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Intelligence Coordination on Domestic Terrorism and Violent Extremism: Background and Issues for Congress

September 1, 2022

Congressional Research Service
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R47229

CRS REPORT
Prepared for Members and
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Intelligence Coordination on Domestic Terrorism and Violent Extremism: Background and Issues for Congress

This report provides an overview of the evolution of domestic intelligence activities by the intelligence and law enforcement communities, as well as the processes by which intelligence and law enforcement agencies coordinate their efforts and share intelligence on domestic extremist violence and terrorism. Congress, in its intelligence oversight responsibilities, has expressed interest in knowing that the intelligence and law enforcement communities are coordinating on domestic threats appropriately: sharing information in a manner that is timely and also protects civil liberties.

When the term *intelligence* is used informally to describe a function of government—involving the collection, analysis, and dissemination of information in support of national security priorities—there is the potential for confusion over what it actually means, which agencies are involved, how coordination and intelligence sharing is conducted, and what legal authorities guide intelligence activities. This is especially true of domestic intelligence activities to counter the threat of terrorism and extremist violence in the United States.

SUMMARY

R47229

September 1, 2022

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The term intelligence generally refers to activities authorized under Title 50 of the *United States Code* (*U.S. Code* or U.S.C.), performed by the 18 statutory elements of the intelligence community, or described in guidelines for law enforcement organizations outlined in Part 23 of Title 28 of the *Code of Federal Regulation* (28 C.F.R. §23), *Criminal Intelligence Systems Operating Policies.* Intelligence activities in support of efforts to counter the threat of domestic terrorism or domestic violent extremism can involve either agencies of the intelligence community or law enforcement. Domestic terrorism is defined in statute as "acts dangerous to human life that are a violation of the criminal laws of the United States or of any State" and "appear to be intended to intimidate or coerce a civilian population; influence the policy of a government by intimidation or coercion; or affect the conduct of a government by mass destruction, assassination, or kidnapping"; and take place primarily in the United States. Domestic violent extremism refers to violent criminal acts in furtherance of ideological goals stemming from domestic influences, such as racial bias and anti-government sentiment.

The public has a reasonable expectation that, regardless of the activity or agency involved, officials conducting intelligence activities in a domestic setting will respect the privacy and civil liberties of U.S. citizens. In a domestic environment, the intelligence community must abide by the various oversight requirements established by Congress and the President, including Attorney General Guidelines and the provisions of the Foreign Intelligence Surveillance Act of 1978 (FISA, P.L. 95-511), as amended.

At the same time, it is incumbent upon both the intelligence and law enforcement communities to share information in a manner that is timely and effective. The current structure for sharing information between the intelligence community and law enforcement agencies is a legacy of the terrorist attacks against the United States on September 11, 2001 (hereafter referred to as 9/11). To break down long-standing cultural barriers between intelligence and law enforcement agencies, and to enable more effective protection of the country, Congress included in the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA, P.L. 108-458) provisions to promote a culture of information sharing to mitigate the threat of international terrorism. The IRTPA also included provisions to strengthen oversight to try to ensure the intelligence and law enforcement communities, in sharing more information, do not overstep their authorities and violate civil liberties. Since 9/11, the domestic terrorism and violent extremist threat has evolved to increasingly include U.S. persons conducting attacks in the United States inspired by either foreign terrorist groups and ideologies, or domestic extremist ideologies or grievances.

As the threat of terrorism and violent extremism has evolved, coordination between the intelligence and law enforcement communities has become more complex, and it remains a work in progress. Congressional action has focused on enhancing intelligence-law enforcement coordination and threat mitigation while trying to ensure oversight provisions are sufficient to protect civil liberties. This report is intended to assist Congress in its oversight responsibilities of the intelligence and law enforcement communities by explaining the respective roles and responsibilities of different agencies that conduct intelligence activities in a domestic environment under different authorities.

Contents

Appendixes

Contacts

Introduction

In the years leading up to the terrorist attacks against the United States on September 11, 2001 (hereafter referred to as 9/11), the intelligence and law enforcement communities developed habits that discouraged even the lawful sharing of information.[1] The attacks of 9/11 revealed the shortcomings of these practices. Through the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA, P.L. 108-458), Congress instituted measures to break down cultural barriers and encourage lawful information sharing and coordination between intelligence and law enforcement agencies. Many experts considered the greatest threat to United States national security at that time was international terrorism, particularly foreign terrorists planning attacks on the U.S. homeland from bases overseas.[2]

The domestic extremist and terrorist environment has evolved since the attacks of 9/11, increasingly involving threats from U.S. nationals. In March 2021, Director of National Intelligence Avril Haines published an assessment that described as "elevated" the threat to the homeland posed by domestic violent extremists.[3] Such extremists, the assessment noted, could be driven to violence by grievances or intolerance concerning race, ethnicity, religion, gender, sexual orientation, abortion, government, animal rights, or the environment.[4]

Following this assessment, President Joseph R. Biden Jr. issued the National Strategy for Countering Domestic Terrorism, which noted that the domestic terror threat was "persistent and evolving" and had, in recent years, undergone a "resurgence."[5] The strategy also called for the

[1] For background on the barriers that discouraged information sharing among intelligence and law enforcement agencies, see National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, Government Printing Office, July 2004, p. 79, at https://www.govinfo.gov/content/pkg/GPO-911REPORT/pdf/GPO-911REPORT.pdf.

[2] Section 1801(c) of Title 50, pertaining to the Intelligence Community, defines international terrorism as activities that (1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any state, or that would be a criminal violation if committed within the jurisdiction of the United States or any state; (2) appear to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by assassination or kidnapping; and (3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum (some internal numbering omitted).

The definition in Section 2331(1) of Title 18, Crimes and Criminal Procedure, differs only in qualifying the location of international terrorism as "primarily [vs. "totally"] outside the United States."

[3] Office of the Director of National Intelligence, *Domestic Violent Extremism Poses Heightened Threat in 2021* (unclassified summary), March 1, 2021, p. 2, at https://www.dhs.gov/sites/default/files/publications/21_0301_odni_unclass-summary-of-dve-assessment-17_march-final_508.pdf. The assessment defined DVEs as,

> U.S.-based actors who conduct or threaten activities that are dangerous to human life in violation of the criminal laws of the United States or any state; appearing to be intended to intimidate or coerce a civilian population; and influence the policy of a government by intimidation or coercion, or affect the conduct of a government by mass destruction, assassination or kidnapping, as per the definition of domestic terrorism in 18 U.S. Code 2331(5).

[4] This report uses a number of terms describing a wide range of domestic extremist criminal activities that necessitate close coordination between the intelligence and law enforcement communities. In many instances, this coordination involves counterterrorist elements. Yet there is little consensus on what constitutes an act of domestic terrorism, nor is there a federal criminal statute on domestic terrorism. Whether acts of domestic extremist violence are classified as acts of terrorism, hate crimes, murder, seditious conspiracy, or some other violent offense, the requirement for intelligence and law enforcement to effectively share information and coordinate their activities to mitigate the threat remains the same.

[5] White House, *National Strategy for Countering Domestic Terrorism*, June 2021, p. 5, at https://www.whitehouse.gov/

broader federal government to "coordinate and collaborate on programmatic aspects of countering domestic terrorism, such as information sharing, training, prevention, and intervention efforts."[6] On June 7, 2022, the Department of Homeland Security (DHS) released a National Terrorism Advisory System bulletin, which noted that the United States remained "in a heightened threat environment" that in the coming months was expected "to become more dynamic as several high-profile events could be exploited to justify acts of violence against a range of possible targets."[7]

Although the existence of domestic terrorist and extremist actors is not new, the current threat environment arguably requires greater coordination between intelligence and law enforcement agencies, which have, over the past two decades, increased their size and capabilities to effectively respond to the threat. Federal Bureau of Investigation (FBI or Bureau) Director Christopher Wray, testifying before the Senate Select Intelligence Committee on March 10, 2022, commented on the impact the current threat has had on coordination:

> With the kind of terrorist we're talking about here: You're talking about an individual going after an easily accessible target with a very crude weapon which means there are a lot less dots to connect.... That's why the growth in the Joint Terrorism Task Forces with task force officers from state and local police departments from all over the country has been such an important development."[8]

While the IRTPA included provisions to promote the sharing of information between law enforcement entities and intelligence community elements, the growing domestic extremist threat by U.S. nationals created a push for additional improvements in how the intelligence and law enforcement communities share information. Flaws in the information-sharing process became evident in the aftermath of the January 6, 2021, attack on the U.S. Capitol. A five-month bipartisan investigation by the Senate Committee on Homeland Security and Governmental Affairs, and the Committee on Rules and Administration, concluded that the intelligence community, principally intelligence elements of the FBI and DHS, "did not issue a threat assessment warning of potential violence targeting the Capitol" and needed to improve its use of social media and online message boards in assessing such threats.[9] The committees' investigation also concluded that the intelligence elements of the United States Capitol Police "failed to convey the full scope of threat information they possessed."[10]

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wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf.

[6] Ibid., p. 12.

[7] Department of Homeland Security, "Summary of Terrorism Threat to the United States," National Terrorism Advisory System Bulletin, June 7, 2022, at https://www.dhs.gov/sites/default/files/ntas/alerts/22_0607_S1_NTAS-Bulletin_508.pdf.

[8] Testimony of FBI Director Christopher Wray, in U.S. Congress, Senate Select Committee on Intelligence, *Worldwide Threats*, 117th Cong., 2nd sess., March 10, 2022, at https://www.intelligence.senate.gov/hearings/open-hearing-worldwide-threats-2.

[9] See Committee on Homeland Security and Governmental Affairs, and Committee on Rules and Administration, "Examining the U.S. Capitol Attack: A Review of the Security, Planning, and Response Failures on January 6," United States Senate Staff Report, June 2021, pp. 1-2 at https://www.hsgac.senate.gov/imo/media/doc/HSGAC&RulesFullReport_ExaminingU.S.CapitolAttack.pdf. This staff report says, in part,

> FBI and DHS officials stressed the difficulty in discerning constitutionally protected free speech versus actionable, credible threats of violence. In testimony before the Committees, officials from both FBI and DHS acknowledged that the Intelligence Community needs to improve its handling and dissemination of threat information from social media and online message boards.

[10] Ibid., p. 2.

Congressional action has focused on enhancing intelligence-law enforcement coordination and threat mitigation. In March 2021, the Senate Judiciary Committee introduced in the Senate the Domestic Terrorism Prevention Act of 2021 (S. 964, 117th Congress), which would have established in the DHS, Department of Justice (DOJ), and FBI offices dedicated to analyzing and monitoring domestic terrorism activity. On May 18, 2022, the House of Representatives passed the Domestic Terrorism Prevention Act of 2022 (H.R. 350), which included similar provisions to those in S. 964. **Appendix B** outlines the intelligence and law enforcement entities involved in the coordination and sharing of information on domestic terrorism and violent extremism.

