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State and Local Intelligence in the War on Terrorism

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Summary

Most discussion of information sharing in the war on terrorism has concentrated on the federal government.¹ Yet, state and local law enforcement agencies (LEAs) may be uniquely positioned to augment federal intelligence capabilities by virtue of their presence in nearly every American community, their knowledge of local individuals and groups, and their use of intelligence to combat crime. How widespread is counterterrorism intelligence activity among state and local LEAs, and how is this activity managed? What are those state and local authorities doing differently since 9/11 in collecting and processing information? How are courts and other oversight bodies guiding that process? And what might an “ideal” division of labor among the various levels of government look like?

As a starting point, this report asks how state and local intelligence activities have developed in the post-9/11 environment. We focus on LEAs’ involvement in intelligence activities designed to counter terrorist actions and support national security objectives. These activities may range from investigation of possible criminal acts that are predicates of terrorist activity, including by means of electronic surveillance (typically, surveillance activities authorized by Ti-

¹ Joint Task Force on Intelligence and Law Enforcement (1995) is notable for its comprehensive treatment of the intersection of law enforcement and intelligence at all stages. Other examples that address domestic and foreign intelligence issues include National Commission on Terrorism (2000); Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction (“Gilmore Commission”), 1999–2004; and National Commission on Terrorist Attacks Upon the United States (2004). See also Shelby (2002).

tle III) to data collection that is incident to the normal activities of LEA officers but that is divorced from any specific criminal case (typically handed “over the wall”² to the FBI for its continued pursuit and intelligence-building). These activities may occur collaboratively with other agencies. We also examine state and local LEA intelligence activity that might occur under federal supervision, such as through participation on a Federal Bureau of Investigation (FBI) joint terrorism task force (JTTF). Although we describe many non-intelligence measures, perceptions, and activities in this report, we provide such reporting primarily for context.

We assess these developments in three major parts. First, we analyze data from a 2002 survey of law enforcement preparedness. Although major elements of that survey were analyzed in another report (Davis et al., 2004), this report examines survey components that were previously not analyzed or were not analyzed in the context of intelligence. This portion of the report helps us determine the breadth, scale, and dimensionality of post-9/11 LEA counter-terrorism intelligence activities.

Second, we conducted case studies of individual law enforcement agencies and their post-9/11 intelligence activities. Drawing on themes that emerged from the survey analysis, we

- assess in detail how eight LEAs around the country formed, managed, and oversaw their intelligence activities
- describe the structure, tasking, and costs associated with their intelligence operations
- review personnel and training issues associated with their programs

² The “wall” refers to perceived and actual limits on the ability to share information across criminal and intelligence investigations. Since the FBI conducts both criminal and intelligence investigations, much of the concern about the wall focuses on the FBI. Our reference to handing a matter “over the wall” refers to the general problem of managing the interface between criminal and intelligence matters. For more on the wall, see Martin (2004) and National Commission on Terrorist Attacks Upon the United States (2004).

- discuss the information sources they use in their intelligence activities, and analyze communication within and among agencies.

This portion of the report provides depth to our understanding of how LEAs operate and manage their intelligence functions.

Third, we analyzed available statistics on wiretaps and related oversight activities to gain perspective on how state and local LEA intelligence programs combine to contribute to national intelligence activities. This section also gives perspective on the federal role in shaping and defining state and local LEA intelligence activity and helps identify points of potential influence.

We conclude with a discussion of the policy implications of state and local involvement in counterterrorism intelligence. What are the outstanding issues and what issues might emerge in the future?

Survey Results

RAND fielded a survey in late 2002 that examined domestic preparedness, particularly among law enforcement agencies, for acts of terrorism. That work was published in 2004 as *When Terrorism Hits Home: How Prepared Are State and Local Law Enforcement?* (Davis et al., 2004). The 2002 survey built on previous RAND work conducted in 1994 in the aftermath of the first attack on the World Trade Center in 1993 (Riley and Hoffman, 1995). Both reports found high degrees of local variation in preparedness for terrorism and a correlation between agency size and likelihood of increased preparedness. Neither report examined intelligence issues in any detail.

