

## **U.S. Policy for Countering Terrorism: The Intelligence Dimension**

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### **INTRODUCTION**

The United States is threatened by an insidious form of warfare spawned by a new breed of warrior. State-supported terrorism has recently emerged on the world stage and, as a result, the basic nature of terrorism has changed. Terrorists, supported by nation-states, are waging a new form of low-intensity war against the United States.

Events in Lebanon in 1983 and 1984 signaled a fundamental change in terrorism. For the first time, nation-states used terrorism as a form of warfare with weapons of increasing destructiveness. Forensic experts from the FBI Laboratory described the bombing of the Marine Headquarters in Beirut in October 1983 as the largest conventional blast ever seen by the experts: an explosive equivalent to over 12,000 pounds of TNT.<sup>1</sup>

In 1983 271 Americans were killed and injured by acts of terrorism, more than in any preceding year.<sup>2</sup> There were over 500 attacks by international terrorists in 1983, of which more than 200 were against the United States.<sup>3</sup> At least seventy incidents in 1983 probably involved significant state support or participation.<sup>4</sup> As Secretary of State Shultz has noted, terrorism is "no longer the random acts of isolated groups of local fanatics," but rather it "is now a method of warfare, no less because it is undeclared and even, though not always, denied."<sup>5</sup>

Despite the number of Americans killed by terrorists in 1983, inside the United States itself there were relatively few terrorist incidents. According to the FBI, only 31 terrorist incidents occurred in the United States, including Puerto Rico.<sup>6</sup> Some knowledgeable individuals, however, question the accuracy of the FBI's figures. Joel Lisker, Chief Counsel of the Senate Subcommittee on Security and Terrorism, stated in 1984 that the FBI's statistics on terrorism generally were "misleading" in that they understated the problem in the United States.<sup>7</sup> One example of such understatement is the series of abortion clinic bombings and burnings which occurred in 1984. The FBI did not include the 20 to 25 clinic incidents in its terrorism statistics because, according to FBI Director Webster, the clinic bombings did not meet his definition of terrorism inasmuch as they were not "acts of violence committed in furtherance of an attack on a government."<sup>8</sup> According to Lisker, the clinic bombings were "violent acts designed to intimidate a section of the community on a contentious social issue, and if that's not terrorism I don't know what is."<sup>9</sup>

It seems only a matter of time before state-supported terrorists begin taking advantage of modern technological advances in transportation, communications and weaponry and bring their surrogate war to Washington D.C., New York City, Los Angeles or rural America. The United States has already experienced some high-technology terrorism including nuclear, chemical and biological incidents, committed by non-state actors.

To illustrate, in 1979 a former employee of a Wilmington nuclear power plant obtained uranium oxide and threatened to release it into the air unless he received \$100,000 in ransom.<sup>10</sup> In 1982, Tylenol was contaminated with cyanide. In 1972, members of a neo-Nazi group were arrested with some 80 pounds of typhoid bacillus they had produced. Apparently the group planned to contaminate the water systems of Chicago, St. Louis and other mid-Western cities.<sup>11</sup>

The state-supported terrorism predicted by Brian Jenkins ten years ago is today a reality.<sup>12</sup> Jenkins more recently discussed the implications for future armed conflict and predicted that the world faces "an era of warfare quite different from the model of armed conflict that derives from the world wars of the twentieth century. Warfare in the future will be less destructive than in the first half of the twentieth century, but also less coherent. Warfare will cease to be finite. The distinction between war and peace will dissolve."<sup>13</sup> Terrorists, according to Jenkins, "will attack foreign targets both at home and abroad."<sup>14</sup> The Long Commission, which investigated the October 1983 bombing of the Marine Headquarters in Beirut, found that "terrorist warfare, sponsored by sovereign states or organized political entities to achieve political objectives, is a threat to the United States, and is increasing at an alarming rate."<sup>15</sup>

Can the United States effectively engage in this new form of warfare? The apparent answer to that very important question is no, not at this time. According to the director of the State Department's counterterrorism and emergency planning office, his organization is suffering from "internal confusion" and an inability "to get our act together."<sup>16</sup> This "internal confusion" prevails throughout the federal government because of the approximate 26 different agencies having some role in a terrorist incident and the overlapping jurisdictional disputes which inevitably result.<sup>17</sup> One very important area where the United States has been unable to get its "act together" is collection of intelligence about foreign and domestic terrorists and groups.

