
Revisiting Domestic Intelligence

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Revisiting Domestic Intelligence

Abstract

This article looks at the evolution of US domestic intelligence prior to and since 9/11 in light of the Capitol attacks. It also reviews the literature and practice of intelligence reform in the context of foreign comparative experience (France, UK, Canada, Australia). It looks at the promise of fusion centers, cocontemporary domestic intelligence models, and the continuing need for domestic intelligence reform.

Additional Keywords: Domestic Intelligence, Intelligence Reform, Intelligence Fusion

Introduction

The January 6, 2021 attack on the United States Capitol exposed seams in the domestic intelligence framework of the United States.¹ While the full story is yet to be told, initial reports suggest a breakdown in interagency threat assessment and communications.² Indeed, some officials blame a breakdown in intelligence—specifically sharing threat intelligence among agencies—for the operational deficiencies in response.³ This lack of early warning raises concerns about the interagency threat assessment and information sharing capacity of the nation’s law enforcement, police and intelligence organizations. In addition to numerous open source indicators on social media, at least some law enforcement agencies were aware of potential threats. For example, on the eve of the insurrection, reports from the Federal Bureau of Investigation (FBI) field office in Norfolk, Virginia detailed specific threats to the Capitol but that threat information did not make it to Capitol Police commanders.⁴

A comprehensive assessment of the intelligence function and operational facets of the response to the insurrection—both the immediate attack and conditions leading up to it—are warranted.⁵ Many questions remain. Was the event an intelligence failure?⁶ If so of what type: Was it an operational failure or was it a failure of operations-intelligence fusion?⁷ While preliminary inquiries have shown that the flow of information among agencies was far from perfect, the comprehensive operational dimensions of those transactions have not yet been fully evaluated. Toward that end, some analysts, such as Brian Michael Jenkins, have suggested a national commission to investigate the attacks.⁸

While efforts to form a commission similar to the 9/11 Commission⁹ have failed to materialize due to partisan resistance,¹⁰ there is a need to address the still unresolved foundations of domestic intelligence.¹¹ For that assessment, this article provides an overview of the historical context of domestic intelligence in the United States, defines the scope of the domestic intelligence enterprise, and assesses the post-9/11 reforms. Finally, it shares foreign perspectives on intelligence to inform current and future debate.¹²

Defining Domestic Intelligence

What is domestic intelligence? This question is recurring; one that tends to rise to the forefront after a security crisis or significant threat. The contemporary discussion of domestic intelligence and all of its ramifications was, of course, catalyzed by the September 11, 2001 attacks, which exposed the United States to the threat of global terrorism. The attacks engendered a range of new approaches to the relationship between law enforcement and intelligence, and challenged the conventional conception of how the different levels of intelligence and law enforcement should interact with each other within the United States. Since 9/11 is widely described as an intelligence failure, it is natural that an examination of intelligence structure—both foreign and domestic, as well as across that divide—arose.¹³ The discussion of domestic intelligence has arisen again in light of the insurrection on January 6, 2021, when Trump-supporters attacked the Capitol in an attempt to stop the certification of the newly-elected President Biden. While the insurrection raised legion political questions, it also—once again—raised the specter of a failure of both law enforcement and domestic intelligence-sharing.

Within the American context, *domestic intelligence* has been defined by what it is not—other than foreign.¹⁴ Indeed, most contemporary discussion has focused on bridging the foreign-domestic intelligence divide because this divide is most extreme within the United States.¹⁵ In addition, many discussions of domestic intelligence have been focused on counterterrorism (CT), thus “the term domestic intelligence and homeland security intelligence are often used colloquially and interchangeably by some observers.”¹⁶

According to Sherman Kent, widely viewed as the father of contemporary intelligence analysis, intelligence involves knowledge, organization and activity. In Kent's view, this was focused on “high-level, foreign, positive intelligence” and excluded happenings in the United States—what Kent called the domestic scene, and the police function. Kent viewed these as “security intelligence.”¹⁷ This distinction carries over into current practice and understanding. For example, Ambassador John Negroponte (the first Director of National Intelligence (DNI)) described three separate “dimensions of

intelligence-foreign, military, and domestic.”¹⁸ Randol suggests that “homeland security intelligence” is an integrating element that can be superimposed upon this construct, yet Randol notes, “With respect to institution building, the approach remains federal-centric.”¹⁹

Of importance to the current discussion is the fact that, traditionally, most consider domestic intelligence to be almost a purely federal endeavor, although all levels of U.S. government, local, state, and federal have domestic intelligence roles and functions. As a consequence, part of the domestic intelligence debate involves understanding the distinctions and interactions between internal security and law enforcement.

To Kent, security intelligence is:

the intelligence behind the police function. Its job is to protect the nation and its members from malefactors who are working to our national and individual hurt one of its most dramatic forms it is the intelligence which continuously is trying to put the finger on clandestine agents sent here by foreign powers. In another, it is the activity which protects our frontiers against other undesirable gatecrashers; illegal entrants, smugglers, dope runners. By and large, security intelligence is the knowledge and the activity which our defensive police forces must have before they take specific action against the individual ill-wisher or ill-doer.²⁰

In a RAND study on reorganizing domestic intelligence in the United States, Treverton defined domestic intelligence as:

efforts by government organizations to gather, assess, and act on information about individuals or organizations in the United States or U.S. persons elsewhere that is not necessarily related to the investigation of a known past criminal act specific planned criminal activity.²¹

Treverton asserts that collection, analysis, and action are the three core functions of domestic intelligence.²² While that is certainly true, the questions before us are rather more complex: How are those functions

organized within the federal government, among the various states, with local police and sheriffs, upon what basis, and to what operational end? Further, how do current domestic operations engage with civil liberties, and what is the historical and political context within which all of this is occurring?

