

**EXHIBIT G**



September 20, 2010

# Report Says F.B.I. Gave Inaccurate Information on Surveillance at Rally

By THE ASSOCIATED PRESS

Filed at 1:59 p.m. ET

WASHINGTON (AP) -- The FBI gave inaccurate information to Congress and the public when it claimed a possible terrorism link to justify surveilling an anti-war rally in Pittsburgh, the Justice Department's inspector general said Monday in a report on the bureau's scrutiny of domestic activist groups.

Inspector General Glenn Fine said the FBI had no reason to expect that anyone of interest in a terrorism investigation would be present at the 2002 event sponsored by the Thomas Merton Center, a nonviolent anti-war and anti-discrimination group.

The surveillance was "an ill-conceived project on a slow work day," the IG stated in a study of several FBI domestic terrorism probes of people affiliated with organizations such as Greenpeace and the Catholic Worker.

Earlier, in statements to Congress and in a press release, the FBI had described the Pittsburgh rally surveillance by one agent as related to a terrorism investigation.

In a letter to the IG, FBI Deputy Director Timothy Murphy said the FBI regrets that inaccurate information was provided to the FBI director and Congress regarding the basis for the agent's presence at the rally.

Speaking generally of the FBI probes it studied, the IG said a domestic terrorism classification has far-reaching impact because people who are subjects of such investigations are normally placed on watchlists and their travels and interactions with law enforcement may be tracked.

The FBI has broad definitions that enable it to classify matters as domestic terrorism that actually are trespassing or vandalism, the inspector general said.

The IG said the evidence did not indicate that the FBI targeted individuals involved with the groups on the basis of their free-speech activities protected by the Constitution's First

Amendment, but rather due to concerns about potential criminal acts.

The IG also concluded that the factual basis for opening some investigations was factually weak and that in several instances there was little indication of any possible federal crime, as opposed to state crimes. In some cases, the IG found that the FBI extended the duration of probes without adequate basis and in a few cases the FBI improperly retained information about the groups in its files, classifying some probes relating to nonviolent civil disobedience under its "Acts of Terrorism" classification.

Regarding the Pittsburgh rally, controversy erupted in 2006 over whether the FBI had spied on protesters at the event several years earlier because of their anti-war views.

At the time, the FBI issued a news release saying the surveillance had been based on an ongoing investigation.

FBI Director Robert Mueller told a Senate hearing that the bureau had been trying to identify a particular individual believed to be in attendance.

The FBI's statements to Congress and the public were not true, said the IG, who found no evidence that the FBI had any information at the time of the event that any terrorism subject would be present.

According to the IG, the Office of the Chief Division Counsel in the FBI Pittsburgh Field Division created a document that said the surveillance was supposedly directed at an individual living in Pittsburgh who was of interest to the FBI based on evidence developed in a terrorism probe.

"We determined this version of events was not true," said the IG.

The inaccurate statements may have been inadvertent, but the IG said it is more likely that the document reflected an effort to state a stronger justification for the surveillance.

# The Washington Post

## FBI probes were improper, Justice says

By Jerry Markon  
Washington Post Staff Writer  
Monday, September 20, 2010; 10:51 PM

The FBI improperly investigated some left-leaning U.S. advocacy groups after the Sept. 11, 2001, attacks, the Justice Department said Monday, citing cases in which agents put activists on terrorist watch lists even though they were planning nonviolent civil disobedience.

A report by Inspector General Glenn A. Fine absolved the FBI of the most serious allegation: that domestic groups were targeted purely for their activism against the Iraq war and other political activity, which would have violated their First Amendment rights. Civil liberties groups and congressional Democrats had accused the FBI of employing such tactics during George W. Bush's administration.

But the report cited what it called "troubling" FBI practices in the Bush administration's monitoring of domestic groups between 2001 and 2006. In one instance, the report said, FBI officials falsely said an agent photographed antiwar demonstrators as part of a terrorism investigation, which led FBI Director Robert S. Mueller III to unintentionally give incorrect information about the incident to Congress.

In another, agents investigated members of the environmental advocacy group Greenpeace over their protest activities "with little or no basis," the report said. Agents kept the case open for more than three years, even though no charges were filed, and put the activists on a terrorist watch list, it said.

The groups that were monitored, which also include a Catholic organization that advocates for peace, compared the FBI's actions to questionable domestic spying tactics the bureau used against antiwar demonstrators and others in the 1960s under longtime director J. Edgar Hoover.

"The use of McCarthyite tactics against PETA and other groups that speak out against cruelty to animals and exploitative corporate and government practices is un-American, unconstitutional, and against the interests of a healthy democracy," said a statement from People for the Ethical Treatment of Animals, an animal rights group that was among those monitored.

Ken Wainstein, former head of the Justice Department's national security division, said the investigations of the groups reflect the FBI's post-Sept. 11 challenge of transforming into an intelligence organization able to detect and dismantle terrorist plots.

"This isn't McCarthyism or the excesses of the 1960s," he said. "This is the Bureau developing the programs to be a fully functioning intelligence agency and trying not to step over the First Amendment lines in the process."

FBI officials defended their tactics, saying they were trying to protect Americans. They noted that the express purpose of Fine's report was to determine whether agents targeted activists purely for their political beliefs.

"After more than four years of investigation and an exhaustive review of hundreds of investigative decisions the FBI made after the September 11 attacks," said FBI spokesman Michael P. Kortan, the report "did not uncover even a single instance where the FBI targeted any group or any individual based on the exercise of a First Amendment right."

He added that although Fine had "disagreed with a handful of the FBI's investigative determinations over the course of six years," the inspector general "has not recommended any significant modifications to the FBI's authority to investigate criminal conduct or national security threats."

The FBI's efforts to balance its fight against domestic terrorism with respect for the First Amendment have long been controversial. Under Hoover's COINTELPRO program, halted in 1971, the bureau sought to monitor and disrupt leftist antiwar and civil rights groups by such tactics as infiltrating them with informants.

Since Sept. 11, 2001, that balance has been tested further. Civil liberties groups have long accused the bureau of overreacting to the hijackings by improperly monitoring antiwar demonstrators and environmental groups.

Fine's investigation began in 2006 after the American Civil Liberties Union released documents, obtained through the Freedom of Information Act, that it said showed that the FBI was monitoring left-leaning groups.

Michael German, an ACLU senior policy counsel and former FBI agent, said Fine's report "clearly shows that the FBI was improperly spying on people's First Amendment-protected activity, and that the FBI didn't have enough internal controls to prevent abuse."

Fine's report says that in some cases, agents began investigations of people affiliated with activist groups for "factually weak" reasons. In others, the report said, the FBI extended probes "without adequate basis" and improperly kept information about activist groups in its files.

Much of the report is about a 2002 antiwar protest sponsored by the Thomas Merton Center, a Pittsburgh-based organization dedicated to promoting peace.

Mark Berry, a probationary FBI agent with little anti-terrorism experience, attended the rally and photographed demonstrators distributing leaflets. An internal FBI document said the bureau was investigating "Pittsburgh anti-war activity," the report said.

After the ACLU filed a Freedom of Information Act request, FBI officials seeking to respond produced an internal "routing slip" saying that Berry was monitoring a local Islamic leader and that his attendance was part of a terrorism probe.





Berry told Fine's investigators that the routing slip was false, and Fine concluded that it was an "after-the-fact reconstruction that was not corroborated by any witnesses or contemporaneous documents." Berry could not be located Monday night.

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# OIG: FBI Inappropriately Tracked Domestic Advocacy Groups

By Andrew Cohen

FBI agents misled officials and the public, violated their own policy manual, used poor judgment, and engaged in sloppy police work when they investigated certain left-leaning, high-profile, domestic advocacy groups in the years immediately following 9/11, the Justice Department announced today following a four-year-long internal investigation by the Office of the Inspector General.

The official review of FBI conduct toward groups like PETA and Greenpeace and the Catholic Worker arose from revelations made public in 2005 that federal agents had used the threat of terrorism as a justification for tracking the legal, associative conduct of members of certain left-leaning groups. Concerned about the chilling impact of no-warrant domestic surveillance upon political advocacy groups whose members were exercising their constitutionally-protected free speech rights, Congressional Democrats and First Amendment activists had sought the probe. It began in 2006 and covered the the years 2001-2006 during the administration of President George W. Bush.

The 209-page report, signed by Inspector General Glenn A. Fine, concluded that while none of the groups were targeted by the FBI for their views alone--one of the key allegations made by critics of the surveillance--the Bureau nevertheless engaged in tactics and strategies toward those groups and their members that were inappropriate, misleading, and in some cases counterproductive. Moreover, the OIG accused FBI witnesses of continuing to the present day to thwart a full and complete investigation into the matter by offering "incomplete and inconsistent accounts of events." An FBI spokesman said the Bureau "regrets that inaccurate information was provided."

The OIG report was sharply critical of what it considered "troubling" work by the Bureau. It concluded, for example, that FBI Director Robert Mueller "unintentionally provided inaccurate testimony to Congress" in 2006 about an anti-war rally in Pittsburgh four years earlier. On that occasion, the report recapped, a probationary agent was sent to do some "make work" on a "slow work day" to look for "international terrorism subjects" at an anti-war rally in Pittsburgh sponsored by The Thomas Merton

Center, a group which says it seeks to promote "peace and social justice." On Capitol Hill, in 2006, Mueller told lawmakers that the surveillance of the Merton Center was "an outgrowth of an FBI investigation and that the agent was "attempting to identify an individual who happened to be, we believed, in attendance at the rally."

The OIG Report, however, "found no evidence that the FBI had any information at the time of the event that any terrorism suspect would be present at the event. Instead, FBI personnel subsequently created two inconsistent and erroneous explanations of the surveillance of the anti-war rally, stating inaccurately that the surveillance was a response to information that certain persons of interest in international terrorism matters would be present. In fact, the FBI had no basis at the time to expect any subject or other person of interest in a terrorism investigation would be present." Mueller, the report indicated, was unaware that the information provided to him by his subordinates was inaccurate.

Fine and his Justice Department colleagues also criticized the FBI for its surveillance of the animal rights group People for the Ethical Treatment of Animals (PETA). The OIG report "questioned whether the FBI had a sufficient factual basis to open several of the cases as full investigations rather than as preliminary inquires, and we concluded with respect to one individual that the facts contained in the FBI communication initiating the case did not support opening any investigation at all." One investigation into PETA's activities that was opened was then improperly allowed to remain open for six years, the OIG concluded, long after it should have remained so.

In a case of domestic surveillance of individuals associated with The Catholic Worker, a group which states it is committed to "nonviolence, voluntary poverty, prayer and hospitality for the homeless, the OIG report concluded that the FBI inappropriately characterized "certain "nonviolent civil disobedience" as terrorism-related. "The information the FBI collected in one case," the OIG report indicates, "had no relationship to any 'violent activities' much less to terrorism." Similarly, in a case involving an investigation into the environmental activist group Greenpeace, the OIG also concluded that the FBI had inappropriately labeled planned protest activities (in Texas against Exxon and Kimberly-Clark) as an "act of terrorism" case. Subjects in that case were put on a federal "watchlist" despite what the OIG called "scant basis for the FBI to suspect" they were planning acts of terrorism.

The OIG Report contained six "recommendations" to the FBI, including the suggestion that the FBI conduct its own internal investigation into its Pittsburgh Field Division to "assess the Division's compliance" with federal law, Attorney General guidelines, and FBI policies involving First Amendment issue. The OIG also called for the Bureau and the Justice Department to consider reinstating a "prohibition on retaining information from public events that is not related to potential criminal or terrorist activity."

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<http://www.theatlantic.com/national/archive/2010/09/oig-fbi-inappropriately-tracked-domestic-advocacy-groups/63276/>

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September 20, 2010

# F.B.I. Spying Not Fueled by Politics, Report Says

By CHARLIE SAVAGE

WASHINGTON — Despite an uproar in 2006 over the disclosure that federal agents had investigated dozens of domestic political advocacy groups, the Federal Bureau of Investigation was motivated by concerns that members of the groups might commit crimes and was not spying on them because of their political views, a Justice Department report said on Monday.

Still, the 209-page report, by the office of Inspector General Glenn A. Fine, criticized the F.B.I. for classifying certain nonviolent crimes related to protest activities as terrorism. And it sharply attacked the bureau for making a series of “false and misleading statements to the public and to Congress” about its surveillance of an antiwar protest on Nov. 29, 2002.

Despite such criticisms, an F.B.I. spokesman, Michael Kortan, said Monday evening that the report’s most important finding was that after “an exhaustive review of hundreds of investigative decisions the F.B.I. made after the Sept. 11 attacks,” Mr. Fine’s office “did not uncover even a single instance where the F.B.I. targeted any group based on the exercise of a First Amendment right.” Nor, Mr. Kortan said, did the report suggest “any significant modifications” of the bureau’s investigative powers.

The report involved investigations of antiwar, environmentalist and animal rights groups from the 2001 terrorist attacks through much of the administration of President George W. Bush.

In the case of the 2002 protest, an F.B.I. agent who attended the event filed a two-page account labeled “results of investigation of Pittsburgh antiwar activity” that was disclosed to the American Civil Liberties Union as part of a larger response to several Freedom of Information Act requests in 2006. It detailed leafleting by people associated with the Thomas Merton Center, which the agent described as a “left-wing organization” that advocated pacifism, to protest the coming Iraq war.

The account described the leaflets as making such claims as that Iraq had no weapons of mass destruction and raised questions about whether the center was linked to Muslims. The agent also photographed an activist who “appeared to be of Middle Eastern descent” and submitted her picture to terrorism analysts.

After the A.C.L.U. made the report public, the bureau’s press office told reporters that the agent attended the protest “as a direct result of information provided to the F.B.I. related to an ongoing investigation.” Later, the F.B.I. director, Robert S. Mueller III, told Congress that the agent was trying to “identify an individual who happened to be, we believed, in attendance at that rally.”

In fact, the inspector general found, this story was false: a supervisor had sent the agent to the protest as a “make-work” assignment to see if any subjects of Pittsburgh terrorism investigations “happened to show up without having any reason to think any of them would be there.”

The agent later told the inspector general’s office that he had gone overboard in carrying out that task because he was a recent hire, and he described the report as “atrocious” and a “horrible mistake,” saying he could “understand why people would become inflamed about it.”

In 2006, officials in the Pittsburgh office apparently came up with the story that the agent had attended the protest in search of a specific individual as part of a terrorism investigation — a false “after-the-fact justification” that made its way into the press statement and briefing materials for Mr. Mueller.

The investigators were also unable to determine who was responsible for the false account. But the report emphasized that there was no reason to believe that Mr. Mueller deliberately misled Congress.

The report also criticized several episodes in which it characterized F.B.I. agents as

opening or continuing investigations despite scant evidence of a federal crime, and it criticized classifying some nonviolent protest-related actions, like trespassing on a military base, as “terrorism” matters. As a result, it said, some people are being inappropriately put or kept on terrorism watch lists.

The inspector general report did note that rules limiting F.B.I. investigations were relaxed in 2002 and eased further in 2008. As a result, one problem documented in the report — keeping information in F.B.I. files related to political activities deemed irrelevant to potential criminal or terrorist activity — is no longer improper. The report suggested that the restriction be reinstated.

Michael German, a former F.B.I. agent who is now with the American Civil Liberties Union, which filed some of the Freedom of Information Act requests that led to the disclosure of the investigations, also said the guidelines were too lax.

Mr. German argued that the report showed that “the rules designed to limit the F.B.I. don’t protect wholly innocent people from being spied on for their political activities” because agents are authorized to take steps like sending informants to spy on groups based on very little reason for suspicion that they might commit a crime.

## NewsRoom

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Section: Editorial Opinion

### FBI investigationsRed-baiting, circa 2002-2006

GREENPEACE, THE Catholic Worker, the Thomas Merton Center - none of these groups had the remotest connection to 9/11 or terrorism. And the **FBI** had no business investigating them - with no evidence other than a suspicion of left-wing organizations in wartime. This was shameful red-baiting at its worst. The best thing to say about it is that a Justice Department report cleared the **FBI** of investigating targeted groups to deliberately stifle their "First Amendment activities." But the net effect was the same.

The Justice Department's Inspector General report released this week pulled few punches in admonishing the **FBI** for targeting anti-war groups and advocacy organizations with no apparent justification, and for placing non-violent activists in those groups on terrorist watch lists. The report chastised the bureau for having a "weak" rationale for some of its investigations; investigating where there was "little indication of any possible federal crimes"; and extending "the duration of investigations involving advocacy groups or their members without adequate basis." The agency was also taken to task for improperly retaining information about the targeted groups in its files and for classifying investigations of peace groups "under its 'Acts of Terrorism' classification."

These are serious abuses. Using anti-terrorism laws to target domestic protest organizations is redolent of the actions of the Justice Department against law-abiding protesters during World War I and the Vietnam War - actions that are rightly remembered as disgraceful

**FBI** Director Robert Mueller was misled by subordinates into telling Congress, falsely, that surveillance of a peaceful 2002 anti-war rally was "an outgrowth of an **FBI** investigation." In fact, it was the product of an agent receiving a "make-work" assignment on a "slow day." Whether a lack of common sense or political bias is to blame, the **FBI** cannot go on looking for terrorists in all the wrong places. Americans will be more secure and the bureau will be a more trustworthy institution if it corrects its flaws quickly.

#### --- Index References ---

Company: GREENPEACE CANADA; **FBI** SA; FRANCHISE BANCORP INC; JUSTICE DEPARTMENT

News Subject: (International Terrorism (1IN37); Top World News (1WO62))

Industry: (Security Agencies (1SE35); Security (1SE29))

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September 28, 2010

Section: News

Hundreds protest raids tied to terrorism probe  
Federal search effort criticized as 'FBI overreach'

Serena Maria Daniels and Andy Grimm, Tribune reporters

About 350 anti-war activists, clergy members and trade union members demonstrated Monday outside the FBI's Chicago headquarters and condemned federal authorities for their raids last week of the homes of activists in Chicago and Minneapolis.

Signs read "Freedom to Dissent" and "One Nation Under Surveillance." Others chanted into bullhorns, "Freedom of speech under attack/What do we do?/Stand up, fight back!"

"It's not just our family. It's not just those that got the knock on Friday. It's not just the many, many movement activists that are here today," said Stephanie Weiner, whose home in Chicago's Logan Square neighborhood was the subject of a search warrant Friday.

Weiner and her husband, Joseph Iosbaker, were among several anti-war activists whose homes were searched in the two cities in an investigation into possible domestic links with alleged terrorist organizations.

Authorities also searched each of their sons' bedrooms, including the room of Tre Iosbaker, 17, who attended the rally in support of his parents.

The FBI also searched the Jefferson Park home of Hatem Abudayyeh, executive director of the Arab American Action Network.

Subpoenas issued to other activists sought records detailing their travel to countries in the Middle East and South America, as well as records of donations to Abudayyeh's group and two groups on the State Department's list of terrorist organizations.

Special Agent Ross Rice, a Chicago-based FBI spokesman, has declined to discuss details of the investigation. But he has noted that judges reviewed the warrants and found probable cause.

Jim Fennerty, an attorney representing Abudayyeh, who is an American of Palestinian descent, said Monday that lawyers from the National Lawyers Guild will represent those who are being investigated.

Ahmed Rehab, executive director of the Chicago chapter of the Council on American-Islamic Relations, said Monday that the investigation into Abudayyeh's organization was "a waste of taxpayer dollars."

"Hatem is a longtime, respected leader in the community. It is unthinkable that he would have any connections to terrorism," Rehab said.

"This is a new low. ... This is an example of **FBI** overreach when it comes to activism or commentary on the (Middle East) conflict."

The Arab American Action Network has received federal block grants for training programs offered at its 63rd Street headquarters, according to its Web site, and offers assistance with citizenship, English classes and after-school programs.

Several of the people whose homes were searched or who were issued subpoenas are members of the Chicago-based Freedom Road ~~Socialist~~ Organization.

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Photo (color): Demonstrators protest Monday outside the **FBI**'s Chicago headquarters. The group was objecting to last week's **FBI** raids on activists' homes. ALEX GARCIA/TRIBUNE PHOTO

— **Index References** —

Company: BINCKBANK NV; **FBI** SA; TRIBUNE CO; FRANCHISE BANCORP INC; STATE DEPARTMENT; TRIBUNE

News Subject: (International Terrorism (1IN37); Labor Unions (1LA31); HR & Labor Management Regulatory (1HR55); Top World News (1WO62); HR & Labor Management (1HR87); Regulatory Affairs (1RE51); Business Management (1BU42))

Industry: (Security Agencies (1SE35); Security (1SE29))

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Other Indexing: (ALEX; AMERICAN OF PALESTINIAN; ARAB AMERICAN ACTION NETWORK; **FBI**; JEFFERSON PARK; NATIONAL LAWYERS GUILD; SPECIAL AGENT ROSS RICE; STATE DEPARTMENT; TRIBUNE) (Abudayyeh; Ahmed Rehab; Demonstrators; English; Hatem; Hatem Abudayyeh; Hundreds; Jim Fennerty; Joseph Iosbaker; Photo; Rehab; Signs; Stephanie Weiner; Tre Iosbaker; Weiner)

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**EXHIBIT H**

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TIME

Monday, Mar. 09, 2009

## Fusion Centers: Giving Cops Too Much Information?

By Hilary Hylton / Austin

At the time, it seemed one of the unanimous lessons of the tragedy of Sept. 11 — law enforcement agencies at all levels of government have to do a better job of sharing information with each other in order to prevent terror plots. Making that actually happen, of course, is easier said than done, which is why newfangled, multi-organizational agencies were set up to promote cooperation and overcome turf battles. But now critics claim that these so-called fusion centers are making it all too easy for government to collect and share data from numerous public databases.

Organizations like the American Civil Liberties Union are pushing bills to restrict fusion centers' access to data, most notably in New Mexico, where opponents hope to make government snooping a costly offense. Legislation has been introduced in Santa Fe that would prohibit any New Mexico law enforcement agency from collecting information about the religious, political and social associations of law-abiding New Mexicans. And in what would be a first for the nation, the bill would allow private citizens to sue law enforcement agencies for damages over the unauthorized collection of such data.

Privacy advocates point to a scandal in the state of Maryland, where last summer it was revealed that in 2005 and 2006 undercover members of the Maryland State Police had carried out surveillance of war protesters and death penalty opponents. Some of the intelligence gathered on the subjects, according to logs obtained by the ACLU last summer, may have found its way into databases shared with local, national and federal agencies through the state's fusion center. An investigation found the data collection represented a serious lapse in judgment, but the victims had little recourse, except public outrage.

"The lack of proper legal limits on the new fusion centers not only threatens to undermine

fundamental American values, but also threatens to turn them into wasteful and misdirected bureaucracies that, like our federal security agencies before 9/11, won't succeed in their ultimate mission of stopping terrorism and other crime," the national ACLU notes in its report on the centers. There are federal and state privacy laws governing the centers, but a recent report by the Department of Homeland Security's own Privacy Office suggested that the multi-governmental nature of the centers allows the staffers to pick and choose a policy that suits their needs. The report, issued in late December, echoed some of the concerns laid out in earlier congressional and Government Accountability Office reports that warned of the potential for "mission creep" by the fusion centers.

There are approximately 60 "fusion centers" nationwide, with some focusing exclusively on criminal activity, others on both criminal and terrorist threats, and some on very specific acts, such as human smuggling, gang activity, online predators or drug trafficking. Much of the funding for the large state centers comes from the federal government, including a new infusion of \$250 million courtesy of the stimulus package to be spent by 2010 on "upgrading, modifying, or constructing" state and local fusion centers. The latest fusion center, the \$21 million Port of Long Beach facility, opened last month. Staffed by local, state and federal officials, it sits on a small swath of land inside the nation's second largest port and utilizes state of the art surveillance technology, including cameras that can read a badge from two miles away. Every state but Idaho and Pennsylvania has at least one fusion center; Texas, for instance, has its Texas Intelligence Center within the Texas Department of Public Safety "to collect, analyze, and disseminate intelligence information related to terrorist activities" covering the entire state. The state also has the North Central Texas Fusion System, covering a 16 county-area around the Dallas metro area that includes "regional homeland security, law enforcement, public health, fire, medical providers, emergency management, and private security". ([See pictures of SWAT teams around the world.](#))

Different missions and different mixes of manpower make each center unique. "If you've seen one fusion center — you've seen one fusion center," says Jack Tomarchio, former deputy director of intelligence for the Department of Homeland Security, who oversaw the development of most of the country's state fusion centers during the Bush Administration. Tomarchio says the centers have proved their value in fighting both crime and terrorism — sometimes exposing the link between the two, as in the case of cigarette smuggling in the Carolinas which funded terrorist groups abroad. They also have provided valuable information in preventing further attacks, he claims, adding that while he is not at liberty to disclose the kind of information mined, fusion center intelligence did reach the level of the daily presidential briefing in the Bush Administration.

The model for the centers grew out of "intelligence-led policing" — a British initiative with its roots in the early 1990s. It has evolved into "a management philosophy that places greater emphasis on

information-sharing and collaborative, strategic solutions to crime problems," according to Dr. Jerry Ratcliffe, a former British police officer and currently a Temple University professor who has lectured and written extensively on the subject. "It facilitates holistic crime prevention," Ratcliffe says. Rather than each department, or even squad, having its own databases, fusion centers allow access to multiple databases and sources of intelligence; the drug squad in one community can share information with the anti-gang task force in another, picking up on patterns that may indicate an emerging threat as gangs set up to move into a new market, or distribute new contraband, for example.

But that sharing of information troubles critics. New Mexico's All Source Intelligence Center, housed in an old National Guard building, has access to 240 state, regional and federal agencies and their databases, including agricultural and parks agencies, according to Peter Simonson, executive director of the state's ACLU chapter. Establishing what kinds of information is being processed by fusion centers can be difficult, Simonson says, since they do not store the records, or even collect them, but simply mine them through digital gateways. Records are accessed, not retained as they would be in specific case or investigative files. Simonson says the New Mexico chapter of the ACLU has filed several open records requests seeking to find out what kind of information is being reviewed, but has been stymied by the lack of a "material product." Other state ACLU chapters are pressing open records requests aimed at casting light on fusion center activities.


Groups like the ACLU have sued law enforcement agencies in the past aimed at exposing domestic spying, but individuals whose privacy has been violated have little recourse — "suing is a shot in the dark," Simonson says, given current state and federal laws. "There aren't any legal remedies and we are trying to create one," Simonson says, acknowledging that it may take more than one legislative session to pass the bill in New Mexico.

One of the most well regarded fusion centers was created under the leadership of former Arizona Governor Janet Napolitano, now Secretary of Homeland Security. During her confirmation hearings Napolitano highlighted her leadership in creating one of the first state anti-terrorism law enforcement fusion centers in the country, and her first directive at DHS ordered a thorough review of intelligence-sharing programs and methods aimed improving the flow of information to states, local and tribal governments. But in her testimony to Congress, she also cited her commitment to privacy: "As Governor, I created the Statewide Information Security and Privacy Office to ensure adequate controls and safeguards are in place for all State of Arizona government technology systems and business practices." However, Napolitano's appointment gives Simonson pause. "I think the Obama Administration has a much greater sensitivity to these issues than the previous Administration, but the track record from Arizona would suggest that we still have good reason to be

concerned."

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December 17, 2009

# Intelligence Improperly Collected on U.S. Citizens

By [CHARLIE SAVAGE](#) and [SCOTT SHANE](#)

WASHINGTON — In February, a [Department of Homeland Security](#) intelligence official wrote a “threat assessment” for the police in Wisconsin about a demonstration involving local pro- and anti-abortion rights groups.

That report soon drew internal criticism because the groups “posed no threat to homeland security,” according to a department memorandum released on Wednesday in connection with a Freedom of Information Act lawsuit. The agency destroyed all its copies of the report and gave the author remedial training.

That was just one of several cases in the last several years in which the department’s intelligence office improperly collected information about American citizens or lawful United States residents, the documents show.

In March 2008, the office produced a “terrorism watch list” report about a Muslim conference in Georgia at which several Americans were scheduled to speak, even though it “did not have any evidence the conference or the speakers promoted radical extremism or terrorist activity,” and such speech is constitutionally protected, an internal report said.

And in October 2007, the office sent a report, “[Nation of Islam](#): Uncertain Leadership Succession Poses Risks,” to hundreds of federal officials. Department guidelines had called for the files to be destroyed because the assessment of the group had lasted more than 180 days without uncovering evidence of potential terrorism.

In all three cases, after other Homeland Security Department officials raised concerns, copies of the reports were destroyed. The agency also held a workshop on intelligence-gathering “while ensuring the protection of civil rights and civil liberties” after the Nation of Islam incident.

The documents were released by the Justice Department in connection with a lawsuit filed by the nonprofit [Electronic Frontier Foundation](#). It had sought reports to the [Intelligence Oversight Board](#), a watchdog panel appointed by the president, by various agencies documenting violations of law, executive orders or presidential directives.

Marcia Hofmann, a staff lawyer with the foundation, praised agency officials for destroying the reports but said the public needed to know about such incidents.

“I think it’s a positive sign that these agencies responded to this and took steps to correct the situation,” Ms. Hofmann said, adding, “We would never have known that this happened had we not seen these internal reports.”



Matt Chandler, a spokesman for the Homeland Security Department, said, "We take very seriously our responsibility to protect the civil rights and liberties of the American people while" protecting the country.

Other documents released Wednesday were heavily censored because they involved classified information.

A February 2008 report from the [National Security Agency](#), for example, has four pages almost entirely redacted, under the heading of intelligence activities "that violate law, regulation, or policy substantiated during the quarter, as well as actions taken as a result of the violations."

In a 2007 report, top security agency officials said "intelligence oversight training is not managed effectively" at the N.S.A. and called procedures regarding training "confusing."

A spokeswoman for the N.S.A., Judith A. Emmel, said that since 2007 the agency had "improved its oversight training program and continues to refine it."

"Ensuring our work force is thoroughly and properly trained is something we take very seriously," Ms. Emmel said.

Another memorandum disclosed that a [Defense Intelligence Agency](#) employee said that in May 2002, in response to a Congressional inquiry, the Joint Forces Intelligence Command provided false information about its activities related to [Al Qaeda](#) and the Sept. 11 attacks. The document offered few details.

The Justice Department also released other documents Wednesday from other Freedom of Information Act lawsuits related to national security policies during the Bush administration.

Among them was a letter written in 2002 by [George J. Tenet](#), who was the director of the [Central Intelligence Agency](#) at the time, suggesting that a C.I.A. ban on using journalists as spies was not airtight.

After Islamic militants killed [Daniel Pearl](#), a Wall Street Journal reporter whom they had falsely accused of working for the C.I.A., leaders of the American Society of Newspaper Editors asked Mr. Tenet to "declare unequivocally" that the agency's spies never posed as journalists.

Mr. Tenet replied that for 25 years, the agency's policy had been "that we do not use American journalists as agents or American news organizations for cover." But he refused to make what he described as "a blanket statement that we would never use journalistic cover."

Instead, he wrote, "the circumstances under which I would even consider any exception to this policy would have to be truly extraordinary."

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September 24, 2010

# F.B.I. Searches Antiwar Activists' Homes

By COLIN MOYNIHAN

F.B.I. agents executed search warrants Friday in Minneapolis and Chicago in connection to an investigation of support of terror organizations.

The searches in Minneapolis took place early in the morning at the homes of people who have helped organize demonstrations against the war in Iraq and protests held two years ago during the Republican National Convention in St. Paul.

"It is rather patently political," said Ted Dooley, a lawyer who represents Mick Kelly, a food service worker at the University of Minnesota and one of those whose homes was searched. "My client denies any wrongdoing."

Steve Warfield, a spokesman for the Federal Bureau of Investigation in Minneapolis, said the agents executed six warrants in Minneapolis and two in Chicago.

"They were seeking evidence related to an ongoing Joint Terrorism Task Force investigation," Mr. Warfield said. "They are looking at activities connected to the material support of terrorism."

He said no one in Minneapolis had been arrested while the warrants were executed. He added that agents in Michigan and North Carolina had also questioned people in connection with the investigation.

Mr. Dooley said the F.B.I. broke down Mr. Kelly's door around 7 a.m. and gave a search warrant to his companion. The warrant said agents were gathering evidence related to people "providing, attempting and conspiring to provide material support" to terrorist organizations, and listed Hezbollah, the Popular Front for Liberation of Palestine and the Revolutionary Armed Forces of Colombia.

The warrant also authorized the agents to look for information connected to the Freedom Road Socialist Organization and to unnamed "co-conspirators" and allowed them to seize items including electronics, photographs, address books and letters.

Mr. Kelly is known in Minnesota as a prominent organizer of the Anti-War Committee, a group that has protested United States military aid to Colombia and called for the removal of American soldiers from Afghanistan.

During the Republican gathering in 2008 he was a primary organizer of a march that drew thousands of participants.

Mr. Kelly was also served with a summons to appear before a grand jury on Oct. 19 in Chicago. The order directed him to bring along pictures or videos related to any trip to Colombia, Jordan, Syria, the Palestinian territories or Israel, as well as correspondence with anyone in those places.

Jess Sundin, another member of the Anti-War Committee whose home was searched, said a warrant also was executed at the group's office. She said she had not done anything to help terror groups.

"I've protested the government's policies and spoken out and tried to educate people in my community," Ms. Sundin said. "That is the extent of what I've done."

# The Washington Post

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## Activists cry foul over FBI probe

By Peter Wallsten, Published: June 13

CHICAGO — FBI agents took box after box of address books, family calendars, artwork and personal letters in their 10-hour raid in September of the century-old house shared by Stephanie Weiner and her husband.

The agents seemed keenly interested in Weiner's home-based business, the Revolutionary Lemonade Stand, which sells silkscreened baby outfits and other clothes with socialist slogans, phrases like "Help Wanted: Revolutionaries."

The search was part of a mysterious, ongoing nationwide terrorism investigation with an unusual target: prominent peace activists and politically active labor organizers.

The probe — involving subpoenas to 23 people and raids of seven homes last fall — has triggered a high-powered protest against the Department of Justice and, in the process, could create some political discomfort for President Obama with his union supporters as he gears up for his reelection campaign.

The apparent targets are concentrated in the Midwest, including Chicagoans who crossed paths with Obama when he was a young state senator and some who have been active in labor unions that supported his political rise.

Investigators, according to search warrants, documents and interviews, are examining possible "material support" for Colombian and Palestinian groups designated by the U.S. government as terrorists.

The apparent targets, all vocal and visible critics of U.S. foreign policy in the Middle East and South America, deny any ties to terrorism. They say the government, using its post-9/11 focus on terrorism as a pretext, is targeting them for their political views.

They are "public non-violent activists with long, distinguished careers in public service, including teachers, union organizers and antiwar and community leaders," said Michael Deutsch, a Chicago lawyer and part of a legal team defending those who believe they are being targeted by the investigation.

Several activists and their lawyers said they believe indictments could come anytime, so they have turned their organizing skills toward a counteroffensive, decrying the inquiry as a threat to their First Amendment rights.

Those who have been subpoenaed, most of them non-Muslim, include clerical workers, educators and in one case a stay-at-home dad. Some are lesbian couples with young children — a point apparently noted by investigators, who infiltrated the activists' circle with an undercover officer presenting herself as a lesbian mother.

All 23 of the activists invoked their right not to testify before a grand jury, defying U.S. Attorney [Patrick Fitzgerald](#), whose office is spearheading the investigation.

A spokesman for Fitzgerald, the Chicago prosecutor whose past work has sometimes riled both political parties, declined to comment.

It is uncertain whether Obama is aware of the investigation. A White House official referred questions to the Justice Department, where spokesman Matthew Miller said the agency will not comment on an investigation, but he disputed any assertion that people would be targeted for political activities.

"Whenever we open an investigation, it is solely because we have a reason to do so based on the facts, evidence and the law," Miller said.

The activists have formed the Committee to Stop FBI Repression, organized phone banks to flood Attorney General [Eric H. Holder Jr.](#)'s office and the White House with protest calls, solicited letters from labor unions and faith-based groups and sent delegations to Capitol Hill to gin up support from lawmakers.

Labor backers include local and statewide affiliates representing the Service Employees International Union and the American Federation of State, County and Municipal Employees, two of the most influential unions in the liberal movement. So far, nine members of Congress have written letters to the administration asking questions.

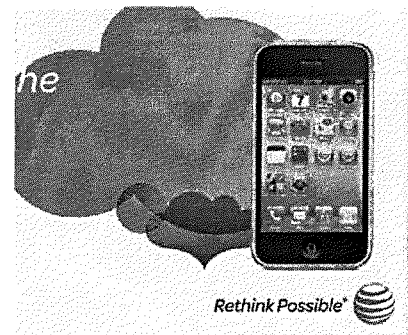
The major national labor organizations have not gotten involved in the case and are considered likely to support Obama's reelection next year.

But some state and local union organizations are expressing alarm about the case, saying that the government appears to be scrutinizing efforts by workers to build ties with trade unionists in other countries.

"I am so disgusted when I see that so many union people have been targeted in this," said Phyllis Walker, president of AFSCME Local 3800, which represents clerical workers at the University of Minnesota, including four members who are possible targets.

The union's statewide group, which says it represents 46,000 workers, called on Obama to investigate and passed a resolution expressing "grave concern" about the raids. Similar resolutions have been approved by statewide AFSCME and SEIU affiliates in Illinois.

If there are indictments, the case could test a 2010 [Supreme Court ruling](#) that found the ban on material support for designated foreign terrorist groups does not necessarily violate the First Amendment — even if the aid was intended for peaceful or humanitarian uses. The ruling held that any type of support could ultimately help a terrorist group's pursuit of violence.



The probe appears to date from 2008, as a number of activists began planning for massive antiwar demonstrations at the Republican National Convention in St. Paul.

After the convention, the FBI's interest continued, apparently focused on the international work pursued by many of the participants. Several activists said they had traveled to Colombia or the Palestinian territories on "fact-finding" trips designed to bolster their case back home against U.S. military support for the Israeli and Colombian governments.

In 2009, a group raised money to travel and deliver about \$1,000 to a Palestinian women's group, but the delegation was turned back by officials at the airport in Israel, organizers said.

Search warrants, subpoenas and documents show that the FBI has been interested in links between the activists and the Revolutionary Armed Forces of Colombia (FARC), the Popular Front for the Liberation of Palestine and Hezbollah.

In the early morning of Sept. 24, 2010, agents raided homes in Chicago and Minneapolis, issued subpoenas to 14 activists, and tried to question others around the country, including prominent antiwar organizers in North Carolina and California.

At 7 a.m., according to documents and interviews, about a dozen armed federal agents used a battering ram to force their way into Mick Kelly's second-floor apartment, which sits over an all-night coffee shop in a working-class neighborhood of Minneapolis.

Kelly, 53, a cook in a University of Minnesota dormitory and a member of the Teamsters, said he was at work and his nightgown-clad wife, Linden Gawboy, was slow to answer the door.

Apparently by accident, the agents left something behind: a packet of secret documents headlined "Operation Order," laying out detailed instructions for the FBI SWAT team to find clues of Kelly's activism, including personal finances or those of the Freedom Road Socialist Organization, a far-left group he works with. The documents point to the FBI's interest in Kelly's foreign travel.

"We've done absolutely nothing wrong," Kelly said. "We don't know what this is about, but we know that our rights to organize and speak out are being violated."

In Chicago, the raid at the home of Weiner, 49, also targeted her husband, Joe Iosbaker, 52, a University of Illinois-Chicago office worker and a union steward for his SEIU local. The couple are among the grassroots activists close to the world once inhabited by Barack Obama who have been caught up in the investigation.

Like others, Weiner and Iosbaker have been fixtures on the local liberal political scene, protesting police actions, attending antiwar rallies, leading pay equity fights and even doing some volunteer work for Obama's past campaigns.

Tom Burke, who received a subpoena Sept. 24, had in 2004 discussed the plight of murdered Colombian trade unionists with then-state senator Obama.

"He was a sympathetic ear," Burke said, recalling that Obama told him the murders were a "human rights problem."

Hatem Abudayyeh, one of seven Palestinians to be subpoenaed in the investigation, recalls encountering Obama in the community during his years as a state legislator. Abudayyeh, 40, is executive director of the Arab American Action Network, a Chicago advocacy group that hosted then-state senator Obama for at least two events.

The role of the undercover officer, which defense lawyers said was confirmed in their talks with prosecutors, became clear in the weeks following the raids. She had joined a Minneapolis antiwar group, then joined demonstrations at the School of the Americas military training site in Fort Benning, Georgia, and at one point flying with a group to Israel on the trip that was thwarted at the airport.

"They were smart sending a 40-year-old lesbian," said Meredith Aby, 38, a high school civics teacher and longtime organizer. "A good match," added Jess Sundin, a university clerical worker.

Aby and Sundin, whose homes were raided and who received subpoenas, had helped lead a group called the Anti-War Committee that had coordinated with antiwar activists across the country to plan the demonstrations at the Republican convention.

Civil libertarians and other critics say the investigation fits a pattern for the FBI, pointing to a Justice Department inspector general's report — issued three days before the raids — chiding the agency for monitoring the domestic political activities of Greenpeace, People for the Ethical Treatment of Animals and other groups in the name of combating terrorism.

Rep. Jan Schakowsky (D-Ill.), a member of the House Intelligence Committee and a close Obama ally, wrote Holder in April conveying the activists' concerns that the probe was infringing on their rights.

"Clearly we need to have a bright line where people can exercise their civil rights, their civil liberties, to peacefully protest," Schakowsky said in an interview.

Holder experienced the activists' anger first hand last month, when Tracy Molm, 30, an AFSCME organizer whose apartment was raided, stood to interrupt a speech he was giving at the University of Minnesota. Holder, unaware that she was a possible investigation target, agreed to meet with her after the speech.

In a small room off the auditorium, with the attorney general flanked by aides and security, Molm demanded to know why the administration was pursuing the inquiry, she recalled later in an interview.

"He said they had a predicate for the investigation," Molm said. "I said, 'The predicates after 9/11 are nothing.'"

"We're going to have to agree to disagree," Holder replied, according to Molm.

At that point, Molm revealed that her apartment had been raided as part of the investigation. Holder and Justice Department officials abruptly ended the discussion.

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Protest News

## Secret government informer "Karen Sullivan" infiltrated Minnesota activist groups

By Nick Pinto Wed., Jan. 12 2011 at 12:59 PM Categories: Protest News

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The Twin Cities activists who had their homes raided by the FBI last September are starting to learn more about why they're being investigated by a Chicago grand jury in relation to material support of terrorism.

Lawyers for the activists have learned from prosecutors that the feds sent an undercover law enforcement agent to infiltrate the Twin Cities Anti-War Committee in April 2008, just as the group was planning its licensed protests at the Republican National Convention.

Going by the name "Karen Sullivan," the agent blended in with the many new faces the Committee was seeing at meetings in the lead-up to the RNC. But she stayed active afterward, attending virtually every meeting.

"She presented herself as a lesbian with a teenage daughter, and said she had a difficult relationship with her former partner, which is one of the reasons she gave us for not being more transparent about her story," says Jess Sundin, a member of the Anti-War Committee and one of the activists who has received a subpoena from the Chicago grand jury. "It was a sympathetic story for a lot of us."

Sullivan told the group she was originally from Boston but that she had had a rough childhood and was estranged from her family. She said she had spent some time in Northern Ireland working with Republican solidarity groups.

Sullivan at first said that she didn't have any permanent address in the area, but she eventually got an apartment in the Seward neighborhood. She claimed to be employed by a friend's small business, checking out foreclosed properties that he might buy. The cover story of a flexible job schedule let her attend all the meetings she wanted to, and to have individual lunches with other activists.

"She really took an interest," Sundin said. "It raised



Committee to Stop FBI Repression "Karen Sullivan," an undercover agent who spied on Twin Cities activists.



Twin Cities Indymedia Jess Sundin speaking at a press conference this morning.

some suspicions among other members at first, but after the other undercover agents from the RNC Welcoming Committee came out, and no in our organization did, we figured we didn't have any. Besides, we didn't think we had anything we needed to be secretive about."

Sullivan began to take on more responsibilities with the organization, chairing meetings, handling the group's bookkeeping, and networking with dozens of other organizations.

In the summer of 2009, Sullivan joined two other Twin Cities activists in a trip to visit Palestine. Somehow, when they landed in Tel Aviv, Israeli security forces knew they were coming, and that they were headed to Palestine.

The three women were told they could get on the next plane back home or they could face detention. Sullivan took the flight. The other two women chose detention and were ultimately deported.

Attorneys for the activists have also learned that prosecutors are especially interested in a small donation the women intended to give to their host organization in Palestine, the Union of Palestinian Women's Committees. The group is registered as an NGO with the Palestinian Authority and not listed as a terrorist group by the United States.

Last fall, Sullivan disappeared from the Twin Cities, telling her fellow activists that she had some family business to take care of. She never came back. On September 24, the FBI launched a series of early morning raids on the homes of members of the Anti-War Committee and the Freedom Road Socialist Organization.

The FBI would not confirm or deny Sullivan's identity as a government agent or comment on this story by the time of publication. The U.S. Attorney's office in Chicago has said it will not comment on anything related to the grand jury investigation.

Last fall the Justice Department's Inspector General released a scathing report that criticized the FBI for invoking anti-terrorist laws to justify their investigations and harassment of groups including Greenpeace, People for the Ethical Treatment of Animals, and the Catholic Worker.



Department of Justice  
U.S. Attorney Patrick Fitzgerald is relying on an undercover informant in his investigation of Twin Cities activists.

"This is exactly what the Inspector General's report was talking about," Sundin told *City Pages* this morning. "The FBI doesn't have the right to spy on us. It's an abuse of our democratic rights. We're supposed to have freedom of association, not, 'You can associate but we're going to spy on you.'"



AP/Charles D...

January 12, 2011

Categories: Terrorism

## Anti-war group active at 2008 GOP convention claims FBI infiltration

Antiwar activists who organized demonstrations in connection with the 2008 Republican National Convention in St. Paul, Minn. are claiming that their group was infiltrated for years by an FBI-directed undercover law enforcement officer who took part in meetings, gave public speeches with the group and even traveled to Israel with fellow activists who wanted to visit with Palestinians.

Leaders of the Twin Cities-based Anti-war Committee called a press conference Wednesday where they displayed a poster-sized photo of the alleged agent, who they said used the name Karen Sullivan and joined the group in April 2008. (The photo has been posted online, but I'm going to hold off posting it myself for now.)

"We are here today to express outrage that our democratic rights have been violated by a government operation of spying, infiltration and disruption of our antiwar movement which was carried out over at least two-and-a-half years," said Jess Sundin, a leader of the group.

Beginning in September, about two dozen activists in the Minneapolis and Chicago area received grand jury subpoenas and also saw their homes or meeting places searched pursuant to search warrants issued in connection with a federal investigation that appears to center on allegations that members of so-called peace groups gave support to organizations in the Middle East and Colombia that the U.S. government has designated as terrorists.

Sundin said "Sullivan"'s FBI affiliation became clear in recent days as a result of discussions lawyers for the activists had with prosecutors handling the investigation for Chicago-based U.S. Attorney Patrick Fitzgerald.

"We now have it confirmed that in this same period [in 2008] we...became the subject of a government investigation," Sundin said. "Our spy made herself comfortable and decided to stay a while, posing as a fellow anti-war activist and pretending to befriend us. For two-and-a-half years, Officer Sullivan participated, sometimes serving as chairperson, in weekly Antiwar Committee meetings here in this very room....Officer Sullivan had a key to this office which was used by FBI on September 24 to enter this office, search it, seize our computers and financial records and other materials."

Sundin and other speakers suggested that the government's actions harkened back to the heyday of FBI surveillance and infiltration of left-leaning and self-described peace groups decades ago.

"The government has no right to spy on the Antiwar Committee or the many organizations we've worked with," she said. "These actions make a mockery of our democratic rights."

A spokesman for the FBI in Minneapolis, Kyle Loven, declined to comment Wednesday on the group's claims. However, he said he stood by earlier statements that the search warrants carried out in September were part of an investigation being conducted by the area's Joint Terrorism Task Force. Spokesmen for the FBI's Chicago office and for the U.S. Attorney's office there had no comment.

No criminal charges are known to have been filed in connection with the probe.

"Sullivan" traveled with the group to Israel in 2009 and was among three activists who were denied entry by Israel. Sundin said she believes the federal investigation is focusing on a group the activists have supported: **the Union of Palestinian Women's Committees** (<http://www.upwc.org.ps/>). It is not listed as a terrorist group by the U.S. Government.

Many law enforcement informants or undercover operatives involved in similar investigations take a passive role in the groups they infiltrate, but that doesn't seem to have been what "Sullivan" did. Sundin noted that some of the alleged agent's speeches, on issues like "don't ask, don't tell" and "Plan Colombia" are still **posted on the antiwar group's website** (<http://antiwarcommittee.org/?s=%22Karen+Sullivan%22>). Sundin said "Sullivan" also joined in activities organized by the Freedom Road Socialist Organization, which also appears to be a focus of federal prosecutors.

Several grand jury subpoenas related to the investigation have called activists to testify in Chicago on January 25. Most if not all of the activists are vowing to defy the subpoenas by refusing to testify.

One of the Palestinian activists whose home was searched in September, Hatem Abudayyeh, **attended a White House outreach briefing for Arab-American leaders last year** ([http://www.politico.com/blogs/joshgerstein/1010/Target\\_of\\_FBI\\_terror-support\\_raid\\_visited\\_WH.html](http://www.politico.com/blogs/joshgerstein/1010/Target_of_FBI_terror-support_raid_visited_WH.html)).

**Another woman who was subpoenaed serves as managing editor of a pro-Palestinian website that published a controversial article** ([http://www.politico.com/blogs/joshgerstein/0111/Editor\\_of\\_site\\_that\\_claimed\\_Obama\\_changed\\_Mideast\\_views\\_gets\\_1](http://www.politico.com/blogs/joshgerstein/0111/Editor_of_site_that_claimed_Obama_changed_Mideast_views_gets_1)) alleging President Barack Obama publicly abandoned his support for the Palestinian community as he pursued federal office, but privately suggested he would resume his prior positions once in office. Obama aides have adamantly denied the account.

FBI-led investigations of domestic political groups are supposed to be conducted pursuant to **a set of guidelines that establish various thresholds and approvals** ([http://www.politico.com/blogs/joshgerstein/0909/FBI\\_airs\\_surveillance\\_rules.html](http://www.politico.com/blogs/joshgerstein/0909/FBI_airs_surveillance_rules.html)) for the use of undercover informants and similar techniques.

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Posted by Josh Gerstein 01:05 PM

**Tags:** 2008 Republican National Convention, Chicago, Civil Liberties, Colombia, FBI, First Amendment, Israel, Israeli-Palestinian Conflict, Minneapolis, Palestine, Terrorism, Undercover Operations

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May 7, 2009

## Justice Dept. Finds Many Flaws in F.B.I. Terror Watch List

By ERIC LICHTBLAU

WASHINGTON – The Federal Bureau of Investigation has improperly kept nearly 24,000 people on a terrorist watch list based on outdated or sometimes irrelevant information, while it missed others with legitimate terror ties who should have been on the list, according to a Justice Department report released Wednesday.

The report said the mistakes posed a risk to national security, because of the failure to flag actual suspected terrorists, as well as an unnecessary nuisance for non-suspects who may be questioned at a traffic stops or stopped from boarding an airplane.

By the beginning of 2009, the report said, the government's terrorist watch lists included about 400,000 people, listed as 1.1 million names and aliases, an exponential growth from the days before the attacks of Sept. 11, 2001, when it included fewer than two dozen people.

Intelligence officials say the watch lists have allowed different agencies to work together in an effort to prevent the type of breakdown that allowed two of the Sept. 11 hijackers to enter the United States even though they were known to the Central Intelligence Agencies for their terrorist ties.

The new Justice Department report provided the most authoritative statistical account to date of the problems connected with the watch lists and confirmed some assertions made by critics of the process. An earlier report by the inspector general, released in March 2008, looked mainly at flaws in the system.

The list has long been a target of public criticism, particularly after well-publicized incidents in which politicians including Senator Edward M. Kennedy of Massachusetts and Representative John Lewis of Georgia accidentally showed up on the lists. People with names similar to actual terrorists have complained that it can take months to remove their names from the list, and civil rights advocates charge that anti-war protesters, Muslim activists and others have been put on the lists and stopped at airports for political reasons.

The report, by the Justice Department inspector general's office, looked mainly at the F.B.I., which took the lead in 2004 for maintaining a consolidated terrorist watch list for all agencies throughout the federal government.

One of the biggest problems identified in the report was the use of outdated information, or material unconnected to terrorism, to keep people on the F.B.I.'s own terror watch list. The report examined nearly 69,000 watch lists referrals brought or processed by the F.B.I. and found that 35 percent of the people, both Americans and foreigners, remained on the list despite inadequate justification.

“Many of these watch-listed records were associated with outdated terrorism case classifications or case classifications unrelated to terrorism,” the report said. In some cases, the people on the watch lists were the subjects of F.B.I. investigations that had been closed years earlier without action, yet their names had either never been removed, or not in a timely fashion.

Potentially even more problematic were the cases of people who were not on the watch lists despite evidence of terrorist ties.

The inspector general looked at a sampling of 216 F.B.I. terrorism investigations, and found that in 15 percent of those cases, a total of 35 subjects were not referred to the terror watch list even though they should have been.

In one case, for instance, a United States Army Special Forces soldier was investigated and ultimately convicted for stealing some 16,500 round of ammunition, C-4 explosives and other material from Afghanistan and shipping them to the United States in what investigators suspected might be the makings of a domestic terror plot. Yet the suspect was not placed on the watch list for nearly five months after the investigation was opened against him.

“We believe that the FBI’s failure to consistently nominate subjects of international and domestic terrorism investigations to the terrorist watch list could pose a risk to national security,” the inspector general said. The director of the Washington office of the American Civil Liberties Union, Caroline Fredrickson, said her group’s monitoring of the watch lists indicates that the problems identified at the F.B.I. are endemic to entire system.

“What this report really shows is that on both ends, the lists are really over-inclusive and under-inclusive,” she said in an interview. “With 1.1 million names, there’s all sorts of problems that have larded it up, and the whole thing just really needs to be torn down and start a new system.”

The F.B.I. adopted all 16 of the inspector general’s recommendations for improving watch list operations, including better training and faster processing of referrals. The agency said in a statement that “we remain committed to improving our watch list policy and practices to ensure the proper balance between national security protection and the need for accurate, efficient and streamlined watch-listing processes.”

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May 28, 2011

# For Anarchist, Details of Life as F.B.I. Target

By COLIN MOYNIHAN and SCOTT SHANE

AUSTIN, Tex. — A fat sheaf of F.B.I. reports meticulously details the surveillance that counterterrorism agents directed at the one-story house in East Austin. For at least three years, they traced the license plates of cars parked out front, recorded the comings and goings of residents and guests and, in one case, speculated about a suspicious flat object spread out across the driveway.

“The content could not be determined from the street,” an agent observing from his car reported one day in 2005. “It had a large number of multi-colored blocks, with figures and/or lettering,” the report said, and “may be a sign that is to be used in an upcoming protest.”

Actually, the item in question was more mundane.

“It was a quilt,” said Scott Crow, marveling over the papers at the dining table of his ramshackle home, where he lives with his wife, a housemate and a backyard menagerie that includes two goats, a dozen chickens and a turkey. “For a kids’ after-school program.”

Mr. Crow, 44, a self-described anarchist and veteran organizer of anticorporate demonstrations, is among dozens of political activists across the country known to have come under scrutiny from the F.B.I.’s increased counterterrorism operations since the attacks of Sept. 11, 2001.

Other targets of bureau surveillance, which has been criticized by civil liberties groups and mildly faulted by the Justice Department’s inspector general, have included antiwar activists in Pittsburgh, animal rights advocates in Virginia and liberal Roman Catholics in Nebraska. When such investigations produce no criminal charges, their methods rarely come to light publicly.

But Mr. Crow, a lanky Texas native who works at a recycling center, is one of several Austin activists who asked the F.B.I. for their files, citing the Freedom of Information Act. The 440 heavily-redacted pages he received, many bearing the rubric “Domestic Terrorism,” provide a revealing window on the efforts of the bureau, backed by other federal, state and local police agencies, to keep an eye on people it deems dangerous.

In the case of Mr. Crow, who has been arrested a dozen times during demonstrations but has never

been convicted of anything more serious than trespassing, the bureau wielded an impressive array of tools, the documents show.

The agents watched from their cars for hours at a time — Mr. Crow recalls one regular as “a fat guy in an S.U.V. with the engine running and the air-conditioning on” — and watched gatherings at a bookstore and cafe. For round-the-clock coverage, they attached a video camera to the phone pole across from his house on New York Avenue.

They tracked Mr. Crow’s phone calls and e-mails and combed through his trash, identifying his bank and mortgage companies, which appear to have been served with subpoenas. They visited gun stores where he shopped for a rifle, noting dryly in one document that a vegan animal rights advocate like Mr. Crow made an unlikely hunter. (He says the weapon was for self-defense in a marginal neighborhood.)

They asked the Internal Revenue Service to examine his tax returns, but backed off after an I.R.S. employee suggested that Mr. Crow’s modest earnings would not impress a jury even if his returns were flawed. (He earns \$32,000 a year at Ecology Action of Texas, he said.)

They infiltrated political meetings with undercover police officers and informers. Mr. Crow counts five supposed fellow activists who were reporting to the F.B.I.

Mr. Crow seems alternately astonished, angered and flattered by the government’s attention. “I’ve had times of intense paranoia,” he said, especially when he discovered that some trusted allies were actually spies.

“But first, it makes me laugh,” he said. “It’s just a big farce that the government’s created such paper tigers. Al Qaeda and real terrorists are hard to find. We’re easy to find. It’s outrageous that they would spend so much money surveilling civil activists, and anarchists in particular, and equating our actions with Al Qaeda.”

The investigation of political activists is an old story for the F.B.I., most infamously in the Cointel program, which scrutinized and sometimes harassed civil rights and antiwar advocates from the 1950s to the 1970s. Such activities were reined in after they were exposed by the Senate’s Church Committee, and F.B.I. surveillance has been governed by an evolving set of guidelines set by attorneys general since 1976.

But the Oklahoma City bombing in 1995 demonstrated the lethal danger of domestic terrorism, and after the Sept. 11 attacks, the F.B.I. vowed never again to overlook terrorists hiding in plain sight. The Qaeda sleeper cells many Americans feared, though, turned out to be rare or nonexistent.

The result, said Michael German, a former F.B.I. agent now at the American Civil Liberties Union,

has been a zeal to investigate political activists who pose no realistic threat of terrorism.

“You have a bunch of guys and women all over the country sent out to find terrorism. Fortunately, there isn’t a lot of terrorism in many communities,” Mr. German said. “So they end up pursuing people who are critical of the government.”

Complaints from the A.C.L.U. prompted the Justice Department’s inspector general to assess the F.B.I.’s forays into domestic surveillance. The resulting report last September absolved the bureau of investigating dissenters based purely on their expression of political views. But the inspector general also found skimpy justification for some investigations, uncertainty about whether any federal crime was even plausible in others and a mislabeling of nonviolent civil disobedience as “terrorism.”

Asked about the surveillance of Mr. Crow, an F.B.I. spokesman, Paul E. Bresson, said it would be “inappropriate” to discuss an individual case. But he said that investigations are conducted only after the bureau receives information about possible crimes.

“We do not open investigations based on individuals who exercise the rights afforded to them under the First Amendment,” Mr. Bresson said. “In fact, the Department of Justice and the bureau’s own guidelines for conducting domestic operations strictly forbid such actions.”

It is not hard to understand why Mr. Crow attracted the bureau’s attention. He has deliberately confronted skinheads and Ku Klux Klan members at their gatherings, relishing the resulting scuffles. He claims to have forced corporate executives to move with noisy nighttime protests.

He says he took particular pleasure in a 2003 demonstration for Greenpeace in which activists stormed the headquarters of ExxonMobil in Irving, Tex., to protest its environmental record. Dressed in tiger outfits, protesters carried banners to the roof of the company’s offices, while others wearing business suits arrived in chauffeured Jaguars, forcing frustrated police officers to sort real executives from faux ones.

“It was super fun,” said Mr. Crow, one of the suits, who escaped while 36 other protesters were arrested. “They had ignored us and ignored us. But that one got their attention.”

It got the attention of the F.B.I. as well, evidently, leading to the three-year investigation that focused specifically on Mr. Crow. The surveillance documents show that he also turned up in several other investigations of activism in Texas and beyond, from 2001 to at least 2008.

For an aficionado of civil disobedience, Mr. Crow comes across as more amiable than combative. He dropped out of college, toured with an electronic-rock band and ran a successful Dallas antiques business while dabbling in animal rights advocacy. In 2001, captivated by the philosophy of anarchism, he sold his share of the business and decided to become a full-time activist.



Since then, he has led a half-dozen groups and run an annual training camp for protesters. (The camps invariably attracted police infiltrators who were often not hard to spot. "We had a rule," he said. "If you were burly, you didn't belong.") He also helped to found Common Ground Relief, a network of nonprofit organizations created in New Orleans after Hurricane Katrina.

Anarchism was the catchword for an international terrorist movement at the turn of the 20th century. But Mr. Crow, whose e-mail address contains the phrase "quixotic dreaming," describes anarchism as a kind of locally oriented self-help movement, a variety of "social libertarianism."

"I don't like the state," he said. "I don't want to overthrow it, but I want to create alternatives to it."

This kind of talk appears to have baffled some of the agents assigned to watch him, whose reports to F.B.I. bosses occasionally seem petulant. One agent calls "nonviolent direct action," a phrase in activists' materials, "an oxymoron." Another agent comments, oddly, on Mr. Crow and his wife, Ann Harkness, who have been together for 24 years, writing that "outwardly they did not appear to look right for each other." At a training session, "most attendees dressed like hippies."

Such comments stand out amid detailed accounts of the banal: mail in the recycling bin included "a number of catalogs from retail outlets such as Neiman Marcus, Ann Taylor and Pottery Barn."

Mr. Crow said he hoped the airing of such F.B.I. busywork might deter further efforts to keep watch over him. The last documents he has seen mentioning him date from 2008. But the Freedom of Information Act exempts from disclosure any investigations that are still open.

"I still occasionally see people sitting in cars across the street," he said. "I don't think they've given up."

# The Washington Post

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## With CIA help, NYPD built secret effort to monitor mosques, daily life of Muslim neighborhoods

By Associated Press, Published: August 24

NEW YORK — Since the Sept. 11 terrorist attacks, the New York Police Department has become one of the nation's most aggressive domestic intelligence agencies, targeting ethnic communities in ways that would run afoul of civil liberties rules if practiced by the federal government, an Associated Press investigation has found.

These operations have benefited from unprecedented help from the CIA, a partnership that has blurred the line between foreign and domestic spying.

The department has dispatched undercover officers, known as “rakers,” into minority neighborhoods as part of a human mapping program, according to officials directly involved in the program. They’ve monitored daily life in bookstores, bars, cafes and nightclubs. Police have also used informants, known as “mosque crawlers,” to monitor sermons, even when there’s no evidence of wrongdoing.

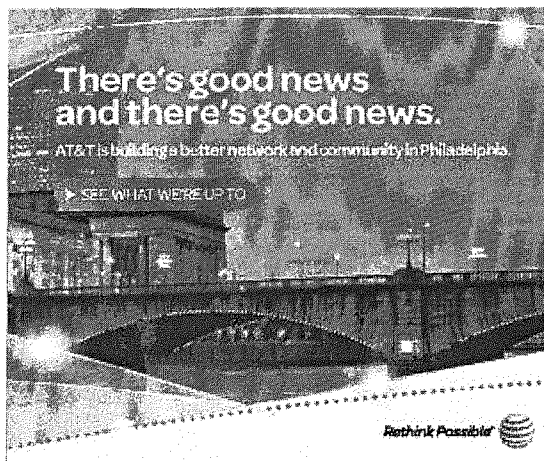
Neither the city council, which finances the department, nor the federal government, which has given NYPD more than \$1.6 billion since 9/11, is told exactly what’s going on.

Many of these operations were built with help from the CIA, which is prohibited from spying on Americans but was instrumental in transforming the NYPD’s intelligence unit.

A veteran CIA officer, while still on the agency’s payroll, was the architect of the NYPD’s intelligence programs. The CIA trained a police detective at the Farm, the agency’s spy school in Virginia, then returned him to New York, where he put his new espionage skills to work inside the United States.

And just last month, the CIA sent a senior officer to work as a clandestine operative inside police headquarters.

In response to the story, the Council on American-Islamic Relations, a leading Muslim civil rights organization, called on the Justice Department to investigate. The Justice Department said Wednesday night it would review the request.



“This is potentially illegal what they’re doing,” said Gadeir Abbas, a staff attorney with the organization.

The NYPD denied that it trolls ethnic neighborhoods and said it only follows leads. Police operations have disrupted terrorist plots and put several would-be killers in prison.

“The New York Police Department is doing everything it can to make sure there’s not another 9/11 here and that more innocent New Yorkers are not killed by terrorists,” NYPD spokesman Paul Browne said. “And we have nothing to apologize for in that regard.”

AP’s investigation is based on documents and interviews with more than 40 current and former New York Police Department and federal officials. Many were directly involved in planning and carrying out these secret operations for the department. Though most said the tactics were appropriate and made the city safer, many insisted on anonymity, because they were not authorized to speak with reporters about security matters.

In just two episodes showing how widely the NYPD cast its net, the department sought a rundown from the taxi commission of every Pakistani cab driver in the city, and produced an analytical report on every mosque within 100 miles, officials said.

One of the enduring questions of the past decade is whether being safe requires giving up some liberty and privacy. The focus of that debate has primarily been federal programs like wiretapping and indefinite detention. The question has received less attention in New York, where residents do not know for sure what, if anything, they have given up.

The story of how the NYPD Intelligence Division developed such aggressive programs begins with one man.

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David Cohen arrived at the New York Police Department in January 2002, just weeks after the last fires had been extinguished at the debris field that had been the twin towers. A retired 35-year veteran of the CIA, Cohen became the police department’s first civilian intelligence chief.

Cohen had an exceptional career at the CIA, rising to lead both the agency’s analytical and operational divisions. He also was an extraordinarily divisive figure, a man whose sharp tongue and supreme confidence in his own abilities gave him a reputation as arrogant. Cohen’s tenure as head of CIA operations, the nation’s top spy, was so contentious that in 1997, The New York Times editorial page took the unusual step of calling for his ouster.

He had no police experience. He had never defended a city from an attack. But New York wasn’t looking for a cop.

“Post-9/11, we needed someone in there who knew how to really gather intelligence,” said John Cutter, a retired NYPD official who served as one of Cohen’s top uniformed officers.

At the time, the intelligence division was best known for driving dignitaries around the city. Cohen envisioned a unit that would analyze intelligence, run undercover operations and cultivate a network of informants. In short, he wanted New York to have its own version of the CIA.

Cohen shared Commissioner Ray Kelly’s belief that 9/11 had proved that the police department could not simply rely on the federal government to prevent terrorism in New York.

“If anything goes on in New York,” one former officer recalls Cohen telling his staff in the early days, “it’s your fault.”

Among Cohen’s earliest moves at the NYPD was making a request of his old colleagues at CIA headquarters in Langley, Va. He needed someone to help build this new operation, someone with experience and clout and, most important, someone who had access to the latest intelligence so the NYPD wouldn’t have to rely on the FBI to dole out information.

CIA Director George Tenet responded by tapping Larry Sanchez, a respected veteran who had served as a CIA official inside the United Nations. Often, when the CIA places someone on temporary assignment, the other agency picks up the tab. In this case, three former intelligence officials said, Tenet kept Sanchez on the CIA payroll.

When he arrived in New York in March 2002, Sanchez had offices at both the NYPD and the CIA’s station in New York, one former official said. Sanchez interviewed police officers for newly defined intelligence jobs. He guided and mentored officers, schooling them in the art of gathering information. He also directed their efforts, another said.

There had never been an arrangement like it, and some senior CIA officials soon began questioning whether Tenet was allowing Sanchez to operate on both sides of the wall that’s supposed to keep the CIA out of the domestic intelligence business.

“It should not be a surprise to anyone that, after 9/11, the Central Intelligence Agency stepped up its cooperation with law enforcement on counterterrorism issues or that some of that increased cooperation was in New York, the site of ground zero,” CIA spokeswoman Jennifer Youngblood said.

Just as at the CIA, Cohen and Sanchez knew that informants would have to become the backbone of their operation. But with threats coming in from around the globe, they couldn’t wait months for the perfect plan.

They came up with a makeshift solution. They dispatched more officers to Pakistani neighborhoods and, according to one former police official directly involved in the effort, instructed them to look for reasons to stop cars: speeding, broken tail lights, running stop signs, whatever. The traffic stop gave police an opportunity to search for outstanding warrants or look for suspicious behavior. An arrest could be the leverage the police needed to persuade someone to become an informant.

For Cohen, the transition from spying to policing didn’t come naturally, former colleagues said. When faced with a decision, especially early in his tenure, he’d fall back on his CIA background. Cutter said he and other uniformed officers had to tell Cohen, no, we can’t just slip into someone’s apartment without a warrant. No, we can’t just conduct a search. The rules for policing are different.

While Cohen was being shaped by the police department, his CIA background was remaking the department. But one significant barrier stood in the way of Cohen’s vision.

Since 1985, the NYPD had operated under a federal court order limiting the tactics it could use to gather intelligence. During the 1960s and 1970s, the department had used informants and undercover officers to infiltrate anti-war protest groups and other activists without any reason to suspect criminal behavior.

To settle a lawsuit, the department agreed to follow guidelines that required “specific information” of criminal

activity before police could monitor political activity.

In September 2002, Cohen told a federal judge that those guidelines made it “virtually impossible” to detect terrorist plots. The FBI was changing its rules to respond to 9/11, and Cohen argued that the NYPD must do so, too.

“In the case of terrorism, to wait for an indication of crime before investigating is to wait far too long,” Cohen wrote.

U.S. District Judge Charles S. Haight Jr. agreed, saying the old guidelines “addressed different perils in a different time.” He scrapped the old rules and replaced them with more lenient ones.

It was a turning point for the NYPD.

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With his newfound authority, Cohen created a secret squad that would soon infiltrate Muslim neighborhoods, according to several current and former officials directly involved in the program.

The NYPD carved up the city into more than a dozen zones and assigned undercover officers to monitor them, looking for potential trouble.

At the CIA, one of the biggest obstacles has always been that U.S. intelligence officials are overwhelmingly white, their mannerisms clearly American. The NYPD didn't have that problem, thanks to its diverse pool of officers.

Using census data, the department matched undercover officers to ethnic communities and instructed them to blend in, the officials said. Pakistani-American officers infiltrated Pakistani neighborhoods, Palestinians focused on Palestinian neighborhoods. They hung out in hookah bars and cafes, quietly observing the community around them.

The unit, which has been undisclosed until now, became known inside the department as the Demographic Unit, former police officials said.

“It's not a question of profiling. It's a question of going where the problem could arise,” said Mordecai Dzikansky, a retired NYPD intelligence officer who said he was aware of the Demographic Unit. “And thank God we have the capability. We have the language capability and the ethnic officers. That's our hidden weapon.”

The officers did not work out of headquarters, officials said. Instead, they passed their intelligence to police handlers who knew their identities.

Cohen said he wanted the squad to “rake the coals, looking for hot spots,” former officials recalled. The undercover officers soon became known inside the department as rakers.

A hot spot might be a beauty supply store selling chemicals used for making bombs. Or it might be a hawala, a broker that transfers money around the world with little documentation. Undercover officers might visit an Internet cafe and look at the browsing history on a computer, a former police official involved in the program said. If it revealed visits to radical websites, the cafe might be deemed a hot spot.

Ethnic bookstores, too, were on the list. If a raker noticed a customer looking at radical literature, he might chat up the store owner and see what he could learn. The bookstore, or even the customer, might get further scrutiny. If a restaurant patron applauds a news report about the death of U.S. troops, the patron or the restaurant could be labeled a hot spot.

The goal was to “map the city’s human terrain,” one law enforcement official said. The program was modeled in part on how Israeli authorities operate in the West Bank, a former police official said.

Mapping crimes has been a successful police strategy nationwide. But mapping robberies and shootings is one thing. Mapping ethnic neighborhoods is different, something that at least brushes against what the federal government considers racial profiling.

Browne, the NYPD spokesman, said the Demographic Unit does not exist. He said the department has a Zone Assessment Unit that looks for locations that could attract terrorists. But he said undercover officers only followed leads, disputing the account of several current and former police and federal officials. They do not just hang out in neighborhoods, he said.

“We will go into a location, whether it’s a mosque or a bookstore, if the lead warrants it, and at least establish whether there’s something that requires more attention,” Browne said.

That conflicts with testimony from an undercover officer in the 2006 trial of Shahawar Matin Siraj, who was convicted of planning an attack on New York’s subway system. The officer said he was instructed to live in Brooklyn and act as a “walking camera” for police.

“I was told to act like a civilian — hang out in the neighborhood, gather information,” the Bangladeshi officer testified, under a false name, in what offered the first narrow glimpse at the NYPD’s infiltration of ethnic neighborhoods.

Officials said such operations just made sense. Islamic terrorists had attacked the city on 9/11, so police needed people inside the city’s Muslim neighborhoods. Officials say it does not conflict with a 2004 city law prohibiting the NYPD from using religion or ethnicity “as the determinative factor for initiating law enforcement action.”

“It’s not profiling,” Cutter said. “It’s like, after a shooting, do you go 20 blocks away and interview guys or do you go to the neighborhood where it happened?”

In 2007, the Los Angeles Police Department was criticized for even considering a similar program. The police announced plans to map Islamic neighborhoods to look for pockets of radicalization among the region’s roughly 500,000 Muslims. Criticism was swift, and chief William Bratton scrapped the plan.

“A lot of these people came from countries where the police were the terrorists,” Bratton said at a news conference, according to the Los Angeles Daily News. “We don’t do that here. We do not want to spread fear.”

In New York, current and former officials said, the lesson of that controversy was that such programs should be kept secret.

Some in the department, including lawyers, have privately expressed concerns about the raking program and how police use the information, current and former officials said. Part of the concern was that it might appear that police were building dossiers on innocent people, officials said. Another concern was that, if a case went to

court, the department could be forced to reveal details about the program, putting the entire operation in jeopardy.

That's why, former officials said, police regularly shredded documents discussing rakers.

When Cohen made his case in court that he needed broader authority to investigate terrorism, he had promised to abide by the FBI's investigative guidelines. But the FBI is prohibited from using undercover agents unless there's specific evidence of criminal activity, meaning a federal raking program like the one officials described to the AP would violate FBI guidelines.

The NYPD declined to make Cohen available for comment. In an earlier interview with the AP on a variety of topics, Police Commissioner Kelly said the intelligence unit does not infringe on civil rights.

"We're doing what we believe we have to do to protect the city," he said. "We have many, many lawyers in our employ. We see ourselves as very conscious and aware of civil liberties. And we know there's always going to be some tension between the police department and so-called civil liberties groups because of the nature of what we do."

The department clashed with civil rights groups most publicly after Cohen's undercover officers infiltrated anti-war groups before the 2004 Republican National Convention in New York. A lawsuit over that program continues today.

During the convention, when protesters were arrested, police asked a list of questions which, according to court documents, included: "What are your political affiliations?" "Do you do any kind of political work?" and "Do you hate George W. Bush?"

"At the end of the day, it's pure and simple a rogue domestic surveillance operation," said Christopher Dunn, a New York Civil Liberties Union lawyer involved in the convention lawsuit.

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Undercover agents like the rakers were valuable, but what Cohen and Sanchez wanted most were informants.

The NYPD dedicated an entire squad, the Terrorist Interdiction Unit, to developing and handling informants. Current and former officials said Sanchez was instrumental in teaching them how to develop sources.

For years, detectives used informants known as mosque crawlers to monitor weekly sermons and report what was said, several current and former officials directly involved in the informant program said. If FBI agents were to do that, they would be in violation of the Privacy Act, which prohibits the federal government from collecting intelligence on purely First Amendment activities.

The FBI has generated its own share of controversy for putting informants inside mosques, but unlike the program described to the AP, the FBI requires evidence of a crime before an informant can be used inside a mosque.

Valerie Caproni, the FBI's general counsel, would not discuss the NYPD's programs but said FBI informants can't troll mosques looking for leads. Such operations are reviewed for civil liberties concerns, she said.

“If you’re sending an informant into a mosque when there is no evidence of wrongdoing, that’s a very high-risk thing to do,” Caproni said. “You’re running right up against core constitutional rights. You’re talking about freedom of religion.”

That’s why senior FBI officials in New York ordered their own agents not to accept any reports from the NYPD’s mosque crawlers, two retired agents said.

It’s unclear whether the police department still uses mosque crawlers. Officials said that, as Muslims figured out what was going on, the mosque crawlers became café crawlers, fanning out into the city’s ethnic hangouts.

“Someone has a great imagination,” Browne, the NYPD spokesman, said. “There is no such thing as mosque crawlers.”

Following the foiled subway plot, however, the key informant in the case, Osama Eldawoody, said he attended hundreds of prayer services and collected information even on people who showed no signs of radicalization.

NYPD detectives have recruited shopkeepers and nosy neighbors to become “seeded” informants who keep police up to date on the latest happenings in ethnic neighborhoods, one official directly involved in the informant program said.

The department also has a roster of “directed” informants it can tap for assignments. For instance, if a raker identifies a bookstore as a hot spot, police might assign an informant to gather information, long before there’s concrete evidence of anything criminal.

To identify possible informants, the department created what became known as the “debriefing program.” When someone is arrested who might be useful to the intelligence unit — whether because he said something suspicious or because he is simply a young Middle Eastern man — he is singled out for extra questioning. Intelligence officials don’t care about the underlying charges; they want to know more about his community and, ideally, they want to put him to work.

Police are in prisons, too, promising better living conditions and help or money on the outside for Muslim prisoners who will work with them.

Early in the intelligence division’s transformation, police asked the taxi commission to run a report on all the city’s Pakistani cab drivers, looking for those who got licenses fraudulently and might be susceptible to pressure to cooperate, according to former officials who were involved in or briefed on the effort.

That strategy has been rejected in other cities.

Boston police once asked neighboring Cambridge for a list of Somali cab drivers, Cambridge Police Chief Robert Haas said. Haas refused, saying that without a specific reason, the search was inappropriate.

“It really has a chilling effect in terms of the relationship between the local police department and those cultural groups, if they think that’s going to take place,” Haas said.

The informant division was so important to the NYPD that Cohen persuaded his former colleagues to train a detective, Steve Pinkall, at the CIA’s training center at the Farm. Pinkall, who had an intelligence background as a Marine, was given an unusual temporary assignment at CIA headquarters, officials said. He took the field



tradecraft course alongside future CIA spies then returned to New York to run investigations.

“We found that helpful, for NYPD personnel to be exposed to the tradecraft,” Browne said.

The idea troubled senior FBI officials, who saw it as the NYPD and CIA blurring the lines between police work and spying, in which undercover officers regularly break the laws of foreign governments. The arrangement even made its way to FBI Director Robert Mueller, two former senior FBI officials said, but the training was already under way and Mueller did not press the issue.

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NYPD’s intelligence operations do not stop at the city line.

In June 2009, a New Brunswick, N.J., building superintendent opened the door to apartment No. 1076 and discovered an alarming scene: terrorist literature strewn about the table and computer and surveillance equipment set up in the next room.

The panicked superintendent dialed 911, sending police and the FBI rushing to the building near Rutgers University. What they found in that first-floor apartment, however, was not a terrorist hideout but a command center set up by a secret team of New York Police Department intelligence officers.

From that apartment, about an hour outside the department’s jurisdiction, the NYPD had been staging undercover operations and conducting surveillance throughout New Jersey. Neither the FBI nor the local police had any idea.

The NYPD has gotten some of its officers deputized as federal marshals, allowing them to work out of state. But often, there’s no specific jurisdiction at all.

Cohen’s undercover squad, the Special Services Unit, operates in places such as New Jersey, Pennsylvania and Massachusetts, officials said. They can’t make arrests and, if something goes wrong — a shooting or a car accident, for instance — the officers could be personally liable. But the NYPD has decided it’s worth the risk, a former police official said.

