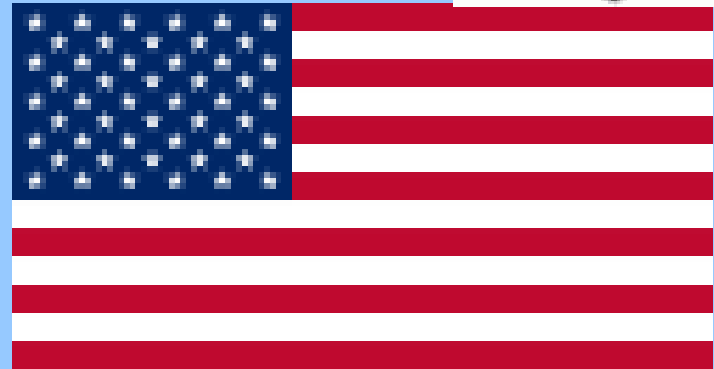


Balancing Intelligence Gathering and Protection of Civil Liberties

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- When was this?

“The Committee recognizes that the government had a responsibility to act in the face of the very real dangers presented by these developments [threats to the Country]. But appropriate restraints, controls, and prohibitions on intelligence collection were not devised; distinctions between legitimate targets of investigations and innocent citizens were forgotten; and the Government’s actions were never examined for their effects on the constitutional rights of Americans....”

1975

- Church Committee
“The Overbreadth
of Domestic
Intelligence
Activity” Major Findings,
page 171
- COINTELPRO;
CHAOS;
SHAMROCK



Handschu v. Special Services Division, 349 F.Supp. 766 (S.D.N.Y. 1972); *Handschu v. Special Services Division*, 605 F.Supp. 1384 (S.D.N.Y. 1985); *Handschu v. Special Services Division*, 787 F.2d 828 (2nd Cir. 1986)

- Class action civil rights lawsuit attacking surveillance activities of the Security and Investigation Section (SIS) of the NYPD
- Complaint alleged SIS activities had a “chilling effect” on exercise of constitutional rights
- SIS maintained reports, lists, dossiers which included people, places and activities unrelated to legitimate law enforcement activities

Handschu Settlement – Court-ordered Guidelines

- Access to information within the SIS files
- Future collection, retention and dissemination of information
- Authority overseeing the activities of the “Intelligence Division” consisting of the First Deputy and Deputy Police Commissioner and a civilian appointed by the Mayor

Handschu Guidelines established

- Types of authorized investigations:
 - Event planning inquiry (limited - make inquiries to preserve peace and assign personnel for crowd and traffic control; identify themselves as police officers), and
 - Investigation
- Predication requirements
- Types of investigative activities that could be conducted

Con't

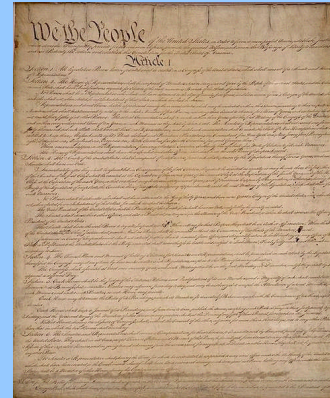
- Reporting requirement to the “Authority Board” describing the predication to initiate an Investigation
- Approval of certain techniques, i.e., undercover techniques by the Authority Board
- Review of Records – by person, group or organization who has reason to believe they are named in intelligence files

Comparable Resolutions to Intelligence-gathering Activities

- Seattle – by way of legislation
- Chicago: *Alliance to End Repression v. City of Chicago*, 561 F.Supp. 537 (N.D.Ill. 1982); *Alliance to End Repression v. Rochford*, 656 F.2d 537 (N.D..Ill. 1982)
- Los Angeles – *Coalition Against Police Abuse v. Board of Police Commissioners*, No. 243-458 (L.A.County Ct. filed Dec. 16, 1982).

DID THE EVENTS OF 9/11 CHANGE ALL OF THIS?