Historical Context of the US Domestic Intelligence Discussion

Wide-ranging—and critical—discussions of domestic intelligence activities within the United States are not new. The last major focus on these issues was in the 1970s, when a series of scandals in the national political arena focused attention on the intelligence community and its methods. Crucially, in 1974—in the wake of the Watergate scandal—the *New York Times* published Hersh's expose of the Central Intelligence Agency's (CIA) covert activities abroad as well as its alleged illegal activities within the United States.²³

In January of the following year, several investigatory commissions were established to determine the depth and breadth of the alleged abuses.

The *President's Commission on CIA Activities Within the United States*, headed by Vice-President Nelson Rockefeller, was the first investigative effort.²⁴ Formed by President Gerald Ford on January 4, 1975, it issued a single report in 1975, which delineated some CIA abuses, including mail opening and surveillance of domestic dissident groups. The Rockefeller Commission found that while there were individual incidents of abuse and improper activity, the bulk of CIA activity in the domestic arena was consistent with its statutory authority and mandate. The Rockefeller Commission was widely viewed as a whitewash and the debate on domestic intelligence was continued in the subsequent Church and Pike Committees.²⁵

While the Rockefeller Commission laid the groundwork for opening up intelligence and exposing its activities to policymakers and the public, the turning point for a public discussion of intelligence came with congressional inquiry into alleged intelligence excesses. In

January 1975, the Senate established a committee—the *United States Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities*—led by Sen. Frank Church (D-ID), while the House investigation, led by Congressman Pike, began its work some months later. The Pike Committee investigation attracted criticism, due to its inappropriate handling of classified material and the sloppy nature of the investigation. The committee report leaked in its entirety to the *Village Voice*.²⁶

The Church Committee, in contrast, was able to balance against the negative perception of the Pike Committee and attract a level of bipartisan support for its activities.²⁷ Senator Frank Church’s presidential aspirations heightened the profile of the committee; he was eager for the limelight and used his committee’s investigations to help him obtain it.²⁸ It was discovered through the Church Committee investigation, which lasted around 16 months, that the CIA, FBI and NSA had each focused some of their intelligence-gathering capabilities internally, on American citizens.²⁹ The form these operations took varied with the agencies involved.

Most notoriously, the FBI investigated, infiltrated, and attempted to disrupt the activities of student groups, labor organizations, and other social groups. Citizens were harassed and threatened by FBI agents in response to what Sen. Walter Mondale called an “enormous unrestricted fear about the American people.”³⁰ The activities of the FBI ranged from the obscene to the ridiculous and focused on a range of targets—from the high profile to the regular citizen. As an example, the Bureau tried to convince Dr. Martin Luther King Jr. to commit suicide by threatening to expose his alleged sexual dalliances. Women’s organizations and peace groups were infiltrated by agents and their activities disrupted by these *agents provocateur*. Most shocking was that these activities of the federal government were conducted with minimal to no oversight.

As scholar Theoharis puts it:

[The Church Committee] discovered that the presidents and their attorneys general in some cases had no knowledge of the

scope and purpose of highly questionable FBI activities and in others sought to avoid meeting their oversight responsibilities. They also discovered that FBI investigations were not confined to criminals or suspected spies but also targeted individuals and organizations engaged in legitimate political activities.³¹

The FBI was not the only agency exposed by the investigations of the Church Committee. The CIA had also been involved domestically in intelligence operations, in the form of OPERATION CHAOS, intended to gather information on American dissidents. Ultimately, the illegal CIA operation collected files on 1,200 American citizens.³² The NSA was also involved in questionable activities directed against the American people in the form of two operations: Projects SHAMROCK and MINARET; the first involved opening personal telegrams over the course of thirty years, and the second focused on the electronic surveillance of American citizens.³³ The Church Committee revelations led to a series of reforms, particularly the establishment of oversight mechanisms in the House and Senate, as well as a legal structure to control the gathering of foreign intelligence in the United States—the Foreign Intelligence Surveillance Act (FISA), passed in 1978.

In retrospect, the turmoil and debate over intelligence abuses and liberty interests in the 1960s and 1970s are a crucial inflection point. While the bureaucratic construct has changed—and will continue to do so—the balance between intelligence and liberty is one of constant debate and refinement and these mid-twentieth century episodes catalyzed this discussion. In the case of the investigations of the 1970s, the secret activities of the intelligence agencies were brought into the public sphere for the first time, where they were assessed for their appropriateness and legality. The lines were then drawn for a greater discussion of how intelligence should engage with society in a democracy, and institutions established to maintain these standards. This article now turns to foreign perspectives on domestic intelligence and internal security intelligence.