With Police Commissioner Kelly’s backing, Cohen’s policy is that any potential threat to New York City is the NYPD’s business, regardless of where it occurs, officials said.

That aggressiveness has sometimes put the NYPD at odds with local police departments and, more frequently, with the FBI. The FBI didn’t like the rules Cohen played by and said his operations encroached on its responsibilities.

Once, undercover officers were stopped by police in Massachusetts while conducting surveillance on a house, one former New York official recalled. In another instance, the NYPD sparked concern among federal officials by expanding its intelligence-gathering efforts related to the United Nations, where the FBI is in charge, current and former federal officials said.

The AP has agreed not to disclose details of either the FBI or NYPD operations because they involve foreign counterintelligence.

Both Mueller and Kelly have said their agencies have strong working relationships and said reports of rivalry and disagreements are overblown. And the NYPD's out-of-state operations have had success.

A young Egyptian NYPD officer living undercover in New Jersey, for example, was key to building a case against Mohamed Mahmood Alessa and Carlos Eduardo Almonte. The pair was arrested last year at John F. Kennedy Airport en route to Somalia to join the terrorist group al-Shabab. Both pleaded guilty to conspiracy.

Cohen has also sent officers abroad, stationing them in 11 foreign cities. If a bomber blows himself up in Jerusalem, the NYPD rushes to the scene, said Dzikansky, who served in Israel and is the co-author of the forthcoming book "Terrorist Suicide Bombings: Attack Interdiction, Mitigation, and Response."

"I was there to ask the New York question," Dzikansky said. "Why this location? Was there something unique that the bomber had done? Was there any pre-notification. Was there a security lapse?"

All of this intelligence — from the rakers, the undercovers, the overseas liaisons and the informants — is passed to a team of analysts hired from some of the nation's most prestigious universities. Analysts have spotted emerging trends and summarized topics such as Hezbollah's activities in New York and the threat of South Asian terrorist groups.

They also have tackled more contentious topics, including drafting a report on every mosque in the area, one former police official said. The report drew on information from mosque crawlers, undercover officers and public information. It mapped hundreds of mosques and discussed the likelihood of them being infiltrated by al-Qaida, Hezbollah and other terrorist groups.

For Cohen, there was only one way to measure success: "They haven't attacked us," he said in a 2005 deposition. He said anything that was bad for terrorists was good for NYPD.

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Though the CIA is prohibited from collecting intelligence domestically, the wall between domestic and foreign operations became more porous. Intelligence gathered by the NYPD, with CIA officer Sanchez overseeing collection, was often passed to the CIA in informal conversations and through unofficial channels, a former official involved in that process said.

By design, the NYPD was looking more and more like a domestic CIA.

"It's like starting the CIA over in the post-9/11 world," Cohen said in "Securing the City," a laudatory 2009 book about the NYPD. "What would you do if you could begin it all over again? Hah. This is what you would do."

Sanchez's assignment in New York ended in 2004, but he received permission to take a leave of absence from the agency and become Cohen's deputy, former officials said.

Though Sanchez's assignments were blessed by CIA management, some in the agency's New York station saw the presence of such a senior officer in the city as a turf encroachment. Finally, the New York station chief, Tom Higgins, called headquarters, one former senior intelligence official said. Higgins complained, the official said, that Sanchez was wearing both hats, sometimes acting as a CIA officer, sometimes as an NYPD official.

The CIA finally forced him to choose: Stay with the agency or stay with the NYPD.

Sanchez declined to comment to the AP about the arrangement, but he picked the NYPD. He retired last year and is now a consultant in the Middle East.

Last month, the CIA deepened its NYPD ties even further. It sent one of its most experienced operatives, a former station chief in two Middle Eastern countries, to work out of police headquarters as Cohen's special assistant while on the CIA payroll. Current and former U.S. officials acknowledge it's unusual but said it's the kind of collaboration Americans expect after 9/11.

Officials said revealing the CIA officer's name would jeopardize national security. The arrangement was described as a sabbatical. He is a member of the agency's senior management, but officials said he was sent to the municipal police department to get management experience.

At the NYPD, he works undercover in the senior ranks of the intelligence division. Officials are adamant that he is not involved in actual intelligence-gathering.

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The NYPD has faced little scrutiny over the past decade as it has taken on broad new intelligence missions, targeted ethnic neighborhoods and partnered with the CIA in extraordinary ways.

The department's primary watchdog, the New York City Council, has not held hearings on the intelligence division's operations and former NYPD officials said council members typically do not ask for details.

"Ray Kelly briefs me privately on certain subjects that should not be discussed in public," said City Councilman Peter Vallone. "We've discussed in person how they investigate certain groups they suspect have terrorist sympathizers or have terrorist suspects."

The city comptroller's office has audited several NYPD components since 9/11 but not the intelligence unit, which had a \$62 million budget last year.

The federal government, too, has done little to scrutinize the nation's largest police force, despite the massive federal aid. Homeland Security officials review NYPD grants but not its underlying programs.

A report in January by the Homeland Security inspector general, for instance, found that the NYPD violated state and federal contracting rules between 2006 and 2008 by buying more than \$4 million in equipment through a no-bid process. NYPD said public bidding would have revealed sensitive information to terrorists, but police never got approval from state or federal officials to adopt their own rules, the inspector general said.

On Capitol Hill, where FBI tactics have frequently been criticized for their effect on civil liberties, the NYPD faces no such opposition.

In 2007, Sanchez testified before the Senate Homeland Security Committee and was asked how the NYPD spots signs of radicalization. He said the key was viewing innocuous activity, including behavior that might be protected by the First Amendment, as a potential precursor to terrorism.

That triggered no questions from the committee, which Sanchez said had been "briefed in the past on how we do

business.”

The Justice Department has the authority to investigate civil rights violations. It issued detailed rules in 2003 against racial profiling, including prohibiting agencies from considering race when making traffic stops or assigning patrols.

But those rules apply only to the federal government and contain a murky exemption for terrorism investigations. The Justice Department has not investigated a police department for civil rights violations during a national security investigation.

“One of the hallmarks of the intelligence division over the last 10 years is that, not only has it gotten extremely aggressive and sophisticated, but it’s operating completely on its own,” said Dunn, the civil liberties lawyer. “There are no checks. There is no oversight.”

The NYPD has been mentioned as a model for policing in the post-9/11 era. But it’s a model that seems custom-made for New York. No other city has the Big Apple’s combination of a low crime rate, a \$4.5 billion police budget and a diverse 34,000-person police force. Certainly no other police department has such deep CIA ties.

Perhaps most important, nobody else had 9/11 the way New York did. No other city lost nearly 3,000 people in a single morning. A decade later, police say New Yorkers still expect the department to do whatever it can to prevent another attack. The NYPD has embraced that expectation.

As Sanchez testified on Capitol Hill: “We’ve been given the public tolerance and the luxury to be very aggressive on this topic.”

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Associated Press writers Tom Hays and Eileen Sullivan in Washington contributed to this report.

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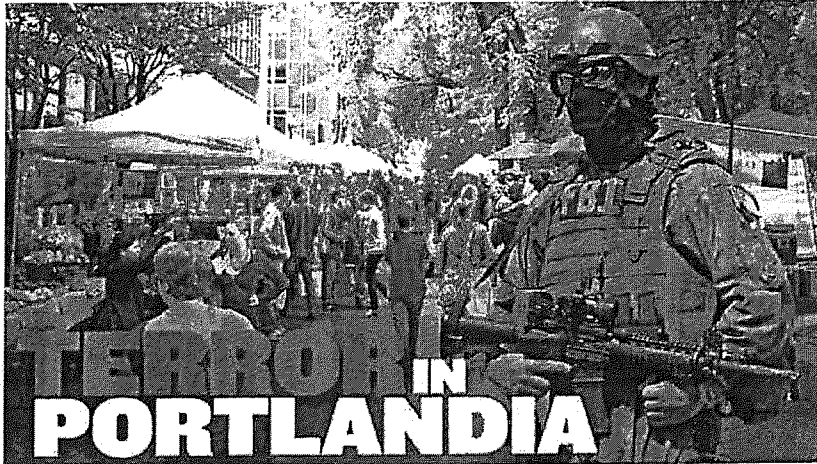
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FBI

## How the FBI Monitored Crusty Punks, 'Anarchist Hangouts,' and an Organic Farmers' Market Under the Guise of Combating Terrorism

The FBI conducted a three-year investigation, dubbed "Seizing Thunder," into a animal-rights and environmental "terrorists" in the Pacific Northwest that devolved into widespread—and seemingly pointless—surveillance of activists for no apparent reason aside from the fact that they were anarchists, or protested the war in Iraq, or were "militant feminists." Here's the file.

I first came across the name "Seizing Thunder" several years ago while rifling through the FBI's investigative files on the Animal Liberation Front. The ALF records obliquely referenced the evocatively named investigation, which I requested via the Freedom of Information Act just for kicks. Last month—after three years—the FBI returned nearly 500 pages (it held back 784).

It turns out that Seizing Thunder, which was based out of the bureau's Portland field office, was one of several investigations into animal rights and environmental activists nationwide that the FBI eventually merged into Operation Backfire, a wide-ranging probe of ALF and the Earth Liberation Front. Backfire concluded in 2006 with the indictments of 11 activists for arson and other "acts of domestic terrorism," including a notorious 1998 destruction of a \$12 million ski

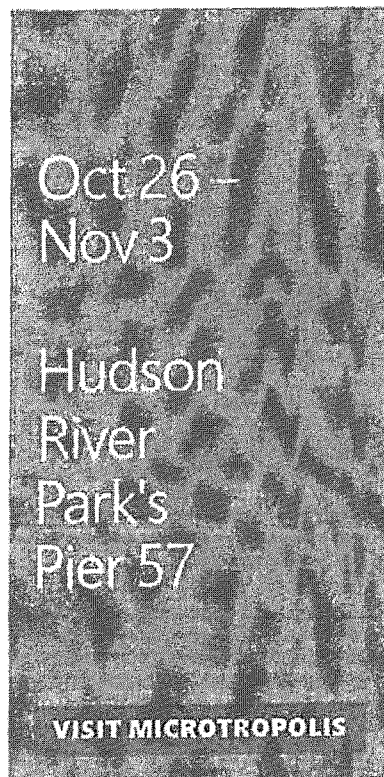
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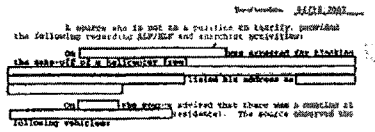


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lodge in Vail, Colo. The Portland portion seemed to focus primarily on gathering general intelligence on activists who used tree-sitting and other monkey-wrench tactics to fight old-growth logging in the Pacific Northwest.



What makes Seizing Thunder interesting, however, is how easily the agents slipped beyond investigating actual federal crimes and devoted considerable resources to tracking political activists with no apparent criminal intent.

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Seizing Thunder was opened in 2002 to target members of the "Animal Liberation front (ALF), Earth Liberation Front (ELF) and an anarchist group called the Red Cloud Thunder, all whose members are inter-related and they openly claimed several major arsons," according to the files. The investigation involved physical and video surveillance, warrants for phone taps, and cooperation with local police departments in Portland and Eugene, Ore. But the feds quickly dropped the pretense of tracking organized groups and quickly began surveilling people simply for identifying themselves—or for being identified by informants—as anarchists. The memos read like artifacts from the Red Scare:

July 19, 2002: "On [redacted], the source observed a [redacted] Oregon license plate...parked at [redacted], a known anarchist hangout."

August 8, 2002: "The source observed the following vehicles in the vicinity of [redacted], a major hangout for the anarchist and [redacted]"

September 19, 2002: "On [redacted] the source observed [redacted] vehicle, Oregon license plate [redacted] parked at [redacted] one of the hangout for anarchist..."

October 18, 2002: "On [redacted] the source was questioned as to the [redacted] anarchist travelling to [redacted]."

### "The anarchists were dressed in black"

What sort of federal crimes were all these anarchists getting up to, aside from the thought variety? The records, which document the FBI's extensive cooperation and intelligence-sharing with local police departments in Eugene and Oregon, show that agents collected intelligence about an anarchist march that was being planned to protest U.S. policy in the Middle East:

On [redacted] at approximately 2:30 p.m., the source visited [redacted]. The source did not observe any anarchists. The source walked [redacted] to view their bulletin board. Most of the ads on the bulletin board were for individuals looking for roommates.

On [redacted] the source attended [redacted]. The source visited [redacted] where the source met two unknown anarchists at [redacted]. The anarchists were dressed in black and were in their early 20s.... The source stated the anarchists are planning a protest to "Reclaim the Streets" on April 20, 2002, in Portland, Ore.

Here's how the Associated Press covered that crucible of terror and violence:

About 700 people marched through downtown Saturday in a peaceful protest against U.S. support of Israel in the Middle East crisis. There were no arrests and no altercations, police said.

### The Pinky Swear Riot

Another FBI source passed along a warning of a similar anarchist plot to gather on the streets of Eugene just two days later to protest the International Monetary Fund. The feds quickly passed along the warning to the Eugene police department, thereby averting a bloody riot, by the FBI's lights:

[Redacted] identified [redacted] a mass protest/riot planned by the Eugene anarchist where on 4/22/02 they attempted to "take over the street" and cause havoc during the rush hour. The Eugene Police Department was immediately notified and they called in numerous officers for this unexpected protest/riot. EPD was prepared for this problem and prevented a major riot. EPD expressed their appreciation for this information as it may have resulted in major damages of businesses and property, similar to that of a riot in June 1999 where \$150,000 of property destruction occurred.



I can't find any record of any news organization covering this narrowly averted riot. A flier for the riot included in the file reads: "2 p.m.: Teach-in on the G8... 4 p.m.: RECLAIM-THE-STREETS! Come and party in the street! Live bands: Pinky Swear (Portland/Punk) and Elevated Elements (Seattle / Hip Hop)."

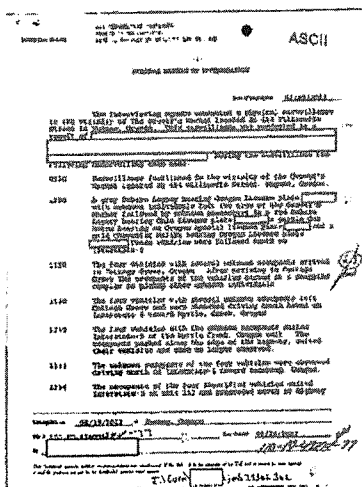
### Chasing Subaru

Another high point of the file shows agents conducting surveillance on the Grower's Market, a "not-for-profit food-buying club for buying organic and natural foods" in Eugene, and then literally tailing two random Subaru Legacys (naturally!) to a political rally. As the redacted memo recounting the excursion makes clear, *the agents had no idea who they were following, or why.*

The interviewing agents conducted a physical surveillance in the vicinity of The Grower's Market located at 454 Willamette Street in Eugene, Oregon. This surveillance was conducted as a result of [redacted]. During the surveillance the following observations were made:

**0930:** Surveillance instituted in the vicinity of The Grower's Market....

**1100:** A gray Subaru Legacy bearing Oregon license plate [redacted] with unknown individuals left the area of the Grower's Market followed by unknown passengers in a red Subaru Legacy bearing Ohio license plate [redacted], a purple Geo Metro bearing an Oregon special license plate [redacted]. These vehicles were followed south on Interstate-5.



What caper were these Subaru-driving terrorists getting up to? Well, after meeting up with a "private bus," also with unknown individuals on board, they drove to Roseburg, Oregon:

**1406:** The bus and three vehicles were observed parked on the west side of Main Street, south of Oak Street, in a free parking area. The occupants of the vehicles were observed to be carrying protest signs and musical instruments and walking north on Main Street toward the South Umpqua National Bank.

**1409:** The occupants of the bus and three vehicles were observed protesting outside the South Umpqua National Bank located at Main and Washington streets in Roseburg,



Oregon. Officers from Roseburg Police Department and the Douglas County Sheriff's Office were observed monitoring/video taping the incident.  
1417: Surveillance discontinued.

## "The Anarchists and homeless groups have united"

The Seizing Thunder agents weren't just worried about enviro-anarchy—they also warned of a dreaded anarchist-homeless alliance that threatened to build a "homeless camp." From a November 2002 memo:

Source advised that the Anarchists and homeless groups have united in the effort to establish a "homeless camp." Source stated that the homeless community has accepted the assistance of the Anarchists in the area of publicity and community outreach.

And don't forget the menace posed by punk rock as performed by anarchists. This memo shows that the bureau's Los Angeles office kept tabs on an the Alternative Gathering Collective, "an anarchist group in Los Angeles that organizes anarchist punk music concerts, many of which are fundraisers for animal liberation and environmental extremist groups and causes."

Review of [redacted] found that the AGC sponsored a benefit show for the Long Beach Food Not Bombs (FNB) on 2/5/2005. The concert was held at the Homeland Cultural Center, 1321 Anaheim St., Long Beach CA with the bands Sin Remedio, Ciril, Degrading Humanity, Life in Exile, Lechuza, Civil Disgust, S.O.U.P., and One Side Society.

Finally, an October 2002 memo warns agents that Lady Anarchists can be a whole mess of trouble:

Source advised that the females of the anarchist's movement are in leadership positions in Eugene, Oregon. These females are described as being very feminist and militant.

Other hilarious moments involve agents snooping on nature hikes, investigating the serious federal crime of keying cars, and unwittingly letting a warrant for a phone tap expire.

## A History of Political Surveillance

Sadly, it shouldn't come as a surprise to anybody paying attention that the FBI spent much of the 2000s following people simply because they harbored forbidden political beliefs. Last year, Austin, Texas activist Scott Crow decided to see if the FBI was keeping tabs on him, so he FOIAed his file. He got back an astonishing 440 pages of surveillance records and other documents, according to the *New York Times*. Crow, an anarchist, has never been charged with a federal crime.

In 2010, the FBI's inspector general issued a report finding that the bureau had overstepped its bounds in investigating political and advocacy groups. The bureau's Pittsburgh office, the report said, had conducted surveillance on an anti-war rally as a "make-work" assignment for a bored agent and then "provided inaccurate and misleading information to Congress and the public" about the incident. It also found that "in several cases" of surveillance aimed at Greenpeace, People for the Ethical Treatment of Animals, and other groups, the FBI's stated bases for the investigations were "factually weak" and demonstrated "little indication of any possible federal crime as opposed to a local crime."

A 2003 inspector general audit of the bureau's intelligence gathering and sharing capabilities took note of the increasing emphasis on domestic counterterrorism investigations aimed at "criminal activities associated with animal rights, environmental, and anti-abortion extremists, as well as by certain social protestors" as opposed to, you know, al Qaeda. The report diplomatically suggested that the FBI's counterterror resources should be reserved for combating actual terrorism: "To the extent that the FBI seeks to maximize its counterterrorism resources to deal with radical Islamic fundamentalist terrorism, WMD, and domestic groups or

individuals that may seek mass casualties, we believe that FBI management should consider the benefit of transferring responsibility for criminal activity by social activists to the FBI's Criminal Investigative Division."

The bureau obviously didn't listen. It should be noted that the 11 people eventually indicted in Operation Backfire actually had committed serious crimes worthy of federal investigations. Though the documents are heavily redacted, it appears from context that at the very least one of them—Chelsea Dawn Gerlach, who participated in the Vail arson—was a target of Seizing Thunder.

I asked the FBI who, if anyone, was eventually charged based on information developed via Seizing Thunder, and what federal crimes the bureau suspected unidentified Subaru drivers, militant feminists, and frequenters of "anarchist hangouts" of committing. A spokeswoman did not immediately respond.

You can read the full file below.

To print the document, click the "Original Document" link to open the original PDF. At this time it is not possible to print the document with annotations.

[Image by Jim Cooke, source images via AP and roboppy/flickr]



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## Never Stop Fighting

The FBI has known about him since his days as a cage-rattling Chicano activist in 1960s L.A. A onetime fugitive and sometime company man, Carlos Montes has kept on confronting the system the only way he knows how. Now the system is closing in

By Ben Ehrenreich

3/1/2012

The first raid came at five o'clock in the morning last May 17. Carlos Montes awoke to a thud. It was the sound, he soon discovered, of his front door splintering open. The sun had not yet risen, and Montes's bedroom was dark, but in retrospect, he says, he's glad he didn't reach for a flashlight—or for a gun. Montes, a retired Xerox salesman, had kept a loaded shotgun behind the headboard and a 9mm pistol beneath a pile of towels on a chair beside the bed since the day he had walked in on an armed burglar a year and a half before. That time a cool head had kept him alive: He persuaded the thief to drive him to a 7-Eleven, where he withdrew as much cash as he could from the ATM and refused to take another step. This time, fortunately, he was half-asleep: He stumbled toward the hallway empty-handed.

Montes, 64, is a tall man, but his shoulders are rounded and slightly stooped, which along with his long, thin legs and the short fuzz of his gray hair, gives him something of the appearance of a bird. Maybe it's that he always seems to be in motion, as if there's a motor in him that keeps humming even when he's sitting still. He often seems to be on the verge of cracking a joke, or as if he's already laughing at the joke he could be telling. Once I showed up early for an interview and found him on the phone, reserving a space in a yoga class. "Gotta take my yoga, man," he said, laughing at himself, "or else I'll blow it!"

Standing in the bedroom of his Alhambra home, Montes saw lights dancing toward him. He hadn't thought to grab his glasses, but when the lights got close enough, he understood that they were flashlights. Green helmets bobbed behind them. Inches beneath each beam he could make out the black barrel of an automatic rifle.

"Who is it?" Montes shouted.



Montes by Willie Heron's 1972 mural *The Wall That Cracked Open* in City Terrace. Photograph by Bryce Duffy.

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Voices shouted back: "Police!"

Then they were behind him. They shoved him past the ruins of his front door and out onto the patio. Handcuffs clicked around his wrists. It was a cool, misty morning, but Montes could see that his narrow hillside street had been transformed, rendered unfamiliar and almost unreal by the two green armored vehicles parked in front of his house and by sheriff's black-and-whites blocking the road to the left and right.

A sheriff's deputy opened the door to one of the patrol cars and pushed Montes into the backseat. He sat there in the relative calm of the police car, the cuffs digging into his wrists, wondering, "What the hell are they going to arrest me for?"

An officer approached the car and told Montes he was under arrest, that he was a convicted felon and it was illegal for him to possess firearms.

"What?" said Montes. As far as he knew, he'd filed all the required papers for the weapons he owned. The police knew he had them. In 2005, after what Montes calls a "dispute" with a now ex-girlfriend, Alhambra police came to his house and took all his guns "for safekeeping." (He was arrested on a domestic violence charge, but the case was dismissed.) A year later, after his ex moved out, Montes dropped by the station, and the police returned the guns. "I thought everything was cool," Montes says.

It was at that point that the morning, already strange, took a stranger turn. Someone from the FBI was there, the deputy told him. An agent in a windbreaker appeared outside the squad car. He leaned in. "I want to talk to you about your political activities," said the man from the FBI. Montes was not just any retired Xerox salesman. In the late 1960s, he had been one of the most visible and militant leaders of the Chicano movement in L.A. Long after the media spotlight had flickered off, he had continued to agitate and organize against police brutality, inequities in the public schools, and U.S. wars abroad.

Early the next morning Montes stood alone on the sidewalk outside the Twin Towers jail downtown. The sheriff's department had released him as they had found him: in socks and pajamas, without his cell phone or wallet or change to make a call. Eventually he found a ride to Alhambra. His sister had come by his home and had a sheet of plywood nailed over his front door. But inside, he says, "the house was in shambles."


Montes was something of a pack rat. He'd saved flyers, clippings, and photos from decades as an organizer of demonstrations and campaigns. "Everything was on the floor," he says. In his bedroom the contents of his drawers and closet had been dumped out on the bed. Files, albums, and carousels of slides had been removed from his closets and stacked in piles on his kitchen counter and on the dining room and kitchen tables. Political documents were mixed with photo albums from his daughter's birthdays and his son's wedding. His guns were gone—the shotgun and the Beretta he'd kept beside the bed plus an old Russian bolt-action rifle, a World War II-era German automatic, and another rifle, a Marlin 30-30. (Montes's antiwar stance was not grounded in across-the-board pacifism.) His cell phone and computer were gone, too.

Now, months later, Montes stands in his kitchen. His home is tidy but cluttered—the kitchen and dining room tables and every available space covered with neat stacks of papers. Images of Che Guevara, Malcolm X, and Emiliano Zapata figure prominently in the decor. "Once they got the guns," Montes asks with eyebrows raised, "why did they go through the whole house?"

Forty-odd years earlier an unannounced visit from the FBI, even one fronted by a SWAT team with assault rifles drawn, would not have been surprising. Cold War paranoia had given J. Edgar Hoover's FBI license to stalk and smear everyone from John Lennon to Martin Luther King Jr. Members of the Black Panther Party were falling by the dozens to police bullets. Through the haze of kitsch that surrounds that era it is difficult to make out the urgency of the times, the until recently almost inconceivable sensation that *everything* could change and that everyone, even high school kids from the east side of the L.A. River, had a crucial role to play. For a little while East L.A. felt like an important node in a struggle that was being mirrored around the globe—in Oakland, Paris, Mexico City, and Saigon.

But what happened here has for the most part been bleached out of the country's collective memory of the '60s. The Chicago Seven made the textbooks, but who remembers the East L.A. Thirteen? Or the Biltmore Six? Those trials have been over for decades, the whole period effectively entombed. And we've come a long way, right? The mayor of Los Angeles is a former union organizer and, though he doesn't like to dwell on it, a onetime Chicano nationalist. The president of the United States is, famously, an ex-community organizer, and both he and his attorney general have much darker skin than Montes. So why is the FBI still interested in Carlos Montes?

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In photos taken in the late 1960s, Montes managed to look at once cocky and intensely serious. The character based on him in the 2006 HBO film *Walkout*—about the 1968 protests at four East L.A. high schools—is portrayed as both joker and firebrand, a militant trickster in a khaki bush jacket. (“*Ya estuvo con la blah blah blah*,” he says in one scene, shushing his hesitant comrades. “We go out tomorrow!”) A year before the journalist Ruben Salazar was killed by a tear gas canister fired by an L.A. County sheriff’s deputy, he described Montes in the *Los Angeles Times* as a “lean, intense young man who often sports a Zapata mustache,...noted for his articulateness on the Chicano movement and his wit.”

The son of an immigrant assembly line worker and a nurse’s aide, Montes was born in El Paso and moved with his parents to Los Angeles when he was seven. “I bought into the whole thing about America, the greatest country,” he says. He was majoring in business at East L.A. College when he began to make connections between the Vietnam War, the routine racism of his teachers and school administrators, and the police harassment he and his classmates had faced throughout their teens. With the zeal of a convert, Montes fell in with a group of students who called themselves Young Citizens for Community Action. They opened a coffeehouse named La Piranya just off Whittier Boulevard. It quickly became a social and organizing hub for politically engaged Chicanos, who included future L.A. school board member Vickie Castro, writer and artist Harry Gamboa, and the film producer Motesuma Esparza. Montes and his peers soon learned an important lesson, one that other young people were learning around the country: You can talk all you want, but the moment you start to organize, the authorities regard you as a threat. Police officers sat in cars outside La Piranya, photographing and hassling people who came and went. More than once the police raided the coffeehouse, claiming they were searching for drugs, frisking everyone inside.

Nothing creates radicals more effectively than repression. The YCCA—by now the Young Chicanos for Community Action—henceforth focused its organizing energies on battling police abuses. In January 1968, says Montes, “somebody went down to the Salvation Army and found a stack of brown berets.” They began wearing them with belted khaki jackets and established a hierarchy modeled on the quasi-military structure of the Black Panthers. Montes, who had just turned 20, was endowed with the grandiose title “Minister of Information.” Salazar referred to him as “the organization’s visionary.”

On March 6 of that year thousands of students walked out of class at Lincoln, Garfield, and Roosevelt high schools, demanding opportunities equal to those taken for granted by Anglo students on the other side of town. Birmingham, Alabama, had arrived in East L.A. The Brown Berets volunteered to form a protective barrier between the students and the police. They found police waiting in the streets and on the football fields. At Garfield, according to one account, snipers were posted on the roof. Montes managed to snap the chain on the gate at Roosevelt. The students who poured past him into the street were met with police batons and fists.

If the newspapers blamed the violence on the students, white L.A. was nonetheless forced to take notice. The *Los Angeles Times* expanded its vocabulary: “Chichano,” a reporter explained later that year, “is a Spanish expression meaning ‘one of us.’” By the end of March FBI headquarters ordered that the Brown Berets be investigated “to determine if activities of the group pose a threat to [sic] internal security of United States.” Within a few months a grand jury indicted 13 of the walkouts’ organizers, including Montes, charging them with a slew of petty misdemeanors rendered serious by the addition of felony charges alleging that the defendants had conspired to commit those same petty misdemeanors. Montes and Ralph Ramírez, the Berets’ “Minister of Discipline,” were in Washington at the time, attending the Martin Luther King-organized Poor People’s Conference. Riots had followed King’s assassination two months earlier, and the D.C. police chief, FBI records show, refused to arrest Montes and Ramírez for fear of inciting more unrest. Instead they were arrested upon their return to L.A.

The East L.A. Thirteen, as they were dubbed, were ultimately acquitted, but 1968 would be a busy year, busier than any until perhaps this last one. The whole world seemed in revolt. Students and workers were fighting police in the streets of Paris—and Chicago. Uprisings were crushed by Soviet tanks in Prague and by snipers’ bullets in Mexico City. Urban guerrilla movements emerged in Brazil, Argentina, Uruguay, even Germany. To Montes, the synchronicity was life altering. So was the sense of solidarity, of being part of something larger: a world and a history that stretched far beyond the nest of freeways encircling the Eastside. “It started becoming clear,” he says, sitting in an Alhambra Starbucks, hunched beneath a straw fedora. “This is not just about police harassment in East L.A. This is a global struggle.”

Brown Beret chapters sprang up around the country. The FBI responded, ordering all offices “having significant numbers of Mexican-Americans in their territories” to gather information on “militant” groups. They began infiltrating the Brown Berets and monitoring them in more than a dozen cities, from Riverside to Miami. Locally Montes’s visibility made him a constant target. Between February 1968 and July 1969, he was arrested seven times. He was convicted only once, of battery on a peace officer—for throwing a soda can at a deputy when police broke up a 1969 demonstration over the lack of a Chicano studies program at East L.A. College—and sentenced to probation.

Montes could not have known that conviction would return to haunt him. He had a more serious case to deal with. In the spring of that year, he and five others—the so-called Biltmore Six—were facing life in prison, accused of lighting fires at the Biltmore Hotel while Governor Ronald Reagan was speaking in the hotel's ballroom. The police had a witness, a young LAPD officer named Fernando Sumaya who had infiltrated the Brown Berets four months earlier. Moctesuma Esparza was Montes's codefendant once again. According to Esparza, their lawyer, Oscar Zeta Acosta (who would later gain fame as a novelist and as the model for Hunter S. Thompson's Dr. Gonzo) learned that Sumaya's testimony would directly implicate Montes. "Acosta let Carlos know that if he [Montes] was on the case, it would affect everybody. The next thing I knew," says Esparza, "Carlos was gone."

Montes likes to talk. His eyebrows leap and fall, punctuating his sentences. His head bobs, and his smile comes and goes. His stories tend to wander, detouring at one aside or another. That laugh of his often breaks out when he arrives at memories that must be painful, as if he's narrating a slapstick version of someone else's life. He laughs as he recounts deciding with his girlfriend at the time, Olivia Velasquez, to leave everything and everyone they knew: "Let's get married, have a big-ass party, and take off."

They held the wedding in a Boyle Heights backyard, celebrated into the night, and two days later caught a ride to Tijuana. Their plan was to fly from Mexico to Cuba, at the time the destination of choice for American radicals in exile. Except for one friend and Montes's brother, they told nobody. In February 1970, *La Causa*, the Brown Berets' newspaper, reported that Montes had disappeared, speculating that "he may have been kidnapped by the Central Intelligence Agency." For a little while he was remembered as a martyr. "Carlos Montes will be looked at as a real Chicano Hero," the article concluded. "In the new history of our people, he lives in the hearts of La Raza, and will never die."

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The second raid of this story would come almost precisely 34 years before the first, in May 1977. Montes and Velasquez had made it as far as Mérida, then headed back north to Ciudad Juárez. They had a son there and a year later moved to El Paso, where Velasquez gave birth to their daughter. Over the next five years Montes worked a series of blue-collar jobs under the name Manuel Gomez. He could not resist jumping back into the mix: He got involved in union activism and community organizing, even in electoral politics, though he did his best to dodge cameras and microphones. Montes knew the risks—"We were real paranoid," he says—and is not particularly self-reflective about his motivations for taking them. He searches for words when I ask him why he took so many chances. "It was something I wanted to do," he says, and apologizes, "I'm not verbalizing it well. We didn't discuss whether we should, we discussed *how* and *where*." Activism had become the only way he knew how to live, to situate himself on the planet in a posture that made sense.

In May 1977, Montes and Velasquez risked a trip home to California. Montes hadn't seen his mother for seven years. His brother had paid him one clandestine visit, but for the most part Montes had been cut off from friends and relatives. The young family spent a weekend with Montes's sister in Gardena, then dropped in on a family barbecue at Velasquez's cousin's house in Monterey Park. "Boom!" says Montes, laughing at the memory. "They raided the house. They had dogs and what looked like M16s." As police stormed through the front door, Montes bolted for the back. "They rushed in and put a gun in my belly." Someone had tipped the LAPD.

In Montes's absence his Biltmore codefendants had been exonerated, but Acosta's defense strategy had been to blame the fires on Sumaya—and on Montes. (Montes blames them on Sumaya. "I went to the bathroom, and Fernando [Sumaya] followed me," he recalls. "He pulled a bunch of napkins from the napkin dispenser, threw them in the trash, and just lit them. I said, 'What the fuck are you doing?' and I got out of there.")

After being escorted at gunpoint from his in-laws' barbecue, Montes spent several weeks in jail trying to raise bail on the Biltmore arson charges that he had fled seven years earlier. "We formed a defense committee, a Free Carlos Montes committee. We did demos, fund-raisers, pickets," he says. A few months before his trial began, an article appeared in the East L.A. College campus newspaper above a photo of a lanky, bushy-haired Montes wearing shades and pleated slacks. He had spoken on campus about police violence and racial inequities in the schools—"the same topics," the reporter observed, that "he spoke against back in 1969 as a leader of the Brown Berets."

But the movement Montes had helped found had begun to crumble while he was still in Mérida. Seven months after Montes went underground, more than 20,000 people marched down Whittier Boulevard to protest the war in Vietnam. The sheriff's department's attempts to break up the crowd left three dead—including Ruben Salazar and a 15-year-old Brown Beret—an untold number injured, and Whittier Boulevard in flames. In the aftermath police infiltration and harassment of Chicano activist groups

increased exponentially. Rifts opened between the Brown Berets and the National Chicano Moratorium Committee (which had organized the march) as well as within the Berets.

"By 1972," says Ernesto Chávez, who teaches history at the University of Texas, "it had all fallen apart." The Berets' central committee fired the group's prime minister, David Sánchez, who promptly called a press conference and declared the Brown Berets disbanded. Even the FBI knew it was over: In a classified memorandum filed that February, agents reported that "most [Brown Beret] chapters are either inactive, defunct, or have deteriorated into social clubs." Surveillance would continue until at least 1976.

Montes had emerged from underground like a revolutionary Rip van Winkle, eager to pick up where he'd left off. The Vietnam War was over, but, as Montes saw it, the old racist system was otherwise in place. His trial was another opportunity to bring attention to the cause, but when he reached out to old friends, he says, "people didn't want to touch me. I was like a crisis from the past." Few of his youthful colleagues seemed eager to help. Their youthful militancy had become a liability.

Ten years after the fact, Montes was found not guilty. There was also the matter of the battery-on-a-peace-officer conviction he had picked up in 1969, for which he was on probation when he skipped town, but the judge was convinced that "time has tempered Mr. Montes's exuberance for radical action," as he put it, and declined to punish him further for a crime already a decade old. (Thirty years later the judge's words still spur Montes to giggles.) But even with his legal troubles resolved, Montes says, "No one would hire me." Eventually an old comrade got him a job at Xerox, as a salesman, and for the next 20 years Montes would spend his weekdays in a suit and tie, hustling copiers in downtown office buildings. "I was kind of the oddball," he says.

Moctesuma Esparza remembers running into Montes for the first time in decades—fortuitously in the lobby of the Biltmore, where they had last been together as fire alarms went off upstairs. Montes doesn't recall the encounter, but it was likely less than comfortable. A few years earlier, he says, Esparza had asked Montes not to call him to testify in court. By the time they met, Montes was Xerox's main salesman downtown. The Biltmore had given him a discount membership to the hotel's health club. "He seemed to be doing very well," Esparza says.

Perhaps it was because Montes was spared the disillusion of the bad days of the early '70s, but he never changed course. In his off-hours he worked on Jesse Jackson's presidential runs in 1984 and 1988, and on an antipolice brutality campaign following the killing of 19-year-old Arturo "Smokey" Jimenez by sheriff's deputies in 1991. He tried repeatedly to reawaken the movement. Toward the end of the '90s, Montes began writing for *Fight Back!*, a newspaper and Web site affiliated with a small sectarian leftist group called the Freedom Road Socialist Organization. The group—of which Montes says he is not a member—is a minuscule organization, a faction that in 1999 broke away from another group bearing the same name that was itself born of the combination of two other obscure groups with distant origins in the 1969 dissolution of Students for a Democratic Society. It is, in other words, an isolated and tattered remnant of the movement that won the FBI's attentions a full half-century ago, when it was still referred to as the New Left.

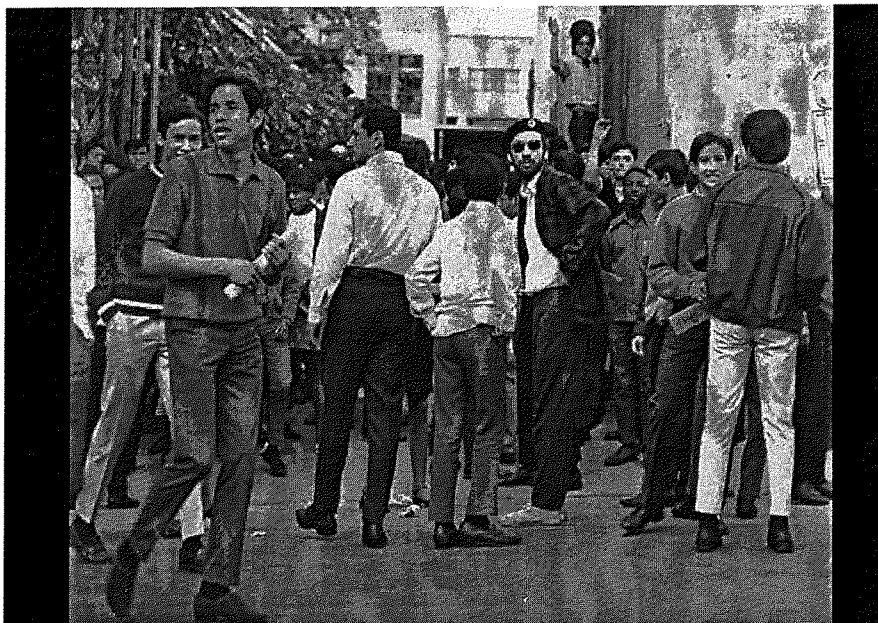
Montes continued to show up at school board meetings to complain about creeping privatization and dirty bathrooms in Eastside schools. He turned out to march against the wars in Iraq and Afghanistan even as the crowds grew smaller with each passing year. He was in front of the LAPD's Rampart station in 2010, shouting into a bullhorn after police killed a Guatemalan day laborer on 6th Street, and there again in September to commemorate the anniversary of his death.

Montes fell in with the small quixotic tribe that had survived the sucking '70s with revolutionary faith intact, the tireless picketers most of the city glimpses in passing through raised windows. He didn't dwell much on the past. His daughter, Felicia, remembers accompanying her parents to constant rallies and community meetings—"That's been what I've known for a long, long time," she says—but she didn't learn about her father's role in the Chicano movement until she was an undergraduate at UC Berkeley, in an ethnic studies class.

I tried a few times to get Montes to talk about how lonely the years after his return must have been, how much disenchantment he must have had to overcome to keep struggling through the era of triumphant Reaganism. His answers rambled; the questions seemed to bounce off him. For him little had changed. None of the wrongs he fought in his youth ever went away—Americans were still killing and dying in faraway wars, young Latinos still contending with police harassment in the streets and with profound inequities in the classroom. The fight was what it always had been. I asked the historian Rodolfo Acuña, who teaches at Cal State Northridge and has known Montes since the 1960s, what he thought kept Montes going. Acuña answered obliquely: "He's the same today as he was 40 years ago."



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Montes (with beret and sunglasses) in an LAPD photo taken during the 1968 Roosevelt High School protest

*Photographs courtesy Carlos Montes*

The third raid came eight months before the first, early on the morning of September 24, 2010. Mick Kelly, 54, was in the cafeteria at the University of Minnesota, where he is a cook, when his cell phone rang. It was his wife, Linden Gawboy. She had been awakened by men with assault rifles. The FBI was at their apartment. "They used a battering ram to take off the front door," says Kelly, a slender, gray-mustached activist who also wrote frequently for *Fight Back!* and who had worked with Montes to organize the protests at the 2008 Republican National Convention in Minneapolis. "They smashed a fish tank," Kelly says. "They took her outside in her nightgown." He rushed home to find a dozen FBI agents emptying the couple's filing cabinets, packing their papers into banker's boxes.

Soon, Kelly says, "calls started coming in from friends." The FBI had raided the Minneapolis office of the Anti-War Committee, the group that had taken the lead in organizing the RNC protests, as well as seven other homes belonging to peace activists in Minnesota, Michigan, and Illinois. Fourteen people had been subpoenaed to testify before a grand jury. All had either been involved in the RNC demonstrations or with *Fight Back!* and Freedom Road.

Montes got a call from Minneapolis. "Be ready," he was told. The search warrant for the Anti-War Committee office had listed the individuals in whom the FBI was interested: Agents were instructed to search for financial records connected to 22 named "members or affiliates of the FRSO." Montes was number 14. By the end of 2010, everyone else on the list had been subpoenaed. (They have refused to cooperate with the grand jury.) "I figured, 'OK, they're gonna come sooner or later,'" says Montes.

It's easy to blame law enforcement's renewed scrutiny of political dissent on the September 11 attacks, but activists had begun to feel the chill two years earlier, after demonstrators in Seattle nearly scuttled the World Trade Organization meetings there. In the mass protests that followed in Washington, Philadelphia, and in L.A. during the 2000 Democratic National Convention, federal and local police discovered a new threat or, better put, rediscovered an old one: the homegrown leftist subversive. They responded with tactics that would have felt familiar to veterans of the 1960s—eavesdropping, infiltration, mass arrests, preemptive raids on activist headquarters.

After the World Trade Center towers fell, the FBI's freedom to engage in domestic surveillance expanded almost without limit. COINTELPRO—J. Edgar Hoover's counterintelligence program of informants, secret wiretaps, and covert burglaries—was a distant memory, one that few bothered to recall so long as the government's new targets were foreigners, the 5,000 Middle Eastern noncitizens rounded up for questioning in the months after September 11. But the following year, Attorney General John Ashcroft revised the "Guidelines for Domestic FBI Operations," redefining the bureau's central mission as



“preventing the commission of terrorist acts against the United States and its people.” The agency was no longer concerned exclusively with solving crimes but with the investigation of potential future criminals. This “proactive investigative authority” made it easier than ever to initiate investigations, demand information, obtain search warrants, and conduct surveillance—both through traditional methods and via electronic eavesdropping on a previously inconceivable scale.

Montes, who had retired from Xerox in 2001, saw the 2008 Republican National Convention as an opportunity to repudiate the political trends of the previous eight years, “to have a big, massive march so the whole world would see that the people condemn Bush.” That June he traveled to Minneapolis to attend a conference of activists who’d gathered to plan the demonstrations. He knew some of them already: Several members of the Twin Cities Anti-War Committee were also members of the FRSO.

Among the new faces was a short-haired woman with a Boston accent; she introduced herself as Karen Sullivan, a lesbian single mother who had joined the Anti-War Committee two months earlier. Montes doesn’t remember talking to her at any length until she initiated a conversation about Colombia at a conference in Chicago. He had long since been divorced from Velasquez and had twice visited the country with a Colombian ex-girlfriend (the one with whom he had fought in 2005). Sullivan told him her girlfriend was Colombian, too. “I said, ‘Oh, they’re beautiful women,’ and she said, ‘Yeah, they got big asses,’” Montes says. “I didn’t know if she was trying to bond with me or what.”

In the days leading up to the convention, local police—aided by the FBI and relying heavily on informants posing as activists—raided six homes used by protesters. Dozens were detained at gunpoint. Eight were arrested and charged under Minnesota’s version of the Patriot Act with “conspiracy to riot...in furtherance of terrorism.” (None were convicted. Local police and the FBI later paid out tens of thousands of dollars in settlements to activists.)

The protests were no less eventful. Thousands of demonstrators filled the streets. Montes spoke at the opening rally and, along with many others, was teargassed by police on the last day of the convention. He managed to evade arrest. Among the hundreds who did not was the woman who called herself Karen Sullivan. Montes saw the police take her away. For the next two years Sullivan would remain close with Montes’s friends in Minnesota. She made herself sufficiently useful that her colleagues trusted her with a key to the office and with the group’s bookkeeping. She joined Freedom Road and seemed particularly interested in fellow activists’ travels to Colombia and Palestine.

In the hours that followed the September FBI raids, as activists around the Midwest were frantically calling to check up on one another, Sullivan did not answer her phone. None of the people she had worked with over the previous two years has seen or spoken to her since. The activists deduced that the woman calling herself Karen Sullivan had been an undercover agent, a fact later confirmed by the U.S. Attorney’s office.

What wasn’t obvious was *why* Sullivan had been assigned to infiltrate the Anti-War Committee, why Obama’s justice department was so concerned with a handful of peace activists or with a group as obscure as the Freedom Road Socialist Organization. The wars in Iraq and Afghanistan may not have been popular, but they also have not provoked anything that could be called a movement. The Occupy Wall Street protests have only focused glancingly on the wars. Despite the rhetoric of Tea Party politicians, socialist revolution in the contemporary United States is about as likely as an attack by the Spanish Armada.

But neither obscurity nor apparent harmlessness have stopped the FBI from testing its new powers. An internal review conducted by the Justice Department’s inspector general in 2010 criticized the bureau for subjecting four antiwar and environmental groups—the Thomas Merton Center, the Catholic Worker, Greenpeace, and People for the Ethical Treatment of Animals—to lengthy domestic terrorism investigations, despite the fact that agents had “little or no basis for suspecting a violation of any criminal statute.” The raids in Minnesota and Illinois came four days after the release of the inspector general’s review.

The FBI and the U.S. Attorney’s office have refused to comment on the investigation—“We can neither confirm nor deny any investigative activity,” says FBI spokesperson Ari Dekofsky—which leaves activists guessing at the government’s motivations. “I think they really believe we’re terrorists,” says Montes with a pained smile. But whatever is behind the searches and subpoenas—whether it’s bureaucratic inertia or a concerted ideological attack—their message is as clear as it was in 1969: Dissent can be dangerous.

The search warrant issued for the raid on the Anti-War Committee office threw a small degree of light on the government’s intentions. Agents were looking for evidence that the subpoenaed activists had violated federal laws prohibiting “material support to designated foreign terrorist organizations”; specifically the Popular Front for the Liberation of Palestine, or PFLP (a leftist faction of the Palestinian Liberation Organization), and the Fuerzas Armadas Revolucionarias de Colombia, or FARC (one of the few surviving

leftist guerrilla forces in Latin America).

In April Kelly and Gawboy made a discovery that clarified things slightly more. Mixed in with their own files in Minneapolis they found papers the FBI had apparently misplaced: the FBI SWAT team's "Operation Order" for the raid on their home. The documents included a lengthy list of "FRSO Interview Questions," ranging from the innocuous ("Have you ever heard of the Anti-War Committee?") to the dramatic ("Have you ever taken steps to overthrow the United States government?") to the quaintly McCarthyite ("Do you have a 'red' name?") to the absurd ("What did you do with the proceeds from the Revolutionary Lemonade Stand?").

Many of the questions focused on contact with the FARC and the PFLP. Several of those subpoenaed had traveled to Colombia and Palestine on the kind of odd vacations that earnest activists tend to take: They interviewed organizers and political prisoners, Kelly says, and when they got home, wrote and lectured about their findings. "What we're talking about is extremely public activity," says Kelly. "The point of making the trips is to be able to come back and talk about what's happening." Montes had visited Colombia twice with his ex-girlfriend. He met labor and human rights organizers there, he says, and a lot of writers—his girlfriend was a poet—but no one from the FARC. He gave presentations on his travels at Pasadena City College and at UCLA. "I had PowerPoint slides," he says. "I denounced the assassination of labor leaders and indigenous leaders. I tried to get as much publicity as I could." But the public nature of the trips may be what gets the activists in trouble: In 2001, the Patriot Act broadened the definition of "material support" to include "expert advice or assistance"; another law passed in 2004 expanded it still more to include "service," a category the Supreme Court has since affirmed may include activities as basic as speech.

When the FBI finally arrived at Montes's home in May, the agent's first question would hew to a familiar script. He asked Montes if he would answer questions about the Freedom Road Socialist Organization. Montes remained silent. A sheriff's department spokesman would later confirm that the raid on Montes's house had been prompted by the FBI. Montes would be charged with four counts of perjury for neglecting to mention a 42-year-old conviction for assaulting a peace officer—the soda can thrown at police lines during the protest at East L.A. College—on the paperwork he filed when he purchased the weapons, along with one count of possession of a handgun and one count of possession of ammunition by an ex-felon. He is facing a possible prison sentence of 22 years. And like the 23 activists already subpoenaed, he is expecting to be indicted at any time for material support of a terrorist organization.

In the months since his arrest there have been fund-raisers in his honor at art galleries and in friends' living rooms, campaigns to barrage Attorney General Eric Holder with e-mails and letters, and rallies as far away as Philadelphia, Dallas, and Gainesville, Florida. Montes has once again become something of an activist cause célèbre, though that is a humbler role today than it was the last time he was charged.

On September 29, the date of Montes's preliminary hearing, the sidewalks outside the downtown courthouse are packed with camera crews. Montes paces the sidewalk in a blue pin-striped suit, grinning anxiously and chatting with his supporters, about 40 of whom have come out. A few wear red T-shirts silk-screened with the image of a young beret-clad Montes. They march in tight ellipses, waving picket signs and chanting "Hands Off Carlos Montes!" The reporters ignore them. They are here, it turns out, for the manslaughter trial of Dr. Conrad Murray, Michael Jackson's physician.

A few LAPD officers stand outside the courthouse, watching idly. Two heavysset women in floral dresses pause beside the picketers, puzzled. Montes hands them flyers. "Oh," says one woman to the other, "this is something else," and they hurry on toward the courthouse door.

Someone gives Montes a microphone. He taps it. His voice booms out through a portable amplifier, thanking his fellow activists for showing up. A gaggle of journalists and photographers hustles past. Montes hurries to address them through the mic. "We're here to support Carlos Montes," he says, winking, "to keep him out of jail. Take a flyer, take a flyer." None of them stops. The cars on Temple Street go honking by as they would on any other weekday morning. Reporters settle into folding chairs on the sidewalk across the street. Someone whispers that Janet Jackson has arrived. Holding the mic to his mouth, Montes looks briefly relaxed, almost at home. "I do want to say," he begins again, "that the struggle continues."

*Ben Ehrenreich's last piece for Los Angeles, "The End," won the 2011 National Magazine Award for feature writing. His novel Ether (City Lights Books) came out in October.*

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## Anarchists targeted after Seattle's violent May Day protests

**Three activists are in federal custody because they won't talk. The secretive investigation has raised alarm among civil rights advocates.**

By Kim Murphy, Los Angeles Times

7:17 PM PDT, October 19, 2012

SEATTLE — Early on the morning of July 25, residents of a neighborhood in northeast Portland, Ore., were awakened by the sound of a battering ram plowing through the front door of a small house. Inside, the sleepy young occupants stumbled out of bed as FBI agents rushed in with assault rifles.

Leah-Lynn Plante, a thin, tattooed woman who volunteers at a bookstore that specializes in anarchist literature, shivered in her underwear in the backyard as a SWAT team hauled out computers, clothing, books and artwork — looking, the agents said, for evidence of who participated in this year's May Day demonstrations in Seattle that saw smashed windows at banks and clashes with the police.

What bothered Plante was that they weren't just looking for sticks and black masks. The FBI search warrant also listed "anarchist" and "anti-government" literature and material among items to be seized.

"It was like something out of George Orwell's '1984.' It was absolutely horrendous," Plante, 24, said shortly before she was taken into custody Oct. 10 for failing to testify before a federal grand jury in Seattle about her friends in the anarchist movement.

Plante is one of three activists being held at the Federal Detention Center near Seattle-Tacoma International Airport in an investigation of anarchists in the Pacific Northwest that has led to subpoenas in Seattle, Olympia and Portland. The secretive probe has raised alarm among civil rights advocates who say witnesses are being asked to answer questions not only about their own activities May 1 — Plante says she wasn't even in Seattle — but what they know about certain groups or organizations.

The investigation in Seattle is one of several across the U.S. targeting anarchists. Last month, three self-described anarchists pleaded guilty to plotting to blow up a bridge south of Cleveland. Three purported anarchists were arrested in Chicago in May and accused of conspiring to burn down buildings with Molotov cocktails during the NATO summit there.

One person, caught on camera, has pleaded guilty to bashing the door of the federal appeals courthouse in Seattle on May Day, an incident that elevated at least that part of the mayhem to a federal crime.

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Authorities said they are investigating whether anyone crossed state lines to riot — also a violation of federal law.

The FBI, citing the secrecy of the grand jury process, has declined to discuss the Seattle investigation, though an affidavit mistakenly released to the Seattle Post-Intelligencer suggested that several Portland activists were monitored as they traveled to Olympia just before the May Day demonstrations. It said text messages monitored by federal authorities established that they were among the black-clad protesters who damaged a federal courthouse and clashed with police that day.

Anarchism as a political philosophy has deep roots in the Pacific Northwest, and that's one of the problems, civil rights advocates say: Many people who might never attack a courthouse may hand out pamphlets and attend meetings that call for upending the nation's system of money and power.

"Anytime the federal government is sending federal security officers into people's homes looking for anti-government literature, that raises all sorts of red flags," said Neil Fox, president of the Seattle chapter of the National Lawyers Guild, which has helped provide attorneys for those called in for questioning.

Authorities say they have long had trouble monitoring protest movements such as Occupy, which attract primarily peaceful demonstrators, but may include radical activists — the kind who don black clothing and cover their faces to attack banks, shops and other perceived symbols of capitalist excess.

"We can use the example in L.A. [The Occupy protest] started off being peaceful demonstrators exercising their 1st Amendment rights, and it was not a problem. But they stayed here [City Hall] 59 days, and over time, you could see the criminal element come into the movement, and it began to degrade very fast," said Michael Downing, head of the Los Angeles Police Department's counter-terrorism and criminal intelligence bureau.

"We saw anarchists, drug dealers, we saw weapons being moved in, rebar, bamboo pipes. It created an environment where people who really wanted to stay and exercise their rights weren't able to because it became unsafe," he said.

Back in Seattle, detained along with Plante are two activists from Olympia, Wash., who also refused to testify: Matthew Duran, 24, a computer technician, and his roommate, Katherine Olejnik, 23, a bartender.

Letters of support have flooded in to all three, and appeals urging their release have multiplied across the Internet. Duran, who grew up in Southern California advocating for the rights of migrant workers, said he had heard from people as far away as France and Italy since he went into custody Sept. 13.

Olejnik, arrested in 2007 and 2008 at the ports of Olympia and Tacoma for trying to blockade war equipment bound for Iraq, said federal prosecutors who questioned her seemed to be trying to identify networks, not crimes.

"They weren't trying to figure out from me who did a certain thing. They wanted to know who knew who, who was connected to who," said Olejnik, who has been held since Sept. 27. "They're asking us who believes in things."

Emily Langlie, a spokeswoman for the U.S. attorney's office in Seattle, which is coordinating the grand jury probe, said the order to incarcerate the three was merely an attempt, under civil contempt

proceedings, to compel them to answer questions they are required by law to answer.

"It's not punitive," she said. "It's coercive."

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[Anarchist probe: Jailed activists say they won't talk to feds](#)

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**latimes.com**

## Anarchist probe: Jailed activists say they won't talk to feds

By Kim Murphy

10:15 PM PDT, October 19, 2012

SEATTLE—The federal detention center near Seattle-Tacoma International Airport is usually home to suspected bank robbers and drug dealers awaiting trial, or perhaps illegal immigrants fighting deportation. These days, though, it's taken on an air of political intrigue, as three activists who've refused to testify before a federal grand jury engage in an extended war of nerves with authorities.

The federal probe, detailed in an [examination of the case in the Los Angeles Times](#), is looking at the activities of anarchists in the Pacific Northwest and damage to a federal appeals courthouse during May Day protests in Seattle on May 1.

It has apparently become a hot topic of discussion at the detention center, where Matthew Duran, 24, a computer technician and self-described anarchist from Olympia, Wash., has been jailed since a federal judge found him in contempt for refusing to answer questions posed to him by a federal prosecutor.

"They took me down to...my unit, which is the general population area," Duran recalled in a recent interview at the detention center. "I get in there and people ran up to me and they're like, 'What's your race? Who do you roll with?' And I'm like, 'I'm not in a gang. I'm Chicano.' 'What are you here for?' 'I'm here for not snitching on people.' They're like, 'That's ... awesome.'

"In like five minutes they came back with this grocery bag full of food and toiletries, and they're like, 'Here, we take care of our own.'"

Duran, who grew up in Southern California, was an activist on migrant workers rights issues before moving to Olympia a few years ago. He said inmates watched the first presidential debate together. They then fell into conversation about why Duran considered himself an anarchist — what was an anarchist, they wanted to know? — and why he had elected to defy a federal judge's order to tell a grand jury what he knew?

"They asked me, 'Where do you stand on the spectrum?' I said, 'Very far left, without capitalism, without state or federal government. I think people ought to be able to organize on their own and still be accountable to their community, and to their society,'" Duran said.

"Well, there's not a lot of cool politics up there," he said, referring to his jail unit. "It definitely got

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people riled up. The guy I was talking to was a libertarian who believes the fundamentals of capitalism are absolutely necessary to keep society going. Well, to maintain the status quo, I said, I guess that is technically true.”

Duran and one of his fellow activist inmates, Olympia bartender Katherine Olejnik, wore jailhouse khakis and spoke separately in a small attorney interview room as a guard waited outside.

They seemed relaxed and cheerful, mindful that they had become celebrities in activist circles that have spread their photos across the Internet. Supporters have characterized the probe as a witch hunt aimed at quashing the radical fringes of the Occupy movement.

“I do want to protect my friends and comrades from whatever I may or may not know,” Duran said. “But this is a tool from the McCarthy era, like the House Un-American Activities Committee. ‘Are you or are you not an anarchist, did you ever subscribe to this publication, have you ever been to a political meeting?’ That type of thing. It seems like it was taken right out of the ‘50s or ‘60s. But I guess it’s more along the lines of, it never went away.”

Duran’s attorney, Kimberly Gordon, said a federal appeals court on Friday rejected her motion appealing Duran’s detention, though she has argued that it amounts to an unconstitutional fishing expedition through citizens’ political activities under the guise of probing crimes of vandalism.

Duran, Olejnik and Leah-Lynn Plante all have been offered immunity from prosecution — meaning they could not assert their Fifth Amendment right against self-incrimination in refusing to testify. Federal authorities have made it clear that no one has the right to hide evidence of a crime — and damage to the federal courthouse that day and to surrounding businesses such as Niketown ran into the tens of thousands of dollars, at least.

“Matt really had no idea what they were going to ask him when he walked in there, but he was pretty resolved at that point that he did not want to be used by the government as a tool to prosecute or punish other people without his permission,” Gordon said. “He was more interested in making sure he was not used in that way than he was in keeping himself out of custody.”

Olejnik, 23, Duran’s roommate in Olympia, is studying for the law school admission test while waiting out her own indefinite period in custody. She said she is determined not to offer information about fellow activists and her own political associations, even if she has to sit at SeaTac through the end of the current grand jury’s 18-month term.

“I think it’s going to be fine,” she said. “Me and Matt are probably going to have to give up our house. But our friends are amazing. They’re going to pack up our house for us, people are raising money for a storage unit for us, they’re taking care of our cat, calling our parents, calling our employers, making sure we get mail and books.”

Duran is hoping his job at the computer company in Olympia will be waiting for him whenever he is released.

“I talked to my boss, the CEO, and they’re like, ‘Wow, we never had a case like this. But you’re a good kid, you’re smart, we invested like a year’s training and we want you back, as long as you don’t get criminal charges or anything.’”

So the wait goes on.



“I really don’t see it ending any other way,” Duran said. “I know I’m not going to talk.”

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# The Seattle Times

Winner of a 2012 Pulitzer Prize

## Local News

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### **Affidavit: Feds trailed Portland anarchists, link them to Seattle's May Day**

A federal affidavit says members of the FBI's Joint Terrorism Task Force tracked Portland anarchists to Seattle where they joined the May Day protest and allegedly attacked the federal courthouse.

By Maureen O'Hagan and Mike Carter

Seattle Times staff reporters

A grand-jury investigation. Five search warrants. Surveillance in two states and a review of hundreds of hours of videotape and photos. Not to mention the three witnesses jailed for refusing to testify.

That's the running toll so far in law enforcement's efforts to bring the weight of the federal criminal-justice system — including possible prison terms — on a group of black-clad vandals suspected of damaging a federal building in May in Seattle, according to a search-warrant affidavit.

The Oct. 3 affidavit, signed by a member of the FBI's Joint Terrorism Task Force, reveals the federal government began tracking a small group of dedicated anarchists in Portland in April. Agents followed members of the group as they first drove to Olympia in a rental car on April 30.

The crimes they are suspected of committing include conspiracy, destruction of government property and interstate travel with intent to riot, according to the 34-page document.

Authorities believe the anarchists were among about a dozen black-clad protesters who attacked the William Kenzo Nakamura U.S. Courthouse during the May Day protest, surging at the building with sticks, spray paint and at least one burning object, according to law enforcement.

The search warrant, which was mistakenly unsealed in U.S. District Court in Seattle on Thursday then quickly resealed, identifies six suspects, but none has been charged.

To Neil Fox, a criminal-defense lawyer who is president of the Seattle chapter of the National Lawyers Guild, the investigation is about much more than catching six vandals. He believes the damage to the courthouse is merely a "jurisdictional hook" to allow the feds to go after anarchists.

"I think there's a lot of bad feelings between law enforcement and the anarchists and they're using this as a tool in this longstanding battle," Fox said.

Emily Langlie, a spokeswoman for the U.S. Attorney's Office, declined to characterize the investigation.

May Day began with peaceful demonstrations in downtown Seattle, but shortly before noon a swarm of protesters, dressed all in black, massed together and began striking out. They targeted

Nike and banks; they slashed tires and broke windows and sprayed anti-capitalist graffiti as some made their way to the Nakamura courthouse. Afterward, members of the so-called "black bloc" protesters shed their dark clothing and blended into the crowd.

The search warrant says the courthouse building, on Spring Street and Sixth Avenue, sustained tens of thousands of dollars in damage, but the U.S. Attorney's Office could not provide a specific dollar amount. Destruction of government property in excess of \$1,000 is punishable by up to 10 years imprisonment.

Seattle police focused their investigation into incidents unrelated to the courthouse damage and arrested eight people. Charges were dropped in all but three cases. Those three all pleaded guilty; two are serving suspended sentences and one spent about two months in jail.

Meanwhile, the FBI set out to find those responsible for the courthouse damage. Agents reported spending long hours reviewing surveillance-camera footage, news video and still photos of the crowd that day, trying to identify suspects based on clues: the white strip around one suspect's waist, the "fringe" of a shirt, the shape of a backpack.

What the warrant makes clear is that state and federal agents were watching some members of the small group of Portland anarchists even before May Day. The affidavit says they were tracking members as early as April 9, when they and others were "all observed by FBI surveillance at an event" in Portland that day changing out of black clothing.

Three weeks later, agents watched the anarchists as they headed up for the protest, spending the night in Olympia.

The investigation picked up speed after the Portland Police Bureau conducted a search May 3 of a known anarchist "squat" — crash pad — where they recovered "distinctive clothing" from some of the alleged conspirators that was observed being worn by members of the black bloc protesters in Seattle.

That led to a trio of FBI searches July 25 in Portland — two homes and a storage shed — where they recovered clothing, phones and laptop computers, according to the federal affidavit temporarily unsealed last week.

"Although many anarchists are law abiding, there is a history in the Pacific Northwest of some anarchists participating in property destruction and other criminal activity in support of their philosophy," the affidavit states.

An additional search warrant related to the May Day protests was executed in July targeting an address in South Seattle.

Among the items seized in the searches were clothing and backpacks that match some of the six suspects' May Day attire. Authorities also seized five cellphones, six digital storage devices, two iPods and one camera. The unsealed affidavit reveals the FBI obtained a warrant to search the contents of those devices.

They've had a chance to examine several cellphones, the affidavit reveals. The affidavit cites text messages sent among some suspects discussing plans for the protest, and recapping their days afterward.

"We are all OK," a May 1 text about the protest from one activist reads. "It was awesome."

While the warrants were being executed, prosecutors also were bringing witnesses before a federal grand jury. Three witnesses wound up being held in civil contempt for refusing to testify, though one, Leah Lynn Plante of Portland, was released on Wednesday after a week. Her lawyer declined to comment and she did not return a phone message.

Grand-jury proceedings are secret, and Langlie, the U.S. Attorney's Office spokeswoman, declined to comment on specifics.

Katherine Olejnik, a 23-year-old recent Evergreen College graduate living in Olympia, was among those jailed. Her father said his daughter has been an activist in social-justice causes since her youth. She is not suspected in the courthouse vandalism, court papers say. She was called in to testify Sept. 27 about someone she knows, according to her lawyer.

Even after Olejnik was given full immunity from prosecution by the judge, she declined to testify. U.S. District Court Judge Richard A. Jones said he had no choice but to send her to jail for up to 18 months, or until she changes her mind.

"What (prosecutors) decided to do is choose people and punish them for their association," said her attorney, Jenn Kaplan.

The U.S. Attorney's Office issued a general statement Sept. 13 about grand-jury proceedings, noting, "We do not investigate or seek to silence lawful free speech, or dissent. We do, however, investigate and enforce the law where speech crosses the line and becomes threats or acts of violence."

Matthew Duran, a roommate of Olejnik's who works in computer security, was jailed for civil contempt Sept. 13 after he, too, refused to testify before the grand jury. A longtime social-justice activist, he describes himself as an anarchist, according to his attorney, Kim Gordon. He is not suspected in the courthouse vandalism.

"One of our concerns was they were really targeting him because they perceived him to be associated with the anarchist community," Gordon said. "It's kind of a fishing expedition."

Appeals of Olejnik's and Duran's case are pending.

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*News researcher Miyoko Wolf contributed to this report.*

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September 27, 2011

## Even Those Cleared of Crimes Can Stay on F.B.I.'s Watch List

By CHARLIE SAVAGE

WASHINGTON — The Federal Bureau of Investigation is permitted to include people on the government's terrorist watch list even if they have been acquitted of terrorism-related offenses or the charges are dropped, according to newly released documents.

The files, released by the F.B.I. under the Freedom of Information Act, disclose how the police are instructed to react if they encounter a person on the list. They lay out, for the first time in public view, the legal standard that national security officials must meet in order to add a name to the list. And they shed new light on how names are vetted for possible removal from the list.

Inclusion on the watch list can keep terrorism suspects off planes, block noncitizens from entering the country and subject people to delays and greater scrutiny at airports, border crossings and traffic stops.

The database now has about 420,000 names, including about 8,000 Americans, according to the statistics released in connection with the 10th anniversary of the Sept. 11 attacks. About 16,000 people, including about 500 Americans, are barred from flying.

Timothy J. Healy, the director of the F.B.I.'s Terrorist Screening Center, which vets requests to add or remove names from the list, said the documents showed that the government was balancing civil liberties with a careful, multilayered process for vetting who goes on it — and for making sure that names that no longer need to be on it came off.

"There has been a lot of criticism about the watch list," claiming that it is "haphazard," he said. "But what this illustrates is that there is a very detailed process that the F.B.I. follows in terms of nominations of watch-listed people."

Still, some of the procedures drew fire from civil liberties advocates, including the Electronic Privacy Information Center, which made the original request and provided the documents to The New York Times.

The 91 pages of newly disclosed files include a December 2010 guidance memorandum to F.B.I. field offices showing that even a not-guilty verdict may not always be enough to get someone off the list, if agents maintain they still have "reasonable suspicion" that the person might have ties to terrorism.

"If an individual is acquitted or charges are dismissed for a crime related to terrorism, the individual must still meet the reasonable suspicion standard in order to remain on, or be subsequently nominated to, the terrorist watch list," the once-classified memorandum says.

Ginger McCall, a counsel at the Electronic Privacy Information Center, said: "In the United States, you are supposed to be assumed innocent. But on the watch list, you may be assumed guilty, even after the court dismisses your case."

But Stewart Baker, a former Homeland Security official in the Bush administration, argued that even if the intelligence about someone's possible terrorism ties fell short of the courtroom standard of "beyond a reasonable doubt," it could still be appropriate to keep the person on the watch list as having attracted suspicion.

Mr. Baker noted that being subjected to extra questioning — or even kept off flights — was different than going to prison.

The guidance memo to F.B.I. field offices says someone may be deemed a "known or suspected terrorist" if officials have "particularized derogatory information" to support their suspicions.

That standard may be met by an allegation that the suspect has terrorism ties if the claim is corroborated by at least one other source, it said, but "mere guesses or 'hunches' are not enough."

Normally, it says, if agents close the investigation without charges, they should remove the subject's name — as they should also normally do in the case of an acquittal. But for exceptions, the F.B.I. maintains a special file for people whose names it is keeping in the database because it has decided they pose a national security risk even they are not the subject any active investigation.

The F.B.I.'s Terrorist Screening Center shares the data with other federal agencies for screening aircraft passengers, people who are crossing the border and people who apply for visas. The data is also used by local police officers to check names during traffic stops.

The December memorandum lays out procedures for police officers to follow when they encounter people who are listed. For example, officers are never to tell the suspects that they might be on the watch list, and they must immediately call the federal government for instructions.

In addition, it says, police officers and border agents are to treat suspects differently based on which "handling codes" are in the system.

Some people, with outstanding warrants, are to be arrested; others are to be questioned while officers check with the Department of Homeland Security to see whether it has or will issue a "detainer" request; and others should be allowed to proceed without delay.

The documents show that the F.B.I. is developing a system to automatically notify regional "fusion centers," where law enforcement agencies share information, if officers nearby have encountered someone on the list. The bureau also requires F.B.I. supervisors to sign off before an advisory would warn the police that a subject is "armed and dangerous" or has "violent tendencies."

The F.B.I. procedures encourage agents to renominate suspects for the watch list even if they were already put on it by another agency — meaning multiple agencies would have to be involved in any attempt to later remove that person.

The procedures offer no way for people who are on the watch list to be notified of that fact or given an opportunity to see and challenge the specific allegations against them.

Chris Calabrese, a counsel with the American Civil Liberties Union, called the watch list system a "Star Chamber" — "a secret determination, that you have no input into, that you are a terrorist. Once that determination is made, it can ripple through your entire life and you have no way to challenge it."

But Mr. Healy said the government could not reveal who was on the list, or why, because that would risk revealing intelligence sources. He also defended the idea of the watch list, saying the government would be blamed if, after a terrorist attack, it turned out the perpetrator had attracted the suspicions of one agency but it had not warned other agencies to scrutinize the person.

Mr. Healy also suggested that fears of the watch list were exaggerated, in part because there are many other reasons that people are subjected to extra screening at airports. He said more than 200,000 people have complained to the Department of Homeland Security about their belief that they were wrongly on the list, but fewer than 1 percent of them were actually on it.

## The New York Times

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August 2, 2009

# Army Looking Into Monitoring of Protest Groups

By WILLIAM YARDLEY

SEATTLE — The Army says it has opened an inquiry into a claim that one of its employees spent more than two years infiltrating antiwar groups active near one of the nation's largest military bases. The groups say the employee infiltrated their activities under an assumed name and gained access to their plans as well as names and e-mail addresses of some members.

The man, John J. Towery, a civilian employee at Fort Lewis, south of Tacoma, Wash., works as a criminal intelligence analyst for the post's Force Protection Division, say officials at Fort Lewis, the nation's third largest Army post.

The Army would not disclose the nature of the investigation or address the claim that Mr. Towery had shared information about civilians. It said Mr. Towery was not available for an interview.

"Mr. John Towery performs sensitive work within the installation law enforcement community, and it would not be appropriate for him to discuss his duties with the media," the Army said in written statement. "Fort Lewis is aware of the claim with regard to Mr. Towery. To ensure all regulatory guidelines were followed, the command has decided that an inquiry is prudent, and an officer is being appointed to conduct the inquiry."

Brendan Maslauskas Dunn said he met Mr. Towery in spring 2007, when Mr. Maslauskas Dunn became involved with Port Militarization Resistance, a group that has frequently tried to disrupt military shipments in Olympia, Tacoma and other ports nearby. Mr. Maslauskas Dunn, who was also active in at least one other group, Students for a Democratic Society, said Mr. Towery had identified himself as John Jacob, using his middle name as his last. He said he worked as a civilian at Fort Lewis doing computer support, Mr. Maslauskas Dunn said.

Mr. Towery, he said, frequently attended protests but had not been among those who agreed in advance that they would be willing to be arrested. He said Mr. Towery had often worked as a "watcher" who tracked law enforcement at the protests.

At one point early on, Mr. Maslauskas Dunn said, Mr. Towery brought at least one of his children to an event. He said Mr. Towery often spent time at a meeting place for anarchists in Tacoma.

Mr. Maslauskas Dunn and another member of the group, Drew Hendricks, said that Mr. Towery had been among a handful of people who ran e-mail lists for some of the groups and that this had given him access to names and e-mail addresses.

Mr. Maslauskas Dunn said Mr. Towery would sometimes call group members while he was at work at Fort

Lewis and provide information about the movements of some units and equipment.

“A lot of information he did give us was easily accessible online,” Mr. Maslauskas Dunn said. “You just had to do a little research.”

Mr. Hendricks said he and other group members did not accept classified information if it was offered by people in the military. Mr. Hendricks, who said he lived in Olympia and repaired printers for a living, said Mr. Towery had drawn his suspicion more than once in the past, including after he posted inaccurate information about a military movement on an activist Web site.

Yet he and Mr. Maslauskas Dunn, who said he worked as a janitor at a lumber mill in Shelton, Wash., said Mr. Towery’s identity was inadvertently discovered after a public records request made with the City of Olympia. The request yielded an e-mail message Mr. Towery had sent to another person with a military address relating to the protesters’ activities.

That led Mr. Hendricks and other group members to try to determine who Mr. Towery was. After they learned it was the man they had known as Mr. Jacob, they discussed it at City Council meeting in Olympia last week and posted the information on a Web site.

Mr. Maslauskas Dunn said that in a meeting last week, Mr. Towery told him and another group member that he was not reporting information to Fort Lewis and that he genuinely wanted to join “the peace movement” but was under pressure to share some information about protesters with local law enforcement authorities. “What he said is that the world isn’t just in black and white, that there are areas of gray and that it’s in those areas of gray that he lives his life,” Mr. Maslauskas Dunn said.

He said Mr. Towery told them that the Army had reassigned him, at least temporarily, and that he was being investigated “for espionage.” Mr. Maslauskas Dunn and Mr. Hendricks said they were skeptical of suggestions that Mr. Towery might have infiltrated the group purely on his own, as a so-called renegade without Army approval.

Stephen Dycus, a professor at Vermont Law School who focuses on national security issues, said the Army was prohibited from conducting law enforcement among civilians except in very rare circumstances, none of which immediately appeared to be relevant to the Fort Lewis case. Mr. Dycus said several statutes and rules also prohibited the Army from conducting covert surveillance of civilian groups for intelligence purposes.

“Infiltration is a really big deal,” he said. He said it “raises fundamental questions about the role of the military in American society.”

Catherine Caruso, a spokeswoman for Fort Lewis, said in a written statement that “the Fort Lewis Force Protection Division, under the Directorate of Emergency Services, consists of both military and civilian employees whose focus is on supporting law enforcement and security operations to ensure the safety and security of Fort Lewis, soldiers, family members, the work force and those personnel accessing the installation.”



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## **EXHIBIT I**



# New ACLU Report And Web Hub Reveal Rise In Political Spying Across United States

June 29, 2010

## Review Finds Incidents In At Least 33 States

FOR IMMEDIATE RELEASE

CONTACT: (202) 675-2312 or [media@dcaclu.org](mailto:media@dcaclu.org)

WASHINGTON – Political surveillance and harassment by U.S. law enforcement agencies are on the rise with incidents reported in at least 33 states since 9/11, according to a review published today by the American Civil Liberties Union. The ACLU also announced the launch of a new “Spyfiles” web hub on domestic political surveillance, which will serve as a comprehensive resource on domestic spying.

Political spying – rampant during the Cold War under the FBI’s COINTELPRO, the CIA’s Operation Chaos and other programs – has experienced a steady resurgence in the years following 9/11 as state and local law enforcement are being urged by federal law enforcement agencies to participate in counterterrorism practices.

“In our country, under our Constitution, the authorities aren’t allowed to spy on you unless they have specific and individual suspicion that you are doing something illegal,” said Michael German, ACLU Policy Counsel and former FBI Special Agent. “Unfortunately, law enforcement in our country seems to be reverting to certain old, bad behaviors when it comes to political surveillance. Our review of these practices has found that Americans have been put under surveillance or harassed by the police just for deciding to organize, march, protest, espouse unusual viewpoints and engage in normal, innocuous behaviors such as writing notes or taking photographs in public.”

The ACLU released its report of 111 incidents in 33 states and the District of Columbia in conjunction with the launch of its new “Spyfiles” web hub on domestic political surveillance, which will serve as a major new resource on domestic spying for the benefit of reporters, researchers, bloggers and any other interested members of the public. It will include a database of documents obtained through state and federal open-records requests as well as links to news reports and other relevant materials.

“In a democracy, there is no place for political spying or surveillance or the collection of information about routine daily activities of citizens by government,” said German. “The ACLU has been warning against domestic political spying for several years now. From our lawsuits against Defense Department spying in the middle of the past decade, to our work on fusion centers, to our ongoing close cooperation with our affiliates in states across the nation to monitor and combat these activities, the ACLU is determined to prevent the emergence of a domestic secret police apparatus in this country.”

United States law enforcement agencies, from the FBI to local police, have a long history of spying on American citizens and infiltrating or otherwise obstructing political activist groups.

“We are determined to prevent the emergence of a domestic secret police apparatus in this country,” said German. “Yet, as the ACLU’s report shows, these activities continue to take place with a regularity that shows there are systemic problems at work that must be monitored closely.”

The ACLU’s review of domestic surveillance incidents can be found at: [www.aclu.org/free-speech-national-security](http://www.aclu.org/free-speech-national-security)

[/policing-free-speech-police-surveillance-and-obstruction-first-amendme](#)

The ACLU's Spyfiles page can be found at: [www.aclu.org/spyfiles](http://www.aclu.org/spyfiles)

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Published on *American Civil Liberties Union* (<http://www.aclu.org>)

**Source URL:** <http://www.aclu.org/free-speech-national-security/new-aclu-report-and-web-hub-reveal-rise-political-spying-across-united>

# **POLICING FREE SPEECH:**

## ***Police Surveillance and Obstruction of First Amendment-Protected Activity***

**An ACLU Survey of Reported Incidents  
August 11, 2010**

United States law enforcement agencies, from the FBI to local police, have a long history of spying on American citizens and infiltrating or otherwise obstructing political activist groups. Political spying was rampant during the Cold War under the FBI's COINTELPRO, the CIA's Operation Chaos, and other program.