- Balancing governmental interests in intelligence collection with civil liberties
- scrutiny and accountability will never change



INCORPORATING THE LESSONS OF THE
PAST INTO TODAY'S
CRIMINAL INTELLIGENCE
COLLECTION AND SHARING MODEL

Criminal Intelligence Systems Operating Policies

28 C.F.R. Part 23

- Purpose: constitutional and privacy protections
- All **criminal intelligence** systems supported with federal funds
- Collection, retention and dissemination of criminal intelligence

- A federally funded project shall collect and maintain criminal intelligence information concerning an individual only if there is **reasonable suspicion** that the individual is involved in criminal conduct or activity *and* the information is relevant to that criminal conduct or activity
- Prohibition on collecting and maintaining information when the information relates solely to First Amendment activities

- Security of the information
 - Restricting access to the information
 - Stored in a manner protecting its integrity
- Dissemination:
 - Need to Know and a Right to Know
 - Related to a law enforcement activity

- Periodic review and purge if appropriate
 - Retained if relevant/necessary
 - Destruction of information if determined to be misleading, obsolete, unreliable
 - Document review of information

Commission on the Accreditation of Law Enforcement Agencies (CALEA)

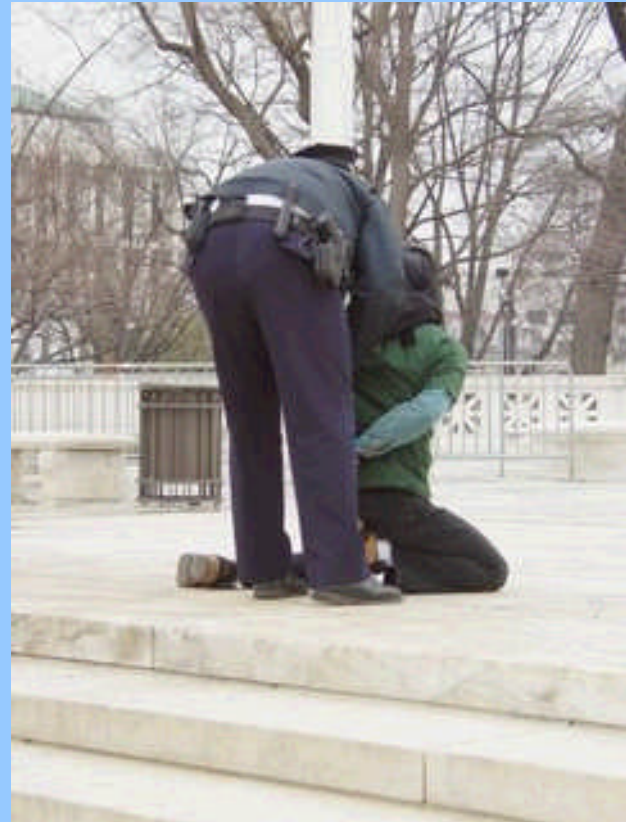
- Recommendations for agencies with intelligence collection programs
- Establish procedures to ensure:
 - collection *and* retention of information relates to criminal conduct posing a threat to the community
 - Review and purge out-of-date, unreliable information

IACP Model Policy National Criminal Intelligence Sharing Plan

- Summit on information sharing within law enforcement (3/2002)
 - Recognition of potential legal and civil liberties issues
 - Promote accountability measures as spelled out in 28 C.F.R. Part 23

Policy Must

- Investigative activities should not be conducted, nor information collected and retained solely for the purpose of monitoring the exercise of rights protected under the First Amendment



Executive Branch Policy on Profiling

- 2/27/2001 - President Bush directed the Attorney General to review the use by federal law enforcement of race as a factor in law enforcement activities
- DOJ developed guidance for all federal law enforcement on the role of race in law enforcement

DOJ Guidance – “Fact Sheet”

http://www.usdoj.gov/opa/pr/2003/June/racial_profiling_fact_sheet.pdf

- Guidance requires more restrictions on the use of race and ethnicity than does Constitution
- Routine patrol duties that do not involve the response to ongoing crimes or the prevention of catastrophic events or harm to national security must be carried out without regard to race or ethnicity
- Acting on specific suspect information is permissible

DOJ Guidance and National Security Concerns

- Profiling guidance recognizes that race and ethnicity may be used in terrorist identification *but only* to the extent permitted by law
- Prohibition on use of general stereotypes remains