For this report, we analyzed data from the 2002 survey through the prism of intelligence. We examined LEAs' prior experience with and perceptions of terrorism, the formation of specialized counterterrorism and intelligence units, LEAs' coordination of counterterrorism and intelligence activities, their information sharing practices, their terrorism threat assessment activities, and the counterterrorism and

intelligence support needs that they identified. The survey was administered to a stratified, random sample of 209 local LEAs and all 50 state-level LEAs. There are nearly 18,000 LEAs across the United States, of which approximately 1,000 have 100 or more full-time sworn officers (BJS, 2002).

State agencies generally report greater awareness of group operations and threats than local agencies do. Likewise, state entities have greater experience with incident management and response, incident investigations, and hoaxes. About 16 percent of local LEAs have specialized terrorism units, whereas 75 percent of states report having such units. Local LEA terror units typically have a more proscribed mission (primarily information-sharing); state LEA terror units are more likely to take on more expansive roles, such as training.

Most state and local LEAs have conducted terrorism threat assessments. Local LEAs were more likely to have conducted theirs after 9/11; about half of the states had done theirs prior to 9/11. There is a correlation between the size of LEAs and their threat assessment activity: the larger the local LEA, the more likely it is to have done a threat assessment.

About one-third of local LEAs collaborate with the FBI's JTTFs. The larger the local LEA, the more likely it will have participated in a JTTF. The local participation in JTTFs typically revolves around information sharing and receipt of training. Nearly all state LEAs collaborate with JTTFs for the same reasons—as well as for more expansive reasons, such as to assist with investigations. Most state LEAs and a near majority of local LEAs report needing more and better threat information. Most state LEAs and one-third of local LEAs report needing more manpower.

Generally, we can expect that the situation has changed, and perhaps improved dramatically, since the survey was fielded in late 2002. The field of intelligence is dynamic and fast-moving, and a survey conducted in 2002 cannot provide insight into the contemporary dimensions of the issue. The survey, however, did give us an idea of what types of issues to address through the cases studies. In addition, the survey points to the need to develop a mechanism that authorities could use to periodically assess the state of affairs with re-

spect to federal, state, and local cooperation on intelligence issues. There are multiple ways that such a scorecard could be prepared, such as through the administration of an annual or biannual survey, and multiple potential institutional hosts for the scorecard, including the FBI and the Director, National Intelligence. Regardless of the method and the institutional host, however, it seems prudent to begin to track progress on the issue more systematically. The 2002 survey should be considered a baseline against which future progress can be measured.

Case Studies

The case study section analysis was organized around six thematic areas, each of which parallels a topic addressed in the survey:

- intelligence mandate and guidelines
- oversight
- counterterrorism structure, tasks, and costs
- personnel and training
- information sources
- communication within and among agencies.

Detailed interviews with local LEAs confirmed the survey finding that local police departments generally have not created separate units for the counterterrorism intelligence function. Counterterrorism intelligence gathering and analysis tend to occur as part of a larger criminal intelligence unit. Nor has the terrorist threat led to large-scale changes in the organizational structure of most local police departments.

In general, the mandate of the counterterrorism function is informal and set by the chain of command. Local police departments rely on federal guidelines in shaping their intelligence function, but the terrorist threat has raised awareness about what should and can be done in intelligence gathering, analysis, retention, and dissemination.

In turn, some departments have adopted or refined their own guidelines.

Similarly, oversight of counterterrorism intelligence is provided internally through the chain of command in most agencies. Some jurisdictions have a degree of oversight by an external body—a civilian committee, for instance, approves the Los Angeles Police Department’s undercover operations.

Local police have increased their commitment of human resources to counterterrorism efforts, usually at the expense of other policing areas. Most local departments have little capacity to analyze the information they collect or receive; although federal grants have been available, most of that money has been used for equipment and consequence management, not analysis and training. The 9/11 attacks led to a sharp increase in the amount of counterterrorism information that is shared within and among local police and their federal counterparts. Paradoxically, however, the sheer number of cooperating agencies sometimes inhibits progress in responding to the terrorist threat.

Oversight and Links to National Intelligence Activity

Overall, state and local intelligence gathering has increased, at least as measured by wiretaps by law enforcement for national security intelligence purposes. Not surprisingly, the jump was sharpest from 2000 to 2001. Since 2001, the number of orders has stayed roughly constant, but the number of communications intercepted under each order has gone up sharply, nearly tripling from 2000 to 2003. The interviews—with the Las Vegas Metropolitan Police Department, for instance—confirmed that if the local LEAs undertook terrorism-related surveillance for intelligence purposes (as opposed to law enforcement), they almost always did so with federal officials through the JTTFs and with federal court oversight.

