THE ROLE OF LOCAL LAW ENFORCEMENT IN COUNTERTERRORISM

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List of Acronyms

- ACLU-American Civil Liberties Union
- AQ-Al-Qaeda
- CT-Counterterrorism
- DHS-Department of Homeland Security
- DOJ-Department of Justice
- GAO-General Accountability Office
- FBI-Federal Bureau of Investigation
- JTTF-Joint Terrorism Task Force
- LAPD-Los Angeles Police Department
- LE-Law Enforcement
- LLEA-Local Law Enforcement Agency
- NSI-Nationwide Suspicious Activity Reporting Initiative
- MI5-UK Domestic Intelligence Agency
- MI6-UK Foreign Intelligence Agency
- NYPD-New York Police Department
- SB-United Kingdom’s Special Branches
- SHSP-State homeland Security Program
- UASI-Urban Areas Security Initiative
- UK-The United Kingdom
- US-United States
Introduction

“Protecting and securing the US from terrorist attack often depends on state and local law enforcement officers, who are both the first and last lines of homeland defense.”

This paper considers one possible counter-strategy to the homegrown Islamic terrorism threat–enhanced use of local law enforcement in a counterterrorism (CT) capacity. The paper first examines current trends in terrorism, and analyzes what implications the trends have for local law enforcement. Specifically, this article argues that the homegrown threat is increasing. Second, the paper explores how the United Kingdom has used its local police for CT. Unlike American police forces, local police in the UK have long histories fighting terrorists; therefore US police can learn from their CT experiences. Third, the paper examines the CT efforts of major local law enforcement agencies (LLEAs) in the United States and the relationships between LLEAs and federal agencies. Fourth, this article outlines the argument for why local law enforcement should take on a more prominent role within overall US CT policy, and provides specific policy recommendations for achieving an enhanced role for LLE in CT.

Terrorism Trends

Due to shifts in the nature of the terrorist threat, LLEAs may become more important for CT in the future. A recent National Intelligence Estimate noted that the terrorist threat increasingly emanates from radicalized individuals within the United States, stating that “the operational threat from self-radicalized cells will grow in importance to US counterterrorism

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The Department of Homeland Security’s (DHS’s) Chief Intelligence officer emphasized that “radicalization will continue to expand within the United States over the long term.” Terrorism scholars such as Marc Sageman agree, arguing that because Al-Qaeda (AQ) Central, the terrorist entity believed to operate near the border of Afghanistan and Pakistan, has been neutralized to a significant extent by US CT operations, the greatest terrorist threat to the United States now comes from “homegrown wannabees” who are self-radicalized. One of the practical implications of the shift to homegrown terrorism is that local authorities may be the first to detect plots, and will need to forward the information to the federal government. Historically the process has worked in the reverse direction, with federal authorities first detecting plots and forwarding the information to locals.

A number of recent domestic plots support the notion that homegrown terrorist plots pose a significant threat to the United States. Examples of recent homegrown terrorist plots include the attempted car bombing of Times Square; nineteen individuals who traveled to Somalia from the US to fight for terrorist group Al-Shabaab; five Americans convicted of terrorism offenses in Pakistan; the Fort Hood shootings; plots to bomb New York City and Washington DC mass transit systems; a plot to bomb a Dallas skyscraper; and various plots to attack federal buildings.

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3 “Declassified Key Judgments of the National Intelligence Estimate Trends in Global Terrorism: Implications for the United States.” April, 2006 Accessed online at http://www.etdadmin.com/cgi-bin/student/pdf?siteld=163;submissionId=71597;saved=1
among others.\textsuperscript{7,8} The problem of self-radicalized cells isn’t limited to the United States; cells have been uncovered in Miami, Toronto, Los Angeles, London, and Madrid. During 2009 the United States discovered homegrown terrorist plots at a rate of approximately one per month, a much higher rate than previously experienced in the United States.\textsuperscript{9} Perhaps most disturbingly, the amount of time from radicalization to recruitment to operational deployment appears to be shrinking, leaving less and less time for law enforcement and intelligence agencies to detect and disrupt plots.\textsuperscript{10} In this environment, it is critical for LLEAs to understand the reasons for increased homegrown terrorist plots.

In the past several years the focus of AQ shifted from conducting attacks themselves towards inspiring others to commit attacks.\textsuperscript{11} Several factors probably contribute to the prevalence of recent homegrown plots and attacks. First, AQ successfully established an infrastructure in the US to radicalize and recruit operatives and support their operations.\textsuperscript{12} Security improvements enacted since 9/11 make it more difficult for foreign operatives to enter the country without alerting authorities. For example, better watch list procedures are in place now, and individuals who come to the US from high risk countries are subjected to more


thorough screening measures. To avoid the scrutiny of enhanced security measures, AQ has looked to recruit Americans or Westerners who can circumvent heightened security measures.”

AQ values homegrown terrorists because they have the cultural knowledge and thorough understanding of Western societies necessary to blend in and avoid detection. The intuitive understanding of the West that a homegrown plotter possesses helps them plan and execute successful attacks. In addition, even if AQ preferred to use foreign operatives, homegrown terrorists may be their only viable option. The United States has aggressively targeted foreign operatives; many of them have been killed or pinned down in defensive positions. With missile equipped drones often prowling the skies above them, terrorists’ mobility is severely curtailed. Moreover, the internet has facilitated the spread of jihadist propaganda. AQ and its affiliates understand the importance of media. AQ has aggressively recruited English speaking operatives to bolster their propaganda campaigns targeting the West. In the past, many people believed that America’s ability to act as a “melting pot” would prevent the United States from suffering homegrown terrorist attacks; recent plots disprove this myth.

The homegrown terrorist threat is challenging to law enforcement because it is diffuse and therefore difficult to detect. However, in some ways the homegrown threat is less threatening than centrally planned and executed plots. Scholar Steven Simon notes that homegrown terrorists are often “feckless and ineffective.” Homegrown attacks are typically more modest in their goals, although it is possible that with the ease of modern global

14 Intercepted Letter from Ayman al Zawahiri to Zarqawi, 7/9/2005
communications, self-radicalized individuals will reach out to formal terrorist groups who can enhance “both their ambitions and their capabilities.”\textsuperscript{16}

If the United States is in the midst of a surge in homegrown terrorist plots, as the above evidence suggests, then it is prudent to explore whether the capacity of local police to act as CT agents is being maximized.

**The Importance of Local Law Enforcement Agencies in Counterterrorism**

Law enforcement’s successful record of disrupting recent terrorist plots demonstrates its importance to overall CT strategy. Since 9/11, authorities thwarted at least 30 plots targeting the United States including plots in New York City, Illinois, Los Angeles, Dallas, and other locations. Of these, 28 were disrupted by LE; the exceptions were the “underwear” and “shoe” bombers—where alert airline passengers disrupted these attempted attacks.\textsuperscript{17} Nineteen plots were disrupted from May 2009 to September 2010 alone, and 43 United States citizens or residents were charged or convicted of terrorism crimes in 2009.\textsuperscript{18} Of course, LE did not stop these attacks single handedly.

