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THESIS

**SHOULD COPS BE SPIES?
EVALUATING THE COLLECTION AND SHARING OF
NATIONAL SECURITY INTELLIGENCE BY STATE,
LOCAL AND TRIBAL LAW ENFORCEMENT**

by

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March 2013

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ENFORCEMENT**

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ABSTRACT

Presidential commissions, the Congress, and numerous national law enforcement groups have noted that the unfettered collection and sharing of intelligence is key to the prevention and mitigation of terrorism in the United States. The sharing of classified national security intelligence collected by the United States Intelligence Community with nonfederal law enforcement is, however, problematic, particularly since the tragic events of September 11, 2001. This thesis examines problems associated with the collection and sharing of classified national security intelligence with and by state, local and tribal law enforcement. It explores four policy options for the collection and sharing of national security intelligence, including Intelligence-led Policing, Nationwide Suspicious Activities Reporting Initiative; the FBI's Joint Terrorism Task Force/the National Counterterrorism Center; National Fusion Center; and the British Special Branch system. It recommends an American adaptation of the British Security Service and Metropolitan Police Service Special Branch model meant to improve the sharing of classified national security intelligence vital to the protection of the homeland. The recommendations in this thesis are designed to promote a debate on the utility and feasibility of classified national security intelligence collection within the homeland by state, local and tribal law enforcement.

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LIST OF ACRONYMS AND ABBREVIATIONS

BJA	Bureau of Justice Administration
CIA	Central Intelligence Agency
CIFA	Counterintelligence Field Activity
CHDS	Center for Homeland Defense and Security
CT	Counterterrorism
EO	Executive Order
FBI	Federal Bureau of Investigation
HUMINT	Human Intelligence
ILP	Intelligence-Led Policing
INS	Immigration and Naturalization Service
IRTPA	Intelligence Reform and Terrorism Prevention Act
NCTC	National Counterterrorism Center
NSI	Nationwide Suspicious Activity Reporting Initiative
OPINT	Other Peoples Intelligence
SAR	Suspicious Activity Report
SB	Special Branch
SSCI	United States Senate Select Committee on Intelligence
TEWG	Terrorism Working Group
TLO	Terrorism Liaison Officer
U.S.C.	United States Code
WMD	Weapons of Mass Destruction

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I. INTRODUCTION

The story is well known. On September 11, 2001, the spectacular success of al-Qa'ida in conducting attacks within the homeland—and the failure of the United States Intelligence Community to prevent those attacks—altered the definition of threats to national security (Newman, 2002). Nineteen foreign nationals, all members of a clandestine international terrorist group known for large-scale coordinated attacks (Mefford, 2003), entered this country undetected and covertly lived among us for months, utilizing tradecraft of such sophistication subsequent investigation failed to reveal any major flaws in the hijacker's operational security (Ilardi, 2009). The 19 individuals involved in the plot organized and rehearsed a plan of unprecedented scale. They commandeered four commercial airliners without encountering significant impediments (Wright, 2006) and turned each airliner into improvised mass casualty weapons without any operationally meaningful warning from the nation's foreign or domestic intelligence agencies (9/11 Commission Report, 2004).¹ All of the various agencies responsible for national security and civilian law enforcement were stunned by the audacious nature of the attacks. Each resolved to never let it happen again.

Immediately following the devastating strike, the nation focused all of its intelligence collection efforts on the prevention of future attacks. Despite efforts to neutralize its leadership, al-Qa'ida “remained a potent, highly capable and extremely dangerous terrorist network” (Mefford, 2003),² and *the* major national security threat to the homeland. To prevent further attacks, legal and preventive measures were implemented, which caused a great deal of angst and concern over the “erosion of civil liberties” (*An Erosion of Civil Liberties*, New York Times, 2002). Plans, programs and policies were also initiated to attempt to harness the domestic intelligence collection

¹ Formally, the National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*. Hereafter referred to as “9/11 Commission” and “9/11 Commission Report.”

² Subsequent events, including the killing of Usama bin Laden and a number of his senior associates, has rendered al-Qa'ida core a shattered remnant of its former self, and in the view of some, no longer a significant threat to the homeland.

potential of state, local and tribal law enforcement to battle the now clear threat posed by transnational terrorist organizations (International Association of Chiefs of Police, 2002).

How did such a clear-cut failure of strategic and tactical intelligence occur? Who, if anyone, was to blame? What steps were necessary to ensure an event like the attacks of 9/11 never happened again? Could the United States Intelligence Community embrace tactical and strategic change so sweeping as to represent a major paradigm shift in its core functions? These were the fundamental questions facing the 9/11 Commission when it created its findings and recommendations after more than two years of hearings, studies and investigations.

To pursue these wide-reaching goals, President Bush initiated significant changes to both the investigative and intelligence structure of the Executive Branch, resulting in the “largest reorganization efforts [*sic*] since the passing of the National Security Act of 1947. In a single piece of legislation, twenty-two [*sic*] separate organizations were brought together to form the Department of Homeland Security” (Clovis, 2006, p. 1). This new cabinet-level department was “composed of nearly 180,000 federal employees, drawn from parts or all of twenty-two units of government, including the Coast Guard, the Secret Service, elements of the Department of Justice, INS [*sic*], security guards at airports, and Customs” (Ridge 2008, p.131).

Nine separate national strategies were written to address elements of homeland security. They include, in part, a National Counterintelligence Strategy (Office of the Director of National Intelligence, 2009), a National Intelligence Strategy (Office of the Director of National Intelligence, 2005), a National Strategy for Homeland Security (White House, 2007), a National Security Strategy of the United States (White House, 2010), a National Counterterrorism Strategy (White House, 2011) and most recently a National Strategy for Information Sharing and Safeguarding (White House, 2012), but significantly no national strategy regarding the collection of domestic intelligence, classified or otherwise. Each strategy attempted to aggregate the country’s response to the threat of further terrorist attacks. A separate military command, United States Northern Command, was created “to provide command and control of Department of Defense homeland defense efforts and to coordinate defense support of civil authorities”

(U.S. Northern Command, n.d.). Congress passed legislation to ensure the convergence of intelligence and law enforcement (IRTPA, 2004)³ and took steps to ensure the Intelligence Community never again took their collective eyes off the terrorism ball.

Ten years later—despite all of the training and oversight Congress and the United States Intelligence Community can provide—the problem remains how to collect, share and understand classified national security intelligence as part of a coherent “intelligence enterprise as it relates to counterterrorism” (Cilluffo, Clark & Downing, 2011, p. 1). The problem continues to reverberate among the members of the domestic law enforcement and United States Intelligence Community. Can the United States Intelligence Community leverage state, local and tribal law enforcement in the collection and sharing of domestic classified national security intelligence to prevent future 9/11 type attacks from occurring?

A. PROBLEM STATEMENT

In an effort to seek greater relevance in the post-9/11 zeitgeist, state, local and tribal law enforcement evolved from blindly focusing on participation in federally-led, regional Joint Terrorism Task Forces, to searching for newer and more robust, self-directed policy models associated with the collection and sharing of classified domestic national security intelligence. What those policy models are, which is most effective, how they compare with the status quo and whether or not state, local and tribal law enforcement should be involved in their implementation and use is the focus of this thesis.

This thesis examines and analyzes the status quo, plus three policy models associated with the collection and sharing of classified national security intelligence pursuant to classified intelligence collection requirements. It looks primarily at options that already are a matter of public discussion. The policy models included in the study are the Intelligence-Led Policing and Nationwide Suspicious Activity Reporting Initiative as the status quo; the National Counterterrorism Center and National Fusion Center model;

³ Formally, the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458, December 17, 2004, Title 50 United States Code, §401. Hereafter, referenced as the IRTPA, 2004.

the Federal Bureau of Investigation Joint Terrorism Task Force model; and the British Security Service (MI-5), Special Branch model of classified domestic intelligence collection. Each of these was considered as a potential dominant policy model that could be implemented or further adapted to increase the production and sharing of classified national security intelligence by state, local and tribal law enforcement.

This thesis also examines, to a lesser degree, the status quo regarding state, local and tribal law enforcement's perceptions regarding how classification issues have affected their ability to collect national security intelligence. A concomitant problem associated with the evaluation of policies and processes for the collection and sharing of classified national security intelligence within the continental United States included issues associated with clearances, classification, sources and methods and the need to know.

The attacks by al-Qa'ida created a critical need to incorporate state, local and tribal law enforcement and the private sector into the general national security intelligence community. This thesis does not, however, examine the role the private sector can play in the collection of classified national security intelligence in support of overall United States Intelligence Community efforts.⁴

As far back as 1996, the Congress of the United States recognized that "intelligence and law enforcement communities have maintained an uneven, and at times an antagonistic relationship" (United States Senate Select Committee on Intelligence, 1996).⁵ Investigations into improper domestic intelligence collection activities during the 1970s resulted in allegations of overreaching and illegal action by intelligence agencies into domestic areas (Rafalko, 2011). Subsequent Congressional investigations and the resulting statutes both restricted the domestic collection activity of covert United States intelligence agencies and expanded the extraterritorial responsibilities of federal law

⁴ While the private sector may have a role in the collection of domestic national security intelligence, for example in the cyber sector, this thesis addresses only those questions associated with the collection of national security intelligence by state, local and tribal law enforcement.

⁵ The United States Senate Select Committee on Intelligence was created by the Senate in 1976 to "oversee and make continuing studies of the intelligence activities and programs of the United States Government" (SSCI, 2011). Hereafter, referred to as the SSCI.

enforcement agencies (Rockefeller Commission Report, 1975).⁶ These laws also required law enforcement activity by federal agencies into areas of significant national intelligence interest—narco-trafficking, international terrorism and the proliferation of weapons of mass destruction (SSCI, 1976).

Other factors bringing intelligence and law enforcement agencies closer together after 9/11 are traditional crime issues, such as international organized crime, illegal immigration, financial institution fraud and money laundering. Policymakers increasingly view domestic law enforcement issues as threats to national security and bona fide intelligence collection topics.

Nevertheless, it was the tragic events of 9/11 that served as the catalyst for greater integration of state, local and tribal law enforcement into the United States Intelligence Community. In the final version of *The 9/11 Commission Report* (2004), the Commission accused the intelligence community of having failed to “connect the dots” (p. 408) and “share information” (pp. 257, 356, 400, 539). Many within the intelligence community viewed this claim as an over-simplification of the complexities of national security intelligence collection and analysis.

In some contexts, however, the claim was quite appropriate due to the significant issues surrounding the coordination, collection and sharing of classified domestic national security intelligence. This was particularly true when applied to the relationship between the federal law enforcement and state, local and tribal law enforcement in regards to the collection and sharing of classified national security intelligence between domestic agencies.

The 9/11 Commission was not alone in its findings. Other commissions and reports, including the Weapons of Mass Destruction Commission Report (2005);⁷ the Congress, through its legislative process (IRTPA, 2004); the Gilmore Commission

⁶ Formally, *Report to the President by the Commission on CIA Activities within the United States*, Washington, DC: Government Printing Office, June 1975. Hereafter, referred to as the “Rockefeller Commission Report.”

⁷ Formally, *Final Report of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction*, Washington, D.C., 2005. Hereafter, referred to as “WMD Commission” and “WMD Commission Report.”

Report (2004);⁸ and even the Executive Office of the President, via the President's Intelligence Oversight Board (Eggen, 2005) would eventually weigh in on the problem. The intelligence collection capabilities of the Federal Bureau of Investigation, the Central Intelligence Agency and other members of the United States Intelligence Community were questioned and significantly impacted by the creation of a myriad of critiques, comments, recommendations and mandates. Yet, no one set of recommendations and guidelines purported to have all the answers.

In 2004, Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004 to reform the United States Intelligence Community (IRTPA, 2004). The Act included a new definition of national intelligence. All intelligence “[was] now defined as *national* intelligence, which has three subsets, foreign, domestic and homeland security intelligence” (Lowenthal 2009, pp. 4–5). Lowenthal noted, “Practitioners are experiencing some difficulty distinguishing among homeland, internal and domestic security” (p. 5).

With this new definition of national intelligence, the collection focus of the homeland security law enforcement community changed. Intelligence reform gave rise to a proliferation of law enforcement intelligence centers, fusion centers, independent state and local police and military intelligence gathering units in the post-9/11 environment, which posed a potential conflict with the United States Intelligence Community and—according to some—a risk domestically to civil liberties (Rollins, 2008).

State and local intelligence units, while not officially added to the existing 17 members of the United States Intelligence Community overseen by the Office of the Director of National Intelligence, were conducting counterterrorism intelligence collection within the United States and in some cases worldwide.⁹ Each perceived their role in the collection of domestic intelligence differently, depending on whether they

⁸ Formally, *The Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction*, Washington, D.C., 2004. Hereafter, referred to as “the Gilmore Commission” and “the Gilmore Commission Report.”

⁹ The Los Angeles Police Department and the New York Police Department are two high profile advocates of the “world-wide” police intelligence collection approach. See John Comiskey, *Effective State, Local and Tribal Police Intelligence: The New York City Police Department's Intelligence Enterprise- a Smart Practice*, 2010, for a more in depth discussion.

were civilian or military, the threat to their domains, legislative mandates and frequently political considerations. Each member of the greater intelligence community also defined what constituted domestic intelligence and its classified collection differently. The differences of opinion and perceptions in how classified domestic intelligence was to be defined and collected became problematic over time due to the eventual inherent conflict with the Federal Bureau of Investigation's own legislatively mandated domestic intelligence collection and counterterrorism investigative programs.

B. STATUS QUO

A majority of homeland security professionals agree that a critical need exists within law enforcement for an integrated system to enhance the collection and sharing of counterterrorism intelligence. Efforts by state, local and tribal law enforcement to seek relevance post-9/11 resulted in numerous attempts to develop new and innovative intelligence-collection policy models involving greater analysis and information sharing. As state, local and tribal law enforcement level agencies reorganized around the counterterrorism and homeland security missions, police intelligence resources shifted from the investigation of criminal enterprises to the detection and prevention of terrorist attacks (Masse, O'Neil & Rollins, 2007).

In an effort to address the issue of domestic intelligence collection within the homeland, two specific, *unclassified* intelligence-collection policy models, Intelligence-Led Policing¹⁰ and the Nationwide Suspicious Activity Reporting Initiative (NSI)¹¹ emerged as the dominant nonfederal, national domestic intelligence collection strategies—*the new paradigms*—driving the nascent field of Homeland Security Intelligence. They have become—ten years after the events of 9/11—the de facto status quo for intelligence collection by state, local and tribal law enforcement.

¹⁰ Intelligence-Led Policing is defined as “a strategic, future-oriented, and targeted approach to crime control, focusing upon the identification, analysis and management of persisting and developing problems or risks (de Lint, 2006, pp. 1–6).

¹¹ The Nationwide Suspicious Activity Reporting Initiative is defined as “a nationwide capacity for gathering, documenting, processing, analyzing and sharing terrorism related suspicious activities reports generated at the local regional, state or federal levels,” (ISE.Gov, 2008).

Intelligence-Led Policing is supported by the membership of the International Association of Chiefs of Police (2002), the Major City Chiefs Association (2008), the United States Department of Justice, Bureau of Justice Assistance (2005) and the Department of Homeland Security (Privacy Impact Assessment, 2008), as well as by the National Strategy for Homeland Security (2007) and the National Criminal Intelligence Sharing Plan (Kiernan, 2006).

The various supporters of the American versions of Intelligence-Led Policing assert reliance on the information gathering capabilities of the 800,000 plus police officers and 18,000 police and sheriff's departments across the country to collect criminal intelligence and leverage data analysis will inherently develop domestic national security intelligence (International Association of Chiefs of Police, 2005). Information collection by police, in turn, will lead to the discovery of terror networks by state, local and tribal law enforcement agencies and result in the prevention of terrorist acts (Major City Chiefs Association, 2008). Intelligence-Led Policing and the Nationwide Suspicious Activity Reporting Initiative represent the latest attempt by domestic law enforcement to integrate intelligence collection and analysis into a coordinated Information and Intelligence-Sharing Environment (2010).

C. PROBLEMS WITH THE STATUS QUO

Intelligence-Led Policing is commonly understood by local police agencies to be “primarily a business model and information-management process that allows police commanders to understand crime problems in a more strategic manner, and thus make more informed decisions to combat criminality” (Ratcliffe, 2008, p.188). The Nationwide Suspicious Activity Reporting Initiative (2008) complements Intelligence-Led Policing by requiring the submission of a suspicious activity report to the local fusion center whenever law enforcement observations meet a certain investigative or intelligence standard of relevance.

While Intelligence-Led Policing is conceptually understood by police executives as a policy model for the prevention of crime, the Intelligence-Led Policing policy model

does not address the collection, analysis and sharing of *classified* national security intelligence (Department of Homeland Security, 2005) for the prevention of terrorism within the United States.

For purposes of this thesis, Intelligence-Led Policing—as an intelligence-collection policy model—is considered distinct from *counterintelligence*, which is not motivated by the occurrence of criminal activity, but rather by the need to investigate espionage, sedition and subversion related to national security concerns (International Association of Chiefs of Police, 1998, revised 2003). Counterintelligence—and its related discipline counterterrorism—are, however, well-established and understood intelligence-collection policy models utilized by federal law enforcement to address national security.

The primary problem with Intelligence-Led Policing—despite having been around since 1995—is that it has not been universally adopted and remains a nascent theoretical model for most domestic police agencies. A general lack of understanding by police executives regarding the purpose and limitations of Intelligence-Led Policing—as well as a lack of understanding of the nature, function and limitations of classified national security intelligence—has inhibited law enforcement’s ability to effectively collect, analyze and disseminate classified domestic national security intelligence. Significantly, Intelligence-Led Policing lacks a universal doctrine or concept of operations (Carter, 2008) by which police can standardize intelligence collection and sharing practices.

Other problems associated with the status quo flow from the proliferation of all-crimes/all hazards fusion centers, joint regional intelligence centers and police intelligence units. The expansion of police intelligence roles created significant discord within the traditional United States Intelligence Community. Local agencies often differed with the intelligence community members regarding the *who and how* of national security intelligence collection and analysis and what should be the priority: detection and prevention, or collection, analysis and exploitation.

This disconnect is primarily a function of competing priorities between domestic law enforcement and the federal intelligence community, created by the inevitable tendency of *coercive* federalism to nationalize security, intelligence collection and

counterterrorism law (Kincaid, 1990, cited in Clovis, 2006) to the detriment of collaboration and sharing. In addition, homeland security grant programs continue to greatly influence intelligence collection and homeland security through “stringent compliance” that “allows the national government to coerce needed behaviors through the power of redistribution of funds.” In this way, “State and local governments had become dependent on federal funding” (Clovis, 2006, p. 6).

These issues are highlighted in regards to how state, local and tribal law enforcement understand classified national security intelligence collection, the principles of classification to protect sources and methods and the doctrine of *need to know*. The problems associated with the collection and sharing of domestic classified national security intelligence by state, local and tribal law enforcement are exacerbated by the lack of classified and *unclassified* domestic intelligence collection requirements propagated by the United States Intelligence Community.

A secondary problem within the status quo exists because of the history of the domestic intelligence enterprise within the United States. *Domestic* intelligence collection by police agencies is replete with examples of abuse, excess and illegal conduct by state, local and tribal law enforcement (Kaplan, 2006; Rafalko, 2011). The shift of law enforcement’s mission from criminal intelligence to domestic intelligence collection, and the proliferation of intelligence centers, state and local fusion centers and other public sector intelligence units in the post-9/11 environment has caused concern and is viewed by some as posing a “significant risk to domestic civil liberties unmatched since the red scares of the early 20th Century” (Kaplan, 2006).

D. RESEARCH QUESTIONS

This thesis posits the collection and sharing of classified national security intelligence by state, local and tribal law enforcement agencies, which is considered mission critical to achieving the overarching counterterrorism goal of preventing and mitigating future terrorist acts within the United States, is a public policy failure. A number of competing paradigms for the collection of domestic intelligence inside the

continental United States by state, local and tribal law enforcement exist. None of them addresses the collection and sharing of classified national security intelligence.

State, local and tribal law enforcement agencies can make a significant contribution to the national classified intelligence collection effort. Current national policies on the collection and dissemination of classified national security intelligence, however, limit the amount and classification level of intelligence that can be shared with state, local and tribal law enforcement. Sharing of classified intelligence by members of the United States Intelligence Community requires a favorable determination of eligibility for access (vetting) by an agency head or the agency head's designee; the signing of an approved nondisclosure agreement; and a need-to-know the information (Executive Order No. 13526, 2009). In addition, recent elimination of the "third party rule"¹² by Executive Order No. 13526, further complicates the release of classified intelligence to state, local and tribal law enforcement.

United States Intelligence Community policies regarding dissemination of classified intelligence limit the effectiveness of state, local and tribal law enforcement as collectors of national security intelligence. Reasons for the reluctance to embrace state, local and tribal law enforcement as collectors of classified national security intelligence are wide and varied and include the real problem of the protection of human confidential source information—but often also hinge on the threat to civil liberties posed by a vibrant police intelligence function, and the desire to avoid creating an American-style "Gestapo" (Baker, 1994; Best, 2001).

1. Primary Questions

1. Can state, local and tribal law enforcement agencies, utilizing the status quo, make a significant contribution to the classified national security intelligence collection effort?

¹² The "third party rule" refers to restrictions on the subsequent release of classified information by recipients absent the consent of the originating agency. This rule was eliminated by Section 4.1 (1)(2)(3)(i)(1) "Classified information originating in one agency may be disseminated to another agency or U.S. entity by any agency to which it has been made available without the consent of the originating agency, as long as the criteria for access under section 4.1(a) of this order are met."

