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**THESIS**

**THE SANDBOX STRATEGY: THE WHY AND HOW OF  
FEDERAL LAW ENFORCEMENT INTEGRATION**

by

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September 2006

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**THE SANDBOX STRATEGY: THE WHY AND HOW OF FEDERAL LAW  
ENFORCEMENT INTEGRATION**

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Submitted in partial fulfillment of the  
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## **ABSTRACT**

This thesis examines the interoperability of federal law enforcement's Big Six investigative agencies, to include the Federal Bureau of Investigation, Immigration and Customs Enforcement, Drug Enforcement Administration, Alcohol Tobacco Firearms and Explosives, Internal Revenue Service-CID, and the United States Secret Service-Investigations. The main issue is whether, in the post-9/11 environment of transnational and terrorist criminal threats, the current administrative and jurisdictional configuration of the Big Six within three executive departments with overlapping duties marginalizes the nation's investigative work-product. This discussion includes the establishment of metrics used to gauge the functionality of the Big Six and, thus, to determine whether Negative Characteristics are present that materially affect the "total" mission. Ultimately, the conclusion is drawn that the integration of the Big Six into a single agency, namely the FBI, would better serve the nation's federal investigative law enforcement needs. This leads into the next area of discussion, which is how to integrate the Big Six. Associated with both these topics is an analysis of what the federal investigative mission means and whether it should include a domestic intelligence product.

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## **DEDICATION**

*Leaders keep moving*

This thesis is dedicated to my father who encouraged me to apply to this program and was physically present upon my entry, but disappointingly only ethereally upon my exit. My father set the standard in which I live my life. I listened to his voice when faith and meaning in things was not evident. By following his instruction, I realized the resurrection of both.

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# I. INTRODUCTION

*We are now in a long-term struggle against persistent, adaptive adversaries, and must transform to prevail...we must transform to win the war.<sup>1</sup>*

## A. OVERVIEW

Federal law enforcement, like many other disciplines, was not immune to the changes created by the events of September 11. Seemingly overnight, the focus of federal law enforcement changed from the War on Drugs to the War on Terror.<sup>2</sup> While each involves invidious transnational actors, this new war has impacted the American psyche in a much deeper and visceral way. It has also stirred a cynicism, scrutiny, and public appetite to redress the defects that exist in government administration. This surge of interest propelled the passage of the Homeland Security Act in 2002 (HLSA), and the creation of the Department of Homeland Security (DHS), which were intended to promote interoperability across all strata of government, including federal law enforcement.

A derivative effect of the HLSA and creation of DHS was the material reconfiguration of the status, mission and/or administration of federal law enforcement's main investigative agencies, specifically the FBI, ICE, DEA, ATF, IRS-CID and USSS-Investigations, collectively referred to in the remainder of this thesis as the Big Six. While agencies like the ATF and USSS were transferred between executive departments, some agencies were dismantled and new ones created. The Immigration and Naturalization Service (INS) and the United States Customs Service (USCS) were among these agencies. The various elements of the former INS and USCS were transformed

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<sup>1</sup> Department of Defense. *The National Defense Strategy of the United States of America*, March 2005, 10–11. <https://www.defenselink.mil/pubs>. [Accessed March 17, 2006].

<sup>2</sup> The War on Drugs was an initiative begun in 1971 by President Nixon, undertaken to carry out an all-out offensive against the non-medical use of certain prohibited drugs. [http://en.wikipedia.org/wiki/War\\_on\\_Drugs](http://en.wikipedia.org/wiki/War_on_Drugs). [Accessed February 26, 2006]. The term “War on Drugs” is not a literal war in the constitutional or international law sense in that Congress did not declare “war” pursuant to its authority in Article I, Section 8 of the U.S. Constitution nor did the enemy constitute a national actor, but rather organized criminal elements. <http://www.law.cornell.edu/constitution/constitution.article1.html#section8>; <http://www.genevaconventions.org/>. [Accessed February 26, 2006].

into new agencies within DHS and given new missions. The Bureau of Immigration and Customs Enforcement (ICE) was one of these new agencies.

The FBI was also not immune from the change in national priorities. While the FBI's metamorphosis was not externally apparent like that of the USCS, INS, USSS or ATF, it has nonetheless incurred a material change in perspective. Subsequent to 9/11, FBI Director Robert Mueller modified the FBI's mission to focus on prevention of terrorist attacks.<sup>3</sup> Since that time, the FBI has been attempting to construct an intelligence service and transform itself into a hybrid law enforcement and intelligence agency. This change of mission was reinforced with the recent creation of the National Security Service, which incorporates the FBI's Directorate of Intelligence with the Counterterrorism and Counterintelligence Divisions.<sup>4</sup> While 9/11 exposed the need for a better domestic intelligence infrastructure, it is not wholly accepted within academic and government circles that this need should subsume the FBI.

The central topic of this thesis regards the foundational conflicts that exist among the Big Six and how these conflicts negatively affect the nation's investigative work-product. As discussed in Chapters II, III and IV, the Big Six do not function at an optimal level. While the expectation in the post-9/11 Global War on Terrorism (GWOT) Era is that interagency operations would become enhanced, the evidence collected for this thesis, from both government reports and an original survey, suggests that gains in this area involving federal investigative agencies have been limited and will diminish over time.

The central theoretical proposition of this thesis is that the proximate cause of this dysfunction is the decentralized, autonomous manner in which the Big Six are configured. The existence of six distinct entities in three different executive departments—Homeland Security, Justice, and Treasury—diminishes the collective capability because it generates non-productive qualities, such as interagency rivalry,

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<sup>3</sup> Federal Bureau of Investigation, "What We Investigate," and "FBI History." [www.fbi.gov](http://www.fbi.gov). [Accessed September 23, 2005].

<sup>4</sup> Federal Bureau of Investigation, "Headline Archives," <http://www.fbi.gov/page2/june05/nss062905.htm>. [Accessed January 4, 2006]; Gregory F. Treverton, "The Next Steps in Reshaping Intelligence," RAND Corporation, 2005.

redundancy, data fragmentation, jurisdictional foreclosure, and civil rights violations. I refer to these qualities collectively in Chapter IV as *Negative Characteristics*.

The central reform proposed in this thesis is that these *Negative Characteristics* present in ICE, FBI, DEA, ATF, IRS-CID and USSS-Investigations operations can be overcome by integrating the Big Six into the Department of Justice (DOJ) and eventually merging them into a reconstituted FBI. Further, such integration will not simply mitigate the *Negative Characteristics*, but create synergy and, thus, an exponentially improved work-product. In Chapter VI, I discuss the manner in which the Big Six should be integrated by introducing the concept of *Integration Evolution* as the multi-phased movement in which the Big Six should be unified. A central purpose of *Integration Evolution* is to avoid many of the pitfalls associated with merging separate bodies into a unified entity. My focus on evolutionary change is a particularly important and sensitive issue because the recent formation of DHS appears to have created a negative impression of agency merger, particularly in the post-Hurricane Katrina collective mindset.

This thesis also examines the maximization of synergy within a reconstituted FBI. In Chapter VII, I explore the need to create an autonomous domestic intelligence agency. I advocate for the segregation of Investigative and Intelligence disciplines because their missions, while parallel, are accomplished in different ways and by different standards. The hypothesis is that by removing the nation's domestic counterintelligence and counterterrorism-intelligence missions from the FBI, its focus will narrow and make it a better investigative agency. This comports with the traditional law enforcement identity and mentality of the Big Six agencies, particularly the FBI, which has been the nation's largest and most renowned criminal investigative agency with jurisdiction to enforce some 200 categories of federal law.<sup>5</sup>

## **B. BASIC ARGUMENTS AND QUESTIONS**

In this thesis I argue that the integration of the Big Six into a single agency will enhance the overall federal law enforcement mission to investigate and punish criminal violators. In order to lay the proper foundation for this assertion, the thesis contains two

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<sup>5</sup> Federal Bureau of Investigation, *What We Investigate*, <http://www.fbi.gov/hq.htm>. [Accessed March 27, 2006].

postulates; first, whether the current decentralized, autonomous configuration of the Big Six produces *Negative Characteristics*, and secondly, whether these characteristics are material and pervasive within Big Six operations. The discussion then explores the architectural design for integrating the Big Six into a reconstituted FBI. The thesis concludes by examining the mission of the reconstituted FBI and whether the U.S.' homeland security intelligence needs will be best fulfilled by a hybrid investigative/intelligence agency, such as the FBI or an autonomous, single-discipline domestic intelligence agency.

### **C. METHODOLOGY**

In the thesis I utilized a variety of analytical techniques. These techniques included a review of literature from the fields of Intelligence, Criminal Investigations, Business Administration, and Mergers/Acquisitions, as well as evidence-gathering methods. Analyses of historical events, case studies, and comparative institutional analysis were also utilized to establish the inferential progression of the paper. The thesis begins with a discussion of how to identify the characteristics of functional government operation. Once identified, it focuses on the measure of these characteristics, that is, the materiality and pervasiveness of these characteristics within Big Six operations. At the core of this analysis, and the one related to the integration of Big Six operations, is a broader Investigative versus Intelligence discipline analysis. This discussion focuses on whether a law enforcement agency can adequately support a dual investigative/intelligence mission.

## II. THE WHY OF FEDERAL LAW ENFORCEMENT INTEGRATION

*[T]he whole of an integrated and networked force is far more capable than the sum of its parts.*<sup>6</sup>

Since its inception in March 2003, DHS has been attempting to forge the federal government's largest reorganization in fifty years. Creating an entire executive department with the core mission of protecting the country from terrorism, has presented many challenges and affected the interrelationships of the Big Six. While DHS has made meaningful changes, the department is still striving to enhance its competence and standing within the government.<sup>7</sup> Recent organizational restructuring proposals from the Second Stage Review seek to improve the department's capabilities.<sup>8</sup> One critical need within the department is to bolster its capacity to identify and address societal needs with a department-wide perspective, rather than through a single component.<sup>9</sup> Ironically, it is the HLSA—an act meant to clarify and streamline the post-9/11 or GWOT Era environment—that is the source of much of this confusion.

ICE, as DHS' largest investigative agency, should be leading law enforcement's fight against terror. However, ICE is unable to assume this role for a number of reasons. Based on its Memorandum of Understanding (MOU) with the FBI, ICE lost its lead

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<sup>6</sup> *National Defense Strategy 2005*, 14.

<sup>7</sup> Department of Homeland Security, Office of Audits, *Major Management Challenges Facing the Department of Homeland Security*, December 2005, 3.  
[http://www.dhs.gov/interweb/assetlibrary/OIG\\_06-14\\_dec05.pdf](http://www.dhs.gov/interweb/assetlibrary/OIG_06-14_dec05.pdf). [Accessed January 3, 2006].

<sup>8</sup> The Second Stage Review was a systematic evaluation of the DHS' operations, policies and structures. It utilized 18 action teams to evaluate six specific operational and policy issues that will drive the near-term agenda for DHS. The six imperatives are to increase preparedness with particular focus on catastrophic events; strengthen border security and interior enforcement and reform immigration processes; harden transportation security without sacrificing mobility; enhance information sharing with our partners, particularly with state, local and tribal governments and with the private sector; improve DHS stewardship, particularly with stronger financial, human resource, procurement, and information technology management; and realign the DHS organization to maximize mission performance.  
<http://www.dhs.gov/dhspublic/display?content=4597>. [Accessed January 4, 2006].

<sup>9</sup> Office of Audits, *Major Management Challenges*, 15.

federal agency authority to pursue domestic counterterrorism investigations.<sup>10</sup> Notwithstanding the MOU, ICE does not have the investigative infrastructure, experience or resources to lead the nation's domestic counterterrorism mission. Regrettably, the FBI, which is the lead federal agency, does not either. Though the FBI currently has more capability and experience, it lacks jurisdiction, capability, knowledge and expertise in customs and immigration enforcement, two requisite disciplines for combating international terrorism. The resultant codependence of ICE and the FBI has created significant and ongoing tension between the two agencies.

The ICE/FBI conflict, while perhaps the most vivid within the counterterrorism field, is neither the only one nor a newly created phenomenon. Within the federal law enforcement spectrum, the FBI does not have lead agency status to investigate all the crimes that may intersect with terrorism. For example, ICE is the lead on immigration and importation crimes, the USSS on counterfeiting crimes, IRS on tax crimes, DEA on narcotics and ATF on firearms and explosives. Since these agencies are autonomous, their vision remains agency-centered and they seek to maintain a proprietary interest in their operations and work-product. Because of this, each has valuable information that the others cannot access or know to exist.

But is it productive to allow them to shield their assets and investigative work-product when each shares the same goal? All organizations exist to produce something and in regards to the Big Six this creates systemic problems. The Big Six engage in all

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<sup>10</sup> Memorandum of Agreement between the Department of Justice and The Department of Homeland Security Concerning Terrorist Financing Investigations, May 13, 2003. (The basis for the MOU stemmed from the need to coordinate governmental efforts as they related to terrorist financing investigations. After 9/11 attacks, the Departments of Treasury and Justice each established programs designed to target terrorist financing schemes. The programs functioned independently, though efforts—albeit unsuccessful—were made to coordinate investigative procedures and define jurisdictional boundaries. Such attempts exacerbated long-standing agency disputes, particularly between the FBI and the U.S. Customs Service's Office of Investigations, which is presently part of ICE. The intent of the MOU was to create a collaborative environment, but the practical result was the unilateral realization of authority in the FBI. The MOU has in many ways inhibited the Nation's counterterrorism response because the expertise and resources from former USCS have not been sufficiently incorporated into the FBI. Neither ICE nor the FBI has openly explained the reason for this, but, intuition suggests that interagency rivalry is a main factor. For a good summary of this issue, refer to the Letter from Richard M. Stana to Thad Cochran and Robert C. Byrd of the Senate Subcommittee on Homeland Security, Committee on Appropriations, February 2004, *United States General Accounting Office, GAO-04-464R*, <http://www.gao.gov/new.items/d04464r.pdf> [Accessed June 22, 2005].)

facets of the homeland security matrix: deterrence, preemption, prevention, protection and response.<sup>11</sup> Certainly, the autonomous construct of the Big Six impedes the sharing of information.

Big Six decision makers do not possess all the materially accessible information needed to make informed decisions. Truly, before any item can be produced or a service provided, strategic and operational decisions must be made. So when an information deficit exists, decision making capabilities are lowered and performance suffers. Within the Big Six, this information deficit decreases individual and collective agency productivity because each agency must either make uninformed decisions or take superfluous steps to obtain the relevant information.

In his book *Administrative Behavior*, Nobel Laureate economist Herbert A. Simon noted “it is impossible for the behavior of a single, isolated individual to reach any high degree of rationality.”<sup>12</sup> Simon’s idea is predicated on the value information has on mental processes and how mental processes are enhanced through interpersonal exchanges. Though Simon’s work did not focus on the administration of federal law enforcement agencies, the import of his theory transcends the interagency law enforcement relationships and exposes the continual interoperability failures present in the law enforcement and intelligence communities.

The ability to obtain information is one of the main problems organizations strive to overcome.<sup>13</sup> Many post-9/11 commentators recognize this and the reason is clear. If enhanced interagency relationships promote information sharing and information sharing improves the U.S. counterintelligence/counterterrorism strategy, then the concept of interoperability is not only “rational” in the Simonian sense, but a smart strategy. Deductively, the sharing of additional resources should improve interagency operations

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<sup>11</sup> Tony Kendall and Richard Bergin, “Homeland Security Technology Matrix,” *Intro to Technology Framework*, Slide 2. <https://www.chds.us/courses/mod/resource/index.php?id=13>. [Accessed March 17, 2006]; Deterrence means no attack is planned; Preemption means a plan is detected, actors identified and neutralized before plan develops; Prevention means actors are identified after the plan is developed, but neutralized before they attack; Protection means defending against the attack; Response means managing the consequences of an attack.

