owners of critical infrastructure; and federal law enforcement and homeland security personnel, among others.⁴⁵ All but nine states – Arkansas, Hawaii, Idaho, Nebraska, Nevada, New Hampshire, New Mexico, Oklahoma, and Wyoming – either have an existing fusion center or at least one in the developmental stages.⁴⁶

⁴¹ See United States Department of Justice Bureau of Justice Assistance and Global Justice Information Sharing Initiative. Fusion Center Guidelines: Developing and Sharing Information and Intelligence in a New World. (July 25, 2005) at 3 [Fusion Center Guidelines], available at <http://it.ojp.gov/FusionCenter/report.pdf>.

⁴² Id.

⁴³ Mimi Hall. "Feds Move to Share Intelligence Faster." USA Today (July 27, 2006), available at http://www.usatoday.com/news/washington/2006-07-26-homeland_x.htm.

⁴⁴ U.S. Congress. House. Homeland Security Subcommittee on Intelligence, Information Sharing & Terrorism Risk Assessment. Building the Information Sharing Environment: Addressing Challenges of Implementation. 109th Cong., 2d sess. 2006 (prepared statement of Ambassador Thomas "Ted" McNamara, Program Manager for the Information Sharing Environment) [McNamara Testimony], available at http://www.fas.org/irp/congress/2006_hr/051006mcnamara.pdf.

⁴⁵ See Alice Lipowicz. "To Be or Not to Tell." Washington Technology. (July 24, 2006), available at http://www.washingtontechnology.com/news/21_14/federal/28981-1.html; Joe Trella. "State Intelligence Fusion Centers: Recent State Actions." National Governor's Association Center for Best Practices (July 7, 2005), available at <http://www.nga.org/Files/pdf/0509FUSION.PDF>.

⁴⁶ National Criminal Intelligence Resource Center, State and Regional Intelligence Fusion Center Contact Information (March 8, 2006), available at <http://www.fas.org/irp/agency/ise/state.pdf#search=%22state%20and%20regional%20fusion%20center%20%22>.

The Department of Homeland Security, and in particular, the Department's Office of Intelligence and Analysis (I&A), has undertaken a program through which it sends I&A personnel to state and local fusion centers to establish a Department presence at those centers.⁴⁷ In so doing, I&A hopes that its staff will serve as a point of contact for information being shared at fusion centers by state, local, and tribal law enforcement personnel.⁴⁸ I&A also hopes that its emissaries will act as a channel for information being shared by the Department itself.⁴⁹ Among the "guiding principles" for this program is the recognition that, "the particular needs and unique situation of each fusion center – one size does not fit all. Individual fusion centers were established to meet the individual needs of the jurisdiction. We need to develop a collaborative, synergistic relationship with each one – one at a time – that benefits all parties concerned."⁵⁰

Border Intelligence Fusion Center Program

One "synergistic relationship" that needs building is at border state fusion centers. The U.S. has 216 airports, 143 seaports, and 115 official land border crossings that are official ports of entry.⁵¹ Screening all the people and goods coming through these busy ports is an enormous resource challenge for the men and women of the Department of Homeland Security. Department personnel, including personnel from CBP and ICE cannot be everywhere at all times to ensure that terrorists or weapons of mass destruction and other related contraband are not being smuggled across our borders to perpetrate attacks against the American people. In order to better secure the homeland, the Department must partner more effectively with state, local, and tribal law enforcement agencies in our nation's border communities – the "force multipliers" at our frontiers.⁵² To play that role, however, police and sheriffs' officers need access to available border intelligence developed by the Department. As David L. Carter, Professor and Director of Michigan State University's School of Criminal Justice notes:

⁴⁷ Hall, supra note 43.

⁴⁸ Press Release, Department of Homeland Security, DHS, State and Local Governments Work Together, Share Information (Aug. 2, 2006) (on file with the Committee).

⁴⁹ Id.

⁵⁰ U.S. Congress. House. Committee on Homeland Security. Subcommittee on Intelligence, Information Sharing & Terrorism Risk Assessment. State and Local Fusion Centers and the Role of DHS. 109th Cong., 2d sess., 2006 (prepared statement of Charles E. Allen, Assistant Secretary for Intelligence & Analysis) (on file with the Committee).

⁵¹ Michael d'Arcy, et al., Protecting the Homeland 2006/2007 (Brookings Institution Press, Washington, D.C., 2006) at 101.

⁵² See Press Release, U. S. Immigration and Customs Enforcement, Fact Sheet Operation Community Shield (March 10, 2006), at <http://www.ice.gov/doclib/pi/news/factsheets/opshield031405.pdf>; Ed Somers. "Mayors Focus on Integrating Homeland Security, Law Enforcement." U.S. Conference of Mayors. (June 27, 2005), at http://www.usmayors.org/uscm/us_mayor_newspaper/documents/06_27_05/hm_security.asp; U.S. Department of Justice Community Oriented Policing Services and Police Executive Research Forum. "Protecting Your Community from Terrorism: Strategies for Local Law Enforcement; Volume I – Local-Federal Partnerships." (March 2003), at <http://www.cops.usdoj.gov/mime/open.pdf?Item=1362>.

