

By Ted Goldman

Ted Goldman, an experienced federal law enforcement officer, traces recent problems in federal law enforcement to personnel laws which force the retirement of seasoned agents who would be able to prevent or rectify agency misjudgments.

More than 20 years ago, the Congress of the United States passed legislation that, in hindsight, ultimately set in motion a process directly leading to the horror of Waco, the tragedy of Ruby Ridge, the FBI Crime Lab fiasco, and the Keystone cops events of the Atlanta Olympic bombing episode. The process started, rather innocuously, as the result of a wildcat strike in New York City in the late 1960s by employees of the U.S. Postal Service. The factors precipitating the walkout were newspaper and television reports disclosing that a typical full-time New York City postal employee, with two children, was receiving less in salary than the sum of the benefits, subsidies, and cash paid to a similarly situated welfare family. The strike was settled when the federal government promised to review the pay scale of all federal employees.

At that time, I had been employed as a Special Agent with the Intelligence Division of the U.S. Treasury Department, a small, elite law enforcement group within the Internal Revenue Service.

This organization's original claim to fame had been the "Alphonse Capone" case, made famous by the dramatizations of the real and fictional exploits of crime-fighter Elliot Ness.

In the early years of my 33 year career in federal law enforcement I worked with a nearly 70-year-old agent who had been assigned to the Al Capone case. This bright energetic man had a distinguished academic past, and was one of the fortunate few, in those Great Depression years, to obtain a coveted position as a government employee.

This man with the "institutional memory" of more than 40 years became my mentor, sharing his wisdom, knowledge, and experiences.

The commission studying the federal employee pay scale, originally undertaken because of the postal strike, submitted its report to rectify the low salary structure.

As part of the increased salary structure, an unnoticed provision planted the seed for recent tragedies resulting from the loss of "institutional memory." Among those who received pay raises were the Federal Bureau of Investigation; the Secret Service; Alcohol, Tobacco, and Firearms; the Bureau of Narcotics (predecessor to the DEA); my own Intelligence Division (now called the Criminal Investigation Division); and other federal law enforcement units. The unnoticed provision in the new pay raise legislation mandated early retirement for federal law enforcement agents.

Where once maximum retirement was 70, the age was been lowered to 55 years, while reducing the practical retirement age to only 50 years old. This effective "20 year loss of experience" was to be the most tragic consequence of that legislation. Though minimum retirement had always been 50, a few agents had always chosen to stay, such as my 70-year-old mentor, despite a generous pension and opportunities in private industry.

Congressmen, many of whose ages considerably exceeded the newly instituted retirement age of 55, decimated the heart and soul from the collective wisdom and history of federal law enforcement. Unknown and unforeseen by those who mandated the new salary structure was the eventual unintended and ultimately tragic impact of that legislation.

A similar error had occurred in the CIA when experienced senior employees, with the collective wisdom of that institution, had been summarily purged. It is not surprising that, as a result, one of the CIA's major responsibilities, to monitor and report the status of the Soviet Union, dramatically failed when the CIA did not predict its sudden and complete collapse.

Similarly, heretofore unimaginable mistakes and bungling at Waco, Ruby Ridge, the FBI Crime Lab, and the Atlanta Olympic bombing would result.

I. The Consequences of the Loss of Institutional Memory

A. Waco

Why the Federal Bureau of Investigation and the Alcohol, Tobacco, and Firearms Bureau acted in the manner they did at Waco may be open to different interpretations. That these agencies acted foolishly, and incompetently, is not in question.

It has been reported that Branch Davidian leader David Koresh could have been arrested when he and several of his followers left the Waco compound several times each week to pick up mail and supplies. Why were decisions made that a religious sect, no matter how unappealing to some, should be subjected to a full scale military assault? As a result, nearly 100 innocent individuals perished, including dozens of women and children, not to mention the unnecessary sacrifice of the lives of four young law enforcement agents.

Why was Koresh not apprehended while shopping? Once the leader was captured, the other members would have probably considered surrendering. Even if this had not occurred, why were they not allowed to remain at an isolated residence indefinitely? The ATF and the FBI knew that this event was unfolding

on CNN before the entire nation. When questioned by Congress later, these agents chose to publicly dissemble, while simultaneously fabricating incredible rationalizations in a futile attempt to avoid responsibility. The 1997 movie documentary *Waco: The Rules of Engagement* shows the willingness of these officials to repeatedly lie before a Congressional committee in a futile attempt to cover up their incompetence.

It has been reported that the ATF was going to have its budget up for Congressional reconsideration shortly after the Waco operation. Did the ATF seek a big media event to justify their proposed new budget? Even if this information is not entirely accurate, how could the burning deaths of women, and children, as well as the old and infirm members of a religious sect, justify all the appalling actions?

