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INTEGRATING DRUG INTELLIGENCE

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**INTEGRATING DRUG INTELLIGENCE**

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20. ABSTRACT (Continue on reverse side if necessary and identify by block number) <span style="float: right;">THIS PAGE</span>  National Security Research Paper published by the National Security Program, John F. Kennedy School of Government, Harvard University. Reports on results of research focused on the problems associated with integrating drug intelligence. Report is based on site visits to existing U.S. drug intelligence fusion centers, review of pertinent literature, and personal interviews with supply-side drug enforcement planners and operators in Congress, ONDCP,		

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DOD, USCG, and national law enforcement and intelligence agencies. The paper cites the significant role of intelligence in the counter-narcotic effort and identifies obstacles to efficient and effective employment. Major areas addressed include: Developing drug related intelligence; Improving law enforcement agency intelligence; Reorienting national priorities; Integrating law enforcement intelligence with foreign intelligence; and, Sharing drug intelligence with foreign law enforcement agencies.

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## EXECUTIVE SUMMARY

Intelligence has a significant role in the drug war. As drug cartels continue to modify smuggling techniques and transit routes and improve their own counter-intelligence capability a well integrated drug intelligence support system will become increasingly important to enforcement operations. The counter-narcotic effort requires the full spectrum of intelligence support: strategic, for assessment of trends and patterns; operational, to assist investigations and the prosecution process; and tactical, to provide immediate actionable criminal information to intelligence operators. Traditional law enforcement intelligence collection systems of HUMINT and COMINT must be integrated and enhanced with national collection capabilities in these systems, augmented by SIGINT and ELINT. Improving US and Soviet relations provide an opportunity to redirect a prudent proportion of US intelligence collection and analysis capability to counter-narcotics.

A significant obstacle to enhanced intelligence support for the drug war is existing inefficiencies in law enforcement intelligence. Identified problems include a law enforcement incentive system driven by statistics and resource competition, insufficient intelligence resources, a law enforcement intelligence philosophy directed at prosecution rather than a strategic

approach, and the lack of an integrated interagency intelligence system. Our recommendations for improvement stress the following:

- ♦ Evaluate and reward agencies and personnel for interagency cooperation.
- ♦ Create incentives to get the best people in interagency tours.
- ♦ Give Title 21 authority to the US Customs Service.
- ♦ Continue to increase DOD and US foreign intelligence support to drug enforcement intelligence.
- ♦ Give the Director of ONDCP authority to allocate drug intelligence funds.

If the nation is serious about winning the war against drugs, it may be necessary to reorient our national legal priorities. Legal restrictions currently in place to protect Americans from unreasonable searches and to ensure privacy severely hinder the drug intelligence and enforcement effort. Consideration should be given to a temporary abridgement of citizen rights, subject to specific congressional and judicial oversight, to target US Persons involved in drug trafficking. We make some additional recommendations on this issue:

- ♦ Change EO 12333 and the National Security Act to expand drug intelligence collection and analysis on US Persons.
- ♦ Give DOD and the national foreign intelligence agencies Privacy Act exemptions.
- ♦ Allow national foreign intelligence and DOD analysts full access to LEA databases.

- ♦ Engage maximum declassification and sanitization of drug-related intelligence.
- ♦ Change national collection priorities to support drug intelligence.
- ♦ Establish a "cut-out" system to protect sensitive information used in criminal prosecution of drug cases.
- ♦ Establish checks and balances to preclude abuses in the use of intelligence to prosecute drug offenders.

Efforts to integrate national foreign intelligence with law enforcement intelligence are currently being complicated by significant differences in agency intelligence philosophy, methods, and structure and database incompatibilities. We suggest changes in this area:

- ♦ Shift the law enforcement intelligence focus from a strictly prosecutorial one to a broader strategic view of criminal methods and infrastructure.
- ♦ Enhance interagency cooperation and understanding by increasing exchange positions in joint law enforcement and national foreign intelligence duty.
- ♦ Create a Drug Warrior Preparation Center to provide integrated training in drug intelligence and joint enforcement operations.
- ♦ Appoint the head of the new National Drug Intelligence Center as the Director of Central Drug Intelligence, and give him authority to coordinate all drug intelligence support.

- ♦ Establish a Director of National Intelligence to coordinate both law enforcement and national foreign intelligence activities.
- ♦ Create an intelligence center to integrate law enforcement and US foreign intelligence.

Finally, the transnational nature of drug cartels and their trafficking operations requires that the national drug control strategy of the US include aggressive international drug intelligence and enforcement initiatives. We believe these initiatives should include:

- ♦ Enhance the role of INTERPOL in international drug enforcement.
- ♦ Use US foreign intelligence assets to determine the reliability of foreign law enforcement personnel.
- ♦ Seek bi-lateral and multi-lateral agreements to enhance international drug enforcement.
- ♦ Increase the use of foreign prosecution for drug suspects.
- ♦ Use the FBI organized crime intelligence method for targeting drug cartels.

## CHAPTER 1

### INTRODUCTION

President Bush in his 5 September 1989 speech to the nation called America's drug problem "the toughest domestic challenge we've faced in decades."<sup>1</sup> In a Congressional Select Committee hearing on 26 April 1989, Representative Fauntroy characterized the problem by stating "the enemy is anyone, anywhere who cooperates with the drug cartels in production, transshipment, marketing or the consumption of illegal drugs and narcotics."<sup>2</sup> Representative Fauntroy further stated that anyone involved in any part of the drug epidemic threatens the national security of the United States.<sup>3</sup>

In response to this national crisis, Congress established the Office of National Drug Control Policy (ONDCP), which has produced a unified and integrated national policy and strategy aimed at reducing drug use in America. A key element of the national strategy is to interdict the flow of illegal drugs coming into the United States. To successfully accomplish this action, the United

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<sup>1</sup> Bernard Weinraub, "President Offers Strategy For US on Drug Control," New York Times 6 Sep. 1989, natl. ed.: 1+.

<sup>2</sup> US House, 101st Congress, 1st session, Select Committee on Narcotics Abuse and Control, Drugs and Latin America: Economic and Political Impact and U.S. Policy Options, (Washington: GPO, 1989) XVII.

<sup>3</sup> House Select Committee, Drugs and Latin America, XVII.

States must have more accurate, timely, and useable intelligence on drug production and trafficking operations.

#### **STATEMENT OF THE PROBLEM**

If America's drug problem is truly a grave national security and domestic crisis, then the United States must employ sufficient assets and systems to provide timely, actionable, and predictive intelligence to improve interdiction efforts and increase prosecutions of drug traffickers. The United States is currently not developing sufficient drug-related intelligence, for numerous reasons that this paper will discuss. Therefore, the basic question and purpose of this study is to ask how to improve and integrate all drug-related intelligence and disseminate it to the proper foreign and domestic law enforcement agencies for appropriate action.

Law enforcement agencies (LEAs) collect information primarily to further an investigation in an attempt to prosecute a criminal case. They rarely conduct long-term intelligence analysis as do the national foreign intelligence collectors, nor do they have the technical collection capabilities of the national agencies.<sup>4</sup> Because of this disparity in collection and analytical capabilities, the administration and Congress must design a system to integrate all drug-related intelligence collection and analysis and develop a mechanism to provide it to the LEAs.

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<sup>4</sup> Robert V. Fernandez, Chief, Special Intelligence Unit, DEA Headquarters, personal interview, 16 Nov. 1989.

## EXTENT OF THE PROBLEM

There are three major obstacles that illustrate the lack of efficient and effective use of all drug-related intelligence. They are the cultural differences between the law enforcement and the national foreign intelligence agencies, certain legal restrictions imposed on the national foreign intelligence community, and a systemic difference between the way the LEAs and the national foreign intelligence community manage their intelligence data.

The national foreign intelligence collectors are reluctant to provide the LEAs with all drug-related intelligence because of possible compromise of sensitive sources and methods. The LEAs are also reluctant to use this intelligence, fearing problems in the defendant's discovery process during a trial, particularly if a case is primarily based on evidence from a highly classified national level intelligence source. Additionally, the LEAs are reluctant to share all of their intelligence or drug-related information with other LEAs and the national foreign intelligence collection community.<sup>5</sup> The LEAs are concerned with maintaining security of their sources and information, but also want to assure their agencies get the credit for a successful "bust".

One of the basic problems impeding effective and efficient intelligence collection and analysis in support of LEA arrests, seizures, and prosecutorial efforts is the prohibition placed on the national foreign intelligence community with regard to

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<sup>5</sup> Craig Coy, Commander, USCG, Strategic Planning Staff, US Coast Guard Headquarters, personal interview, 11 Oct. 1989.

collection of intelligence and maintenance of files on US Persons. Although the national foreign intelligence community is authorized to collect intelligence on international narcotic trafficking, legal concerns over maintaining files and performing analysis on information about US Persons hinders effective intelligence operations that could help the total drug enforcement effort.

The data management differences between the two groups is also significant. The national foreign intelligence community views intelligence collection and analysis as a long-term comprehensive process; as a result, these agencies devote considerable assets and force structure to collect, maintain, analyze, and collate all intelligence data. National foreign intelligence agencies operate in all three spectrums of intelligence, commonly called strategic, operational, and tactical. Decision makers view intelligence as a precursor to action, either in support of the immediate tactical situation for the operational commander's overall plan of action, or for strategic analysis that influences policy decisions at the national level.

Since the LEAs normally view intelligence for use in the immediate criminal cases under development, there is less effort devoted to maintenance, analysis, and collation of this intelligence data for future use.<sup>6</sup> The LEAs generally are not automated to the degree the national foreign intelligence community is nor do they apply as many resources to the analytical effort.

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<sup>6</sup> John C. Trainor, CAPT, USCG, Chief, Coast Guard Intelligence Coordination Center, Headquarters US Coast Guard, personal interview, 11 Oct. 1989.

Some law enforcement agencies deal in hard copy data, which is difficult to retrieve in a timely fashion.<sup>7</sup> National foreign intelligence agencies are highly automated and possess systems that greatly assist timely and accurate analysis.

#### **ASSUMPTIONS**

There are four basic assumptions guiding this research paper. First, because of the cultural, legal, and systemic differences between the LEAs and national foreign intelligence communities, there will always be problems with efficient collection, analysis, and sharing of drug-related intelligence. The LEAs generally view intelligence as investigative information used to further their efforts to prosecute a particular case. The national foreign intelligence community, on the other hand, collects massive amounts of intelligence data for analysis and use in diplomatic or military action.

Second, the US must satisfactorily integrate all drug-related intelligence to successfully reduce the supply of illegal drugs coming into America. National foreign intelligence collection and analysis must be integrated into the total law enforcement effort to have a successful counter-narcotics program. Conversely, LEA drug intelligence must also be integrated into the national foreign intelligence databases. Additionally, analysts from both communities must have equal access to all drug-related intelligence data.

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<sup>7</sup>Fernandez interview.

Thirdly, there will be limited increases in funding and major reprioritization or reallocation of existing resources. Due to the budget deficit and the Presidential "no tax" pledge, we assume that no significant amount of new money will be available for the drug war. Therefore, funding must come from existing programs. It is also possible that a major reduction in DOD force structure might be necessary to provide budgetary savings and to fund drug interdiction efforts across the spectrum.

Finally, the overall reduction of US and Soviet tensions will make additional Department of Defense (DOD) assets available for increased drug interdiction and intelligence efforts. Assuming that fewer forces will be needed for the nation's deterrence mission, then an increasingly larger portion of DOD operational and intelligence units along with other national foreign intelligence assets could be employed in interdiction and intelligence missions in support of the war on drugs.

#### **FOCUS OF THE ANALYSIS**

We acknowledge that no single system or effort will win the war on drugs. Illegal trafficking of drugs across American borders is an affront to US territorial integrity; therefore the government has little choice but to make an effort to stop this flow. Although interdiction alone cannot stop the flow of illegal drugs coming into the US, it can raise the level of personal and financial risk to the drug traffickers and disrupt their

operations.<sup>8</sup> It will take a dedicated and concentrated effort both in decreasing the demand for drugs at home and interdicting the supply off shore to be successful. This paper will deal with the supply interdiction activity of the war on drugs, specifically with what could be done to unify the efforts of the law enforcement and national foreign intelligence communities so that all drug-related intelligence collection, analysis, and dissemination could be integrated to support the entire counter-narcotic effort.

#### METHODOLOGY

This paper is the result of readings in current literature, personal interviews, symposium discussions, and on-site visits. The authors also bring to the research extensive experience in military police, intelligence, and Coast Guard counter-narcotic operations.

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<sup>8</sup> US White House, National Drug Control Strategy, (Washington: GPO, 1990) 65.

## CHAPTER 2

### DEVELOPING DRUG-RELATED INTELLIGENCE

The war on drugs cannot be waged successfully, much less won, unless the US increases intelligence collection systems to support the entire counter-narcotics effort. In this chapter we will discuss the important role of intelligence in the counter-narcotics effort, how the intelligence system works, and why it is so important for the long-term counter-narcotic effort. We will be discussing the national foreign intelligence agencies, which by charter are organizations that collect information concerning foreign governments and entities but are restricted from collecting information on Americans in all but exceptional cases.

### ROLE OF INTELLIGENCE IN THE DRUG WAR

The Chief of Coast Guard Intelligence recently stated that approximately two-thirds of their interdiction and seizures of illegal drugs on the high seas are a result of intelligence rather than "cold hits," or random stop-and-search incidents.<sup>9</sup> This current operational trend is significant because more intelligence is now being applied to the counter-narcotics effort than prior to 1989. Also, the drug traffickers are making monitoring and

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<sup>9</sup> R. Lee Carpenter, Capt, USCG, Chief, Intelligence Division, US Coast Guard Headquarters, AFCEA Symposium, Intelligence Support to the War on Drugs (Bolling, Md.: Bolling AFB, 1 Dec. 1989).

interdiction more difficult because they are varying their transit and operations and are far less predictable than in recent years.<sup>10</sup> When DOD further increases its assets and resources for the intelligence mission, interdiction successes should be even greater because the Coast Guard and other LEAs will have more specific intelligence on which to act.

A very important ongoing intelligence effort is the location and estimation of coca and poppy crops worldwide. This intelligence not only provides valuable information for intelligence estimates and further analysis, but also supports eradication efforts. Coca and poppy crop eradication is a politically sensitive problem because of the economic havoc it causes in the source countries. However, eradication efforts and successes are an essential element in the congressionally mandated certification process established by the 1986 Anti-Drug Abuse Act.<sup>11</sup>

Intelligence provides the direction for investigative leads in support of the law enforcement agencies with a counter-narcotic mission. As drug cartel leaders get smarter and develop more diverse methods of smuggling illegal drugs into this country, intelligence will play an increasingly important role. A critical element of America's drug interdiction strategy is to have prior knowledge of drug trafficking activities. Good intelligence should reveal not only the time and place of drug shipments, but more

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<sup>10</sup> US Armed Forces, Joint Task Force-4, background briefing, Key West Naval Station, 7 Feb. 1990.