Pressing the intelligence and law enforcement communities to share information more effectively, the 117th Congress has expressed concern over the potential for incidental violations of civil liberties.[11] A provision in the Intelligence Authorization Act of 2022 (Division X of P.L. 117-103), for example, explicitly prohibits the intelligence community from collecting information on constitutionally protected activities.[12]

This report is intended to assist Congress in its oversight responsibilities of the intelligence and law enforcement communities by explaining the respective roles and responsibilities of different agencies that conduct intelligence activities in a domestic environment under various authorities. By the "intelligence community" (IC), this report refers to the 18 elements designated as the "intelligence community" in Title 50, *U.S. Code*, Section 3003, for the purpose of conducting foreign intelligence and counterintelligence collection, analysis, and dissemination. These IC elements must conduct intelligence activities in accordance with Executive Order 12333, "United States Intelligence Activities," and other intelligence oversight requirements.[13] By "law enforcement," this report refers to organizations at the federal, state, local, tribal, and territorial levels that are authorized to enforce criminal law or perform law enforcement activities, such as crime prevention, control, or reduction, among other criminal justice matters. Guidelines for law enforcement criminal intelligence activities are provided in 28 C.F.R. §23, *Criminal Intelligence Systems Operating Policies,* rather than statute.[14] See **Appendix A** for an outline of terminology related to domestic intelligence and domestic extremism.

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[11] See, for instance, statements and questions by Members during the following hearings: U.S. Congress, House Permanent Select Committee on Intelligence, *Worldwide Threats*, 117th Cong., 2nd sess., March 8, 2022, at https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=114469; and U.S. Congress, Senate Select Committee on Intelligence, *Worldwide Threats*, 117th Cong., 2nd sess., March 10, 2022, at https://www.intelligence.senate.gov/hearings/open-hearing-worldwide-threats-2.

[12] P.L. 117-103, §303, amends the National Security Act of 1947 (P.L. 80-253; 50 U.S.C. §3021 et seq.) by adding a new section. "Sec. 105C, Prohibition on collection and maintenance of information of United States persons based on First Amendment-Protected activities" states,

> No element of the intelligence community may collect or maintain information concerning a United States person (as defined in section 105A) solely for the purpose of monitoring an activity protected by the first amendment to the Constitution of the United States.

[13] See Executive Order 12333, "United States Intelligence Activities," 46 *Federal Register* 59941, December 4, 1981, at https://www.archives.gov/federal-register/codification/executive-order/12333.html; and Department of Defense, *Executive Order 12333, United States Intelligence Activities, (As amended by Executive Orders 13284 (2003), 13355 (2004) and 13470 (2008))*, at https://dpcld.defense.gov/Portals/49/Documents/Civil/eo-12333-2008.pdf.

[14] 28 C.F.R. §23, *Criminal Intelligence Systems Operating Policies*, at https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/28cfr_part_23.pdf. 28 C.F.R. §23 provides guidelines for law enforcement agencies that operate federally-funded, multi- and intra-jurisdictional criminal intelligence systems encompassing the submission, entry, security, inquiry, dissemination, review and purge of criminal intelligence information. Many state and local law enforcement organizations have voluntarily adopted 28 C.F.R. §23 standards that are otherwise not required to do so. See "28 C.F.R. Part 23 Frequently Asked Questions," *RISS*, at https://www.riss.net/policy/cfr/.

Background

Intelligence and law enforcement coordination and information sharing have evolved in response to changing perceptions of the most significant threats to national security. The FBI's domestic intelligence capability was established in 1936 to thwart espionage attempts by Germany, Japan, and the Soviet Union. According to the DOJ Inspector General:

> During the 1930s, President Franklin D. Roosevelt expressed concern over the growing indications of subversive activities within the United States, especially those of communist and fascist supporters. At the direction of President Roosevelt, the FBI began gathering intelligence on the activities of such individuals and groups.[15]

The Administrations of Presidents Franklin D. Roosevelt through Richard M. Nixon "permitted, and sometimes encouraged" domestic intelligence collection of political figures or those they viewed as extremist or subversive.[16] During this time, Congress exercised relatively limited oversight of intelligence agencies.[17] In collecting information to guard against what the Bureau perceived to be subversive threats to U.S. national security, the Attorney General and the FBI made a practice of investigating Americans' organizational memberships, political beliefs, and national affiliations.[18]

Domestic Surveillance in the 1960s and 1970s

In 1974, the public was made aware of the Central Intelligence Agency (CIA) covert action programs abroad and the intelligence and law enforcement communities' systematic violation of the privacy and civil liberties of American citizens through a story published in the *New York Times*.[19] In the wake of this report, some Members of Congress took a closer look at the sort of domestic activities the intelligence and law enforcement agencies were conducting. Congress became aware, for example, of the FBI's Counterintelligence Program (COINTELPRO), a domestic covert program intended to discredit Americans the Bureau viewed as subversive.

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[15] Department of Justice, Office of the Inspector General, *Special Report on the Federal Bureau of Investigation's Compliance with the Attorney General's Investigative Guidelines* (redacted), September 2005, at https://oig.justice.gov/sites/default/files/archive/special/0509/chapter2.htm.

[16] Select Committee to Study Governmental Operations with respect to Intelligence Activities, *Intelligence and the Rights of Americans, Book II: Final Report of the Select Committee to Study Government Operations with respect to Intelligence Activities*, United States Senate (Washington, DC: GPO, 1976), p. 8. This report provides several examples of these activities, including

> President Eisenhower received reports on purely political and social contacts with foreign officials by Bernard Baruch, Mrs. Eleanor Roosevelt, and Supreme Court Justice William O. Douglas.
>
> The Kennedy Administration had the FBI wiretap a Congressional staff member, three executive officials, a lobbyist, and a Washington law firm. Attorney General Robert F. Kennedy received the fruits of a FBI "tap" on Martin Luther King, Jr., and a "bug" on a Congressman both of which yielded information of a political nature.

[17] James S. Van Wagenen, "A Review of Congressional Oversight," *Studies in Intelligence*, vol. 40, no. 5 (1997), archived at https://apps.dtic.mil/sti/pdfs/ADA524502.pdf.

[18] Select Committee to Study Governmental Operations with Respect to Intelligence Activities, *Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans, Book III, Final Report of the of the Select Committee to Study Government Operations with respect to Intelligence Activities*, United States Senate (Washington, DC: GPO, 1976), pp. 374-377.

[19] See Seymour M. Hersh, "Huge C.I.A. Operation Reported in U.S. against Antiwar Forces, Other Dissidents in Nixon Years," *New York Times*, December 22, 1974, at https://www.nytimes.com/1974/12/22/archives/huge-cia-operation-reported-in-u-s-against-antiwar-forces-other.html.

Targeted individuals included members of the Ku Klux Klan, anti-war protesters, and civil rights leaders.[20] In another instance, the National Security Agency's (NSA's) Project Shamrock intercepted millions of telegrams to and from the United States at the request of the Bureau of Narcotics and Dangerous Drugs (the predecessor to the Drug Enforcement Administration, DEA).

In taking a more active role in exercising oversight of the intelligence community, Members of Congress established two select committees, informally known as the Church and Pike committees after their Senate and House of Representatives' chairmen, to investigate purported abuses of American's civil liberties.[21] In addition, then-President Gerald R. Ford established the United States President's Commission on CIA Activities (called the "Rockefeller Commission" after its chairman, Nelson A. Rockefeller), an independent commission to investigate abuses of civil liberties within the United States. One result of these inquiries was the dissolution of the FBI's Domestic Intelligence Division, which had been at the forefront of domestic intelligence collection.[22] The Church and Pike committees led to the establishment in the 1970s of a dedicated intelligence oversight framework with the Senate Select Committee on Intelligence (SSCI) and the House Permanent Select Committee on Intelligence (HPSCI).

Findings of the Congressional Joint Inquiry and the 9/11 Commission:

The climate of concern about domestic intelligence abuses contributed to an institutional reluctance on the part of the intelligence and law enforcement communities to collaborate and share information on threats to U.S. national security that persisted up to the 9/11 attacks. Following the attacks, two investigative efforts provided a number of findings on the negative impact limited intelligence and law enforcement agency collaboration had on the domestic counterterrorist posture of the United States at that time. These were the National Commission on Terrorist Attacks upon the United States (the "9/11 Commission") and a joint inquiry of the House and Senate intelligence committees (the "Joint Inquiry"), and they each reported a number of concerns.

- The 9/11 Commission found significant "fault lines between foreign and domestic intelligence, and between and within agencies," and "pervasive problems of managing and sharing information across a large and unwieldy

[20] For accounts of the violations of civil liberties by the intelligence community and FBI during the 1960s and 1970s, see Select Committee to Study Governmental Operations with respect to Intelligence Activities, *Intelligence and the Rights of Americans, Book II: Final Report of the Select Committee to Study Government Operations with respect to Intelligence Activities*, United States Senate (Washington, DC: GPO, 1976). See also Select Committee to Study Governmental Operations with respect to Intelligence Activities, *Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans, Book III, Final Report of the of the Select Committee to Study Government Operations with respect to Intelligence Activities*, United States Senate (Washington, DC: GPO, 1976). For an example of lingering concern about the role of intelligence in a domestic environment, see Jonathan Blanks, "The Dangerous Incentive in a New Domestic Terror Unit," *The Week*, January 14, 2022, at https://theweek.com/politics/1009006/the-dangerous-incentive-in-a-new-domestic-terror-unit.

[21] The committees were formally known as the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, and the House Select Intelligence Committee. For a discussion of Congress taking a more active role in the oversight of intelligence, see James S. Van Wagenen, "A Review of Congressional Oversight," *Studies in Intelligence* (published by the Central Intelligence Agency's Center for the Study of Intelligence), vol. 40, no. 5 (1997), p. 99, archived at https://apps.dtic.mil/sti/pdfs/ADA524502.pdf.

[22] National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, Government Printing Office, July 2004, p. 75, at https://www.govinfo.gov/content/pkg/GPO-911REPORT/pdf/GPO-911REPORT.pdf.

government that had been built in a different era to confront different dangers."[23] Moreover, the commission found the IC lacked a focused, integrated counterterrorism posture, particularly regarding the prospect of attacks *within* the United States.[24]

- The Joint Inquiry found that from 1998 to 2001, the intelligence community received a modest but steady stream of intelligence indicating a prospective attack within the United States, but the analysis focused on prospective attacks on U.S. personnel and interests abroad.[25]
- The Joint Inquiry also determined that the intelligence community analysis focused mainly on foreign intelligence threats abroad.[26] Moreover, the intelligence community placed insufficient emphasis on terrorist financing.[27]
- FBI headquarters, according to the Joint Inquiry, did not act on internal communications from the Bureau's Phoenix Field Office expressing concern over the number of "individuals of investigative interest" who were taking civil aviation-related classes.[28] Intelligence indicating a possible attack by aircraft was not included in any known threat assessments.[29]
- The FBI lacked an effective intelligence collection effort, the 9/11 Commission noted.[30] Moreover, the FBI's Deputy Assistant Director for Counterterrorism Analysis noted that the Bureau lacked an effective data mining capability and analytical tools, which inhibited the Bureau's efforts to pursue leads of terrorist activity.[31]
- Both the Joint Inquiry and 9/11 Commission cited institutional barriers between intelligence and criminal investigative entities within the FBI, and between intelligence and law enforcement agencies, that significantly slowed the flow of intelligence, even in situations where there was a clear criminal predicate (as there was with several of the 9/11 terrorists).[32]

In sum, the 9/11 Commission found that the intelligence community failed to focus on the "collective significance" of the information it had.[33] The Joint Inquiry concluded the intelligence community lacked a culture conducive to sharing relevant information within and between intelligence agencies, between the law enforcement and intelligence agencies, and between intelligence agencies and non-intelligence organizations of the U.S. government.[34]

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[23] Ibid., p. xvi.