Intelligence is absolutely crucial if the United States, or any democracy, ever hopes to have a viable counterterrorism program. A paradox exists in the United States between official government pronouncements and reality. Officially, the United States has espoused an aggressive stance against terrorism. In reality, however, the government lacks the intelligence to provide the decision-makers and implementers with the detailed factual information necessary to formulate and execute a "pre-emptive" or "pro-active" counterterrorism policy.

This lack of intelligence results from many factors, some of which are discussed in this paper. Among the more important are a series of legislative and bureaucratic restraints placed upon the U.S. intelligence community throughout the 1970s. Another factor, which is illustrated by a detailed case study, involves the inherent conflict in a democratic society between society's right and duty to protect itself and its institutions and the individual's rights to privacy, free speech and assembly.

Beginning in the early 1970s, in the aftermath of the Vietnam conflict and the Watergate affair, federal, state and local governments began imposing restrictions on law enforcement and intelligence agencies' collec-

tion of intelligence information. These restrictions ironically began appearing at the very time numerous terrorist actors began their long run on the world stage.

### **FEDERAL PRIVACY LEGISLATION**

In 1974 the original Freedom of Information Act (FOIA) was amended and the Privacy Act was enacted.<sup>18</sup> The original FOIA, enacted in 1966, was based on the presumption that all government information should be available to the public unless there were compelling reasons relating to national security, law enforcement or privacy which justified its exemption. This presumption, in turn, was based on the belief that in a democratic government, the citizens have a right to know what their government is doing.<sup>19</sup> The 1974 Amendment made several fundamental changes in the FOIA, the most significant being that reasonably distinct portions of a document not coming within the Act's exemption were required to be released upon request to determine if records were properly withheld under the Act. This, according to a former Director of the CIA, "resulted in an increasing tendency on the part of the courts to second-guess the judgment of professional intelligence officers that information is properly classified in order, for example, to protect the identity of intelligence sources."<sup>20</sup>

The Privacy Act of 1974, Section 3, permits an individual to determine what records pertaining to the individual are collected, maintained, used or disseminated by government agencies. Section E (7) of the Privacy Act possibly weakens federal security even more than the amended FOIA. That section prohibits the keeping of records which show how any person exercises First Amendment rights unless those records are authorized by statute or gathered in the course of an actual law-enforcement inquiry. In other words, the keeping of records on persons solely because they belong to revolutionary and/or radical groups is barred.

### **IMPACT OF PRIVACY LEGISLATION**

The FOIA, as amended in 1974, has been a significant adverse impact on the operation of both the CIA and FBI. Director Webster, speaking for the FBI, testified before Congress that "the Privacy Act, of course, restricts collection. The Freedom of Information Act ... is an inhibiting factor. We are dealing with the real risk of physical harm to someone who supplies information and is exposed by it."<sup>21</sup> The number of informants willing to assist the FBI declined precipitously because of fear of disclosure from a FOIA release. Over 200 FBI informants "just disappeared in terms of providing any information to the FBI, for fear of compromise, and because under our Freedom of Information Act people are able to get information from files."<sup>22</sup> By July 1978 the FBI had only 42 informants nationwide covering the entire field of terrorist and extremist groups.<sup>23</sup>

FOIA has also had a severe impact upon the CIA. The Chairman of the Senate Select Committee on Intelligence stated that "since the act was passed in 1966 and amended in 1974, we have been denied intelligence information that we normally could be expected to get from foreign sources, friendly foreign services, and some American citizens traveling abroad."<sup>24</sup> During committee hearings in 1981, another committee

member commented that “the mere existence of FOIA has had a negative effect on existing and potential sources of intelligence information both at home and abroad, and has led a number of allied intelligence organizations to reduce the flow of vital intelligence information to our own intelligence agencies.”<sup>25</sup> John McMahon, current Deputy Director of the CIA, testified in more recent hearings that “foreign agents, some very important, have either refused to accept or have terminated a relationship on the grounds that, in their minds — and it is unimportant whether they are right or not — but in their minds the CIA is no longer able to absolutely guarantee that they can be protected.”<sup>26</sup> Later, McMahon succinctly stated the crux of the problem faced not only by the CIA but by the entire United States intelligence community when he said, “there are many more cases of sources who have discontinued a relationship or reduced their information flow based on their fear of disclosure. No one can quantify how much information vital to the national security of the United States has been or will be lost as a result.”<sup>27</sup>

Not only has the FOIA caused a reduction in the number of informants furnishing information to the intelligence agencies, it has required the diversion of considerable resources away from vital intelligence tasks, such as collection and analysis, and toward the administrative processing of FOIA requests. Within the CIA, for instance, the man-hours involved in processing FOIA and Privacy Act requests increased from 110 man-years in 1979, to 144 in 1980.<sup>28</sup> Two years later, over 200 CIA personnel were required to process FOIA requests at a cost of \$3.9 million.<sup>29</sup>