The intelligence community (IC) plays a central role in helping LE prevent terrorist attacks. Without tips from the IC or leads developed internally, LE has no hope of preventing most plots. Defensive measures and random preventative patrols are of limited utility; most


defenses are prohibitively expensive, and patrols to deter terrorists cannot be everywhere at once. To be effective, LLEAs must be focused against threats by intelligence.

**International Comparison: The United Kingdom**

Local police departments in other Western democracies are heavily involved in CT activities and have been for some time. Their experiences suggest local police can become an integrated and effective component of national CT efforts. The United Kingdom is a prime example. Examining the UK’s history fighting terrorism is especially useful because their society has similar values as the United States and therefore struggled to defeat terrorism with the same types of constraints which are present in the United States. The United Kingdom case illustrates how a developed network of local CT units can contribute to national CT efforts.

Local police in the United Kingdom play a very active role in CT operations. The history of UK’s “Special Branches” (SBs), which are responsible for terrorism investigations, goes all the way back to 1883, when the Metropolitan Police Department first developed a special unit in response to Irish terrorist attacks.\(^{19}\) This long history is an important reason why the SBs are so well integrated into the national counter terrorism architecture, and SBs have produced results.\(^{20}\) In 2007, Scotland Yard’s CT unit reportedly disrupted 13 terrorist networks.\(^{21}\) Part of the reason why the SBs have been successful is that unlike the FBI, the UK’s domestic intelligence agency, MI5, lacks arrest powers. MI5’s lack of arrest powers forces


it to work closely with LLEAs. Today local police departments across the UK have SBs which investigate terrorism and disseminate classified intelligence to officers on the street. The SBs are mature and integrated into national efforts. According to a RAND report, “SBs have been described as an executive partner of the Security Service that provides a major extension to MI5 in terms of intelligence collecting ability.” Additionally, “SBs provided national operational support to the Security Service for which local knowledge and access are vital. This street level familiarity ensures that each SB forms an integral component in the general process of identifying and targeting covert human intelligence sources, who are then managed by a SB unilaterally or together with MI5.” Interestingly, the SBs have become increasingly standardized and centralized. Interaction between other SBs and with MI5 and MI6 occurs through standardized institutional mechanisms.

The United Kingdom uses a National Intelligence Model to guide police intelligence efforts. The model identifies four objectives for success, which might be useful for US LLEAs looking for guidance:

- Establish of a task and coordination process.
- Develop core intelligence products to drive operations.
- Develop rules for best training practices at all levels of policing.

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• Develop systems and protocols to facilitate intelligence.  

The United States’ Approach: Federal, State, and Local Agency Interaction

Since 9/11 local police agencies have taken on greater CT responsibilities.  

A survey performed by the International Chiefs of Police found that after 9/11 there were significant changes in the “operational capacity, mission focus, and program resourcing” of local departments.  

Federal agencies including the Department of Homeland Security (DHS) and the Federal Bureau of Investigation (FBI) impact local level CT operations in important ways.

The Department of Homeland Security: Divergence of Rhetoric and Reality

DHS is the agency responsible for preventing and responding to terrorist attacks on the US homeland. As part of this mission, DHS is the primary federal entity responsible for coordinating and supporting local and state CT activities. In their official statements, federal officials emphasize the importance of local LE in CT. The slogan “homeland security, in fact, begins with hometown security” has become a common refrain among federal security officials, particularly at DHS. DHS Secretary Janet Napolitano has said that “In today’s threat environment, it could very well be a local police officer who detects or disrupts a threat rather

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than an intelligence analyst here in DC.”

DHS says it is working with its Homeland Security Advisory Council to aid local LE. DHS’ fiscal year 2010 budget request included a request for increased funding to facilitate information sharing between local, state, and federal law enforcement. Secretary Napolitano has said, “One of the top priorities for the Department is getting tools out of Washington and into the hands of the men and women on the front lines [first responders].” Secretary Napolitano went on to acknowledge that “[first responders] will be more effective locally than anything we can do from Washington.”

While it is true that DHS has made a serious effort to bolster the capabilities of local LE, DHS’ actions have been too limited. In congressional testimony DHS Secretary Napolitano explained that at her directive DHS is “considering ways to improve intelligence sharing by involving state and local partners during the formulation of intelligence-sharing policies and procedures.”

Nearly ten years after 9/11 it is now incumbent upon leaders to move from consideration options to action. Napolitano has acknowledged that the topic of improving relationships with state and local officials has “proven easy to talk about and difficult to act

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Close examination of each of DHS’ major programs aimed at assisting LLEAs reveals serious problems.

One of the initiatives DHS created to assist LLEAs is fusion centers, of which there are approximately 72. DHS personnel “work side-by-side with state and local LE” at these locations.\(^{34}\) Federal officials believe the fusion centers are an important asset to help “connect the dots” related to CT. Local officials note, however, that the fusion centers vary widely in terms of capabilities and focus. For example, the majority fusion centers analyze information pertaining to “all crimes” while others only analyze information that is explicitly terrorism related.\(^ {35}\) Additionally, the federal government does not fund fusion centers in a consistent manner, making it difficult for local officials to plan their personnel and funding commitments.\(^ {36}\) Fifty-four of fifty-eight fusion centers contacted by the Government Accountability Office reported challenges with funding which were severe enough to threaten the long term sustainability of their center. Furthermore, while the primary purpose of the fusion centers is to share terrorism related information, according to some officials “too much relatively useless federally-generated information is passed down through the centers, and too few locally-


\(^{34}\) “Nine Years after 9/11: Confronting the Terrorist Threat to the Homeland.” Hearing of the Senate Homeland Security and Governmental Affairs Committee. Washington DC, 09/22/2010. Pp. 6


generated tips are being passed up the chain.”  

When the Government Accountability Office assessed the effectiveness of the fusion centers, they found the centers were “underfunded…undermanned, and some of the analysts [were] not properly trained.” Many staff members also encountered difficulty accessing the information systems they supposedly had access to. More than two thirds of fusion centers reported problems getting security clearances, and about one third had difficulty getting their security clearances accepted by federal partners. For example, DHS would not recognize FBI clearances and FBI would not recognize DHS clearances, in spite of the fact that according to Executive Order agencies are generally required to accept other agency’s security clearances. Another limitation of the fusion centers is they are not collectors of information, but merely synthesizers and analyzers. As long as the local agencies which are supposed to feed into the fusion centers do not have a collection capability, the usefulness of the centers will be somewhat limited.

The “Suspicious Activity Reporting System,” also called the Nationwide Suspicious Activity Reporting Initiative (NSI), is another important DHS program. The program intends to standardize ways for police to identify suspicious activities and report that activity back to

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federal intelligence agencies, so that they can be analyzed against current threat information to identify broader trends. Facilitating the flow of information from local officials to their federal counterparts is an important goal. However, there are serious information sharing problems between local and federal agencies. Current LAPD CT chief and chairman of the Major Cities Police Intelligence Commander’s Association’s Intelligence Group Michael Downing asked rhetorically “Do we have authentic partnerships, or is it still, you know, kind of a one way traffic flow of information?”