<sup>12</sup> Herbert A. Simon, *Administrative Behavior: A Study of Decision-Making Processes in Administrative Organization*, 3d ed. (New York City: The Free Press, 1976), 79, 81.

<sup>13</sup> Donald F. Kettl, *Sharing Power: Public Governance and Private Markets*, (Washington D.C.: The Brookings Institutions, 1993), 23.

even more. Viewed in this manner, the integration of the Big Six into a single entity is rational because it is a complete collective form.

A centralized command structure, such as the one needed by the Big Six to foster the integration of the disparate elements, is not unique to public governance or law enforcement. In his book about business administration, *Designing Organizations*, Jay R. Galbraith found that in order for an organization to execute a multidimensional strategy the interdependence of functional units requires coordination across departments. Thus, if units are interdependent they must coordinate to function. Therefore, when an endeavor, like federal law enforcement, becomes multidimensional it is not wise to decentralize operations into small autonomous units because they will become uncoordinated and perform at a less than optimal or “dysfunctional” level. More complex networks are needed because all the dimensions must be considered before a decision is made.<sup>14</sup> Recognition of the interdependence becomes paramount.

If nothing else, the current Big Six configuration can be fairly characterized as a complex network where overlapping jurisdictions have caused more than one Memorandum of Understanding to be drafted in order to quell systemic interference. Further, the existence of the Big Six within three separate executive departments causes decentralization and categorizes each agency as an autonomous unit. Unfortunately, today’s threat spectrum is not compartmentalized and transnational criminal actors cause autonomous Big Six investigations to intersect. This in turn instigates the unintended, and often times unwelcome, collusion among the effected agencies in order to competently combat the threat. This collusion becomes a tacit admission of interdependence. This admission opens the door to central question; how should the interdependence be managed?

In order to answer this question, the construct of modern federal investigative agencies needs to be examined because the failures of interdependence lie in this framework. The modern system can be traced to two primary sources. The first derives from an antiquated early-20<sup>th</sup> century model in which federal law enforcement agencies were created to address specific problems. This established the diffused and autonomous

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<sup>14</sup> Jay R. Galbraith, *Designing Organizations, An Executive Guide to Strategy, Structure and Process*, (San Francisco: Jossey-Bass, 2002), 5.

nature of today's agencies. The second source is founded in the growth of respective agency responsibilities in order to address new or evolved threats.

The examination of the genesis and evolution of federal law enforcement agency jurisdictions lays a foundation for the proposals put forth in this thesis. In this context, these proposals should appear less provocative because this retrospective examination reveals that the construct of federal law enforcement has been continually changing. It further shows that the confluence of independent and broadened agency jurisdictions have become a more evident obstruction as the Big Six attempt to address the terrorism threat from different angles. It also indicates that the current framework is not malleable enough or sufficiently unified to address modern threats. The lessons of historical change show that the architecture of federal law enforcement has and should continue to modify itself in order to address new threats and perform more effectively.

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### III. THE PROGRESSIVE ERA

In American history, the Progressive Era signifies the time when the federal government realized the supremacy it fought for in the Civil War. Essentially, the foundation of federal supremacy established by the Union's victory was built upon during the Progressive Era, which lasted from the late-19<sup>th</sup> century to the beginning of World War I.<sup>15</sup> Progressive reform came in response to the predatory capitalistic actions of entrepreneurs and monopolistic corporations that spawned in the post-war era known as the Gilded Age.

During the Gilded Age, the federal government's regulatory strategy was completely different from what it is today. The federal government adopted a law enforcement strategy in which private litigation, as opposed to public regulation, was the principal manner in which social wrongs were righted. In this model, the judiciary assumed a primary role in "policing" malevolent acts. This is in sharp contrast to the primary role the executive branch plays today. The big difference is that the former keeps social order by assessing and awarding damages after the fact while the latter seeks to prevent the act from occurring.<sup>16</sup>

The litigation strategy traces its roots to agrarian America, when the difference in individual wealth amongst the citizenry was not great. In the Gilded Age this changed, as large corporations gathered huge resources and their shareholders amassed great wealth. This had a collateral corruptive impact on the justice system as judicial postings became politicized and judges were elected or appointed through the lobbying efforts of the rich. As injustice and public displeasure excelled, a paradigm shift occurred and the belief that private litigation was the cure for social wrongs waned.

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<sup>15</sup> Randall G. Holcombe, "Federal Government Growth Before the New Deal," *The Freeman*, September 1, 1997, reprint The Independent Institute.. <http://www.independent.org/printer.asp?page=%2Fpublications%2Farticle%2Easp?id=360>. [Accessed February 1, 2006]; "Learn About the Progressive Era," *Digital History*. <http://www.digitalhistory.uh.edu/modules/progressivism/index.cfm>. [Accessed March 7, 2006].

<sup>16</sup> Edward L. Glaeser and Andrei Shleifer, "The Rise of the Regulatory State," *Journal of Economics Literature* XLI (June 2003): 414.

Progressive reformers advocated a more socially conscious role for government. One progressive demand was for the restoration of law and order. A derivative of this was the creation of regulatory agencies and the professionalism of existing agencies to control specific areas of the economy. In the area of law enforcement a series of new organizations and legislative acts set the stage for change. Regulatory agencies at both the state and federal level began instituting anti-trust, pricing, as well as food and drug reforms.<sup>17</sup> Amongst these new organizations and laws were the Interstate Commerce Commission (1887), The Sherman Antitrust Act (1890), the Food and Drug Administration (1906), the Federal Reserve (1913), the 16<sup>th</sup> Amendment (Federal Income Tax, 1913), the Federal Trade Commission (1914), the Harrison Narcotics Tax Act (1914) and the Immigration Act (1917). The Harrison Act, which prohibited the production, importation or sale of opium, cocaine and their derivatives, and the Immigration Act, which significantly expanded the classes of excludable persons, remain at the heart of modern federal law enforcement.<sup>18</sup>

The FBI traces its origins to this era.<sup>19</sup> The FBI originated in 1908 during the Presidency of Theodore Roosevelt who created a corps of Special Agents within the Department of Justice. Today, it seems evident that our country needs a federal investigative service, but in 1908, the creation of a “federalist” agency was highly controversial.<sup>20</sup> Interestingly, the core of expertise used to create this new national agency came from the United States Secret Service (USSS).<sup>21</sup>

The USSS traces its origins to 1865, when President Lincoln responded to the economic threat brought about by the South’s counterfeiting of the Union’s currency in what, arguably, may be America’s first economic based terror attack. It was not until

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<sup>17</sup> Edward L. Glaeser and Andrei Shleifer, “The Rise of the Regulatory State,” *Journal of Economics Literature* XLI (June 2003): 416.

<sup>18</sup> *Harrison Narcotics Tax Act, 1914*. <http://www.druglibrary.org/schaffer/History/e1910/harrisonact.htm>. [Accessed February 16, 2006]; *MSN Encarta*, [http://encarta.msn.com/encyclopedia\\_761566973\\_3/Immigration.html](http://encarta.msn.com/encyclopedia_761566973_3/Immigration.html). [Accessed March 7, 2006].

<sup>19</sup> Federal Bureau of Investigation, *FBI History*, <http://www.fbi.gov/libref/historic/history/origins.htm>. [Accessed September 28, 2005].

<sup>20</sup> *Ibid.*

<sup>21</sup> United States Secret Service, *Secret Service History*, <http://www.secretservice.gov/history.shtml>. [Accessed May 9, 2006].

President McKinley was assassinated in 1902 that the USSS' mission expanded to include the role of presidential protection.<sup>22</sup> This mission continued to expand and today includes former presidents, their families and presidential candidates. Over time, this non-investigative mission has gained primacy and today the USSS is most recognizable as a protective agency. While the USSS continues to investigate counterfeiting crimes, many of its investigations lack continuity as its agents are regularly called away to perform protective details. This is unfortunate because in today's global economic environment, organized criminal and terrorist groups have adopted sophisticated counterfeiting techniques and identity thefts schemes. Unfortunately, the USSS is being pulled in one direction while global consumerism and crime go in another.

It is not uncommon for federal law enforcement agencies to evolve or "creep" into areas of enforcement that have no or little association with their original purpose. Take ATF as an example. ATF, formerly of the Department of Treasury, but currently part of the Department of Justice, traces its tax collecting roots to the post-Revolutionary period. In 1789, under the new Constitution, Congress imposed a tax on imported spirits to address the Revolutionary War debt the federal government assumed from the states.<sup>23</sup> During the next 181 years, ATF essentially existed as a division of the Internal Revenue Service. This ended in 1970 when "moved by growing perception that the IRS's revenue-collecting bias did not reflect ATF Division's enforcement skills, overtures began toward ATF independence."<sup>24</sup> In 1970, congress officially recognized ATF's explosives expertise and two years later Treasury Department Order No. 120-1 transferred the functions, powers and duties related to alcohol, tobacco, firearms, and explosives from the IRS to ATF. Then in 1982 arson became a federal crime and ATF became responsible for investigating commercial arson nationwide.<sup>25</sup> Today, ATF is identified as the nation's arson and explosives experts, which seems to be exactly how it wants to be identified. Within ATF, alcohol and tobacco investigations are not

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<sup>22</sup> United States Secret Service, *Secret Service History*, <http://www.secretservice.gov/history.shtml>. [Accessed May 9, 2006].

<sup>23</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives, *History*, <http://www.atf.treas.gov/about/atfhistory.htm>. [Accessed May 9, 2006].

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

considered glamorous and are not pursued as aggressively as they should be despite the fact that cigarette smuggling and counterfeiting operations are prevalent and a lucrative source of terrorist financing schemes. This has not been lost on other agencies, in particular ICE, which created its Cornerstone program to deal with this threat.<sup>26</sup> As with the USSS, ATF's new mission and priorities have pulled it away from its original jurisdiction.

The DEA also came into existence as the offspring of other federal agencies. During the late 1960s and early 1970s, the U.S. had three agencies—USCS, the Office of Drug Abuse Law Enforcement, and the Bureau of Narcotics and Dangerous Drugs—involved in drug investigations. DEA was created in July 1973, by President Nixon pursuant to Executive Order 11727 in order to establish a single command structure. Many of DEA's new agents were selected from the USCS' Office of Investigations, and many accepted top positions with the new agency.<sup>27</sup> Despite the loss of numerous experienced agents, USCS agents continued to conduct narcotics cases, in conjunction with, and at other times, against their former colleagues. The narcotics investigations field became even more congested when in 1982 the Attorney General gave the FBI concurrent jurisdiction over narcotics violations in the United States.<sup>28</sup>

Though the Progressive Era is deemed to have ended when the U.S. became involved in World War I, the framework it established is reflected in the current configuration of the Big Six. In fact, Prohibition, which began in 1920 with the enactment of the 18<sup>th</sup> Amendment and ended some thirteen years later with the ratification of the 21<sup>st</sup> Amendment, provided federal law enforcement with its first “War”. Prohibition also provided an opportunity for federal agencies to meld their

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<sup>26</sup> Cornerstone is ICE's initiative to detect and close down weaknesses within U.S. financial, trade and transportation sectors that can be exploited by criminal networks. Active partnership between law enforcement and the private sector is a key component of Cornerstone. Such partnerships are built by sharing law enforcement typologies and methods with businesses and industries that manage the very systems that terrorists and criminal organizations seek to exploit. This sharing of information allows the financial and trade community to take precautions in order to protect themselves from exploitation. In return, ICE receives information, "red flags", tips, and insight from these industries to more effectively investigate these complex and sophisticated criminal schemes.  
<http://www.ice.gov/partners/financial/index.htm>. [Accessed July 3, 2006]

<sup>27</sup> Drug Enforcement Administration, “DEA History Book, 1970–1975,” citing the Senate Committee on Government Operations report issued on October 16, 1973,  
[http://www.dea.gov/pubs/history/deahistory\\_01p.htm](http://www.dea.gov/pubs/history/deahistory_01p.htm). [Accessed November 11, 2005].

<sup>28</sup> Federal Bureau of Investigation, “FBI History.”

forces in a sustained interdisciplinary approach that involved the Bureau of Internal Revenue, Customs Service, Coast Guard and Department of Justice.<sup>29</sup> These interdisciplinary endeavors continue and have evolved into the myriad law enforcement task forces that exist today.

As recently as April 2006, ICE announced that it will lead a brand new Document and Benefits Fraud Task Force. According to ICE Assistant Secretary Julie Myers, the task force model is critical to “harnessing the expertise of numerous agencies...new task forces are badly needed to help combat the significant threats posed...”<sup>30</sup> During the same press conference attended by Ms. Myers, Deputy Attorney General Paul McNulty added, “document fraud is a serious problem and is the common element of many different crimes.”<sup>31</sup> Of course, terrorism is the most notable. In instances when document fraud intersects with terrorism, as it did in 1993 with Ramzi Yousef, the mastermind of the first World Trade Center Bombing, the ICE led task force will cede investigative control to the FBI led Joint Terrorism Task Force (JTTF), in which various Big Six agencies are also members. Task forces like these, and others such as the Organized Crime Drug Enforcement Task Force (OCDETF) and the High Intensity Financial Crimes Area Task Force (HIFCA), to name a few, are recognition of the fact that federal law enforcement agencies, particularly the Big Six, are as Galbraith termed “coordinated interdependent units.”<sup>32</sup>

Though Galbraith’s findings on organizational functionality derived from his examination of private sector companies, such as Hewlett-Packard, 3M and Boeing, and not federal law enforcement agencies, this makes little difference from a command and control perspective. Federal law enforcement agencies are interdependent functional units. The difference between federal law enforcement and Boeing is that Boeing is a single corporation with a unified structure while federal law enforcement is divided into

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<sup>29</sup> Randall G. Holcombe, “The Growth of the Federal Government in the 1920s,” *Cato Journal* 16:2, (Fall 1996), 193.

<sup>30</sup> Bureau of Immigration and Customs Enforcement, Office of the Press Secretary, *Joint Task Forces Created in 10 Cities to Combat Document and Benefit Fraud*, April 5, 2006. <http://www.ice.gov/pi/news/newsreleases/articles/060405dc.htm>. [Accessed May 26, 2006].

<sup>31</sup> Ibid.

<sup>32</sup> Galbraith, *Designing Organizations*, 5.

autonomous units with separate commands. Because the GWOT Era is characterized by multidimensional criminal enterprises it is not reasonable to expect that narrowly programmed federal law enforcement agencies can address the threat without becoming interdependent. The confluence of interdependence and autonomy is not systemically consonant with Big Six operations because these qualities become exceedingly diametric in an environment where entities vie for recognition and budgetary validation.

An excellent discussion of the ongoing challenges that federal law enforcement agencies encounter in coordinating their respective functions can be found in Richard M. Stana's paper "Investigating Money Laundering and Terrorist Financing."<sup>33</sup> Though the paper examines "federal law enforcement agencies' efforts to cooperatively investigate money and terrorist financing" the baseline of his message centers on the interagency rivalry between the FBI and ICE, created by the passage of the HLSA. Stana's finding that interagency rivalry leads to a breakdown in capability reinforces the concept that the diffusion of federal investigative authority does not promote functionality.

Stana focuses on one investigative area shared by ICE and the FBI, namely, financial crimes, noting how money laundering and financial schemes are utilized by terrorists to promote their activities. He then goes on to discuss how the FBI and ICE are attempting to reconcile their respective missions. The importance of his analysis is the conclusion that the existence of these two separate executive departments has led to "operational and organizational challenges" that have failed to include the development of "effective interagency relationships."<sup>34</sup> He found that these failures have led to the resource constraints, competing priorities, and lack of investigative synergies.<sup>35</sup> While he does not explicitly find that the merger of ICE and the FBI would facilitate the eradication of these deficiencies, his findings support that opinion.