[24] Ibid., pp. 263-264.

[25] House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence, *Report of the Joint Inquiry into the Terrorist Attacks of September 11, 2001*, 107th Cong., 2nd Sess., S.Rept. 107-351, December 2002, pp. 198-201, at https://www.intelligence.senate.gov/sites/default/files/documents/CRPT-107srpt351-5.pdf.

[26] Ibid., p. 379. See also the *9/11 Commission Report*, pp. 204, 258.

[27] Ibid., pp. 113-114, 308. See also the *9/11 Commission Report*, p. 185.

[28] Ibid., p. 20.

[29] Ibid., p. 9.

[30] *9/11 Commission Report*, p. 77.

[31] *Joint Inquiry*, pp. 331, 358.

[32] Ibid., p. 363. See also the *9/11 Commission Report*, pp. 78-80.

[33] Ibid., pp. 10-11, 59.

[34] *Joint Inquiry*, p. 363.

Selected Reform Measures

The terrorist attacks of 9/11 resulted in renewed congressional interest in how U.S. government agencies could be better prepared to prevent similar attacks in the future. This included congressional interest in how to better organize law enforcement and intelligence community agencies, and facilitate information sharing that would both enhance domestic security and protect the civil liberties of Americans.

The bulk of the efforts immediately following the 9/11 attacks reflected a widespread assumption that the threat of terrorism would come largely—although not exclusively—from abroad, including Salafist terrorists aligned with Al Qaeda or like-minded religiously motivated extremists. Consequently, the presidential and congressionally mandated reforms included significant changes to how the intelligence community was organized to collect and integrate foreign intelligence and counterintelligence in support of countering the threat of foreign or foreign-inspired terrorism.[35]

Director of National Intelligence (DNI)

One of the 9/11 Commission's recommendations was creation of a central coordinating authority among the then-16 component organizations of the IC to mitigate administrative and operational barriers, and promote the sharing of information and intelligence. Congress acted on this recommendation, creating the position of the Director of National Intelligence (DNI) through passage of the 2004 Intelligence Reform and Terrorism Prevention Act (P.L. 108-458, or IRTPA). The law also eliminated the Director of Central Intelligence (DCI) position, which had existed since 1946. Through a "triple-hatted" arrangement, the DCI simultaneously served as community manager of the intelligence community, Director of the CIA, and chief intelligence advisor to the President. With the passage of IRTPA, the DNI assumed responsibility as manager of the intelligence community and principal intelligence advisor to the President, leaving leadership of the CIA to the Director of the CIA. The IRTPA also established an Office of the DNI (ODNI) to support the execution of the DNI's responsibilities.

National Counterterrorism Center (NCTC)

To address the threat of international terrorism, then-President George W. Bush established the National Counterterrorism Center (NCTC) with Executive Order 13354 in 2004, at the recommendation of the 9/11 Commission.[36] Congress codified NCTC in the IRTPA as part of the ODNI "[t]o serve as the primary organization in the United States Government for analyzing and integrating all intelligence possessed or acquired by the United States Government pertaining to terrorism and counterterrorism, excepting intelligence pertaining exclusively to domestic terrorists and domestic counterterrorism."[37] Although the 9/11 Commission recommended that NCTC address foreign and domestic terrorist threats, its statutory authority is limited to terror threats originating abroad; the law specifically excludes domestic-based terrorism from the

[35] 50 U.S.C. §3003(2) defines foreign intelligence as "information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities." 50 U.S.C. §3003(3) defines counterintelligence as "information gathered, and activities conducted, to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities."

[36] E.O. 13354, *National Counterterrorism Center*, August 27, 2004, at https://www.dni.gov/files/NCTC/documents/RelatedContent_documents/eo13354.pdf

[37] 50 U.S.C. §3056(d)(1).

NCTC purview. NCTC, however, can receive and retain intelligence related to domestic terrorism threats "from any Federal, State, or local government or other source necessary to fulfill its responsibilities," and disseminate this or other relevant domestic terrorism information to any agency with a counterterrorism mission that requests it from NCTC "to assist it in its responsibilities."[38]

Because its statutory authority was limited to international terrorism, the establishment of NCTC did not resolve questions over which intelligence or law enforcement organization(s) would be responsible for conducting intelligence activities related to domestic terrorist and criminal extremist threats. Some experts had previously raised the idea of creating a new domestic intelligence organization independent of the FBI, approximately resembling Britain's MI-5. Those who advocated for a new organization argued that the FBI's traditional focus on solving crimes could potentially detract from employing intelligence in a more forward-looking manner to mitigate threats before they manifested as acts of violence.[39]

The 9/11 Commission determined, however, that oversight of a large separate domestic intelligence bureaucracy would be difficult and could potentially increase the risk of abuses.[40] Further, the commission concluded that since the FBI had the most experience with sensitive domestic intelligence activities, its role should mirror the CIA's abroad: "interviewing informants, conducting surveillance and searches, tracking individuals, working collaboratively with local authorities ... operating under the U.S. Constitution and quite different laws and rules."[41] Rather than creating a separate domestic intelligence organization, the 9/11 Commission recommended promoting a culture of information sharing that would help to break down the cultural barriers between intelligence and law enforcement agencies: "The removal of 'the wall' that existed before 9/11 between intelligence and law enforcement, has opened up new opportunities for cooperative action within the FBI."[42]

Information Sharing Environment

Acting on the 9/11 Commission's recommendation, Congress included in the IRTPA authorization to establish the Information Sharing Environment (ISE), an "approach that facilitates the sharing of terrorism information" across appropriate federal, state, local, and tribal entities, and the private sector, to share terrorism information "in a manner consistent with national security and with applicable legal standards relating to privacy and civil liberties."[43]

An ISE program manager and an Information Sharing Council were both established within the ODNI. They were responsible for implementing the ISE concept and managing the sharing of information across the federal government without compromising security.[44]

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[38] 50 U.S.C. §3056(e)(1)-(2).

[39] Peter Chalk and William Rosenau, *Confronting the Enemy Within: Security Intelligence, the Police, and Counterterrorism in Four Democracies* (Santa Monica: RAND Corporation, 2002), p. XI. See also Robert A. Fein and Bryan Vossekuil, *Protective Intelligence and Threat Assessment Investigations: A Guide for State and Local Law Enforcement Officials*, National Institute of Justice, January 2000, p. 7 at https://www.ojp.gov/pdffiles1/nij/179981.pdf.

[40] *9/11 Commission Report*, pp. 423-424.

[41] Ibid., p. 423.

[42] Ibid., p. 424.

[43] P.L. 108-458, §1016(a)(2)-(b)(1)(A).

[44] P.L. 108-458, §1016(f)-(g).

Consistent with the statutory definition of domestic terrorism, law enforcement agencies—chiefly the FBI—continue to lead on the collection and analysis of intelligence related to domestic terrorism and violent extremism, as well as the enforcement of federal criminal laws, including hate crime statutes, and the prosecution of individuals violating such laws.[45]

Evolving Domestic Terrorist and Violent Extremist Threat Environment

After the post-9/11 reforms, the intelligence community continued to be careful about how it describes its responsibilities vis-a-vis domestic terrorism and violent extremism, according to a former ODNI official.[46] In 2005 and 2009, for example, ODNI excluded the term "domestic intelligence" from the National Intelligence Strategy.[47] Iterations of the National Intelligence Strategy over the years similarly make little reference to domestic terrorism as a priority. The 2014 and 2019 National Intelligence Strategies do not refer to domestic intelligence.[48]

In 2016, then-DNI James Clapper directed his office to prepare a report that described how intelligence collection and sharing was conducted in a manner that also protected the privacy and civil liberties of American citizens. This report stated that

[45] At the federal level, prosecutors can use a variety of statutes to prosecute hate crimes, including 18 U.S.C. §249 (offenses involving actual or perceived race, color, religion, or national origin), 18 U.S.C. §241 (conspiracy against rights), 18 U.S.C. §242 (deprivation of rights under color of law), 18 U.S.C. §245 (violent interference with rights), 18 U.S.C. §247 (destruction of religious real property/interference with free exercise of religion), 18 U.S.C. §249 (hate crime acts), and 42 U.S.C. §3631 (violent interference with federal housing rights). Hate crimes can also be prosecuted at the state level.

18 U.S.C. §2331(5)(A)-(C) defines domestic terrorism as "activities that involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State" and "appear to be intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, or kidnapping"; and "occur primarily within the territorial jurisdiction of the United States" (some internal numbering omitted).

[46] Patrick Neary, former Principal Deputy Director and Chief Strategist at ODNI, recounted that while working on the first two iterations of the NIS, "Domestic intelligence was the phrase we dare not speak aloud.... We had to find ways to craft it to get to that point without saying it." See "Domestic Intelligence Gathering," *C-SPAN*, October 6, 2010, at https://www.c-span.org/video/?295849-3/domestic-intelligence-gathering&event=295849&playEvent.

[47] The 2005 NIS included an objective for the intelligence community to "build an integrated intelligence capability to address threats to the homeland, consistent with U.S. laws and the protection of privacy and civil liberties." See *The National Intelligence Strategy of the United States of America: Transformation through Integration and Innovation*, October 2005, p. 5, at https://www.dni.gov/index.php/newsroom/reports-publications/reports-publications-2005. The 2009 NIS was similar: "The IC," it stated, "will deliver actionable intelligence to support diplomats, military units, interagency organizations in the field and domestic law enforcement organizations at all levels." See *The National Intelligence Strategy of the United States of America*, August 2009, p. 5, at https://www.dni.gov/index.php/newsroom/reports-publications/reports-publications-2009?start=15.

[48] The 2014 NIS states, "Violent extremist groups and transnational criminal networks threaten U.S. security and challenge the U.S. both in the homeland and abroad.... The IC will increasingly serve homeland security as well as military and foreign policy objectives." See *National Intelligence Strategy of the United States of America*, 2014, p. 4, at https://www.dni.gov/index.php/newsroom/reports-publications/reports-publications-2014/item/1114-dni-unveils-2014-national-intelligence-strategy. The most recent NIS, published in 2019, indirectly references the role of intelligence in a domestic environment: "The IC supports broader U.S. Government efforts to counter the spread of violent extremist ideology that drives terrorist actions and to leverage domestic and foreign partnerships and capabilities to strengthen our own capacity and resilience." See *National Intelligence Strategy of the United States of America*, 2019, p. 12, at https://www.dni.gov/files/ODNI/documents/National_Intelligence_Strategy_2019.pdf.