<sup>11</sup> US House, 99th Congress, 2nd session, The Anti-Drug Abuse Act of 1986 (Washington: GPO, 1986).

information regarding the drug leaders, their lieutenants, and financial information concerning drug-money laundering.

Long-term intelligence analysis can develop a comprehensive picture of drug cartel organizations, complete with names, locations, financial information, and assorted support activities associated with various cartels or smaller drug organizations. The FBI is taking this approach to the current drug problem and is patterning it after their successful long-term intelligence effort against the Mafia families.<sup>12</sup>

#### **HOW THE INTELLIGENCE PROCESS WORKS**

To better understand what intelligence can do to counteract the drug problem, it is necessary to discuss concepts and how the intelligence process works, the types of intelligence, and the systems used. Critical to the entire analysis is a survey of the current database problems plaguing some LEAs.

Intelligence is evaluated information. According to Jeffrey Richelson, an expert on the US intelligence community, intelligence "is the product resulting from the collection, evaluation, analysis, integration, and interpretation of all available information."<sup>13</sup> This information may concern certain aspects of a nation or entity or, in the case of counter-narcotics, all information relevant to the production, shipment, marketing,

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<sup>12</sup> David W. Johnson, FBI, Strategic Intelligence, Counter-Narcotics Activities, personal interview, 14 Nov. 1989.

<sup>13</sup> Jeffrey Richelson, The US Intelligence Community (Cambridge, Mass.: Ballinger Publishing Company, 1989) 1.

and consumption of illegal drugs. It is also information that has been evaluated as to its reliability, believability, and pertinence to the particular situation at hand.

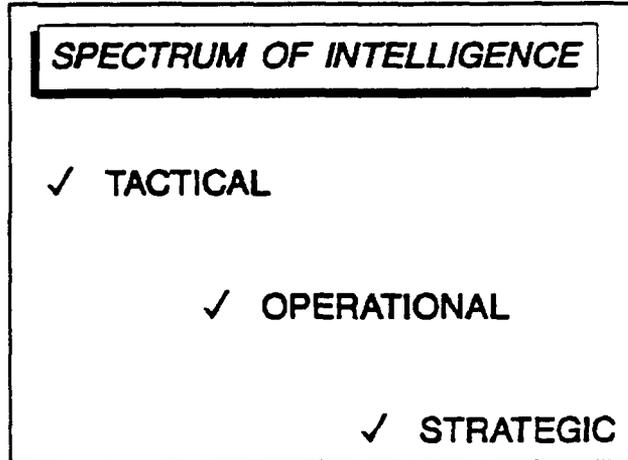


Figure 1

Intelligence is generally viewed in a spectrum ranging from tactical to operational to

strategic -- or vice versa, depending on the perspective of the user. Strategic intelligence is evaluated information concerning broad trends and patterns and is used by decision makers at the national level of our government. In support of the counter-narcotics problem, strategic intelligence provides data on drug crop cultivation, production, and smuggling patterns.<sup>14</sup>

Operational intelligence in support of the counter-narcotics effort generally refers to information gathered to assist investigations and the prosecution process. This information includes data on individuals and organizations, along with source and transit country activities.<sup>15</sup>

Tactical intelligence is actionable information on the current locations and movements of drug smugglers. A prime example of tactical intelligence in counter-narcotics is the location,

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<sup>14</sup> US House, 100th Congress, 1st session, Committee on Foreign Affairs, The Role of Intelligence in International Narcotic Control (Washington: GPO, 1987) 6-7.

<sup>15</sup> House Comm. Foreign Affairs, Role of Intelligence, 6-7.

direction, speed, and probable destination of a suspected drug smuggling airplane. Tactical intelligence is perishable and requires almost immediate reaction. Obviously tactical intelligence is of vital concern to law enforcement agencies who are involved in arrests and seizures. Because of the time criticality of this type of intelligence, it is not usually analyzed in depth, but is disseminated quickly to the operators in field units to be acted upon. Tactical intelligence not only assists drug interdiction efforts, but also LEA investigations into money-laundering activities and other currency violations.<sup>16</sup>

The entire intelligence activity can be viewed as a cycle, as reflected in figure 2. The cycle begins with the requirements, then proceeds to collection of information, then on to analysis, and finally dissemination of the product to the user. The cycle is a continuous process and applies to the entire spectrum of intelligence.

The beginning of the cycle is to establish requirements, or to ask specific questions. These requirements are based on a decision or policy maker's specific needs. The foreign intelligence collectors and DOD's military intelligence organizations use an extensive and well-developed requirements system. In contrast the chief of the Community Coordination Group stated at a recent symposium that the LEAs involved in counter-narcotics neither view intelligence as a cycle nor do they establish or provide specific requirements for collection to the

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<sup>16</sup> House Comm. Foreign Affairs, Role of Intelligence, 6-7.

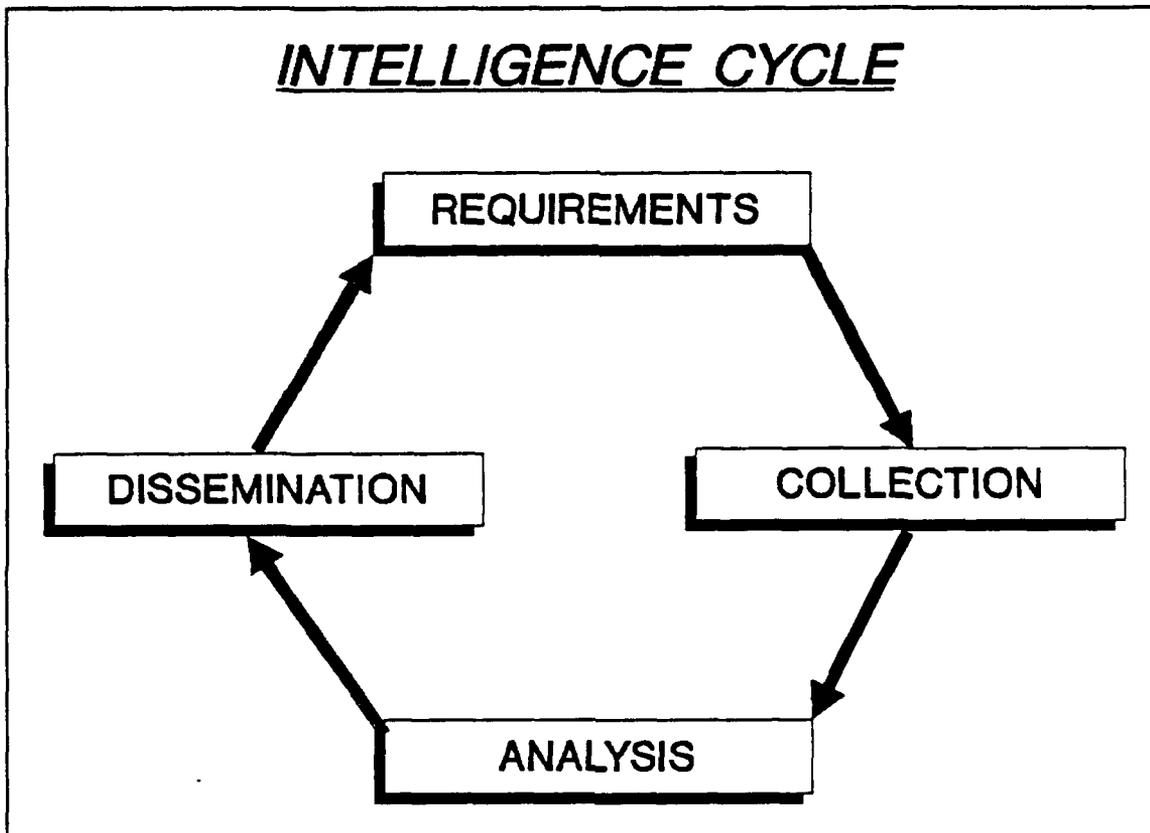


Figure 2

foreign intelligence community.<sup>17</sup>

Analysis and maintenance of large computerized databases is a significant part of the national foreign intelligence community's effort. This community employs considerable resources to make the analytical effort work successfully. Some of the LEAs have an automated system, while others maintain manual-labor-intensive "shoe-box" files.<sup>18</sup> Information from non-automated databases is

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<sup>17</sup> Speaker, Chief, Community Coordination Group, AFCEA Symposium, Intelligence Support to the War on Drugs (Bolling, Md.: Bolling AFB, 1 Dec. 1989).

<sup>18</sup> Nelson B. Johnson, "Intelligence Support to the War on Drugs," Signal Sept. 1989: 49.

largely unretrievable and cannot support the analytical effort unless it is automated.

The final step in the intelligence process is dissemination. Intelligence is worthless unless it gets to the one who needs it complete and in a timely fashion. Our research indicated there is little inhibition to share intelligence between agencies within the national foreign intelligence and DOD communities. There is, however, considerable reluctance in the LEAs to share intelligence among themselves, much less with the national foreign intelligence community.

Intelligence methods that could support the counter-narcotic effort are many, but can be categorized generally in three areas: intelligence derived from human sources, or HUMINT; from overhead imagery, or IMINT; and from signals intelligence, called SIGINT. Human sources provide most of the information on counter-narcotics for the LEAs, and are the most common sources of intelligence, while both imagery and signal intelligence are almost exclusively under the purview of the national foreign intelligence agencies.

The LEAs, in particular Drug Enforcement Agency (DEA), derive most of their information and intelligence from their informants. Robert Fernandez, Chief of Intelligence at DEA, stated that his agency receives about 7000 intelligence reports a week. DEA is unable to analyze all of these reports, much less evaluate them for reliability and believability.<sup>19</sup> Despite this problem, HUMINT remains an absolutely vital source of information for the LEAs and

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<sup>19</sup> Fernandez interview.

other intelligence agencies who support the counter-narcotic effort. Understandably, some information can come only from human sources. HUMINT information generally is not reported as rapidly as information from technical means, such as imagery and signals intelligence. Nevertheless, HUMINT is a vital source of information to both the LEAs and the foreign intelligence community.

Lieutenant General Soyster, Director of the Defense Intelligence Agency (DIA), stated that technical intelligence systems and the analytical resources supporting them are increasingly being employed in support of the counter-narcotics mission.<sup>20</sup> The two primary technical intelligence systems are generally considered to be imagery and signals intelligence.

Jeffrey Richelson, in his book The US Intelligence Community, explains in some detail the US capabilities and operational successes with imagery systems such as satellite photography, the SR-71 and U-2 aircrafts, as well as other aircraft systems.<sup>21</sup> These immense national collection capabilities can be turned to support counter-narcotics operations.

Richelson also states that "signals intelligence (SIGINT) is traditionally considered to be one of the most important and sensitive form of intelligence."<sup>22</sup> He describes in some detail US

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<sup>20</sup> Harry E. Soyster, LTG, Director, DIA, AFCEA Symposium, Intelligence Support to the War on Drugs (Bolling, Md.: Bolling AFB, 30 Nov. 1989).

<sup>21</sup> Richelson, 145-161.

<sup>22</sup> Richelson, 167.

national SIGINT capabilities in space, airborne platforms, ground stations, and surface ships. He explains the differences between the types of SIGINT, such as communications intelligence or COMINT, and electronic intelligence or ELINT. He defines COMINT as intelligence obtained from interception, processing, and analysis of communications not including radio and television broadcasts, while ELINT refers largely to information derived from radars and other non-communication emitters. From his discussion on SIGINT capabilities and successful operations in the past, it should be clear to most observers how much more effective the counter-narcotic interdiction effort would be with an increase in US SIGINT support.<sup>23</sup>

Technical intelligence systems are not all owned and operated by the national foreign intelligence community. The US Customs Service operates a picket line of tethered aerostats that provide radar coverage of the southern border to detect smuggling aircraft.<sup>24</sup> Also, Customs has P-3 patrol aircraft that provide air and surface surveillance through a sophisticated radar system. They have smaller aircraft and helicopters employed in an electronic surveillance capacity.<sup>25</sup>

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<sup>23</sup> Richelson, 167-192.

<sup>24</sup> Clarence A. Robinson, "Fighting the War on Drugs," Signal Sept. 1989: 39.

<sup>25</sup> Robinson, 38.

## WHY INTELLIGENCE IS IMPORTANT

There are many reasons why an expanded US intelligence role is necessary. One important reason is that "traffickers spend an estimated \$125 million per year on signals intelligence (SIGINT) technology and equipment."<sup>26</sup> This means the traffickers have sophisticated equipment such as radars, navigational equipment, and secure radios to protect themselves, their businesses, and to conduct counter-surveillance on US and drug-source-country police and military forces. Because the drug cartels are spending so much money on this sophisticated electronic equipment to protect their business interests, they are becoming more vulnerable to US technical collection means. The more the traffickers use this equipment and depend upon it for communications, navigation, and intelligence, the greater will be their vulnerability to US intelligence collection efforts. Also, the more dependent the traffickers become upon technical systems, the greater will be the justification for a maximum US intelligence effort.

Current budget outlays dedicate approximately 70% to the supply-side and 30% to the demand-side reduction efforts, with the interdiction program receiving most of the supply-side drug budget.<sup>27</sup> Peter Reuter's Rand Corporation study, among others, develops a mathematical model showing that a small increase in the

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<sup>26</sup> William V. Cowan, "Melting The Snowman: Communications and the Counternarcotic Threat," Signal Dec. 1989: 31.

<sup>27</sup> Frank Kalder, Director, Budget and Legislative Review, ONDCP, AFCEA Symposium, Intelligence Support to the War on Drugs. (Bolling, Md.: Bolling AFB, 30 Nov. 1989).

interdiction effort would bring about only a tiny reduction in the supply of cocaine coming into this country.<sup>28</sup> These studies fail to take into account a significant infusion of US intelligence resources and DOD operational forces entering the interdiction campaign in the war on drugs. Regardless of the model, the US has certain capabilities already in place and it is prudent to use them.

Finally, the US has a responsibility as a sovereign nation to control its borders and restrict entry of drug traffickers. The US government has a duty to its citizens to attempt to control the nation's borders and, at a minimum, to disrupt the flow of drugs coming into the US. Therefore, as a matter of national policy and morality, the US must vigorously pursue interdiction efforts, seizures, and legal actions against the drug traffickers. In order for the US to have a successful drug interdiction program, it must have a well-coordinated intelligence system targeted against the counter-narcotic threat.

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<sup>28</sup> Peter Reuter, Gordon Crawford, and Jonathan Cave, Sealing The Borders: The Effects of Increased Military Participation in Drug Interdiction (Santa Monica: Rand Corp., Jan. 1988) 122-130.