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<sup>33</sup> Richard M. Stana, *Testimony Before the Subcommittee on Criminal Justice, Drug Policy and Human Resources, Committee on Government Reform, House of Representatives*, "Investigating Money Laundering and Terrorist Financing: Federal Law Enforcement Agencies Continuing Coordination Challenges," *United States General Accounting Office, GAO-04-710T*, May 11, 2004, 4. <http://www.gao.gov/news.item/d04710t.pdf>. [Accessed March 15, 2006]; Letter from Richard M. Stana to Thad Cochran and Robert C. Byrd of the Senate Subcommittee on Homeland Security, Committee on Appropriations, February 2004, *United States General Accounting Office, GAO-04-464R*, <http://www.gao.gov/new.items/d04464r.pdf>. [Accessed March 17, 2006].

<sup>34</sup> Stana, "Investigating Money Laundering," 3.

<sup>35</sup> *Ibid.*, 6.

The lack of investigative synergy is an important concept because the central theory of this thesis is that integration of the Big Six will not only mitigate the *Negative Characteristics* discussed in the next chapter, but create synergy among the Big Six and eventually a reconstituted FBI. The basis for merger must be the expectation of a net gain. Thus, the effects of a merger must be multiplicative not merely additive: That is, the sum of the whole must be greater than the value of the individual parts.<sup>36</sup> As discussed in the next chapter, the agencies comprising the Big Six are devalued because their segregation produces *Negative Characteristics* that can be marginalized through integration. Merging the Big Six will create synergy.

One countervailing position to the integration of the Big Six is the proposition that the way forward is to look back. Rather than fusing the agencies to marginalize the negative byproduct of segregation, it would be better to streamline their missions. For example, instead of creating a single Drug Enforcement Division within a new conglomerate agency, it would be better to remove the narcotics jurisdiction from ICE and the FBI, and let DEA stand with exclusive federal jurisdiction.

In many ways, this proposition echoes the sentiment of the Progressive Era when agencies were formed to address specific threats. Unfortunately, with today's multi-crime, multi-jurisdictional actors, a single agency/single threat strategy is insufficient. Additionally, such a strategy will not lessen agency interdependence or the problems concomitant with it. While removing jurisdiction from ICE and the FBI might mitigate the inherent redundancy in having three agencies police the same crime, it would do nothing to remedy other negative factors. In fact, it would probably exacerbate the problem because in today's multidimensional threat environment criminal and terrorist organizations do not act unilaterally, thus, a unilateral agency cannot fully engage it. In such a situation, even the redundancy would not be lessened because the missions of various agencies would eventually collide as they pursue complex organizations that traffic in narcotics, counterfeit merchandise, human smuggling and financial fraud, to name some examples.

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<sup>36</sup> J. Fred Weston, "The Determination of Share Exchange Ratios in Mergers," *The Corporate Merger*, (Chicago: The University of Chicago Press, 1974), 130.

Another solution also exists. A more contemporary answer may be to create a position for federal law enforcement akin to the recently anointed Director of National Intelligence (DNI). In his paper, “Organizing for Homeland Security,” political scientist Charles R. Wise identifies three options related to the coordination and collaboration of newly created governmental positions, which can be characterized as White House Control, Power Sharing and Congressional Control.<sup>37</sup>

The first, White House Control, envisions “executive order coordination” in which the president and his staff coordinate the activities of the different executive offices that have standing to pursue a particular issue. Executive order coordination allows the entities involved to remain decentralized, while simultaneously promoting “flexibility by relying on the broad executive power of the president”.<sup>38</sup> This is very much in line with the DNI’s management principle of “centralized oversight, decentralized execution.”<sup>39</sup> This option was pursued by President Bush when he established the Office of Homeland Security. The main advantage of this model is that it is flexible and allows for rapid response since there is virtually no congressional oversight.<sup>40</sup>

The second and third options, Power Sharing and Congressional Control, require the formalization of the position and the bifurcation of control between the Executive and Legislative Branches. Here, the newly created Director of Federal Investigations (DFI) is established by law rather than by executive order. In his paper, “The Disaster after 9/11: The Department of Homeland Security and Intelligence Reorganization,” Charles Perrow discusses how the Gilmore Commission recommended this procedural option when it

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<sup>37</sup> Charles R. Wise, “Organizing for Homeland Security,” *Public Administration Review* 62:2 (March/April 2002): 135. [http://www.dni.gov/reports/cda\\_14-25-2004\\_report.pdf](http://www.dni.gov/reports/cda_14-25-2004_report.pdf). [Accessed May 26, 2006].

<sup>38</sup> Charles Perrow, “The Disaster after 9/11: The Department of Homeland Security and the Intelligence Reorganization,” *Homeland Security Affairs* II:1:3 (2006): 4–8. <http://www.hsaj.org/?fullarticle=2.1.3>. [Accessed May 23, 2006].

<sup>39</sup> *Report on the Progress of the Director of National Intelligence in Implementing the “Intelligence Reform and Terrorism Prevention Act of 2004,”* May 2006, 1. [http://www.dni.gov/reports/cda\\_14-25-2004\\_reports.pdf](http://www.dni.gov/reports/cda_14-25-2004_reports.pdf). [Accessed July 12, 2006].

<sup>40</sup> Perrow, “The Disaster after 9/11,” 4.

examined the need for a national office for combating terrorism.<sup>41</sup> This office was to be statutorily empowered, but located within the White House. This option “gives the president considerable authority, but it is shared with Congress, which writes the laws governing it.”<sup>42</sup> In this setting, such a law could mirror the Section 102 of the Intelligence Reform and Terrorism Prevention Act of 2004, which empowers the DNI thusly:

Section 102

(b) PRINCIPAL RESPONSIBILITY—Subject to the authority, direction, and control of the President, the Director of National Intelligence shall—

- (1) serve as the head of the intelligence community;
- (2) act as the principal advisor to the President, to the National Security Council for intelligence matters related to the national security; and
- (3) consistent with section 1018 of the National Security Intelligence Reform Act of 2004, oversee and direct implementation of the National Intelligence Program.

Admittedly, the creation of a DFI would be speculative, especially since it is too early to measure the impact of the DNI. Assuming for a moment that the DNI is a glorious success, the creation of a DFI would not have the synergetic effect that integrating the Big Six would. As discussed in Chapter VII, the disciplines of Intelligence and Investigations are different, so much so that the characteristics, which negatively affect the performance of the Big Six, do not adversely affect the Intelligence Community.

One of the lessons learned from the Progressive Era model is that compartmenting or streamlining law enforcement agencies will not lessen the negative byproduct

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<sup>41</sup> Perrow, “Disaster After 9/11,” 7; (The Gilmore Commission’s official designation is the *Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction*. The Advisory Panel assessed the capabilities for responding to terrorist incidents in the U.S. Response capabilities at the Federal, State, and local levels will be examined, with a particular emphasis on the latter two. <http://www.rand.org/nsrd/terrpanel/charter.html>.) [Accessed July 12, 2006].

<sup>42</sup> Ibid.

generated by their coterminous existence. Further, a DNI type position operates far above the micro-level required of a law enforcement manager whose operational timetable is far shorter and, thereby, more dynamic. The recommendations made herein, namely, the integration of the Big Six and the removal of the domestic intelligence mission from federal law enforcement, are the best solution. A newly reconstituted FBI will have more investigative expertise, jurisdiction and focus.

#### IV. DEFECTS IN THE CURRENT CONFIGURATION

*Organizational reform is not a panacea. There is no perfect organizational design, no flawless managerial fix...Even excellent organizational structure cannot make impetuous or mistaken leaders patient or wise, but poor organizational design can make good leaders less effective...*

*General Charles G. Boyd<sup>43</sup>*

The first step in approaching the subjects of integration and comparative organizational structure is to explore the defects of the current configuration. This will lay the foundation for the central question, “will the integration of the Big Six make the nation safer?” In order to accomplish this, the deficiencies of the current system and the expected benefits of the proposed system must be weighed against the cost of changing to the new system. Of course, a prerequisite in devising a new scheme is that defects can be corrected without causing more serious harm.

In terms of organizations, the government is like a “super-firm” that is able to influence outcomes in a manner no private entity can. This does not mean that the government is immune from market forces.<sup>44</sup> The administration of government is influenced by different elements than those that impact private organizations, which in the course of their affairs pursue the goal of efficiency. Capitalistic efficiency is measured by obtaining a desired level of output at the lowest possible price. This does not exclude efficiency as a desired outcome of government administration, but indicates that it should not be the sole influence in the policymaking process.

The challenge facing government entities is not profitability, but accountability to the public good. In his book, *Sharing Power*, Donald F. Kettl identified the metrics of accountability for government organizations. Though Kettl’s work involved performance

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<sup>43</sup> General Charles G. Boyd, USAF (Ret.), preface to “Road Map for National Security: Imperative for Change,” *The Phase III Report of the U.S. Commission on National Security/21<sup>st</sup> Century*, (Hart-Rudman Commission), <http://govinfo.library.unt.edu/nssg/PhaseIIIIFR.pdf>. [Accessed February 14, 2006].

<sup>44</sup> Ronald H. Coase, “The Problem of Social Cost” *Journal of Law and Economics*, 3:1(October 1960): 23. <http://www.sfu.ca/~allen/CoaseJLE1960.pdf>. [Accessed March 3, 2006].

of government administration through decentralization and reliance upon the private sector to fulfill traditional government services his performance measures are easily applied in other areas.

Kettl identified five measures—efficiency, effectiveness, capacity, responsiveness and trust/confidence—which are suitable criteria for examining the efficacy of integrating the Big Six. He called these the Five Standards.<sup>45</sup> What is unclear from Kettl’s work is whether the Five Standards are meant to be prioritized. It seems logical that Kettl did not seek to prioritize the standards because the relative weight of an individual standard will fluctuate from situation to situation based on the facts. In reality, the standards either “compete to shape the public interest” or interact in a complementary way.<sup>46</sup>

Using Kettl’s definition of efficiency—the maximum output for the lowest input—it becomes clear that the success of law enforcement agencies cannot be judged by this standard alone. For example, that most effective policing strategy might not be the most cost preventative strategy, therefore maximum output requires more than minimal input. In a Use of Force context, a police department may require the use of a less-than-lethal device such as a taser in lieu of a firearm in a deadly force situation. The firearm is a more effective tool for terminating the threat, but the taser may promote trust and confidence in the community because the citizens feel the Use of Force policy has integrity and that the police respect their civil rights.

Before an informed decision can be made regarding the benefit of the integrative model, the current configuration must be examined and certain condition precedents established. First, it must be determined whether the current configuration of six independent agencies in three executive departments creates negative byproducts that reduce optimal functionality. Assuming that this hypothesis is true, the second issue to be resolved is whether the integration of the Big Six will mitigate the negative byproducts, and, thus, enhance the output of investigative work-product.

Based on my professional experiences and conversations with prosecutors, defense attorneys, military personnel, local/state/federal police officers and criminal

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<sup>45</sup> Kettl, *Sharing Power*, 19.

<sup>46</sup> *Ibid*, 17.

defendants, I have identified five characteristics that are present in and adversely impact the investigative capabilities of the Big Six. Certainly, other characteristics may exist, but these appear dominant. These five *Negative Characteristics* are defined as follows:

- 1) Interagency Conflict—the real or perceived incongruity of agencies’ interest that detrimentally affects the performance of one or both of the agencies. Such conflict can materialize in different forms like interagency rivalry, mistrust or malfeasance. One example of this can be seen in the law enforcement context, when, during a joint operation, the participating agencies vie for control or credit for an action or case.
- 2) Redundancy—the duplication or repetition of action. One example of this can be seen in the law enforcement context, when two or more agencies participate in an investigation and unnecessarily perform the same or similar tasks. These tasks can be administrative, such as report writing, or operational, such as assigning personnel to participate in an enforcement action when there are already sufficient human resources.
- 3) Data Fragmentation—the collection and segregation of information, which prevents the sharing of it. One example of this can be seen in the law enforcement context when one agency has information regarding a suspect that may be of value to another agency and does not or cannot provide access to the information or make the other party aware of the information.
- 4) Jurisdictional Foreclosure—the inability to enforce a law due to lack of authority or resources. Lack of authority can be seen in the law enforcement context when a DEA agent is prevented from pursuing Immigration violations or an FBI agent is prevented from conducting a lawful border search. Lack of resources can be seen when ICE establishes a minimum weight for drug offenses before it will open an investigation.
- 5) Violation of Civil Rights— The deprivation of rights belonging to an individual, including civil liberties, due process, equal protection of the laws, and freedom from discrimination through an act or omission to act by law enforcement.

Kettl’s Five Standard methodology can be used to evaluate the Big Six by associating the characteristics to the Five Standards. The presence of the characteristics would indicate that the current configuration does not function at an optimal level. In conducting this analysis, no attempt will be made to singularly qualify or rate the characteristics due to their interrelationships. Additionally, the quantification of the standards between the comparative models—the current configuration versus the integrated configuration—cannot be made because traditional metrics such as number of arrests, search warrants executed, reductions in crime, etc. are unobtainable since the integrative model advocated herein has never existed.

The characteristics can be associated with the Five Standards as follows:

		FIVE STANDARDS				
		Efficiency	Effectiveness	Responsiveness	Capacity	Integrity
NEGATIVE CHARACTERISTICS	Interagency Conflict					
	(i) Rivalry	x	x			x
	(ii) Mistrust		x			x
	(iii) Malfeasance		x			x
	Redundancy					
	(i) Admin	x	x	X		
	(ii) Operational	x	x			
	Data Fragmentation					
	(i) Intentional		x	X	x	x
	(ii) Jurisdictional		x	X	x	
	Jurisdictional Foreclosure					
	(i) Authority	x	x	X	x	
	(ii) Resources	x	x	X	x	
	Violation of Civil Rights	x	x	X	x	x

Table 1. Correlating the Five Standards with the Negative Characteristics

Admittedly, the application of the *Negative Characteristics* to the Five Standards may be inexact insofar as it is based on intuition rather than science, but such exactness is not required to establish the basic association, particularly since circumstantial evidence can carry the same weight as direct evidence. The establishment of some association between the *Negative Characteristics* and the Five Standards primes the main argument, which is that positive elements such as efficiency, effectiveness, responsiveness, capacity and integrity are affected by the existence of negative elements such as interagency

conflict, redundancy, data fragmentation, jurisdictional foreclosure and/or civil rights violations. This leads to the conclusion that the generation of *Negative Characteristics* will cause an entity to under-perform. From this foundation, questions related to materiality and pervasiveness can be addressed. Anecdotal evidence of the presence and relevance of the *Negative Characteristics* within Big Six operations is presented below.

**A. NEGATIVE CHARACTERISTICS: INTERAGENCY CONFLICT, REDUNDANCY, DATA FRAGMENTATION AND JURISDICTIONAL FORECLOSURE**

An interesting examination of inefficiency through redundancy is found in a 2004 Inspector General Audit report related to the Arson and Explosive Databases individually operated by the ATF and FBI. The databases exist so that state and local law enforcement officers can seek and provide arson and explosives data for investigative and intelligence purposes. The auditors identified the joint jurisdictional responsibility the ATF and FBI share for investigating and compiling data about arson and explosive related events. They also recognized this as the source of inefficiency. The auditors noted that the separate yet duplicative databases caused a redundancy of effort and discrepancy in the accuracy, availability, and uniformity of the information, which led to a waste of resources.<sup>47</sup> While this audit provided only a micro-inspection of governmental inefficiency, the problem exists in other areas and between other agencies.