This is probably close to the ideal division of labor. Federal authorities—the FBI in particular—will naturally lead in intelligence gathering that is not connected to criminal investigation. Local LEAs

have neither money nor capacity for that kind of pure intelligence. So their intelligence gathering would be guided by federal regulations and overseen primarily by federal courts.

Considerable attention has been paid to information sharing, especially from the federal level down—for instance by the national 9/11 Commission (National Commission on Terrorist Attacks Upon the United States, 2004). Although technology remains a problem, policy is a more formidable obstacle. As both the surveys and case studies suggest, the principal information-sharing mechanism, the JTTF, is constrained because state and local participants are required to have security clearances at the level of their FBI counterparts. It is imperative to find new ways to share information and to share it more widely.

Finally, while an ideal division of labor would have more analysis done at the federal than at the local level, the paucity of local capacity was striking. Only the very largest police departments have any capacity at all. The importance of analysis derives directly from the nature of the counterterrorism task. A traditional law enforcement investigation seeks to reconstruct the single trail from crime back to perpetrator. In contrast, the counterterrorism investigation, especially one aimed at prevention, must look at a number of paths—sembling enough information about each to know when patterns are changing or something suspicious is afoot along one of them. The local role in the analytic labor would be to take the general guidance provided by federal authorities and relate it to local domain awareness.

Policy Implications

The survey revealed the extent to which LEAs are engaging in counterterrorism intelligence activity. The bulk of this activity is concentrated among larger departments. The case studies provided insight into how LEAs organize and support their counterterrorism activities. Here we found that departments are not generally engaged in massive reorganizations, but rather are typically paying for these activities

“out of their own hides.” That is, they typically are not receiving explicit federal support and are paying for the activity out of internal reallocations. Finally, the section on authorization and oversight revealed that there has been a substantial increase in state and local involvement in wiretap activity and that the federal courts almost always retain oversight authority.

In short, the picture of law enforcement involvement in counterterrorism intelligence is somewhat mixed. On the one hand, it is probably not as pervasive as feared among civil libertarians, in the sense that relatively few LEAs appear to be supporting such activities to any great extent. On the other hand, there has been a marked increase in intelligence activity among those departments that are engaged in it.

Against this backdrop, the report considers four major issues that need to be addressed:

- *The sustainability of state and local LEA intelligence activity is in question.* State and local LEAs report that the funding for these activities is not coming from the federal government but is being borne by their budgets. It remains unclear whether LEAs will continue to support this activity as other demands on them increase. In addition, it is unclear whether intelligence activities assist with or detract from traditional crime prevention activities at the local level. This is an important issue that deserves analytic attention.
- *The training of LEA personnel involved in intelligence activity appears insufficient.* There is obvious need for more training, especially in analysis, at the state and local level. Current efforts are ad hoc and vary widely among the states. Organizations too must be “trained” to develop clear mission statements, adopt minimum standards for data collection, develop proper file maintenance standards, and implement appropriate staff training and certification processes.
- *Scant doctrine for shaping state and local LEA intelligence activity exists.* More vigorous use of the JTTFs as a locus for shaping LEA intelligence activities is one possible way of providing the

fundamental principles. Another option is the development of a federal intelligence support program that would be similar in structure and role to the position of federal security director at airports—institutions that are typically locally managed. That is, the support director would provide day-to-day operational intelligence direction. An intermediate option would be to link provision of federal funding to specific standards and practices. This list is not exhaustive, and we make no recommendation about which option might be best. Rather, we simply point out the potential for doctrinal guidance of what is a fairly loose and ad hoc process at this point.

- *The courts—the federal courts in particular—will continue to strike the balance between privacy and civil liberties, on the one hand, and national security on the other.* What our survey and case studies hinted at became much more explicit when we talked with federal homeland security intelligence officials. They feel they have little guidance when deciding what they should do with information they collect—especially about American citizens. Can they keep it in databases? For how long and on what basis? It will be up to the courts to enforce guidelines when constitutional or statutory standards apply and to put pressure on the executive branch to issue clear guidelines when such standards do not apply.