In view of the Waco fiasco, I strongly suspect that if the current FBI and ATF had been at Mount Sinai, when Moses carried the Ten Commandments, they would have justified slaughtering the Children of Israel simply because they failed to obtain government permits to assemble before God.

B. Ruby Ridge

At Ruby Ridge, an FBI sharpshooter killed a mother holding an infant inside a cabin. This young agent fired from a distance exceeding the length of three football fields. A judge has ruled that his actions were clearly unconstitutional. Older, experienced agents could have avoided the entire episode by refusing to issue the ridiculous order to which the young sniper was subject. After being predictably exonerated by a so-called federal investigation, the sniper was indicated for manslaughter by a courageous Idaho county prosecutor. Other involved FBI agents are being sued for millions.

Not only was this standoff unnecessary, any purported gain was far outweighed by the scorn heaped upon a once formidable agency. That the FBI became a laughingstock to most of the civilized world is not in serious question. That such a sniper order could have even been made is a direct result lack of common sense due to a lack of institutional memory.

C. FBI Crime Lab

The FBI Crime Lab had been repeatedly warned by an unusually brave in-house technical gadfly that it had consistently been violating its standards and procedures. Not only was the work of hundreds of cases placed in jeopardy, the labs' misfeasance required the courts to go through convoluted reasoning to justify upholding the convictions of overwhelmingly guilty criminals. The gadfly was placed in professional jeopardy, isolated, and subjected to the full weight of bureaucratic punishment. No one in a position to stem the damage, change the course of events, or summarily correct the known errors, and mishandling of evidence, dared speak up. Fear of reprisal outweighed any benefit of doing what was required, or of setting the matter right.

Why was this brave man subjected to punishment for doing his job well? Who will fix this matter and begin the overdue process of repairing this formerly great agency? In the fashionable language of today, "mend it, don't end it."

D. Olympic Bombing

At the Atlanta Olympics, a young security guard, unnecessarily ridiculed by some as not quite up to the "standards" of the more traditional law enforcement agencies, noticed a suspicious package. Richard Jewell followed correct procedures, reported this violation to the authorities, and ultimately suffered the wrath, vindictiveness, and injustice of an ever more incompetent, but very powerful, federal law enforcement agency.

Again, the FBI's actions were incomprehensible, even after the back-to-back-to-back horrors of Waco, Ruby Ridge, and the FBI Crime Lab fiasco. The tactical decision to violate an innocent man's rights and liberty, if not so serious, was a Keystone Kops series of absurdly foolish errors of judgment, again monitored by the entire world news media. Institutional wisdom would have prevented this obvious blunder.

II. Comments, Conclusions and Recommendations

What are we all to think of federal law enforcement's abilities and competence? Who is protecting our liberty? Are we to believe that the agencies seek justice, tempered with mercy, compassion, and common sense? Hopefully they will, but not before a system permitting self-correction is restored.

The FBI still continues to waffle about a forthright public apology owed to Richard Jewell. It is an apology owed to all of us for patently attempting to entrap a vulnerable, innocent man. Without a public apology our liberty has been diminished.

That those responsible probably believe they are competent professionals compounds these successive horrors immeasurably.

Perhaps, hidden away, are some "letters of reprimand" issued to designated scapegoats. One FBI bureaucrat was trapped by his own criminal cover-up attempt when he destroyed an "after-action critique" about Ruby Ridge that could have confirmed this horror. He was disgraced and sentenced to 18

months in prison. At a minimum, his actions are evidence of the arrogance that these matters should not see the light of public scrutiny. Skilled bureaucratic in fighters can frequently cover up their own foibles. Their success is based on the ability to shift the spotlight, blame, and responsibility to others. Under the current system, no lasting improvement can be sustained.

Where were the seasoned agents with institutional memory who could derisively condemn these actions? Why was the chain of command afraid to speak in opposition? A lack of experienced agents, unafraid to criticize superiors for fear of ending their careers, made these tragedies possible. Three reforms should be implemented:

1. End Career Compression Increase (the now mandatory retirement age), in order to create a wiser, more balanced, and courageous federal law enforcement bureaucracy capable of expressing unreserved criticism.
2. Require On-Site Decisions. Experienced field agent decisions should not be overruled, except in writing. A written record will contribute to sound thinking, and unquestioned responsibility.
3. Commission to Review Future Major Bureaucratic Foul-Ups. Create an on-going, independent commission with the dual authority to recommend criminal sanctions, and review all internal documents.

In conclusion, institutional memory should not be lost. Our liberty as free citizens requires no less. For my former 70-year-old mentor of blessed memory, this article is for you.