> inconsistent practices, absence of doctrine, and a lack of unity of effort across levels of government still characterize the domestic landscape. This domestic enterprise is more ad hoc and independent than organized and enterprise-oriented, and often depends more on personal or preexisting relationships than defined engagement protocols.[49]

The following year, in 2017, the Intelligence Community Inspector General, along with the Inspectors General of the DOJ and the DHS, published *A Review of Domestic Sharing of Counterterrorism Information*, which concluded that while the DHS, DOJ, and intelligence community were committed to sharing information, implementation of the 2012 National Strategy for Information Sharing and Safeguarding was "uneven."[50] They also recognized a need to "update intelligence information sharing standards and processes among the departments."[51] The DOJ and DHS inspectors general also emphasized the importance of each of the information sharing enterprise partners' ability to understand each other's roles and responsibilities.[52]

Over the last approximately seven years, the threat to U.S. national security has increasingly shifted from international terrorism, represented by the 9/11 attacks, to domestic terrorism and violent extremism. FBI Director Christopher Wray, testifying before the House Appropriations Committee in April 2019, described domestic violent extremism as a "persistent ... pervasive" threat.[53] That month, the FBI elevated domestic violent extremism to its highest threat priority, on par with the threat posed by the Islamic State of Iraq and the Levant (hereafter Islamic State) terrorism and Homegrown Violent Extremism (HVE).[54] Two years later, in March 2021, Director Wray testified before the Senate Judiciary Committee that the January 6, 2021, attack on the U.S. Capitol was an act of domestic terrorism.[55] Subsequent to the attack on the Capitol, at the request of President Biden, the ODNI published an assessment that described the threat of domestic terrorism as "elevated," pointing to domestic violent extremists motivated by "biases against minority populations, ... government overreach, ... [and] narratives of fraud in the [2020] general

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[49] Office of the Director or National Intelligence, *Domestic Approach to National Intelligence*, December 2016, p. 9, at https://www.dni.gov/files/documents/Newsroom/DomesticApproachtoNationalIntelligence.PDF.

[50] Inspectors General of the: Intelligence Community, Department Of Homeland Security, Department Of Justice, *Review of Domestic Sharing of Counterterrorism Information, Offices of the Inspectors General of the Intelligence Community, Department of Homeland Security, and Department of Justice*, March 2017, p. i, at https://www.dni.gov/files/documents/Newsroom/Domestic_Sharing_Counterterrorism_Information_Report.pdf.

[51] Ibid. For the 2012 *National Strategy of Information Sharing and Safeguarding* by the Department of Homeland Security, see https://www.dhs.gov/sites/default/files/publications/15_1026_NSI_National-Strategy-Information-Sharing-Safeguarding.pdf.

[52] Ibid.

[53] Testimony of FBI Director Christopher Wray in U.S. Congress, Committee on Appropriations, United States House of Representatives, *FBI Fiscal Year 2020 Budget Request*, April 4, 2019, C-SPAN https://www.c-span.org/video/?459339-1/fbi-director-wray-tells-lawmakers-read-mueller-report.

[54] Testimony of FBI Director Christopher Wray before the Committee of the Judiciary, United States Senate, "FBI Director Christopher Wray Testified on January 6 Capitol Attack," March 2, 2021, at C-SPAN, 24:18, https://www.c-span.org/video/?509033-1/fbi-director-christopher-wray-testifies-january-6-capitol-attack. See also Statement of Christopher Wray, Director, Federal Bureau of Investigation before the Committee on the Judiciary, United States Senate, March 2, 2021, p. 2: "Overall, the FBI assesses that the January 6th siege of the Capitol Complex demonstrates a willingness by some to use violence against the government in furtherance of their political and social goals," at https://www.judiciary.senate.gov/imo/media/doc/SJC%20Oversight%20Hearing%20-%20FBI%20Director%20Wray%20SFR%20-%203.2.2021.pdf..

[55] FBI Director Wray testified about January 6, 2021, "That attack, that siege, was criminal behavior, plain and simple, and it's behavior that we, the FBI, view as domestic terrorism." See testimony of FBI Director Christopher Wray before the Committee of the Judiciary, United States Senate, "FBI Director Christopher Wray Testified on January 6 Capitol Attack," March 2, 2021, at C-SPAN, 24:18, https://www.c-span.org/video/?509033-1/fbi-director-christopher-wray-testifies-january-6-capitol-attack. The comment does not appear in Director Wray's prepared statement.

election."[56] The assessment also described the role intelligence community elements had in supporting efforts to mitigate domestic terror threats:

> The FBI and DHS lead the IC's [intelligence community's] counter DVE missions—and are thus positioned to bring domestic collection to bear in understanding and addressing this issue—while the NCTC supports them. Other IC elements, such as CIA and DIA, contribute their unique accesses or expertise, including on ties that foreign elements have to DVEs. All agencies are mindful of the duty to respect privacy, civil rights, and civil liberties and to act within the authorities granted to them as they seek to put together as complete an intelligence and analytic picture as is possible.[57]

On the basis of this assessment, President Biden published in June 2021 the *National Strategy for Countering Domestic Terrorism*, which described the importance of law enforcement making "investigatory and prosecutorial decisions," but called for the broader federal government to "coordinate and collaborate on programmatic aspects of countering domestic terrorism, such as information sharing, training, prevention, and intervention efforts."[58]

Most recently, on June 7, 2022, DHS released a National Terrorism Advisory System bulletin that noted that the United States remains "in a heightened threat environment," which in the coming months was expected "to become more dynamic as several high-profile events could be exploited to justify acts of violence against a range of possible targets."[59] See **Appendix C** for a summary of the current international terrorist threat environment.

The bulleted list below provides violent incidents since 2015 that underscore the continuing challenge to intelligence and law enforcement agencies of coordinating their activities to mitigate the threat of additional attacks. No federal criminal statute exists for domestic terrorism. Perpetrators were charged under different federal and state laws covering hate crimes, murder, attempted murder, assault, and seditious conspiracy, among other offenses.

Selected Domestic Violent Incidents
2015-2022

- **June 2015:** An American citizen, later convicted of hate crimes, murdered nine members of the Emanuel AME Church in Charleston, SC.[60]
- **December 2015:** In an attack the FBI classified as an act of terrorism, two Americans, who claimed to be acting on behalf of ISIS, according to then-FBI Director James Comey Jr., killed 14 people in the Inland Regional Center in San Bernardino, CA.[61]

[56] Office of the Director of National Intelligence, "Domestic Violent Extremism Poses Heightened Threat in 2021," March 1, 2021, p. 2, at https://www.dni.gov/files/ODNI/documents/assessments/UnclassSummaryofDVEAssessment-17MAR21.pdf.

[57] Ibid., p. 3.

[58] National Security Council, "National Strategy for Countering Domestic Terrorism," June 2021, at https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf.

[59] Department of Homeland Security, "National Terrorism Advisory System Bulletin: Summary of Terrorism Threat to the United States," June 7, 2022, at https://www.dhs.gov/ntas/advisory/national-terrorism-advisory-system-bulletin-june-7-2022.

[60] Federal Bureau of Investigation, Department of Homeland Security, "FBI-Designated Significant Domestic Terrorism Incidents in the United States from 2015 through 2019," p. 30; *Strategic Intelligence Assessment and Data on Domestic Terrorism*, May 2021, at https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf/view.

[61] Testimony of FBI Director James Comey, Jr., in U.S. Congress, Senate Committee on the Judiciary, December 9, 2015, at https://www.c-span.org/video/?401606-1/fbi-director-james-comey-oversight-hearing-testimony.

- **June 2016:** An individual who reportedly had pledged allegiance to the Islamic State killed 49 patrons of the Pulse nightclub in Orlando, FL.[62]
- **September 2016:** An American citizen who the Islamic State claimed was "a soldier of the Islamic State" stabbed 10 people in a St. Cloud, MN, shopping mall.[63]
- **June 2017:** During a practice session in Alexandria, VA, for a congressional baseball game for charity, an individual wounded five people, two critically, including Representative Steve Scalise of Louisiana. The FBI subsequently described the perpetrator as an individual with "a personalized violent ideology," and classified the incident as an act of domestic terror.[64]
- **August 2017:** An individual drove his vehicle into a crowd protesting the Unite the Right rally in Charlottesville, VA, killing one person.[65]
- **October 2018:** An individual, who was subsequently charged with federal hate crimes, killed 11 members of the Tree of Life synagogue in Pittsburgh, PA.[66]
- **August 2019:** An individual the FBI described as a racially-motivated violent extremist killed 22 people at a Walmart in El Paso, TX.[67]
- **May 2020:** An individual "aligned ... with an anti-government ideology," killed a DHS Federal Protective Service officer during a George Floyd/Black Lives Matter (BLM) protest in Oakland, CA. The same attacker killed a second law enforcement officer in Santa Cruz days later.[68]
- **January 2021:** Thousands of Americans attacked the U.S. Capitol in Washington, DC, on January 6, 2021, including followers of over a dozen extremist groups such as the Proud Boys and the Oath Keepers.[69] Many

[62] "Director Provides Update on Orlando Shootings Investigation," *FBI News*, June 13, 2016, at https://www.fbi.gov/news/stories/director-provides-update-on-orlando-shootings-investigation.

[63] Stephen Montemayor, "One year later, motive of St. Cloud mall attacker remains unclear," *Star Tribune*, September 17, 2017, at https://www.startribune.com/one-year-later-motive-of-st-cloud-mall-attacker-remains-unclear/444894453/.

[64] Federal Bureau of Investigation, Department of Homeland Security, "FBI-Designated Significant Domestic Terrorism Incidents in the United States from 2015 through 2019," p. 35; *Strategic Intelligence Assessment and Data on Domestic Terrorism*, May 2021, at https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf/view.

[65] Federal Bureau of Investigation, Department of Homeland Security, "FBI-Designated Significant Domestic Terrorism Incidents in the United States from 2015 through 2019," p. 36; *Strategic Intelligence Assessment and Data on Domestic Terrorism*, May 2021, at https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf/view.

[66] Federal Bureau of Investigation, Department of Homeland Security, "FBI-Designated Significant Domestic Terrorism Incidents in the United States from 2015 through 2019," p. 38, *Strategic Intelligence Assessment and Data on Domestic Terrorism*, May 2021, at https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf/view.

[67] Federal Bureau of Investigation, Department of Homeland Security, "FBI-Designated Significant Domestic Terrorism Incidents in the United States from 2015 through 2019," p. 40, *Strategic Intelligence Assessment and Data on Domestic Terrorism*, May 2021, at https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf/view.

[68] "Steven Carrillo Sentenced to 41 Years in Prison for Murder and Attempted Murder for Role in Drive-By Shooting at Federal Courthouse in Oakland," *United States Department of Justice U.S. Attorney's Office, Northern District of California News*, June 3, 2022, at https://www.justice.gov/usao-ndca/pr/steven-carrillo-sentenced-41-years-prison-murder-and-attempted-murder-role-drive. DHS has also documented dozens of incidents in 2020 by "violent anarchists" in the city of Portland, OR, such as vandalism, assault, and trespassing. These incidents have as of yet not been prosecuted under domestic terrorism or hate crime statutes but have energized the debate over what sort of activity constitutes an act of domestic terrorism. See "Acting Secretary Wolf Condemns the Rampant Long-Lasting Violence in Portland," *DHS press release*, July 16, 2020, at https://www.dhs.gov/news/2020/07/16/acting-secretary-wolf-condemns-rampant-long-lasting-violence-portland.