Foreign Perspectives

Domestic intelligence is not unique to the United States. Indeed, all states require and employ domestic intelligence in order to support their internal security functions. When reviewing domestic intelligence practice in other democracies—specifically, the United Kingdom’s (UK’s) Security Service (widely known as MI-5), France’s Directorate of Territorial Security (DST), the Canadian Security Intelligence Service (CSIS) and the Australian Security Intelligence Organization (ASIO), it becomes apparent that these organizations share common attributes. These attributes are a “culture of prevention,” collaborative relationships with local law enforcement, a human intelligence (HUMINT) emphasis, the development of regular threat assessments, and the ability to recruit from a wider pool of talent outside of law enforcement.³⁴ Indeed in a 2007 paper, James Burch looked at the prospects for a U.S. domestic intelligence agency concluding that there are immense cultural obstacles to establishing a US domestic intelligence agency. These obstacles may favor reforming existing entities and their relationships with other agencies.³⁵

Arguably, the American experience of domestic intelligence is different from these other democracies—culture, history, and legal history create a different framework and set of requirements in terms of domestic intelligence from other, even comparable democracies.³⁶ Nevertheless, similarities exist. These similarities include the focus on the importance of separating intelligence from law enforcement, insisting that the arrest function be separate from the intelligence-gathering function. This obviously serves to separate powers and ensure that there exists an appropriate check on the power of both sides of this equation through the involvement of the criminal justice system. Other similarities include a focus on the importance of oversight mechanisms, as well as on the integral function of interagency liaison, cooperation, and information-sharing. Domestic intelligence is somewhat distinct in that it requires—to varying degrees—involvement with local communities as well as the creation of regional structures that integrate the skills and information of a range of agencies.

The Congressional Research Service (CRS) also reviewed the British experience in their assessment “Domestic Intelligence in the United Kingdom: Applicability of the MI-5 Model to the United States.”³⁷ That CRS Report observed that while there may be lessons to be learned from the British experience with domestic intelligence, there are key differences between United States and British governmental, legal, cultural and political norms. These include political and Constitutional approaches. Most importantly, unlike the United States, Britain does not have a written constitution that specifies individual rights. In addition, the British system concentrates national political power in a unitary Parliament, while in the United States power is distributed through a federalist system. Organizationally, the United Kingdom has chosen to separate its domestic intelligence entity (the Security Service known as MI-5) from its various law enforcement agencies.³⁸ In the United States, this function is combined at the federal level. Both federal law enforcement and domestic intelligence are a responsibility within the FBI—an arm of the Department of Justice.

In the UK, MI-5 is the agency focusing on domestic threats to national security. This includes developing counterterrorism intelligence, as well as addressing critical infrastructure protection and serious organized crime (including money laundering, the proliferation of chemical, biological, radiological, and nuclear defense, cyber-threats, and the smuggling of people, weapons, and drugs. MI-5 is supported Joint Terrorism Analysis Centre, which is a fusion center for analysis/synthesis of domestic and foreign intelligence drawing from the Secret Intelligence Service, the foreign agency, Government Communications Headquarters, the signals intelligence agency, the Metropolitan Police (the lead CT police agency), and key government departments. MI-5 also coordinates with the police through the special branch structure, augmented by investigative counter terrorism units and counterterrorism intelligence units with the collaborative National Counter Terrorism Policing Network.

France has undergone several iterative transitions in its domestic intelligence since 2007.³⁹ In 2007, the *Direction de la Surveillance du Territoire* (DST) and *Direction Centrale des Renseignements Généraux* merged into a new the *Direction central du renseignement intérieure*

(DCRI – Central Directorate of Internal Intelligence) and a new *Conseil nationale du renseignement* (National Intelligence Council). Despite this merger intelligence gaps persisted and a new reform led to disbanding the DCRI and replacing it with another two new bodies in the Interior Ministry. The lack of intelligence sharing between those new bodies, the *Direction générale de la sécurité intérieure* (Directorate-General for Internal Security), focused on CT and counter-espionage; and the *Service central du renseignement territorial* (Central Service of Territorial Intelligence) in light of the January 2015 *Charlie Hedbo* attack.⁴⁰ This led to the establishment of a new coordinating body, the *Etat-Major Operationnelle de Prevention du Terrorisme* (the Operational Staff for Preventing Terrorism).⁴¹ Complexity and issues of co-ordination led to the development of a new National Center for Counter Terrorism (*Centre national de contre-terrorisme*) to oversee all French CT intelligence along with a national intelligence coordinator (*Coordonnateur nationaux du renseignement*) to supervise national CT capacities.

Canadian domestic intelligence is primarily the responsibility of the CSIS, which was established in 1984. CSIS works closely with Communications Security Establishment and the police service primarily the Royal Canadian Mounted Police (RCMP). The CSIS has expanded powers to take active measures to disrupt terrorist attacks.⁴² In addition, a fusion center, the Integrated Threat Assessment Centre at CSIS, and a watch center, the National Security Joint Operations Centre at RCMP are in place to co-ordinate information sharing.