Unfortunately, it appears that these old tendencies have once again come to the fore. Law enforcement agencies across America continue to monitor and harass groups and individuals for doing little more than peacefully exercising their First Amendment rights.

A thorough search and review of news accounts by the ACLU reveals that these law enforcement behaviors have taken place in at least 33 states plus the District of Columbia in recent years. Americans have been put under surveillance or harassed by the police just for deciding to organize, march, protest, espouse unusual viewpoints, and engage in normal, innocuous behaviors such as writing notes or taking photographs in public.

For example, in the past year, at least four troubling Fusion Center reports have come to light:

- The Virginia Fusion Center's Homegrown Terrorism Document: <http://www.infowars.com/media/vafusioncenterterrorassessment.pdf>
- The Texas Fusion Center's Prevention Awareness Bulletin: [http://www.privacylives.com/wp-content/uploads/2009/03/texasfusion\\_021909.pdf](http://www.privacylives.com/wp-content/uploads/2009/03/texasfusion_021909.pdf)
- The Missouri Fusion Center's Document on the Modern Militia Movement: [http://www.privacylives.com/wp-content/uploads/2009/03/miacreport\\_022009.pdf](http://www.privacylives.com/wp-content/uploads/2009/03/miacreport_022009.pdf)
- The Massachusetts Fusion Center's "Commonwealth Fusion Center's Standard Operating Procedures" (not available online)

The following is a state-by-state compilation of examples of these behaviors in recent years.

States where incidents of political spying were found in ACLU review



### Alaska

- *Military Intelligence Spied on Alaskans for Peace.* According to an Electronic Frontier Foundation FOIA, military intelligence spied on the anti-war group Alaskans for Peace and Justice in 2005. Tags: DOD (<http://rawstory.com/2010/02/military-spied-planned-parenthood-civilian-phone-calls/>)

### Arizona

- *Student Arrested for Advertising Protest.* University of Arizona Police Department's arrested a 24-year-old graduate student for using sidewalk chalk to advertise a protest. Individuals involved with the incident believe that the anonymous faculty member who reported the chalk probably had a problem with the content, not the medium, of the message. Tags: State and Local Police (<http://wildcat.arizona.edu/news/outrage-at-arrest-intensifies-1.556708>)

### California

- *FBI Infiltration of Islamic Center.* An FBI agent testified in court in 2009 that an informant had been planted at an Islamic Center in Irvine, California. Surveillance has prompted some Muslims to avoid mosques and cut charitable contributions out of fear of being questioned or branded as 'extremists.' Tags: FBI ([http://www.usatoday.com/news/religion/2009-04-21-muslim-surveillance\\_N.htm](http://www.usatoday.com/news/religion/2009-04-21-muslim-surveillance_N.htm) and <http://www.presstv.ir/detail.aspx?id=87254&sectionid=3510203>)
- *Los Angeles Police Department Reporting Policy.* LAPD Special Order #11, dated March 5, 2008 includes a list of 65 behaviors LAPD officers "shall" report. The list includes such innocuous, clearly subjective, and First Amendment-protected activities as, taking measurements, using binoculars, taking pictures or video footage "with no apparent esthetic value," drawing diagrams, taking notes, and espousing extremist views. Tags: State and Local Police ([http://www.aclu.org/pdfs/privacy/fusion\\_update\\_20080729.pdf](http://www.aclu.org/pdfs/privacy/fusion_update_20080729.pdf))
- *California Office of Homeland Security Reports on Peaceful Protests.* In 2006, the LA Times gained access to California Office of Homeland Security reports detailing information about political demonstrations throughout California including an animal rights rally outside a Canadian consulate office in San Francisco to protest the hunting of seals, a demonstration in Walnut Creek at which government officials spoke against the war in Iraq, and a Women's

International League for Peace and Freedom gathering at a courthouse in support of a 56-year-old Salinas woman facing federal trespassing charges. Tags: State and Local Police  
([http://www.aclu.org/pdfs/privacy/fusion\\_update\\_20080729.pdf](http://www.aclu.org/pdfs/privacy/fusion_update_20080729.pdf))

- *Santa Cruz Police Infiltration of DIY New Year's Parade.* When the city of Santa Cruz decided to cancel their annual "First Night" New Year's Parade, community activists decided to create their own parade, the Do It Yourself (DIY) New Year's Parade. Police found out about parade plans in late October 2005 and decided to spy on the group by infiltrating their parade planning meetings. Police Chief Howard Skerry promised a complete investigation but tapped Deputy Chief Vogel—the very person who authorized the infiltration—to determine whether the authorization was appropriate. Not surprisingly, Vogel's report cleared the Santa Cruz Police Department of any wrongdoing. Tags: State and Local Police  
([http://www.aclu.org/pdfs/privacy/fusion\\_update\\_20080729.pdf](http://www.aclu.org/pdfs/privacy/fusion_update_20080729.pdf))
- *California National Guard Monitoring of Mothers' Day Peaceful Protest.* On May 5, 2005, a member of Gov. Arnold Schwarzenegger's press office, informed California National Guard officials that members of CODEPINK, Gold Star Families for Peace, and others were planning to "mark Mother's Day urging the Governor and Legislature to support bringing California National Guardsmen home from Iraq by Labor Day. The information was then forwarded up the chain of command and National Guard intelligence staff was asked to monitor the event. Tags: National Guard, Fusion Centers ([http://www.aclu.org/pdfs/privacy/fusion\\_update\\_20080729.pdf](http://www.aclu.org/pdfs/privacy/fusion_update_20080729.pdf))
- *Military Monitors Campus Anti-Recruiting Protests.* Two Department of Defense (DOD) Threat and Local Observation Notices (TALON) from April 2005 describe anti-recruiting protests by students at the University of California campuses of Berkeley and Santa Cruz. The source for both TALON reports, a "special agent of the federal protective service, U.S. Department of Homeland Security," relayed protest information he received through email alerts. Tags: DOD, FBI, FPS ([http://www.aclu.org/pdfs/privacy/fusion\\_update\\_20080729.pdf](http://www.aclu.org/pdfs/privacy/fusion_update_20080729.pdf))
- *Undercover Campus and County Sheriffs Attend Cal State Fresno Lecture on Veganism.* On November 10, 2004, the California State Fresno student group Campus Peace and Civil Liberties Coalition (CPCLC) hosted an on-campus lecture by a speaker formerly employed by People for the Ethical Treatment of Animals (PETA). The lecturer addressed approximately 60 people about the benefits of a vegan diet. Six of those 60 attendees were undercover police officers—three from the county sheriff's department and three from the campus police department. Tags: State and local Police ([http://www.aclu.org/pdfs/privacy/fusion\\_update\\_20080729.pdf](http://www.aclu.org/pdfs/privacy/fusion_update_20080729.pdf))
- *Military Monitors Peaceful Anti-War Protest.* A November 2004 Department of Defense (DOD) Threat and Local Observation Notice (TALON) report addressed a "protest against the Iraq war . . . planned by a Sacramento chapter of a U.S. domestic group at the Sacramento Military Entrance Processing Station." The San Francisco Joint Terrorism Taskforce (JTTF) had advised commanders of the San Francisco and San Jose stations of the protests, and notes that "it appears this protest will most likely be peaceful, but some type of vandalism is always a possibility." Tags: State and Local Police, DOD, FBI, JTTF  
(<http://www.aclu.org/safefree/spyfiles/27988pub20070117.html>)
- *The Military Monitors Veterans for Peace Veterans' Day Protest.* The Sacramento Chapter of Veterans for Peace (VFP)'s 2004 Veteran's Day protest at the Sacramento Military Entrance Processing Station landed them as the first entry on a published Department of Defense (DOD) Threat and Local Observation Notices (TALON) extract. Tags: DOD  
(<http://www.aclu.org/safefree/general/24272res20060227.html>)
- *Costa County Sheriff's Homeland Security Unit Officers Infiltrate Union Demonstration.* When Southern California Safeway store workers went on strike in 2003–2004, a delegation of

religious leaders planned a pilgrimage to the Safeway CEO's home to deliver postcards supporting the striking workers. Sheriff's deputies from Contra Costa County Sheriff's Homeland Security Unit went to the United Food and Commercial Workers Union (UFCW), and staff directed them to a contact number on a flyer. Despite the fact that the sheriff's department had been in contact with the pilgrimage organizers—union leaders saw the same sheriff's deputies in plainclothes attending a demonstration at a Safeway store in San Francisco.

Tags: State and Local Police

[http://www.aclunc.org/issues/government\\_surveillance/asset\\_upload\\_file714\\_3255.pdf](http://www.aclunc.org/issues/government_surveillance/asset_upload_file714_3255.pdf)

- *Fresno County Sheriff's Office Infiltrates Peace Fresno.* An undercover Fresno County Sheriff's deputy infiltrated a non-violent activist group, Peace Fresno, attending meetings and rallies, taking minutes for the group on one occasion and traveling to a demonstration in Sacramento. A Peace Fresno member learned of the infiltration when an obituary in the *Fresno Bee* revealed the deputy's true identity and identified him as a member of the Fresno County Sheriff's Department's "anti-terrorist team." Tags: State and Local Police  
[http://www.aclunc.org/issues/government\\_surveillance/asset\\_upload\\_file714\\_3255.pdf](http://www.aclunc.org/issues/government_surveillance/asset_upload_file714_3255.pdf)
- *California Anti-Terrorism Information Center Bulletin on Anti-War Protest.* On April 7, 2003, the California Anti-Terrorism Information Center (CATIC) issued a bulletin warning of violence by demonstrators at an anti-war demonstration at the Port of Oakland. Police responded in an excessive manner, firing wooden dowels at protesters and injuring over 50 people. The public disclosure of that bulletin, a significant follow-up investigation by the Oakland Tribune, and advocacy by the ACLU led Attorney General Bill Lockyer to commission a review of the agency. Tags: State and Local Police  
[http://www.aclunc.org/issues/government\\_surveillance/asset\\_upload\\_file714\\_3255.pdf](http://www.aclunc.org/issues/government_surveillance/asset_upload_file714_3255.pdf)
- *Oakland Police Department Infiltrates Anti-Police Brutality Demonstration Planning Committee.* On May 12, 2003, activists returned to the Port of Oakland for a demonstration against the police response to the April 7 protest. Documents obtained by the ACLU of Northern California during litigation over the original April 7 incident revealed that two undercover Oakland police officers infiltrated the protest planning group and selected "the route of the march." Tags: State and Local Police  
[http://www.aclunc.org/issues/government\\_surveillance/asset\\_upload\\_file714\\_3255.pdf](http://www.aclunc.org/issues/government_surveillance/asset_upload_file714_3255.pdf)
- *Sacramento Police Department Videotapes Peaceful Protestors.* On February 15, 2003, peace and justice organizations held a demonstration in Sacramento to protest the then-impending war in Iraq. Approximately 10,000 people attended the peaceful demonstration. The Sacramento Police Department provided security for the event. They also sent a police department employee to videotape the demonstration. Sacramento Police confirmed that taping of the protest was at least partially intended to modify protesters' behavior. Tags: State and Local Police, Fusion Centers  
[http://www.aclunc.org/issues/government\\_surveillance/asset\\_upload\\_file714\\_3255.pdf](http://www.aclunc.org/issues/government_surveillance/asset_upload_file714_3255.pdf)
- *California Anti-Terrorism Information Center (CATIC)/JTTF Information Sharing on about a Rally at Lawrence Livermore National Laboratory.* On November 8, 2002, CATIC issued a "Law Enforcement Advisory" about a "rally" at Lawrence Livermore National Laboratory. Despite the innocuous nature of the demonstration, the bulletin advised law enforcement to contact either the local JTTF or CATIC's Situation Unit with "any additional information regarding this rally, potential problems occurring with this rally or information regarding any similar situations." Tags: JTTF, FBI, State and Local Police, Fusion Centers  
[http://www.aclunc.org/issues/government\\_surveillance/asset\\_upload\\_file714\\_3255.pdf](http://www.aclunc.org/issues/government_surveillance/asset_upload_file714_3255.pdf)



- *San Francisco Police Infiltrate Anti-War Protests.* During the huge protests against the war in Iraq between October 2002 and February 2003, several San Francisco police officers posed as protesters to monitor crowd activities. This infiltration of the protests by undercover officers was never authorized by the chief of police, representing a failure to follow San Francisco's Guidelines for First Amendment Activities. Tags: State and Local Police ([http://www.aclunc.org/issues/government\\_surveillance/asset\\_upload\\_file714\\_3255.pdf](http://www.aclunc.org/issues/government_surveillance/asset_upload_file714_3255.pdf))
- *Military Collects Conference Attendees' Contact Information, Including References to Arab-American Anti-Discrimination Committee.* A Department of Defense (DOD) Threat and Local Observation Notice (TALON) document obtained by the ACLU relates to a May 2002 conference held at Stanford University entitled "Third National Organizing Conference on Iraq." The document contains "a contact list" of attendees and a number of references to the American-Arab Anti-Discrimination Committee, including the organization's Washington, DC address, phone number, and email. Tags: DOD, JTTF, FBI ([http://www.aclunc.org/issues/government\\_surveillance/asset\\_upload\\_file714\\_3255.pdf](http://www.aclunc.org/issues/government_surveillance/asset_upload_file714_3255.pdf))
- *California Anti-Terrorism Information Center (CATIC) Issues Warning About Middle Eastern Festivities.* In April 2002, CATIC issued an "Anti-Terrorism, Law Enforcement Advisory," discussing "California's vulnerability to violence based on current Middle East Conflict." The bulletin listed "events involving Middle Eastern festivities," including "the Afghan New Year's Festival in Pleasanton at the Alameda County Fairgrounds" and a "march against 'War and Racism'" in San Francisco. Tags: JTTF, State and Local Police, Fusion Centers ([http://www.aclunc.org/issues/government\\_surveillance/asset\\_upload\\_file714\\_3255.pdf](http://www.aclunc.org/issues/government_surveillance/asset_upload_file714_3255.pdf))
- *California Anti-Terrorism Information Center (CATIC) Issues Bulletin on International Action Anti-War Protest.* Center On November 7, 2001, CATIC issued a bulletin with the heading "Anti-Terrorism, Terrorism Advisory for Law Enforcement Use Only, Sensitive Information." The bulletin warned of "possible war protests" and stated that "the International Action Center, an anti-war, anti-globalization, and anti-corporation protest advocacy group founded by former U.S. Attorney General Ramsey Clark, is encouraging individuals to protest the war in Afghanistan in San Francisco." Tags: State and Local Police ([http://www.aclunc.org/issues/government\\_surveillance/asset\\_upload\\_file714\\_3255.pdf](http://www.aclunc.org/issues/government_surveillance/asset_upload_file714_3255.pdf))
- *The Los Angeles County Terrorism Early Warning Center (LACTEW) officials Steal Files Pertaining to Surveillance of Muslim Groups.* A group of military reservists and law enforcement officers led by the co-founder of the Los Angeles County Terrorism Early Warning Center (LACTEW) engaged in a years-long conspiracy to steal highly classified intelligence files from the Strategic Technical Operations Center (STOC) located at the U.S. Marine Corps Base at Camp Pendleton, California and secret surveillance reports from the U.S. Northern Command headquarters in Colorado Springs, Colorado. Some of the stolen files "pertained to surveillance of Muslim communities in Southern California," including mosques in L.A. and San Diego, and revealed "a federal surveillance program targeting Muslim groups" in the United States. Tags: State and Local Police, Fusion Centers ([http://www.aclunc.org/issues/government\\_surveillance/asset\\_upload\\_file714\\_3255.pdf](http://www.aclunc.org/issues/government_surveillance/asset_upload_file714_3255.pdf))
- *Military Collects Information on Student and Community Peace Groups.* The Department of Defense (DOD) Threat and Local Observation Notice (TALON) database included information on numerous anti-war and counter-recruitment protests, including campus demonstrations by UC Santa Cruz Students Against War and the UC Berkeley Stop the War Coalition, a Sacramento protest organized by military veterans, and a San Francisco demonstration organized by local activists. The TALON database also designated the level of concern posed by the protest activity. Tags: JTTF

([http://www.aclunc.org/issues/government\\_surveillance/asset\\_upload\\_file714\\_3255.pdf](http://www.aclunc.org/issues/government_surveillance/asset_upload_file714_3255.pdf) and <http://www.aclu.org/safefree/spyfiles/24142res20060214.html>)

- *LAPD Disrupts Bicycle Protest of BP Oil Spill.* An LAPD officer, claiming to be at the intersection of Hollywood Boulevard and Highland Avenue to ticket cyclists who failed to stop at red lights, kicked at a passing bicyclist during a protest ride against BP's role in the Gulf of Mexico oil spill. Tags: State and Local Police (<http://latimesblogs.latimes.com/lanow/2010/06/bicyclist-kicked-lapd-video-bp-protest.html>)

## Colorado

- *FBI JTTF Monitors American Indian Movement, Peace Groups, and Environmental Groups.* In August 2005, the ACLU obtained the documents in response to a Freedom of Information Act (FOIA) request containing information on the Colorado American Indian Movement and the Rocky Mountain Peace and Justice Center. The files show that JTTF agents opened "domestic terrorism" investigations after they read notices on web sites announcing an antiwar protest in Colorado Springs in 2003 and a protest against Columbus Day in Denver in 2002. Tags: FBI, JTTF (<http://www.aclu.org/safefree/general/20298prs20050802.html>)
- *Law Enforcement Infiltrates Rocky Mountain Peace and Justice Center.* In 2003, Rocky Mountain Peace and Justice Center was engaged in several civil disobedience actions, along with other peace and social justice groups. On two occasions, they learned that they had been infiltrated by undercover law enforcement officers who had attended their nonviolence trainings and participated in the actions with them. (<http://www.aclu.org/safefree/general/24217res20060220.html>)
- *Federal Protective Service Shares Information on "Flying Circus" Protest.* In the summer of 2002, Denver activists planned a peaceful, several-day event billed as the "Flying Circus." On July 30, the Federal Protective Service intercepted an email containing a schedule for the event. FPS forwarded it to the intelligence unit of the Colorado Springs Police Department as well as the JTTF and the Denver FBI office. The Federal Protective Service also forwarded the same email to the Denver Police Department's Intelligence Unit. (<http://www.aclu-co.org/spyfiles/fbifiles.htm>) Tags: FPS, State and Local Police
- *Federal Protective Service Shares Information on Transform Columbus Day Event.* In August 2002, the Federal Protective Service intercepted an email containing information about the Transform Columbus Day events planned for Denver. FPS forwarded the intercepted email to the intelligence unit of the Colorado Springs Police Department as well as the JTTF and the Denver FBI office. The Federal Protective Service forwarded the same email to the Denver Police Department's Intelligence Unit. (<http://www.aclu-co.org/spyfiles/fbifiles.htm>) Tags: FPS, JTTF
- *Colorado Springs Police Records and Shares Names and License Plate Numbers of Environmental Activists.* Environmentalist and conservationist groups organized a peaceful demonstration at the North American Wholesale Lumber Association's (NAWLA) annual convention in Colorado Springs in June 2002. The Colorado Springs police provided the Denver Intelligence Unit with a two-page list of names and license plate numbers of participants in the nonviolent protest. The cover sheet indicates that the list of names and plates would be forwarded to the JTTF, who was apparently expecting the information. An FBI spokesperson admitted that the agency requested the list of plate numbers. Tags: JTTF, FBI, State and Local Police (<http://www.aclu-co.org/spyfiles/fbifiles.htm> and <http://www.aclu.org/safefree/general/24240res20060222.html>)
- *Federal Protective Services Intercepts and Shares E-mail about Palestine Rally.* An e-mail announcing a rally about Palestine at the state capitol in Denver on April 5, 2002 was

intercepted by the Federal Protective Service, which forwarded it to the Denver Police Department Intelligence Unit and the FBI. Tags: State and Local police, JTTF, FBI (<http://www.aclu-co.org/spyfiles/fbifiles.htm>)

- *Denver Intelligence Unit Keeps Binder of Activist Organizations.* A 3-ring binder maintained by the Denver Intelligence Unit contains a section labeled "Colorado and Local Links: JTTF Active Case List." The pages in that section consist of printouts made in April 2002 from the web sites of such local Colorado groups as Colorado Campaign for Middle East Peace, American Friends Service Committee, Denver Justice and Peace Committee, Rocky Mountain Independent Media Center, and the Human Bean Company. Tags: JTTF, FBI (<http://www.aclu-co.org/spyfiles/fbifiles.htm>)
- *JTTF Adds Environmental Extremists and Black Extremists to VGTOF.* In anticipation of the 2002 Olympics, the JTTF added "anarchists" and eight separate categories of "extremists" (such as "environmental extremist" and "Black extremist") to the FBI's Violent Gang and Terrorist Organization File (VGTOF). When patrol officers check the name of a driver or a suspect in the National Crime Information Center (NCIC), the VGTOF database is automatically searched, too. Tags: JTTF, FBI (Ann Davis, "Data Collection Is Up Sharply Following 9/11," *Wall Street Journal*, May 22, 2003, at B1. and <http://www.aclu-co.org/spyfiles/fbifiles.htm>)
- *Colorado University Boulder Police Department Intercepts and Shares E-mail about Fur Free Friday.* An e-mail sent to members of Rocky Mountain Animal Defense about Fur Free Friday, dated November 7, 2001, was intercepted by the Colorado University Boulder police department. CUBPD forwarded it to the Denver Police Department Intelligence Unit and the Joint Terrorism Task Force. Tags: State and Local police (<http://www.aclu-co.org/spyfiles/fbifiles.htm>)
- *Colorado University Boulder Police Department Intercepts and Shares E-mail About Aspen Event Meeting.* On July 13, 2000, an activist's email to the Direct Action Network and the Waake-up list announcing an informational meeting to discuss events that the Aspen Institute was sponsoring the following month was email was intercepted by the Colorado University Boulder police department, who quickly forwarded it to the Denver Police Department's Intelligence Unit. Tags: JTTF, State and Local police (<http://www.aclu-co.org/spyfiles/fbifiles.htm>)
- *Intelligence Bureau Information Summary Includes Information on Individual Handing Out Flyers About a Documentary Criticizing the FBI.* The Oct. 19, 1999 Intelligence Bureau Information Summary included information on an individual handing out flyers advertising a screening of a documentary that criticizes the FBI. A handwritten note indicated the report would be faxed to the JTTF. Tags: JTTF, FBI (<http://www.aclu-co.org/spyfiles/fbifiles.htm>)
- *JTTF and Denver Intelligence Unit Monitor Protest of Serbia Bombing.* In April 1999, FBI JTTF agent, joined by two members of the Denver Intelligence Unit, monitored two peaceful demonstrations protesting the NATO bombing of Serbia. Detectives followed one participant to her car three blocks away to get her license number so she could be identified. Tags: JTTF, FBI, State and Local Police (<http://www.aclu-co.org/spyfiles/fbifiles.htm>)
- *JTTF Interest in Food Not Bombs.* A memo released pursuant to an ACLU FOIA requests indicates an ongoing federal interest, through the FBI JTTF, in Food Not Bombs, a Colorado group that provides free vegetarian food to hungry people and protests war and poverty. Tags: FBI, JTTF ([http://www.aclu.org/spyfiles/idaho\\_pressrelease.pdf](http://www.aclu.org/spyfiles/idaho_pressrelease.pdf))

## Connecticut

- *Activist Arrested for Photographing Governor at Public Event.* Hartford Police arrested activist Ken Krayeske after he photographed Connecticut Governor Jodi Rell at a public event.

Connecticut State Police monitored Krayeske's blog, which was critical of the Governor, and sent local police his photograph as a potential threat to the Governor. Tags: State and Local Police (video) ([http://www.the40yearplan.com/CNN\\_on\\_Fusion\\_Centers.php](http://www.the40yearplan.com/CNN_on_Fusion_Centers.php))

- *Activist Claims State Police Engaged in Political Spying Online.* Activist Ken Krayeske alleges in court documents that State Police used phony e-mail identities to subscribe to bulletin boards and e-mail lists of political parties, such as the Green Party and the Democratic Party, and advocacy groups such as the Central Connecticut State University Progressive Student Alliance Committee. Tags: State and Local Police (<http://www.courant.com/shopping/hc-krayeske-charges-police-1220.artdec20,0,3377048.column>)

## Florida

- *Military Surveillance Gets Friends Meeting of Ft. Lauderdale listed on Government Watchlist.* During the 2004 and 2005 Air-Sea Shows, the Friends Meeting of Ft. Lauderdale distributed information about conscientious objection to recruiters and interested civilians and handed out peace literature. Peter Ackerman learned that this action had landed him on a government watchlist when, shortly after news broke about domestic surveillance by the Department of Defense, a local reporter called him and asked if he was a "credible threat". Tags: DOD (<http://www.aclu.org/safefree/general/24251res20060224.html>)
- *JTTF and US Army Recruiting Command Briefed on Anti-War Guerilla Theater.* The Broward Anti-War Coalition's protest at the Florida air and sea show was included as a Department of Defense (DOD) Threat and Local Observation Notice (TALON) database threat entry. The U.S. Army Recruiting Command and the JTTF in Miami had been briefed on the planned protest, which was intended to "counter military recruitment and the 'pro-war' message with 'guerrilla theatre.'" Tags: JTTF, FBI, DOD (<http://www.aclu.org/safefree/spyfiles/27988pub20070117.html>)
- *FBI Bulletin Warns of FTAA Protests.* On November 15, 2003, the FBI issued Intelligence Bulletin no. 94, entitled "Potential for Criminal Activity at Free Trade Area of the Americas (FTAA) Annual Meeting." It noted that the FTAA annual meeting "historically... draws large scale demonstrations, both peaceful and by those individuals or groups who wish to disrupt the meeting." The bulletin referenced a previous bulletin as providing "guidance on tactics used during protests and demonstrations" that could "assist... in preparations for the FTAA annual meeting." Tags: JTTF, FBI (Memorandum for Glenn A. Fine, Inspector General *Re: Constitutionality of Certain FBI Intelligence Bulletins*, April 5, 2004: <http://www.docstoc.com/docs/19849237/CONSTITUTIONALITY-OF-CERTAIN-FBI-INTELLIGENCE-BULLETINS>)

## Georgia

- *Federal Protective Services Shares Information about Georgia State Students for Peace and Justice Protest.* The Georgia State University Students for Peace and Justice appear in an April 2005 Department of Defense (DOD) Threat and Local Observation Notice (TALON). The source, a "special agent of the federal protective service, U.S. Department of Homeland Security," describes an email alert he received about an "Anti-Recruitment Picket." The Atlanta Police Department, the Georgia Information and Sharing Intelligence Center, and the Atlanta Recruiting Battalion were among the local organizations advised of the protests. Tags: JTTF, DOD, DHS, State and Local Police (<http://www.aclu.org/safefree/spyfiles/27988pub20070117.html>)

- *FBI Surveillance of SOA Protest.* FBI surveillance of School of the Americas (SOA) Watch's peaceful protests and acts of civil disobedience outside Fort Benning, once classified as "Routine," after 2001 became "Priority" and subject to "Counterterrorism" monitoring. Tags: FBI (<http://www.aclu.org/safefree/spying/25442prs20060504.html> and <http://www.aclu.org/safefree/spying/25436res20060504.html>)
- *Military Lists Georgia Peace & Justice Coalition as a Threat to DOD.* A Department of Defense (DOD) Threat and Local Observation Notice (TALON) report listing Atlanta-area protests organized by the Georgia Peace and Justice Coalition (GPJC) contends that the Students for Peace and Justice Network poses a threat to DOD personnel. Citing a DHS source, the TALON supports its claim by listing prior acts of civil disobedience in California and Texas, including a protest at the University of California Santa Cruz campus, a sit-in, and street theatre. Tags: JTTF, DOD, DHS(<http://www.aclu.org/safefree/spyfiles/27988pub20070117.html>)
- *Vegetarian Activist Arrested for Writing Down License Plate Number of DHS Agent Who Monitored Her Protest.* Caitlin Childs was arrested after a peaceful protest on public property outside the Honey Baked Ham store on Buford Highway in DeKalb County for taking down the license plate number of the car belonging to the DHS agent who had been photographing the protestors all day. Tags: DHS, JTTF (<http://www.aclu.org/safefree/general/24168res20060216.html>)
- *Veteran Surveilled for Participation in Recruiting Station Protest.* Debbie Clark, who was honorably discharged from the US army after eight years of active duty and who is married to a man who remains on active duty in the military, found herself under Pentagon surveillance when she participated in a protest near an Army Recruiting Station in Atlanta, GA on Ponce de Leon Avenue. Tags: DOD (<http://www.aclu.org/safefree/spyfiles/24155res20060215.html>)
- *DHS Terrorist Watch List Report on Muslim Conference.* In March 2008, DHS produced a "terrorism watch list" report about a Muslim conference in Georgia at which several Americans were scheduled to speak, even though it "did not have any evidence the conference or the speakers promoted radical extremism or terrorist activity," and such speech is constitutionally protected. Tags: DHS ([http://www.nytimes.com/2009/12/17/us/17disclose.html?\\_r=2&ref=todayspaper](http://www.nytimes.com/2009/12/17/us/17disclose.html?_r=2&ref=todayspaper)).
- *FBI Field Intelligence Group Lists Green Party as Potential Target for Eco-terrorism Investigation.* An FBI intelligence analyst wrote a 2005 memo "identifying future targets of the animal rights and environment [sic] rights movements and/or those committing crimes on behalf of the movement in the Georgia area," which listed the Green Party as a terrorist group. Tags: FBI (<http://gawker.com/5329187/fbi-agent-thinks-the-green-party-is-a-terrorist-group-with-nukes>).

#### Idaho

- *FBI Questions Idaho Progressive Student Alliance Leaders.* In May 2005, the ACLU and ACLU of Idaho filed FOIA to request information on behalf of the Idaho Progressive Student Alliance (IPSA), a non-partisan student group that focuses on social, economic, gender, and environmental justice. IPSA President Arielle Anderson and Secretary Audra Green were questioned by FBI agents in March 2004 regarding the IPSA's boycott of Taco Bell to protest the conditions of Immokalee workers in Florida. Tags: FBI ([http://www.aclu.org/spyfiles/idaho\\_pressrelease.pdf](http://www.aclu.org/spyfiles/idaho_pressrelease.pdf))

#### Illinois

- *Military Reports on American Friends Service Committee Action.* The American Friends Service Committee (AFSC) appears in a Department of Defense (DOD) Threat and Local Observation

Notice (TALON) report regarding the group's planned protests at a recruiting center in Springfield, Illinois. A "special agent of the federal protective service, U.S. Department of Homeland Security," provided information he received in an email alert from the AFSC: "[A] series of protest actions were planned in the Springfield, IL area . . . to focus on actions at military recruitment offices with the goals to include: raising awareness, education, visibility in community, visibility to recruiters as part of a national day of action focused on military recruiters." Tags: DOD, JTTF, DHS

<http://www.aclu.org/safefree/spyfiles/27988pub20070117.html>

- *JTTF Investigates Muslim Man Using Hand Counter to Track His Daily Prayers.* A Middle Eastern man in traditional clothing sparked a three-day police manhunt in Chicago when a passenger on the bus he was riding notified the police that he was clicking a hand counter during the trip. A JTTF investigation into the episode revealed he was using the counter to keep track of his daily prayers, a common Muslim practice. Tags: JTTF  
[http://www.aclu.org/pdfs/privacy/fusion\\_update\\_20080729.pdf](http://www.aclu.org/pdfs/privacy/fusion_update_20080729.pdf)

## Indiana

- *IDP Alters Peaceful Protest's Route.* In August 2003, the National Governors Association (NGA) held a meeting in Indianapolis. In preparation for the NGA meeting, the Indianapolis Police Department (IPD) Intelligence Unit created a "protest zone" outside of the hotel where the governors stayed and where many of the meetings took place. The local police soon learned that a group of demonstrators wished to walk the eight or nine blocks from St. Mary's Catholic Church to the protest zone. The demonstrators were silent and non-disruptive, yet. They were met by twenty to thirty IPD police officers riding on bikes and in cars. The IPD decided, on the spot, to develop the route that the demonstrators were required to take. Following the completion of protest activity in the protest zone, a number of the demonstrators wished to return to St. Mary's in a group as a continuation of their protest but were again escorted back by the police. Several of the protestors sued O'Connor for violating their First Amendment rights to peacefully protest by altering their route. On February 9, 2005, the U.S. District Court for the Southern District of Indiana found in favor of the protestors. Tags: State and Local Police  
<http://www.aclu.org/FilesPDFs/in%20free%20speech%20district%20court.pdf>
- *IDP Raids Solidarity Books Collective.* The IPD raided Solidarity Books Collective (SBC), a local political awareness group. Tags: State and Local Police  
<http://www.aclu.org/FilesPDFs/in%20free%20speech%20district%20court.pdf>

## Iowa

- *JTTF Delivers Grand Jury Subpoenas to Peace Activists and Drake University.* In February 2004, it came to light that four peace activists and Drake University had received federal grand jury subpoenas, which were delivered by a local JTTF officer. The U.S. Attorney's statement on the subpoenas shows that they were all related to a mid-November seminar at Drake University, led by the National Lawyers Guild, on non-violent civil disobedience. Tags: JTTF, DOJ, FBI  
<http://www.aclu.org/safefree/general/16989prs20040210.html>
- *FBI and Local Police Infiltrate Iowa Peace Groups Before Republican National Convention.* An FBI informant and a Ramsey County Minnesota Sheriff's Deputy went undercover to infiltrate Iowa City peace groups in advance of the Republican National Convention, and attended an Iowa City campus anti-war demonstration. FBI files include detailed descriptions of a dozen Iowa political activists. Tags: FBI, State and Local Police  
<http://www.commondreams.org/headline/2009/05/17-4>



## Kansas

- *Kansas Police Department Trains Rental and Maintenance Staff to Spy for Them.* One Kansas police department trains maintenance and rental staffs of apartment complexes, motels, and storage facilities to look for things like “printed terrorist materials and propaganda.” Tags: State and Local Police ([http://www.aclu.org/pdfs/privacy/fusioncenter\\_20071212.pdf](http://www.aclu.org/pdfs/privacy/fusioncenter_20071212.pdf))

## Kentucky

- *Minister Placed on FBI List for Ordering Books on Islam.* Rev. Raymond Payne, a Greenup County minister, was detained for more than an hour by Canadian border officials while trying to enter the country in fall 2004 on a sightseeing trip. Rev. Payne has never been arrested, has never been charged with a crime, and has never even participated in a protest. Border officials indicated that he was being detained because he is the subject of an FBI file. Rev. Payne believes he may have come under federal scrutiny immediately after September 11 when he ordered books over the Internet about the Islamic religion, including several copies of the Koran. He did so – at the request of his congregation – to help the church members gain a better understanding of the faith. Tags: FBI ([http://www.aclu.org/spyfiles/kentucky\\_pressrelease.pdf](http://www.aclu.org/spyfiles/kentucky_pressrelease.pdf))

## Louisiana

- *Veterans for Peace Classified as Threat to DOD Personnel.* An April 2005 Department of Defense (DOD) Threat and Local Observation Notice (TALON) points to an altercation between a soldier and an individual at a university anti-war rally in New Orleans. Despite acknowledging that “[i]t is unknown if the individuals involved in the incident are students at the local university or associated with the Veterans for Peace organization,” the report alleges that the incident demonstrates that VFP should be viewed as a possible “threat” to DOD personnel. Tags: DOD (<http://www.aclu.org/safefree/spyfiles/27988pub20070117.html>)

## Maine

- *FBI Intercepts and Stores E-mails Planning Peaceful Protests.* The FBI intercepted and stored e-mail communications pertaining to protests at the Brunswick Naval Air Show and against the christening of an Arleigh Burke Class destroyer organized by Veterans for Peace and co-sponsored by Pax Christi Maine, PeaceWorks, WILPF, Peace Action Maine, Smilin’Trees Disarmament Farm, Global Network Against Weapons & Nuclear Power in Space, Maine Coalition for Peace & Justice, Island Peace & Justice, Winthrop Area People for Peace, and Waldo County Peace & Justice. Tags: FBI (<http://www.aclu.org/safefree/spying/27177res20061025.html>)

## Maryland

- *Maryland State Police Spies on Activists.* The Maryland State Police spied on more than 30 activist groups, mostly peace groups and anti-death penalty advocates, and wrongly identified 53 individual activists and about two dozen organizations as terrorists. The Maryland State Police shared information about these cases with the Baltimore City Police Department, the Baltimore County Police Department, the Anne Arundel County Police Department, the Washington-Baltimore High Intensity Drug Trafficking Area Task Force, a local police representative of the FBI’s JTTF, a National Security Agency security official, an unnamed military intelligence officer, and DHS. DHS further disseminated e-mails from one of the peace groups. Tags: State and Local Police, FBI, JTTF, NSA (<http://www.aclu->

[md.org/Index%20content/NoSpying/NoSpying.html](http://md.org/Index%20content/NoSpying/NoSpying.html), Uniform Crime Reports, <http://www.orlandosentinel.com/news/bal-te.groups18jul18,0,4271281.story>, <http://www.baltimoresun.com/news/maryland/bal-te.md.spying01oct01,1,6958564.story> and [http://www.washingtonpost.com/wp-dyn/content/article/2009/02/16/AR2009021601131\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2009/02/16/AR2009021601131_pf.html))

- *Maryland State Police Lists Activist Groups as Security Threats.* The Maryland State Police listed the All People's Congress, American Friends Services Committee, A.N.S.W.E.R, and the Campaign to End the Death Penalty are listed in a database as "Security Threat Groups." Anti-Death Penalty information was also entered into the High Intensity Drug Trafficking Agency (HIDTA) Database, thereby linking advocacy with drug dealing, murder, and gang activity. Tags: State and Local Police (<http://www.indybay.org/newsitems/2010/08/05/18655440.php>)
- *DHS Federal Protective Service Monitors Activist Message Boards.* DHS Federal Protective Service collected and disseminated information about peaceful protests at the Silver Spring Armed Forces Recruitment Center. Patrick Elder, founder of the D.C. Anti-War Network, recognized one of his messages among those circulated. Tags: DHS ([http://www.gazette.net/stories/10022009/polinew200659\\_32527.shtml](http://www.gazette.net/stories/10022009/polinew200659_32527.shtml))

### Massachusetts

- *UMass Amherst Campus Police Joins Ant-Terrorism Taskforce.* In December 2002, a police officer at the University of Massachusetts campus at Amherst was recruited by the FBI to spend several days a week working exclusively for its Anti-Terrorism Task Force. The arrangement came to light after FBI agents, acting on the basis of information provided by the campus officer, questioned a faculty member and an organizer for a campus union. The faculty member is of Iraqi descent and the union organizer is from Sri Lanka. Tags: FBI, JTTF (<http://www.aclu.org/safefree/general/17079prs20021212.html>)
- *Undercover Harvard Police Photographs Peaceful Protestors.* A plain-clothes Harvard University detective was caught photographing people at a peaceful protest for "intelligence gathering" purposes. Protesters who then photographed the officer were arrested. HUPD officers are sworn special State Police officers often work "in conjunction with other agencies, including the Massachusetts State Police, Boston Police, Cambridge Police, Somerville Police, and many federal agencies." A university spokesman refused to say what the HUPD does with the photographs it takes for "intelligence gathering" purposes, so it is unknown whether this information was shared. Tags: State and Local Police ([http://www.aclu.org/pdfs/privacy/fusion\\_update\\_20080729.pdf](http://www.aclu.org/pdfs/privacy/fusion_update_20080729.pdf))
- *Fusion Center's Standard Operating Procedures Allow Undercover Police Monitoring of First Amendment Activities.* The ACLU of Massachusetts recently obtained a copy of the Commonwealth Fusion Center's "Standard Operating Procedures." The procedures allow undercover police officers to attend public meetings to gather intelligence even when there is no reasonable suspicion of illegal activity. Tags: Fusion Centers, State and Local Police ([http://www.aclu.org/pdfs/privacy/fusion\\_update\\_20080729.pdf](http://www.aclu.org/pdfs/privacy/fusion_update_20080729.pdf))

### Michigan

- *Members of Mosques Asked to Monitor Their Fellow Congregants.* In April 2009, the Council of Islamic Organizations of Michigan sent a letter to Attorney General Holder after mosques and other groups reported that their members have been asked by the FBI to monitor people coming to mosques and donations they make. Tags: FBI, DOJ (<http://www.cbsnews.com/stories/2009/04/16/national/main4949669.shtml>)



## Minnesota

- *FBI Seeks Informant for Surveillance at Vegan Potlucks.* Prior to the 2008 Republican National Convention in St. Paul, the FBI Joint Terrorism Task Force attempted to recruit a University of Minnesota student arrested for vandalism to go undercover at “vegan pot-lucks” in order to spy on groups organizing protests. Tags: FBI, JTTF (<http://www.citypages.com/2008-05-21/news/moles-wanted/>)
- *Police Conduct Pre-emptive Raids Against Video Journalists, Protest Groups.* The weekend before the start of the Republican National Convention, Ramsey County Sheriffs and St. Paul police conducted pre-emptive raids against a video journalist group, I-Witness, whose documentation of police misconduct during the 2004 Republican National Convention were instrumental in overturning criminal charges against protesters there. Police also conducted several other raids, apparently in coordination with the FBI, and made pre-emptive arrests of people planning to protest at the RNC. Tags: State and Local Police, FBI ([http://www.alternet.org/rights/97110/rnc\\_raids\\_have\\_been\\_targeting\\_video\\_activists\\_/](http://www.alternet.org/rights/97110/rnc_raids_have_been_targeting_video_activists_/))
- *Police Conduct Mass Arrests of Protesters on Opening Day of Republican National Convention.* State and local police conducted pre-emptive mass arrests of more than 200 protesters and innocent pedestrians in Riverfront Park on the opening day of the Republican National Convention. Tags: State and Local Police (<http://minnesotaindependent.com/43406/class-action-lawsuit-filed-over-mass-arrest-on-first-day-of-rnc>)
- *Mass Arrests on Final Day of Republican National Convention Result in No Charges for 323 people.* On the final day of the RNC police conducted mass arrests, including 323 people gathered on the Marion Street and Cedar Street bridges. All 323 were later released without charge. Tags: State and Local Police (<http://minnesotaindependent.com/27157/rnc-aftermath-no-charges-from-323-arrests-on-final-day>)

## Missouri

- *Fusion Center Profiles Modern Militia Movement.* The February 2009 Missouri Fusion Center report on “the modern militia movement” claimed militia members are “usually supporters” of presidential candidates Ron Paul, Chuck Baldwin and Bob Barr; that they often anti-choice, anti-immigrant, or tax resisters and that they are often members of the Constitutional, Libertarian or Campaign for Liberty Party. Tags: Fusion Centers (<http://www.campaignforliberty.com/article.php?view=38> and <http://www.indybay.org/newsitems/2010/08/05/18655440.php>)

## New Jersey

- *Municipalities Refuse to Disclose How They Determine “Potential Threat Elements.”* In 2004, the ACLU of New Jersey sent open public records requests to the 50 largest New Jersey municipalities to obtain documents disclosing the identification of, or criteria for designating individuals as, “potential threat elements.” Eight municipalities responded with refusals to disclose their records, claiming they were exempt from disclosure under New Jersey's Open Public Records Act (OPRA). Tags: State and Local Municipalities (<http://www.aclu.org/safefree/general/18727prs20041202.html>)

## New Mexico

- *Military monitors Veterans for Peace Protest.* An April 2005 Department of Defense (DOD) Threat and Local Observation Notice (TALON) from an “active duty U.S. Army officer” reports on

protests organized by the group Veterans for Peace (VFP), which the TALON describes as "a peaceful antiwar/ anti-military organization." Without any evident factual basis, the TALON states that although VFP is "a peaceful organization . . . there is potential [that] future protest[s] could become violent." Tags: DOD

(<http://www.aclu.org/safefree/spyfiles/27988pub20070117.html>)

- *Albuquerque Police Department Infiltrates Anti-War Protest Planning Meetings.* An undercover Albuquerque Police Department detective attended organizing meetings for a protest against the Iraq war that was held on March 23, 2003. The detective used a false name, joined email contact lists, and gathered intelligence about the organizers. Undercover APD officers also attended the demonstration posing as protestors. Tags: State and Local Police  
(<http://www.aclu.org/free-speech/aclu-new-mexico-sues-albuquerque-police-over-mistreatment-peaceful-protestors>)

## New York

- *Military Spies on Veterans for Peace Lecture.* On April 20, 2005, John Amidon, a member of Veterans For Peace, spoke to about 75 students and community members at SUNY Albany. Seven months later, when NBC News aired a story about groups being spied on by the government, Amidon learned that the SUNY Albany event was one of the events that had been monitored. Tags: DOD (<http://www.aclu.org/safefree/general/24185res20060217.html>)
- *Military Monitors War Resisters League Peaceful Protest.* A February 2005 Department of Defense (DOD) Threat and Local Observation Notice (TALON) focuses on protests planned by the War Resisters League (WRL) near New York City recruiting stations. The document describes WRL as advocating "Gandhian nonviolence." CODEPINK and United for Peace and Justice are mentioned as joining WRL in protest events. Tags: DOD, State and Local Police  
(<http://www.aclu.org/safefree/general/24185res20060217.html>)
- *NYPD Infiltrates Republican National Convention Protest Groups.* For at least a year prior to the 2004 protests at the Republican National Convention in New York City, undercover NYPD officers fanned out across the country from Albuquerque to Miami and, posing as activists and sympathizers, infiltrated hundreds of groups planning to attend the protests. Tags: State and Local Police (<http://www.aclu.org/free-speech/federal-judge-orders-release-rnc-intelligence-documents>)
- *NYPD Arrests Free Speech Activist and Confiscates Chalk-Writing Bike.* A student who created an internet-connected bicycle that printed messages in water-soluble sidewalk chalk as he rode was arrested by the NYPD while he was demonstrating the device to a news reporter. The arrest was not spontaneous, but was arranged by the NYPD's RNC Intelligence Unit, which had collected a file on him. The arrest disrupted his plan to ride around during the Republican National Convention, printing sidewalk messages sent in via his website. He was released the following day without charge but the bike was not returned. Tags: State and Local Police  
([http://www.wired.com/politics/onlinerights/news/2007/04/kinberg\\_0410](http://www.wired.com/politics/onlinerights/news/2007/04/kinberg_0410))
- *Police Detain Muslim-American Journalism Student for Taking Photos for a Class Assignment.* Mariam Jukaku, a 24-year old Muslim-American journalism student at Syracuse University, was stopped by Veterans Affairs police in New York for taking photographs of flags in front of a VA building as part of a class assignment. After taking her into an office for interrogation and taking her driver's license, the police deleted the photographs from her digital camera before releasing her. Tags: State and Local Police, Federal Police  
([http://www.aclu.org/pdfs/privacy/fusion\\_update\\_20080729.pdf](http://www.aclu.org/pdfs/privacy/fusion_update_20080729.pdf))

## North Carolina

- *Pentagon Surveils Veteran.* Debbie Clark, who was honorably discharged from the US army after eight years of active duty and who is married to an active duty military man, found herself under Pentagon surveillance when she participated in a protest at Fort Bragg in March 2005 led by veterans and military families. Tags: DOD (<http://www.aclu.org/safefree/spyfiles/24155res20060215.html>)
- *TALON Report on Peaceful Protest.* A planned demonstration at Fort Bragg, North Carolina, was listed in the TALON database, though it had been determined not to be a credible threat because of its "peaceful" nature. Tags: State and Local Police, DOD (<http://www.aclu.org/safefree/spyfiles/27988pub20070117.html>)

## Ohio

- *Military Monitors Anti-War Protest.* A protest entitled "Stop the War NOW!" was reported as a potential terrorist threat in a March 2005 Department of Defense (DOD) Threat and Local Observation Notice (TALON). The TALON describes the protest, aimed at a military recruiting station and federal building in Akron as including a rally, march, and "Reading of Names of War Dead." Tags: JTTF, FBI (<http://www.aclu.org/safefree/spyfiles/27988pub20070117.html>)

## Oklahoma

- *Citizen Journalist Arrested at Halliburton Protest.* A citizen journalist who left the designated protest area during a rally outside a Halliburton Shareholders Meeting was arrested while other journalists were allowed to come and go from the protest area, and pro-Halliburton protestors were not confined to a protest area at all. A judge later found the journalist not guilty. Tags: State and Local Police (<http://daily.lawton-constitution.com/Repository/ml.asp?Ref=VExDLzlwMDYvMDYvMDkjQXlwMDEwNA==&Mode=HTML&Locale=english-skin-custom>)
- *Musician Arrested for "Trampling a Flag".* The Cherokee Nation Marshal Service arrested the lead guitarist of the band Smunty Voje for trampling an American flag during his act at the Cherokee Casino. Tags: State and Local Police ([http://www.tulsaworld.com/news/article.aspx?subjectid=11&articleid=20090721\\_11\\_A1\\_CAT\\_OOS78367](http://www.tulsaworld.com/news/article.aspx?subjectid=11&articleid=20090721_11_A1_CAT_OOS78367))

## Oregon

- *Portland Withdraws from JTTF.* In April 2005, Portland, Oregon became the first city in the nation to withdraw local law enforcement participation from the JTTFs rather than allow them to participate without proper oversight. Tags: JTTF, FBI ([http://www.aclu.org/spyfiles/ri\\_pressrelease.pdf](http://www.aclu.org/spyfiles/ri_pressrelease.pdf))
- *Federal Protective Service engages in undercover surveillance of Oregon rally.* On May 30, 2008 a Federal Protective Service officer engaged in undercover surveillance of a peaceful anti-pesticide rally in Eugene, Oregon, located several blocks from any federal building. The FPS officer called Eugene Police Department officers to the scene and pointed to an individual who EPD immediately arrested. Tags: FPS, State and Local Police ([http://acluor.convio.net/site/DocServer/Letter\\_DeFazio\\_072908.pdf?docID=3362](http://acluor.convio.net/site/DocServer/Letter_DeFazio_072908.pdf?docID=3362))

## Pennsylvania

- *FBI Investigates Thomas Merton Center for Peace & Justice.* Two documents released in March 2006 reveal that the FBI investigated gatherings of the Thomas Merton Center for Peace &

Justice (TMC) because the organization opposed the war in Iraq. The FBI memo points out that the Merton Center “is a left-wing organization advocating, among many political causes, pacifism.” Several members of TMC have found themselves under surveillance. Tags: FBI, JTTF (<http://www.aclu.org/safefree/spying/24528prs20060314.html> and <http://www.aclu.org/safefree/general/24287res20060227.html>)

- *FBI Monitors Anti-War Leafleting.* Tim Vining is the former Director of the Thomas Merton Center for Peace and Justice. He was at a protest on November 24, 2002 that the FBI was monitoring despite the fact that TMC often advises the police of what they’re planning. The protest consisted of handing out anti-war flyers at a shopping mall. Tags: FBI (<http://www.aclu.org/safefree/spying/24522res20060314.html>)
- *Penn State Senior Arrested for Taking Photo of Police Activity.* A 21-year-old Penn State senior was arrested in his own backyard in Philadelphia for snapping a picture of police activity in his neighborhood with a cell phone camera. He was taken to the police station where police threatened to charge him with conspiracy, impeding police, and obstruction of justice, but he was later released without charge. Tags: State and Local Police ([http://www.aclu.org/pdfs/privacy/fusion\\_update\\_20080729.pdf](http://www.aclu.org/pdfs/privacy/fusion_update_20080729.pdf))
- *Muslim-American’s Security Clearance Revoked After Questioning on First Amendment Activities.* After making public comments criticizing the FBI’s treatment of Muslims in Pittsburgh, Dr. Moniem El-Ganayni, a nuclear physicist and naturalized American citizen, had his security clearance improperly revoked by the U.S. Department of Energy (DOE) despite 18 years of dedicated service. Though they never told him the reason his clearance was revoked, during seven hours of interviews, representatives from the DOE and the FBI never alleged a breach of security but instead questioned El-Ganayni about his religious beliefs, his work as an imam in the Pennsylvania prison system, his political views about the U.S. war in Iraq, and the speeches he’d made in local mosques criticizing the FBI. Tags: FBI ([http://www.aclu.org/pdfs/privacy/fusion\\_update\\_20080729.pdf](http://www.aclu.org/pdfs/privacy/fusion_update_20080729.pdf))
- *Pennsylvania Actionable Intelligence Bulletin Targets Education, Immigration, Anti-War, LGBT, Muslim, and Other Groups.* The Pennsylvania Actionable Intelligence Bulletin has included warnings to law enforcement officials about a pro-education rally organized by Pennsylvania Citizens for Children and Youth and Good Schools Pennsylvania, antigun demonstrations, the coming of the circus, a pro-immigration protest organized by Stop Deportation, an anti-war demonstration called "Funding for Philadelphia, Not for War!", the Philadelphia LGBT Pride Parade and Festival, a gay-pride festival in Harrisburg, a Muslim family celebration in Philadelphia, and Pittsburgh Organizing Group’s G-20 protest. Tags: State and Local Law Enforcement ([http://www.philly.com/inquirer/local/20100719\\_Daniel\\_Rubin\\_Keeping\\_Pennsylvanians\\_safe\\_or\\_unwarranted\\_domestic\\_spying\\_.html](http://www.philly.com/inquirer/local/20100719_Daniel_Rubin_Keeping_Pennsylvanians_safe_or_unwarranted_domestic_spying_.html))

#### **Rhode Island**

- *Middle Eastern Man Arrested by JTTF.* A Pawtucket resident was arrested by the Rhode Island JTTF for failing to appear in court on a minor larceny charge. The involvement of the JTTF in this case is puzzling, and the Middle Eastern name of the person arrested suggests the use of racial profiling in the JTTF’s activities. The ACLU of Rhode Island filed a FOIA request in May 2005 seeking information about this particular arrest as well as information about how the practices and funding structure of the JTTFs. Tags: JTTF, FBI ([http://www.aclu.org/spyfiles/ri\\_pressrelease.pdf](http://www.aclu.org/spyfiles/ri_pressrelease.pdf))

- *Military surveillance of Rhode Island Community Coalition for Peace.* The Department of Defense (DOD) Threat and Local Observation Notice (TALON) database includes a report of a December 2004 protest outside of a National Guard recruitment station organized by Rhode Island-based Community Coalition for Peace (RICCP). The TALON document begins by stating that it is being provided “only to alert commanders and staff to potential terrorist activity or apprise them of other force protection issues.” Tags: State and Local Police, DOD (<http://www.aclu.org/safefree/spyfiles/27267prs20061101.html> and <http://www.aclu.org/safefree/spyfiles/27988pub20070117.html>)

## Texas

- *Fusion Center Describes Conspiracy to Spread Tolerance.* In February 2009, a DHS-supported North Central Texas Fusion System intelligence bulletin described a purported conspiracy between Muslim civil rights organizations, lobbying groups, the anti-war movement, a former U.S. Congresswoman, the U.S. Treasury Department, and hip hop bands to spread tolerance in the U.S. The bulletin was reportedly distributed to over 100 different agencies. Tags: DHS, Fusion Centers (<http://www.aclu.org/privacy/gen/38835prs20090225.html>)
- *Fusion Center Power Point Presentation Describes Searching Web for “Threatening Words” Such as “Protest”.* An inadvertently released power point presentation by the North Central Texas Fusion Center describes searching “blogs” and “websites” for threatening words like “protest” and “hate.” A category for processing is “expressed opinion on HLS [Homeland Security] issues.” Tags: Fusion Centers (<http://www.aclu.org/blog/free-speech-technology-and-liberty/little-privacy-invading-snowflakes>)
- *Texas DHS Tries To Create Massive Database of Law Enforcement, Government, and Private Data.* In the wake of the influx of evacuees after Hurricane Katrina, the Texas Department of Homeland Security contracted with Northrop Grumman Corporation for a \$1.4 million database project that would bring together a wide variety of law enforcement and government data, as well as consumer dossiers gathered by the private data company ChoicePoint. The project was intended to create a “global search capability,” which would then be made available to the Texas Fusion Center. The project failed due to concerns over the security of the data: “it was not clear who at Northrop had access to the data, or what had become of it.” Tags: State and Local Police, Fusion Centers([http://www.aclu.org/pdfs/privacy/fusioncenter\\_20071212.pdf](http://www.aclu.org/pdfs/privacy/fusioncenter_20071212.pdf))
- *Military monitors Anti-Recruitment Protest.* The Department of Defense (DOD) Threat and Local Observation Notice (TALON) database includes a report on a counter-recruitment/anti-war protest at a recruitment station in Austin. Tags: DOD (<http://www.aclu.org/safefree/spyfiles/27988pub20070117.html>)
- *Sheriffs Stop Al-Jazeera From Filming on Public Road.* Sheriff’s deputies in Texas stopped an Al-Jazeera television crew that was filming on a public road more than a mile away from a nuclear power plant and conducted “extensive background checks” on them. The police said they “found no criminal history or other problems.” Tags: State and Local Police ([http://www.aclu.org/pdfs/privacy/fusion\\_update\\_20080729.pdf](http://www.aclu.org/pdfs/privacy/fusion_update_20080729.pdf))
- *FBI Infiltrates Austin Protest Groups in Advance of Republican National Convention.* The FBI utilized a prominent and influential activist as an informant against Texas activists for 18 months prior to the RNC. FBI reports produce by the informant include “dozens of people, most of whom have never been charged with a crime.” Tags: FBI (<http://www.nytimes.com/2009/01/05/us/05informant.html>)

## Utah

- *U.S. Joint Forces Command Disseminates Information on Planned Parenthood and National Alliance.* The U.S. Joint Forces Command liaison, working with the FBI's Olympic Intelligence Center, collected and disseminated information on members of Planned Parenthood and National Alliance, a white supremacist group, regarding their involvement in protests and distributing literature as part of the government's security preparations for the 2002 Olympics. Tags: FBI, DOD (<http://www.wired.com/threatlevel/2010/02/military-spied-on-planned-parenthood> and <http://rawstory.com/2010/02/military-spied-planned-parenthood-civilian-phone-calls/>)

## Virginia

- *Fusion Center Describes Universities and Diversity as Threats.* The Virginia Fusion Center's March 2008 terrorism threat assessment described the state's universities and colleges as "nodes for radicalization" and characterized the "diversity" surrounding a Virginia military base and the state's "historically black" colleges as possible security threats. Tags: Fusion Centers (<http://www.aclu.org/safefree/general/39501prs20090430.html> and <http://www.aclu.org/privacy/gen/39333prs20090406.html>)
- *Fusion Center Detains Muslim Man Photographing Chesapeake Bay Bridge.* Asked by the *Washington Post* for an example of a successful use of a fusion center, the best one official could apparently come up with was the arrest and detention of a Muslim man spotted videotaping the Chesapeake Bay Bridge. But the *Post* goes on to note that the person in question, a U.S. citizen, was quickly released and never charged with any crime. Tags: Fusion Centers ([http://www.aclu.org/pdfs/privacy/fusioncenter\\_20071212.pdf](http://www.aclu.org/pdfs/privacy/fusioncenter_20071212.pdf))

## Washington

- *Fort Lewis Force Protection Member Infiltrates OlyPMR.* John J. Towery, a civilian employee of Fort Lewis assigned to "Fort Lewis Force Protection," posed undercover as an anarchist using the name "John Jacob" and took part in Olympia Port Militarization Resistance's (OlyPMR) activities from 2007 until June 2009. Towery was one of several OlyPMR listserv administrators and therefore had direct access to OlyPMR membership lists. Tags: DOD (<http://www.theolympian.com/southsound/story/922995.html>)
- *Police Detain Artist for Taking Photos of Power Lines.* Shirley Scheier, a 54-year-old artist and Associate Professor of Fine Art at the University of Washington, was stopped by police for taking pictures of power lines as part of an art project. Police frisked and handcuffed Scheier, and placed her in the back of a police car for almost half an hour. She was eventually released, after officers photographed maps that Scheier used to find the power station. The officers also told her she would be contacted by the FBI about the incident. Tags: FBI ([http://www.aclu.org/pdfs/privacy/fusion\\_update\\_20080729.pdf](http://www.aclu.org/pdfs/privacy/fusion_update_20080729.pdf))
- *State Patrol Arrest Activist In Transit to Anti-War Protest.* Philip Chinn, a 22-year old anti-war activist from The Evergreen State College, was arrested while traveling to an anti-war protest at the Port of Grays Harbor in Aberdeen. Aberdeen Police acknowledged that detectives had been watching Chinn and others as they prepared for the protest and, on the day of, broadcasted an "attempt to locate" his car, which was described as containing "three known anarchists." Criminal charges were dismissed after tests showed Chinn had no alcohol or drugs in his system. Tags: State and Local Police ([http://seattletimes.nwsources.com/html/localnews/2011780363\\_spysettle05m.html](http://seattletimes.nwsources.com/html/localnews/2011780363_spysettle05m.html))



- *Evergreen College Faculty Member Forwards Student E-mail to Washington State Patrol.* On March 15, 2007, an Evergreen State College faculty member forwarded a student's message detailing information about an upcoming anti-war protest scheduled at the Port of Tacoma to the Washington State Patrol. Tags: State and Local Police (<http://www.theolympian.com/2010/08/04/1326232/documents-reveal-surveillance.html>)
- *Joint Base Lewis-McChord Fusion Center Warns of FOIA Request.* A March 29, 2010 bulletin originating from Joint Base Lewis-McChord's Fusion Center warned the Naperville, Illinois police department of public records requests by a "local activist group." Tags: Fusion Centers, State and Local Police (<http://www.theolympian.com/2010/08/04/1326232/documents-reveal-surveillance.html>)
- *Tacoma Police Department Contemplates Giving Misinformation to Activist Groups.* During a Tacoma Police Department "Homeland Security Meeting," a police captain, "wondered if it is legal for someone to provide false information to these 'protestor-type' websites or blogs to throw them off as to events that are happening." Minutes of the meeting were circulated to Department supervisors. Tags: State and Local Police (<http://www.theolympian.com/2010/08/04/1326232/documents-reveal-surveillance.html>)
- *Tacoma Police Infiltrate Anti-War Group.* An Aug. 5, 2008 document contained a quote from an undercover officer who had infiltrated an anti-war group. The quote stated, "It was very funny to watch them on Friday night, just so you know, they are scared sh\*tless of TPD, that's pretty much all they talked about. Then they try to psych each other up enough to take one for the team, the car ride to the tide flats was hilarious ..." Tags: State and Local Police (<http://www.theolympian.com/2010/08/04/1326232/documents-reveal-surveillance.html>)
- *Federal Way Police Department Collects Personal Information and Photographs of Environmental Activists.* 2007 Intelligence files contain photographs, birthdates and other information about Seattle Rainforest Action Group (SEARAG) members, notwithstanding SEARAG's non-criminal, "respectful" protest from the prior year. Tags: State and Local Police (<http://www.indybay.org/newsitems/2010/08/05/18655440.php>)
- *FOIA Request Shared with the Military and Misattributed to "Activist Group".* A March 29, 2010 Daily Intelligence Bulletin, shows that local law enforcement shared information on a series of public records request with Ft. Lewis. Though the request was made by a local college student performing an independent study, the bulletin attributes the request to an "activist group." The bulletin then warns law enforcement agencies about the dangers of public disclosure. It is unclear why the local law enforcement agencies initially forwarded information about the request to the military, and why the military then shared this "warning" with the rest of the country. Tags: State and Local Police, DOD (<http://www.indybay.org/newsitems/2010/08/05/18655440.php>)
- *Tacoma Police Department Monitors Jobs With Justice Protest.* Officers at a November 8, 2007 Homeland Security Committee meeting discussed a Jobs With Justice protest, focusing on a "known protestor" who videotaped the event. Officers also noted the fact that the protest was not "posted on the usual websites," but rather was coordinated using a "phone tree." Tags: State and Local Police (<http://www.indybay.org/newsitems/2010/08/05/18655440.php>)
- *Tacoma Police Department Tracks Coffee Shop Opening.* At a February 1, 2008 Homeland Security Committee meeting, officers noted the opening of Coffee Strong, a coffee shop formed by a veterans group called GI Voice. TPD noted that this "could serve as the anti-war headquarters." Tags: State and Local Police (<http://www.indybay.org/newsitems/2010/08/05/18655440.php>)

- Tacoma Police Department Monitors the Pitch Pipe Info Shop. At an August 8, 2008 Homeland Security Committee meeting, officers discussed the "Pitch Pipe Info Shop," a house at which various activists would meet and hang out. Tags: State and Local Police (<http://www.indybay.org/newsitems/2010/08/05/18655440.php>)
- United States Army Criminal Investigations Command Investigates Veterans for Peace. A September 27, 2006 Summary of Investigative Activity includes a lengthy blurb about the plans and political views of the Veterans for Peace, a peaceful anti-war group. Tags: DOD (<http://www.indybay.org/newsitems/2010/08/05/18655440.php>)
- United States Army Criminal Investigations Command Reports on the International Islamic Front. A February 2007 Summary of Investigative Activity on the International Islamic Front effectively equates community-based efforts for tolerance and acceptance with subversive planning for a "multi-generational war." Tags: DOD (<http://www.indybay.org/newsitems/2010/08/05/18655440.php>)
- University of Washington Police Department Surveils Student Worker Coalition (SWC). Plainclothes and undercover police officers infiltrated a UW SWC meeting that was not open to the public, and information from the meeting was shared with the University and Police. Tags: State and Local Police (<http://www.indybay.org/newsitems/2010/08/05/18655440.php>)
- Washington State Fusion Center Monitors Anti-War Protest Group. E-mails from July 2009 describe the Fusion Center's surveillance of anti-war protestors. One e-mail notes a protestor meeting, as well as the address and phone number of the house. Another mentions Coast Guard intelligence about communications within the protest group. Tags: Fusion Centers (<http://www.indybay.org/newsitems/2010/08/05/18655440.php>)
- Fort Lewis Protection Unit Describes Banner Drops as "Most Likely Threat". Fort Lewis Force Protection Unit stated that an anti-war or anti-military event staged to gain media attention (i.e. banner hanging, signage, demonstration) was the "Most Likely Threat" to a planned military shipment. Tags: DOD (<http://www.indybay.org/newsitems/2010/08/05/18655440.php>)

## Washington DC

- DC City Council Report Reveals Metropolitan Police Department Failed to Protect Privacy, First Amendment Rights of Protesters. In March 2004 a Committee of the DC City Council reported the Metropolitan Police Department used undercover officers to infiltrate protest groups without evidence of criminal wrongdoing, repeatedly took pre-emptive actions to prevent demonstrations, including arrests, and failed to protect the free speech and assembly rights of protesters. Tags: State and Local Police (<http://epic.org/privacy/surveillance/spotlight/1205/mpdrep5304.pdf>).
- DHS Tracks Anti-War Group. DHS tracked the protest plans of the DC Anti-War Network (DAWN), a peaceful antiwar group, and passed the information to the Maryland State Police, which had previously labeled the activists as terrorists in an intelligence file. Tags: DHS ([http://www.washingtonpost.com/wp-dyn/content/article/2009/02/16/AR2009021601131\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2009/02/16/AR2009021601131_pf.html))
- FBI Bulletin on Anti-War Protests. On October 15, 2003, the FBI issued Intelligence Bulletin no. 89, entitled "Tactics Used During Protests and Demonstrations." Bulletin 89 advised that "mass marches and rallies against the occupation in Iraq" were scheduled to occur on October 25, 2003, in Washington, D.C, and San Francisco, and although the FBI had no information indicating that "violent or terrorist activities [were] being planned as part of these protests, the possibility exists that elements of the activist community may attempt to engage in violent, destructive, or disruptive acts." The protest tactics identified in Bulletin 89 included, Internet activity to recruit,



raise funds, and coordinate activities; false documentation to gain access to secure facilities; marches, banners, and sit-ins; vandalism, physical harassment, and trespassing; drawing large numbers of police officers to a specific location in order to weaken security at other locations; use of homemade bombs; and intimidation of law enforcement through videotaping, without distinguishing between First Amendment-protected activity and criminal acts. Tags: FBI, JTTF (Memorandum for Glenn A. Fine, Inspector General *Re: Constitutionality of Certain FBI Intelligence Bulletins*, April 5, 2004: <http://www.docstoc.com/docs/19849237/CONSTITUTIONALITY-OF-CERTAIN-FBI-INTELLIGENCE-BULLETINS>)

### Wisconsin

- *DHS Threat Assessment on Pro- and Anti-Choice Groups*. A Department of Homeland Security intelligence official assigned to the Wisconsin Statewide Information Center produced a “threat assessment” about a February 2009 rally involving local pro- and anti-choice groups even though the groups posed no threat to homeland security. A lawyer representing the groups has filed a request for the report through Wisconsin open records laws, but local officials have refused to release it, citing “sensitive law enforcement information.” Tags: DHS, Fusion Centers (<http://dailyherald.com/story/?id=357811>).

### Nationally

- *DHS Reports Warns of Veterans*. DHS’s “Right-Wing Extremism” Report warned that right-wing extremists might recruit and radicalize “disgruntled military veterans.” Tags: DHS (<http://www.washingtontimes.com/news/2009/apr/14/federal-agency-warns-of-radicals-on-right/>)
- *DHS Report Warns of Environmental Groups*. DHS’s Contractor Eco-Terrorism Report described environmental organizations like the Sierra Club, the Humane Society, and the Audubon Society as “mainstream organizations with known or possible links to eco-terrorism.” Tags: DHS (<http://www.unbossed.com/index.php?itemid=2546>)
- *DHS Keeps Calendar of Peaceful Protests*. DHS’s March 2006 “Protective Intelligence Bulletin” lists several advocacy groups that were targets of the Maryland State Police operations, including CODEPINK, Iraq Pledge of Resistance and DAWN, and contains a “civil activists and extremists action calendar” that details dozens of demonstrations planned around the country, mostly peace rallies. Federal Protective Services apparently gleans this information from the Internet. There is no indication anywhere in the document to suggest illegal activity might occur at any of these demonstrations. Tags: DHS, FPS (<http://www.aclu.org/privacy/gen/39226prs20090401.html>)
- *FBI Lists Green Party as Target for Eco-Terrorism Investigation*. The FBI Field Intelligence Group lists the Green Party as potential future target of eco-terrorism investigation. Tags: FBI (<http://gawker.com/5329187/fbi-agent-thinks-the-green-party-is-a-terrorist-group-with-nukes>)
- *DHS Reports on Nation of Islam in Violation of its own Protocols*. In October 2007, DHS sent a report, “Nation of Islam: Uncertain Leadership Succession Poses Risks,” to hundreds of federal officials despite the fact that Department guidelines had called for the files to be destroyed because the assessment of the group had lasted more than 180 days without uncovering evidence of potential terrorism. Tags: DHS ([http://www.nytimes.com/2009/12/17/us/17disclose.html?\\_r=2&ref=todayspaper](http://www.nytimes.com/2009/12/17/us/17disclose.html?_r=2&ref=todayspaper)).

## Appendix 1: Glossary of Terms

**California Anti-Terrorism Information Center (CATIC):** Created on September 25, 2001, by then–Governor Gray Davis and Attorney General Bill Lockyer, the center was instituted to collect and disseminate terrorist related information to local law enforcement.

([http://www.aclunc.org/issues/government\\_surveillance/asset\\_upload\\_file714\\_3255.pdf](http://www.aclunc.org/issues/government_surveillance/asset_upload_file714_3255.pdf))

**California Office of Homeland Security (OHS):** OHS was developed to coordinate “the activities of all [California] agencies pertaining to terrorism-related issues.” Then–Governor Gray Davis created the office by executive order in 2003. OHS initially functioned largely as a clearinghouse for disbursing federal homeland security grant money to local agencies. More recently, however, California’s OHS appears to have played a larger role in intelligence analysis.

([http://www.aclunc.org/issues/government\\_surveillance/asset\\_upload\\_file714\\_3255.pdf](http://www.aclunc.org/issues/government_surveillance/asset_upload_file714_3255.pdf))

**Denver Intelligence Unit:** The intelligence branch of the Denver Police Department that works with Denver’s JTTF. (<http://www.aclu-co.org/spyfiles/fbifiles.htm>)

**FBI Field Intelligence Group:** Field Intelligence Groups take raw information from local cases and make big-picture sense of it, fill gaps in national cases with local information, and share their findings, assessments, and reports with fellow Field Assessment Groups across the country and other partners in law enforcement and intelligence. Some are dedicated to the big picture—others are actually “embedded” in squads to work with street agents on specific counterterrorism, counterintelligence, and criminal cases. (<http://www.fbi.gov/page2/april05/fig042705.htm>)

**Federal Protective Service:** The Federal Protective Service (FPS) is a component of Immigration and Customs Enforcement (within DHS) and is responsible for law enforcement and security for federally owned and leased buildings, facilities, properties and other federal assets.

([http://www.ice.gov/pi/fps/org\\_hfs.htm](http://www.ice.gov/pi/fps/org_hfs.htm))

**Fusion Centers:** These state, local and regional institutions were originally created to improve the sharing of anti-terrorism intelligence among different state, local and federal law enforcement agencies. Though they developed independently and remain quite different from one another, for many the scope of their mission has quickly expanded—with the support and encouragement of the federal government—to cover “all crimes and all hazards.” The types of information they seek for analysis has also broadened over time to include not just criminal intelligence, but public and private sector data, and participation in these centers has grown to include not just law enforcement, but other government entities, the military and even select members of the private sector.

([http://www.aclu.org/pdfs/privacy/fusioncenter\\_20071212.pdf](http://www.aclu.org/pdfs/privacy/fusioncenter_20071212.pdf))

**IPD Intelligence Unit:** The Indianapolis Police Department Intelligence Unit consists of a group of officers responsible for providing counterintelligence services for the police and the city.

(<http://www.aclu.org/FilesPDFs/in%20free%20speech%20district%20court.pdf>)

**Information Synchronization, Knowledge Management and Intelligence Fusion program:** California’s Fusion program, billed as a “one-stop shop for local, state and national law enforcement to share information.” ([http://www.aclunc.org/issues/government\\_surveillance/asset\\_upload\\_file714\\_3255.pdf](http://www.aclunc.org/issues/government_surveillance/asset_upload_file714_3255.pdf))

**Intelligence Bureau Information Summary:** Intelligence reports compiled by the Denver Police Department. (<http://www.aclu-co.org/spyfiles/Documents/ccconference.pdf> and [http://www.aclu-co.org/spyfiles/Documents/Springs\\_CISPES\\_plates.pdf](http://www.aclu-co.org/spyfiles/Documents/Springs_CISPES_plates.pdf))

**Joint Terrorism Task Force (JTTF):** Joint Terrorism Task Forces (JTTFs) are small cells of highly trained, locally based, investigators, analysts, linguists, experts, and other specialists from dozens of U.S. law enforcement and intelligence agencies. It is a multi-agency effort led by the Justice Department and FBI designed to combine the resources of federal, state, and local law enforcement. (<http://www.usdoj.gov/jtff/>)

**Los Angeles County Terrorism Early Warning Center (LACTEW):** Established in 1996, LACTEW has been described as the first Fusion Center. ([http://www.aclu.org/pdfs/privacy/fusion\\_update\\_20080729.pdf](http://www.aclu.org/pdfs/privacy/fusion_update_20080729.pdf))

**National Crime Information Center (NCIC):** NCIC is a computerized index of criminal justice information (i.e.- criminal record history information, fugitives, stolen properties, missing persons). It is available to Federal, state, and local law enforcement and other criminal justice agencies and is operational 24 hours a day, 365 days a year. (<http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm>)

**National Security Agency (NSA):** The NSA's mission is to protect U.S. national security systems and to produce foreign signals intelligence information. (<http://www.nsa.gov/about/index.shtml>)

**Threat and Local Observation Notice (TALON):** Threat and Local Observation Notices, or TALON, began in 2003 to collect intelligence about possible threats to military bases within the United States, but was expanded to include reports by local law enforcement agencies and military security personnel about nonviolent demonstrations and rallies. (<http://www.aclu.org/natsec/gen/29495prs20070425.html>)

**Violent Gang and Terrorist Organization File (VGTOF):** The VGTOF provides law enforcement with identifying information about violent criminal gangs and terrorist organizations and the members of such groups. This information may warn law enforcement officers about the potential danger posed by violent individuals, and allow for the exchange of information about these groups and members to aid criminal investigations. The information listed in this file is investigative/intelligence information that has not been subjected to an independent judicial review. Under no circumstances should information from this file be disseminated to non-law enforcement/criminal justice personnel. (<http://www.doj.state.wi.us/dles/cibmanuals/files/TIME/HTML/violentgangterroristorganizationfilevgtof.htm>)

**Wisconsin Statewide Information Center (WSIC):** The Wisconsin Statewide Information Center (WSIC) was formed after the U.S. Department of Homeland Security mandated establishment of intelligence fusion centers in every state. WSIC serves as the primary intelligence-gathering entity for the State of Wisconsin, working with state, local, military and federal agencies. WSIC offers sophisticated intelligence-gathering efforts statewide, and produces intelligence briefings for the Governor, top law enforcement officials and partner agency heads throughout Wisconsin. WSIC also serves as the Wisconsin liaison for INTERPOL, which promotes mutual assistance among international law enforcement authorities in the prevention of international crimes. (<http://www.doj.state.wi.us/dci/tech/>)

Appendix 2: Surveillance By Law Enforcement Agency

Campus Police

California State – Fresno . . . . . p. 2  
Colorado University – Boulder . . . . . p. 6  
Harvard University . . . . . p. 11  
University of Arizona . . . . . p. 1  
University of Massachusetts – Amherst . . . . . p. 10  
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County Sheriffs

Costa County . . . . . p. 2  
Fresno County . . . . . p. 2, 3  
Ramsey County Sheriffs . . . . . p. 12  
Texas<sup>1</sup> . . . . . p. 15

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Florida . . . . . p. 7  
Georgia . . . . . p. 8  
Illinois . . . . . p. 8  
Louisiana . . . . . p. 10  
New Mexico . . . . . p. 12  
New York . . . . . p. 13  
North Carolina . . . . . p. 14  
Ohio . . . . . p. 14  
Rhode Island . . . . . p. 16  
Texas . . . . . p. 16  
Washington . . . . . p. 19

Department of Energy

Pennsylvania . . . . . p. 15

Department of Homeland Security

Georgia . . . . . p. 8  
Maryland. . . . . p. 11  
Washington, DC . . . . . p. 19  
Wisconsin . . . . . p. 20  
Nationally . . . . . p. 20

FBI

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Colorado . . . . . p. 7  
Florida . . . . . p. 7  
Georgia . . . . . p. 8  
Idaho . . . . . p. 8

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<sup>1</sup> Specific County not specified.

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Maine . . . . .	p. 10
Michigan . . . . .	p. 11
Minnesota . . . . .	p. 12
Pennsylvania . . . . .	p. 14
Texas . . . . .	p. 16
Utah (Olympic Intelligence Center) . . . . .	p. 15
Washington, DC . . . . .	p. 19
Nationally . . . . .	p. 20
Federal Protective Services	
Colorado . . . . .	p. 5
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Maryland . . . . .	p. 10
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Missouri . . . . .	p. 11
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San Francisco . . . . .	p. 2
Illinois . . . . .	p. 9
Iowa . . . . .	p. 9
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Albuquerque . . . . .	p. 13
Cherokee Nation Marshall Service . . . . .	p. 14
Colorado Springs . . . . .	p. 5
Duncan . . . . .	p. 14
Eugene . . . . .	p. 14
Federal Way Police Department (Seattle) . . . . .	p. 18
Hartford . . . . .	p. 6
Indianapolis . . . . .	p. 9
Kansas <sup>2</sup> . . . . .	p. 10
Los Angeles . . . . .	p. 1, 5
New York City . . . . .	p. 13

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<sup>2</sup> Specific city not specified.