## CHAPTER 3

### IMPROVING LAW ENFORCEMENT AGENCY INTELLIGENCE

Three primary factors stand in the way of an effective law enforcement intelligence effort: an incentive system driven by statistics and resource competition, minimal intelligence resources, and the law enforcement approach to intelligence. This chapter will discuss and analyze these factors and make recommendations to improve the effectiveness and efficiency of law enforcement drug intelligence.

#### THE LAW ENFORCEMENT INCENTIVE SYSTEM AND RESOURCE COMPETITION

The Constitution was designed to insure a balance of powers to prevent any one branch of government from having too much power. Balance of power also describes law enforcement agencies, especially those in drug law enforcement. There are over thirty-six federal agencies involved in trying to control the illegal drug problem.<sup>29</sup> This number excludes the various state and local agencies. These agencies, especially the law enforcement agencies, frequently find themselves fighting bureaucratic resource battles rather than working cooperatively to solve the problems of enforcing laws against illegal drugs.

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<sup>29</sup> US White House, National Drug Control Strategy, (Washington: GPO, 1989) 121.

To understand the nature of the competition among law enforcement agencies, it is helpful to examine the law enforcement incentive system that is an important part of the law enforcement culture. Success in the law enforcement field is measured by individual or agency statistics that document arrests, convictions, and, in the case of drug law enforcement, seizures. These statistics are law enforcement's "measures of effectiveness" and are used in determining promotions, allocating resources within an agency, and in competing with other law enforcement agencies for resources.

Good, aggressive law enforcement agents develop and cautiously guard reliable informants who provide the information that leads the agents to the arrests, convictions, and seizures necessary to compete successfully for promotion. Throughout their careers, law enforcement agents continue to think of arrest, seizure, and conviction statistics as measures of effectiveness. Agents see regional offices grow, shrink, open, or close based on the number of cases successfully prosecuted. For the successful law enforcement personnel who reach leadership positions in their agencies, these measures of effectiveness remain influential and are cited in the competition for resources with other law enforcement agencies.

During the past few years, competition for resources among the law enforcement agencies has been particularly fierce. Largely because of the illegal drug problem, law enforcement funding is one of the few growth areas in the federal budget. According to FBI

statistics, federal spending for law enforcement has grown four times as fast as spending for education and twice as fast as spending for health care.<sup>30</sup>

To compete for these additional resources, law enforcement agencies scrambled for seizure and arrest statistics, attempting to prove that their particular agency was the most effective in the effort against illegal drugs. These "measures of effectiveness" were used to compete for congressional funding.

One of the most visible examples of this competition was the 1986-88 dispute between the US Coast Guard and the US Customs Service over air and maritime jurisdictions. The Coast Guard, according to Title 14 USC 2, has the authority to enforce or assist in the enforcement of applicable federal laws on and under the high seas and on the waters subject to US jurisdiction. Since Customs' jurisdiction extends 12 miles out from the shoreline, the Coast Guard and the Customs Service have overlapping jurisdictions.

Under the aggressive leadership of Commissioner William von Raab, the Customs Service acquired a fleet of vessels and began to make a significant number of busts while exercising jurisdiction well outside the 12-mile limit. Customs was particularly active 12 miles off the coast in the busy smuggling waters between Florida and the Bahamas. The Coast Guard challenged the extension of Customs' maritime jurisdiction and also its jurisdiction to do air interdiction beyond 12 miles off the US coast. Prior to this

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<sup>30</sup> Michael Gottfredson and Travis Hirschi, "FBI Crime Statistics," Washington Post 24 Sept. 1989: 24.

challenge, the US Customs Service had the country's only significant operation intercepting airborne drug smugglers. The Coast Guard pressed the issue, declaring that it should have the air interdiction mission over water.

Following the development of a sharply adversarial relationship between the top leadership of the Coast Guard and the Customs Service, the National Drug Policy Board achieved a compromise.<sup>31</sup> The Coast Guard was designated as the lead agency in maritime interdiction and the Customs Service was designated lead agency in land interdiction. According to the board's compromise, Coast Guard and Customs would share the lead agency role in air interdiction. Both Customs and Coast Guard received additional resources to carry out their designated lead agency roles.

A less public example of agency competition is the 1988 Department of Justice ruling removing the US Customs Service authority to make seizures under Title 21 USC 881, the narcotics code.<sup>32</sup> The Customs Service had previously prosecuted a significant number of narcotics investigations and made a large number of seizures. The Justice Department ruling prohibits the Customs Service from conducting investigations under Title 21. The Customs Service can still make arrests and seizures based on border searches, but if Customs receives information regarding a large

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<sup>31</sup> James Longo, "Yost, Outspoken diplomat woos and wins Hill for Coast Guard's missions," Navy Times 12 March 1990: 10.

<sup>32</sup> US Department of Justice, Office of Legal Counsel, Memo, US Customs Service Jurisdiction Pursuant to 21 USC 881 Forfeiture Provisions, 23 Nov. 1988: 25.

illegal drug operation, they must turn the information over to DEA for investigation.<sup>33</sup> Any wire taps, search warrants, or other investigative techniques that require approval by a magistrate must be applied for by DEA through the US Attorney's office.

The Department of Justice ruling removing Title 21 seizure authority will significantly reduce the amount of information Customs will be able to gather to make arrests, seizures, and prosecutions. Many of the arrests, seizures, and convictions that would have been credited to Customs in the Department of Treasury will now go to DEA in the Department of Justice.

The Justice Department ruling will also reduce the assets passing through the Customs' seizure fund and may subsequently result in a significant decline in Customs statistics. Customs shared seized assets with state and local law enforcement agencies more quickly than did Justice Department agencies.<sup>34</sup> This rapid turn over of assets to state and local agencies made them more apt to pass information to the Customs Service than to agencies in the Department of Justice. The Customs Service believes that the removal of Title 21 investigative authority seriously inhibits its contribution to the anti-drug effort and, since the nation's drug problem is so severe, no agency's effort should be restricted.<sup>35</sup>

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<sup>33</sup> Michael Desjardins, Office of Smuggling Investigations, US Customs Headquarters, personal interview, 14 Nov. 1989.

<sup>34</sup> Desjardins interview.

<sup>35</sup> Desjardins interview.

The Department of Justice response to the Customs Service position is that restricted Title 21 authority is necessary to maintain control and coordination of drug investigations to avoid duplication of effort.<sup>36</sup> The hidden agenda may be that restricted Title 21 authority gives the agencies in the Department of Justice, like DEA and FBI, greater possibilities for success. Having nearly exclusive Title 21 authority would almost certainly produce an increase in arrest and seizure statistics.

The January 1990 version of the National Drug Control Strategy published by ONDCP reported a compromise between DEA and the Customs Service concerning the Department of Justice Title 21 ruling. Over a period of eighteen months, DEA will cross-designate 1,000 Customs agents with Title 21 authority to conduct drug investigations. The potential coordination problem will be addressed by designating full-time DEA and Customs coordinators.<sup>37</sup>

Since the US Customs Service is the lead agency for land interdiction and the co-lead agency for air interdiction, it seems logical Customs should have full Title 21 drug investigation authority. If that happens, there should be a corresponding increase in drug-related arrests and seizures.

To overcome counter-productive interagency resource competition, the incentive system needs a shift in emphasis from competition to cooperation. To increase cooperation, the National Drug Control Strategy recommended law enforcement agencies and

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<sup>36</sup> Fernandez interview.

<sup>37</sup> White House, National Drug Control Strategy, 1990, 26.

agents be evaluated for cooperation as well as individual statistics. This system of evaluation should reward cooperating agencies with funding and reward cooperating agents who are involved in interagency efforts with promotions.<sup>38</sup>

One method that might prove effective is to measure agency success in terms of intelligence inputs leading to the dismantling of major trafficking organizations. Measuring and then rewarding significant intelligence inputs should create incentives for law enforcement agencies to share information. Evaluating significant intelligence inputs as a measure of success would require a strong national drug law enforcement intelligence center to receive and analyze the data and to assess the value of the intelligence contributions.

Congress has successfully required increased joint operations from the branches of the armed forces to reduce inter-service competition and duplication of effort. Applying elements of the same concept of joint operations to drug law enforcement may improve law enforcement cooperation. One factor in assessing cooperation could be holding agencies accountable for the number of people or personnel hours devoted to joint drug enforcement operations. Another way to evaluate cooperation would be to examine the number of people filling positions in joint drug task forces or interagency liaison billets. Still another way would be to make service in joint drug law enforcement operations an important promotion factor.

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<sup>38</sup> White House, National Drug Control Strategy, 1989, 30.

Giving the Director of ONDCP budget authority over the intelligence functions of federal law enforcement agencies would also help to increase cooperation in the illegal drug effort. The bill creating ONDCP was modeled after Executive Order 12333, which was part of the implementation of the National Security Act of 1947 that created the Director of Central Intelligence. The bill establishing ONDCP was missing one important element of Executive Order 12333. Unlike the Director of the Central Intelligence (DCI), the Director of ONDCP lacks budget authority. According to EO 12333, the DCI has budget authority over all intelligence functions. Some of the agencies over which the DCI has budget authority are the National Security Agency, Defense Intelligence Agency, and the intelligence branches of the armed forces. The DCI also has budget authority over special sections of the FBI, Department of Treasury, Department of Energy, and the Bureau of Intelligence and Research in the State Department.

The Director of ONDCP has the responsibility to review and certify federal law enforcement agency budgets, but this is only a tool of moral suasion that he, with the help of the President and Congress, can bring to bear on other agency heads to modify their priorities.<sup>39</sup> With budget authority, ONDCP would have the leverage to compel agencies to cooperate and share intelligence.

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<sup>39</sup> Bruce M. Carnes, Director, Office of Planning, Budget and Administration, Office of National Drug Control Policy, AFCEA Symposium, Intelligence Support to the War on Drugs (Bolling, Md.: Bolling AFB, 30 Nov. 1989).

## LACK OF INTELLIGENCE RESOURCES

The DEA has 3,000 agents. This figure includes those who are in senior administrative and liaison positions. Serving in the intelligence function for DEA are about 300 analysts, who must evaluate approximately 7,000 hard-copy reports per week. DEA's resources include the El Paso Intelligence Center (EPIC), which is the primary drug law enforcement intelligence center in the US.<sup>40</sup>

The Coast Guard has a modest Intelligence Coordination Center at its headquarters. The Atlantic and Pacific Areas each have small intelligence staffs of less than a dozen people. These area staffs split their time between the military intelligence duties associated with being Maritime Defense Zone Commanders, and drug intelligence. Each of the 10 Coast Guard Districts has an intelligence staff ranging in number from about 12 in the largest office in Miami to fewer than 3 persons in the district offices covering the Great Lakes and Mississippi River. The small staffs squeeze intelligence analysis between planning law enforcement operations and reviewing internal affairs cases.

The US Customs Service has Regional Intelligence Bureaus in each of its seven regions. These are usually made up of approximately six analysts to support the enforcement agents. The Customs Service also has a small headquarters intelligence branch as well as technical support branches.

The only reliable, secure, and compatible method of communications among DEA, Customs, and Coast Guard intelligence

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<sup>40</sup> Fernandez interview.

organizations is a secure telephone. Since DOD's Joint Task Force Four (JTF-4) began operations in July 1989, some secure computer links have been established for passing intelligence information among JTF-4, Coast Guard, Customs, and DEA, but these computer links are not yet reliable.<sup>41</sup>

The modest intelligence resources of law enforcement pale in comparison to the intelligence collection, surveillance, and communications resources that support America's national defense establishment. Targeting the technical assets of the national foreign intelligence community, like the U-2 type reconnaissance aircraft, COMINT, and satellite imagery, for use against the illegal drug trade would enhance the anti-drug effort. The ability of national foreign intelligence assets to collect massive amounts of information and automate it for analysis is especially needed to fight the illegal drug problem. The application of sophisticated systems and the large number of personnel resources needed to process and analyze this information are available in DOD agencies like DIA and NSA. According to Lieutenant General Soyster, Director of DIA, his agency has a significant number of analysts addressing the drug problem now and will more than double that number in 1990.<sup>42</sup> Participation of the national foreign intelligence community in the effort against illegal drugs could

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<sup>41</sup> Paul J. Bibeau, Commander, United States Coast Guard, Assistant to the Director, U.S. Customs and U.S. Coast Guard Command, Control, Communications and Intelligence (C<sup>3</sup>I) Center East, personal interview, Miami, Florida, 6 Feb. 1990.

<sup>42</sup> Soyster.

significantly enhance law enforcement's small, fragmented intelligence effort.

#### **LAW ENFORCEMENT APPROACH TO INTELLIGENCE**

In law enforcement, intelligence is generally equated with the evidence needed for a successful prosecution leading to a conviction. The goal of the law enforcement officer is to develop information leading to arrests, seizures, and convictions. Once those goals are reached, the information is generally filed, with little further analysis, unless it can lead directly to other arrests, seizures, and convictions.

In order to get a better understanding of the illegal drug trade, law enforcement agencies must look beyond collecting evidence to support a conviction and learn to apply the information to the overall picture of the illegal drug trade.<sup>43</sup> Even the law enforcement agents themselves realize the focus on prosecutions can lead to a buy-and-bust syndrome that piles up statistics, but does not make a significant contribution to stopping the illegal drug trade.<sup>44</sup>

There is a tremendous amount of information about the illegal drug trade gathered by federal, state, and local law enforcement agencies during their investigations, but there is no national system for coordination. The collection, automation, and analysis of this information could produce powerful insights into the

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<sup>43</sup> White House National Drug Control Strategy, 1989, 87.

<sup>44</sup> Elaine Shannon, Desperados, (New York: Penguin, 1988), 130

organizational patterns of the illegal drug trade. The press of making convictions coupled with a lack of personnel and equipment resources to automate and analyze information make detailed intelligence analysis difficult for drug law enforcement agencies.

Differences in the institutional values among agencies also contribute to law enforcement's fragmented approach to intelligence. DEA and FBI present an interesting contrast in institutional values. DEA agents are located in forty-eight different countries as well as in the US. Overseas, they tend to operate with considerable latitude. DEA has the delicate task of assisting their foreign counterparts, who sometimes are of dubious honesty, in the enforcement of the host country's drug laws. Simultaneously, the agents gather information to assist DEA and other law enforcement agencies in the US with drug investigations. Even DEA's command structure reflects autonomy, with field office special agents-in-charge reporting directly to DEA's second in command, the Deputy Assistant Administrator.<sup>45</sup> DEA agents are generally more given to rugged individualism and are more willing to question the decisions of those in authority.<sup>46</sup>

In contrast, FBI's team orientation is illustrated by the Bureau's recruiting criteria, which favors neatness, good organizational skills, and respect for authority. This recruiting policy has produced a group of like-minded, ambitious, confident, clean-cut agents with an exceptional loyalty to their fellow agents

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<sup>45</sup> Fernandez, interview.