In Australia, the ASIO has a preventive role and is responsible for interdicting attacks in addition to traditional intelligence collection and dissemination. Like other domestic security intelligence agencies, the ASIO does not have police or arrest authority, but it does have limited authority to detain individuals for questioning to substantially assist a terrorist intelligence investigation. This limited authority is not independent and is exercised through the Australian Federal Police, necessitating close co-operation between the ASIO and AFP.⁴³

All four of these case studies demonstrate the complexity of domestic CT intelligence enterprises. Multiple agencies from the intelligence services interact with the police service and other law enforcement entities. Since

the dedicated domestic security intelligence services are not police agencies, collaborative relationships with the police are essential to their success. Since they have no law enforcement function they can focus on prevention, emphasize HUMINT, and develop regular threat assessments to support the interagency CT domain. In all cases, the domestic security services have evolved and adapted considering intelligence failures, organizational complexity, and bureaucratic necessity.⁴⁴

9-11, Counterterrorism, and Homeland Security Intelligence

The 9/11 attacks significantly changed the intelligence and national security structures of the United States. In many ways, the true, long-term impacts of these changes are unknown, as the wake of bureaucratic reorganization and the accompanying turf battles have yet to settle, even twenty years later. While 9/11 brought the endemic turf battles between the FBI and CIA (Central Intelligence Agency) into public discussion due to the failure to share the information needed to recognize and prevent the 9/11 plot, such bureaucratic competition was not new. Athan Theoharis examines these historic turf-battles in *The Quest for Absolute Security*.⁴⁵ Traditionally, the FBI handled domestic issues, while the CIA handled foreign (with a degree of overlap). Theoharis documents competition between the FBI and CIA in overseas posts, their competition for Cold War bureaucratic intelligence dominance, including conflicting counterespionage approaches, and the CIA's illegal domestic intelligence operations that culminated in the Church and Pike Committee investigations.

Amy Zegart continues the examination of the institutional barriers between US intelligence agencies in *Spying Blind: The CIA, the FBI, and the Origins of 9/11*.⁴⁶ Zegart observes that the U.S. Intelligence Community had the "stunning inability...to adapt to the end of the Cold War."⁴⁷ Essentially, *Spying Blind* is an account of bureaucratic competition and resistance to change. Zegart documents organizational dysfunction and adaptation failure at the CIA and FBI and summarizes the various studies on intelligence reform and the status of their recommendations. According to Zegart, adaptation failure can be assessed through three questions:

1. Did senior intelligence officials and policymakers recognize the gravity of the threat posed by al-Qaeda before September 11, and if so, when?
2. Did they understand the connection between the terrorist threat and the imperative for organizational change in U.S. intelligence agencies?
3. To what extent did they achieve the organizational changes they believed were necessary? ⁴⁸

The threats were recognized, but reorganization and reform over-emphasized the foreign threat. For our purposes, the balance between domestic and foreign intelligence, as well as the interactions within the federal intelligence community and state and local agencies, were not properly synchronized. These shortfalls are pivotal since the threat information did not effectively get to the National Capitol Region Threat Intelligence Consortium, the Washington DC area fusion center.

In the domestic realm, the need for policed agencies to conduct intelligence operations at all levels of government was recognized (and apparently forgotten) well before 9/11. For example, in the aftermath of the domestic intelligence scandals of the 1960s-70s, the National Advisory Committee on Criminal Justice Standards and Goals published a report on police intelligence for extraordinary violence. This landmark report, *Disorders and Terrorism*, articulated standards and goals for all sectors of government. The chair of the Advisory Committee was Brendan T. Byrne, governor of New Jersey. Jerry V. Wilson at the American University chaired its task force on disorders and terrorism.⁴⁹

Among the standards promulgated was Standard 5.3 on the Intelligence Function. This standard, which was intended for the legislative bodies of the various states, recognized an “indispensable role of intelligence gathering and the use of intelligence in the fight against terrorism.”⁵⁰ In addition, it pointed out the need for an

appropriate balance between the need to protect the domestic security and potential dangers to individual privacy and free expression. These liberty concerns persist until today. In an effort to address these issues, Standard 6.4, Self Regulation of Police Intelligence Operations stated that the “Responsibility for intelligence operations relating to extraordinary violence should be clearly located within every police agency.”⁵¹ This function requires, according to the standard, a designated official to oversee information gathering, records maintenance, and information dissemination.

In addition, Standard 6.4 called for the police intelligence function to collect:

- a) Overtly available information [now known as open source information or OSINT] on special crime trends, political events, and other subject matters relevant to extraordinary violence;
- b) Preventive intelligence on persons and groups suspected of having serious potential for future criminal acts of disorder and terrorism;
- c) Strategic and tactical intelligence on persons or groups currently suspected of criminal activity related to extraordinary violence.⁵²

These recommendations, while at first glance dated, are critical. These are the lessons learned from the 1960s through the 1970s’ waves of terrorism and disorder that were never fully integrated into domestic intelligence practice. They could provide valuable context and perspective to the much-needed contemporary debate.

In the wake of the attacks on 9/11, a series of investigations were undertaken to determine where error occurred and where reform or change should be implemented. Among them, the Gilmore Commission—officially the Congressional Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction—which had actually begun its work prior to the attacks, focused its attention on promulgating measures for state and local governments in order to prepare for domestic terrorist threats.⁵³ The commission’s final report proposed a range of improvements on readiness in terms of homeland security, focusing particularly on the

inextricable relationship between federal, state, local levels as well as on the role of the private sector. The committee also pointed out that a civil liberties oversight board should be established, as should guidelines for acceptable uses of the military domestically. Further recommendations included engaging academia and others in research and development and critical infrastructure protection.⁵⁴

The renewed recognition that law enforcement agencies had a role in understanding the terrorist threat that emerged after 9/11 briefly resulted in an emphasis on security intelligence. Rather than establishing a domestic security service, the emphasis has been on information sharing through the development of fusion centers at the state and major city level. Fusion centers are essentially interagency, and often multidisciplinary operations watch and analysis centers for fusing terrorist threat information. They are intended to serve as a two-way conduit between the federal intelligence community and state and local agencies. While the fusion center movement is maturing, its progress is uneven. Nevertheless, it is a platform for sharing (but usually not collecting) domestic intelligence.