2. If not, what is the optimal policy option for implementation of a classified collection and sharing system by the United States Intelligence Community in collaboration with state local and tribal law enforcement?

2. Secondary Question

1. How does Great Britain address the collection and sharing of classified national security intelligence and can their model provide insight to the United States Intelligence Community and state, local and tribal law enforcement in the war on terror?

E. RESEARCH DESIGN

This thesis utilizes a research methodology that combines 1) a history/policy options analysis approach to identify issues, problems and 2) solutions surrounding the primary research questions regarding the collection of classified national security intelligence by state, local and tribal law enforcement agencies. This methodology consisted of two distinct components that collectively lead to a series of policy options and recommendations addressing the collection of classified national security intelligence and terrorism related information by state, local and tribal law enforcement. The ultimate goal of this research design is to formulate policy options that would lead to greater debate among the principal consumers of homeland security intelligence as to which of the four options creates the greatest amount of collaborative interaction between the federal government and state, local and tribal law enforcement.

F. SIGNIFICANCE OF THE RESEARCH

The focus of this research is on the collection and sharing of classified national security intelligence by the Homeland Security Community, represented by state, local and tribal law enforcement agencies in partnership with the United States Intelligence Community. It is expected the findings of this research can influence policy makers as they search for policy models to improve the collection and sharing of classified national security intelligence. While a plethora of literature exists surrounding both the British and American versions of Intelligence-Led Policing, little of it has dealt with the issue of how state, local and tribal law enforcement agencies can best assist the United States

Intelligence Community and federal law enforcement in the collection and sharing of classified intelligence and the prevention of terrorism.

Within the United States, the collection of classified domestic national security intelligence by state, local and tribal law enforcement requires clear and definitive policy models. This thesis identifies three alternate policy models in addition to the current Intelligence-Led Policing and the Nationwide Suspicious Activity Reporting Initiative policy model that could enhance law enforcement's contribution to counterterrorism efforts. This research will also contribute to the growing body of literature and knowledge of Intelligence-Led Policing as it is practiced in America.

The proper role of the four policy options researched within this thesis is both a local law enforcement-policy issue and a domestic national security intelligence-policy issue. In the absence of a national strategy for the collection and sharing of domestic intelligence, defining the individual roles in the collection and sharing of national security intelligence in the war on terror is problematic. As the Department of Homeland Security, the United States Department of Justice, state, local and tribal law enforcement, and the overall United States Intelligence Community each strive to assert a leadership role in the prevention of terrorism within the United States, political considerations will continue to affect the efficient collection and sharing of classified domestic national security intelligence. Additional research into the effectiveness of Intelligence-Led Policing and the Nationwide Suspicious Activity Reporting Initiative—and national strategies to guide its collection—is critical to the development of sound domestic national security policy.

G. ARGUMENT: MAIN CLAIMS, WARRANTS, EVIDENCE, AND CHALLENGES

In the ever-changing post-911 enterprise, which is the United States Intelligence Community, the argument as to whether or not “cops should be spies” and significant contributors to the national security intelligence collection and sharing paradigm is increasingly at the forefront. As noted by the RAND Corporation:

Terrorism respects no boundaries. It is both a foreign and domestic matter, one that requires responses from both intelligence and law enforcement agencies, among many other entities. One aspect of combating terrorism that is often discussed but seldom examined in detail is the overlap of intelligence and law enforcement and the role of state and local law enforcement agencies as the ultimate “eyes and ears” in the war on terrorism. (Riley, Treverton, Wilson, & Davis, 2005, Kindle location 11)

A secondary argument regarding the empowerment of state, local and tribal law enforcement agencies to aggressively pursue the infiltration, recruitment, disruption and the dismantlement of homegrown terrorist individuals and groups—in the manner of a bona fide member of the United States Intelligence Community—concerns the ability to conduct such investigations without compromising civil liberties. This is neither a new argument nor a new paradigm. It is, rather, a return to the problems confronting police domestic intelligence collection policies of the 1950s Red Scare era, the 1960s Vietnam War era and the 1970s Leftist Revolutionary era.

The craft of domestic national security intelligence collection—as opposed to the collection of *foreign* national security intelligence¹³—is the least understood and most misrepresented of all of the various forms of national intelligence. Moreover, a lack of clarity regarding a doctrine that fails to define the craft of domestic intelligence collection—with a definition that is codified, comprehensive and universally recognized—severely complicates the development of national domestic intelligence guidelines governing the conduct of domestic intelligence collection. Defining intelligence collection adds specificity and consistency to an intelligence collection process where none had previously existed (Carter, 2004).

To understand the extent of the problem regarding the collection and sharing of classified intelligence with state, local and tribal law enforcement, we must first attempt to define exactly what we mean by domestic intelligence. This is because the complexities of domestic national security intelligence collection within the homeland

¹³ An argument can be made that a majority of the intelligence collected in the United States by the United States Intelligence Community in the war on terror actually represents foreign intelligence regarding terrorist plots planned and directed from overseas (See Crumpton, 2005, p. 203). This thesis attempts to argue that even in those instances, the close cooperation of state and local law enforcement through classified intelligence sharing is critical to mitigating the threat from overseas.

have significant policy and civil rights implications depending on how domestic intelligence is defined and by whom, as well as how it is collected. The current lack of a definition of domestic intelligence instills confusion among the public and rank-and-file professionals whose duty it is to both collect pertinent intelligence and ensure the civil rights of those engaged in constitutionally protected activities.

Where others have attempted to define domestic intelligence (Heck, 2009), the attempt has fallen short. If domestic national security intelligence is to follow the foreign collection model, with collection requirements derived from policy considerations, then the United States Intelligence Community needs to begin the process by defining the conditions requiring domestic national security intelligence collection and establishing rules and guidelines for the behavior of its collectors.

Fundamentally, intelligence is “understanding the motivations, thoughts and plans of one’s enemies” (Cilluffo, Marks & Salmoiraghi, 2002, p. 61). Lowenthal (2009) defines intelligence as information subjected to analysis that is used to inform policy makers. What Lowenthal and Cilluffo et al. are referencing in their definitions of intelligence, however, is strategic foreign intelligence rather than tactical domestic intelligence. While strategic multi-disciplinary intelligence that provides “insights into the cultures and mindsets of terrorist organizations” (Cilluffo et al., 2002, p. 61) may be crucial to the greater United States Intelligence Community in providing warnings and indicators of impending attacks, it is of little tactical use to state, local and tribal law enforcement in preventing, preempting and disrupting terrorist activities before they occur.

Strategic intelligence—when marketed to the state, local and tribal law enforcement community as a tactical intelligence product—often provides nothing more than unclassified background and context, often in a format that can be easily obtained through open sources. Strategic *counterterrorism* intelligence marketed to the state, local and tribal law enforcement community often takes the form of *intelligence pornography*, designed to satisfy the prurient intelligence interest of the reader, but which provide little of practical value for the prevention or mitigation of terrorism threats to the community.

In contrast, *classic espionage* is defined as a counterintelligence activity “directed towards the acquisition of information through clandestine means and proscribed by the laws of the country against which it is committed” (Cilluffo et al., 2002). Domestic intelligence collection by local law enforcement—except for its description as being illegal—most closely mirrors the definition of classic espionage; however, when targeted against domestic terror groups, domestic intelligence collection is more accurately described as counter-intelligence or counterterrorism rather than classic foreign intelligence collection or classic espionage.

The issue surrounding which definition to embrace regarding the collection of classified domestic national security intelligence is further clouded when individuals or organizations use terms, such as domestic security, domestic tranquility, national security and internal security as a euphemism for the collection of domestic intelligence. The juxtaposition of criminal intelligence collection and analysis, such as intelligence-led policing, with domestic counterterrorism intelligence collection, as well as the differences between the mere gathering of information and the collection of actual intelligence causes further confusion.

Henry A. Crumpton, former Ambassador-at-Large for Counterterrorism at the Department of State, and the former Chief of the Central Intelligence Agency’s (CIA) National Resources Division, has argued for a return to the fundamentals of the craft of intelligence and has called the heavy reliance on law enforcement as intelligence collectors a “traditional macro defensive effort” (2005, p. 198). Crumpton states, “The success of intelligence at home will increasingly depend on a new form of internal collection against specific enemies and on the forging of a deep partnership with the American nation, from local police forces to private enterprises” (p. 198).

Both Crumpton and Fathali Moghaddam have postulated globalization as a meme that has created new opportunities for America’s enemies. Moghaddam, in particular, argued regular globalization encouraged us to accept a first worldview of al-Qa’ida as a multi-national terrorist organization following a corporation-like model. Moghaddam’s

fractured globalization,¹⁴ however, teaches a second worldview of al-Qa'ida as a franchiser of terrorism. That terrorism is less a function of individuals or groups following al-Qa'ida's lead and more the result of a conflict of culture between east and west. It is, for the franchisee, about social contract, trust, control and identity (Moghaddam, 2008, p. 45). From a political science standpoint, this argument is a further refinement of Alexander Wendt's (1999) Theory of Social Constructivism applied to subgroups or franchises of al-Qa'ida.

Crumpton, on the other hand argues, "...new enemies are individuals or teams armed with inconspicuous weapons, maneuvering secretly within the massive global exchange," which from an intelligence perspective are "micro-targets," who pose "macro threats" utilizing "micro sized, macro impact weapons." Crumpton also cites "highly sophisticated intelligence services, even those of erstwhile allies" as significant domestic threats requiring a new approach to domestic national security intelligence collection (2005, p. 200).

Crumpton cautions against the infringement of civil liberties during times of expanded military authority—as during the current post-9/11 enthusiasm for increased integration of foreign and domestic intelligence collection efforts—and the false sense of security that the "comfort of conventional defense provides" (2005, p. 203). Instead, Crumpton argues:

[The] U.S. does not need a separate domestic intelligence structure for domestic suspects; this should remain the purview of U.S. law enforcement. Nevertheless, domestic-based foreign intelligence collection and analysis are critical to the constructing of the right defense. This domestic foreign intelligence structure, of course, can also enable offensive law enforcement initiatives in the homeland and U.S. responses abroad, ranging from diplomatic incentives to military strikes. (2005, p. 203)

What Crumpton argues for is an *offensive* foreign intelligence collection strategy, focusing on foreign intelligence collection in the homeland, which is more than the

¹⁴ Fractured Globalization is defined as "the tendency for sociocultural disintegration to pull in a local direction at the same time that macroeconomic and political systems are set up to pull toward the international direction and to accelerate globalization" (Moghaddam, 2008, p. 8).

“detection and disruption of each individual threat” (911 Commission Report, p. 375). He feels U.S. Northern Command is poorly suited to address micro threats in this “new Domestic battleground” (p. 204). Instead, Crumpton states, “law enforcement—not military force or covert action—is statecraft’s hard-power tool in the homeland, and intelligence must support this customer” (p. 205). In other words, both the Department of Homeland Security and state, local and tribal law enforcement need a better offensive, classified national security intelligence collection and sharing policy model under which to operate.

Research and precedent show that the United States has responded to the need for a classified domestic intelligence capability for state, local and tribal law enforcement in five ways: First, it has ignored it; Second, it has sought ad hoc arrangements, without clear authority or oversight, which has led to political abuse; Third, it has allowed domestic-based case officers of the Central Intelligence Agency to collect foreign intelligence through its National Resources Division; Fourth, the United States has rested on an assumption law enforcement can substitute for intelligence (Crumpton, 2005, pp. 206–207); and Fifth, it has allowed the Federal Bureau of Investigation to bear the brunt of responsibility for the collection of classified domestic intelligence to counter both homegrown and transnational terrorism. The addition of the Department of Homeland Security, Office of Intelligence and Analysis, as an independent collector of classified domestic intelligence, and its influence at the state, local and tribal area, has further muddied the manner in which the United States has responded to its need for classified domestic intelligence collection capability.

As those working in the domestic intelligence collection arena correctly understand, the Central Intelligence Agency must collect their foreign intelligence in the United States overtly, not covertly and in close coordination with the Federal Bureau of Investigation, who under Executive Order No. 12333 (White House, 1981) have primary responsibility for the collection of foreign intelligence¹⁵ within the United States. The

¹⁵ Foreign intelligence as defined by Executive Order 12333 includes the activities of hostile foreign intelligence services and transnational terrorism groups, as well as any information vital to the national security interests of the United States.

Department of Homeland Security has no such restrictions for the collection of domestic intelligence. Crumpton further failed to address the much broader category of U.S. Persons¹⁶ against whom foreign intelligence can only be legally collected within the United States by the Federal Bureau of Investigation pursuant to the protections afforded by the United States Constitution.

Do the “micro threats” referenced by Crumpton (2005, p. 198)—best exemplified by the Mumbai attack—require an entirely new form of internal intelligence collection efforts? If so, then the argument becomes: Can the intelligence community and domestic law enforcement—to include the military—collect intelligence domestically without a new codified definition of domestic intelligence or national strategy? After all, classified domestic intelligence collection, including foreign intelligence collection, is not the same as internal or homeland security. Alternatively, an argument can be made that traditional law enforcement and public safety, with adjustments, can provide a reasonable level of both safety and the protection of civil rights.

A secondary problem remains the question of who should be in charge of conducting the collection of classified domestic national security intelligence. If the McGaffin standard for the collection of intelligence, i.e., “by conscious, specifically targeted, operational clandestine espionage activity, whether technical, human, or a combination of both” (2003, p. 4) is used then, the primary expectation is that state, local and tribal law enforcement agencies will at some point be engaged in the clandestine recruitment of confidential human sources, whose mission will be to betray their compatriots, by stealing their secrets and selling—or giving them—to law enforcement. In which case, cops will have become spies...or at least, spy handlers.

A major argument in support of the integration of state, local and tribal law enforcement into the United States Intelligence Community has been the desire to

¹⁶ A U. S. person is defined in Title 50, United States Code §1801 as “a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section [1101\(a\)\(20\)](#) of title [8](#)), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3) of this section.”

leverage the enormous information gathering capabilities of local law enforcement, which has thousands of agencies and almost 800,000 officers available throughout the United States (Bureau of Labor Statistics, 2010). Close coordination and control of the domestic intelligence gathering potential of local law enforcement, however, presents significant challenges for the United States Intelligence Community.

The history of terrorist operations in the United States has shown terrorist groups can include both U.S. persons and foreign nationals, operating in and out of the United States and its territories, over long periods of time. For some scholars of multi-national terrorism, “the threat of catastrophic terrorism spans the globe, defying ready classification as solely foreign or domestic” (Carter, Deutch, & Zelikow, 1998, p. 82). The greatest danger arises when investigation of the threat—or the gathering of intelligence about the threat—falls through the cracks and into one of the “crevasses of overlapping jurisdictions” (p. 82), such as the divide between foreign and domestic terrorism, federal and state law enforcement, and national security versus homeland security.

This historical problem significantly affects the intelligence community’s ability to address the terrorism problem, and this thesis’ ability to analyze and formulate a practical and positive policy option. The problem today is still as clear as articulated in 1998 by the Universities Study Group on Catastrophic Terrorism:

The law enforcement/national security divide is especially significant, carved deeply into the topography of American Government. The national security paradigm fosters aggressive, active intelligence gathering. It anticipates the threat before it arises and plans preventive action against special targets. In contrast, the law enforcement paradigm fosters reactions to information provided voluntarily, uses *ex post facto* arrests and trials governed by rules of evidence, and protects the rights of citizens. (Carter, Deutch & Zelikow, 1998, p. 82)

The ability of state, local and tribal law enforcement agencies to collect, analyze and disseminate national security intelligence in the war on terror is critical to the capacity of the United States Intelligence Community to prevent terrorism. While Intelligence-Led Policing and the Nationwide Suspicious Activity Reporting Initiatives are considered successful models for the prevention of crime, neither works as effective

policy models for the collection of national security intelligence. As noted by the Center for Homeland Defense and Security (CHDS):

Local police departments play a critical role in the global war against terrorism. Intelligence professionals working in the IC [*sic*] know little about community policing procedures undertaken by local agencies, while local police departments often see the intelligence community as distant and unresponsive to their needs. (CHDS, 2009)

Some experts, however, do not agree this is the problem. For them, a more salient problem within the classified/unclassified conundrum is that local crime issues only intersect with classified national security issues coincidentally (Wirtz, personal communication, 2010). While this may be true, it should not be the case that coincidence drives domestic intelligence collection policy.

Returning to the de facto status quo, Intelligence-Led Policing and the Nationwide Suspicious Activity Reporting Initiative are ineffective primarily due to police executives both failing to understand the purpose and limitations of both models as tools for the collection of national security intelligence. Little empirical evidence contained within either the literature or the law enforcement community suggests Intelligence-Led Policing and the Nationwide Suspicious Reporting Initiative are effective policy models for the collection of national security intelligence as opposed to merely criminal intelligence. Neither is there anecdotal evidence supporting the success rate of Intelligence-Led Policing and the Nationwide Suspicious Activity Reporting Initiative in national security matters. In addition, the lack of local classified and unclassified national security collection requirements clearly inhibits state, local and tribal law enforcement's ability to direct local national security collection efforts.

To be effective as a domestic, national security intelligence collection system, Intelligence-Led Policing requires an integrated system of intelligence collection requirements tailored for the state, local and tribal law enforcement community and an agency to manage their dissemination. An effective policy model also requires access to classified national security intelligence, which suggests a means of systematically and efficiently granting classified clearances. Absent integration with the national intelligence community, Intelligence-Led Policing will always focus on local community concerns

and issues, and not on national security issues. State, local and tribal law enforcement have little hope of becoming a viable adjunct to the United States Intelligence Community until the efforts of police officers are directed towards the greatest threats in the collection of national security intelligence.

The United States Department of Justice, Bureau of Justice Assistance and the Department of Homeland Security have each supported Intelligence-Led Policing and the Nationwide Suspicious Activity Reporting Initiative without a clear understanding of their principles and their lack of policy doctrine, to the detriment of other possibly more viable intelligence collection policies and platforms. In supporting Intelligence-Led Policing as a means of collecting counterterrorism intelligence, the federal government is promoting not an intelligence collection process as the name might imply, but an “information-management process that allows police commanders to understand crime problems in a more strategic manner, and thus make more informed decisions to combat criminality” (Ratcliffe, 2008, p.188).

The evaluation of the theories and practice regarding the collection of national security intelligence by domestic law enforcement and the paradigms they use is extremely important. The reason lies in the critical need to establish well-defined standards governing the operations of state, local and tribal law enforcement domestic intelligence units in the collection of national security intelligence. As Nestor Duarte postulated in his thesis *Unleashing Our Untapped Domestic Collection is the Key to Prevention*, “leaders must establish the priority for all law enforcement, from Agents and detectives, to cops on the beat, to view themselves as collectors of national security information” (Duarte, 2006, p. 66).

The question regarding which policy model is most effective in the prevention of terrorist attacks in the homeland is the pertinent issue. Police executives argue, because of the overwhelming numerical superiority of local police agencies versus federal law enforcement, local law enforcement is best situated to uncover and address, i.e., prevent terrorism in the homeland (Major City Chief’s Association, 2008). Others argue nonfederal public sector intelligence units involved in domestic intelligence collection in the post-9/11 environment pose a significant risk to domestic civil liberties (Kaplan,

2006) and should not be involved in the collection of any noncriminal domestic intelligence. While the two arguments above represent the polar extremes regarding intelligence gathering, little disagreement exists that current domestic intelligence collection efforts “operate at the intersection of law enforcement and intelligence gathering” (Baker, 1994, p. 36) and represent a “blending of the roles between cops and spies” (Wittes, 1995). These two roles are desperately in need of analysis.

Assuming a rationale for state, local and tribal law enforcement participation in the collection of domestic national security intelligence, unclassified collection requirements, which have synthesized national security intelligence into usable targeting assessments, remain an elusive goal. The incorporation of intelligence collection requirements from across the United States Intelligence Community to produce assessments that inform law enforcement, integrates intelligence functions and analysis, is critical to the success of any of the proposed policy options (National Counterterrorism Center, 2009).

This important role would normally be assumed by the Department of Homeland Security, Office of Intelligence and Analysis, who’s “mission is to equip the Homeland Security Enterprise with the intelligence and information it needs to keep the homeland safe, secure and resilient” (Department of Homeland Security, 2012). While the Department’s Homeland Security Standing Information Needs “form the foundation for information collection activities within the Department,” the failure to effectively mobilize the Department’s extensive domestic intelligence collection capability to fill the intelligence gap has left it without a recognized leadership role among its most obvious customers—state, local and tribal law enforcement—as well as other federal law enforcement and intelligence agencies.

Domestic terrorism usually involves only one host country so all protagonists, including the perpetrators, victims, financing and logistical support are homegrown (Enders & Sandler, 2006). As a result, most law enforcement agencies¹⁷ consider purely

¹⁷ The New York and Los Angeles Police Departments are notable exceptions. See John Comiskey, [*Effective State, Local and Tribal Police Intelligence: The New York City Police Department's Intelligence Enterprise- a Smart Practice*](#), 2010, for a more in depth discussion.

domestic terrorists to be criminals for whom the normal range of criminal intelligence collection and modern law enforcement management methods are sufficiently effective to enforce the law and prevent terrorism (International Association of Chiefs of Police, 2002; Major City Chief's Association, 2008). Important to the understanding of domestic terrorism and its impact on the collection of classified national security intelligence, however, is many intelligence professionals previously believed domestic terrorism generated implications solely for the country of origin or its political interest. The attacks of 9/11, however, changed this perception. Subsequent domestic efforts by federal law enforcement and the intelligence community to ensure the prevention of terrorism within the United States have met with increased scrutiny from a dubious Congress.