## **STATE PRIVACY LEGISLATION**

Even though the FOIA, being a federal statute, had no direct applicability to state and local governments, nevertheless an indirect impact resulted. Many states have enacted parallel privacy legislation which is more restrictive than the federal statutes. One of the more dramatic examples of a state’s privacy legislation, and the severe impact it had upon American internal security programs — programs designed as the first line of defense against terrorism, espionage and other disorders — occurred in Massachusetts beginning in 1972. A detailed look at the Massachusetts legislation illustrates the fundamental conflict which exists in a democracy between individual rights and freedoms, and societal rights and obligations to protect society and its institutions.

### **MASSACHUSETTS — A CASE STUDY**

The year 1972 was a year of new beginnings. Not only did Massachusetts begin a new era of privacy legislation, a new Department of Defense (DOD) investigative agency also began its existence. On October 1, 1972 the Defense Investigative Service (DIS) became operational. DIS was organized in compliance with President Nixon’s decision of November 5, 1971, to consolidate all DOD personnel security investigations within a single agency.<sup>30</sup> One of the most productive and relevant elements of a personnel security investigation is criminal justice agency information. Criminal record checks “have the highest value in producing information relevant to the suitability of ... employees for access to classified information” according to a DOD official.<sup>31</sup> DIS field offices in Massachusetts

were able to conduct criminal record checks for only three months after the creation of the agency. On January 1, 1973 a new law, passed in 1972, was enacted in Massachusetts which severely restricted access to the Commonwealth's criminal history records.<sup>32</sup> The statute provided that "criminal offender record information shall be disseminated whether directly or through any intermediary, only to (a) criminal justice agencies and (b) such other individuals and agencies as are authorized access to such records by statute."<sup>33</sup>

Thus, in January 1973, the newly created Criminal History Systems Board (CHSB) began holding meetings to certify agencies eligible to receive criminal offender record information. Any agency which desired access to criminal offender record information (that is, the files of the Massachusetts Board of Probation and every police department in the Commonwealth) had to present its case to the CHSB. The CHSB was guided by the two criteria mentioned above. If an agency could show that it was a criminal justice agency, then it was certified for access. The CHSB arbitrarily defined a criminal justice agency as an agency which devoted 95 percent of its time and effort to law enforcement activity. The CHSB found that DIS did not meet the criteria of a criminal justice agency under this criterion. It is ironic that other DOD investigative agencies, such as the Air Force Office of Special Investigations (AFOSI), were granted access even though they no longer held the background investigation mission, while DIS, given the responsibility of that mission, was denied access to the most crucial information necessary to perform its task. The CHSB then applied the second criterion to DIS and other federal agencies to determine if they had statutory authority to receive such information. The CHSB construed the word "statute" very narrowly and held that a "statute" was solely a legislative enactment. Any implementing directives, executive orders, and so forth, were held not to be statutes and, therefore, an agency like DIS, which was created at the direction of the President through an implementing DOD directive, had no statutory authority to receive criminal record information. The action by the CHSB, although it had a great effect on the agencies concerned, did not come to the notice of the public until March 3, 1973 when the first newspaper article appeared concerning the CHSB and its action.<sup>34</sup> From March until May 1973, the CHSB held firm in its denial of access to DIS and 41 other federal and state agencies. During that period the federal government weighed the idea of challenging the Massachusetts law in court. The first public disclosure of the possibility of such an action was reported in the press on May 16, 1973.<sup>35</sup>

In June 1973 the federal government did bring suit against the Commonwealth of Massachusetts and the CHSB, challenging the constitutionality of the statute.<sup>36</sup> In support of the government's contention, the author furnished an affidavit describing the adverse effect of the statute on DIS and stated that DIS, at that time, had conducted approximately 2330 background investigations in Massachusetts since January 1, 1973, in which access to police files had been denied. The affidavit further pointed out that these investigations were mandated by statutory authority, executive orders and regulations and were necessary for the granting of security clearances.

The court test of the Massachusetts statute was set for October 1973 in U.S. District Court, Boston. However, on September 25, 1973, the suit was dropped. In an announcement by Deputy United States Attorney General William Ruckelshaus, the federal court was asked to dismiss the case. Ruckelshaus pledged that the Justice Department "will have the Constitutional and other rights of affected persons very much in mind when it attempts to gain access to the files by Congressional action."<sup>37</sup> No such Congressional action was ever pursued by either the Justice Department or DOD.