<sup>46</sup> Shannon, 93.

and the FBI. The FBI prefers to apply its organization and discipline to long-term investigations. The FBI strives to make a few big, thoroughly documented cases that result in successful prosecution rather than engage in the multiple buy-and-bust world of the DEA.<sup>47</sup> The FBI's model for approaching the drug problem is the Bureau's successful ten- to fifteen-year effort in dismantling the Mafia's criminal organization. The Bureau's strategy against illegal drugs is to target the drug trafficking and financial organizations for prosecution. These organizations provide the transportation and money handling infrastructure for the major traffickers. The destruction of the infrastructure would make the illegal drug business less efficient, less profitable and reduce the threat to our society.<sup>48</sup>

Due in some part to their cultural differences, DEA and FBI view the illegal drug organizations differently. DEA regards the drug organizations as less susceptible to the organized crime approach. The drug organizations, according to the DEA, are more like AMWAY, with loosely connected business organizations and many independent operators who move fluidly in and out of the business. The FBI however, views the illegal drug organizations as IBM: a highly centralized, integrated business organization having clear lines of authority and responsibility. Obviously, an IBM would

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<sup>47</sup> Shannon, 93.

<sup>48</sup> Johnson interview.

lend itself more readily than an AMWAY to an FBI-style investigation.<sup>49</sup>

The Office of National Drug Control Policy (ONDCP) recognizes the validity of both the FBI and DEA views of drug trafficking organizations. The September 1989 National Drug Control Strategy published by ONDCP directs law enforcement to attack criminal organizations as one of the primary ways to reduce the drug supply.<sup>50</sup> The January 1990 National Drug Control Strategy recognizes that not all trafficking organizations are as rigidly hierarchical as the more traditional organized crime organizations. These organizations are large, decentralized, and fluid and are, therefore, more susceptible to traditional state and local law enforcement investigations.<sup>51</sup> Given the diverse way agencies with differing institutional values comprehend the drug problem, it is easy to understand the difficulty in developing a consistent law enforcement approach to the illegal drug intelligence.

There must be greater dialogue between law enforcement professionals and members of the US national foreign intelligence community. The object of this dialogue would be to encourage law enforcement agencies to use intelligence for more than criminal prosecutions. Law enforcement needs to recognize the value of collating and analyzing the large volume of general information acquired in criminal investigations. This information includes

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<sup>49</sup> Fernandez interview.

<sup>50</sup> White House National Drug Control Strategy, 1989, 60-61.

<sup>51</sup> White House National Drug Control Strategy, 1990, 94.

smuggling and distribution procedures, transportation methods and vehicle preferences, financial and money-laundering patterns, and communications and counter-surveillance techniques.<sup>52</sup>

The Director of Central Intelligence's Counter Narcotics Center (CNC) is making an important initial contribution to the dialogue between law enforcement and the national intelligence community. The CNC fosters communication among law enforcement and foreign intelligence communities by providing an avenue to discuss the possible declassification of information vital to the prosecution of an illegal drug case. The CNC can also be an avenue to apply US national intelligence assets to a drug law enforcement problem. The CNC looks for ways to help on specific cases by seeking practical ways for US foreign intelligence to assist drug law enforcement.<sup>53</sup> To derive the full benefits of the vast amount of information that criminal investigators have worked so hard to collect, drug law enforcement needs to move away from using the information exclusively for prosecution and do more intelligence analysis.

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<sup>52</sup> Charles M. Fuss Jr., "Lies, Damn Lies, Statistics, and the Drug War," US Naval Institute Proceedings Dec. 1989: 68.

<sup>53</sup> Speaker, Chief, Community Coordination Group, "Intelligence Architecture," AFCEA Symposium, Intelligence Support to the War on Drugs, Washington, 1 Dec. 1989.

## RECOMMENDATIONS

### **Evaluate and reward agencies and agents for cooperation.**

Reduce the importance of arrest, seizure, and conviction statistics in evaluating law enforcement agencies. This is essential in getting law enforcement agencies to change their focus from winning the resource competition to interagency cooperation in drug enforcement. When distributing resources to law enforcement agencies, Congress should emphasize an agency's participation in joint drug enforcement operations and how well an agency filled joint task force positions. The proposed National Drug Intelligence Center (NDIC) should evaluate and report to ONDCP, the Congress, and the President the level and quality of various law enforcement agencies' contributions to the national drug intelligence effort.

### **Create incentives to get the best people in interagency tours.**

There should be incentives for liaison tours with other agencies to insure that the highest quality personnel are involved in interagency activities. Personnel should receive bonus pay and additional points toward promotion to make these liaison positions competitive as well as attractive to the strongest candidates. Assigning strong candidates to these positions would also create an increased potential for people who have experienced the value of interagency cooperation to rise to policy-making positions in law enforcement agencies. Since there will be no early termination of the war on drugs, a major emphasis on joint assignments among

law enforcement agency personnel will pay long-term dividends for the law enforcement community.

**Give Title 21 authority to the US Customs Service**

Do not wait 18 months to cross-designate 1,000 Customs Agents with Title 21 authority. Grant all Customs Agents full Title 21 authority now. Customs conducted effective Title 21 investigations in the past, and the illegal drug threat is too serious not to apply every available enforcement agency against the threat.

**Continue to increase DOD and US national foreign intelligence role in drug law enforcement intelligence.**

The reduction in tensions between the United States and the Soviet Union creates an opportunity to apply an ever-increasing number of national foreign intelligence community resources to the illegal drug problem. These national resources could make a significant contribution in alleviating the serious technical, financial, and personnel resource problems facing law enforcement intelligence.

**Give the Director of ONDCP budget authority to allocate drug intelligence funds.**

The Congress should give the Director of ONDCP budget authority over the intelligence functions of law enforcement agencies. The director of ONDCP needs budget authority to support his leadership role in the drug intelligence effort. Giving budget authority to the Director of ONDCP will help alleviate turf battles among the different law enforcement agencies.

## CONCLUSIONS

The law enforcement intelligence effort against illegal drugs is fragmented and fraught with problems. These problems include an incentive system and culture that inhibits cooperation, a lack of intelligence resources, and an overemphasis on prosecution. Significant improvement in drug intelligence can occur if the incentive system is changed to emphasize cooperation when evaluating drug law enforcement agents and agencies and if there are increases in the application of DOD and US national foreign intelligence assets against the drug problem. Finally, drug intelligence will improve if there are legislative changes giving the Director of ONDCP budget authority over the drug law enforcement intelligence budgets.

## CHAPTER 4

### REORIENTING NATIONAL PRIORITIES

If the United States is to win the war on drugs, it may be necessary to reorient some national priorities. Many of these priorities are legal in nature, some are a matter of interpretation, while others require a bold change in the way America must do business. Admiral Crowe, former Chairman of the Joint Chiefs of Staff, observed that Americans are willing to send US military forces to fight the drug war in foreign nations and disrupt their societies, but are unwilling to compromise and allow any sacrifices in the United States.<sup>54</sup>

In this chapter we will discuss some of these legal issues and recommend courses of action that will, in our judgment, help America win the war on drugs. Some of these recommendations will require Americans to temporarily sacrifice or abridge a few of their rights so the nation can more effectively and efficiently disrupt, dismantle, and destroy the illegal drug market in the United States.

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<sup>54</sup> William Crowe, Admiral, USN, Retired Chairman of the Joint Chiefs of Staff, remarks, National Security Program, JFK School of Government, Harvard University, Cambridge, Mass., 19 Jan. 1990.

## CORE LEGAL ISSUES

There are two basic problems impeding effective and efficient intelligence collection and analysis in support of LEA counter-narcotic efforts. The prohibition placed on the national foreign intelligence community forbidding them to collect intelligence and maintain files on US Persons poses serious constraints for effective and efficient drug intelligence operations. Even if the national foreign intelligence community were to be allowed unrestrained intelligence collection and files maintenance in drug cases, a serious question arises of how to use this highly classified information in prosecutions. Is this classified information to be used only as a lead to develop a case or is this information to be subject to the defendant's right of discovery?

Since the basic policy objective of the war on drugs is to reduce illegal drug consumption among Americans and is not the annihilation of all drug traffickers, then, it follows, we must consider the laws protecting Americans from unreasonable searches and the laws safeguarding privacy and due process. If the US counter-narcotic effort were really a war, then a different set of laws and rules of engagement would apply to make the drug enforcement task easier. It is, therefore, essential that we understand these laws, discuss the interpretations, and propose legal changes to enhance their enforcement in the war on drugs.

The foundation of these laws is the Fourth Amendment to the US Constitution, which states "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable

searches and seizures, shall not be violated."<sup>55</sup> Directly affecting intelligence and investigative operations in support of the counter-narcotic effort are Fourth Amendment prohibitions on wiretapping and electronic surveillance activities. A body of law has developed governing this type of activity specifying the conditions when wiretapping and electronic surveillance is legal.

The second critical legal issue is the Congressional and Executive prohibition of national foreign intelligence agencies, including the DOD intelligence organizations, from collecting intelligence and maintaining files on US Persons. A US person is normally defined as either a US citizen or resident alien. The 1947 National Security act with subsequent amendments and the current Executive Order Number 12333, signed by President Reagan on 4 December 1981, prohibit domestic intelligence collection by the national foreign intelligence agencies. However, the executive order and National Security Act do allow for intelligence collection and counterintelligence operations targeted against international narcotics and terrorism activities.<sup>56</sup>

The Law Enforcement Agencies have the primary responsibility for domestic drug-related intelligence operations, although DEA has a charter for both foreign and domestic counter-narcotic activities. More importantly, the LEAs have exclusive

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<sup>55</sup> Edward S. Corwin, The Constitution and What it Means Today (Princeton, N.J.: Princeton University Press, 1973) 301.

<sup>56</sup> US White House, Executive Order Number 12333 of United States Intelligence Activities, President of the United States, (Washington: GPO, 4 Dec. 81) secs: 1.4(c), 1.8(b), 2.3(c).

responsibility for apprehension, seizures, and prosecutions of drug offenders. Quite obviously, some of the people involved in illegal narcotics trafficking are US Persons. The LEAs maintain files on drug traffickers, some of whom are US Persons. The legal presumption is that any person or organization outside the United States involved in illegal drug trafficking is not a US person. However, it is quite possible that some of these people are in fact US Persons. The national foreign intelligence community is authorized to collect intelligence on US Persons outside the United States if there is a reasonable assurance that these people are or are about to engage in illegal international narcotics activities.<sup>57</sup>

Since the national foreign intelligence community is restricted from collecting intelligence on US Persons suspected of illegal drug activity inside the United States and is prohibited from maintaining files on US Persons, the intelligence contribution to the overall counter-narcotic effort from these agencies is considerably less effective. The prohibition placed on the national foreign intelligence community with regard to collection of intelligence and maintenance of files on US Persons is the basic problem impeding effective and efficient collection and analysis of drug-related intelligence in support of LEA arrests, seizures, and prosecutorial efforts.

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<sup>57</sup> US Department of Defense, Procedures Governing the Activities of DOD Intelligence Components That Affect United States Persons, DOD Regulation number 5240.1-R, (Washington: GPO, Dec. 1982) 2-3.

The prohibition against intelligence collection and files maintenance on US Persons is only part of the problem. Another important question is how to use this highly classified intelligence without compromising the sources and methods of collection. Does the government subject this classified information to the rules and rigors of the prosecutorial process and chance compromise of its sources and methods, or should this information just be used as a lead to begin a counter-narcotic case that may lead to a prosecution?

It is necessary to review and analyze the legal requirements affecting the use of classified information in prosecuting narcotic cases. We need to examine what could be changed and how these changes would increase the overall effectiveness of the intelligence effort in support of the war on drugs. We should also examine the best way to use this highly classified information in support of the counter-narcotic effort.

#### **LEGAL ISSUES AFFECTING INTELLIGENCE COLLECTION**

The prohibition on national foreign intelligence agencies to collect information and maintain files on US Persons, both in and outside the United States, is the core problem. These prohibitions and restrictions are, as mentioned previously, built into the Presidential executive orders governing intelligence activity and the National Security Act of 1947 with subsequent amendments. The current executive order, Executive Order Number 12333 (EO 12333), which provides guidance for effective conduct of US intelligence

activities and protection of constitutional rights, has not been reissued by President Bush. In EO 12333, national foreign intelligence agencies, including DOD intelligence organizations, can conduct "counterintelligence, international narcotics, or international terrorism investigations,"<sup>58</sup> on US Persons outside the United States; however, they must use the least intrusive collection means feasible.<sup>59</sup> This provision protects the constitutional and other legal rights of Americans and limits the collection of information to lawful government purposes. The least intrusive means is collecting public information with or without the consent of the person or "using lawful investigative techniques that do not require a judicial warrant or approval of the Attorney General."<sup>60</sup> If either of these collection techniques is not feasible or sufficient, then the national intelligence collection agencies can request approval from the Attorney General to use other means of intelligence gathering.<sup>61</sup>

Although the Executive Order is clear in the narcotics and terrorism caveat, in practical terms national foreign intelligence agencies are not only reluctant, but also feel inhibited, to collect intelligence and maintain files on US Persons outside the United States. When an agency must weigh the risks versus benefits

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<sup>58</sup> White House, Exec. Order, secs.: 1.4(c), 1.8(b), 2.3(c), 1.12(d)(1).

<sup>59</sup> White House, Exec. Order, sec.: 2.4.

<sup>60</sup> DOD, Procedures, 2-3.

<sup>61</sup> White House, Exec. Order, sec.: 2.5 and DOD, Procedures, 2-4.

of collecting intelligence and maintaining files on suspected US Persons engaged in illegal narcotic activity, more often the risk of being accused of illegal intelligence operations outweighs any benefits. The predicament of the national foreign intelligence collectors is that they must collect intelligence and perform analysis, which means maintaining files, on suspects engaged in illegal drug activity. Many of these suspects are in fact US Persons. The prohibitions on US Persons inhibit the national foreign intelligence agencies from efficient and effective intelligence support to the law enforcement agencies charged with countering illegal drug activity.

The administration could change and re-issue EO 12333 to authorize and clarify procedures for conducting intelligence operations and analysis of US Persons engaged in or suspected to be engaged in illegal drug trafficking. It is likely that US Persons are involved in the narcotics flow and money-laundering in source and transit countries as well as in the United States. The Executive Order should also be revised to not only make it clear that intelligence collection against these US Persons is authorized, but also that national foreign intelligence agencies can conduct analysis from databases on information concerning US Persons.