Prior to 9/11, terrorist attacks that included perpetrators, victims, targets, or interests from two or more countries constituted *international or transnational terrorism* (Enders & Sandler, 2006). Since 9/11, the intelligence community and federal law enforcement has seen a dramatic blending of domestic and transnational terrorism into something new and insidious. The modern-day threat from terrorism frequently falls between the seams of the military, intelligence and law enforcement. The prevention of terrorism requires the fusion of multiple elements of national power to collect intelligence and prevent future attacks (Grave de Peralta, 2010).

Following the attacks on 9/11, "domestic law enforcement agencies, initiated, and in some cases enhanced efforts to gather intelligence against domestic terrorists" (CHDS, 2007). Their efforts were diminished, however, by their lack of access to timely and accurate classified intelligence and national security collection requirements. In the words of the Weapons of Mass Destructions (WMD) Commission: "The intelligence failure in Iraq did not begin with faulty analysis. It began with a sweeping collection failure" (WMD Commission Report/Overview, 2005, p. 21). While the WMD Commission itself was referring to the failure of the intelligence community to collect pertinent classified national security intelligence, the same can be said about the current state of intelligence collection by state, local and tribal law enforcement agencies across the nation.

The law enforcement community now faces a threat that receives its inspiration and direction from overseas groups, but may plan and implement its actions solely on the domestic front. These plots and groups have previously been identified and neutralized primarily through the development of classified signals intelligence, overseas electronic surveillance and the exploitation of evidence obtained through military missions in combat zones. Today, however, the threat may emanate from anywhere within the greater United States of America.

Absent a unified national strategy for the collection of domestic intelligence, specific policy models for the collection of national security intelligence, as well as a system for the incorporation of collection requirements into the development of unclassified national security intelligence, “each agency will set out on its own to get what it needs” (Heyman, 2007 p. 155). In doing so, the nation risks a repeat of the disaster that occurred on September 11, 2001.

H. CHAPTER OVERVIEW

This thesis examines public policy regarding the collection and sharing of classified national security intelligence by state, local and tribal law enforcement; proposes policy models and examines the British system of domestic intelligence gathering. Chapter I poses the thesis questions, provides an examination of the status quo and summarizes the arguments in favor of the research. Chapter II summarizes the available literature on this topic and determined that only limited literature analyzing the overall validity of current procedures and policy models regarding state, local and tribal law enforcement collection of national security intelligence is available for review.

Sufficiently abundant literature, however, does exist within the three main categories of research for this to provide a basis for the development of arguments in support of several different policy options to address the collection and sharing of national security intelligence. Chapter III discusses research design and methodology. Chapter IV presents the results and findings of the research. Chapter V synthesizes the findings from the previous four chapters, presents a preferred policy option for the collection of classified domestic national security intelligence by state, local and tribal

law enforcement. Finally, Chapter VI makes policy recommendations regarding the findings in Chapter V and for future intelligence related research.

II. REVIEW OF THE LITERATURE

This literature review explores questions surrounding the collection, analysis and dissemination of classified national security intelligence developed domestically by state, local and tribal law enforcement agencies. The literature reviewed is related to how intelligence collection, specifically national security intelligence, can better integrate state, local and tribal law enforcement with the overall United States Intelligence Community. This literature review also assesses if Intelligence-Led Policing, as a policy model enhances the collection of national security intelligence by state, local and tribal law enforcement. It compares Intelligence-Led Policing with the literature of other potential policy models and combinations of models, including the British Security Service (MI-5)¹⁸ *Special Branch* model,¹⁹ that are meant to enhance the ability of state, local and tribal law enforcement to identify, collect, process, analyze and disseminate critical national security intelligence.

While sufficient literature exists regarding the question of both criminal and domestic intelligence collection by state, local and tribal law enforcement, only limited information exists about the specific questions regarding the collection and sharing of classified national security intelligence by state, local and tribal law enforcement in support of counterterrorism, either in response to classified national security collection requirements, or through independent unclassified criminal collection, which is later classified based on its content and analysis. As noted by the Center for Homeland Defense and Security (2007):

Although much has been written about how the threat of international terrorism creates challenges for federal law enforcement and intelligence agencies, much less has been written about the nexus between local and state law enforcement officers, first responders and federal organizations,

¹⁸ The British Security Service (MI-5) is the United Kingdom's domestic intelligence component and is comparable to the National Security Branch of the FBI.

¹⁹ The British Special Branch model involves close integration by the British Security Service of municipal police officers into classified national security investigations. The term Special Branch is used to identify individual police units responsible for national security matters under the supervision of MI-5.

especially in terms of intelligence collection. This is an important shortcoming in the existing literature on homeland defense and security.

Local police departments play a critical role in the global war against terrorism and are often the first responders to the threats and results of domestic and transnational terrorism. Nevertheless, “a gap continues to exist today between the federal agencies that make up the national intelligence community and state and local police departments and intelligence organizations. The gap is not only organizational in nature but also involves practice and theory” (CHDS, 2007).

Many excellent studies of individual categories of intelligence are available including counterintelligence (Kiernan, 2007), counterterrorism (Posner, 2007) and domestic intelligence (Burch, 2007; Dahl, 2011); some comparative studies of national security intelligence collection (Treverton, 2008; Masse 2006); and even studies of individual agencies (Zegart, 1999; 2007; Rafalko, 2010). Several intelligence anthologies address multiple issues, including operational and strategic considerations (Johnson & Wirtz, 2008, 2011), as well as collection and civil liberties in comparative government (Chalk & Rosenau, 2004); however, none provides a comprehensive assessment of domestic intelligence collection issues, nor do they provide an overarching theory of classified national security intelligence collection as it pertains to state, local and tribal law enforcement and homeland security.

This literature review is divided into four main areas. First, it describes literature regarding the nature and general collection of national security intelligence, the intelligence collection and analysis cycle, criminal intelligence, intelligence tradecraft and national security law. Second, it highlights literature regarding Intelligence-Led Policing from British and American sources. Third, literature in which theories of domestic security intelligence and its application by state, local and tribal law enforcement agencies is synthesized. Fourth, it surveys literature regarding domestic intelligence collection’s effect on civil rights and arguments for its restriction.

A. NATIONAL SECURITY INTELLIGENCE

Much has been written that discusses the theory and practice of intelligence collection and analysis (see Lowenthal, 2008; Masse, 2003 and 2006; Posner, 2005, 2006 and 2009; Treverton, 2008; Zegart, 1999 and 2007). As noted by Amy Zegart, however, national security intelligence collection by state, local and tribal law enforcement has been “vastly under studied in the discipline” (Zegart, 1999, p. 3).

The National Security Act of 1947, as amended over the years, specifically authorized the Central Intelligence Agency to collect intelligence through human sources and other appropriate means, except the Central Intelligence Agency shall have no "police, subpoena, or law enforcement powers or internal security function" (National Security Act of 1947). The intention of the law was to hold intelligence separate and distinct from law enforcement activities. At the time the Act was written, concern existed about creating a monolithic central security service which history—and observations made of totalitarian states—had taught us was undesirable in a democratic society.

Permissible intelligence collection activities were further clarified by President Reagan's 1981 Executive Order No. 12333 (1981). President Obama's Executive Order No. 13526 (2009) amended Executive Order No. 12958 (1995) and Executive Order No. 13292 (2003), issued by Presidents Clinton and Bush respectively, and deals with the manner in which sensitive information and classified national security intelligence is handled. The orders provide guidance to all intelligence agencies on the scope of allowable collection, classification procedures and other intelligence activities. Within the limits set out in Executive Order No. 12333, the intelligence community is permitted to collect a large amount of foreign intelligence that is of interest to law enforcement. Section 1.4c authorizes the intelligence agencies to undertake the "collection of information concerning, and the conduct of activities to protect against, intelligence activities directed against the United States, international terrorist and international narcotics activities, and hostile activities directed against the United States by foreign powers, organizations, persons or their agents" (Executive Order No. 12333, 1981). Thus, Executive Order No. 12333 empowers the intelligence community to collect and analyze

intelligence on the foreign aspects of traditional law enforcement concerns such as narcotics production and trafficking, international terrorism and counterintelligence, but not foreign intelligence.

The definition of *foreign* intelligence has a long legislative history, tracing its roots back to its first iteration as part of the National Security Act of 1947; however, domestic intelligence and its collection are not addressed by the 1947 Act. As defined in the Act:

(1) The term "intelligence" includes foreign intelligence and counterintelligence.

(2) The term "foreign intelligence" means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, *or international terrorist activities [emphasis added]*.

(3) The term "counterintelligence" means 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 [Emphasis added]* (50 U.S.C. 401(a)).

Nowhere does the National Security Act of 1947 refer to the term “national security” or “national security intelligence; rather it refers to “the intelligence required to address the national security interests of the United States as specified by the President.” (50 U.S.C. 402)(h)(2)(3)(A)).

The Intelligence Reform and Terrorism Prevention Act of 2004 (PL 108-458), however, provides for a revised definition of national intelligence:

The terms “national intelligence” and “intelligence related to national security” refer to all intelligence, regardless of the source from which derived and including information gathered within or outside the United States, that — (A) pertains, as determined consistent with any guidance issued by the President, to more than one United States Government agency; and (B) that involves — (i) threats to the United States, its people, property, or interests; (ii) the development, proliferation, or use of

weapons of mass destruction; or (iii) any other matter bearing on United States *national or homeland security* [*emphasis added*]. (p. 26)

According to the above definition of national intelligence, all counterintelligence and counterterrorism intelligence collection activities, as well as the criminal intelligence gathering activities of state, local and tribal law enforcement, can be construed as contributing to the *national or homeland security* counterterrorism efforts to prevent sabotage and assassinations by foreign organizations, foreign persons and international terrorist activity (IRTPA, 2004).

B. INTELLIGENCE-LED POLICING

Many excellent treatises regarding the history, development, application and evaluation of Intelligence-Led Policing exist, particularly in terms of the way Intelligence-Led Policing is applied within the British system of law enforcement. Many are on-point regarding the hypothesis contained in this proposal: Intelligence-Led Policing does not work as a strategic or tactical policy model in the collection of national security intelligence for the prevention of terrorism. As Ratcliffe (2008) noted in *Intelligence Led Policing*:

Intelligence-Led Policing is quite different from the meaning of intelligence common in military or national security context. Unlike in the military, law enforcement analysts are rarely a recognized feature of the managerial sphere, and across policing there is a lack of understanding of the role and applicability of crime intelligence to strategy. (p. 9)

The term Intelligence-Led Policing, as a law enforcement model, originated in Great Britain in the early 1990s. Intelligence-Led Policing was considered a new approach to crime control that was “strategic, future-oriented and targeted” and “built around analysis and management of problems and risks, rather than reactive responses” (Maguire & John. 2006, pp. 67–85).

Intelligence-Led Policing, community policing, criminal intelligence models and crime prevention strategies all share the same genesis as a managerial strategy for the prevention of crime and the apprehension of serial offenders (Ball, 2007; Carter 2004; Guidetti, 2006; Simeone, 2007). None, however, addresses the national security aspect of

collection by, for, or as a component of Intelligence-Led Policing. Rather, they assume national security intelligence can be collected incident to normal, aggressive policing driven by Intelligence-Led Policing (International Association of Chiefs of Police, 2003).

In the United States, the events of 9/11 prompted a review of all domestic intelligence sharing, which resulted in a reassessment of the value of Intelligence-Led Policing to the American policing establishment. The domestic intelligence divide in the United States, however, was incorrectly understood as an information-sharing problem rather than an intelligence collection problem. Assumptions and arguments contained in the 2003 National Criminal Intelligence Sharing Plan suggest, “if greater information sharing had occurred prior to 9/11, the tragic events could have been prevented” (Ratcliffe, 2009, p. 32).

While the literature notes that the lack of information sharing was a contributing factor in the failure to prevent the events of 9/11, nowhere is it argued that implementation of Intelligence-Led Policing prior to 9/11 would have had any substantial effect on subsequent events. The belief by the public that Intelligence-Led Policing might have had an effect on 9/11 can be attributed to American misunderstanding of Intelligence-Led Policing and why it was implemented in the United Kingdom.

1. The British Intelligence-Led Policing System

In 1995, the Kent Constabulary pioneered the first attempt to introduce Intelligence-Led Policing in a systematic manner into the day-to-day work of ordinary police officers. Intelligence became the core of local decision making, meaning the intelligence unit directed daily police activities, for example tasking patrol officers to gather specific information later used in planning operations (Maguire & John, 2006). The purpose of Intelligence-Led Policing was to reduce the reliance on calls for service to direct the deployment of police resources and return to a strategic planning process incorporating statistical analysis of crime trends to prevent crime rather than merely apprehend criminals.

By 1997, the Inspectorate of Constabulary had published an influential report titled “Policing with Intelligence.” It documented the fundamental elements of

intelligence-led law enforcement and crime reduction, including an integrated intelligence structure, performance indicators and collaboration with outside agencies. “The report sought to indicate best practice to British police services (and by osmosis the broader law enforcement community) by drawing on an examination of the current application with six police forces (Ratcliffe, 2002, p. 54).

As the years progressed and policing in the United Kingdom continued to develop, “[a] gradual and piecemeal, but clearly perceptible, shift was taking place in police approaches to the investigation and control of crime” in England and Wales” and in many other countries:

In essence, it was observed, rather than simply responding to individual crimes as they are reported by the public, the police—often in collaboration with other public sector agencies—were acting increasingly proactively in relation to perceived risks, putting substantial effort and resources into planned strategies to identify and to ‘target’ offenders, locations or activities that appeared to present a sufficient level of threat or nuisance to the community to merit priority attention. (Maguire & John, 2006, p. 68)

The paradigm shift in the “police approach[es] to the investigation and control of crime” ultimately led to a change in the manner in which both crime control and criminal intelligence collection were perceived, initiated and utilized by the international police community.

a. The National Intelligence Model

In 2000, the National Criminal Intelligence Service and the Association of Chief Police Officers in England and Wales sponsored, the National Intelligence Model, “a business model for law enforcement” (Maguire, 2000, p. 315). The National Intelligence Model identified the core business of policing as “managing crime, managing criminals, managing localized disorder, managing enforcement and community issues and reducing opportunities for crime. The desired outcomes of police work are “community safety,” “reduced crime,” “arrested/disrupted criminals,” “managed hot-spots,” and “control of potentially dangerous offenders.” The police methods and

resources useful to achieve these outcomes included intelligence, reactive investigation, proactive operations and patrol resources (Maguire & John, 2006, p. 71).

b. The National Policing Plan

The British government's first National Policing Plan, covering 2003–2006, required all 43 police forces in England and Wales adopt the National Intelligence Model and to comply with its procedures by April 2004. In the United States, however, no such mandate exists, or can exist under the principles of federalism established within the 10th Amendment to the United States Constitution. National police governing bodies, such as the International Association of Chiefs of Police, the National Sheriff's Association and the Major City Chief's Association can make recommendations to their membership, but generally have little sway with their constituents, despite these organizations and the United States Department of Justice, Bureau of Justice Assistance having universally adopted Intelligence-Led Policing and the National Suspicious Activities Reporting Initiative as their preferred policing and domestic intelligence collection model.

2. The American Variation of Intelligence-Led Policing

The closest approximation in the United States to the manner in which Intelligence-Led Policing is utilized in the United Kingdom is the New York Police Department and the Los Angeles Police Department's use of CompStat, a computer-based statistical analysis of crime data designed to drive deployment of limited police resources to combat serial crime (Ball, 2007). Both police departments derived their reliance on Intelligence-Led Policing from the leadership of William H. Bratton as Police Commissioner and Chief of Police respectively of each department.

While the New York Police Department has been successful in promoting the popular view that the general reduction in major city crime in New York from 1993 to 1998 was due to CompStat, a number of researchers have questioned this assumption (Ratcliffe, 2009). Controversy continues to this day regarding the manipulation of crime reporting statistics to give the appearance of policy success (Bruce, 2010; Patrick, 2012). If, however, CompStat represents the best application of the principles of Intelligence-

Led Policing in the United States, there is no evidence that anything in the daily activities of the 9/11 hijackers would have brought them to the attention of local law enforcement applying these principles.

An effective domestic national security collection system, Intelligence-Led Policing requires an integrated system of intelligence collection requirements tailored for the state, local and tribal law enforcement community. The key is the development of a system, which promotes significant “buy-in” regarding the collection of national security intelligence by state, local and tribal law enforcement. Local police agencies have to both understand their role in national security and have a desire to participate in its collection.

Absent a domestic, national security collection system that integrates unclassified intelligence requirements, local cleared intelligence liaison officers and a federal agency to develop and coordinate these efforts, state, local and tribal law enforcement has little hope of enhancing the collection efforts of police officers in regards to the greatest counterterrorism threats in the collection of national security intelligence.

C. DOMESTIC INTELLIGENCE

A significant category of intelligence literature deals with the synthesis of prevailing theories on domestic intelligence collection and reform, the historical perspectives regarding classified domestic national security intelligence collection and how intelligence collection by state, local and tribal law enforcement has impacted the enforcement of civil rights in the past.

Gregory Treverton, noted scholar of intelligence issues, observed that in analyzing intelligence collection, a critical distinction existed between mysteries and puzzles. Treverton offered puzzles are questions with answers. Mysteries are those questions for which no answer exists. Puzzles involve facts and data. Mysteries involve judgment, analysis and interpretation (Treverton, 2007). In a quote from an article in *Smithsonian Magazine* derived from his book, Treverton states, “Solving puzzles is useful for detection. But framing mysteries is necessary for prevention” (Treverton, 2007, p. 2). The distinction is useful for this thesis because state, local and tribal law enforcement agencies are not usually in the business of framing mysteries, as United

States Intelligence Community collectors are often required to do. They much prefer the “Sgt. Joe Friday” approach to criminal investigation: “All we want are the facts ma’am” (Mikkelson & Mikkelson, 2008).

If, however, state, local and tribal law enforcement is expected to be a major contributor to the prevention of terrorism within the United States, then the literature suggests that an understanding of the “framing of mysteries,” rather than just the solving of a puzzle, as most criminal investigators are trained to do, will be a requirement of their collection capacity.

A systemic shortcoming with the academic literature surrounding the collection of national security intelligence is a prevailing lack of understanding regarding exactly how classified domestic national security intelligence collection within the United States is conducted from a practitioner’s point of view, as well as a doctrine on collection to guide law enforcement. Most literature ignores the very significant role that the Federal Bureau of Investigation has had since its inception in 1908 in the collection of domestic intelligence and foreign counterintelligence both within the United States and overseas. While many anthologies provide valuable examples of articles with divergent viewpoints, historical background and synthesis of national security and intelligence collection, few have synthesized the manner in which the various components of the United States Intelligence Community collaborate in the collection and dissemination of classified intelligence for domestic intelligence purposes.

1. Defining Domestic Intelligence

Former high-ranking members of the Central Intelligence Agency define domestic intelligence as “Domestic-based foreign intelligence collection and analysis critical to the constructing of the right defense” and “offensive foreign intelligence collection strategy, focusing on foreign intelligence collection in the homeland” (Crumpton, 2005, p.203). The distinction being the intelligence collected domestically is only legally related to the foreign, rather than the domestic threat. Any intelligence collected relating to the domestic threat is coordinated with the Federal Bureau of Investigation, which has exclusive jurisdiction for federal domestic intelligence collection (Rafalko, 2011).

The Department of Defense defines domestic intelligence as "intelligence relating to activities or conditions within the United States that threaten internal security and that might require the deployment of troops; and intelligence relating to the activities of individuals or agencies potentially or actually dangerous to the security of the Department of Defense" (Joint Publication 1-02, p.171). Civil libertarians, on the other hand, have referred to domestic intelligence collection activities as the "secret collection of information by a government on its own citizens and residents" (Martin, 2004, p. 7).

The Intelligence Reform and Terrorism Prevention Act of 2004 includes neither a comprehensive definition of what constituted *domestic* intelligence (Masse, 2003 and 2006, as cited in Treverton, 2008), nor an understanding of how domestic intelligence is distinguished from its associated subsets of homeland, internal and domestic security (Lowenthal, 2009). By contrast, the RAND Corporation defines domestic intelligence as "efforts by government organizations to gather, assess and act on information about individuals or organizations in the United States or U.S. [sic] persons elsewhere that is not necessarily related to the investigation of a known past criminal act or specific planned criminal activity" (Treverton, 2008, p. 15).

The issue of how to define domestically collected national security intelligence becomes even less clear when individuals or organizations use terms like domestic security, domestic tranquility and national security, in place of, or as a euphemism for, the collection of domestic intelligence. More confusing yet is the juxtaposition of criminal intelligence functions with domestic intelligence collection functions for national security and the differences between the collection of information and the collection of intelligence. As illustrated below, former senior Central Intelligence Agency Associate Deputy Director of Operations John McGaffin made a clear distinction between gathering information and collecting intelligence during testimony before the 9/11 Commission, a distinction that is not correct:

While the FBI [sic] correctly highlights its unmatched ability to *gather* evidence—and with it information, there is nonetheless a National Security imperative which distinguishes *intelligence collection* from a similar, but different, function found in Law enforcement. *Gathering* which is not driven or informed by specific, focused National Security

needs is not the same as *intelligence collection* as the DCI [*sic*] and the Intelligence Community understand the term. This collection is accomplished not incidental to law enforcement, but by conscious, specifically targeted, operational clandestine espionage activity, whether technical, human, or a combination of both. (McGaffin, *Security and Liberty*, p.4, as cited in Crumpton, 2005, p.209)

As this quote illustrates, differences of opinion surrounding the complexities of defining domestic intelligence collection capabilities versus information collection within the homeland are significant. The misunderstanding and policy implications extend depending on who it is collecting domestic security intelligence, how it is collected and who is targeted. An additional concern is how the intelligence is recorded, maintained and disseminated.

a. Problems Associated with the Collection of Domestic Intelligence

The collection of all national security intelligence in the United States is based upon the principles embodied in the intelligence cycle, i.e., intelligence requirements inform collection and analysis. The national intelligence collection requirements that drive the cycle are developed, based on input from policy makers, the collective United States Intelligence Community and promulgated by the Director of National Intelligence. It is these collection requirements that serve as the foundation for the United States Intelligence Community collection of national security intelligence, whether related to terrorism, counterintelligence, or positive foreign intelligence (Lowenthal, 2008).

