



Consolidate Domestic Intelligence Entities Under the FBI

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KEY POINTS

- Federal, state, and local law enforcement gather and share information and intelligence using two often-siloed entities: the FBI's Joint Terrorism Task Forces (JTTFs) and fusion centers supported by the Department of Homeland Security.
- This divided structure is inefficient and runs the risk of not connecting key information and intelligence to other data to help detect and prevent a terrorist attack. It has essentially recreated the wall between intelligence and investigation that contributed to America's failure to detect and stop the 9/11 attack.
- Fusion centers provide little more than duplicative and redundant information or intelligence and have rarely, if ever, provided meaningful intelligence of a potential terrorist attack.
- Eliminating fusion centers or merging them into JTTFs would strengthen state and local information and intelligence activities.

After the September 11 terrorist attack, the federal government responded by reforming existing programs and adding new entities and activities. This new "homeland security" apparatus was born under the duress of a crisis, with the best of intentions. Knowing our policymakers rarely get it exactly right, we should occasionally review their decisions and make reforms when necessary. In our domestic counterterrorism activities, getting it right is critical.

As the cliché notes, the law enforcement entities charged with protecting us from terrorists must succeed all of the time because the terrorists need only succeed once. Those difficult odds should not be made longer by trapping law enforcement in a fragmented, inefficient, and costly multiheaded system. Yet today, federal, state, and local law enforcement entities outside of Washington are doing the work to gather, share, and analyze

information and intelligence within several, often siloed structures.

The two primary structures are the Joint Terrorism Task Forces (JTTF) of the US Department of Justice (DOJ) and fusion centers of the US Department of Homeland Security (DHS). The bulk of the activity occurs in the JTTFs, while the fusion centers have struggled to show meaningful utility in the information and intelligence arena. Because these two entities compete for finite resources and run the risk of inadvertently failing to share information or intelligence that could help prevent a terrorist attack, DHS and DOJ should merge the fusion centers into the older, more established and active JTTFs.

By consolidating all federal, state, and local information and intelligence activities into one entity, we would give our law enforcement

community the best opportunities to detect and to prevent terrorist attacks.

Background

As early as 1980, DOJ under the auspices of the Federal Bureau of Investigation established JTTFs at the state and local level to work with law enforcement. JTTFs are “small cells of highly trained, locally based, passionately committed investigators, analysts, linguists, SWAT experts, and other specialists from dozens of US law enforcement and intelligence agencies.”¹ JTTF members collaboratively investigate possible terrorist activities and then serve as the primary responders if an incident occurs.

As the 9/11 Commission Report noted, a JTTF was “first tried out in New York City in 1980 in response to a spate of incidents involving domestic terrorist organizations.”² The New York City JTTF brought together federal, state, and local law enforcement personnel after the first World Trade Center bombing in 1993. In implicit recognition of the joint aspect of the JTTF, the New York Police Department (NYPD) and the FBI were equally represented on the task force.

With more than 100 JTTFs around the United States, “the JTTFs have substantially contributed to improved information sharing and operational capabilities at the state and municipal levels.”³ More than 5,000 members from federal, state, and local law enforcement belong to the JTTFs, and there are JTTFs in all 28 of the higher-risk urban areas. These higher-risk urban areas have also received homeland security grants from DHS. Such high-level connections between the FBI and state and local law enforcement make a strong argument that the FBI should be the federal lead on counterterrorism efforts. In fact, under federal law, the FBI is the “lead agency in domestic intelligence collection.”⁴ With the rise of DHS and its control of homeland security grants, states and localities are caught between their long-term relationships with the FBI and their need for new DHS funding.

In the terrorist’s top target of New York City, the NYPD has assigned more than 100 detectives to the JTTF, which is more manpower than most, if not all, other law enforcement intelligence units in the United States. As NYPD Deputy Commissioner for Counterterrorism Richard Falkenrath noted: “The only established information-sharing mechanism

with real coherence and consistent value is the sharing of usually case-specific, classified information with the Joint Terrorism Task Force.”⁵

However, with the creation of DHS in 2003, another entity with equity in state and local information sharing and intelligence arrived on the scene. As expected, DHS moved aggressively to assert itself in the debate over which federal entity “owned” state and local information sharing and intelligence. DHS used the creation of fusion centers as its primary tool for injecting itself into state and local information-sharing and intelligence efforts. Yet its effort is weak at best according to expert opinion.