[69] Masood Farivar, "Researchers: More Than a Dozen Extremist Groups Took Part in Capitol Riots," *VOA*, January 16, 2021, at https://www.voanews.com/a/2020-usa-votes_researchers-more-dozen-extremist-groups-took-part-capitol-riots/6200832.html.

were also proponents of QAnon conspiracy theories, which the FBI has cited as possibly serving as a "catalyst" for violence.[70]

- **November 2021:** A high school student killed four of his classmates, and wounded seven others, in Oxford, Michigan. Along with charges that included first degree murder, he was charged with one count of terrorism under the Michigan Anti-Terrorism Act for apparent psychological trauma to survivors of the attack.[71]
- **January-August 2022**: During the first eight months of 2022, the Department of Homeland Security reported 49 bomb threats targeting Historically Black Colleges and Universities (HCBU), and 19 targeting Predominantly Black Institutions.[72]
- **May 2022:** An individual at a supermarket in east Buffalo, NY, shot 13 people, killing 10, in what the FBI characterized as a "targeted attack, a hate crime, and an act of racially-motivated violent extremism."[73]
- **June 2022**: A federal grand jury indicted an individual for allegedly attempting to assassinate Supreme Court Justice Brett Kavanaugh at his home.[74]
- **August 2022:** Following the FBI execution of a search warrant in the Florida residence of former President Donald Trump, the FBI and DHS issued a joint bulletin reporting "an increase in threats to law enforcement and, to a lesser extent, other law enforcement officials."[75] On August 11, 2022, a gunman was fatally shot by FBI agents during an attempt to breach the Bureau's Cincinnati Field Office.[76]

Selected Legislative Responses

The intelligence community has changed its approach to counterterrorism in the context of increasingly blurred distinctions between international and domestic threats to U.S. national security.[77] Coordination between the intelligence and law enforcement communities has become more complex, and it remains a work in progress. Congress has acted to enable intelligence and

[70] Federal Bureau of Investigation and Department of Homeland Security Office of Intelligence and Analysis, *Adherence to QAnon Conspiracy Theory by Some Domestic Violent Extremists*, June 4, 2021, at https://s3.documentcloud.org/documents/20889411/adherence-to-qanon-conspiracy-theory-by-some-domestic-violent-extremists4.pdf.

[71] Michigan Compiled Law (MCL) defines an act of terrorism as, "a willful and deliberate act that is all of the following: (i) An act that would be a violent felony under the laws of this state, whether or not committed in this state. (ii) An act that the person knows or has reason to know is dangerous to human life. (iii) *An act that is intended to intimidate or coerce a civilian population* or influence or affect the conduct of government or a unit of government through intimidation or coercion." MCL 750.543b(a)(i)-(iii) (emphasis added).

[72] "Addressing Bomb Threats at Historically Black Colleges and Universities," Department of Homeland Security, August 30, 2022, at https://www.dhs.gov/news/2022/08/30/addressing-bomb-threats-historically-black-colleges-and-universities.

[73] "Statement on the FBI Response to the Shooting in Buffalo, New York," *FBI National Press Office*, May 16, 2022, at https://www.fbi.gov/news/press-releases/press-releases/statement-on-the-fbi-response-to-the-shooting-in-buffalo-new-york.

[74] "California Man Facing Federal Indictment in Maryland for the Attempted Murder of a Supreme Court Justice," *Department of Justice, United States Attorney's Office, District of Maryland*, June 15, 2022, at https://www.justice.gov/usao-md/pr/california-man-facing-federal-indictment-maryland-attempted-murder-supreme-court-justice.

[75] David Shepardson, "FBI, DHS Warn U.S. Enforcement of Threats after Trump Search," *Reuters*, August 14, 2022, at https://www.reuters.com/world/us/fbi-dhs-warn-us-law-enforcement-threats-after-trump-search-2022-08-14/.

[76] "FBI Cincinnati Statement," *FBI Cincinnati*, August 12, 2022, at https://www.fbi.gov/contact-us/field-offices/cincinnati/news/press-releases/fbi-cincinnati-statement-081122.

[77] See, for example, Office of the Director of National Intelligence, *Domestic Approach to National Intelligence*, December 2016, at https://www.dni.gov/files/documents/Newsroom/DomesticApproachtoNationalIntelligence.PDF. See also the comment by John Gannon on the blurred distinction between foreign and domestic intelligence, *Domestic Intelligence Gathering*, C-SPAN, October 6, 2010, at https://www.c-span.org/video/?295849-3/domestic-intelligence-gathering.

law enforcement agencies to improve their evaluation and coordination of intelligence on terrorism and violent extremism.

Following the January 6, 2021, attack on the U.S. Capitol, an investigation by the Senate Committee on Homeland Security and Governmental Affairs, and the Senate Committee on Rules and Administration recommended that the intelligence community review the criteria for issuing and communicating intelligence assessments to law enforcement and other consumers of intelligence.[78] The investigation further recommended improvements in how intelligence is shared among law enforcement organizations such as the U.S. Capitol Police.[79] In March 2021, the Senate Judiciary Committee considered the Senate the Domestic Terrorism Prevention Act of 2021 (S. 964,117 Congress), which would establish offices in DHS, DOJ, and FBI dedicated to analyzing and monitoring domestic terrorism activity. The bill would also create an interagency task force to analyze and combat white supremacist and neo-Nazi infiltration of the Armed Forces and federal law enforcement agencies, and it would require a review of federal law enforcement training programs to ensure that they are equipped to understand, detect, and deter acts of domestic terrorism. On May 18, 2022, the House of Representatives passed the Domestic Terrorism Prevention Act of 2022 (H.R. 350, 117th Congress), which includes similar provisions to those in S. 964. The legislation closely followed the May 14, 2022, attack at a supermarket in Buffalo, NY by an avowed white supremacist, who killed 10 people and wounded three. All 10 of those fatally shot were African American.

Some observers have urged Congress to protect civil liberties while pushing for enhanced coordination between the intelligence community and law enforcement.[80] Several Members of Congress have also sought assurances that intelligence coordination on domestic terrorism and violent extremism be done in a manner that respects civil liberties. Congress, for example, enacted a provision in the Intelligence Authorization Act for 2022 (Division X of P.L. 117-103) that amended the National Security Act of 1947 (P.L. 80-253; 50 U.S.C. §3021 et seq.) to explicitly prohibit the intelligence community from collecting information on U.S. persons engaged in constitutionally protected activities.

Issues for Congress

As Congress confronts an evolving terrorist threat in the homeland and evaluates the government's ability to gather and coordinate intelligence to combat this threat, it may consider a number issues. It may choose to evaluate First Amendment issues and whether any intelligence gathering, such as monitoring of social media, violates First Amendment-protected free speech. It may also evaluate how effective intelligence information-sharing standards and processes are in addressing the current threat of domestic terrorism and violent extremism.

[78] Committee on Homeland Security and Governmental Affairs, and Committee on Rules and Administration, "Examining the U.S. Capitol Attack: A Review of the Security, Planning, and Response Failures on January 6," United States Senate Staff Report, June 2021, p. 11, at https://www.hsgac.senate.gov/imo/media/doc/HSGAC&RulesFullReport_ExaminingU.S.CapitolAttack.pdf.

[79] Ibid., p. 5.

[80] See for example, Shane Harris, "DHS Compiles 'Intelligence Reports' on Journalists who Published Leaked Documents," *Washington Post*, July 30, 2020, at https://www.washingtonpost.com/national-security/dhs-compiled-intelligence-reports-on-journalists-who-published-leaked-documents/2020/07/30/5be5ec9e-d25b-11ea-9038-af089b63ac21_story.html. See also Zolan Kanno-Youngs, Sergio Olmos, Mike Baker, and Adam Goldman, "From the Start Federal Agents Demanded a Role in Suppressing Anti-Racism Protests," *New York Times*, July 28, 2020, at https://www.nytimes.com/2020/07/28/us/federal-agents-portland-seattle-protests.html.

Combating the Domestic Terrorist Threat While Protecting Constitutionally Protected Speech

A perennial issue for federal law enforcement and intelligence agencies is distinguishing between constitutionally protected speech and threat-related activity subject to enforcement action.[81] Federal investigations may be conducted for an authorized national security, criminal, or foreign intelligence collection purpose and in pursuit of a clearly defined objective. Investigative activity may not monitor activities that are solely the exercise of First Amendment rights.[82] This issue is especially relevant for domestic anti-terrorism policy. Both DHS and the FBI had warned of potential violence at the U.S. Capitol on January 6, 2021, but law enforcement reportedly did not act on that intelligence, partly because they decided that some of the cases in question were protected by First Amendment rights.[83] In a subsequent congressional hearing, and in light of the heightened domestic terrorism threat, then-DHS Acting Undersecretary for Intelligence and Analysis (I&A) John Cohen stated that DHS is "redoubling efforts to augment intelligence analysis and information sharing capabilities, while also reviewing how to better access and use publicly available information to inform our analysis."[84] Further, he indicated that DHS would establish a dedicated domestic terrorism branch within I&A to combat the domestic terrorism threat. Congress may balance its support for DHS and the FBI in their newly concentrated efforts to combat domestic terrorism with First Amendment limitations.[85]

Social Media and Intelligence Gathering

In 2021, DHS began to gather and analyze intelligence about security threats, including domestic terrorism threats, from public social media posts.[86] The FBI has given conflicting responses to questions on whether it relies on social media for this purpose and has repeated concerns over First Amendment protections.[87] According to the FBI Domestic Investigations and Operations Guide, the FBI is permitted to proactively search publicly available

[81] See Christopher Wray, *Threats to the Homeland: Evaluating the Landscape 20 Years After 9/11*, Federal Bureau of Investigation, Statement Before the Senate Homeland Security and Governmental Affairs Committee, September 21, 2021.

[82] See Department of Justice, *The Attorney General's Guidelines for Domestic FBI Operations*, 2008.

[83] Devlin Barrett, "Homeland Security official: Jan. 6 changed how we handle online intelligence," *The Washington Post*, November 3, 2021, at https://www.washingtonpost.com/national-security/homeland-security-official-jan-6-changed-how-we-handle-online-intelligence/2021/11/03/108484f0-3cb7-11ec-bfad-8283439871ec_story.html.

[84] U.S. Congress, House Permanent Select Committee on Intelligence, Subcommittee on Counterterrorism, Counterintelligence, and Counterproliferation, *Countering Domestic Terrorism*, Testimony of John Cohen, Senior Official Performing the Duties of the Under Secretary for Intelligence and Analysis, U.S. Department of Homeland Security, 117th Cong., 1st sess., November 3, 2021.

[85] For example, lawmakers have previously expressed interest in designating organizations as domestic terrorist organizations, but doing so may infringe on First Amendment protections. See discussion in CRS In Focus IF10839, *Are Antifa Members Domestic Terrorists? Background on Antifa and Federal Classification of Their Actions*, by Lisa N. Sacco.