Following the tragedy of September 11, the demand for both foreign and domestic intelligence became a national priority. Despite the well-meaning collective efforts of members of the intelligence community, the need to have universal rules for the collection, analysis, maintenance, dissemination and purging of intelligence information quickly became apparent. Domestically, only the Law enforcement Intelligence Unit, a national criminal intelligence organization, has promulgated the use of standardized investigative conduct guidelines, primarily those contained in Code of Federal

Regulations, Title 28, Part 23.²⁰ These guidelines have long been in use in local and state jurisdictions. Nevertheless, these guidelines govern the conduct of *criminal intelligence* and are not generally transferable to the collection of classified domestic national security intelligence.

According to Crumpton (2005), the United States Intelligence Community has historically responded to the need for a domestic foreign intelligence capability in four ways: First, it has ignored it. Second, it has sought ad hoc arrangements with state, local and tribal law enforcement, without clear authority or oversight, which has led to political abuse. Third, it has allowed Central Intelligence Agency case officers to collect foreign intelligence domestically through its National Resources Division. Fourth, it has rested on an assumption that law enforcement efforts alone can substitute for intelligence collection

Problems associated with the collection and maintenance of intelligence information on United States Persons reflect the general absence of national domestic intelligence guidelines governing the collection and sharing of both classified and unclassified national security intelligence by state, local and tribal law enforcement. The primary purpose of national *domestic* intelligence collection guidelines would be to avoid unnecessarily broad invasions of citizens' privacy without legitimate, noncriminal law enforcement or intelligence purpose, or the creation of intelligence files without existence of a documented intelligence predicate.

b. Domestic Intelligence Doctrine

No one has proposed an overarching theory or doctrine regarding the domestic collection of national security intelligence by state, local and tribal law enforcement (Zegart, 2007). Some have explored the issue regarding the establishment of a new domestic intelligence agency (Treverton, 2007; Burch, 2007). Former Federal

²⁰ 28 Code of Federal Regulations Part 23 is a guideline for law enforcement agencies. It contains implementing standards for operating federally grant-funded multijurisdictional criminal intelligence systems. 28 CFR Part 23 does not provide specific, detailed information on how the standards should be implemented by the operating agency but, instead, provides the ability for each agency to develop its own policies and procedures.

Bureau of Investigation Deputy Assistant Director Brenda Heck (2009) did propose consolidation of federal law enforcement and intelligence functions into one mega-community “given the agility, speed and complexity of twenty-first century threats” (p. 14).

According to Heck, “To counter globalized threats, the national security system must be as connected, interdependent and networked” (p. 22). Ultimately Heck proposes “Define[ing] national security, domestic security, domestic intelligence, law enforcement and homeland security for the twenty-first century in a new security doctrine to create a common language and understanding of these critical security terms” (p. 83). Her recommendations regarding the development of a new security doctrine, however, fall short of actually creating an overarching theory applicable to the collection of domestic national security intelligence.

Defining domestic intelligence doctrine is complicated by the addition of a new subset of intelligence—Homeland Security Intelligence—that also remains undefined by statute or general acceptance (Lowenthal, 2009). As Masse observed, “The terms domestic intelligence and homeland security intelligence are often used colloquially and interchangeably by some observers” (2006, p. 3). In the field of homeland security, as many different definitions of *domestic* intelligence exist as intelligence agencies.

Rather than attempting to articulate a vision of how her theory regarding doctrine could be achieved, Heck appears to defer to the expertise and leadership of the United States Intelligence Community and federal law enforcement as a whole. Heck’s proposal ignores the significant role that domestic state, local and tribal law enforcement could play in any new security doctrine and instead assumes a federal leadership role in addressing new intelligence paradigms involving the global war on terror. In Heck’s defense, articulating the specific components of a new national security or doctrine strategy was beyond the scope of her thesis.

Intelligence authorities, including former Central Intelligence Agency officers Crumpton and McGaffin, who have written from a practitioner’s standpoint,

often take a myopic, agency-centric view of domestic information gathering, implying state, local and tribal law enforcement have little or no relevant role in the collection of national security intelligence (Sims & Gerber, 2008) due to a lack of domestic intelligence collection requirements.

Other literature comes closer to providing an objective view of domestic intelligence collection within the United States from a historical perspective, as against the Germans during WWII (MacDonnell, 1995). Central Intelligence Agency case officer Frank Rafalko (2011) documents an interesting counter-narrative to the conventional revisionist view of domestic intelligence collection as inherently illegal and in violation of civil rights law. In his study of the Central Intelligence Agency's efforts to investigate foreign intelligence service infiltration of the Black Panther and the radical new left movement, Rafalko outlines in great detail how domestic intelligence collection during the 1970s was closely coordinated with the Federal Bureau of Investigation and the United States Department of Justice in order to prevent violations of federal law and civil rights abuses. Rafalko's narrative suggests, however, that domestic intelligence collection designed to detect foreign intelligence service penetration of domestic movements is largely only within the capability and purview of federal agencies like the Federal Bureau of Investigation or the Central Intelligence Agency.

Perhaps because their focus is on counterintelligence from a national security perspective, some literature suffers from a lack of clarity regarding the role of state, local and tribal law enforcement in the collection of classified domestic national security intelligence (Sims & Gerber, 2009). In the case of *Transforming Intelligence*, each author within the anthology provided a different contextual application of the term counterintelligence, leading to confusion on the part of the reader as to its actual meaning. Dr. Kathleen L. Kiernan provides insight into the law enforcement intelligence paradigm, but falls short, as she seems to confound the terms counterintelligence and counterterrorism (Kiernan, 2009).

Richard Posner's study of domestic intelligence reform provides a cogent, lucid narrative on the nature of domestic intelligence with which to frame the problem of its collection (Posner, 2005, 2006, and 2007). Posner understands "the most serious of the

neglected system-wide problems, however, is that of domestic intelligence” (Posner, 2007, p. xi) and argues for a separate purely domestic intelligence agency outside of the Federal Bureau of Investigation. Citing Congressional testimony by Richard Falkenrath, Posner “underscores the importance of an effective domestic counterterrorism and intelligence program” in countering “the rise of the homegrown terrorist threat” (p. 147).

Nevertheless, while his arguments for a separate federal domestic intelligence agency have considerable scholarly merit, Posner does not explain how domestic intelligence is—or should be—collected by state, local and tribal law enforcement. Posner and others presume that the collection of domestic intelligence, particularly national security domestic intelligence, would be conducted “by dedicated investigators with both intimate knowledge of the population in question and mastery of human intelligence tradecraft who are backed by the full power and resources of a major law enforcement agency” (p. 148). This argument by a sitting federal judge ignores precedent involving both the Interstate Commerce Clause and the 10th Amendment establishing the principle of Federalism. The collection of classified domestic national security intelligence is not just an urban problem, but one also faced in rural America.

D. CIVIL LIBERTIES AND INTELLIGENCE COLLECTION

A significant piece of the public policy literature involving the collection of classified national security intelligence within the homeland involves its impact on civil liberties. Scholars have frequently noted that, “By its very nature, domestic and homeland security intelligence is intrusive and risks infringing on civil liberties” (Dahl, 2011). The historical literature of the domestic intelligence enterprise within the United States is also replete with examples in the literature of abuse, excess and illegal conduct by federal, state and local agencies, including U.S. military intelligence units (Rockefeller Commission Report, 1975; Church Committee Report, 1976; IC21, Staff Study, Permanent Select Committee on Intelligence, HR 104, 1996; Kaplan, 2006).

More recently Dahl (2011), writing in the journal *Homeland Security Affairs* noted:

Some domestic counterintelligence activities of the Department of Defense have drawn criticism since 9/11, in particular the now-defunct Counterintelligence Field Activity (CIFA). But in general, military and other national security intelligence capabilities have not been utilized domestically to any great degree, because of civil liberties concerns as well as Posse Comitatus restrictions on the use of military personnel for law enforcement.

James Burch (2007), as well, recognized that “an increased focus on domestic intelligence leads to concerns about civil liberties and oversight” (cited in Johnson & Wirtz, 2011, p. 500) and appropriately noted that “letting an organization pursue an aggressive domestic intelligence agenda could lead to the domestic spying abuses similar to those of the 1950s and 1960s” (p. 501).

After 9/11, government organizations reorganized around the counterterrorism and homeland security missions while police intelligence resources shifted from the investigation of criminal enterprises to the detection and prevention of terrorist attacks (Masse, O’Neil & Rollins, 2007). Because of this shift of missions from criminal intelligence to domestic intelligence collection, recent literature has implied that the proliferation of law enforcement intelligence centers, state and local fusion centers and other public sector intelligence units in the post-9/11 environment can also pose a significant risk to domestic civil liberties (Kaplan, 2006).

While the current state of police and military intelligence unit activity has not replicated the most egregious abuses of the past century, a review of the literature revealed two important themes in regards to domestic intelligence collection, as it is practiced in America today. First, no comprehensive national guidelines governing the conduct of domestic intelligence collection efforts within the United States and its territories exist. All current guidelines are voluntary in nature, except for those promulgated by the Attorney General mandated for use by the United States Department of Justice. Second, neither a comprehensive definition of what constitutes domestic intelligence (Masse, 2003 and 2006, as cited in Treverton, 2008) nor an understanding of how domestic intelligence is distinguished from its associated subsets of homeland, internal and domestic security (Lowenthal, 2008) can be said to exist. Rather, the definition of domestic intelligence depends upon the author's frame of reference. For

example, foreign intelligence collected internationally might be referred to as domestic intelligence if its primary affect was significant to the homeland.

Current domestic intelligence collection literature strongly suggests, as Stuart Baker stated in 1994, a “hidden struggle” continues to occur between federal, state, local police and other investigative agencies which “operate at the intersection of law enforcement and intelligence gathering” (Baker, 1994, p. 36). The literature implies this is due to the absence of a codified definition of domestic intelligence. Defining intelligence collection adds specificity and consistency to an intelligence collection process where none previously existed (Carter, 2004).

Disconnection and misunderstanding among agencies of the objectives of domestic intelligence collection suggests potential for abuse of power. While no professional organization is without individuals who may abuse their authority, historical literature has shown that the answer to such errors is not the abolition of law enforcement intelligence files and domestic intelligence units. Rather, the suggested solution lies in the establishment of well-defined standards governing the operations of domestic intelligence units.

The essential question regarding the protection of civil liberties and the collection of intelligence within the homeland remains, “if spies shouldn’t be cops, should cops be spies?” If domestic intelligence is to follow the foreign collection model with collection requirements emanating from policy issues, then the literature regarding domestic intelligence failures suggests the process needs to begin by defining the condition and establishing rules for its behavior.

Absent national standards for the collection of domestic intelligence and without a framework and clarity about roles and responsibilities, “each agency will set out on its own to get what it needs” (Heyman, 2007, p. 155). In doing so, the nation risks a repeat of historical police and intelligence agency abuses of the 20th century.

E. CONCLUSION

Defining domestic national security intelligence collection requires a fundamental understanding of the elements of collection management and national intelligence requirements. For domestic national security intelligence, the literature revealed both a fundamental misunderstanding of the domestic intelligence collection cycle by state, local and tribal law enforcement, and a lack of nationally established domestic intelligence collection requirements that reflect the national security requirements of the United States as established by the Director of National Intelligence.

There exist few studies that analyze the overall validity of current procedures and policy models regarding state, local and tribal law enforcement collection of national security intelligence. This lack of theory and analysis when it comes to intelligence collection is an area in need of study (Zegart, 1999) and is, as the Center for Homeland Defense and Security (2007) observed, “an important shortcoming in the existing literature on homeland defense and security.”

This literature review suggests, however, that there is an abundant literature within the four main categories of research for this thesis—national security intelligence, Intelligence-Led Policing, domestic intelligence and civil liberties and intelligence collection. This material can provide a basis for the development of arguments in support of several different policy options to address the collection and sharing of domestic national security intelligence by state, local and tribal law enforcement.

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III. METHODOLOGY

This thesis utilizes a combination historical study and policy analysis to identify issues, problems and solutions surrounding the collection of national security intelligence by state, local and tribal law enforcement agencies, both independently and in conjunction with the United States Intelligence Community. Using the historical perspective through an on-going literature review to compare the collection of criminal intelligence in the prevention of crime with the collection of national security intelligence by state, local and tribal law enforcement in the prevention of terrorism—both in the United States and in the United Kingdom—this thesis develops an assessment of the status quo, as well as identifying policy alternatives for the manner in which national security intelligence is collected—or not collected—by state, local and tribal law enforcement agencies within the United States. The thesis methodology will also frame questions for future national security policy analysis and research.

The history of policy implementation regarding Intelligence-Led Policing in the United Kingdom and the United States is important to the understanding of why the Intelligence-Led Policing policy model, the recommended information sharing and intelligence policy model for the collection of criminal intelligence by state, local and tribal law enforcement (International Association of Chiefs of Police, 2002; Bureau of Justice Administration, 2005; Carter, 2008), may or may not work in the United States for the collection of national security intelligence.

According to David Carter, “the conceptual foundation of ILP [*sic*] provided by BJA [*sic*] was articulated as building on the lessons of problem-oriented policing and CompStat, applying these principles to a threat-based environment of multijurisdictional complex criminality” (Carter, D. L. & Carter, J. G., 2013, p. 78, cited in Archbold, C. A., 2013). Without an understanding of the historical perspective governing the development and implementation of the Intelligence-Led Policing paradigm in the United Kingdom, the various collection and sharing methodologies cannot be assessed as potential policy options for state, local and tribal law enforcement agencies within the United States.

The same issues regarding the use of this research methodology hold true for the analysis of the Nationwide Suspicious Activity Reporting Initiative. While greater in collection scope than intelligence led policing, the suspicious activity reporting initiative has been framed as another answer to local police intelligence collection issues. By looking at both implementation and policy implications surrounding the suspicious activity reporting initiative, this thesis hopes to create a basis for the establishment of a unified classified intelligence collection policy.

A. THE EIGHTFOLD PATH

This thesis utilizes the “Eightfold Path,” popularized by Eugene Bardach (2009) at the Goldman School of Public Policy, University of California, Berkeley, as the basis of its policy option analysis. Each step of the path will be incorporated into this combined methodology. The eightfold path consists of the following steps. Step one involves definition of the problem to be analyzed. In this thesis, the primary issue examined is the ability of both state, local and tribal law enforcement and the United States Intelligence Community to collect and share with each other classified counterterrorism intelligence that is collected pursuant to a set of classified intelligence collection requirements.

Step Two involves assembling evidence or analysis. According to Bardach, the purpose of assembling evidence is “to assess the nature and extent of the problem(s) you are trying to define. A second purpose is to assess the particular features of the concrete policy situation” (p. 10). The most important point regarding the assembly of evidence, however, is to determine and “assess policies that have been thought, by at least some people, to have worked effectively in situations similar to your own” (Bardach, p. 11). Both British and American law enforcement have policies in place regarding the collection of criminal, and in some cases, national security intelligence, by state, local and tribal law enforcement. These policies are assessed for their applicability to the collection of national security intelligence in support of the counterterrorism mission of the United States Intelligence Community.

Step Three involves the identification of policy alternatives. In conducting policy options analysis, the range of principal alternatives can sometimes be daunting. Such is

the case when looking at the range of possibilities for the collection of national security intelligence by state, local and tribal law enforcement. All of the potential alternatives are governed by the federal government's need to protect intelligence sources and methods; therefore, some of the most logical alternatives—such as simply providing universal access to classified intelligence to state, local and tribal law enforcement agencies—cannot easily be implemented. Viable alternatives must be constructed that meet the security requirements of the United States Intelligence Community, and yet conform to national security law.

Step Four involves the selection of criteria used to select among competing alternatives. Policy analysis has “two interconnected but separable plotlines, the analytical and the evaluative.” This thesis is primarily evaluative and attempts to project outcomes that “will solve the policy problem to an acceptable degree” (Bardach, p. 26). The principal objective of this thesis is to determine from a policy standpoint the optimal method for state, local and tribal law enforcement agencies to incorporate the collection of national security intelligence into their normal range of law enforcement activities.

Step Five involves developing an estimate of the possible outcomes that will follow in the wake of various policy options. Projecting the outcomes of possible policies is the most difficult step in policy options analysis. In addition to utilizing a systematic effort to project the outcomes, this thesis utilizes an outcomes matrix to visualize policy alternatives. The principle purpose of a policy analysis matrix is “to provide information and assist policy makers” (Pearson, Gotsch & Bahri, 2003, p. 17) in deciding the best outcome among various policy options. Policy analysis matrices are based on a “well-understood framework” in order for “decision makers and interest groups to understand the consequences of policy actions” (Pearson et al., 2003, p. 7).

For purposes of this thesis, the well-understood framework consists of four possible primary policy outcomes: 1. Can the policy model increase the collection of classified national security intelligence pursuant to classified intelligence collection requirements? 2. Can the policy model increase the sharing of classified national security intelligence? 3. Does the policy model respond to classified intelligence collection requirements? 4. Is the policy model universally adoptable by state, local and tribal law

enforcement? Two secondary outcomes were also examined: 1. Will the policy model improve intelligence tradecraft by state, local and tribal law enforcement? And 2., Will the policy model address concerns for the protection of civil rights?

Step Six involves an assessment of the value trade-offs involved in various policy options. Because one *dominant* policy alternative to the problem associated with the collection of national security intelligence by state, local and tribal law enforcement does not exist, this thesis proposes a range of alternatives to the outcomes for assessment.

Step Seven involves making a policy recommendation. In this step, three policy options, plus the *status quo* initially described in Chapter I of this thesis, i.e., the Intelligence-Led Policing and Nationwide Suspicious Activity Reporting Initiative model, an expanded Federal Bureau of Investigation, Joint Terrorism Task Force model, a National Counter-Terrorism Center/National Fusion Center model and a model patterned after the British “Special Branch” system, are parsed into a final series of recommendations. A discussion of the Department of Homeland Security’s Office of Intelligence and Analysis is also offered inasmuch as the Department continues to promote itself as a viable alternative for classified domestic intelligence collection by state, local and tribal law enforcement.

Step Eight culminates in the final chapter of this thesis as the “story of whether or not cops should be spies,” along with the findings, conclusions and recommendations regarding the collection of national security intelligence by state, local and tribal law enforcement.

B. RESEARCH LIMITATION

This research is limited in several ways. First, the research methodology does not include the use or analysis of classified materials. It will attempt to analyze *the process* by which classified intelligence, including controlled unclassified information, is collected by members of the United States Intelligence Community and shared domestically with state, local and tribal law enforcement. This research will also attempt to formulate a policy by which classified and controlled unclassified information/intelligence can be collected and shared between domestic police agencies.

All research into the collection of classified domestic national security intelligence can be quite problematic because “any open-source, academic study of intelligence matters is of course limited by the exclusion of classified materials” (Dahl, 2004 p. 2–3). This study is no exception to this general observation. By utilizing a methodology that attempts to address inherent disadvantages regarding the lack of access to classified materials by only considering options that deal with the implementation of a classified collection policy, however, the need to access classified materials is mitigated.

Excluding the use of classified intelligence examples in this thesis affects the degree to which the policy models being proposed for the collection of national security intelligence by state, local and tribal law enforcement can be critically evaluated, thereby somewhat limiting the outcomes. As many classified counterterrorism criminal cases are readied for trial within the United States, however, examples involving classified information that has been declassified are now available in the public domain for scrutiny and scholarly research. They will be utilized where needed to highlight the effects of limitations on sharing.

C. GENERALIZABILITY

Generalizability is a form of reasoning predicated on a common occurrence that is used to predict similar occurrences in the future (Barnes et al., 2005, cited in Chen, 2009). The outcomes projected for this thesis are speculative in nature in that they remain untested. As with any analysis addressing public policy, particularly public policy involving national security, the ability to generalize beyond the specifics of each policy option is difficult, at best. Therefore, the confidence level in each policy option proposed in this thesis can vary until tested.

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IV. RESULTS

This thesis evaluated three questions surrounding the collection and sharing of classified national security intelligence by state, local and tribal law enforcement. First, can state, local and tribal law enforcement agencies, utilizing the status quo, make a significant contribution to the classified national security intelligence collection effort? Second, what is the optimal policy model for the collection of classified domestic national security intelligence by state, local and tribal law enforcement agencies to be used in the prevention of terrorism? Finally, how do Great Britain and the British Intelligence Community address the collection of classified domestic national security intelligence, and can their model provide insight to the United States Intelligence Community and state, local and tribal law enforcement in the war on terror?

Four different policy options were examined utilizing a policy options analysis methodology. The four options analyzed were, the Intelligence-Led Policing and Nationwide Suspicious Activity Reporting Initiative model (the Status Quo); the Federal Bureau of Investigation Joint Terrorism Task Force model; the National Counterterrorism Center/National Fusion Center model; and, the British Special Branch model. Each policy option has its own set of positive and negative outcomes, and each requires enabling legislation or executive orders to achieve the goal of integrating state, local and tribal law enforcement into the collection and sharing of classified national security intelligence in support of counterterrorism efforts within the United States.