The borders of the U.S. are replete with small state, local, and tribal law enforcement agencies. Officers in those agencies know the people in their communities and the character of life on the border and readily recognize when there are anomalies. Yet, they rarely report this information and even more rarely are asked. This is valuable data that may often times help fusion center analysts and the federal Intelligence Community complete the threat puzzle. The need to overtly and aggressively reach out to these agencies and collect this information is essential for homeland security. This is true for not only the Mexican border but also the Canadian border and the coasts. For example, there are border areas along the Great Lakes where the only law enforcement presence is from tribal police. Similarly, small sheriff's agencies and a few highway patrol officers are often the only law enforcement presence along the vast Canadian border. Engaging these officers as part of the homeland security team and regularly collecting information from them – and, in return, sharing useful intelligence products with them – is an essential ingredient to securing our borders and making America safer.⁵³

The Department nevertheless has not developed a single, easily accessible, or widely available system to consistently share border intelligence and other information with its state, local, and tribal law enforcement partners. It likewise has failed to establish a process by which those partners can consistently share with the Department information that they obtain that is relevant to border security. As a result, police and sheriffs' officers serving jurisdictions along our northern and southern borders typically depend upon personal relationships with CBP and ICE personnel stationed in their respective jurisdictions to get the information they need.

As Sheriff Peter Warner of the Ferry County, Washington Sheriff's Department notes, "We rely on Border Patrol agents in my jurisdiction for information about what's going on at the border, and I know them personally. We frankly need more Border Patrol agents – and more resources to hire additional police and sheriffs' officers – in order to meet the threat of terrorism at the border."⁵⁴

Personal relationships with CBP and ICE agents nevertheless have not helped in all locales – leading to an inconsistent sharing of border intelligence from jurisdiction to jurisdiction. Chief Andrew Wells of the City of Ogdensburg, New York Police Department observes:

⁵³ Email from Professor David L. Carter, Professor and Intelligence Program Director, School of Criminal Justice, Michigan State University to Thomas M. Finan, Counsel and Coordinator, House Committee on Homeland Security (Aug. 12, 2006 23:04:00 EDT) [Carter August 12 Email] (on file with the Committee).

⁵⁴ Email from Sheriff Pete Warner, Ferry County, Washington to Thomas M. Finan, Counsel and Coordinator, House Committee on Homeland Security (Aug. 14, 2006 16:24:00 EDT) [Warner Email] (on file with the Committee).

We clearly need a mechanism to get better and more consistent intelligence information from the Department of Homeland Security. The City of Ogdensburg is on the St. Lawrence Seaway, and people can cross over from the Canadian side on leisure boats easily. We don't know what activity, people, or trends might be cause for alarm, however. Unfortunately, we have no ability to communicate with the Border Patrol via radio, so our opportunities to connect and share information – at least at the local police department level – are few and far between.⁵⁵

Fusion centers may help improve this situation. Most states that border Canada or Mexico have some variation of a fusion center.⁵⁶ Indeed, police and sheriffs' officers in many of these states look to fusion centers as important sources of law enforcement intelligence that – with the right resources – could also be a valuable source of border intelligence. “We know that the Border Patrol is shorthanded and does not have personnel to cover the border on our northern front,” notes Sheriff David Zeis of the Cavalier County, North Dakota Sheriff's Department.⁵⁷ “Our county is in between two Border Patrol stations approximately 90 miles each way, so we do not see many agents patrolling our area. Basically, we are unprotected between the ports of entry. Getting more information out to border counties would be very helpful to us local law enforcement agencies.”⁵⁸ He adds that the North Dakota State Fusion Center would be the logical conduit for that information, because it so far has done a “great” job disseminating all the information it has to share.⁵⁹

While the Department's border intelligence products generated in Washington, D.C., and disseminated to fusion centers will undoubtedly be helpful to public servants like Sheriff Zeis, a far richer source of border intelligence would come from CBP and ICE personnel working locally in border jurisdictions themselves. As Assistant Director Porter notes, “Strengthening the ability of intelligence fusion centers and CBP and ICE to share information in a timely way – especially in border jurisdictions – will help make our entire nation safer.”⁶⁰

One powerful model of a “border” fusion center already exists in the El Paso Intelligence Center (EPIC).⁶¹ EPIC has an unsurpassed record for over two decades in fighting illegal drug smuggling and immigration violations on the southwest border and has learned lessons that are both applicable and relevant to border security

⁵⁵ Email from Andrew Wells, Police Chief of the City of Ogdensburg, New York, Police Department to Thomas M. Finan, Counsel and Coordinator, House Committee on Homeland Security (Aug. 14, 2006 17:09:00 EDT) [Wells Email] (on file with the Committee).

⁵⁶ National Criminal Intelligence Resource Center, State and Regional Intelligence Fusion Center Contact Information (2006), available at <http://www.fas.org/irp/agency/ise/state.pdf>.

⁵⁷ Email from Sheriff David J. Zeis, Cavalier County, North Dakota to Thomas M. Finan, Counsel and Coordinator, House Committee on Homeland Security (Aug. 14, 2006 12:36:00 EDT) [Zeis Email] (on file with the Committee).

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Porter Email, supra note 19.