A good example of how data fragmentation promotes, not simply inefficiency, but grave ineffectiveness is documented in the 9/11 Commission Report. In January 2001, a joint FBI/CIA source identified a person known as “Khallad” as the director of the USS Cole bombing. The CIA later connected Khallad to one of the 9/11 bombers, but did not notify any U.S. law enforcement agency. The 9/11 bomber, Khalid al Mihdhar, entered the U.S. under his real name, but because U.S. law enforcement was not informed of his nefarious connections, it did not search for him. The 9/11 Commission found that had the information been shared, al Mihdhar could have been located and detained, thereby

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<sup>47</sup> The United States Department of Justice, Office of Inspector General, Audit Report 05-01, *The Bureau of Alcohol, Tobacco and Firearms and Explosives’ and Federal Bureau of Investigation’s Arson and Explosives Intelligence Databases, Executive Summary*, October 2004. <http://www.usdoj.gov/oig/reports/ATF/a0501/index.htm>. [Accessed October 14, 2005].

disrupting at least part of the plot.<sup>48</sup> Though the Commission analyzed the interaction between an intelligence agency, CIA, and an investigative agency, FBI, the point that the failure to share data promotes mission failure is established and applies with equal or greater weight to this proposal. If anything, the information sharing solutions between law enforcement agencies should be easier to facilitate since they operate in a more codependent manner.

Unfortunately, this does not always happen. During 2002, DEA, ICE, FBI and the Mexican government's PGR participated in Operation Sky High, an international cocaine smuggling investigation. ICE played a significant role in the investigation based on its control of a confidential source (CS) who was a high ranking member of the cocaine smuggling cartel.<sup>49</sup> Pursuant to a Memorandum of Understanding between ICE and DEA, which has primary jurisdiction in U.S. narcotics cases, ICE notified DEA about its source. The MOU, originally entered into between the former USCS and DEA, was created to promote communication and cooperation while concurrently mitigating dangerous, confrontational and redundant activities.<sup>50</sup> One of the primary purposes of the MOU was to quell the interagency rivalries that promulgated the creation of DEA in the first place.<sup>51</sup>

During the investigation, DEA accused ICE of failing to share information gathered from the CS. DEA expressed to ICE that it felt this failure was based on ICE's lack of trust in DEA's agents. As the investigation progressed, ICE gathered material information from the CS that it did not share with DEA. Some of this information pertained to the CS' role in at least one, but maybe as many as thirteen, homicides

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<sup>48</sup> *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, (NY: W.W. Norton & Company, Inc, 2004) 267, 272.

<sup>49</sup> Letter from DEA Special Agent in Charge Sandalio Gonzalez to ICE Special Agent in Charge John Gaudioso, dated February 24, 2004, [www.narconews.com/print.php3?ArticleID=1248&lang=en](http://www.narconews.com/print.php3?ArticleID=1248&lang=en). [Accessed February 6, 2006]; Alfredo Corchado, "Border official demoted during inquiry," *Dallas Morning News*, June 4, 2004, [www.dallasnews.com/cgi-bin/bi/gold\\_print.cgi](http://www.dallasnews.com/cgi-bin/bi/gold_print.cgi). [Accessed February 8, 2006].

<sup>50</sup> Memorandum of Understanding Between The Drug Enforcement Administration and The United States Customs Service To Implement Title 21 Cross-Designation Policies and Procedures, <http://oi.ice.dhs.gov/search.asp>. [Accessed February 6, 2006].

<sup>51</sup> Drug Enforcement Administration, "DEA History Book, 1970–1975."

committed in Mexico. The CS also informed ICE that two of DEA's Mexico based agents had been identified by the cartel.

Allegedly, ICE did not share any of this information with DEA because it was worried that the information would detrimentally affect the joint investigation as well as another exclusive ICE investigation involving illegal cigarettes. DEA eventually learned about the information the CS provided to ICE, but not until hired killers working for the cartel went to the residence of one of its Mexico based agents. DEA immediately conducted an emergency evacuation of the two agents and their families.

This case unfortunately portrays how interagency rivalry, redundancy and data fragmentation can materially and adversely affect the Big Six mission. Had a single narcotics agency been involved, instead of three, this redundancy would not have existed. Further, a unified command structure would have prevented the data fragmentation and more capably identified and suppressed the rivalry. Interagency rivalry is an ongoing threat to competent government function.

Unfortunately, rivalry, both inter and intra-agency, will always exist. For example, it is not uncommon for different divisions within a unified business, military or police command to interfere with or fail to support the other's operations as they compete for funding or credit. The difference is that in a unified command, such transgressions are easier to identify and remedy. Within a single command, transgressors are subject to the same institutional and peer review scheme and disciplinary policy. When commands are divided, negligent or malicious acts are more frequently overlooked by the uninjured agency as it seeks to gain advantage or shield itself and/or its employee from liability. It also engenders an "us against them mentality," which perverts conceptions of loyalty and fidelity.

While the above case may seem extreme it is not. After the terrorist attacks of September 11, 2001, the FBI redirected its resources to fight the War on Terror. Prior to May 2003, neither ICE nor the FBI had lead agency status to investigate terrorist financing schemes. In fact, ICE's Green Quest Program was probably more developed

and operational than any of the FBI's programs.<sup>52</sup> In order to coordinate efforts, mitigate duplicative allocation of resources, and wage a seamless law enforcement campaign against terrorist financing, ICE and the FBI entered into a Memorandum of Understanding (MOU) on May 13, 2003. The terms of the MOU designated the FBI as the "primary" investigative agency, and directed ICE to transfer its terrorism-related investigations to the bureau. Despite the transfer of cases, the MOU sought to create a cooperative climate where ICE agents continued to participate in terrorist financing investigations by being assigned to the FBI's JTTFs.<sup>53</sup>

After entering the MOU, ICE agents from Houston wrote a T-III wiretap application so it could intercept the telephonic communications of a terrorist financing target. The T-III application was forwarded to the FBI's local office, the local U.S. Attorney's Office and the Department of Justice's Counterterrorism Section and Office of Enforcement Operation. Each determined that probable cause existed linking the financing scheme to international terrorism. Per the MOU, the T-III application was then forwarded to the FBI's Headquarters for its concurrence. For over three months, FBI-HQ needlessly delayed its approval. During this time, more the 700 communications with a suspected nexus to terrorism were not intercepted.

Ultimately, due to the FBI's delay, ICE was unable to conduct its investigation and closed its case. The FBI did not pursue the investigation and later admitted that it mishandled the T-III application and the delay should not have occurred. Persons familiar with the situation stated that in their opinion the FBI's delay was not based on negligence, but on its desire to protect its turf.<sup>54</sup>

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<sup>52</sup> Operation Green Quest was a USCS-led financial enforcement initiative designed to harness the formidable financial expertise and authority of the Treasury Department to freeze accounts, seize assets, and, where appropriate, bring criminal actions against individuals and organizations that finance terrorism. [http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/archives/legacy/2002/22002/02262002.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/archives/legacy/2002/22002/02262002.xml). [Accessed July 12, 2006].

<sup>53</sup> Memorandum of Agreement between the Department of Justice and The Department of Homeland Security Concerning Terrorist Financing Investigations, May 13, 2003.

<sup>54</sup> Letter from Senate Finance Committee Chairman Charles E. Grassley to the Attorney General Alberto Gonzales and Homeland Security Secretary Michael Chertoff, dated June 3, 2005. <http://msnbcmedia.msn.com/i/msnbc/Sections/TVNews/Dateline%20NBC/grassley.pdf>; [Accessed February 8, 2006]. Letter from ICE Special Agent in Charge Joseph R. Webber to Senator Charles E. Grassley, dated January 24, 2005. [http://msnbcmedia.com/i/msnbc/Sections/TVNews/Dateline%20NBC/webber\\_letter%20\\_to\\_grassley.pdf](http://msnbcmedia.com/i/msnbc/Sections/TVNews/Dateline%20NBC/webber_letter%20_to_grassley.pdf). [Accessed February 8, 2006].

In this case, the government failed to operate efficiently, effectively and responsively because of interagency rivalry and redundancy. ICE could have conducted its investigation had it not needed the FBI's approval, which under the circumstances was completely unnecessary since the ICE officials and Department of Justice attorneys had already scrutinized it. The involvement of the FBI in this case, even had it approved the wiretap, added no value and only created an avenue for failure, which is what occurred. In many ways, ICE's ability to conduct financial investigations has been foreclosed by the MOU.

A more common example of jurisdictional foreclosure is evidenced in the following example. Pre-September 11, 2001, the former USCS and DEA initiated an Organized Crime Drug Enforcement Task Force (OCDETF) investigation targeting the smuggling of pseudoephedrine into the U.S. from Canada and the unlawful transfer of criminal proceeds from the U.S. to Yemen.<sup>55</sup> At the time, neither agency had the authority to conduct Title 8 Immigration investigations, which was critical since nearly every target in the investigation was an immigrant from Yemen.

In an effort to pursue the immigration violations, and to perhaps recruit potential informants, the OCDETF coordinator from the former INS was asked to commit resources to the investigation. Despite an expression of intention to do so, none really materialized. A telephone number for an immigration agent was forwarded to the USCS and DEA case agents and contact was made. Unfortunately, the INS agent stated that INS could not spare resources to the investigation because Mexicans, not Middle Easterners were his office's priority and the office was overwhelmed. Consequently, no immigration charges were filed though it was discovered that a number of targets were in the U.S. illegally. In fact, multiple sources of information have estimated that 90% of Yemeni immigrants that came to the U.S. prior to 1995 entered or remained in the U.S. under false pretenses. Regrettably, many of these persons remain in the U.S. because their whereabouts is no longer known.

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<sup>55</sup> The Organized Crime Drug Enforcement Task Force (OCDETF) is a federal drug enforcement program that focuses attention and resources on the disruption and dismantling of major drug trafficking organizations. OCDETF provides a framework for federal, state, and local law enforcement agencies to work together to target well-established and complex organizations that direct, finance, or engage in illegal narcotics trafficking and related crimes. <http://www.justice.gov/criminal/ocdef.html>. [Accessed July 12, 2006].

## B. NEGATIVE CHARACTERISTICS: CIVIL RIGHTS

The threat of transnational criminal and terrorist organizations is ubiquitous. The controversial issues involved in addressing these threats are the steps the U.S. is prepared to take to combat them. Commonly, these steps interfere with traditional conceptions of right and wrong. Recent acts such as the non-judicial arrest of Jose Padilla, the un-reviewed classification and detention of persons at Guantanamo Bay, Operation Iraqi Freedom, and the NSA's warrantless electronic monitoring of persons within the U.S. are examples of this. Unfortunately, it would be a bit misleading to suggest that such abuses and/or illegal government activity did not occur until recently. Watergate, Iran-Contra and the FBI's COINTELPRO, a program aimed at suppressing political dissent during the 1960s and 1970s, are historical examples.<sup>56</sup> Therefore, public concern over the integration of the Big Six is not unreasonable, at least superficially.

Ideally, agents from each of the Big Six agencies would never commit errors or violate citizen's rights and in the great majority of cases they do not. However, most civil rights violations go unrecognized and unreported by the public. Considering that each Big Six agency prioritizes the value of internal enforcement individually, the operating environment is quite unregulated. Recalling that breaches of *Integrity* negatively affect each of the Five Standards, the mitigation of civil rights violations becomes not only an issue of fairness, but also performance.

The collective thought that the people of the U.S. are willing to cede their civil liberties and absorb invasions of their privacy for the sake of security, without any proof that the security measures work, is waning the more distant 9/11 becomes.<sup>57</sup> Historically, four circumstances lead to government abuses of civil rights:

- (1) Surveillance and the secret gathering of information;
- (2) the collection and retention of unnecessary information;
- (3) the use of legally obtained information for improper purposes; and
- (4) the failure to verify information used in official government applications, such as search warrants.<sup>58</sup>

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<sup>56</sup> Treverton, "The Next Steps in Reshaping Intelligence,"14.

<sup>57</sup> Ellen Alderman, "Homeland Security & Privacy, Striking a Delicate Balance," *Carnegie Reporter*, 2:1 (Fall 2002). <http://www.carnegie.org/reporter/05/homeland>. [Accessed June 23, 2005].

<sup>58</sup> Unknown source.

The main fallacy with the argument against the creation of a unified national police force, at least as it relates to the Big Six, is that the coalescence of federal law enforcement agencies does not ipso facto portend a greater threat or loss of rights. To a certain degree this may seem counterintuitive, but the integration advocated here, along with the streamlining of the law enforcement mission argued for in Chapter VII, will diminish the potential for constitutional or civil rights violations.

Concomitant with the centralization of the Big Six is the administrative oversight of its actions. Within the context of the Big Six, the American public is exposed to six separate investigative agencies probing into their affairs. It is no secret that each of these agencies compiles and stores its own data, thereby increasing the probability of abusive government surveillance, the secret gathering of information, as well as the collection and retention of unnecessary information, six-fold.

The actions of each Big Six agency are monitored by their own internal mechanisms, variously referred to as Internal Affairs, Office of Professional Responsibility and/or Inspector General. These agencies maintain oversight of the agencies for which they work not any of the others. This means six different interpretations of six different policies.

In his prepared testimony before the Senate Judiciary Committee in June 2001, Michael Bromwich, the former Inspector General of the Department of Justice, addressed the “privileged and protected status” the FBI has within the Justice Department.<sup>59</sup> While Bromwich’s testimony related to DOJ Inspector General-centric issues and not the integration of the Big Six, his comments relate to this discussion because DOJ and the FBI are the intended destinations for the Big Six at completion of the *Integration Evolution* discussed in Chapter VI.

In defense of his position that the DOJ’s Inspector General can maintain oversight of the FBI, Bromwich stated “For most of our history, concerns about the FBI’s becoming a national police force have been countered by the assurance that it is under the

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<sup>59</sup> *Prepared Testimony of Michael R. Bromwich before the Senate Judiciary Committee*, June 20, 2001, 3. [http://www.fas.org/irp/congress/2001\\_hr?062001\\_bromwich.html](http://www.fas.org/irp/congress/2001_hr?062001_bromwich.html). [Accessed August 23, 2005].

control of the Justice Department and the Attorney General.<sup>60</sup> A logical extension of this statement is that the integrity of the Big Six once consolidated within DOJ, and ultimately merged into the FBI, can be maintained. The core of Bromwich's testimony is that objectivity cannot be regulated when oversight is completely housed within an agency and emphasized this point by highlighting some of the mistakes committed by the FBI that affected civil liberties, to include the matters of Wen Ho Lee, Ruby Ridge, and Richard Jewell.<sup>61</sup>

Bromwich's expectation that the Justice Department can maintain adequate oversight of the FBI should not be interpreted to mean that departmental oversight can be expected to eradicate all civil rights violations committed by law enforcement. This is of little consequence since the central issue is whether the integration of the Big Six will proximately cause a rise in such violations. Future research into this area would be beneficial. Intuitively, it seems that with appropriate oversight integration of the Big Six will promote procedural congruity and accountability, which will lead to more operational uniformity and fewer violations.

### C. CONCLUSION

The idea of integrating law enforcement agencies is not new, and as the events of 9/11 and Hurricane Katrina have shown, the need for law enforcement to operate in a smarter and more cohesive manner has never been more evident. However, the current configuration of major law enforcement agencies within three different executive departments, Justice, Treasury and Homeland Security produces interagency conflict, redundancy, data fragmentation, jurisdictional foreclosure and civil rights violations, which affect and, thereby, diminish the collective and singular efforts of each agency. With this in mind, the seminal issue is not whether the current configuration promotes dysfunction. All human endeavors are prone to fail in some regard.

As obvious as the failures discussed above are, it would be misleading to argue that the occurrence of such events mandates the overhaul of federal law enforcement's

<sup>60</sup> *Testimony of Michael R. Bromwich*, 8. [http://www.fas.org/irp/congress/2001\\_hr?062001\\_bromwich.html](http://www.fas.org/irp/congress/2001_hr?062001_bromwich.html). [Accessed August 23, 2005].