Specifically, Deputy Commissioner Falkenrath stated:

The utility of the Department of Homeland Security’s information-sharing initiatives is severely limited by DHS’s apparent inability to treat various state and local agencies differently according to their role, their sophistication, their potential contribution to the national mission of combating terrorism, and their size and power. Consequently, NYPD’s collaboration with other members of the Intelligence Community and with foreign law enforcement and intelligence agencies is substantially more valuable than is our collaboration with DHS.⁶

Prior to the creation of the first DHS fusion center, a group of federal, local, and state experts warned: “Information needs to rest in a single place, and the JTTF provides that forum. They are concerned that a different or complementary forum might undermine the JTTFs, provide confusion and redundancy, and further drain limited resources.”⁷ DHS ignored this prophetic warning. Because it controlled billions of dollars in state and local terrorism grants, it initially inserted language into the grant guidance in 2005 promoting the “hiring of contractors/consultants . . . for participation in information/intelligence sharing groups or intelligence fusion centers.”⁸

While some inside DHS argued against an interagency fight with DOJ and the FBI over state and local information and intelligence activities due to the existence and prevalence of JTTFs, common sense lost out to Potomac Fever. By 2007,

Table 1. Fusion Centers and JTTFs

Fusion Centers

Managed by state and local authorities, and include federal, SLTT [state, local, tribal, and territorial], and private sector partners from multiple disciplines (including law enforcement, public safety, fire service, emergency response, public health, and critical infrastructure)

Deal with criminal, public safety, and terrorism matters across multiple disciplines

Share information across disparate disciplines on topics such as terrorism, criminal activity, and public safety

Fusion centers add value to their jurisdictional customers by providing a state and local context to threat information and collaborate with the Federal Government to enhance the national threat picture

Serve as centers of analytic excellence to assess local implications of threat information to (1) produce actionable intelligence for dissemination to law enforcement and homeland security agencies, and (2) perform services in response to customers' needs

Joint Terrorism Task Forces

Managed by FBI, and include federal and SLTT law enforcement partners

Deal primarily with terrorism matters and other criminal matters related to various aspects of the counterterrorism mission

Work with SLTT partners to share critical infrastructure information with the federal government

104 JTTFs investigate terrorism cases across the FBI's 56 field offices and coordinate their efforts via the National Joint Terrorism Task Force, a fusion of local, state, and federal agencies acting as an integrated force to combat terrorism on a national and international scale

Primarily conduct terrorism investigations; however JTTFs share intelligence with law enforcement and homeland security agencies, as appropriate

Source: US Department of Homeland Security, "Fusion Centers and Joint Terrorism Task Forces," July 30, 2015, <http://www.dhs.gov/fusion-centers-and-joint-terrorism-task-forces>.

DHS promoted the full "establishment of a network of fusion centers to facilitate effective nationwide homeland security information sharing."⁹

As the National Strategy for Information Sharing has noted, "Many state and major urban areas have established information fusion centers to coordinate the gathering, analysis, and dissemination of law enforcement, homeland security, public safety, and terrorism information."¹⁰ More recently, the National Strategy for Information Sharing and Safeguarding stated that DHS had:

Established a National Network of Fusion Centers owned and managed by state and local entities, which use the Nationwide Suspicious Activity Reporting (SAR) Initiative (NSI) to share terrorism information among all levels of government; and with consistent policies to protect individual privacy, civil rights, and civil liberties.¹¹

For a description of the two entities, see Table 1 replicated from the DHS website.

Even though the Government Accountability Office (GAO) could not give a precise number, the cost to create and maintain fusion centers is high because “FEMA estimated that grant funding provided to fusion centers from 2003 through 2010 ranged from \$289 million to as much as \$1.4 billion.”¹² Given the ongoing budget crisis, the federal homeland security funding for fusion centers could eventually run out. If it does, will states and localities allocate the funds necessary to keep them running? JTTFs, as creatures of the FBI, likely will not lose federal support.

Do Fusion Centers Provide Value?

