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Undercover Police Work *Pat 1/31/75*

Comprehensive mechanisms for intelligence gathering and exchange have become commonplace within law enforcement agencies of America only during the last decade. The Task Force on Organized Crime in 1967 noted that effective programs then existed in only a handful of cities.

The function of law enforcement intelligence units, until the 1960s was primarily to uncover the presence, extent, and operations of organized crime. But events during the 1960s were to change the purpose and extent of the law enforcement intelligence gathering. The sometimes peaceful, sometimes disruptive demonstrations and the destructive urban disorders combined to give police executives of the 1960s experiences which were denied to many of their predecessors.

Planning and coping with large demonstrations, whether peaceful or disruptive, required that police chiefs have more information than was usually available through regular channels of information.

The spontaneous urban disorders posed even more difficult intelligence gathering tasks. Police departments were forced not only to monitor the activities, but to develop a capacity to evaluate the effect of various rhetoric on the public mood.

Intelligence gathering was needed not just in pre-planning for demonstrations or for urban disorders, of course, but also for on-the-scene reporting of events as they occurred.

Consequently, the 1968 National Advisory Commission on Civil Disorders, recommended establishment of police intelligence units to gather, evaluate, analyze, and disseminate information on potential as well as actual disorders.

There is a fundamental difference between police intelligence and more common police criminal investigations, and it is that difference which makes people uncomfortable about intelligence operations. The intelligence operation collects information about peo-

ple who may not be violating the law and, in any event, are unlikely to be formally accused and allowed to defend themselves against the intelligence findings.

In the case of organized crime, of course, the accumulated intelligence information may result in further investigation leading to criminal prosecution, but much unverified accusatory intelligence data may still remain in unchallengeable files.

The final objectives of intelligence gathering are commendable: to uncover and combat organized crime; to predict and to prepare for potential or real disorder. It may be that the function has become indispensable, but the process is certainly worrisome.

There is a constant hazard that an undercover operative will become overzealous and engage in unapproved or unlawful tactics to obtain information. This is a particularly great hazard when paid informants are used. Worse yet, to infiltrate an organized crime group may force an operative to participate in unlawful activities. There is constant hazard of an operative's being forced into a quasi-leadership role which will cast the operative as an agent provocateur.

Police executives who receive intelligence reports accusing important people in government of improper or unlawful activities are faced with a dilemma of whether or not to report such information, perhaps unproven, to their superiors. (The problem is even more confusing when the information is about their superiors.)

No one should really be surprised that intelligence reports often have included information about political leaders, particularly during the turmoil of the 1960s, when massive demonstrations often were organized as political rallies and when some urban disorders seemed to derive from political events. Some of the harshest rhetoric of those times came out of the mouths of individuals who at least by

self definition and sometimes by actuality were "political leaders."

When an agency begins monitoring the activities of an organization criminal who is outwardly respectable, it is unsurprising that politicians, and judges, and policemen, are going to appear among his circle of acquaintances. And the worst of it is that many of those whose names appear may be innocent of any wrongdoing, but their innocence may not be evident to an intelligence analyst.

The worst effects of intelligence gathering, in my view, are more subtle, however. The constant looking for conspiracy has a tendency to give the law enforcement officials involved an unduly suspicious view of the society they serve. At the other end of the process, existence of intelligence procedures tends to make those who believe they are watched suspicious even of their friends. Perhaps this is not too high a price to pay to combat organized crime, but could the same be said of urban activists of yesteryear?

In 1975, when hindsight clearly indicates that the events of the 1960s did not evolve into a violent revolution, it is hard to recall how uncertain the next day often seemed. Care must be taken that new safeguards against excesses of intelligence gathering do not cripple the government's ability to cope with future uncertainties.

Moreover, discounting even possible uncertainties of the future, it is clear that intelligence gathering is virtually indispensable to effective countermeasures against organized crime.

There have been suggestions of late that various intelligence activities be prohibited by law. In my judgment, the problem is too complex, and the operations are too varied for effective legislative treatment. What clearly is needed, though, is federal leadership, presumably from the Department of Justice, for development of standards of ethics for future guidance of intelligence collectors and users at all levels of government.