The ultimate shape of fusion centers and the relationship to domestic intelligence writ large is still evolving. The basic definition of fusion centers was articulated in a set of fusion center guidelines developed through the U.S. Department of Justice Global Justice Information Sharing Initiative in cooperation with the U.S. Department of Homeland Security.⁵⁵ These guidelines released in 2005 have been updated with asset of baseline capabilities in 2008.⁵⁶ Additional guidance is now found in a series of supplemental sponsored by Department of Homeland Security (DHS).⁵⁷ In addition to these documents, the United States Office of the Director of National Intelligence (ODNI), disseminated a “National Strategy for the National Network of Fusion Centers” in July 2014. This vision document covered the period 2014-2017.⁵⁸ Despite efforts, fusion centers have yet to realize their full potential and the need to refine a lack of analytical focus in the domestic realm remains. A potential model for refining the state of analytical practice can be found in the Terrorism Early Warning Group model.⁵⁹

The Terrorism Early Warning (TEW) model is both a precursor and methodology for implementing fusion for counterterrorism intelligence. The TEW Group concept emerged in Los Angeles in 1996 as a way to bridge the gaps in traditional intelligence and security structures. The Los Angeles TEW included analysts from local, state and federal agencies to produce a range of intelligence products at all phases of response (pre-, trans-, and post attack) specifically tailored to the user's operational role and requirements. The TEW model bridges criminal and operational intelligence to support strategic and tactical users. The TEW model advocates development of a distributed network with the potential to co-produce intelligence to counter networked threats.⁶⁰ “Developing the intelligence needed to anticipate, prevent, disrupt, or mitigate the effects of an attack requires the production of intelligence in a collaborative and integrated endeavor by a number of agencies across this dispersed area. This is known as 'co-production' of intelligence.”⁶¹

In essence, the TEW was designed as a node in a counter-terrorist intelligence network. These concepts are detailed in depth in the text *Terrorism Early Warning: 10 Years of Achievement in Fighting Terrorism and Crime*.⁶² Within the TEW model intelligence a distinction between criminal operational intelligence is emphasized. Criminal intelligence focuses on crime suppression and criminal prosecution, while operational intelligence is the “processed information needed to understand the current and future situation, including the capabilities and intentions of an adversary in order to conduct operational missions at all phases of response.”⁶³

Law enforcement, police, or crime intelligence activities are a significant component of domestic intelligence at all levels of government. If one goes beyond a federal, bureaucratic perspective, it is apparent that intelligence can be gathered, processed, analyzed, and applied to a wide range of activities, including policing a community. Unfortunately, in the wake of the domestic intelligence controversies of the 1960s and 1970s that culminated in the Church Committee hearings, law enforcement or criminal intelligence became marginalized, something police administrators feared rather than exploited.

The nature of contemporary terrorism, disorder, extremism, and security threats place state and local agencies at the front line of both prevention and response to terrorism and other homeland security threats. Intelligence is an important element to understanding terrorist threats, crafting homeland security response, and preventing terrorist and criminal activity. Yet, prior to 9/11, most intelligence for these threats was outward-looking foreign intelligence or concentrated in the efforts of a few major metropolitan areas (notably New York, Washington, DC, and Los Angeles), and the federal government (largely through the FBI, and its network of Joint Terrorism Task Forces). That has changed.

Contemporary Domestic Intelligence Controversies

Failed Intelligence Reform? Domestic Spying, Networks, and Hierarchies

Domestic intelligence remains a controversial issue in the United States. As previously stated, the optimal configuration of a domestic security service, and the responsibilities of such a service or services remains open. Ultimately, the domestic intelligence equation is a matter of balancing operational security needs, political and bureaucratic imperatives, liberty interests and the threat environment. In the United States, federalism, and a diverse law enforcement community complicate the situation. There is no single national police service, and a domestic intelligence service at the federal level would share responsibility and turf with a multitude of state and local actors operating with a range of priorities.

From a federal perspective, domestic intelligence is a component of national intelligence. As such the federal view emphasizes activities by the Intelligence Community (IC) and looks at integration with state, local, territorial, and tribal entities as partnerships.⁶⁴ This is reasonable yet minimizes the role of state and local (especially metropolitan police) agencies in the production and dissemination of intelligence within their own domain and vertically into the federal IC framework. Specifically, this federal bias views activities such as

criminal intelligence, homeland security information, and suspicious activity reporting as interacting with IC activities, yet separate.⁶⁵

The distinctions between foreign and domestic intelligence continue to color the debate about the nature and structure of domestic intelligence.⁶⁶ Concerns about global terrorism are likely to stimulate future changes to this balance. In short, the domestic intelligence arena is viewed largely as a federal endeavor but is a national effort involving interaction between competing federal agencies and state, local, and tribal entities. The current interaction is notionally grounded in the national network of fusion centers, but that framework remains immature, requiring investment in skills development, doctrine, accountability, and oversight.

