

Policing Terrorism in New York City

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Abstract:

After the attacks on September 11, 2001, law enforcement in the United States, especially in New York City, quickly changed. These changes included: greater displays of weapons in public; increased suspicion, surveillance, registration, detention and deportation of Arab and Muslim immigrants; increased efforts to protect and reach out to those same people; training for first response to future disasters; and greater investigation co-operation between municipal and federal agencies. This article describes some of the changes at the federal and municipal levels of law enforcement and where they were contested by civil libertarians.

Keywords:

Anti-Terrorist Legislation, Anti-Terrorist Policing, Community Policing, Civil Liberties, New York City.

Three weeks after the attack in New York City on 9/11/2001, NYPD officers began returning to the course I teach for them on racism and policing. They were fatigued and expressed disbelief and confusion. Many officers were experiencing what Freud called the uncanny (Gampel 2000) as they moved between the normal activities of daily life and the horror of buried bodies on the still smoldering “pile” down at “Ground Zero.” Officers discussed feelings of fear and anger, but also how they were going numb in order to get by everyday. We discussed reactive aggression and how repressed fear and anger can burst to the surface, often out of proportion to the immediate trigger. Most were hesitant to seek counseling in the Department and said returning to our class was the one time they were able to stop moving and try to talk about what they were experiencing. Officers described a strong identification with and compassion for the victims, fear for themselves and their families, and even remorse, a recurring feeling of guilt, something akin to the survivor's guilt observed by Bruno Bettelheim (1980). This remorse was sometimes expressed as a sense of responsibility. To cope with these feelings, many went to dig on the pile. Some said they felt a new urgency for increased vigilance in their policing. The attack tore apart the fabric of daily life and everyone, especially law enforcement, sought to find a way to stitch the traumatic wound.

The events of 9/11 changed the consciousness of New Yorkers and most Americans regarding the potential of terrorism. While nationalist and leftist groups like the IRA, ETA, Red Brigade, and PFLP attacked soft targets in European cities in the late 1960s and 1970s, in the US workers struggles were largely pacified by World War II, and terrorist attacks were largely restricted to white supremacist victimization

of blacks. With only a few exceptions, US law enforcement was not overly concerned with the terrorists that threatened Europe. However, in the 1980s and early 1990s, fear of political violence from right wing groups at home and Arab nationalists abroad increased. A car bombing by Islamist militants of the World Trade Center in February 1993, killed six and injured over 1000. Then a car bombing by former US soldiers of the Murrah Federal Building in Oklahoma City on April 19, 1995, killed 168 people and injured several hundred more. Then the attack against New York City and Washington, DC, on September 11, 2001, killed over 3,000. These events pushed American law enforcement into significant changes. This article outlines the changes that occurred in federal and New York municipal law enforcement's responses to threats of terrorism.

Federal Legislation

In the 1980s and 1990s, there was a rising tide of anti-terrorist legislation in response to terrorist attacks outside the US that killed American citizens, like the attack on the Achille Lauro in 1985 and the Lockerbie airline bombing in 1988. The Omnibus Diplomatic Security and Antiterrorism Act of 1986 and the Antiterrorism Act of 1992 were designed to provide American victims of international terrorism with a civil cause of action (Patton 1997: 131). The Antiterrorism Act of 1987 imposed restrictions on the Palestinian Liberation Organization (PLO); specifically, it prohibited U.S. citizens from "receiving anything of value except information material from the PLO" and made it unlawful to establish "an office...or other facilities" that furthered the interests of the PLO (Patton 1997: 131). The United States also entered into several aviation security agreements and attempted to eliminate the "political offense exception" from many of its extradition treaties (Patton 1997: 131). On February 10, 1995, two years after the first attack on the World Trade Center, the Omnibus Counterterrorism Act of 1995 was introduced to Congress (Martin 1996: 210). This Act: a) brought terrorist acts in or from the United States under Federal criminal jurisdiction, b) allowed secret evidence in deportation proceedings, c) outlawed fund-raising that supports international terrorist activities overseas, and d) implemented international agreements requiring chemical tags in plastic explosives. The Act was passed soon after the Oklahoma bombing in April 1995, and a new, more expansive Act was soon introduced.

By the anniversary of the Oklahoma bombing in 1996, the Antiterrorist and Effective Death Penalty Act (AEDPA) was approved by Congress (S. 735). This act had numerous provisions that may be divided into three categories: 1) those increasing policing powers such as the use of the army and loosening judicial oversight of police surveillance, 2) those allowing the use of secret evidence and curtailing the appeals process, and 3) those outlawing donations to organizations that are both charitable or religious, and also involved in terrorist activities

according to the US Secretary of State. This last part criminalizes humanitarian acts that have a remote connection to terrorist activity (Patton 1997: 151; see also Brooke and Sciolino 1995). The Supreme Court has repeatedly held that the First Amendment protects money contributions to political groups (Patton 1997: 151), but this right can be ignored by the designation of a group as terrorist.

