



**Senate Judicial Proceedings Committee
Hearing on Maryland State Police Surveillance Practices & Policies
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**Testimony¹ of
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**IMPACT OF INCLUSION OF WRONGFUL SURVEILLANCE TARGETS
IN NATIONAL SECURITY AND INTELLIGENCE INFORMATION
SYSTEMS LIKE HIDTA**

**Consequences for national security and wrongful targets when innocent
people are labeled by law enforcement as “terrorists” and “security
threats” in the post-9/11 information sharing era**

So often since the terrorist attacks of September 11th, 2001 we have been told that we need balance liberty interests against security interests, but what I learned in a 16-year career in law enforcement is that this is a false construction. In fact, the opposite is true: by failing to protect our liberty interests we actually harm our security. This investigation by former Attorney General Stephen Sachs proves the point. The Maryland State Police’s undercover operations against peaceful protest groups did more than harm the constitutional rights of those improperly investigated, they harmed security: first, by misdirecting police resources that could have and should have been used against real

¹ Delivered by oral presentation.

threats, and second by corrupting criminal intelligence databases that a vast array of law enforcement and intelligence agencies use on a daily basis.

By uploading irrelevant and misleading information into inter-jurisdictional databases the Maryland State Police not only violated federal regulations designed to protect the civil liberties and privacy of innocent people, they significantly damaged the reliability of these intelligence systems, which is very dangerous because in the security business the only thing worse than no intelligence, is bad intelligence.

This case highlights a growing problem with the way law enforcement and intelligence agencies share information today. As Mr. Sachs' report explains, the Maryland State Police shared information about these cases with the Baltimore City Police Department, the Baltimore County Police Department, the Anne Arundel County Police Department and the Washington-Baltimore High Intensity Drug Trafficking Area Task Force. But that only tells part of the problem. The Maryland State Police investigative files indicate that the Baltimore City Police officer to whom case information was given was working domestic terrorism cases for the FBI's Joint Terrorism Task Force. This means that the information was likely reported to the FBI. (Note also that according to its website, the Maryland State Police also has three troopers of its own assigned to the JTTF).

Similarly, the Maryland State Police, the Baltimore City Police, Baltimore County Police, and Anne Arundel County Police are all active participants in a Maryland intelligence fusion center, known as the Maryland Coordination and Analysis Center, or MCAC. Other MCAC participants include at least a dozen other federal, state and local law enforcement agencies, emergency services agencies, and even the U.S. military. According to materials produced by MCAC, the MCAC routinely networks and shares

information with the Joint Terrorism Task Force, the HIDTA task force, the Terrorist Screening Center (which is responsible for creating the terrorist watchlist), the FBI's Counter Terrorism Watch, the National Counter-Terrorism Center, the Maryland Terrorism Information Network, and the Middle Atlantic Great Lakes Organized Crime Law Enforcement Network, and at least a dozen other networks.

Once Max Obuszewski² was listed as the “suspect” in two terrorism case files and this information was uploaded into this permissive information sharing environment it became close to impossible to know all the places it could end up. It is impossible to know how many false leads were developed, how many error-ridden intelligence reports were produced or terrorist profiles were skewed because of this misleading information. And it is difficult to know if this bad information could ever be completely purged. You could ask the MSP, the Baltimore City and County Police, the Anne Arundel Police, the Joint Terrorism Task Force and the HIDTA task force to purge their databases, but who knows what other agencies accessed this information or whether it was further distributed through any one of the dozens of information sharing networks. For Max Obuszewski this means he'll always have to wonder whether this bad information will somehow remain in the system to haunt him. So the next time he's hassled at the airport, or doesn't get a loan, or loses a lease he won't know if this bad information has somehow played a part, or whether it's just bad luck.

This is why it is so important for the police to get it right on the front end. Protecting the rights of the innocent will prevent the police from wasting resources on fruitless investigations. Effective regulation of police authorities will protect liberty and improve security.

² And any other wrongfully targeted individual

This was the purpose of 28 C.F.R. part 23, the federal regulation governing criminal intelligence systems that was discussed in Mr. Sachs's report. All of the inter-agency networks I mentioned earlier require compliance with 28 C.F.R. part 23, so it is a little hard to understand how Maryland State Police officials so misunderstood its requirements. The explanation could be that the federal government has shown little interest in enforcing the regulation, even within inter-agency databases it controls. The Director of HIDTA, the federal database where the misleading information from these cases was placed, was quoted in the newspaper saying it was up to the 134 local and state police agencies with access to his database to ensure they were in compliance with the regulation. With such an abdication of responsibility, it is not surprising abuse takes place. In my analysis, I believe the federal government is encouraging state and local law enforcement to follow them down a path that will only result in more abuse, and more wasteful investigations like these ones. Since 9/11 we have already seen improper law enforcement surveillance of peaceful advocacy groups in Pennsylvania, Georgia, Colorado, California, New York, and elsewhere.

Several states and municipalities have taken steps on their own to regulate police intelligence activities within their jurisdictions. Sometimes this is a direct result of litigation, which is not ideal because it means someone's rights have already been violated. Litigation is time-consuming and costly, resulting in the further misdirection of security resources. The other option is legislation. Oregon and the District of Columbia have passed legislation to regulate police practices, and in California, the State constitution was amended to provide an explicit right to privacy.

All Maryland law enforcement agencies feel the same pressure, zeal, and expectations regarding their responsibility for providing security to the communities they serve, so it is not surprising that they sometimes step over the line, even with the best

intentions. But it is their obligation to protect our rights as well as our security. Providing them with uniform, clear standards that protect the rights of all Maryland residents will only make these public servants more efficient and more effective at protecting their communities from real threats to public safety.