

THE SENATE REPORT ON FUSION CENTER FAILS TO ASK OR ANSWER THE MOST BASIC QUESTION

As I suggested the other day, there is a lot to recommend the Permanent Subcommittee on Investigations report on fusion centers.

But while it meticulously supports its claims about the waste and inefficacy of fusion centers, it seems to miss what all that evidence suggests. That is that there is **no need for fusion centers**. The report clearly shows we have spent somewhere between \$289 million and \$1.4 billion to build a bunch of data sharing centers in the name of terrorism; yet in spite of the investment, the centers appear to never actually have contributed to finding a terrorist.

Fusion centers are supposed to be about counterterrorism

This is made clear in the way the report meticulously lays out the purported purpose of fusion centers, then measures how they fulfill that purpose.

The report notes two moments in DHS' history when fusion centers were pointedly not authorized: the initial formation of DHS, the 9/11 Commission report. It notes that under Michael Chertoff, DHS aides were pushing for reasons to sell fusion centers to the Feds.

Mr. Riegler said that he did not believe that access to state and local information was really a principal reason for the federal government to support fusion centers, but it was part of the pitch. "It was a selling point to the Feds," Mr. Riegler said. "I've got to tell them what the benefits are."

Only in 2007, at a time when there were already

37 fusion centers, many in states not likely to be targeted by foreign terrorism, did Congress specifically authorize fusion centers. At that time, Congress emphasized the fusion centers' counterterrorism function.

The law also directed DHS to detail intelligence personnel to the centers if the centers met certain criteria, several of which required a center to demonstrate a focus on and commitment to a counterterrorism mission. Among the criteria the law suggested were "whether the fusion center . . . focuses on a broad counterterror approach," whether the center has sufficient personnel "to support a broad counterterrorism mission," and whether the center is appropriately funded by non-federal sources "to support its counterterrorism mission."

Fusion centers have not found any terrorists

And on that basis, fusion centers have failed.

The value of fusion centers to the federal government should be determined by tallying the cost of its investment, and the results obtained. Yet, despite spending hundreds of millions of dollars on state and local fusion centers, DHS has not attempted to conduct a comprehensive assessment of the value federal taxpayers have received for that investment.

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First, how well did DHS engage operationally with fusion centers to obtain useful intelligence, and share it with other federal agencies and its own analysts?

[snip]

On the first issue, the Subcommittee investigation found that DHS's

involvement with fusion centers had not produced the results anticipated by statute, White House strategies and DHS's own 2006 plan. Specifically, DHS's involvement with fusion centers appeared not to have yielded timely, useful terrorism-related intelligence for the federal intelligence community.

Of particular interest is the report's objective measure of how well fusion centers are finding and sharing intelligence: the number of reports submitted. This passage is interesting not just for the results—which are damning—but also for the way the report assesses the results.

As noted, the Subcommittee investigation reviewed every raw DHS intelligence report drafted on information from state and local fusion centers from April 1, 2009, to April 30, 2010. The period corresponds to the first year I&A implemented its multi-office review process.

The Subcommittee investigation counted that, during that period, DHS intelligence officers at state and local fusion centers around the country filed 610 draft reports¹³⁸ to DHS headquarters for dissemination.¹³⁹ During that period, the **draft HIRs came from fusion centers in just 31 states; fusion centers in 19 states generated no reports at all.** In addition, **the vast majority of the 574 unclassified draft reports filed came from DHS detailees assigned to fusion centers in just three states – Texas (186 drafts), California (141) and Arizona (89).** Meanwhile, **fusion centers in most other states produced little to no reporting.**¹⁴⁰

Of the 574 unclassified draft reports field officers filed, the Subcommittee investigation counted 188 marked by DHS reviewers as cancelled, nearly a third.

Reviewers recommending cancellation of drafts faulted the reports for lacking any useful information, for running afoul of departmental guidelines meant to guard against civil liberties or Privacy Act protections, or for having no connection to any of DHS's many missions, among other reasons.