<sup>61</sup> *Ibid.* 5-6.

main investigative agencies if they are isolated, anomalous events. Of course, the premise here is that the examples, while striking, are not extreme. Rather they are common and not surprising to persons familiar with federal law enforcement. This assertion was tested via a survey of law enforcement officers. The results of the survey are discussed in the next chapter.

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## V. SURVEY

*It has not often enough been recognized that in many cases the review of work can just as well be confined to a randomly selected sample of the work as extended to all that is produced.*

Herbert A. Simon<sup>62</sup>

During the months of January–May 2006, I conducted a survey of selected law enforcement officials in an effort to gather evidence on federal law enforcement interoperability. The participants of the survey were comprised of experienced local, state and federal investigators who had conducted multi-agency federal cases involving the Big Six, within the Northern District of California, Ninth Appellate Circuit.<sup>63</sup> A broader nationwide survey would be more encompassing, but by limiting the survey to a single region, any findings regarding the absence or presence of characteristics creates a rebuttable presumption that the same exists elsewhere, absent contrary evidence. It should be noted that three of the four cases cited in the previous chapter and used as scenarios in the survey, did not occur in the Northern District of California.

The expectation of the survey was that the findings would validate the author's assertions that the *Negative Characteristics*, presented in Chapter IV, are ubiquitous and materially impact the enforcement of federal laws. Further, that the post-9/11 changes in operating procedure and agency configuration, did not and will not mitigate these characteristics. In the survey, the participants reviewed sanitized versions of the four case studies presented in last chapter. After reviewing each case, the participants were asked three questions. After completing the four scenarios the participants were asked one general question regarding the impact 9/11 has had on the interoperability of federal law enforcement agencies.

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<sup>62</sup> Simon, *Administrative Behavior*, 315.

<sup>63</sup> The group was limited to this single federal jurisdiction for two reasons. The first was simply for logistical reasons since I am located there. The second, and more important, is because the Ninth Circuit and, specifically, the San Francisco Bay Area is arguably the nation's most socially liberal and judicially progressive. Such a jurisdiction exacerbates the scrutiny federal agents are subject to and may amplify the working environment. The degree in which this might impact the presence or perception of the *Negative Characteristics* is unknown, but it does provide a benchmark by which additional study can be compared.

As noted previously, the scenarios presented in Chapter IV were obvious examples of government fallibility. The purpose of limiting the participants' choices to the *Negative Characteristics* was to determine their viability as metrics of dysfunction for federal law enforcement operations. That is, to see if the participants could easily relate the characteristics to the facts presented in the scenarios. Neither the purpose nor the expectation was that a single characteristic would be associated with a specific scenario. While the results of the survey, which appear in a diagram later in the chapter, reveal that the participants tended to associate a particular characteristic with a scenario, rarely did a participant select only one. Again, this is of little consequence since the characteristics are not mutually exclusive and are in some situations comparable.

The crux of the survey lies in the third question, which seeks input from the participants regarding their professional experience. This third question addresses the seminal issue of this thesis, which is how pervasive the *Negative Characteristics* are within federal law enforcement interagency operations. The interoperability issue is at the core of not only modern law enforcement, but homeland defense and security as a whole. As discussed previously, in the GWOT Era no Big Six agency can singularly address the threat. Thus, once the presence of negative characteristics is established, materiality and scope become central. The survey is presented below:

#### Law Enforcement Survey

The following survey is designed to gather your opinions on the subject of interoperability between law enforcement agencies. The survey contains four scenarios.

After reading each scenario you will be asked three questions. Your answers may be as short or long as you desire, but fuller explanations are encouraged.

The questions will focus on the overall law enforcement goal(s) presented in the scenario, i.e. dismantle a criminal conspiracy, collection of evidence, identify sources and methods, etc., and whether any of the four characteristics described below were present.

If one of the scenarios is similar to a personal law enforcement experience, please describe it.

At the end of the scenarios, you will be asked one general question.

Please email your responses to [gregmandoli@hotmail.com](mailto:gregmandoli@hotmail.com).

## **Characteristics**

- 1) Interagency conflict
- 2) Redundancy
- 3) Data fragmentation
- 4) Jurisdictional foreclosure

## **Definitions**

- 1) Interagency Conflict—the real or perceived incongruity of agencies’ interest that detrimentally affects the performance of one or both of the agencies. Such conflict can materialize in different forms like interagency rivalry, mistrust or malfeasance. One example of this can be seen in the law enforcement context, when, during a joint operation, the participating agencies vie for control or credit for an action or case.
- 2) Redundancy—the duplication or repetition of action. One example of this can be seen in the law enforcement context, when two or more agencies participate in an investigation and unnecessarily perform the same or similar tasks. These tasks can be administrative, such as report writing, or operational, such as assigning personnel to participate in an enforcement action when there are already sufficient human resources.
- 3) Data Fragmentation—the collection and segregation of information, which prevents the sharing of it. One example of this can be seen in the law enforcement context when one agency has information regarding a suspect that may be of value to another agency and does not or cannot provide access to the information or make the other party aware of the information.
- 4) Jurisdictional Foreclosure—the inability to enforce a law due to lack of authority or resources. An example of lack of authority can be seen in the law enforcement context when a DEA agent is prevented from pursuing Immigration violations or an FBI agent is prevented from conducting a lawful border search. An example of lack of resources can be seen when ICE establishes a minimum weight for drug offenses before it will open an investigation.

## **Scenario #1**

In January 2001, a confidential source, jointly handled by an U.S. intelligence agency and a U.S. investigative agency, identified a person known as “Mohammad” as a terrorist. The U.S. intelligence agency later identified “Mohammad” as Mohamed LNU and connected him with a known terrorist. The U.S. intelligence agency did not notify its investigative counterpart or any U.S. law enforcement agency of its findings. Mohamed LNU entered the U.S. under his real name. He was not denied entry because U.S. border agents were not informed of his true identity or terrorist connections. Once in the country, no U.S. investigative agency searched for Mohamed LNU because it did not know his true identity or that he was in the U.S. Mohamed LNU later committed a terrorist act against U.S. civilians.

*What was or should have been the goal(s) of law enforcement in this scenario?*

*Do you believe that any of the characteristics described above are present in this scenario? If yes, do you believe the characteristic(s) interfered with or had more than nominal affect on U.S. law enforcement's ability to prevent Mohamed LNU from committing the terrorist act?*

*Have you encountered something similar to this during your career?*

### **Scenario #2**

After the terrorist attacks of September 11, 2001, law enforcement agency #1(A1) and law enforcement agency #2 (A2) redirected their respective resources to fight the War on Terror. A1 and A2 both had the lawful authority to investigate terrorist financing schemes. In order to coordinate efforts, mitigate duplicative allocation of resources, and wage a seamless law enforcement campaign against terrorist financing, A1 and A2 entered into a Memorandum of Understanding (MOU). The terms of the MOU designated A1 as the "primary" investigative agency, whereby A2 would transfer its terrorism-related investigations to A1. Despite the transfer of cases, the MOU sought to create a cooperative climate where agents from A2 continued to participate in terrorist financing investigations by being assigned to multi-agency task force controlled by A1.

After entering the MOU, A2 wrote a T-III wiretap application for a terrorist financing case. The T-III application was forwarded to A1's local office, the local U.S. Attorney's Office and the Department of Justice's Counter-Terrorism Section and Office of Enforcement Operation. Each determined that probable cause linking the financing scheme to international terrorism existed. Per the MOU, the T-III application was then forwarded to A1's Headquarters for its concurrence. For over three months, A1 needlessly delayed providing its approval. During this time, more the 700 communications with a suspected nexus to terrorism were not intercepted. Ultimately, due to A1's delay, A2 was unable to conduct its investigation and closed its case. A1 did not pursue the investigation. A1 later admitted that it mishandled the T-III application and the delay should not have occurred. Interviews with persons familiar with the situation stated that in their opinion A1's delay was not based on negligence, but on A1's desire to protect its turf.

*What was or should have been the goal(s) of law enforcement in this scenario?*

*Do you believe any of the characteristics listed and described above are present in this scenario? If yes, do you believe the characteristic(s) interfered with or had more than nominal affect on A2's ability to conduct its investigation?*

*Have you encountered something similar to this during your career?*

### **Scenario #3**

During 2002, federal law enforcement agency #1 (A1) initiated Operation Highway, an international cocaine smuggling investigation jointly conducted with the Mexican government. Pursuant to a Memorandum of Understanding between A1 and U.S. law enforcement agency #2 (A2), A2 had primary jurisdiction in U.S. narcotics cases, therefore, A1 was mandated to notify A2 of its investigation and invite A2's participation. A1 complied with these requirements and A2 joined the investigation.

A1 generated its investigation based on confidential source (CS) information. CS was a high-ranking member of the cocaine smuggling cartel. During the investigation, A2 accused A1 of failing to share information gathered from CS. A2 expressed to A1 that it felt this failure was

based on A1's lack of trust in A2's agents. As the investigation progressed, A1 did gather relevant information from CS that it did not share with A2. Some of this information pertained to CS' role in a homicide committed in Mexico and that two of A2's Mexico-based agents had been identified by the cartel. A1 did not share the information with A2 because it was worried that the information would detrimentally affect the joint investigation as well as another exclusive A1 investigation involving illegal cigarettes.

A2 later learned about the information CS provided to A1. A2 accused A1 of concealing vital information, which, had it been disseminated, would have prevented the homicide committed in Mexico. Further, A2 alleged that A1's failure to share information put the lives of the two A2 agents and their families at risk. A2 conducted an emergency evacuation of its agents and their families.

*What was or should have been the goal(s) of law enforcement in this scenario?*

*Do you believe any of the characteristics listed and described above are present in this scenario? If yes, do you believe the characteristic(s) interfered with or had more than nominal affect on how U.S. law enforcement conducted this investigation?*

*Have you encountered something similar to this during your career?*

#### **Scenario #4**

In late-1999, U.S. law enforcement agencies #1 and #2, (A1) and A(2) respectively, initiated an OCDETF investigation targeting the smuggling of pseudoephedrine into the U.S. from Canada and the unlawful transfer of criminal proceeds from the U.S. to Yemen. A1 and A2 both have the authority to conduct drug and money laundering investigations. In narcotics offenses, A2 is the lead federal agency and has the authority to conduct domestic and international investigations. A1 can only conduct narcotics investigations that have an international nexus. Further, A2 cannot conduct money laundering investigations unless the proceeds are generated by the sale of narcotics. Nearly every target in the investigation was an immigrant from Yemen.

As the investigation progressed, A2 continually failed to commit its fair share of resources. According to A2 agents, they were not interested in pseudoephedrine because it was only a precursor chemical, and therefore, less interesting than investigations involving cocaine, heroin or methamphetamine. A1 was prevented from expanding its investigation to include the persons manufacturing the methamphetamine due to the domestic nature of the investigation and A2's lack of participation.

In an effort to obtain more agents to support the investigation, A1 sought assistance from U.S. law enforcement agency #3 (A3), which had authority to conduct immigration investigations. A1 did not have the authority to conduct immigration investigations. A3 assigned an agent to the investigation, but neither this agent nor any other agent from A3 participated in the investigation. A1 learned that many of the targets were committing immigration related offenses. When A1's case agent asked A3's case agent why no one was participating in the investigation, A3's agent stated that A3 was not interested in persons from the Middle East because Mexicans were the priority.

A1 concluded its investigation and charged numerous individuals with international drug and money violations. No domestic drug targets were investigated and no immigration violations were pursued.

What was or should have been the goal(s) of law enforcement in this scenario?

Do you believe any of the characteristics listed and described above are present in this scenario? If yes, do you believe the characteristic(s) interfered with or had more than nominal affect on AI's ability to conduct the OCDETF?

Have you encountered something similar to this during your career?

**General Question**

Do you think events such as those described above are more likely or less likely to occur in federal law enforcement post-9/11...or has 9/11 not changed how federal law enforcement agencies interact with each other?

		SCENARIOS			
		#1(Mohamed LNU)	#2 (T-III)	#3 (Op Highway)	#4 (OCDETF)
NEGATIVE CHARACTERISTICS	Interagency Conflict	57%	85%	100%	57%
	Redundancy	21%	29%	36%	50%
	Data Fragmentation	71%	0%	50%	36%
	Jurisdictional Foreclosure	29%	21%	36%	64%
	Present, but unspecified	21%	14%	7%	14%
	Professional Experience	93%	79%	79%	57%

Table 2. Survey Results

The results of the survey indicate that the participants readily identified the presence of one or more of the *Negative Characteristics* in each scenario. For example, 57% noted the presence of interagency conflict in Scenario #1 involving Mohamed LNU. The totality of the results validates the association of the *Negative Characteristics* to the factual scenarios and, in turn, their correctness as measures of performance for federal investigative agencies. The percentage of participants—93%, 79%, 79%, and 59%—providing affirmative responses to the professional experience question, *Have you encountered something similar to this during your career?*, supports the proposition that the presence of the *Negative Characteristics* is pervasive in federal

law enforcement operations. This comports with the anecdotal evidence I have heard and the actual operations that I have participated in. Some of the participants' comments are listed below.

**A. Scenario #1 (Mohamed LNU)**

*The U.S. Intelligence [C]ommunity and the U.S. law enforcement community...serve two distinctly different masters. LE investigates criminal matters with a clear goal: [G]ather evidence and arrest the violator. And although LE also gathers intelligence, it does so with its aforementioned goal in mind.*

Participant F2014

*I have experienced situations in which Agencies or their members have not communicated critical information...In my opinion, lack of cooperation usually results from an attitude of "ownership" of information or cases to the detriment of the overall goals of the investigation.*

Participant K1310

**B. Scenario #2 (T-III)**

*The fact that agencies often don't work well together has been well documented. Many times they have conflict even when they don't [have] overlapping jurisdiction. If they have overlapping jurisdiction, the potential for conflict is even greater.*

Participant G-186

*On numbers[sic] occasions in my investigative career "[a]gency egos" have greatly assisted Terrorist and criminal organizations.*

Participant E416

**C. Scenario #3 (Op. Highway)**

*Yes, and the fault lies with successive Presidents and Congresses who created agencies with overlapping jurisdiction...thus creating an environment for a wholly natural competition between bureaucracies for funds, authority, and most of all, publicity.*

Participant H12

*I have not encountered something as serious as presented in the scenario. However, I have been in the position of agency A1, where I was in possession of information that I intentionally did not share with another agency [because] I believed by doing so it would impede my investigation.*

Participant G310

**D. Scenario #4 (OCDETF)**

*It really is what...is happening with these types of investigations. This happens all the time.*

Participant F1913

*I have encountered situations where I was jurisdictional[ly] foreclosed...and the agencies that were not foreclosed...participated in the investigation in a half-hearted manner [because] it was not a priority for them.*

Participant G310

The evidence collected from this survey confirms the presence and scope of the Negative Characteristics in federal law enforcement operations within the Ninth Judicial Circuit and by presumption throughout the nation as a whole. Clearly more in-depth study is needed to probe the depth or intensity of this on nationwide basis. Nevertheless, the expectation is that additional study will only corroborate the conclusions drawn upon from the data collected herein.

The last question to address is whether the events of 9/11, which ushered in the GWOT Era, and the substantial changes that have come with it, will, if given sufficient time, marginalize the negative aspects that exist today within federal law enforcement.