Four years passed before further action occurred. Finally, in late 1977 the Massachusetts statute was amended to add a third category of agencies eligible to receive access to Commonwealth felony conviction records where the CHSB determined that the "public interest in access clearly outweighs the security and privacy interests that would be at stake in a dissemination."<sup>38</sup> In November 1978, DIS was certified as eligible to receive felony conviction record information in that category. However, that certification did not solve the problem faced by DIS. DOD officials pointed out to Congress that many people arrested for felonies are either never tried for the felony or the charge is reduced to a misdemeanor.<sup>39</sup> One study found that case dismissals after arrest, without plea bargaining or trial, ranged from 76 percent in Los Angeles to 40 percent in Milwaukee.<sup>40</sup> DOD officials summarized the dilemma: "the denial of access to nonconviction records places adjudicators and military commanders in the position of certifying a person's trustworthiness and suitability without benefit of information which has a direct bearing on that certification."<sup>41</sup>

Another four years elapsed before DIS was finally granted complete access to all Massachusetts criminal history records. On June 30, 1982, almost a decade after it was first denied access, DIS was finally granted unrestricted access to arrest and conviction records. During that ten year hiatus, thousands and thousands of incomplete background investigations were conducted by DIS for DOD on its active duty and civilian members and contractor employees. One can only speculate how many of those individuals would have been denied security clearances and thus access to possible terrorist targets, such as missile maintenance facilities, nuclear submarines, computer centres and command posts, if their criminal, violent or radical histories had been discovered during background investigations.

## **PURGING OF LOCAL INTELLIGENCE FILES**

In addition to denying access to existing records, some state privacy statutes require the purging or destruction of police intelligence files dealing with extremist and radical organizations of both the far Left and far Right. The State of Texas Public Safety Division, for instance, destroyed its files in 1974. New York State Police files have been locked up since 1975. Washington D.C., Baltimore, Pittsburgh and other cities have also destroyed their files. In March 1975 the Chicago Police Department locked up its intelligence files, while in New York City, Los Angeles and other major cities, there has been a wholesale destruction of files, ranging from 90 to 98 percent of the previous total.<sup>42</sup> Many law enforcement agencies at both state and local levels have completely abandoned the

intelligence function and disbanded their domestic intelligence units. An estimated 17,000 municipal law enforcement agencies in the United States in recent years lost between 50 and 75 percent of their total intelligence-gathering capabilities.<sup>43</sup>

There is, therefore, very little intelligence information left at the local, state, federal or, even, international level and what little remains is not always freely shared with other law enforcement or intelligence agencies, despite the highly mobile nature of terrorist groups.

### LEVI GUIDELINES

Not only are informants on the verge of becoming an extinct species because of the FOIA and Privacy Acts, but also because of administrative and bureaucratic restrictions governing the recruitment and utilization of informants. An excellent example of such restrictions was published on March 10, 1976 by Attorney General Edward Levi. The Levi Guidelines for Domestic Security Investigations severely restricted the FBI's ability to conduct domestic security investigations and developed what became known as the criminal standard or predicate.<sup>44</sup> Under the Guidelines, the FBI could not initiate an investigation of individuals or organizations to determine their potential for domestic violence or terrorism unless they had already committed a crime or the commission of violence was imminent. The FBI was also severely restricted in using informants to infiltrate radical or violent groups for the purpose of gathering intelligence on the groups' intentions. As a result of the Levi Guidelines, "domestic security investigations in the FBI underwent a radical change, both in number and in scope."<sup>45</sup> The number of domestic security investigations declined 87 percent in the first nine months following the 1976 announcement of the Levi Guidelines and declined a total of 99 percent between 1976 and November 1983.<sup>46</sup> FBI Director Webster stated publicly on May 3, 1978 that the FBI was "practically out of the domestic security field."<sup>47</sup> On March 31, 1976, one week before the Guidelines went into effect, the FBI was conducting 4,868 domestic security investigations. Six months later, that number was down to 626 and as of August 20, 1982, the FBI had a total of 38 current domestic security investigations, including 22 organizations, and 16 individuals. Of the 22 organizational investigations, only eight were being conducted as full investigations under the Levi Guidelines.<sup>48</sup>

Because of the Levi Guidelines, the FBI could not investigate or collect intelligence on such groups as the Progressive Labor Party (PLP) or the May 19th Communist Organization. The PLP is a "Maoist Communist group that advocates the violent overthrow of the U.S. Government and the infiltration and subversion of the U.S. Armed Forces."<sup>49</sup> The May 19th Communist Organization, an avowed extremist group which is the East Coast branch and an off-shoot of the Prairie Fire Organization, the surface support group of the Weather Underground Organization, has ties to and overlapping membership with known terrorist groups.<sup>50</sup>