Oakland . . . . .	p. 3
Philadelphia . . . . .	p. 15
Sacramento . . . . .	p. 3
San Francisco . . . . .	p. 4
Santa Cruz . . . . .	p. 2
Saint Paul . . . . .	p. 11, 12
Tacoma . . . . .	p. 18, 19
Washington <sup>3</sup> . . . . .	p. 17
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Alaska . . . . .	p. 1
Utah (U.S. Joint Forces Command) . . . . .	p. 17
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New Jersey . . . . .	p. 11
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Outstanding FBI/JTTF FOIA Requests	
Idaho . . . . .	p. 8
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California Anti-Terrorism Information Center . . . . .	p. 3, 4
California Office of Homeland Security . . . . .	p. 1
Connecticut State Police . . . . .	p. 7
DC Metropolitan Police Department . . . . .	p. 17
Denver Intelligence Unit . . . . .	p. 5, 6
Maryland State Police . . . . .	p. 10, 11
Pennsylvania Actionable Intelligence Bulletin . . . . .	p. 15
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Veterans Affairs Police	
New York . . . . .	p. 12

Appendix 3: Surveillance By Organization Surveilled

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Transform Columbus Day Events . . . . .	p. 5
Arab, Muslim, and Middle Eastern Groups	
Afghan New Year’s Festival in Pleasanton . . . . .	p. 4

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<sup>3</sup> Specific city not specified.

American-Arab Anti-Discrimination Committee . . .	p. 4
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Individual Muslims or Arab-Looking People . . . .	p. 9, 12, 15, 17
International Islamic Front . . . . .	p. 19
Irvine Islamic Center . . . . .	p. 1
Mosques in L.A. and San Diego . . . . .	p. 4
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Amnesty International . . . . .	p. 11
CASA of Maryland . . . . .	p. 11
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Irvine Islamic Center . . . . .	p. 1
Mosques in L.A. and San Diego . . . . .	p. 4
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Good Schools Pennsylvania . . . . .	p. 15
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National Lawyers Guild . . . . .	p. 12
Pennsylvania Citizens for Children and Youth . . . . .	p. 15
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Pittsburgh Organizing Group . . . . .	p. 15
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Colorado Campaign for Middle East Peace . . . . .	p. 6
DC Anti-War Network (DAWN) . . . . .	p. 10, 19, 20
Denver Justice and Peace Committee . . . . .	p. 6



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Georgia Peace and Justice Coalition . . . . .	p. 8
Global Network Against Weapons & Nuclear Power in Space . . . . .	p. 10
Gold Star Families for Peace . . . . .	p. 2
International Action Center . . . . .	p. 4
Iraq Pledge of Resistance . . . . .	p. 20
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Maine Coalition for Peace & Justice . . . . .	p. 10
Olympia Port Militarization Resistance . . . . .	p. 17
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Peace Action Maine . . . . .	p. 10
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PeaceWorks . . . . .	p. 10
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Drake University . . . . .	p. 9
Emory University . . . . .	p. 12
Evergreen State College . . . . .	p. 18
Georgia State University . . . . .	p. 7
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 New Mexico State University . . . . . p. 12  
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 Students for Peace and Justice Network . . . . . p. 8  
 Student Worker Coalition . . . . . p. 19  
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## **EXHIBIT J**



June 12, 2011

# F.B.I. Agents Get Leeway to Push Privacy Bounds

By **CHARLIE SAVAGE**

WASHINGTON — The [Federal Bureau of Investigation](#) is giving significant new powers to its roughly 14,000 agents, allowing them more leeway to search databases, go through household trash or use surveillance teams to scrutinize the lives of people who have attracted their attention.

The F.B.I. soon plans to issue a new edition of its manual, called [the Domestic Investigations and Operations Guide](#), according to an official who has worked on the draft document and several others who have been briefed on its contents. The new rules add to several measures taken over the past decade to give agents more latitude as they search for signs of criminal or terrorist activity.

The F.B.I. recently briefed several privacy advocates about the coming changes. Among them, Michael German, a former F.B.I. agent who is now a lawyer for the American Civil Liberties Union, argued that it was unwise to further ease restrictions on agents' power to use potentially intrusive techniques, especially if they lacked a firm reason to suspect someone of wrongdoing.

"Claiming additional authorities to investigate people only further raises the potential for abuse," Mr. German said, pointing to complaints about the bureau's surveillance of domestic political advocacy groups and mosques and to an inspector general's findings in 2007 that the F.B.I. had frequently misused "[national security letters](#)," which allow agents to obtain information like phone records without a court order.

Valerie E. Caproni, the F.B.I. general counsel, said the bureau had fixed the problems with the national security letters and had taken steps to make sure they would not recur. She also said the bureau, which does not need permission to alter its manual so long as the rules fit within broad guidelines issued by the attorney general, had carefully weighed the risks and the benefits of each change.

“Every one of these has been carefully looked at and considered against the backdrop of why do the employees need to be able to do it, what are the possible risks and what are the controls,” she said, portraying the modifications to the rules as “more like fine-tuning than major changes.”

Some of the most notable changes apply to the lowest category of investigations, called an “assessment.” The category, created in December 2008, allows agents to look into people and organizations “proactively” and **without firm evidence** for suspecting criminal or terrorist activity.

Under current rules, agents must open such an inquiry before they can search for information about a person in a commercial or law enforcement database. Under the new rules, agents will be allowed to search such databases without making a record about their decision.

Mr. German said the change would make it harder to detect and deter inappropriate use of databases for personal purposes. But Ms. Caproni said it was too cumbersome to require agents to open formal inquiries before running quick checks. She also said agents could not put information uncovered from such searches into F.B.I. files unless they later opened an assessment.

The new rules will also relax a restriction on administering lie-detector tests and searching people’s trash. Under current rules, agents cannot use such techniques until they open a “preliminary investigation,” which — unlike an assessment — requires a factual basis for suspecting someone of wrongdoing. But soon agents will be allowed to use those techniques for one kind of assessment, too: when they are evaluating a target as a potential informant.

Agents have asked for that power in part because they want the ability to use information found in a subject’s trash to put pressure on that person to assist the government in the investigation of others. But Ms. Caproni said information gathered that way could also be useful for other reasons, like determining whether the subject might pose a threat to agents.

The new manual will also remove a limitation on the use of surveillance squads, which are trained to surreptitiously follow targets. Under current rules, the squads can be used only once during an assessment, but the new rules will allow agents to use them repeatedly. Ms. Caproni said restrictions on the duration of physical surveillance would still apply, and argued that because of limited resources, supervisors would use the squads only rarely during such a low-level investigation.

The revisions also clarify what constitutes “undisclosed participation” in an organization by an F.B.I. agent or informant, which is subject to special rules — most of which have not been made public. The new manual says an agent or an informant may surreptitiously attend up to five meetings of a group before those rules would apply — unless the goal is to join the group, in which case the rules apply immediately.

At least one change would tighten, rather than relax, the rules. Currently, a special agent in charge of a field office can delegate the authority to approve sending an informant to a religious service. The new manual will require such officials to handle those decisions personally.

In addition, the manual clarifies a description of what qualifies as a “sensitive investigative matter” — investigations, at any level, that require greater oversight from supervisors because they involve public officials, members of the news media or academic scholars.

The new rules make clear, for example, that if the person with such a role is a victim or a witness rather than a target of an investigation, extra supervision is not necessary. Also excluded from extra supervision will be investigations of low- and midlevel officials for activities unrelated to their position — like drug cases as opposed to corruption, for example.

The manual clarifies the definition of who qualifies for extra protection as a legitimate member of the news media in the Internet era: prominent bloggers would count, but not people who have low-profile blogs. And it will limit academic protections only to scholars who work for institutions based in the United States.

Since the release of the 2008 manual, the assessment category has drawn scrutiny because it sets a low bar to examine a person or a group. The F.B.I. has opened thousands of such low-level investigations each month, and a vast majority has not generated information that justified opening more intensive investigations.

Ms. Caproni said the new manual would adjust the definition of assessments to make clear that they must be based on leads. But she rejected arguments that the F.B.I. should focus only on investigations that begin with a firm reason for suspecting wrongdoing.





June 18, 2011

## **Backward at the F.B.I.**

The Obama administration has long been bumbling along in the footsteps of its predecessor when it comes to sacrificing Americans' basic rights and liberties under the false flag of fighting terrorism. Now the Obama team seems ready to lurch even farther down that dismal road than George W. Bush did.

Instead of tightening the relaxed rules for F.B.I. investigations — not just of terrorism suspects but of pretty much anyone — that were put in place in the Bush years, President Obama's Justice Department is getting ready to push the proper bounds of privacy even further.

Attorney General John Ashcroft began weakening rights protections after 9/11. Three years ago, his successor, Michael Mukasey, issued rules changes that permit agents of the Federal Bureau of Investigation to use highly intrusive methods — including lengthy physical surveillance and covert infiltration of lawful groups — even when there is no firm basis for suspecting any wrongdoing.

The Mukasey guidelines let the bureau go after people identified in part by race or religion, which only raises the danger of government spying on law-abiding Americans based on their political activity or ethnic background.

Incredibly, the Obama administration thinks Mr. Mukasey did not go far enough. Charlie Savage reported in *The Times* last week that the F.B.I. plans to issue a new edition of its operational manual that will give agents significant new powers to search law enforcement and private databases, go through household trash or deploy surveillance teams, with even fewer checks against abuse.

Take, for example, the lowest category of investigations, called an "assessment." The category was created as part of Mr. Mukasey's revisions to allow agents to look into people and groups "proactively" where there is no evidence tying them to possible criminal or terrorist activity. Under the new rules, agents will be allowed to search databases without making a record about it. Once an assessment has started, agents will be permitted to



conduct lie detector tests and search people's trash as part of evaluating a potential informant. No factual basis for suspecting them of wrongdoing will be necessary.

The F.B.I. general counsel, Valerie Caproni, said agents want to be able to use the information found in a subject's trash to pressure that person to assist in a government investigation. Um, well, yes, that is the problem. It only heightens concern about privacy, improper squeezing of individuals, and the adequacy of supervision.

Currently, surveillance squads, which are trained to surreptitiously follow targets, may be used only once during an assessment. The new rules will allow repeated use.

They also expand the special rules covering "undisclosed participation" in an organization by an F.B.I. agent or informant. The current rules are not public, and, as things stand they still won't be. But we do know the changes allow an agent or informant to surreptitiously attend up to five meetings of a group before the rules for undisclosed participation — whatever they are — kick in.

The changes also remove the requirement of extra supervision when public officials, members of the news media or academic scholars are investigated for activities unrelated to their positions, like drug cases. That may sound like a reasonable distinction, but it ignores an inflated potential for politically motivated decision-making.

The F.B.I.'s recent history includes the abuse of national security letters to gather information about law-abiding citizens without court orders, and inappropriate investigations of antiwar and environmental activists. That is hardly a foundation for further loosening the rules for conducting investigations or watering down internal record-keeping and oversight.

Everyone wants to keep America safe. But under President Bush and now under President Obama, these changes have occurred without any real discussion about whether the supposed added security is worth the harm to civil liberties. The White House cares so little about providing meaningful oversight that Mr. Obama has yet to nominate a successor for Glenn Fine, the diligent Justice Department inspector general who left in January.

Finally, Congress is showing some small sign of interest. Senator Jon Tester, Democrat of Montana, has written to Robert Mueller III, the F.B.I. director, asking that the new policies be scuttled. On Friday afternoon, Senators Patrick Leahy of Vermont and Charles Grassley of Iowa, the chairman and the ranking Republican member of the Judiciary Committee, called on Mr. Mueller to provide an opportunity to review the changes before they are carried out,

and to release a public version of the final manual on the F.B.I.'s Web site. Mr. Obama and Attorney General Eric Holder Jr. need to listen.

**EXHIBIT K**



March 26, 2011

# F.B.I. Casts Wide Net Under Relaxed Rules for Terror Inquiries, Data Show

By CHARLIE SAVAGE

WASHINGTON — Within months after the Bush administration [relaxed limits](#) on domestic-intelligence gathering in late 2008, the F.B.I. assessed thousands of people and groups in search of evidence that they might be criminals or terrorists, a [newly disclosed Justice Department document](#) shows.

In a vast majority of those cases, F.B.I. agents did not find suspicious information that could justify more intensive investigations. The New York Times obtained the data, which the F.B.I. had tried to keep secret, after filing a lawsuit under the Freedom of Information Act.

The document, which covers the four months from December 2008 to March 2009, says the F.B.I. initiated 11,667 “assessments” of people and groups. Of those, 8,605 were completed. And based on the information developed in those low-level inquiries, agents opened 427 more intensive investigations, it says.

The statistics shed new light on the F.B.I.’s activities in the post-Sept. 11 era, as the bureau’s focus has shifted from investigating crimes to trying to detect and disrupt potential criminal and terrorist activity.

It is not clear, though, whether any charges resulted from the inquiries. And because the F.B.I. provided no comparable figures for a period before the rules change, it is impossible to determine whether the numbers represent an increase in investigations.

Still, privacy advocates contend that the large number of assessments that turned up no sign of wrongdoing show that the rules adopted by the Bush administration have created too low a threshold for starting an inquiry. Attorney General [Eric H. Holder Jr.](#) has left those rules in place.

Michael German, a former F.B.I. agent who is now a policy counsel for the [American Civil Liberties Union](#), argued that the volume of fruitless assessments showed that the Obama administration should tighten the rules.

“These are investigations against completely innocent people that are now bound up within the F.B.I.’s intelligence system forever,” Mr. German said. “Is that the best way for the F.B.I. to use its

resources?”

But Valerie E. Caproni, the bureau’s general counsel, said the numbers showed that agents were running down any hint of a potential problem — including vigilantly checking out potential leads that might have been ignored before the Sept. 11 attacks.

“Recognize that the F.B.I.’s policy — that I think the American people would support — is that any terrorism lead has to be followed up,” Ms. Caproni said. “That means, on a practical level, that things that 10 years ago might just have been ignored now have to be followed up.”

F.B.I. investigations are controlled by guidelines first put in place by Attorney General Edward H. Levi during the Ford administration, after the disclosure that the bureau had engaged in illegal domestic spying for decades. After the Sept. 11 attacks, those rules were loosened by Attorney General [John Ashcroft](#) and then again by Attorney General [Michael B. Mukasey](#).

Some Democrats and civil liberties groups [protested](#) the Mukasey guidelines, [contending](#) that the new rules could open the door to racial or religious profiling and to fishing expeditions against Americans.

In 2006, The New York Times [reported](#) that the [National Security Agency](#) had each month been flooding the bureau with thousands of names, phone numbers and e-mail addresses that its surveillance and data-mining programs had deemed suspicious. But frustrated agents found that virtually all of the tips led to dead ends or innocent Americans.

When the Mukasey guidelines went into effect in December 2008, they allowed the F.B.I. to use a new category of investigation called an “assessment.” It permits an agent, “proactively or based on investigative leads,” to scrutinize a person or a group for signs of a criminal or national security threat, according to the [F.B.I. manual](#).

The manual also says agents need “no particular factual predication” about a target to open an assessment, although the basis “cannot be arbitrary or groundless speculation.” And in selecting subjects for such scrutiny, agents are allowed to use ethnicity, religion or speech protected by the First Amendment as a factor — as long as it is not the only one.

An assessment is less intensive than a more traditional “preliminary” inquiry or a “full” investigation, which requires greater reason to suspect wrongdoing but also allows agents to use more intrusive information-gathering techniques, like wiretapping.

Still, in conducting an assessment, agents are allowed to use other techniques — searching databases, interviewing the subjects or people who know them, sending confidential informers to infiltrate an organization, attending a public meeting like a political rally or a religious service, and following and photographing people in public places.

In March 2009, [Russ Feingold](#), then a Democratic senator from Wisconsin, asked the F.B.I. how many assessments it had initiated under the new guidelines and how many regular investigations had been opened based on information developed by those assessments.

In November 2010, the Justice Department sent a classified letter to the Senate Judiciary Committee answering Mr. Feingold's question. This month, it provided an uncensored copy of the same answer to The Times as a result of its Freedom of Information Act lawsuit.

F.B.I. officials said in an interview that the statistics represented a snapshot as of late March 2009, so the 11,667 assessment files were generated over a roughly four-month period. But they said they believed that agents had continued to open assessments at roughly the same pace since then.

Some aspects of the statistics are hazy, officials cautioned.

For example, even before the December 2008 changes, the bureau routinely followed up on low-grade tips and leads under different rules. But that activity was not formally tracked as an "assessment" that could be easily counted and compared.

F.B.I. officials also said about 30 percent of the 11,667 assessments were just vague tips — like a report of a suspicious car that included no license plate number. Such tips are entered into its computer system even if there is no way to follow up on them.

Finally, they said, it is impossible to know precisely how many assessments turned up suspicious facts. A single assessment may have spun off more than one higher investigation, and some agents may have neglected to record when such an investigation started as an assessment.

Ms. Caproni also said that even though the F.B.I. manual says agents can open assessments "proactively," they still must always have a valid reason — like a tip that is not solid enough to justify a more intensive level of investigation but should still be checked out.

But Mr. German, of the A.C.L.U., said that allowing agents to initiate investigations without a factual basis "seems ripe for abuse." He added, "What they should be doing is working within stricter guidelines that help them focus on real threats rather than spending time chasing shadows."



U.S. Department of Justice

Office of Legislative Affairs

DATE: 11-23-2010  
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CLASSIFIED BY 60324 UC BAW SAB/sab  
REASON: 1.4 (c)  
DECLASSIFY ON: 11-23-2035

Office of the Assistant Attorney General

Washington, D.C. 20530

~~SECRET~~

November 19, 2010

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Chairman Leahy:

Enclosed please find responses to questions number 15 and 52d from the questions for the record arising from the appearance of FBI Director Robert Mueller before the Committee on March 25, 2009 at an FBI oversight hearing. We are submitting this response separately from others because it is classified. We apologize for the delay and hope that this information is of assistance to the Committee.

Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

Ronald Weich  
Assistant Attorney General

Enclosure

cc: The Honorable Jeff Sessions  
Ranking Minority Member

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THIS PAGE IS NOT CLASSIFIED WHEN SEPARATED FROM CLASSIFIED ATTACHMENT

~~SECRET~~

**Responses of the Federal Bureau of Investigation  
to Questions for the Record  
Arising from the March 25, 2009, Hearing Before the  
Senate Committee on the Judiciary  
Regarding Oversight of the FBI**

**Question Posed by Senator Feingold**

**15. How many assessments has the FBI conducted and completed using the new authorities provided by AG Guidelines that were put into effect in December 2008? How many preliminary or full investigations were initiated based upon information developed in those assessments? How many assessments are still ongoing?**

**Response**

(U) This supplements the unclassified response to this inquiry.

(FOUO) The FBI has initiated 11,667 Type 1 and Type 2 assessments, 3,062 of which are ongoing. 427 preliminary and full investigations have been opened based upon information developed in these Type 1 and Type 2 assessments. 480 Type 3, 4, 5, and 6 assessments have been initiated, of which 422 remain open.

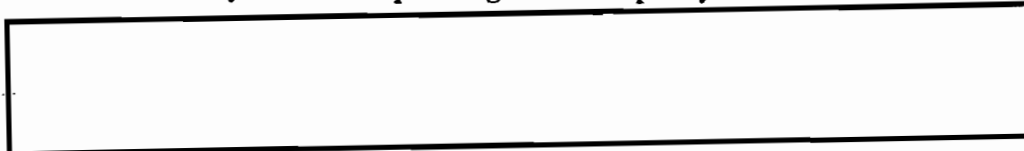
**Question Posed by Senator Grassley**

**52. Last year, we learned that certain key counterterrorism units had unusually high vacancy rates. The FBI was reportedly having trouble attracting enough qualified people to those critical operational units at the core of its number one priority.**

**d. Are there any FBI units operating at 75% capacity or less?**

b1

(S)



~~SECRET~~



**EXHIBIT L**

# Rolling Stone

## Exclusive: Homeland Security Kept Tabs on Occupy Wall Street

### RS Politics Daily

by: Michael Hastings



Occupy protestors during a demonstration at the UC Davis campus in November.  
Justin Sullivan/Getty Images

As Occupy Wall Street spread across the nation last fall, sparking protests in more than 70 cities, the Department of Homeland Security began keeping tabs on the movement. An internal DHS report entitled "SPECIAL COVERAGE: Occupy Wall Street," dated October of last year, opens with the observation that "mass gatherings associated with public protest movements can have disruptive effects on transportation, commercial, and government services, especially when staged in major metropolitan areas." While acknowledging the overwhelmingly peaceful nature of OWS, the report notes darkly that "large scale demonstrations also carry the potential for violence, presenting a significant challenge for law enforcement."

The five-page [report](#) – contained in 5 million newly leaked documents examined by *Rolling Stone* in an investigative partnership with WikiLeaks – goes on to sum up the history of Occupy Wall Street and assess its "impact" on everything from financial services to government facilities. Many of the observations are benign, and appear to have been culled from publicly available sources. The report notes, for instance, that in Chicago "five women were arrested after dumping garbage taken from a foreclosed home owned by Bank of America in the lobby one of the bank's branches," and that "OWS in New York staged a 'Millionaires March,' from Zucotti Park to demonstrate outside the homes of some of the city's richest residents."

But the DHS also appears to have scoured OWS-related Twitter feeds for much of their information. The report includes a special feature on what it calls Occupy's "social media and IT usage," and provides an interactive map of protests and gatherings nationwide – borrowed, improbably enough, from the lefty blog Daily Kos. "Social media and the organic emergence of online communities," the report notes, "have driven the rapid expansion of the OWS movement."

The most ominous aspect of the report, however, comes in its final paragraph:

"The growing support for the OWS movement has expanded the protests' impact and increased the potential for violence. While the peaceful nature of the protests has served so far to mitigate their impact, larger numbers and support from groups such as Anonymous substantially increase the risk for potential incidents and enhance the potential security risk to critical infrastructure (CI). The continued expansion of these protests also places an increasingly heavy burden on law enforcement and movement organizers to control protesters. As the primary target of the demonstrations, financial services stands the sector most impacted by the OWS protests. Due to the location of the protests in major metropolitan areas, heightened and continuous situational awareness for security personnel across all CI sectors is encouraged."

It's never a good thing to see a government agency talk in secret about the need to "control protestors" – especially when that agency is charged with protecting the homeland against terrorists, not nonviolent demonstrators exercising their First Amendment rights to peaceable dissent. From the notorious Cointelpro operations of the 1960s to the NYPD's recent surveillance of Muslim Americans, the government has a long and disturbing history of justifying the curtailing of civil liberties under the cover of perceived, and often manufactured, threats ("the potential security risk to critical infrastructure"). What's more, there have been reports that Homeland Security [played an active role](#) in coordinating the nationwide crackdown on the Occupy movement last November – putting the federal government in the position of targeting its own citizens in the name of national security. There is not much of a bureaucratic leap, if history is any guide, between a seemingly benign call for "continuous situational awareness" and the onset of a covert and illegal campaign of domestic surveillance.

Federal Election Commission  
Office of General Counsel  
999 E Street, N.W.  
Washington, DC 20463

**VOLUME 2 OF EXHIBITS SUBMITTED IN SUPPORT OF 2012 REQUEST BY THE  
SOCIALIST WORKERS PARTY, THE SOCIALIST WORKERS NATIONAL  
CAMPAIGN COMMITTEE, AND COMMITTEES SUPPORTING CANDIDATES OF  
THE SOCIALIST WORKERS PARTY FOR AN ADVISORY OPINION**

November 7, 2012

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**EXHIBIT M**

*United States Senate*

***PERMANENT SUBCOMMITTEE ON INVESTIGATIONS***

***Committee on Homeland Security and Governmental Affairs***

---

*Carl Levin, Chairman*

*Tom Coburn, Ranking Minority Member*

**FEDERAL SUPPORT FOR AND  
INVOLVEMENT IN STATE AND LOCAL  
FUSION CENTERS**

**MAJORITY AND MINORITY  
STAFF REPORT**

**PERMANENT SUBCOMMITTEE  
ON INVESTIGATIONS  
UNITED STATES SENATE**



**October 3, 2012**

**SENATOR CARL LEVIN**  
**Chairman**

**SENATOR TOM COBURN, M.D.**  
**Ranking Minority Member**

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**FEDERAL SUPPORT FOR AND INVOLVEMENT  
IN STATE AND LOCAL FUSION CENTERS**

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# FEDERAL SUPPORT FOR AND INVOLVEMENT IN STATE AND LOCAL FUSION CENTERS

## I. EXECUTIVE SUMMARY

Sharing terrorism-related information between state, local and Federal officials is crucial to protecting the United States from another terrorist attack. Achieving this objective was the motivation for Congress and the White House to invest hundreds of millions of taxpayer dollars over the last nine years in support of dozens of state and local fusion centers across the United States.<sup>1</sup> Congress directed the Department of Homeland Security (DHS) to lead this initiative. A bipartisan investigation by the Permanent Subcommittee on Investigations has found, however, that DHS's work with those state and local fusion centers has not produced useful intelligence to support Federal counterterrorism efforts.

The Subcommittee investigation found that DHS-assigned detailees to the fusion centers forwarded "intelligence" of uneven quality – oftentimes shoddy, rarely timely, sometimes endangering citizens' civil liberties and Privacy Act protections, occasionally taken from already-published public sources, and more often than not unrelated to terrorism.

The Subcommittee investigation also found that DHS officials' public claims about fusion centers were not always accurate. For instance, DHS officials asserted that some fusion centers existed when they did not. At times, DHS officials overstated fusion centers' "success stories." At other times, DHS officials failed to disclose or acknowledge non-public evaluations highlighting a host of problems at fusion centers and in DHS's own operations.

Since 2003, over 70 state and local fusion centers, supported in part with Federal funds, have been created or expanded in part to strengthen U.S. intelligence capabilities, particularly to detect, disrupt, and respond to domestic terrorist activities. DHS's support for and involvement with these state and local fusion centers has, from the beginning, centered on their professed ability to strengthen Federal counterterrorism efforts.

Under the leadership of Senator Coburn, Ranking Subcommittee Member, the Subcommittee has spent two years examining Federal support of fusion centers and evaluating the resulting counterterrorism intelligence. The Subcommittee's investigative efforts included interviewing dozens of current and former Federal, state and local officials, reviewing more than a year's worth of intelligence reporting from centers, conducting a nationwide survey of fusion centers, and examining thousands of pages of financial records and grant documentation. The investigation identified problems with nearly every significant aspect of DHS's involvement with fusion centers. The Subcommittee investigation also determined that senior DHS officials

---

<sup>1</sup> Congress has defined fusion centers as "a collaborative effort of 2 or more Federal, State, local, or tribal government agencies that combines resources, expertise, or information with the goal of maximizing the ability of such agencies to detect, prevent, investigate, apprehend, and respond to criminal or terrorist activity." Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, § 511, 121 Stat. 317, 318-24 (2007). <http://www.gpo.gov/fdsys/pkg/PLAW-110publ53/pdf/PLAW-110publ53.pdf>.

were aware of the problems hampering effective counterterrorism work by the fusion centers, but did not always inform Congress of the issues, nor ensure the problems were fixed in a timely manner.

Regarding the centers themselves, the Subcommittee investigation learned that a 2010 assessment of state and local fusion centers conducted at the request of DHS found widespread deficiencies in the centers' basic counterterrorism information-sharing capabilities. DHS did not share that report with Congress or discuss its findings publicly. When the Subcommittee requested the assessment as part of its investigation, DHS at first denied it existed, then disputed whether it could be shared with Congress, before ultimately providing a copy.

In 2011, DHS conducted its own, less rigorous assessment of fusion centers. While its resulting findings were more positive, they too indicated ongoing weaknesses at the fusion centers.

The findings of both the 2010 and 2011 assessments contradict public statements by DHS officials who have described fusion centers as "one of the centerpieces of our counterterrorism strategy,"<sup>2</sup> and "a major force multiplier in the counterterrorism enterprise."<sup>3</sup> 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.

Despite reviewing 13 months' worth of reporting originating from fusion centers from April 1, 2009 to April 30, 2010, the Subcommittee investigation could identify no reporting which uncovered a terrorist threat, nor could it identify a contribution such fusion center reporting made to disrupt an active terrorist plot. Instead, the investigation found:

- Nearly a third of all reports – 188 out of 610 – were never published for use within DHS and by other members of the intelligence community, often because they lacked any useful information, or potentially violated Department guidelines meant to protect Americans' civil liberties or Privacy Act protections.
- In 2009, DHS instituted a lengthy privacy and civil liberties review process which kept most of the troubling reports from being released outside of DHS; however, it also slowed reporting down by months, and DHS continued to store troubling intelligence reports from fusion centers on U.S. persons, possibly in violation of the Privacy Act.
- During the period reviewed, DHS intelligence reporting suffered from a significant backlog. At some points, hundreds of draft intelligence reports sat for months before DHS officials made a decision about whether to release them to the intelligence community. DHS published many reports so late – typically months late, but sometimes nearly a year after they were filed – that many were considered "obsolete" by the time they were released.
- Most reporting was not about terrorists or possible terrorist plots, but about criminal activity, largely arrest reports pertaining to drug, cash or human smuggling.

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<sup>2</sup> Remarks by DHS Secretary Janet Napolitano, National Fusion Center Conference, Denver, Colorado (3/15/2011).

<sup>3</sup> Testimony of Caryn Wagner, "Homeland Security Department Intelligence Programs and State and Local Fusion Centers," before the House Subcommittee on Homeland Security of the Committee on Appropriations (3/4/2010).

- Some terrorism-related “intelligence” reporting was based on older news releases or media accounts.
- Some terrorism-related reporting also appeared to be a slower-moving duplicate of information shared with the National Counter Terrorism Center through a much quicker process run by the Federal Bureau of Investigation’s Terrorist Screening Center.

In interviews, current and former DHS officials involved in the fusion center reporting process stated they were aware that “a lot of [the reporting] was predominantly useless information,” as one DHS official put it.<sup>4</sup> A former reporting branch chief said that while he was sometimes proud of the intelligence his unit produced, “There were times when it was, ‘what a bunch of crap is coming through.’”<sup>5</sup>

The Subcommittee investigation also examined DHS’s management of the fusion center counterterrorism intelligence reporting process. The investigation discovered:

- DHS required only a week of training for intelligence officials before sending them to state and local fusion centers to report sensitive domestic intelligence, largely concerning U.S. persons.
- Officials who routinely authored useless or potentially illegal fusion center intelligence reports faced no sanction or reprimand.

The Subcommittee investigation also reviewed how the Federal Emergency Management Agency (FEMA), a component of DHS, distributed hundreds of millions of taxpayer dollars to support state and local fusion centers. DHS revealed that it was unable to provide an accurate tally of how much it had granted to states and cities to support fusion centers efforts, instead producing broad estimates of the total amount of Federal dollars spent on fusion center activities from 2003 to 2011, estimates which ranged from \$289 million to \$1.4 billion.

The Subcommittee investigation also found that DHS failed to adequately police how states and municipalities used the money intended for fusion centers. The investigation found that DHS did not know with any accuracy how much grant money it has spent on specific fusion centers, nor could it say how most of those grant funds were spent, nor has it examined the effectiveness of those grant dollars.

The Subcommittee conducted a more detailed case study review of expenditures of DHS grant funds at five fusion centers, all of which lacked basic, “must-have” intelligence capabilities, according to assessments conducted by and for DHS. The Subcommittee investigation found that the state and local agencies used some of the Federal grant money to purchase:

- dozens of flat-screen TVs;
- Sport Utility Vehicles they then gave away to other local agencies; and

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<sup>4</sup> Subcommittee interview of former DHS Senior Reports Officer (3/21/2012).

<sup>5</sup> Subcommittee interview of Harold “Skip” Vandover (3/22/2012).

- hidden “shirt button” cameras, cell phone tracking devices, and other surveillance equipment unrelated to the analytical mission of a fusion center.

All of those expenditures were allowed under FEMA’s rules and guidance, DHS officials told the Subcommittee. Yet none of them appeared to have addressed the deficiencies in the centers’ basic information analysis and sharing capabilities, so they could better contribute to Federal counterterrorism efforts.

Every day, tens of thousands of DHS employees go to work dedicated to keeping America safe from terrorism; Federal funding of fusion centers was intended to advance that Federal objective. Fusion centers may provide valuable services in fields other than terrorism, such as contributions to traditional criminal investigations, public safety, or disaster response and recovery efforts. In this investigation, the Subcommittee confined its work to examining the Federal return on its extensive support of state and local fusion centers, using the counterterrorism objectives established by law, Executive strategy, and DHS policy statements and assessments.

The investigation found that top DHS officials consistently made positive public comments about the value and importance of fusion centers’ contributions to Federal counterterrorism efforts, even as internal reviews and non-public assessments highlighted problems at the centers and dysfunction in DHS’s own operations. But DHS and the centers do not shoulder sole responsibility for the fusion centers’ counterterrorism intelligence failures. Congress has played a role, as well. Since Congress created DHS in 2003, dozens of committees and subcommittees in both Houses have claimed jurisdiction over various aspects of the Department. DHS officials annually participate in hundreds of hearings, briefings, and site visits for Members of Congress and their staffs. At Congress’ request, the Department annually produces thousands of pages of updates, assessments and other reports. Yet amid all the Congressional oversight, some of the worst problems plaguing the Department’s fusion center efforts have gone largely undisclosed and unexamined.

At its conclusion, this Report offers several recommendations to clarify DHS’s role with respect to state and local fusion centers. The Report recommends that Congress and DHS revisit the statutory basis for DHS support of fusion centers, in light of the investigation’s findings. It also recommends that DHS improve its oversight of Federal grant funds supporting fusion centers; conduct promised assessments of fusion center information-sharing; and strengthen its protection of civil liberties in fusion center intelligence reporting.

## II. SUBCOMMITTEE INVESTIGATION

The past decade has seen a proliferation of “fusion centers” in states and cities around the country. Congress has defined fusion centers as “a collaborative effort of 2 or more Federal, State, local, or tribal government agencies that combines resources, expertise, or information with the goal of maximizing the ability of such agencies to detect, prevent, investigate, apprehend, and respond to criminal or terrorist activity.”<sup>6</sup> Although operated by state, local or tribal governments, these centers typically receive significant financial and logistical support from the Federal Government, primarily from the Department of Homeland Security (DHS).<sup>7</sup>

A failure among government officials to share timely, relevant information on terrorist threats was widely credited with contributing to the broader failure to protect the United States from the September 11, 2001 terrorist attacks by al Qaeda.<sup>8</sup> In the aftermath of those attacks, Congress and the White House made sweeping reforms intended to improve how officials in agencies at all levels of government share information to prevent future terrorist attacks.

As part of those reform efforts, both the Executive and Legislative branches have championed state and local fusion centers as critical tools for the Federal Government to share terrorism-related information with states and localities. In 2007, Congress designated DHS as the lead Federal partner for fusion centers.<sup>9</sup>

As state and local entities, the exact missions of individual fusion centers are largely beyond the authority of the Federal Government to determine. Many have chosen to focus their efforts on local and regional crime. In Nevada, the Southern Nevada Counterterrorism Center tracks incidents of violence in schools.<sup>10</sup> However, Federal officials and lawmakers established Federal grant programs for the centers premised primarily on involving fusion centers in Federal efforts to prevent another terrorist attack. They touted the centers’ ability to gather counterterrorism information from local sources and share it with the Federal Government; in turn, Federal officials were instructed to share with the centers threat information gathered and analyzed on the Federal level to ensure a common awareness of terrorist threats. Support for the centers grew, funding increased, information networks expanded, and Federal officials were sent to work from and assist the centers.

Today, DHS provides millions of dollars in Federal grant funds to support state and local fusion center efforts. It details personnel to the centers, and offers them guidance, training and

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<sup>6</sup> Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, § 511, 121 Stat. 317, 318-24 (2007). <http://www.gpo.gov/fdsys/pkg/PLAW-110publ53/pdf/PLAW-110publ53.pdf>.

<sup>7</sup> “2011 Fusion Center Federal Cost Survey: Results,” DHS (6/2012). The Department of Justice also provides support to some fusion centers.

<sup>8</sup> See “9/11 Commission Report,” National Commission on Terrorist Attacks Upon the United States (7/22/2004), at 400, <http://govinfo.library.unt.edu/911/report/911Report.pdf>.

<sup>9</sup> Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, § 511, 121 Stat. 317, 318-24 (2007). <http://www.gpo.gov/fdsys/pkg/PLAW-110publ53/pdf/PLAW-110publ53.pdf>.

<sup>10</sup> 8/31/2012 Mike Blasky, “Fusion center helps police with school violence prevention,” *Las Vegas Review-Journal*, <http://www.lvrj.com/news/police-finalists-for-award-for-school-violence-prevention-168226076.html>.



technology. The Department promotes its support or involvement with 77 fusion centers,<sup>11</sup> located in nearly every state and most major urban areas.

DHS funds state and local fusion centers through its Federal Emergency Management Agency (FEMA) grant programs. DHS provides information, logistical support, technology and personnel to the centers through its State and Local Program Office (SLPO), part of its Office of Intelligence and Analysis (I&A). DHS personnel also draft intelligence reports based on information received at fusion centers, which the agency then processes for release through its Reporting Branch (RB), also a part of I&A.<sup>12</sup>

The value of fusion centers to the Federal Government should be determined by tallying the cost of its investment, and the results obtained. Yet, despite spending hundreds of millions of dollars on state and local fusion centers, DHS has not attempted to conduct a comprehensive assessment of the value Federal taxpayers have received for that investment.

Several years ago, when the Department formally committed itself to supporting fusion centers, it made an explicit argument for how the centers would contribute to Federal counterterrorism efforts. That argument, contained in DHS's 2006 blueprint for engaging with fusion centers, provides a framework for examining fusion centers' contributions to Federal taxpayers. In that plan, DHS identified the benefits it expected to receive from its involvement with the centers.

Known as the "State and Local Fusion Center Implementation Plan," it emphasized the counterterrorism benefits to DHS of obtaining routine access to locally-derived information to support its mission. "Our objective is to create partnerships with . . . existing State & Local Fusion Centers (SLFCs) . . . to improve the flow of threat information between DHS and the SLFCs, and to improve the effectiveness of the Centers as a group," Charles Allen, then DHS Under Secretary for Intelligence & Analysis, wrote in a memo accompanying the plan to then-DHS Secretary Michael Chertoff.<sup>13</sup>

Mr. Allen began the plan itself with a quote from the 9/11 Commission's final report. It noted the panel had concluded that government officials failed to "connect the dots" prior to the September 11, 2001 attacks, and that "DHS was created, in part, to address that issue."

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<sup>11</sup> "Preventing Terrorism Results," DHS website, <http://www.dhs.gov/topic/preventing-terrorism-results>, accessed 9/19/2012. In 2010, a federal assessment could confirm at best 68 in existence. "2010 Fusion Center Baseline Capabilities Assessment," PM-ISE, (10/2010) at 8, DHS-HSGAC-FC-007231.

<sup>12</sup> "Standard Operating Procedure for Homeland Intelligence Report Production," DHS I&A Reporting Branch (6/25/2010), at 4, DHS-HSGAC-FC-056471. Other branches of I&A prepare analytic reports for distribution to fusion centers, as well as joint analytical products in conjunction with fusion center personnel. Other DHS components also assign representatives to fusion centers.

<sup>13</sup> Memorandum from Charles E. Allen to Michael Chertoff, "SUBJECT: State and Local Fusion Center Implementation Plan" (3/16/2006), DHS-HSGAC-FC-004031.

“Based on the legislative mandate . . . it is DHS’s mission to ensure that we effectively collaborate with Federal, State, Local and Private Sector elements to share information concerning terrorist threats,” Mr. Allen’s plan stated.<sup>14</sup>

Specifically, Mr. Allen’s plan listed nine “values accruing to DHS” from fusion center involvement:

- Improved information flow from State and Local entities to DHS
- Improved situational awareness at the Federal level
- Improved access to Local officials
- Consultation on State and Local issues
- Access to non-traditional information sources
- Clearly defined information gathering requirements
- Improved intelligence analysis and production capabilities
- Improved intelligence/information sharing and dissemination capabilities
- Improved prevention, protection, response and recovery capabilities.<sup>15</sup>

In 2008, the Bush Administration also produced a list of the baseline capabilities that every fusion center should have to contribute in a meaningful way to Federal counterterrorism efforts.<sup>16</sup>

Given the substantial and growing Federal investment in state and local fusion centers, the Subcommittee undertook a review of their activities. The Subcommittee investigation initially set out to answer three questions: First, how much has the Federal Government spent to support state and local fusion centers? Second, based on benefits anticipated by language in statute, executive directives and DHS’s own 2006 plan, what has DHS received in return for its investment? And third, is the return worth the cost?

The Subcommittee immediately ran into several roadblocks in its review. First, DHS was unable to produce a complete and accurate tally of the expense of its support for fusion centers.<sup>17</sup> Indeed, for years it has struggled to identify not only what money it has spent or granted to enhance fusion centers, but also how many personnel it has detailed to the centers.<sup>18</sup> Also, while

<sup>14</sup> Memorandum from Charles E. Allen to Michael Chertoff, “SUBJECT: State and Local Fusion Center Implementation Plan” (3/16/2006), at 6, 10, DHS-HSGAC-FC-004031.

<sup>15</sup> Id. at 3, DHS-HSGAC-FC-004035. For a fuller discussion of DHS’s analysis, see CRS, “Fusion Centers: Issues and Options for Congress,” updated January 18, 2008, at 3-6.

<sup>16</sup> Department of Justice, Global Justice Information Sharing Initiative, “Baseline Capabilities for State and Major Urban Area Fusion Centers,” September 2008, <http://www.it.ojp.gov/documents/baselinecapabilitiesa.pdf>.

<sup>17</sup> This year DHS reported what it believes it has spent on fusion centers directly, which totals \$17.2 million, but that figure does not include DHS funds granted to state and local governments intended to support fusion centers, which is believed to be a significant portion of federal spending on fusion centers. “2011 Fusion Center Federal Cost Survey: Results,” DHS (6/2012).

<sup>18</sup> Congress has repeatedly pressed DHS for detailed reporting on its fusion center efforts. In 2006, appropriators began requesting quarterly reports from DHS on its fusion center efforts. See H. Rept 109-699, H. Rept 110-181, S. Rept. 110-84, P.L. 110-329. However, that failed to yield consistently prompt and accurate responses from the department. In 2010, appropriators noted DHS “has failed to submit the quarterly reports on this activity.” H. Rept 111-157. They criticized DHS for creating “an unacceptable lack of visibility into DHS’s intelligence programs,” and “disregard[ing] Congress’ explicit direction to provide timely information.” H. Rept. 111-298.

DHS has made attempts to assess the centers' ability to operate, it has never evaluated the quality or impact of the centers' contributions to Federal counterterrorism efforts using the 2006 criteria it specified.

Faced with missing, ambiguous and inadequate data, the Subcommittee investigation refocused its efforts, to answer three more fundamental questions: First, how well did DHS engage operationally with fusion centers to obtain useful intelligence, and share it with other Federal agencies and its own analysts? Second, how well did DHS award and oversee the millions of dollars in grant funds it awards states and cities for fusion center projects? Third, how capable were state and local fusion centers of conducting intelligence-related activities in support of the Federal counterterrorism mission?

Over a period of two years, the Subcommittee reviewed more than 80,000 pages of documents, including reviews, audits, intelligence reports, emails, memoranda, grant applications, news accounts, and scholarly articles; conducted a nationwide survey of fusion centers; and interviewed over 50 current and former DHS officials, outside experts, and state and local officials.

On the first issue, the Subcommittee investigation found that DHS's involvement with fusion centers had not produced the results anticipated by statute, White House strategies and DHS's own 2006 plan. Specifically, DHS's involvement with fusion centers appeared not to have yielded timely, useful terrorism-related intelligence for the Federal intelligence community. In addition, the Subcommittee investigation found that DHS has not had the proper policies, training, personnel or practices in place to responsibly and timely receive information from state and local fusion centers, and make it available to its own analysts and other Federal agencies.

On the second issue, the Subcommittee investigation found that DHS did not adequately monitor the amount of funding it directed to support fusion centers; failed to conduct meaningful oversight of how state and local agencies spent grant funds DHS intended to support fusion centers; did not ensure the grants it made to fusion center projects were yielding the progress state and local officials promised; and did not attempt to determine whether the end product of its efforts and spending were commensurate with the level of its investment.<sup>19</sup>

On the third issue, the Subcommittee investigation found that many fusion centers lacked either the capability or stated objective of contributing meaningfully to the Federal counterterrorism mission. Many centers didn't consider counterterrorism an explicit part of their mission, and Federal officials said some were simply not concerned with doing counterterrorism work.

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<sup>19</sup> These failures have not gone unnoticed by Congress. In 2010, Senate appropriators explicitly stated their expectation "that performance metrics will be developed to judge the success of I&A's SLFC [State and Local Fusion Center] program. S. Rept. 111-222. The following year, House appropriators directed DHS "to develop robust programmatic justification to better identify and quantify the Federal benefit and return on investment from the State and Local Fusion Center (SLFC) program," and present it by February 2012. A DHS official told the Subcommittee in April 2012 they were still working on such an evaluation. Subcommittee interview of Joel Cohen (4/22/2012).

Despite these problems, DHS officials have been consistent in their praise for fusion centers as counterterrorism tools when speaking to Congress and the American public. DHS Secretary Janet Napolitano has described them as “one of the centerpieces of our counterterrorism strategy,”<sup>20</sup> and Caryn Wagner, DHS’s top intelligence official, told Congress they are “a vital tool for strengthening homeland security.”<sup>21</sup> A May 2012 report from DHS stated that fusion centers “play a vital role in improving the Nation’s ability to safeguard the Homeland.”<sup>22</sup>

But in internal assessments and interviews with the Subcommittee, knowledgeable officials from DHS and the intelligence community have said that most fusion centers were not capable of effective intelligence-sharing work, whether it is receiving terrorism-related information, analyzing it, or sharing it with Federal officials and others. They have also admitted that DHS’s own practices have fallen well short of what is necessary for an effective intelligence enterprise.

Meanwhile, Congress and two administrations have urged DHS to continue or even expand its support of fusion centers, without providing sufficient oversight to ensure the intelligence from fusion centers is commensurate with the level of Federal investment.

As a result, by its own estimates DHS has spent somewhere between \$289 million and \$1.4 billion in public funds<sup>23</sup> to engage state and local fusion centers in the Federal counterterrorism mission, but has little to show for it.

The Subcommittee investigation did not examine the expense, performance or value of fusion centers to the state and local governments which own and operate them, and makes no finding or recommendation in this regard. Fusion centers may provide valuable local services in other fields, such as traditional criminal investigations, public safety, or disaster and recovery efforts. The Subcommittee confined its work to examining Federal support for and involvement in the state and local fusion centers, using the counterterrorism objectives established by law and White House strategy, and DHS policy statements and assessments.

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<sup>20</sup> Remarks by DHS Secretary Janet Napolitano, National Fusion Center Conference (3/15/2011).

<sup>21</sup> Testimony of Caryn Wagner before the House Counterterrorism and Intelligence Subcommittee of the Committee on Homeland Security (5/12/2010).

<sup>22</sup> “2011 National Network of Fusion Centers, Final Report, May 2012,” DHS-HSGAC-FC-057027, pp. v-vi.

<sup>23</sup> Figures are based on separate estimates DHS provided to the Subcommittee. “Fusion Center Funding Report,” Spreadsheet, 6/22/2012, DHS HSGAC FC 058336, and “Fusion Keyword Search Solution Area Funding Report,” Spreadsheet, 2/24/2010, DHS HSGAC FC 057017, at 2.

### III. BACKGROUND

Fusion centers, few of which existed before the September 11, 2001 attacks, now number as many as 77, according to DHS, and operate in almost every state and many major cities in the country.<sup>24</sup> Their existence has stirred up concerns about domestic intelligence gathering practices, and questions about the Federal Government's involvement in state and local law enforcement operations. To understand those concerns, and the design and execution of the Subcommittee's investigation, it is helpful to understand the origins of fusion centers; the evolution of DHS's engagement with the centers; how DHS supports fusion centers, particularly through grant funding; and how DHS gathers counterterrorism intelligence from and shares intelligence with state and local fusion centers.

#### A. History

Prior to the September 11, 2001, attacks, few states or localities operated fusion centers.<sup>25</sup> The Department of Homeland Security, now the Federal Government's largest supporter of fusion centers, had not yet been created.

The Homeland Security Act of 2002 (P.L. 107-296), which then-President George W. Bush signed into law on November 25, 2002, created the Department of Homeland Security (DHS). That law did not mandate the new agency provide support to fusion centers – indeed, it does not mention fusion centers at all – but it did give DHS sweeping responsibilities to gather, fuse and share terrorism-related information with Federal, state and local entities. Specifically, the law directed DHS to:

- [A]ccess, receive and analyze law enforcement information, intelligence information, and other information from the Federal Government, State, and local government agencies (including law enforcement agencies), and private sector entities, and to integrate such information in order to –
  - (A) identify, assess, detect, and understand threats of terrorism against the United States and to the homeland;
  - (B) detect and identify threats of terrorism against the United States; and
  - (C) understand such threats in light of actual and potential vulnerabilities to the homeland....
- Consult with State and local governments and private sector entities to ensure appropriate exchanges of information, relating to threats of terrorism against the United States....
- Disseminate or coordinate dissemination of terrorism information and warnings (including some law enforcement information) to state and local entities, the private sector, and the public[.]<sup>26</sup>

<sup>24</sup> "Preventing Terrorism Results," DHS.gov, <http://www.dhs.gov/topic/preventing-terrorism-results>, accessed September 16, 2012. A 2010 assessment performed for DHS, however, documented only 68 functional fusion centers. "2010 Baseline Capabilities Assessment," PM-ISE, (10/2010), DHS-HSGAC-FC-007031.

<sup>25</sup> January 18, 2008, Rollins, John, "Fusion Centers: Issues and Options for Congress," Congressional Research Service, RL34070, at 15.

DHS officially opened its doors in March 2003, equipped with that mandate and legal authority.<sup>27</sup> Two months later, President Bush created the interagency Terrorist Threat Integration Center (TTIC), to centralize threat information.<sup>28</sup> In September, he created the Terrorist Screening Center (TSC), an interagency operation administered by the Federal Bureau of Investigation (FBI), to consolidate the Federal Government's many terror watchlists.<sup>29</sup> The White House's decision to create these two centers outside of DHS led some to observe that these entities "overlap with, duplicate . . . or even trump" the Department's statutory intelligence duties, as DHS's own inspector general put it.<sup>30</sup>

The following year, 2004, was an important year for the growth of state and local fusion centers, even as developments further constrained DHS's role in counterterrorism intelligence. That July, the National Commission on Terrorist Attacks Upon the United States, better known as the 9/11 Commission, released its public report detailing the circumstances surrounding the September 11, 2001 terrorist attacks. Among its findings, the Commission highlighted the failure of public officials to "connect the dots," or share key terrorism-related intelligence in time to prevent the attack.<sup>31</sup>

Although the Commission did not refer to fusion centers in its recommendations, advocates of the centers, including DHS, have consistently interpreted the panel's recommendations to improve information-sharing as a call for increased Federal support for fusion centers.<sup>32</sup>

The Commission's report spurred Congress and the White House to action, passing bills and issuing Executive Orders which reorganized U.S. government agencies' roles and responsibilities in fighting terrorism. Those moves boosted the importance of Federal-state-local information-sharing efforts. They also all but shifted responsibility for facilitating information-sharing, integrating intelligence, and analyzing threat information at the Federal level from DHS to a new Federal interagency body, the National Counterterrorism Center (NCTC), part of the Office of the Director of National Intelligence.

<sup>26</sup> Homeland Security Act of 2002, P.L. 107-296 (11/25/2002).

<sup>27</sup> DHS website, "Creation of the Department of Homeland Security," <http://www.dhs.gov/creation-department-homeland-security>, accessed 9/16/2012.

<sup>28</sup> "The Terrorist Threat Integration Center," FBI.gov, [http://www.fbi.gov/news/stories/2004/april/threat\\_043004](http://www.fbi.gov/news/stories/2004/april/threat_043004), accessed 9/24/2012.

<sup>29</sup> "New Terrorist Screening Center Established" (9/13/2003), FBI publication, <http://www.fbi.gov/news/stories/2003/september/tsc091603>.

<sup>30</sup> "DHS Performance and Accountability Report, Fiscal Year 2003" (2/13/2004), <http://www.dhs.gov/xlibrary/assets/PerformanceAccountabilityReportFY03.pdf>, at 37.

<sup>31</sup> July 2004, "The 9/11 Commission Report," Chapter 13, the National Commission on Terrorist Attacks Upon the United States, [http://govinfo.library.unt.edu/911/report/911Report\\_Ch13.pdf](http://govinfo.library.unt.edu/911/report/911Report_Ch13.pdf).

<sup>32</sup> As just one example, DHS pointed to the landmark document in its 2011 publication, "Implementing 9/11 Commission Recommendations, Progress Report." In it DHS called fusion centers a "critical feature" of the United States' "strengthened homeland security enterprise" that "align with – and respond to" the 9/11 Commission's recommendation of "expanding information sharing." "Implementing 9/11 Commission Recommendations, Progress Report," DHS, at , <http://www.dhs.gov/xlibrary/assets/implementing-9-11-commission-report-progress-2011.pdf>.

The NCTC was created by the 2004 intelligence reform law and replaced the TTIC.<sup>33</sup> The 2004 law gave the new center the responsibility for integrating and analyzing terrorist threat intelligence from all sources, as well as the job of assessing the terrorist threat to the United States. That law, and Executive Order 13356, also created a new office, the Program Manager for the Information Sharing Environment (PM-ISE), to help local, state and Federal agencies better share terrorism-related information.<sup>34</sup>

As other Federal agencies and offices took the lead in compiling and analyzing counterterrorism information at the Federal level, DHS's intelligence operations began to focus on a responsibility that received less attention in subsequent reform laws and Executive Orders: information sharing with state, local and tribal partners.

At that time, DHS was working with 18 state and local intelligence and fusion centers to share threat-related information, and officials were working on how to best develop a coordinated effort to build their capabilities.<sup>35</sup>

In 2006, DHS's then intelligence chief, Charles E. Allen, submitted a detailed fusion center plan to his superior, then DHS Secretary Michael Chertoff, which highlighted fusion centers' potential to aid Federal counterterrorism efforts.

"Harnessing domestic information is the unique DHS contribution to the national-level mission to protect the Homeland," Allen's plan read.<sup>36</sup> He called fusion centers "critical sources of unique law enforcement information and threat information," and "the natural entry point into the State and Local 'systems' for critical threat information from the National Intelligence Community."<sup>37</sup>

"These centers are both suppliers and customers to DHS," Mr. Allen wrote. "We need the capability to routinely harvest information and finished intelligence in a timely manner from State and Local sources."<sup>38</sup> The plan, Mr. Allen said in his cover memo to Mr. Chertoff, was "one of the most important endeavors the Department can undertake right now."<sup>39</sup>

In presentations to other agencies and Congress, DHS officials stressed fusion centers' value as sources of counterterrorism intelligence for the Federal Government. Robert Riegle was a key DHS official involved in the Department's fusion center efforts at the time. He told the

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<sup>33</sup> See Executive Order No. 13,356, 69 Fed. Reg. 53599 (9/1/ 2004); "Intelligence Reform and Terrorism Prevention Act of 2004," P.L. 108-458, 118 Stat. 3638 (2004).

<sup>34</sup> Id.

<sup>35</sup> See 2005 Responses to Questions for the Record submitted by DHS, for the 3/4/2004 hearing, "Department of Homeland Security's Information Analysis and Infrastructure Protection Budget Proposal for Fiscal Year 2005," House Committee on Homeland Security, <http://ftp.resource.org/gpo.gov/hearings/108h/22589.txt>.

<sup>36</sup> Memorandum from Charles E. Allen, "State and Local Fusion Center Implementation Plan" (3/16/2006), at 2, DHS-HSGAC-FC-004031.

<sup>37</sup> Id. at 9.

<sup>38</sup> Id.

<sup>39</sup> Id..



Subcommittee he gave presentations to Secretary Chertoff, the FBI, and Congress about the important contributions fusion centers could make to the Federal counterterrorism effort.<sup>40</sup>

“Every single day interrogations occur, in police investigations throughout the United States,” Mr. Riegler recounted to the Subcommittee. “We could train people in these units . . . on the seven signs of terror.” Local police weren’t the only ones DHS could reach as intelligence sources through fusion centers, Mr. Riegler said. “We had fire [departments] – one of the few people who can enter your home without a warrant is a firefighter.”<sup>41</sup>

Mr. Riegler said that he did not believe that access to state and local information was really a principal reason for the Federal Government to support fusion centers, but it was part of the pitch. “It was a selling point to the Feds,” Mr. Riegler said. “I’ve got to tell them what the benefits are.”<sup>42</sup>

DHS Secretary Chertoff approved the plan in June 2006. By the end of that year, at least 37 fusion centers had begun operations in states including Connecticut, Delaware, Indiana, Maine, and North Carolina.<sup>43</sup>

The following year, both Congress and the White House took steps to bolster DHS’s involvement with fusion centers. Congress passed the “Implementing Recommendations of the 9/11 Commission Act of 2007,” which explicated DHS’s role in sharing information with state and local agencies,<sup>44</sup> even as it called the Department’s outreach to those state and local officials “haphazard and often accompanied by less than timely results.”<sup>45</sup> In the law, legislators directed DHS to provide support and coordinate Federal involvement with fusion centers.<sup>46</sup>

In the law, Congress established a DHS State, Local, and Regional Fusion Center Initiative. The law directed DHS to provide to fusion centers “operational and intelligence advice;” conduct exercises with them; provide management assistance; and “review information . . . including homeland security information, terrorism information, and weapons of mass destruction information that is gathered by State, local, and regional fusion centers; and to incorporate such information, as appropriate, into the Department’s own such information.”<sup>47</sup>

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<sup>40</sup> Subcommittee interview of Robert Riegler (6/1/2012).

<sup>41</sup> Id.

<sup>42</sup> Id.

<sup>43</sup> Subcommittee survey of fusion centers (2010).

<sup>44</sup> Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, § 511, 121 Stat. 317, 318-24 (2007). <http://www.gpo.gov/fdsys/pkg/PLAW-110publ53/pdf/PLAW-110publ53.pdf>.

<sup>45</sup> Conference Report to Accompany H.R. 1 (7/25/2007), <http://www.gpo.gov/fdsys/pkg/CRPT-110hrpt259/pdf/CRPT-110hrpt259.pdf>, at 304.

<sup>46</sup> Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, § 511, 121 Stat. 317, 318-24 (2007). <http://www.gpo.gov/fdsys/pkg/PLAW-110publ53/pdf/PLAW-110publ53.pdf>.

<sup>47</sup> Id. at 318-24.



To underscore the point, Congress urged DHS to “increase its involvement with them [state and local fusion centers] and appropriately incorporate their non-Federal information into the Department’s intelligence products.”<sup>48</sup>

The law also directed DHS to detail intelligence personnel to the centers if the centers met certain criteria, several of which required a center to demonstrate a focus on and commitment to a counterterrorism mission. Among the criteria the law suggested were “whether the fusion center . . . focuses on a broad counterterror approach,” whether the center has sufficient personnel “to support a broad counterterrorism mission,” and whether the center is appropriately funded by non-Federal sources “to support its counterterrorism mission.”<sup>49</sup>

Also in 2007, the Bush Administration focused on improving how officials at all levels of government shared terrorism-related information. That October, President Bush released his “National Strategy for Information Sharing: Successes and Challenges in Improving Terrorism-Related Information Sharing,” in which he called for fusion centers to be “the focus . . . within the State and local environment for the receipt and sharing of terrorism information, homeland security information, and law enforcement information related to terrorism.”<sup>50</sup>

President Bush’s 2007 report also directed the Federal government to develop for the first time a set of minimum operational standards for fusion centers, which would allow officials to determine whether a fusion center had “achieved a baseline level of capability.”

In response, in September 2008, the Departments of Justice and Homeland Security published “Baseline Capabilities for State and Major Urban Area Fusion Centers.” The document outlined the basic “structures, processes and tools” fusion centers needed to have in place in order to functionally participate in sharing counterterrorism intelligence information with the Federal Government.<sup>51</sup> The capabilities included having a governance structure, a staffing plan, and a privacy policy; installing sufficient physical security; developing a funding strategy; having a plan to provide training to intelligence analysts; and having processes and protocols in place to share relevant information with Federal agencies.

“It is recognized that at the time of writing this document, most fusion centers are in the process of achieving these standards and capabilities,” the 2008 report stated – underscoring how few, if any, fusion centers then possessed all the minimum capabilities to meaningfully participate in counterterrorism information-sharing with the Federal Government. The report

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<sup>48</sup> Conference Report to Accompany H.R. 1 (7/25/2007), <http://www.gpo.gov/fdsys/pkg/CRPT-110hrpt259/pdf/CRPT-110hrpt259.pdf>, at 304.

<sup>49</sup> Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, § 511, 121 Stat. 317, 318-24 (2007). <http://www.gpo.gov/fdsys/pkg/PLAW-110publ53/pdf/PLAW-110publ53.pdf>.

<sup>50</sup> October 2007 “The National Strategy for Information Sharing,” White House, available at <http://georgewbush-whitehouse.archives.gov/nsc/infosharing/index.html>.

<sup>51</sup> September 2008, “Baseline Capabilities for State and Major Urban Area Fusion Centers,” Department of Justice, Global Justice Information Sharing Initiative, <http://www.it.ojp.gov/documents/baselinecapabilitiesa.pdf>. For the full list of baseline capabilities, please see Appendix A of this Subcommittee report.

stated that it expected fusion centers “to take a period of one to five years to achieve all of the baseline capabilities.”<sup>52</sup>

Even before the 2008 report was issued, the Bush administration had provided grants to fusion centers to develop their capabilities, but it also made clear that it did not believe it was the Federal Government’s place to sustain the fusion centers forever. “The funding . . . helps fledgling centers get off the ground and start to build fundamental baseline capabilities. This is not meant, by the way, to be sustainment funding,” explained then-DHS Secretary Michael Chertoff in his keynote address to the first annual National Fusion Center Conference in 2007.<sup>53</sup> “We are not signing up to fund fusion centers in perpetuity. But we do want to use these grants to target resources to help fusion centers make the capital investment and training investment to come to maturity. And then, of course, we expect every community to continue to invest in sustaining these very important law enforcement tools.”<sup>54</sup>

Control of the Executive branch changed parties in 2009. At DHS, officials criticized their predecessors’ efforts to support and benefit from state and local fusion centers. “DHS has failed to date to institute a well-coordinated, Department-wide approach to supporting and interfacing with state and major urban area fusion centers,” wrote Bart Johnson, then the Acting Undersecretary of DHS Intelligence and Analysis, to DHS Secretary Janet Napolitano. “This shortcoming has resulted in a disjointed and ad hoc approach by DHS elements toward supporting and interacting with these centers.”<sup>55</sup>

Mr. Johnson proposed that the new DHS Secretary, Janet Napolitano, issue a “Secretarial declaration of recommitment” to the fusion center initiative. In place of previous efforts, Mr. Johnson envisioned “a robust Department-wide initiative to support the establishment and sustainment of a nationwide network of fusion centers.” Secretary Napolitano approved the proposal, and made fusion centers one of the Department’s top priorities.<sup>56</sup> “Fusion centers are and will be a critical part of our nation’s homeland security capabilities. I intend to make them a top priority for this Department to support them, build them, improve them and work with them,” she said in a July 2009 speech, after receiving Mr. Johnson’s plan.<sup>57</sup>

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<sup>52</sup> September 2008, “Baseline Capabilities for State and Major Urban Area Fusion Centers,” Department of Justice, Global Justice Information Sharing Initiative, <http://www.it.ojp.gov/documents/baselinecapabilitiesa.pdf>. Two subsequent DHS assessments, each with different methodologies but both purportedly based to some degree on the 2008 list of baseline capabilities, have found most fusion centers continue to lack necessary minimum capabilities to support the Federal counterterrorism mission. “2010 Baseline Capabilities Assessment,” PM-ISE, DHS-HSGAC-FC-007231; “2011 National Network of Fusion Centers, Final Report, May 2012,” DHS-HSGAC-FC-057027.

<sup>53</sup> 1/18/2008 CRS Report, “Fusion Centers: Issues and Options for Congress,” John Rollins, at 44, <http://www.fas.org/sgp/crs/intel/RL34070.pdf>. Derived from CRS transcription of Secretary Chertoff’s Keynote Address to the first annual National Fusion Center Conference (3/6/2007), Footnote 135.

<sup>54</sup> 1/18/2008 CRS Report, “Fusion Centers: Issues and Options for Congress,” John Rollins, at 44, <http://www.fas.org/sgp/crs/intel/RL34070.pdf>. Derived from CRS transcription of Secretary Chertoff’s Keynote Address to the first annual National Fusion Center Conference (3/6/2007), Footnote 135.

<sup>55</sup> Memorandum from Bart R. Johnson to Secretary Janet Napolitano, “Subject: DHS State and Local Fusion Center Initiative” (7/20/2009), at DHS-HSGAC-FC-058964.

<sup>56</sup> *Id.*

<sup>57</sup> Remarks by Secretary Napolitano at the Council on Foreign Relations (7/29/2009), DHS.gov, <http://www.dhs.gov/news/2009/07/29/secretary-napolitanos-remarks-council-foreign-relations>.

The White House also publicly embraced fusion centers as part of its anti-terrorism strategy. In his 2010 National Security Strategy, President Barack Obama wrote:

To prevent acts of terrorism on American soil, we must enlist all of our intelligence, law enforcement, and homeland security capabilities.

We will continue to integrate and leverage state and major urban area fusion centers that have the capability to share classified information; establish a nationwide framework for reporting suspicious activity; and implement an integrated approach to our counterterrorism information systems to ensure that the analysts, agents, and officers who protect us have access to all relevant intelligence throughout the government. We are improving information sharing and cooperation by linking networks to facilitate Federal, state, and local capabilities to seamlessly exchange messages and information, conduct searches, and collaborate.<sup>58</sup>

Despite President Obama's clear focus on fusion centers as counterterrorism tools, some Administration officials have at times shifted away from defending the centers' value to Federal counterterrorism efforts. In recent years, they have emphasized other possible fusion center functions, such as disaster recovery, or investigations of crime, sometimes even to the exclusion of any counterterrorism mission.

DHS Secretary Napolitano has alternated between describing fusion centers as a crucial part of the Department's counterterrorism efforts, and also as centers which do "everything else."

In March 2009, the Secretary spoke before the National Fusion Center Conference in Kansas City, Missouri. Ms. Napolitano explained what she believed was the difference between state and local fusion centers and Joint Terrorism Task Forces (JTTFs), FBI-led groups that include state and local law enforcement as well as other Federal agencies and whose primary mission is investigating terrorist threats. Ms. Napolitano said:

Fusion Centers are not the same as your Joint Terrorism Task Forces (JTTF). They are different and they have different roles. The JTTF, as those in the audience know, is an FBI-driven group designed to look solely at the issue of terrorism and [the] terrorism dimension. The Fusion Centers are designed to look at many, many more things beyond that . . . . [A] serial kidnapper, a gang or organized crime syndicate in an area, a serial or pattern murderer all have been handled by Fusion Centers. The JTTFs have a very defined specific function, the Fusion Center[s] much broader, and then the Fusion Center also includes the capacity for response and recovery.<sup>59</sup>

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<sup>58</sup> "2010 National Security Strategy," White House, [http://www.whitehouse.gov/sites/default/files/rss\\_viewer/national\\_security\\_strategy.pdf](http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf).

<sup>59</sup> Remarks by Janet Napolitano before the National Fusion Center Conference (3/11/2009), DHS.gov, <http://www.dhs.gov/news/2009/03/13/napolitanos-remarks-national-fusion-center-conference>.

Ms. Napolitano concluded, “Fusion Centers to me are going to be key in how we increase our ability to protect the homeland.”<sup>60</sup>

In testimony before the Senate in September 2009, DHS Secretary Napolitano was even more direct. “I think it’s good to explain the difference between a JTTF and a fusion center. A JTTF is really focused on terrorism and terrorism-related investigations. Fusion centers are almost everything else,” Ms. Napolitano said.<sup>61</sup> But then two years later, in a 2011 speech at the National Fusion Center Conference in Denver, Colorado, Ms. Napolitano called fusion centers “one of the centerpieces of our counterterrorism strategy.”<sup>62</sup>

In March 2012 testimony before the Senate, DHS Secretary Napolitano again stressed fusion centers’ work beyond counterterrorism. “Their mission is terrorism prevention, but it’s also much broader than that,” Ms. Napolitano said during testimony. “And as [Arizona] governor I started one of the first fusion centers in the country. It is an ideal place to co-locate, to share information. We use them in a variety of ways,” Ms. Napolitano said.<sup>63</sup>

## **B. DHS Intelligence and Analysis (I&A)**

The Department of Homeland Security’s Office of Intelligence and Analysis (I&A) runs the Department’s operational involvement with fusion centers.<sup>64</sup> On one side, its State and Local Program Office (SLPO) acts as a service bureau to the fusion centers, dispatching liaison officers to fusion centers around the country, helping arrange for security clearances for state and local personnel, and providing other training and logistical support for the centers.<sup>65</sup>

On the other side, I&A’s Reporting Branch (RB), receives, reviews and publishes so-called “raw” intelligence obtained from fusion centers, distributing it to assist DHS and its Federal intelligence community partners.<sup>66</sup>

Raw intelligence is a report of an event that has not undergone analysis or necessarily verification, but is essentially what its name implies. It is typically a report of a single event,

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<sup>60</sup> Remarks by Janet Napolitano before the National Fusion Center Conference (3/11/2009), DHS.gov, <http://www.dhs.gov/news/2009/03/13/napolitanos-remarks-national-fusion-center-conference>.

<sup>61</sup> Testimony of DHS Secretary Janet Napolitano before the Senate Homeland Security and Governmental Affairs Committee, “Eight Years After 9/11: Confronting the Terrorist Threat to the Homeland” (9/30/2009).

<sup>62</sup> Remarks by DHS Secretary Janet Napolitano, National Fusion Center Conference, Denver, Colorado (3/15/2011).

<sup>63</sup> Testimony of DHS Secretary Janet Napolitano before the Senate Homeland Security and Governmental Affairs Committee, “President Obama’s Fiscal 2013 Budget Proposal for the Homeland Security Department” (3/21/2012).

<sup>64</sup> I&A also oversees the intelligence activities of the Department’s component divisions. Its chief is an Under Secretary who reports directly to the Secretary of the Department. She is also the Department’s Chief Intelligence Officer, and in that capacity is responsible to the Director of National Intelligence. I&A is not responsible for the Department’s funding of fusion centers, which is handled through the grants division of the Federal Emergency Management Agency (FEMA).

<sup>65</sup> 11/2011 “DHS’ Efforts to Coordinate and Enhance Its Support and Information Sharing With Fusion Centers, OIG-12-10” DHS Office of Inspector General, at 16-17.

<sup>66</sup> I&A publishes both “raw” intelligence reporting and “finished” analytical products. Raw intelligence is produced by the Reporting Branch, which receives the information from DHS personnel mostly outside the directorate, from personnel at component agencies, or from detailees in state and local fusion centers. The Reporting Branch also receives, reviews and publishes raw intelligence from DHS components.

creating the proverbial “dots” of intelligence. For DHS, it could be news of possible terrorist precursor activity, an arrest with details indicating cross-border drug smuggling, or information regarding a suspected terrorist traveling into or out of the United States.

Raw intelligence is expected to be fragmentary and more immediate than analytical products, which tend to be lengthier, draw from multiple sources, and take more time to produce.

### **(1) Homeland Intelligence Reports (HIRs)**

During the 2009-2010 period of reporting the Subcommittee reviewed, raw intelligence from fusion centers came to DHS in the form of an intelligence report known as a Homeland Intelligence Report, or “HIR.”<sup>67</sup> Reporting of raw intelligence handled by I&A from all components of DHS used the HIR format.<sup>68</sup> HIRs are the primary method DHS uses to publish and distribute the raw intelligence it gathers to Federal intelligence and law enforcement agencies.<sup>69</sup>

I&A required all HIRs, regardless of where they were drafted, to meet the following thresholds:

1. Report information that falls within one of five authorized I&A intelligence activities, showing a nexus to Homeland Security issues. This includes information related to:
  - a. Terrorist threats to the homeland.
  - b. Priorities for protective and support measures in response to actual or potential threats or hazards to the homeland, including critical infrastructure or key resources; a significant public safety, public health or environmental impact; political, societal and economic infrastructure; border security; the proliferation or use of weapons of mass destruction; or other potential catastrophic events including man-made and natural disasters.
  - c. Departmental support, such as the furtherance of law enforcement activities of a component.
  - d. General tasks directed by the Secretary of Homeland Security.
  - e. Specific tasks directed by statute or presidential directive.
2. Satisfy valid IC [Intelligence Community] collection requirements or DHS SINs [Standing Information Needs].

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<sup>67</sup> In October 2011, DHS changed its terminology to “Intelligence Information Reports,” or IIRs, but the format was largely unchanged. For simplicity, this report uses the term HIRs throughout.

<sup>68</sup> “Standard Operating Procedure for Homeland Intelligence Report Production, v. 1.1” (6/25/2010), DHS-HSGAC-FC-056471

<sup>69</sup> Testimony of Caryn Wagner before the House Counterterrorism and Intelligence Subcommittee of the Committee on Homeland Security, “The DHS Intelligence Enterprise- Past, Present, and Future” (6/1/2011). Recently, DHS has partnered with DOJ on a “National SAR (Suspicious Activity Reporting) Initiative,” which encourages fusion centers to file reports on “suspicious activity,” which the Departments define as “observed behavior reasonably indicative of preoperational planning related to terrorism or other criminal activity.” Those reports can be written by state and local personnel, and are shared through a DOJ-managed process. “About NSI,” Nationwide SAR Initiative, [http://nsi.ncirc.gov/about\\_nsi.aspx](http://nsi.ncirc.gov/about_nsi.aspx).

3. Contain information that is generally unavailable via open sources (i.e. mainstream media outlets) or from other Intelligence Community reporting.
4. Contain information that is of interest to federal organizations other than the reporting element.<sup>70</sup>

HIRs from fusion centers are typically composed of information drawn from local law enforcement records.<sup>71</sup> They are often unclassified, but treated as “For Official Use Only” (FOUO), a designation DHS applies to documents to which it cannot restrict access under statute or regulation, but which it nonetheless believes to be “sensitive in nature.”<sup>72</sup> They are generally two to three pages in length, not including the list of recipients which accompanies each report. Each HIR not only recounts an event, incident or observation, but also gives data on when that information was obtained, the source of the information, and codes indicating the origin of the report, the author, the existence of sensitive U.S. person information and why it is legal to include it, the date and time it was published, and what intelligence needs the report addresses.

An HIR does not bear the name of the official who collected the information or authored the report, although it does bear a numeric code which corresponds to that official’s identity. DHS told the Subcommittee that it considers the reporters’ identities classified, and has since 2004.<sup>73</sup> It provided the Subcommittee with a list of reporter codes, known as Field Reporter Numbers (FRNs) or “PREP codes,” and it provided a list of reporting officials; however, it declined to provide the Subcommittee any document or information in an unclassified setting that it believed could be used in combination with other information to discern the identities of the authors of specific HIRs.<sup>74</sup>

According to DHS officials, in 2007 and 2008, the Department trained state and local personnel, including firefighters and policemen, on how to draft an HIR.<sup>75</sup> “It’s true, state and local personnel were issued FRNs . . . . Yes, there are reports in the system [by authors] who are not Federal employees, but were trained,” said former Reporting Branch chief Keith Jones, who

<sup>70</sup> Attachment 2: Homeland Intelligence Report Threshold, HIRWG Phase 1 Report and Recommendations, DHS-HSGAC-FC-056566.

<sup>71</sup> 6/25/2010 “Standard Operating Procedure for Homeland Intelligence Report Production, v. 1.1,” DHS-HSGAC-FC-056471, at 056498; “Reports Officer Basic Course, Student Guide, Rev 0511,” DHS-HSGAC-FC-057118, at 11.

<sup>72</sup> “‘For Official Use Only’ (FOUO) is the term used within DHS to identify unclassified information of a sensitive nature that is not otherwise categorized by statute or regulation.” 3/14/2011 “DHS Sensitive Systems Policy Directive 4300A,” DHS.gov, [https://www.dhs.gov/xlibrary/assets/foia/mgmt\\_directive\\_4300a\\_policy\\_v8.pdf](https://www.dhs.gov/xlibrary/assets/foia/mgmt_directive_4300a_policy_v8.pdf). In the 13 months’ worth of reports the Subcommittee reviewed, 36 HIRs were classified, 574 were unclassified.

<sup>73</sup> “Since DHS I&A’s adoption of the DIA IIR formatting, dissemination and security standards in 2004, any association of an assigned FRN with the name of the corresponding DHS reporter has been considered classified information at its inception.” Email from DHS to the Subcommittee (7/15/2011), “Subject: Fusion Centers.” PSI-DHS-72-000002.

<sup>74</sup> DHS explained that its reporters’ identities were a national security secret, because terrorists or criminals could seek retribution for being subjects of their reporting. “[R]eleasing the identities of Reports Officers would expose those Officers to retribution from or exploitation by the adversaries that are the subjects of those Officers’ reporting, causing serious damage to national security.” Response from DHS to the Subcommittee (8/1/2012), DHS-HSGAC-FC-059275. When asked about the purpose of classifying reporters’ identities, DHS I&A Under Secretary Caryn Wagner stated, “I don’t think we’re talking about personal danger, just, why would you need to know?” Subcommittee interview of Caryn Wagner (9/16/2012).

<sup>75</sup> Subcommittee interviews of former Senior Reports Officer (3/30/2012) and Mark Collier (3/8/2012).



left the position in 2009. “I recall feeling vaguely uneasy about it . . . people I didn’t hire writing reports,” Mr. Jones said.<sup>76</sup>

The Department confirmed that DHS “does not explicitly prohibit” non-Federal officials from filing intelligence reports, and that as recently as 2010, DHS published intelligence reports prepared by non-Federal officials.<sup>77</sup> However, in a separate statement the Department acknowledged “it would be inadvisable” to allow non-Federal officials to file intelligence reports, because DHS “lacks the legal authority to compel State, local, tribal, territorial, and private sector entities to abide by” Executive Order 12333, which regulates national intelligence activities.<sup>78</sup>

## (2) I&A Personnel

Although DHS has funded fusion centers since it opened its doors in 2003, DHS had few intelligence personnel at fusion centers until recently. In 2006, when then-Under Secretary Allen’s plan was approved, I&A began systematically detailing “Intelligence Officers” (IOs) to fusion centers around the country.<sup>79</sup>

The process was gradual – Allen’s plan called for the first three dozen IOs to be in place by 2009. Reporting intelligence to DHS was just one of an IO’s responsibilities. IOs were also liaisons to DHS, arranging for training state and local personnel, helping local fusion center personnel get questions answered at DHS, preparing information for briefings to state and local officials, and more.<sup>80</sup>

In 2008, the Reporting Branch began detailing its own specialists to fusion centers.<sup>81</sup> Reporting Branch officials sent to fusion centers are known as Reports Officers (ROs) or Senior Reports Officers (SROs), different from IOs primarily because their focus is solely the reporting of state and local intelligence back to DHS. As of May 3, 2012, DHS said the Reporting Branch has deployed reporting officials to 18 fusion centers around the country.<sup>82</sup>

IO and RO intelligence collection authorities are restricted by Executive Order to “overt” collection practices,<sup>83</sup> which includes the acquisition of information “from . . . observation,

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<sup>76</sup> Subcommittee interview of Keith Jones (4/2/2012).

<sup>77</sup> DHS response to Subcommittee inquiry (9/21/2012), DHS-HSGAC-FC-059982.

<sup>78</sup> DHS response to Subcommittee inquiry (8/1/2012), DHS-HSGAC-FC-059275.

<sup>79</sup> Subcommittee interview of Robert Riegle (6/1/2012). The first DHS detailee at a fusion center was placed in January 2006, to the Los Angeles Joint Regional Intelligence Center, before Allen’s plan, which contained a strategy for detailing personnel, was approved. Subcommittee interview of Joel Cohen (4/16/2012).

<sup>80</sup> “Position Description, Intelligence Operations Specialist,” DHS-HSGAC-FC-058978.

<sup>81</sup> At first the Reporting Branch deployed contract employees provided by Federal contractors; they eventually replaced them with Federal employee Reports Officers. Subcommittee interview of Jonathan Wilham (3/6/2012).

<sup>82</sup> DHS Support to Fusion Centers, as of 5/3/12, PSI-DHS-56-0021.

