

When your favorite tool is a hammer, everything looks like a nail. After the near-catastrophe on Northwest Airlines Flight 253 on Christmas Day, it is not surprising that many hammer away with the tools they know best: data-mining and watchlists. The conventional wisdom is that if we know enough soon enough, we can stop the next attack. The problem over Christmas, therefore, is identified solely as a function of that tool: we didn't know enough, or, if we did, not everyone did, or if we all did, we forgot crucial bits in the welter of all that data—"enterprise amnesia."

We should resist the urge to pick up a heavier hammer and expand our watchlisting efforts. That reflex blinds us to the other tools in our toolbox, and the need for more ingenuity in using them.

Of course, sometimes only a hammer will do. Intelligence gathering and analysis now requires massive databases and sophisticated computers. Who could object to a "Google-like" tool to search and sort that information? But resist the claim that you can add that feature and all will be well. There are two problems with that approach.

First, it neglects the nature of the institutions tasked to use these tools. The Google gap is hardly a recent revelation. In fact, FAA officials gave the [same excuse](#) to the 9/11 Commission to explain why their proto-"No Fly List" contained only twenty names on September 11, 2001, while the State Department's TIPOFF database listed over 61,000 names. It was hard to make these databases interact because they were designed for different purposes, with different functions (none of which were Google-able). The 9/11 Commission, like many blue-ribbon commissions before it, discovered that agencies do not share information well. To quote Claude Rains in *Casablanca*, "I am shocked, shocked."

Shocking, but hardly surprising. Political institutions (and intelligence agencies are as political as any other) will always protect their turf against encroachment from competitor agencies. That's simply the nature of constant competition for the President's ear and Congress' purse. And that's why creating more, new institutions is not always as helpful as creating mechanisms that push existing institutions to share more.

Here is where ingenuity and creativity can play a role. An example is the Terrorist Screening Center (TSC), one of the most important counterterrorism entities that most people have never heard of. Notwithstanding the fact that the TSC is responsible for maintaining the No-Fly List, it received virtually no public notice in the aftermath of the Christmas Day attack. The TSC is a multi-agency component of the FBI that operates 24/7 in an undisclosed location in Northern Virginia. According to its [director](#), the TSC "connects the law enforcement communities with the intelligence community by consolidating information about known and suspected terrorists into a single Terrorist Screening Database." That's right, this list is supposed to access everything. In fact, Dennis Blair's National Counter Terrorism Center (NCTC) is supposed to dump its entire Terrorist Identities Datamart Environment into the TSC's basket [every day](#) (and twice on Fridays). From that mega-list, the TSC is tasked to support screening agencies with precision-crafted, smaller lists, like TSA's No-Fly List.

That degree of funneling intelligence into a single entity is extraordinary in our fractured intelligence community. But as we learned on Christmas Day, it was still not enough.

Although TSC is responsible for the final adjudication of nominations to its various watchlists, it is reliant on other agencies to make those initial nominations themselves—in other words, the same sharing problem that stymied cooperation before 9/11.

So Google away, but as Napoleon said, “the tools belong to the man who can use them.” The first problem, then, is that institutions (and the problems that bedevil them) still matter. New and bigger hammers aren’t enough without embedding pressure for competing agencies to cooperate in their use. This is the inevitable paradox between the efficiencies of consolidation and the occasional value of built-in redundancy.

The second problem is Mr. Rosenzweig’s hammer itself. He suggests that we should automate human intuition with data-mining tools like Admiral Poindexter’s “Total Information Awareness” system (TIA), although he regrets its “unfortunate” name. But Total Information Awareness accurately described the idea, in much the same way that the all-seeing disembodied eye on its proponent’s [symbol](#) did. According to official supporters at the time of the controversy, [TIA](#) meant a database “of an unprecedented scale” that would seek data on everything from cell phones to driver’s licenses to credit cards.

Tony Tether, then director of the Defense Advanced Research Products Agency (and therefore TIA’s chief defender), [assured Congress](#) that the program was designed only to give agencies the power to use “whatever data to which they currently have *legal* access.” But it doesn’t take a DARPA scientist to see that “current legal access” is hardly a long-term constraint. Once deployed, creeping pressure toward expansion is inevitable, by the same logic that argues for TIA’s adoption.

That was what was so chilling about TIA: there was no stopping point to it. We see that pressure today with the watchlists we already have. Why use a name-based list when biometrics are much more reliable? Why watchlist planes but not trains? Why permit a watchlisted person, too dangerous to fly, access to guns or chemicals? And that’s why the focus cannot assume just “a failure of policy, not of law.” It was the inability of TIA’s creators to identify a stopping point consistent with our society’s values that killed the program, not troubled civil libertarians (who didn’t have much traction in Congress at that time).

We owe it to ourselves to employ the best tools consistent with the values of our society. But we also need total information awareness about how these tools change the baselines that govern our way of life. Not everything we can do is something we should do. The road back from whence we came runs uphill.

*--Jeffrey Kahn is an Assistant Professor of Law at Southern Methodist University. He previously served as a trial attorney in the U.S. Department of Justice, Civil Division, in Washington D.C.*