In certain cases local agencies were restricted from sharing their information because of bureaucratic red tape in the federal government. For example, the former police chief of both New York and Los Angeles, Bill Bratton, explained that while with LAPD he created a regional information sharing system between the LLEAs from California and several neighboring states. The network contained a wealth of intelligence, but the information could not be shared with federal agencies because the federal government refused to indemnify the local authorities against lawsuits filed in the event that federal authorities misused the information. Mr. Bratton described this road block as “frustrating…unfortunate and unnecessary.”

Lawmakers have shared Mr. Bratton’s frustration. Senator Susan Collins, when discussing continuing obstacles to information sharing, chastised security officials, stating that “We have asked over and over and over again what are those policy and legal limitations [to information sharing] because we want to address them.” Some of the information provided to local officials is of questionable value. Local officials express frustration at the amount of time

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it takes for them to receive federal intelligence, stating that by the time they receive threat
information it is often “of no use.”

Officials intend to have a nationwide NSI system in place by 2014, but that goal may not
be realistic. Currently, the NSI is a pilot program funded by the Office of the Director of
National Intelligence. Departments participating in the pilot program include Chicago, Houston,
Las Vegas, Miami, Phoenix, Seattle, Washington DC, and the state fusion centers of Florida,
New York, and Virginia. The Government Accountability Office determined that DHS efforts
to expand information sharing networks have been “bedeviled by cost overruns, poor planning
and ambivalence on the part of local and state authorities.”

Civil liberties groups argue that information sharing efforts between local and federal
authorities may violate individuals’ rights. The ACLU claims that national SARs systems
represent “overboard reporting authority” which “gives law enforcement officers justification to
harass practically anyone they choose, to collect personal information and to pass such
information along to the intelligence community.”

In light of bureaucratic problems and opposition from civil liberties groups, it seems there
are still significant challenges confronting efforts to improve intelligence flows between state
and local officials.

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45 Bill Bratton speaking at “The 2010 Aspen Security Forum. Local LE Perspective: The View from the
Front.” Video available online at http://www.aspeninstitute.org/video/asf-10-local-law-enforcement-
perspective-view-front
47 O’Harrow, Robert Jr and Nakashima, Ellen. “National Dragnet is a Click Away.” Washington Post,
03/06/2008. Accessed online at http://www.washingtonpost.com/wp-
dyn/content/article/2008/03/05/AR2008030503656.html
DHS funding decisions have been problematic, and have deservedly been the subject of widespread derision. In the past, homeland security grant funding formulas often produced absurd results, which were well documented by academics and the media. For example, a study published in the Journal of Homeland Security and Emergency Management found that from 2003-2006 allocation of homeland security grant money was inversely related to risk factors. In other words, the cities at greatest risk of suffering a terrorist attack tended to receive a disproportionately small amount of funding from DHS, while locales at low risk of attack tended to receive a disproportionately large amount of funding per capita. Even more disturbing is the study’s finding that even after funding formulas were revised in 2006, funding allocations “were still negatively related to risk.”

A project by the Center for Investigative Reporting tracks the approximately $30 billion in homeland security funds DHS has handed out to state and local governments, and has highlighted examples of questionable spending. In one case, a town in Nebraska with a population of approximately 400 was allocated $4,500 for surveillance cameras. In another example, Idaho spent $3.4 million to protect against CBRN attacks and $41,000 studying how to protect a grocery store’s distribution center. West Virginia spent $3,000 on lapel pins. Other “homeland security” spending includes air-conditioned garbage trucks for Newark, New Jersey; a trailer to transport racing lawn mowers in Converse, Texas; and traffic cones for Des Moines, Iowa. Meanwhile, two weeks after the attempted Time Square bombing in New York City, CT funding to the city was cut by over $50 million. The move was criticized by both Democrats and Republicans in Congress, but DHS and the Obama administration

defended the move.\textsuperscript{51} According to Congressman Chris Cox, former Chairman of the House Committee on Homeland Security, “The process is exactly backwards. Instead of planning first and knowing where that money is going to go according to our priorities, it’s now that I’ve got the money, what can I do with it?”\textsuperscript{52} Given these facts, it would seem prudent to figure out a way to better distribute grant money.

Homeland security grant money is distributed primarily through two programs—the State Homeland Security Program (SHSP) and the Urban Areas Security Initiative (UASI). The risk assessment methodology of these programs has been reviewed year after year by the Government Accountability Office. The GAO found that DHS has improved its distribution methods, but challenges remain.\textsuperscript{53} Another GAO report, covering DHS transit security grants from 2006-2008, highlighted appalling problems with DHS’ grant distribution. For example, of the grant money allocated for transit security by DHS from 2006 through 2008, only 3% had been spent by February 2009 due to federal bureaucratic backlogs and lengthy approval requirements. Typically, “transit agencies receive[d] authorization to spend their grant dollars near the end of each 2 to 3 year grant performance period.”\textsuperscript{54} Homeland security funds are intended to save lives; it is unacceptable to have a two to three year wait time while the funds


\textsuperscript{52} “Homeland Funds Misspent?” CBS News 60 Minutes Segment June 14 2006. Accessed online at http://www.cbsnews.com/video/watch/?id=687071n


languish within the federal bureaucracy. There are further problems with DHS policies regarding support for LLEAs.

In addition to its flawed grant distribution system, DHS has taken the position that it can pay for equipment or fixed costs of local departments, but operational expenses such as salaries, maintenance expenses, and overtime typically remain the responsibility of local jurisdictions. The federal government’s reluctance to finance operational activities and its focus on purchasing equipment does not seem to have a logical basis aside from vague ideological notions that the role of the federal government should be limited. For instance, certain New York City grant proposals received low favorability ratings, and thus were not funded, because operational expenses comprised a large portion of the grant.\(^{55}\) The chief of LAPD’s CT unit complained that “We’ve had years and years and years of buying trucks, and radios, and sensor equipment, and now I really think it’s time to turn and start investing in people and human capital…we need analysts and an understanding of the nature of the threat.”\(^{56}\) Secretary Napolitano states that DHS is beginning to address this problem by “eliminating red tape so these grants can be used to sustain current programs, rather than being forced to buy new equipment or technology each year.”\(^{57}\)

In addition to arbitrarily affecting the distribution of grant money, a federal fixation on purchasing equipment has other negative effects. Local jurisdictions are happy to accept whatever new “toys” the federal government pays for. However, after accepting equipment


many departments soon find they are unable to afford the expense of maintaining it. As a result, many departments have very expensive equipment which sits unused or inoperable because the departments cannot afford repair, maintenance, or operating costs.