<sup>83</sup> Executive Order 12333, as amended, <http://www.fas.org/irp/offdocs/eo/eo-12333-2008.pdf>.

government-to-government dialog, elicitation, and from the sharing of data openly acquired . . . . [T]he sources involved normally are aware of the general collection activity[.]”<sup>84</sup>

While DHS produced a memo explaining I&A’s collection authorities and fourteen collection categories, DHS officials told the Subcommittee the Department has no written guidance or training to explain to ROs and IOs what specific intelligence collection practices are allowable or prohibited under those authorities.<sup>85</sup>

Harold Vandover was chief of the I&A Reporting Branch from December 2009 to September 2011. He now helps DHS develop training for its intelligence officers. Mr. Vandover told the Subcommittee that I&A does not allow IOs and ROs to recruit people to be human intelligence sources for them. They cannot instigate a conversation for the purpose of collecting information, according to Mr. Vandover. They are generally limited to reviewing documentation such as databases, arrest reports and other law enforcement records. Mr. Vandover said they can participate in interviews conducted by state and local officials at their fusion center, but cannot request those interviews, and can only ask questions in order to clarify information already solicited.<sup>86</sup>

As of May 3, 2012, DHS had detailed Intelligence Officers to 66 state and local fusion centers in addition to the 18 Reports Officers. Eleven fusion centers had no DHS I&A personnel of any kind on site to identify potentially useful intelligence and report it to headquarters,<sup>87</sup> hampering those centers’ ability to contribute to the Federal counterterrorism mission.

During the period of review, IOs drafted their own HIRs and submitted them to headquarters, where ROs in the Reporting Branch would review the drafts, edit them and shepherd them through a multi-office review process. The Reporting Branch was ideally situated to spot problems with reporting from IOs. However, the IOs worked for the State and Local Program Office (SLPO), a separate entity from the Reporting Branch. This division created a cleft in the chain of command, wherein the Reporting Branch was responsible for the quality of the reporting, but not the quality of the reporter. When an IO routinely submitted useless or inappropriate reporting, the Reporting Branch had no authority to take corrective personnel action. It could only notify SLPO officials that the IO was not adhering to Department guidelines.<sup>88</sup>

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<sup>84</sup> DHS written response to Subcommittee inquiry (8/24/2012) DHS-HSGAC-FC-059584. The Department stated it generally follows the definition of “overt collection” from the CIA’s Glossary of Intelligence Terms and Definitions (June 1989): “The acquisition of intelligence information from public media, observation, government-to-government dialogue, elicitation, and from the sharing of data openly acquired; the process may be classified or unclassified; the target and host governments as well as the sources involved normally are aware of the general collection activity, although the specific acquisition, sites, and processes may be successfully concealed.”

<sup>85</sup> Subcommittee interviews of Harold “Skip” Vandover (8/22/2012) and DHS Office of General Counsel (8/12/2012); DHS written response, DHS-HSGAC-FC-059275; Memorandum from Charles E. Allen and Matthew L. Kronisch to All Employees, Detailees, and Contractors Supporting the Office of Intelligence and Analysis, “SUBJECT: Interim Intelligence Oversight Procedures for the Office of Intelligence & Analysis,” (4/3/2008) DHS-HSGAC-FC-047637.

<sup>86</sup> Subcommittee interview of Harold “Skip” Vandover (3/22/2012).

<sup>87</sup> DHS Support to Fusion Centers (5/3/2012), PSI-DHS-56-0021.

<sup>88</sup> Subcommittee interview of Harold “Skip” Vandover (3/22/2012).



### (3) Drafting Fusion Center HIRs

When DHS personnel at a state or local fusion center obtain information that they believe might assist the homeland security mission, they draft an intelligence report, known during the period of Subcommittee review as a Homeland Intelligence Report (HIR).<sup>89</sup> Until October 2011, reporters filed draft HIRs as Microsoft Word documents and transmitted them to headquarters via unclassified email.<sup>90</sup> The Department has since switched to using an intelligence reporting system developed by the Defense Department, and sharing drafts via a secure network.<sup>91</sup>

At DHS's Washington, D.C. headquarters, an I&A Reports Officer (RO) received the documents when they arrived. He or she reviewed the draft against the source documents to ensure everything necessary was present, conducted additional research as warranted, revised the draft, and forwarded it to a Senior Reports Officer for review.<sup>92</sup>

I&A Reports Officers worked their way through the queue of draft HIRs, typically reviewing each one in order of when it was received, officials said. According to Reporting Branch officials, ROs often had to make extensive edits, including rewriting the entire HIR, adding codes and formatting before the document was ready for publication to the intelligence community.<sup>93</sup>

Once the draft was complete, the ROs sent the final, peer-reviewed draft to a Senior Reports Officer (SRO), who reviewed the document and its changes. If the SRO approved the final draft, the RO placed it in a shared folder for oversight review.

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<sup>89</sup> DHS now calls HIRs Intelligence Information Reports (IIR). In this report, the terms are used interchangeably, however HIR primarily refers to reporting during the review period. During the period reviewed by the Subcommittee, IOs drafted HIRs. In July 2011, DHS refined the roles of ROs and IOs, stating that ROs primarily draft IIRs, and IOs should pass tips and leads to ROs for drafting into a report. Memorandum from Christopher Button and Michael Potts, "Subject: Management of I&A Personnel at State and Major Urban Area Fusion Centers" (7/29/2011), DHS-HSGAC-FC-059289.

<sup>90</sup> Subcommittee interview of Keith Jones (4/12/2012).

<sup>91</sup> Subcommittee interview of Charles Robinson (7/18/2012); DHS response to Subcommittee inquiry (8/30/2012), PSI-DHS-67-0001; "Standard Operating Procedure for Homeland Intelligence Report Production, v. 1.1," DHS, (6/25/2010) DHS-HSGAC-FC-056477. In the uncommon case of a draft HIR that was classified, it was transmitted via the Homeland Security Data Network (HSDN), a Secret-level classified network. Email from DHS to the Subcommittee (8/30/2012), PSI-DHS-67-0001. Because DHS classifies its reporters' identities, its procedure requiring reporters to email draft reports via unsecure networks may represent improper handling of classified information.

<sup>92</sup> 6/25/2010 "Standard Operating Procedure for Homeland Intelligence Report Production, v. 1.1," DHS, at DHS-HSGAC-FC-056478.

<sup>93</sup> Subcommittee interviews of Senior Reports Officer (3/1/2012), Senior Reports Officer (3/20/2012), and Keith Jones (4/2/2012).

#### (4) DHS Enhanced Review of HIRs

Prior to April 2009, I&A did not systematically send draft HIRs to be reviewed by the DHS Office of Privacy and Office for Civil Rights and Civil Liberties.<sup>94</sup> However, in April 2009, news outlets reported on a DHS intelligence product which suggested that anti-abortion groups, anti-immigration groups, and groups “rejecting Federal authority in favor of state or local authority” could be considered “rightwing extremist” groups potentially capable of acts of terror.<sup>95</sup> Media articles about the intelligence report brought sharp criticism of DHS, particularly from conservative groups and civil libertarians.<sup>96</sup>

In response to public outcry over the report, DHS Deputy Secretary Jane Holl Lute ordered I&A to ensure certain types of intelligence products were reviewed and approved by officials from DHS’s Privacy Office (PRIV), Office for Civil Rights and Civil Liberties (CRCL), I&A’s Office of Intelligence Oversight (I/O), and the DHS Office of General Counsel (OGC) before release.<sup>97</sup>

Following Ms. Lute’s directive, I&A Reporting Branch officials coordinated with these four offices, and within weeks they instituted a new procedure.<sup>98</sup> Under the new procedure, after receiving a draft nomination from DHS personnel in the field, a Reports Officer at headquarters assigned it a tracking number; placed the draft, and any accompanying materials, in a shared folder on the DHS electronic network; and alerted officials at the reviewing offices (PRIV, CRCL, I/O, OGC) that a new draft nomination was available for review.<sup>99</sup>

Reviewing officials from each office read the material and submitted their comments in emails to I&A, advising publication or cancellation, asking questions, or recommending alterations to the draft. All four offices reviewed and approved a draft before it was published; an objection from any reviewer caused a report’s cancellation.

From 2007 to early 2010, DHS Deputy Under Secretary for Operations James Chaparro oversaw much of I&A’s operations. Mr. Chaparro had serious concerns about how the enhanced multi-office review process was implemented. In his eyes, it was “putting a tremendous workload on [the offices] without commensurate resources. You can see exactly what’s going to happen. It’s going to slow the process down.”<sup>100</sup>

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<sup>94</sup> Both entities are oversight offices located outside of I&A.

<sup>95</sup> “Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment” (4/7/2009), DHS-HSGAC-FC-059277.

<sup>96</sup> See, e.g., “Soon, We’ll All Be Radicals,” ACLU, <http://www.aclu.org/blog/national-security-technology-and-liberty/soon-well-all-be-radicals> (4/16/2009); Transcript of “Hannity,” segment “Joe the Plumber at Atlanta Tea Party,” <http://www.foxnews.com/story/0,2933,516835,00.html> (4/15/2009).

<sup>97</sup> Email from MGMTExecSec, “Subject: Management Action Directive: Coordination of Intelligence Products” (4/17/2009), DHS-HSGAC-FC-047649.

<sup>98</sup> Email from Jonathan Wilham to Timothy Bailey, Ole Broughton, et al, “Subject: Vetting of DHS HIRs” (5/5/2009), DHS-HSGAC-FC-047651.

<sup>99</sup> Id.

<sup>100</sup> Subcommittee interview of James Chaparro (6/28/2012).

As Mr. Chaparro predicted, the new review process, when it met with a steady flow of poorly-written, sometimes inappropriate reporting, slowed I&A's intelligence publishing by months. "It was horribly inefficient," Ken Hunt, a Privacy Office official involved in the review process, told the Subcommittee. "I remember conversations about the inefficiencies."<sup>101</sup> For the better part of almost three years – from early 2009 to late 2011 – DHS reporting was delayed, sometimes by months.<sup>102</sup>

### C. Funding State and Local Fusion Centers

DHS has funded state and local fusion center operations primarily through its Homeland Security Grant Program (HSGP), administered by the Federal Emergency Management Agency (FEMA). Through the HSGP, FEMA provides roughly \$800 million annually to states and municipalities for the broad purpose of "building and sustaining national preparedness capabilities."<sup>103</sup>

HSGP funds can be used by states and urban areas for items as diverse as body armor, respirators, diving fins, mass casualty transport vehicles, reference databases, boats, planes, and refrigerators;<sup>104</sup> for training on a wide variety of topics; for preparedness exercises; and for special event planning.<sup>105</sup> Recipients can even use HSGP funds for costs like construction, physical security upgrades, rent and salaries, in proscribed circumstances. They can also use HSGP funds to support a fusion center.<sup>106</sup>

FEMA awards the funds to a designated agency in each state, known in FEMA parlance as the State Administrative Agency (SAA). Each year, FEMA determines how much each SAA

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<sup>101</sup> Subcommittee interview of Ken Hunt (2/27/2012).

<sup>102</sup> HIRs from fusion centers published in June 2009 were published on average nearly three months after the information contained therein had been acquired, the Subcommittee investigation found. The delay persisted through April 2010, the end of the period of reporting the Subcommittee reviewed.

A March 9, 2011 memorandum suggests that in late 2010 DHS cut the publication lag to an average of 14 days, but by the date of the memorandum a second backlog had developed. The backlog likely included – and impacted – reporting from DHS components, as well. Memorandum from Harold "Skip" Vandover to Mike Potts, "SUBJECT: Reporting Backlog" (3/9/2011), DHS-HSGAC-FC-059705.

Documents indicate the backlog persisted through most of 2011. Email from Harold "Skip" Vandover to Donald Torrence, "Subject: RE: UPDATED HIR Triage Definitions" (5/3/2011), DHS-HSGAC-FC-050748 ("I intend to monitor the backlog to see how it is coming down before I take more drastic measures"). Email from Harold "Skip" Vandover to Jonathan Wilham, et al, "Subject: S&L HIR "Surge" (8/24/2011), DHS-HSGAC-FC-050751 ("As it stands right now, there are over 500 HIRs waiting to be reviewed and published . . . we are continuing to slip further behind.")

A November 2011 document indicates a significant backlog was still present at that time – 307 draft reports were waiting for publication, 267 of which were more than 10 days old. "DHS Reporting Branch Weekly Passdown" (11/10/11), DHS-HSGAC-FC-056589.

<sup>103</sup> DHS website, "Fiscal Year (FY) 2012 Homeland Security Grant Program (HSGP) Frequently Asked Questions (FAQs)," <http://www.fema.gov/pdf/government/grant/AFG.pdf>. Before 2008, DHS also funded fusion centers through its Law Enforcement Terrorism Prevention Program (LETPP), which no longer exists as a separate program.

<sup>104</sup> FEMA Preparedness Grants Authorized Equipment List, <https://www.rkb.us/mel.cfm?subtypeid=549>, accessed 9/24/2012.

<sup>105</sup> FEMA Homeland Security Grant Program, Program Guidance and Application Kits, 2007- 2011.

<sup>106</sup> Id.

will receive in HSGP funds according to a risk-based formula set out in statute.<sup>107</sup> It informs each state of the amount it will receive. Then, the SAAs prepare and submit an application to FEMA that identifies and justifies the broad areas in which they plan to spend the grant funds FEMA has already committed to providing them.

States determine how much of their FEMA preparedness grant funding they will direct to fusion center projects. As explained below, DHS does not track the exact amount each state and municipal recipient directs to each fusion center in their jurisdiction.

After FEMA reviews and approves these applications, also known as “investment justifications” (IJs), it disburses grant funds to the states. Each SAA then distributes portions of the funds to specific projects, including those meant to support fusion centers, through the state and local agencies responsible for implementing those projects. Once an SAA allocates grant funds to an individual project, FEMA expects that SAA to compile progress reports on the project. Those reports, known as the Biannual Strategy Implementation Reports (BSIRs), are filed every six months. They are intended to track the expenditure of grant funds.<sup>108</sup> BSIRs are not used to conduct program oversight. BSIRs reviewed by the Subcommittee provided only a high level overview of grantees’ spending.

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<sup>107</sup>Implementing Recommendations of the 9/11 Commission Act of 2007, P. L. No. 110-53, § 2004 (e) (2007), codified at 6 U.S.C. § 605 (e).

<sup>108</sup> DHS, Homeland Security Grant Program, Program Guidance and Application Kit, Fiscal Years 2007-2009.

#### IV. DHS SUPPORT FOR AND INVOLVEMENT IN STATE AND LOCAL FUSION CENTERS DOES NOT GENERATE TIMELY, USEFUL INTELLIGENCE FOR FEDERAL COUNTERTERRORISM EFFORTS

- Reporting from fusion centers was often flawed, and unrelated to terrorism.
- Some reports had “nothing of value.”
- If published, some draft reporting could have violated the Privacy Act.
- Most fusion center reporting related to drug smuggling, alien smuggling or other criminal activity.
- Terrorism-related reporting was often outdated, duplicative and uninformative.
- DHS intelligence reporting officials who repeatedly violated guidelines faced no sanction.
- DHS did not sufficiently train its fusion center detailees to legally and effectively collect and report intelligence.
- Short-staffing and reliance on contract employees hampered reporting efforts.
- Reporting officials aren’t evaluated on the quality of their reporting.
- A hastily-implemented and poorly coordinated review process delayed reporting by months.
- Retaining inappropriate records is contrary to DHS policies and the Privacy Act.
- Problems with DHS reporting are acknowledged, but unresolved.

##### A. Overview

“Fusion centers are and will be a critical part of our nation’s homeland security capabilities. I intend to make them a top priority for this Department to support them, build them, improve them and work with them,” DHS Secretary Janet Napolitano said in a speech before the Council on Foreign Relations in July 2009.<sup>109</sup>

At a March 4, 2010 Congressional hearing, DHS Undersecretary for Intelligence and Analysis Caryn Wagner praised fusion centers as “the linchpin of the evolving homeland security enterprise,” “a proven and invaluable tool,” and “a major force multiplier in the counterterrorism enterprise.”<sup>110</sup>

Central, effective, vital to the Federal counterterrorism mission: that was how DHS officials have envisioned and explained fusion centers’ importance to the Department and their efforts to protect the country from another terrorist attack.

In 2006, the Department’s intelligence chief penned a master plan for how DHS should use fusion centers to contribute to the U.S. intelligence community. “Harnessing domestic information is the unique DHS contribution to the national-level mission to protect the Homeland,” wrote Charles Allen, then Under Secretary for Intelligence and Analysis, in the Department’s strategy for systematic engagement with fusion centers. “We need the capability

<sup>109</sup> Remarks by Secretary Napolitano at the Council on Foreign Relations (7/29/2009), [http://www.dhs.gov/ynews/speeches/sp\\_1248891649195.shtm](http://www.dhs.gov/ynews/speeches/sp_1248891649195.shtm).

<sup>110</sup> Testimony of Caryn Wagner before the House Subcommittee on Homeland Security of the Committee on Appropriations, “Homeland Security Department Intelligence Programs and State and Local Fusion Centers,” (3/4/2010).

to routinely harvest information and finished intelligence in a timely manner from State and Local sources.”<sup>111</sup>

Congress and the White House handed DHS the responsibility and authority to share terrorism-related information with state, local and tribal governments; in 2007, both Congress and the White House made clear they agreed with Mr. Allen’s plan that such information-sharing should happen via state and local fusion centers.

But five years and hundreds of millions of dollars later, DHS has struggled to turn this vision into a reality. Even as DHS officials and others have used public appearances to emphasize fusion centers’ alleged contributions to counterterrorism intelligence efforts, the facts have not supported the weight of their claims.

The Subcommittee’s two-year investigation found that DHS’s support of fusion centers has yielded little, if any, benefit to Federal counterterrorism intelligence efforts. After reviewing 13 months’ worth of reporting originating from fusion centers from 2009 to 2010, the Subcommittee investigation found that DHS-assigned detailees to the centers forwarded “intelligence” of uneven quality – oftentimes shoddy, rarely timely, sometimes endangering citizens’ civil liberties and Privacy Act protections, occasionally taken from already-published public sources, and more often than not unrelated to terrorism.

While there were times when he was proud of the quality of reporting coming out of DHS’s Reporting Branch, former branch chief Harold “Skip” Vandover told the Subcommittee, “there were times when it was, ‘what a bunch of crap is coming through.’”<sup>112</sup>

“A lot of [the reporting] was predominantly useless information,” one former Senior Reports Officer, who worked in the Reporting Branch from 2006 to 2010, told the Subcommittee. “You had a lot of data clogging the system with no value.”<sup>113</sup> Overall, the former official estimated 85 percent of reports coming out of the Reporting Branch were “not beneficial” to any entity, from Federal intelligence agencies to state and local fusion centers.<sup>114</sup>

Of the 610 reports reviewed, the Subcommittee investigation identified dozens of problematic or useless HIRs – dated, irrelevant, potentially violating civil liberties protections, even drawn from older public accounts.

The DHS officials who filed useless, problematic or even potentially illegal reports generally faced no sanction for their actions, according to documents and interviews. Supervisors spoke with them about their errors, but those problems were not noted on the reporting officials’ annual performance reviews, and did not influence managers’ decisions about

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<sup>111</sup> Memorandum from Charles E. Allen, “State and Local Fusion Center Plan” (3/16/2006), at 2, DHS-HSGAC-FC-004031.

<sup>112</sup> Subcommittee interview of Harold “Skip” Vandover (3/22/2012).

<sup>113</sup> Subcommittee interview of former Senior Reports Officer (3/21/2012).

<sup>114</sup> Id. Others also noted the frequency of substandard reporting. “It’s quite apparent when you look at some of the reporting that the HUMINT [human intelligence] skills aren’t there,” said one former Senior Reports Officer, who reviewed and edited HIRs from fusion centers. Subcommittee interview of Senior Reports Officer (3/1/2012).

their salary raises, bonuses or career advancement, DHS officials told the Subcommittee. In fact, the Subcommittee investigation was able to identify only one case in which an official with a history of serious reporting issues faced any consequences for his mistakes – he was required to attend an extra week of reporting training.

The Subcommittee investigation also learned that DHS did not adequately train personnel it sent out to perform the extremely sensitive task of reporting information about U.S. persons – a job fraught with the possibility of running afoul of Privacy Act protections of individuals’ rights to associate, worship, speak, and protest without being spied on by their own government.

In May 2009, DHS Deputy Secretary Jane Holl Lute required certain I&A reporting to be examined and approved by a thorough multi-office review process which required signoff from the Department’s Privacy and Civil Liberties experts. Following that policy, I&A officials submitted all DHS reporting from state and local fusion centers to the enhanced review process.<sup>115</sup> While onerous, the enhanced review compensated for the difficulty DHS intelligence reporters had in consistently adhering to departmental guidelines and Federal law, and the difficulties DHS intelligence reviewers had in enforcing guidelines and law in the reporting process. Unfortunately, the offices involved in the review process also radically slowed down the reporting process. A lack of oversight from the highest levels of DHS allowed those delays to continue, slowing the publication and distribution of intelligence reports by several months, on average. Those delays affected the reporting process for the better part of almost three years.

The problems created by poor reporting and an onerous review process were compounded by insufficient staffing at the Reporting Branch, the DHS intelligence unit responsible for reviewing and finalizing drafts for publication. DHS officials said they relied on contract employees to perform these sensitive tasks, some of whom they believed to be under-trained or poor performers. And for most of its existence, the office lacked basic documentation outlining its policies and practices, such as Standard Operating Procedures or a Concept of Operations, which should have clearly defined functions, roles and responsibilities in the reporting process.<sup>116</sup>

Moreover, DHS told the Subcommittee that until 2010 it could not routinely receive intelligence reporting from most fusion centers. DHS indicated that its procedures required all “raw” intelligence reporting originating from fusion centers to be filed with DHS by a DHS official on-site at the fusion center.<sup>117</sup> In 2009, DHS reported it had placed intelligence officers at only 32 of the 70 fusion centers which it claimed operated around the country.<sup>118</sup> That meant 38 of the fusion centers had no DHS official and, thus, purportedly no way to file intelligence reports with DHS. Despite directing Federal funding to these 38 centers, DHS had not detailed

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<sup>115</sup> Email correspondence from MGMTExecSec (4/17/2009), DHS-HSGAC-FC-047649; Email correspondence from Jonathan Wilham, “Subj: Vetting of DHS HIRs” (5/5/2009), DHS-HSGAC-FC-047651.

<sup>116</sup> See 3/2011 Homeland Intelligence Report Working Group (HIRWG) Phase 1 Report and Recommendations, November 2010, DHS-HSGAC-FC-050770.

<sup>117</sup> Some DHS officials told the Subcommittee that from 2006 to as recently as 2010, DHS allowed state and local officials to file reports; in fact, DHS officials trained them to do so, and accepted reporting from them. For more on this topic, see the Background section.

<sup>118</sup> “State and Local Fusion Center Program: Quarterly Report, Fiscal Year 2009 Report to Congress, First Quarter,” (8/4/2009), at 2.

intelligence personnel to those centers, rendering them functionally disconnected from DHS's intelligence reporting process.

Undersecretary Wagner disagreed that those fusion centers were unable to share intelligence with DHS in her interview with the Subcommittee. If a fusion center lacked an IO or RO, "they can pick up the phone or send us an email," she said. Asked why ROs and IOs were necessary if telephones and email were sufficient to share information, Ms. Wagner said, "I wouldn't say these are sufficient."<sup>119</sup>

Since the period of review by the Subcommittee investigation, DHS told the Subcommittee it had expanded the number of detailees assigned to fusion centers. By May 2012, DHS claimed it had placed intelligence officials at 66 fusion centers around the country.<sup>120</sup>

The Subcommittee investigation found that senior DHS officials knew about the problems with the Department's fusion center intelligence reporting efforts, and with its broader intelligence reporting program. Yet the problems went unaddressed for months – sometimes years – and were largely unknown outside of the Department. Officials chose not to inform Congress or the public of the seriousness of these problems during that time, nor were they uncovered by any outside review until this investigation.

By the end of 2009, DHS I&A officials, led by Deputy Under Secretary for Operations James Chaparro, had identified a handful of what Mr. Chaparro termed "systemic problems" contributing to the extreme delays.<sup>121</sup> Among them: Reports officers "do not always apply sufficient scrutiny" to the information they turn into an HIR, particularly from fusion centers.<sup>122</sup> DHS officials involved in reporting intelligence needed more training, they said. Also, the Reporting Branch was understaffed.<sup>123</sup>

Mr. Chaparro left I&A on February 13, 2010, just two days after Ms. Wagner was confirmed as Undersecretary.<sup>124</sup> Ms. Wagner told the Subcommittee that officials did not immediately share with her the conclusions of Mr. Chaparro and others, although in time she received briefings which highlighted the backlog in raw intelligence production.<sup>125</sup>

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<sup>119</sup> Subcommittee interview of Caryn Wagner (9/16/2012).

<sup>120</sup> DHS Support to Fusion Centers (5/3/2012), PSI-DHS-56-0021.

<sup>121</sup> Memorandum from James Chaparro to Bart Johnson, "Homeland Intelligence Reports," (1/7/2010), DHS-HSGAC-FC-050742.

<sup>122</sup> Id.

<sup>123</sup> Id.

<sup>124</sup> Mr. Chaparro left I&A on February 13, 2010. Subcommittee interview of James Chaparro (6/28/2012). The Senate confirmed Ms. Wagner to Undersecretary for I&A on February 11, 2010. Biography of Caryn Wagner, DHS web site, <http://www.dhs.gov/caryn-wagner>, accessed 9/18/2012.

<sup>125</sup> Subcommittee interview of Caryn Wagner (9/16/2012). Ms. Wagner said she was not only concerned with the quality of reporting DHS received from fusion centers, but the quality of reporting DHS pushed out to the centers. "We had to improve the information flowing out," she said. "We weren't providing very good products to the fusion centers, either." Subcommittee interview of Caryn Wagner (9/16/2012). In 2010, the DHS Inspector General found that DHS reporting to fusion centers was often months old. "As a result, the information contained in the HIRs may no longer be relevant by the time it reaches the fusion centers," the IG reported. DHS Office of Inspector



According to one person interviewed by the Subcommittee, DHS officials who briefed Ms. Wagner discussed how her division was taking months to publish “raw” intelligence reports from fusion centers as well as from components of DHS like the Transportation Security Administration (TSA), U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP).<sup>126</sup> “I said, that’s not acceptable,” Ms. Wagner recalled. She requested a study on how her office received and published raw intelligence.<sup>127</sup>

Amy Kardell, a Ph.D. in Organizational Sociology, oversaw I&A’s efforts to coordinate intelligence activities among the Department’s many components. Ms. Kardell led the effort to examine the problems with I&A’s reporting and publication process, and propose solutions.<sup>128</sup> While it proved to be useful, the new study spent several months diagnosing some of the same problems which had already been identified by Mr. Chapparo and others, particularly the inadequacy of I&A’s reports officer training.<sup>129</sup>

In May 2010, at Ms. Wagner’s request, Ms. Kardell created the HIR Working Group (HIRWG). The group described the problems it would tackle:

Currently the HIR process from submission to dissemination is perceived as requiring excessive time to disseminate a HIR; suffering from implementation inconsistency from one Component to another; having little perceived value (clearance times render items obsolete) to include understanding the customer sets; dissemination responsibilities; and issues involving ingest to the IC [intelligence community].<sup>130</sup>

The working group’s review took six months, and its findings were sharp. Ms. Kardell told the Subcommittee that when she examined the Reporting Branch, she found it “in a state of disrepair.”<sup>131</sup> “The house was not in order,” as she described it to the Subcommittee, contrasting the branch unfavorably to a well-ordered intelligence operation. “It was kind of like a MASH unit,” she said. “[They] used a lot of practices you wouldn’t use in a hospital.”<sup>132</sup>

The HIR Working Group found the Reporting Branch lacked basic documentation like Standard Operating Procedures, clear reporting thresholds, policy management, and a Concept of

General, Report, “Information Sharing With Fusion Centers Has Improved, but Information System Challenges Remain,” Report 11-04, [http://www.oig.dhs.gov/assets/Mgmt/OIG\\_11-04\\_Oct10.pdf](http://www.oig.dhs.gov/assets/Mgmt/OIG_11-04_Oct10.pdf).

It is unclear how much the process has improved since then. GAO reported in September 2012 that fusion centers said DHS reporting “was not always timely,” and that “sometimes . . . I&A information is already available through media outlets and other information sources.” Government Accountability Office, Report, “INFORMATION SHARING: DHS Has Demonstrated Leadership and Progress, but Additional Actions Could Help Sustain and Strengthen Efforts,” Report GAO-12-809, <http://www.gao.gov/assets/650/648475.pdf>.

<sup>126</sup> Subcommittee interview of Amy Kardell (6/5/2012).

<sup>127</sup> Subcommittee interviews of Amy Kardell (6/5/2012) and Caryn Wagner (9/16/2012).

<sup>128</sup> Subcommittee interview of Amy Kardell (6/5/2012).

<sup>129</sup> Poor reporting training and its consequences had been flagged in an email conversation between I&A officials in April 2009, several months before Mr. Chapparo’s memorandum. Email from Barbara Alexander to James Chapparo, et al., “Subject: Open Source Requirements,” DHS-HSGAC-FC-059585.

<sup>130</sup> “Terms of Reference for HSIC HIR Working Group,” (11/2010) DHS-HSGAC-FC-056566.

<sup>131</sup> Subcommittee interview of Amy Kardell (6/5/2012).

<sup>132</sup> Id.

Operations.<sup>133</sup> DHS officials who collected and reported information on U.S. persons were not required to meet any standard of competence, nor required to pass any test or certification.<sup>134</sup>

While problematic and useless reporting was common, Ms. Kardell told the Subcommittee she discovered the unit had never conducted an audit or review to see why problems were so frequent, nor did it maintain records which would allow others to properly oversee the program. Ms. Kardell's team also found that many believed the review process could be "arbitrary" and "inconsistent."<sup>135</sup>

Ms. Kardell's review was completed in November 2010. In March 2011, five months later, Undersecretary Wagner directed her staff to act on the group's recommendations.<sup>136</sup> As of September 2012, more than two years after the initial study was completed, DHS had yet to fully implement several of the review's key recommendations.<sup>137</sup>

### **B. Reporting from Fusion Centers was Often Flawed, Unrelated to Terrorism**

As noted, the Subcommittee investigation reviewed every raw DHS intelligence report drafted on information from state and local fusion centers from April 1, 2009, to April 30, 2010. The period corresponds to the first year I&A implemented its multi-office review process.

The Subcommittee investigation counted that, during that period, DHS intelligence officers at state and local fusion centers around the country filed 610 draft reports<sup>138</sup> to DHS headquarters for dissemination.<sup>139</sup> During that period, the draft HIRs came from fusion centers in just 31 states; fusion centers in 19 states generated no reports at all. In addition, the vast majority of the 574 unclassified draft reports filed came from DHS detailees assigned to fusion centers in just three states – Texas (186 drafts), California (141) and Arizona (89). Meanwhile, fusion centers in most other states produced little to no reporting.<sup>140</sup>

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<sup>133</sup> The Reporting Branch assembled a document of Standard Operating Procedures in June 2010, during the period of the HIRWG review. It does not appear to reflect current practices.

<sup>134</sup> "Homeland Intelligence Report Working Group (HIRWG) Phase 1 Report and Recommendations," (11/2010) DHS-HSGAC-FC-050770.

<sup>135</sup> *Id.*

<sup>136</sup> While Undersecretary Wagner made reference to the study and its recommendations in public testimony, she said her office did not share the report with Congress until the Subcommittee requested a copy as part of its investigation. Subcommittee interview of Caryn Wagner (9/16/2012).

<sup>137</sup> Subcommittee interview of Caryn Wagner (9/16/2012); DHS response to Subcommittee inquiry, DHS-HSGAC-FC-059968.

<sup>138</sup> Of those, 574 were unclassified, 36 were classified.

<sup>139</sup> DHS disseminated HIRs to other fusion centers, although I&A personnel understood their primary consumers to be the Federal intelligence community – other DHS components, intelligence agencies, even the White House Situation Room. See, "Standard Operating Procedure for Homeland Intelligence Report Production, v. 1.1," (6/2010) at 6, DHS-HSGAC-FC-056483. ("[I]nformation. . . may be drafted and published as an HIR if it contains information of intelligence value to members of the IC.")

<sup>140</sup> This imbalance in reporting did not go unnoticed within the DHS Reporting Branch. Keith Jones, who headed the branch for part of 2009 and 2010, estimated that most reporting from fusion centers during his time came from a half dozen DHS officers. "In a couple cases there was a lot going on," he told the Subcommittee. "In a couple of others

Of the 574 unclassified draft reports field officers filed, the Subcommittee investigation counted 188 marked by DHS reviewers as cancelled, nearly a third. Reviewers recommending cancellation of drafts faulted the reports for lacking any useful information, for running afoul of departmental guidelines meant to guard against civil liberties or Privacy Act protections, or for having no connection to any of DHS's many missions, among other reasons.

Of the 386 unclassified reports published, the Subcommittee investigation counted only 94 which related in some way to potential terrorist activity, or the activities of a known or suspected terrorist. Of those 94 reports, most were published months after they were received; more than a quarter appeared to duplicate a faster intelligence-sharing process administered by the FBI; and some were based on information drawn from publicly available websites or dated public reports. In one case, DHS intelligence officials appear to have published a report which drew from or repeated information in a Department of Justice press release published months earlier. In short, the utility of many of the 94 terrorism-related reports was questionable.

The Subcommittee investigation found that fusion center reporting that attempted to share terrorism-related information was more likely to be cancelled than reporting on other topics. While the overall cancellation rate of draft intelligence reports from fusion centers during the period of review was around 30 percent, the cancellation rate for reports which alleged or indicated a possible connection to terrorism had a higher cancellation rate – over 45 percent.<sup>141</sup>

### **(1) Some Reports Had “Nothing of Value”**

At DHS headquarters, Reports Officers who reviewed the draft HIRs from fusion centers before they were to be published found many of the reports useless. The officers shared those sentiments in the written comments they made recommending that particular draft HIR reports be cancelled. At times they expressed amazement at the poor quality of reporting. For instance, one draft intelligence report alerted would-be readers that a certain model of automobile had folding rear seats that provided access to the trunk without leaving the car, and opined the feature could be useful to human traffickers. One reviewer wrote, “This is common knowledge.”<sup>142</sup> A folding rear seat “is featured on MANY different makes and models of vehicles,” the reviewer commented. “There is nothing of any intelligence value in this report[.]” The report was never published.<sup>143</sup>

“I see nothing to be gained by releasing this report,” one reviewer commented on several other intelligence drafts that were eventually cancelled. One reported an arrest for cocaine possession; another relayed information about the bust of a methamphetamine lab run by a person who had claimed affiliation with a white supremacist group; and one was on an Afghan-

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they were looking for stuff [to report] so they could wave their flag.” Subcommittee interview of Keith Jones (4/2/2012).

<sup>141</sup> Undersecretary Wagner said she believed “[HIRs] are not the premier process of reporting counterterrorism from fusion centers.” Asked what was, Ms. Wagner said, “daily ongoing collaborations,” which she defined as “phone calls” and “secure video teleconferences.” Subcommittee interview of Caryn Wagner (9/16/2012).

<sup>142</sup> “Human smuggling vehicle concealment method,” draft HIR report, cancelled 7/6/09, DHS-HSGAC-FC-17078.

<sup>143</sup> Id.

born former U.S. Army translator who had been a passenger in a car involved in an accident.<sup>144</sup> Reviewers could see no apparent link to a homeland security mission for any of the reports.

“This report does not provide the who, what, when, where, how,” went a comment on a different draft report that was cancelled.<sup>145</sup> That particular draft HIR, dated July 2009, chronicled the experience of a Texas sheriff’s deputy who encountered a man standing beneath a bridge near the U.S.-Mexico border. When the deputy spoke with the man, the draft said the man identified himself as a former gang member. After they spoke, the man left, according to the draft report.<sup>146</sup>

The sheriff’s deputy saw “numerous human footprints nearby,” the draft stated. A records check on the man turned up numerous arrests, including some for drug smuggling, the draft noted. There was no record of any activity by the man’s alleged former gang in the area, according to the draft, and the officer saw no drugs at the site underneath the bridge. Nevertheless, the sheriff’s department believed the man “may have been awaiting a drug shipment at the time of the encounter,” the draft stated.<sup>147</sup>

“There is no conclusive, reportable information in this HIR,” another commenter wrote on the draft. “I don’t feel this meets our reporting threshold or provides any benefit to the IC [Intelligence Community].” In February 2010, seven months after the draft was filed, DHS I&A cancelled it.

“This is open-source information,” a DHS headquarters reviewer wrote to advocate cancelling another draft report, using the intelligence community’s term for public, non-classified information such as news reports. The draft relayed a Mexican news report that a Mexican ambulance service allegedly declined to transport a Mexican victim of drug violence in Mexico. Another reviewer concurred, “This is open source news information and lacks any valuable information for the IC.”<sup>148</sup>

“[D]oes not contain any actual intelligence,” went a comment on yet another draft. That draft recounted the experience of two state wildlife officials who spotted a pair of men in a bass boat “operating suspiciously” in a body of water on the U.S.-Mexico border.<sup>149</sup> “The bass boat, operating within Mexican waters, was travelling at a high rate of speed towards the international boundary,” the draft stated. “After the wardens responded by maneuvering their . . . boat in the

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<sup>144</sup> “Narcotics and Currency Smuggler Arrested . . .” draft HIR report, cancelled 4/30/2010, DHS-HSGAC-FC-16967; “Police Discover Meth Lab Operated by Member of White Supremacist Group,” draft HIR report, cancelled 4/23/2010, DHS-HSGAC-16971; “Woman Under Investigation. . . Relocates . . . to Work on Military Base,” draft HIR report, cancelled 4/30/2010, DHS-HSGAC-16975. When citing and quoting cancelled reporting in this report, the Subcommittee investigation has removed specific identifying details of individuals wherever possible, including names and locations, and represented those omissions with ellipses and/or bracketed text.

<sup>145</sup> “Possible . . . Gang Smuggling Activity Interrupted . . .” draft HIR, 7/6/2009, DHS-HSGAC-FC-017130.

<sup>146</sup> Id.

<sup>147</sup> Id.

<sup>148</sup> “Possible Refusal by Mexican Ambulance Services of Transporting Victims of Drug Trafficking Organizations (DTOs) to Mexican Hospitals,” draft HIR, cancelled 2/18/2010, INT-3135-09, DHS-HSGAC-FC-017279.

<sup>149</sup> “Possible Drug Smuggling Activity. . .” draft HIR, 2/16/2010, DHS-HSGAC-FC-017375.

direction of the international boundary to investigate, the bass boat stopped abruptly just short of the boundary and the two occupants began fishing.”<sup>150</sup>

When the wardens drove their boat closer, “the two individuals avoided eye contact, started their engine, and maneuvered the bass boat approximately 50 yards further away from the international border.” A comment by the draft’s author stated, “it is unusual to fish at that location based on the depth of the reservoir. Additionally, there were high winds and choppy waters at that time.” The commenter included the observation that the suspicious boat “was riding low in the water, as if it were laden with cargo.”<sup>151</sup>

“The fact that some guys were hanging out in a boat where people normally do not fish MIGHT be an indicator of something abnormal, but does not reach the threshold of something that we should be reporting,” one reviewer stated. “I . . . think that this should never have been nominated for production, nor passed through three reviews.”<sup>152</sup>

“I am actually stunned this report got as far as it did,” went a comment from a reviewer asking to cancel another draft report, about local police arresting a foreigner with an expired visa and a record in the Terrorist Identities Datamart Environment (TIDE), a U.S. government database it calls its central repository of “known or appropriately suspected” terrorist identities.<sup>153</sup> The foreigner was accused of shoplifting.

“The subject of the report is a TIDE match. Okay, good start. But the entire total knowledge about the subject . . . is that he tried to steal a pair of shoes from Nieman Marcus. Everything else in the report is [commentary] . . . I have no idea what value this would be adding to the IC [Intelligence Community].”<sup>154</sup>

“I actually am surprised that nobody recommended this for cancellation already,” a senior reports officer wrote on another draft that was eventually cancelled. That draft reported information about an individual with a record in the TIDE database who was arrested for speeding while driving his brother’s van. “As I see it, we have a report about a TIDE match that borrowed a van. That is it. From that I can see no reason why the IC would be interested,” the senior officer wrote.<sup>155</sup>

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<sup>150</sup> Id.

<sup>151</sup> Id.

<sup>152</sup> Id.

<sup>153</sup> TIDE’s custodian, the National Counterterrorism Center (NCTC), defines it as containing “identities of individuals known or appropriately suspected to be or have been involved in activities constituting, in preparation for, in aid of, or related to terrorism, with the exception of purely domestic terrorism information.” TIDE Fact Sheet, NCTC.gov, [http://www.nctc.gov/docs/Tide\\_Fact\\_Sheet.pdf](http://www.nctc.gov/docs/Tide_Fact_Sheet.pdf).

<sup>154</sup> “TERRORISM WATCHLIST: [State] Law Enforcement Officials (LEOs) Arrest an Overstay with Terrorist Related Records,” draft HIR, cancelled 2/18/2010, DHS-HSGAC-FC-16692.

<sup>155</sup> “TERRORISM WATCHLIST – Encounter with a Jordanian-born U.S. Citizen with Terrorist Related Records,” INT-2611-09, DHS-HSGAC-FC-016740.

While reporting information on an individual who is listed in the TIDE database sounds significant, the Subcommittee found that DHS officials tended to be skeptical about the value of such reporting, because of concerns about the quality of data contained in TIDE.<sup>156</sup>

## **(2) If Published, Some Draft Reporting Could Have Violated the Privacy Act**

Reporting information of little or no intelligence value may have been the most benign type of failure by DHS intelligence officers reporting from fusion centers. During the 13-month period of reporting the Subcommittee reviewed, DHS officials also nixed 40 reports filed by DHS personnel at fusion centers after reviewers raised concerns the documents potentially endangered the civil liberties or legal privacy protections of the U.S. persons they mentioned.

The Constitutional obligations of I&A reports officers and officials at state and local fusion centers were summarized by the Office of General Counsel in a July 2008 memorandum DHS provided to the Subcommittee. “You are prohibited from collecting or maintaining information on U.S. persons solely for the purpose of monitoring activities protected by the U.S. Constitution, such as the First Amendment protected freedoms of religion, speech, press, and peaceful assembly and protest,” the memorandum stated.<sup>157</sup>

It continued, “[T]his does not mean you may never maintain or collect information with some connection to constitutionally protected activities; but the information regarding the

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<sup>156</sup> Although NCTC describes its TIDE database as holding information on the identities of known and suspected terrorists, DHS officials – who interacted with TIDE data on a daily basis, as they reviewed reporting not only from state and local law enforcement encounters but from encounters by DHS components – said they found otherwise. “Not everything in TIDE is KST,” DHS privacy official Ken Hunt told the Subcommittee, using a shorthand term for “known or suspected terrorist.”

“Would you buy a Ford?” one DHS Senior Reports Officer asked the Subcommittee staff during an interview, when he was asked how serious it was for someone to be a match to a TIDE record. “Ford Motor Company has a TIDE record.”

Ole Broughton headed Intelligence Oversight at I&A from September 2007 to January 2012. In an interview with the Subcommittee, Mr. Broughton expressed the concern DHS intelligence officials felt working with TIDE data. In one instance, Mr. Broughton recalled he “saw an individual’s two-year-old son [identified] in an HIR. He had a TIDE record.” Mr. Broughton believed part of the problem was that intelligence officials had routinely put information on “associates” of known or suspected terrorists into TIDE, without determining that that person would qualify as a known or suspected terrorist. “We had a lot of discussion regarding ‘associates’ in TIDE,” Mr. Broughton said.

Mark Collier, who served as a Senior Reports Officer and briefly as chief of the Reporting Branch, recalled another case. An HIR was drafted concerning an incident with a TIDE match, but the TIDE record was based on an FBI inquiry. Later the FBI ended its inquiry and cleared the individual of any connection to terrorism – but because DHS had filed an HIR on the person, the individual’s record was kept active in TIDE. Subcommittee interviews of Ken Hunt (2/27/2012), former Senior Reports Officer (3/1/2012), Mark Collier (3/8/2012), and Ole Broughton (4/18/2012).

<sup>157</sup> Memorandum from Matthew L. Kronisch to I&A Reports Officers and Fusion Center Representatives, “Subject: Roles & Functions” (7/29/2008), DHS-HSGAC-FC-047644.

protected activity may only be incidental to the authorized purpose for which you collected or maintained the information.”<sup>158</sup>

The inappropriate reporting appears to have been a regular problem. An April 2009 email from an alarmed senior I&A official stated: “[State and Local Fusion Center officials] are collecting open-source intelligence (OSINT) on U.S. persons (USPER), without proper vetting, and improperly reporting this information through homeland information reporting (HIR) channels,” wrote Barbara Alexander, then director of the Collection and Requirements Division, which oversaw HIR reporting. “The improper reporting of this information through HIR channels is likely a result of a lack of training on proper collection and reporting procedures . . . they are inadvertently causing problems.”<sup>159</sup> In an interview with the Subcommittee, Ms. Alexander said she recalled being told the Reporting Branch was “flooded” with inappropriate reporting. “A lot of information was coming in inappropriately,” she remembered. “The information was not reportable.”<sup>160</sup>

Two years later, in 2011, Margo Schlanger, then the director of DHS’s Office for Civil Rights and Civil Liberties (CR/CL), gave a training presentation based on the “main issues coming up” for her office as it reviewed I&A’s reporting.<sup>161</sup>

Ms. Schlanger’s presentation, a copy of which DHS provided to the Subcommittee, indicated that areas in which DHS intelligence reporters had overstepped legal boundaries included: Reporting on First Amendment-protected activities lacking a nexus to violence or criminality; reporting on or improperly characterizing political, religious or ideological speech that is not explicitly violent or criminal; and attributing to an entire group the violent or criminal acts of one or a limited number of the group’s members.<sup>162</sup>

Examples of those errors were present in the Subcommittee’s review of HIRs drafted by DHS officials at fusion centers. To the credit of officials participating in the review process, these reports were for the most part cancelled before publication.<sup>163</sup> However, these reports should not have been drafted at all.

One draft reported on a list of reading suggestions by a Muslim community group, “Ten Book Recommendations for Every Muslim.” The report noted that four of the titles were

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<sup>158</sup> Memorandum from Matthew L. Kronisch to I&A Reports Officers and Fusion Center Representatives, “Subject: Roles & Functions” (7/29/2008), DHS-HSGAC-FC-047644.

<sup>159</sup> Email from Barbara Alexander to James Chaparro, et al., “Subject: Open Source Requirements” (4/1/2009) DHS-HSGAC-FC-059585.

<sup>160</sup> Subcommittee interview of Barbara Alexander (6/22/2012).

<sup>161</sup> Subcommittee interview of Margo Schlanger (5/22/2012).

<sup>162</sup> Principles for Respecting Civil Rights and Civil Liberties in Intelligence Products, Margo Schlanger (3/30/2011), DHS-HSGAC-FC-056639.

<sup>163</sup> With the assistance of a former DHS Civil Rights and Civil Liberties official, the Subcommittee investigation identified two published reports from the period of review which may have included inappropriate information on identified individuals. Subcommittee interview of Timothy Skinner (3/14/2012); DHS-HSGAC-FC-013331, DHS-HSGAC-FC-14519.

authored by individuals with records in a U.S. intelligence counterterrorism database, the Terrorist Identities Datamart Environment (TIDE).<sup>164</sup>

“We cannot report on books and other writings of TIDE matches simply because they are TIDE matches,” wrote a CR/CL reviewer on that draft. “The writings themselves are protected by the First Amendment unless you can establish that something in the writing indicates planning or advocates violent or other criminal activity.”<sup>165</sup> The report was not published.<sup>166</sup>

One draft HIR that CR/CL opposed publishing reported on a leaflet prepared by a chapter of the Mongols Motorcycle Club, a California-based biker gang. The organization, which has claimed it is persecuted by overly aggressive law enforcement, saw their notoriety boosted in 2008, when a Federal investigation into many of its members culminated in the arrest and conviction of dozens of Mongols for crimes including murder, attempted murder, drug trafficking, money laundering, and racketeering.<sup>167</sup>

At first blush, the activities of this group would seem significant. The subject of the DHS intelligence official’s report, however, focused not on their illegal behavior, but on a leaflet the club produced entitled, “Checklist for the Club Members Who Are Stopped.” The document did not mention any illegal activities. To the contrary, the checklist directed members, if pulled over by police, to:

- Be “as courteous as possible”;
- Try to pull over in a lighted or busy area – “this can provide witnesses to any harassment”;
- “always carry a disposable camera”;
- document the “date, time and which type cop (police or sheriff) is harassing you,” including badge number, as well as “all threats/comments about this being their town, they will run you out, etc.”
- “STAY IN CONTROL OF YOUR EMOTIONS – Now is not the time to have problems in bars and public places. Watch each other[’]s backs and help one another with this”;
- “Clean up your vehicle – make sure it is completely legal – current registration, all lights working – even a license plate light being out . . . is enough to have them pull you over”;
- “If possible, have a designated driver who will be alcohol and drug free. If not possible, taxis cost less than an attorney.”<sup>168</sup>

<sup>164</sup> For more on TIDE, see footnote 155.

<sup>165</sup> “TERRORISM WATCHLIST: [Organization] Advertises Literature Produced by Persons with Records Related to Terrorism,” draft HIR, cancelled 2/26/2010, DHS-HSGAC-FC-16408.

<sup>166</sup> Id.

<sup>167</sup> See “Mongols motorcycle gang members arrested,” *Associated Press*, (10/21/2008), [http://www.usatoday.com/news/nation/2008-10-21-mongols\\_N.htm](http://www.usatoday.com/news/nation/2008-10-21-mongols_N.htm); “U.S. targets bikers’ identity,” *Los Angeles Times*, Scott Glover (10/22/2008), <http://articles.latimes.com/2008/oct/22/local/me-mongols22>.

<sup>168</sup> “Mongols Motorcycle Club (MMC) Chapter . . . Issues Guidelines for Intelligence Collection During Police Encounters,” draft HIR, cancelled 2/17/2010, DHS-HSGAC-FC-16551.



“There is nothing illegal or even remotely objectionable [described] in this report,” wrote the CR/CL reviewer about the draft. “The advice given to the groups’ members is protected by the First Amendment. The organization does not advocate the violation of ANY laws – on the contrary, they tell their members to obey the law.”<sup>169</sup> The draft HIR was never published.

One DHS intelligence officer filed a draft HIR about a U.S. citizen who was appearing at a Muslim organization to deliver a day-long motivational talk and a lecture on positive parenting. “Intelligence personnel are not authorized to collect information regarding USPERs [U.S. persons] solely for the purpose of monitoring activities protected by the U.S. Constitution,” the DHS Office of General Counsel wrote on the draft. It was cancelled.<sup>170</sup>

“Constitutionally protected activities; no nefarious activity,” wrote a reviewer recommending cancellation of a different draft HIR reporting about a Muslim organization hosting a daylong seminar on marriage.<sup>171</sup>

Another cancelled draft HIR reported on a U.S. citizen visiting and giving a lecture at a mosque. The draft contained no derogatory information on the speaker, or the mosque, although it noted that the speaker was once the head of a U.S. Islamic school that had a record in the TIDE database. “There is concern,” the drafting officer wrote in his initial submission, “that [the subject’s] visit . . . could be to strengthen ties with the . . . mosque as well as to conduct fundraising and recruiting for the sake of foreign terrorist organizations.”<sup>172</sup> This assertion was not supported by evidence, however, and was removed from later drafts.

“The number of things that scare me about this report are almost too many to write into this [form],” one reviewer stated about the submission. He noted it was sourced to a fusion center on the other side of the country, as well as to open source information – which required it to go through a reporting team which specialized in open source information. “Secondly, the nature of this event is constitutionally protected activity (public speaking, freedom of assembly, freedom of religion).”<sup>173</sup>

Markings on the drafts appear to indicate that half of the draft HIRs which appeared to overstep legal restrictions on government monitoring of protected activity came from one intelligence officer. DHS confirmed that officer “received informal counseling,” but faced no other penalty, reprimand, formal counseling or other consequence.<sup>174</sup>

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<sup>169</sup> Id.

<sup>170</sup> “TERRORISM WATCHLIST—Individual with Terrorist-related Records Speaks at a Seminar . . .,” draft HIR, cancelled 7/16/2009, DHS-HSGAC-FC-16303.

<sup>171</sup> “TERRORISM WATCHLIST: Naturalized U.S. Citizen with Records Related to Terrorism is Scheduled to a Lead Seminar [sic],” draft HIR, cancelled 1/11/10, DHS-HSGAC-FC-016339.

<sup>172</sup> “TERRORISM WATCHLIST: U.S. Citizen with Terrorist-related Records Speaks at a Mosque . . .” draft HIR, cancelled 2/17/2010, INT-2483-09, DHS-HSGAC-FC-016644.

<sup>173</sup> Id.

<sup>174</sup> DHS response to Subcommittee inquiry, DHS-HSGAC-FC-059967.

### (3) Most Fusion Center Reporting Related to Drug Smuggling, Alien Smuggling, or Other Criminal Activity

Of the 386 unclassified HIRs that DHS eventually published over the 13-month period reviewed by the Subcommittee investigation, a review found close to 300 of them had no discernable connection to terrorists, terrorist plots or threats.<sup>175</sup>

Most draft HIRs that were accepted by DHS headquarters for dissemination relayed information from arrests or encounters relating to drug trafficking and, to a lesser extent, alien smuggling. One typical report, based on information acquired in July 2009 and published five months later, reads as follows:

On 05 July 2009 at 1704 hours, Texas DPS officers stopped a 2007 three door Ford F-150, bearing identified Arizona license plates, for speeding eastbound on Interstate 40 at milepost 56 in Potter County. The driver and passenger were nervous and told conflicting stories regarding their travel. A search of the vehicle resulted in the seizure of 5.23 kilograms of methamphetamine. The methamphetamine was hidden in a false compartment built in to the floor of the vehicle behind the front seats. The occupants were reportedly traveling from Phoenix, Arizona to Oklahoma City, Oklahoma.

The driver and the passenger of the load vehicle were identified U.S. persons (USPER1 and USPER2, respectively). (SOURCE COMMENT: USPER2 was previous[ly] convicted for attempting to smuggle 41.9 pounds of marijuana into the United States from Mexico on 29 December 2003.)

The Tucson HIDTA [High Intensity Drug Trafficking Area] has noted an increase in the number of methamphetamine seizures from Mexico over the last six months . . . .<sup>176</sup>

Additionally, the Subcommittee reviewed redacted, unclassified versions of the 39 classified HIRs published during the same the time period. About half appeared to contain no terrorism-related information. Those HIRs were published on average 142 days, or over four months, after the information was obtained by a DHS reporting official.

Though it may be relevant to broader departmental missions, the preponderance of non-terrorism related reporting raises concerns about DHS's fusion center involvement. If reporting on drug running and human smuggling are not top priorities in DHS's counterterrorism effort, it is unclear how the bulk of published reporting from fusion centers contributes to DHS's antiterrorism mission. Conversely, if the most useful fusion center contributions come in these

<sup>175</sup> The Subcommittee review of the 386 unclassified HIRs found only 94 had any discernible relationship to terrorism.

<sup>176</sup> "HIR/AZ-0032-09 Law Enforcement Officers Seize Methamphetamine From a Vehicle's Hidden Compartment," published December 22, 2009, DHS-HSGAC-FC-013267.

areas, it is unclear why DHS does not describe fusion centers as essential to its counterdrug and anti-human-smuggling efforts, rather than to its counterterrorism mission.<sup>177</sup>

### **C. Terrorism-Related Reporting was Often Outdated, Duplicative, and Uninformative**

Of the 386 unclassified HIRs published by DHS during the 13-month period reviewed by the Subcommittee, only 94 HIRs, or less than one-third, appeared to have a connection to a suspected terrorist or terrorist supporter, suspicious behavior that could indicate terrorist intent, or criminal activity that could indicate a potential terrorist plot, such as the theft of explosive material.

Those terrorism-related reports were published on average four months after they were first drafted. Some appeared to be based on previously published accounts. Some reports, which flagged activity by so-called “known or suspected terrorists,” appeared to duplicate information already being shared by a faster, more efficient system managed by the FBI-led Terrorist Screening Center.

#### **(1) Some Terrorism-Related Reports Were Based on Older Published Accounts**

At times, it appears DHS reporting officials at fusion centers based their reporting not on sensitive intelligence and law enforcement information from state and local sources, but on previously-published accounts, including a press release and news articles.

**Stolen Explosives.** One particularly alarming HIR published in March 2010 described thefts in the Northwest of hundreds of pounds of explosives and explosive components, including 96 pounds of TNT; 27 pounds of deta-sheet, another type of explosive; 17 sticks of Dyno-Yello, yet another explosive; four 50-pound bags of “ammonium nitrate/fuel oil explosive”; 130 pounds of black powder; 14 bags of “rocket black powder”; 11 bags of KINEPAK, another explosive; 115 “small blasting cap boosters”; and hundreds of feet of detonation cord.<sup>178</sup>

The HIR had been drafted, however, in August 2009, seven months prior.<sup>179</sup> The author acquired the information about the thefts on August 13, according to the report.<sup>180</sup> The thefts occurred July 28, 2009, nearly two weeks before the report was apparently drafted.<sup>181</sup> And they were the subject of a press release at the time of the thefts: The U.S. Department of Justice’s

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<sup>177</sup> The investigation noted the potential for duplication between terrorism-related information sharing efforts by fusion centers and FBI-led Joint Terrorism Task Forces (JTTFs), but did not address the issue in its inquiry. At the request of House and Senate Homeland Security Committees, the Government Accountability Office is currently reviewing fusion centers, JTTFs and other information-sharing entities for potential duplication. GAO expects to release its findings in 2013.

<sup>178</sup> “HIR/WA-0001-10 Theft of Explosives from Storage Bunker in Walla Walla, Washington,” (3/3/2010), DHS-HSGAC-FC-016082.

<sup>179</sup> Id.

<sup>180</sup> Id.

<sup>181</sup> Id.

Bureau of Alcohol, Tobacco and Firearms (ATF), which led the joint investigation of the thefts, had issued a release to the media about the thefts on July 31, 2009, describing the missing materials in detail and asking the public for tips and leads.<sup>182</sup>

**Blog Praising Fort Hood Shooting.** In one HIR from November 2009, a DHS intelligence officer stationed at a California fusion center reported information relating to the Fort Hood shooting, which had taken place just days earlier in Texas. Anwar Nassar Al-Awlaki, the U.S.-born radical Muslim cleric, praised the shootings on his public blog, the intelligence officer reported in his draft HIR.<sup>183</sup>

On the same day the officer reported that news – November 9, 2009 – several news organizations, including the *Los Angeles Times*, ABC News and FOX News ran stories reporting the same information.<sup>184</sup> On November 13, 2009 – four days after the *Los Angeles Times* and others reported the same information – DHS officials circulated their HIR about Al-Awlaki’s blog to colleagues at the NSA, the CIA, the Defense Intelligence Agency, the FBI, Special Operations Command (SOCOM), even the White House Situation Room.<sup>185</sup>

Surprisingly, a subsequent performance review for the HIR’s author cited this report as a signature accomplishment. The performance review gave the author an evaluation of “Achieved Excellence,” and recommended the official for a promotion to a leadership position “analyzing the most critical national security threats facing the Homeland.”<sup>186</sup> “His outstanding analytical abilities would serve I&A well in any position,” the appraisal stated.<sup>187</sup>

**Terrorist Threat to Tourists in North Africa.** In March 2010, DHS published an HIR by a fusion center DHS detailee in California on alleged terrorist threats to tourists in North Africa.<sup>188</sup> The HIR repeated verbatim six paragraphs of information from a bulletin published by the non-governmental Institute of Terrorism Research and Response (ITRR) 11 months earlier, in April 2009.<sup>189</sup> In the HIR version, the DHS reporter described “the veracity/reliability of the source and the information” as “unknown.” The reporter did not note that the initial ITRR

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<sup>182</sup> “Theft of Explosives in Walla Walla” (7/31/2009), ATF Press Release, <http://www.atf.gov/press/releases/2009/07/073109-sea-walla-walla-explosives-theft.html>.

<sup>183</sup> “HIR/CA-0078-09 Imam Anwar Nassar Al-Awaki [sic] Praised Fort Hood,” (11/13/2009) DHS-HSGAC-FC-014138.

<sup>184</sup> “Fort Hood shooting suspect’s ties to mosque investigated,” *Los Angeles Times*, Josh Meyer (11/9/2009); (11/9/2009) “Tragedy at Fort Hood: What They Knew,” World News with Charlie Gibson, ABC News, Brian Ross (11/9/2009); “Details Emerge About Fort Hood Suspect’s Past and His Communications,” Fox News, Catherine Herridge (11/9/2009).

<sup>185</sup> To make matters worse, DHS published the report misspelling the Al Qaeda imam’s name in the report’s title, dubbing him “Al-Awaki.”

<sup>186</sup> Performance review provided by DHS (10/26/2010). DHS-HSGAC-FC-004908

<sup>187</sup> Id.

<sup>188</sup> 3/10/2010 “Private Security Firm Claims al-Qaida to Target Tourists in North Africa,” HIR/CA-0014-10, DHS-HSGAC-FC-013566.

<sup>189</sup> 4/28/2009 “TAM-C ALERT: MODERATE: NORTH AFRICA,” Institute for Terrorism Research and Response, PSI-ITRR-01-0001.

bulletin stated the “timeline” for the threat was “through 3 June 2009,” indicating it was likely out of date by the time of its publication by DHS in March 2010.<sup>190</sup>

## **(2) Many Terrorism-Related HIRs from Fusion Centers Appeared to Duplicate a Faster, More Efficient Information-Sharing Process**

Some of the published terrorism-related intelligence reports filed from fusion centers during the period reviewed by the Subcommittee appear to have duplicated a faster, more efficient information-sharing process already in place between local police and the FBI-led Terrorist Screening Center (TSC).

Of the 94 published terrorism-related intelligence reports from DHS officials at fusion centers, 27 of them relayed information about encounters between local law enforcement and individuals whose identities were listed in the Terrorist Identities Datamart Environment (TIDE), the Federal Government’s central repository for information on who it considers a known or suspected terrorist entity. TIDE is maintained by the National Counter Terrorism Center (NCTC), an entity under the direction of the Office of the Director of National Intelligence (ODNI).<sup>191</sup>

These reports of so-called “TIDE matches” relayed information gathered in the course of routine law enforcement incidents, such as a traffic stop or a response to a 911 call, in which a state or local law enforcement officer came into contact with an individual whose identity was listed in the TIDE database, identifying him or her as a “known or suspected terrorist” according to the U.S. government.<sup>192</sup>

DHS officials whose responsibilities included reviewing these draft HIRs for release explained that in most cases, they published reports of TIDE matches not because the incident itself appeared to indicate planning or preparation for a terrorist attack, or even suggested an intent to do so, but because the report could contain new biographical data that could be used to update the subject’s TIDE record.<sup>193</sup> Such reports were supported by DHS guidance contained in a June 2010 handbook on HIR production that DHS produced to the Subcommittee.<sup>194</sup>

As the DHS I&A Reporting Branch stated in its 2010 Standard Operating Procedures, “DHS TIDE based HIRs are written primarily to update the TIDE record, provide a more detailed background of the subject, indicate travel patterns or associations, and to highlight a recent incident while providing appropriate background context to a subject’s importance for the

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<sup>190</sup> 3/10/2010 “Private Security Firm Claims al-Qaida to Target Tourists in North Africa,” HIR/CA-0014-10, DHS-HSGAC-FC-013566.

<sup>191</sup> For more discussion of NCTC, please see the introduction.

<sup>192</sup> Deficiencies in the TIDE database are described earlier.

<sup>193</sup> Subcommittee interview of Senior Reports Officer (3/20/2012). See also, “Standard Operating Procedure for Homeland Intelligence Report Production, v. 1.1,” (6/2010) DHS-HSGAC-FC-056483.

<sup>194</sup> Standard Operating Procedure for Homeland Intelligence Report Production, v. 1.1, DHS, 6/25/2010, DHS-HSGAC-FC-056483.

IC. HIRs typically attempt to fill in the unknown backgrounds of some of these individuals or organization[s].”<sup>195</sup>

Such information could include a driver’s license number, automobile registration information, information on the subject’s origin or destination of travel, even what was in their pockets or in the car’s backseat.<sup>196</sup> It could include any information lawfully collected by law enforcement during the encounter, officials from both DHS and the Department of Justice told the Subcommittee.<sup>197</sup>

DHS did not require that the subject of such a report be suspected of or charged with violating any law or ordinance to report his or her information. For example, the Subcommittee reviewed a report on a TIDE match who was a passenger in a car whose driver was cited for a moving violation, and two on TIDE matches who were crime victims.

The DHS reporting official at the local fusion center learned of a local police officer’s interaction, possibly by reviewing an incident report.<sup>198</sup> The DHS official then prepared a draft HIR and filed it with DHS headquarters in Washington, D.C.<sup>199</sup>

At headquarters, such a draft HIR would go through the four-office review process described earlier. After weeks or months spent in the review queue, the HIR would be approved by the four offices involved in the process, and DHS would release the report to the intelligence community. DHS officials said they would flag these HIRs for NCTC, which maintains TIDE, suggesting it update its records on the entities named.

The result was that, several weeks or months after the incident with a possible TIDE match individual occurred, NCTC would receive a report from DHS with information to update its records.

However, as the Subcommittee learned from DHS’s senior representative at NCTC, the very same data in those reports likely made it to the center within a day of the incident via an FBI-run process, possibly making DHS’s reporting both untimely and duplicative.<sup>200</sup>

The FBI process occurs without the involvement of a fusion center or DHS: When a local police officer or state trooper encounters an individual in the field, for example in a traffic stop, he or she checks the person’s identification electronically against the National Crime

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<sup>195</sup> Id.

<sup>196</sup> Subcommittee interview of Joel Cohen (4/16/2012).

<sup>197</sup> Subcommittee interviews of Rick Kopel, DHS/NCTC (4/11/2012), and Kimberly Smith, Branch Chief, CJIS Division, FBI (6/21/2012).

<sup>198</sup> Subcommittee interview of Joel Cohen (4/16/2012).

<sup>199</sup> Id.

<sup>200</sup> Subcommittee interview of Rick Kopel, DHS/NCTC (4/11/2012).

Information Center (NCIC) database, an online criminal information clearinghouse that has been run by the FBI since 1967.<sup>201</sup>

The NCIC database contains a “known and suspected terrorist” identities list.<sup>202</sup> It derives that list from the Terrorist Screening Database (TSDB), more commonly known as the Terrorist Watchlist.<sup>203</sup> The TSDB is maintained by the Terrorist Screening Center (TSC), an FBI-led organization. TSC obtains the identities for TSDB from the National Counterterrorism Center’s TIDE database.<sup>204</sup>

When a local law enforcement officer checks an identity through NCIC, his or her computer will display a message if NCIC finds a possible match on its known or suspected terrorist list. The message instructs the officer to contact the TSC, which will rely on the officer’s help to confirm whether the individual matches the identity on the watchlist.<sup>205</sup>

When that officer contacts TSC, TSC personnel will ask the officer “to get all the information you can,” a Justice Department official told the Subcommittee. According to the procedure, the officer will gather the information, and share it with TSC personnel at the time of the stop.<sup>206</sup> TSC personnel immediately pass that information along to the NCTC, to update the individual’s record, officials explained to the Subcommittee.<sup>207</sup>

According to Rick Kopel, DHS’s senior representative to NCTC, that sharing of information typically occurs on the same day of the local law enforcement official’s encounter. Mr. Kopel could think of no reason why TSC would fail to timely relay the information to NCTC, or which might justify DHS’s maintaining a second pathway to share the same information. “There’s no reason TSC would not report encounter data [to NCTC],” Mr. Kopel told the Subcommittee. “If that wasn’t happening, that would be a problem.”<sup>208</sup>

These facts indicate DHS may be using fusion center HIRs to report to NCTC information about an encounter days, weeks, even months after NCTC already received the same information, from the same local source, through TSC.<sup>209</sup>

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<sup>201</sup> Subcommittee interviews of Kimberly Smith, Branch Chief, CJIS Division, FBI (6/21/2012), Rick Kopel, DHS/NCTC (4/11/2012), Joel Cohen (4/16/2012); FBI.gov, “FBI-National Crime Information Center,” <http://www.fbi.gov/about-us/cjis/ncic/>.

<sup>202</sup> Subcommittee interview of Kimberly Smith, Branch Chief, CJIS Division, FBI (6/21/2012).

<sup>203</sup> Testimony of Timothy J. Healy before the House Judiciary Committee (3/24/10),

<http://www.fbi.gov/news/testimony/sharing-and-analyzing-information-to-prevent-terrorism>.

<sup>204</sup> Id.; Subcommittee interview of Kimberly Smith, Branch Chief, CJIS Division, FBI (6/21/2012).

<sup>205</sup> Subcommittee interviews of Rick Kopel, DHS/NCTC (4/11/2012) and Kimberly Smith, Branch Chief, CJIS Division, FBI (6/21/2012).

<sup>206</sup> Id.

<sup>207</sup> Id.

<sup>208</sup> Subcommittee interview of Rick Kopel, DHS/NCTC (4/11/2012).

<sup>209</sup> At least one DHS I&A official told the Subcommittee that he recalled this duplicative reporting was taking place. Mark Collier, a Senior Reports Officer and one-time reporting branch chief, told Subcommittee staff that NCTC at times “would get the same ‘encounter package’” report “through TSC before they got it from us.” Subcommittee interview of Mark Collier (3/8/2012).

Asked about this possible duplication, Undersecretary Wagner said if true, “it’s probably not the most efficient use of resources. . . . I would say we should write [intelligence reports] that don’t duplicate other reporting.”<sup>210</sup>

#### **D. DHS Intelligence Reporting Officials Who Repeatedly Violated Guidelines Faced No Sanction**

The Subcommittee investigation found that a very small number of DHS reporting officials appeared to be responsible for many of the problematic HIRs that DHS reviewers later cancelled.<sup>211</sup> Just four reporting officials generated 108 of the 188 cancelled draft HIRs during the 13-month period reviewed by the Subcommittee, according to a tally of cancelled HIRs by the reporter codes which indicated authorship. Those reporters had higher cancellation rates than their peers, the tally showed. However, reporters’ cancellation rates were not considered when managers assessed their performance, according to DHS officials.

“I don’t recall noting poor reporting in an annual review. It never came up as a black mark against a guy,” said Mikael Johnston, who oversaw IOs as head of the State and Local Program Office from October 2009 to March 2012. Jonathan Wilham, deputy director of the Reporting Branch, also said that when assessing ROs, “we don’t use cancellation rates as a performance measure.”<sup>212</sup> The Subcommittee also learned that those who repeatedly violated guidelines faced no apparent sanction for their transgressions.<sup>213</sup>

DHS detailees at fusion centers were not junior officials. Information provided by DHS indicates that detailees were typically GS-14s, near the highest end of the Federal workforce pay scale.<sup>214</sup> During the period of reporting reviewed by the Subcommittee, salaries for GS-14 employees ranged from around \$80,000 to over \$100,000.<sup>215</sup> Additionally, the Department distributed over \$500,000 to the detailees in the form of bonuses, performance awards, and recruitment and relocation incentives in 2009 and 2010.<sup>216</sup>

One reporter had 26 of his 35 draft reports cancelled during the April 2009-April 2010 period. One former Senior Reports Officer said he knew the author and that he had a reputation as “a problem child” among Reporting Branch officials.<sup>217</sup>

“He didn’t like to be told what he was doing was not in the realm of the program,” the former official said, and stated he and others raised the officer’s performance with higher-ups.

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<sup>210</sup> Subcommittee interview of Caryn Wagner (9/16/2012).

<sup>211</sup> DHS provided the Subcommittee with limited unclassified biographical data on the reporting officials. As a result it was difficult for the Subcommittee investigation to discern whether particular reporting officials were Intelligence Officers (IOs) or Reports Officers (ROs).

<sup>212</sup> Subcommittee interviews of Mikael Johnston (6/18/2012) and Jonathan Wilham (3/6/2012).

<sup>213</sup> DHS response to Subcommittee inquiry, DHS-HSGAC-FC-059967.

<sup>214</sup> DHS personnel spreadsheet, DHS-HSGAC-FC-7154.

<sup>215</sup> General Schedule Salary Tables, 2009 and 2010, U.S. Office of Personnel Management, <http://www.opm.gov/oca/10tables/index.asp>.

<sup>216</sup> DHS personnel spreadsheet, DHS-HSGAC-FC-7154.

<sup>217</sup> Subcommittee interview of Former Senior Reports Officer (3/21/2012).



“It was a well-known fact that information coming out of [the officer’s area] was complete and utter crap.”

“I cancelled a lot of them,” said one Senior Reports Officer, when asked about that particular official’s many nixed draft reports. Noting that his reporting often raised concerns about violating their subjects’ civil liberties, she said, “I would say the person must not have understood what was reportable and what wasn’t . . . . You could see this was a pattern.”<sup>218</sup> The Subcommittee investigation reviewed the reporter’s 26 cancelled drafts, and found that reviewers explicitly noted civil liberties concerns when canceling at least 12, because they improperly reported on Constitutionally-protected activity. That intelligence officer was responsible for more than a quarter of all draft HIRs rejected for potentially breaching DHS guidelines meant to keep reporters from violating Americans’ privacy and civil liberties.

Another reporting official had 32 of his 84 reports – nearly 40 percent – cancelled by the Reporting Branch for various reasons. “That’s a pretty high cancellation rate,” said Mark Collier, a Senior Reports Officer and one-time reporting branch chief, when asked his reaction to that track record. “If that was my reporting officer, we would have real talks.”<sup>219</sup>

Jonathan Wilham, a key DHS official overseeing the report review and release process, told the Subcommittee that reporters are not judged by how frequently their draft HIRs were cancelled. The reasons for cancellations were rarely similar, according to Mr. Wilham. “It was really case-by-case,” he said.<sup>220</sup> Mr. Wilham cited three criteria by which he believed a reporters’ products should be assessed; the reporter’s rate of cancellation was not one of them.<sup>221</sup>

Reporters generating high rates of problematic reporting were a headache for the Reporting Branch. “You would have some guys, the information you’d see from them, you’d scratch your head and say, ‘what planet are you from?’” one Senior Reports Officer recalled. “Some individuals [were] producing 50 percent garbage. That would add to the queue.”<sup>222</sup> Bad reporting was a concern, another former Senior Reports Officer recalled from the period. “We were heading down a path that wasn’t in the best interests of the Department,” he told the Subcommittee.<sup>223</sup>

Mr. Vandover said he recalled as many as five cases in which he went to SLPO officials to complain about the quality of reporting by their intelligence officers. “The people who repeatedly did this kind of thing were reported,” Mr. Vandover told the Subcommittee. “This went to Undersecretary levels, on these particular people.”<sup>224</sup>

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<sup>218</sup> Subcommittee interview of Senior Reports Officer (3/20/2012).

<sup>219</sup> Subcommittee interview of Mark Collier (3/8/2012).

<sup>220</sup> Subcommittee interview of Jonathan Wilham (3/6/2012).

<sup>221</sup> Id.

<sup>222</sup> Subcommittee interview of Former Senior Reports Officer (3/21/2012).

<sup>223</sup> Subcommittee interview of Former Senior Reports Officer (3/1/2012).

<sup>224</sup> Subcommittee interview of Harold “Skip” Vandover (3/22/2012).

DHS officials interviewed could not identify a single official who faced significant consequences for shoddy reporting.<sup>225</sup> In a written response to the Subcommittee, DHS said that “a number of individuals involved in the [reporting] process . . . received informal counseling on the need to improve the quality of their [reports] and work with headquarters constructively to resolve any issues that arose from the clearance process.”<sup>226</sup>

The problem of substandard reporting, according to former Deputy Undersecretary for I&A Jim Chaparro, was “systemic.” In a January 2010 memo, Mr. Chaparro reported:

[T]here have been cases where I&A state and local fusion center representatives have pushed ROs to submit reports which do not meet reporting criteria. Since most deployed ROs are contractors or junior personnel who are not in a position to speak authoritatively to the state and local representatives and as well, to avoid conflict, the CRD ROs have submitted reports which do not fall within the scope of these activities. This in turn creates a larger volume of reporting that goes into the review process only to be returned to the originator for failure to meet reporting criteria. It is important that a better understanding at the State and Local Fusion Center level be developed regarding what information is reportable under intelligence oversight standards.<sup>227</sup>

“I think that’s in the past,” said Undersecretary Wagner when asked about her officers’ reporting information that potentially violated privacy and civil liberties protections. “The HIR Working Group [recommendations] are designed to ensure we report on information that met reporting criteria, and were respectful of privacy and civil liberties protections.”<sup>228</sup>

### **E. DHS Did Not Sufficiently Train Its Fusion Center Detailees to Legally and Effectively Collect and Report Intelligence**

Draft HIRs from IOs sometimes reported information that did not meet a DHS mission, improperly relayed information on Constitutionally-protected activity, or contained significant typographical errors, according to officials and internal documents. These problems were less likely to have occurred if reporting officials had received more extensive training and passed a rigorous certification process.

While the training process changed over time, the Subcommittee learned that DHS has never required more than five days of intelligence reporting training for DHS personnel assigned to fusion centers.<sup>229</sup> Moreover, DHS has not required its reporting officials to pass a test or exam, or demonstrate they met any formal standards before they went into the field to gather

<sup>225</sup> Subcommittee interviews of Mikael Johnston (6/18/2012), Harold “Skip” Vandover (5/24/2012), Keith Jones (4/2/2012).

<sup>226</sup> DHS response to Subcommittee inquiry, DHS-HSGAC-FC-059967.

<sup>227</sup> Memorandum from James Chaparro to Bart Johnson, “Homeland Intelligence Reports (HIRs)” (1/7/2010), DHS-HSGAC-FC-050742.

<sup>228</sup> Subcommittee interview of Caryn Wagner (9/16/2012).

<sup>229</sup> In August 2012, the Department initiated a “pilot” three-week training course for reports officers, but it is a test and has not been instituted as a recurring course. Subcommittee interview of Harold “Skip” Vandover (8/22/2012).

information, despite the fact that they often collect and report sensitive information on U.S. persons.

DHS intelligence reporting officials interviewed by the Subcommittee regarded their Department's intelligence reporting training as inadequate. "You can barely teach people what the word ['intelligence'] means" in a week, said Harold "Skip" Vandover, who was chief of the reporting branch from December 2009 to December 2011.<sup>230</sup> "All the problems we saw – are all linked right straight back to training."<sup>231</sup>

"I knew we needed to rework training, I knew it was a problem," James Chaparro, I&A Deputy Under Secretary, told the Subcommittee in an interview.<sup>232</sup> Indeed, Mr. Chaparro had identified the need for more extensive training in a January 2010 memorandum to Bart Johnson, then acting Undersecretary of I&A.<sup>233</sup> Later in 2010, the HIR Working Group examined the issue and also noted weaknesses in intelligence reporter training and a lack of certification. In March 2011, I&A Undersecretary Caryn Wagner approved a recommendation to improve training and institute a certification process. As of September 2012, her office has conducted a pilot enhanced training course, but has yet to implement a new training program.<sup>234</sup>

**The Five-Day Course.** Until it was discontinued in 2012,<sup>235</sup> DHS's training for reports officers had been a five-day series of classes known as the DHS Reports Officers Basic Course (ROBC).

The 33-hour course spent one day on the background and basics of the job, including the history of DHS and the roles and responsibilities of a Reports Officer. One day was dedicated to intelligence requirements and thresholds; another day was spent on intelligence oversight issues, including privacy and civil liberties. The fourth day covered the HIR reporting format. The fifth day spent three hours on HIR writing practice, 90 minutes for review and questions, and a half-hour ceremony, at which participants received "graduation certificates" for their attendance at the training.<sup>236</sup>

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<sup>230</sup> Subcommittee interviews of Harold "Skip" Vandover (3/22/2012); Timeline of Reporting Branch chiefs, DHS-HSGAC-FC-050767.

<sup>231</sup> Subcommittee interviews of Harold "Skip" Vandover (3/22/2012, 5/24/2012).