[86] Ken Dilanian, "DHS Launches Warning System to Find Domestic Terrorism Threats on Public Social Media," *NBC News*, May 10, 2021, at https://www.nbcnews.com/politics/national-security/dhs-launches-warning-system-find-domestic-terrorism-threats-public-social-n1266707.

[87] Quinta Jurecic, "Why Didn't the FBI Review Social Media Posts Announcing Plans for the Capitol Riot?," *Lawfare*, June 29, 2021, at https://www.lawfareblog.com/why-didnt-fbi-review-social-media-posts-announcing-plans-capitol-riot.

information.[88] Director Wray, however, stated that the FBI is allowed to monitor social media "[w]ith proper predication and an authorized purpose..." but clarified that the FBI is not allowed "just sit and monitor social media, and look at one person's posts, just looking to see if maybe something would happen just in case."[89]

In its *National Strategy for Countering Domestic Terrorism*, the Biden Administration stated that DOJ is examining whether new legislative authorities that balance safety and the protection of civil rights and liberties are "necessary and appropriate."[90] It is unclear what those new legislative authorities might be.

Congress might consider the effectiveness of safeguards for protecting civil liberties that exist within the processes for coordinating and sharing intelligence between intelligence and law enforcement agencies.[91] For example, it could request the Government Accountability Office (GAO) to examine whether the intelligence and law enforcement workforces are sufficiently trained on the protection of civil liberties in an environment that promotes intelligence sharing.

Coordination between Intelligence and Law Enforcement Agencies

This report has cited the 2016 ODNI report, *Domestic Approach to National Intelligence*, which determined that insofar as the domestic environment was concerned, the intelligence community engaged in "inconsistent practices, absence of doctrine, and a lack of unity of effort."[92] Similarly, the Intelligence Community Inspector General, in 2017, found that information sharing standards required updating, and information sharing itself was "uneven."[93] Congress' investigation into the indications and warning of the January 6, 2021 attack on the Capitol also indicated a need to improve information sharing standards.[94] These findings raise questions about how effective intelligence information-sharing standards and processes are in addressing the current threat of domestic terrorism and violent extremism.

As this report previously mentioned, in 2021 and 2022, respectively, the Senate and House introduced legislation intended to improve the ways government agencies monitor, analyze, and coordinate information on domestic violent extremist threats. Congress could continue to explore options for enhancing interagency coordination on domestic violent extremism, which could include training and exercises, balanced by emphasizing the responsibility of intelligence and law enforcement entities to respect civil liberties.

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[88] Federal Bureau of Investigation, *FBI Domestic Investigations and Operations Guide*, p. 77.

[89] U.S. Congress, House Committee on the Judiciary, *House Judiciary Committee Holds Hearing on FBI Oversight*, Response of FBI Director Wray to question asked by Congressman Swalwell., 117th Cong., 1st sess., June 10, 2021.

[90] The White House, National Security Council, *National Strategy for Countering Domestic Terrorism*, June 2021, pp. 25-26, at https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf.

[91] Examples of safeguards include the NCTC's *Civil Liberties and Privacy Intelligence Community Enterprise Strategy 2019-2024* and the role of the Civil Liberties Protection Officer for the Office of the Director of National Intelligence.

[92] Office of the Director or National Intelligence, *Domestic Approach to National Intelligence*, December 2016, p. 9, at https://www.dni.gov/files/documents/Newsroom/DomesticApproachtoNationalIntelligence.PDF.

[93] Inspectors General of the Intelligence Community, Department Of Homeland Security, Department Of Justice, *Review of Domestic Sharing of Counterterrorism Information, Offices of the Inspectors General of the Intelligence Community, Department of Homeland Security, and Department of Justice*, March 2017, p. i, at https://www.dni.gov/files/documents/Newsroom/Domestic_Sharing_Counterterrorism_Information_Report.pdf.

[94] Committee on Homeland Security and Governmental Affairs, and Committee on Rules and Administration, "Examining the U.S. Capitol Attack: A Review of the Security, Planning, and Response Failures on January 6," United States Senate Staff Report, June 2021, pp. 5, 39-49 at https://www.hsgac.senate.gov/imo/media/doc/HSGAC&RulesFullReport_ExaminingU.S.CapitolAttack.pdf.

Appendix A. Intelligence, Domestic Terrorism, and Related Terms

The intelligence community and law enforcement agencies frequently use the terms "intelligence," "domestic terrorism," "homegrown violent extremism (HVE)," and "domestic violent extremism (DVE)" in testimony and documents addressing the domestic threat environment. This appendix provides definitions and context for these terms.

Intelligence

The Office of the Director of National Intelligence has defined intelligence as

> information gathered within or outside the U.S. that involves threats to our nation, its people, property, or interests; development, proliferation, or use of weapons of mass destruction; and any other matter bearing on the U.S. national or homeland security. Intelligence can provide insights not available elsewhere that warn of potential threats and opportunities, assess probable outcomes of proposed policy options, provide leadership profiles on foreign officials, and inform official travelers of counterintelligence and security threats.[95]

In statute, the term "intelligence" includes foreign intelligence and counterintelligence. Foreign intelligence is defined as "information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities." Counterintelligence is defined as "information gathered, and activities conducted, to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities."[96]

Intelligence or Information Supporting Homeland Security

No statutory definition exists for domestic intelligence. However, Title 6 of the *U.S. Code*, which provides the statutory authority and organization for domestic security, broadly defines intelligence components supporting homeland security as authorized to engage in the collection, processing, analysis, production, and dissemination of intelligence information "within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, or national intelligence."[97]

In statute, the term "homeland security information" refers to

> any information possessed by a Federal, State, or local agency that: relates to the threat of terrorist activity; relates to the ability to prevent, interdict, or disrupt terrorist activity; would improve the identification or investigation of a suspected terrorist or terrorist organization; or, would improve the response to a terrorist act.[98]

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[95] Office of the Director of National Intelligence, "What is Intelligence?" at https://www.dni.gov/index.php/what-we-do/what-is-intelligence#:~:text=Intelligence%20is%20information%20gathered%20within,U.S.%20national%20or%20homeland%20security.

[96] 50 U.S.C. §3003(2)-(3).

[97] 6 U.S.C. §101(11).

[98] 6 U.S.C. §482(f)(1)(A)-(D). (some internal numbering omitted)

A 2009 RAND study offered the following definition of domestic intelligence: "Efforts by government organizations to gather, assess, and act on information about individuals or organizations in the United States or U.S. persons elsewhere that are not related to the investigation of a known past criminal act or specific planned criminal activity."[99]

Domestic Terrorism

The statutory definition of domestic terrorism is as follows:

> Activities that involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any state [and] appear to be intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, or kidnapping; and occur primarily within the territorial jurisdiction of the United States.[100]

The FBI defines domestic terrorism as "violent, criminal acts committed by individuals and/or groups to further ideological goals stemming from domestic influences, such as those of a political religious, social, racial, or environmental nature."[101]

Homegrown Violent Extremism and Domestic Violent Extremism

The FBI defines Homegrown Violent Extremists (HVE) as individuals who "have been radicalized primarily in the United States, and who are inspired by, but not receiving individualized direction from, foreign terrorist organizations (FTOs)."[102]

Domestic Violent Extremists (DVE), on the other hand, generally do not have a foreign nexus. The FBI defines DVEs as "individuals who commit violent criminal acts in furtherance of ideological goals stemming from domestic influences, such as racial bias and anti-government sentiment."[103] FBI Director Christopher Wray, testifying before the House Appropriations Committee in April 2019, described white supremacists and similar domestic violent extremists as "less structured, less organized ... more uncoordinated, one-off individuals as opposed to some structured hierarchy":[104]

> The top threat we face from domestic violent extremists stems from those we identify as racially/ethnically motivated violent extremists [who] were the primary source of

[99] Brian A. Jackson, ed., "The Challenge of Domestic Intelligence in a Free Society: A Multidisciplinary Look at the Creation of a U.S. Domestic Counterterrorism Intelligence Agency" (Santa Monica: RAND, 2009), pp. 3-4, at https://www.rand.org/pubs/monographs/MG804.html.

[100] 18 U.S.C. §2331(5)(A)-(C). Within DHS, the term "terrorism" is based on a definition in 6 U.S.C. §101(18)(A)-(B): "An act that: is dangerous to human life or potentially destructive of critical infrastructure or key resources; and, Is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and, appears to be intended: to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, or kidnapping" (some internal numbering omitted).

[101] See "What We Investigate: Terrorism," at https://www.fbi.gov/investigate/terrorism. The Bureau defines international terrorism as "violent, criminal acts committed by individuals and/or groups who are inspired by, or associated with, designated foreign terrorist organizations or nations."

[102] Christopher Wray, *Worldwide Threats to the Homeland*, Statement before the Senate Homeland Security and Government Affairs Committee, September 24, 2020, at https://www.fbi.gov/news/testimony/worldwide-threats-to-the-homeland-092420.

[103] Ibid.

[104] See Christopher Wray before the House Appropriations Committee, April 4, 2019, at https://www.c-span.org/video/?459339-1/fbi-director-wray-tells-lawmakers-read-mueller-report.

> ideologically motivated lethal incidents and violence in 2018 and 2019 and have been considered the most lethal of all domestic extremists since 2001.[105]

In its March 2021 assessment, the intelligence community definition of a DVE as

> an individual based and operating primarily in the United States without direction or inspiration from a foreign terrorist group or other foreign power and who seeks to further political or social goals wholly or in part through unlawful acts of force or violence.[106]

The term does not include individuals engaged solely in activities protected by the First Amendment and other constitutional protections.[107]

[105] Christopher Wray, *Worldwide Threats to the Homeland*, Statement before the Senate Homeland Security and Government Affairs Committee, September 24, 2020, at https://www.fbi.gov/news/testimony/worldwide-threats-to-the-homeland-092420.

[106] Office of the Director of National Intelligence, *Domestic Violent Extremism Poses Heightened Threat in 2021*, March 2021, at https://www.dni.gov/files/ODNI/documents/assessments/UnclassSummaryofDVEAssessment-17MAR21.pdf.

[107] Ibid.

Appendix B. Intelligence Community and Law Enforcement Domestic Threat Organization

Counterterrorism organizations created in the wake of the 9/11 attacks were initially conceived to address the threat of international rather than domestic terrorism. They were also intended to address some of the concerns highlighted in the findings of the Joint Inquiry and 9/11 Commission that also apply to the threat of domestic terrorism: greater collaboration between law enforcement (LE) entities and intelligence community elements, and the timely sharing of relevant information across the departments and agencies of the federal government and with state, local, tribal, territorial (SLTT) LE entities. Following are the missions and functions of the NCTC's Joint Counterterrorism Assessment Team, the FBI's National Security Branch and Intelligence Branch, and the Department of Homeland Security's (DHS's) Office of Intelligence and Analysis (I&A).