In the late 1990s, civil rights attorneys and some leaders in Arab and Muslim American communities became concerned about prosecutions based on the AEDP Act. In several cases, such as Nasser Ahmed, Mazen Al Najjar and Hany Kieraldeen, men were detained for years based on secret evidence that they had an association with terrorist groups without any criminal charges being brought. The Immigration and Nationalization Service (INS) used secret evidence in at least two dozen cases, almost all of which involve Arabs and Muslims.

In the immediate wake of 9/11, the USA Patriot Act was quickly passed into law on October 26, 2001. Among the USA Patriot Act's provisions are measures that:

1. allow for indefinite detention of non-citizens who are not terrorists on minor visa violations if they cannot be deported;
2. minimize judicial supervision of federal telephone and Internet surveillance by law enforcement authorities and expand the ability of the government to conduct secret searches;
3. give the Attorney General and the Secretary of State the power to designate domestic groups as terrorist organizations and deport any non-citizen who belongs to them;
4. grant the FBI broad access to sensitive business records about individuals without having to show evidence of a crime;
5. allow law enforcement officials to cast an even broader net for student information without any particularized suspicion of wrongdoing;
6. allow for the broad sharing of sensitive information in criminal cases with intelligence agencies, including the CIA, the NSA, the INS and the Secret Service, without judicial review or any safeguards regarding the future use of such information;
7. create a new crime of "domestic terrorism" which threatens to transform protestors into terrorists if they engage in conduct that "involves acts dangerous to human life."

While the Patriot Act passed Congress with overwhelming bi-partisan support, civil libertarians feared that these new policing powers would be used against political opponents of the government such as Operation Rescue, People for the

Ethical Treatment of Animals, the Environmental Liberation Front, Greenpeace or World Trade Organization protesters. Civil rights advocates argue that the unchecked use of policing inhibits freedom of speech and freedom from arbitrary search and seizure, both of which are rights enshrined in the US Constitution in order to promote democracy against the possible tyranny of state power.

Federal Law Enforcement

Federal law enforcement was not called upon to track down and prosecute the conspirators of 9/11 as they were in the 1998 bombings of US embassies in Dar es-Salam and Nairobi. The Bush administration used the US military, CIA and mercenaries to do that. Instead, Federal law enforcement was focused on prevention of further attacks. First, the federal level Transportation Security Administration took airport security away from private contractors, tightened the physical screening of passengers, and increased the number of marshals riding on planes. Then, an entire new agency, the Department of Homeland Security, took responsibility for 21 agencies in order to close the gaps in intelligence sharing that facilitated 9/11.

In the wake of 9/11, there were many reported cases of racial discrimination: at least 80 passengers were removed from airlines after boarding because of perceived ethnicity; there were over 800 reported cases of employment discrimination; and many cases of discrimination in housing and provisions of other services (Ibish 2003). Despite statements by President George Bush and both houses of Congress rejecting racial or religious profiling, the federal government detained over 1,000 men, most of them Arabs and Muslims (ACLU 2002a). According to later investigations by the Office of Inspector General of the Department of Justice, there was misconduct by federal officials including indiscriminate arrests, severe confinement at the federal detention facility in New York City, denial of access to lawyers and family, physical and verbal abuse by guards and hundreds held longer than their alleged immigration violations, many minor, warranted (see also NYCLU 2003a). In one of the most sweeping acts of profiling, in June 2002 the Department of Justice required all non-citizen men over the age of 16 from a list of 25 countries, mostly but not exclusively Muslim, deemed to be of “highest terrorism risk” to register in person at Immigration and Naturalization Service offices by certain deadlines to be fingerprinted, photographed and questioned. Hundreds of men and teenage boys who showed up to be registered were arrested and detained on immigration violation charges; around 13,000 Arab and Muslim men faced deportation (Casimir 2003a, 2003b; Hall 2003; Swarns 2003).

High profile Muslim activists have also been subject to investigation and prosecution. Sami al-Arian, a tenured 44 year-old professor of computer engineering at the University of South Florida, of Palestinian origin who has lived in

the United States since 1975, was put on administrative leave after he appeared as a spokesperson for Islam on CNN on September 26, 2001. By December, the university board of trustees voted 12-1 to approve of his firing (*On Campus* 2002). In February 2003, he was arrested by the federal government on charges of providing aid to Palestinian Islamic Jihad. After a failure to convict in 2005, he plead guilty in May 2006, rather than face a retrial, to one count of conspiring to assist Islamic welfare operations in Palestine. Shukri Abu Baker, 50, and Ghassan Elashi, 55, two founding members of the Holy Land Foundation for Relief and Development, formerly the largest US Muslim charity, were sentenced to 65 years in prison in May 2009, for sending millions of dollars to Hamas-controlled schools and programs; there were no accusations of bankrolling violence (Robbins 2009). Over 300 Muslim American groups and individuals were listed as “unindicted coconspirators” in their trial sending chills through the community (Marks 2009).