**The FBI and Joint Terrorism Task Forces**

Any discussion of LE and CT in the United States would be incomplete without mentioning the FBI. The FBI is the principal agency for investigating terrorism in the United States, and the FBI’s “overriding priority is to protect America from terrorist attacks.” Since 9/11, the FBI has significantly expanded its CT operations: shifting a large number of agents from criminal investigations to CT duties, doubling its staff of intelligence analysts, and tripling its staff of linguists. It also increased the number of Joint Terrorism Task Forces (JTTF); the FBI led and locally stationed entities charged with investigating and disrupting terrorist plots, from 35 to 101. The number of staff assigned to JTTFs increased from less than 1,000 before 9/11 to almost 4,000 nationwide. JTTFs include law enforcement officers from various federal, state, and local departments. A 2006 survey found that approximately one third of LLEAs work with JTTFs. Like the federal members of the task forces, state and local members typically have top secret security clearances. The FBI’s enhancement of the JTTFs represents an important step towards reorienting the Bureau to a CT focus.

Despite the positive developments in the FBI’s CT resources, the FBI and JTTFs still do not adequately address the domestic terrorist threat. JTTFs are criminal case oriented entities. As one officer put it “They’re very good at that [cases]. You give them a feather, and they’ll find

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59 Riley, Jack K, Treverton, Gregory F, and Wilson, Jeremy M. “State and Local Intelligence in the War on Terrorism.” Rand Corporation: 2006. Pp. xii
the chicken. You give them the partial number of a plate and they’ll find the car…but there’s another side to this [local CT efforts], where local LE can develop intelligence.” JTTF’s focus is on investigating active criminal cases, and therefore they are unlikely to develop or analyze information which could indicate a potential plot, but has not yet crossed into the realm of the illegal. And although local officers are assigned to JTTF, the FBI is still the hegemon and dominates the task forces. As a result, the JTTFs suffer from many of the weaknesses that affect the FBI as a whole.

If LLEAs identify an individual they suspect of being involved in terrorism, they are likely to encounter difficulty trying to get information regarding that individual from federal authorities. Secretary Napolitano indicated during Congressional testimony that there is not a clearly identified resource for officers to contact should they encounter this type of situation. The perspective of local officials is one of frustration when dealing with the federal government in these circumstances. According to former chief of NYPD and LAPD Bill Bratton, “It still seems there is a great deal of tension, frustration, and even confusion about who has responsibility for what [in federal government].” He went on, indicating that “one of the frustrations we had after 9/11 was convincing the now reforming federal government of the importance of local policing particularly at the large urban level, the importance of letting us into

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63 Senator Carl Levin discussing previous testimony with Secretary Napolitano at “Nine Years After 9/11: Confronting the Terrorist Threat to the Homeland.” Hearing of the Senate Homeland Security and Governmental Affairs Committee. Washington DC, 09/22/2010. Pp. 28
the tent…for the manpower we could bring to the issue…we literally had to argue for several years to get a place at the table. And then we had to argue to move farther up the table closer to where the decisions were made.”

**The Department of Justice**

Aside from DHS and the FBI, the Department of Justice (DOJ) may be the most important federal partner for LLEAs. DOJ has played an important role facilitating information exchanges. DOJ created the National Data Exchange, which allows federal authorities to “automatically examine the enormous caches of local and state records for the first time.” The system has been characterized as “laying the foundation of a domestic intelligence system.”

**The Effect of Arrest Powers**

The relationships between police and intelligence agencies in the UK suggest that the structure of the overall CT enterprise and the authorities of each agency have an effect on their working relationship. This is true in the United States as well. The FBI has powers of arrest, so it has less of an incentive to develop close working relationships with local LE officers. Some might argue that the American model of having intelligence and LE powers within a single agency is more efficient than the system of the UK. Others believe because of its lack of local knowledge and its prosecutorial culture, the FBI is not an effective domestic intelligence agency. Local officers feel that while the FBI publicly states its desire to work closely with them, in

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66 O’Harrow, Robert Jr and Nakashima, Ellen. “National Dragnet is a Click Away.” Washington Post, 03/06/2008. Accessed online at [http://www.washingtonpost.com/wp-dyn/content/article/2008/03/05/AR2008030503656.html](http://www.washingtonpost.com/wp-dyn/content/article/2008/03/05/AR2008030503656.html)

67 O’Harrow, Robert Jr and Nakashima, Ellen. “National Dragnet is a Click Away.” Washington Post, 03/06/2008. Accessed online at [http://www.washingtonpost.com/wp-dyn/content/article/2008/03/05/AR2008030503656.html](http://www.washingtonpost.com/wp-dyn/content/article/2008/03/05/AR2008030503656.html)
reality this may not be the case. For example, even some officers assigned to the JTTF with security clearances have complained that the FBI would not allow them into the FBI’s SCIF (a secure room) to view sensitive documents. Local officials in NYC have described their situation of relying on the FBI for intelligence as analogous to “trying to put together a jigsaw puzzle with all the edges rounded off the pieces.” The FBI proved to be such a devoted obstructionist to the NYPD’s CT efforts that NYPD ended up going around the FBI for information, and eventually got the access to the documents they needed through the Department of Defense.68

The Normative Argument for Using Local Law Enforcement Agencies for Domestic Counterterrorism

As discussed earlier, LE will play a critical role in fighting homegrown terrorism. Local intelligence and CT efforts have significant potential to disrupt plots. In the wake of the 9/11 attacks, terrorism expert Brian Jenkins explained that “building more effective local-level intelligence collection may be better than creating another federal entity.”69 He continued, “we have great potential at the local level. Local police know their territory…their composition better reflects local populations. They have more native-fluency foreign language speakers. Unlike any federal force, they don’t rotate to a different town every few years.”70 A Council on Foreign Relations (CFR) report similarly concluded that local governments can “play a distinct role in preventing terrorism…as they often have more intimate knowledge of the communities

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69 Statement of Brian Jenkins to the National Commission on Terrorist Attacks Upon the United States, March 31, 2003. This statement was made when the creation of DHS was being considered by Congress
70 Statement of Brian Jenkins to the National Commission on Terrorist Attacks Upon the United States, March 31, 2003
under their care.” A separate CFR report explained that “generally speaking, the local approach [to homegrown terrorism] proves most effective…local police are the best tool the government has for preventing homegrown terrorists.” Michael Downing of LAPD agrees, stating that “Nobody is better placed in communities than police. They know the communities better than anyone, because they’re out there 24 hours a day 7 days a week…They understand the baseline and they understand when there’s (sic) anomalies happening.” Additionally, research shows that terrorists “routinely resort to ‘traditional’ crimes such as drug trafficking and financial scams, to further their objectives.” Therefore, local police may detect terrorist plots during their routine enforcement duties, if they have the knowledge to recognize clues of terrorist activity when they see them. Unlike federal authorities, local police can also make use of state and local laws to aggressively disrupt or incarcerate suspected terrorists. Apprehending terrorist suspects for lesser non-terrorism charges has been described as the “Capone approach,” alluding to the Prohibition era gangster incarcerated for tax evasion after authorities could not prove other charges. Federal authorities use the Capone approach by using immigration charges

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or charges of lying to an FBI Special Agent (in contrast, it is not a crime to lie to local officers.)

The scope of activities which local police typically engage in is much wider than the activities of federal agents, who are typically tasked with investigating very specific crimes, and therefore local police have a broader vantage point.