<sup>232</sup> Subcommittee interview of James Chaparro (6/28/2012).

<sup>233</sup> Memorandum from James Chaparro to Bart Johnson, "Homeland Intelligence Reports (HIRs)" (1/7/2010), DHS-HSGAC-FC-050742.

<sup>234</sup> Subcommittee interview of Caryn Wagner (9/16/2012). "It's a pilot, a proof of concept, to see if we can meet all the requirements," Daylen Heil, a DHS official coordinating the training effort, told the Subcommittee in August, when the course was underway. At that point no further training courses had been scheduled, Mr. Heil said. Subcommittee interview with Daylen Heil (8/22/2012).

<sup>235</sup> DHS is no longer teaching the course, and is piloting a new three-week training. Subcommittee interviews of Harold "Skip" Vandover (8/22/2012), Caryn Wagner (9/16/2012), DHS response to Subcommittee inquiry, DHS-HSGAC-FC-059968.

<sup>236</sup> "Unit 5.2 – Graduation" of the course student guide reads, "Congratulations! After you are briefed on the graduation process, a senior DHS official will offer closing remarks and distribute graduation certificates." It lists "Topics Covered" during graduation to include "The importance of training to the success of the Intelligence Enterprise." DHS Reports Officer Basic Course (ROBC) Student Guide, Rev. 0511, DHS-HSGAC-FC-057117.

Participants in that weeklong course received a total of two hours' training on civil liberties issues and two hours on privacy issues, according to Ayn Crawley, who has headed training for the DHS Office for Civil Rights and Civil Liberties since 2008.<sup>237</sup> Ms. Crawley told the Subcommittee she felt two hours was sufficient to train Intelligence Officers in what they needed to know to do their jobs while staying within the law and DHS guidelines. "I think it's doing the job it should do."<sup>238</sup>

Ms. Crawley confirmed that the trainers did not administer any final test or exam to the students, or assign a grade or score to their performance. Trainers did not even have the option of failing a student. Ms. Crawley said her belief in the adequacy of the training was based on first-hand observations by trainers. "I think what you're looking for is true transfer of knowledge," Ms. Crawley explained to the Subcommittee. "That interaction is a lot more powerful."<sup>239</sup>

Some officials who engaged in reporting from state and local fusion centers had little intelligence reporting experience of any kind prior to joining DHS.<sup>240</sup> For them, DHS's training was clearly insufficient to educate them on even the basics of intelligence, officials told the Subcommittee.

"The [reporting] process is not as simple as ending your sentences with periods," explained a former Senior Reports Officer at DHS who had spent nine years prior as an Army intelligence analyst. "There is a validation process, you fill intelligence gaps. I don't think that's something you can send someone to a weeklong training and expect them to understand it."<sup>241</sup>

The training program "probably wasn't adequate for most people," said another former DHS Senior Reports Officer (SRO). Before joining DHS, he had been an intelligence analyst in the Army, where he said he received six months of training, half of which was dedicated to report writing. The difference in depth and scope between his Army training and the DHS training, he said, was "night and day."<sup>242</sup>

Like these two former officials, some DHS reporters had prior intelligence experience, but virtually none of them had experience reporting on U.S. citizens and legal residents within the United States. "Privacy, [protections for] U.S. person data – it is extremely difficult to get them to understand . . . those nuances," Mr. Vandover said.<sup>243</sup>

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<sup>237</sup> Subcommittee interview of Ayn Crawley (6/13/2012).

<sup>238</sup> Id.

<sup>239</sup> Id.

<sup>240</sup> The Subcommittee reviewed resumes for DHS Intelligence Officers at fusion centers and found that most had years of intelligence experience, but few reflected experience collecting intelligence or drafting reports. Mikael Johnston, who oversaw IOs until March 2012, said he believed about a third of IOs had come to DHS with some experience or training in reporting. Subcommittee interview of Mikael Johnston (6/18/2012).

<sup>241</sup> Subcommittee interview of former Senior Reports Officer (3/1/2012).

<sup>242</sup> Subcommittee interview of former Senior Reports Officer (3/21/2012).

<sup>243</sup> Subcommittee interview of Harold "Skip" Vandover (3/22/2012).

“The reality is even if you came [to DHS] with extensive Intelligence Community experience, what we do is quite a bit different,” said Mark Collier, a DHS Senior Reports Officer and one-time reporting branch chief. “You really need training.”<sup>244</sup> Mr. Collier told the Subcommittee that the need to improve DHS’s training of reports officers was “obvious.”<sup>245</sup>

Internal documents between senior DHS officials show senior managers shared his view. In April 2009, an email from Barbara Alexander, then Director of I&A’s Collections and Requirements Division, wrote to other I&A officials warning that DHS reporters at fusion centers were filing reports “on U.S. persons (USPER), without proper vetting[.]” She wrote that one of the main reasons for this was “a lack of training on proper collection and reporting procedures[.]”<sup>246</sup>

In a January 2010 memorandum, addressed to Bart Johnson, then the Acting Under Secretary for Intelligence and Analysis, former I&A Under Secretary for Operations James Chaparro stated that “the current quality of information in HIR reports is inconsistent,” in part because reports officers “do not always apply sufficient scrutiny to the data which they are asked to turn into an HIR[.]” Mr. Chaparro prescribed “enhanced training of the ROs” to fix the problem.<sup>247</sup>

Despite that recommendation, the training regimen has not yet substantially changed. A year later, at the end of 2010, the HIR Working Group helmed by Ms. Kardell again pinpointed the Department’s weak training of intelligence reporting officials as a serious problem.<sup>248</sup> In its final report, Ms. Kardell’s group observed DHS had no standards or minimum qualifications that reporters had to meet before it sent them into the field to collect intelligence, largely information about U.S. persons. “Currently there are no formal [department-wide] standards or requirements for training or certification that must be met prior to an RO or SRO placement,” the Working Group’s final report stated. “The HIRWG unanimously felt that these standards and requirements should be established to ensure individuals engaged in HIR production, review, and control are trained and qualified in a uniform and satisfactory manner.”<sup>249</sup> In March 2011, Undersecretary Wagner asked her office to act on the report’s recommendations, including reform of the training program.<sup>250</sup>

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<sup>244</sup> Subcommittee interview of Mark Collier (3/8/2012).

<sup>245</sup> Id.

<sup>246</sup> Email from Barbara Alexander to James Chaparro, et al., “Subject: Open Source Requirements,” (4/1/2009) DHS-HSGAC-FC-059585.

<sup>247</sup> Memorandum from James Chaparro to Bart Johnson, “Homeland Intelligence Reports (HIRs)” (1/7/2010), DHS-HSGAC-FC-050742.

<sup>248</sup> Subcommittee interview of Amy Kardell (6/5/2012). Ms. Kardell said the HIRWG report was complete before December 2010, but was delayed from being formally submitted to Undersecretary Wagner because of several factors, including Christmas vacation. Concerns from other offices about drafting the report’s cover memorandum delayed the report’s submission by two months, Ms. Kardell said. See also “Homeland Intelligence Report Working Group (HIRWG) Phase 1 Report and Recommendations,” (11/2010) DHS-HSGAC-FC-050770

<sup>249</sup> “Homeland Intelligence Report Working Group (HIRWG) Phase 1 Report and Recommendations,” (11/2010) DHS-HSGAC-FC-050770, at 4.

<sup>250</sup> “Homeland Intelligence Report Working Group (HIRWG) Phase 1 Report and Recommendations,” (11/2010) DHS-HSGAC-FC-050770.

**Incomplete Training Overhaul.** By August 2012, more than a year after Undersecretary Wagner approved the group's recommendation to develop and implement better training and requirements, no improvements have been institutionalized, although a new, longer training is being tested, according to documents and DHS officials.<sup>251</sup>

In August 2012, during the period of the Subcommittee's investigation, I&A suspended the five-day reporter training classes<sup>252</sup> Ms. Kardell's group and others had found so lacking for years prior, and began to reform and expand the Reports Officer Basic Course. But even the new training course may be inadequate. Mr. Vandover, who is a subject matter expert for DHS's effort, told the Subcommittee he recommended the course needed to be extended to six weeks.<sup>253</sup> He said he was told DHS could only afford a three-week course. Mr. Vandover told the Subcommittee he believed three weeks was insufficient time for proper training.<sup>254</sup>

When asked about the pilot training course, Undersecretary Wagner disagreed that financial concerns spurred the decision to limit the course length to three weeks. "I don't know about money [not being] available," she said. Instead, Ms. Wagner said the issue was that the course was not mandatory, and if it was too long then DHS components would not use it. "I think the likelihood of components sending people to a 6-week course was pretty slim," she told the Subcommittee. However if the course were to be voluntary, it would not fulfil the unanimous recommendation of the HIR Working Group, which stated: "Mandatory training will be required for all RO and SROs. . . . Components must require that their ROs and SROs receive this training prior to writing and releasing HIRs."<sup>255</sup>

## F. "Two Different Chains of Command"

Another problem involved the differences between IOs and ROs assigned to fusion centers. As of May 2012, DHS has assigned 66 IOs and 18 ROs to centers across the country. IOs are overseen by the SLPO, while ROs are overseen by the Reporting Branch.

When Reporting Branch officials noticed an IO's intelligence reporting was subpar, inappropriate, or potentially illegal, there was little the Reporting Branch could do but notify SLPO officials, who oversaw those IOs but whose office had few rules or procedures for ensuring domestic intelligence collection activities were effective and appropriate. "You're talking two different chains of command, I didn't have control of those individuals," explained Mr. Vandover, the former Reporting Branch chief.<sup>256</sup> Thus the Reporting Branch, which was

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<sup>251</sup> Memorandum from Caryn Wagner to DHS Homeland Security Intelligence Council, "Subject: DHS Reports Officer Course (ROC)" (4/25/2012), DHS-HSGAC-FC-059035. The "pilot" course is being conducted on a one-time basis with a class of 10 students. There are hopes to improve the training and offer it in 2013 and beyond, but those courses are not yet scheduled. Subcommittee interview of Daylen Heil (8/22/2012).

<sup>252</sup> DHS response to Subcommittee inquiry (9/21/2012), DHS-HSGAC-059968.

<sup>253</sup> Memorandum for Brian Kelly, "SUBJECT: Development of the Reports Officer Course, (ROC)" (2/3/2012), DHS-HSGAC-FC-059023.

<sup>254</sup> Subcommittee interview of Harold "Skip" Vandover (5/24/2012).

<sup>255</sup> 3/2011 Homeland Intelligence Report Working Group (HIRWG) Phase 1 Report and Recommendations, November 2010, DHS-HSGAC-FC-050770.

<sup>256</sup> Subcommittee interview of Harold "Skip" Vandover (3/22/2012).

responsible for the reviewing draft HIRs and preparing them for publication, did not have the authority to oversee or manage the individuals preparing many of those reports.

### **G. Short-Staffing and Reliance on Underqualified, Underperforming Contract Employees Hampered Reporting Efforts**

Another problem with HIRs was that I&A was unable to hire sufficient numbers of sufficiently qualified personnel to staff its Reporting Branch, a problem that affected its efforts to receive and process intelligence originating at state and local fusion centers.

At times, Reporting Branch personnel were simply unable to handle the amount of reporting being drafted. In his January 2010 memo to Bart Johnson, Mr. Chaparro warned of staffing shortfalls affecting the reporting process from state and local fusion centers. “[T]here are too many HIRs being generated and not enough staff to review and edit the HIRs,” wrote the Deputy Under Secretary. “There is little logic to drafting large numbers of HIRs [if] we lack the bandwidth to publish and disseminate them.”<sup>257</sup>

As it did in other offices, DHS sometimes filled vacant spots in I&A’s Reporting Branch with personnel provided under contract from private companies, including General Dynamics and Booz Allen Hamilton.<sup>258</sup>

DHS officials told the Subcommittee that contract employees were not always qualified or properly trained to do the work expected of them, and their productivity could be substandard.<sup>259</sup>

When Mr. Vandover arrived as chief of the Reporting Branch in December 2009, he found a “lack of proficiency” among contract employees at the branch, who at the time outnumbered the Federal employees under his direction, he recalled. “It’s difficult to run a branch like this when you’re so heavy on contractors,” he said.<sup>260</sup>

Mr. Vandover recalled that he quickly identified four contract employees out of roughly a dozen who he believed were not doing their job. “What I mean by, ‘not doing their job,’ is – not doing their job,” Mr. Vandover told the Subcommittee. He said he had them replaced.<sup>261</sup>

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<sup>257</sup> Memorandum from James Chaparro to Bart Johnson, “Homeland Intelligence Reports (HIRs)” (1/7/2010), DHS-HSGAC-FC-050742.

<sup>258</sup> GAO Report, “Department of Homeland Security: Risk Assessment and Enhanced Oversight Needed to Manage Reliance on Contractors” (10/17/2007), GAO-08-14T, <http://www.gao.gov/new.items/d08142t.pdf>; Subcommittee interviews of Jonathan Wilham (3/6/2012) and Harold “Skip” Vandover (3/22/2012).

<sup>259</sup> The Subcommittee notes that several DHS officials interviewed for the investigation first joined the Department as contract employees. Subcommittee interviews of former I&A Senior Reports Officer (3/1/2012), Jonathan Wilham (3/6/2012), former Senior Reports Officer (3/28/2012), former Senior Reports Officer (3/30/2012), and Keith Jones (4/2/2012).

<sup>260</sup> Subcommittee interview of Harold “Skip” Vandover (3/22/2012). Mr. Vandover told the Subcommittee that when he joined the branch in December 2009, it had 10 government employees and between 20 and 25 contractors.

<sup>261</sup> Subcommittee interview of Harold “Skip” Vandover (3/22/2012).

In his January 2010 memo, Mr. Chaparro explicitly noted concern about contractors drafting and reviewing intelligence reports. Mr. Chaparro stated he hoped to soon be “filling RO [reports officer] positions with government personnel versus contractors,” which he believed would “help I&A to build and sustain a professional cadre of ROs.”<sup>262</sup>

Still, the branch consisted mostly of contractors, and Mr. Vandover found himself managing his team not against the quality of their product but against contract deliverables. “If I have to tell you your deliverables, [I] have to be able to quantify. How many [reports] a day do you have to do?”<sup>263</sup> Instead of emphasizing the quality of the reporting, Mr. Vandover said, he had to emphasize minimum requirements of production.

The result was a quota system. Reports officers reviewing drafts “were tracked by the number [of reports] they produced, not by quality or evaluations they received,” recounted a former Senior Reports Officer, who worked for Mr. Vandover. “If you wanted to stay employed, you produced reports.”<sup>264</sup>

One former Senior Reports Officer described how part of his job was to track production by the Reports Officers under him. “How many reports did we produce this month?” he remembered being asked. “[P]roduction numbers were extremely important.” The benchmark, he said, was producing more reports, not better reporting. “You had a good year if you put more reports out than the year before.”<sup>265</sup> Those numbers were tracked on a regular basis via spreadsheets showing production for that time period versus the same period a year ago, according to Reporting Branch officials.<sup>266</sup>

Mr. Vandover confirmed that reporting quotas were a key measure of performance. He conceded it wasn’t a system that would generate good intelligence. “We had to give them an average – a daily quota,” Mr. Vandover said, “which is not the way you should do this.”<sup>267</sup>

The reliance on contractors also appears to have derailed earlier efforts to improve the Reporting Branch training course. In 2009, Senior Reports Officer and one-time reporting branch chief Mark Collier worked to revamp the training program,<sup>268</sup> but he told the Subcommittee his superiors decided the new training could not go beyond a week in length, just like the old program. “I was told that if it was longer, the [reports officers] who were contractors couldn’t [participate] because their company was paying for it,” Mr. Collier explained. “The

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<sup>262</sup> Memorandum from James Chaparro to Bart Johnson, “Homeland Intelligence Reports (HIRs)” (1/7/2010), DHS-HSGAC-FC-050742. Mr. Vandover noted that a Reports Officer in Phoenix, Arizona was a contract employee. Subcommittee interview of Harold “Skip” Vandover (3/22/2012).

<sup>263</sup> Subcommittee interview of Harold “Skip” Vandover (3/22/2012).

<sup>264</sup> Subcommittee interview of former Senior Reports Officer (3/21/2012).

<sup>265</sup> Id.

<sup>266</sup> Subcommittee interviews of Harold “Skip” Vandover (3/22/2012) and former Senior Reports Officer (3/21/2012).

<sup>267</sup> Subcommittee interview of Harold “Skip” Vandover (3/22/2012).

<sup>268</sup> DHS response to Subcommittee inquiry (9/14/2012), DHS-HSGAC-FC-059877.



understanding was that contract employees were to come [to DHS] with the training they need, so other training shouldn't be necessary."<sup>269</sup>

## H. Reporting Officials Aren't Evaluated on the Quality of Their Reporting

As of July 2012, DHS relied on 66 Intelligence Officers and nine regional directors to identify reportable intelligence from fusion centers,<sup>270</sup> while only 18 Reports Officers were in the field.<sup>271</sup> However, during the period of review, the State and Local Program Office, which oversees the IOs, did not evaluate IOs on the quality of their reporting.<sup>272</sup> The Reporting Branch did not have the authority or any mechanism to evaluate the performance of the IOs who draft HIRs at fusion centers. The Reporting Branch also did not evaluate the quality of the reporting filed by their own ROs, although materials provided by DHS suggest managers may take cancellation rates into account when reviewing RO performance.<sup>273</sup>

Jonathan Wilham, a longtime DHS Reporting Branch official and deputy chief of the branch, has overseen day-to-day operations at the branch since April 2009.<sup>274</sup> Mr. Wilham confirmed to the Subcommittee that his office does not have a method to evaluate reporting officials on the quality of their reporting. "We're still trying to figure out how we want to do it."<sup>275</sup>

In her interview with the Subcommittee, Undersecretary Wagner contradicted Mr. Wilham's statement. "Most ROs out there are evaluated by their reporting," she said. When informed of Mr. Wilham's statements, Ms. Wagner responded, "interesting."<sup>276</sup>

<sup>269</sup> Subcommittee interview of Mark Collier (3/8/2012).

<sup>270</sup> Email from DHS to Subcommittee staff, "Subj: Request from Wilham interview" (7/26/2012).

<sup>271</sup> DHS Support to Fusion Centers (5/3/2012), PSI-DHS-56-0021.

<sup>272</sup> "I don't recall noting poor reporting in an annual review. It never came up as a black mark against a guy," said Mikael Johnston, who was head of the SLPO in 2009 and 2010. Subcommittee interview of Mikael Johnston (6/18/2012).

<sup>273</sup> DHS provided one personnel review document for a Reports Officer which cited the RO's intelligence reporting reflected "an 80% acceptance rate and 85% error free." "Employee Performance Plan and Appraisal Form for the period 10/1/2011-9/30/2012," (produced 8/17/2012), at 3, DHS-HSGAC-FC-059577.

<sup>274</sup> Subcommittee interview of Jonathan Wilham (3/6/2012).

<sup>275</sup> Mr. Wilham said he had at one time proposed three metrics for assessing the quality of reports officer production centered on whether the intelligence was used by others in the Intelligence Community: first, evaluations submitted by consumers of the reports informing DHS of their value; second, instances in which reports are cited within finished intelligence analysis; and third, instances in which readers have requested further information from the branch about the incident being reported. The branch has never instituted a formal review that incorporated these metrics. The Subcommittee requested and received from DHS a tally of reports which had been the subject of any such evaluation, cite or request for information. In all, 17 percent of published HIRs from fusion centers received any form of recognition identified by Mr. Wilham. Subcommittee Interview of Jonathan Wilham (3/6/2012).

<sup>276</sup> Subcommittee interview of Caryn Wagner (9/16/2012).

## I. A Hastily-Implemented and Poorly Coordinated Review Process Delayed Reporting by Months

The enhanced review process required by DHS Deputy Secretary Lute began in May 2009. It was clearly necessary, given the poor quality of reporting. However, the new process had the foreseeable consequence of also slowing the dissemination of completed HIRs. For reports published in June 2009, officials took on average 104 days, more than three months, from generating a draft HIR to releasing it, according to a Subcommittee analysis.<sup>277</sup>

In the months that followed, the rate of publication came to almost a dead stop. From August to December 2009, DHS published only five or fewer HIRs per month that came from fusion centers, according to DHS records supplied to the Subcommittee.<sup>278</sup>

Meanwhile, DHS officials continued to portray fusion centers to the public as active and essential collaborators in the national counterterrorism intelligence effort. In a September 2009 hearing before the Senate Homeland Security and Governmental Affairs Committee, in the middle of the five-month period when intelligence reporting from fusion centers had all but ground to a halt, DHS Secretary Napolitano testified that state and local fusion centers were “key tools for stakeholders at all levels of government to share information related to threats,” and “the primary way that DHS shares intelligence and analysis with our homeland security partners.”<sup>279</sup> Delays in reporting from fusion centers were not mentioned at the hearing.

Although the new review process had clearly delayed DHS’s ability to timely “connect the dots” by sharing raw intelligence among all levels of government – one of the reasons Congress and the White House created the Department – only one official interviewed by the Subcommittee could recall the Deputy Secretary’s office inquiring about the problems the new policy had created, or what needed to be done to ensure it functioned more efficiently. Former Acting Under Secretary of I&A Bart Johnson said he remembered Deputy Secretary Lute asking how things were going. “Weeks, a month or so after the new guidance was issued, the Deputy Secretary asked basically, ‘how’s it going?’” Mr. Johnson told the Subcommittee. “I told her,

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<sup>277</sup> To obtain this average, the Subcommittee first identified all HIRs from fusion centers DHS published in June 2009 during the 13-month period under review; and for each, calculated the number of days between its drafting and its date of publication; and then averaged the time periods.

<sup>278</sup> See 12/30/2009 Memorandum from Philip Groven to James Chaparro, “Subject: The Fiscal Year 2009 4<sup>th</sup> Quarter Management Report,” DHS-HSGAC-FC-058860. The Reporting Branch has not been alone in delaying or temporarily halting intelligence reporting. Officials told the Subcommittee that at different times, reporting from certain DHS components, notably U.S. Citizenship and Immigration Services (CIS), and the Transportation Security Administration, has halted or been severely restricted. Subcommittee interviews of Senior Reports Officer (3/20/2012) and Amy Kardell (6/5/2012); HIR Working Group Notes, Meeting July 23, 2010, DHS-HSGAC-FC-056573; Subcommittee interview of Chuck Robinson (7/18/2012).

In a written response to the Subcommittee, CIS stated that between 2008 and 2009 it filed fewer than 100 reports. It noted that it had an I&A reports officer supporting its efforts during the period, whom they asked to be removed “due to poor performance.” CIS response to Subcommittee inquiry (9/14/2012), DHS-HSGAC-FC-059878. The Subcommittee received no response from TSA.

<sup>279</sup> Prepared Testimony of Secretary Napolitano before the Senate Committee on Homeland Security and Governmental Affairs, “Eight Years after 9/11: Confronting the Terrorist Threat to the Homeland,” (9/30/2009) <http://www.dhs.gov/news/2009/09/30/secretary-napolitanos-testimony-eight-years-after-911-confronting-terrorist-threat>, accessed 9/18/2012.

it's creating some challenges, in terms of timelines.”<sup>280</sup> The Subcommittee invited a written response to these allegations from Ms. Lute's office, and documents supporting her response, but the Department provided neither.

DHS officials involved in the enhanced review process told the Subcommittee that the slowdown occurred in part because of problems at the Office of General Counsel (OGC).<sup>281</sup> An OGC representative told the Subcommittee that his office had workforce problems which “contributed” to the backlog. Specifically, he said that turnover at the junior attorney position responsible for reviewing HIRs “likely slow[ed] the process.”<sup>282</sup>

When asked who within OGC was held accountable for the problems, Matthew Kronisch, DHS Associate General Counsel for Intelligence, answered, “By the end of December 2009, the attorney responsible for representing [OGC] in the review process during the period in which the backlog developed was no longer employed at DHS.”<sup>283</sup>

At the Subcommittee's request, OGC identified the departed official. In an interview with the Subcommittee, the official stated that he was the primary OGC employee who reviewed the draft HIRs during 2009, and the volume of reporting meant the task of reviewing the drafts overwhelmed his other responsibilities.<sup>284</sup>

The official said he made his superiors at OGC aware of the situation, but they did not appear concerned. He indicated that they assigned no additional resources to assist him. “My understanding was HIRs were not an immediate priority – not to be ignored, but not first on anybody's list,” he recalled for the Subcommittee.<sup>285</sup>

The official said he did not believe the task could be done by a single person. “It was a setup for failure,” he said. He stated he was never reprimanded or counseled because of the delays in reviewing HIRs. He added that when he submitted his resignation, his superior, Mr.

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<sup>280</sup> Subcommittee interview of Bart Johnson (7/11/2012).

<sup>281</sup> Subcommittee interviews of Harold “Skip” Vandover (3/22/12), Timothy Skinner (3/14/12), and Jonathan Wilham (3/6/12). In addition, a December 2009 memorandum from Philip Groven to James Chaparro suggested a policy dispute between OGC and the Reporting Branch contributed to the virtual shutdown, although that policy dispute was not mentioned by the individuals interviewed. Memorandum from Philip Groven to James Chaparro, “Subject: The Fiscal Year 2009 4<sup>th</sup> Quarter Performance Management Report” (12/30/2009), DHS-HSGAC-FC-058860.

<sup>282</sup> “Responses to Questions Submitted to Matthew L. Kronisch,” (3/22/2012), DHS-HSGAC-FC-047634.

<sup>283</sup> Id. Mr. Kronisch acknowledged that OGC and other review offices spent many hours reviewing and revising draft reports that the Reporting Branch had already concluded were the product of unauthorized intelligence efforts. “The reviewing offices expended significant effort attempting to perfect these noncompliant nominations, many of which could not be perfected,” Mr. Kronisch told the Subcommittee. At one point, he said, over 300 troubled drafts languished in the review process before most of them were eventually cancelled.

<sup>284</sup> Subcommittee interview of Curt Heidtke (8/12/2012).

<sup>285</sup> Id.

Kronisch, asked him to stay on another four months.<sup>286</sup> These OGC staffing problems were on top of inadequate staffing at the Reporting Branch, discussed earlier.

Another problem may have also contributed to the delays. DHS officials interviewed who had been involved in the review process for the Privacy Office and CRCL were unable to identify formal written guidance from their offices on how to review HIRs, what to look for, or what thresholds to apply in determining what was acceptable or unacceptable.<sup>287</sup>

## **J. Retaining Inappropriate Records is Contrary to DHS Policies and the Privacy Act**

DHS personnel “are prohibited from collecting or maintaining information on U.S. persons solely for the purpose of monitoring activities protected by the U.S. Constitution, such as the First Amendment protected freedoms of religion, speech, press, and peaceful assembly and protest,” as the Department’s Office of General Counsel reminded I&A employees in April 2008.<sup>288</sup>

This reminder appears to reflect the statutory prohibitions contained in the Privacy Act of 1974, which bars Federal agencies from improperly collecting and storing information on U.S. citizens and lawfully admitted aliens based solely on First Amendment-protected activities without a valid reason to do so.<sup>289</sup>

The Subcommittee investigation reviewed 40 cancelled draft HIRs from the period of April 2009 through April 2010, each of which DHS officials had cancelled after raising privacy or civil liberties concerns about their content.<sup>290</sup>

As noted above, the Privacy Act prohibits agencies from storing information on U.S. persons’ First Amendment-protected activities if they have no valid reason to do so. Additionally, DHS’s own intelligence oversight procedures allow the Department to retain information about U.S. persons for only 180 days, in order to determine if it can be properly retained. Once a determination is made that the document should not be retained, the “U.S. person identifying information is to be destroyed immediately.”<sup>291</sup>

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<sup>286</sup> Id. Asked if Mr. Heidtke’s statements were accurate, DHS said it did not have further comment on the matter, and deferred to Mr. Heidtke’s version of events. Email from DHS to Subcommittee, “Subject: RE: Fusion Center questions” (9/7/2012).

<sup>287</sup> Subcommittee interviews of Timothy Skinner (3/14/2012), Ken Hunt (2/27/2012), and Margo Schlanger (5/22/12).

<sup>288</sup> Memorandum from Charles E. Allen and Matthew L. Kronisch to All Employees, Detailees, and Contractors Supporting the Office of Intelligence and Analysis, “SUBJECT: Interim Intelligence Oversight Procedures for the Office of Intelligence & Analysis,” (4/3/2008) DHS-HSGAC-FC-047637.

<sup>289</sup> 5 U.S.C. Sec. 552a(e)(7)

<sup>290</sup> The HIRs were identified by DHS in September 2011, in response to a Subcommittee request for copies of draft HIRs that had been recommended for cancellation. These 40 were recommended for cancellation by the Privacy Office, the Civil Liberties office, or both; or they were cancelled by a reports officer who explicitly cited privacy or civil liberties concerns in his or her recommendation to cancel.

<sup>291</sup> Memorandum from Charles E. Allen and Matthew L. Kronisch to All Employees, Detailees, and Contractors Supporting the Office of Intelligence and Analysis, “SUBJECT: Interim Intelligence Oversight Procedures for the Office of Intelligence & Analysis,” (4/3/2008) DHS-HSGAC-FC-047637.

The Subcommittee investigation found, however, that DHS had retained the cancelled draft HIRs for a year or more after the date of their cancellation, and appeared to have no process to purge such inappropriate reporting from their systems. It was not clear why, if DHS had determined that the reports were improper to disseminate, the reports were proper to store indefinitely.

Asked why it was legal for the Department to retain reports on U.S. persons that may improperly report on protected activities, DHS responded that “while a draft HIR or IIR may be cancelled based upon a determination that its publication would be outside the scope of I&A’s mission, and, by extension, I&A’s obligations under the Privacy Act, the cancelled document may be retained by I&A for administrative purposes such as audit and oversight.”<sup>292</sup>

While auditing and oversight may qualify as legitimate “administrative purposes,” several concerns arise regarding the Department’s assertion that they form a reasonable basis for retaining the cancelled HIRs.

First, as noted by CRS counsel who examined the issue on behalf of the Subcommittee, the Department’s own requirement to destroy inappropriate records appears to contradict its justification for retaining them.<sup>293</sup> If the reports were considered inappropriate to disseminate due to civil liberties concerns, as the cancellation comments indicate, it is not clear how they are then appropriate to keep. “There also seems to be some inconsistency with the requirement for [DHS] document holders to destroy U.S. person information once he or she deems it to fall outside the guidelines; nothing in the guidelines explains how I&A personnel are to know which records are subject to audit rather than destruction or minimization, or what to do with records once it has been determined they should be held for audit.”<sup>294</sup>

Second, the Department’s intelligence oversight guidelines include a list of documents it considers proper for retention as “administrative information.” That list includes “personnel and training records, reference materials, contractor performance records, public and legislative affairs files, and correspondence files.” It does not include intelligence reports, nor does it mention auditing as an administrative purpose.<sup>295</sup>

Third, DHS has no policy or practice of auditing its HIR reports. The internal November 2010 HIR Working Group (HIRWG) study concluded DHS had no formal auditing procedure for HIRs. “HIRWG found no record of any audits or studies of previous HIR releases, cancellations or tracking of substantive edits,” the report stated. “The HIRWG recommends establishing a post-release audit process whereby HIRs could be systematically evaluated . . . to ensure proper adherence to the reporting thresholds, legal requirements, reporting quality and timeliness.”<sup>296</sup>

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<sup>292</sup> DHS response to Subcommittee inquiry (6/2012), DHS-HSGAC-FC-57026.

<sup>293</sup> CRS memorandum from Jennifer Elsea and Gina Stevens to the Subcommittee, “Subject: DHS’S Intelligence and Analysis Information Collection Practices,” (9/26/2012), at 8.

<sup>294</sup> Id.

<sup>295</sup> Id.

<sup>296</sup> “Homeland Intelligence Report Working Group (HIRWG) Phase 1 Report and Recommendations,” (11/2010), at 2, DHS-HSGAC-FC-050770.

As of July 2012, it still lacked such a process. “I want to say next fiscal year, we will start that process,” Chuck Robinson, Deputy Director of I&A’s Collection and Requirements Division, told the Subcommittee. “There is a draft plan. It has not been approved yet.”<sup>297</sup> With no policy or practice for auditing its intelligence reporting, DHS’s claim that it is retaining cancelled HIRs for auditing purposes is troubling.

In addition, when the Subcommittee requested copies of the cancelled draft HIRs as part of its oversight investigation, the Department initially sought to withhold the documents, explaining it was concerned about the effects of oversight on its reporting process:

For drafts and cancelled HIRs, it would be helpful if you could articulate why the committee needs this information to further its oversight . . . . We believe it is important to protect the integrity of the process by which those reports are reviewed and subjected to internal editorial, analytic, legal, and operational scrutiny prior to publication decisions, so as not to impede officers in the field from reporting appropriately on topics of interest and importance to homeland and national security. Moreover, this could have a significant chilling effect on the quality of the reporting that ultimately is published and, as a result, the agency decisions it is intended to inform.<sup>298</sup>

These concerns are puzzling, given DHS’s claim that the sole reason it is retaining the cancelled HIRs is for audit and oversight purposes. The apparent indefinite retention of cancelled intelligence reports that were determined to have raised privacy or civil liberties concerns appears contrary to DHS’s own policies and the Privacy Act.

### **K. Problems with DHS Reporting Acknowledged, But Unresolved**

Despite multiple memoranda and internal reviews which identified problems and made recommendations to fix DHS’s intelligence reporting processes at fusion centers,<sup>299</sup> problems appear to remain. Some have been addressed. For instance, DHS officials have stated they no longer suffer from understaffing within the Reporting Branch, which slowed the process.<sup>300</sup> In addition, the Department has shifted from using an ad hoc method involving Microsoft Word and unclassified email accounts to draft and share intelligence reports, to using a Department of Defense system and a secure network.

Other issues remain. For example, DHS officials who report intelligence from fusion centers still do not appear to be evaluated on the quality of their reporting, a problem flagged by Mr. Chaparro in January 2010.<sup>301</sup> DHS also has not yet successfully instituted a more

<sup>297</sup> Subcommittee interview of Charles Robinson (7/18/2012).

<sup>298</sup> Email from DHS to the Subcommittee, “Subject: Fusion Centers,” (7/15/2011) PSI-DHS-72-000001.

<sup>299</sup> See “Homeland Intelligence Report Working Group (HIRWG) Phase 1 Report and Recommendations, November 2010,” DHS-HSGAC-FC-05770; 1/7/2010 memorandum from James Chaparro to Bart Johnson, “Homeland Intelligence Reports (HIRs),” DHS-HSGAC-FC-050742; Memorandum from Philip Groven to James Chaparro, “Subject: The Fiscal Year 2009 4<sup>th</sup> Quarter Management Report” (12/30/2009), DHS-HSGAC-FC-058860.

<sup>300</sup> Subcommittee interview of Charles Robinson (7/18/2012).

<sup>301</sup> Memorandum from James Chaparro to Bart Johnson, “Subject: Homeland Intelligence Reports (HIRs)” (1/7/2010), DHS-HSGAC-FC-050742.

substantive training program or finalized a certification process for its reporting officials, an issue noted by Ms. Alexander in 2009, Mr. Chaparro in January 2010, and by Ms. Kardell's group in November 2010, although a pilot training program is being tested.

As of July 2012, more than 18 months after Ms. Kardell's HIR Working Group made its recommendations (and more than a year after Undersecretary Wagner approved them), some of the most important, including the recommendation to improve training, remain incomplete. In addition, DHS has not yet finalized Standard Operating Procedures for the Reporting Branch to reflect procedures it currently follows, which Kardell's group recommended.<sup>302</sup> DHS has also failed to institute a process to review or audit its own intelligence reporting,<sup>303</sup> a problem which the HIR Working Group found "significantly complicates efforts to establish metrics for production, quality, cancellations, or reporting problems, and impedes the identification of best practices."<sup>304</sup>

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<sup>302</sup> Subcommittee interview of Charles Robinson (7/18/2012).

<sup>303</sup> *Id.*

<sup>304</sup> "Homeland Intelligence Report Working Group (HIRWG) Phase 1 Report and Recommendations, November 2010," DHS-HSGAC-FC-05770, at 2.

## V. DHS DOES NOT ADEQUATELY OVERSEE ITS FINANCIAL SUPPORT FOR FUSION CENTERS

- DHS does not know how much it has spent to support fusion centers.
- DHS does not exercise effective oversight of grant funds intended for fusion centers.
- FEMA monitoring visits do not confirm grant funds are used appropriately.
- Federally required A-133 audits are not useful to monitor grant spending.
- DHS grant requirements do not ensure states spend fusion center funds effectively.
- DHS cannot say whether its spending has improved fusion centers' ability to participate meaningfully in the Federal counterterrorism mission.

### A. Overview

For most of its history, DHS has largely been unable to account for its spending in support of state and local fusion centers. Its recent efforts to fix the problem have fallen short.

DHS spending in support of fusion centers can be divided into two general categories: funds it spends on its own personnel and programs which interact with and provide operational support to fusion centers; and grant funds it awards to states and urban areas, with the intention that they will spend the money on their fusion centers.

This year, for the first time, DHS estimated what it spent on the first category – \$17.2 million in 2011.<sup>305</sup> However, DHS remains unable to provide an accurate accounting of spending in the second category. DHS cannot say with accuracy how much grant funding it has awarded to support fusion centers, how that money was spent, or whether any of it improved fusion centers' ability to participate meaningfully in counterterrorism information-sharing with the Federal Government.

In a series of estimates it provided the Subcommittee, DHS said it has awarded between \$289 million and \$1.4 billion in grant funding to states and cities to support fusion centers and related efforts between 2003 and 2010.<sup>306</sup> These estimates differ by more than \$1 billion, making them of questionable use. The Subcommittee investigation also found weaknesses in the grant award process, grant monitoring, and DHS's ability to assess the impact of those funds.

The Subcommittee investigation also reviewed expenditures by select state and local agencies on behalf of fusion centers around the country between 2006 and 2010. The review found that state and local agencies did not consistently spend Federal grant dollars on items that would directly improve their ability to contribute to the Federal counterterrorism effort. Instead, they spent DHS funds intended for fusion centers on vehicles, surveillance equipment, and even significant overhead costs like rent, which did little to improve their core intelligence analysis

<sup>305</sup> "2011 Fusion Center Federal Cost Inventory: Results" (6/2012), at 9.

<sup>306</sup> Figures are based on FEMA estimates: "Fusion Center Funding Report," Spreadsheet, 6/22/2012, DHS HSGAC FC 058336 and "Fusion Keyword Search Solution Area Funding Report," Spreadsheet 2/24/2010, DHS HSGAC FC 057017 at 2.



and sharing capabilities. Yet, all of those expenditures were allowable under the guidance which existed at the time, and would not have been questioned by DHS officials overseeing the grant program, officials told the Subcommittee.

In 2011 and 2012, DHS attempted to tighten its oversight of funding for fusion centers by requiring states to document how they intended to use FEMA preparedness grant funds to improve fusion centers' "must-have" information-sharing capabilities.<sup>307</sup> DHS officials said they expect that will help align its fusion center funding efforts, managed by FEMA, with its intelligence priorities for fusion centers, managed by its Office of Intelligence and Analysis (I&A). But as the Subcommittee investigation found, these new rules and processes do not fix the fundamental problems with how FEMA funds state and local fusion center efforts: they do not ensure states and cities spend the money wisely, nor do they significantly improve FEMA's ability to track the amount of Federal funds actually spent on supporting fusion centers.

To assess the return on any program, one must know how much one has invested, how those funds were applied, and what goals the funding is intended to help achieve. However, DHS cannot identify how much it has spent intending to support fusion centers, nor has it examined how the bulk of that money has been used. As a result, DHS is unable to identify what value, if any, it has received from its outlays.

### **B. DHS Does Not Know How Much It Has Spent to Support Fusion Centers**

FEMA officials told the Subcommittee that they do not have a mechanism to accurately and reliably identify the total amount of DHS grant funding spent on supporting fusion centers,<sup>308</sup> despite increasingly identifying fusion centers as a departmental priority.<sup>309</sup>

FEMA has not deemed fusion centers to be a separate mandatory category for tracking the expenditures of Federal grant funds. Instead, it has required states to submit Biannual Strategy Implementation Reports (BSIR) which relay general updates of how the state is spending DHS funds, on fusion centers and other projects.

FEMA officials told the Subcommittee that the only way to estimate grant funding directed towards fusion centers was to perform a keyword search using project descriptions found in the BSIRs.<sup>310</sup> As FEMA officials noted in a briefing to the Subcommittee, such a search relies on data that are self-reported by those agencies (known by FEMA as "State Administrative Agencies," or SAAs), and changing the way in which search terms are applied can have a substantial impact on the results returned.<sup>311</sup>

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<sup>307</sup> For a list of those capabilities, please see Appendix B of this Subcommittee report.

<sup>308</sup> Subcommittee interview of FEMA officials (6/14/2012).

<sup>309</sup> In 2009, DHS elevated fusion centers to "national priority" status in the grant program guidance; in 2010, 2011, and 2012, DHS identified fusion centers as one of its highest priorities. FEMA response to Subcommittee inquiry; DHS-HSGAC-FC-057115.

<sup>310</sup> Subcommittee interview of FEMA (6/14/2012).

<sup>311</sup> Id.; Briefing "FEMA Preparedness Grant Funding for Fusion Centers," FEMA/Grants Program Directorate (6/14/2012).

Initially, FEMA officials conducted a broad search of the BSIR data, using terms like “fusion,” “information sharing” and “data collection,” that yielded an estimate \$1.4 billion from 2003-2010, including \$719 million in grant funding for fiscal years 2007-2009.<sup>312</sup> FEMA subsequently conducted a more narrow, revised search using only the term “fusion center” of the same data and yielded an estimate of \$222 million for the 2007-2009 period.<sup>313</sup> The two estimates of Federal funding of fusion centers from 2007 to 2009 differed by nearly half a billion dollars.

In addition to requesting data from FEMA, in 2010, the Subcommittee requested information from every state and local fusion center on the amount of Federal funding, by source, each fusion center received for years 2007 through 2009.<sup>314</sup> Where possible, the Subcommittee compared the funding figures provided by fusion centers to those FEMA provided for the same centers. The Subcommittee found that the fusion centers’ responses differed significantly from both sets of data provided by FEMA.<sup>315</sup> For instance, the Vermont Fusion Center indicated that it received no Federal funding in 2007, 2008, or 2009, although data from FEMA identified between \$1.2 and \$1.6 million in funding for the same time period.<sup>316</sup> The Minnesota Joint Analytical Center reported receiving \$4.3 million in Federal funding, while FEMA reported between \$2.3 and \$7.3 million in funding.<sup>317</sup> These two examples show the FEMA figures could vary substantially from than the state estimates. The variability casts doubt on the accuracy and reliability of FEMA’s data.

Because of a lack of specificity in FEMA’s data or differences in the survey responses provided by the fusion centers, the Subcommittee investigation was able to compare FEMA’s figures with those of only 29 fusion centers. It was unable to compare figures for fusion centers in states which had more than one center, since FEMA’s BSIR data contains estimates of aggregate spending on fusion centers in a given state, and not spending on specific fusion centers. Thus the Subcommittee’s analysis was limited to only those instances in which a state had only one recognized fusion center.

Of that group, only a small number of centers identified a total funding amount within 10% of FEMA’s estimates for the 2007-2009 time period. The remaining 30 fusion centers identified funding amounts that differed, in some cases significantly, from FEMA’s data.

FEMA officials acknowledged the limitations of the keyword-search approach used to identify fusion center funding, stating that it likely did not accurately capture all of the DHS funding supporting fusion centers. FEMA officials also acknowledged that grants for broader information-sharing efforts by states and localities may also assist fusion centers, although those

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<sup>312</sup> “Fusion Keyword Search Solution Area Funding Report,” Spreadsheet 2/24/2010, DHS HSGAC FC 057017 at 2.

<sup>313</sup> “Fusion Center Funding Report,” Spreadsheet, 6/22/2012, DHS HSGAC FC 058336.

<sup>314</sup> At the time, DHS said it recognized 72 state and local fusion centers.

<sup>315</sup> In some cases, centers’ responses did not consistently distinguish DHS funding from other Federal sources.

<sup>316</sup> Comparison of June 2011 Biannual Strategy Implementation Report data; DHS HSGAC FC 05833-058340; “Information Sharing and Fusion Center Funding” (12/3/2010); and Vermont Fusion Center response to Subcommittee survey; Vermont Fusion Center 01-0001.

<sup>317</sup> Comparison of June 2011 Biannual Strategy Implementation Report data; DHS HSGAC FC 05833-058340; “Information Sharing and Fusion Center Funding” (12/3/2010); and Minnesota Joint Analysis Center response to Subcommittee survey; PSI-Minnesota Joint Analysis Center 01-0001 at 2.

items may not be identified in a keyword search, because they might not specifically contain “fusion center” or related terms in their descriptions.<sup>318</sup> FEMA officials stated that they were planning to implement a change in the BSIR reporting process by which SAA’s will be asked to indicate with a “yes/no” response whether funding for a specific project is supporting a fusion center.<sup>319</sup> While such a change may reduce FEMA’s reliance on performing a keyword search to identify grant funding to fusion centers, it remains dependent on self-reported information from the recipient agencies, which FEMA officials concede may not be accurate.<sup>320</sup>

### **C. DHS Does Not Exercise Effective Oversight of Grant Funds Intended for Fusion Centers**

In 2010, DHS told auditors from the Government Accountability Office (GAO) it “had plans to assess the costs of the fusion center network,” but it has yet to do such a comprehensive assessment.<sup>321</sup> Without an accurate tally of the amount of Federal funds supporting each fusion center, FEMA, I&A and DHS not only fail to accurately track Federal spending, but also remain unable to determine whether its investments are helping to meet the Federal mission in a cost-effective manner.

While the Subcommittee investigation focused on grant funds intended to support state and local fusion centers, FEMA’s inability to effectively monitor state and local grant spending affects its oversight of all preparedness grant funding it distributes.

The Department of Homeland Security’s Inspector General stated flatly in a June 2012 report that, despite distributing over \$800 million annually for state and local preparedness efforts: “FEMA did not have a system in place to determine the extent that Homeland Security Grant Program funds enhanced the states’ capabilities to prevent, deter, respond to, and recover from terrorist attacks, major disasters, and other emergencies.”<sup>322</sup>

Although FEMA did not determine whether states and localities had effectively spent the FEMA grant funds they received, that did not relieve the agency of the statutory obligation to continue to distribute DHS grant funds to the states under a mandatory formula specifying minimum state grants for preparedness.<sup>323</sup>

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<sup>318</sup> Subcommittee interview of FEMA (6/14/2012).

<sup>319</sup> Id.

<sup>320</sup> Id.

<sup>321</sup> GAO, *Information Sharing: Federal Agencies Are Helping Fusion Centers Build and Sustain Capabilities, and Protect Privacy, but Could Better Measure Results*, GAO-10-972 (Washington D.C.: September 2010), at 14. In late 2011, DHS attempted to conduct a cost assessment of Federal support to fusion centers, however it was unable to include financial figures for FEMA grant funding to fusion centers, which, by FEMA estimates, is a greater Federal cost than the operational items (for example personnel, technology, security clearances and network connectivity) in the DHS 2011 cost assessment. 6/2012, “2011 Fusion Center Federal Cost Inventory: Results,” DHS; “Fusion Center Funding Report,” Spreadsheet, 6/22/2012, DHS HSGAC FC 058336 and “Fusion Keyword Search Solution Area Funding Report,” Spreadsheet 2/24/201, DHS HSGAC FC 057017 at 2.

<sup>322</sup> “The Federal Emergency Management Agency’s Requirements for Reporting Homeland Security Grant Program Achievements,” OIG-12-92 (6/2012), [http://www.oig.dhs.gov/assets/Mgmt/2012/OIG\\_12-92\\_Jun12.pdf](http://www.oig.dhs.gov/assets/Mgmt/2012/OIG_12-92_Jun12.pdf).

<sup>323</sup> Id. at 9.

To oversee grant spending, including spending on fusion centers, FEMA relies on two mechanisms. First are FEMA grant monitoring reports, which are biennial reviews based on site visits by FEMA officials.<sup>324</sup> Second are grantee self-audits, known colloquially as “A-133s,” after the Office of Management and Budget (OMB) circular requiring them. According to GAO, neither report is a sufficient tool for meaningful oversight.<sup>325</sup>

### (1) FEMA Monitoring Reports

Currently, every two years, FEMA officials visit grant recipients and prepare monitoring reports based on those visits.<sup>326</sup> FEMA is required by law to conduct monitoring visits, but officials expressed a lack of faith in both the monitoring visits as well as the reports they produced. “I am not satisfied that our programmatic monitoring is as strong as it could be,” said Elizabeth Harman, the FEMA Assistant Administrator in charge of its grants programs.<sup>327</sup> Until recently the monitoring visits were supposed to evaluate FEMA-funded projects against milestones the states promised to achieve with the money FEMA gave them. However, Matthew Bower, Branch Chief, Risk Analytics and Strategic Initiatives, FEMA/GPD/Preparedness Grants Division, noted that a FEMA monitoring visit likely would not involve the FEMA official physically confirming a state agency’s claim that it had achieved any specific milestone.

Just because a FEMA official reports a milestone was achieved, “we are not viewing the capability” firsthand, Mr. Bowers said.<sup>328</sup> Even if a FEMA official rated a project milestone at 100 percent, indicating it was fully achieved, he might not base that on having personally verified the claim. “[That] may not mean we ‘kicked the tires’ on any of this stuff,” Mr. Bower told the Subcommittee.<sup>329</sup> Despite that, Mr. Bower said the visits were important “to make sure projects are on track.”<sup>330</sup>

Recently, the DHS Inspector General’s Office examined FEMA’s monitoring efforts. It reported that state officials told them FEMA’s monitoring visits “do not include reviewing the state’s progress in achieving annually identified investment project milestones.”<sup>331</sup>

The Subcommittee investigation noted one particular case in which a FEMA monitoring official rated a fusion center project as having made no progress – zero percent – for certain milestones, yet FEMA continued to award grant funds for the project.<sup>332</sup> Mr. Bower told the

<sup>324</sup> Subcommittee interview of Elizabeth Harman, Assistant Administrator, DHS Grants Program Directorate (8/2/2012).

<sup>325</sup> See “Testimony: DHS Improved its Risk-Based Grant Programs’ Allocation and Management Methods, But Measuring Programs’ Impact on National Capabilities Remains a Challenge” (3/11/2008), prepared by GAO, GAO-08-488T; “Single Audit Improvements” (3/13/2009), prepared by GAO, GAO-09-307R.

<sup>326</sup> The visits and reports have changed over time, and FEMA officials indicated they are preparing to make further changes. Subcommittee interviews of Elizabeth Harman (8/2/2012) and FEMA officials (7/19/2012).

<sup>327</sup> Subcommittee interview of Elizabeth Harman (8/2/2012).

<sup>328</sup> Subcommittee interview of FEMA officials (7/19/2012).

<sup>329</sup> Id.

<sup>330</sup> Id.

<sup>331</sup> “The Federal Emergency Management Agency’s Requirements for Reporting Homeland Security Grant Program Achievements,” OIG-12-92 (6/27/2012).

<sup>332</sup> “Philadelphia Urban Area FY 2009 Monitoring Report” (9/17/2009), FEMA; “Programmatic Monitoring Report, Pennsylvania – Philadelphia Area, HSGP/UASI,” (10/18/2011), FEMA, DHS-HSGAC-FC-059194.

Subcommittee that was possible because, among other reasons, FEMA had no “formal process” to review a recipient’s monitoring reports as part of its grant award process. Mr. Bower said that it was “common” for FEMA to continue to award funding to projects which showed no progress on previous years’ monitoring reports.<sup>333</sup> “Past performance does not affect future awards,” Mr. Bower explained at one point.<sup>334</sup>

When asked how long a project must show no progress before FEMA questioned its funding, Bower said he would expect FEMA officials to raise questions if a project had received funding for three consecutive years and showed zero percent progress on any milestone for that three-year period.<sup>335</sup>

In its June 2012 report, the DHS IG criticized FEMA’s monitoring program and the reports it generated for producing dated information of little value. “Our review of monitoring reports supported that the reports were not a source for tracking milestone progress,” the IG stated. The IG said the visits were too rare, and reports filed too late, to be of any practical use. “With monitoring visits scheduled every two years, and the monitoring reports not being completed for several months following the visit, the results of the visits were not timely or current for reviewing project activity accomplishments when annual applications for grant awards were being reviewed.”<sup>336</sup>

These findings echo what GAO found in 2008. “[FEMA] monitoring of grant expenditures does not provide a means to measure the achievement of desired program outcomes,” GAO reported then.<sup>337</sup> Ms. Harman told the Subcommittee, four years after the GAO report, that her staff was currently researching how to improve the monitoring process for FEMA grants.<sup>338</sup> However, Ms. Harman noted, “As the Federal Government, it’s not our job to micromanage these funds,” she said. “We need to maintain a level of flexibility.”<sup>339</sup>

**Delaware Valley Intelligence Center (DVIC).** The Subcommittee investigation, in addition to reviewing FEMA mechanisms for tracking Federal grants funds spent on fusion centers generally, also examined FEMA monitoring reports for specific fusion centers. One that highlighted the weakness in the monitoring reports process involved a fusion center project in Philadelphia, known as the Delaware Valley Intelligence Center (DVIC) project.

The Southeastern Pennsylvania Regional Task Force (SEPARTF), the regional government coalition which manages the project, identified over \$11 million in FEMA funding

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<sup>333</sup> Subcommittee interview of FEMA officials (7/19/2012).

<sup>334</sup> Id.

<sup>335</sup> Id.

<sup>336</sup> “The Federal Emergency Management Agency’s Requirements for Reporting Homeland Security Grant Program Achievements,” OIG-12-92, at 9, (6/27/2012), [http://www.oig.dhs.gov/assets/Mgmt/2012/OIG\\_12-92\\_Jun12.pdf](http://www.oig.dhs.gov/assets/Mgmt/2012/OIG_12-92_Jun12.pdf).

<sup>337</sup> DHS Improved its Risk-Based Grant Programs’ Allocation and Management Methods, But Measuring Programs’ Impact on National Capabilities Remains a Challenge,” GAO-08-488T, at 5, <http://www.gao.gov/assets/120/119323.pdf>.

<sup>338</sup> Subcommittee interview of Elizabeth Harman (8/20/12).

<sup>339</sup> Id.

that has been committed to the DVIC project since 2006.<sup>340</sup> According to SEPARTF, the DVIC will employ over 130 personnel in a 24-hour-a-day, 7-days-a-week operation.<sup>341</sup>

In September 2009, a FEMA grant officer visited SEPARTF to conduct a grant monitoring site visit.<sup>342</sup> Despite FEMA's multi-million-dollar obligations to the center over a three-year period, the FEMA officer did not visit the actual location of the DVIC as part of the site visit. FEMA could not conduct a site visit of the fusion center itself, because despite years of grant funding, the center did not physically exist.

In 2009, the FEMA officer reviewed the promises the task force had made regarding the progress it would make on DVIC in 2008, when FEMA had awarded it \$2.6 million.<sup>343</sup> The FEMA officer determined that no progress had been made on any of them – including what may have been the most fundamental: “Establish the DVIC facility and provide contractors and staff to operate the fusion center.”<sup>344</sup> Three years and \$11 million in obligations, yet the center did not exist.

“Milestones shows [sic] zero progress,” the official noted in the 2009 monitoring report, but appeared to excuse the task force's inaction. “When the monitoring was conducted it was very early in the Grant cycle and the Grantees and Sub-recipients were in the process of ob[li]gating funds and initiating projects.”<sup>345</sup> Despite finding no progress in 2009, FEMA continued to direct funding to the project in 2010 and 2011.<sup>346</sup>

In October 2011, a FEMA official conducted the next site visit to Philadelphia.<sup>347</sup> This monitoring visit took place five years after FEMA's initial grant to DVIC in 2006. By that time, the Commonwealth of Pennsylvania had frozen the FEMA grant funds it held that were intended for the center, because of concern that the local officials in charge of the project were planning to improperly spend millions in FEMA funding to refurbish and equip an old industrial building to house not only DVIC, but an even larger criminal intelligence center for the Philadelphia Police Department. FEMA grant guidance and Federal law prohibit the use of grant funds for construction.<sup>348</sup> In addition, expenditures for non-fusion center needs would have gone against the task force's promises to use the funds exclusively for the fusion center.<sup>349</sup> State officials were

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<sup>340</sup> DVIC Funding Overview, SEPARTF; PSI-PEMA-05-0090.

<sup>341</sup> Response to Subcommittee questionnaire (7/23/2010), Delaware Valley Intelligence Center, PSI-Delaware Valley Intelligence Center-01-0001.

<sup>342</sup> The task force is a subgrantee of the state of Pennsylvania; it receives, allots and spends FEMA grant funds for the Philadelphia region.

<sup>343</sup> “Philadelphia Urban Area FY 2009 Monitoring Report” (9/17/2009), FEMA, at 21; DVIC Funding Overview, SEPARTF; PSI-PEMA-05-0090.

<sup>344</sup> “Philadelphia Urban Area FY 2009 Monitoring Report” (9/17/2009), FEMA, at 21.

<sup>345</sup> *Id.*

<sup>346</sup> “Programmatic Monitoring Report, Pennsylvania – Philadelphia Area, HSGP/UASI” (10/18/2011), FEMA, DHS-HSGAC-FC-059194; Grant Agreement Between PEMA and SEPARTF for FEMA FFY 2010 UASI funds, (6/10/2011), at 37; “FY2011 HSGP Investment Justification: Fusion Center Addendum,” at 2.

<sup>347</sup> “Programmatic Monitoring Report, Pennsylvania – Philadelphia Area, HSGP/UASI” (10/18/2011), FEMA, DHS-HSGAC-FC-059194.

<sup>348</sup> 6 U.S.C. § 609 (b)(4).

<sup>349</sup> Correspondence from Christopher F. Wilson, Pennsylvania Governor's Office of General Counsel, to Edward Atkins, Chair, Southeastern Pennsylvania Regional Task Force (9/15/2011), PSI-PEMA-05-0003. The

so concerned they told SEPARTF that they would not reimburse any construction costs related to the DVIC until FEMA granted a waiver to do so.

FEMA officials were aware of these concerns at the time of the visit – indeed, according to state officials, FEMA shared their doubts.<sup>350</sup> Specifically, FEMA officials knew that project officials planned to use FEMA grant funds to pay for building renovations, which was explicitly barred by FEMA grant guidelines.<sup>351</sup> Just a few weeks earlier, local officials had written FEMA asking for an “immediate and favorable” decision to waive that restriction so that the project “may proceed along its current promised timeline.”<sup>352</sup>

Despite local officials’ efforts to get around FEMA spending restrictions and allocate millions of taxpayer dollars to disallowed construction and renovation costs, the FEMA monitoring report from the October 2011 visit contained no particular criticisms or sense of urgency regarding the fusion center. For instance, the report form asked: “During the course of the programmatic Site Visit, were there indicators of possible non-compliance with grant

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Subcommittee investigation discovered that a DHS official, Joseph Liciardello, served as one of the DVIC project’s managers, outside of his professional capacity as a DHS employee. (“I am the Co-Lead on the [DVIC] Project Management Team.” Email from Joseph Liciardello to ISC@DHS.gov, “Subject: Request for documents” (9/23/2010), DHS-HSGAC-FC-020104.) He assisted in crafting documents and providing advice for the project and seemed to be counseling the project on how to recharacterize construction costs they intended to cover using grant funds: (“I . . . am handling the lease negotiations for the DVIC for most of the week.” Email from Joseph Liciardello to Kurt Bittner, “Subject: RE: DVIC – Siemens Contact Information,” (10/11/10), DHS-HSGAC-FC-022630; “We cannot reference construction so I added ‘or additional funding as necessary’ to . . . the enhanced lease payment clause.” Email from Joseph Liciardello to Evalyn Fisher, “Subject: FW: DVIC Lease” (10/5/2010), DHS-HSGAC-FC-024159; “As to the request for a change from SEPARTF ‘construction’ to ‘requirements[‘], it is necessary because of restrictions found in the grant guidance concerning allowable costs.” Email from Joseph Liciardello to Douglas Kubinski, “Subject: RE: DVIC Intergovernmental Cooperation Agreement between the City and Task Force” (2/17/2011), DHS-HSGAC-FC-023663).

In interviews with the Subcommittee, Mr. Liciardello said he never referred to himself as a project lead for DVIC, and that his role was “administrative,” and “assistance.” He said he was versed in the lease process but only because he was a “referee” between the parties. Subcommittee interviews of Joseph Liciardello (10/31/11 and 11/2/11).

The Subcommittee was unable to confirm the extent of Mr. Liciardello’s role in the project, in part because DHS did not produce all emails from his account related to his extra-professional involvement the project. In a written explanation, the Department stated, “our technological representatives were unable to access” emails from May and June 2011. Response to Subcommittee inquiry (8/17/2012), DHS, DHS-HSGAC-FC-059294.

<sup>350</sup> “Issues were first raised regarding the construction issue in late February 2011,” PEMA officials told the Subcommittee. “They rose to DHS’ level . . . we have an April 26, 2011 note from Dennis Donehoo [of FEMA] requiring a [construction] waiver.” Subcommittee interview of Pennsylvania Emergency Management Agency officials (11/14/2011).

<sup>351</sup> “The Federal Emergency Management Agency (FEMA) has asked PEMA for the status of the construction/renovation waiver as Federal guidance requires such a waiver . . . PEMA will be unable to reimburse the SEPARTF for any expenditure related to the DVIC until such a time that SEPARTF submits a construction/renovation waiver to PEMA and that waiver is consequently approved by FEMA[.]” Correspondence from Christopher F. Wilson, Chief Counsel, Governor of the Commonwealth of Pennsylvania, to Ed Atkins, Chairperson, Southeastern Pennsylvania Regional Task Force (9/15/2011), PSI-050-0004.

<sup>352</sup> Correspondence from Edward J. Atkins, Chairman, Southeastern Pennsylvania Regional Task Force, to Dennis Donehoo, Program Analyst, FEMA (9/26/2011), PSI-PEMA-05-0012. FEMA did not grant the waiver.

program requirements (e.g., unallowable expenditures) that should be brought to the financial analyst's attention?" The FEMA officer wrote, "No."<sup>353</sup>

As for progress, the official noted that work on the center was "not started," except for a segment of funds from a 2008 grant, which the official noted were "used for a temporary facility while the perm[a]n[e]nt DVIC is under construction." In that instance, the official recorded that "all investment activities" had been "completed."<sup>354</sup>

In February 2012, SEPARTF informed FEMA that it expected to use 2000 square feet of office space "for pre-operational activities related to establishment of the DVIC."<sup>355</sup> In August 2012, Pennsylvania officials told the Subcommittee they understand that SEPARTF had yet to hire any intelligence analysts.<sup>356</sup> To date, about \$2.3 million of FEMA funds committed to the project have been spent.<sup>357</sup> The remainder of the grant funds has expired, been redirected to other projects, or remain unspent.<sup>358</sup> DHS continues to list DVIC as one of its officially recognized fusion centers in reports to Congress and public documents, even though after six years, the fusion center is not yet operational.<sup>359</sup>

FEMA's passivity in the face of years of questionable fusion center expenditures in Philadelphia is remarkable, but it is not exceptional. Fusion center grant recipients that have earned reputations among FEMA grant officials for poor spending practices typically face few consequences. FEMA officials told the Subcommittee that while they sometimes find instances of misspending, lax recordkeeping or other poor performance by grant recipients – on fusion centers and other projects – they almost never withhold funds.<sup>360</sup> In fact, FEMA officials could name only a few instances in which DHS withheld grant money from any grant recipient in any DHS program. In 2007, FEMA withheld grant funds from American Samoa in response to a major investigation into the misuse of millions in DHS grant funds for tsunami preparedness by the protectorate.<sup>361</sup> FEMA officials also indicated that they temporarily withheld funds from Pennsylvania and Texas that were to be used to support fusion center activities, because the states did not provide enough information in their applications about how the funds were going to be used.<sup>362</sup>

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<sup>353</sup> "Programmatic Monitoring Report, Pennsylvania – Philadelphia Area, HSGP/UASI," FEMA, DHS-HSGAC-FC-059194.

<sup>354</sup> *Id.* at 18.

<sup>355</sup> Letter from Edward J. Atkins, Chairman, SEPARTF to Dennis Donehoo, FEMA (2/23/2012), DHS-HSGAC-FC-05-0796.

<sup>356</sup> Subcommittee interview of Pennsylvania Emergency Management Agency officials (8/1/2012).

<sup>357</sup> PEMA Spreadsheet. (9/20/12)

<sup>358</sup> DVIC Funding Overview, SEPARTF; PSI-PEMA-05-0090; Subcommittee interview of Pennsylvania Emergency Management Agency officials (8/1/2012).

<sup>359</sup> See "2011 National Network of Fusion Centers, Final Report, May 2012," DHS-HSGAC-FC-057027.

<sup>360</sup> Subcommittee interview of FEMA officials (6/14/2012).

<sup>361</sup> See "Report: Tsunami warning funds squandered in American Samoa," CNN.com, Drew Griffin and David Fitzpatrick (10/28/2009),

<http://edition.cnn.com/2009/WORLD/americas/10/27/asamoa.tsunami.warningsystem/index.html>.

<sup>362</sup> Subcommittee interview of FEMA officials (6/14/2012).



## (2) A-133 Audits

The Office of Management and Budget (OMB) requires state, local and tribal governments who expend more than \$500,000 in Federal grant funds within a given fiscal year to audit their expenditure of those funds, as well as to conduct timely and effective oversight of any subgrantees' financial activities, through actions such as site visits.<sup>363</sup>

The process has long been problematic, as GAO and the President's Council on Integrity and Efficiency (PCIE) have reported.<sup>364</sup> The Subcommittee investigation reviewed A-133 audits of FEMA grant funds awarded to California, Arizona and Pennsylvania, and determined the audit reports did not follow a uniform reporting format, and often did not distinguish expenditures for fusion centers from other programs, rendering them useless for effective financial oversight of how state and local agencies spend Federal grant dollars on fusion centers.

The difficulties experienced by the Subcommittee in using A-133 audit reports is consistent with broader concerns raised by earlier reviews of A-133s. In 2007, PCIE reported that nearly half of all A-133 audits were not adequate to meet the reporting requirements of the OMB circular – so much so that it considered them either wholly unacceptable or “limited in reliability.” The council also pointed out that there has been no single Federal entity responsible for monitoring compliance with the A-133 audit requirement, and agencies were not consistent in enforcing it.<sup>365</sup>

The A-133 audits conducted by California illustrate the problems. In 2009, the DHS Inspector General released its audit of the State of California's management of its State Homeland Security Program (SHSP) grants from 2004 to 2006. Among other findings, the DHS IG found that the state had failed to conduct any monitoring of the spending by its subgrantees until late 2005, and when it did, the review efforts were inadequate to provide “sufficient oversight” of the subgrantees' activities. Among other problems, nearly half of the subgrantees received no visits at all from state overseers, and the audits did not identify any procurement-related problems, although the IG's auditors found many. In fact, the IG found that “in an effort to improve operational efficiency,” the state did not require subgrantees to give them *any* receipts, invoices or other documentation before disbursing Federal grant funds to them.<sup>366</sup>

Among its recommendations, the DHS IG informed California it should strengthen its site visits to subgrantees, and improve its financial oversight measures to ensure the subgrantees were spending Federal grant funds “as intended.” The state agreed to do so.<sup>367</sup>

<sup>363</sup>“OMB Circular A-133 Compliance Supplement 2011,” Part 1,

[http://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a133\\_compliance/2011/pt1.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a133_compliance/2011/pt1.pdf).

<sup>364</sup> See “Single Audit: Opportunities Exist to Improve the Single Audit Process and Oversight,” (3/13/2009), prepared by GAO, GAO-09-307R, <http://www.gao.gov/new.items/d09307r.pdf>.

<sup>365</sup>“Report on National Single Audit Sampling Project” (6/2007), President's Council on Integrity and Efficiency, <http://www.ignet.gov/pande/audit/NatSamProjRptFINAL2.pdf>.

<sup>366</sup>“The State of California's Management of State Homeland Security Program Grants Awarded During Fiscal Years 2004 through 2006,” prepared by DHS IG, (2/2009) OIG-09-33, [http://ipv6.dhs.gov/xoig/assets/mgmttrpts/OIG\\_09-33\\_Feb09.pdf](http://ipv6.dhs.gov/xoig/assets/mgmttrpts/OIG_09-33_Feb09.pdf).

<sup>367</sup> Id.

In 2011, the DHS IG revisited the State of California's grant operations, this time to review its management of Urban Area Security Initiative (UASI) grants, another subset of FEMA's preparedness grants program. In its report, the IG noted the state was required by OMB Circular A-133 to monitor subgrantee spending through site visits and other means. It noted it had found an absence of meaningful financial oversight by California two years earlier. It noted the state of California had promised to improve its monitoring, including boosting its site visits, to comply with Federal regulations.<sup>368</sup>

California officials told IG auditors they planned to initiate visits to subgrantees in three of the state's six urban areas receiving UASI funds from 2006 and 2007. The IG pointed out that left subgrantees in the other three areas unaffected, and held little promise of ensuring fiscal discipline, since nearly all of the 2006 and 2007 grant funds would have been spent and reimbursed by then.<sup>369</sup>

The Subcommittee's review of Arizona and Pennsylvania A-133 audits were equally troubling, indicating these self-audits do not provide effective financial oversight of Federal funds spent on fusion centers.

#### **D. DHS Grant Requirements Do Not Ensure States Spend Fusion Center Funds Effectively**

In administering its grant programs, DHS, through FEMA, outlines broad requirements for the types of activities that can be funded and equipment that can be purchased. However, for several years DHS made no attempt at ensuring state expenditures on fusion centers addressed gaps in the centers' information-sharing capabilities. Recently, FEMA has made changes intended to make sure states and cities use FEMA grant dollars for fusion centers to improve these abilities, but those efforts still fall short of meaningful reform.

Before 2011, FEMA grant recipients faced few requirements on how they used grant funds for fusion center projects, beyond the general FEMA guidelines governing all preparedness grant projects. In 2011, FEMA and I&A instituted new procedures intended to better align FEMA grant funds with I&A priorities.<sup>370</sup>

To begin with, I&A initiated what are intended to be annual assessments of each fusion center, measuring each facility's key capabilities, a list of attributes which includes having an

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<sup>368</sup> February 2011 "The State of California's Management of Urban Areas Security Initiative Grants Awarded During Fiscal Years 2006 through 2008," prepared by DHS IG, OIG-11-46, [http://www.oig.dhs.gov/assets%5CMgmt%5COIG\\_11-46\\_Feb11.pdf](http://www.oig.dhs.gov/assets%5CMgmt%5COIG_11-46_Feb11.pdf).

<sup>369</sup> "[T]here is no plan to visit the other three urban areas that received Urban Areas Security Initiative grant funds . . . The FY 2010 visits would not be timely for the FYs 2006 and 2007 grants since nearly all of these funds would have been spent and reimbursed by the State." "The State of California's Management of Urban Areas Security Initiative Grants Awarded During Fiscal Years 2006 through 2008," prepared by DHS IG, OIG-11-46, at 24, [http://www.oig.dhs.gov/assets%5CMgmt%5COIG\\_11-46\\_Feb11.pdf](http://www.oig.dhs.gov/assets%5CMgmt%5COIG_11-46_Feb11.pdf) (2/2011)

<sup>370</sup> Subcommittee interview of FEMA officials (6/14/2012).

approved privacy policy, information-sharing policies, governance plans, analyst training, and more.<sup>371</sup>

In addition, beginning in 2011, FEMA required all states and cities to submit a project document known as an Investment Justification (IJ), in which they would describe how they planned to spend FEMA funds on their fusion centers.<sup>372</sup> FEMA asked recipients to use the IJ to show how they would use DHS grant money to address any weaknesses which had been noted by DHS assessments.<sup>373</sup>

When FEMA received the IJs from the states and cities, it shared them with officials at I&A.<sup>374</sup> I&A officials reviewed the IJs for each fusion center against their assessment of that center, to ensure that the recipient planned to use its grant funds to address the capability gaps I&A assessors had identified at the center.<sup>375</sup>

While this new procedure represents a significant improvement over past practice, the Subcommittee investigation identified three issues which weaken its effectiveness.

First, the new system does not ensure that Federal funds are spent on Federal priorities. While I&A reviews the submitted proposals to ensure FEMA recipients say they will use their funds to address identified weaknesses at each fusion center, DHS does not require that a significant portion of the Federal grant funds it awards for fusion centers be directed towards eliminating those weaknesses. In a hypothetical situation, a state could indicate it was spending \$300,000 to address a particular weakness, and another \$2 million to buy unrelated equipment such as emergency response vehicles or wiretapping devices, or even to defray overhead costs, without demonstrating steps to achieve the “must-have” capabilities required by DHS.<sup>376</sup> Allowing fusion center expenditures for unrelated purposes significantly weakens FEMA’s ability to ensure that Federal funds for fusion centers are devoted to achieving Federal priorities at those centers.<sup>377</sup>

Second, recipients of FEMA grant funds are under little obligation to follow through on commitments made in their Investment Justifications. FEMA gives preparedness grant recipients wide latitude to change their minds about spending priorities even after receiving grant funds. According to FEMA officials, recipients and their subgrantees are allowed to reprogram funds from one purpose to another without necessarily obtaining consent or notifying FEMA in

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<sup>371</sup> For a complete list of attributes used in the DHS 2011 assessment process, see Appendix B of this Subcommittee report.

<sup>372</sup> Subcommittee interview of Joel Cohen, I&A (7/12/2012).

<sup>373</sup> Subcommittee interview of FEMA (6/14/2012).

<sup>374</sup> Id.

<sup>375</sup> Subcommittee interviews of Joel Cohen, I&A (4/16/2012 and 7/12/2012).

<sup>376</sup> Emergency response and covert surveillance are not key capabilities for fusion centers, as demonstrated in Appendix A and B of this Subcommittee report.

<sup>377</sup> Subcommittee interview of Joel Cohen, I&A (7/12/2012). While Mr. Cohen stated, “I don’t know what fusion center needs response vehicles,” he confirmed that as long as some portion of the IJ addressed capability gaps, I&A and FEMA would allow the other expenditures as long as they were consistent with FEMA’s general guidelines. “Okay, so be it,” Mr. Cohen said.

advance.<sup>378</sup> This latitude makes it possible for states and cities to report intentions to shore up key weakness at a fusion center, but after receiving the funds, spend them on other purposes.

Third, no one at FEMA or I&A appears to be charged with ensuring that states and cities in fact, spend their fusion center funds on the commitments made in their IJs. When the Subcommittee asked FEMA officials who was in charge of checking to see if states were actually using funds as promised to address their identified weaknesses, FEMA said that the task fell to I&A.<sup>379</sup> When asked what role it played in overseeing states' and cities' spending Federal dollars on fusion centers, I&A officials told the Subcommittee that they conducted no such oversight. "[I&A has] no role whatsoever in oversight," Joel Cohen, a senior I&A official, told Subcommittee. "It's true across the board .... We do not monitor [spending]. We do not provide oversight, we do not provide monitoring."<sup>380</sup> He indicated that was FEMA's responsibility, and added that FEMA coordinated its oversight efforts with I&A "all the time."<sup>381</sup>

To test the effectiveness of DHS and FEMA oversight practices, the Subcommittee reviewed spending by FEMA recipients and subgrantees at five fusion centers. At each, the Subcommittee investigation found significant instances in which state and local agencies spent Federal dollars meant to improve fusion center capabilities on items that did little to achieve those improvements or were not used by the centers at all. Although all of the cases occurred before FEMA and I&A had implemented the new 2011 IJ review process for fusion centers, FEMA indicated all of the expenditures listed below appeared to be allowable under current rules.<sup>382</sup>

### **(1) Using Fusion Center Funds on Chevrolet Tahoes**

In April 2008, the Arizona Department of Public Safety (AZDPS) bought a new Chevrolet Tahoe sport utility vehicle (SUV) using over \$33,500 in DHS grant funds meant to enhance the capabilities of the Arizona Counter Terrorism Information Center (ACTIC), the state's fusion center. Specifically, the funds were intended to support Arizona's Terrorism Liaison Officers (TLO) Program, which is run by the ACTIC.<sup>383</sup> TLOs are specially trained law enforcement officers whose role is to, among other things, "relay terrorism related information and intelligence efficiently and appropriately between the ACTIC and field resources."<sup>384</sup>

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<sup>378</sup> Subcommittee interview of FEMA officials (7/19/2012).

<sup>379</sup> Subcommittee interview of FEMA officials (6/14/2012). Specifically, when asked if I&A's State and Local Program Office (SLPO) handled program monitoring of fusion centers, FEMA's Matthew Bower replied, "That's fair to say."

<sup>380</sup> Subcommittee interview of Joel Cohen (7/12/2012).

<sup>381</sup> Id.

<sup>382</sup> Subcommittee interviews of FEMA officials (6/14/2012 and 7/19/2012).

<sup>383</sup> Invoice, Midway Chevrolet-Isuzu, April 14, 2008, PSI-AZDOHS-03-0587 and 2007 State of Arizona Department of Homeland Security, 2007 State Homeland Security Grant Program Project Detail Workbook, Project Justification. PSI-AZDOHS-03-0008. The State of Arizona provided the Subcommittee with the vehicle invoice in response to a request for detailed documentation on its use of homeland security grant funds.

<sup>384</sup> 2007 State of Arizona Department of Homeland Security, 2007 State Homeland Security Grant Program Project Detail Workbook, Project Justification. PSI-AZDOHS-03-0008.

For a law enforcement terrorism prevention grant FEMA awarded AZDPS in October 2007, the state indicated the funds would be used to purchase equipment, including a vehicle, for TLOs outside of the Phoenix area to respond to chemical, biological, radiological, nuclear, and explosive (CBRNE) incidents.<sup>385</sup> In accordance with the grant, a few months later, AZDPS provided the vehicle to the Flagstaff Fire Department for use by a city fire official designated as a TLO, under an agreement to “enhance domestic preparedness [CBRNE] response services concerning the activities of terrorism[.]”<sup>386</sup> DHS does not consider responding to CBRNE events, however, an essential fusion center capability.<sup>387</sup>

Moreover, according to Arizona records for the truck, the vehicle does not appear to qualify as a satisfactory CBRNE response vehicle: it is not equipped to respond to a zone affected by most types of CBRNE incidents, despite the award of an additional \$9,400 in fusion center grant funds the state spent to install aftermarket equipment on the truck.<sup>388</sup> The state equipped the vehicle with lights, flashers, a siren and public address microphone, an anti-theft device, a notebook holder, computer mount, external cup holder, reinforced bumper, and a rear compartment partition, among other items.<sup>389</sup>

The only specialized equipment related to CBRNE accompanying the vehicle was a radiation-detecting dosimeter. The device can identify exposure to radiation, but offers no protection against it. The city official to whom the vehicle was assigned told the Subcommittee he keeps the truck at his house and uses it primarily to commute between his home and the Flagstaff Fire Department.<sup>390</sup>

A year later, in October 2009, Arizona purchased and outfitted a second Chevrolet Tahoe SUV with DHS funds that were likewise intended to support ACTIC, again claiming it to be a CBRNE response vehicle. The state used about \$47,000 in Urban Area Security Initiative (UASI) funds, and gave the truck to the Arizona State University Police Department (ASUPD).<sup>391</sup> The vehicle was assigned to a K-9 officer who was designated as a TLO. The vehicle was outfitted to serve as a police K-9 unit vehicle, with a kennel, heat alarm system, lights and sirens, radios, a patrol rifle, chemical protective gear, a gas mask, a GPS unit, a ballistic helmet and vest, and training equipment for the dog.<sup>392</sup>

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<sup>385</sup> 2007 State of Arizona Department of Homeland Security, 2007 State Homeland Security Grant Program Project Detail Workbook, Project Justification. PSI-AZDOHS-03-0008.

<sup>386</sup> ACTIC, “Intergovernmental Agreement,” October 2, 2008, PSI-Flagstaff\_Fire\_Dept-01-0002.

<sup>387</sup> For a list of fusion center capabilities used by DHS to assess fusion centers in 2011, please see Appendix B of this Subcommittee report.