The FBI's case on the PLP was closed September 20, 1976, and not reopened, even though the organization publicly proclaimed in the Spring 1978 issue of its magazine *Progressive Labor*, that it intended to take

power in the United States through an “armed struggle” and it was engaged in a program of penetrating the DOD.<sup>51</sup> Even with this information, the FBI, under the Levi Guidelines, was barred from collecting intelligence about, or conducting an investigation of, the PLP because the criminal standard in the Guidelines said that advocacy of violence or rhetoric alone was not sufficient to open a domestic security investigation.

During the five year period 1977-1982, only ten FBI cases were opened by field offices on the basis of advocacy of violence alone, and all ten cases were later determined by FBI Headquarters to have been erroneously opened and were ordered closed.<sup>52</sup>

Although they basically only applied to the FBI, the Levi Guidelines influenced other federal, state and local law enforcement and intelligence agencies. The former Director of the Secret Service estimated that his agency suffered a reduction of 40 to 60 percent in the number of intelligence reports available to it from the FBI on an annual basis, and that there was a further decline of approximately 25 percent in the aggregate amount of intelligence available to the Secret Service because the reports it received from the FBI were less detailed and comprehensive than before the Levi Guidelines. What this added up to, according to the former Director, was that the Secret Service was receiving only 25 percent of the amount of intelligence it received prior to the Levi Guidelines and the era of privacy legislation.<sup>53</sup>

Thus, the decade of the 1970s was an era of restrictions and crippling constraints on United States law enforcement and intelligence agencies. With the constraints came a corresponding reduction and sharing of intelligence. Fortunately, terrorist activity in the United States, at least, did not increase with the implementation of the constraints. “Terrorist activity in the United States declined in the late 1970s, primarily for reasons that had nothing to do with intelligence operations. Some of the previously active groups had been destroyed, and, perhaps more important, some of the causes that inspired political violence — notably, American involvement in the war in Vietnam — no longer existed.”<sup>54</sup>

Overseas, however, the late 1970s and early 1980s saw an increase in terrorist violence and lethality. As the country faced a growing terrorist threat, the constraints on domestic and foreign intelligence began to be relaxed.

Not only was 1980 the beginning of a new decade, it was also the year the pendulum began swinging the other way *vis-à-vis* constraints on the civilian component of the United States intelligence community. Congress, in the face of increasing terrorist violence abroad and domestically, began hearings concerning the emasculation of United States intelligence agencies. Many in Congress began to ask seriously if the Levi Guidelines and privacy legislation were handicapping American efforts to combat the increasing terrorist threat.

## **REAGAN ADMINISTRATION**

The Reagan administration took office in 1981 pledging a campaign against terrorism.<sup>55</sup> In December 1981, the President issued a new Executive Order (EO) governing the U.S. Intelligence Community. The new



order, which replaced a more restrictive EO issued by President Carter in 1976, "clarifies the authorities, responsibilities, and limitations concerning U.S. intelligence effort."<sup>56</sup>

In March 1983, Attorney General Smith issued new guidelines, revising the Levi Guidelines, because the administration concluded that the Levi rules had discouraged FBI agents from aggressively investigating violence-prone groups. The new Smith Guidelines abolished the Levi criminal standard and provided that a "domestic security/terrorism investigation may be initiated when the facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of furthering political or social goals wholly or in part through activities that involve force or violence and a violation of the criminal laws of the United States."<sup>57</sup> The Smith Guidelines also permitted the FBI to send an informant into a group during the initial stages of an investigation. Under the Levi Guidelines, such infiltration was explicitly forbidden in preliminary investigations.<sup>58</sup> The new guidelines made it easier for the government to monitor organizations that had shown an inclination for violent criminal activity, but are currently inactive or dormant. Further, FBI agents could now gather "publicly available information" from periodicals and similar sources so long as the collection of such data did not violate the Privacy Act.<sup>59</sup>

In 1984, Congress, after at least three years of hearings and debate, finally amended the FOIA to exempt CIA operational files from disclosure. During a 1981 hearing, the Deputy Director of the Defense Intelligence Agency (DIA), testified in an unsuccessful attempt to exempt DIA files from FOIA disclosure as well. General Larkin stated that "we are deeply concerned about the chilling effect on our ability to collect information due to the fear of even our closest allies that such information would be released under the Freedom of Information Act."<sup>60</sup> Larkin went on to point out underlying problems created by the FOIA that were likely to have adverse effects upon the quality of future intelligence products. "There have already been expressions of concern on the part of foreign sources to the disclosure problems created by the Act. It is likely these sources will become increasingly reluctant to provide us with vital intelligence data in the future."<sup>61</sup> DIA's arguments were unsuccessful, however; only the CIA was granted Congressional relief from FOIA disclosure.<sup>62</sup>