In short, the ability of police to target potential terrorists using a wide array of authorities can help communities in the United States remain inhospitable to would-be terrorists.

In addition to the specific tactical and operational arguments for using local LE, there are several strategic arguments to consider. First, it is worth noting that thus far, the federal response to homegrown terrorism and radicalization has been disjointed. In fact, the federal government’s response to 9/11 was to create even more bureaucracies responsible for CT. Since 9/11, the federal intelligence empire has become bloated. The result is that there is a lack of focus and coordination among agencies, and there is so much redundancy and waste that many intelligence reports are routinely ignored. Past attacks demonstrate local governments cannot rely solely on the federal government to protect them from homegrown terrorists. In contrast to the federal intelligence system, which is bursting at the seams with redundancy and waste,

LLEAs are an untapped resource which can be harnessed in a cost efficient manner–there is no need to create new organizations. Bruce Hoffman articulates this argument well in a piece in the National Interest, stating that “rather than building and perpetuating still bigger bureaucracies, Washington would do well to emulate the pioneering and highly effective counterterrorism model advanced by the NYPD…The DHS should make a major, long-term investment to enable state and local police throughout the nation to do what they are best positioned to do.”

The federal government is a necessary, but not sufficient part of the solution.

Preventing terrorist attacks in major cities is a national level public good. In other words, the nation has an obligation to help fund local level CT efforts in the cities which are most likely to be attacked. New York City and Washington D.C. are prime examples of cities which require additional support. Homeland security scholar Clark Ervin explains that “the entire country should go to considerable lengths to help the large iconic cities bear the burden of protecting what is essentially the nation as a whole.”

Currently cities get relatively little federal assistance for CT operations and training. For example, New York City pays for the vast majority of its annual $223 million CT budget on its own. Its international liaison program, which stations officers abroad to collect information relevant to its CT operations, is funded through private donations. Similarly, Chicago and Los Angeles fund their own CT training. A RAND Corporation study which surveyed the Police

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Departments of Charlotte, NC; Columbus, OH; Fairfax County, VA; Las Vegas, NV; Oakland, CA; San Diego, CA; and Washington, DC showed these departments financed their CT operations by redirecting funds from other functions such as crime fighting. The departments “generally report that they are not receiving explicit federal support.”  

Without federal assistance, the vast majority of local jurisdictions cannot afford to establish effective CT or intelligence capabilities, and even large departments may not be able to sustain operations. The side effects of allocating resources to CT from other local priorities remain unknown. The director of Harvard’s Taubman Center for State and Local Government explained, “Relatively few cities are spending their own money on [counter] terrorism.” Even Los Angeles, a city with more resources than all but a few, was forced to eliminate a CT task force because of funding cuts.

There are often political constraints at the local level which restrict the ability of police executives to dedicate resources to CT. Department executives and their local political superiors are often under pressure to reduce crime, and therefore are hesitant to allow officers to engage in work behind the scenes to reduce a terrorist threat when they could be conducting routine patrols to deter crime. After all, a terrorist attack is a low probability event, while crime is near constant and therefore more likely to undermine a re-election campaign. Law scholar Matthew

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85 Riley, Jack K, Treverton, Gregory F, and Wilson, Jeremy M. “State and Local Intelligence in the War on Terrorism.” Rand Corporation: 2006. Pp. 59
86 Riley, Jack K, Treverton, Gregory F, and Wilson, Jeremy M. “State and Local Intelligence in the War on Terrorism.” Rand Corporation: 2006. Pp. 60
C. Waxman astutely describes this issue, explaining that while the costs and benefits of fighting crime are felt locally, “some national security functions are necessarily shielded from public view, and the benefits of local police efforts in support of national security accrue elsewhere or are unobservable.”

Oftentimes, a market failure results from this issue, where a public good is not provided at socially sufficient levels.

An additional benefit of providing LLEAs with more intelligence training and resources is that better intelligence capability is useful for fighting problems in addition to terrorism. For instance, better intelligence capabilities will help LLEAs address traditional crime and social order problems such as gangs and drug trafficking organizations. The experience of the NYPD supports this conclusion.

The massive size of the US LE community is an advantage for CT operations. The community is comprised of approximately 17,500 different agencies and 800,000 officers. These officers conduct the vast majority of LE operations in the US. They could be a tremendous asset for CT operations if trained and networked properly. The NYPD alone has a dedicated CT force two thirds the size of the number of FBI Special Agents dedicated to CT in the past (the number is now classified). Simply because of their large number, local officers

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have the greatest chance of detecting and catching terrorists. For example, both Eric Rudolph (the “Olympic Park Bomber”) and Timothy McVeigh (the perpetrator of the Oklahoma City bombing) were captured by officers on routine patrols. McVeigh was stopped for not having a front license plate on his vehicle; Rudolph was stopped and arrested by a rookie officer. According to the former US attorney for the Western district of Washington, these types of incidental contacts are our best chance to detect suspicious activities and individuals.

**Limitations Affecting Local Law Enforcement Counterterrorism Operations**

Several factors are likely to limit the effectiveness of LLEAs in CT. It is difficult for many LLEAs to navigate the federal bureaucracy. Most police departments do not understand what role they can or should play in CT, and it will take a significant investment to develop this understanding. In the words of LAPD CT Chief Michael Downing “We need to look at the resources we have and the decentralized structure of American LE and find a way to integrate that and align that into the process a little bit better.”

The “decentralized and localized nature of American policing” makes it difficult to integrate and align. As noted previously, the American LE community is very large, which is both a blessing and a curse. It is a challenge because most localities have an extremely low risk of terrorism, and therefore their police departments do not perceive a need to engage in CT.

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efforts. A survey found that only about 16 percent of local law enforcement agencies have CT units (although large departments are disproportionately represented in this group, so a significantly higher percentage of the population is served by a department which has a specialized CT unit.)\textsuperscript{98} A RAND report’s findings demonstrate that “smaller jurisdictions…have different approaches to terrorism preparedness than large cities. These differences are evident in areas ranging from development of terrorism guidelines and contingency plans, to training and operations.”\textsuperscript{99} Furthermore, departments vary significantly in terms of their capabilities, size, sense of priorities, and structure. The federal government has limited ability to force cooperation from local departments. The Supreme Court ruled in Printz v. United States that the federal government cannot require police to perform certain services.\textsuperscript{100}

While the heterogeneous nature of American LLEAs might appear to pose difficulties to coordination efforts, it is worth noting that the departments most likely to coordinate on CT issues have similar structures concerning CT. For example, LAPD, NYPD, and the Chicago Police Department all have dedicated CT and/or intelligence units, participate in JTTFs, have a CT training capability, and have CT liaison officers/experts assigned at the precinct level to pick up on any terrorism related activity and to brief the precinct’s beat officers on the latest threat information.