A. PRIMARY FINDINGS

This thesis determined the ability of state, local and tribal law enforcement to collect, analyze and share classified national security intelligence, pursuant to classified intelligence requirements, with members of the United States Intelligence Community is critical to the prevention and mitigation of international terrorism threats within the United States (Cilluffo, Clark, & Downing, 2011).

The involvement of state, local and tribal law enforcement in the collection and sharing of classified national security intelligence in support of national counterterrorism

efforts augments the ability of federal law enforcement and the United States Intelligence Community to provide for an enhanced state of homeland security through the leveraged sharing of intelligence, and “is crucial to protecting the United States from another terrorist attack” (*Federal support for and involvement in state and local fusion centers*, 2012). Current restrictions on the sharing of classified national security intelligence with state, local and tribal law enforcement outside of Federal Bureau of Investigation Joint Terrorism Task Forces and their Executive Committees, however, negatively impact the intelligence community’s ability to leverage law enforcement strengths and mitigate terrorism threats within the homeland (Downing, 2007).

No unequivocal answer was provided for which of the four policy models would provide for optimal enhancement of law enforcement’s ability to collaborate on the collection and sharing of classified national security intelligence; however, a preference for an American adaptation of the British Special Branch option was clearly indicated in the policy options matrix. Details supporting this finding are described in the policy options sections of this thesis.

1. Classified National Security Intelligence Collection

Classified intelligence—particularly domestic intelligence relevant to the homeland that is collected and shared by the military, other government agencies and friendly foreign intelligence services—is considered the apex of information relevant to the investigation and mitigation of terrorism threats. Proper collection of classified domestic counterterrorism intelligence “requires the fusion of...elements of national power to prevent attacks, collect vital intelligence, and facilitate the use of key evidence to achieve substantive convictions” (Grave de Peralta, 2010, p. v). The unfettered sharing of classified national security intelligence among members of the United States Intelligence Community is fundamental to mitigating the terrorism threat at the federal level (Kean & Hamilton, 2004).

Misconceptions and disagreement among the various state, local and tribal law enforcement agencies charged with collecting domestic counterterrorism intelligence has created a fundamental disconnect between the United States Intelligence Community and

domestic police agencies. As noted by David Carter in *Law Enforcement Intelligence: A Guide for State, Local and Tribal Law Enforcement*:

At the outset, law enforcement officers must understand the concept of law enforcement intelligence, its distinction from national security intelligence, and the potential problems an SLTLE [*sic*] agency can face when the two types of intelligence overlap. A law enforcement executive must understand what is meant by an “intelligence function” and how that function can be fulfilled through the use of different organizational models. Related executive decisions focus on staffing, particularly when there are fiscal limitations. Complicating this mission are two new intelligence responsibilities that have emerged: 1. Information sharing with national security and homeland security partners as part of the Information Sharing Environment and 2. Developing a capacity for Homeland Security—or “all-hazards”—Intelligence. (Carter, 2004, p. 3)

United States intelligence policy models currently restrict the sharing of classified intelligence with all but the largest police agencies across the country that have forged separate personal and professional relationships with members of the United States Intelligence Community and acquired the appropriate clearances. As Frank Cilluffo et al. noted, “Nearly a decade after the attacks of September 11, 2001, there continue to be gaps in the types of intelligence products to which local law enforcement has access” (Cilluffo, Clark, & Downing, 2011). Restricting access by smaller state, local and tribal law enforcement to classified intelligence places them at a significant disadvantage and inflicts an undue burden upon the thousands of law enforcement organizations responsible for the first-line, physical protection of the general populace.

a. Access to Classified Intelligence

Reasons for the marginalization of state, local and tribal law enforcement from access to classified intelligence by the United States Intelligence Community are many and varied. They range from legal restrictions (executive orders, legislation, national security directives) to operational considerations requiring the protection of sensitive sources and collection methods. This problem has been exacerbated by state, local and tribal law enforcement insistence on running independent intelligence collection operations that are in conflict with United States Intelligence Community tactical and strategic goals and objectives (*AP's Probe into NYPD Intelligence Operations*, 2013).

Under the preferred policy option, classified intelligence collection operations would be subject to mandatory United States Intelligence Community oversight under the leadership and direction of the Director of National Intelligence. In order to participate in the collection and sharing of domestic national security intelligence and concomitant counterterrorism targeting information, a domestic law enforcement agency participating in the program would have to agree to the oversight encompassed in the Department of Justice's Domestic Intelligence Investigations Guide.

The problem regarding the granting of classified security clearances, however, remains the difficulty, or at times inability of state, local and tribal law enforcement to obtain Secret or Top Secret clearances, and is often cited as a reason for restricting access to classified materials (Chen, 2009). Problems associated with the potential leaking of classified material to the media or watchdog groups are also frequently cited (*FBI statistical data on leaks of classified intelligence Information*, 2010).

According to the Federal Bureau of Investigation, limiting access to classified information and intelligence is the only proven method of protecting sensitive sources and methods (*FBI statistical data on leaks of classified intelligence Information*, 2010). In recognition of this finding, the United States Intelligence Community has unilaterally determined that state, local and tribal law enforcement have no need-to-know the majority of classified intelligence available regarding terrorists threats to the homeland. Access to classified national security intelligence is therefore denied to a great majority of police officials within the domestic law enforcement, homeland security community.

Public source research into both the deliberate and inadvertent disclosure of sensitive methods of intelligence collection and singular sources of intelligence suggests the majority of these disclosures come from within the already established intelligence community (Hoekstra, 2005). This makes the restricting the granting of additional clearances and access to classified intelligence due to fear of leaking a "straw man" argument. The fact of these disclosures is also irrelevant to the question of whether or not state, local and tribal law enforcement *should* be given vetted access to classified

intelligence. A more pertinent question is the significance of a real *need-to-know*²¹ for nonspecific, classified strategic intelligence by local law enforcement.

The lack of a nationally directed vetting process providing for the conduct of background investigations and the granting of security clearances to nonmembers of the intelligence community exacerbates the difficulty for state, local and tribal law enforcement to obtain security clearances. This remains a significant counterterrorism intelligence issue. The lack of a directed vetting process also effectively limits state, local and tribal law enforcement's ability to investigate—and thereby mitigate—terrorism threats. This in turn allows the United States Intelligence Community to make the inability to obtain proper clearances and fear of disclosure an easy excuse for the denial of access to classified national security intelligence by state, local and tribal law enforcement.

The ability of state, local and tribal law enforcement to utilize classified intelligence to run human intelligence networks, signals intelligence collection platforms and electronic surveillance targeting a suspected terrorist facility is critical to mitigating the terrorist threat. Absent access to classified national security intelligence, state, local and tribal law enforcement lack the information, background and context with which to understand the nature and extent of the terrorist threat to their communities, and thereby properly deploy their limited resources.

Without broader access to classified tactical targeting intelligence and classified intelligence collection requirements state, local and tribal law enforcement's potential contributions to the United States Intelligence Community will continue to be marginalized in the domestic aspect of the war on terror.²²

²¹ Need-to-know is defined by DoD 5200.2-R as “A determination made by a possessor of classified information that a prospective recipient, in the interest of national security, has a requirement for access to, knowledge, or possession of the classified information in order to perform tasks or services essential to the fulfillment of an official United States Government program” (*Need-to-know -- defense security service*, 2012).

²² While state and major urban fusion centers have access to classified strategic intelligence through the Department of Homeland Security's Intelligence and Analysis Division—and through the Federal Bureau of Investigation's assigned Field Intelligence Group representative—it is classified domestic tactical and targeting intelligence, along with classified intelligence collection requirements that is frequently not shared with state, local and tribal law enforcement.

2. Findings Regarding the Status Quo

This thesis further finds that the status quo, i.e., the Intelligence-Led Policing and Nationwide Suspicious Reporting Initiative are not the optimal public policy models for the collection and sharing of classified national security intelligence by state, local and tribal law enforcement agencies. This second finding suggests a significant need exists for a new policy option designed to fully integrate state, local and tribal law enforcement into the classified national security intelligence-collection paradigm and entry into the larger United States Intelligence Community. Absent access to appropriate security clearances and the requisite training to ensure compliance with security directives, intelligence tradecraft and policies regarding the handling of classified intelligence, state, local and tribal law enforcement will almost never be provided access to sensitive intelligence, sources and methods or entrusted with their protection. As a result, they will be unable to make a significant contribution to the classified national security intelligence collection effort utilizing the status quo.

Political realities suggest that any policy option that proposes unfettered access to classified intelligence by cleared state, local and tribal law enforcement, not under the direct supervision of a member of the United States Intelligence Community, may be impractical and politically untenable. The sheer number of state, local and tribal law enforcement agencies within the United States makes certification of local intelligence officers a difficult task. Even if restricted to only the 70 largest police and sheriffs departments comprising the Major City Chiefs and Sheriffs Association, the task is daunting considering the widely varying political spectrum that the state, local and tribal law enforcement community represents.

Intelligence agencies by their inherent nature are disinclined to recognize and participate in the *responsibility-to-share* doctrine, as opposed to the need-to-know where the lives of collectors, confidential human sources and multi-billion dollar SIGINT platforms are on the line. As noted by Richard Best:

At the heart of the intelligence effort lies *[sic]* a paradox. The necessary goal is to find the best balance between adequate sharing and effective information security. Intelligence is valuable only if it can be share with

those who need it, but, to the extent that it is more widely shared, risks of compromise are enhanced. (Best, 2011, p. 1)

The mere ability to access the closed classified computer systems required to share classified intelligence frequently require secure compartmented intelligence facilities, classified document storage safes and technically secured computer lines—something that is well beyond the financial ability of all but the largest of the major metropolitan police departments. These types of facilities can be built, and if the United States Government is committed to the integration of state, local and tribal law enforcement into the United States Intelligence Community, it needs to bear a significant portion of the cost of implementation of this policy option.

An easier and more politically expedient policy option involves simply increasing federal funding for the major city chiefs and sheriffs associations, sufficient that each could hire additional personnel in order to become a full-time participant in a regional Joint Terrorism Task Force. The purpose of this thesis, however, is to suggest an intelligence community solution to the problem of classified domestic intelligence collection and sharing—as opposed to a budgetary solution—that would in all likelihood prove temporary.

The single most-critical issue for the domestic homeland security community since the attacks on September 11 has been how to prevent terrorist attacks within the United States. This issue is dominated by two relevant questions. The first is how does the United States Intelligence Community ensure federal, state, local and tribal law enforcement have the authority to collect, use and share critical classified national security intelligence about potential terrorist activities? The second is how does the homeland security community ensure that this authority is not abused? (Richman, 2004).

The following are four policy options and their analysis. The analysis is designed to examine potential practical solutions to the national security intelligence-sharing conundrum. A range of solutions is proposed. While lacking the intimate details that make actual policy analysis politically viable, the programs examined and the proposal presented are intended to serve as a starting discussion point for a new domestic intelligence paradigm as we enter the second decade of the post-9/11 intelligence era.

B. POLICY ANALYSIS

1. Option One—The Status Quo

a. The Intelligence-Led Policing Model

The development of an integrated Intelligence-Led Policing policy model incorporating the Nationwide Suspicious Activity Reporting Initiative is the de facto status quo for the collection and sharing of criminal intelligence by state, local and tribal law enforcement agencies. The International Association of Chiefs of Police, the Major City Chief's Association, the Bureau of Justice Assistance and the National Criminal Intelligence Sharing Plan all endorse Intelligence-Led Policing (Peterson, 2005). Numerous nationally recognized law enforcement agencies—such as the Los Angeles Police Department and the New York City Police Department—as well as with the United States Department of Justice and the Department of Homeland Security also endorse the Intelligence-Led Policing and Nationwide Suspicious Activity Reporting Initiative as the preferred police intelligence sharing policy model (Carter, 2008).

In the mid-nineties, law enforcement officials across the nation—and indeed the world—began to realize a need to incorporate more intelligence analysis, primarily criminal intelligence analysis, into the conduct of their daily duties. The movement became known as Intelligence-Led Policing (Maguire & John, 2006). Introduced by the Kent Constabulary in 1984, Intelligence-Led Policing provoked considerable change in the way police executives and criminologists viewed the preventive role of policing (Maguire & John, 2006). Within the United States, Chief William Bratton led the drive towards Intelligence-Led Policing, when he was Chief of the New York City Transit District Police (Ratcliffe, 2008). Intelligence-Led Policing has been adopted by a significant number of state, local and tribal law enforcement and is aggressively marketed to the policing community by the United States Department of Justice, Bureau of Justice Assistance (Peterson, 2005).

b. Nationwide Suspicious Activities Reporting (SAR) Initiative

Intelligence-Led Policing and the homeland security community have also embraced the Nationwide Suspicious Activities Reporting Initiative as its basic method

of collection for unclassified law enforcement intelligence. The Nationwide Suspicious Activities Reporting Initiative “has been endorsed by the International Association of Chiefs of Police, the Major Cities Chiefs Association, the National Sheriffs' Association, the Major County Sheriffs' Association and the Criminal Intelligence Coordinating Council” (*Nationwide SAR Initiative (NSI)*, 2012). The premise of the Nationwide Suspicious Activities Reporting Initiative is that to prevent terrorism and not just respond to its after-effects, police must focus on “precursor conduct—surveillance or “casing” of bridges or train stations, for instance—that may not be criminal, but may signal a coming attack” (Farmer, 2010, p. 1).

Utilizing an unclassified version of the Federal Bureau of Investigation’s classified Guardian tracking system—known as *e-Guardian*—the Nationwide Suspicious Activity Reporting model combines local law enforcement’s suspicious activity reporting with state and local fusion center analysis to provide information and potential intelligence to the United States Intelligence Community through *e-Guardian* (Rogerero, 2010):

e-Guardian is a secure, but unclassified, user-friendly enhancement to the classified Guardian Program. *e-Guardian* was implemented to share potential terrorist threats, terrorist events, and suspicious activity information among state, local tribal and federal law enforcement partners, in conjunction with state fusion centers, regional intelligence centers, and the Federal Bureau of Investigation’s Joint Terrorism Task Forces. *e-Guardian* bridges the gap between the secret-level Guardian system on internal Federal Bureau of Investigation networks, and the Sensitive But Unclassified law enforcement environment, via the Internet’s Law Enforcement Online system for state, local and tribal law enforcement agencies. (Rogerero, 2010)

e-Guardian allows recognized law enforcement agencies to record suspicious activity or threat information with a potential nexus to terrorism in a standardized format, using a predefined business process flow and to submit the information for review and analysis at the local agency, regional or state fusion center, as well as to the Joint Terrorism Task Force. *e-Guardian* is the only intelligence sharing system that processes unclassified potential terrorist threats, events and suspicious activity information—as opposed to classified intelligence—and has the potential to share

information among federal, state, local and tribal law enforcement agencies, state fusion centers and Federal Bureau of Investigation's Joint Terrorism Task Forces (Rogero, 2010):

The Nationwide Suspicious Activity Reporting Initiative is the outgrowth of a number of separate but related activities that respond directly to the mandate to establish a “unified process for reporting, tracking, and accessing suspicious incident reports and suspicious activity reports” as called for in the National Strategy for Information Sharing. (White House, 2007, p. A1-7)

The Nationwide Suspicious Activity Reporting Initiative is a comprehensive effort involving federal, state, local and tribal authorities to build upon existing capabilities and establish a unified, nationwide process for sharing of terrorism-related suspicious activities reports. As described in the NSI [*sic*] Technical Implementation Options, Version 1 (March, 2010):

The Nationwide Suspicious Activity Reporting (SAR) Initiative (NSI) is a collaborative effort among federal and state, local and tribal (SLT) government agencies with Counterterrorism (CT) responsibilities. Developed pursuant to Presidential direction, it establishes a nationwide capability to gather, document, process, analyze, and share information about suspicious incidents to enable rapid identification and mitigation of potential terrorist threats.

The resulting NSI business process (often referred to as the NSI cycle) was described by the Program Manager for the Information Sharing Environment (PM-ISE) in a Concept of Operations for the NSI published in December 2008 and in a revised functional standard in May 2009. (p. 1)

c. Problems with the Status Quo Policy Option

Analysis of Intelligence-Led Policing and the Nationwide Suspicious Activity Reporting Initiative policy option determined—despite it being the de facto status quo for the collection of unclassified criminal intelligence—that it is an ineffective policy model for the collection of classified national security intelligence by state, local and tribal law enforcement. Moreover, some have argued from a civil liberties point of view “Suspicious Activity Reporting begins at the troubled intersection where law enforcement meets intelligence” (Farmer, 2010, p. 1).

While the Department of Homeland Security has attempted to market the Nationwide Suspicious Activity Reporting Initiative under the banner of “See Something Say Something,” there is little empirical evidence that the Nationwide Suspicious Activity Reporting Initiative has resulted in any proactive terrorism preventions. The historical evidence suggests that the lack of classified intelligence collection and classified intelligence sharing has resulted in a number of missed prevention opportunities. The cases involving Najibullah Zazi,²³ Faisal Shahzad, Nidal Malik Hassan and others are primary examples of the flaws in the suspicious activity-reporting concept. In none of the cited cases was suspicious activity reported to authorities prior to the attempted terrorist events (*Federal support for and involvement in state and local fusion centers*, 2012).

The integrated Intelligence-Led Policing and Nationwide Suspicious Activity Reporting policy model does not endorse or encourage the collection of classified national security intelligence by state, local and tribal law enforcement. Rather it demurs, arguing instead that the universal implementation of Intelligence-Led Policing and the National Suspicious Activity Reporting Initiative by state, local and tribal law enforcement will automatically result in an increase in general nonclassified criminal intelligence collection. The implication being that an increase in the collection of general, nonclassified criminal intelligence will result in a concomitant increase in classified national security intelligence and that a decrease in terrorism will occur by default (Peterson, 2005).

Where Intelligence-Led Policing and the Nationwide Suspicious Activity Reporting Initiative fail as classified national security collection strategies and policy models is in the general misunderstanding by state, local and tribal law enforcement of the programs’ primary purpose. Rather than being appreciated as an excellent crime prevention policy models and data-processing management tools, Intelligence-Led Policing and the Nationwide Suspicious Activity Reporting Initiative are viewed as

²³ The Najibullah Zazi case is particularly relevant, in that the initial information regarding Zazi was developed through classified sources and methods and was not shared with the New York Police Department until investigation showed that New York City was his primary target.

intelligence panaceas, not only by state, local and tribal law enforcement, but also by Department of Homeland Security officials who do not seem to understand local domestic intelligence collection and the potential negative impact domestic intelligence policies have on local police agencies' ability to enforce the law. It is sometimes easy to forget that when it comes to the collection of domestic intelligence "the ability of the police to perform their duties is dependent upon public approval of police actions" (Peel, cited in Lentz & Chaires, 2007).

Heyman and Carafano (2008), on the other hand, appropriately note "State and local law enforcement are the 'first preventers'" and that to identify and thwart crime state, local and tribal law enforcement need accurate information. In an effort to connect too many dots, however, state, local and tribal law enforcement are often the recipients of "multiple uncoordinated information products" (p.15). Misapplication of the term *intelligence* is generally argued as the reason underlying the misunderstanding of Intelligence-Led Policing.

A secondary problem with Intelligence-Led Policing is the many different interpretations, in both concept and application, by different law enforcement agencies. A primary criticism of Intelligence-Led Policing remains that "there is a movement toward the adoption of Intelligence-Led Policing without a universally accepted definition or a manual of practice" (Carter, 2008, p. 41). According to Carter, no *Manual of Practice* for Intelligence-Led Policing exists because, "like community policing, *it must be tailored to the characteristics of each individual agency*" [emphasis added]. Carter defines Intelligence-Led Policing as:

...an underlying philosophy of how intelligence fits into the operations of a law enforcement organization. Rather than being simply an information clearinghouse that has been appended to the organization, Intelligence-Led Policing provides strategic integration of intelligence into the overall mission of the organization. (Carter, 2004, p. 41)

d. Defining Intelligence for Homeland Security

A concomitant problem affecting the validity of the Intelligence-Led Policing and the Nationwide Suspicious Activity Reporting Initiative policy model as a

classified collection platform occurs due to the misuse and conflation of the terms *law enforcement intelligence* and *criminal intelligence*, which are often used synonymously, but frequently defined differently, by state, local and tribal law enforcement (*Privacy impact assessment for the department of homeland security state, local, and regional fusion center initiative*, 2008). The most commonly used police definition of intelligence originates with the International Association of Chiefs of Police, which defines criminal intelligence as “information compiled, analyzed, and/or disseminated in an effort to anticipate, prevent, or monitor criminal activity” (*IACP Criminal Intelligence Model Policy*, 2003, cited by Peterson, 2005, p. 39).