There has, then, begun a shift toward reestablishing and rebuilding the intelligence capabilities of both the FBI and the CIA. Within DOD, however, there has been no comparable discernable movement. Despite the increasing terrorist threat and the changing nature and scope of terrorism, DOD has not relaxed any of its constraints on intelligence collection which have existed since 1971.

## **CONCLUSION**

If the United States hopes to win the insidious war waged by state-supported terrorism, or at least reduce the number of U.S. casualties in that war, it needs to continue to rebuild and revitalize its intelligence capability. While satellites and other technological gadgetry are necessary to collect intelligence to fight conventional and nuclear wars, accurate and timely human intelligence is necessary to wage war against terrorism.<sup>63</sup>

Government officials at all levels, civilian and military, need to recognize the vital importance of intelligence in the war against terrorism. Those officials must place the same emphasis on intelligence in the war against terrorism that they place in fighting a conventional or nuclear war.

A crucial requirement for defeating any political terrorist campaign therefore must be the development of high quality intelligence, for unless the security authorities are fortunate enough to capture a terrorist red-handed at the scene of the crime, it is only by sifting through comprehensive and accurate intelligence data that the police have any hope of locating the terrorists. It is all very well engaging in fine rhetoric about maximizing punishment and minimizing rewards for terrorists. In order to make such a hard line effective the government and security chiefs need to know a great deal about the groups and individuals that are seeking rewards by terrorism, about their aims, political motivations and alignments, leadership, individual members, logistic and financial resources and organizational structures.<sup>64</sup>

The initiatives taken by the Reagan administration and Congress to revitalize the U.S. intelligence community are but a first step and must be continued and expanded. Federal, state and local intelligence agencies should be permitted to collect the intelligence they need to protect American society from terrorist attack without being hampered by overly restrictive statutory rules and regulations. Congress should grant the DOD intelligence and counterintelligence agencies the same exemption from FOIA disclosure that the CIA now enjoys. Congress should resist any further attempts to restrict the operation of U.S. intelligence agencies and should enact legislation which specifically grants exemption from disclosure the identity of any informant, foreign agent or source who provides intelligence information concerning terrorist activity. Local and state governments need to rebuild their domestic intelligence units which were disbanded during the 1970s. Local law enforcement agencies must be able to collect intelligence on such groups as the PLP and the May 19th Communist Organization, which are publicly known to engage in or advocate violence and disorder. Law enforcement and intelligence agencies at all levels of government need to share freely information about terrorist groups, without being hampered by restrictive state and federal privacy statutes. Administrative and bureaucratic restrictions which hamper effective intelligence collection also need to be closely examined and replaced with more realistic and workable guidelines. The replacement of the Levi Guidelines by the Smith Guidelines is an excellent case in point.

Due to the compartmentalized and clandestine nature of terrorism, it is a very difficult threat to counter. Terrorists have the initiative. They control the element of surprise. Terrorists can attack any target at any time anywhere they choose. Purely defensive measures, such as barriers and increased physical security, will never succeed in protecting all of America's resources all of the time, all around the world. Offensive measures are required to fight terrorism and intelligence is required for the planning and execution of offensive measures.

Now is the time to rebuild the human intelligence capability — not after a new cause which inspires political violence — not after an American city suffers a major terrorist attack such as the car bombings occurring almost daily in Beirut — not after countless Americans are killed or injured by a nuclear, chemical or biological terrorist attack.

Until the United States government recognizes the reality that terrorism is a form of warfare and that intelligence is absolutely necessary in war, Americans will continue to die in terrorist attacks. One American who understands the reality of terrorism is Diego Ascencio. Mr. Ascencio, former United States Ambassador to Colombia, was held hostage inside the Dominican Republic Embassy in Bogota for 61 days by a Colombian terrorist group, M-19. Reflecting on the fact that he almost died because of a lack of intelligence information about his captors, Ambassador Ascencio's words should serve as the charter and bulwark of a strong, viable and cohesive United States counterterrorism program grounded upon a strong intelligence capability:

