

DRAFT of FORTHCOMING ARTICLE IN AFIO INTELLIGENCER

Law Enforcement Intelligence: Its Evolution and Scope Today

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Societies rely on intelligence to reduce uncertainty and support decisions affecting their security and survival.¹ Both national security intelligence and law enforcement intelligence have assumed greater importance in our globalized and interconnected world where threats can be measured in terms of hours, minutes and seconds. These two categories of intelligence overlap and often are indistinguishable from one another.

[Editor note: Insert as sidebar in article]

“My highest priority is to keep the American people safe. I believe that Homeland Security is indistinguishable from National Security – conceptually and functionally, they should be thought of together rather than separately. Instead of separating these issues, we must create an integrated, effective, and efficient approach to enhance the national security of the United States.” President Obama, February 23, 2009

The *National Strategy for Homeland Security*² calls for "a common framework" to (1) prevent and disrupt terrorists attacks; (2) protect the American people, our critical infrastructure, and key resources; (3) respond to and recover from incidents that do occur; and (4) continue to strengthen the foundation to ensure our long-term success." The strategy also states: "the law enforcement community, along with the intelligence community, must work to develop and implement national information requirements – develop a process for identifying information gaps, determining critical information requirements, and meeting those requirements collaboratively. We also encourage the implementation of *Intelligence-Led Policing* by state, local, and tribal law enforcement" [Emphasis added].³

What is Law Enforcement Intelligence?

¹Fingar, T. (2011). Reducing Uncertainty: Intelligence Analysis and National Security. Stanford, CA: Stanford University Press. p35.

²Office of the President of the United States, *National Strategy for Homeland Security* (2007). Washington, DC: October 5, 2007. p1.

³Ibid. pp19-20.

The definition of law enforcement intelligence is “The end product (output) of an analytic process that collects and assesses information about crimes and/or criminal enterprises with the purpose of making judgments and inferences about community conditions, potential problems, and criminal activity with the intent to pursue criminal prosecution or project crime trends to support informed decision making by [law enforcement] management.”⁴ The current definition of law enforcement intelligence incorporates the additional roles law enforcement agencies acquired in post 9/11 legislation that required all levels of law enforcement to detect, deter, prevent, respond to and mitigate criminal and terrorist activities. These additional requirements encompass homeland security infrastructure protection, transnational organized crime, cybercrime, counterterrorism, weapons of mass destruction, contingency planning for both hometown and the *National Response Framework* and *National Incident Management System*, as well as intelligence support for order maintenance associated with public demonstrations, major event planning and National Special Security Events, such as Super Bowls or political conventions.

Law enforcement organizations' mission statements reflect two primary responsibilities: (1) to protect life, property, and constitutional guarantees;⁵ and (2) preserve order by preventing crime, pursuing and apprehending offenders, and obtaining evidence for criminal prosecution and convictions.”⁶

Law enforcement “methods of investigation,”⁷ are similar to the “intelligence cycle/process” in that the criminal investigator collects information and uses critical thinking and reasoning skills to determine what, when, where, by whom, why and how a crime occurred. Key to this process is analysis, converting information into evidence, to prove or disprove hypotheses that a person or group perpetrated a crime or is about to perpetrate a crime. Criminal investigators in the U.S. are required to meet legal standards of proof in our courts of law. Additionally, both law enforcement intelligence units and investigators must operate within the framework of the *U.S. Constitution*, federal *Rules of Criminal Procedures*, and statutory and case law to ensure citizens' civil liberties and rights are protected.⁸ Violations of civil liberties are subject to both civil and criminal liability for federal agents and for state and local law officers.

⁴U.S. Department of Justice, Bureau of Justice Assistance, Global Justice Information Sharing Initiative. *Minimum Criminal Intelligence Training Standards for Law Enforcement and Other Criminal Justice Agencies in the United States, Appendix – Criminal Intelligence Glossary of Terms - October 2007*, “Law Enforcement Intelligence,” (2007). Washington, DC: p4;. as well as Carter, D.L. (2009). *Law Enforcement Intelligence: A Guide for State, Local, Tribal Law Enforcement Agencies*. Washington, DC: U.S. Department of Justice, Office of Community Oriented Policing Services, p445.

