

The Ethics of Information Sharing Between the FBI and CIA

Nicholas Jones, Lauren Mallik, William McLaughlin, Dustin Toy

Introduction

Prior to the 9/11 attacks, the CIA was aware of the presence of two of the hijackers in the United States; for approximately 21 months, they had been identified as terrorists and confirmed to be living in the US. However, the FBI was unaware that they were supposed to be searching for these men. When an all points bulletin was issued on August 23, 2001 it was too late to effectively track them down. It has been speculated that had they been tracked sooner while they were inside the US, that their meetings with other hijackers could have easily lead their apprehension and potentially the thwarting of the 9/11 attacks. The process of sharing info between the agencies lead to the delay in pertinent knowledge, and indirectly contributed to the attacks ("Hijackers Trailed by CIA Before Attacks").

There are several agencies that focus on foreign threats to the USA, the foremost of which is the CIA, and of the several intelligence agencies that focus on domestic threats, the FBI is the foremost. Because of the difference in the nature of the mission of the several US intelligence agencies, a problem of intelligence oversight exists and restricts the flow of information to where it is most needed. Additionally, the changing patterns of international and domestic crime and terrorism play a large role in the issues of integration of information because it is increasingly more difficult to distinguish between the foreign and domestic threats. These factors suggest the US is up against an enemy which requires adaptation in the form of increased integration between foreign and domestic intelligence agencies if the US is to effectively combat these new threats.

This adaptation implies that American citizens must give up privacy for an increase in security in return, which presents an ethical dilemma and forces policymakers and US citizens to determine whether privacy or security is valued higher. This paper will argue that the trade of privacy in return for security is an acceptable bargain,

implying that the US government should facilitate further integration between its intelligence agencies to prevent future terrorist attacks and combat international crime, because the result contributes to the common welfare of the nation, and in particular its safety. The ethical framework that will be used for analysis is the Common Good Approach which dictates that in order for anything to be ethical, it must promote the common good of the community.

FBI and CIA: Legal Barriers to Sharing Information

The CIA and FBI are two agencies which were initially created with specific and separate missions. This separation is to prevent a scenario of an all-powerful government agency which would have the powers of both domestic and foreign intelligence agencies. The intention was for the CIA to focus on gathering information on foreign countries, having no jurisdictional authority over citizens in the US or power to collect information on US citizens. The FBI was created to address crime and terrorism within the US, but also to protect US from those trying to do harm to the US by addressing counter-espionage and counter terrorism efforts. If the FBI is to collect information on US citizens, it must be done within the framework of the US law.

There is a clear separation in the abilities and the obligations of the two agencies. The CIA has an array of intelligence gathering techniques such as satellite imagery capabilities and other methods of detecting information. The FBI or any other US law enforcement agency may not use satellites or any other detection devices on US citizens. The only way they may detect information on US citizens is to obtain the authority from US courts and then go about collecting the information in ways what comply with US law.

The events that occurred on September 11, 2001, in a large part might have been prevented by increased information sharing between the CIA and the FBI. It is of course impossible to know for sure if the 9/11 attacks were preventable, but it is still important to analyze the failures and weaknesses in the intelligence and law enforcement system which allowed the attacks to occur. The 9/11 Commission Report, published in 2004, details the failure of the communication between the CIA and FBI. It is clear that both the FBI and the CIA had partial information on the activities of terrorist suspects as they

entered and left the United States and other countries. It was also argued that there were legal barriers that had prevented this knowledge from being shared. This was known as “the wall” by government agencies and was in place to prevent criminal investigations from using intelligence sources to gain warrants. The intent was to keep the spheres of power separate but this wall unintentionally went against the common good of those who were supposed to be protected by these two agencies.

The laws have been retracted to some extent after the 9/11 attacks and there was discourse on whether the laws had been interpreted properly since their inception. There was a disjunction in intelligence where there were no laws for the official protocol requiring sharing of information.

Recently, the mission of each respective agency has caused it to venture into the other's territory; however, despite this overlap, there has been an absence in information sharing between the two agencies. In order for the FBI to uphold the law and defend the Constitution, it must gather information on those suspected to be breaking the law. The CIA's mission is to "provide knowledge and take action to ensure the national security of the United States and the preservation of American life and ideals ("CIA Vision, Mission, and Values")." "To protect the United States from foreign intelligence and terrorist activities ("Hijackers Trailed Before Attacks")" which is part of the FBI mission statement, is very similar to the CIA's when we consider that the target of terrorists is the destruction of the American way of life and ideals.