NCTC's Joint Counterterrorism Assessment Team

Within NCTC, the Joint Counterterrorism Assessment Team (JCAT) is responsible for disseminating relevant counterterrorism intelligence, classified at an appropriate level and in a useable format, to SLTT entities with responsibility for counterterrorism in their respective jurisdictions. JCAT is staffed by SLTT first responders, serving on rotational assignments from their home agencies, alongside analysts from the FBI, DHS, and NCTC.[108]

FBI National Security Branch

In 2005, the FBI created the National Security Branch (NSB) in accordance with then-President George W. Bush's directive to establish a national security service to "ensure that the FBI's intelligence elements are responsive to the Director of National Intelligence."[109] The NSB was established to fully integrate the FBI's intelligence elements into the intelligence community, and it includes the Counterintelligence and Counterterrorism divisions, as well as the Terrorist Screening Center.[110]

In its intelligence role, the NSB produces and circulates intelligence products to federal, state, local, tribal, and territorial law enforcement partners and disseminates trends in threat reporting and criminal activity involving domestic violent extremism. For example, in August 2020, the NSB released an intelligence report informing partners that "domestic violent extremists with partisan political grievances likely posed an increased threat related to the 2020 election."[111]

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[108] Office of the Director of National Intelligence, "About Us: Joint Counterterrorism Assessment Team," at https://www.dni.gov/index.php/nctc-how-we-work/joint-ct-assessment-team.

[109] The White House, President George W. Bush, *President Bush Administration Actions to Implement WMD Commission Recommendations,* at https://georgewbush-whitehouse.archives.gov/news/releases/2005/06/20050629-5.html June 29, 2005.

[110] In addition to the components listed above, the Weapons of Mass Destruction Directorate is also part of the NSB. Federal Bureau of Investigation, *National Security Branch*, at https://www.fbi.gov/about/leadership-and-structure/national-security-branch.

[111] Jill Sanborn, *Examining the January 6 Attack on the U.S. Capitol*, Federal Bureau of Investigation, Statement Before the Homeland Security and Governmental Affairs Committee and Rules and Administration Committee, March 3, 2021, at https://www.hsgac.senate.gov/imo/media/doc/Testimony-Sanborn-2021-03-03.pdf p. 2.

Terrorist Screening Center

The Terrorist Screening Center (TSC) is located within the NSB. The TSC is a multiagency organization created by presidential directive in 2003[112] and administered by the FBI, which is responsible for managing the Terrorist Screening Database (TSDB; also known as the Terrorist Watchlist). Through the TSDB, the TSC disseminates identity information for individuals suspected or known to have engaged in terrorism (including domestic terrorism) to screening partners such as the Department of State; DHS; federal, state, and local law enforcement; and select international partners.[113]

The TSDB is designed to help prevent terrorism, but the information in it is generally only useful when the appropriate entities access it. Dozens of watchlisted individuals were reportedly in Washington, DC, on the day of the January 6 terrorist attack on the U.S. Capitol.[114] The watchlisting information on these individuals was of little use to law enforcement that day because they would not have had access to it unless an individual had an encounter with law enforcement involving a TSDB record check.

FBI Intelligence Branch

The FBI's Intelligence Branch (IB) leads the FBI's intelligence program and supports intelligence operations across FBI field offices and divisions at FBI headquarters through the Directorate of Intelligence, Office of Partner Engagement, and Office of the Private Sector.[115] These divisions manage the FBI intelligence strategy, resources, policies, and programs. The IB gathers intelligence through a variety of techniques—including interviews, wiretaps, and data analysis—and engages with intelligence partners in law enforcement and fusion centers.[116] Further, the IB engages with the private sector and academic institutions to increase collaboration and mitigate threats through "mutually beneficial partnerships."[117]

Within the IB, the Strategic Intelligence Issues Group (SIIG) provides FBI leaders with an integrated perspective on threats, including domestic terrorism threats. The SIIG is composed of senior national intelligence officers with "subject-matter expertise on geographic and functional programs who help integrate the FBI's understanding of priority threat issues."[118]

DHS Office of Intelligence and Analysis

The DHS Office of Intelligence and Analysis (I&A) accesses, receives, and analyzes intelligence from federal, state, and local government agencies and private sector entities and disseminates

[112] Homeland Security Presidential Directive-6, "Directive on Integration and Use of Screening Information to Protect Against Terrorism," September 16, 2003, at https://www.govinfo.gov/content/pkg/PPP-2003-book2/pdf/PPP-2003-book2-doc-pg1174.pdf.

[113] For more information, see https://www.fbi.gov/about/leadership-and-structure/national-security-branch/tsc.

[114] Devlin Barrett, Spenser S. Hsu, and Marissa J. Lang, "Dozens of People on FBI Terrorist Watch List Came to D.C. the Day of Capitol Riot," *The Washington Post*, January 14, 2021, at https://www.washingtonpost.com/national-security/terror-watchlist-capitol-riot-fbi/2021/01/14/07412814-55f7-11eb-a931-5b162d0d033d_story.html.

[115] Federal Bureau of Investigation, *FY 2023 President's Budget Request*, March 2022, p. 7.

[116] Federal Bureau of Investigation, "Leadership & Structure: Intelligence," https://www.fbi.gov/about/partnerships/office-of-private-sector.

[117] Federal Bureau of Investigation, "Partnerships: Office of the Private Sector," https://www.fbi.gov/about/leadership-and-structure/intelligence-branch.

[118] Federal Bureau of Investigation, *FY 2023 President's Budget Request*, March 2022, pp. 21-22.

intelligence to those partners. I&A intelligence officers, reports officers, and regional directors are deployed nationwide to manage information sharing with state and local entities as part of I&A field operations.[119] I&A is responsible for producing intelligence reports for the intelligence community based on counterterrorism information from state and local authorities.[120] I&A collects publicly available information in furtherance of national and departmental missions, including its domestic terrorism missions.[121]

DOJ Domestic Terrorism Unit

On January 11, 2022, Assistant Attorney General Matthew Olsen announced that DOJ would establish a new unit to focus on domestic terrorism. Citing the rise in the threat of domestic extremism and the sharp increase in the number of FBI domestic terrorism investigations,[122] Olsen stated that DOJ is creating the new unit to ensure that domestic terrorism cases are "properly handled and effectively coordinated."[123] The extent to which this unit will be involved in the collection, consumption, and dissemination of intelligence remains unclear.

Coordination of Intelligence in a Domestic Threat Environment

Law enforcement (federal, state, local, tribal, and territorial) and intelligence agencies across the country coordinate to confront the persistent and rising domestic terrorist threats in the United States. The FBI is the lead law enforcement and intelligence agency that confronts these threats, and it uses "all available lawful investigative techniques and methods to combat these threats while continuing to collect, analyze, and share intelligence."[124] The FBI shares intelligence with numerous partners through its Joint Terrorist Task Forces (JTTFs) and FBI Field Intelligence Groups (FIGs). Other means through which government entities coordinate intelligence to confront the domestic terrorist threat include the state and locally run National Network of Fusion

[119] Department of Homeland Security, "Operational and Support Components: Office of Intelligence and Analysis," https://www.dhs.gov/office-intelligence-and-analysis; Inspectors General of the Intelligence Community, Department of Homeland Security, and Department of Justice, *Review of Domestic Sharing of Counterterrorism Information*, Department of Justice OIG Audit Division Report 17-21, March 2017, p. 4.

[120] Inspectors General of the Intelligence Community, Department of Homeland Security, and Department of. Justice, *Review of Domestic Sharing of Counterterrorism Information*, Department of Justice OIG Audit Division Report 17-21, March 2017, pp. 17-18.

[121] U.S. Congress, House Permanent Select Committee on Intelligence, Subcommittee on Counterterrorism, Counterintelligence, and Counterproliferation, *Countering Domestic Terrorism*, Testimony of John Cohen, Senior Official Performing the Duties of the Under Secretary for Intelligence and Analysis, U.S. Department of Homeland Security, 117th Cong., 1st sess., November 3, 2021, at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Cohen%20Testimony.pdf.

[122] Assistant Attorney General Olsen stated in his testimony that the number of FBI domestic terrorism investigations has more than doubled over the past two years. See U.S. Department of Justice, "Assistant Attorney General Matthew G. Olsen Delivers Opening Remarks Before U.S. Senate Committee on the Judiciary," *Justice News*, January 11, 2022, at https://www.justice.gov/opa/speech/assistant-attorney-general-matthew-g-olsen-delivers-opening-remarks-us-senate-committee.

[123] See remarks by Assistant Attorney General Matthew Olsen during oral testimony at U.S. Congress, Senate Committee on the Judiciary, *The Domestic Terrorism Threat One Year After January 6*, 117th Cong., 2nd sess., January 11, 2022, at https://www.justice.gov/opa/speech/assistant-attorney-general-matthew-g-olsen-delivers-opening-remarks-us-senate-committee.

[124] Christopher Wray, *Threats to the Homeland: Evaluating the Landscape 20 Years After 9/11*, the Federal Bureau of Investigation, Statement Before the Senate Homeland Security and Governmental Affairs Committee, September 21, 2021, at https://www.fbi.gov/news/testimony/threats-to-the-homeland-evaluating-the-landscape-20-years-after-911-wray-092121.

Centers, Homeland Security Information Network (HSIN), Law Enforcement Enterprise Portal (LEEP), and Domestic Security Alliance Council.

Joint Terrorism Task Force and Field Intelligence Group Coordination

The interagency National Joint Terrorism Task Force (JTTF) operates out of FBI headquarters and is responsible for intelligence sharing to and among local JTTFs. According to the FBI, JTTFs conduct law enforcement operations such as investigating and responding to terrorism, but they also collect and share intelligence, and ensure the intelligence "flows freely among the local JTTFs and beyond."[125] There are 200 JTTFs in the United States, including at least one in each of the FBI's 56 domestic field offices, with hundreds of participating state, local, and federal agencies.[126]

The FBI's Field Intelligence Groups (FIGs) "coordinate, manage, and execute all functions of the intelligence cycle, including collection, analysis, production, and dissemination, for the FBI in field offices throughout the country."[127] All FBI field offices operate a FIG, and they are primarily staffed with FBI intelligence analysts who provide direct operational and analytical support to JTTF officers. The FBI established mandatory coordination requirements among all FIGs and JTTFs.[128]

National Network of Fusion Centers

Fusion centers are state- and locally-run organizations that receive, analyze, collect, and share intelligence related to threats to the homeland. Fusion centers help law enforcement and homeland security partners prevent, protect against, and respond to terrorism and other crimes. Fusion center information-gathering initiatives have disrupted potential domestic terrorist threats. For example, according to testimony from Assistant Director of the FBI Jill Sanborn, the Orange County Intelligence Assessment Center (a fusion center in California) provided information to the FBI that led the Bureau to open cases resulting in the arrests of seven members of The Base (a group that supports white supremacy) across four states.[129] Fusion centers also coordinate intelligence on threats between state, local, tribal, territorial, federal, and private-sector partners. The National Network of Fusion Centers, as well as the Regional Information Sharing Systems

[125] Federal Bureau of Investigation, "Joint Terrorism Task Forces," at https://www.fbi.gov/investigate/terrorism/joint-terrorism-task-forces.

[126] Ibid.