⁵Goldstein, H. (1977). *Policing a Free Society*, Cambridge, MA: Ballinger. p35.

⁶International Association of Chiefs of Police National Law Enforcement Policy Center, “Criminal Intelligence: Concepts and Issues Paper.” (2003). Alexandria, VA: IACP. p2.

⁷O'Hara, C.E. (1973). *Fundamentals of criminal investigation*, 3d. ed. Springfield, IL, Charles Thomas Publisher. pp5-21.

⁸Black, C.H. (1991). *Black's Law Dictionary*, 3d. ed. “Proof,” St. Paul, MN. West Publishing Co. pp385 and 844-845.



Source: U.S. Department of Justice. (2005), *The National Criminal Intelligence Sharing Plan* (NCISP), Washington, DC; Department of Justice Global Justice Information Sharing Initiative. p. 3.

Even though law enforcement agencies and the Intelligence Community (IC) operate under different sets of legal authorities, jurisdictions, mandates and methods, both use the intelligence cycle/process and similar “tradecraft” as tools to satisfy their respective mission requirements. However, national security intelligence, being largely prospective, rarely meets the standards of proof necessary for the courtroom.

The law enforcement and Intelligence Community occasionally find themselves mutually affected by a criminal case, especially as when a defendant seeks access to classified information to assist the defense [Rule 16 of the Federal Rules of Criminal Procedures – Discovery and Inspection]. When this occurs, an issue of major concern to both communities is the protection of sensitive intelligence sources and methods. This protection is governed by the *Classified Information Procedures Act* [Public Law 96-456] and by the intelligence agencies placing restrictions on access to the information or by including special warning and caveats that restrict the use of the information.⁹ An example is the presidential “state secrets” privilege [Reynolds v U.S.¹⁰]. Many critics are quick to assume that as *all* information obtained in a criminal investigation is subject to public scrutiny and review by courts of law and defendants this also applies to intelligence. However, the requirement for disclosure or discovery in court is only applicable to intelligence the law enforcement agency or prosecutor presents as evidence. The investigator or prosecutor can decide not to use intelligence that may reveal sensitive information regarding operational, tactical and strategic law enforcement operations, informant identities, or operationally sensitive sources and methods.

⁹Ibid

¹⁰Ibid

The law enforcement community tries to prevent crime by identifying and prosecuting persons who are conspiring to, or have, committed past crimes, as well as maintaining public order by monitoring criminal enterprises and extremist activities. Law enforcement intelligence supports operational and tactical decision-making as well as prosecutions. By contrast the national security Intelligence Community informs policy makers of threats and trends important for national defense, foreign relations, economics, counterintelligence, and transnational crime suppression including that associated with organized criminal organizations and terrorist groups.¹¹ National security intelligence produce judgments (including National Intelligence Estimates) “based on a sizeable body of fact – but the facts are never so complete as to remove all uncertainty from the judgment.”¹² – [or] “chiseled in stone- ‘facts’ that can be established like evidence in a courtroom trial.”¹³

The Evolution of Law Enforcement Intelligence in the U.S.

The use of intelligence for law enforcement purposes has paralleled political and social crises in the United States. As early as the 1870s, law enforcement intelligence activities were utilized to prevent and control crime and violence.¹⁴ By 1880, the New York City Police Department (NYPD) had an intelligence capability, when “intelligence gathering became an organized enterprise” [in the Detective Bureau].¹⁵

Since the 1970’s the law enforcement community has endeavored to establish standards and guidelines to provide better crime analysis and criminal intelligence functions while protecting citizens’ civil liberties. Organizations such as the Law Enforcement Intelligence Unit, the Association of Law Enforcement Intelligence Analysts, Association of Crime Analysts, and the Departments of Justice and Homeland Security have developed and implemented criminal intelligence standards and professionalization training and certification of law enforcement intelligence analysts¹⁶ and officers.¹⁷

Scope of Law Enforcement Intelligence in the United States Today

¹¹U.S. Department of Justice (1997). *United States Attorneys’ Manual*. Washington, DC: Department of Justice, Section 9-90.210. Retrieved from http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/90mcrm.htm.