The FBI's investigations have led them to have an ever increasing global presence. This presence is required to help the war on terrorism which has become a central focus of the FBI's investigations. Although the FBI is still the lead agency for dealing with intelligence activities on American soil, they are working with a vast international campaign dedicated to defeating terrorism ("What we investigate"). This campaign is not the limit of the FBI's international presence and they currently have over fifty legal attaché offices, called ‘legats’, around the world ("Major Executive Speeches"). These are vital to the FBI's counter-terrorism efforts since they facilitate the flow of information between international law enforcement agencies. The FBI has also trained tens of thousands of operatives who work for other countries including Russia, Australia, and Saudi Arabia. These operatives have obtained information on more than

ten thousand suspected terrorists from over a dozen countries ("What We Investigate"). The FBI also focuses on investigating the flow of money that funds terrorist groups. The Bureau's Terrorism Financing Operations Section conducts this task which traces the lifeblood of their organizations (About Us- Quick Facts).

The CIA's original and current roles are collecting intelligence abroad, providing analysis, and conducting covert actions. The CIA was created for gathering intelligence and was intended to have no enforcement capabilities due to a fear that the agency's actions would be illegal to use against American citizens per constitutional protections. Today the CIA works closely with many other national and international intelligence and enforcement agencies. This could be considered indirect enforcement power. This is not to say that the CIA has any legal power in the U.S., which was greatly feared, but they do influence the international community.

Created in 1947, the CIA is lead by the Director of Central Intelligence (DCI). The Director of Central Intelligence's job is to be the president's advisor on national security matters. The function of the rest of the CIA is to assist the Director in this duty. It is that close relationship with the executive branch and its de facto enforcement capabilities that could lead the CIA to becoming too powerful of an agency. Additionally, with the ability to gather information that would benefit international FBI investigations, it makes sense to better facilitate communication of vital information. It is essential to rethink the structure of two of America's leading intelligence agencies to assure that they uphold the common good for the greatest number of citizens for which they are intended to protect.

Recently, the FBI and CIA information sharing issues have reached a breaking point. With the current information sharing system, Counterintelligence-21, out of date, there is high demand for improved technology (CIA FBI Developing Super Computer). This flawed system does not share raw data; rather it allows interpretations of information to be transferred. Even e-mails cannot be forwarded securely between agencies. Operatives must print a paper version and provide this to the counterpart who needs it ("Justice Department Fails to Address 9/11").

Some steps have been taken to remedy this situation including various cooperation programs designed to elevate communication between the two agencies. For

example, after the USA PATRIOT act came into action, an initiative was laid out to get information flowing. This included the requirement of the Attorney General to turn over all foreign intelligence information obtained in any criminal investigation to the Director of the CIA, including the most sensitive grand jury information and wiretap intercepts (“Justice Department Fails to Address 9/11”). Furthermore, it comes as no surprise that “after months of criticism that they do not work well together, the CIA and FBI have begun jointly developing a new supercomputer system designed to improve their ability to both pull and share information (“About Us- Quick Facts”)”. This multimillion dollar project would entail a data-mining system that could be used to pool resources and information from both agencies in an effort to not be caught in the dark again. When completed, it will be imperative that this super system of the CIA and FBI’s highly classified data be kept completely safeguarded from hackers, spies, leaks, and the like. If this indeed proves to be plausible, then our government agencies will be infinitely more effective in their capabilities to serve and protect this nation.

The bottom line on the legality of sharing information is that what was once was discouraged and feared has become more and more legal over time. There were once laws and beaurucratic difficulties, but now this has become less of a factor. Still problems of the lack of information sharing between the CIA and the FBI persist, which many critiques have attributed to the cultural barriers between the two agencies.

"The Wall": Cultural Barriers to Sharing Information

The current conditions of international crime dictate that two agencies with the scopes that the FBI and CIA possess will invariably overlap intelligence gathering in their individual investigations. The overlap is a problem because there is a "wall" that exists between the two agencies. The "wall" refers to the cultural biases within each organization as well as the limited legally approved methods of data transfer between them and creates a de fact barrier to information sharing because it takes to much time and effort to share information. The agencies are not able to or are unwilling to share crucial information that could greatly help one another. In either case, this failure to communicate is unacceptable and does not represent the greatest good for the greatest number.

Over the past few years this wall has gotten worse (“Justice Department Fails to Address 9/11”). Therefore, it is extremely difficult to coordinate agencies if they have different agendas and are not used to working together. In fact, the CIA and FBI are notorious for having a reluctance to share information. This is partly due to an efficacy issue where both sides want to be the responsible party for saving the day.