With all of the funding that has gone to fusion centers, there also are serious concerns as to whether those entities add enough valuable data to the information and intelligence enterprise. The return on the investment made in fusion centers has been paltry, at best.

Redundancy Rules the Day. As early audits discovered, many of the fusion centers receive little specific or actionable information from DHS.¹³ Moreover, DHS was slow to provide fusion centers with useful guidance and training support. Despite the push for DHS fusion centers, the FBI continued to strengthen its ties to state and local law enforcement through the far greater presence of FBI agents in key jurisdictions, the JTTFs, Field Intelligence Groups (FIGs), and the enhancement of multiple information-sharing systems such as Law Enforcement Online, the Regional Information Sharing System, National Data Exchange, FBINet (classified information), and Sensitive Compartmental Information Operational Network (top secret) networks.¹⁴

This federal scrum over controlling state and local information sharing and intelligence has led to redundant efforts from DHS and the FBI, as well as other resource-wasting initiatives, such as DHS’s much-maligned unclassified Homeland Security Information Network and classified Homeland Security Data Network. Many state and local law enforcement agencies, already understaffed and underbudgeted, are forced to make difficult choices in allocating resources (personnel and money) to these duplicative federal initiatives.

It is not that just fusion centers and JTTFs have overlapping and redundant functions. Each of the FBI’s 56 field offices has a Field Intelligence Group, an intelligence cell staffed with analysts, linguists, and special agents. Often, the intelligence products produced by a fusion center duplicate FIG products. As a GAO audit discovered, there is significant “overlap” with FIGs, including “in the one urban area, the fusion center and FIG both produced all-crimes analytical products, threat and risk assessments, and criminal bulletins and publications, as well as disseminated all-crimes information, for federal, state, and local customers.”¹⁵

Little Intelligence Comes from Fusion Centers.

Beyond duplicative efforts, fusion centers have not shown much intelligence value. An in-depth U.S. Senate investigation noted fusion centers “often produced irrelevant, useless or inappropriate intelligence reporting to DHS, and many produced no intelligence reporting whatsoever.”¹⁶ In fact, the investigation could not find a single instance when a fusion center “uncovered a terrorist threat, nor could it identify a contribution such fusion center reporting made to disrupt an active terrorist plot.”¹⁷

In many cases, the fusion centers merely reproduce information and intelligence already disseminated by the National Counter Terrorism Center by way of the FBI. Even DHS officials conceded that “a lot of [the reporting] was predominantly useless information” and that 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.”¹⁸

Despite DHS assertions about the utility of fusion centers, the investigators were “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.”¹⁹ Even worse, during the course of the investigation, they discovered numerous instances in which the fusion centers made “significant intelligence errors” that mislead decision makers, forcing them to issue “prompt clarifications and apologies.”²⁰

Even DHS Secretary Janet Napolitano expressed confusion over the two entities when she noted that

fusions centers were similar to JTTFs, but that those entities did more than terrorism, despite the fact that fusion centers were created to fight terrorism.²¹ Proponents of fusion centers point to the broader “all crimes” portfolio to justify having those entities exist. If state and local governments continue to believe that fusion centers are critical for nonterrorism activities, then presumably those government entities would fund fusion centers that no longer receive federal funds. Eliminating or merging the terrorism components of fusion centers into JTTFs and ending federal support for fusion centers simply means fusion centers would need to prove to states or localities they deserve funding.

Rebuilding a Dangerous Wall. There is another issue to consider. With the proliferation of intelligence entities in two different federal departments, are we risking the de facto rebuilding of the wall between intelligence and investigation expanded in 1995, but eliminated after the September 11 attack?

Specifically, the now infamous memorandum written by Assistant Attorney General Jamie Gorelick established a higher wall between intelligence components and investigation activities:

We believe that it is prudent to establish a set of instructions that will clearly separate the counterintelligence investigation from the more limited, but continued, criminal investigations. These procedures, which go beyond what is legally required, will prevent any risk of creating an unwarranted appearance that FISA [Foreign Intelligence Surveillance Act] is being used to avoid procedural safeguards which would apply in a criminal investigation.²²

This higher wall contributed to the intelligence failure leading up to the September 11 attack. As noted in the *Wall Street Journal*, Attorney General John Ashcroft testified:

In the days before September 11, the wall specifically impeded the investigation into Zacarias Moussaoui, Khalid al-Midhar and Nawaf al-Hazmi. After the FBI arrested Moussaoui, agents became suspicious of his interest in commercial aircraft and

sought approval for a criminal warrant to search his computer. The warrant was rejected because FBI officials feared breaching the wall.