Metropolitan police are increasingly reliant upon intelligence in order to prevent and adequately respond to terrorist threats and transnational crime. To fill this need, some police agencies are enhancing their intelligence gathering and analysis apparatus. The efforts of the New York Police Department (NYPD) to build a counterterrorism intelligence program are a pertinent example.⁶⁷ The January 6 insurrection is another salient example.

The NYPD's liaison program—which is based on the premise that “The war on terrorism has no national boundaries and now the NYPD doesn't either”—is referred to by New York's Police Foundation (which partially funds the program) as “Global Policing in the 21st Century.” It has deployed detectives to 15 cities worldwide including: Toronto, Montreal, Santo Domingo, London, Paris, Lyon, Madrid, The Hague, Tel Aviv, Amman, Singapore, and Sydney.⁶⁸ These NYPD detectives are essentially intelligence liaison officers. They are unarmed and are not directly involved in investigations or enforcement actions. Their role blurs the traditional distinctions between foreign and domestic intelligence.⁶⁹ While their focus is solely liaison and information exchange, “their presence overseas has strained the department's often tense relations with the [FBI]. In Israel, for instance, the bureau [FBI] opposed creating the post for the department's detective, according to American and Israeli officials.”⁷⁰ According

to reportage by journalist Judith Miller, the FBI resents NYPD's efforts to collect its own intelligence.⁷¹

Fusion Centers

After 9/11, effort was devoted to establishing a national network of fusion centers to address domestic intelligence needs.⁷² The network, however, has been fraught with controversy over civil liberties concerns, and a lack of standards, doctrine (network protocols), and training/education in the process of intelligence production. The emphasis was ostensibly on information sharing among all levels of government (local, state, and federal) and among various disciplines: law enforcement, fire, and health, as well as sharing with critical infrastructure sectors. That goal was never fully realized due to issues of bureaucratic competition and organizational culture (within the federal interagency and among the numerous state, local, and federal agencies participating in the endeavor).⁷³ Critics of the system claim the fusion centers, as currently constituted, are ineffective, spending billions in taxpayer dollars with little tangible result toward combatting terrorism.⁷⁴ These issues are also complicated by the emphasis on information sharing itself. The core of the issue is the production of intelligence—or ideally, the networked ‘co-production’ of intelligence—to alert, warn, and shape policy and operational responses to a range of threats (including terrorism and violent extremism).

Is the current fusion center network viable? In the aftermath of the January 6 capitol insurrection, scrutiny of the role of fusion centers is scarce. The fact that NTIC, the fusion center in the national Capital Region, apparently did not receive adequate warning remains unexplored.⁷⁵ Was its absence due to political interference or politicization?

The January 6, 2021 insurrection—attack on the U.S. capitol to overthrow the Presidential election—raises profound questions about the state of domestic intelligence.⁷⁶ These questions include the scope of partisan political interference, the capacity of fusion centers to detect and analyze emerging threat intelligence, the ability to understand current intelligence,

and the pathways to share threat warnings with operational entities (such as the United States Capitol Police, and the Washington, DC Metropolitan Police) related to domestic intelligence and active threats. The resolution to the questions remains elusive and are occluded by partisan warfare awaiting a comprehensive review and criminal investigation of the January 6 insurrection.

The suspect actions to limit intelligence due to potential politicization during the Trump Administration are a good example. In August 2020, Benjamin Wittes recounted repeated efforts by the DHS Office of Intelligence and Analysis (DHS I&A) to limit the DHS Inspector General from reviewing the agency's intelligence products. These affronts to the intelligence oversight norms established in the aftermath of the Watergate scandal and Church Commission that sought to remedy those abuses are a clear indication of the politicization of intelligence and the need for domestic intelligence reform. After all, the efforts to suppress oversight are related to efforts to obscure inappropriate intelligence collection and dissemination (and implicitly analysis) by DHS I&A.⁷⁷

This lack of transparency is not new. Fusion centers have been long subject to criticism. For example, Open the Government noted that, "State and local fusion centers," created to share counterterrorism intelligence across government agencies to prevent the failures that contributed to the 9/11 terror attacks in 2001, exhibit a persistent pattern of violating Americans' privacy and civil liberties, producing unreliable and ineffective information, and resisting financial and other types of standard public accountability." This activity often suggests a *prima facie* bias, especially in instances related to monitoring demonstrations, "Fusion centers, including those in Chicago, Memphis and Boston, continue to conduct monitoring on activity that should be protected by the First Amendment, including free speech, freedom religion, freedom of assembly, and freedom of the press."⁷⁸

Again, Open the Government observes, "Despite strong criticism and recommendations from the U.S. Senate Homeland Security and Governmental Affairs Committee Permanent Subcommittee on Investigations in 2012, the fusion centers and the federal agencies providing so much of their funding have made few, if any, meaningful

improvements to improve effectiveness and public accountability.”⁷⁹ It concludes, “Intelligence shared by fusion centers continues to be unreliable and ineffective.”⁸⁰ The scope and practice of intelligence analysis and production remains immature at best despite repeated criticism. A significant concern is monitoring political and First Amendment protected speech and activities by personnel without requisite oversight and training.