Indeed there are other possible solutions to solving this qualm. For instance, “The poster child of intelligence reform is a new agency called the National Counterterrorism Center, where officials from different agencies sit in the same room and draft collective reports. The center has even developed a classified website that provides synthesized terrorism intelligence for government officials (Zegart)”.

If the CIA and FBI developed a relationship similar to this, then information swapping could be drastically accelerated and could potentially create a new standard for our country. In this sense, agents could operate collectively in person as well as post relevant news on the secure website for others to view. This cooperation would lead to an increase in safety for a greater number of Americans, at a very small cost. Further, it is important to reduce the barriers, because they slow down the agencies and make them less capable of reacting to the new threats and environment of international crime and terrorism.

The New Threat

When the CIA and the FBI were first set up in the US government, they faced a far different enemy than they face in today’s world. In the 1960’s and the 1970’s there was a strong division between domestic and international threats to security considering the enemies were foreign countries. In this set up, the CIA and the FBI had clear scopes in which to focus their actions. Further, a high level of coordination would not be able to achieve substantial results, even if there was some minimal need of coordination. At the time these agencies were created, separation was the best way to uphold the greatest good for the greatest number of Americans.

An emerging trend that is presented in recent discourse of international relations is the hypothesis that international war as we have seen in the past is no longer a threat in today’s world (Muller). The argument is that countries have far more common good to

gain by participating in the economic integration of the world than in creating war. Of course, there are rogue nations such as Iran and North Korea that present a threat in the traditional senses, but the academics in this field would classify their leaders as mere criminals who have an illegitimate hold of power in their respective countries.

This further supports the claim that the only conflict that exists in the world is criminals acting to further their gains whether it be through illicit trade, terrorism, etc. The implications of this argument has on information sharing between the government agencies is that the traditional threats the counter-espionage and espionage missions were created for no longer exist in the ways in which they did before. In addition to this new threat that has emerged and rendered the agencies less effective, a new environment has emerged which equally calls into question the aptitude of the current practices between the agencies to deal with international and domestic threats.

A New Environment

Recently, the world is changing at an ever accelerated pace because of globalization and the increases in technology. It is obvious that nation-states are highly integrated and the exchange of information is occurring at ever-increasing speeds. What is true for licit international dealings is closely reflected in illicit international dealing as well, including terrorism and crime. It is far easier today for terrorist and other groups to operate trans-nationally, not recognizing the borders that were once in place, because of trends in the ease and speed of the travel of information.

Given these trends in the state of transnational terrorism, it is clear that the agencies trying to protect US national security are at a disadvantage when trying to fight groups that recognize no borders because the agencies' control and influence begin and end at international boundaries. Due to the changing world, these agencies must change in order to continue to promote the common good for those they are trying to protect.

An example to demonstrate this would be to compare the old threats to the new threats. The old threat would be characterized by a Soviet secret agent who takes pictures of secret US documents and then physically carries them back to his homeland. Compare this to the threat of today. A man who holds US citizenship and is involved in Al Qaeda cells overseas uses his Blackberry to transmit schematics of relevant

infrastructure designs to terrorist planners in foreign countries to be used in bombing attacks. The US intelligence agency abroad attempts to trace the terrorist cells and their leadership back to members, many of which reside in the US. Obviously, the threat to US national security is far different than when the agencies were established and it is only common sense that there should be commensurate change to equip the agencies to deal with the threat. The way to do this is to do everything possible to facilitate information sharing between the CIA and FBI.

Ethical Implications

Because of the above discussion, it is clear that there needs to be increased integration between the FBI and CIA. But, because a large degree of the separation that exists between the two agencies is cultural in addition to legal, it implies that the magnitude of the integration must be greater than just sending over information. The two agencies must cooperate together and integrate in a way that counters the cultural barriers and makes their goals common between them. Creating this further integration would also crumble the divisions that were originally part of the structure of the separation of the agencies. Some may argue that it is a slippery slope and by further integrating the agencies, it is creating an agency which is too powerful, thus detracting the personal privacy from the government provided in the constitution.

Because of the several trends in the above discussion, it is ethical give up the privacy protected in the past provided by the separation of the FBI and CIA in order to provide increased security. Because the type of threat the agencies combat and the environment in which the threats are being perpetrated have both changed since the inception of these agencies, it would provide for the common welfare of the US to further integrate the CIA and FBI.

According to Santa Clara University's Applied Ethics Department, "the Greek philosophers have contributed the notion that life in community is a good in itself and our actions should contribute to that life...this approach also calls attention to the common conditions that are important to the welfare of everyone (A Framework For Ethical Thinking)." "The common good, then, consists primarily of having the social systems, institutions, and environments on which we all depend work in a manner that benefits all

people”. Using the common good approach, something must contribute to the common welfare of the community to be ethical. This makes it apparent that one ethical solution to the security threat is to better facilitate the distribution of gathered data between the agencies.