<sup>388</sup> 1/30/2009 Invoice, Arizona Emergency Products, PSI-AZDOHS-03-0272.

<sup>389</sup> Id.

<sup>390</sup> Subcommittee Interview of Dep. Chief Jerry Bills, Flagstaff Fire Department (2/3/2012). Mr. Bills told the Subcommittee he used the vehicle for his daily commute since receiving it at some point prior to October 2008; he lived 12 miles from his station; and the odometer presently read approximately 27,000 miles. He estimated 15,000 of those miles were from commuting. He did not indicate the truck had ever been used to respond to a CBRNE attack, although he said may have used it to attend and host training sessions in HAZMAT response, terror response and other topics.

<sup>391</sup> “Property Disposal Request and Authorization,” March 10, 2010, State of Arizona Surplus Property; also, Midway Chevrolet Invoice, October 27, 2009 PSI-AZDOHS-03-0954.

<sup>392</sup> Subcommittee interview of Cpl. Parker Dunwoody, Arizona State University Police Department (2/2/2012).

The dog is trained and equipped only to detect conventional explosives, according to his handler. The officer told the Subcommittee that he was trained and equipped to respond to several kinds of CBRNE incidents.<sup>393</sup> While enhancing CBRNE response is a legitimate use of FEMA grant funds, CBRNE response is not a baseline capability DHS expects of state and local fusion centers.

## (2) Using Fusion Center Funds on Rent

From 2009 to 2011, Arizona used \$1.98 million in FEMA grant funds to lease space for the ACTIC fusion center.<sup>394</sup> That amount covered the entire cost of ACTIC's lease from August 2009 to August 2011, which ran roughly \$80,000 a month.<sup>395</sup> In interviews, FEMA stated that although its guidelines appear not to allow this use of DHS funds, it allowed the expenditures anyway. Such spending did little, if anything, to help the Arizona center address significant weaknesses in its ability to receive, analyze and share terrorism threat-related information with the Federal Government.

Before using FEMA funds to make payments on ACTIC's lease, an Arizona official queried FEMA about the allowability of the expenditure. The official's response indicates FEMA's guidelines are not rigidly enforced.

The Arizona official sent a February 2009 email to FEMA asking: "Can we reimburse rent for a fusion center?" A DHS official responded: "[A]llowable (M&A [Management and Administration]) costs can pay for the *leasing or renting* of space for newly hired personnel. And since new people will be hired during the period of this grant ☺ you should have no problem with it."<sup>396</sup>

The Arizona official replied, noting that the expenses in question were not "M&A" expenses which are normally confined to costs for administering FEMA grants within the state. FEMA restricts grant recipients from using any but a very small portion of their funding on management and administration expenses, which might include overhead costs such as lease payments, office equipment, and administrative salaries.<sup>397</sup> "This would be under Organizational not M&A," the Arizona official wrote. "M&A is only allowable to 3% [of the grant] and these funds are used to support the direct administration of all grants (funds the AZDOHS office)."<sup>398</sup>

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<sup>393</sup> Email from Cpl. Parker Dunwoody to the Subcommittee (10/1/2012).

<sup>394</sup> Award letters from Arizona Dept. of Homeland Security (AZDHS) to Arizona Dept. of Public Safety (AZDPS), September 19, 2009, September 18, 2009 and August 6, 2010, PSI-ACTIC-02-0952, PSI-ACTIC-02-0967, PSI-ACTIC-02-0982.

<sup>395</sup> AZDPS lease agreement for ACTIC, July 7, 2009, PSI-AZDOHS-05-0005.

<sup>396</sup> Emails between David W. Nichols, DHS, and Lisa Hansen, AZDHS, February 5-6, 2009, PSI-AZDOHS-03-1312. [Emphasis and emoticon in original.]

<sup>397</sup> For example, "Fiscal Year 2008 Homeland Security Grant Program Guidance and Application Kit," FEMA (2/2008), at 23, B-3; "Fiscal Year 2009 Homeland Security Grant Program Guidance and Application Kit," FEMA (11/2008), at 34, 65; "Fiscal Year 2010 Homeland Security Grant Program Guidance and Application Kit," FEMA (12/2009), at 35, 72.

<sup>398</sup> Emails between David W. Nichols, DHS, and Lisa Hansen, AZDHS (2/5/2009 – 2/6/2009), PSI-AZDOHS-03-1312.

“Organizational, yes,” the DHS official responded.<sup>399</sup>

Still apparently unsure, the Arizona official wrote again. “Thank you for your response, if I understand you correctly. AZDOHS [may] fund the fusion center rent with HSGP FY09 funds in the category of Organizational and not impact M&A funds?”<sup>400</sup>

“yes,” the DHS official responded.<sup>401</sup>

FEMA grant guidance for the period indicates that rent or lease payments are allowed as organizational expenses, if it is “for leasing or renting of space for newly hired personnel during the period of performance of the grant program.”<sup>402</sup> As such, rent or lease payments for space *not* intended for new personnel would not be allowed. However, that is how Arizona applied the funds: to pay for not only some percentage of ACTIC’s lease to house new employees, but to cover ACTIC’s entire lease, a cost of nearly \$1 million a year.

Appearing to contradict their own guidelines, FEMA officials interviewed by the Subcommittee stated that they have approved using grant funds to cover fusion center lease payments several times. “There was a policy decision within our office, I know anecdotally we’ve allowed it many times in the past,” FEMA’s Matthew Bower told the Subcommittee.<sup>403</sup> FEMA provided the Subcommittee with a list of states it had allowed to use grant funds this way, but was unable to provide any documentation memorializing the policy decision to allow grant funds to reimburse lease costs, or informing other grant recipients of the change.<sup>404</sup>

When asked how and why FEMA allows Federal grant funds to cover such a basic cost as rent for a fusion center, Elizabeth Harman, FEMA’s grants chief, said she was “not well-versed on the rent issue.” Ms. Harman noted that FEMA has “given [recipients] a lot of flexibility in how these grant dollars are spent.”<sup>405</sup> Allowing fusion centers to use DHS funds to cover rental expenses, which are often substantial, necessarily reduces the funds available to develop baseline counterterrorism capabilities.

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<sup>399</sup> Id.

<sup>400</sup> Id.

<sup>401</sup> Id.

<sup>402</sup> “Fiscal Year 2009 Homeland Security Grant Program Guidance and Application Kit,” FEMA (11/2008), at 63.

<sup>403</sup> Subcommittee interview of FEMA officials (7/19/2012).

<sup>404</sup> DHS Response to the Subcommittee (8/1/2012), DHS-HSGAC-FC-059232. The states who have been allowed to use grant funds to cover lease costs for fusion centers include California, Arizona, Delaware, Georgia, Massachusetts, Minnesota, Mississippi and Wisconsin; FEMA states it has also allowed fusion center rent costs for Puerto Rico and the city of Jacksonville.

<sup>405</sup> Subcommittee interview of Elizabeth Harman (8/2/2012).

### (3) Using Fusion Center Funds on Wiretap Room

In 2009, AZDOHS awarded the state's Department of Public Safety \$105,112 under a DHS grant program for urban areas<sup>406</sup> to support IT infrastructure at ACTIC.<sup>407</sup> Officials from the fusion center told the Subcommittee and related documents indicate that roughly \$64,000 of that total was used to purchase equipment for a surveillance monitoring room at the ACTIC fusion center.<sup>408</sup>

The money purchased software, a new laptop, two monitors and two 42" flat screen televisions.<sup>409</sup> Some of the funds were also used to send an employee to receive training related to surveillance technology, according to an Arizona official.<sup>410</sup> The monitoring room, which ACTIC officials referred to as "the wire room," is used for criminal investigations.<sup>411</sup>

As a state-run fusion center, it is the state of Arizona's prerogative to house criminal investigative resources within the fusion center. However, Federal guidelines for fusion center key capabilities do not include covert or surreptitious intelligence gathering.<sup>412</sup> Indeed, fusion center capabilities used in DHS assessments relate to the ability to receive, analyze, and share information, not gather it. Nevertheless, FEMA approved the expenditures for ACTIC.

In all three of these cases, the state of Arizona acted in accordance with FEMA rules and guidelines. The use of DHS grant funds to purchase CBRNE response vehicles, surveillance equipment, and to cover rent costs are allowable under the grant program.

But DHS does not consider CBRNE response to be a baseline capability for fusion centers. Likewise, DHS does not consider surveillance to be a fusion center capability. Rental costs also do not address the counterterrorism baseline capabilities every fusion center is supposed to possess. The questioned purchases do not directly boost the center's needed capabilities; and no DHS rule or guideline currently encourages Arizona to focus its spending on those counterterrorism information-sharing priorities.

At the time these expenditures were made, ACTIC had a catalog of weaknesses inhibiting its participation in sharing terrorism threat information with the Federal Government. A 2010 assessment of the center on behalf of DHS concluded the center had no system for gathering, processing, collating and storing information; it had no analytic production plan; it had no training plan for analysts "that adheres to nationally-recommended standards;" it had no staffing plan or continuity of operations plan; and at the time, it had no privacy policy nor a way to be sure all personnel received privacy training.<sup>413</sup> In the most recent Federal assessment of ACTIC

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<sup>406</sup> The program is known as the Urban Area Security Initiative (UASI).

<sup>407</sup> 2009 Homeland Security Grant Program Award, Grant Agreement Number 555601-05. PSI-ACTIC-02-0907.

<sup>408</sup> Wire room list of expenditures, PSI-AZDOHS-08-0047.

<sup>409</sup> Id.

<sup>410</sup> Email from Maj. Mike Orose, ACTIC, to Subcommittee (2/9/2012), PSI-AZDOHS-08-0001.

<sup>411</sup> Id.

<sup>412</sup> For the list of Baseline Capabilities for Fusion Centers (2008) and the Critical Operational Capabilities (2008) see Appendix A of this Subcommittee report.

<sup>413</sup> "Arizona Counter Terrorism Information Center Baseline Capabilities Assessment," PM-ISE (10/2010), DHS-HSGAC-FC-007497.



in 2011, DHS found the center still lacked 14 out of 50 attributes needed to achieve minimal functionality as a fusion center contributing to Federal counterterrorism efforts.<sup>414</sup>

#### **(4) Using Fusion Centers Funds on Computers for County Medical Examiner**

Another example of questionable fusion center spending involved the procurement of specialized computers. In Cleveland, Ohio, officials used \$15,848 in 2007 FEMA grant funds for the Northeast Ohio Regional Fusion Center (NEORFC) to buy ruggedized Toughbook laptop computers.<sup>415</sup> In response to a Subcommittee inquiry, County officials reported the laptops were not located at the fusion center, but at the county medical examiner's office.<sup>416</sup>

When asked why laptops intended for the fusion center were located at the medical examiner's office, a Cuyahoga County official responded that the laptops were for processing human remains in the aftermath of a mass casualty event in the Cleveland area. The official stated his region had not experienced such an event.<sup>417</sup>

When asked how the purchase of the computers would benefit the fusion center and could be portrayed as a fusion center expenditure, the official said he assumed that in the aftermath of a mass casualty event, information about the human remains would have "intelligence value." He said he did not know whether the laptops were able to connect and securely transmit information to the fusion center.

In 2010, a capabilities assessment of NEORFC conducted on behalf of DHS concluded the center was all but completely incapable of functioning as a fusion center. "The center is lacking in its ability to process, collate, or disseminate information . . . . Based on [its] self-assessment, the Northeast Ohio Regional Fusion Center (NEORFC) appears to be struggling. [T]he center exhibits limited capability to support the intelligence cycle . . . . Limited personnel, few documented processes or plans . . . hinder the ability to achieve baseline capabilities . . . . [T]here is limited capability to process or disseminate information collected."<sup>418</sup>

When asked about the computer purchase, FEMA's Matthew Bower said, "[T]his would jump out to me as well. I can't give you a full answer." Mr. Bower noted that FEMA does not review purchases at the subgrantee level, rather relying on the state administrative agencies' to do so, so the agency was likely unaware of the purchase.<sup>419</sup>

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<sup>414</sup> DHS, "2011 Fusion Center Assessment Individual Report, Arizona Counter Terrorism Information Center," Revised March 2012, DHS-HSGAC-FC-047650.

<sup>415</sup> "HSGP Equipment Inventory," NEORFC (7/12/2011).

<sup>416</sup> Id.

<sup>417</sup> Subcommittee interview of Hugh Shannon, Administrator, Cuyahoga County Medical Examiner's Office (12/15/2011).

<sup>418</sup> Northeast Ohio Regional Fusion Center Baseline Capabilities Assessment (October 2010), DHS-HSGAC-FC-010416, at 8, 10.

<sup>419</sup> Subcommittee interview of FEMA (7/19/2012).

## (5) Using Fusion Center Funds for Surveillance Equipment, Computers, Televisions

In 2011, the San Diego area’s fusion center, known as the Law Enforcement Coordination Center (SD-LECC), spent \$25,000 on high-tech surveillance equipment, most of which was so sophisticated it eventually returned it for simpler devices.<sup>420</sup> This purchase was made, despite the fact that Federal guidelines for fusion center key capabilities do not include covert or surreptitious intelligence gathering.<sup>421</sup>

SD-LECC used FEMA grant funds to make the following purchases:

- a covert, wireless audio/video recorder with a “shirt-button camera”;
- an ultra-low-light “pinhole” VGA camera; and
- an ultra-low-light shirt-button camera “with interchangeable tops.”<sup>422</sup>

In a document provided to the Subcommittee, SD-LECC officials stated that the center returned some of the equipment after it was deemed “simply too complicated for our customers to use.”<sup>423</sup> In their place, the fusion center received other undercover surveillance devices, including a camera hidden in a hat and one disguised as a water bottle.<sup>424</sup> It is unclear how the San Diego fusion center’s use of Federal grant funds to buy surveillance equipment assisted the primary mission of DHS’s fusion center effort. Nevertheless, the purchases were allowable under FEMA guidelines.

When asked if the surveillance equipment purchases, such as a shirt-button camera, raised concerns for him, Mr. Bower, head of FEMA’s Risk Analytics and Strategic Initiatives Branch, told the Subcommittee he would “need to know the exact use of that equipment.”<sup>425</sup> Mr. Bower noted that FEMA officials “don’t review every piece of equipment that’s purchased,” but that was actually a strength of the agency’s approach. “It’s on purpose,” Mr. Bower explained. “Asking for every single widget . . . isn’t furthering the success of these grantees.”<sup>426</sup>

The San Diego fusion center also spent nearly \$200,000 on 116 computers, monitors, and related equipment.<sup>427</sup> Asked how 80 full-time employees used over 100 computers, SD-LECC officials told Subcommittee investigators that not all of the computers were for fusion center

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<sup>420</sup> Correspondence from Lee Yoder, SD-LECC Director, to Subcommittee (12/14/2011), at 4, PSI-SDLECC-03-0001; Invoice from ADS to Sheriff’s Department of San Diego (4/15/2011), PSI-SDLECC-03-0009.

<sup>421</sup> For a list of baseline capabilities for fusion centers, see Appendix A of this Subcommittee report.

<sup>422</sup> Correspondence from Lee Yoder, SD-LECC Director, to Subcommittee (12/14/2011), at 4, PSI-SDLECC-03-0001; Invoice from ADS to Sheriff’s Department of San Diego (4/15/2011), PSI-SDLECC-03-0009.

<sup>423</sup> Memorandum from SD-LECC Director Lee Yoder to Subcommittee (12/14/2011).

<sup>424</sup> Memorandum from ADS to HIDTA, Leo Marchand (10/21/2011), PSI-SDLECC-03-0010; Correspondence from Lee Yoder, SD-LECC Director, to Subcommittee (12/14/2011), PSI-SDLECC-03-0001.

<sup>425</sup> Subcommittee interview of FEMA (7/19/2012).

<sup>426</sup> Id.

<sup>427</sup> Dell invoice XCN5467W2M, May 21, 2008, PSI-CalEMA-02-0485; Dell invoice XCNF2T747, May 30, 2008, PSI-CalEMA-02-0411; Dell invoice XCW1P97K1, September 9, 2008, PSI-CalEMA-02-0513; Dell invoice XCW418R32, September 11, 2008, PSI-CalEMA-02-0510; Dell invoice XDRFM3XK7, April 23, 2010, PSI-CalEMA-02-2234; Dell invoice XDRFN8T48, April 23, 2010, PSI-CalEMA-02-2231.

personnel; some were used by other law enforcement personnel to access the same network. The officials explained that some of the computers were not even located in the fusion center.<sup>428</sup> To justify the purchases, officials told Subcommittee staff that the computers could be used to share “case data” and “statistical data” with the fusion center.<sup>429</sup>

The San Diego center also spent nearly \$75,000 on 55 flat-screen televisions. However, the intelligence training program they were meant to facilitate was never purchased.<sup>430</sup> When asked what the televisions were being used for, officials said they displayed calendars, and were used for “open-source monitoring.” Asked to define “open-source monitoring,” SD-LECC officials said they meant “watching the news.”<sup>431</sup>

Officials responsible for the fusion center told the Subcommittee they now view the televisions as “a huge mistake,” and stated the former fusion center director who authorized the purchase was “relieved of his duties.”<sup>432</sup>

An October 2010 “baseline capabilities assessment” on behalf of DHS found a number of weaknesses at SD-LECC, ranking them below the national average in 9 of 12 capabilities.<sup>433</sup> Among other weaknesses, assessors noted the absence of memoranda of understanding and/or non-disclosure agreements with agencies who participate in the center; the absence of “a procedure manual that outlines privacy, physical security, and information security policies;” the absence of a list of “data sources and repositories necessary to conduct analysis;” and the absence of “a mechanism to receive stakeholder feedback.”<sup>434</sup>

## **(6) Using Fusion Center Funds for Shifting Information Technology Needs**

In some cases, state or regional grant recipients may substantially revise their stated intentions to spend funds requested on behalf of fusion centers. Consider, for example, the shifting descriptions and justifications associated with one project managed by the Washington, D.C. Homeland Security and Emergency Management Agency (HSEMA), which oversees the city’s fusion center.

Early in 2008, the D.C. Metropolitan Police Department submitted an initial proposal to HSEMA requesting \$725,000 for a project entitled, “Information Technology (Data Mining, Analytical Software).” The proposal provided no indication that the project was associated with a fusion center, nor did it identify any specific items that were to be purchased.<sup>435</sup>

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<sup>428</sup> Subcommittee interview of SD-LECC officials (11/30/2011).

<sup>429</sup> Id.

<sup>430</sup> Id.

<sup>431</sup> Id.

<sup>432</sup> Id.

<sup>433</sup> 10/2010 “San Diego Law Enforcement Coordination Center – Baseline Capabilities Assessment,” PM-ISE, DHS-HSGAC-FC-007893.

<sup>434</sup> Id. at 9-12.

<sup>435</sup> 1FASH8 [Project Concept](#) MPD-Data Mining, Analytical Software, 1, 4 and 5.

Subsequently, HSEMA included this project in a broader application to FEMA for grant funding in 2008. In its application materials, HSEMA told FEMA it wanted to use \$2.7 million Homeland Security grant funds on an effort that would enhance the capabilities of the police department as well as “the information and intelligence gathering and analysis capabilities of the D.C. Intelligence Fusion Center.”<sup>436</sup> Specifically, the effort was to include an upgraded electronic records management system, data mining software, and an Automated License Plate Recognition system (LPR system). The city’s description of how the data mining software was to be used noted that “installing improved analytical and data mining tools and training analysts to use them effectively will improve the quality of final intelligence products” and “will bolster the DC Intelligence Fusion Center analysts’ ability to identify trends, track patterns, and generate quality analytical products.”<sup>437</sup>

After receiving its allocation of grant funding from FEMA, D.C. HSEMA awarded a subgrant to the D.C. Metropolitan Police Department (MPD) in October 2008, worth \$700,000 for the project, referred to in the grant document as “Analytical & Data Mining Software – Fusion Center.”<sup>438</sup> In addition, the project as described in the award agreement documentation had changed. It included a records management system upgrade at a cost of \$100,000, and “analytical software” at a cost of \$90,000. The LPR system was dropped, though it may have been included in another DHS subgrant. The project also added for the first time sophisticated cell phone tracking devices, and “handheld citation issuance units and accessories.” Those new items seem to be outside the scope of DHS-recognized key capabilities for a fusion center, yet their cost, \$510,000, became the largest portion of the project.<sup>439</sup> Also of significance is that none of the \$700,000 in funds was designated for the D.C. fusion center; instead, the sole named recipient was now the D.C. police department.

The grant award changes did not end there. In July 2010, the police department again altered the description, nearly two years after the subgrant was awarded. It updated the project plan to indicate that the records management system would now cost \$376,070; the cell phone tracking tools and service would cost \$266,000; and the remaining funds would now be used to purchase Closed Circuit television (CCTV) download kits for \$12,250, and Liquid Crystal Display (LCD) “Status Boards” for \$45,680.<sup>440</sup>

By the time the grant funds were actually spent in 2010, purchase orders and invoices reviewed by the Subcommittee indicate further changes to the cost of some items, and to what was purchased. It bought the records management system for \$409,818, and the cell phone tracking and surveillance system for \$260,935. Rather than purchase the CCTV download kits or LCD status boards, the police department spent \$11,958 to purchase two Panasonic laptops; \$5,552 to purchase six Dell computer towers; and \$11,735 to pay fees to cellular providers.<sup>441</sup> Again, none of the equipment was destined for the D.C. fusion center.

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<sup>436</sup> FY 2008 DC HSGP Investment 1 Law Enforcement and Information Sharing, 1 and 4. At the time of its application, HSEMA did not know the total amount of funding FEMA would award.

<sup>437</sup> Id. at 2, 3.

<sup>438</sup> 1FASH8 (8SHSP127-01) Award Letter Signed, 1.

<sup>439</sup> Id. at 8.

<sup>440</sup> 1FASH8 Project Plan revised 07152010, 1 and 6.

<sup>441</sup> 1FASH8 Expenditures; PSI-DCHSEMA-02-0001.

HSEMA officials told the Subcommittee on multiple occasions that the funding associated with this subgrant was not used to support the D.C. fusion center, despite the original written justification HSEMA provided to FEMA to support the grant.<sup>442</sup> When asked about this series of events, Mr. Bower of FEMA noted that, as long as the equipment ultimately purchased using DHS grant funds is considered allowable under the grant guidelines, then states are allowed to purchase equipment that may differ from what is indicated in their initial Investment Justifications and may allocate it to an entity other than the one originally identified. Furthermore, states can exercise discretion in determining whether a proposed change merits requesting new approval from FEMA.<sup>443</sup>

When DHS and FEMA grant procedures allow grant recipients to change the identified subgrantee, the items to be purchased, the amounts to be spent, and the ultimate use of the purchased equipment, it is clearer why DHS and FEMA are unable to accurately track the taxpayer dollars actually awarded to or used by fusion centers. The loose rules render effective financial oversight of fusion center difficult, if not impossible.

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<sup>442</sup> Emails from HSEMA officials to the Subcommittee (6/4/2012).

<sup>443</sup> Subcommittee interview of FEMA (7/19/2012).

## VI. FUSION CENTERS HAVE BEEN UNABLE TO MEANINGFULLY CONTRIBUTE TO FEDERAL COUNTERTERRORISM EFFORTS

- Two Federal assessments found fusion centers lack basic counterterrorism capabilities.
- Despite promises, DHS has not assessed fusion center performance.
- Some DHS-recognized fusion centers do not exist.
- Many fusion centers do not prioritize counterterrorism efforts.
- DHS “Success Stories” do not demonstrate centers’ value to counterterrorism efforts.
- Fusion centers may have hindered, not aided, some Federal counterterrorism efforts.

### A. Overview

The Department of Homeland Security has directed hundreds of millions of dollars to support and strengthen the capabilities of state and local fusion centers. DHS officials have spoken publicly about the centers’ key role in assisting Federal officials’ fight against terrorism. Yet the centers themselves have fallen short of developing the capabilities necessary to meaningfully contribute to the Federal counterterrorism mission.

“We have established programs that facilitate a strong, two-way flow of threat-related information, where SLTT [State, Local, Tribal and Territorial] officials communicate possible threat information to Federal officials, and vice-versa,” DHS Secretary Janet Napolitano said in testimony before the Senate Homeland Security and Governmental Affairs Committee in September 2010.<sup>444</sup> “[P]re-operational activity – such as target selection, reconnaissance, and dry runs – occur over a very short time period, or in open and crowded places. Informing federal authorities . . . increase[es] the likelihood that an attack can be thwarted . . . . The nation’s fusion centers have been a hub of these efforts, combined with other initiatives DHS has instituted to better partner with SLTT law enforcement.”<sup>445</sup>

DHS has struggled to identify a clear example in which a fusion center provided intelligence which helped disrupt a terrorist plot, even as local and Federal law enforcement have thwarted dozens of terrorist attacks on U.S. soil and against U.S. interests in the past decade.<sup>446</sup> In some cases, fusion centers’ analytical efforts have instead caused frustration and embarrassment for themselves and DHS.

In four success stories that DHS identified, the Subcommittee investigation was unable to confirm that the fusion centers’ contributions were as significant as DHS portrayed them; were unique to the intelligence and analytical work expected of fusion centers; or would not have occurred absent a fusion center.

<sup>444</sup> Testimony of DHS Secretary Janet Napolitano before the Senate Homeland Security and Governmental Affairs Committee, “Nine Years After 9/11: Confronting the Terrorist Threat to the Homeland” (9/22/2010).

<sup>445</sup> Id.

<sup>446</sup> “The Congressional Research Service (CRS) estimates that there have been 53 homegrown violent jihadist plots or attacks in the United States since September 11, 2001 (9/11).” 11/15/2011 “American Jihadist Terrorism: Combating a Complex Threat,” Jerome P. Bjelopera, Congressional Research Service.

In addition, two recent national assessments conducted by and for DHS found fusion centers often lacked one or more basic capabilities necessary to do the work expected of them, to share information which could help detect and disrupt terrorist plots against the United States. These assessments, conducted in 2010 and 2011, found weaknesses at most fusion centers they examined, from having insufficiently trained intelligence personnel, to having inadequate physical security, to an inability to distribute alert and warning information to state and local agencies, and an inability to effectively share appropriate information with the Federal Government or local partners.<sup>447</sup>

Each fusion center is different, and neither assessment indicated a sole reason the centers had not yet developed the necessary capabilities to contribute to the Federal counterterrorism mission. However, neither assessment found a center which had developed all of the basic necessary capabilities to participate in Federal counterterrorism intelligence efforts.<sup>448</sup>

As noted earlier, some fusion centers have gone years without a physical presence and without filing any intelligence reports. Others have operated for years without having DHS personnel on site to report counterterrorism information, effectively cutting the centers off from the larger DHS terrorism-related intelligence efforts.<sup>449</sup> Still other fusion centers have had DHS personnel on site, but have produced information of little value for Federal counterterrorism intelligence efforts.<sup>450</sup> As well, many of the fusion centers have not made counterterrorism an explicit priority, and some have de-emphasized counterterrorism in favor of more traditional public safety and anti-crime work.

Despite these challenges, senior DHS officials have continued to claim that state and local fusion centers have made significant contributions to its counterterrorism efforts, and cited specific “success stories” which they claim demonstrate the centers’ value. The Subcommittee examined four such cases in which DHS claimed fusion centers made important or “key” contributions to investigations of significant terrorist plots on U.S. soil. The Subcommittee

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<sup>447</sup> See “2010 Baseline Capabilities Assessment,” PM-ISE, DHS-HSGAC-FC-007231; “2011 National Network of Fusion Centers, Final Report, May 2012,” DHS-HSGAC-FC-057027.

<sup>448</sup> Id.

<sup>449</sup> The need for DHS to gather locally-generated terrorism-related information from fusion centers is an open question. The FBI is the nation’s lead federal agency to investigate terrorism cases in the United States, and DHS expects fusion centers to share actual threat-related information immediately with the FBI-led Joint Terrorism Task Forces (JTTFs). (“Domestic Terrorism in the Post-9/11 Era,” FBI.gov, [http://www.fbi.gov/news/stories/2009/september/domterror\\_090709/](http://www.fbi.gov/news/stories/2009/september/domterror_090709/), “Fusion Centers and Joint Terrorism Task Forces,” DHS.gov, [http://www.dhs.gov/files/programs/gc\\_1298911926746.shtm](http://www.dhs.gov/files/programs/gc_1298911926746.shtm)). The Department of Justice also leads the National SAR (Suspicious Activity Reporting) Initiative (NSI), which allows personnel at participating fusion centers to relay information about suspicious, potentially terror-linked activity that lacks a clear nexus to terrorism. (“Nationwide SAR Initiative,” NCIRC.gov, <http://nsi.ncirc.gov/default.aspx>). Thus, it is not clear what role exists for DHS to receive terrorism-related information from fusion centers, that is not already being received or coordinated by officials from the Department of Justice. When the Subcommittee asked Undersecretary Wagner what counterterrorism information DHS intelligence reporting at fusion centers shared which was not already being shared via NSI or the JTTFs, Ms. Wagner first suggested reporting on fraudulent documents which had a nexus to a suspected terrorist. Upon consideration, Ms. Wagner said a fusion center would probably share that information with the area JTTF. “There are numerous reasons why IIRs are important,” Ms. Wagner then said. “I wish I could come up with a better example.” Subcommittee interview of Caryn Wagner (9/16/2012).

<sup>450</sup> Memorandum from Jim Chaparro to Bart Johnson, “Homeland Intelligence Reports” (1/7/2010), at 2, DHS-HSGAC-FC-050743; Email from Chaparro to Johnson, “HIR Backlog” (1/4/2010), DHS-HSGAC-FC-056637.

investigation found that the claims made by DHS did not always fit the facts, and in no case did a fusion center make a clear and unique intelligence contribution that helped apprehend a terrorist or disrupt a plot. Worse, three other incidents examined by the Subcommittee investigation raised significant concerns about the utility of the fusion centers, and raised the possibility that some centers have actually hindered or sidetracked Federal counterterrorism efforts.

Federal officials have been well aware of these episodes, and the underlying weaknesses in fusion centers' capabilities that likely contributed to them. But they have chosen not to highlight the considerable shortcomings of fusion centers in public appearances or in briefings to Congress. Instead they have chosen to portray fusion centers as "linchpins" of the Federal Government's fight to prevent terrorism, making "vital" contributions to the Federal Government's efforts to keep the country safe from another terrorist attack. This portrayal is simply at odds with the actual counterterrorism records of the fusion centers.

## **B. Two Federal Assessments Found Fusion Centers Lack Basic Counterterrorism Capabilities**

Two comprehensive assessments of fusion centers by or at the request of DHS, completed in 2010 and 2011, found widespread deficiencies in fusion centers' basic capabilities to properly collect, analyze, and share intelligence on homeland security threats.<sup>451</sup>

### **(1) 2010 Assessment**

In 2010, seven years after DHS had begun funding state and local fusion centers, the Department's Office of Intelligence and Analysis (I&A) asked the Program Manager for the Information Sharing Environment (PM-ISE), a part of the Office of the Director of National Intelligence (ODNI), to lead an interagency team in conducting a nationwide assessment of state and local fusion centers.<sup>452</sup>

The assessment was carried out in two parts. First, PM-ISE asked fusion centers to complete a rigorous, 380-question self-assessment questionnaire. The questions were based on a set of eight "baseline capabilities" which had been identified by DHS, the Department of Justice, and a panel of fusion center experts. These eight baseline capabilities represented the "necessary capabilities required to support Federal counterterrorism mission requirements."<sup>453</sup>

Second, teams of Federal intelligence experts fanned out across the nation to visit fusion centers and validate whether each possessed the capabilities their officials claimed in their self-assessment responses. PM-ISE reported that although DHS publicly claimed to recognize 72 operational fusion centers at the time of the assessment, three were "not functional at a level to

<sup>451</sup> "2010 Fusion Center Baseline Capabilities Assessment," PM-ISE, (10/2010) DHS-HSGAC-FC-007231; "2011 National Network of Fusion Centers, Final Report, May 2012," DHS-HSGAC-FC-057027.

<sup>452</sup> "2010 Fusion Center Baseline Capabilities Assessment," PM-ISE, (10/2010) at 5, DHS-HSGAC-FC-007241.

<sup>453</sup> Id. at 4, DHS-HSGAC-FC-007231. In 2008, the Departments of Justice and Homeland Security devised a list of 12 "baseline capabilities" for fusion centers; in 2010, fusion center directors "distilled" that list to eight "National Network priorities." ("Baseline Capabilities for State and Major Urban Area Fusion Centers," September 2008, <http://www.it.ojp.gov/documents/baselinecapabilitiesa.pdf>; "National Network of Fusion Centers Fact Sheet," DHS.gov, <http://www.dhs.gov/national-network-fusion-centers-fact-sheet>).



receive a visit,” and one “was not operational” at all.<sup>454</sup> On-site visits were, thus, made to 68 fusion centers.

The “baseline capabilities” the assessors examined were precisely that: basic, minimum standards of functionality necessary to effective intelligence sharing. As the officials who identified the capabilities in 2008 wrote, “By achieving this baseline level of capability, a fusion center will have the necessary structures, processes, and tools in place to support the gathering, processing, analysis, and dissemination of terrorism, homeland security, and law enforcement information.”<sup>455</sup>

The final 2010 assessment report was about 140 pages long. Supporting documents included an individual assessment of each of the 68 fusion centers then in operation. The final report found that a third of fusion centers had no defined procedures for sharing information gathered outside of their walls, one of the prime reasons for their existence. It found that more than half of all fusion centers lacked procedures for receiving and sharing with partner agencies information on threats received from DHS and other Federal agencies. And “most” fusion centers told the assessors that their intelligence and analytical responsibilities were designed to assist with response and recovery efforts after a major event or attack,<sup>456</sup> not to prevent one, inverting the notion of what many perceive to be the primary purpose of the fusion centers.

The 2010 assessment concluded that most fusion centers not only lacked the minimum capabilities to function effectively, they also lacked plans showing how they would develop those capabilities. It also concluded that two-thirds of fusion centers had no way to assess the return on investment taxpayers received for funding their operations.<sup>457</sup>

Finally, the 2010 assessment criticized the Federal government for failing to have adequately “defined and articulated” the capabilities it expected of the fusion centers in order to support Federal missions, and for lacking a budget that detailed how it planned to fund fusion center efforts to “develop, deploy, and sustain these capabilities.”<sup>458</sup>

DHS did not make any of these findings public or share them with Congress. Moreover, when the Subcommittee requested access to the findings of the 2010 assessment, DHS initially denied such a report existed. Then, after the assessment report was identified internally, DHS resisted turning it over to the Subcommittee. Some DHS officials contended that, although the Subcommittee had requested all fusion center analyses “produced within DHS,” technically the

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<sup>454</sup> “2010 Fusion Center Baseline Capabilities Assessment,” PM-ISE, (10/2010) at 5, 8, DHS-HSGAC-FC-007231.

<sup>455</sup> September 2008, “Baseline Capabilities for State and Major Urban Area Fusion Centers,” <http://www.it.ojp.gov/documents/baselinecapabilitiesa.pdf>.

<sup>456</sup> “2010 Fusion Center Baseline Capabilities Assessment,” PM-ISE, (10/2010) at 17, 18, 24, DHS-HSGAC-FC-007231.

<sup>457</sup> “2010 Fusion Center Baseline Capabilities Assessment,” PM-ISE, (10/2010) at 18, 24, 37, DHS-HSGAC-FC-007231 at 37.

<sup>458</sup> “2010 Fusion Center Baseline Capabilities Assessment,” PM-ISE, (10/2010) at 3, DHS-HSGAC-FC-007231.

assessment had been conducted at the request of DHS by another Federal office, and therefore had not been literally “produced within DHS.”<sup>459</sup>

In June 2011, during the course of an interview, a senior DHS intelligence official presented a copy of the national 2010 assessment to the Subcommittee, unaware that the Department had maintained to the Subcommittee no such document could be located.<sup>460</sup> DHS officials at the interview declined to leave that copy of the report with the Subcommittee, saying they needed time to resolve their concerns about agreements of confidentiality allegedly made with fusion centers. Those agreements, the officials stated, prohibited the Department from sharing the report with Congress.<sup>461</sup>

When the Subcommittee requested copies of those agreements, DHS responded that they were oral “assurances.”<sup>462</sup> When the Subcommittee asked who made the agreements, DHS said they were made by PM-ISE officials.

PM-ISE officials interviewed by the Subcommittee said they did not recall any such agreements. Upon review of its records, PM-ISE determined that it may have made certain assurances in 2009 during a pilot study that preceded the baseline assessment. “[I]t appears that, in conducting the pilot study in 2009, PM-ISE made this point and stated that information would be treated as sensitive and not further disseminated without further consultation,” PM-ISE stated. “It is not clear if similar assurances were given in 2010, but this appears likely as the same considerations . . . were present, and as a result, confidentiality was important to achieving the goals of the assessment.”<sup>463</sup>

DHS eventually produced the “report cards” on individual fusion centers and the final 2010 assessment report to the Subcommittee after obtaining “consent” from a private, non-governmental organization, the National Fusion Center Association (NFCA), which supposedly had the authority to represent the 68 fusion centers subject to review. In a letter to the Subcommittee, NFCA explained it had “authorized” DHS to share the assessment information with Congress.<sup>464</sup>

NFCA, a private organization led by a former senior DHS grants official, advocates for increased Federal funding for state and local fusion centers.<sup>465</sup> It is funded by corporations who seek to do business with fusion centers.<sup>466</sup> It is not a membership organization, but the group

<sup>459</sup> 8/24/2011 “Explanation of Why DHS Did Not Produce the Baseline Capabilities Assessment to Subcommittee Prior to June 24, 2011,” prepared by DHS, PSI-DHS-61-0002.

<sup>460</sup> Subcommittee interview of Bart Johnson (6/24/2011).

<sup>461</sup> Id.

<sup>462</sup> Written response from DHS, DHS-HSGAC-FC-059296 (8/1/2012).

<sup>463</sup> Subcommittee interview of PM-ISE officials (9/14/2012); PM-ISE response to Subcommittee inquiry (9/27/2012).

<sup>464</sup> NFCA letter to the Subcommittee (7/1/2011), PSI-NFCA-01-0001.

<sup>465</sup> “About NFCA,” <http://www.nfcausa.org/>; Statement of W. Ross Ashley III, Executive Director, NFCA, before the Subcommittee on Homeland Security, Committee on Appropriations, U.S. House of Representatives, <http://appropriations.house.gov/uploadedfiles/hhrg-112-ap15-rashley-20120307.pdf>; Subcommittee interview of Ben Bawden, W. Ross Ashley III (8/21/2012).

<sup>466</sup> Subcommittee interview of Ben Bawden and W. Ross Ashley III (8/21/2012). According to Mr. Ashley, the group receives funds from Microsoft, ESRI, Thomson-Reuters and Mutualink, among other firms. “When you look

purports to represent all DHS-recognized fusion centers, and invites them to help elect its board of directors.<sup>467</sup>

In an interview with the Subcommittee, the group's director, W. Ross Ashley III, said he no longer stood by the language in his letter. "Maybe the term 'authorized release' wasn't appropriate," he said, calling his phrasing "a little boisterous on our part."<sup>468</sup>

## (2) 2011 Assessment

In 2011, DHS did not request PM-ISE to repeat its fusion center baseline capability assessment. Instead, DHS itself assumed responsibility for conducting a nationwide fusion center assessment. Deeming the 2010 assessment "too exhaustive" and "almost irrelevant," DHS narrowed the assessment criteria to checking for 55 "attributes" which it believed composed the eight previously-defined capabilities, down from the 380 items examined in the 2010 assessment.<sup>469</sup>

Like the 2010 assessment, DHS asked fusion center directors to complete an online self-assessment, as well as provide data on staff, budget and operational costs.<sup>470</sup>

After that information was submitted, "validation teams" of personnel from DHS and other Federal agencies reviewed the self-assessment data to "identify submission errors and inconsistencies and to minimize data discrepancies."<sup>471</sup> DHS noted later that the centers "provided inconsistent levels of detail in their responses on the 2011 assessment and in some cases provided incomplete responses."<sup>472</sup>

Unlike the 2010 assessment, the DHS teams did not visit the centers themselves to validate the answers were accurate, but instead conducted "structured telephone interviews" with fusion center officials.<sup>473</sup> During these calls DHS says the teams discussed the "identified issues" and gathered additional information.<sup>474</sup> After the data was "validated," DHS prepared individual reports for each fusion center, scoring each center on the basis of how many attributes it possessed.<sup>475</sup>

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at why a company's giving money, it's for access," Mr. Ashley said. Mr. Bawden, the group's lobbyist, later clarified that Mr. Ashley meant access to the group's membership. "It's for access to the association's membership, just like any other professional association," Mr. Bawden said. Email from Ben Bawden to the Subcommittee (10/1/2012).

<sup>467</sup> Subcommittee interview of Ben Bawden and W. Ross Ashley III (8/21/2012).

<sup>468</sup> Id.

<sup>469</sup> Subcommittee interview of Joel Cohen (4/16/2012).

<sup>470</sup> "2011 National Network of Fusion Centers, Final Report, May 2012," DHS-HSGAC-FC-057027, at 5-6. While 72 fusion centers participated in the self-assessment, only 60 returned budget and operational cost information, and 57 returned data on staff and their products, the report noted.

<sup>471</sup> Id.

<sup>472</sup> Response to Questions for the Record, "Hearing: The Homeland Security Department's Budget Submission for Fiscal Year 2013, March 21, 2012," at 13 (received 6/26/2012).

<sup>473</sup> "2011 National Network of Fusion Centers, Final Report, May 2012," DHS-HSGAC-FC-057027, at 5-6.

<sup>474</sup> Id.

<sup>475</sup> Id.

After DHS officials completed the scoring process, they realized that five of the minimum attributes they had defined related to having personnel who had attended trainings that DHS did not yet offer, including one training which was to be on a network portal that DHS had not yet created.<sup>476</sup> In other words, DHS's lack of training and technology offerings was itself responsible for fusion centers' inability to achieve five of the attributes DHS considered essential to have minimal operational capability.<sup>477</sup> To remedy the situation, DHS cut those five attributes from its list.<sup>478</sup>

Even with its more limited review, DHS still found weaknesses at state and local fusion centers. More than half lacked a strategic plan, and nearly as many lacked a communications plan. Nearly a third had no analytic production plan.<sup>479</sup> "For the National Network to fulfill its potential as a fully integrated participant in the National Information Sharing Environment . . . individual fusion centers must further develop and institutionalize their capabilities and facilitate interconnectivity," the report concluded.<sup>480</sup>

Due to the new design of the 2011 DHS assessment, its findings were largely non-comparable to the 2010 assessment conducted by PM-ISE. Therefore, it was generally not possible to measure progress made between the PM-ISE's 2010 findings and DHS's 2011 findings.<sup>481</sup> Nevertheless, DHS concluded its report by stating that "fusion centers made notable progress in developing their capabilities." However, it added, "significant work still remains."<sup>482</sup>

### **C. Despite Promises, DHS Has Not Assessed Fusion Center Performance**

DHS has repeatedly committed itself to assessing not only fusion centers' capabilities, but also their performance. While the 2010 and 2011 assessments purported to examine what fusion centers were capable of, DHS committed to but has never attempted assessing fusion centers' actual contributions.

In a presentation to Congressional oversight staff in October 2011, DHS stated it had been working since September 2010 to develop "a fusion center performance management program, called the Fusion Center Performance Program (FCPP)."<sup>483</sup> That program, the presentation claimed, would use "a single, integrated, data-driven process" to measure the

<sup>476</sup> Subcommittee interview of Joel Cohen (4/16/2012).

<sup>477</sup> Id.

<sup>478</sup> Id.

<sup>479</sup> "2011 National Network of Fusion Centers, Final Report, May 2012," DHS-HSGAC-FC-057027, at vii.

<sup>480</sup> Id. at ix.

<sup>481</sup> Subcommittee of Joel Cohen (4/16/2012). The 2011 report included a section that purported to describe the "maturity" of fusion centers nationwide. A diagram of the "maturity model" showed four stages – "Fundamental," "Emerging," "Enhanced," and "Mature." When 75 percent of fusion centers achieved certain capabilities in each section, according to the model, DHS would judge fusion centers overall at that level. However, the model was not developed until the assessment process was underway, and DHS could provide no objective basis for the thresholds upon which the model relied. "We want to tell a story about the maturity of the network," said Joel Cohen, who developed the maturity model. Explaining how he came up with the 75 percent figure, he said, "We thought two-thirds was too low, and higher than three-quarters was too high. You can have an intellectual debate to your heart's content." Subcommittee interview of Joel Cohen (7/12/2012).

<sup>482</sup> "2011 National Network of Fusion Centers, Final Report, May 2012," DHS-HSGAC-FC-057027, at ix.

<sup>483</sup> "National Network of Fusion Centers," presentation, slide 12, (10/7/2011) DHS-HSGAC-FC-058772

performance of fusion centers; the national network of fusion centers; and Federal support for fusion centers. In February 2012, DHS I&A personnel went further, telling House and Senate staff that they were “implementing a Fusion Center Performance Program.”<sup>484</sup>

When the Subcommittee sought detailed information about the FCPP, however, DHS admitted that no such program currently exists. In a July 2012 interview with Joel Cohen, the DHS official who oversaw the 2011 fusion center assessment process, he identified himself as the DHS official in charge of the FCPP.

In the interview, Mr. Cohen first described the FCPP as “a variety of projects and initiatives.”<sup>485</sup> Asked to elaborate, Mr. Cohen stated that the assessment process was “the centerpiece.”<sup>486</sup> There was also “an exercise component,” he said, that would demonstrate whether fusion centers had the capabilities they claimed; and “all the survey stuff.”<sup>487</sup> The Department was also developing performance measures, Mr. Cohen said.<sup>488</sup>

The Subcommittee requested a document outlining the FCPP. Mr. Cohen stated such a document did not exist. “A document is being developed,” Mr. Cohen told the Subcommittee. “We’re building the plane as we’re flying it,” he said.<sup>489</sup>

When asked about the performance measures he was developing, Mr. Cohen said that performance measures are “tough.”<sup>490</sup> When asked to elaborate on the exercise component, Mr. Cohen said, “There is no fully-developed exercise component.”<sup>491</sup> Mr. Cohen also told the Subcommittee that for the two years his office has purported to be working on the program, he has not had sufficient staff to make progress.<sup>492</sup>

#### **D. Some DHS-Recognized Fusion Centers Do Not Exist**

One of the ongoing troubling features of DHS’s fusion center efforts involves nonfunctional fusion centers whose very existence is a matter of dispute. In its October 2010 report, the PM-ISE identified four fusion centers out of the 72 DHS counted that were “not functional at a level to receive a visit,” and one which “was not operational” at all.<sup>493</sup> Despite that finding, DHS officials continued to publicly allege it was engaged with 72 fusion centers around the country.

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<sup>484</sup> “State and Local Program Office (SLPO) FY 2012 Semi-Annual Briefing,” DHS-HSGAC-FC-058809, slide 13 (2/8/2012).

<sup>485</sup> Subcommittee interview of Joel Cohen (7/12/2012).

<sup>486</sup> Id.

<sup>487</sup> Id.

<sup>488</sup> Id.

<sup>489</sup> Id.

<sup>490</sup> Id.

<sup>491</sup> Id.

<sup>492</sup> Id.

<sup>493</sup> 10/2010 “2010 Fusion Center Baseline Capabilities Assessment,” PM-ISE, at 8, DHS-HSGAC-FC-007231. PM-ISE officials identified the locations of the non-operational centers as Pittsburgh, Philadelphia, South Dakota and Wyoming. Subcommittee interview with PM-ISE officials (9/14/2012).

“Today, we have a national network of 72 recognized fusion centers – one in every state and 22 in major urban areas – and, with Department of Homeland Security support, they are being woven into the national and homeland security fabric of the United States,” then-Undersecretary for Intelligence and Analysis Bart Johnson wrote on the DHS website, in an October 25, 2010, essay entitled, “How Fusion Centers Help Keep America Safe.”<sup>494</sup>

“Today, there are 72 state- and locally-run fusion centers in operation across the nation,” DHS Secretary Napolitano told the House Homeland Security Committee in her February 2011 testimony.<sup>495</sup>

“Today, 72 recognized fusion centers serve as focal points for the receipt, analysis, gathering, and sharing of threat-related information among the Federal Government and state, local, tribal, territorial and private sector partners,” Secretary Napolitano stated in separate testimony in September 2011 before the Senate Homeland Security and Governmental Affairs Committee.<sup>496</sup>

Asked why Secretary Napolitano and other DHS officials claimed the existence of four fusion centers its own assessment could not demonstrate, Undersecretary Wagner said, “My understanding was that they operated as virtual fusion centers.” When it was noted that PM-ISE found that they literally were non-functional – PM-ISE said three were “not functional at a level to receive a visit” and one was “not operational,” Ms. Wagner said, “There was no intent to obfuscate. It just took some of them [fusion centers] longer than others to get there.”<sup>497</sup>

The Subcommittee examined two fusion centers which DHS has alleged to exist and has said it officially recognized, but whose existence was disputed by local officials or documentation.

### (1) Wyoming

Since 2009, DHS has counted among its officially recognized fusion centers an entity in Wyoming it has referred to as the Wyoming Fusion Center.<sup>498</sup> In September 2009, DHS reported

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<sup>494</sup> 10/25/10 Johnson, Bart, “How Fusion Centers Help Keep America Safe,”

<http://www.dhs.gov/blog/2010/10/25/how-fusion-centers-help-keep-america-safe>

<sup>495</sup> Testimony of Secretary Janet Napolitano before the House Committee on Homeland Security, “Understanding the Homeland Threat Landscape – Considerations for the 112th Congress” (2/9/2011), <http://www.dhs.gov/news/2011/02/09/secretary-napolitanos-testimony-understanding-homeland-threat-landscape>.

<sup>496</sup> Testimony of DHS Secretary Janet Napolitano before the Senate Committee on Homeland Security and Governmental Affairs, “Ten Years After 9/11: Are We Safer?” (9/12/2011), <http://www.dhs.gov/news/2011/09/12/testimony-secretary-janet-napolitano-united-states-senate-committee-homeland>. DHS has since recognized five more fusion centers, bringing the total of DHS-recognized fusion centers to 77. DHS web site, “Preventing Terrorism Results,” <http://www.dhs.gov/topic/preventing-terrorism-results>, accessed 9/25/2012.

<sup>497</sup> Subcommittee interview of Caryn Wagner (9/16/2012).

<sup>498</sup> 9/4/2009 “State and Local Fusion Center Program: Quarterly Update, Fiscal Year 2009 Report to Congress, Third Quarter.”

to Congress that such a fusion center existed, and it intended to detail an intelligence official there.<sup>499</sup>

But just prior to that, in August 2009, FEMA officials issued an assessment of the state's progress on meeting goals associated with establishing a fusion center at "zero," or no progress, on any aspect of the effort.<sup>500</sup>

According to Wyoming state officials, their state has no fusion center and never intended to create one. "It confuses me," said Kebin Haller, Deputy Director for the state's Division of Criminal Investigation (DCI). They have a criminal intelligence center, he said, but "we've chosen not to refer to it as a fusion center." Neither have state officials formally designated it as a fusion center for DHS to recognize; they have not accepted DHS grant funds for the center, or participated in any DHS assessment, he said.<sup>501</sup>

Asked about DHS's claim to have placed a detailee at the center, Mr. Haller said, "We did have a DHS detailee, interestingly enough." DHS hired away one of the center's senior criminal analysts, Mr. Haller explained, "but they didn't really have the office space" to house him. Mr. Haller said DHS asked if it could leave its new hire in his old office at the Wyoming DCI. "We said sure, as long as we don't need that office space," Mr. Haller recalled. He said his division eventually needed the desk back, and DHS moved their employee to another state. Wyoming has neither requested nor received another detailee, Mr. Haller said.<sup>502</sup>

## (2) Philadelphia Fusion Center

DHS has also counted among its recognized fusion centers the Delaware Valley Information Center (DVIC), which it locates in Philadelphia, Pennsylvania.<sup>503</sup> The Department has indicated plans to assign a detailee to the center;<sup>504</sup> and since 2006, DHS has awarded millions of dollars in grant funds in support of the project.<sup>505</sup>

In response to a 2010 survey from the Subcommittee, however, Philadelphia officials stated the center did not yet exist.<sup>506</sup> They stated DVIC was to begin operations in December 2010. Five months later, during a May 2011 interview, however, officials in charge of the DVIC

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<sup>499</sup> Id.

<sup>500</sup> "Wyoming FY 2009 Monitoring Report," FEMA (8/18/2009).

<sup>501</sup> Subcommittee interview of Kebin Haller, Deputy Director, Wyoming Division of Criminal Intelligence (9/7/2012).

<sup>502</sup> Id.

<sup>503</sup> "State and Local Fusion Center Program: Quarterly Update, Fiscal Year 2009 Report to Congress, Second Quarter," (9/4/2009); "State and Local Fusion Center Program: Quarterly Update, Fiscal Year 2009 Report to Congress, Third Quarter," (8/4/2009).

<sup>504</sup> "State and Local Fusion Center Program: Quarterly Update, Fiscal Year 2009 Report to Congress, Second Quarter," (8/4/2009); "State and Local Fusion Center Program: Quarterly Update, Fiscal Year 2009 Report to Congress, Third Quarter," (9/4/2009); "Fusion Center Locations and Contact Information," DHS.gov, <http://www.dhs.gov/fusion-center-locations-and-contact-information>, accessed September 27, 2012.

<sup>505</sup> "Philadelphia Urban Area FY2009 Monitoring Report," FEMA (9/17/2009); DVIC Funding Overview, SEPARTF; PSI-PEMA-05-0090.

<sup>506</sup> Response to Subcommittee Questionnaire, Delaware Valley Intelligence Center (7/23/10), at 2, PSI-Delaware Valley Intelligence Center-01-0001.

project informed the Subcommittee the center had still not yet opened.<sup>507</sup> Since then, the State of Pennsylvania has frozen DHS funds associated with the project.<sup>508</sup> As of August 2012, the center still did not physically exist. Yet, in its most recent capability assessment report on fusion centers, DHS again lists DVIC as a recognized fusion center.<sup>509</sup>

DHS's insistence on listing fusion centers with no physical presence is not only puzzling, but raises questions about its entire assessment process.

### **E. Many Fusion Centers Do Not Prioritize Counterterrorism Efforts**

The White House, Congress and DHS itself have described fusion centers as key tools for gathering, analyzing, and sharing information to prevent terrorist attacks. Indeed, in 2007, Congress indicated DHS should consider any fusion center's commitment to doing counterterrorism work before detailing personnel to work there.<sup>510</sup> However, the Subcommittee investigation found some centers do not make terrorism a priority among their many efforts.

The 2010 Subcommittee survey found that 25 of 62 responsive fusion centers, or more than one-third, did not mention terrorism in their mission statements. And the trend appeared to be moving in that direction: at least five fusion centers reported recently revising their mission statements in ways that emphasized public safety and anti-crime efforts, and diminished or removed mentions of counterterrorism.<sup>511</sup>

In an interview, a DHS official who helps oversee the Department's support for and engagement with fusion centers acknowledged that some centers were not interested in focusing on counterterrorism. "We have trouble getting smaller, less mature fusion centers to pay attention to things like counterterrorism analysis," said Joel Cohen, head of policy and planning for the DHS State and Local Program Office (SLPO). "They are more concerned with day-to-day crime."<sup>512</sup>

But the trend away from prioritizing counterterrorism efforts does not appear isolated to smaller, "less mature" fusion centers. Indeed, statewide fusion centers and fusion centers in major cities indicate that they emphasize anti-crime efforts and "all-hazards" missions over an explicit focus on counterterrorism.

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<sup>507</sup> Subcommittee interview of DVIC officials Walt Smith, Tom Elsasser, and Joseph Liciardello (5/23/2011). Since that interview, Mr. Liciardello has maintained he is not a DVIC official. For more information on Mr. Liciardello's role in the DVIC project, see Chapter V.

<sup>508</sup> Subcommittee interviews of Pennsylvania Emergency Management agency (11/14/2011, 11/30/2011, 8/1/2012).

<sup>509</sup> "2011 National Network of Fusion Centers, Final Report, May 2012," Appendix 5, DHS-HSGAC-FC-057027.

<sup>510</sup> Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, § 511, 121 Stat. 317, 318-24 (2007). <http://www.gpo.gov/fdsys/pkg/PLAW-110publ53/pdf/PLAW-110publ53.pdf>.

<sup>511</sup> Subcommittee survey of state and local fusion centers (July 2010).

<sup>512</sup> Subcommittee interview of Joel Cohen (4/16/2012).



For instance, The Michigan Intelligence Operations Center (MIOC) changed its mission statement from the following:

The State of Michigan's Intelligence Operations Center shall collect, evaluate, collate, and analyze information and intelligence and then, as appropriate, disseminate this information and intelligence to the proper public safety agencies so that any threat of terrorism or criminal activity will be successfully identified and addressed.<sup>513</sup>

to:

To promote public safety by operating in a public-private partnership that collects, evaluates, analyzes, and disseminates information and intelligence in a timely and secure manner while protecting the privacy rights of the public.<sup>514</sup>

Similarly, the Nevada Threat Analysis Center (NTAC) once defined its mission with a stated emphasis on preventing terror:

NTAC embraces a team effort of local, state, federal and tribal law enforcement, fire, health, and private sector stakeholders, in cooperation with the citizens of the state of Nevada, for the timely receipt, analysis, and dissemination of terrorism and criminal activity information relating to Nevada while ensuring the safety of its citizens and critical infrastructure.<sup>515</sup>

But as of August 2012, their mission statement read:

NTAC embraces a team effort of local, state, federal, and tribal law enforcement, fire, health, and private sector stakeholders, in cooperation with the citizens of Nevada, for the timely receipt, analysis, and dissemination of criminal information while ensuring the safety and privacy rights of our citizens and critical infrastructure.<sup>516</sup>

These revisions reflect a general shift towards a so-called "all-crimes, all-hazards" approach. That trend was noted in a 2008 Congressional Research Service report which found fusion centers were broadening their missions to encompass all crimes and all hazards as a way

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<sup>513</sup> Michigan Intelligence Operations Center questionnaire response, (7/26/2010) PSI-Michigan Intelligence Operations Center-01-0001.

<sup>514</sup> Michigan Intelligence Operations Center (MIOC) website, <http://www.michigan.gov/mioc>, accessed Sept. 10, 2012.

<sup>515</sup> Nevada Threat Analysis Center questionnaire response, (7/23/10) PSI-Nevada Threat Analysis Center-01-0001.

<sup>516</sup> "Nevada Threat Analysis Center," Nevada Department of Public Safety website, [http://id.dps.nv.gov/programs/Nevada\\_Threat\\_Analysis\\_Center\\_%28NTAC%29/](http://id.dps.nv.gov/programs/Nevada_Threat_Analysis_Center_%28NTAC%29/), accessed Sept. 10, 2012.

to encourage participation from local agencies, qualify for a wider array of grant programs, and because other centers were doing it.<sup>517</sup>

CRS noted that the “all-crimes” approach to counterterrorism was premised on an assumption that would-be terrorists would commit precursor crimes before attempting an attack. But CRS officials questioned whether that was a valid assumption, and whether the broad “all-crimes” approach diverted fusion center efforts towards working on criminal and other matters that bore no connection to terrorism.<sup>518</sup>

“[O]ne can reasonably question if sophisticated terrorists, those who have received formal terrorism training from established international groups and may be planning catastrophic attacks, engage in criminal activity prior to, and in support of, a terrorist attack. Will following all criminal leads and terrorism tips lead to the disruption of sophisticated terrorist plots?” CRS asked.<sup>519</sup>

In fact, some fusion center officials from major jurisdictions have championed a focus on traditional criminal activity over terrorist plots. “Our end state is to prevent terrorism, but in my own community, right across the bay from San Francisco where I work, the City of Oakland, they’ve had 740 shootings to date,” stated Ronald Brooks, director of the Northern California Regional Intelligence Center (NCRIC) in San Francisco, in a hearing before the Senate Homeland Security and Governmental Affairs Committee (HSGAC) in October 2011. “That’s a city of 400,000. That’s terror right there in our own community. And that kind of terror is one that’s experienced in big cities and small towns across the country.”<sup>520</sup>

Like many other centers, Mr. Brooks’ center in Oakland makes no mention of terrorism in its mission statement. His “all-crimes” fusion center aims to “coordinate the exchange of criminal intelligence, threats, and hazards and facilitate regional communication among Northern California Law Enforcement, First Responders, Government and Private Sector Partners.”<sup>521</sup> An official with the Washington (D.C.) Regional Threat and Analysis Center (WRTAC), whose region includes some of the nation’s most inviting terrorist targets, sounded a similar note in a Subcommittee interview. The D.C. fusion center was focused on “crime, crime, crime,” the official said. “The last I checked, terrorism was still a crime.”<sup>522</sup>

WRTAC’s mission statement initially included a mention of terrorism, stating the center was “the focal point for collection, integration, assessment, analysis, and dissemination of intelligence relating to terrorism, criminal activity and catastrophic events[.]” A revised mission statement omits any specific mention of terrorism, and commits the center to enhancing its

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<sup>517</sup> John Rollins, “Fusion Centers: Issues and Options for Congress,” (1/18/2008) CRS Report RL34070, at 21-22, 87.

<sup>518</sup> Id.

<sup>519</sup> Id. at 68-69.

<sup>520</sup> “Ten Years After 9/11: A Status Report on Information Sharing,” before the Senate Homeland Security and Governmental Affairs Committee, testimony of Ronald Brooks (10/12/2011).

<sup>521</sup> NCRIC website, “About NCRIC,”

<https://ncric.org/default.aspx/MenuItemID/122/MenuGroup/NCRIC+Public+Contact.htm>.

<sup>522</sup> Subcommittee visit to WRTAC, March 16, 2010.

partner agencies’ “ability to detect credible threats to the region from all hazards and all crimes.”<sup>523</sup>

Indeed, the PM-ISE’s 2010 Baseline Capabilities Assessment of fusion centers found that terrorism was a low priority for most of them. “Most [fusion] centers focus on the priority mission of the law enforcement agency that owns/manages them; primarily analytical case support to drug, gang, and violent crime investigations for the geographic area of responsibility,” the report stated. “As a result many centers struggle to build the necessary capabilities required to support Federal counterterrorism mission requirements, specifically in the areas of intelligence analysis and information sharing beyond their jurisdictions.”<sup>524</sup>

### **F. DHS “Success Stories” Do Not Demonstrate Centers’ Value to Counterterrorism Efforts**

On its web site, DHS has devoted a page to fusion center “success stories.”<sup>525</sup> On that page, DHS includes many events unrelated to terrorism in a long list of fusion center “successes.” DHS praises, for example, fusion center efforts that have helped to reduce automobile thefts, apprehend a man suspected of kidnapping and rape, and bust up a drug ring.<sup>526</sup>

While those anticrime successes are notable, they do not advance the DHS counterterrorism mission; they do not fulfill the promise Federal officials made to Congress and the public that the significant taxpayer support directed to fusion centers would aid in the fight against terror; and they do not meet the expectations set by legislative and executive mandates which make clear both branches expected fusion centers to perform as conduits of terrorism information-sharing to and from the Federal Government.

To evaluate fusion centers’ contributions to Federal counterterrorism efforts, the Subcommittee asked DHS to provide its best examples of how fusion centers have made such contributions. In response, DHS provided a handful of examples, although only a few related to actual terrorist plots. The Subcommittee examined four of them. It was unable to confirm that the fusion centers contributions were as significant as DHS portrayed them; were unique to the intelligence and analytical work expected of fusion centers; or would not have occurred absent a fusion center.

#### **(1) Najibullah Zazi Case – CIAC**

On its website and in presentations to Congress, DHS has cited the contributions of the Colorado Information Analysis Center (CIAC) to the investigation into Najibullah Zazi, an admitted terrorist. In 2009, the 25-year-old Afghan immigrant traveled from Colorado to New York City, where he has admitted that he planned to blow himself up on the subway around the

<sup>523</sup> WRTAC Response to Subcommittee Questionnaire, (2/13/2012) PSI-WRTAC-02-0004

<sup>524</sup> “2010 Fusion Center Baseline Capabilities Assessment,” PM-ISE, at 3, (10/2010) DHS-HSGAC-FC-007032.

<sup>525</sup> “Fusion Center Success Stories,” DHS.gov, <http://www.dhs.gov/fusion-center-success-stories>, accessed August 21, 2012.

<sup>526</sup> Id.

anniversary of the 9/11 attacks. The FBI learned of his intention and arrested Mr. Zazi on September 19.<sup>527</sup>

“[I]n the Zazi plot to bomb the New York subway, it was a fusion center near Denver that played the key role in ‘fusing’ the information that came from the public with evidence that came in following the suspect’s arrest by the FBI,” DHS Secretary Janet Napolitano stated in a September 2010 speech.<sup>528</sup>

The DHS website is more circumspect. “The CIAC provided analytic support to the Denver FBI and the Department of Homeland Security regarding the suspicious activity reported to the CIAC through the public website and 1-800 number,” DHS states on its site. “CIAC provided personnel to assist the Denver FBI in the investigation and support the field operations. CIAC analysts also assisted in the review and analysis of the evidence obtained during the execution of the search and arrest warrants.” The Department also notes that CIAC officials “addressed media inquiries” about the investigation and the threats it involved.<sup>529</sup>

When the Subcommittee asked CIAC itself for a more detailed explanation of its role in the Zazi case, the center provided a four-page summary.<sup>530</sup> CIAC did not claim to have “played the key role” in “fusing” evidence from the case with information from the public.<sup>531</sup> The center summarized its analytical contributions as “assisting in open source and law enforcement research” by checking databases. CIAC personnel also “assisted in the review of the information obtained through search warrants,” the center’s summary stated.<sup>532</sup> Additionally, the Subcommittee confirmed, the center responded to media inquiries.

In its summary, CIAC explained that most of its contributions to the case came from state troopers who were assigned to the center. Of the 605 hours CIAC states its personnel dedicated to assisting the FBI in the Zazi case between September 9 and September 16, 2009, only 60 of those hours came from its analysts. Troopers did the rest, including 145 hours of analytical work and 400 hours of operational work, including vehicle stops and augmenting the Colorado Governor’s security detail.<sup>533</sup> The trooper who accounted for CIAC’s largest contribution to the investigation – 120 hours in a one-week period – was a state trooper who was part of the

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<sup>527</sup> “Najibullah Zazi Pleads Guilty to Conspiracy to Use Explosives Against Persons or Property in U.S.,” press release, Department of Justice, (2/22/2010); See also Sulzberger, A.G., and William K. Rashbaum, “Guilty Plea in Plot to Bomb New York Subway,” New York Times, (2/22/2010), <http://www.nytimes.com/2010/02/23/nyregion/23terror.html>; Sulzberger, A.G., “Imam Snared in Terror Plot Admits He Lied to FBI,” New York Times, March 4, 2010, <http://www.nytimes.com/2010/03/05/nyregion/05terror.html>.  
<sup>528</sup> “Remarks as Prepared by Secretary Napolitano to New York City First Responders” (9/20/2010), DHS Website, <http://www.dhs.gov/news/2010/09/10/remarks-prepared-secretary-napolitano-new-york-city-first-responders>, accessed 9/18/2012.

<sup>529</sup> “Fusion Center Success Stories,” DHS.gov, <http://www.dhs.gov/fusion-center-success-stories>, accessed August 21, 2012.

<sup>530</sup> “Najibullah Zazi Case,” April 2011, Colorado Information Analysis Center.

<sup>531</sup> The CIAC summary notes, however, that two troopers received calls from citizens “reporting concerns and events in-which they deemed suspicious [sic] after the Zazi case became public.” The first news stories regarding the Zazi case appeared on Sept. 16, 2009.

<sup>532</sup> “Najibullah Zazi Case,” April 2011, Colorado Information Analysis Center.

<sup>533</sup> Id.

troopers' "CIAC unit," but was also assigned to the FBI Joint Terrorism Task Force (JTTF), which was handling the investigation, the center's director explained to the Subcommittee.<sup>534</sup>

This examination does not diminish Colorado officials' support of the FBI investigation into Najibullah Zazi. But it does indicate that much of the contribution attributed to CIAC came from state troopers, and could have – hopefully, would have – occurred absent a fusion center.

## (2) Faisal Shahzad Case – NYSIC

On May 1, 2010, Faisal Shahzad attempted to detonate a car bomb in New York City's Times Square. Mr. Shahzad's attempt was foiled by alert street vendors, who noticed smoke coming from a parked vehicle and notified authorities. DHS Customs and Border Patrol agents apprehended Mr. Shahzad two days later on May 3, after he successfully boarded a commercial flight bound for Dubai, UAE. He eventually pled guilty to charges arising from the attempted attack.<sup>535</sup>

On its web site, DHS cites as a fusion center success the contributions made by the New York State Intelligence Center (NYSIC) in Latham, New York, to the FBI's Shahzad case.<sup>536</sup> The Department's description omits a small detail, however, which has the effect of potentially mischaracterizing the value of the center's contribution.

"In New York, an alert AAA employee filed a SAR [Suspicious Activity Report] with the New York State Intelligence Center [(NYSIC)] regarding a call on May 2, 2010 – when Shahzad called for assistance because he had locked his keys inside the vehicle," DHS states on its web site.<sup>537</sup> While that information may have been useful in building the case against the would-be bomber, it neither helped disrupt his plans nor hastened his capture. According to NYSIC, it received the information from AAA on May 4, the day after Mr. Shahzad's dramatic airport arrest. The Department does not disclose that later date, allowing a reader to believe the information was shared by the fusion center on the same day as the call. NYSIC included the later date in a narrative it provided to the Subcommittee.<sup>538</sup>

NYSIC also noted that it assisted the FBI investigation by conducting database searches for vehicle identification numbers and Department of Motor Vehicles (DMV) photographs.<sup>539</sup> The fusion center was uniquely able to provide DMV photographs because it is currently the only other entity with which the New York State Department of Motor Vehicles shares the

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<sup>534</sup> Email from Capt. Steve Garcia, CIAC Director, to Subcommittee, "Subject: Follow-up inquiry from PSI" (8/33/2012), PSI-CIAC-03-0001.

<sup>535</sup> "Faisal Shahzad Pleads Guilty in Manhattan Federal Court to 10 Federal Crimes Arising from Attempted Car Bombing in Times Square," Press release, U.S. Department of Justice, June 21, 2010, <http://www.justice.gov/opa/pr/2010/June/10-ag-721.html>.

<sup>536</sup> "Fusion Center Success Stories," DHS.gov, <http://www.dhs.gov/fusion-center-success-stories>, accessed August 21, 2012.

<sup>537</sup> Id.

<sup>538</sup> Letter from NY State Police Capt. Douglas R Keyer Jr. to the Subcommittee, Mar. 29, 2011. NYSIC characterized the May 4 AAA call as "an important lead [for the FBI] regarding the second vehicle used by Shahzad."

<sup>539</sup> Letter from NY State Police Capt. Douglas R Keyer Jr. to the Subcommittee, Mar. 29, 2011.

pictures, according to a NYSIC official.<sup>540</sup> “New York is one of the few states that doesn’t make DMV photos readily available to law enforcement,” Mr. Timothy Parry of the New York State Police told the Subcommittee.<sup>541</sup>

In its recounting, NYSIC also noted it “sent out teletype messages nationwide on the National Crime Information Center (NCIC) network requesting all agencies to conduct [License Plate Reader] checks through their systems,” and send positive hits to NYSIC. However, the NCIC system is a Department of Justice network that predates fusion centers, and even DHS itself, and a NYSIC official told the Subcommittee the FBI may have been able to utilize NCIC on its own. “Could they do it? Yes. Is it as easily and quickly done? No. [We are] trying to make it more streamlined and efficient,” he said.<sup>542</sup>

### **(3) Faisal Shahzad Case – Florida Fusion Center**

In addition to the work performed by NYSIC, DHS cites on its webpage of fusion center successes efforts by the Florida Fusion Center (FFC) in the Shahzad case. DHS does not characterize the FFC’s work as making a significant contribution to the case, and the facts it cites are corroborated by the State of Florida’s own comments provided to the Subcommittee. Following the May 3 arrest of Faisal Shahzad, FFC personnel “immediately began to query state databases seeking any association with Shahzad,” according to FFC Director Robert LeFiles.<sup>543</sup> The center identified two individuals having possible associations with Mr. Shahzad, and passed the information to the FBI JTTF pursuing the case. The information was used in a finished intelligence product, but nothing further was reported by either FFC or DHS about the leads.<sup>544</sup> The information does not appear to have played any key role in the Shahzad case.

### **(4) Francis “Schaeffer” Cox Case – AKIAC**

DHS also pointed to work by the Alaska Information Analysis Center (AKIAC) regarding Francis “Schaeffer” Cox, an Alaskan militia leader who was arrested in March 2011,<sup>545</sup> and convicted in June 2012 on charges stemming from a murder plot against Federal officials.<sup>546</sup>

In September 2012, the Department asserted the Alaska center had played an important role in disrupting Mr. Cox’s plans. “From December 2010 through February 2011, the Alaska Information Analysis Center (AKIAC) provided consequential information that assisted an FBI Anchorage Field Office investigation that culminated in the arrest and conviction of a Sovereign Citizen/Militia Leader and two associates,” DHS told the Subcommittee.

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<sup>540</sup> Subcommittee interview of Timothy Parry, senior investigator, New York State Police (9/6/2012).

<sup>541</sup> Id.

<sup>542</sup> Id.

<sup>543</sup> Correspondence from FFC Director Robert LeFiles to the Subcommittee, March 24, 2011, Florida Fusion Center 02-0001.

<sup>544</sup> Id.

<sup>545</sup> Press release, “Five Arrested for Conspiracy against Troopers, Judges,” Alaska State Troopers (3/10/2011), [http://www.dps.state.ak.us/pio/docs/Press/2011/ConspiracyArrest\\_031111.pdf](http://www.dps.state.ak.us/pio/docs/Press/2011/ConspiracyArrest_031111.pdf).

<sup>546</sup> Press release, “Guilty Verdicts in USA v. Cox, Barney and Vernon,” U.S. Attorney for the District of Alaska, (6/19/2012) [http://www.justice.gov/usao/ak/news/2012/June\\_2012/Francis%20Schaeffer%20Cox.html](http://www.justice.gov/usao/ak/news/2012/June_2012/Francis%20Schaeffer%20Cox.html)



Alaska officials may have provided useful information to the Federal investigation of Mr. Cox. In a September 2012 interview with the Subcommittee, Lt. Rex Leath, an Alaska State Trooper, said that in late 2010, state law enforcement officials collected information about Mr. Cox and his associates from several local law enforcement agencies around Alaska, and shared it all with the bureau. They learned Mr. Cox had been arrested for domestic assault, that he may have been booby-trapping his house in case law enforcement visited, that Mr. Cox's associates were conducting surveillance of off-duty police officers, and that Mr. Cox had stationed armed guards around his house.<sup>547</sup> "This dynamic started to develop, we would keep tabs on local law enforcement [information], and we would pass it on to the [FBI's] JTTF [Joint Terrorism Task Force]," Lt. Leath said. Some of that information was later cited in testimony by an FBI agent at Mr. Cox's trial.<sup>548</sup>

However, in his interview with the Subcommittee, Lt. Leath explained that that information-sharing was done not by officials at the fusion center, but by those at the state troopers' criminal intelligence unit, in conjunction with local law enforcement and the local JTTF. The trooper criminal intelligence unit had the lead on the case, Lt. Leath said.

Lt. Leath, who is the AKIAC director, told the Subcommittee that his fusion center put out a request for information from other states on Mr. Cox in early 2011, "around January."<sup>549</sup> Lt. Leath said the center learned of ties between Mr. Cox and other states, including Alabama, Michigan and Montana – ties Lt. Leath said indicated "funding, training, and verbal encouragement."<sup>550</sup>

The fusion center compiled the information into an intelligence report,<sup>551</sup> and shared it with the FBI in Anchorage that January, Lt. Leath said. "As soon as we got that information, it got the attention of the local FBI office," Lt. Leath said. "[T]hat's when the FBI got involved."

However, the FBI had been actively investigating Mr. Cox for months prior, according to news accounts. The bureau's Anchorage office reportedly began a preliminary investigation into Mr. Cox in February 2010.<sup>552</sup> Agents utilized two confidential informants against Mr. Cox,<sup>553</sup> one of whom was responsible for more than 100 hours of surreptitious recordings, including one of an "initiation ceremony" into Mr. Cox's militia in August 2010.<sup>554</sup>

In an October 2012 letter to the Subcommittee, Lt. Leath stated that AKIAC itself had been gathering and documenting information about Mr. Cox for almost a year before it compiled

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<sup>547</sup> Subcommittee interview of Lex Leath (9/26/2012).

<sup>548</sup> "Speeches put militia leader Schaeffer Cox on FBI radar," Richard Mauer, Anchorage Daily News (5/30/2012).

<sup>549</sup> Subcommittee interview of Lex Leath (9/26/2012).

<sup>550</sup> Id.

<sup>551</sup> "HIR/AK-0001-11, TERRORISM WATCHLIST—Alaska Militia Leader Continues Violent Rhetoric," (1/2011), PSI-AKIAC-01-000001.

<sup>552</sup> "Speeches put militia leader Schaeffer Cox on FBI radar," Richard Mauer, Anchorage Daily News (5/30/2012), <http://www.adn.com/2012/05/29/2484451/speeches-put-militia-leader-on.html>.

<sup>553</sup> "Informants aided FBI in militia probe, court documents show," Associated Press, (3/29/2011), <http://www.adn.com/2011/03/29/1781500/informants-aided-fbi-in-militia.html>.

<sup>554</sup> "Militia leader told volunteers to be ready to shoot to kill agents," Richard Mauer, Anchorage Daily News (5/22/2012), <http://www.adn.com/2012/05/21/2474525/militia-leader-told-his-squad.html>.

its January 2011 intelligence report. “[T]he AKIAC learned of these acts [by Mr. Cox] and began documenting them in early 2010,” Lt. Leath wrote.<sup>555</sup>

In this case, local, state and Federal officials appear to have engaged in useful information-sharing. Mr. Cox and his associates were arrested and convicted, and lives were possibly saved. However, it is not clear the role the state fusion center played in the process, or if it was as important or influential as DHS has alleged.<sup>556</sup>

### **G. Fusion Centers May Have Hindered, Not Aided, Federal Counterterrorism Efforts**

Fusion centers have also made significant intelligence errors, with embarrassing results for themselves and the Department. Three examples of these errors – involving both faulty intelligence analysis and reporting – have led DHS to misinform decision-makers and prompt clarifications and apologies from fusion center officials.

#### **(1) Russian “Cyberattack” in Illinois**

On November 10, 2011, the Illinois Statewide Terrorism & Intelligence Center (STIC) published a report alerting officials that a hacker in Russia had stolen an unknown number of usernames and passwords to sensitive utility control systems, and used that information to hack into a local water district’s computerized control system. Once inside the system, the fusion center report alleged, the hacker sent commands which caused a water pump to burn out.<sup>557</sup>

“An information technology services and computer repair company . . . determined the system had been remotely hacked into from an Internet Provider (IP) address located in Russia,” the fusion center’s report stated. “It is believed the hackers had acquired unauthorized access to the software company’s database and retrieved the usernames and passwords of various [control] systems, including the water district’s system.”<sup>558</sup>

Although it may sound like a minor prank, the intrusion would have represented a significant and troubling event, had it been real. Earlier that year, U.S. Department of Defense officials stated that the United States could treat such cyberattacks, if they caused widespread casualties, as acts of war.<sup>559</sup> The Illinois attack, which purportedly involved exercising remote control over a U.S. water system, would have been the first known attack of its kind on a U.S. facility, and was considered for a time to be “a major new development in cybersecurity.”<sup>560</sup>

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<sup>555</sup> Letter from Lt. Rex Leath to the Subcommittee (10/1/2012)

<sup>556</sup> DHS response to Subcommittee inquiry (9/21/2012), DHS-HSGAC-FC-059981.

<sup>557</sup> Subcommittee interview of DHS (12/13/2011).

<sup>558</sup> Statewide Terrorism & Intelligence Center, “Daily Intelligence Notes,” November 10, 2011, PSI-Illinois State Police-01-0003.