The Bureau of Justice Affairs within the Department of Justice, on the other hand, has stated simply “information plus analysis equals intelligence” (Peterson, 2005, p. 3). Understanding the distinction between information and intelligence, as well as between criminal intelligence and national security intelligence is important because most Americans think of the term law enforcement intelligence as a concept distinct from the term national security intelligence. The United States Department of Justice, for example, defines criminal intelligence information as:

...data which has been evaluated to determine that it is relevant to the identification of and the criminal activity engaged in by an individual who or organization which is reasonably suspected of involvement in criminal activity; and meets criminal intelligence system submission criteria. (*Privacy impact assessment*, 2008)

As the general intelligence literature makes clear, intelligence is an analytic process. To render the information gathered useful, information must be analyzed, as analysis is the “derivation of meaning from data” (*Privacy impact assessment*, 2008). Analysis can be tactical and operational, or it can be strategic, and the resulting intelligence can be tactical or strategic. Tactical intelligence allows law enforcement to solve a particular crime, while strategic intelligence provides *the big picture*. However:

Distinct from criminal intelligence, national security intelligence is the collection and analysis of information concerning the United States, its relationship with foreign governments and nonstate actors, regarding political and economic factors, and the maintenance of sovereign US

principles. National security intelligence is focused more on the security of the Nation and the conduct of foreign affairs. **It is not focused on the prosecution and conviction of individuals** [emphasis added]. The risk in the collection of classified national security intelligence is that it may not be amenable to use in a criminal proceeding, rendering its use questionable as direct evidence in a criminal prosecution. Second, the sources and methods used to gather the information that is the basis of the national security intelligence might be compromised if used in a criminal proceeding. (*Privacy impact assessment*, 2008, p. 7–8)

In the United States, the events of 9/11 prompted a review of all domestic intelligence sharing, which resulted in a reassessment of the value of Intelligence-Led Policing to the American policing establishment. The domestic intelligence divide in the United States, however, was incorrectly understood as an information-sharing problem rather than an intelligence-collection problem. Assumptions and arguments contained in the 2003 National Criminal Intelligence Sharing Plan suggest, “if greater information sharing had occurred prior to 9/11, the tragic events could have been prevented” (Ratcliffe, 2008, p. 32). There is significant question among intelligence professionals whether this assumption is, in fact, true.

This argument assumes the collection of intelligence prior to 9/11 was adequate to render a conclusion regarding the intent and operational plans of the hijackers. No such a priori conclusion exists in the unclassified literature. Rather, what is clear from the literature is “the system had detected a raft of indication that a major attack was imminent weeks before it happened” (Betts, 2008, Kindle location 1322) but was unable to determine “when, where, or how an assault might come” (Kindle location 1339) due to a lack of tactical intelligence.

Critics of the United States Intelligence Community’s intelligence collection efforts prior to 9/11 continue to assert proper intelligence collection can somehow be reduced to “a stochastic exercise in which the probability of some event can be determined with a degree of certainty” (Wirtz, 2003, p. 105). Clearly, this is not the case.

Rather than just collecting more dots—which in effect just adds more “noise to the system” (Handel, 2003, cited in Betts & Mahnken, 2003, Kindle location

401)—and makes the data collected more difficult to analyze—the intelligence community, including state, local and tribal law enforcement, has to collect the correct relevant information. The most relevant counterterrorism information generally resides domestically within the classified intelligence traffic.

While the lack of information sharing was certainly a contributing factor in the failure to prevent the events of 9/11, it is a fallacy to believe implementation of Intelligence-Led Policing prior to 9/11—as construed by American law enforcement—would have had any effect on subsequent events. This paradox was a direct result of American misunderstanding of how and why Intelligence-Led Policing was initially implemented and employed in the United Kingdom.

In order for a positive outcome regarding the collection of classified national security intelligence by state, local and tribal law enforcement to be achieved through implementation of Policy Option One, a national policing plan on order of that implemented by the British government, along with a National Intelligence Model (*Guidance on the national intelligence model*, 2005) backed by Congressional legislation is required. As previously noted, however, significant Constitutional and political impediments exists to the passage of this type of national legislation.

To be an effective domestic national security collection system, Intelligence-Led Policing requires an integrated system of intelligence collection requirements tailored for the state, local and tribal law enforcement community. The key is the development of a system that promotes significant “buy-in” regarding the collection of classified national security intelligence by state, local and tribal law enforcement. Local police agencies have to both understand their role in the collection of classified national security intelligence and have the desire to participate in its collection.

Absent a domestic, national security collection system that integrates classified intelligence requirements, local cleared intelligence officers and a federal agency to develop and coordinate intelligence efforts, state, local and tribal law

enforcement has little hope of enhancing and efficiently directing the collection efforts of police officers towards the greatest threats in the collection of national security intelligence, classified or otherwise.

For many communities, particularly those whose political base consists of progressive-minded individuals grounded in the anti-establishment politics of the 1960s and 1970s, this is a difficult decision. Any intelligence policy model involving the collection of noncriminal *political intelligence* by local police agencies is the antithesis of their political *raison d'être*.

e. Civil Liberties Issues

Civil liberty groups—represented in part by individuals like former FBI Special Agent Mike German, security policy counsel for the American Civil Liberties Union—take issue with the Nationwide Suspicious Activities Reporting Initiative, arguing “it increases the probability innocent people will be stopped by police and have their personal information collected” (German, cited by Farmer, 2010, p. 1). According to German, programs like the Nationwide Suspicious Activities Reporting Initiative “moves the police officer away from his core function, to enforce the law, into being an intelligence officer gathering information about people” (German, 2010, p. 1).

Janet Napolitano, the secretary of Homeland Security, has stated it is her belief that, “homeland security begins with hometown security” (Napolitano, 2010). The question, however, is can locally based observations of *suspicious* activity occur without also encouraging a disregard for privacy and constitutional rights? “The difference here is one of degrees” (Farmer, 2010, p. 1).

2. Option Two

a. The Federal Bureau of Investigation, Joint Terrorism Task Force Model

The Federal Bureau of Investigation and Joint Terrorism Task Force policy model examines the proposed development of an enhanced Joint Terrorism Task Force that would incorporate greater numbers of state, local and tribal law enforcement

agencies into counterterrorism and intelligence operations. The Joint Terrorism Task Force is at the heart of the current policy model for the domestic collection of classified national security intelligence by the Federal Bureau of Investigation, in partnership with state, local and tribal law enforcement. This model, however, does not address the sharing of classified intelligence regarding counterterrorism matters except with those members of local law enforcement assigned to the task force.

Each Federal Bureau of Investigation Joint Terrorism Task Force consists of a multi-agency legal partnership led by the U.S. Department of Justice and the Federal Bureau of Investigation that effectively and efficiently maximizes investigative collaboration in the global war on terror (*The department of justice's terrorism task forces*, 2005). The first Joint Terrorism Task Force was initiated in 1980 in the Federal Bureau of Investigation's New York City Field Office. Prior to 9/11, there were 32 Joint terrorism Task Forces in all of the major urban areas. In the 11 years since the 9/11 attack, the Federal Bureau of Investigation has added task forces to all 52-field offices, bringing the total to 71 Joint Terrorism Task Forces created since the events of 9/11 (Downing & Mayer, 2012). Many of the larger field offices operate more than one Joint Terrorism Task Force. For example, the Federal Bureau of Investigation's Seattle Field Office, which is responsible for the entire state of Washington, maintains two Joint Terrorism Task Forces and two additional annexes throughout the state. The Department of Justice lists a total of 103 Joint Terrorism Task Forces as of 2005 (*The department of justice's terrorism task forces*, 2005).

All Joint Terrorism Task Forces include federal agents—primarily the Department of Homeland Security, the Department of Justice and the Department of Defense law enforcement component agencies—as well as state, local and sometimes tribal law enforcement agencies. Full-time participants in a Joint Terrorism Task Force hold Top Secret and in some cases sensitive compartmented information or special access clearances. The security clearances for all state, local and tribal law enforcement assigned to the Joint Terrorism Task Forces are sponsored and maintained by the Federal Bureau of Investigation (*The department of justice's terrorism task forces*, 2005).

b. Regional Intelligence Groups

Joint Terrorism Task Forces are now enhanced by the creation of Regional Intelligence Groups by the Federal Bureau of Investigation to oversee and coordinate individual Field Office, Field Intelligence Group analysis within eight regions. Regional Intelligence Groups differ from the Joint Regional Intelligence Centers established in Los Angeles, Washington D.C. and Chicago to coordinate state and local intelligence fusion in that the Regional Intelligence Group's primary responsibility is the supervision of the analytical product produced by the Field Intelligence Groups assigned as part of the Federal Bureau of Investigation's Joint Terrorism Task Forces. The difference between federal Regional Intelligence Groups and local Joint Regional Intelligence Centers is an important distinction for purposes of this policy option. In addition, each Special Agent-in-Charge of a Federal Bureau of Investigation Field Office is now considered the Director of National Intelligence's field representative, usurping the traditional role of the Central Intelligence Agency's Station Chief of their National Resources local offices (*FBI gets a broader role in coordinating domestic intelligence activities*, 2012).

Within the United States, the Federal Bureau of Investigation has primary responsibility for the investigation and mitigation of all domestic and international terrorism threats to the homeland (Executive Order 12333, 1976; IRTPA, 2004). All of the Joint Terrorism Task Forces operate under the direct supervision of the interagency National Joint Terrorism Task Force and the Federal Bureau of Investigation's Counterterrorism Division (*The department of justice's terrorism task forces*, 2005) and serve as a critical force-multiplier for both intelligence collection and the law enforcement application of the homeland security paradigm. The Joint Regional Intelligence Groups operate under the direct supervision of the Federal Bureau of Investigation's Intelligence Division.

c. Advantages of the Joint Terrorism Task Force Model

The strength of an enhanced Joint Terrorism Task Force policy option would be the ability to collect and share classified national security intelligence among a larger number of state local and tribal participants, and the 16 members of the United

States Intelligence Community. Joint Terrorism Task Force members are privy to some of the most sensitive investigations and investigative techniques used within the United States Intelligence Community, although normal rules regarding need-to-know apply. Counterterrorism cases are frequently worked jointly, with local agency participants often taking the lead and classified intelligence freely exchanged among members of the Joint Terrorism Task Forces.

While participation in Joint Terrorism Task Forces by state, local and tribal law-enforcement routinely fluctuates, enhanced participation would provide a mechanism for the sharing of classified intelligence with state, local and tribal law enforcement executive management through the Joint Terrorism Task Force Executive Board. The chief executive of each outside agency participating in the Joint Terrorism Task Force sits as a member of the Executive Board for which the Federal Bureau of Investigation routinely provides Secret and Top Secret clearances. The level of clearance provided is generally dependent on the agency head's level of participation, severity of the local threat and need-to-know, with the highest levels of security clearances provided on a case-by-case basis.

According to RAND, the Joint Terrorism Task Force represents "close to the ideal division of labor" (Riley, Treverton, Wilson, & Davis, 2005, Kindle location 108). Because state, local and tribal law enforcement frequently have neither the funding or the capacity to engage in pure intelligence collection, the Federal Bureau of Investigation takes the lead and assumes responsibility for all counterterrorism intelligence collection not connected to criminal activity, while state, local and tribal law enforcement provide the local-area expertise. A side benefit of this symbiotic relationship is all intelligence gathered by state, local and tribal law enforcement is "guided by federal regulations and overseen by federal courts" (Kindle location 108) rather than by local privacy acts, freedom of information acts and legislation designed to limit the amount of intelligence collection that can be conducted by state, local and tribal law enforcement.

Local agency participation serves as a significant adjunct to, and force multiplier for, the local Joint Terrorism Task Force. The greater the local participation in the task force, the more likely local elected executive management will have confidence

critical counterterrorism information is being shared at the local level. This is because local officers are encouraged to brief their own local police management on salient counterterrorism issues when their agency management participates in the Executive Board and maintains the requisite security clearance.

d. Problems with the Joint Terrorism Task Force Policy Option

Two principle problems occur with the enhanced Joint Terrorism Task Force policy model: First, how do you increase participation in the Joint Terrorism Task Forces when state, local and tribal governments are already suffering from diminishing budgetary resources? Second, how do you overcome the perception that the Federal Bureau of Investigation is only half a partner—or alternatively the dominant majority partner—unwilling to share classified intelligence even with their task force agency partners, or through their local and state fusion centers? This perception of the Federal Bureau of Investigation extends nationally to the Department of Homeland Security and the greater United States Intelligence Community as well (Downing, 2007). Some of the largest police departments in the country, including the Los Angeles Police Department, believe little or no integration of intelligence between federal and local law enforcement exists. As noted by Los Angeles Police Department Deputy Chief Michael P. Downing, Commander of Counterterrorism Intelligence and Special Operations, during an interview with senior national security correspondent for the Washington Times, Bill Gertz:

I think to say that we have an integrated federal intelligence system is false. We have a centralized federal intelligence enterprise, and we're not taking advantage of the decentralized law enforcement structure that we have in the United States. (Downing, as quoted by Gertz, 2011)

Chief Downing is not alone in his viewpoint. Another perceived problem with the Joint Terrorism Task Force model concerned the ability by elected state and local officials to receive and review classified information involving their jurisdictions and law enforcement personnel. According to Yi-Ru Chen (2009), the majority of respondents replied to a survey regarding the sharing of information with mayors and

other chief executives and “were emphatic of their desire to receive classified information” (p. 30). These respondents believed the “receipt of classified information meant a higher level of detail:”

Responses revealed that even when they received such information, they have been unimpressed with the level of detail considered classified. The majority of respondents suggested that the lack of useful information in classified material was the result of the lack of collaboration or information sharing from the federal intelligence community with their fusion centers. The majority of respondents also noted anecdotally that the Top Secret classification of information made it impossible for those that have Secret level clearance to receive the intelligence. The majority of respondents also indicated concern with the federal control of access to intelligence, which suggested the federal effort did not support the National Strategy for Information Sharing (White House, 2007, p. 30).

This finding by Chen is indicative of one of the central problems regarding participation in a Joint Terrorism Task Force and the use or broad dissemination of classified intelligence to individuals unfamiliar or un-indoctrinated into the world of classified intelligence. Individuals who work outside of the classified environment have unrealistic and elevated expectations of what classified intelligence can provide. In most cases no higher level of detail exists between Secret and Top Secret information, only a greater level of confidence and greater sensitivity to compromise based on the identification of the access level of the sources and methods that provided the intelligence.

This is not to presume the intelligence community lacks confidence in the lower level intelligence; each requires the same level of prevention from disclosure. However, lower level intelligence will often delete references to the specific sources and methods requiring protection from disclosure, as opposed to Top Secret intelligence, which will often detail the sources and methods to improve the confidence level of the intelligence. It is the often-inadvertent disclosure of sensitive source and method information by state and local officials unschooled in collection methodology that is central to the problem.

Evidence of discord over the sharing of classified intelligence with elected state, local and tribal officials came to a head in 2005, when the City of Portland, Oregon

recused itself from membership in the Portland's Joint Terrorism Task Force over the Federal Bureau of Investigation's refusal to grant the Portland mayor a Top Secret security clearance. Portland thereafter expressed a concern that intelligence assessments and investigations unrelated to a criminal nexus were being conducted in violation of local ordinances. A perception soon developed by Portland's political leadership that those counterterrorism investigations involved significant civil rights violations of Portland citizens (Meyer & Findanque, 2012).

Perhaps the more salient problem involves the lack of greater participation in Federal Bureau of Investigation run Joint Terrorism Task Forces by state, local and tribal law enforcement. Anecdotal evidence revealed participation by state, local and tribal law enforcement in Joint Terrorism Task Forces was frequently limited due to funding issues.²⁴ The inability of local police chiefs to use Urban Areas Security Initiative grant funds to staff their participation on a Joint Terrorism Task Force and the reluctance of local governments to dedicate limited budgetary revenue streams to support what they perceive as a federal responsibility (counterterrorism) is often cited as justification for their nonparticipation in joint task forces. Despite the obvious significant value added by collocating state and local officers with federal agents, current Department of Homeland Security and Federal Emergency Management funding regulations continue to disallow the hiring or paying of additional officers in support of counterterrorism participation in Joint Terrorism Task Forces despite the obvious significant value added by collocating state and local officers with federal agents and national clandestine service intelligence officers (Scharf, personal communication, 2007).

In contrast, the Joint Regional Intelligence Center in the Los Angeles, California claims to include "representatives from seven counties with a total of 18 million people and 166 police agencies" (Gertz, 2011). A distinction needs to be made,

²⁴ The FBI Seattle, Puget Sound Joint Terrorism Task Force is a primary example. Of the FBI Special Agents and 20 other Federal Agencies assigned to the task force, only four local agencies have full-time participation: The Seattle Police Department (2); the Bellevue Police Department (1); the Port of Seattle Police Department (1), and the Washington State Patrol (1). Each has cited budget issues as precluding greater participation in the task force.

however, between intelligence entities that have enforcement and arrest powers, like a Joint Terrorism Task Force and intelligence analysis only entities like the Joint Regional Intelligence Center.

A concomitant problem exists in that intelligence only entities often suffer from a lack of collectors to service their own counterterrorism intelligence requirements. In the absence of collectors willing to be tasked with collection requirements and the development of human intelligence (HUMINT) networks, the intelligence only centers are forced to rely on other people's intelligence (*OPINT*)²⁵ to complete their analysis.

Intelligence professionals understand the difference between tactical intelligence and strategic intelligence. Homeland Security professionals, however, often conflate the need for strategic intelligence vs. tactical intelligence, emphasizing the strategic over the tactical. And yet, from a law enforcement perspective, i.e., tactical intelligence leading to tactical warning is the preferred scenario. "The goal is to deter and limit damage by identifying in advance *when, where* and *how* a declared or potential adversary will forcefully strike the United States directly, mount a challenge to U.S. [*sic*] forces, personnel, or interests abroad, or make a menacing weapons breakthrough" (Davis, 2003).

A centralized federal intelligence enterprise, combined with the enforcement powers of a Joint Terrorism Task Force, may be the best model for the sharing of classified national security intelligence regarding terrorism threats to the homeland; however, absent greater vetting and training of local intelligence officers and general funding to increase participation by state, local and tribal law enforcement, there will be a reluctance to share classified national security intelligence.

²⁵ OPINT, or Other Peoples Intelligence is a term of derision among sworn law enforcement, where mediocre intelligence is often traded by individuals untrained in intelligence analysis tradecraft, and who staff analyst positions.

3. Option Three

a. *The National Counterterrorism Center*

The National Counterterrorism Center was established by Presidential Executive Order No. 13354 in August 2004 and codified by the Intelligence Reform and Terrorism Prevention Act of 2004. It is responsible for both joint operational planning and joint intelligence. It developed out of the Terrorist Threat Integration Center, created in 2003, which became the National Counterterrorism Center's intelligence analysis branch and which was, in effect, a fusion center, staffed by officials from the Central Intelligence Agency's Counterterrorism Center and the Federal Bureau of Investigation's Counterterrorism Division (*National counterterrorism center: About us*, 2010).

The Intelligence Reform and Prevention Act gave the National Counterterrorism Center the authority to determine what the "strategic operational planning" (IRTPA, 2004, p. 37) task would entail and how it would work. The National Counterterrorism Center was created to focus on putting together all of the various pieces of the intelligence puzzle, both foreign and domestic, and provide warning to the intelligence community of terrorist threats to the homeland (Treverton, 2005).

By law, the National Counterterrorism Center serves as the primary organization in the United States Government for integrating and analyzing *all* intelligence pertaining to counterterrorism (except for information pertaining exclusively to domestic terrorism) (Executive Order No. 13354, 2004). As stated in the 9/11 Commission Report (Kean & Hamilton, 2004), the National Counterterrorism Center concept implements a key recommendation of the 9/11 Commission: "Breaking the older mold of national government organizations, this NCTC [*sic*] should be a center for joint operational planning *and* joint intelligence, staffed by personnel from the various agencies" (p. 403).

The National Counterterrorism Center is also the progeny of the Intelligence Reform and Terrorism Prevention Act of 2004, and was established "as an extra-agency entity constructed by providing personnel from key participating agencies including state and local authorities" (Grave de Peralta, 2010, p. 73). Similar to the

Director of National Intelligence and the Director of Central Intelligence, the Director of National Counterterrorism Center reports directly to the President “on the conduct of strategic operational planning for counterterrorism activities for integrating all elements of U.S. national power” (Maguire, 2008). The Director also reports to the Director for National Intelligence as the primary organization in the U.S. government for analysis and integration of all terrorism intelligence (Best, 2010; *National counterterrorism center: About us*, 2010).

b. National Fusion Center Model²⁶

The concept of a National Fusion Center with responsibility for the integration of intelligence collection and analysis across all 71 state and local fusion centers has long been viewed as a logical outcome of the Department of Homeland Security’s Office Intelligence and Analysis by state, local and tribal law enforcement and the International Association of Chiefs of Police. And so, it has attempted to become. Through the development of Homeland Security Standing Information Needs (HSEC SINs), the Department of Homeland Security has attempted to establish a “foundation for information collection activities within the department and provide other Intelligence Community and Homeland Security Enterprise members the ability to focus their collection, analytic and reporting assets in support of the homeland security mission” (*More about the office of intelligence and analysis mission*, 2012).

c. Problems with the National Counterterrorism Center/National Fusion Center Policy Option

Problems with the National Counterterrorism Center/National Fusion Center, as a viable classified intelligence sharing policy option model focus on the need for classified domestic, intelligence collection requirements to improve the collection of national security intelligence by state, local and tribal law enforcement. One of the prevailing arguments within the United States Intelligence Community against the

²⁶ According to the *fusion center* guidelines, a *fusion center* is defined as “a collaborative effort of two or more agencies that provide resources, expertise, and information to the center with the goal of maximizing their ability to detect, prevent, investigate, and respond to criminal or terrorist activity” (Fusion Center Guidelines, 2005, p. 2).

involvement of state, local and tribal law enforcement in the collection of national security intelligence is that all intelligence—both foreign and domestic—is collection requirements driven.

Intelligence collection requirements constitute the *roadmap* by which all members of the United States Intelligence Community support national security policy. Most requirements involve the collection of strategic intelligence, rather than tactical intelligence, and no current intelligence requirements, foreign or domestic, are directed to state, local or tribal law enforcement agencies for collection by the over 800,000 police officers working within the continental United States.