With a shift in the intelligence community’s focus and mission, this ethical framework implies that it is essential to improve the common good as well as to further the safety of the American populous. Since we are no longer defending against other countries, but rather groups of individual agents, some of whom are operating domestically, the common good dictates a better link between intelligence abroad and intelligence at home. The key point that must be emphasized: better security means nothing without the preservation of the American way of life. Ideally, any compromises should be considered for the overall effect as well as how different from the status quo it will be. Further, because the inherent separation between our intelligence agencies was created to prevent abuse, steps must be taken to ensure that abuse remains at a minimum.

Increased information isn’t a danger, but abuse of that information is. Ethically, we can only say that the increase of information is the right thing to have if there is a significant protection against abuses. Therefore there should be a system of checks and balances put in place to assure the rights of American citizens and prevent the abusive use of intelligence information. Perhaps by creating a new organization, it would be possible to have the integration of the two agencies without the possibility of the abuse of power.

Solution: A New Organization

The best option is a new intermediary organization that receives and distributes data to the various intelligence agencies. Ideally all information would be analyzed and categorized to determine who could best (or legally) utilize data that was gathered.

This intermediary organization could have several channels of transmission based on expediency or urgency of the material. Things that were not deemed highly time-sensitive could go through the normal bureaucratic channels, and things that were deemed crucial to national security could be pushed through before review. By allowing the information to flow freely, time-sensitive intelligence can be utilized to its full

potential and the efficiency of the system can increase. In order for there to be near free-flow of information, there is need for oversight and review. We propose an oversight board that would directly report to congress but that also works heavily with the American Civil Liberties Union. We believe that this combination would provide an appropriate level of accountability for the American people.

With an oversight group observing all data transfers, it can be determined whether or not another user truly needs the data they were given, and further, whether or not a transfer was legal. By doing this, the truly important bits of data can rapidly be sent, and can minimize the time spent in bureaucracy increasing the greatest good for the greatest number. Obviously, there also needs to be a provision for “teeth” in the oversight group’s abilities, to lay punitive actions onto any abusers by way of the department of justice. This manner of data sharing would increase the nation’s security by allowing its FBI conduct its mission while receiving greatly needed assistance from the vast external intelligence gathering capability of the CIA. The ability to regulate and punish those who would abuse the process allows the cumulative good of this measure to stand up within the ethical framework.

However, a consideration not to be overlooked here is that the CIA and FBI will be joining forces to an extent which could create the threat of a new superpower being born. Thus, due to the high risk involved with creating such a powerful information sharing system, questions of ethics come into play. The two agencies at hand were obviously created separately for a specific reason. Then again, with changing times and new threats to the public, intense collaboration of information is imperative in order to keep up with the information age that we live in. There definitely is a thin line to be crossed in this situation, yet if successful, this would be exactly what our country needs to better equip and protect itself for the future.

Another possible solution would be to create a new agency tasked with the specific purpose of facilitating information flow between the CIA and FBI. This third agency would have no authority to use or act on the information, rather it would be charged with distributing necessary information to each agency. Thus, the new agency would act as the database for each, delegating information on a need to know basis, and bridging the gap between the CIA and FBI.

Any way you look at it, the CIA and FBI are currently struggling to protect our nation in an effective way. Without a doubt, they must work more closely together and pool resources to continue protecting American citizens. With an ever-changing enemy and mountains of information on them, it is imperative that we allow the proper agencies to obtain the necessary materials to efficiently prevent national disasters and promote the common good.

Conclusion

Given the current nature of threats to our country, and that the methods of protection have become dated, it is imperative that the CIA and FBI evolve to ensure the safety of our people. Because the recent trend of lessening the regulation between the two agencies, and the persistence of the barrier between them brought about by the cultural patters, it is essential to take large steps toward the direction of further integrating the agencies. Additionally, the threat the two agencies are up against and the environment they are fighting in is different from the time of the inception of the agencies, further implying the need for further integration. Ethically speaking, it is the right thing to do because it offers the greatest benefit for the greatest number of citizens because the increased security is beneficial because it allows Americans to live as they desire. It is true that the privacy of American citizens will be to some extent sacrificed, but it is for the common good of the community. Increased integration offers a way to get vital information to those who need it, and can better ensure that what happened on 9/11, or something worse, will never happen again. If integration is done properly, with oversight and review, it can be done with an emphasis on preserving the rights of American citizens. This must be done, as our rights are our way of life and our way of life is what terrorists would like to destroy.

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