⁶¹ United States Drug Enforcement Administration Home Page, El Paso Intelligence Center, available at <http://www.usdoj.gov/dea/programs/epic.htm> (last visited Aug. 15, 2006).

generally.⁶² This 32 year-old Drug Enforcement Administration-led center houses representatives from 15 federal agencies – including CBP – who create intelligence products on these topics.⁶³ Not only does EPIC promote information sharing but also it coordinates training for state, local, and tribal law enforcement officers in the methods of highway drug and drug currency interdiction.⁶⁴ “EPIC maintains information sharing agreements with other federal law enforcement agencies, the Royal Canadian Mounted Police and each of the 50 states and serves law enforcement agencies throughout the western hemisphere,” said one Department of Justice official shortly after the 9/11 attacks.⁶⁵ “A telephone call, fax, or teletype from any of these agencies provides the requestor real-time information accessed through EPIC from many different federal databases, plus EPIC’s own internal database.”⁶⁶

Congress should look to EPIC as a model for encouraging fusion centers to analyze information available at our nation’s borders in order to create and disseminate a border intelligence product that makes the homeland safer. Specifically, Congress should create and fund a Department of Homeland Security-based “Border Intelligence Fusion Program” that would make CBP and ICE officers trained in intelligence analysis available to any state or border region fusion center that wants them. Those officers should have as their primary missions: (1) gathering border security-relevant information from state, local, and tribal law enforcement sources in border communities; (2) creating border intelligence products derived from those law enforcement sources and any other border-security relevant information in the Department’s possession; and (3) disseminating such products to state, local, and tribal law enforcement agencies, departments, and offices along the nation’s northern and southern borders. These Department representatives should also provide their border intelligence products to I&A for dissemination to other fusion centers throughout the country. Finally, they should be responsible for reaching out to Canadian and Mexican law enforcement authorities that serve neighboring communities in those countries in order to maximize situational awareness at and between ports of entry.

Establishing such a CBP and ICE presence would help ensure the most consistent, timely, and relevant flow of border intelligence to and from the law enforcement officers who need it most. “By putting a Border Patrol and ICE agent focusing on border intelligence in state and regional fusion centers,” Chief Wells states, “we would finally have a point of contact with whom we could share information. If those agents could provide us [in return] a daily bulletin addressing what to look for and how to respond, all the better.”⁶⁷

⁶² Id.

⁶³ Id.

⁶⁴ Id.

⁶⁵ U.S. Congress. Senate. Committee on the Judiciary. Should the Office of Homeland Security Have More Power? A Case Study in Information Sharing. 107th Cong., 2d sess. 2002 (prepared statement of Mr. Vance Hitch, Chief Information Officer, United States Department of Justice), available at http://judiciary.senate.gov/print_testimony.cfm?id=229&wit_id=430.

⁶⁶ Id.

⁶⁷ Wells Email, supra note 55.

Chief Michael Gahagan of the Caribou, Maine Police Department agrees with this assessment:

Assigning a Border Patrol agent and an ICE agent to state fusion centers will provide the missing link that we need to coordinate information sharing when it comes to our borders. We often hear from our federal partners that “we’re doing information sharing now.” But on the ground – from my perspective – we’re missing the boat. Any hope we have of actually stopping a terrorist from crossing our borders is going to come through effective communications with local law enforcement. The Border Intelligence Fusion Center Program is an important step in the right direction.⁶⁸

In order to make “border intelligence” not only a reality on paper but also an asset that helps keep the country safe, moreover, the federal government must put its money where its homeland security mouth is and fully fund the Border Intelligence Fusion Center Program. By so doing, border state and local fusion centers could become an essential tool for encouraging and incubating the personal relationships that are at the root of effective information sharing along our nation’s frontiers.

Fusion and Law Enforcement Education and Teaming (FLEET) Grant Program

Each state and local fusion center is financed through some combination of federal, state, and local funding directed at two sets of costs: (1) the startup costs of acquiring physical space, computer hardware and software, and personnel; and (2) the annual operating costs associated with paying the salaries and expenses and training involved in maintaining fusion centers.⁶⁹ While fusion centers have been established with financial support from the federal government through the Department of Homeland Security’s Preparedness Directorate grants, the fact remains that a substantial percentage of the financial burden to support ongoing operations is borne by states and localities.⁷⁰ To help defray costs, for example, many of them support the annual personnel costs associated with fusion centers by requiring participating agencies at the federal, state, and local levels to continue to pay the salaries of the professionals detailed to them.⁷¹ Given this reality – as well as a lack of state funding for a physical space for the center – New Mexico has opted to go “virtual” by linking together state and local law enforcement, federal agencies, and nontraditional partners such as public health entities and fire services via email and other existing information

⁶⁸ Email from Michael W. Gahagan, Police Chief of the City of Caribou, Maine Police Department to Thomas M. Finan, Counsel and Coordinator, House Committee on Homeland Security (Aug. 16, 2006 08:09:00 EDT) (on file with the Committee).

⁶⁹ Chris Logan and Joe Trella. “Establishing State Intelligence Fusion Centers. National Governor’s Association Center for Best Practices (July 13, 2005), [available at](http://www.nga.org/Files/pdf/FusionCenterIB.pdf) <http://www.nga.org/Files/pdf/FusionCenterIB.pdf>.

⁷⁰ Id.