More importantly, neither the National Counterterrorism Center nor the National Fusion Center has responsibility for directing a cadre of intelligence officers who are in a position to act on collection requirements in support of the greater United States Intelligence Community and serve as collectors. Rather the entire intelligence community is responsible for addressing intelligence requirement—but only as the requirements conform to individual agency intelligence mission sets. For example, the Federal Bureau of Investigation may collect pertinent intelligence through one of its ongoing investigations that meets an intelligence requirement, but they will not actively seek to collect that type of intelligence unless directed to as part of its own domestic intelligence collection mission. It is this authority to direct an agency to collect against intelligence requirements that the National Counterterrorism Center currently lacks.

Similarly, the Central Intelligence Agency may actively seek to collect internationally against counterterrorism requirements but in the past has been known to fail to pass classified intelligence on to the rest of the community for a number of reasons, not the least of which includes the fact that assisting domestic law enforcement is not part of their primary intelligence mission (Kean & Hamilton, 2004). The case of Khaled al-Mihdhar and Nawaf al-Hazmi, as described in *The Looming Tower*, exemplifies the type of intelligence sharing problems that can occur when intelligence collection and analysis centers like the National Counterterrorism Center, have no line authority over the collectors of intelligence (Wright, 2006).

As the threat within the United States has shifted over the years from one focused on the threat from transnational adversaries—i.e., al-Qa’ida Core and al-Qa’ida affiliate members—to domestic, self-radicalized individuals who are inspired rather than directed by al-Qa’ida, restricting information or collected intelligence solely to that having an international nexus is problematic for the implementation of any policy designed to provide a basis for the collection of classified national security intelligence.

Classified intelligence collection does not occur by happenstance. Many intelligence experts agree classified strategic intelligence collection is the product of a deliberative process based on the intelligence cycle (McGaffin, 2003; Lowenthal, 2008). To incorporate state, local and tribal law enforcement as a value added component of the United States Intelligence Community, a clearly articulated plan or procedure for the development and dissemination of targeted national security intelligence requirements for the collection of tactical intelligence designed specifically for state, local and tribal law enforcement is needed.

As noted by the Department of Homeland Security in their Privacy Impact Statement (2008):

At the heart of fusion centers lies law enforcement intelligence, a concept that is distinct from “intelligence” as most Americans think of the term, national security intelligence. Understanding the distinction is important.

Information is the key to intelligence, of whatever kind. Information has been defined as “pieces of raw, unanalyzed data that identifies persons, evidence, events, or illustrates processes that indicate the incidence of a criminal event or witnesses or evidence of a criminal event.” In the law enforcement or criminal context, information includes criminal histories and driving records; statements by witnesses, informants, and suspects; vehicle registration information; banking and other financial information; and police reports. (p. 14)

What state, local and tribal law enforcement lack are systems to set requirements, capture the collection, and facilitate distribution or dissemination. This was the role originally envisioned in the Intelligence Reform and Terrorism Prevention Act of 2004 for the National Counterterrorism Center (IRTPA, 2004). Nevertheless, disseminating those requirements, capturing the results of collection and its subsequent

dissemination remains problematic. The *e-Guardian* system—an unclassified internet based tracking system developed by the Federal Bureau of Investigation and managed by Law Enforcement Online—may provide the means to achieve widespread dissemination of intelligence and “near real-time sharing and tracking of terror information and suspicious activities” with state, local and tribal law enforcement. *e-Guardian* is a spin-off of a similar, but classified tool, also called *Guardian* used internally by the Federal Bureau of Investigation for tracking informational terrorism leads (Rogero, 2008).

The nascent and often-times conflicted and confused state of fusion centers around the country—as evidenced by the recent findings by the Department of Justice, Office of Inspector General Report on fusion centers (*Federal support for and involvement in state and local fusion centers*, 2012)—has resulted in significant criticism and lack of confidence in the state and local fusion center system by the Congress. In addition, the establishment of Joint Regional Intelligence Groups by the Federal Bureau of Investigation has further muddled the process of which agency has responsibility for the analysis and sharing of domestic national security intelligence within the United States (Downing & Mayer, 2012).

The authors of the 9/11 Commission Report concluded that responsibility for managing classified national security intelligence should be delegated to a National Counterterrorism Center (Kean & Hamilton, 2004). An argument can be made that for domestic classified intelligence collections, collocation of both the source of intelligence requirements and the means for management of the various components of the intelligence cycle would enhance management of the intelligence cycle and improve analysis of intelligence products.

4. Option Four

a. The British Special Branch Model

Of all the policy option models examined by various post-9/11 panels and commissions, the British *Special Branch* model generated both the most interest and the most confusion among both academics and intelligence professionals in discussing possibilities for the reformation of United States domestic intelligence services. For the

most part, academic analysis of the British model has focused on the British Security Service (MI-5), rather than on the local law enforcement Special Branches, as a potential domestic intelligence replacement model for the United States Intelligence Community. Local Special Branches—which function as force multipliers for the counterterrorism and counterintelligence community in Great Britain—contribute to the effectiveness of the British Security Service as a domestic security intelligence agency by providing expertise in law enforcement, criminal and domestic intelligence (Kean & Hamilton, 2004).

The primary difference between the United Kingdom and the United States in the collection and sharing of classified domestic national security intelligence with state, local and tribal law enforcement is the Special Branches. The British manner of incorporating local police officials, through cleared and vetted police officers designated to a “special branch” within each of the 43 local police agencies and the London Metropolitan Police Department is unique to Great Britain. No concomitant system of vetting state, local and tribal law enforcement officers exists in the United States, except for those limited number of local law enforcement officers attached to the Federal Bureau of Investigation’s Joint Terrorism Task Forces.

Unlike within the United States where the Federal Bureau of Investigation serves as both an intelligence agency and a law enforcement agency, “the [United Kingdom] separates its domestic intelligence function executed primarily by the [British Security Service] from its law enforcement function executed by the Metropolitan Police Service and the other [43 United Kingdom] police agencies. Thus, the British Security Service must rely on one of its more crucial partners for law enforcement powers—the local police” (Treverton, 2008, p. 63, as cited by Heck, 2009, p. 37). Because of their lack of law enforcement powers, the Special Branch system developed as a means of providing “functional law enforcement powers” (Heck, 2009, p. 37) to the British Security Service.

Founded in 1829, the Metropolitan Police Force, deployed plain-clothes officers to gather political intelligence almost from its inception. In 1883, the Metropolitan Police Service formed a Special Irish Branch as the intelligence service of the police force to address a campaign of Irish Republican bomb attacks being waged

throughout England (Hewitt, 2008). According to Gregory Treverton, “the Home Secretary setup a parallel “Secret Service” to assist the Branch, but the result was more infighting than crime fighting, and the new service was sharply curtailed, leaving the Special Branch to keep tabs on Irish and other potential enemies within” (Treverton, 2008, p. 57).

The British Special Branch system is characterized by each of the separate police department in the United Kingdom having specially selected and vetted police officers, who have received intelligence officer training, resident within each police department’s investigative branch. These Special Branch officers are the law enforcement arm of the British Security Service and are vetted to conduct their own national security investigations within strict parameters. Referred to by the British as collectors of “security intelligence,” Special Branch officers are involved in “both collection and all-source analysis for internal security purposes” (Herman, 2008, p. 348).

Over the years, Special Branch took on responsibility for combating a wide range of extremist and terrorist activity. Special Branch provides operational support to British Security Service and the “street-level affinity” for the targeting of “covert human intelligence, who [*sic*] are then managed by an SB [*sic*] unilaterally or together with MI5 [*sic*]” (Chalk & Rosenau, 2004, p.13). In many cases, Special Branch assumes responsibility for gathering, collating and exploiting intelligence on extremist political and terrorist activity and disseminating intelligence for operational use.

The British Special Branch model allows local police officers to be privy to classified intelligence on major investigations throughout the United Kingdom when a documented need to share exists. As noted by New York Police Detective Sergeant Gustavo Rodriguez, local police are considered critical to the development of human intelligence, confidential human sources, electronic surveillance and physical surveillance in support of British national security investigations and interests (Rodriguez, 2011). As a result, the sharing of intelligence across agency lines is the norm rather than the exception in Great Britain (Alexander, 2009). The goal of the any new American classified intelligence collection and sharing policy would be the opportunity for members of individual police agencies to apply for training and vetting of their

intelligence units as certified intelligence officers of the United States Intelligence Community in support of human intelligence collection efforts.

b. The American Version of Special Branch

As proposed, this policy model would establish an American version of the British Special Branch in the form of a National Police Intelligence Corps that would mirror the Special Branch system and be comprised of trained and vetted state, local and tribal law enforcement officers who would provide “local police expertise; provide a local network of HUMINT [*sic*] sources; [be] a conduit to the rest of the local police force; provide local contingency CT [*sic*] planning” (Smith, 2010, cited by Rodriguez, 2011, p. 42). Police officers trained and certified by members of the Intelligence Corps would return to their individual police departments to serve as local counterterrorism intelligence liaison officers, collecting and sharing classified intelligence with the United States Intelligence Community, developing confidential human sources to be shared with the Federal Bureau of Investigation in criminal and national security counterterrorism investigations, and assist in the development of domestic classified national security intelligence requirements.

The National Police Intelligence Corps would be managed and funded by the Department of Homeland Security Intelligence and Analysis Division and overseen by the Director of National Intelligence, becoming an *ex officio* 18th member of the United States Intelligence Community, limited in scope by Congressional statute. Alternately, the National Police Intelligence Corps could serve under the auspices of the National Counterterrorism Center or the National Joint Terrorism Task Force. In either case, the National Police Intelligence Corps could be tasked to provide a classified collection and sharing capability that neither entity currently possesses.

In the recommended policy model, the Department of Homeland Security would provide vetted state, local and tribal law enforcement officers with funded intelligence officer training and certification. All training for the National Police Intelligence Corps would be similar to training provided the Central Intelligence Agency’s National Clandestine Service case officers and the Federal Bureau of

Investigation's National Security Branch special agents. The Director of National Intelligence and the Attorney General of the United States would approve the curriculum and tradecraft training as intelligence officers in order to conform to current investigative and intelligence collection restrictions outlined in the Federal Bureau of Investigations' Domestic Investigations and Operations Guidelines (2011). All requirements for consideration as national security intelligence officers with access to classified intelligence, sensitive compartmented information, and national security collection requirements would be met by this training.

Each member of this cadre of certified police intelligence liaison officers would be cleared for the receipt of classified information up to, and including the Top Secret/Sensitive Compartmented Information level, along with generally recognized handling caveats and special program access. Coordination of the collection efforts of state, local and tribal officers with the United States Intelligence Community would remain under the oversight of the National Security Council (Best, 2010).

The American policy model would differ from the British Special Branch system in that the recommended policy option would not include the sharing of nonclassified intelligence on purely domestic political groups that are suspected of engaging in criminal terrorist activities, such as bank robbery or drug dealing, or where 1st Amendment issues predominate. In those cases, intelligence regarding purely domestic terrorism would be segregated from classified national security intelligence regarding international terrorism and would be shared with state, local and tribal law enforcement under existing criminal intelligence agreements with the Federal Bureau of Investigation's Joint Terrorism Task Forces or criminal squads.

The recommended American policy would also differ from similar appearing systems already in existence in the United States such as the Terrorism Liaison Officer²⁷ program managed by the Los Angeles Police Department's Joint Regional Intelligence Center:

²⁷ TLO.org provides Terrorism Liaison Officers and Fusion Liaison Officers with easy-to-access unclassified information regarding threats, trends, and news items of interest. TLO.org is managed by the Los Angeles Joint Regional Intelligence Center. (TLO.org, 2010).

The [Terrorism Liaison Officer] mission is to develop a network of trained, coordinated first responders in various disciplines to function as the local eyes and ears in the war on terrorism. TLOs [*sic*] operate within the framework of a local TEWG [*sic*][terrorism early warning group] or state fusion center and assist in intelligence collection. They assist information dissemination to the various disciplines they represent. (Morrissey, 2007, p. 42)

Michael Grossman noted, “Following the attacks of September 11, 2001, Los Angeles County organized a Terrorism Advisory Group...One of the policy models that developed from this effort was that each members of the group would designate a Terrorism Liaison Officer.” As described by Grossman, “These officers are the central point of contact for all terrorism-related information—but not classified intelligence—for their respective agencies” (Grossman, 2005, p. 24). While Grossman was prescient in his recognition of a need for an intelligence liaison function within the Los Angeles Terrorism Advisory Group, the terrorism liaison officer program has “created a pathway for information flow a coordination among the participating cities” (p. 24) as noted, it does not address the collection of classified and sharing of national security intelligence.

c. Problems with the Special Branch Policy Option

A problem with any classified intelligence collection and sharing proposal based on the British Special Branch system are the significant differences that exist, both politically and within the structure of the United Kingdom’s intelligence and law enforcement apparatus. The United Kingdom is a much smaller country than the United States, with a law enforcement structure that is managed locally but directed nationally by the British Home office. The United Kingdom also lacks the concept of Federalism, whereby individual states in the American union understand that “powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people” (10th Amendment—U.S. Constitution, n.d.).

Terrorism liaison officers—the model most closely resembling the proposed National Police Intelligence Corps policy model—are not currently trained and vetted in classified intelligence tradecraft and collection, nor are they trained and vetted in the protection of classified sources and methods. Anecdotally, problems have

developed within the Terrorism Liaison Program wherein a single terrorism liaison officer is accused of unauthorized release of classified information resulting in the decision to exclude all members of the group. The net effect being that where the terrorism liaison group used to meet monthly to exchange information, this particular group has now not met for over a year (Mata, personal communication, 2010). Any new national policy option would need to address these and other sensitive issues and would require the concurrence of the Director of National Intelligence for true access to classified intelligence platforms.

A third problem with any National Police Intelligence Corps policy model as proposed is that—absent strict protocols regarding dissemination of classified intelligence and strong leadership from within the United States Intelligence Community—the policy will remain subject to the whims and foibles of whatever entity controls access to the classified information. While not insurmountable, this problem is significant and has been noted elsewhere in this thesis. Overcoming United States Intelligence Community prejudice against the law enforcement community requires leadership by both the Secretary of the Department of Homeland Security and the Director of National Intelligence.

Coordination of investigative and collection efforts also remains a significant problem related to any proposed intelligence policy change. As noted by McGee and Duffy (1996), “[Coordination] sounds simple in concept. In reality, it is likely to prove difficult, challenging constitutional limits on domestic law enforcement activity while drawing intelligence officers ever closer to proceedings that could compromise sources and methods” (p. 373). As was seen in the Najibullah Zazi investigation, once information controlled by the FBI was released to the New York Joint Terrorism Task Force and thereafter to the New York Police Department’s Intelligence Unit, control of the classified information was lost (Sulzberger, 2010) potentially compromising the sensitive sources and methods that originally developed the intelligence.

Finally, this proposed policy model comes at a time when the British Special Branch model upon which it is based has itself transformed into a model more

closely resembling the Federal Bureau of Investigation. In 2006, the Metropolitan Police Service merged their Anti-Terrorist Branch (SO13) and Special Branch (SO12) and formed Counter Terrorism Command (SO15) (*Metropolitan police: Counter terrorism command*, 2012). By forming this new command, the Metropolitan Police tacitly acknowledged that the ability to bring law enforcement resources to bear is as important as the collection and sharing of classified and unclassified intelligence about terrorism by members of the intelligence services. At the same time, “it continues their legacy of expertise and brings together intelligence, operations and investigations functions. It also engages with a range of partners to prevent terrorist related activity, including the British Security Service and Secret Intelligence Service” (*Metropolitan police: Counter terrorism command*, 2012). The question remains, however, *why become more like the British, when the British are becoming more like the Americans?*

C. POLICY OPTIONS MATRIX:

Table 1 is a graphical analysis of the positive and negative outcomes of the four policy options:

Table 1. Policy Options Analysis Matrix

Should Cops Be Spies?	Primary outcomes				Secondary outcomes		Other study outcomes	
	Collects Classified Intelligence	Improves Intelligence Sharing	Responds to Collection Requirements	Universally Adoptable	Improves Intelligence Tradecraft	Addresses Civil Rights	Politically Viable	Requires Enabling Legislation
Intelligence-Led Policing/Nationwide Suspicious Activity Reporting Initiative	NO	NO	NO	YES	NO	NO	YES	NO
FBI/Joint Terrorism Task Force Model	YES	Limited*	YES	YES	YES	YES	YES	NO
National Counterterrorism Center/National Fusion Center Model	NO	Limited**	NO	NO	NO	NO	YES	NO
American Version of British "Special Branch" Model	YES	YES	YES	YES	YES	YES	UNK!	YES

* Classified intelligence sharing under the FBI Joint Terrorism Task Force Model is considered limited due to its being restricted to only those members of the JTTF and the Executive Board who maintain Secret clearances.

** Classified intelligence sharing under the National Counterterrorism Model/National Fusion Center Model is considered limited because intelligence sharing is restricted to among the 17 members of the United States Intelligence Community.

! The political viability of the British "Special Branch" model is unknown at this time due to an inability to gauge the overall acceptance level of expanding classified intelligence to state, local and tribal law enforcement by the United States Intelligence Community. There are many within the Intelligence Community that would be opposed to this model.

D. RELEVANCE TO THE AMERICAN POLICE INTELLIGENCE SHARING PARADIGM

The domestic terrorism threat facing the United States is increasingly complex, adaptive and evolving (Mueller, 2012). It continues to include threats from an international Salafi Jihadi movement tied to a conservative Islamist theology advanced by Usama bin Laden and al Qa'ida, but also from local threats posed by traditional domestic rejectionist movements, left and right wing activists, violent animal rights and ecology based groups, the neo-Nazi movement and religious extremists including numerous variants of British Israelism, Christian Identity and Germanic neo-paganism.

The Director of the Federal Bureau of Investigation has noted that a critical need continues to exist for a national domestic intelligence collection policy that is “threat-focused, intelligence-driven [and] guided by clear operational strategies.” In addition, the policy should “remain firmly committed to carrying out these strategies under guidelines established by the attorney general that protect the civil liberties of those entrusting us with the authorities to carry out our mission” (Mueller, 2012).

Accurate intelligence is crucial to disrupting the entire criminal and terrorism threat variants faced by state, local and tribal law enforcement, including those still posed by al Qa'ida and its affiliates and is considered a matter of top United States foreign policy (Walsh, 2010). Intelligence sharing between the United States Intelligence Community and state, local and tribal law enforcement is therefore critical to a vibrant and coherent domestic homeland security intelligence policy that is desperately in need of a new paradigm, without turning American police into a modern day Gestapo.

A national police force has always been an anathema to the democratic principles upon which the United States was founded and an infringement on the concept of Federalism embodied in the 10th amendment to the Constitution; however, modern-day technological evolution demands the ability to quickly share classified and unclassified intelligence across state lines with state, local and tribal law enforcement. As a national issue, the challenge is to create a system designed, sanctioned and advanced by the United States Intelligence Community, and supported by the American police community across the country.

But in many ways and for many political reasons, local law enforcement and the police intelligence community is incapable of forging an integrated solution; rather it has become part of the homeland security intelligence-sharing problem. Major metropolitan police departments have contributed to the classified intelligence-sharing debacle by moving away from their traditional role of developing tactical intelligence for the purpose of crime prevention—including terrorism—and towards a domestic national clandestine service model based on the Central Intelligence Agency’s foreign intelligence collection mission (*AP’s Probe into NYPD Intelligence Operations*, 2012).

American law enforcement has embraced this change becoming—like the Central Intelligence Agency—more militarized in the process (Rizer & Hartman, 2011) and less focused on traditional criminal intelligence gathering techniques (Baker, 2011). Recent calls for change in the Central Intelligence Agency mirror the domestic police intelligence enterprise need to “halt...creeping militarization and restore it to what it does best: collecting human intelligence” (Johnson, 2012). One could add the prevention of crime as well.

As a result of creeping clandestinity, the development of criminal confidential human sources and human intelligence networks has fallen into disrepute. This shift in domestic intelligence collection, from one focused on penetrating and recruiting members of terrorist cells, to one with an eye for investigating 1st Amendment protected free speech and uncovering the political and religious motivations of potential terrorism subjects is both potentially illegal and suggestive of a significant gap in the understanding of past police intelligence operations (*Document shows NYPD eyed Shiites based on religion*, 2012). This shift mirrors one occurring within the intelligence community itself.

As recently noted by Joshua Foust, a Fellow at the American Security Project:

Over the last decade of counterterrorism operations, the U.S. intelligence community (IC) has undergone a remarkable transformation. A relatively modest part of the national security community before the 9/11 attacks, by 2010 the IC had swelled to encompass nearly a million people largely focused on prosecuting the wars in Iraq and Afghanistan and the global counterterrorism mission...Large areas of the IC have move away from

their traditional role of analyzing a broad range of current events for policymakers and toward supporting the global counterterrorism mission. (Foust, 2012)

Disclosures in the media regarding the activities of the New York Police Department's Intelligence Unit (Apuzzo, Goldman, Sullivan, & Hawley, 2012) are also indicative of the degree to which cops have envisioned reinventing themselves to become domestic spies. To alleviate this tendency on the part of police, some have proposed the implementation of a domestic Interpol, or *Domestipol*, "a national system of police coordination amongst police departments in cities within the DHS's [*sic*] Urban Area Security Initiative (UASI) program" that would incorporate a domestic intelligence sharing apparatus among the 50 largest police departments where, "as per DHS [*sic*] a significant risk of a terrorist attack exists" (Rodriguez, 2011, p. 50).