Of the 386 unclassified reports published, the Subcommittee investigation counted only 94 which related in some way to potential terrorist activity, or the activities of a known or suspected terrorist. Of those 94 reports, most were published months after they were received; more than a quarter appeared to duplicate a faster intelligence-sharing process administered by the FBI; and some were based on information drawn from publicly available websites or dated public reports. In one case, DHS intelligence officials appear to have published a report which drew from or repeated information in a Department of Justice press release published months earlier. In short, the utility of many of the 94 terrorism-related reports was questionable.

The Subcommittee investigation found that **fusion center reporting that attempted to share terrorism-related information was more likely to be cancelled than reporting on other topics.** While the overall cancellation rate of draft intelligence reports from fusion centers during the period of review was around 30 percent, the cancellation rate for reports which alleged or indicated a possible connection to terrorism had a higher cancellation rate – over 45 percent.¹⁴¹

¹⁴⁰ This imbalance in reporting did not go unnoticed within the DHS Reporting

Branch. Keith Jones, who headed the branch for part of 2009 and 2010, estimated that **most reporting from fusion centers during his time came from a half dozen DHS officers.** “In a couple cases there was a lot going on,” he told the Subcommittee. “In a couple of others they were looking for stuff [to report] so they could wave their flag.” Subcommittee interview of Keith Jones (4/2/2012).

Most draft HIRs that were accepted by DHS headquarters for dissemination relayed information from arrests or encounters relating to drug trafficking and, to a lesser extent, alien smuggling.

If reporting on drug running and human smuggling are not top priorities in DHS’s counterterrorism effort, it is unclear how the bulk of published reporting from fusion centers contributes to DHS’s antiterrorism mission. Conversely, if the most useful fusion center contributions come in these areas, it is unclear why DHS does not describe fusion centers as essential to its counterdrug and anti-human-smuggling efforts, rather than to its counterterrorism mission.

Elsewhere the report explains why reporting problems get worse when dealing with contractors.

So to sum up:

- Most of the reporting comes from three states which happen to be border states with significant drug and human trafficking issues but—except for CA—not really

significant international terrorism issues

- Most of the reports that make it through a vetting process for privacy and relevance report on drugs and human trafficking
- Many of the reports come from 6 individuals who—a guy in DHS' reporting branch suggests—were reflecting their own issues, not actual issues of concern
- Most other states weren't reporting anything

What this says to me is in most places, where there is nothing resembling terrorism, fusion centers are just cashing FEMA checks to buy flatscreen TVs. In states where they have things that are sort of like terrorism—in terms of the big money and networks involved—they have repurposed fusion centers to pursue those crimes.

But if that impression is true (the report itself doesn't talk about what this lack of reporting suggests), then it means there is likely nothing there that fusion centers can report anyway. Note, that's not to say there are no "terrorism issues" to report, but those take both classified information and also, I suspect, the ability to report on First Amendment issues that DHS' review process was deliberately weeding out. And the result is that with limitations on classified reporting and First Amendment reporting, the fusion centers have nothing to do.

Except report on drug crimes.

Obama and the fusion centers are shifting their focus so they can pretend to meet a need

As a result of the apparent fact that there's no actual need for fusion centers are they are currently defined both the Administration and fusion centers themselves are redefining their mission. For example, the report points out how Janet Napolitano distinguishes fusion centers from Joint Terrorism Task Forces (which are limited by neither of the classification or the First Amendment issues fusion centers are) by saying they're there for disasters.

Despite President Obama's clear focus on fusion centers as counterterrorism tools, some Administration officials have at times shifted away from defending the centers' value to federal counterterrorism efforts. In recent years, they have emphasized other possible **fusion center functions, such as disaster recovery, or investigations of crime, sometimes even to the exclusion of any counterterrorism mission.**

DHS Secretary Napolitano has alternated between describing fusion centers as a crucial part of the department's counterterrorism efforts, and also as centers which do "everything else."