In 2012, fusion centers faced serious criticism from the Senate Homeland Security and Governmental Affairs Committee’s Permanent Subcommittee on Investigations.⁸¹ According to the committee, fusion centers “frequently produced ‘shoddy, rarely timely’ reports that in some cases violated civil liberties or privacy and often had little to do with terrorism.”⁸² In addition, fusion center grant expenditures lacked oversight. A review of five fusion centers found that federal funds were used to purchase dozens of flat screen televisions, two sport utility vehicles, cell phone tracking devices and other surveillance equipment unrelated to the analytical mission of a fusion center.⁸³

Sen. Coburn (R-OK) noted that:

Unfortunately, DHS has resisted oversight of these centers. The Department opted not to inform Congress of the public of serious problems plaguing its fusion center and broader intelligence efforts. When this Subcommittee requested documents that would help it identify these issues, the Department initially resisted turning them over, arguing that they were protected by privilege, too sensitive to share, were protected by confidentiality agreements, or did not exist at all.⁸⁴

This is closer to reality than the apologies published by bureaucratic proponents of the status quo. Fusion centers could be an asset, but they are still poorly integrated into the federal system and lack robust full-channel network connectivity. They largely disseminate information developed by other entities and mirror those reports in their dissemination, often duplicating efforts of other entities.

“In reality, the Subcommittee investigation found that the fusion centers often produced irrelevant, useless or inappropriate intelligence reporting to DHS, and many produced no intelligence reporting whatsoever.” Basic understanding of intelligence analysis tradecraft is still lacking. This is due to lack of institutional knowledge and domain expertise.

A 2015 Brookings blog summarizing that criticism noted that the Permanent Subcommittee on Investigations, “which issued a scathing report in 2012...argued that, fusion centers provided low-quality intelligence to the federal government and were not contributing in a meaningful way to counterterrorism efforts.”⁸⁵ That 2012 report overstated the effectiveness and utility of fusion centers as currently configured and underestimates the deficiencies, focusing only on criticism regarding civil liberties concerns and grant funding priorities and avoiding underlying issues regarding training, and doctrine. The essay recaps anecdotal examples of success but they are derived from other reports rather than independent assessments of capability and effectiveness. Nevertheless, the rise of domestic rightwing extremism and the attempted overthrow of the Presidential election during the January 6, 2021 insurrection call the current domestic intelligence structures into question. Fusion centers remain core elements of federal, state, and local interaction, yet they have not yet adapted to the profound domestic intelligence challenges posed by right wing extremists and potential right-wing terrorists.

Each fusion center has a unique, local flavor. That is valuable since it helps the centers meet local needs, but it also raises challenges. New institutions like fusion centers must be planned in a public, open manner, and their implications for privacy and other key values carefully thought out and debated. And like any powerful institution in a democracy, they must be constructed in a carefully bounded and limited manner with sufficient checks and balances to prevent abuse.”⁸⁶ Concerns raised by the American Civil Liberties Union include: Ambiguous lines of authority, private sector participation, military participation, data fusion—data mining, and excessive secrecy. While each of these concerns warrants scrutiny, they are not necessarily flaws. They can be strengths if properly managed and subject to effective oversight. Clear doctrine for addressing these issues is still an aspiration, rather than a reality.

Conclusion: Is Domestic Intelligence Reform Still Viable?

Domestic intelligence is critical to ensuring security and governance. It is also essential to preserving liberties. Domestic intelligence reform is necessary to calibrate the national intelligence framework to address the emerging and evolving threats faced internally, as well as those continuing external threats. Indeed, cross-cutting global challenges⁸⁷ like advanced technology, climate security,⁸⁸ transnational crime, maritime security,⁸⁹ and networked right wing extremism⁹⁰ are interconnected with domestic and foreign dimensions.

As Amy Zegart observed:

The threat landscape is changing dramatically—just as it did after the Cold War—and not because of a single emerging terrorist group or a rising nation-state. Advances in artificial intelligence, open-source internet-based computing, biotechnology, satellite miniaturization, and a host of other fields are giving adversaries new capabilities; eroding America's intelligence lead; and placing even greater demands on intelligence agencies to separate truth from deception. But the US intelligence community is not responding quickly enough to these technological changes and the challenges they are unleashing...Now, as in the run-up to 9/11, early indicators of the coming world are evident, and the imperative for intelligence reform is clear.⁹¹

These developments demonstrate a clear need for renewed intelligence reform. While Zegart's essay addresses the global picture, the need is also acute on the domestic front—especially as the distinction between foreign and domestic continues to blur.

While 9/11 provided an impetus for intelligence reform, it was short lived—especially on the domestic front. As Darrren Tromblay noted,

Unfortunately, even after 9/11, the national security enterprise has struggled with implementing a whole-of-government (and private sector) approach to national security. Fusion centers, for which DHS manages the Fusion Center Performance Program and, more recently, the NCTC's Interagency Threat Assessment and Coordination Group/Joint Counterterrorism Assessment Team, have not proven to be the most efficient mechanisms for establishing a two-way relationship with state and local authorities in furtherance of counterterrorism objectives.⁹²