The homeland security and law enforcement communities can and should reverse this trend. Domestic police intelligence collection and sharing needs to return to its roots focusing on criminal behavior rather than the collection of political intelligence. While the police counterterrorism mission can and should continue, it should be placed within the context of classified national security intelligence that is indicative of criminal activity and networks that are violating federal, state and local laws. By integrating the deep criminal intelligence collection capabilities of local police with the vast international intelligence collection capabilities built over the last decade by the Federal Bureau of Investigation and the Central Intelligence Agency, the homeland security community can generate the knowledge it needs to prevent terrorism, protect the public and make smart decisions to ensure America's long-term security interests.

It is through this lens that the need for a new post-9/11, classified intelligence collection and sharing policy model is proposed; a model that incorporates training and vetting approved by the Director of National Intelligence, is sanctioned and supported by the Directors of the Federal Bureau of Investigation and Central Intelligence Agency, and universally adopted by the state, local and tribal law enforcement community.

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V. DISCUSSION/CONCLUSIONS

A. DISCUSSION

The primary question of this thesis—whether or not state, local and tribal law enforcement should be involved in the collection and sharing of classified national security intelligence in support of national counterterrorism efforts—is difficult to answer in an empirically valid sense.

Any classified domestic intelligence collection policy model that allows for the intrusive reach of domestic police agencies into the lives of American citizens strikes at the core of who we are as a people. Domestic intelligence collection and sharing does not just mean the sharing of foreign or domestic intelligence collected on non-U.S. persons, but often also means the collecting and sharing of intelligence on United States citizens within the homeland. This thesis attempts to put forward an alternative to the status quo and argues greater sharing of classified domestic national security intelligence with state, local and tribal law enforcement, along with increased classified collection by law enforcement, is necessary to ensure the prompt mitigation of terrorist threats.

The implicit objective of this thesis was, however, to answer the abstract question—whether or not cops should be spies. While this question is more argumentative than practical, it remains the fundamental philosophical issue affecting democratic policing in the United States. America remains the safest, freest and most prosperous nation the world has ever known. It is, however, this same freedom that makes us vulnerable to both international and domestic terrorism. The issue is—and continues to be—a domestic political struggle to strike a balance between “winning the battle against the terrorists and losing the ideological²⁸ war that created them” (Collins, 2006, p. 45). The question of exactly how much intrusive investigative authority to grant to state, local and tribal law enforcement to enhance domestic classified intelligence collection remains: Should cops be spies? According to Frank Cilluffo:

²⁸ A separate argument can be made as to whether an ideological, or “Cosmic War” (Juergensmeyer, 2003; Aslan, 2008) can ever be won or lost at all.

...the role of U.S. intelligence cannot be minimized; it will be Uncle Sam's lifeblood in the campaign against terrorism. Accurate and timely information is the foundation of every element of this campaign, including U.S. diplomatic, military, financial, and political operations; it also provides warning of future attacks. (Cilluffo, Marks & Salmoiraghi, 2002, p. 61)

In the almost ten years since the events of 9/11, the United States Intelligence Community has evolved through the "wisdom that comes from sad experience" (Teller, 1958, p. 201). Yet significant shortcomings in the collection, analysis and sharing of classified national security intelligence remain because the United States Intelligence Community continues to restrict granting access to classified national security intelligence affecting the homeland to state, local and tribal law enforcement. Recent events have highlighted a significant issue regarding the cops versus spies' conundrum with the revelation that the New York City Police Department employed active duty intelligence officers assigned to the Central Intelligence Agency as full-time intelligence collection and tradecraft advisors. By law, "The C.I.A. [*sic*] is prohibited from gathering intelligence on American soil, but some have criticized its counterterrorism cooperation with law enforcement services as a de facto domestic spying campaign" (Mazzetti, 2011, p. A31). Other articles published by the Associated Press have highlighted the New York City Police Department's extensive surveillance of the general Muslim community, not just in New York, but also in the tri-state area (Apuzzo, Goldman, Sullivan & Hawley, 2012).

While mitigating the threat from domestic and international terrorist groups is the primary objective of law enforcement intelligence, classified or otherwise, the primary purpose of collecting classified *domestic* intelligence, particularly homeland security intelligence is not—as asserted by Lowenthal (2008) and others—to inform policy makers to help achieve policy goals, but sometimes rather "to exploit and leverage, to prevent, preempt and disrupt terrorist activities before they occur...The first priority should always be to get there before the bomb goes off" (Cilluffo, Marks & Salmoiraghi, 2002, p. 61).

The intelligence cycle, as it is applied to domestic counterterrorism, begins with collection driven by requirements and ends with enforcement action designed to mitigate the threat. When mitigating domestic threats to the homeland, the domestic intelligence collection process begins and ends with same person, the law enforcement collector. In recent history—at least since 9/11—this role has primarily been the responsibility of the Federal Bureau of Investigation.

In his book, *Enemies of Intelligence: Knowledge and Power in American National Security*, (2006) Richard Betts noted:

The main failure before September 11 was the insufficient collection of unambiguous information. Dots must be collected before they can be connected. The more dots, the more likely that two or three will show directly when, where, or how an assault might come. (Kindle Edition, location 1399)

Following the signing of the *Intelligence Reform and Terrorism Prevention Act of 2004*, the RAND Corporation declared:

The intelligence culture of secrecy and “need to know” is dangerously out of date and suggested that the intelligence community would be improved by consulting people who have *no* “need to know” but bring a different perspective and might see patterns the ostensible experts do not. (Treverton, 2005, p. vii)

The RAND analysis, like many outside of the intelligence community, presumes the problem is merely one of access to restricted intelligence by analysts outside the formal intelligence community. This thesis argues, however, in regards to domestic counterterrorism investigations, access to specific classified domestic intelligence by law enforcement entities to improve classified national security intelligence collection, is the key to improving threat mitigation within the continental United States. The conclusion, particularly as it relates to the ability of state, local and tribal law enforcement to understand and collect classified national security intelligence, is the proposal of a policy option, which could incorporate large numbers of police officers from agencies large and small into the national security paradigm.

B. CONCLUSIONS

Modern domestic counterterrorism investigations depend to an increasing degree on highly sensitive classified intelligence collected overseas and domestically. Some of the most sensitive classified intelligence collected by components of the intelligence community does not easily translate into unclassified products for the use of state, local and tribal law enforcement. Intelligence collected by the National Security Agency and confidential human source intelligence are two primary examples.

Many of the subjects of domestic counterterrorism investigations are functionally invisible to state, local and tribal law enforcement authorities absent classified briefings from federal investigators. Thus, national security intelligence investigations in general, and classified intelligence collection by state, local and tribal law enforcement in particular, becomes increasingly difficult without access to classified national intelligence collection requirements. This should not be occurring.

Almost ten years after the events of 9/11, and now following the death of Usama bin Laden, those of us employed within the law enforcement arms of the United States Intelligence Community continue to see cases that cross the classified/unclassified divide. Recent arrests of Homegrown Violent Extremists in Chicago (Headly/Rana), New York (Zazi, Shahzad), Portland (Mohamud), Dallas (Aldawsari) and most recently in Spokane (Harpham), Clarkston (Brice) and Seattle (Latif/Mujahidh), have emphasized the need to have state, local and tribal officers who are cleared to the Top Secret, Sensitive Compartmented Information level involved in the investigation in order that important background and investigative information be shared. All of the above cases, with the exception of Harpham, were investigated utilizing classified collection techniques authorized under the Foreign Intelligence Surveillance Act.

So how does state, local and tribal law enforcement uncover and collect classified domestic counterterrorism intelligence when the agencies charged as first responders/first preventers do not even know what they are looking for? Few things are impossible to detect; however, it may actually be impossible to detect a clandestine intelligence officer whose training is based on nondetection. Many of the most dangerous al-Qa'ida core

operatives were trained or are training at this level of clandestine operation. In this sense, the current state of national security investigations at the state, local and tribal level is strongly weighted against effective intelligence collection and mitigation, unless the United States Intelligence Community shares critical national security intelligence.

Almost ten years after the United States invaded Afghanistan in an attempt to wipe out Usama bin Ladin and the remnants of al-Qa'ida senior leadership to insure against future surprise attack, the United States Intelligence Community in general—and the homeland security community in particular—are still arguing about access and dissemination of classified national security intelligence. Today we have to consider that the philosophy of al-Qa'ida, like a ball of mercury dropped onto a piece of glass, has subdivided into multiple small franchises of the original: McTerrorism at its most efficient. Without greater utilization of the classified intelligence tools at hand, the homeland remains as vulnerable today, as it was on 09/10/2001.

A terrorist is easily noticed only if their nefarious activities, i.e., clandestine preparation for terrorism, are carried out in the most obvious manner. There can be no doubt if a terrorist wants to carry out preparations for a terrorist act in secrecy, detection will become difficult and uncertain, particularly if the terrorist is a true lone wolf offender (Spaaij, 2012). As is well known within the law enforcement community, in the contest between the drug dealer and the police, the drug dealer has the greater advantage.

All of this is far less important than the question: *How do we both collect and share critical national security and counterterrorism intelligence without violating the intelligence community principles of secrecy and need to know?*

According to James Burch (2007):

...the challenge in developing a viable national security collection capability [for state, local and tribal law enforcement] centers on how to organize these capabilities optimally within the larger U.S. [sic] intelligence framework, how to ensure streamlined information sharing between foreign intelligence and the multitude of law enforcement agencies, and how best to implement oversight mechanisms to protect civil liberties and ensure accountability of intelligence operations (p. 1).

The review of the literature was clear on several points. The first was that neither Intelligence-Led Policing nor the Nationwide Suspicious Activity Reporting Initiative work as a policy model for the collection of classified national security intelligence by state, local and tribal law enforcement. Absent clear direction from the United States Intelligence Community as a whole—in the form of classified intelligence collection requirements tailored for dissemination to cleared and vetted, intelligence-trained police officers resident within nonfederal law enforcement agencies—the process by which intelligence collection is formulated—the intelligence collection cycle—cannot be completed.

The second point revealed by both the literature review and the policy analysis was that a model does exist that incorporates local and national intelligence components, as well as law enforcement and purely intelligence functions, into a seamless integration of talents. The model policy is best represented by an American adaptation of the British Special Branch system.

In evaluating the relevance of the primary thesis question concerning whether or not state, local and tribal law enforcement can make a significant contribution to the classified national security intelligence collection effort, it is helpful to keep in mind the war on terror is a “shifting security paradigm” (Andreas & Price, 2001, p. 32). In the war on terror, preventive policing and proactive domestic intelligence collection have taken their rightful place alongside overseas warfare as a means to prevent terrorism in the homeland. As noted by Andreas and Price, “the traditionally distant relationship between law enforcement and the intelligence community has become far more intimate.” In the past, “...law enforcement was largely a domestic matter, and intelligence was focused primarily on geopolitical rivalries” (pp. 41–42). Now that al-Qa’ida, through its surrogates and franchisees—as well as through its core operatives—has brought the war on terror to the homeland, a significant argument can be made that there has been a convergence of war fighting and crime fighting.

The key to answering is dependent upon support at the federal level for the development of classified intelligence collection requirements tailored to the state, local and tribal law enforcement community.

Writing in *Strategic Insights*, Center for Contemporary Conflict, Naval Postgraduate School, Karen Guttieri (2003) stated about the [then] new National Strategy for Homeland Security (White House, 2002), “implementing the new national security strategy will require cooperation across sectors of activity and jurisdictions of authority” (p. 1). The objectives of the National Strategy for Homeland Security are to “1) prevent terrorist attacks within the United States; 2) reduce American vulnerability to terrorism; 3) minimize damage caused by terrorist attacks that do occur; and 4) recover from terrorist attacks” (White House, 2002, revised 2007, cited in Guttieri, 2003, p. 7). Inasmuch as prevention is a key component of the strategy, the collection of classified domestic national security intelligence by state, local and tribal law enforcement is a significant, but underdeveloped element in the nation’s overall United States Intelligence Community strategy for preventing terrorism. As noted by Lowenthal, “Collection is the bedrock of intelligence...without collection, intelligence is little more than guesswork—perhaps educated guesswork, but guesswork nonetheless” (2009, p. 69).

A significant concomitant problem exists in that no single definition of domestic intelligence, national security intelligence, or homeland security intelligence exists within the framework of the United States Intelligence Community. Despite the findings of the 911 Commission over six years ago, no single integrated intelligence collection plan for the prevention of terrorism that incorporates the efforts of state, local and tribal law enforcement exists within the United States Intelligence Community. Nor does an integrated national strategy for the collection of domestic intelligence exist. In order for state, local and tribal law enforcement to address its natural order within homeland security, there needs to be an understanding of what role state, local and tribal law enforcement will play in the overall intelligence collection discipline.

In regards to the status quo, Intelligence-Led Policing is ineffective primarily due to police executives failing to understand the purpose and limitations of Intelligence-Led Policing as a tool for the collection of classified national security intelligence. Little empirical evidence in the literature or within the law enforcement community suggests Intelligence-Led Policing is an effective policy model for the collection of classified national security intelligence. This is partly the result of the desire by the United States

Intelligence Community to engage in “analysis driven collection,” by which is meant intelligence collection priorities “should reflect the intelligence needs of those crafting the analysis” (Lowenthal, p. 78). The lack of domestic national security intelligence collection requirements inhibits the ability of state, local and tribal law enforcement agencies to effectively direct local counterterrorism collection efforts.

The national security intelligence collection role which state, local and tribal law enforcement can assume in support of the United States Intelligence Community is critical to the success of the global war on terror because “criminal and terrorist networks...constitute a departure from traditional criminal activity because they are not concentrated in any one local jurisdiction” (Sullivan & Wirtz, 2009, p. 2). Integration and coordination of efforts among the United States Intelligence Community, the Federal Bureau of Investigation—as the agency primarily designated to engage in domestic intelligence collection—and state, local and tribal law enforcement is critical to the effective prevention of terrorist acts within the United States.

The current challenge is to devise and implement a proactive and dynamic domestic intelligence collection strategy incorporating all elements of the United States Intelligence Community to achieve the goal of prevention rather than reaction to terrorism (Clutterbuck, 2004, p. 141). In the words of Gabriella Blum and Phillip B. Heyman, writing in *Laws, Outlaws, and Terrorists: Lessons from the War on Terrorism* (2010):

The struggle against international terrorism has not been won. Allegiance to the goals and means of Al-Qaeda [*sic*] has not been ended. To the contrary...the phenomenon of terrorism, in one form or another, is here to stay, in America and worldwide. Since 9/11, terrorists have struck repeatedly in the Middle East, as well as in London, Madrid, Bali, Colombia, Russia, and elsewhere (albeit in different forms driven by different motivations.) What we have learned from both the successes and the failures of U.S. strategy over the past nine years should provide an invaluable guide -- domestically and internationally -- on how to devise an effective, legal, legitimate, and politically viable counterterrorism strategy for years to come. (pp. xv–xvi)

In sum, the way forward requires the development of an integrated national domestic-intelligence collection policy that leverages the collection capabilities of state,

local and tribal law enforcement through the sharing of classified intelligence. It may be, after all is said and done, that a centralized federal intelligence enterprise is, in fact, the best model for the collection and sharing of classified national security intelligence regarding threats to the homeland. Only time will tell.

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VI. RECOMMENDATIONS

A. NATIONAL SECURITY POLICE INTELLIGENCE POLICY

1. The National Police Intelligence Corps

This thesis recommends the Department of Homeland Security, Intelligence and Analysis Division consider the development and permanent funding of a National Police Intelligence Corps and a Counterterrorism Intelligence Liaison Officer training program for state, local and tribal law enforcement that would certify officers completing the course as intelligence officers of the United States. Modeled on the British “Special Branch” system, this program would train, certify and manage local police officers in intelligence tradecraft, human intelligence source development, classification of intelligence and other topics necessary to the development of a vibrant classified intelligence liaison program. Upon completion of their training, National Police Intelligence Corps officers would be certified as counterterrorism intelligence liaison officers and would be vetted at the Top Secret, Sensitive Compartmented Information level. The National Counterterrorism Intelligence Liaison Officers would then serve within their individual police departments as force multipliers and adjunct collectors of national security intelligence for the Joint Terrorism Task Forces, the Central Intelligence Agency’s National Resources Division and state and local fusion centers.

The *National Police Intelligence Corps*, similar in structure to the London Metropolitan Police Special Branch system, but which at the same time recognizes the significant differences between the two nations’ political and law enforcement systems is being proposed. The National Police Intelligence Corps would require training, vetting and integration of volunteer state, local and tribal law enforcement officers to serve as certified counterterrorism intelligence officers in the greater United States Intelligence Community. Locally certified intelligence officers would remain with their individual departments but would serve a larger intelligence collection policy model, both as a conduit for classified national security intelligence collection to and from state, local and tribal police officers and as developers of local ad hoc classified intelligence collection

requirements. This finding mirrors a current trend within homeland security to establish terrorism liaison officers and fusion liaison officers within individual departments who have a greater understanding of terrorism threat mitigation, the workings of the United States Intelligence Community and access to some—but not all—classified national security intelligence.

In their capacity as intelligence collectors, the locally certified intelligence officers would work in close coordination with both the Federal Bureau of Investigation and the Central Intelligence Agency’s National Resources Division, as well as with other members of the intelligence community authorized under federal law to collect classified domestic intelligence. The certified intelligence officer would serve primarily as a handler of confidential human sources, as well as a developer and collector of classified and unclassified human intelligence and would automatically be considered an ad hoc member of any local Federal Bureau of Investigation Joint Terrorism Task Force. In addition, the certified intelligence officer would be subject to the provisions of the Federal Bureau of Investigation’s *Domestic Investigations and Operations Guide* (Federal Bureau of Investigation, 2011)

To mitigate terrorism threats the certified intelligence officer would also be cleared to have access to and share classified intelligence developed at the highest levels of special access with the United States Intelligence Community. Access would, of course, be dependent on the need-to-know, the ability to maintain the appropriate Top Secret security clearance and special access privileges appropriate to the level of classified intelligence required. In this way, state, local and tribal certified intelligence officers would be able to address the problem confronting homeland security, that present and future terrorist threats to the United States are “global and adaptive,” and frequently “[blur] the distinctions between crime, terrorism, and war” (Treverton, 2005, p. ix).

Funding for this program would be included within the budget of the United States Intelligence Community managed by the Director of National Intelligence.

2. A National Strategy for the Collection of Domestic Intelligence

Concomitant to the development of the National Police Intelligence Corps and the National Counterterrorism Intelligence Liaison Officer program, this thesis further recommends the Department of Homeland Security—as the department responsible for protecting the American people from terrorist threats and understanding the evolving and emerging threats which threaten the nation—develop and promulgate, through the Office of the Director of National Intelligence, a National Strategy for the collection of domestic intelligence focusing on the collection of classified counterterrorism intelligence.

This new National Strategy would define domestic counterterrorism intelligence; establish a doctrine for the collection of domestic intelligence for the purpose of preventing or mitigating terrorism initiating solely within the homeland; and incorporate the current Domestic Investigations and Operations Guide used by the United States Department of Justice as a policy manual. In this manner, all domestic intelligence collection and national security investigations would be conducted in a similar manner by all United States law enforcement agencies participating in the recommended National Police Intelligence Corps.

3. Classified and Unclassified Counterterrorism Collection Requirements

This thesis recommends both classified and unclassified national security intelligence collection requirements, suitable for dissemination to the general homeland security community, be developed and promulgated by both the Departments of Homeland Security and the United States Intelligence Community. These intelligence collection requirements could then be viewed as taskings from the Intelligence Community to the certified intelligence officer program participants. In this manner, the participants could be viewed as participating in the overall homeland security effort.

B. QUESTIONS FOR FUTURE RESEARCH

1. Classified Homeland Security Intelligence

For many intelligence professionals working in the field of homeland security—as opposed to military-centric national security—the *classification conundrum* is the single-most problematic aspect of intelligence sharing for the purpose of threat mitigation in the world of domestic counterterrorism. Over-classification to protect sources and methods continues to be a significant problem domestically. If homeland security is to succeed as both a profession and an academic discipline, it needs to address the ability of major players within homeland security and academia to access and exploit both classified and de-classified national security intelligence that directly affects the homeland.

Who shall designate those major players and what level of access to classified intelligence that discloses sources and methods will they be provided—this is the salient question and should be subject to significant Congressional review.

2. The Role of the CIA in the Domestic Intelligence Collection

The Central Intelligence Agency has a lead role in the development of classified intelligence in the overseas war on terrorism. That lead role, however, by law does not extend to the investigation and development of intelligence—classified or otherwise—on United States Citizens or United States Persons—including corporations—residing within the confines of the continental United States (National Security Act, 1947, amended 2007; Executive Order 12333, 1981, amended 2004). Congress exclusively delegates the role of federal domestic intelligence collection against United States citizen to the Federal Bureau of Investigation, along with mandating considerable Congressional and judicial oversight.

Recent revelations by the New York Times, the Associated Press and other media outlets, of the involvement and integration of the Central Intelligence Agency into the training and oversight of domestic intelligence collection programs by state, local and tribal law enforcement is troubling for more than a passel of reasons. While many in Congress and elsewhere have argued for the inclusion of the Central Intelligence Agency in the collection of domestic intelligence paradigm, such a profound change would

unleash a plethora of criticism domestically and potentially mobilize significant right and left wing opposition to the changes, leading to an increased state of domestic strife unparalleled since the 1960s.

A review should be conducted of the relevant legislation to determine if the domestic role of the Central Intelligence agency should be expanded or revised.

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