¹²McLaughlin, J (2007). NIE Is Not as Decisive as it May Seem. Washington, DC, CNN, December 10, 2007, Retrieved from <http://edition.cnn.com/2007/Politics/12/10/mclaughlin.commentary/index.html?iref=allsearch>.

¹³ Fingar, T. Reducing Uncertainty, p70.

¹⁴Bowen, W, and Neal, H. (1960). *The United States Secret Service*. Philadelphia, PA, Chilton Co. pp149-151.

¹⁵Lardner, J. and Reppetto, T. (2000). *NYPD: A city and its police*. New York, NY: Henry Holt and Co. LLC. p81.

¹⁶ U.S. Department of Justice and International Association of Law Enforcement Intelligence Analysts. (2012). *Law Enforcement Analytic Standards. 2d ed.* Washington, DC: Department of Justice, Global Justice Information.

¹⁷ U.S. Department of Justice, Bureau of Justice Assistance, Global Justice Information Sharing Initiative (2007). *Minimum Criminal Intelligence Training Standards for Law Enforcement and Other Criminal Justice Agencies in the United States*. Washington, DC: U.S. Department of Justice, Office of Community Oriented Policing Services.

Law enforcement in American is “highly diverse and decentralized.”¹⁸ There are over 12,500 local police agencies and more than 809,000 state and local sworn officers. At the federal level, there are 73 agencies that account for 120,348 personnel plus 33 Inspector General Offices with law enforcement powers.¹⁹ The four largest federal agencies, two in the Department of Homeland Security (DHS) and two in the Department of Justice (DOJ), employ two-thirds of all federal officers. The largest federal agency is the U.S. Customs and Border Protection (CBP) within DHS with 36,863 federal officers/investigators. The U.S. Immigration and Customs Enforcement (ICE), also in DHS, is the fourth largest federal agency with 12,466 federal officers/investigators. The DOJ employs about a third of federal officers in 2008, the Bureau of Prisons being the largest with 16,835 officers and the FBI being the second largest with 12,760 officers and special agents.²⁰ Approximately 75 per cent of law enforcement agencies in the U.S. have less than 24 sworn officers, and more often than not, do not have full-time analysts and intelligence officers.²¹

Prior to the 9/11 attacks on the U.S., many large urban police departments had intelligence units to analyze and map crime (often referred to as “CompStat”). Intelligence analysis underpinned intelligence led policing efforts. Following the 9/11 attacks, the *Intelligence Reform and Terrorism Prevention Act of 2004* (IRTPA) mandated a national Information Sharing Environment (ISE). Subsequently, the *National Criminal Intelligence Sharing Plan* (NCISP) was developed. The NCISP was designed to ensure all law enforcement agencies, regardless of size or jurisdiction, have an intelligence capability.²² Today state and local law enforcement agencies receive shared intelligence through a multitude of information sharing networks. These include the National Law Enforcement Telecommunications System (NLETS), the National Criminal Information System (NCIC), the Regional Information Sharing system (RISS), and the FBI and High Intensity Drug Trafficking Area (HIDTA) centers. The NCISP further recommended nation-wide implementation of intelligence-led policing and the establishment of the Criminal Intelligence Coordinating Council to advise on implementation and provide guidance to the Attorney General.²³

The IRTPA also authorized the establishment of 78 state and urban intelligence fusion centers to work in conjunction with the 110 Joint Terrorism Task Forces (JTTF). Fusion centers and JTTFs serve distinct, but complementary roles: fusion centers are operated by state and local entities to share all crimes and all hazards threat information; the FBI-led JTTFs focus on terrorism-related

¹⁸National Research Council (2004). *Fairness and Effectiveness in Policing: The Evidence*. Committee to Review Research on Police Policy and Practices. Wesley Skogan and Kathleen Frydl, eds. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: National Academies Press. pp2 & 47.

¹⁹U.S. Department of Justice (2012). *Federal Law Enforcement Officers, 2008*. (Washington, DC Department of Justice, Office of Justice Programs, Bureau of Justice Statistics June 2012, NCJ238250. pp1 & 11.

²⁰Ibid. p2-3.