⁷¹ See Bruce Finley. “Funding for Colorado Intel Center May Die.” Denver Post (Aug. 13, 2006), [available at](http://www.denverpost.com/nationworld/ci_4175196) http://www.denverpost.com/nationworld/ci_4175196; Logan and Trella, supra note 69.

sharing networks.⁷² “In my state, my county and local law enforcement agencies simply can’t afford to give up a body to staff a fusion center,” states New Mexico Homeland Security Director Timothy Manning, “but involvement by those agencies in the fusion process is critical if we’re ever going to have effective statewide information sharing.”⁷³

Federal funding consequently is becoming an increasingly essential part of the fusion center equation. As FBI Supervisory Special Agent William A. Forsyth has observed, “Federal funding for anti-terrorism information and intelligence sharing can be the difference in having a fusion center or not. Federal funding is helpful because it eases the fiscal burden of local budgets and, at the same time, fosters greater cooperation and support from all agencies participating at the center.”⁷⁴ This is certainly the case when it comes to fusion center staffing – especially in states, counties, and localities where budgets are tight. “Information sharing to secure the homeland is just too important for us to wait for an actual building staffed with enough people to do this work,” notes Director Manning.⁷⁵ “However, more federal funding would allow us to hire more analysts and others who could help us make sense of the information we are sharing among ourselves electronically.”⁷⁶

Sheriff Warner agrees, noting that rural jurisdictions are often in greatest need of assistance on this front:

*Individual police and sheriffs’ departments – especially in rural areas – often don’t have the resources or sufficient numbers of personnel to assign an officer to sit out at a fusion center. Federal funding, however, would allow us and other nearby law enforcement agencies to jointly appoint someone to take on this task. I think it would be very valuable to have someone with our needs in mind participating at a fusion center who can then review data and pick out the information that is relevant to the homeland security needs in my jurisdiction.*⁷⁷

Congress accordingly should establish a program known as the “Fusion and Law Enforcement Education and Teaming (FLEET) Grant Program” to fill this resource gap. Specifically, the FLEET Grant Program should be designed to provide communities in need with money to: (1) establish a presence at state or local fusion centers by detailing eligible law enforcement personnel to those centers; (2) provide appropriate fusion center training for personnel detailed there; and (3) ensure effective communications between themselves and the fusion center or centers serving their

⁷² Email from Timothy Manning, New Mexico Homeland Security Director to Thomas M. Finan, Counsel and Coordinator, House Committee on Homeland Security (Sep. 11, 2006 23:30:00 EDT) (on file with the Committee) [Manning Email].

⁷³ *Id.*

⁷⁴ William A. Forsyth, *State and Local Intelligence Fusion Centers: An Evaluative Approach in Modeling a State Fusion Center* 72 (2005) (thesis, Naval Postgraduate School), [available at](https://www.hsdl.org/homesecc/docs/theses/05Sep_Forsyth.pdf) https://www.hsdl.org/homesecc/docs/theses/05Sep_Forsyth.pdf.

⁷⁵ Manning Email, *supra* note 72.

⁷⁶ *Id.*

⁷⁷ Warner Email, *supra* note 54.

geographic area. In so doing, the FLEET Grant Program would help ensure that more law enforcement agencies at the county, local, and tribal levels that would like to participate in the fusion process can do so.

Assistant Director Porter believes that this approach would target a key shortfall in the nation's homeland security and information sharing efforts. "We can't allow our nation's 750,000 law enforcement officers to operate in a virtual intelligence vacuum, without access to needed intelligence and information. It's essential that local agencies have direct access to the right information," he states.⁷⁸ "One way to accomplish this is to assign and train appropriate personnel from local law enforcement agencies to work in a state or regional fusion center, so that all levels of government – local, state, and federal – are represented. Each brings a different, but a valuable, perspective to the work at hand."⁷⁹

Chief Wells agrees that this would go a long way toward helping more law enforcement agencies from a wider and more representative group of communities take part in the information sharing revolution occurring at fusion centers:

*While state and regional fusion centers are great, the City of Ogdensburg does not have an officer who sits full time at the Upstate New York Regional Intelligence Center (UNYRIC). We simply can't afford it. Therefore, the FLEET Grant Program would be a welcome opportunity to hire an intelligence officer who could represent the particular intelligence needs of not only local communities like Ogdensburg but also county law enforcement agencies. That officer could then identify intelligence that is pertinent to our communities on the front lines and, in so doing, offer us something more tailored to our policing needs. We could also report what we're seeing on the ground to that intelligence officer – who can then share it with UNYRIC and make its intelligence work on a regional basis even better.*⁸⁰

Chief Hanson also believes in the FLEET Grant Program, noting the value of her Crime Resistant Community Policing program that has helped position her local jurisdiction to detect and thwart terrorist attacks before lives and property are put at risk.⁸¹ "In my view," she states, "the FLEET [Grant] Program would help promote information sharing by allowing Lenexa and other communities to establish a presence at the Kansas Threat Integration Center (KSTIC)."⁸² Establishing this presence would provide these communities with "a point of contact who could share what we know at the local level while accessing information from the KSTIC that might help us direct our law enforcement efforts on the ground to protect the public."⁸³

⁷⁸ Porter Email, supra note 19.

⁷⁹ Id.

⁸⁰ Wells Email, supra note 55.