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In testimony before the Senate in September 2009, DHS Secretary Napolitano was even more direct. "I think it's good to explain the difference between a JTTF and a fusion center. A JTTF is really focused on terrorism and terrorism-related investigations. Fusion centers are almost everything else," Ms. Napolitano said.

And more than a third of the fusion centers themselves have removed all mention of terrorism (including, incidentally, domestic terrorism, which exists more geographically broadly in this country than Islamic terrorism) from their

mandate.

The 2010 Subcommittee survey found that 25 of 62 responsive fusion centers, or more than one-third, did not mention terrorism in their mission statements. And the trend appeared to be moving in that direction: at least five fusion centers reported recently revising their **mission statements in ways that emphasized public safety and anti-crime efforts**, and diminished or removed mentions of counterterrorism. However, the Subcommittee investigation found some centers do not make terrorism a priority among their many efforts. 511

In an interview, a DHS official who helps oversee the Department's support for and engagement with fusion centers acknowledged that some centers were not interested in focusing on counterterrorism. **"We have trouble getting smaller, less mature fusion centers to pay attention to things like counterterrorism analysis,"** said Joel Cohen, head of policy and planning for the DHS State and Local Program Office (SLPO). **"They are more concerned with day-today crime."** 512

But the trend away from prioritizing counterterrorism efforts does not appear isolated to smaller, "less mature" fusion centers. Indeed, statewide fusion centers and **fusion centers in major cities indicate that they emphasize anti-crime efforts and "all-hazards" missions over an explicit focus on counterterrorism.**

As a DIA report found, one of the reasons for this is that the people running the fusion centers have priorities that aren't counterterrorism.

Indeed, the PM-ISE's 2010 Baseline

Capabilities Assessment of fusion centers found that terrorism was a low priority for most of them. “Most [fusion] centers focus on the priority mission of the law enforcement agency that owns/manages them; **primarily analytical case support to drug, gang, and violent crime investigations for the geographic area of responsibility,**” the report stated. “As a result many centers struggle to build the necessary capabilities required to support federal counterterrorism mission requirements, specifically in the areas of intelligence analysis and information sharing beyond their jurisdictions.”

Again, let’s take a moment to reflect what this suggests. Most fusion centers have ignored their original mandate, and even after taking money that purportedly supports counterterrorism, have instead applied it to fight drugs and gangs, priorities that the local law enforcement officials almost certainly find to be a more pressing priority. And that use of counterterrorism money for other law enforcement priorities has been blessed by the Obama Administration—and indeed, was baked in from the time Michael Chertoff’s aides were using CT to justify expanding and funding this redundant set of information sharing centers.

From all this, the report takes a relatively modest conclusion:

Congress should require DHS to conform its efforts to match its counterterrorism statutory purpose, or redefine DHS’ fusion center mission.

It doesn’t consider a much more obvious answer, particularly at a time of budget constraints: just eliminate all the fusion centers.

It also doesn’t consider a far more important issue.

As I'll explain at length in a future post, this entire report arose out of Tom Coburn's anger about DHS' report on right wing extremism (and the report points out a few of the more abusive instances of DHS reporting on purported right wingers).

That is, it arose out of Tom Coburn's unhappiness that reports about people like him were being entered into a vast new intelligence network yoking the power of the Federal government to localities.

And yet this entire process—which not only exposed breathtaking amounts of financial corruption but also revealed that there is no there there for the fusion centers to investigate—never posed the bigger questions implied by Coburn's anger: What threats are really so risky that we, as a society, believe local law enforcement should be deputized into a national network of intelligence gathering? For what crimes is such a networked intelligence approach constitutionally appropriate, and for what crimes is such a networked approach really justified by the size of the threat?

This report, though it doesn't say it, actually shows that counterterrorism is not a significant enough threat to duplicate the JTTF structure to investigate. Yet, rather than advocating shutting down the entire network (I would put the fund to climate change preparedness), the Senate report suggests just revamping the mandate explicitly, without the necessary question of whether it's appropriate and necessary to do so.