Quite simply, the answer is no. The significance of 9/11 is that it has changed the institutional construct of the Big Six and the perspective from which the agencies operate. This has set the stage for dialogue, the appetite for change and, most importantly, highlighted the true deficiencies. The GWOT Era did not create the *Negative Characteristics* it just made them more obvious. Below are some of the Participants comments on the subject:

**E. POST-9/11 QUESTION**

*I believe the cooperation is better now than it was pre-9/11. However, interagency cooperation is still pitiful. Much improvement is needed.*

Participant G186

*9/11 has not changed anything regarding interagency conflict, but has increased redundancy.*

Participant G103

*Within the arena of investigations relating to terrorism, I believe that the scenarios described are less likely to occur post 9/11 [because] there is greater recognition within law enforcement that individual agencies possess certain authorities and expertise that must, out of necessity, be made a part of such investigations. However, that recognition, and the resulting level of cooperation, is tenuous and weakening as we move further from the events of 9/11.*

Participant G310

*I believe that post 9/11/01 consolidation and refocusing of some federal agencies has reduced the propensity for the above listed problems to recur. However, I believe that the problems continue to exist during multi-agency investigations.*

Participant F413

*I believe that events such as those described above are less likely to happen with respect to Counterterrorism investigations because so much emphasis, importance and scrutiny are directed at counterterrorism investigations. Criminally speaking, I believe that instances of*

*interagency conflict, redundancy, data fragmentation and jurisdictional foreclosure are just as likely to occur.*

Participant K1310

*As long as there are multiple agencies with similar or the same mission, conflict will continue.*

Participant D1319

*9/11 has not changed how federal law enforcement agencies interact.*

Participant H1816

*I think the further we get from 9/11, the events described above are more likely to happen. Immediately following 9/11, agencies were under a lot of pressure to share information in order to prevent another attack, but I think agencies will always do what is in their own interest.*

Participant E516

This last quote identifies the core problem. Governmental agencies will always act to fulfill their own interest. In situations where these interests intersect, there will be a direct correlation between the number of agencies involved and the generation of negative byproducts. In the GWOT Era the Big Six jurisdictions do intersect, therefore the presence of the *Negative Characteristics* will continue and the federal law enforcement mission will continue to under-perform. As discussed previously, there are different options that can be undertaken to address this problem, but fully integrating the Big Six is arguably the most viable. However, before such integration occurs, a thoughtful plan must be devised. Such a premeditated scheme is discussed in the next chapter.

## VI. INTEGRATION EVOLUTION

*It will be necessary to grow capabilities in pieces, building on existing systems and technologies over time.*

Markle Foundation<sup>64</sup>

In the aftermath of 9/11, the passage of the HLSA and creation of DHS seemed to become symbolic surrogates for the Twin Towers. From an insider's perspective, the sudden and forced integration of diverse federal agencies creates a bureaucratic maelstrom and is not a model to follow. The rapid reorganization of twenty-two separate agencies within DHS resulted in an under-staffed, under-funded dysfunctional department.<sup>65</sup> Aside from the rush, a major problem in the creation of DHS was that the persons responsible for organizing the department did not have much experience in mergers and acquisitions.

In their article regarding the creation of DHS, Washington Post staff writers Susan Glasser and Michael Grunwald interviewed dozens of people involved in the formation of DHS and concluded that the department was "designed in secrecy and haste..."<sup>66</sup> Even more appalling was the small group of mid-level staffers materially involved in the process who made seemingly random decisions and apparently did not know much about the agencies that they considered and/or ultimately included within the new department.<sup>67</sup> Inexperience and lack of pre-planning have been identified as two major sources of error when performing a merger.<sup>68</sup>

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<sup>64</sup> *Creating a Trusted Network for Homeland Security*, Second Report of the Markle Foundation Task Force, (Markle Foundation, December 2003). The Markle Foundation was established in 1927 to promote the advancement and diffusion of knowledge. Currently, the foundation's mission is to realize the potential of information and communication technologies. The foundation's National Security program is focused on how to mobilize information and information technology to improve national security while protecting civil liberties. To see more go to <http://www.markle.org>. [Accessed August 27, 2006].

<sup>65</sup> Charles Perrow, "The Disaster after 9/11," Abstract.

<sup>66</sup> Susan B. Glasser and Michael Grunwald, "Department's Mission Was Undermined from the Start," *washingtonpost.com*, December 22, 2005, 2, <http://www.washingtonpost.com/wp-dyn/content/article/2005/12/21/AR2005122102327>. [Accessed May 5, 2006].

<sup>67</sup> *Ibid*, 4-5.

<sup>68</sup> Robert M. Allan, Jr., "Expansion by Merger," *The Corporate Merger*, (Chicago: The University of Chicago Press, 1974), 107.

In many ways, it seems that the planners of DHS thought that the mere act of creation would generate benefits. When it comes to planning a merger a number of standards have been identified as requisite precursors. The following list is not exclusive nor is it intended that each and every standard be met. One important caveat about mergers is that each “presents its own complex and unique pattern of problems, no systematic, detailed set of rules...is now available, or ever likely to be.”<sup>69</sup> Included in the standards are the following:

- (1) integration of common functions;
- (2) the development of specific, realizable operating objectives;
- (3) developing a program for achieving operating benefits;
- (4) basic corporate policies;
- (5) plans for improvement;
- (6) leadership;
- (7) creating a positive atmosphere for change;
- (8) ability to give the new entity time to establish itself.<sup>70</sup>

In the context of this chapter, a couple of other caveats must also be kept in mind. The intent underlying the recommendations made herein is that they not be taken as exhaustive. The *Integration Evolution* is a framework not a recipe. There are many additional issues that will spring from a micro-architectural merger analysis. The integration of major functions usually turns out to be an “extremely complicated and delicate maneuver that involves many non-routine decisions.”<sup>71</sup> The temporal breadth of the *Integration Evolution* acknowledges this. However, a central lesson learned from the creation of DHS is that it can be done, and presumably with more success given a reasonable timeframe.

There are various types of mergers, but horizontal, vertical and conglomerate are the most common. A horizontal merger is the combining of similar “industry” entities.<sup>72</sup>

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<sup>69</sup> Forrest D. Wallace, “Some Principles of Acquisition,” *The Corporate Merger*, (Chicago: The University of Chicago Press, 1974), 178.

<sup>70</sup> Ibid, 166–175.

<sup>71</sup> Ibid, 173.

<sup>72</sup> Allan, “Expansion by Merger,” 101.

In the law enforcement context, the creation of ICE from the former investigative offices of the INS and USCS provides an example. ICE was created through the merger of the investigative assets from the INS and the USCS. Though ICE has multiple divisions, including the non-investigative entities such as the Office of Intelligence, Federal Protective Service, Forensic Document Laboratory, and the Office of Detention and Removal, it is the Office of Investigations that makes ICE DHS' largest investigative agency.

A vertical merger is the combining of industry related, yet separate interest agencies.<sup>73</sup> In the law enforcement context, the proposed merger of ICE with its sister DHS agency, Customs and Border Protection (CBP), is an example. CBP is a regulatory and interdiction agency while ICE is an investigative agency. There has been much discussion about the prospect of merging ICE and CBP. Recently, the DHS Inspector General issued a report calling for the merger of the two agencies. The Inspector General found no good reason for bifurcating the customs and immigration functions between two agencies and that the separation of ICE and CBP has led to “the articulation of mismatched priorities, competition, and, at times, operational inflexibility.”<sup>74</sup> The presumption that the merger of ICE and CBP would create synergy is not shared by Secretary Chertoff, who rejected the idea as part of the Second Stage Review.

Conglomerate merger is the most diversified method of acquisition and can be thought of as a “shotgun” approach to expansion. In this type of merger, entities with little or no industry relation are merged together. The advantage of a conglomerate merger is that it is the fastest way to “enter” into a new market. The disadvantage is that there are inherent difficulties with integrating the myriad entities that are merged. The diversity of organizations involved in this type of merger makes it the riskiest and most likely to fail.<sup>75</sup>

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<sup>73</sup> Allan, Jr., “Expansion by Merger,” 101

<sup>74</sup> Department of Homeland Security, Office of Inspections and Special Reviews, *An Assessment of the Proposal to Merge Customs and Border Protection with Immigration and Customs Enforcement*. November 2005. <http://www.mipt.org/pdf/DHS-OIG-06-04-Nov-2005.pdf>. [Accessed January 31, 2006].

<sup>75</sup> *Ibid*, 101–102.

The creation of DHS can be broadly regarded as a conglomerate acquisition since it involved the merger of twenty-two agencies from a vast array of disciplines. In reality, it involved all three types in what can be considered a “Big Bang” merger. In fact, the creation of DHS—no matter what you think of it—was quite a feat and can be conceptualized as “entry” into the new market of Homeland Defense and Security. However, a review of the merged agencies reflects the confluence of a vast array of tangentially related disciplines and, thus, the intersection of more than one industry. The twenty-two entities merged into DHS were:

- Immigration and Naturalization Service;
- United States Customs Service;
- Federal Protective Service;
- Transportation Security Administration;
- Federal Law Enforcement Training Center;
- Animal and Plant Health Inspection Service;
- Office for Domestic Preparedness;
- Federal Emergency Management Agency;
- Strategic National Stockpile and the National Disaster Medical System;
- Nuclear Incident Response Team;
- Domestic Emergency Support Teams;
- National Domestic Preparedness Office;
- CBRN Countermeasures Programs;
- Environmental Measurements Laboratory;
- National BW Defense Analysis Center;
- Plum Island Animal Disease Center;
- Federal Computer Incident Response Center;
- National Communications System;
- National Infrastructure Protection Center;
- Energy Security and Assurance Program;
- Secret Service;
- Coast Guard.<sup>76</sup>

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<sup>76</sup> United States Department of Homeland Security, *DHS Organization*, <http://www.dhs.gov/dhspublic/display?theme=10&content=5271>. [Accessed January 15, 2006].

The integration of the Big Six is not comparable to that of DHS for a number of reasons. First it involves far fewer entities from far fewer fields. Secondly, it represents a horizontal not a Big Bang or conglomerate merger. Therefore, it would involve the most simplistic form of merger as horizontal organization is the most basic characteristic of specialized activity.<sup>77</sup> Also, temporally speaking, the merger would be premeditated and deliberate, two characteristics seemingly absent from the DHS plan. The integrative path of the Big Six would occur incrementally over a period of five to seven years. This *Integration Evolution* is a multi-phased horizontal merger that places an emphasis on analyzing the standards (1)–(8) listed above, with the specific intent of minimizing many of the malignant consequences that derive from bringing disparate groups together.

From my own experience, I have identified Recognition, Coordination, Collaboration, Community, Consolidation and Merger as the six phases of *Integration Evolution*. These phases are defined as follows:

- 1) Recognition—Confirmation of existence. In the law enforcement context this occurs when one agency acknowledges that another agency has the authority to perform a particular act, such as the FBI noting that ICE has border search authority and it does not.
- 2) Coordination—The act of adjusting in order accommodate concurrent jurisdiction. An example of this in the law enforcement context would be when the California Highway Patrol and the San Francisco Police Department agree upon areas each will primarily patrol in regard to the San Francisco roadways over which both have jurisdiction.
- 3) Collaboration—The act of working together in a joint operation. Agency participation in a Task Force and the Memorandums of Understanding between various Big Six agencies are examples of this.
- 4) Community—The act or process of openly sharing resources or information amongst several entities with some restriction. In the context of *Integration Evolution*, this would occur when the Big Six agencies continue to maintain their identity and administration, yet begin to institute cross-agency

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<sup>77</sup> Joel Dean and Winfield Smith, "Relationships between Profitability and Size," *The Corporate Merger*, (Chicago: The University of Chicago Press, 1974), 11; Herbert A. Simon, *Administrative Behavior*, 7.

assignment of senior agents and low to middle managers and unrestricted access to information for which there is a proper clearance and need-to-know.

5) Consolidation—The act or process of uniting several entities. In the context of *Integration Evolution* this would occur when the Big Six are transferred to the Department of Justice and begin to institute unified recruitment/hiring, training and policy though continuing to maintain their respective agency identity.

6) Merger—The fusion of disparate entities. In the context of *Integration Evolution* this would occur when the Big Six cease to exist, come to occupy distinct divisions within the newly constituted FBI.<sup>78</sup>

The first three, Recognition, Coordination and Collaboration currently and frequently happen. As mentioned in prior chapters, Task Forces exist on all levels of law enforcement. Task Forces represent a quasi-merger of law enforcement officers from the local, state and federal levels who form a coalition in order to marshal their respective enforcement strengths. At the most basic level, an officer is assigned to a task force in order to collaborate with officers from other agencies so he can learn new things and ultimately enhance the effectiveness of his own agency. Unfortunately, it is typical for an agency not to fully commit its officer to the task force and require him to report through his agency chain-of-command not the task forces'. By maintaining a proprietary interest over the officer, the agency also maintains a proprietary interest over its information and restricts access to it and dissemination of it.

In the context of *Integration Evolution*, the task force concept is an acknowledgement by the participating agency that extra-agency resources are needed to best fulfill a mission. It is a passive/aggressive recognition of the need to merge. It is aggressive insofar as an agency assigns officers and dedicates resources, and passive because of the proprietary rope each agency casts around its assets, which is ready to be pulled back when the needs of the agency supersede the needs of the task force. Further, it maintains the status quo. Each agency maintains identity and managerial positions remain secure because they are not superfluous in a segregated scheme.

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<sup>78</sup> *Black's Law Dictionary*, (St. Paul, MN: West Publishing Co., 1991)

In order to facilitate the horizontal interoperability of the Big Six a Community must be recognized. A Community is best described as an intangible coalition where the members place special significance and standing upon the other members. This special status provides the foundation for the lessening or removal of information sharing restrictions and influx of cross-agency assignments. During the Community phase the countenance of agency identity and infrastructure remain. In the Federal Law Enforcement Community, the Big Six would all continue to exist, but would be able to access the data possessed by the others.

One of the most attractive qualities of the Community integration from a technological perspective is that it can be accomplished with minimal cost relative to the creation of a new system and accomplished in a timely manner.<sup>79</sup> As the FBI recently learned in its attempt to modernize its aging technology infrastructure, upgrading an existing system can be costly and time consuming. Prior to 9/11, the FBI began its Trilogy project, which incorporated an agency wide upgrade of its desktop hardware and software, deployment of a modern network infrastructure and an integrated suite of software for entering, finding, sharing and analyzing casework.<sup>80</sup>

Unfortunately, after nearly five years and half a billion dollars, Trilogy has not had an impact on the FBI's antiquated case management system.<sup>81</sup> In fact, Director Robert Mueller was forced to admit to a senate committee that the project will not succeed and alternative solutions are being examined.<sup>82</sup> Though agency integration will not solve the FBI's dilemma, the lessons learned from the Trilogy experience provide an instructive cautionary tale.

One of the major disadvantages to the integration model described herein is the inefficiency associated with the operation of connected, yet separately maintained

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<sup>79</sup> Franklin R. Hunting, (ICE Security Compliance Officer), interview by author, Oakland, CA, October 13, 2005; Erica Frandsen., (DEA-Northern California HIDTA Network Administrator), interview by author, San Francisco, October 11, 2005.

<sup>80</sup> *Anatomy of an IT disaster: How the FBI blew it*, CIO, March 19, 2005. <http://cio.co.nz/cio.nsf/PrintDoc/836321C0CEA5B402CC256FC800797F9C?OpenDocument>. [Accessed October 23, 2005].

<sup>81</sup> Ibid.

<sup>82</sup> *FBI Unable to Launch New Computer Program-Audit*, eWEEK, February 4, 2005. [http://eweek.com/print\\_article2/0,2533,a=14510200.asp](http://eweek.com/print_article2/0,2533,a=14510200.asp). [Accessed October 25, 2005].

systems. It is important to note that the integration of the disparate agency databases is not meant to supplant the creation of a unified technological system that would be shared by all the agencies or agency, depending on what phase of evolution the Big Six are in. However, creation of a single database is a long term project.

Another major step occurring during the Community phase is the cross-agency assignment of senior agents and low to middle managers. Of the pre-merger standards (1)-(8) noted above, almost half can be aggressively addressed during this phase. These standards include the integration of common functions, learning about the basic policies of sister agencies, leadership and, most importantly, creating a positive atmosphere for change. This last standard cannot be overemphasized.