[127] Inspectors General of the Intelligence Community, Department of Homeland Security, and Department of Justice, *Review of Domestic Sharing of Counterterrorism Information*, Department of Justice OIG Audit Division Report 17-21, March 2017, p. 6.

[128] Ibid., p. 312.

[129] See transcript from U.S. Congress, House Committee on Homeland Security, Subcommittee on Intelligence and Counterterrorism, *Confronting the Rise in Anti-semitic Domestic Terrorism, Part II*, 116th Cong., 2nd sess., February 26, 2020. For further information on the arrests of members of The Base, see Alexander Mallin and Luke Barr, "Inside the neo-Nazi hate group 'The Base,' which is the center of an FBI investigation," *ABC News*, January 23, 2020. For description of The Base and associates, see, for example, Department of Justice, U.S. Attorney's Office, District of Maryland, *Two Members of the Violent Extremist Group "The Base" Each Sentenced to Nine Years in Federal Prison for Firearms and Alien-Related Charges*, October 28, 2021, at https://www.justice.gov/usao-md/pr/two-members-violent-extremist-group-base-each-sentenced-nine-years-federal-prison.

(RISS; see discussion below), are the primary state and local counterterrorism information-sharing organizations.[130]

FBI Role with Fusion Centers

In January 2007, the FBI's Directorate of Intelligence established an Interagency Integration Unit to provide FBI headquarters oversight of FBI field office relationships with fusion centers.[131] The FBI's role in and support of individual fusion centers varies, and FBI efforts to support centers include assigning FBI special agents and intelligence analysts to fusion centers, providing office space for fusion centers, providing security clearances to fusion center personnel, conducting security certification of facilities, and "providing direct or facilitated access to the FBI."[132] As part of their intelligence mission, FBI personnel assigned to fusion centers provide for a two-way flow of intelligence between the fusion center and the FBI and support the timely flow of intelligence between the fusion center and the local JTTF and FBI FIG.[133]

FBI Office of Partner Engagement

The FBI's Office of Partner Engagement (OPE; part of the FBI's IB) manages programs for the FBI's work with state and local fusion centers as part of its intelligence support for the Domestic Information-Sharing Architecture.[134] OPE administers intelligence training to fusion center personnel. Training includes

- intelligence-centric courses (designed by OPE) to educate law enforcement on a common set of practices in producing and disseminating intelligence products within their departments and communities;
- intelligence-leadership training for future intelligence commanders and other intelligence personnel; and
- training on common intelligence practice and lexicon shared by federal, state, and local law enforcement.[135]

[130] Inspectors General of the Intelligence Community, Department of Homeland Security, and Department of Justice, *Review of Domestic Sharing of Counterterrorism Information*, Department of Justice OIG Audit Division Report 17-21, March 2017, p. 6; and Department of Homeland Security, *National Network of Fusion Centers Fact Sheet*, September 30, 2021, at https://www.dhs.gov/national-network-fusion-centers-fact-sheet.

[131] U.S. Government Accountability Office, Homeland Security: Federal Efforts Are Helping to Alleviate Some Challenges Encountered by State and Local Information Fusion Centers, GAO-08-35, November 29, 2007, p. 11, https://www.gao.gov/products/gao-08-35.

[132] Ibid.

[133] Ibid., p. 11.

[134] Federal Bureau of Investigation, *FY 2023 President's Budget Request*, March 2022, p. 23.

[135] Ibid., p. 4-10.

Further, the FBI and the National Fusion Center Association (along with other federal partners) developed the Enhanced Engagement Initiative (EEI) to ensure that state and local fusion centers have a complete understanding of the terrorism threat.[136] In support of the EEI, the FBI provides training and other resources on the intelligence process and writing "to ensure greater continuity and standardization of terrorism information sharing efforts."[137]

Regional Information Sharing Systems Centers

The Regional Information Sharing Systems (RISS) program supports law enforcement efforts to combat organized and violent crime, terrorism, drug trafficking, and other crimes. The program is composed of six regional centers across the United States and the RISS Technology Support Center.[138] Among other functions, it maintains a criminal intelligence database to enable law enforcement to conduct a "real-time, online federated search of more than 60 RISS and partner intelligence databases, including state intelligence systems, fusion centers, and systems connected via the National Virtual Pointer System (NVPS)."[139] The intelligence user interface, known as RISSIntel, is meant to facilitate the exchange of information and coordination among member agencies investigating the same individuals or organizations.[140]

Homeland Security Information Network

The DHS Homeland Security Information Network (HSIN) is used to share sensitive but unclassified information among federal, state, local, territorial, tribal, international, and private sector partners. Through HSIN, operators access homeland security data, send secure requests to other agencies, coordinate event safety and security, and respond to incidents related to securing the homeland.[141] According to DHS, "HSIN-Intel is utilized by over 4,000 professionals across the country and includes over 40,000 products on a range of Homeland Security threat issues, and that includes domestic terrorism."[142]

Law Enforcement Enterprise Portal

Administered by the FBI, the Law Enforcement Enterprise Portal (LEEP) is a single sign-on, secure platform used by intelligence, law enforcement, and other criminal justice agencies to access a host of information systems relevant to criminal cases, including RISS. LEEP enables participants to set up a Virtual Command Center: a critical-incident management system used to share information such as suspect profiles, maps and floorplans, event schedules, and threat

[136] Kerry L. Sleeper, Assistant Director, Office of Partner Engagement, *From Boston to Austin: Lessons Learned on Homeland Threat Information Sharing*, Federal Bureau of Investigation, Statement Before the House Homeland Security Committee, April 18, 2018.

[137] Ibid.

[138] Regional Information Sharing Systems, *About Us* and *Criminal Intelligence Database Solving Cases Through Information Sharing*, at https://www.riss.net/.

[139] See Regional Information Sharing Systems, *Criminal Intelligence Database Solving Cases Through Information Sharing*, at https://www.riss.net/.

[140] Ibid.

[141] Department of Homeland Security, "Homeland Security Information Network (HSIN)," at https://www.dhs.gov/homeland-security-information-network-hsin.

[142] U.S. Congress, House Committee on Homeland Security, *Confronting the Rise of Domestic Terrorism in the Homeland*, Statement of Brian Murphy, Principal Deputy Under Secretary for the Office of Intelligence and Analysis, U.S. Department of Homeland Security, 116th Cong., 1st sess., May 8, 2019.

monitoring for incidents such as domestic terrorist attacks and threats.[143] Time-sensitive threat information may be shared widely with law enforcement through LEEP.[144]

Domestic Security Alliance Council

In 2005, the FBI set up the Domestic Security Alliance Council (DSAC) at the request of corporate chief security officers from around the country. It is a partnership between the FBI, DHS, and private sector executives designed to advance the FBI's mission of detecting, preventing, and deterring criminal acts, including domestic terrorist acts, by facilitating relationships among its private sector member companies, FBI Headquarters and field offices, DHS Headquarters, fusion centers, and other federal government entities.[145] Reportedly, the DSAC enables a two-way exchange of intelligence, which can include information related to counterintelligence and terrorism, and helps the FBI learn of new threats and information related to existing threats.[146]

[143] Federal Bureau of Investigation, "Criminal Justice Information Services: Law Enforcement Enterprise Portal (LEEP)," at https://www.fbi.gov/services/cjis/leep.

[144] For example, prior to the Capitol breach on January 6, 2021, the Norfolk FBI field office reportedly posted threat information warning of violence at the Capitol on LEEP. See Mark Mazzetti and Adam Goldman, "Muddled Intelligence Hampered Response to Capitol Riot," *The New York Times*, February 5, 2021, updated April 13, 2021, at https://www.nytimes.com/2021/02/05/us/politics/capitol-riot-domestic-terrorism.html.

[145] Federal Bureau of Investigation, "Domestic Security Alliance Council," https://www.dsac.gov/.

[146] Dave Ress, "America's enemies are targeting businesses. This FBI office focuses on corporate security and fraud," *Daily Press*, March 20, 2021.

Appendix C. The Current Transnational Terrorism Threat Environment as It Pertains to the Homeland

In March 2021, the Biden Administration released its Interim National Security Strategic Guidance (INSSG).[147] The INSSG states that among the risks to the security of the United States, "violent extremism and terrorism pose profound and, in some cases, existential dangers."[148] The INSSG further asserts that "terrorism and violent extremism, both domestic and international, remain significant threats" and that "despite significant successes against international terrorism, a diffuse and dispersed threat to Americans remains."[149] In focusing on threats within the homeland, the INSSG finds that "domestic violent extremism challenges core principles of our democracy and demands policies that protect public safety while promoting our values and respecting our laws."[150]

Current assessments suggest threats to the U.S. homeland from foreign actors remain a viable and possibly growing likelihood. In its 2021 annual assessment of global threats, the Office of the Director of National Intelligence (ODNI) reported that Iran has often voiced a desire to retaliate against the U.S. for the January 2020 strike that killed Islamic Revolutionary Guard Corps Quds Force Commander Qasem Soleimani. The ODNI assessed Iran as desiring to "conduct lethal operations in the United States" in response to this killing.[151] This assessment also suggested that "ISIS-*inspired* attacks will very likely remain the primary ISIS threat to the U.S. homeland this year—rather than plots operationally supported or directed by ISIS."[152] The intelligence community's long-term assessment regarding threats from the Middle East finds that "Iran's and Lebanese Hizballah's efforts to solidify a Shia 'axis of resistance' also might increase the threat of asymmetric attacks on the U.S."[153]

Some experts have commented that the U.S. military withdrawal from Afghanistan will increase the likelihood of the country becoming a base once again for Salafi-Jihadi groups that could pose a threat. At a September 14, 2021, meeting of intelligence community professionals, Lt. Gen. Scott D. Berrier, Director of the Defense Intelligence Agency, stated, "The current assessment probably conservatively is one to two years for Al Qaeda to build some capability to at least threaten the homeland."[154] The Director of National Intelligence, Avril Haines, however, has commented that Yemen, Somalia, Syria, and Iraq pose more serious terrorist threats to the United States than the possibility of Salafi-Jihadi terrorists to threaten the United States from bases in Afghanistan.[155]

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[147] Joseph R. Biden Jr., *Interim National Security Strategic Guidance*, Executive Office of The President, Washington DC, March, 2021, at https://www.whitehouse.gov/wp-content/uploads/2021/03/NSC-1v2.pdf.

[148] Ibid.

[149] Ibid.

[150] Ibid.

[151] Office of Director of National Intelligence, *Annual Threat Assessment of the U.S. Intelligence Community*, April 9, 2021, at https://www.intelligence.senate.gov/sites/default/files/documents/2021-04-09%20Final%20ATA%202021%20%20Unclassified%20Report%20-%20rev%202.pdf

[152] Ibid.

[153] Office of the Director of National Intelligence, National Intelligence Council, *Global Trends 2040, A More Contested World*, March 2021, at https://www.dni.gov/files/ODNI/documents/assessments/GlobalTrends_2040.pdf.

[154] Julian E. Barnes, "Al Qaeda Could Rebuild in Afghanistan in a Year or Two, U.S. Officials Say," *New York Times*, September 14, 2021, at https://www.nytimes.com/2021/09/14/us/politics/al-qaeda-afghanistan.html.

[155] Ibid.

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