NYPD's Multi-Tactic Responses

In New York City after the attacks on 9/11, thousands of police were pulled from their usual assignments and put on the streets guarding the United Nations, the Empire State Building, all the bridges and tunnels, Grand Central Station and dozens of other locations that supervisors decided were possible targets. The police went on twelve hour shifts and that often meant fourteen to sixteen hour days when commuting was included. Sleep deprivation became a frequent topic of conversation. In addition to guarding and directing traffic, they were digging in the destruction at Ground Zero, sifting through the debris and helping identify bodies.

In the months and years that followed, there were many new displays of police presence. Six helicopters began rotating to watch the city from above. Operation Hercules, a heavily armed special interdiction force, began showing up at different locations with no obvious pattern hoping to disrupt terrorist operatives (Horowitz 2003). An anti terrorist telephone hot-line campaign was publicized on busses and subways urging people to report suspicious people or objects. Random bag checks began at subway entrances. The department put portable radiation detectors on the streets and the city began installing 500 surveillance cameras on potential terrorist targets (Reagan 2006).

There were also less visible increases in police presence. The number of anti-terror detectives quickly rose from 20 to over a hundred (Gardiner and Parascandola 2002). More officers were assigned to the Joint Terrorist Task Force putting them in contact with the DHS, the FBI, and numerous other law enforcement agencies. Detectives were posted overseas (Weiss 2002). Police participated in disaster training drills (El-Ghobashy 2004). A new high-tech counter-terrorism center was built. Operation Nexus, implemented in 2002, began

gathering potential intelligence from businesses that might inadvertently train or supply terrorists (Reagan 2006). Civilian analysts were hired by the intelligence division in 2003 to help sort through the data (Worth 2005).

In January 2003, Deputy Commissioner Cohen challenged and succeeded in changing the old spying rules, called the 1985 Handschu Guidelines, that limited and monitored police investigations of constitutionally protected activity like street protests, community meetings and political essayists, where there is no indication of crime. Loosening the Handschu Guidelines, police obtained the power to infiltrate and monitor groups, keep dossiers and freely disseminate information (see Lee 2003). This surveillance has focused on mosques (O'Shaughnessy 2008), but also on groups involved in mainstream political dissent.

Just before the invasion of Iraq in March 2003, the NYPD refused march permits to a coalition of anti-war groups. Instead, a permit was given for a stationary rally near the UN, but hundreds of thousands of people were prevented from getting there by miles of police barricades, pepper spray, horses and hundreds of arrests (Dunn, et. al. 2003; Solomon 2003). Charged only with minor offenses, arrested demonstrators were interrogated about their political affiliations and prior demonstration activity on a Criminal Intelligence form entitled "Demonstration Debriefing Form" (NYCLU 2003b). After criticism of this tactic, the Department agreed to destroy the documents and discontinue the practice (Rashbaum 2003).

At the 2004 Republican National Convention protesters' petitions to assemble on the Great Lawn of Central Park were denied and over 1800 individuals were arrested. But the greater controversy emerged when it was discovered that the NYPD had gathered extensive intelligence on lawful political protesters. The Department said their intelligence gathering focused on estimating the number and motivations of people planning to attend the convention, looking for potential threats to public safety including "innovative nonviolent and violent disruption techniques that were discussed at public meetings and on the Internet by more than 18 groups and coalitions planning protests at the convention, several of which have histories of violent activity at earlier demonstrations" (Miller 2007).

Civil rights lawyers closely watched the NYPD in all areas of enforcement. Policing at these protests was closely scrutinized. The New York Civil Liberties Union sent approximately 117 teams of two to four monitors at over 40 events at the Republican National Convention (Dunn, et. al. 2005). After lawsuits brought by such organizations, the courts curbed some NYPD tactics. "In a rebuke of a surveillance practice greatly expanded by the New York Police Department after the Sept. 11 attacks, a federal judge ruled...that the police must stop the routine videotaping of people at public gatherings unless there is an indication that unlawful activity may occur" (Dwyer 2007). In December 2009, a federal judge ordered the

NYPD to release to the public the intelligence files they gathered for the Republican National Convention (NYCLU 2009).