Any democracy that vitiates such a precious political instrument (i.e. intelligence) deserves everything that happens to it. The destruction of our intelligence capability in the face of the activities of the KGB and its minions throughout the world strikes me as the height of lunacy. Those who advocate the unilateral dismantling of our intelligence capacity are guilty of incredible naivete. I'm not in favor of rogue elephants out of control of the appropriate authorities nor do I condone transgressions against the civil rights of Americans or anyone else, for that matter, but I advocate strongly the need for a sensitive and capable intelligence community. Our lives depend on it.<sup>65</sup>

#### Footnotes

1. U.S., Department of Defense, *Report of the DOD Commission on Beirut International Airport Terrorist Act, October 23, 1983*, p. 3
2. U.S., Congress, House, Committee of Foreign Affairs, *Legislation to Combat International Terrorism*, 98th Cong., 1st and 2nd sess., 1983-84, p. 78.
3. *Ibid.*
4. *Ibid.*, p. 79.
5. *Ibid.*
6. U.S., Department of Justice, *FBI Analysis of Terrorist Incidents in the United States 1983*, p. 2.
7. Stuart Taylor, "When Is A Terrorist Not Necessarily A Terrorist?," *New York Times*, December 12, 1984, p. 14.
8. *Ibid.*
9. *Ibid.*
10. *Washington Post*, June 21, 1983.
11. Richard Charles Clark, *Technological Terrorism* (Old Greenwich: Devin-Adair Company, 1980), p. 111.
12. Brian Jenkins, *International Terrorism — A New Mode of Conflict* (Los Angeles: Current Publications, 1975), p. 20.

13. Brian Jenkins, *New Modes of Conflict* (Santa Monica: Rand Corporation, 1983), p. 16.
14. *Ibid.*
15. U.S., Department of Defense, *Report of the DOD Commission on Beirut International Airport Terrorist Act, October 23, 1983*, p. 4.
16. Testimony of Ambassador Robert B. Oakley before the House Foreign Affairs Committee's Subcommittee on Arms Control and International Operations on March 5, 1985 as reported in *Washington Post*, March 6, 1985, p. 8.
17. For a detailed discussion of the federal government's bureaucratic machinery established to deal with terrorism, the reader should consult Ernest Evans, *Calling a Truce to Terror: The American Response to International Terrorism* (Westport, Connecticut: Greenwood Press, 1979); William Regis Farrell, *The U.S. Government Response to Terrorism: In Search of an Effective Strategy* (Boulder, Colorado: Westview Press, 1982); and James B. Motley, *U.S. Strategy to Counter Domestic Political Terrorism* (Washington, D.C.: National Defense University Press, 1983).
18. 5 U.S.C. 552 and 5 U.S.C. 552a.
19. U.S., Congress, Senate, Subcommittee on Criminal Laws and Procedures of Judiciary Committee, *The Erosion of Law Enforcement Intelligence and Its Impact On The Public Safety*, Committee Print, 95th Cong., 2nd sess., 1978.
20. U.S., Congress, Senate, Select Committee on Intelligence, *Intelligence Reform Act of 1981*, 97th Cong., 1st sess., 1981, p. 13.
21. U.S., Congress, Senate, Subcommittee on Security And Terrorism of The Judiciary Committee, *Domestic Security (Levi) Guidelines*, 97th Cong., 2nd sess., 1982, p. 26.
22. U.S., Congress, House, Subcommittee on Civil and Constitutional Rights of The Judiciary Committee, *Federal Capabilities in Crisis Management and Terrorism*, 96th Cong., 1st and 2nd sess., 1979-1980, p. 13.
23. U.S., Congress, Senate, Subcommittee on Criminal Laws and Procedures of the Judiciary Committee, *The Erosion of Law Enforcement Intelligence and Its Impact On The Public Safety*, Committee Print, 95th Cong., 2nd sess., 1978.
24. U.S., Congress, Senate, Select Committee on Intelligence, *Intelligence Reform Act of 1981*, 97th Cong., 1st sess., 1981, p. 1.
25. *Ibid.*, p. 4.
26. U.S., Congress, Senate, Select Committee on Intelligence, *An Amendment To The National Security Act of 1947*, Hearings on S.1234, 98th Cong., 1st sess., 1983, p. 7.
27. *Ibid.*
28. U.S., Congress, Senate, Select Committee on Intelligence, *Intelligence Reform Act of 1981*, 97th Cong., 1st sess., 1981, p. 7.
29. U.S., Congress, Senate, Select Committee on Intelligence, *An Amendment To The National Security Act of 1947*, Hearings on S.1234, 98th Cong., 1st sess., 1983, p. 28.
30. Department of Defense, Washington, D.C., *Commanders Digest*, Vol. 13, no. 6 (December 12, 1972).
31. U.S. Congress, House, Subcommittee on Oversight of the Permanent Select Committee on Intelligence, *Pre-Employment Security Procedures of The Intelligence Agencies*, 96th Cong., 1st sess., 1979, p. 188.
32. Massachusetts General Laws, Chapter 6, Section 167-178.
33. *Ibid.*, Sec. 172 (a) and (b).
34. *Boston Globe*, March 3, 1973.
35. *Boston Globe*, May 16, 1973.
36. United States of America and Small Business Administration of the United States v. Commonwealth of Massachusetts and the Criminal History Systems Board of the Commonwealth of Massachusetts, Civil Action No. 73-1809-T, June 18, 1973.
37. *Boston Globe*, September 26, 1973.
38. U.S., Congress, House, Subcommittee on Oversight of the Permanent Select Committee on Intelligence, *Pre-Employment Security Procedures of The Intelligence Agencies*, 96th Cong., 1st sess., 1979, p. 170.