One of the main missteps that occurred in the creation of ICE was the failure to quantify the impacts of *tangible and intangible resistance*. All things are vulnerable to malice and superficial judgment. Thus, the insecurity and non-malevolent reluctance amongst the employees of the Big Six must be contended with. Of course, malevolent reluctance must also be anticipated both on the institutional and personal level.

*Organizational politics is an inescapable reality of corporate and public life. Even if an organization has reached the tipping point of execution, there exist powerful vested interests that will resist the impending changes.*

*Blue Ocean Strategy*<sup>83</sup>

In their book, *Blue Ocean Strategy*, W. Chan Kim and Renee Mauborgne studied how over one hundred and fifty companies from a wide range of industries went about effectuating change. Amongst the insights that they gleaned from their study was the concept of tipping-point strategy. Tipping-point strategy is based on the concept that “fundamental changes can happen quickly when the beliefs and energies of a critical mass of people create an epidemic movement toward an idea.”<sup>84</sup> The key question then

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<sup>83</sup> W. Chan Kim and Renee Mauborgne, *Blue Ocean Strategy*,” (Boston: Harvard Business School Press, 2005) 165–166.

<sup>84</sup> *Ibid*, 151.

becomes, who makes up this critical mass? Kim and Mauborgne identify key personnel, designated as Kingpins, who are people inside each organization that are natural leaders and have the ability to influence.<sup>85</sup>

In the context of the Big Six Community phase, these persons will come from the senior agent and low to middle management range. This is why these people must be given cross-agency assignments. Having personally participated in a cross-agency assignment, I can attest to the value of these endeavors. Introduction into a different operating environment allows parties on both sides to access their respective strengths and weaknesses. Typically, personal resistance is rooted in superficial judgments, insecurity, fear of change and loss of identity. Cross-agency assignments allow Kingpins to address these barriers within their own agencies.

Ultimately, much of the intangible resistance will be addressed two other ways. The first is that forced integration through mandatory cross-agency assignment will not be done. That is, agents from one legacy agency will not be forced into an assignment with another legacy agency. For example, a DEA agent will not be non-volitionally transferred to an ICE Cyber Crimes Group or FBI White Collar Crimes Squad. This policy should be maintained for a few years after the merger. This will give everyone plenty of time to come to terms with their new reality.

Truly, the identity of a reconstituted FBI will rise from below not fall from above. Once the agencies are transferred from their respective departments into DOJ the consolidation phase will have begun. During this phase, a unified recruitment and hiring scheme will take effect. New Agent-Candidates will begin to attend the same basic training academy. After completing this training, an Agent-Candidate will select or be selected for assignment and additional training in one of the designated divisions.

As noted above, the Big Six are presently ready to enter the Community phase. Thus, the five to seven year timetable will truly be devoted to the Consolidation and Merger phases. In order to facilitate each transition an *Integration Engineer* and

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<sup>85</sup> W. Chan Kim and Renee Mauborgne, *Blue Ocean Strategy*, (Boston: Harvard Business School Press, 2005), 162.

*Integration Committee* must be established. The *Integration Engineer* should be a DOJ official since it is the end destination department. The engineer will be the Officer-In-Charge of the *Integration Evolution* and be assisted by an *Integration Committee* that will consist of a delegate from each Big Six agency. It is expected that each Big Six agency, especially the FBI, will assign their own personnel to agency subcommittees.

Of course, the FBI will play a critical role in this process since it is the end destination agency. Admittedly, a whole new agency or other Big Six member could be the end destination agency, but the FBI makes the most sense for a number of reasons. First, it is the biggest Big Six agency in terms of jurisdiction, budget and personnel. Second, the FBI is the most notorious of the Big Six agencies. In my experience, most people are unfamiliar with the actual structure of federal law enforcement agencies and already think the Special Agents from other Big Six agencies are part of the FBI. Third, and most importantly, the FBI has the most political clout. “Invention calls on two quite different kinds of knowledge: [K]nowledge about needs to be filled and knowledge about things that can be done.”<sup>86</sup> It is expected that if the FBI was not targeted for growth and notoriety, its tangible resistance would create an insurmountable barrier to this proposal.

During the consolidation phase, and in preparation for the merger phase, the Big Six’s missions will become streamlined in a Progressive like fashion. During this phase two important functions will occur. The substance and/or breadth of investigation performed by each Big Six agency will be modified to mirror the divisional role that it will fulfill once merged.

For agencies like DEA or IRS this should mean relatively little since each could respectively absorb the drug enforcement and financial crimes missions. For multi-program agencies like ICE, FBI and ATF certain programs will cease to be enforced while others are expanded. For example, ATF will expand its Arson and Explosives role, while losing its Alcohol and Tobacco programs, which can be absorbed by either an ICE Merchandise Fraud Group or FBI General Crimes Squad. ICE and the FBI will cease to

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<sup>86</sup> Simon, *Administrative Behavior*, 347.

investigate narcotics related offenses and their money laundering and white collar programs will begin to align with the IRS in what will upon merger come to occupy the Financial Crimes Division of the FBI.

Of course, the USSS is an agency caught in the middle. Since Executive Protection is a non-investigative duty neither this function nor the USSS will become part of the newly reconstituted FBI. The expectation is that the USSS will be partitioned, with its protective-detail remaining in DHS and its counterfeiting program transferred to the FBI. This can happen one of two ways. The preferred method is that a contingent of USSS personnel be transferred to the FBI and populate an Identity Theft and Counterfeiting Division. This way expertise and continuity can be maintained. The other way is to just transfer the jurisdiction to the FBI without any personnel. Ultimately, the *Integration Engineer* and *Integration Committee* will form recommendations for the President and Congress on the divisional configuration.

Ultimately, the *Integration Engineer* and *Integration Committee* will have to consider many topics not addressed in this paper. Again, the purpose of this chapter is to provide a framework for merging the Big Six. The *Integration Evolution* provides a pragmatic approach for successfully accomplishing this task. As discussed in the next chapter, one major topic that needs to be addressed during this process is whether the strategic plan for a reconstituted FBI should encompass the FBI's current plan to become a hybrid domestic intelligence/investigative agency.

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## VII. THE FOCUSED MISSION

*Terrorists still plot their evil deeds, and nature's unyielding power will continue. We know with certainty that there will be tragedies in our future.*<sup>87</sup>

### A. INVESTIGATIVE VERSUS INTELLIGENCE CULTURES

A central strategic plan regarding the integration of the Big Six incorporates the idea that a reconstituted FBI should not meld intelligence and investigative functions. These functions should be performed by separate entities. The segregation of these functions will enhance a reconstituted FBI's ability to fulfill its base investigative mission. Therefore, the responsibility of gathering, analyzing and disseminating the nation's domestic intelligence product should be performed by a singularly dedicated agency. The responsibility should fall somewhere else, possibly within DHS, where a domestic all-source intelligence group could be formed.

The natural follow-up question is how can a law enforcement agency seek to prevent crime without intelligence? Clearly, deterrent, preemptive and preventative law enforcement efforts cannot materialize without pertinent information. However, intelligence is more than gathering information. Many commentators believe that even with the many changes the FBI has made, inherent structural and cultural factors will prevent it from generating an intelligence cycle.<sup>88</sup>

There are multiple stages that comprise the intelligence cycle: Planning and direction, collection, processing and exploitation, analysis, dissemination, and consumption. Feedback from the policymakers and consumers at each stage of the process keeps the integration of the stages balanced.<sup>89</sup> In a purely investigative context, a law enforcement agency does not need to complete each stage of the cycle because the gathering of evidence or "collection" stage is its primary mission.

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<sup>87</sup> *The Federal Response to Hurricane Katrina: Lessons Learned*, <http://www.whitehouse.gov/reports/katrina-lessons-learned/text/chapter1.html>. [Accessed March 25, 2006].

<sup>88</sup> Alfred Cumming and Todd Masse, "Intelligence Reform Implementation at the Federal Bureau of Investigation: Issues and Options for Congress," *Congressional Research Service, RL33033, Library of Congress*, August 16, 2005, 28, <http://www.crsdocuments.com>. [Accessed January 14, 2006].

<sup>89</sup> Mark L. Lowenthal, *Intelligence: From Secrets to Policy*, (Washington D.C.: CQ Press, 2003), 50.

The real problem for hybrid investigative/intelligence agencies is the inherent conflict between the disciplines. The natural tendency of an investigative agency is to collect evidence and openly publish it. Another conflict is of a temporal nature. Law enforcement agencies are bound by laws that require them to act within particular timeframes. Examples of this are statutes of limitations and the Sixth Amendment right to a speedy trial.<sup>90</sup>

Thus, even if a law enforcement agency is tasked with intelligence collection, the natural consequence is that the intelligence it collects, analyzes, etc, will probably regard the short term. This minimizes forward thinking, long term “trend” intelligence, which is vital to counterterrorism, especially groups like Al Qaeda whose plans take a long time to gestate. Further, if the law enforcement agency takes a long term outlook, it is abandoning the response standard of its mission. Therefore, a domestic intelligence product created by a law enforcement agency is going to marginalize either the intelligence or investigative mission it seeks to perform and perhaps both.

Intelligence involves segments of data collection, processing, analysis, production and dissemination that are performed by agencies that have specified capabilities or functions. Many of these tasks are technologically complex and foster specialization within the Intelligence Community (IC). In comparison, the investigative techniques employed by the Big Six are more pedestrian and universally applied making the skill set of its agents more common and its agents more fungible. If law enforcement can be thought of as a two-dimensional endeavor then intelligence is three-dimensional.

The differences between the two disciplines are also evidenced by the fact that the same performance standards cannot be used to measure their functionality. Recall in Chapter IV, the Five Standards and *Negative Characteristics* were used to reveal the dysfunction of the Big Six. While the Five Standards are universal measures for government agency performance—albeit with differing degrees of meaning depending on the agency—the same cannot be said of the *Negative Characteristics*. The

<sup>90</sup> *Constitution of the United States, Sixth Amendment*: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

characteristics, which negatively impact Big Six investigations, are not entirely suitable metrics for gauging the affect of intelligence operations. For example, the *Negative Characteristics* of *redundancy* and *interagency rivalry* are encouraged in the field of intelligence where “competitive analysis” performs the academic function of testing theories. It is through this intellectual engagement that asymmetric, anti-“group-think” prospers. In this context, repetition of action and a competitive atmosphere promote efficiency and effectiveness in ways that are destructive in an investigative setting.

Debate regarding the differences between the two disciplines is not new. Basically, policy analysts have broadly formed the discussion of this issue into two camps. In their paper on intelligence reform implementation, Alfred Cumming and Todd Masse identify the two camps as the (i) Optimists/Synergists and (ii) Skeptics and describe them as follows:

The optimists/ “synergists” recognize that the events of 9/11 represented a substantial shock to the FBI’s traditional priorities and culture. They argue, however, that the FBI has developed a *coherent and sound vision* for an intelligence program that integrates and leverages what they assert is a synergy between the FBI’s criminal and national security missions.<sup>91</sup>

The skeptics believe that there is some limited synergy between the disciplines of law enforcement and intelligence with respect to terrorism fund-raising, but they doubt it extends to other issues. Moreover, they contend the benefits of a focused and integrated intelligence program would far outweigh the intangible benefits derived from any existing synergy. As a result, skeptics of the FBI’s approach believe the FBI’s vision for intelligence reform is fundamentally flawed.<sup>92</sup>

Many well respected U.S. commentators and commissions have adopted this bifurcated, diametric Cummings/Masse framework. In his article, “Intelligence and Law Enforcement: Countering Transnational Threats to the U.S.” Richard Best examines the *coherent and sound vision* sought by U.S. law enforcement and intelligence agencies as each addresses U.S. security concerns stemming from the transnational threats that terrorism, narcotics smuggling, and WMD present. Best notes “that the continuing lack of clarity about relationships among U.S. law enforcement and intelligence agencies and

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<sup>91</sup> Cumming and Masse, “Intelligence Reform,” 15.

<sup>92</sup> Ibid, 15–16.

their roles and missions may reduce the effectiveness of their individual and collective efforts and lead to waste and duplication of effort.”<sup>93</sup>

The core of Best’s argument focuses on the difficulty inherent in coordinating law enforcement and intelligence functions. He explains that there is a natural dichotomy between the missions, expectations, methods and oversight associated with each group. For example, law enforcement’s expectation is that wrongdoers will be arrested and punished. In order to accomplish this goal, law enforcement must follow strict guidelines on how it gathers information/evidence. A law enforcement officer is cognizant that his actions are or will be open for public consumption and scrutiny. In contrast, an intelligence officer’s mission is to collect information so that something can be learned. This activity can be performed with no concern that the methods or product will be publicly exposed.<sup>94</sup>

Best’s position directly comports with the Skeptics position that the nation’s investigative and intelligence functions should be segregated. Though he does not explicitly endorse the creation of a domestic all-source intelligence group his premise logically supports it. However, direct support for the proposition can be found in the Markle Foundation’s October 2002 report, which presents the most directed policy recommendation on how to effectuate the Skeptic’s view:

The foundation’s basic conception is that the Department of Justice and its FBI should be the lead agencies for law enforcement, exercising the power to investigate crimes, charge people with crimes, perhaps take away their liberty, and prepare cases for trial and appeal. The DHS should be the lead agency for shaping domestic intelligence products to inform policymakers, especially on the analytical side, so that there is some separation between the attitudes and priorities of intelligence analysis and the different, more concentrated, focus of law enforcement personnel authorized to use force on the street to make arrests and pursue or detain citizens.

We understand that criminal investigation (and counterintelligence) often overlaps with intelligence work. Some overlap is natural and good. But the case for a fundamental separation is strong. Intelligence has much broader purposes than criminal investigation. The operational *objectives* are different. The *training* is different. The *rules* about how to collect,

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<sup>93</sup> Richard A. Best, Jr., “Intelligence and Law Enforcement: Countering Transnational Threats to the U.S.” *Congressional Research Service, Library of Congress*, Updated December 3, 2001), 6.

<sup>94</sup> *Ibid*, 15.

retain, and share information are different. The relationships with sources of information are different.<sup>95</sup> [Italics added]

The Markle Task Force identified three vital components that help explain the cultural differences between investigative and intelligence cultures. The *objectives*, *training*, and *rules* are all materially different for investigative and intelligence agencies. Of the three components, the *rules* are perhaps most significant. The methods law enforcement agencies use to complete their mission face greater constitutional and statutory scrutiny than those of intelligence agencies.

Take a generic narcotics investigation where the police use a confidential source to infiltrate Seller. The police use the source to purchase narcotics and provide information that can be used in a Search Warrant affidavit. After obtaining enough information to satisfy a judge that probable cause exists, the police execute the search warrant and gather more evidence to support an arrest. At the outset of the search, the police must present a copy of the search warrant and list of items to be seized to the target of investigation.<sup>96</sup> The police then present the evidence to a prosecutor who determines if enough evidence exists to convince a judge or jury beyond a reasonable doubt that Seller is guilty. If the prosecutor charges Seller, the prosecutor must make all the evidence that will be presented during the main part of the trial, and any exculpatory evidence that may or may not be presented at trial, available to Seller's attorney who will then share the information with Seller. If the case proceeds to trial, Seller's Sixth Amendment right to "public" trial will ensure an open forum for full disclosure. Thus, law enforcements' sources and methods will not only be publicized, but subject to scrutiny by various courts and members of the defense bar.

Intelligence agencies thrive on secrecy and spying, two characteristics that are like kryptonite to the transparency and accountability required of investigative operations. Intelligence operators do not seek absolute standards like truth or justice, but

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<sup>95</sup> "Protecting America's Freedom in the Information Age: Part One, Report of the Markle Foundation," The Markle Foundation {October 2002}: 3.

<sup>96</sup> Groh v. Ramirez, 2004 DJDAR 2314; U.S. v Gantt, 1999 Daily Journal D.A.R. 5549.

a conjecture based “proximate reality.”<sup>97</sup> Best-guesses do not comport with the standards or burdens of proof that law enforcement officers must meet.