When the CIA finally told the FBI that al-Midhar and al-Hazmi were in the country in late August, agents in New York searched for the suspects. But because of the wall, FBI headquarters refused to allow criminal investigators who knew the most about the most recent al Qaeda attack to join the hunt for the suspected terrorists.

At that time, a frustrated FBI investigator wrote headquarters, quote, “Whatever has happened to this—someday someone will die—and wall or not—the public will not understand why we were not more effective and throwing every resource we had at certain ‘problems.’”²³

The lesson we should have learned from this tragic episode is that we can ill afford for key information or intelligence to reside in siloed entities, thereby increasing the risk it will not be combined with other information or intelligence to give our law enforcement personnel the fullest picture possible. The mere existence of competing entities across America makes this risk a real possibility.

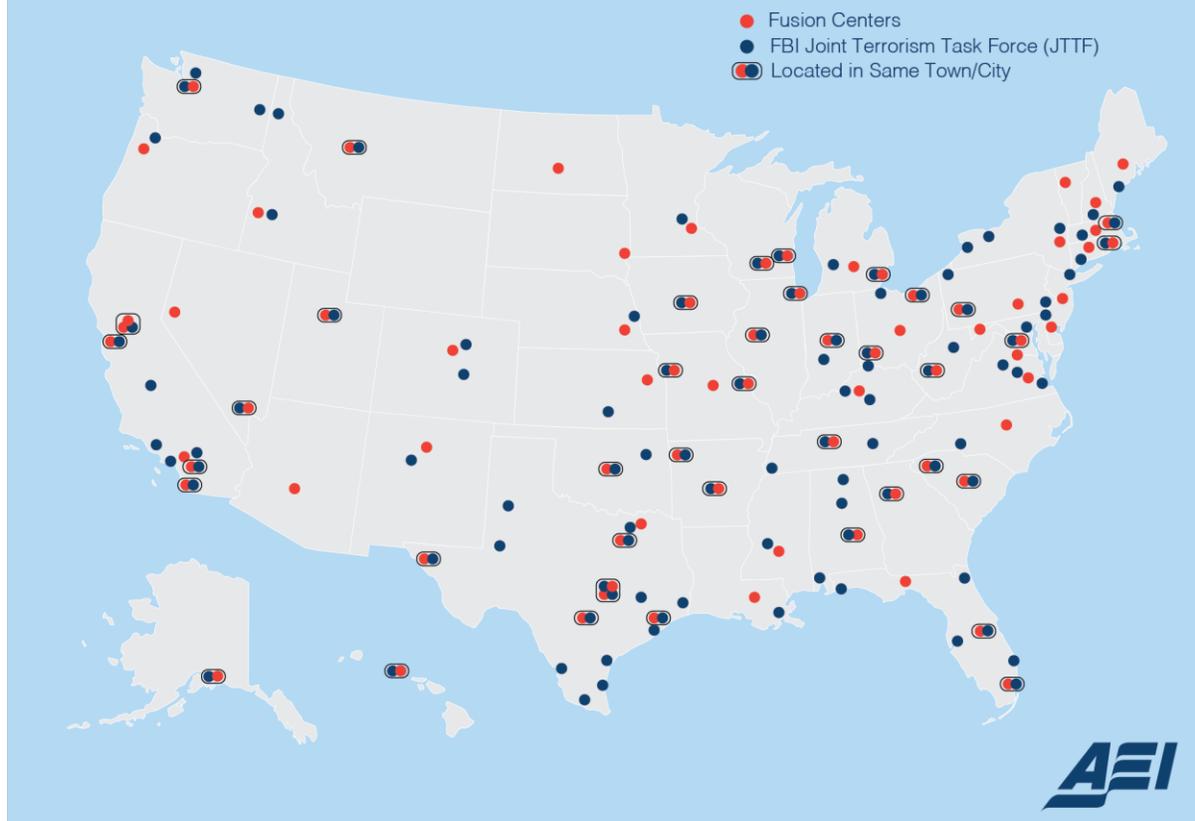
Time to Eliminate Duplication and Fragmentation