²¹U.S. Department of Justice, Bureau of Justice Assistance, Global Justice Information Sharing Initiative, *The National Criminal Intelligence Sharing Plan (NCISP)*. Washington, DC; Department of Justice Global Justice Information Sharing Initiative. piii.

²² U.S. Department of Justice, *The National Criminal Intelligence Sharing Plan* (NCISP), piv.

²³ U.S. Department of Justice, (2004). “Criminal Intelligence Coordinating Council. Tallahassee, FL. Institute for Intergovernmental Research. Retrieved from <http://www.iir.com/giwg/council.htm>

investigations. The U.S. Departments of Justice and Homeland Security collaborated to develop state and urban area fusion center standards and guidelines, as well as national Suspicious Activities Reporting (SARs) and privacy and civil liberties standards and guidelines.²⁴

Conclusion

The 2010 *National Security Strategy* states: “to prevent acts of terrorism on American soil, we must enlist all of our intelligence, law enforcement, and homeland security capabilities. We will continue to integrate and leverage state and major urban area fusion centers that have the capability to share classified information; establish a nationwide framework for reporting suspicious activity; and implement an integrated approach to our counterterrorism information systems to ensure that the analyst, agents, and officers who protect us have access to all relevant intelligence throughout the government.”²⁵

FBI Director Robert S. Mueller III, stated March 12, 2012, during his testimony before the U.S. Senate Intelligence Committee, “The ability of the criminal justice system to produce intelligence is often overlooked and underestimated. . . the ultimate goal in criminal cases is to obtain the cooperation of individuals who during plea agreements provide valuable information” that becomes actionable intelligence for both law enforcement and national security intelligence agencies.²⁶

“The terrorist attacks of 9/11 served as a catalyst for dramatic changes to the United States national security enterprise,” wrote Director of National Intelligence, James Clapper. “Among those changes is the recognition that our local, state, and tribal law enforcement agencies make critical contributions not only to the protection of our communities but to the security of the United States at large. . . The progress we have made to improve coordination between the intelligence community and law enforcement since 9/11 has been phenomenal.”²⁷

Readings for Instructors

Besides the sources identified in the footnotes, the following are recommended for further reading.

²⁴ U.S. Department of Homeland Security (2013). “National Network of Fusion Centers Fact Sheet.” Retrieved from <http://www.dhs.gov/national-network-fusion-centers-fact-sheet>.

²⁵Office of the President of the United States, *National Security Strategy* (2010). Washington, DC: May 2010. p20. Retrieved from http://www.whitehouse.gov/sites/default/files/rss_viewer/National_Security_Strategy.pdf.

²⁶Mueller, R.S. III (2013) U.S. Senate Intelligence Committee Hearing, “Worldwide Threats to the U.S.,” March 12, 2013, Retrieved from CSPAN <http://www.c-span.org/events/senate-intelligence-comte-hearing-on-worldwide-threats-to-the-us/10737438688-1/>

²⁷ Clapper, J.R. (2012) “Effective Intelligence Must Remain a Top Priority.” *The Police Chief*. (Alexandria, VA: The International Association of Chiefs of Police). p12. Retrieved from <http://naylornetwork.com/iac-nxt>

A comprehensive history of law enforcement intelligence in America can be found in Carter, D. L. (2009). *Law Enforcement Intelligence: A Guide for State, Local, and Tribal Law Enforcement Agencies*, 2d ed. (Washington, DC: U.S. Department of Justice, Community Oriented Policing Services). This is available on the Web at <http://it.ojp.gov/docdownloader.aspx?ddad=1133> .

Current law enforcement intelligence analyst guidance for best practices provided in *Criminal Intelligence For the 21st Century* (2011), (Richmond, VA: Association of Law Enforcement Intelligence Units and International Association of Law Enforcement Intelligence Analysts.

Contemporary guidance to assist law enforcement first responders in accessing and understanding Federal intelligence reporting and to encourage the sharing of information outlined in the Interagency Threat Assessment and Coordination Group (2011), *Intelligence Guide for First Responders*, 2nd Ed. (Washington, DC: Interagency Threat Assessment and Coordination Group. This is also on the web at http://www.nctc.gov/docs/ITALG_Guide_For_First_Responders_2011.pdf)

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