⁸¹ Hanson Email, supra note 11.

⁸² Id.

⁸³ Id.

Vertical Intelligence Terrorism Analysis Link (VITAL)

As the 9/11 Commission and others have noted, the hundreds of thousands of law enforcement officers across the country offer perhaps the best hope for detecting and preventing terrorist attacks before they happen.⁸⁴ There simply are more of them in more places noticing more day-to-day activities in their communities than their federal counterparts – making them far more likely to encounter terrorist activity in its early stages than anyone at the Department of Homeland Security, the FBI, or any other federal agency. A May 2005 report by the International Association of Chiefs of Police echoed this conclusion, stating, “If state, tribal, and local law enforcement officers are adequately equipped and trained, they can be an invaluable asset in efforts to identify and apprehend suspected terrorists before they strike.”⁸⁵ All of this, of course, depends on the IC sharing specific and actionable law enforcement intelligence with these first preventers. Put simply, all the intelligence in the world is useless if it does not add value to their routine policing work.

Despite this truth, the current Administration has failed to develop clear policies and procedures for converting highly classified intelligence into an unclassified or “less classified” law enforcement sensitive format that can be shared rapidly with state, local, and tribal law enforcement. It likewise has failed to create a mechanism by which officers can consistently and effectively share information that they develop in the field with the IC. As a result, the National Governor’s Association’s 2006 State Homeland Security Directors Survey (2006 NGA Survey) discovered that sixty percent of responding homeland security directors are dissatisfied or somewhat dissatisfied with the specificity of the law enforcement intelligence that they receive from the government.⁸⁶ It likewise discovered that fifty-five percent of those state homeland security directors are dissatisfied or somewhat dissatisfied with the “actionable quality” of that intelligence.⁸⁷

⁸⁴ See, e.g., K. Jack Riley, “State and Local Intelligence in the War on Terror.” RAND Corporation (2005), at http://www.rand.org/pubs/monographs/2005/RAND_MG394.sum.pdf; Michael O’Hanlon. “The Role of State and Local Governments in Homeland Security: Written Testimony for the Senate Committee on Homeland Security and Government Affairs.” (July 14, 2005), at <http://www.brookings.edu/views/testimony/ohanlon/20050714.pdf>; James Jay Carafano, et al. “An Agenda for Increasing State and Local Government Efforts to Combat Terrorism.” Heritage Foundation Backgrounder No. 1826 (Feb. 24, 2005), at <http://www.heritage.org/Research/HomelandDefense/bg1826.cfm>.

⁸⁵ International Association of Chiefs of Police. “From Hometown Security to Homeland Security.” (May 2005), available at www.theiacp.org/leg_policy/HomelandSecurityWP.pdf.

⁸⁶ National Governor’s Association Center for Best Practices. “2006 State Homeland Security Directors Survey.” (April 3, 2006), available at <http://www.nga.org/Files/pdf/0604HLSDIRSURVEY.pdf>.

⁸⁷ *Id.*

This distressing state of affairs has persisted for over five years, and efforts to address the problem have not made much headway. Last December, for example, the President released “guidelines to create information sharing guidelines” – rather than the policies and procedures that are actually needed to address the problem.⁸⁸ Cultural resistance to sharing law enforcement intelligence with police and sheriffs’ officers, moreover, remains a live issue. “As much as federal agents may intellectually understand that information sharing in this new global threat scenario is good, it goes against everything they’ve always believed deep down in their guts,” observed one commentator.⁸⁹ “So a big, integrated system for sharing case information may make sense, but it probably feels to the G-men like a highway to hell.”⁹⁰

The country would be well-served by following the example of the United Kingdom’s Intelligence Community and its new Joint Terrorism Analysis Centre (JTAC).⁹¹ JTAC is an entity that brings all of the UK’s intelligence agencies together under one roof to fuse and share intelligence information.⁹² It is staffed by intelligence and law enforcement officers who, among other things, not only identify intelligence of interest to police officers but also work to convert it to a usable format. JTAC does this work with the assistance of the Police International Counterterrorism Unit (PICTU) which is the voice of local police departments to the UK Intelligence Community.⁹³

The U.S., by contrast, is only halfway there. Like JTAC, the new National Counterterrorism Center (NCTC) brings all of our intelligence agencies together under one roof to jointly analyze intelligence information.⁹⁴ However, the country lacks anything like PICTU through which state, local, and tribal law enforcement officers could regularly and effectively voice their needs to their federal partners.⁹⁵

Congress therefore should pass legislation establishing and funding a PICTU-like unit called the “Vertical Intelligence Terrorism Analysis Link” or “VITAL.” VITAL should be located physically within the NCTC, where it could go a long way to ensuring that state, local, and tribal law enforcement is fully looped into the intelligence cycle at the federal level. Specifically, VITAL should be staffed by appropriately cleared police and sheriffs’ officers who would rotate through the unit periodically. In this way, officers could educate the IC about what intelligence is actually of interest to law enforcement in terms of thwarting terrorist attacks. They likewise could work with IC analysts to convert sometimes highly classified documents

⁸⁸ See Memorandum from President George W. Bush to the Heads of Executive Departments and Agencies (Dec. 16, 2003), available at <http://www.whitehouse.gov/news/releases/2005/12/print/20051216-10.html>.