The federal government should eliminate the multiheaded federal lead on state and local counterterrorism by designating the FBI as the lead agency for state and local counterterrorism efforts. Under the FBI lead, the DHS fusion centers, given their limited value and high cost, should be consolidated into the more established and numerous JTTFs.²⁴ In fact, nearly two dozen fusion centers are already collocated with the FBI.

From a resource allocation standpoint, a combined entity under the JTTF will ensure that precious resources are allocated more efficiently, rather than increase the demand for analysts, especially in places where little to no terrorist activities occur or are unlikely. Many fusion centers lack the trained analysts to do their work, and state and local participants have reported difficulties in staffing fusion centers.²⁵ State and local officials “found the

Redundant Antiterrorism Fusion Centers Put Americans at Risk

Sharing intelligence is a big enough challenge. Information needs to rest in a single location, and the FBI's Joint Terrorism Task Force offices are the right place.



Sources: US Government Accountability Office, "Information Sharing: Agencies Could Better Coordinate to Reduce Overlap in Field-Based Activities," April 2013, p. 14, Figure 1, <http://www.gao.gov/assets/660/653527.pdf>; National Fusion Center Association, "Fusion Centers," <https://nfcausa.org/default.aspx/MenuItemID/117/MenuGroup/Public+Home.htm>; and US Department of Justice, "The Department of Justice's Terrorism Task Forces," June 2005, p. 20, Figure 2, <https://oig.justice.gov/reports/plus/eo507/final.pdf>.

multiple systems or heavy volume of often redundant information a challenge to manage."²⁶ With the requirement for cameras and other IT for patrol officers post-Ferguson, the budgetary constraints on local law enforcement will get worse. When asked, states commented that they wanted the FBI to take a greater role in the fusion centers.²⁷ Federal entities also face personnel constraints in assigning staff to both JTTFs and fusion centers.

The JTTFs are by no means perfect. Too often, the FBI's culture inhibits sharing information and

intelligence with local law enforcement. In some cases, the FBI uses the forum to federalize investigations from local law enforcement without much discussion on whether doing so makes sense. This approach makes little sense. More problematic, federalizing leads and cutting out local law enforcement can undermine years of community policing efforts. When so much of America's ability to stop a terrorist attack rests on its ability to penetrate murky and nebulous community-based entities, we can ill afford to ignore the strides made thus far.

Going forward, the FBI should develop the JTTFs into truly joint ventures where state and local law enforcement sit as partners with their federal counterparts. Ideally, the JTTF should be a place where representatives from federal, state, and local law enforcement sit down, evaluate leads, share and review all intelligence, debate pros and cons of proposed courses of action, and agree on a plan of action. An integral part of the discussion should center on which level of authority makes the most sense to assume leadership: local law enforcement sometimes possesses greater flexibility and power.

In this merged model, DHS would still remain involved with domestic counterterrorism activities via several connections. First, DHS should have its own intelligence analysts as members of the JTTF. Next, several DHS components are already JTTF participants, including U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection. Finally, DHS possesses several elements that serve as pipelines of potential intelligence (e.g., airport screening operations, biological and chemical detection assets, and visa processes).

Conclusion

As we have seen over the past 15 years, our domestic intelligence entities have a difficult job. With multiple federal, state, and local law enforcement entities already involved in keeping us safe, sharing information and intelligence poses a large enough challenge. Increasing that challenge with separate and distinct information and intelligence-sharing entities across the United States that are overseen by two different federal departments is more than just bad policy. It easily could result in failures that prevent law enforcement from stopping the next terrorist attack.

The rise of Daesh (the Islamic State) and its emphasis on lone-wolf and small-group attacks make our current siloed system inherently dangerous, inefficient, and costly. After San Bernardino, it is clear that the homeland is still in the crossfire. Bringing all the key players together under one roof should increase cooperation, lower costs, reduce inefficiency, and enhance effectiveness.

About the Author

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