The current view is that the national foreign intelligence community, including the DOD's military intelligence analysts, cannot conduct any analysis of information dealing with US Persons found in the LEA databases. These databases are replete with

information on or about US Persons, much of which is raw uninterpreted data. Although the LEAs are allowing some national intelligence analysts to view the LEA databases, they do not allow the analysts to transfer information to their own databases. The LEAs claim this action constitutes "collection" of intelligence and file maintenance on US Persons, which is prohibited by the Executive Order.<sup>62</sup> Because of this interpretation, an analyst working on the drug problem can look at only part of the puzzle for fear of violating existing laws. The government must resolve this matter, otherwise, the entire counter-narcotics intelligence effort will be inefficient and ineffective.

A revised EO 12333 should also make a distinction between the collection and analysis of intelligence. In a recent interview, Alfred Prados, a congressional research analyst in National Security and Intelligence Oversight, stated that this distinction should be made because more people can share in drug intelligence analysis and support the entire analytical effort. Prados also stated that the intent of the law is to prevent the national foreign intelligence agencies from "spying" on Americans, rather than to frustrate legitimate analytical efforts.<sup>63</sup> The administration could change EO 12333 to reflect this division of activity and still prohibit the national foreign intelligence

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<sup>62</sup> Cynthia Christfield, Office of Chief Counsel, DEA, personal interview, 27 Feb. 1990.

<sup>63</sup> Alfred B. Prados, Congressional Research Analyst in National Security and Intelligence Oversight, personal interview, 15 Nov. 1989.

agencies from collecting intelligence on US Persons inside the United States.

The National Security Act of 1947 is an important document for the defense and intelligence community. This act prohibits the CIA and, by implication, DOD intelligence branches from conducting law enforcement or internal security type operations.<sup>64</sup> The Act has been amended many times to affect other aspects of the defense and intelligence establishment and is a primary statutory vehicle for Congress to change the operations and structure of the intelligence and defense community. The Act could be amended again to give the national foreign intelligence agencies, to include DOD intelligence elements, the right to conduct intelligence operations, perform analysis, and maintain files on US Persons engaged in or suspected of being engaged in international drug trafficking. If Congress is solidly behind the national drug strategy, then it must seriously consider changing the National Security Act to give all intelligence operators the legal right to collect, analyze, and disseminate intelligence on US Persons who are suspected or are in fact involved in illegal drug trafficking. The Act should make it clear that the national foreign intelligence agencies remain restricted from intelligence collection on US Persons inside the United States, but are allowed to perform analysis on all drug-related intelligence files. The task is far too complex for the LEAs to have the sole authority to collect and analyze all the

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<sup>64</sup> US Congress, National Security Act of 1947, 80th Congress (Washington: GPO, 1947) sec.: 102(d)(3).

information on US Persons involved in drug trafficking and exclude that information from being used by the national foreign intelligence analysts. Aside from being an inefficient way to conduct the intelligence business, the fact remains the LEAs lack the capability and resources that the national foreign intelligence agencies have for the kind of dedicated long-term intelligence collection and analysis required to significantly reduce the drug supply.

Major legal considerations that cannot be ignored are the 1966 Freedom of Information Act and the 1974 Privacy Act. These Congressional Acts have considerable influence in this entire matter of collecting information and maintaining files on US Persons. The Freedom of Information Act established the presumption that records held by agencies and departments of the Executive Branch of the federal government are accessible to the people. Before this Act became law, the individual had to establish the right to examine pertinent government records, whereas now the burden of proof has shifted from the individual to the government.<sup>65</sup> The Privacy Act is a companion of the Freedom of Information Act and regulates federal government record keeping and disclosure practices. The Act allows most individuals to have access to federal agency records about themselves.<sup>66</sup> Both of these

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<sup>65</sup> US Congress, Committee of the Whole House, A Citizen's Guide on Using The Freedom of Information Act and the Privacy Act of 1974 to Request Government Records, 101st Congress, 1st Session (Washington: GPO, 1989) 2.

<sup>66</sup> US Congress, A Citizen's Guide, 3.

laws establish the right of individuals to request access to information held by the government. Information collected and retained on US Persons must be entered into the federal register. Any individual has the right to canvas that register to determine if the government has developed a file on him. This means that US Persons engaged in illegal drug trafficking could obtain information about themselves, such as information derived from wire tap or electronic surveillance. Any information collected from these intelligence sources is subject to the rules of discovery and can be used when a case is on trial.

There are a number of exemptions and exclusions that protect against disclosure of information or against even confirming the existence of a record. Two prominent examples of exemptions or exclusions are special cases of national security and foreign policy information. These exemptions and exclusions are few and are highly regulated by statute. Normally, in the case of exemptions, the entire record is not exempt, and a skillful request can determine the degree to which the government has developed a file on an individual. The exclusions must meet a tougher test than an exemption because an agency is not even required to confirm the existence of a record to a requester.<sup>67</sup> If certain information on a file is exempted, the government can refuse to disclose that information but must cite the exemption rule.

The 1986 Amendments to the Freedom of Information Act expanded the protection available for law enforcement records under

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<sup>67</sup> US Congress, A Citizen's Guide, 11-16.

Exemption 7. Congress made the exemption test for requests under the Freedom of Information Act easier for the LEAs by changing the language for qualifying under Exemption 7 from "would disclose techniques" to "could reasonably be expected to disclose" techniques. This change allowed agencies to deny disclosure of certain records.<sup>68</sup> These amendments made it easier for law enforcement officials to maintain secrecy of ongoing criminal investigations.

Only the CIA is exempt from some Privacy Act provisions, but the CIA is also prohibited from collecting information and maintaining files on US Persons in the United States, with certain restrictions overseas. If the national foreign intelligence agencies were to be given the legal right to collect information and maintain files on US Persons engaged in or suspected of being engaged in illegal drug trafficking, then the agencies would also have to be authorized to have exemptions and exclusions under both the Freedom of Information and Privacy Acts. The intelligence gathered by these agencies would be highly classified; therefore, they have an overwhelming need to protect their sensitive collection sources and methods.

With the rising popularity and use of cellular telephones, especially among drug traffickers and dealers, it is easy to visualize how lucrative this electronic target is for law enforcement and intelligence agency intelligence collection efforts. There would have to be some protection for the LEAs and

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<sup>68</sup> US Dept. of Justice. Attorney General's Memorandum, 1-23.

intelligence agencies because any defendant has the right to have access to information gathered from electronic means for his defense.<sup>69</sup>

#### LEGAL ISSUES AFFECTING THE USE OF INTELLIGENCE

The next major question is what is to be done with this highly classified information once the LEAs receive it? Is this classified information to be used as evidence in a trial of suspected drug traffickers, either for US Persons or others, or is this intelligence to be used only as a lead in developing a case that might result in prosecution? We will examine the procedures for protecting classified information, some ideas of how to provide greater protection for sources and methods, and a discussion of the rules of discovery. Finally, we will discuss how to use highly classified information in a trial without compromising the source and methods, yet still protecting the rights of the accused.

In 1980 Congress passed the Classified Information Procedures Act (CIPA), which established procedures to protect against disclosure of any classified information by the United States to any defendant in a criminal case.<sup>70</sup> This act works to the benefit of the government and the defendants in court cases. The court may authorize the US government to delete specific items of classified

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<sup>69</sup> Mary Lawton, Counsel for Intelligence Policy, Department of Justice, AFCEA Symposium, Intelligence Support to the War on Drugs, (Bolling, Md: Bolling AFB, 30 Nov. 1989)

<sup>70</sup> United States Congress, Classified Information Procedure Act, 96th Congress, 1st Session, (Washington: GPO, 1980) sec. 3.

information from documents that are to be made available to the defendant, or to substitute a summary of the classified information, or to substitute a statement admitting the relevant facts that the classified information would tend to prove. The court may also allow the US government to not reveal the classified information, but this information must be sealed and preserved by the court in the event of an appeal.<sup>71</sup>

Although there are protections for the government under CIPA, there are also great risks. The court could easily decide that the classified data is vital to the defendant's case and demand that this information be subject to the discovery process. Even if the court deletes some of the information or demands a summary or a listing of the relevant facts, this information is subject to discovery by the defense, and consequently there are great risks of *compromising sensitive sources and methods*. The fear of intelligence agencies is that release of some or all of this classified information will tip off drug traffickers and their organizations as to the extent of the government's capability to collect intelligence about their illegal operations. From the viewpoint of the national intelligence collectors, the value of these sensitive sources and methods goes beyond one drug-related court case. These same intelligence collection systems are used for other drug cases and for collection of information vital to US national survival.

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<sup>71</sup> US Congress, CIPA, sec. 4.

The guarantees for the defendant provided under CIPA also create problems for the intelligence collection community, including both the national foreign intelligence agencies and LEAs. Under CIPA, whenever a defendant is prevented from causing the disclosure of classified information, the court will dismiss the indictment, except when the court determines that the interests of justice would not be served by such dismissal. In lieu of dismissing the indictment, the court could dismiss some of the counts of the indictment or strike part or all of the testimony of some of the witnesses.<sup>72</sup>

A prosecution attempt of a suspected drug trafficker would be lost in court if it was based on classified information that the government did not want revealed. From a practical standpoint, law enforcement agencies are extremely reluctant to use classified information as a basis for prosecution even with some CIPA guarantees. The LEAs attempt to build a non-classified case, or at least a case built on other non-sensitive sources of information that could be sustained in court. This effort takes time and more investigative work along with a little luck. It is quite likely that some drug traffickers who ought to go to trial would not go because the government could not develop a strong enough case without the use of classified information.

The national foreign intelligence community, including the DOD operational and intelligence elements, have the requirement to support the law enforcement agencies with detection, monitoring,

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<sup>72</sup> US Congress, CIPA, sec. 6(e)(2).

and intelligence of illegal drug activity. These operational and intelligence elements have considerable capability and can provide extensive, extremely accurate, and timely intelligence on drug trafficking operations. A quantum increase of intelligence on illegal drug trafficking requires a detailed review of what CIPA guarantees the government has in the protection of vital intelligence sources and methods.

Congress should consider some changes to CIPA to protect the intelligence agencies from compromise so that these agencies will have no inhibitions from totally supporting the counter-narcotic effort. If Congress and the administration are really serious about winning the war on drugs, then they must make some changes to the law as a proof of their commitment. If they will make no changes, then there will be considerable inefficiency and ineffectiveness in intelligence collection, analysis, and use of information. Additionally, if no changes are made, the US government will be spending a considerable sum of money on drug intelligence and receiving only a marginal benefit. This combination of lack of efficiency and effectiveness, along with an unfavorable cost-benefit ratio, and the government's lack of willingness to make a commitment are powerful arguments for making changes to CIPA.

All intelligence collection agencies consider protection of sources and method to be paramount. In balancing the rights of the accused in drug cases vs. the need for the government to maintain the secrecy of its highly sensitive intelligence collection effort,

the balance should tip toward national security. In nearly all cases, except terrorism and international narcotic trafficking, the national foreign intelligence community has little input into the prosecutorial process. If the administration and Congress had not declared the drug problem a major domestic and national security problem facing America, then the existing CIPA guarantees would be adequate. Because of the significant deleterious affects of increased drug use in the US resulting from unhampered trafficking, Congress should respond by amending laws. Congressional action should provide more protection to intelligence sources and methods while also making it easier to use classified information for prosecution of drug cases. If this were a real war and the mission was to annihilate the drug traffickers, then there would be little discussion of defendants' rights.

The government must protect intelligence sources and methods because there are other security considerations besides the illegal drug organizations. These US national intelligence systems must not be compromised, because it would endanger overall US national security now and in the future. These sources and methods do not always involve a highly sensitive technical device; rather, many are well-placed informants whose very lives would be in danger if they were compromised. If a source is lost or compromised and the information stops coming from the source, then the intelligence agency must develop new sources. Depending on the compromise, it may take the agency a short time to adjust, several years, or possibly never. In the meantime an event vital to national

security might occur, and the intelligence system could fail to provide the decision maker the information needed at the critical time. Maintaining effective intelligence collection systems is hard work, and any compromise makes the task much more difficult. The American people should not be put at risk to protect the rights of drug traffickers whose very intentions are to increase illicit drug use and, thus, to destabilize American society.

In our view a combination of changes to CIPA and accelerated declassification and sanitization of classified materials would be the best approach. These changes would cause national foreign intelligence agencies to be more aggressive in declassifying information that has little reference to a sensitive source and to initiate wholesale sanitization of highly classified products. Sanitization refers to modifying intelligence reports by taking out references to, or implications of, sensitive sources and/or methods. Congress should amend CIPA so that declassified and sanitized intelligence could be used as evidence in trials of drug offenders without the court or the defendant's discovery process delving into the sources and methods. This proviso or stipulation should be used only in drug-related cases and should not affect other criminal cases. As a check and balance, Congress should monitor and evaluate the government's use of declassified and sanitized intelligence in drug cases to preclude abuse of a defendant's rights. If Congress detects abuses, then they should withdraw the amendments and revert to previous provisions of the law.

The reason amendments to CIPA, declassification, and sanitization are so important is because any information used as evidence in a trial must meet the rules of discovery under the Federal Rules of Criminal Procedure. The intent of the rules of discovery is that a defendant, in an open trial, should have equal access to all the information the government intends to use in the prosecution. These rules impact on how much, if any, classified information the government is willing to use or claim is available and not under a Privacy Act exemption or exclusion.

There are four general rules of discovery that have a bearing on classified information used as evidence. Rule 16 gives the defendant the right to inspect and copy or photograph any relevant written or recorded data. This rule applies to any SIGINT-derived data as well as statements from witnesses. Rule 3500 states that any statement or report used by the government is subject to direct examination in court. The implication of this rule is that the government would have to provide a subject matter expert to respond under direct examination about any classified information used as evidence. In Rule 3504 the government must confirm or deny whether information obtained as evidence was done so by an "unlawful act." In this case the defense is normally trying to determine if any illegal electronic surveillance is the source of the evidence. With the infusion of national foreign intelligence collection, the defense could easily assume that the government obtained the information from unlawful means. The fourth rule is based on the

Brady vs. Maryland case, which requires the government to give the defense exculpatory evidence, or relevant data to the defendant.<sup>73</sup>

A revolutionary method to avoid disclosure of certain sensitive classified information as evidence is to establish a "cut-out." A cut-out could be an individual, committee, or more probably representatives from the Congressional Intelligence and Judicial committees and from the office of the Attorney General and the DCI. The purpose of the cut-out would be to vouch for the authenticity, reliability, and believability of highly sensitive classified information that the government desires to use as evidence in a drug case. This evidence would be accepted by the court and not be subject to the rules of discovery. A cut-out should be used only in the most extraordinary cases and be the exception not the rule. In implementing the cut-out system, Congress must consider ways to check to avoid abuses. If there are abuses, then Congress should eliminate the cut-out system.