\textsuperscript{98} Riley, Jack K, Treverton, Gregory F, and Wilson, Jeremy M. “State and Local Intelligence in the War on Terrorism.” Rand Corporation: 2006. Pp. xii
Many local police departments still have a poor understanding of the threat posed by international terrorist groups. According to the Chairman of the Major Cities Chief Intelligence Commanders group, Michael Downing, “Do we have an understanding of that threat domain, and do you have that threat domain mapped in your community so you can make decision on…deployment of resources? Those are questions that I believe we still haven’t answered to an adequate level.”

It is troubling that departments still do not have an adequate understanding of the threat nearly ten years after 9/11. Classic scholars of conflict such as Clausewitz and Sun Tzu emphasize the importance of understanding the adversary. These teachings are most often applied to the military, but they are relevant for law enforcement as well. Without a proper understanding of how the enemy thinks, law enforcement cannot effectively deter and disrupt the enemy. Contemporary scholars echo this theme. For example, Bruce Hoffman argues that “without knowing our enemy and its environment, we cannot successfully penetrate its cells. We cannot knowledgeably sow discord and dissension in our adversary’s ranks and thus weaken the organization from within…Without this understanding; moreover, we cannot break the cycle of radicalization and recruitment that replenishes terrorists’ ranks.”

Therefore, it is critical that departments begin addressing these issues through increased training and education.

One case study illustrates how valuable CT training for LLEAs can be. During the summer of 2009, a Chicago police officer observed a man behaving suspiciously. The man was running military drills with children. The officer, who had received federal funded terrorism awareness training, also noticed the individual was speaking Urdu—one of the languages spoken primary in Pakistan. Terrorism training for Chicago officers includes “daylong courses that

cover everything from bombs improvised from paint cans to the structure of terrorist
organizations to the attempted bombing in New York’s Times Square last May.”  

The suspicious individual, it turned out, was terrorist David Headley. Headley played a key role in
preparations for the 2008 the Mumbai terrorist attacks which killed 168 individuals, and was
planning further attacks in Denmark. The Chicago Police Department had given officers
briefings on Lashkar-e-Taiba, the terrorist group which has been blamed for organizing the
Mumbai attacks. After observing Headley’s suspicious behavior, the Chicago police officer
documented it and sent the information to terrorism investigators. Chicago police played a
leadership role in Headley’s investigation, which ultimately resulted in Headley pleading guilty
to federal terrorism charges. Headley subsequently divulged significant information about
terrorist activities, according to Attorney General Eric Holder. According to the Patrick Daly,
the chief of the Chicago PD’s CT division, the case was a “prime example of how the Chicago
Police Department has become an integral force against terrorism.”

Mr. Daly’s statement
doesn’t appear to be an exaggeration—the reason Headley was “on the radar” of law
enforcement’s was because the Chicago officer reported the initial suspicious behavior.

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Without terrorist threat training, it seems unlikely that a police officer working a beat would have
known to associate the behavior with a threat or recognize the Urdu language. Chicago has
taken the right steps to protect the city from attack by recognizing the incredible collection
capability which resides among its 13,500 police officers.

Role of Community Policing

Community policing has become common at American police departments. According to
one study “community policing has been applied with notable success in places such as New
York City, Chicago, Boston, and San Diego, and has been widely adopted (at least in name)
throughout the United States.” 108 LLEAs and scholars have recognized the potential of using
community policing principles for CT purposes. The methods of community policing such as
forging community partnerships, forming awareness of the community, and addressing problems
with a broad range of remedies dovetail nicely with the need of intelligence gathering. Former
CIA Director James Woolsey noted that “only an effective local police establishment that has the
confidence of citizens is going to be likely to hear from, say, a local merchant in a part of town
containing a number of new immigrants that a group of young men from abroad have recently
moved into a nearby apartment and are acting suspiciously.” 109 The Muslim, Arab, and Sikh
communities have the language and cultural knowledge key to identifying suspicious activities.
Since most LLEAs have relatively limited language and cultural knowledge relevant to the

108 Lark, Rosemary, Rowe, Richard, and Markey, John. “Community Policing Within Muslim
Communities: An Overview and Annotated Bibliography of Open-Source Literature.” DHS Science and
http://www.homelandsecurity.org/hsireports/Task_06-99_Community_Policing_within_Muslim_Communities.pdf
109 Quoted in Kelling, George L and Bratton, William J. “Policing Terrorism.” Manhattan Institute for
terrorist threat, they depend on cooperative relationships with the communities which do have this knowledge. DHS says that it is “using proven community-oriented policing techniques to develop training, and holding regional summits for LE-to give them the tools they need to work with communities to combat sources of violence and detect threats when they arise.”

LAPD views community policing as a force multiplier, and attempts to educate the community to be alert for suspicious activity related to terrorism. LAPD goes to great lengths to engage their Muslim communities, including using native foreign language speakers of Arabic, Farsi, and Urdu to work with Muslim community leaders.

The FBI has created “community engagement teams” composed of special agents, analysts, and community specialists who are responsible for creating contacts with key communities, develop trust, and dispel myths about the FBI and the government. DHS also conducts outreach campaigns. One problem with these efforts is that there appears to be little coordination between the various organizations who are engaged in public outreach.

When discussing counter radicalization Senator Collins complained that “there still doesn’t seem to be an overall strategy or accountability build in, or a means of

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assessing the success.” A second problem is that, according to a DHS study, the majority of outreach efforts are superficial contact unlikely to produce meaningful partnerships.

A short case testifies to the importance of building trusted relationships with community members. In June 2001, police received an anonymous letter from a member of the Yemeni community in Buffalo, NY explaining that a terrorist group had come to the town to recruit terrorist operatives. The information led to the arrest six men who had attended AQ training camps in Afghanistan and the targeted killing in Yemen of several individuals.

The mission of LE agencies makes it inherently difficult to build trust with the community, because investigative agencies tend to arouse fear and suspicion from the communities they work in. There is a fine line between engaging the public versus gathering intelligence on them. Citizens are very sensitive to the difference.

The most well intentioned community policing efforts can backfire. For instance, an LAPD program which planned to identify the areas of the city where Muslims lived came under fire and was portrayed by Muslim groups and civil libertarians as religious profiling. In fact, the department’s planning documents stated they only intended to use the information as a way of guiding outreach from social service organizations. Initially, the department also defended the efforts as a necessary method to identify “potential hotbeds of extremism.” The department

abandoned the program after the outcry from the community. In the UK, police found that the increased community presence associated with officers engaged in community policing prompted radicals conceal their activities, making them more difficult to track.

Some LLEAs have mounted aggressive undercover operations targeting Muslim communities that have produced short term results but also raise strategic concerns. Advocates argue undercover operations are the best way to disrupt radicalized cells. Undercover operatives can gather critical intelligence not available through any other means. The mere existence of undercover officers can undermine trust among terrorist cells, as members may begin to question the bona fides of their co-conspirators. NYPD’s Deputy Commissioner of Intelligence stated that undercover operatives have become the city’s primary means of defense. The NYPD sent a young Bangladeshi officer undercover to infiltrate an Islamic bookstore. He soon found himself watching videos of US soldiers being killed. Some of the officers newfound “friends” were later arrested for planning terrorist acts.