<sup>559</sup> “Cyberwar Plan Has New Focus On Deterrence,” *Wall Street Journal*, Julian E. Barnes and Siobhan Gorman (7/15/2011); “Cyber Combat: Act of War,” *Wall Street Journal*, Siobhan Gorman and Julian E. Barnes (5/30/2011)

<sup>560</sup> “Foreign hackers targeted U.S. water plant in apparent malicious cyber attack, expert says,” *Washington Post*, Ellen Nakashima (11/18/2011), [http://www.washingtonpost.com/blogs/checkpoint-washington/post/foreign-hackers-broke-into-illinois-water-plant-control-system-industry-expert-says/2011/11/18/gIQAgmTZYN\\_blog.html](http://www.washingtonpost.com/blogs/checkpoint-washington/post/foreign-hackers-broke-into-illinois-water-plant-control-system-industry-expert-says/2011/11/18/gIQAgmTZYN_blog.html).



In truth, there was no intrusion, and DHS investigators eventually concluded as much.<sup>561</sup> The so-called “intrusion” from Russia was actually an incident of legitimate remote computer access by a U.S. network technician who was working while on a family vacation.<sup>562</sup> Making the intrusion allegations all the more perplexing, the contractor had logged on from Russia in June, five months before the pump broke; and although the access had been under his username and password, no one from the fusion center, the water utility or DHS had contacted him to find out if he had logged on from Russia.

“A quick and simple phone call to me right away would have defused the whole thing immediately,” the contractor told a reporter after the report had been discredited. “All I did was I logged on.”<sup>563</sup>

In addition to the fusion center report, DHS intelligence officials issued their own intelligence report on the alleged hacking incident, publishing it five days after the Illinois fusion center published its own, on November 10, 2011.<sup>564</sup> Like the fusion center report, DHS stated the allegations as fact, not as theory, claim or hunch – none of which are reportable under DHS reporting guidelines. The author, a DHS Senior Reports Officer with I&A’s Reporting Branch, drafted the bulletin.<sup>565</sup> He wrote that his report was based on “first and secondhand knowledge of information . . . deemed reliable,” and used no language indicating the “attack” was a mixture of allegation and conjecture.<sup>566</sup>

“[T]he Springfield, Illinois Curran-Gardner Public Water District’s Supervisory Control and Data Acquisition (SCADA) system experienced a network intrusion from a Russian IP address,” the briefing slide stated. “The perpetrator used an authorized user account of an employee from an identified US business that developed and installed the SCADA system. System controls were manipulated resulting in a pump burnout.”<sup>567</sup>

Apparently aware of how important such an event could have been, had it been real, DHS intelligence officials included the false allegations – stated as fact – in a daily intelligence briefing that went to Congress and the intelligence community.<sup>568</sup>

After receiving the Illinois center’s November 10 report, the FBI opened an investigation into the allegations. A week later, after receiving DHS’s own intelligence report on the hacking claims, the Department’s Cyber Emergency Response Team (CERT)<sup>569</sup> also began investigating

<sup>561</sup> “Illinois Water Pump Failure Report,” DHS, ICSB-11-327-01, (11/23/2011) DHS-HSGAC-FC-019824.

<sup>562</sup> “Working on his vacation in Russia, contractor touches off false report of cyberattack,” Associated Press (12/1/2011).

<sup>563</sup> Id.

<sup>564</sup> “NETWORK INTRUSION INTO A SPRINGFIELD, Illinois Public Water District’s SCADA system, originated in Russia, resulted in a pump burnout,” IIR-4-007-0104-12, Nov. 15, 2011, DHS-HSGAC-FC-019826.

“HIRs/[IIRs] are not analytic products and should present factual information, rather than theories or conclusions.” Standard Operating Procedure for Homeland Intelligence Report Production, 6/25/10, DHS-FC-HSGAC-056474.

<sup>565</sup> Subcommittee interview of Anne Wessel, Chuck Robinson (12/13/2011).

<sup>566</sup> “NETWORK INTRUSION INTO A SPRINGFIELD, Illinois Public Water District’s SCADA system, originated in Russia, resulted in a pump burnout,” IIR-4-007-0104-12, Nov. 15, 2011, DHS-HSGAC-FC-019826.

<sup>567</sup> Daily Intelligence Highlights, “Illinois: Water System Disrupted by Cyber Intrusion,” (11/15/2011)

<sup>568</sup> DHS response to Subcommittee inquiry, (9/19/2012) DHS-HSGAC-FC-059955.

<sup>569</sup> CERT is part of DHS’s National Protection and Programs Directorate, separate from I&A.

the incident. On November 23, 2011, CERT issued its own report with this finding: “After detailed analysis of all available data, ICS-CERT and the FBI found no evidence of a cyber intrusion into the SCADA system of the Curran-Gardner Public Water District in Springfield, Illinois.”<sup>570</sup>

“In addition,” CERT’s report continued, “there is no evidence to support claims made in the initial Illinois STIC report – which was based on raw, unconfirmed data and subsequently leaked to the media – that any credentials were stolen, or that the vendor was involved in any malicious activity that led to a pump failure at the water plant. In addition, DHS and the FBI have concluded that there was no malicious or unauthorized traffic from Russia or any foreign entities, as previously reported.”<sup>571</sup>

Almost no part of the initial reports of the incident had been accurate – not the fusion center report, or DHS’s own intelligence report, or its intelligence briefing. The only fact they got right was that a water pump in a small Illinois water district had burned out.

DHS I&A did not subsequently issue a correction or notification of its erroneous reporting. In an interview with the Subcommittee, DHS officials responsible for the reporting incident said they believed there was no need to issue a correction for the faulty report or briefing slide, because “they are not finished intelligence.”<sup>572</sup> They agreed that the report did not include caveats for its reporting, and that it was “not typical” for such reports to state uncorroborated claims and hypotheses as fact. But “there is a premium for getting IIRs out,” one official explained. “Analytical judgements are saved.” Despite its inaccuracies and sloppy phrasing, DHS officials characterized the IIR as a success. “[It did] exactly what it’s supposed to do -- generate interest.”<sup>573</sup>

## **(2) Shooting of Representative Giffords and 18 Others**

A second recent example of flawed information issued by a fusion center involves the Arizona Counter Terrorism Information Center (ACTIC) about a high-profile shooting. This example showed how a center’s weak analysis could actually hinder anti-terrorism and law enforcement efforts.

In January 2011, Jared Loughner opened fire at a public event in Tucson, Arizona. He shot and killed six people and wounded 13 others, including Arizona Representative Gabrielle Giffords.<sup>574</sup> Fox News reported that an ACTIC document indicated that the center’s analysts had a “strong suspicion” that Mr. Loughner was connected to American Renaissance, which the

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<sup>570</sup> “ICS-CERT INFORMATION BULLETIN: ICSB-11-327-01—ILLINOIS WATER PUMP FAILURE REPORT,” Industrial Control Systems Cyber Emergency Response Team (ICS-CERT), November 23, 2011, DHS-HSGAC-FC-019824.

<sup>571</sup> Id.

<sup>572</sup> Subcommittee interview of Anne Wessel, Chuck Robinson (12/13/2011).

<sup>573</sup> Id.

<sup>574</sup> “Jared Lee Laughner Pleads Guilty to Federal Charges in Tucson Shooting,” Department of Justice press release, (8/7/2012), <http://www.justice.gov/opa/pr/2012/August/12-crm-983.html>; “Jared Loughner, Ariz. shooting suspect, pleads guilty to 19 counts,” CBSNews.com (8/7/2012) [http://www.cbsnews.com/8301-504083\\_162-57488644-504083/jared-loughner-ariz-shooting-suspect-pleads-guilty-pleads-guilty-to-19-counts/](http://www.cbsnews.com/8301-504083_162-57488644-504083/jared-loughner-ariz-shooting-suspect-pleads-guilty-pleads-guilty-to-19-counts/).

document termed an anti-Semitic, anti-government group.<sup>575</sup> The memo stated then-Representative Giffords was “the first Jewish female elected to such a high position in the US government,” suggesting that was a possible reason Mr. Loughner had targeted her.<sup>576</sup>

Closer scrutiny of the ACTIC document’s claims revealed that many were false. Ms. Giffords was not the first Jewish female elected to Congress; the alleged anti-government, anti-Semitic, white supremacist group, American Renaissance, says it is neither anti-Semitic nor anti-government, nor even a membership organization. American Renaissance was instead a newsletter, and its publishers quickly confirmed Mr. Loughner did not subscribe.<sup>577</sup>

In the wake of reports debunking the analysts’ assertions, the ACTIC director backed away from the document, characterizing it as a “quick summary” that “was never intended for public dissemination.”<sup>578</sup>

ACTIC “just didn’t have its facts straight,” concluded one news analysis, which went on to question why the fusion center was attempting to participate in a criminal investigation. “Presumably, law enforcement authorities in Tucson and from the FBI were on the case when the memo was written,” the analysis reasoned. “One wonders why the fusion center was involved at all, but clearly, it was operating out of its league.”<sup>579</sup>

### **(3) Missouri MIAC Militia Report**

A third example of fusion center missteps took place in February 2009 when a problematic analysis issued by the Missouri Information Analysis Center (MIAC) provoked public outrage.

Deemed a “strategic report,” “The Modern Militia Movement” attempted to provide a summary analysis of the recent history of violent militia organizations in the United States.<sup>580</sup> The report was poorly researched and written.<sup>581</sup> It attempted to show connections between certain Constitutionally protected, non-violent political activity and a tendency towards violent extremism.

For instance, the report alleged that “militia members most commonly associate with 3<sup>rd</sup> party political groups,” including the Libertarian Party. It stated that “these [militia] members

<sup>575</sup> “DHS Memo Suggests Shooter May Be Linked to Racist Organization,” Jennifer Griffin, FoxNews.com (1/9/2011), <http://politics.blogs.foxnews.com/2011/01/09/dhs-memo-suggests-shooter-may-be-linked-racist-organization>.

<sup>576</sup> “Jared Loughner’s supremacists tie debunked,” POLITICO, Kenneth Vogel (1/11/2011), <http://www.politico.com/news/stories/0111/47438.html>.

<sup>577</sup> Id.

<sup>578</sup> Id..

<sup>579</sup> Harris, Shane, “ANALYSIS: Intelligence File One Bad Apple,” Government Executive, Apr. 1, 2011, <http://www.govexec.com/features/0411-01/0411-01adif.htm>.

<sup>580</sup> “The Modern Militia Movement, MIAC Strategic Report,” Missouri Intelligence Analysis Center (MIAC), (2/20/09), <http://www.news-leader.com/assets/pdf/DO131242323.PDF>, accessed 9/26/2012.

<sup>581</sup> Among other errors, the document reportedly misspelled President Barack Obama’s first name, and contained sentences reproduced verbatim from other sources without attribution. See Livengood, Chad, “Top law officials defend embattled MIAC agency,” Springfield (Mo.) News-Leader, Sept. 10, 2009.

are usually supporters of . . . Ron Paul, Chuck Baldwin, and Bob Barr.” Further, it claimed militia members might display signs, cartoons or bumper stickers featuring “anti-government rhetoric,” as well as “anti-immigration, and anti-abortion” material. Most surprising to some, it identified as “the most common symbol displayed by militia members” the so-called “Gadsden Flag,” featuring a coiled snake and the words, “Don’t Tread on Me.”<sup>582</sup> As the report properly noted, the flag was designed by a U.S. General, Christopher Gadsden, and first gained notice in the 1700s. And while it may hold significance to members of the militia movement, it is considered by many to be a symbol of American patriotism, and a popular symbol at Tea Party rallies.

The report, which became public in March 2009, caused an avalanche of criticism of MIAC, as well as the Missouri Department of Public Safety, which oversaw the center. One former state government official said the report “looks like a Missouri State University fraternity brother wrote something and put it on state letterhead and sent it out.”<sup>583</sup> The department’s chief issued public apologies to Mr. Paul, Mr. Baldwin and Mr. Barr, stating in letters to the men, “I regret that those comments were ultimately included in the final report[.]”<sup>584</sup>

These three examples of poor quality intelligence reports by fusion centers suggest some centers do not qualify as the counterterrorism successes portrayed by DHS. Fusion centers are controlled by state and local agencies, and staffed largely by state and local personnel. It should be no surprise, nor should it necessarily be a cause for concern, that they are primarily concerned with addressing state and local needs.

The Federal government has also repeatedly stated, however, its expectation that fusion centers be capable of contributing to the Federal counterterrorism mission. It is that expectation that has been used to justify the Federal Government’s strong and growing support for fusion centers, from providing hundreds of millions of dollars in Federal grant funds and dispatching Federal personnel, to installing data connectivity, and supplying secure equipment and facilities capable of handling classified information.

Unfortunately, despite a significant investment of resources and time, fusion centers today appear to be largely ineffective participants in the Federal counterterrorism mission. Much of the blame lies with DHS, which has failed to adequately implement a fusion center program that would produce the results it promised. But significant responsibility for these failures also lies with Congress, which has repeatedly chosen to support and praise fusion center efforts, without providing the oversight and direction necessary to make sure those efforts were cost effective and useful.

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<sup>582</sup> “The Modern Militia Movement, MIAC Strategic Report,” Missouri Intelligence Analysis Center (MIAC), (2/20/09), <http://www.news-leader.com/assets/pdf/DO131242323.PDF>, accessed 9/26/2012.

<sup>583</sup> Livingood, Chad, “Agency apologizes for militia report on candidates,” Springfield (Mo.) News-Leader, March 25, 2009.

<sup>584</sup> Id.

## VII. RECOMMENDATIONS

- **Congress should clarify the purpose of providing federal monetary and other support for DHS's fusion center efforts.** The Subcommittee's investigation could not verify that the statutory basis for DHS's involvement in fusion centers – to strengthen federal counterterrorism efforts – was reflected in the department's efforts. Congress should require DHS to conform its efforts to match its counterterrorism statutory purpose, or redefine DHS's fusion center mission.
- **DHS should reform its intelligence reporting efforts at state and local fusion centers to eliminate duplication.** DHS reporting from fusion centers duplicates – often poorly – better intelligence-sharing processes undertaken by other agencies. The Joint Terrorism Task Forces receive threat-related information; the National SAR Initiative shares suspicious activity reports from state and locals; and the Terrorist Screening Center gathers information on state and local officials' interactions with individuals in the National Counter Terrorism Center's TIDE database.
- **DHS should improve its training of intelligence reporters.** DHS must ensure that any DHS personnel engaged in reporting intelligence information from within the United States be adequately trained and certified to prevent violations of U.S. law or DHS guidelines, policy or regulations.
- **DHS should strictly align fusion center grant funding to meet federal needs.** When FEMA gives states and cities grant funds for a fusion center, it should not allow those dollars to be spent on items that do not directly contribute to improving the fusion center's abilities to contribute to its federal mission of counterterrorism.
- **DHS should track how much money it gives to each fusion center.** FEMA should identify how much money it grants to states and urban areas for direct or indirect support of each individual fusion center, and report those amounts annually to Congress.
- **PM-ISE should evaluate fusion center capabilities and performance.** At the request of DHS, the Program Manager for the Information Sharing Environment (PM-ISE) in the Office of the Director of National Intelligence conducted a national assessment of fusion center capabilities that produced useful findings, and PM-ISE should use that model to conduct future evaluations. In addition, it should begin to evaluate fusion centers' performance as participants in federal counterterrorism information-sharing efforts.
- **DHS should link funding of each fusion center to its value and performance.** Granting funds for state and local fusion center efforts year after year, without expecting or even examining the results received from previous grants, provides no mechanism to ensure federal taxpayers receive a return on their investments.
- **DHS should timely disclose to Congress significant problems within its operations.** Serious issues plagued DHS fusion center efforts for years, yet officials were reluctant to share them with Congress. Even when asked about these problems, DHS avoided

acknowledging the problems, initially withheld documents, and repeatedly resisted Subcommittee requests, which unnecessarily prolonged the Subcommittee investigation.

- **DHS should align its practices and guidelines to protect civil liberties, so they adhere to the Constitution, federal law, and its statutory mission.** DHS should strengthen its protections to prevent DHS personnel from improperly collecting and retaining intelligence on Constitutionally protected activity. It should not retain inappropriate and illegal reporting. It should strictly enforce policies, and hold all of its employees to the highest standards, including by promptly barring poorly performing personnel from issuing domestic intelligence reports involving Americans.

# # #

## Fusion Center Capability Areas

# I. Fusion Process Capabilities

*“Adhere to the National Criminal Intelligence Sharing Plan (NCISP) and other sector-specific information sharing plans, and perform all steps of the intelligence and fusion processes.”*

*Guideline 1, Fusion Center Guidelines.*

The Fusion Process capabilities identify those capabilities and standards necessary to perform the steps of the Intelligence Process within a fusion center, including the gathering, analysis, and dissemination of information and intelligence. Though the steps and actions of the Fusion Process do not comprehensively mirror the steps of the Intelligence Process, the Intelligence Process provides the foundation to carry out the Fusion Process and assist in the identification of the capabilities needed to successfully complete the Fusion Process.

The Intelligence Process is defined in the NCISP and incorporated into Guideline 1 of the *Fusion Center Guidelines*.

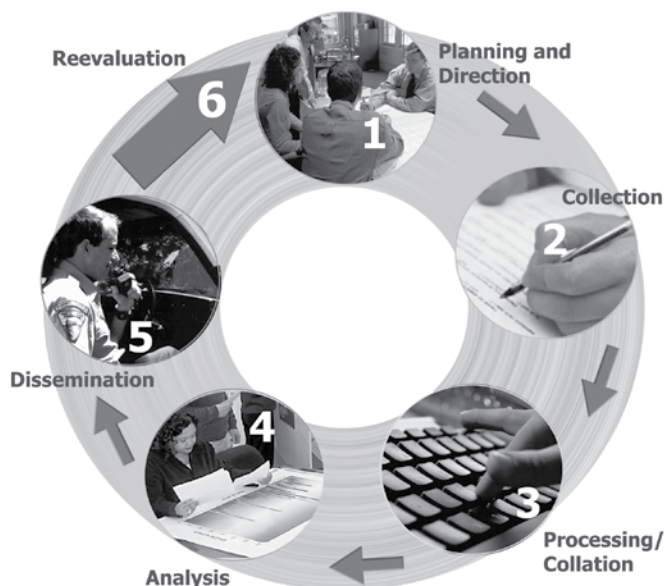
For purposes of baseline capabilities, the Fusion Process capability areas are modified to be:

- Planning and Requirements Development
- Information Gathering/Collection and Recognition of Indicators and Warnings
- Processing and Collation of Information
- Intelligence Analysis and Production
- Intelligence/Information Dissemination
- Reevaluation

The following capabilities address the plans and their associated policies, standards, processes, and procedures (collectively “procedures”) needed to perform various aspects of the Fusion Process: the gathering, processing, analyzing, and disseminating of terrorism, homeland security, and law enforcement information. For these capabilities to be considered achieved or accomplished, the plans and procedures should be documented and provided to appropriate center personnel and partners. Though the types of plans and procedures are broken down by topic, they are in practice integrated aspects of the Fusion Process; therefore, many of these plans should be developed concurrently to the extent possible. In many cases, the resulting plans and procedures may not be separate documents but may be individual components of a larger document, such as a center’s Concept of Operations, Standard Operating Procedures, or Policies and Procedures Manual.

The following capabilities do not include capabilities that are otherwise addressed in Section II. Management and Administrative Capabilities (e.g., Information Privacy Protections, Security, Information Technology).

### The Intelligence Process







**out the Fusion Process (gathering, processing, analyzing, and disseminating of terrorism, homeland security, and law enforcement information) on a statewide basis.**

- a. Identify and incorporate local and tribal law enforcement, homeland security, or other discipline analytic centers that do not meet the definition of a fusion center but are within the fusion center’s geographic area of responsibility, and develop and maintain coordination procedures and communication methodologies.
- b. The plan should address the further dissemination of federally generated alert, warning, and notification messages, bulletins, and situational reports, including the identification and establishment of a communications platform to support the timely dissemination of these products.
- c. The plan should clearly identify who is responsible for disseminating what types of products and to whom (which local, tribal, and federal authorities; the private sector; and the general public, as appropriate), in order to reduce duplicative dissemination to the extent possible.

## **A. Planning and Requirements Development**

*The Planning and Requirements Development stage “lays the foundation for the types of information that will be collected.”*

*– Guideline 1, Fusion Center Guidelines, p. 21.*

**1. Intrastate Coordination – In developing and implementing all Fusion Process-related plans and procedures, the center shall coordinate with other fusion centers (the designated state fusion center and/or any UASI fusion center(s)) within its state to identify the roles and responsibilities of each center in carrying**

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**2. Risk Assessment – Fusion centers shall conduct or contribute to a statewide and/or regional risk assessment that identifies and prioritizes threats, vulnerabilities, and consequences at regular intervals.**

- a. Use available national and statewide risk assessments and other relevant products that identify patterns and trends reflective of emerging threats in the development of statewide and regional risk assessments.
- b. Develop site-specific and topical risk assessments as appropriate.
- c. Provide the risk assessment or a summary and/or briefings on the risk assessment to law enforcement and homeland security officials with planning, resource allocation, and budgeting responsibilities, including appropriate elected officials from the executive and legislative branches.
- d. Maintain mechanisms to contribute information of value to other state, multistate, and national-level risk assessments.



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**3. Information Requirements – The information requirements for the fusion center shall be defined, documented, updated regularly, and consistent with the center’s goals and objectives as defined by the governance structure and reflect the risks identified in the statewide and/or regional risk assessment.**

- a. Use the risk assessment to identify and prioritize the information requirements in order to address the risks (threats, vulnerabilities, and consequences) posed in the center’s geographic area of responsibility.
- b. Create a formal process to define, communicate, and modify intelligence requirements and intelligence gathering.
- c. Establish goals and objectives for collecting, producing, and sharing information.
- d. Review and consider including relevant requirements from the national intelligence requirements as provided by DHS and the Federal Bureau of Investigation (FBI).
- e. Coordinate with the state and major urban area homeland security advisors and the DHS Protective Security Advisor(s) to ensure coordination and support of the *National Infrastructure Protection Plan* (NIPP).
- f. Coordinate information requirements with other interested agencies (local FBI Field Intelligence Group [FIG], Joint Terrorism Task Forces [JTTF], High Intensity Drug Trafficking Areas [HIDTA], etc.) as appropriate.

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**4. Suspicious Activity Reporting (SAR) – Fusion centers shall develop, implement, and maintain a plan to support the establishment of a suspicious activity and incident reporting process for their geographic area of responsibility, in a manner consistent with the *Findings and Recommendations of the Suspicious Activity Report (SAR) Support and Implementation Project*.<sup>12</sup> Specifically,**

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<sup>12</sup> The Major Cities Chiefs Association, Global, DOJ, and DHS supported the development of this report, which describes “the all-crimes approach to gathering, processing, reporting, analyzing, and sharing of suspicious activity by the local police agency.”

**centers shall have the ability to receive, process, document, analyze, and share SARs in a manner that complies with the ISE-SAR Functional Standard.<sup>13</sup>**

- a. Adhere to the state and local responsibilities for SARs outlined in Appendix 1 of the *National Strategy for Information Sharing* (page A1-6).
- b. The fusion center’s SAR process should complement and support the SAR processes established or being established by state or local law enforcement agencies within the fusion center’s geographic area of responsibility.
- c. In cooperation with state or local law enforcement agencies within the fusion center’s geographic area of responsibility that have developed or are developing a SAR process, the fusion center shall support:
  - i. Defining and documenting the process to be used by the originating agency to ensure that suspicious activity reporting is made available to fusion centers and local JTTFs in a timely manner.
  - ii. Developing outreach material for first responders, public safety, and private sector partners and the public to educate them on recognizing and reporting behaviors and incidents indicative of criminal activity associated with international and domestic terrorism.
- d. The fusion center, in the absence of a specified threat or risk, should utilize SARs to analyze data trends and identify any potential terrorism linkage or activity (including precursor activity) and disseminate to the JTTF and other appropriate federal, state, and/or local entities.
- e. The designated statewide fusion center shall coordinate an effort or support existing efforts to identify system requirements for the state’s designated shared space<sup>14</sup> that will support

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<sup>13</sup> For additional information regarding the ISE Functional Standard for SAR, visit <http://www.ise.gov/pages/ctiss.html>.

<sup>14</sup> The ISE Shared Spaces concept is a key element of the *ISE Enterprise Architecture Framework* and helps resolve the information processing and usage problems identified by the 9/11 Commission. ISE Shared Spaces are networked data and information repositories used by ISE participants to make their standardized terrorism-related information, applications, and services accessible to other ISE participants. ISE Shared Spaces also provide an infrastructure solution for those ISE participants with national security system (NSS) network assets, historically sequestered with only other NSS systems, to interface with ISE participants having only civil network assets. Additionally, ISE Shared Spaces also provide the means for foreign partners to interface and share terrorism information with their U.S. counterparts. For more information about the ISE Shared Spaces concept, reference the *ISE Enterprise Architecture Framework* and the *ISE Profile Architecture Implementation Strategy* at [www.ise.gov](http://www.ise.gov).

statewide reporting, tracking, and accessing of SARs in a manner that ensures consistent use of data elements and collection procedures. (Refer to Section II.E. Information Technology/ Communications Infrastructure, Systems, Equipment, Facility, and Physical Infrastructure; the ISE-SAR Functional Standard; and the *Findings and Recommendations of the Suspicious Activity Report (SAR) Support and Implementation Project.*)

- f. Fusion centers should support or develop training for law enforcement and nontraditional partners to identify and appropriately report suspicious activities, indicators, and warnings.

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**5. Alerts, Warnings, and Notifications – Fusion centers shall ensure that alerts, warnings, and notifications are disseminated, as appropriate, to state, local, and tribal authorities; the private sector; and the general public.**

- a. Fusion centers shall develop and implement a written policy outlining standard operating procedures to govern the receipt of further dissemination of federally generated alert, warning, and notification messages, consistent with the intrastate coordination plan called for by Section I.A.1.
- b. In response to federally generated alert, warning, and notification messages and/or significant events, the fusion center shall support or facilitate the identification of actions that were taken by state, local, and tribal authorities and the private sector and report those back to the appropriate federal agency.
- c. Adhere to the state and local responsibilities for alerts, warnings, and notifications outlined in Appendix 1 of the *National Strategy for Information Sharing* (page A1-8).

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**6. Situational Awareness Reporting – Fusion centers shall develop processes to manage the reporting to key officials and the public of information regarding significant events (local, regional, national, and international) that may influence state or local security conditions.**

- a. Fusion centers shall develop and implement a written policy outlining standard operating procedures to govern the receipt and further

dissemination of federally generated information bulletins and other situational awareness messages, consistent with the intrastate coordination plan called for by Section I.A.1.

- b. Adhere to the state and local responsibilities for situational awareness reporting outlined in Appendix 1 of the *National Strategy for Information Sharing* (page A1-9).

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**7. Data Sources – Fusion centers shall identify and document data sources and repositories needed to conduct analysis based on the mission of the center, the findings of the Risk Assessment, and the center’s defined Information Requirements.**

- a. Refer to Section II.E. Information Technology/ Communications Infrastructure, Systems, Equipment, Facility, and Physical Infrastructure to further develop plans for access to data sources based on the fusion center’s defined mission and core business processes.

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**8. Coordination With Response and Recovery Officials – Fusion centers shall identify and coordinate with emergency managers and appropriate response and recovery personnel and operations centers to develop, implement, and maintain a plan and procedures to ensure a common understanding of roles and responsibilities and to ensure that intelligence and analysis capabilities can be leveraged to support emergency management operation activities, as appropriate, when events require such a response.**

- a. Ensure that the center has identified its intelligence and analytical roles and responsibilities in accordance with the National Incident Management System (NIMS) and Incident Command System (ICS).
- b. The plan should identify roles, responsibilities, and protocols to govern the timely reporting of significant events occurring within state or local jurisdictions to federal authorities and, when appropriate, other states, localities, or regional entities.

- c. Ensure that the plan addresses the contingency and continuity-of-operations (COOP) planning during an emergency. (See Section II.E.)

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**9. Coordination With Private Sector and Critical Infrastructure and Key Resources (CIKR) Information Sharing – Fusion centers, in partnership with locally based federal authorities, shall develop, implement, and maintain a plan and procedures for sharing information with owners of CIKR and, in general, the private sector, in a coordinated manner.**

- a. All centers shall include in the plan the procedures to disseminate alerts, warnings, and notifications and other relevant analytic reports to critical infrastructure sectors and/or private sector entities that are affected by the threat.
- b. The plan should document the decision of the center’s governance structure—based on the center’s mission, risk assessment, and information requirements—whether the center will establish a CIKR capability to integrate and analyze threat, vulnerability, and consequence data and enable and support state, local, and private sector decision making and activities to protect CIKR.

Note: At a minimum, the baseline capabilities require fusion centers to have the capability to receive information from the private sector and disseminate critical information to members of the private sector. Beyond those baseline capabilities, some fusion centers are encouraged, but not required, to incorporate the needs of the CIKR protection activities into their Fusion Process. This option should be considered by the governance structure as a part of the mission development process. (See Section II.A.)

References: For those centers interested in incorporating the support of CIKR into their Fusion Process, an appendix to this document is being developed that will outline the fusion center capabilities for supporting CIKR protection activities.

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**10. Exercises – Fusion centers should conduct or participate in another agency’s scenario-based tabletop and live training exercises to regularly assess their capabilities.**

- a. Exercises should include simulations, games, tabletops, functional exercises, and full-scale field exercises.
- b. Exercises should involve all relevant center personnel and constituents and should contribute to understanding the value of the statewide Fusion Process, the center’s collection plan, the SAR process, analytical products, the center’s role in the Information Sharing Environment, and the center’s role in response and recovery activities in accordance with NIMS and ICS.
- c. Centers should use the exercises to validate center operations, policies and procedures, and training activities and develop action plans to mitigate any identified gaps.



## B. Information Gathering/Collection and Recognition of Indicators and Warnings

*“The stage in which the planning and requirements development stage becomes operational...information is collected from various sources, including law enforcement agencies, public safety agencies, and the private sector. This stage is essential for fusion centers to be effective.” – Guideline 1, Fusion Center Guidelines, p. 21.*

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### 1. Information-Gathering and -Reporting Strategy – Fusion centers shall develop, implement, and maintain an information-gathering and -reporting strategy that leverages existing capabilities and shall identify methods for communicating information requirements and the overall information-gathering strategy to partners, to include any applicable fusion liaison officers.

- a. Clearly outline the collection process, including how the collectors of information are identified and tasked—or if the center lacks the authority to task, identify how such requests are made to partners.

- b. Leverage and/or coordinate with the JTTF and other federal, state, local, tribal and private sector information sharing and counterterrorism efforts.
- c. Clearly outline the processes that partner organizations—including law enforcement, public safety, private organizations, and the public—use to report information to the fusion center.
- d. The strategy and associated processes shall be consistent with the governance structure’s defined, agreed-upon, and auditable privacy policy. (Reference Section II.B.)

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### 2. Feedback Mechanism – Fusion centers shall define and implement a feedback mechanism that:

- a. Provides the reporting entity an acknowledgement of the receipt of its information and, to the extent possible, provides feedback on the value of the information and actions taken with the information.
- b. Allows collectors to make suggestions to improve the strategy, plans, or processes, as well as seek clarification on information requirements.
- c. Allows recipients of information or products to make suggestions to improve products.

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### 3. Collection and Storage of Information – Fusion centers shall define the policies and processes and establish a mechanism for receiving, cataloging, and retaining information provided to the center.

- a. Ensure that policies, processes, and mechanisms comply with the center’s privacy policy—particularly regarding data retention, purging, and redress. (Reference Section II.B.)
- b. Fusion centers should reference the Commission on Accreditation for Law Enforcement Agencies (CALEA) Standard 51.1.1 regarding intelligence collection and the types of information to collect, methods for purging out-of-date or incorrect information, and procedures for the utilization of intelligence personnel and techniques.<sup>15</sup>
- c. Adhere to the Law Enforcement Intelligence Unit (LEIU) *Criminal Intelligence File Guidelines*<sup>16</sup>

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<sup>15</sup> Additional information regarding CALEA Standard 51.1.1—Criminal Intelligence is available at <http://www.calea.org/online/newsletter/no79/criminalintelligence.htm>.

<sup>16</sup> LEIU *Criminal Intelligence File Guidelines*—[http://www.it.ojp.gov/documents/LEIU\\_Crim\\_Intell\\_File\\_Guidelines.pdf](http://www.it.ojp.gov/documents/LEIU_Crim_Intell_File_Guidelines.pdf).



and the LEIU *Audit Checklist for the Criminal Intelligence Function*<sup>17</sup> for the maintenance of criminal intelligence files.

- d. Adhere to the collection, storage, and retention requirements of 28 CFR Part 23.
- e. Establish processes to routinely identify progress achieved against individual information requirements and the overall information-gathering strategy, and provide summary assessments to fusion center partners, management, and the governance body on a routine basis.
- f. The mechanism used to catalog and retain information shall enable timely retrieval by the center's analysts.
- g. Develop protocols to ensure the archiving of all appropriate data, information, and intelligence to support future efforts.
- h. To the extent the processes and mechanisms are automated, adhere to the Information Technology/ Communications Infrastructure, Systems, Equipment, Facility, and Physical Infrastructure capabilities. (Section II.E.)



## C. Processing and Collation of Information

*“Processing and collation involves evaluating the information’s validity and reliability. Collation entails sorting, combining,*

*categorizing, and arranging the data collected so relationships can be determined.” – Guideline 1, Fusion Center Guidelines, p. 20.*

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### 1. Information Collation – Fusion center analysts shall use the necessary and available tools to process and collate information and intelligence to assist with accurate and timely analysis.

- a. Fusion center analysts should consider utilizing the appropriate tools identified in Global’s *Analyst Toolbox* to assist in the collation of information.
- b. Fusion center analysts should reference IALEIA and Global’s *Law Enforcement Analytic Standards* when developing the processes for collating information.
- c. Fusion centers should consider the development or utilization of an intelligence collection system that allows for the collection, processing, collation, and storage of information related to the mission of the center.

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### 2. Levels of Confidence – Fusion centers shall liaise with partners to ensure that information collected is relevant, valid, and reliable.

- a. Fusion center personnel should consider regular meetings with information providers to discuss information collection requirements.
- b. Fusion center personnel should ensure that partners are aware of the various levels of confidence of information provided to the center.
  - i. 28 CFR Part 23 states, “Information shall be labeled to indicate levels of sensitivity, levels of confidence, and the identity of submitting agencies and officers.”
  - ii. Levels of confidence relate to reliability, validity, and relevancy.

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<sup>17</sup> LEIU *Audit Checklist for the Criminal Intelligence Function*—[http://it.ojp.gov/documents/LEIU\\_audit\\_checklist.pdf](http://it.ojp.gov/documents/LEIU_audit_checklist.pdf).



## D. Intelligence Analysis and Production

*“Analysis transforms the raw data into products that are useful...the goal is to develop a report that connects information in a logical and meaningful manner to produce an intelligence report that contains valid judgments based on analyzed information. ...One of the goals of the fusion center during this stage is to identify trends or information that will prevent a terrorist attack or other criminal activity.”*

*– Guideline 1, Fusion Center Guidelines, pp. 20–21.*

**1. Analytic Products – Fusion centers shall develop, implement, and maintain a production plan that describes the types of analysis and products they intend to provide for their customers and partners (which, at a minimum, include Risk Assessments; Suspicious Activity Reporting; Alerts, Warnings, and Notifications; and Situational Awareness Reporting [see Sections I.A.2, 4, 5, and 6 for further details on these product types]), how often or in**

**what circumstances the product will be produced, and how each product type will be disseminated.**

- a. Adhere to the tenets in IALEIA and Global’s *Law Enforcement Analytic Standards* booklet,<sup>18</sup> particularly Standards 17, 20, and 21, which address Analytic Product Content, Report, and Format standards.
- b. The production plan shall be prioritized based on the center’s mission, information requirements, and priority functions.
- c. Identify stakeholders and customer base for specific product lines and request feedback from customers to guide future products.
- d. Ensure the production of value-added intelligence products that support the development of performance-driven, risk-based prevention, protection, response, and consequence management programs.

**2. Fusion Process Management – An intelligence commander/manager should be designated to oversee the management of the Fusion Process (including the collection, collation, analytic function, dissemination, and reevaluation of information and intelligence) within the center.**

- a. The commander/manager should address the day-to-day intelligence management functions of the center.
- b. The commander/manager should prioritize critical intelligence products and ensure that the critical outputs of the fusion center are accomplished.
- c. The commander/manager should have the necessary skill sets to oversee the production of intelligence products that are effective, efficient, and permissible under state and federal laws and regulations.
- d. The commander/manager should have previous experience and management training.
  - i. Training should include the intelligence cycle, analytical training, intelligence management, the role of the fusion center, and legal issues.

<sup>18</sup> IALEIA and Global’s *Law Enforcement Analytic Standards* booklet is available at [http://www.it.ojp.gov/documents/law\\_enforcement\\_analytic\\_standards.pdf](http://www.it.ojp.gov/documents/law_enforcement_analytic_standards.pdf).

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**3. Enhancing Analyst Skills – The fusion center should develop and implement a Training and Professional Development Plan to enhance analysts’ critical thinking, research, writing, presentation, and reporting skills.**

- a. The supervisor of the analytic function should work with each analyst to draft a Training and Professional Development Plan. Components of the plan should include training and mentoring opportunities for learning new subject matter/ areas of expertise and exposure to new analytic techniques and technologies.
  - i. The initial training goal should be the completion of the Foundations of Intelligence Analysis Training program or its training equivalent and the certification of analysts.
  - ii. Adhere to the tenets in IALEIA and Global’s *Law Enforcement Analytic Standards* booklet,<sup>19</sup> particularly Standards 1–7 for analysts.
  - iii. Utilize IALEIA and Global’s *Law Enforcement Analytic Standards* and the *National Criminal Intelligence Sharing Plan* in the development of the training plan.
- b. Analysts should be provided routine opportunities to present their analytic findings and receive feedback on the quality of their written reports and oral presentations.
- c. Performance evaluations should be conducted at least annually, and the Training and Professional Development Plan updated accordingly.

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**4. Information Linking – Fusion centers shall ensure that analysts are able to understand and identify the links between terrorism-related intelligence and information related to traditional criminal activity so they can identify activities that are indicative of precursor behaviors, terrorist activities, and threats. (Guidelines 12, 13, 14, *Fusion Center Guidelines*)**

- a. Training regarding precursor activities of terrorists should be provided to analysts and relevant fusion center personnel following the standards outlined in the *Minimum Criminal Intelligence Training*

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<sup>19</sup> IALEIA and Global’s *Law Enforcement Analytic Standards* booklet is available at [http://www.it.ojp.gov/documents/law\\_enforcement\\_analytic\\_standards.pdf](http://www.it.ojp.gov/documents/law_enforcement_analytic_standards.pdf)

*Standards for Law Enforcement and Other Criminal Justice Agencies in the United States.*<sup>20</sup>

- b. Ensure that analysts receive training on the analytic process, analytical writing and briefing skills, and reporting skills.

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**5. Strategic Analysis Services – Fusion centers shall develop the capability to provide strategic analysis services for the jurisdiction served. (Guideline 14, *Fusion Center Guidelines*.)**

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**6. Open Source Analysis Capability – Fusion centers shall establish an open source analysis capability utilizing the free training and tools provided by the federal government.**

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**7. Analyst Specialization – Fusion centers should assign “accounts” or “specialties” to analysts based on the priorities of the fusion center, to allow the development of analytic depth.**

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**8. Analytical Tools – Fusion centers shall provide the necessary tools to analysts for the analysis of information and data. (Guidelines 11 and 14, *Fusion Center Guidelines*)**

- a. Fusion centers should provide all tools outlined in Global’s *Analyst Toolbox* document.
- b. Training should be provided for the identified analytic tools so that relevant personnel are proficient in their use.
- c. Analysts shall be provided with routine mechanisms to communicate with other fusion center analysts within the state or region. (Examples include “chat rooms” available via Homeland Security State and Local Intelligence Community of Interest [HSLIC] or other collaborative networks or regular phone calls.)
- d. Analysts shall have access to and understanding of where to find information sources and available expertise to support the information priorities of the fusion center.

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<sup>20</sup> The *Minimum Criminal Intelligence Training Standards for Law Enforcement and Other Criminal Justice Agencies in the United States* is accessible at [http://www.it.ojp.gov/documents/min\\_crim\\_intel\\_stand.pdf](http://www.it.ojp.gov/documents/min_crim_intel_stand.pdf).



## E. Intelligence/Information Dissemination

*“The process of effectively distributing analyzed intelligence utilizing certain protocols in the most appropriate format to those in need of the information to facilitate their accomplishment of organizational goals” – Definition of Dissemination, Criminal Intelligence Glossary.*

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### 1. **Dissemination Plan – Fusion centers shall develop a high-level dissemination plan that documents the procedures and communication mechanisms for the timely dissemination of the center’s various products to the core and ad hoc customers.**

- a. The plan should be consistent with the intrastate coordination plan. (See Section I.A.1.)
- b. Consider a variety of methods to distribute information, including Web site; e-mail; secure portal; regional and national information sharing systems such as Regional Information Sharing Systems® (RISS), Homeland Security Information Network (HSIN), Law Enforcement Online (LEO), and HS SLIC; pager; fax; telephone; video teleconferencing system; and personal contact. (Reference Guideline 6, *Fusion Center Guidelines*, for further suggestions.)

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### 2. **Reporting of Information to Other Centers – Fusion centers shall develop the processes and protocols for ensuring that relevant and vetted priority information is reported to fusion centers in other states and localities to support regional trends analysis. (Guideline 7, *Fusion Center Guidelines*)**

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### 3. **Reporting of Information to Federal Partners – Fusion centers shall develop the processes and protocols, in coordination with the FBI and DHS Office of Intelligence and Analysis (I&A), for ensuring that relevant and vetted priority information is reported to the JTF and other appropriate federal agencies to support its inclusion into national patterns and trends analysis.**

- a. In addition to the priority information processes (SAR; Alerts, Warnings, and Notifications; and Situational Awareness Reporting), share information to address national security and criminal investigations.
- b. Ensure that information provided to the federal government is shared according to the fusion center’s privacy policy. (See Section II.B.)
- c. Utilize the protocols established in the SAR report, National Information Exchange Model (NIEM), and Information Exchange Package Documents for information exchange.





## F. Reevaluation

*“Reevaluation assesses current and new information, assists in developing an awareness of possible weak areas as well as potential threats, and strives to eliminate previously identified weaknesses that have been hardened as a result of the Fusion Process. Overall, this step provides an opportunity to review the performance or effectiveness of the fusion center’s intelligence function.” – Guideline 1, Fusion Center Guidelines, p. 20.*

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- 1. Performance Evaluation – Fusion centers shall develop and implement a plan to reevaluate the center’s performance of the intelligence cycle on a regular basis.**
    - a. Develop mechanisms to receive stakeholder feedback on all parts of the intelligence cycle.
    - b. Incorporate feedback from training and exercises.
    - c. Update plans and procedures as appropriate.

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- 2. Fusion Center Processes Review – Fusion centers shall establish a process to review and, as appropriate, update the center’s information requirements, collection plan, and analytic production strategy on a regular basis and any time one of the following is received:**
    - a. New threat or vulnerability information;
    - b. New federal or state standing or ad hoc information requirements;
    - c. Federal or state alerts, warnings, or notifications or situational awareness bulletins; and/or
    - d. Updated risk assessment.



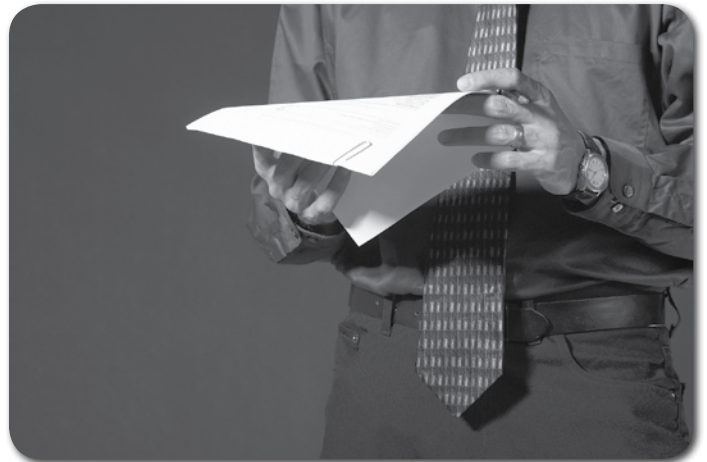
# Fusion Center Capability Areas

## II. Management and Administrative Capabilities

### A. Management/Governance

*“Fusion centers will have many demands placed on them, and it is important to have clear priorities.” – Guideline 2, Fusion Center Guidelines, p. 23.*

*“Establishing a governance structure creates a supported environment that frames the ability for the center to function and operate, assign tasks, allocate and manage resources, and develop and enforce policy.” – Guideline 3, Fusion Center Guidelines, p. 25.*



1. **Governance Structure – Fusion centers shall have a governance structure that provides appropriate representation for the jurisdictions and disciplines in the center’s area of responsibility. (Guidelines 3, 4, and 5, Fusion Center Guidelines)**
  - a. Ensure that stakeholders have the opportunity to provide input into the establishment of the governance structure. (See Section II.A.3. regarding identifying stakeholders.)
  - b. The center’s governance body should include representatives from the state and local law enforcement and public safety disciplines.
    - i. If the mission of the center is primarily law enforcement-focused, the center should include representation from the public safety

*“Examples of how to include the private sector in the governance structure:*

- *Including representatives from the Sector Coordinating Councils (SCC), the Information Sharing and Analysis Centers (ISACs), or InfraGard.*
- *Coordinating with an existing critical infrastructure or private sector advisory council that provides advice to the state or major urban area homeland security advisor, emergency manager, or law enforcement agency.*
- *Leveraging the expertise of local sector associations or coalitions.”*

discipline in at least an advisory capacity. This will enhance the center’s ability to perform key baseline capabilities, including:

- a) Receiving tips from and disseminating alerts, warnings, notifications, and relevant analytic products to public safety organizations; and
  - b) Supporting emergency management, response, and recovery planning activities based on likely threat scenarios and at-risk targets.
- c. The center’s governance body should include representatives from the federal government in at least an advisory capacity.
- i. Include local representatives from the FBI (i.e., the JTTF and FIG) and appropriate components of DHS (i.e., Protective Security Advisor, U.S. Coast Guard, Federal Emergency Management Agency [FEMA], U.S. Immigration and Customs Enforcement [ICE], United States Secret Service [USSS], etc.).
  - ii. Also consider including or coordinating with the following efforts as appropriate to the center’s mission and location: HIDTAs and the U.S. Attorney’s Office’s Anti-Terrorism Advisory Council (ATAC).
- d. Consideration should be given to include the perspectives of the private sector, where appropriate, in at least an advisory capacity.
- e. Ensure that the governance body is composed of officials with decision-making authority, capable of committing resources and personnel to the center.
- f. Ensure that bylaws for the operations of the governance structure are developed and adopted by the governance body.
- g. The governance body shall clearly define the management and command structure of the center.
- h. The governance body should develop and approve key fusion center policies, including the center’s privacy and security policies. (See Sections II.B. and C. for more information on Information Privacy Protections and Security capabilities).
- i. The governance body shall receive at least annual reports on the center’s compliance with the defined privacy and security policies.
- j. Develop communication mechanisms to provide the governance body with feedback from center management and personnel, stakeholders, and recipients of information within the state or region.

- k. The governance body should include representation from and ensure that the fusion center management coordinates with other fusion centers within the state (the designated state fusion center and/or any UASI fusion center(s)), in order to identify the roles and responsibilities of each center in carrying out the Fusion Process (gathering, processing, analyzing, and disseminating of terrorism, homeland security, and law enforcement information) on a statewide basis.
- l. Review the governance structure and membership at regular intervals to determine whether additional organizations or disciplines should be included based on the current risk assessment and the fusion center’s mission.

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## **2. Mission Statement – Fusion centers shall have a defined mission statement that is clear and concise and conveys the purpose, priority, and roles of the center. (Guideline 2, Fusion Center Guidelines)**

- a. The governance body shall develop and adopt the mission statement, unless it has been predefined by law or executive order.
- b. In defining the mission statement, consideration should be given to the risks identified in the center’s geographic area of responsibility.
- c. In defining the mission statement, the governance body should consider using an all-crimes approach and/or an all-hazards approach (see Glossary for definition of these terms), recognizing that precursor crimes or incidents may have national security implications.
  - i. If the governance body determines that the center will incorporate certain public safety disciplines into the fusion center’s mission and/or determines the center will use an all-hazards approach, centers shall adhere to the forthcoming appendices to this document, which will outline the baseline capabilities for incorporating the following disciplines into the center:
    - a) Fire Service
    - b) Public Health
    - c) Critical Infrastructure and Key Resources
  - ii. If the fusion center utilizes an all-crimes approach, the center should liaise with applicable agency and multijurisdictional task forces and intelligence units, including:



- a) Gang task forces and intelligence units, as well as the National Gang Intelligence Center (NGIC)<sup>21</sup>
  - b) Narcotic-related task forces and intelligence units, as well as the National Drug Intelligence Center (NDIC)
  - c) Violent crime/fugitive task forces and intelligence units
  - d) Economic crime task forces and intelligence units
- d. The governance body shall provide oversight to ensure that the mission statement, the most recent risk assessment, and the identified customer needs inform the Planning and Requirements Development process. (See Section I.A., particularly the prioritizing of fusion center functions and tasks.)

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**3. Collaborative Environment – Fusion centers shall identify the organizations that represent their core (permanent) and ad hoc stakeholders and the roles and responsibilities of each stakeholder and develop mechanisms and processes to facilitate a collaborative environment with these stakeholders. (Guidelines 4 and 5, *Fusion Center Guidelines*)**

- a. Review the most recent risk assessment, if available, and identify relevant stakeholders that should be included to address the highest identified risks.
- b. Include the identification of entities and individuals responsible for planning, developing, and implementing prevention, protection, response, and consequence-management efforts at the state, local, and tribal levels.
- c. When identifying the roles and responsibilities of core and ad hoc stakeholders, identify their needs as a customer of the center, as well as their contributions to the center (for example: providing resources such as funding, personnel, and access to expertise or providing access to information or databases).
- d. After a governance structure has been established and a mission statement approved, review the identified stakeholders and their roles and responsibilities to determine whether any

additional organizations should be included or whether roles and responsibilities need to be revised based on the center’s defined mission.

- e. Develop standard processes and mechanisms to facilitate communication between the stakeholders and center personnel, to include in-person meetings and briefings on operational and administrative matters, as needed.
- f. Develop and implement a Memorandum of Understanding (MOU) or Agreement (MOA) and, if needed, nondisclosure agreements (NDA) between the center and each stakeholder who intends to participate in or partner with the fusion center. (Review Guideline 5 for further details.)
- g. Ensure that appropriate legal authorities review the agreements before signature.
- h. Identify the organizations with executive and legislative oversight and funding responsibilities, and provide routine briefings on the establishment and operations of the center.



**Recommended Resources**

- *Refer to Appendix C: Functional Categories, Fusion Center Guidelines, for a list of organizations, disciplines, and functions to consider including as stakeholders.*
- *See Guidelines 4 and 5, Fusion Center Guidelines, for issues to consider when developing MOUs, MOAs, and NDAs.*

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<sup>21</sup> Those fusion centers utilizing an all-crimes approach that includes gang-related criminal intelligence are encouraged to consult Global’s *Guidelines for Establishing and Operating Gang Intelligence Units and Task Forces* to assist in the coordination and/or implementation of their efforts.

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**4. Policies and Procedures Manual – Fusion centers shall develop a policies and procedures manual for center operations. (Guideline 15, *Fusion Center Guidelines*)**

- a. Include the center’s mission, goals, policies, procedures, rules, and regulations.
- b. Include the center’s privacy policy and its physical and information security policies within the manual, which should include guidance on the use of information specifically for criminal investigations and compliance with local and state confidentiality laws and how to safeguard information.
- c. Outline the roles and responsibilities of all entities involved in the center and their function.
- d. Outline the day-to-day management and command structure of the center.
- e. Include in the manual the relevant processes developed in accordance with the Planning and Requirements Development capabilities (Section I.A.), to include outlining how and from whom intelligence requirements are developed.
- f. Implement an annual review of center directives, and purge or revise outdated policies and procedures.

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**5. Center Performance – Fusion centers shall define expectations, measure performance, and determine effectiveness of their operations. (Guideline 16, *Fusion Center Guidelines*)**

- a. Develop outputs and outcomes that measure expected performance of identified mission, goals, and objectives.
- b. Coordinate the development and review of measures and performance with participating agencies.
- c. Create internal measures pertaining to administrative matters and external measures to evaluate the performance of the intelligence cycle. (See Section I.F., Reevaluation.)
- d. Utilize participation in a regular cycle of exercises to evaluate capabilities and assess performance. (See Section I.A.10.)

- e. To the extent possible, leverage systems and databases to statistically capture, store, and report performance.
- f. Publicize performance to the public, policymakers, and customers.

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**6. Outreach – Fusion centers shall establish a policy to govern official outreach and communications with leaders and policymakers, the public sector, the private sector, the media, and citizens and develop a plan to enhance awareness of the fusion center’s purpose, mission, and functions. (Guidelines 12 and 13, *Fusion Center Guidelines*)**

- a. Outreach efforts should include information about the center’s privacy policy, the Fusion Process, and the types of information that should be reported to law enforcement or the fusion center and how to do so.
- b. If there is more than one fusion center operating within the state, the centers should jointly determine how to communicate the value, roles, and responsibilities of each of the centers, consistent with the plan required by Section I.A.1.
- c. Develop a process to liaise with and educate elected officials and community leadership to promote awareness of center operations.
- d. Train personnel on communications policy.



## B. Information Privacy Protections<sup>22</sup>

*“Develop, publish, and adhere to a privacy and civil liberties policy.” – Guideline 8, Fusion Center Guidelines.*

*“Protecting the rights of Americans is a core facet of our information sharing efforts. While we must zealously protect our Nation from the real and continuing threat of terrorist attacks, we must just as zealously protect the information privacy rights and other legal rights of Americans. With proper planning we can have both enhanced privacy protections and increased information sharing – and in fact, we must achieve this balance at all levels of government, in order to maintain the trust of the American people.” – National Strategy for Information Sharing, p. 27.*

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<sup>22</sup> These capabilities were developed to ensure that the privacy policies that fusion centers develop are at least as comprehensive as the ISE Privacy Guidelines (see the Methodology section for further background). The achievement of these capabilities will result in a fusion center privacy protection policy that meets the Section 12.d. requirement of the ISE Privacy Guidelines.

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1. **Privacy Official – Fusion centers shall designate an individual to serve as the privacy official and/or establish a privacy committee to be responsible for coordinating the development, implementation, maintenance, and oversight of the privacy protection policies and procedures. (ISE Privacy Guidelines – Section 12)**
    - a. If the privacy official is not an attorney, the fusion center shall have access to legal counsel to help clarify laws, rules, regulations, and statutes governing the collection, maintenance, and dissemination of information and assist with the development of policies, procedures, guidelines, and operation manuals.
    - b. The privacy official or committee should review all other fusion center policies and procedures to ensure consistency with the privacy policy.
    - c. The privacy official or committee shall coordinate with the center’s designated security officer to ensure that security measures provide the proper protection to information in compliance with all applicable laws and the center’s privacy policy protection policies.
    - d. Identify stakeholders to include nongovernment organizations, advocates, the media, and others that are essential to the development and implementation of the privacy policy.
      - i. To the extent possible, fusion centers should use existing outreach mechanisms, such as a state or local government’s privacy advisory committee, or outreach conducted by the state or local law enforcement or homeland security organizations to facilitate engagement with the community and privacy advocacy groups.

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  2. **Privacy Policy Development – In developing the privacy policy, fusion centers shall:**
    - a. Develop guidance statements that include the vision, mission, values statements, goals, and objectives for the creation of the privacy policy. (ISE Privacy Guidelines—Section 3)
    - b. Develop a project charter that will include an introduction, background, membership, and the previously drafted guidance statements.
    - c. Analyze the flow of information and the legal environment for the protection of privacy

to identify what gaps exist between existing technological and legal requirements.

- i. Information flow analysis helps determine what personally identifiable information the agency collects, uses, maintains, and disseminates. (ISE Privacy Guidelines—Section 4)
  - a) Identify the fusion center’s data holdings and establish mechanisms to ensure their review before protected information is shared through the ISE.
  - b) Establish mechanisms to identify the nature of protected information so it can be handled in accordance with applicable legal requirements.
- ii. All policies and procedures are compliant with the U.S. Constitution, the state’s constitution, applicable laws, and executive orders. (ISE Privacy Guidelines—Section 2)
  - a) Conduct a rules assessment and adopt policies and procedures requiring the fusion center to seek, receive, or retain only the protected information which it is legally permitted to seek, receive, or retain and which was lawfully obtained.
  - b) Establish a process to allow for the ongoing identification and assessment of new and/or revised laws, court decisions, and policies that impact issues related to privacy, civil rights, and civil liberties.
  - c) If an issue posing a significant risk to privacy is identified, develop policy and procedural protections.
- d. Perform a gap analysis to identify legal and technological gaps.
- e. Vet the privacy protection policy internally and externally during its development by soliciting commentary and buy-in from stakeholders and agency constituents prior to finalizing the policy.
- f. Formally adopt a privacy protection policy to guide the collection, use, maintenance, and dissemination of personal information. (ISE Privacy Guidelines—Section 12.d.)
  - i. Obtain formal adoption of the policy by the project team, privacy and civil liberties officer, the fusion center’s governance structure and, if applicable, any legislative body.

**use of information) are conducted in a manner that protects the privacy, civil liberties, and other legal rights of individuals protected by applicable law, while ensuring the security of the information shared. The policy shall cover all center activities and shall be at least as comprehensive as the requirements set forth in the Information Sharing Environment Privacy Guidelines and consistent with 28 CFR Part 23 and DOJ’s *Global Privacy and Civil Liberties Policy Development Guide and Implementation Templates.***

- a. The privacy protection policy shall include procedures to ensure data quality. (ISE Privacy Guidelines—Section 5)
  - i. Establish accuracy procedures to ensure that information is accurate, and prevent, identify, and correct errors regarding (1) protected information and (2) any erroneous sharing of information in the ISE.
  - ii. Establish and implement a process to provide written error notice of any potential error or deficiency to the privacy official of the source agency when it is determined that the protected information received may be erroneous, includes incorrectly merged information, or lacks adequate context such that the rights of the individual may be affected.
  - iii. Adopt and implement the ISE policies and procedures for merger of information, investigation, and correction/deletion/nonuse of erroneous or deficient information, and retain only information that is relevant and timely for its appropriate use.
- b. Establish criteria for types of information that partners can submit to the center.
- c. Include provisions for the use of privately held data systems information and commercially obtained data.
- d. Review the center’s security policies and ensure that they are sufficient for providing appropriate physical, technical, and administrative measures to safeguard protected information. (See Section II.C. and ISE Privacy Guidelines—Section 6.)
  - i. Ensure that the center’s privacy and civil liberties policy articulates a process for

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**3. Privacy Protections – Fusion centers shall develop and implement a privacy protection policy that ensures that the center’s activities (collection/gathering, analysis, dissemination, storage, and**



responding to and addressing security breaches, in coordination with the center’s designated security officer. (See Section II.C.2.)

- e. The privacy protection policy shall include documentation on how the policies and procedures meet the following ISE Privacy Guidelines requirements (ISE Privacy Guidelines—Section 12):
  - i. Fusion centers shall adopt policies and procedures limiting the sharing of information through the ISE to terrorism, homeland security, and law enforcement (terrorism-related) information, as defined for the ISE (see Glossary) and ensure that access to and use of protected information<sup>23</sup> are consistent with the authorized purpose of the ISE.<sup>24</sup> (ISE Privacy Guidelines—Section 3)
  - ii. Fusion centers shall identify protected information to be shared through the ISE.

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#### **4. Privacy Policy Outreach – Fusion centers shall implement necessary outreach and training for the execution, training, and technology aspects of the privacy protection policy. (ISE Privacy Guidelines – Section 9)**

- a. Ensure that privacy protections are implemented through training, business process changes, and system designs.
- b. Provide ongoing training to center personnel and any other liaison partners on the fusion center’s privacy policies and procedures. Training should be tailored to the audience (management, analysts, collectors, consumers of center products, etc.) but, at a minimum, should include:
  - i. An overview of the policies and procedures for collection, use, disclosure of protected information, data quality, accountability, enforcement, auditing, and redress.
  - ii. How to report violations of the privacy policy.

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<sup>23</sup> The term “protected information” is defined in the ISE Privacy Guidelines, Section 1.b., for both non-intelligence agencies and members of the Intelligence Community. For both federal non-intelligence agencies and SLT agencies, it means, at a minimum, personally identifiable information about U.S. citizens and lawful permanent residents. States are free to extend this definition to other classes of persons or to all persons (including organizations).

<sup>24</sup> The authorized purpose of the ISE is to share terrorism-related information in a lawful manner that protects the privacy and other legal rights of Americans between and among authorized recipients of such information. (ISE Privacy Guidelines—Section 3)

- iii. An overview of sanctions or enforcement mechanisms for failure to comply with the privacy policy.

- c. Consider and implement appropriate privacy-enhancing technologies.
- d. Fusion centers shall facilitate public awareness of their privacy protection policy by making it available to the public or otherwise facilitating appropriate public awareness. (ISE Privacy Guidelines—Section 10)

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#### **5. Privacy Policy Accountability – Fusion centers shall ensure accountability with regard to the privacy protection policy and identify evaluation methods for auditing and monitoring the implementation of the privacy policy and processes to permit individual redress and incorporate revisions and updates identified through the evaluation and monitoring as well as redress processes. (ISE Privacy Guidelines – Section 7)**

- a. Fusion centers shall develop or modify policies, procedures, and mechanisms for accountability, enforcement, and auditing of the center’s privacy protection. (ISE Privacy Guidelines—Section 7)
  - i. Require reporting, investigating, and responding to violations of the center’s privacy protection policy.
  - ii. Encourage cooperation with audits and reviews.
  - iii. Provide for receipt of error reports by the agency privacy official or committee. (See Section B.2., above.)
  - iv. Implement adequate review and audit mechanisms to verify the center’s compliance with its privacy protection policy.
  - v. Incorporate the core elements of the ISE Privacy Guidelines’ Accountability, Enforcement, and Audit guidance into the fusion center ISE privacy policy.
- b. Fusion centers shall develop internal procedures for redress—particularly to address complaints from protected persons regarding personally identifiable information about them under fusion center control. (ISE Privacy Guidelines—Section 8)
  - i. Incorporate the core elements of the ISE Privacy Guidelines Redress guidance into the fusion center ISE privacy protection policy.

- c. Fusion centers should utilize the LEIU *Audit Checklist for the Criminal Intelligence Function* when reviewing their “criminal intelligence function to demonstrate their commitment to protecting the constitutional rights and the privacy of individuals, while ensuring the operational effectiveness of their criminal intelligence function.”<sup>25</sup>



## C. Security

*“Ensure appropriate security measures are in place for the facility, data, and personnel.”*

*– Guideline 9, Fusion Center Guidelines.*

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- 1. Security Measures – Fusion centers shall establish appropriate security measures, policies, and procedures for the center’s facility (physical security), information, systems, and personnel and visitors and document them in a security plan consistent with the NCISP, the *Fusion Center Guidelines*, *Global’s Applying Security Practices to Justice Information Sharing* document, and 28 CFR Part 23. (Guidelines 8, 9, and 10, *Fusion Center Guidelines*)**

- 
- 2. Security Officer – Fusion centers shall designate an individual to serve as the security officer responsible for coordinating the development, implementation, maintenance, and oversight of the security plan. (Guideline 9, *Fusion Center Guidelines*)**

- a. For fusion centers colocated with other organizations (e.g., HIDTA, FBI), the fusion center can opt to use the other organization’s security officer, provided that the officer is willing to perform the capabilities required of the fusion center security officer. If a colocated organization’s security officer cannot or will not perform all of the functions, the fusion center should designate an individual to partner with the other organization’s security officer to ensure that each of the baseline capabilities for security is met.
- b. Ensure that the designated security officer has at least some exposure to or experience with physical, information, systems, and/or personnel security.
- c. Ensure that the security officer receives routine training in the areas of physical, information, systems, and personnel security, to include the relevant DHS- or FBI-required training if the fusion center intends to establish and maintain a certified storage environment at the Secret level.
- d. The security officer should:
- Conduct security training and awareness on the center’s overall security plan and the center’s security measures, policies, and procedures.
  - Provide regular updates to the center’s management and the governance body on compliance with the security plan.
  - Coordinate with federal security officials to the extent needed for facilitating federal security clearances for personnel, facility security certifications, and access to federal information systems. (Reference Section II.E. regarding security clearances for personnel.)
  - Establish and coordinate the processes used to conduct background checks on all center personnel prior to commencement of duties. (Reference Section II.D.2.)
  - Receive, document, and investigate reports of security violations according to the center’s security policies.

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25 LEIU *Audit Checklist for the Criminal Intelligence Function*, p. i.

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**3. Securing Information – Fusion centers’ security policies shall address the ability to collect, store, and share classified, controlled unclassified, and unclassified information to address homeland security and criminal investigations. (Guidelines 7 and 14, Fusion Center Guidelines)**

- a. In coordination with the appropriate federal security official, develop a process to receive, handle, store, and disseminate Secret-level information, to include establishing and maintaining a certified storage environment<sup>26</sup> if one is not readily available.<sup>27</sup>
- b. Fusion centers shall follow the regulations and processes for security management of the certified storage environment, as required by the federal security manager (i.e., DHS or FBI), to include, but not limited to:
  - i. Certification of computers and other electronic devices for classified information.
  - ii. Storage of both paper and electronic media containing classified information.
  - iii. Level of security clearance required to access the facility without escort.
  - iv. Processes for certifying the security clearances of individuals assigned to or visiting the facility.
  - v. Rules for access with escort for individuals not holding the requisite level of security clearance.
  - vi. Processes for derivative classification and marking of classified information created within the facility.
  - vii. Processes for dealing with any security incidents or violations that may take place.
- c. In coordination with the appropriate federal agencies, establish a policy to receive, handle, store, and disseminate federal information that is provided under the Controlled Unclassified Information Framework. (See Glossary.)

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<sup>26</sup> Certified storage environments will either be DHS-certified Open Storage Secret or the equivalent FBI-certified closed storage environment. NOTE: The Open Storage authorization granted by DHS applies only to computer systems and not to document storage.

<sup>27</sup> DHS and the FBI have agreed to allocate the responsibilities for the following support to fusion centers to minimize redundancy: establishing operating classified work environments, getting personnel cleared to be able to access classified information, providing ways to communicate with the federal government, and other technical assistance. See the most recent version of the Federal Coordinated Support Plan for further information regarding these efforts.

- d. Ensure that security policies allow for timely distribution of the center’s intelligence products to the center’s constituency base, which may include daily, weekly, and monthly analysis reports and assessments; advisories; alerts; warnings; executive reports; briefings; etc.
- e. If a fusion center has chosen to incorporate the CIKR discipline, it shall have the ability to collect, store, and share Chemical-terrorism Vulnerability Information (CVI) (in accordance with 6 CFR Part 27), Safeguards Information (SGI), Sensitive Security Information (SSI) (in accordance with 49 CFR Part 1520), and Protected Critical Infrastructure Information (PCII) in accordance with the PCII Final Rule.
- f. Consider whether a state law for security and confidentiality of public and private sector data is needed.
- g. Adopt established, accredited models for secure horizontal and vertical information and intelligence sharing (e.g., RISS, LEO, HSIN, OneDOJ).
- h. Ensure that controls and safeguards for data access to all appropriate systems are in place.



## **D. Personnel and Training**

*“Achieve a diversified representation of personnel based on the needs and functions of the center.” – Guideline 11, Fusion Center Guidelines.*

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- 1. Staffing Plan – Fusion center managers should develop a staffing plan based on the center’s mission and goals and update as needed based on the current**

**information requirements, collection strategy, and analytic production plan. (Guideline 11, *Fusion Center Guidelines*)**

- a. Managers should determine which positions require access to classified national security information based on the roles and responsibilities of the position and, through the center's security officer, make the request for national security clearances to the federal security manager.<sup>28</sup>
- b. Where appropriate, make clear when employment is contingent upon the applicant's ability to meet the requirements necessary for receiving national security clearances.
- c. Adhere to the education and hiring standards for analysts in IALEIA and Global's *Law Enforcement Analytic Standards* booklet.<sup>29</sup>
- d. The staffing plan should address the following support of functions: administration, information technology, communications, graphics, designated security officer (Section II.C.), and designated privacy official (Section II.B.).
- e. The staffing plan should address the center's requirements to access legal counsel to help clarify laws, rules, regulations, and statutes governing the collection, maintenance, and dissemination of information and liaison with the development of policies, procedures, guidelines, and operation manuals. (Also required by Section II.B.2.a.)

**training needed to address the center's mission and current information requirements. (Guidelines 12 and 13, *Fusion Center Guidelines*)**

- a. Reference each capability grouping for further details on minimum training requirements for particular capabilities (e.g., Analysis and Production, Management and Governance, Information Privacy Protections, and Security).
- b. At a minimum, all center personnel should be trained on:
  - i. The intelligence process and types of intelligence, crime-specific training, and how these factors contribute to implementation of the center's collection plan, through the use of the NCISP training objectives and the *Minimum Criminal Intelligence Training Standards for Law Enforcement and Other Criminal Justice Agencies in the United States*.
  - ii. Roles and responsibilities of intelligence and analytical functions in accordance with NIMS and ICS.
  - iii. The center's privacy and security policies and protocols.
- c. Training should be provided to all fusion center personnel upon assignment to the center and include regular retraining.
  - i. All fusion center personnel—including analysts, intelligence officers, and non-law enforcement personnel assigned to the center (corrections, fire services, public health, private sector, and others)—assigned both full-time, part-time, and on an "as needed" basis should be included in the training plan.
- d. See Guidelines 12 and 13, *Fusion Center Guidelines*, for additional information.

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**2. Background Checks – Ensure that background checks are conducted on center personnel (whether private or public) prior to the commencement of duties. (NCISP Recommendation 27 and Guideline 9, *Fusion Center Guidelines*)**

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**3. Training Plan – Fusion centers shall develop and document a training plan to ensure that personnel and partners understand the intelligence process and the fusion center's mission, functions, plans, and procedures. The plan shall identify the basic training needs of all center personnel and identify specialized**

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<sup>28</sup> See Footnote 21.

<sup>29</sup> IALEIA and Global's *Law Enforcement Analytic Standards* booklet is available at [http://www.it.ojp.gov/documents/law\\_enforcement\\_analytic\\_standards.pdf](http://www.it.ojp.gov/documents/law_enforcement_analytic_standards.pdf).





## E. Information Technology/ Communications Infrastructure, Systems, Equipment, Facility, and Physical Infrastructure

*“Integrate technology, systems, and people.”*  
– Guideline 10, *Fusion Center Guidelines*.

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### 1. Business Processes Relating to Information Technology – Fusion centers shall identify and define their business processes prior to purchasing or developing information technology, communications infrastructure, systems, or equipment to handle those processes.

- a. Utilize the methodology and templates for analyzing the fusion center’s business architecture provided by the Global document *Fusion Center Business Architecture*.

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### 2. Information Exchange within the Center – Fusion centers shall establish an environment in which center personnel and partners can seamlessly communicate – effectively and efficiently exchanging information in a manner consistent with the business processes and policies of the fusion center. (Guidelines 6, 7, and 10, *Fusion Center Guidelines*)

- a. Ensure that appropriate personnel are colocated and/or virtually integrated within the center.
- b. Leverage databases, systems, and networks available from participating entities to maximize information sharing, and plan for future connectivity to other federal, state, local, and tribal systems under development.
- c. Utilize the latest version of NIEM for information exchange.
- d. Maintain a repository of information to be made available to the Information Sharing Environment, which will be a component of ISE Shared Spaces.<sup>30</sup>

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### 3. Communications Plan – Fusion centers shall have a plan to ensure safe, secure, and reliable communications, including policies and audit capabilities. (Guideline 18, *Fusion Center Guidelines*)

- a. Identify how fusion center partners will communicate during an incident or emergency. Ensure that existing communications capabilities are interoperable.
- b. Incorporate current communications plans utilized by law enforcement and emergency services.
- c. Ensure that redundancy is incorporated into the plan.
- d. Test the communications plan on a routine basis to ensure operability and maintenance of current contact information for fusion center participants.
- e. See Guideline 18 for recommended aspects of the communications plan.

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### 4. Contingency and Continuity-of- Operations Plans – Fusion centers shall have contingency and continuity-of- operations plans to ensure sustained execution of mission-critical processes and information technology systems during an event that causes these systems to fail and, if necessary, to ensure performance of essential functions at an alternate location during an emergency. (Guidelines 9, 10, and 18, *Fusion Center Guidelines*)

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<sup>30</sup> See Footnote 14 or the Glossary for more information on the ISE Shared Spaces concept.

- a. Conduct a threat/vulnerability assessment to determine risk to the facility, data, and personnel.
- b. Develop the plans in coordination with emergency managers and other appropriate response and recovery officials. (See Section I.A.8.)
- c. Clearly define personnel roles and responsibilities during emergency situations.
- d. Ensure that contact information for the constituency is up to date.
- e. Ensure redundancy of infrastructure, resources, personnel, communications, and systems.
- f. Establish an emergency power source.
- g. Conduct continuity-of-operations exercises to ensure the operational resiliency of the center.
- h. Reference Guidelines 9, 10, and 18 for recommended aspects for developing contingency and continuity-of-operations plans.

- a. Base funding on center priorities identified by center leadership.
- b. Identify capability gaps and develop an investment strategy and resource plan to achieve the baseline capabilities.
- c. Establish an operational budget.
- d. Leverage existing resources/funding from participating entities and identify supplemental funding sources.
- e. Ensure that resource commitment of participating entities is addressed in the MOU.
- f. Identify return on investment for fusion center partners.
- g. Engage executive and legislative officials who have oversight and funding responsibilities, and provide routine briefings on the establishment, operations, and budgetary needs of the center.
- h. Ensure that the investment strategy is communicated to and coordinated with the state homeland security advisor (HSA) and State Administrative Agency (SAA) to ensure coordination and support of the state's homeland security strategy and any respective state and/or urban area grant program investment justifications.



## F. Funding

*“Establish and maintain the center based on funding availability and sustainability.”*

*– Guideline 17, Fusion Center Guidelines.*

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- 1. Investment Strategy – Fusion centers shall develop an investment strategy to achieve and sustain baseline capabilities for the center’s operations, including a delineation of current and recommended future federal versus nonfederal costs. (Guideline 17, Fusion Center Guidelines)**

# Appendix 1

## 2011 Assessment Attributes and Scoring

Individual fusion center scores are calculated using the validated Assessment data from 50 attributes aligned to the four Critical Operational Capabilities (COC) and four Enabling Capabilities (EC). Each COC is worth 20 points, and the ECs combined are worth 20 points (i.e., 5 points each) for a total of 100 points. Since attributes are not equally distributed across the COCs and ECs, the value of each attribute between capabilities varies. Each attribute is worth a specific value, and an individual fusion center is credited the value once it has successfully achieved an attribute. Out of 50 attributes, 30 attributes are aligned to the COCs, and 20 attributes are aligned to the ECs. Below is a list of attributes organized according to COCs and ECs.

### COC 1: Receive

5 Attributes

Fusion Center Attributes	
1.	Fusion center has approved plans, policies, or standard operating procedures (SOP) for the receipt of federally generated threat information
2.	Fusion center has a plan, policy, or SOP that addresses the receipt and handling of National Terrorism Advisory System (NTAS) alerts
3.	Fusion center staff with a need to access classified information are cleared to at least the Secret level
4.	Fusion center has access to sensitive but unclassified information systems (e.g., Homeland Security Information Network [HSIN], Law Enforcement Online [LEO], Homeland Security State and Local Community of Interest [HS SLIC])
5.	Fusion center has access to the Homeland Secure Data Network (HSDN) and/or the Federal Bureau of Investigation Network (FBINet) (i.e., within fusion center or on-site)

## COC 2: Analyze

11 Attributes

Fusion Center Attributes	
1.	Fusion center has approved plans, policies, or SOPs for assessing the local implications of time-sensitive and emerging threat information
2.	Fusion center has a documented analytic production plan
3.	Fusion center has access to multidisciplinary subject matter experts (SME) within its area of responsibility (AOR) to inform analytic production
4.	Fusion center has access to multidisciplinary SMEs outside of its state to inform analytic production, as required
5.	Fusion center has a process to provide the U.S. Department of Homeland Security (DHS) with information and/or intelligence that offers a local context to threat information in the event of an NTAS-related alert
6.	Fusion center conducts threat assessments within its AOR
7.	Fusion center contributes to or conducts a statewide risk assessment (threat, vulnerability, and consequence analysis)
8.	Fusion center contributes to national-level risk assessments
9.	Fusion center has a customer satisfaction mechanism for its analytic products
10.	Fusion center evaluates the effectiveness of the customer feedback mechanism on an annual basis
11.	All fusion center analysts have received at least 20 hours of issue-specific training in the past 12 months

## COC 3: Disseminate

6 Attributes

Fusion Center Attributes	
1.	Fusion center has approved plans, policies, or SOPs governing the procedures for the timely dissemination of products to customers within its AOR
2.	Fusion center has a dissemination matrix
3.	Fusion center has a primary sensitive but unclassified mechanism to disseminate time-sensitive information and products
4.	Fusion center has a plan, policy, or SOP that addresses dissemination of NTAS alerts to stakeholders within its AOR
5.	Fusion center has a mechanism to disseminate NTAS alerts
6.	Fusion center has a process for verifying the delivery of products to intended customers



Fusion Center Attributes	
1.	Fusion center has an approved Nationwide Suspicious Activity Reporting (SAR) Initiative (NSI) site plan or an approved plan, policy, or SOP governing the gathering of locally generated information
2.	Fusion center has a tips and leads process
3.	Fusion center has a process for identifying and managing information needs
4.	Fusion center has a process for managing the gathering of locally generated information to satisfy the fusion center's information needs
5.	Fusion center has approved Standing Information Needs (SIN)
6.	Fusion center has an annual process to review and refresh SINs
7.	Fusion center has a request for information (RFI) management process
8.	Fusion center has a process to inform DHS of protective measures implemented within its AOR in response to an NTAS alert

Fusion Center Attributes	
1.	Fusion center has a privacy policy determined by DHS to be at least as comprehensive as the <i>Information Sharing Environment (ISE) Privacy Guidelines</i>
2.	Fusion center provides formal and standardized training to all personnel on the fusion center's privacy policy annually
3.	Fusion center's policies, processes, and mechanisms for receiving, cataloging, and retaining information (provided to the center) comply with 28 CFR Part 23
4.	Fusion center trains all personnel who access criminal intelligence systems in 28 CFR Part 23
5.	Fusion center has identified a P/CRCL Officer for the center
6.	Fusion center has a privacy policy outreach plan

## EC 2: Sustainment Strategy

5 Attributes

Fusion Center Attributes	
1.	Fusion center has an approved strategic plan
2.	Fusion center conducts an annual financial audit
3.	Fusion center completes an annual operational cost assessment
4.	Fusion center participates in an exercise at least once a year
5.	Fusion center measures its performance and determines the effectiveness of its operations relative to expectations it or its governing entity has defined

## EC 3: Communications and Outreach

3 Attributes

Fusion Center Attributes	
1.	Fusion center has a designated Public Information Officer or Public Affairs Officer
2.	Fusion center has an approved communications plan
3.	Fusion center has a process for capturing success stories

## EC 4: Security

6 Attributes

Fusion Center Attributes	
1.	Fusion center has an approved security plan that addresses personnel, physical, and information security
2.	Fusion center trains all personnel on the fusion center's security plan
3.	Fusion center has a designated Security Liaison
4.	Fusion center's Security Liaison (or other organization's Security Liaison) completes annual training
5.	Fusion center has access to the Central Verification System (CVS)
6.	Fusion center's Security Liaison (or other organization's Security Liaison) is trained on how to use CVS