The primary reason for considering a cut-out system is to provide a vehicle for certain highly sensitive information to be used in court when other evidence is insufficient to convict. If a cut-out system is not implemented, then there will always be cases where a drug trafficker will escape punishment due to lack of evidence. Further, since the US is calling this a war on drugs and the administration, Congress, and the American people consistently view the plague of illegal drugs as the number one domestic and foreign policy problem, then Congress must seriously

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<sup>73</sup> Christfield interview.

consider extraordinary measures aimed at incarceration of drug traffickers.

Whatever changes Congress and the administration ultimately make in the legal framework affecting the collection and use of information for prosecution of drug traffickers, they must also consider the checks and balances. There must be a monitoring of any changes to the law or executive order to avoid abuses. If abuses are found, then Congress and the administration must deal with them expeditiously. If abuses cannot be contained, then Congress and the administration should reverse changes regardless of the affect on the war on drugs. If the nation agrees to abridge the rights of some accused, it must be careful not to treat the rights of others in a cavalier fashion.

If Congress and the administration make changes to improve the efficiency and effectiveness of all intelligence support to the counter-narcotic effort, then law enforcement officials and prosecutors must work together more efficiently in drug cases. William J. Corcoran, from the Department of Justice, stated at a symposium that because of the fears, biases, and reluctance to share intelligence with the judicial system, many prosecutors are hamstrung early on in the case. The prosecutors either do not know which information is classified or whether some classified information is available but not shared with them. Mr. Corcoran further stated that Justice Department prosecutors claim that if they knew at the beginning of the case whether any classified information were being used, they could develop a better

prosecuting strategy with the law enforcement officials. The prosecutors claim they could be more efficient and successful in prosecuting drug offenders.<sup>74</sup> Obviously these fears, biases, and reluctances are areas where deep-seated prejudices must give way to reason and a sense of mission. If the nation is to win the war on drugs, then the law enforcement officials and prosecutors must work together and cooperate. If Congress and the administration make substantive changes to the laws and provide assurances to protect intelligence systems, then the law enforcement officials and the prosecutors should be able to work together more effectively.

If the national foreign intelligence collectors can fully support the counter-narcotic effort and have legal assurances that their sources and methods will remain secure, then the national intelligence collection priorities must also change. Quite obviously with the easing of tensions between the US and Soviet Union and the breathtaking changes in Eastern Europe, the US can maintain its vigilance in that theater, but divert some of the intelligence gathering resources to support the counter-narcotic effort. The United States still has concerns in Latin America, but with the fall of communism in Europe, the threats to this hemisphere have diminished considerably. Because of this geopolitical reality, the US can safely divert large portions of its national foreign intelligence collection effort from the

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<sup>74</sup> William J. Corcoran, Counsel, Department of Justice, AFCEA Symposium, Intelligence Support to the War on Drugs (Bolling, Md.: Bolling AFB, 1 Dec. 1989)

"deterrence" mission and assign them the new mission of fighting the war on drugs.

#### **RECOMMENDATIONS**

##### **Change the Executive Order and the National Security Act.**

It is time to publish a new EO 12333 making it very clear that the national foreign intelligence agencies, to include the DOD intelligence organizations, can collect drug-related intelligence and maintain files on all persons, including US Persons. The primary focus of these organizations should remain foreign intelligence collection, but they should not be restricted from domestic narcotic activities that have a direct bearing on analysis of all drug-related intelligence.

##### **Give the National Foreign Intelligence Agencies and DOD Privacy Act exemptions.**

Give these agencies exemptions or exclusions for national security reasons, making it clear that they can maintain secrecy about their sources and methods without fear of compromise.

##### **Allow the National Foreign Intelligence and DOD analysts full access to LEA databases.**

After authorizing the national intelligence community to collect intelligence and maintain files on all persons suspected or engaged in drug trafficking, specify that these national agencies and DOD intelligence organizations have full access to LEA databases. Make it clear that there is a distinction between collection and analysis. Although not authorized to conduct

domestic intelligence collection, the national foreign intelligence agencies should be able to conduct analysis on the entire database.

**Engage in maximum declassification and sanitization of drug-related intelligence.**

Start this process now. Make the intelligence available and useable for the LEAs. Not only will this make development of cases and prosecution easier, but it will ease the security concerns for the LEAs in maintaining highly classified data.

**Change national collection priorities to support drug intelligence.**

It is time to adjust to reality and put the resources into the battle that is ongoing and not the war America may have already won. Be aggressive and transfer necessary intelligence systems and analytical effort to the counter-narcotics mission. Use national foreign intelligence resources to collect information on source and transit countries and follow the trail into the US.

**Establish a "cut-out."**

Establish a cut-out system for exceptional cases when highly sensitive intelligence is the only or primary source of evidence in a drug prosecution.

**Establish checks and balances.**

Establish a system to make sure there are no abuses in the use of intelligence to prosecute drug offenders. Create a congressional or judicial watch-dog element to make sure any collection of information and files maintained on US Persons are not abused by the intelligence agencies.

## **CONCLUSION**

The United States must reorient some of its national priorities. If the drug problem is a key national security issue and major domestic problem, then it is time for Americans to compromise, make sacrifices, and accept an abridgment of some of their rights. Americans cannot have it both ways: fight the drug war off the nation's shores but go on with business as usual in the United States. Be aggressive and attack the drug traffickers and bring them to justice. If it takes a temporary abridgment of citizens' rights to accomplish this task, then do it.

**CHAPTER 5**  
**INTEGRATING LAW ENFORCEMENT INTELLIGENCE WITH FOREIGN**  
**INTELLIGENCE**

There are significant differences that separate the two communities of US national foreign intelligence and US drug law enforcement intelligence. Some of these differences are seen in the way each community approaches or views intelligence, and other differences are seen in the way each community is organized. Integration of the two communities is essential to success in the effort against illegal drugs.

**DIFFERENT VIEWS AND APPROACHES**

One problem in integrating drug law enforcement intelligence with national foreign intelligence is that each community uses intelligence for a different purpose. The law enforcement community uses intelligence primarily as a tool for criminal prosecutions. The national foreign intelligence community provides intelligence to policy makers as an aid in making political, economic, and military decisions on the national and international level.

Another obstacle to the integration of the two intelligence communities is that law enforcement intelligence is primarily concerned with activities involving individuals or relatively small

groups of criminals while foreign intelligence is concerned with patterns of large-scale activity such as troop movements, weapons tests, and economic production in and among nations. Since one community is looking mostly at people and the other is looking at large patterns of activity, each has a different approach in gathering and analyzing intelligence.

Law enforcement looks at people, criminals, and suspected criminals for the purpose of collecting evidence for a successful arrest and prosecution. Law enforcement uses primarily HUMINT from informants, as well as human surveillance techniques such as stake-outs, to develop the necessary information for a successful prosecution.<sup>75</sup> When there is sufficient probable cause to believe that a crime has been or is being committed, permission to use the more technical intelligence methods, such as phone taps, can be granted through a legal proceeding.

In contrast, national foreign intelligence looks at broad patterns of activity. The US foreign intelligence community uses some HUMINT sources, but its major effort is spent on large volumes of sensor or technical intelligence collection and processing. Necessarily, technical intelligence receives the largest part of the national foreign intelligence community's budget.<sup>76</sup> The information collected by these sensors is analyzed to discern the level of military or economic capability of a nation or group of

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<sup>75</sup> Nelson B. Johnson, 48.

<sup>76</sup> Bruce D. Berkowitz and Allan E. Goodman, Strategic Intelligence for American National Security (Princeton, N.J.: Princeton University Press, 1989) 146.

nations. The information is also analyzed for patterns that may indicate a particular group's intentions regarding US national interests. Once analyzed, the information is disseminated to policy makers to aid in making military, political, diplomatic, and economic decisions.

In comparison, national foreign intelligence has many assets and a broad responsibility to help policy makers, while law enforcement intelligence has limited assets and a narrow responsibility to catch and prosecute criminals. Integrating these two disparate views and approaches presents a challenge.

Despite these major differences, US national foreign intelligence agencies, especially the military intelligence specialists, can focus their radar, surveillance aircraft, and SIGINT capabilities on the narrower tactical intelligence level. These DOD assets can assist law enforcement in locating drug-laden vessels, aircraft, and vehicles for apprehension. It is important that the two intelligence communities be integrated to take advantage of these foreign intelligence tactical capabilities.

Another characteristic that inhibits integration of law enforcement and US foreign intelligence is that foreign intelligence is primarily proactive, while law enforcement intelligence is reactive. Law enforcement, usually for good constitutional reasons, has to wait until a crime has been or is being committed before the full range of law enforcement intelligence techniques can be used. In contrast, national foreign

intelligence is constantly collecting, analyzing, and disseminating intelligence, trying to be predictive in anticipating events.

Given the national security threat created by the illegal drug trade and its continuous high level of international criminal activity, the proactive efforts of foreign intelligence seem a more appropriate counter to illegal drugs. The two intelligence communities must be integrated to develop intelligence that will allow law enforcement to more effectively apprehend drug traffickers by anticipating their constantly changing smuggling routes, rather than continuously reacting to the changes. The US needs to collect and analyze sufficient intelligence about the drug traffickers to determine the patterns that will enable law enforcement to take advantage of the most essential and most vulnerable aspects of the illegal drug trade.<sup>77</sup>

Classified information is another issue that inhibits the integration of law enforcement intelligence with US foreign intelligence. Unclassified drug enforcement intelligence oriented toward prosecution is not providing enough of the right kind of information to effectively attack the illegal drug trade. Seizure statistics continue to rise with little effect on the street price of drugs. Law enforcement needs to concentrate more on the organization and infrastructure of the drug trade and less on prosecution. Classified material from the national foreign

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<sup>77</sup> John P. Walters, Chief of Staff and National Security Advisor to the Director, ONDCP, AFCEA Symposium, Intelligence Support to the War on Drugs, (Bolling, Md.: Bolling AFB, 30 Nov. 1989).

intelligence community applied to the analysis of the organization and infrastructure of the drug trade can provide helpful insights without the adverse consequences of using classified material in prosecuting a specific case.

One strategy to overcome some of the obstacles to integration caused by the divergent views and approaches of the law enforcement and foreign intelligence communities is to provide personnel in the two communities the opportunity to work together in more joint duty positions. Examples of these joint duty positions could be assignments at interagency intelligence centers such as EPIC, FINCEN, Coast Guard and Customs C<sup>3</sup>I Centers, the DOD Joint Task Forces, the proposed National Drug Intelligence Center, and the DCI's Counter Narcotics Center (CNC).

The DCI's CNC with its Community Coordination Group is an especially effective initial attempt to integrate the two intelligence communities. The Community Coordination Group is made up of senior personnel from law enforcement and foreign intelligence working on problems of organization, structure, communication, and coordination. The CNC deals not only with these large issues; it aggressively identifies relevant information on a day-to-day, case-by-case basis. The CNC arranges for declassification and passing of information that can immediately assist in apprehension and prosecution of drug traffickers. Therefore, the CNC's Community Coordination Group is "simultaneously looking for the seeds of solutions"<sup>78</sup> to larger

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<sup>78</sup> Chief, Community Coordination Group, AFCEA Symposium.

integration problems while declassifying and passing intelligence information on immediate issues.

It is important to encourage the best people to fill these joint duty positions. Incentives like pay, promotions, enhanced status in the parent agency, post-tour education opportunities, and limited tour lengths should be offered to attract the best candidates to joint interagency counter-narcotics intelligence assignments.

The vast majority of the members in the two intelligence communities will not have the opportunity to serve in a joint position. One way to overcome this obstacle to integration is to provide a common training facility. There is a NATO Warrior Preparation Center in Europe that prepares military personnel from the member countries for combined operations. Paul Pelletier from MITRE Corporation developed a Drug Warrior Preparation Center concept modeled after the NATO program. The Drug Warrior Preparation Center would train personnel from the various agencies involved in narcotics supply reduction efforts.<sup>79</sup>

The primary mission of the center would be to provide an integrated view of joint operations involving multiple government agencies and to impart in training and simulated exercises a sense of common purpose and cooperation. The course must cover the areas of intelligence collection, detection and monitoring of drug traffic, interdiction, apprehension, and prosecution. The Drug

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<sup>79</sup> Paul A. Pelletier, Office of Intelligence & C<sup>3</sup>CM Systems, MITRE Corporation, personal interview, 1 Feb. 1990.

Warrior Preparation Center would include a drug war gaming facility to provide a "real-time" exercise capability. The center could also be used to simulate a variety of intelligence-driven scenarios and to test the effectiveness of several different counter-narcotics operations against the scenarios.<sup>80</sup> The war gaming facility would serve a function similar to that of the Center for War Gaming at the Naval War College, where extensive anti-drug war games were conducted from 1985 to 1988. The anti-drug war games at the Naval War College played a significant role in fostering interagency cooperation. The Drug Warrior Preparation Center could play a similar role in helping to build interagency trust, integrating intelligence, and improving joint operations.

#### **DIFFERENT ORGANIZATIONS AND STRUCTURES**

The organizational and structural differences between the US foreign intelligence and law enforcement communities also offer some interesting challenges to overcome in integrating the two communities. The law enforcement intelligence community is decentralized, with limited automation and less sophisticated communications. In contrast, the US foreign intelligence community is centrally organized, with a high degree of automation and more secure communications.

The centralization of US foreign intelligence began with the passage of the National Security Act of 1947, creating the Director of Central Intelligence (DCI). Additionally, Executive Order 12333

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<sup>80</sup> Pelletier interview.

reinforces the centralization of US intelligence by making the DCI directly responsible to the President and the National Security Council on foreign intelligence matters. The DCI also develops the objectives and policy guidance for the national foreign intelligence community.<sup>81</sup>

The law enforcement intelligence community has no equivalent to the DCI. The lack of a DCI for illegal drugs resulted in the proliferation of drug intelligence centers and programs as each law enforcement agency significantly involved in the anti-drug effort developed its own intelligence program. The Coast Guard has an Intelligence Coordination Center at its headquarters, as well as area and district intelligence operations. The Customs Service has regional and headquarters intelligence branches. The Customs Service and the Coast Guard operate joint Command, Control, Communications, and Intelligence (C<sup>3</sup>I) Centers for the interdiction of drugs smuggled by air. The Treasury Department has also recently opened a Financial Crimes Enforcement Network (FINCEN) to attack the money-laundering end of the illegal drug trade.<sup>82</sup> The FBI is starting a new drug unit looking at strategic intelligence along with the DEA.<sup>83</sup> The DEA also operates the oldest and largest drug intelligence center, the El Paso Intelligence Center (EPIC),

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<sup>81</sup> BETAC Corporation, Department of Defense Counter Drug Baseline Report (DRAFT), (Arlington, Va., 1989), 2-13, 2-14.