39. *Ibid.*, p. 190.
40. *Ibid.*
41. *Ibid.*
42. *The Erosion of Law Enforcement Intelligence and Its Impact On The Public Safety*, S. Rept. 1978, 95th Cong., 2nd sess., 1978, p. 2.
43. *Ibid.*, p. 38.
44. U.S., Congress, Senate, *Impact of Attorney General's Guidelines for Domestic Security Investigations (The Levi Guidelines)*, S. Rept. 1983, 98th Cong., 1st sess., 1983, p. 7
45. *Ibid.*
46. *Ibid.*, p. 5.
47. *Ibid.*
48. *Ibid.*, pp. 3-5.
49. *Ibid.*, p. 26.
50. *Ibid.*, p. 20.
51. U.S., Congress, House, Subcommittee on Oversight of the Permanent Select Committee on Intelligence, *Pre-Employment Security Procedures of the Intelligence Agencies*, 96th Cong., 1st sess., 1979, p. 207.
52. U.S., Congress, Senate, Subcommittee on Security and Terrorism of the Judiciary Committee, *Domestic Security (Levi Guidelines)*, 97th Cong., 2nd sess., 1982, pp. 68-69.
53. U.S., Congress, Senate, *The Erosion of Law Enforcement Intelligence and Its Impact On The Public Safety*, Report of the Subcommittee on Criminal Laws and Procedures To The Senate Judiciary Committee, 95th Cong., 2nd sess., 1978, p. 38.
54. Brian M. Jenkins, Marvin M. Lavin and Sorrel Wildhorn, *Intelligence Constraints of the 1970s and Domestic Terrorism: Vol. 1, Effects on the Incidence, Investigation, and Prosecution of Terrorist Activity* (Santa Monica: Rand Corporation, 1982), p. 107.
55. *New York Times*, January 30, 1981.
56. *New York Times*, December 19, 1981. During a discussion with Admiral Stansfield Turner at the University of Pittsburgh on March 7, 1985, the former Director of the CIA expressed his opinion that the Reagan Executive Order is a mistake and will lead to domestic abuses which existed in the early 1970s.
57. *New York Times*, March 8, 1983.
58. *Ibid.*
59. *Ibid.*
60. U.S., Congress, Senate, Select Committee on Intelligence, 97th Cong., 1st sess., 1981, p. 27.
61. *Ibid.*, p. 34.
62. According to the Executive Director of the American Civil Liberties Union (ACLU) the Congressional relief granted the CIA does not exempt the CIA from searching and reviewing its files in response to the FOIA request. In a January 17, 1985 letter to the *New York Times* which was printed on February 4, 1985, the Director says: "... the legislation specifically provides that when individuals ask for information about themselves, the CIA is required to search and review its operational files, as if the new legislation didn't exist. The same is true for requests about covert operations. The same is true for requests about allegations of improper or illegal conduct by the CIA, such as illegal infiltration of political organizations. There are other important exceptions. All these exceptions were included in the legislation at the ACLU's insistence to assure that the CIA would not be able legally to hide, and therefore withhold, information it was otherwise obligated to disclose. If these exceptions had not been included, if the bill had exempted the CIA from ever having to search and review its operational files ... we would have opposed it."
63. Admiral Stansfield Turner, former CIA Director, commented on March 7, 1985 that technology and technical intelligence collection systems, including satellites, can play a very important role in gathering intelligence on terrorist groups and their activities.
64. *New York Times*, March 1, 1979.
65. Diego and Nancy Ascencio, *Our Man Is Inside* (Boston: Little, Brown and Co., 1982), pp. 224-225.