Community Policing Against Terrorism

The NYPD made significant outreach efforts in neighborhoods with recognizable Arab or Muslim populations to protect them from backlash hate crimes. The need was evident. In the first nine weeks after 9/11 there were over 700 violent incidents in the United States, including several murders, targeting Arab Americans, or those mistaken for Arabs or Muslims like Sikhs and other South Asians (Ibish 2003; see also Human Rights Watch 2002; Ruiz 2003). New York City was not an exception to this trend. Before 9/11, there were 301 hate crimes recorded for the year, an average of 33 a month; but in the month after 9/11, there were 142, with about 100 involving people of Middle Eastern descent (Hamil 2001). Common objects of such hate crimes were neighborhood mosques, deli-supermarkets owned by immigrants and taxi drivers.

The NYPD also reached out to these communities to engage them in the prevention of terrorist crimes. It is important to note that in August 1997, when the NYPD raided a Brooklyn apartment catching two bombers with bombs, they were acting on a tip from an acquaintance of the bombers, someone from the Arab community (Barry 1997: 42). Knowing the importance of cultivating relationships and not alienating the communities, the Department took several steps. Commissioner Kelly publically rejected and warned against racial profiling saying that it was immoral, a waste of resources and counter-productive (Kelly 2002). He took a public stand at the national level against the federal government's plans to engage local police in immigration enforcement. He frequently cited the importance of the cooperation and involvement of New Yorkers as eyes and ears for the police. By the summer 2003, the Department created new sensitivity components for rookies and cadets about the Arab and Muslim residents in the city. Several well-attended annual police-community events emerged especially around Ramadan. And most important, hundreds of new officers were recruited from Muslim communities who bring language and cultural competence to the Department.

On August 10, 2009, at a pre-Ramadan conference held at NYPD headquarters, over a hundred Muslim community leaders and activists had a chance to mingle and chat over coffee and pastries with numerous precinct, borough and department commanders, dozens of officers from community affairs, and well over a hundred young officers recruited from Muslim communities in New York. When Police Commissioner Kelly addressed the group he emphasized the department's commitment to a safe Ramadan for Muslim New Yorkers. He also acknowledged for applause the Muslim officers present and praised the group saying that the

department respects their traditions. The Muslim communities, like any, want protection, especially from hate crimes, and the NYPD wants full cooperation in their surveillance of these communities to investigate radicalism. The pre-Ramadan Conference and events like it are efforts to cultivate relationships of mutual reciprocity and trust between police and Muslim residents of the City.

However, even at that overwhelmingly positive conference, talk among participants and even a direct question to Commissioner Kelly, raised concerns about police operations. In particular was the fear that informants working for the police would cross the line from informing into entrapment. This was the argument of the lawyer of Shahawar Matin Siraj, a 23 year old Pakistani immigrant who was sentenced to 30 years for plotting to blow up a New York subway station in 2004. James Elshafay, his co-conspirator, a 19 year old recognized as mentally unstable, received 5 years. Siraj claimed the plot was cultivated by Osama Eldawoody, a 50 year-old paid police informer who encouraged violence and said that he had international jihadi connections and that he could provide weapons (Rashbaum 2006, 2007). Because the men never had explosives, a timetable for an attack, or a connection to a terrorist group, public critics called it a set-up. Muslim community leaders, therefore, want assurance that troubled youths who pose little danger, like Siraj's and Elshafay's families claimed them to be, will be easily entrapped by digitally recording their angry, violent and stupid words.

Conclusions

As the opening vignette describes, the terrorist attack on 9/11 that killed over 3000 and destroyed the World Trade Center, also traumatized the individuals who survived it. This traumatic disruption to people's sense of security was a potential crisis of leadership for the state. While armies were mobilized to retaliate overseas, federal and New York City governments had to respond publically to reassert the perception of control and safety, and they had to prevent another future attack. Federal legislators responded by granting more policing powers, and federal law enforcement responded with widespread arrests of immigrants and high profile prosecutions of leading Islamic charity personalities.

The NYPD responded with a wide variety of tactics. Some seemed like displays of force to visually reassure the public, like the appearance of heavily armed Operation Hercules. Other tactics have raised vigorous objections from civil libertarians, such as the investigation and mass arrest of anti-War protesters in 2003 and Republican National Convention protesters in 2004, and a case of suspected entrapment in 2004. On the other hand, the NYPD has consistently reached out to engage Muslim American communities by consulting with community based organization leaders, recruiting young Muslim adults into the police department,

and engaging in a growing number of public rituals of solidarity. Commissioner Kelly led an organization of municipal police leaders to oppose the Bush administration's attempts to push local police to enforce immigration law. In these ways, the behavior of the NYPD stands in very favorable contrast to the broad and harsh actions of the federal government.

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