<sup>82</sup> Stephen Labaton, "US In Drug Drive, To Regulate Shift Of Funds Abroad," New York Times 5 Oct. 1989: A1 & D23.

<sup>83</sup> Louis A. Tosti, Chief, Automation Support Unit, Drug Section, FBI, personal interview, 14 Nov. 1989.

established in 1974. These drug intelligence centers communicate and share intelligence to varying degrees, depending on the desires and agendas of the parent agencies and departments. Since there is no equivalent to the DCI for law enforcement drug intelligence operations, the intelligence effort is wasteful and inefficient due to duplication and fragmentation.

The first step in establishing the centralization necessary to reduce the fragmentation and duplication of effort is to give the Director of ONDCP budget authority to allocate drug intelligence funds, as recommended in chapter three. The Second National Drug Strategy declares that the administration will create a National Drug Intelligence Center (NDIC) to consolidate and coordinate the intelligence gathered by law enforcement agencies.<sup>84</sup> The Director of the proposed NDIC would be a logical choice to act as the DCI for drug enforcement intelligence under the Director of ONDCP.

Unfortunately, the NDIC as currently proposed cannot act as a DCI for drug enforcement intelligence. The NDIC appears to be just another of several intelligence centers in the counter-narcotic effort. The Treasury Department's Financial Crimes Enforcement Network (FINCEN) will be the center for drug-related financial intelligence, and DEA's El Paso Intelligence Center (EPIC) "will remain the principle national archive and processing facility for tactical drug law enforcement intelligence."<sup>85</sup> For the

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<sup>84</sup> White House, National Drug Control Strategy, 1990, 83.

<sup>85</sup> White House, National Drug Control Strategy, 1990, 84.

NDIC to be successful, it must be the paramount national drug enforcement intelligence center.

Once the drug law enforcement intelligence community is centralized into a more rational operation, the need remains to integrate the law enforcement intelligence with national foreign intelligence. The January 1990 National Drug Control Strategy calls for the proposed NDIC to serve "as an exchange point for classified drug intelligence between the law enforcement community and the foreign intelligence community."<sup>86</sup> The proposed NDIC does not provide the integration necessary to allow a sufficient flow of information between the national foreign intelligence community and the drug law enforcement intelligence community. The NDIC will integrate drug enforcement intelligence from law enforcement sources, but will exchange information only with the national foreign intelligence community. There will be insufficient dissemination of intelligence between the two communities to significantly improve the quality of collection and analysis on both sides.

A Director of National Intelligence (DNI) is needed to oversee the integration of drug law enforcement intelligence and national foreign intelligence. Alfred Prados, a Library of Congress researcher, suggests in a congressional research report that Congress should establish an overarching Director of National Intelligence or DNI. The DNI would be above the Director of the CIA and other heads of intelligence agencies, including law

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<sup>86</sup> White House, National Drug Control Strategy, 1990, 84.

enforcement intelligence. Under the current system the Director of the CIA is also the DCI. He is in effect a peer of the heads of other intelligence agencies while at the same time responsible to the President for all intelligence summaries and policies. With this dual responsibility, there is the potential that policy guidelines or agency initiatives might favor CIA analysis over other agencies. Having a DNI would provide a better system of checks and balances between intelligence activity and policy formulation.<sup>85</sup> Separating the functions of the head of the CIA and the Director of Central Intelligence would help assure that all components of the intelligence community were adequately represented in the production of intelligence.

Although there are solid organizational reasons to adopt this proposal, there are some political realities to consider. Establishing a DNI would also mean a significant increase and possible duplication of the bureaucracy. Despite any problems with the creation of a DNI, such an organizational change would greatly assist in the integration of all drug-related intelligence. With one leader of our nation's intelligence activities, all foreign and law enforcement intelligence efforts could be tasked, managed, and coordinated by the DNI.

There is a sharp contrast between the US foreign intelligence and the law enforcement intelligence community in their capacities to automate information. The foreign intelligence community has

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<sup>85</sup> CRS Report for Congress, Intelligence Community Leadership: Development and Debate Since 1947, (Washington: Library of Congress, 1989) 53.

the impressive technical resources of the NSA and DIA to fuse several sources of information, rapidly analyze the information, and quickly disseminate it to consumers in several different agencies.

One example of lack of automation in drug law enforcement intelligence is the DEA headquarters intelligence system, where up to 7,000 hard-copy case reports a week are received from field agents. Despite a good central file indexing system, these reports are hand-processed and -accessed, resulting in a tedious procedure that could be improved by the application of computer technology.<sup>86</sup>

The differences between the law enforcement intelligence and US national foreign intelligence communications structures is another area that will present challenges in integrating the two communities. The national foreign intelligence community is linked primarily by secure, compatible communications. In contrast, law enforcement has very limited compatible secure communications devices other than secure telephones.

In the US national foreign intelligence community, a single agency, the National Security Agency (NSA), is responsible for secure communications and computer security. NSA works directly with the DCI. NSA serves DOD and US foreign intelligence as the central approving authority for secure communication and secure computer systems for intelligence analysis.<sup>87</sup> The Defense Communications Agency (DCA) is responsible for ensuring the

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<sup>86</sup> Fernandez interview.

<sup>87</sup> BETAC, 3-19, 3-20.

compatibility of the Command, Control, Communications and Intelligence (C<sup>3</sup>I) systems used by the military services and the intelligence agencies.<sup>88</sup>

Operating for the most part outside of DOD and the intelligence communities, law enforcement agencies have been free to buy any communications and computer systems that suited their needs and financial resources. There was little consideration given to compatibility with other agencies and little thought, beyond crude operational codes and voice scramblers, about secure communications. The drug traffickers with their great financial resources are spending millions on their own signals intelligence technology, such as radar detectors, secure radios, scanners, and communications intercept equipment. The traffickers use this equipment to intercept law enforcement communications and to detect radar interdiction systems so they may protect their financial resources and distribution networks.<sup>89</sup> The lack of secure, compatible communications to counter the traffickers' intelligence efforts presents a serious threat to the security of drug law enforcement operations.

In summary, the centrally organized, highly automated, and securely linked US national foreign intelligence community will be difficult to integrate with the diffusely organized, minimally automated, and non-securely linked law enforcement intelligence community.

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<sup>88</sup> BETAC, 3-21.

<sup>89</sup> Cowan, 31.

## **RECOMMENDATIONS**

**Shift intelligence focus from prosecution to organization and infrastructure.**

This shift in focus by law enforcement will improve prospects for the integration of intelligence by reducing the cultural differences between the law enforcement and national foreign intelligence communities. With the continuous collection and analysis required by the organization and infrastructure approach, law enforcement intelligence will be less reactive and prosecutorial and more proactive and predictive.

**Provide opportunities for joint law enforcement and foreign intelligence duty.**

The more often people from the two intelligence communities work together and understand the important contribution each can make in the struggle against illegal drugs, the better the chance of effectively integrating the illegal drug intelligence in both communities.

**Create a Drug Warrior Preparation Center.**

A Drug Warrior Preparation Center on the model of the NATO Warrior Preparation Center would provide standard training for personnel in various agencies involved in the counter narcotics effort. A key part of the training would involve emphasis on the importance of cooperation to achieve success in anti-drug operations. It would also provide a simulator for testing anti-narcotic strategies against intelligence-driven simulations.

**Appoint a Director of Central Drug Intelligence as the head of the National Drug Intelligence Center.**

Drug law enforcement intelligence suffers from fragmentation and duplication of effort. The January 1990 National Drug Control Strategy calls for the creation of a National Drug Intelligence Center. It would be logical to appoint the director of the NDIC as the Director of Central Drug Intelligence (DCDI), much the same way that the Director of the CIA is the Director of Central Intelligence. With the proposed budget authority of the Director of ONDCP, the DCDI would have the tools to effectively direct the anti-drug intelligence effort.

**Establish a Director of National Intelligence.**

A Director of National Intelligence (DNI) would eliminate the present organizational conflict of interest that exists with the Director of the CIA and the Director of Central Intelligence being the same person. A DNI would coordinate both law enforcement and national foreign intelligence activities.

**Create an Intelligence Center to integrate law enforcement and US foreign intelligence information.**

The NDIC proposed in the January 1990 National Drug Control Strategy is primarily for the integration of law enforcement drug intelligence. The need remains for a center to integrate drug law enforcement intelligence with drug-related national foreign intelligence. This center would operate under the auspices of the proposed DNI.

## CONCLUSIONS

The integration of drug enforcement intelligence from the law enforcement and foreign intelligence communities is being addressed in the National Drug Strategy. Both communities have much to learn about each other's cultures. It is clear that law enforcement is going to have to adopt many of the methods of foreign intelligence community if it is to comply with the National Drug Strategy. It is also clear that considerable foreign intelligence resources must be shifted to meet the illegal drug threat. It appears there is a significant possibility the current efforts will not produce the necessary level of intelligence integration to make an important contribution to the counter-narcotics effort unless there is a further reorganization of the drug intelligence effort.

## CHAPTER 6

### SHARING DRUG INTELLIGENCE WITH FOREIGN LAW ENFORCEMENT AGENCIES

The international nature of illegal drug trafficking requires any US national drug control strategy to set objectives for improving foreign drug intelligence. Transnational drug cartels for cocaine and other foreign produced drugs currently exploit the lack of effective sharing of international drug intelligence. Further, these cartels take advantage of the various jurisdictional restrictions of national and international criminal justice agencies. The National Drug Control Strategy published by the White House in September 1989 identified a number of intelligence objectives including "increased intelligence efforts to concentrate on the infrastructure of trafficking organizations and their allied enterprises, particularly money-laundering."<sup>90</sup>

The strategy also identified a series of seven very broad international initiatives that addressed disrupting and eliminating drug trafficking organizations; reducing drug and precursor chemical supplies; energizing foreign nations against the drug threat; and establishing a multi-agency group to target international money-laundering activities.<sup>91</sup>

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<sup>90</sup> White House, National Drug Control Strategy, 1989, 88.

<sup>91</sup> White House, National Drug Control Strategy, 1989, 106-107.

In our judgment these international initiatives need to be expanded to more fully articulate the problems associated with targeting transnational drug trafficking and provide more specific recommendations for improvement. The role of foreign drug intelligence and its sharing is critical to international drug enforcement.

The challenge of sharing drug intelligence with foreign law enforcement agencies is extremely difficult even under the best of circumstances. Anthony Cave Brown, in his book Bodyguard of Lies, cites the rivalry between the American and British air intelligence services even during preparations for the D-Day invasion of German-occupied Europe. He stated that "estimates of Luftwaffe strength varied so widely, that they might have been drawn from a hat." He places the blame for this on allied rivalry and the rigid security imposed upon the Luftwaffe intelligence that "Ultra" was able to provide.<sup>92</sup> If such difficulties in intelligence sharing existed between close allies during critical wartime operations, we can expect even greater reluctance to integrate international drug intelligence among agencies of foreign nations.

#### **PASSIVE NATURE OF INTERPOL**

INTERPOL, the International Criminal Police Organization, founded in 1923 and headquartered in Lyons, France, serves as a international center for criminal intelligence coordination.

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<sup>92</sup> Anthony Cave Brown, Bodyguard of Lies, (New York: Bantam Books, 1976) 523.

National law enforcement and intelligence agencies primarily use the INTERPOL network to conduct criminal record checks and disseminate pertinent criminal intelligence reports of current and future utility. INTERPOL is comprised of some 150 member-countries, each with a National Central Bureau through which information is channeled.

The US law enforcement communications link to INTERPOL is through the US National Central Bureau (USNCB), which executes its responsibilities through cooperative efforts with 14 other federal law enforcement agencies. The INTERPOL-USNCB reports to an Associate Attorney General. The bureau is staffed by representatives of the US Treasury Department. The bulk of investigative and support personnel are provided by the FBI, DEA, Immigration and Naturalization Service, US Marshall Service, Bureau of Alcohol, Tobacco, and Firearms, US Customs Service, and Internal Revenue Service.

The INTERPOL-USNCB has established a National Law Enforcement Telecommunications System (NLETS) that links some 20,000 local, state and federal law enforcement agencies. The system allows rapid movement of criminal intelligence, queries, and requests for assistance, with the INTERPOL-USNCB serving as the interface with foreign law enforcement agencies.

Primary emphasis under the INTERPOL system is given to criminal intelligence sharing and investigation of a broad range of significant crimes. These include crimes of violence, fraud and counterfeiting violations, large-scale drug offenses, location

and apprehension of international fugitives, and arrests and extraditions to the countries where the crimes were committed.<sup>93</sup>

Candid personal interviews with agents of the Drug Enforcement Administration indicate that there is a less-than-optimal use of the INTERPOL system for international drug enforcement. Several agents stated that when the need arises to move DEA drug intelligence to international locations, DEA tends to use its own intra-agency network of DEA agents. Intelligence is passed directly between agents stationed in the US and in foreign countries, and vice versa, or through a liaison agent at the DEA headquarters. Concern was also expressed that the databases within the INTERPOL system are not fully automated and lack compatibility.<sup>94</sup>

The DEA's cautiousness in using the INTERPOL system to pass drug intelligence may also be based on past compromise. DEA learned during the follow-up investigation into the murder of DEA agent Kiki Camarena in February 1985 at Guadalajara, Mexico, that a key Mexican INTERPOL official was on the payroll of the drug cartels.<sup>95</sup> INTERPOL officials subsequently confirmed that INTERPOL intelligence was used to tip off wanted criminals. They admit that the different professional and ethical standards of national police

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<sup>93</sup> BETAC, 2-29

<sup>94</sup> Edward Crimmins, DEA LNO, Joint Task Force-4, personal interview, Key West, Fla., 7 Feb. 1990.

<sup>95</sup> Shannon, 234.

forces complicate coordination. Yet, INTERPOL is not in a position to apply sanctions against those who compromise.<sup>96</sup>

The INTERPOL network holds promise as a mechanism for expanded use in coordinating international drug intelligence. Currently, however, it has significant shortcomings in fostering efficient sharing of drug intelligence. INTERPOL is a passive organization rather than proactive. It is systemically designed to provide intelligence in response to specific queries by various authorized agencies rather than providing unsolicited strategic, operational, and tactical intelligence.<sup>97</sup>

In a recent interview for the New York Times, Raymond E. Kendall, Secretary General of INTERPOL, admitted that the organization's bureaucratic past and antiquated files and communications systems have fostered this passive image. He also cited that "with an annual budget of just \$15 million and only about 90 police officers among its 280 member headquarters staff, INTERPOL remains small." He stressed "that with over half of INTERPOL files dedicated to drug trafficking and money-laundering the organization has an increasing responsibility to integrate and disseminate international drug intelligence." On a positive note, Mr. Kendall cited that INTERPOL files have recently been converted

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<sup>96</sup> Alan Riding, "Interpol Regrets Shady Past, Vows Better Future," New York Times 22 Feb. 1990, I-16.