Post 9/11 intelligence reform is incomplete. Indeed, it was never fully understood nor was it integrated into the United States experience. This is especially evident considering the January 6, 2021 insurrection attack on the Capitol. Due to reform fatigue, the initial—untested—crisis responses became the new foundation for domestic intelligence. Reform efforts also became the battleground for new bureaucratic contests for turf, prestige, and funding. All of these translate into contests for power. The imperatives of intelligence, as articulated in Sherman Kent's imperatives for analytical objectivity, became over-run by political objectives. Domestic intelligence has become politicized. The situation is the same on the foreign side of the house.⁹³ The current politicization of intelligence creates great risk as it ignores ground truth for political dominance. The case of violent right-wing extremism, including white supremacist and neo-Nazi groups is an alarming case in point. The Trump administration especially political appointees in DHS—expressly rejected addressing the rise of right-wing violence in the aftermath of Black Lives Matter protests, often conflating protest, direct action, riots, and terrorism from the left while ignoring direct action and terrorism from the extreme right. As reported by Betsy Woodruff Swan, “They tried to get Trump to care about right-wing terrorism. He ignored them.”⁹⁴

Twenty years after 9/11, United States domestic intelligence is carried out by multiple, loosely connected—and often competing—organizations. These agencies include the FBI, other Federal entities, such as the DHS and Drug Enforcement Administration, as well as state and local police. The current situation shares attributes of both a network and hierarchy. Creation of a new dedicated federal, domestic intelligence agency for counterterrorism and transnational threats is one option that needs to be

explored further. Such an agency could be a stand-alone entity, an agency-within an agency, or a distributed network. The analysis of these potential alternatives is just beginning.

The domestic intelligence domain is once again in need of significant reform—a reform that remains largely unfinished after the initial impulse to build new capacity after the 9/11 attacks. The major new capacities were three-fold: The creation of DHS, the establishment of the ODNI, and the promotion of a national network of fusion centers. The results of these efforts are uneven. There are significant levels of bureaucratic competition. For example, the roles of the FBI and DHS are often competing and duplicative, politicization has diminished the independence of the ODNI, and fusion centers still lack unified network standards in terms of common training, doctrine, and defined pathways for multi-lateral communication and the co-production of intelligence. Civil liberties and privacy issues remain a concern.

The need to examine domestic intelligence in a holistic, national—rather than federal—framework remains. It is time to revisit the network architecture of a national domestic intelligence capacity. This re-assessment needs to look at oversight, privacy concerns, the rise of new technology, and the growing connections between domestic and international (global) threats such as the rise of global networks comprised of violent right-wing extremists, authoritarian states, and violent non-state actors. The suitability of current organizational roles, including potential reforms to fusion centers, and the potential role and models for a national domestic intelligence service is once again a necessary. This article provides a starting point for that assessment.

Endnotes

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- ²⁷ Rhodri Jeffreys-Jones, *The CIA and American Democracy* (New Haven, CT: Yale University Press, 2003, 3rd edition), 208.
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- ²⁹ Loch K. Johnson, *A Season of Inquiry: Congress and Intelligence* (Belmont, CA: Dorsey Press, 1987) for a fascinating insider's view of the Church Committee proceedings.
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- ³³ Lester, *When Should State Secrets Stay Secret?*, 95.
- ³⁴ "Confronting the 'Enemy Within': What Can the United States Learn About Counterterrorism and Intelligence from Other Democracies?" Research Brief (Santa Monica: RAND, 2004), at https://www.rand.org/pubs/research_briefs/RB9047.html.
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- ³⁸ Christopher Andrew, *The Defence of the Realm: The Authorized History of MI5* (London: Alan Lane, 2009). It is important to note that while the UK maintains a domestic intelligence agency, this function is also closely integrated with intelligence operations within the police service. In general, police intelligence functions are performed by what is historically known as a "Special Branch." In 2005 the largest of these units, the Metropolitan Police Special Branch merged with the Anti-Terrorist Branch to form the Counter Terrorism Command. In addition to the Security Service, the UK maintains the National Crime Agency, previously known as the Serious Organised Crime Agency, and National Criminal Intelligence Service, respectively for serious and organized crime.
- ³⁹ Up until that time the *Direction de la Surveillance du Territoire* (DST – Directorate of Territorial Security) was the lead domestic agency for internal security threats while the *Direction générale de la sécurité extérieure* (DGSE – General Directorate of External Security) was the lead foreign intelligence agency. The DST worked closely with the National Police (*Police nationale*) and Gendarmerie (*Gendarmerie nationale*) through the *Direction Centrale des Renseignements Généraux* (DCRG – Central Directorate of General Intelligence) within the Ministère de l'Intérieur (Interior Ministry).
- ⁴⁰ John P. Sullivan and Adam Elkus, "Urban Siege in Paris: A Spectrum of Armed Assault," *Small Wars Journal*, February 2, 2015, <https://smallwarsjournal.com/jrnl/art/urban-siege-in-paris-a-spectrum-of-armed-assault>.
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- ⁴² This Canadian framework goes beyond the typical intelligence service role of gathering and disseminating intelligence to obtain special, secret warrants. Although not conferring arrest authority it creates a hybrid between the security intelligence and police roles. An oversight agency, the National Security and Intelligence Review Agency (NSIRA) was established to oversee the interactions of CSIS, CSE, and RCMP. Operational interaction among these agencies involves information-sharing and joint operations by Integrated National Security Enforcement Teams (INSETs) with staffing from CSIS, RCMP, the Canada Border Agency, Citizenship and Immigration Canada

- and provincial and metropolitan police from Quebec, Ontario, and British Columbia.
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