⁸⁹ Abbie Lundberg, “The Hard Road to Change,” *CIO Magazine*, June 15, 2005, available at <http://www.cio.com/archive/061505/edit.html?action=print>.

⁹⁰ *Id.*

⁹¹ U.S. House Committee on Homeland Security Democratic Staff, “Beyond Connecting the Dots: a VITAL Framework for Sharing Law Enforcement Intelligence Information,” (December 2005) at 43, available at http://www.fas.org/irp/congress/2005_rpt/vital.pdf.

⁹² *Id.*

⁹³ *Id.* at 43-45.

⁹⁴ *Id.* at 46-47.

⁹⁵ *Id.* at 48-49.

to an unclassified, law enforcement sensitive format that could be disseminated widely. Moreover, VITAL not only could help get such “sanitized” intelligence information to the officers in the field who need it but also could be a point of contact for those officers who want to share information with the IC.

In order to maximize participation by law enforcement representing as diverse a group of cities, towns, and rural areas as possible, Congress should adequately fund VITAL so participating agencies can (1) continue paying salaries to their employees working in the VITAL unit; and (2) hire someone to “backfill” those positions on their staffs.

Assistant Director Porter believes that the VITAL approach would promote far better two-way information sharing between the federal government and its state, local, and tribal law enforcement partners:

Too often, intelligence producers are unable to develop a full appreciation for and understanding of the intelligence needs of the customer. Conversely, those who are in a position to collect intelligence are unaware of the value it may have to the larger intelligence mission. It’s essential to bolster the ability for intelligence producers and consumers to understand one another. Offering the opportunity for local and state law enforcement personnel to work at federal agencies can help the intelligence producers better understand the customer’s information needs. If local and state law enforcement officers are “detailed” to a federal intelligence center, local and state personnel can help federal personnel identify information that would be relevant to local and state law enforcement. All of them could work together to craft actionable intelligence products. In turn, local and state personnel could learn about the broader intelligence needs of other customers, and could help their counterparts understand the types of information to collect. What’s more, the diverse perspectives that would be brought to the table could foster analytical creativity and stimulate imagination – things that the 9/11 Commission said are sorely needed.⁹⁶

This practical approach would avoid the challenges and pitfalls that have plagued efforts to put together comprehensive, government-wide information sharing guidelines and policies aimed at breaking through lingering cultural resistance to information sharing. As one former Department of Homeland Security intelligence official has commented:

The VITAL concept is precisely what the National Counterterrorism Center needs. For decades, the state, local, and tribal law enforcement communities and the federal Intelligence Community have been talking past each other. By co-locating police and sheriffs’ officers side-by-side

⁹⁶ Porter Email, supra note 19.

*with intelligence analysts at the NCTC, we might finally start to get everyone on the same page when it comes to figuring out what intelligence would be useful to cops on the beat and what the federal government can actually offer. Once that understanding is in place, the process of writing intelligence in a way that protects sources methods while providing law enforcement – and the private sector – with something useful becomes much easier. The British experience is proof positive that cultural barriers to information sharing can be broken down. I think adopting the VITAL approach here in the United States would have similarly beneficial results.*⁹⁷

In short, VITAL could play a key part in improving information sharing and engaging the law enforcement community in the nation's homeland security efforts. "VITAL is important in that there will be complete two-way information flow. The locals will have the opportunity to see that their hard work at the field level is recognized and shared with others," notes Chief Quasula⁹⁸ "I was in Washington many years working as a director of law enforcement (having come from the field). Many times the bureaucracy clouded what was happening in the real world. It was amazing to me that there were many well-intentioned federal employees that were obviously disconnected from the field cops."⁹⁹ Bottom up communication from the state, local, and tribal levels, he concludes, will clarify the issues.¹⁰⁰

Professor Carter agrees, adding, "There is nothing more effective than exchanging personnel to understand the roles, processes and value of another organization's work."¹⁰¹ VITAL, he believes, "will provide state, local, and tribal law enforcement officers with needed experience, operational insight and personal contacts – all of which will enhance the two-way flow of information that is essential for effective intelligence analysis and policing strategies."¹⁰²

⁹⁷ Interview with former Department of Homeland Security intelligence official (Aug. 12, 2006) (notes on file with the Committee).

⁹⁸ Quasula August 18 Email, supra note 24.

⁹⁹ Id.

¹⁰⁰ Id.

¹⁰¹ Carter August 12 Email, supra note 53.

¹⁰² Id.