<sup>97</sup> Andrew G. Thomas, Deputy Assistant Secretary of State, AFCEA Symposium, Intelligence Support to the War on Drugs. (Bolling, Md.: Bolling AFB, 1 Dec. 1989)

to a sophisticated data processing system with a state-of-the-art world-wide telecommunications link.<sup>98</sup>

#### PROTECTION OF SOURCES AND METHODS

A key obstacle to effective sharing of drug intelligence in the international arena is the high potential for corruption in source and transit countries.<sup>99</sup> Personnel assigned to law enforcement, intelligence, and other national agencies in these countries are vulnerable to corruption and coercion instigated by drug organizations. Drug lords specifically target key individuals in these agencies for purposes of counterintelligence and to provide warning or protection from enforcement operations. A dilemma exists for the US and other nations between the desire to provide actionable foreign intelligence to national enforcement agencies in source and transit countries and reluctance to share for fear of compromise of intelligence, sources, and methods.

From a military perspective, many foreign countries, particularly in the Andean Region of South America, have very sophisticated intelligence systems that could be applied to collection, analysis, and dissemination of drug intelligence. The problem is, however, that they are being used to keep track of political opponents and insurgent organizations. A fear exists among US intelligence and law enforcement personnel that any intelligence improvements offered by the US to apply to the

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<sup>98</sup> Riding, I-16.

<sup>99</sup> Fernandez interview.

international counter-narcotics effort would be used against the current regional political opponents. The consensus among US operatives in Latin America is that the drug transit countries, such as Columbia and Venezuela, are better candidates for US drug intelligence sharing and cooperation than source countries. Commander Heyl, a former USCG advisor to Bolivian naval forces, stressed that "all levels of source countries' government and society are too deeply involved in the economic aspects of the drug trade and see the problem as one of the incessant drug demand of the US society."<sup>100</sup>

The key tools in developing reliable human intelligence in source and transit countries are trust and money. Intelligence and enforcement operatives must establish a bond of trust with drug informants and methods to cross-check reliability. Extensive funds must be available to reward informants for providing actionable drug intelligence and to counter the enormous funds used in bribery and corruption by the drug cartels.<sup>101</sup>

Similarly, intelligence support for counter-narcotics operations in source and transit countries is jeopardized by concerns for operations security (OPSEC). There is growing concern among US law enforcement and intelligence experts about the counterintelligence capabilities of the drug cartels. They have the monetary resources to purchase high-tech equipment and the

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<sup>100</sup> Philip Heyl, LCDR, USCG, Former Advisor to the Bolivian Naval Forces, personal interview, 24 Jan. 1990.

<sup>101</sup> Shannon, 9.

skilled personnel required for its operation.<sup>102</sup> As counter-narcotics operations by national forces in source and transit countries increase, counter-surveillance efforts by cartel personnel will also increase. Should US forces be used unilaterally or as part of an international strike force in targeting cartel production and transit activities, operations security would be critical to success in rendering enemy countersurveillance ineffective.<sup>103</sup>

According to Colonel Manuel Granado, former Commander, US Military Group, Columbia, another obstacle to sharing of drug intelligence with foreign law enforcement agencies is a general lack of high-tech systems for data management and telecommunications in source and transit countries.<sup>104</sup> In most instances these agencies are limited by manual intelligence databases and outmoded communications systems. Planners involved in expanding drug intelligence fusion, particularly in the Andean Region, will have to find solutions to the very real problem of information overload.

Still another problem is limitations on sharing of classified intelligence. US national-level collection efforts employ the combined application of human intelligence and the results of

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<sup>102</sup> Terrence J. Huber, Former Special Assistant to the Director, DIA, AFCEA Symposium, Intelligence Support to the War on Drugs, (Bolling, Md.: Bolling AFB, 30 Nov. 1989)

<sup>103</sup> "Jamaican Leader, on Hill, Promotes drug Strike-Force Idea," Washington Times 7 Nov. 1989, 5.

<sup>104</sup> Manuel Granado, COL, USA, Former Commander, Military Group, Columbia, personal interview, 13 Oct. 1989.

sensor technologies.<sup>105</sup> Of the universe of military intelligence databases, some or all must be identified and codified for applicability and releasability to non-military foreign agencies.<sup>106</sup> Further, intelligence declassification is restrained by the very valid concern to protect sources and methods from disclosure.

#### **TRANSNATIONAL NATURE OF DRUG CARTELS**

Another challenge for international drug intelligence planners is the transnational nature of the drug cartels. These profit-driven organizations skillfully understand and use to their advantage limitations placed on counter-narcotics agencies by national and international jurisdictions and other legal restraints. Gathering intelligence to identify, locate, and track illegal drug trafficking targets is a crucial, and difficult, process. The targets, drug traffickers, know no borders and are spreading throughout the world. These targets are more elusive, more complex and more difficult to detect than traditional opposing forces operating on a definable battlefield. They generally operate outside legal economic and national structures, but at the same time use these structures to their advantage whenever possible.<sup>107</sup>

When faced with a threat from conventional military forces or national agencies, the traffickers respond with business decisions

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<sup>105</sup> Nelson B. Johnson, 48.

<sup>106</sup> Nelson B. Johnson, 49.

<sup>107</sup> Nelson B. Johnson, 48.

rather than with military decisions and actions. For example, recent events in Columbia illustrate how the hired military arm of the drug cartels is used to harass, divert, and cripple the government with insurgent- and terrorist-type attacks. Meanwhile, the drug operation moves to less threatened areas of the country that have no real interest in the conventional army's desire to control terrain or the insurgent forces' desire to control the population.<sup>108</sup>

A particularly complex problem generated by the transnational nature of drug trafficking is the laundering of money from drug sales. Drug cartels use financial institutions, false corporations, retail operations, and every other conceivable method to move funds generated from the international drug trade. The US has moved to tighten national banking laws, thus requiring more detailed monitoring of laundering indicators and rapid reporting to financial enforcement agencies. The cartels, however, have continued to be exceptionally resourceful in adjusting to changes in enforcement actions. They continue to take advantage of foreign institutions who welcome their tainted funds and operate in many cases under less restrictive reporting requirements.

The Kerry Amendment to the 1988 Anti-Drug Abuse Act was a major US initiative to foster international support to counter money-laundering. The law required the US Treasury Department to negotiate bilateral agreements on money-laundering detection and prevention with all US trading partners. The key to enforcement

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<sup>108</sup> Cowan, 29.

of this initiative was the threat to exclude non-complying foreign institutions from the US banking network and clearing houses.<sup>109</sup>

The National Drug Control Strategy calls for the creation of a Financial Crimes Center (FINCEN) under the oversight of the US Treasury Department. The center will have the capability to collect and cross-reference financial information from throughout the US. It will interface multiple law enforcement and financial databases to identify financial crimes like money laundering.<sup>110</sup>

Many obstacles remain to countering the extensive international money-laundering operation of the drug cartels. The FINCEN is an excellent US initiative; however, international cooperation in the form of financial drug intelligence sharing is critical to its success.

#### **PROSECUTION AND EXTRADITION PROBLEMS**

Another problem that is interrelated, at least in part, to the limitations on sharing of classified intelligence is the follow-on problem of extradition and prosecution of supply-side drug criminals. Raw intelligence requires sanitization to protect sources and methods for appropriate use in prosecution.<sup>111</sup> Yet,

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<sup>109</sup> Jonathan Beaty and Richard Hornick, "A Torrent of Dirty Dollars," Time 18 Dec. 1989: 56.

<sup>110</sup> Paul M. Barrette, "Other Agencies Say No Soap to Treasury's Push For High-Tech Tracking of Money Laundering," Wall Street Journal 14 Dec. 1989.

<sup>111</sup> Speaker, Chief, Assessments Group, AFCEA Symposium, Intelligence Support to the War on Drugs, (Bolling, Md.: Bolling AFB, 30 Nov. 1989).

the US criminal justice system requires a substantial degree of information on source and collection methods for evidence against the suspects before proceeding with extradition and criminal prosecution in the United States.

Extradition and prosecution of foreign drug offenders is further hampered by a lack of bilateral and multilateral agreements giving legal basis to such actions. The 24 October 1989 US congressional approval of six Mutual Legal Assistance Treaties (MLAT) is a positive step toward international cooperation between the US and source and transit countries.<sup>112</sup>

A related issue is the lack of a viable international fugitive apprehension program leading to extradition and prosecution of foreign drug traffickers. INTERPOL currently plays a role in this effort by disseminating intelligence internationally on criminals who cross international borders.<sup>113</sup> In our judgement, however, this system is largely ineffective due to the current level of resourcing for the INTERPOL system and the need for greater international commitment to the program.

#### **ORGANIZATIONAL SHORTCOMINGS**

Changes are necessary in the existing US National Foreign Intelligence Community (NFIC) and counterpart foreign intelligence and law enforcement agencies to effectively collect and integrate drug intelligence on a global scale. The present system has

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<sup>112</sup> White House, National Drug Control Strategy, 1990, 57.

<sup>113</sup> White House, National Drug Control Strategy, 1990, 21.

traditionally been focused on military threats to the US and its allies. With recent changes in the Soviet and Warsaw Pact threat to western stability, there must be a significant upgrade in the priority level of international drug intelligence.

US law enforcement agencies have failed to refine and articulate their drug intelligence needs regarding international drug cartels. Consequently, the NFIC has not developed and disseminated the necessary essential elements of information. As a result, we do not know how the drug groups are organized, specific details of how they operate, nor all aspects of their counter-surveillance methods.<sup>114</sup>

The existing US drug intelligence system is limited in its effectiveness to rapidly collate technical and human intelligence, determine its strategic, operational, or tactical utility, and disseminate it to appropriate foreign and domestic agencies for information and action. The system is also limited in analysis staffing and "real-time" secure telecommunications links.

A critical problem in the sharing of all-source foreign drug intelligence is the lack of comprehensive regional fusion centers. The current absence of such centers in each geographic region of drug production and transshipment results in a lack of connectivity. Redundant intelligence is collected and analyzed by multiple agencies resulting in uncoordinated and ineffective unilateral interdiction operations.

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<sup>114</sup> Carnes.

Currently, in the Caribbean region, there are limited regional intelligence centers that must be greatly expanded. These centers can provide for sanitizing of sensitive data and correlating information with plot data from active sensors into a fused product to be shared by US and foreign law enforcement agencies.

"Country teams" are organized in each Andean country. These US teams are composed of embassy staffers, military group personnel, and members of other US agencies represented in-country. The Defense Attaché Office (DAO) is a separate element that may or may not be operating in conjunction with country team elements in support of intelligence actions. The intelligence aspect of the DAO is overt in nature.

Some officials with previous experience in working with country teams recognize inefficiencies in support of drug enforcement. Frequently, the US in-country intelligence apparatus is not fully coordinating all-source information. Representatives of the various US agencies are often parochial and fail to fully share intelligence.<sup>115</sup>

One method to improve the efficiency of the country teams' drug intelligence capability is to vigorously support the implementation of all-source fusion cells. These cells are capable of collating highly sensitive intelligence, sanitizing it, and disseminating it to country team and host nation intelligence personnel. The all-source fusion cells were extremely successful in other regions and could be tailored to support the counter-

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<sup>115</sup> Heyl interview.

narcotic effort for both the national foreign intelligence and law enforcement agencies.

Multi-lateral agreements between the US and multiple nations, such as a Andean agreement where nations of the region agree to intensify counter-narcotics operations, would prove most useful in countering the drug threat. Regional agreements to establish and operate an Andean region drug intelligence fusion center would be useful as an all-source drug intelligence collection, analysis and dissemination node. Another initiative in the multi-lateral arena would be the formation of an international drug strike force under the auspices of the Organization of American States (OAS) or the United Nations (UN).<sup>116</sup>

Drug enforcement operations staffed on a bilateral or multilateral basis must be expanded. Maritime, air, and land interdiction operations jointly staffed between the US and source and transit nations foster international cooperation and help root out drug smuggling operations that use national boundaries to establish safe havens. To this end, collection and sharing of foreign drug intelligence plays a critical supporting role.<sup>117</sup>

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<sup>116</sup> "Jamaican Leader," 5.

<sup>117</sup> White House, National Drug Control Strategy, 1990, 68.

## **RECOMMENDATIONS**

**Support an enhanced role for INTERPOL in international drug enforcement.**

The US needs to take the world lead in converting INTERPOL into an effective support organization for international drug enforcement. Solicit increased international funding for data processing and telecommunications equipment, and analytical staffing. Make it a proactive rather than passive organization. Make its International Fugitive Apprehension Program and intelligence role work in support of drug enforcement.

**Use US foreign intelligence assets to determine the reliability of foreign law enforcement personnel.**

Technical and human intelligence collectors should be used to target corrupt officials in source and transit countries. Once corruption has been validated, host nations can remove and prosecute or, as a minimum, corrupt officials can be excluded from sensitive intelligence.

**Seek bilateral and multilateral agreements to enhance international drug enforcement.**

The US should pursue additional Mutual Legal Assistance Treaties (MLAT) that include terms for international intelligence sharing, enforcement operations, and extradition and prosecution. Tie these agreements to stipulations for US foreign aid that are certifiable with limited regard to international politics.

**Increase the use of foreign prosecution for drug suspects.**

Given the current difficulties in using sensitive intelligence as a basis for extradition and prosecution in the US criminal justice system, we need to pursue methods for foreign prosecution. In many instances arrest and prosecution in foreign nations has far fewer legal restrictions than in the US, and action against drug suspects can be expedited.

**Use the FBI Organized Crime Intelligence method for targeting drug cartels.**

During the past several decades the FBI has achieved exceptional success in eliminating organized crime families. This was accomplished through a strategic intelligence approach in which detailed intelligence was collected on these transnational crime organizations, analyzed, and used to build large criminal cases that produced mass prosecutions and seizures of assets. FBI argues that a similar methodology would be effective against the less sophisticated drug cartels.<sup>118</sup>

## **CONCLUSION**

The transnational nature of drug cartels and their trafficking operations requires that the national drug control strategy of the United States include aggressive foreign enforcement initiatives. The US must seek international cooperation in establishing multinational organizations and legal agreements to facilitate sharing of drug intelligence, enforcement operations, and swift

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<sup>118</sup> David W. Johnson interview.

identification, extradition, and prosecution of drug suspects. Take the lead to enhance the existing international law enforcement agency, INTERPOL, and make it an effective weapon in international drug enforcement. The US cannot solve its drug problems unilaterally; success is keyed to international cooperation.

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