Despite successes in disrupting plots, civil rights and community leaders decry the use of undercover operatives, arguing the operations amount to religious profiling. Some Muslims have reported feeling increased fear of law enforcement because of the operations. Focus groups and studies since 9/11 indicate Muslim groups have felt victimized by law enforcement since 9/11.

Despite this, the Muslim community still says it welcomes “constructive engagement with local law enforcement.” Other critics maintain that law enforcement use of undercover operatives is entrapment. For example, the “Newburgh Four” and “Liberty Seven” cases have been criticized on the grounds that the arrested “plotters” were totally incompetent and their plans never would have come to fruition in the absence of inducements from agent provocateurs. Law enforcement must consider the costs in community trust that the operations pose. The American Muslim community, as described earlier in this paper, has a successful track record of alerting LLEAs of potential terrorists in their midst, so law enforcement must be careful not to compromise trust of the Muslim American community. Studies of radicalization found that disaffection created by perceived persecution provided “fertile breeding ground for radicalization.”

The period since 9/11 is not the first time the federal government has tried to make use of local police to gather intelligence and fight a perceived national threat. After World War I the FBI used local police to raid suspected radicals and immigrants. Following World War II the FBI again used local police, this time to perform surveillance on members of the civil rights movement. The groups who object to current LLEA operations assert that the current operations

are as misguided and abusive as the activities after the World Wars described above.\textsuperscript{123} A study by the National Institute of Justice found four key obstacles limiting effectiveness of outreach efforts, including “distrust between Arab communities and law enforcement, lack of cultural awareness among law enforcement officers, language barriers, and concerns about immigration status and fears of deportation.”\textsuperscript{124}

The tension between law enforcement’s conflicting imperatives of disrupting threats through aggressive action and building cooperative relationships with the community is inherent to law enforcement. Department executives and their political supervisors will be required to make judgment calls regarding what the proper balance is between the two imperatives in their own communities. Departments will sometimes make decisions frustrating to federal officials, such as Portland Police’s decision to end their participation in the JTTF and the Detroit Police Department’s refusal to conduct voluntary interviews of their Muslim population after the 9/11 attacks.

\textbf{Building Trust among Counterterrorism Stakeholders}

Information sharing often depends on trusted personal relationships. Bureaucrats are less likely to share information with someone who contacts them out of the blue. Additionally, the intelligence field is inherently competitive. Given these facts, it is important to understand what kinds of personal relationships and networks exist among personnel within and between agencies. According to a study on networks in the homeland security community, successful


information sharing networks possess three important attributes. First, “rules should derive from
the bottom up, focusing on specific requirements of the user communities. Second, individual
incentives matter; leadership may inspire use of a network, but the measure of an individual’s
performance must include adoption of SOPS (standard operating procedures) incorporating use
of the network. Finally, and perhaps most important, information sharing in the absence of trust
will continue to be a challenge, so any future network must overcome the lack of trust endemic
today among the many stakeholders in the homeland security enterprise.”  125  Certain departments
are leading the way in building the trusted networks which facilitate cooperation. The NYPD’s
Sentry program trains officers in the tri-state area. Through Sentry training personal
relationships are built that may later facilitate the sharing of vital information. According to
terrorism expert Bruce Hoffman, replicating this system “is common sense- a quality that has not
always been evident throughout the past nine years of the war on terrorism.”  126  This is not solely
an academic issue. Many past terrorist attacks were planned and sourced not in the city to be
attacked, but in cities in the nearby vicinity. For example, the first World Trade Center bombing
was planned in New Jersey, and the London bombings were planned and prepared for in Leeds,
about 150 miles away.  127

Policy Recommendation Summary

The United States has not appropriately funded and integrated local LE in terms of CT
efforts. Again, the federal government appears aware of the need to support local and state level
training; a study published by the Department of Justice concluded that “the development of

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125 Shiffman, Gary M. “Intelligence Sharing for Homeland Security.” Georgetown University Center for
online at http://nationalinterest.org/blog/nypd-state-mind-3893
analytical techniques, training, and technical assistance needs to be supported.\textsuperscript{128} However, the federal government has not executed its recommendation to adequate extent. The federal government must transform its thinking and harness the potential role of police officers as intelligence collectors.

**Further Revise Grant Distribution Process**

The United States must also ensure that it dispenses CT funds based on a reasonable risk assessment rather than the desires of politicians, who often secure unnecessary homeland security funding as a way to gain political favor among their constituents. New York City, Washington DC, Chicago, and Los Angeles are the cities most likely to need federal assistance. Funds which are awarded must be allocated in a timely manner.

**Connect Local Law Enforcement Agency Counterterrorism Units Using Decentralized Intelligence Network**

National CT strategy has failed to integrate local law enforcement officers into CT efforts. Further spending on local LE can be thought of as a national investment. Some scholars have advocated for the creation of a new domestic intelligence agency, similar in design to the United Kingdom’s MI5. However, others, such as terrorism expert Brian Jenkins have argued that if police departments in major cities of the United States devoted even a small percentage of officers to CT duties and linked them together in a network, the United States could create a decentralized network of CT officers with superior knowledge of local areas. Unlike MI5, this

network would have powers of arrest. Local officials excel at developing “granular” intelligence about what is going on across the country. Lacking information from other jurisdictions hinders their situational awareness, however. By connecting LLEA CT units, potentially virtually through a private Wikipedia-like program, departments can assemble a more accurate and complete intelligence picture. However, on its own, this type of intelligence may lack the context which leads to a clear understanding of a threat.

Increase Funding for Training Local Law Enforcement Agencies in Terrorism and Counterterrorism

Current CT training for LLEAs is sorely lacking. As David Cohen, head of NYPD’s intelligence division, explained “At the investigative level, for the traditional NYPD detective, that granularity is grist for the mill. That’s what they grow up on. But it’s the context for that granularity that they’re missing.” Brian Jenkins agrees with the concept that local police need more support, explaining “What they need is better training, a common curriculum… And they would need to be linked so that information could be quickly transmitted across the network. It’s not that difficult.” Ray Kelly, Commissioner of the New York Police Department, outlined specific training needs which the federal government could provide, including “sharpening their analyst’s skills in conducting link analysis and terrorist group identification, improving abilities to identify intelligence gaps quickly, and teaching investigative officers debriefing skills.”

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129 Statement of Brian Jenkins to the National Commission on Terrorist Attacks Upon the United States, March 31, 2003
131 Statement of Brian Jenkins to the National Commission on Terrorist Attacks Upon the United States, March 31, 2003
emphasized that the Department has developed its analytical and investigative capabilities, with “all of this out of our own pockets right now.” He went on, “we want to do more of it, and do it better, with the federal government’s support and expertise.”

Even though NYPD is the best trained and prepared department to fight terrorism, Ray Kelly still lamented that “as far as [terrorism] prevention training is concerned, it really is minimal.” Other departments could surely use support as well. The current Los Angeles’ police chief explained that with their CT cases “what we’re dealing with now is a puzzle piece with 1,000 pieces and no picture on the box, and no borders, and we’re asked to put this puzzle together.” Presumably the federal intelligence community could help provide better information about the overall threat environment. He also echoed Ray Kelly’s call for federal assistance including “sponsorship, mentorship, and education.”