Moving Urgent Security Clearances for Law Enforcement (MUSCLE) Program

Many law enforcement executives want to understand the complete nature of the terrorist threat within their jurisdictions.¹⁰³ They know that if they have access to classified information sooner, they will be able to intervene in a variety of ways to protect lives and property before threats manifest themselves. If they do not have a security clearance, however, they typically are unable to access intelligence about those threats unless an attack is imminent. Access to Secret and, in some cases, Top Secret information helps law enforcement executives make more effective management decisions during the war on terror – ranging from the assignment of personnel for investigations to the need for extending shifts and canceling officers’ leaves should the threat condition warrant it.¹⁰⁴ For these reasons alone, granting security clearances to these executives should be an imperative. Doing so is an appropriate courtesy, moreover, given the valuable contributions of staff and resources that law enforcement executives provide to the federal government’s counterterrorism efforts.¹⁰⁵

Assistant Director Porter notes that, “Although many state and local law enforcement officers have been able to obtain national security clearances with minimal difficulty, others have found it to be arduous.”¹⁰⁶ Indeed, the security clearance process is backlogged in many jurisdictions throughout the country – leaving some law enforcement executives waiting for years for a Secret or Top Secret clearance. Making matters worse is the perception that clearances are not always granted on a first-come, first-served basis. Compounding these problems even further is the fact that even when a Secret or Top Secret clearance has been provided, typically one federal agency will recognize it while others will not:

Reciprocity in security clearances – meaning the acceptance by one agency of a security clearance granted by another agency, and vice versa – has been an elusive security policy goal for well over a decade. But lately it has become the subject of increased attention. “The Director [of National Intelligence] has done little to ensure the reciprocal recognition of security clearances within the [Intelligence] Community,” the House Intelligence Committee complained in its new report.¹⁰⁷

¹⁰³ See Carter, *supra* note 1 at Chapter 2: Understanding Current Law Enforcement Intelligence: Concepts and Definitions 163.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Porter Email, *supra* note 19.

¹⁰⁷ Aftergood, S. (2006, July 28). Seeking Reciprocity in Security Clearance Policy. Blog entry (citing House Permanent Select Committee on Intelligence Report, “Initial Assessment on the Implementation of

This has been an issue with both Secret and Top Secret clearances. As Joseph Polisar, Chief of the Garden Grove, California Police Department has noted:

As an appointee to the Homeland Security Science and Technology Advisory Committee, I went through a nine-month process to obtain a Department of Homeland Security Top Secret Security Clearance. Once I received it however, I discovered that the FBI could not immediately recognize it for information sharing purposes. Specifically, until my DHS Top Secret clearance was recognized by the FBI, any Top Secret information that the FBI had supplied to one of my officers assigned to our local Joint Terrorism Task Force could be held from me. Because I held a DHS Top Secret Clearance and the officer held an FBI Top Secret Clearance, I was forced to submit my information to the FBI through the DHS and had to wait eight months before the Bureau recognized my DHS Top Secret clearance. If there had been any terrorist activity in my jurisdiction in the meantime, I might have been shut out of the loop. This obviously is not an optimal solution. If the feds are having this kind of difficulty recognizing each other's clearances, how are we in law enforcement ever going to be full players in the country's homeland security efforts?¹⁰⁸

These difficulties create ill will among the non-federal law enforcement community, serve as an obstacle to information sharing, and have led to wasted taxpayer dollars. Congress accordingly should establish a "Moving Urgent Security Clearances for Law Enforcement Executives (MUSCLE) Program" in order to expedite Secret and, where appropriate, Top Secret clearances for law enforcement executives. Specifically, the Office of Personnel Management, the Department of Homeland Security, and the FBI should be required to hammer out a system that processes applicants for Secret and Top Secret clearances on a first-come, first-served basis within sixty (60) and one hundred twenty (120) days, respectively. All federal agencies likewise should be required to treat Secret and Top Secret clearances granted through the MUSCLE Program as valid. Finally, a vigorous reporting requirement mechanism should be included that would let Congress know when problems arise so corrective action can be taken.

While the federal government should focus its efforts in providing unclassified versions of law enforcement intelligence whenever possible in order to promote information sharing with state, local, and tribal law enforcement, there are times when a Secret or Top Secret clearance is necessary to fully communicate the terrorist threat. The MUSCLE Program would offer a practical solution to this problem that is long overdue.

the Intelligence Reform and Terrorism Prevention Act of 2004 (July 27, 2006)). Retrieved on August 15, 2006, from http://www.fas.org/blog/secretcy/2006/07/seeking_reciprocity_in_security.html.

¹⁰⁸ See U.S. House Committee on Homeland Security Democratic Staff, *supra* note 91 at 18.

Targeted Intelligence-Led Policing Satisfaction (TIPS) Benchmark Survey

This past March, the Government Accountability Office (“GAO”) released a report on information sharing in which it concluded that, “No government-wide policies or processes have been established by the executive branch to date to define how to integrate and manage the sharing of terrorism-related information across all levels of government and the private sector despite legislation and executive orders dating back to September 11.”¹⁰⁹ GAO attributed this situation, in part, “to the difficulty of the challenge, as well as the fact that responsibility for creating these policies has shifted among various executive agencies.”¹¹⁰ One month later, the 2006 NGA Survey chronicled the consequences of failing to develop these policies and processes – and the resulting high levels of dissatisfaction with both the specificity and actionability of law enforcement intelligence provided to state homeland security directors by the federal government.¹¹¹ Police and sheriffs’ officers have reported similar complaints.¹¹²

Most intelligence analysis conducted by the IC has been historically destined for high-level federal policymakers – not first preventers in the field.¹¹³ Without some input from these new intelligence consumers, however, the result might be useless data dumps on police and sheriffs’ officers in the name of “information sharing.” “The caveat is to make sure the information in the intelligence products is essential and reaching the right consumer,” Professor Carter observes.¹¹⁴ “If law enforcement officers are deluged with intelligence reports, the information overload will have the same outcome as not sharing information at all,” he added.¹¹⁵ “If officers are deleting intelligence products without reading them, then the effect is the same as if it had never been disseminated.”¹¹⁶

¹⁰⁹ Government Accountability Office. “INFORMATION SHARING: The Federal Government Needs to Establish Policies and Processes for Sharing Terrorism-Related and Sensitive but Unclassified Information.” (GAO 06-385: March 2006) at 14, [available at](http://www.gao.gov/new.items/d06385.pdf) <http://www.gao.gov/new.items/d06385.pdf>.