Bill Bratton had similar thoughts, saying that “We need to do a better job of educating the 700 or 800 thousand officers around the country of what to look for.”

CIA veteran and former DHS Undersecretary Charles Allen also emphasized the federal government should help local LE develop intelligence capability. He stated that there are “tremendous number of tools that can help analysts at the local level…they don’t cost a lot of money.” Additionally, he argued that “DHS has a responsibility to provide as much training

as possible across police departments, the 72 fusion centers…how to do analytic tradecraft, how to do collection, how to do collection priorities, this training needs to be done…this is a smaller area where we can get a lot more for our money [than initiatives to defend infrastructure].”

Specifically, the federal government should support increased training in the following areas:

- Threat awareness
- Awareness of terrorist support structures
- Intelligence analysis methodologies and challenges
- The intelligence cycle
- Civil liberties and intelligence collection
- Muslim cultural awareness

Clarify the Counterterrorism Roles and Responsibilities of Local Law Enforcement Counterterrorism Units, and Identify Best Practices

LLEAs are often confused about how they should contribute to CT efforts, or about whom in the federal government they can go to for assistance. The federal government can and should take more aggressive action to enable local departments to increase their intelligence capabilities through identification of best practices and procedures. Identifying best practices wouldn’t have to be done by the federal government, however. Leading LLEAs such as NYPD and LAPD could play a leading role in this process, as could professional associations such as the International Association of Police Chiefs or the Major Cities Chiefs Association.

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Regardless of who identifies the best practices, the procedures might also help to assuage citizen concerns regarding potential abuses of civil liberties by local intelligence units.

**Limitations of Policy Recommendations**

Clearly, there are limitations to these suggestions. First, federal security institutions may be uncomfortable with a greater share of CT funds going to local agencies. Bureaucratic institutions tend to be very protective of both their mandates and their budgets. This was demonstrated clearly after the Washington Post released an investigative report raising questions about the efficiency of the US intelligence system. According to Bruce Hoffman “the existence of this vast, bloated empire has been greeted mostly by paralytic bewilderment coupled with the predictable vigorous defense from those agencies and departments, contractors and consultants who have benefited most from it.”\(^{139}\) Indeed, bureaucratic change is difficult, but that doesn’t mean it should not be undertaken.

Critics might also argue that because the Joint Terrorism Task Force includes local LE officials, the creation of free standing counter terrorism units within individual police departments is both redundant and unnecessary. However, the FBI still leads the JTTF, and because the JTTF is housed in local FBI field offices, members of local departments are absorbed into the FBI. JTTFs also don’t do the type of training of the rank and file officers to increase awareness that CT units within police departments could, and in some cases such as New York, do engage in.

Admittedly, it is possible that new CT units could create more redundancy. However, as Richard Posner argues in his book “Preventing Surprise Attacks” redundancy in our security institutions can be a good thing. Redundancy is not tantamount to wastefulness, and it is wise to

have a degree of redundancy in systems designed to prevent catastrophic consequences such as
terrorist attacks. CT units within PDs would bring a unique perspective to their work, and
therefore may detect plots which the FBI dominated JTTFs would miss. Members of JTTFs
have complained to the press that “we don’t have the time to respond to trends we recognize,
because we’re too busy to responding to the trend du jour [as determined by FBI Headquarters
directives].”

It would be difficult to satisfy all local jurisdictions when doling federal funds through
this program. No matter how funds were distributed, local officials would probably claim they
deserve a larger share of federal funding than they actually received. For example, New York
complained loudly when their share of CT funds was slashed by forty percent in 2006, even
though they were still receiving more federal dollars than any other city.

Additionally, there are clearly limitations to what LE and the criminal justice system as a
whole can achieve as a CT strategy. Domestic LE agencies are bound by constraints of the
Constitution and criminal procedure. Specifically, detecting radicalization is inhibited because
radicalization activities may be protected by the first and fourth amendments. There are
significant limits on the ability of LE officers to use coercive interrogation techniques, and any
evidence obtained using illegal methods is inadmissible in court. The most effective way to
guarantee an attack will not occur is obviously to incarcerate an individual. However, in order to

\[\text{140 Shukovsky, Paul. “Success of Counterterrorism Efforts Difficult to Evaluate.” Seattle Post}
\[\text{Intelligencer, 4/11/2007}}
\[\text{Accessed online 5/7/2010 via}}
\[\text{142 Bhatt, Arvin, and Silber, Mitchell D. “Radicalization in the West: the Homegrown Threat.” New}
\[\text{York Police Department, 2007. Pp. 12}}
\[\text{143 Guiora, Amos N. “Constitutional Limits on Coercive Interrogation.” Oxford Scholarship Online:}
\[\text{January 2009}}
\[\text{}}
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do so an individual must be convicted in criminal court, where there is a very high standard of proof. Additionally, the accused have the right to confront the evidence against them. However, in terrorism cases the prosecution may not be able to disclose certain evidence or how it was obtained for reasons of national security. Finally, criminal trials are public and therefore allow accused terrorists a potent medium to espouse their radical beliefs. Given these factors, many have argued strenuously against using the criminal justice system to prosecute terrorists. However, the counter to these arguments is that the criminal justice system has successfully prosecuted the vast majority of the 131 persons who have been identified as homegrown terrorists since 9/11.\textsuperscript{144}

A primary criticism of using police agencies in dual roles as both LE and intelligence agencies is that police tend to have a prosecutorial mindset where successful prosecution is emphasized rather than prevention of attacks. Therefore, law officers may be prone to arresting and prosecuting an individual before the ability to gather intelligence based on the suspects’ activities has been maximized. This is a criticism often cited in reference to the FBI, but it applies equally to this paper’s proposal of using local LE in a more prominent CT role. The counter to this argument is that CT units could be trained to encourage a shift in their perception of themselves from “first responders” to “first preventers.”

Local populations, particularly immigrant populations, may come to fear local LE if they come to believe the police suspects them of terrorism. For example, after an undercover operation resulted in the arrest of two Muslims in NYC, the Muslim population voiced

widespread concern that they too would be targeted by police.\textsuperscript{145} This could undermine intelligence gathering efforts. To avoid this, CT efforts by local police departments should be combined with outreach efforts to local populations. Establishing a cooperative relationship with immigrant communities is difficult, but critical.

**Conclusion**

Better federal support of local law enforcement in CT efforts is an important first step towards more effectively addressing the homegrown terrorist threat. Local police are poised to serve as the best tool against homegrown terrorists. Enhancing the capabilities of LLEAs will require both improvements in current programs and dramatic changes among both local and federal agencies. Local law enforcement agencies need to be connected in an intelligence sharing network and need additional CT training. They also to clarify their role in CT and should identify best practices for LLEA CT units. These changes are demanding, but the potential payoff justifies the effort.

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