¹¹⁰ *Id.*

¹¹¹ National Governor’s Association Center for Best Practices. “2006 State Homeland Security Directors Survey.” (April 3, 2006), [available at](http://www.nga.org/Files/pdf/0604HLSDIRSURVEY.pdf) <http://www.nga.org/Files/pdf/0604HLSDIRSURVEY.pdf>.

¹¹² See, e.g., United States Department of Homeland Security. Office of Inspector General. Homeland Security Information Network Could Support Information Sharing More Effectively (June 7, 2006) at 13-14; 23-25, [available at](http://www.dhs.gov/interweb/assetlibrary/OIG_06-38_Jun06.pdf) http://www.dhs.gov/interweb/assetlibrary/OIG_06-38_Jun06.pdf.

¹¹³ See Deborah G. Barger, Toward a Revolution in Intelligence Affairs 21, RAND Corporation, National Security Research Division (2005), [available at](http://www.rand.org/pubs/technical_reports/2005/RAND_TR242.pdf) http://www.rand.org/pubs/technical_reports/2005/RAND_TR242.pdf.

¹¹⁴ David L. Carter, Law Enforcement Intelligence: A Guide for State, Local, and Tribal Law Enforcement Agencies, Chapter 6: Law Enforcement Intelligence Classification, Products, and Dissemination 86 (November 2004), [available at](http://www.cops.usdoj.gov/mime/open.pdf?Item=1393) <http://www.cops.usdoj.gov/mime/open.pdf?Item=1393>.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

The Program Manager of the recently initiated Information Sharing Environment (ISE), Ambassador McNamara, acknowledged the growing chorus on this front during testimony this spring before the House Committee on Homeland Security.¹¹⁷ In written remarks, he stated that the main problem with information sharing between the federal government and state and local authorities is that there is too much flow of uncoordinated information and too little flow of the right kinds of information in actionable form.¹¹⁸ As a result, he noted, “valuable information potentially is being wasted because it is not reaching the proper consumers.”¹¹⁹

In order to help prevent terrorism and criminal activity related to terrorism, it is therefore critical that the federal government improve both the specificity and actionable quality of the law enforcement intelligence it provides to state, local, and tribal law enforcement. One of the best ways to assess improvement in these areas is to conduct benchmark surveys of law enforcement agencies serving large cities, suburban areas, small cities and towns, and rural regions that are broadly representative of similar communities nationwide. “How can we possibly know if we’re making progress unless we have a ‘baseline’ report card?” asks Assistant Director Porter.¹²⁰ “If all of us are serious about improvement, we need to complete a benchmark survey, followed by periodic updates to mark our advancement.”¹²¹

Congress therefore should pass legislation that directs the Attorney General – in coordination with the Secretary of the Department of Homeland Security – to establish a “Targeted Intelligence-Led Policing Satisfaction (TIPS) Benchmark Survey” to do just that. Specifically, a research team should be established to perform in-depth, in the field interviews with police and sheriffs’ officers hailing from no more than fifteen (15) different state, local, and tribal law enforcement agencies. To gauge progress over time, the research team should visit with officers in the selected communities every two years and make its findings available online. In this way, policymakers and practitioners at the federal, state, local, and tribal levels would be able to identify information sharing problem areas and direct resources accordingly.

¹¹⁷ McNamara Testimony, supra note 44.

¹¹⁸ Id.

¹¹⁹ Id.

¹²⁰ Porter Email, supra note 19.

¹²¹ Id.

Professor Carter believes that this approach holds promise and will assist Congress and others in their efforts to improve the current situation:

Program evaluation is critical for determining if strategies are successful. Typically, superficial data are collected nationwide from law enforcement executives, officers, and others and are used as a barometer to measure program success. While these data provide insights on activity, however, they provide little insight on success. It is well established in the scientific literature that a representative, purposefully identified sample that is comprehensively examined in detail about program operations will identify successes, failures and lessons learned. When consistent trends emerge in the sample, accurate generalizations can be made to all. The TIPS Benchmark Survey will rely on this well established and scientifically sound methodology. This evaluation method will ensure that the federal investment in state, local, and tribal law enforcement is paying off in the intended ways to ensure the homeland remains secure.¹²²

¹²² Carter Aug. 12 Email, supra note 53.

Moving Forward

Every day, state, local, and tribal law enforcement officers put their personal security second to the defense of our communities and in service to each and every one of us. Five years after 9/11, they have seen their priorities evolve beyond investigating traditional crimes to include new terrorism prevention and preparedness duties. The federal government must also evolve and give police and sheriffs' officers the law enforcement intelligence resources they need to play the role they are uniquely positioned to play in securing the homeland. This LEAP Information Sharing Strategy outlines important first steps for action.

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