Intelligence agencies seek to gather information with few legal constraints and manipulate it for value. In contrast, the objectives of U.S. investigative agencies are to identify, infiltrate, and dismantle criminal enterprises in an open manner. Also, there is an expected terminus to a criminal investigation, whereas there is no natural or legal end to an intelligence operation.<sup>98</sup> Thus, there are significant substantive and procedural chasms between the two disciplines.

Despite such meaningful differences, two well recognized commissions have not supported the creation of a single discipline domestic intelligence agency. The highly influential *9/11 Commission Report* juxtaposes the Markle Report in many ways and offers an extremely credible encapsulation of the Optimist/Synergist position. Specifically, the report differs from the Markle position in two key areas. First, the commission argues against the creation of a new domestic intelligence agency, and second, it recommends that the FBI continue on its path to become the nation’s domestic intelligence agency. Among its stated reasons are that the FBI currently conducts sensitive intelligence collection operations and the creation of a new agency would exacerbate existing information-sharing problems.<sup>99</sup>

The 9/11 Commission’s recommendation is well articulated and reasoned, yet after reading the report, one gets the impression that the commission’s support of the FBI is more about maintaining the status quo than achieving an optimal work-product. The 9/11 Commission’s endorsement of the FBI seems less rooted in faith than in practicality. This sentiment is more evidently expressed in the WMD Commission Report.

In March 2005, the WMD Commission issued an extensive report that contained seventy-four recommendations for improving the U.S. Intelligence Community. Like the 9/11 Commission, it considered and rejected the creation of a domestic intelligence agency:

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<sup>97</sup> Lowenthal, *Secrets to Policy*, 14.

<sup>98</sup> Tom O’Connor, “The Integration of Homeland Security and Law Enforcement,” <http://faculty.ncwc.edu/toconnor/427/427lect05.htm>. [Accessed January 26, 2006].

<sup>99</sup> *9/11 Commission*, 424–425.

(I)n today’s world of transnational threats, the line between “criminal activity” and “national security information” is increasingly blurred...Ensuring continuing coordination between the FBI’s two halves is critical for at least two reasons: such coordination is necessary to optimize the FBI’s performance in both national security and criminal investigations, and—equally important—it will ensure continued attention to civil liberties and legal limits on the power of government to intrude into the lives of citizens.<sup>100</sup>

Thus, the WMD Commission embraced the Optimist/Synergist idea that the FBI’s hybrid nature is one of its strengths. In much the same way as the Markle Report, the WMD Commission acutely recommended an effective solution that would assist in realizing its vision. It recommended that the FBI create a new National Security Service (NSS), which would include the FBI’s Counterterrorism and Counterintelligence Divisions as well as its Directorate of Intelligence. The NSS would fall under the authority of the DNI.

Despite its strong endorsement for the creation of the NSS, the WMD Commission, later, tempered its position, holding;

despite the many benefits associated with having a combined law enforcement and intelligence agency, we recommend that policymakers re-evaluate the wisdom of creating a separate agency—an equivalent to the British ‘MI-5’...dedicated to intelligence collection in the United States...”<sup>101</sup>

The commission qualified its primary recommendation because it doubted the FBI’s ability to create an effective intelligence agency. Given the FBI’s past failures in the areas of counterintelligence and counterterrorism, it must improve its domestic abilities.<sup>102</sup> This may be easier said than done. The commission found that the FBI has attempted and failed to restructure itself:

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<sup>100</sup> *Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction*, Washington D.C., 466.

<sup>101</sup> *Ibid*, 468.

<sup>102</sup> Select Committee on Intelligence and Permanent Select Committee on Intelligence, “Recommendations of the Final Report on Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence Joint Inquiry in Terrorist Attacks of September 11, 2001,” December 10, 2002, 5. <http://www.intelligence.senate.gov/recommendations.pdf>. [Accessed March 15, 2006].

Past efforts to build a strong intelligence capability within the FBI...Failed in quick succession as a result of strong resistance from the FBI's operational divisions and an intelligence architecture that could not defend itself inside the bureaucracy. Several of the obstacles (the) FBI has faced in reforming itself stem from the Bureau's long and proud law enforcement culture.<sup>103</sup>

One can only surmise how the FBI's inbred law enforcement culture will react to the creation of the NSS. It is quite possible that the design will create an internal power struggle between the investigative and intelligence divisions as they vie for substantive and budgetary control. Pursuant to the Intelligence Reform Act, the FBI divides its budget into four parts: intelligence, counterterrorism/counterintelligence, criminal justice services and criminal enterprises/federal crimes.<sup>104</sup> With the NSS, the four parts will presumably become three since the intelligence and counterterrorism/counterintelligence budgets will be combined. Only time will tell how the criminal divisions of the FBI will adapt to this change in priority. Conflict between the two is probable. It is foreseeable the conflict could lead to a self-imposed detachment between the branches. If such an event were to occur, the semi-autonomous intelligence division would become a de facto domestic intelligence agency. This would effectively fuse both the Optimist/Synergist and Skeptic positions and, quite possibly, marginalize the strengths of each. With the NSS dually reporting to the DNI and the FBI director the recipe for friction is set.

## **B. COMPARATIVE MODELS**

The overarching measure of comparative national domestic intelligence agency models and their effectiveness centers on the issue of terrorism and how different nations counter it. This presents a couple of troublesome issues: One being that there is no settled definition of terrorism within the U.S. or internationally. Secondly, every country's history and experience is unique. Thus, despite the similarities or dissimilarities the U.S may have with other nations, parallel institutional analysis may not be very rewarding.<sup>105</sup> That being said, it is hard to dismiss the manner in which other

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<sup>103</sup> *WMD Commission Report*, 453.

<sup>104</sup> *Ibid*, 458.

<sup>105</sup> Lowenthal, *Secrets to Policy*, 245; Peter Chalk and William Rosenau, "Confronting the 'Enemy Within,'" RAND Corporation (2004): xv, <http://www.rand.org>. [Accessed October 22, 2005].

countries have modeled themselves. Especially countries like the United Kingdom, Canada, France, Germany, Australia and Israel, which have closely related liberal democratic traditions that are also challenged by transnational criminal organizations and Islamic fueled terrorism.

The difficulty in understanding the full effect of terrorism may be the difficulty in ascertaining its meaning. The problem with defining the term is that it has subjective and objective components. Victims of an attack may define it one way while perpetrators define it another. However, a detailed discussion of the definition is not incorporated herein since an exact definition will not materially affect the institutional construct needed by the U.S. to fulfill its domestic intelligence needs.

Sociologically nations digest the threat of terrorism quite differently. The U.S is arguably the world's number one terrorist target, but its national existence is really not threatened by terrorism. In contrast, Israel's counterterrorism capabilities truly affect the viability of the state.<sup>106</sup> France, with its recent socio-religious riots and a large Muslim population is beginning to recognize this prospect. Perhaps this helps explain why the French and Israelis conceptualize terrorism in existential terms and as a phenomenon that is part of the human condition.<sup>107</sup> This is in stark contrast to the U.S., which views terrorism as a temporal nuisance manifested in a quantifiable enemy that cannot sustain itself in the face of adequate force.

A country's intelligence services are products of its unique history, political structures and socio-cultural expectations of privacy. In his book, *Intelligence: From Secrets to Policy*, U.S. intelligence official Mark M. Lowenthal, hypothesizes that modeling one nation's domestic intelligence architecture after another's is not a productive exercise because each service must fulfill the unique intelligence requirements

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<sup>106</sup> Jonathan B. Tucker, "Strategies for Countering Terrorism: Lessons from the Israeli Experience," *Journal of Homeland Security*, <http://homelandsecurity.org/newjournal/articles/tucker-israeli.html>. [Accessed March 13, 2006].

<sup>107</sup> Jeremy Shapiro and Benedicte Suzan, "The French Experience of Counter-terrorism," *Survival* 45:1 (Spring 2003): 88. <http://www.apps49.brookings.edu/views/articles/fellows/shapiro20030301.pdf>. [Accessed September 10, 2006].

of its national policymakers.<sup>108</sup> The logical extension of Lowenthal's position is that domestic intelligence agency configuration should be as diverse or unique as the nation it serves.

If Lowenthal is correct, it must be true that the United Kingdom, Germany, France, Australia, Israel and Canada have similar policy requirements since all have created singularly dedicated non-law enforcement intelligence agencies. Inversely, if they are dissimilar, their domestic intelligence configurations must therefore be flawed. It is difficult to argue that these nations' agencies are flawed when many of these countries developed their single discipline intelligence agencies after learning that law enforcement and intelligence do not mix well.<sup>109</sup> (Thus, unlike the recommendations of the 9/11 and WMD Commissions these decisions were based on experience not the path of least resistance.) Likewise, it is difficult to say that these countries have similar policy needs. For example, the United Kingdom is the only European nation mentioned that has not adopted the Euro as its currency, which indicates a socio-economic policy difference. Further, none of these countries faces the threat of potentially imminent extinction like the Israelis. Thus, these countries are dissimilar, but not flawed within the context discussed herein. Therefore, Lowenthal's hypothesis can be judged as oversimplified.

The fact that the U.K., Germany, France, Australia, Israel and Canada have single discipline domestic intelligence agencies suggests that some known or otherwise unknown objective criterion exist. The existence of objective criterion suggests that the desire to segregate investigative and intelligence missions is purposive not random. The million dollar question is what are the objective factors?

A pre-9/11 U.S. General Accounting Office (GAO) report examined this issue and compared the intelligence and law enforcement structures of the U.S., United Kingdom, France, Canada, Germany and Israel. A similar report, published in 2004, by Peter Chalk and William Rosenau titled, "Confronting the 'Enemy Within,'" conducted

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<sup>108</sup> Lowenthal, *Secrets to Policy*, 234, 245.

<sup>109</sup> The Markle Foundation, October 2002, 3.

an examination including the United Kingdom, Canada, France and Australia. Combining each report’s findings helps to broaden the comparative spectrum.<sup>110</sup>

Following is a table of each nation’s law enforcement and domestic intelligence structure:

	Post 9/11 Terror Threat	Law Enforcement Structure	Intelligence Structure
U.S.	Primarily Islamic; Attacked home/abroad	Diffused; State/local counterparts	Dual Discipline
U.K.	Primarily Islamic; Attacked home/abroad	Decentralized; Regional partners	Single Discipline
France	Primarily Islamic; Civil unrest; attempted attacks	Centralized	Single Discipline
Germany	Primarily Islamic; Not attacked/attack planned	Centralized; Regional counterparts	Single Discipline
Canada	Primarily Islamic; Not attacked/attack Planned/sanctuary	Centralized	Single Discipline
Israel	Primarily Islamic; Attacked home/abroad	Centralized	Single Discipline
Australia	Primarily Islamic; Attacked abroad	Centralized	Single Discipline

Table 3. Seven Nation Law Enforcement and Domestic Intelligence Structure

Reviewing these structures, the predominant characteristic is that the majority of countries have a centralized national police force. Thus, for these countries, it seems complementary and well compartmented to have a centralized or dedicated intelligence service to act as a counterpart. Unlike the FBI, France’s Direction de la Surveillance du Territoire (DST), Canada’s Security Intelligence Service (CSIS), Germany’s Bundesamt

<sup>110</sup> Chalk and Rosenau, “Enemy Within,”5; United States General Accounting Office, *Combating Terrorism: How Five Foreign Countries Are Organized to Combat Terrorism*, (April 2000): 18–19.

fur Verfassungsschutz, Australia's Security Intelligence Organisation (ASIO), and Israel's Security Agency-Sherut ha-Bitachon ha-Klali (Shin Bet) have no arrest powers.<sup>111</sup>

A natural conclusion may be to think that the reason the U.S. opted for a hybrid investigative/intelligence service model is because it does not have a centralized federal law enforcement structure. This is a misleading deduction. Though the U.S.' national law enforcement structure is not centralized, it comprised of multiple law enforcement agencies with overlapping jurisdictions, i.e., the Big Six. Therefore, it is more diffused than decentralized. Further, from a national perspective, the U.S. is federally weighted, despite the plethora of state and local police agencies. Also, the concurrent existence of local and state law enforcement entities does not appear to be a factor inhibiting the creation of a dedicated domestic intelligence agency. The U.K., Canada and Germany also have regional counterparts.<sup>112</sup> As discussed below, the existence of regional counterparts may be one of the most compelling reasons for redesigning our intelligence paradigm:

[M]uch of the Federal government, Congress, and the Nation at large have continued to think about terrorism and natural disasters as if they are competing priorities... The lessons of 9/11 and Hurricane Katrina are that we cannot choose one or the other type of disaster. We must be prepared for all-hazards.<sup>113</sup>

The U.S. is a melting pot of ideas, races, cultures and problems, both natural and man-made. It also has an integrated federalist political structure that relies upon local, state, and federal commitment. It has been widely recognized that local and state agencies from various disciplines to include military, law enforcement, fire, and health, stand on the frontline in this new era. In the U.S., neither the Optimists/Synergists nor Skeptics have embraced the conceptual breadth of homeland security and therefore the

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<sup>111</sup> Chalk and Rosenau, summary to "Enemy Within,"; GAO Report, "Combating Terrorism," 9: Lowenthal, *Secrets to Policy*, 240.

<sup>112</sup> GAO Report, "Combating Terrorism," 6.

<sup>113</sup> *The Federal Response to Hurricane Katrina*, 5.

U.S.’ domestic intelligence needs. Before the U.S. can fully engage in domestic intelligence it must better understand and accept its needs and the weaknesses those needs reveal.

To intelligently address the complexity of its domestic threats, the U.S. needs to consider the development of an all-hazards, all-source intelligence group so that the efforts of the myriad constituent agencies can be enveloped in a meaningful way. With twenty-two agencies dedicated to homeland defense and security, DHS provides a good foundation for the placement of a new domestic intelligence group. In the area of intelligence, DHS is poised to operate as a central repository for domestic intelligence concerns.

Thus, a domestic intelligence agency will be expected to not only fuse the various aspects that threaten local, state and federal security, it must also interact with the other members of the Intelligence Community. In its 2005 report, the WMD Commission found that “DHS is the primary repository for information about what passes in and out of the country,” and makes DHS “a critical player safeguarding the United States from nuclear, biological, or chemical attack.”<sup>114</sup>

An instructive model for policymakers is found in Los Angeles County’s Terrorism Early Warning Group (TEW), which provides a good model of how to coalesce the multiple disciplines that contribute to an all-hazards strategy. The TEW is an emergent concept based on a horizontal and vertical network model that seeks to fuse the resources and information from the various agencies responsible for deterring, preempting, preventing, protecting and responding to public harms. Agencies from the fields of law enforcement, fire, health and emergency management contribute to the TEW. This public service “cooperative” could be adopted on the federal level. As noted in the previous chapter, this would be a critical area for the *Integration Engineer* and *Integration Committee* to consider. Since a detailed analysis of the TEW concept is not

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<sup>114</sup> WMD Commission, 469,473.

incorporated in this paper, the author recommends the thesis of the Naval Postgraduate School Master's graduate Michael Grossman as a starting point.<sup>115</sup>

In this paper, the creation of a federal TEW is a secondary concern to that of the separation of investigative and intelligence duties within a reconstituted FBI. To date, DHS has not gained much standing within the IC, which makes the implementation of a federal TEW less likely even though it appears to be the most effective option considering our threat spectrum and federalist political structure. While there may be many contributing factors as to why, one factor is that the policy option parameters have been constrained to the Optimist/Synergist—Skeptic dialogue. The threat spectrum is about more than Al Qaeda, and thus, the nation's intelligence apparatus needs to be about more than counterterrorism.

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<sup>115</sup> Michael Grossman, "Perception or Fact: Measuring the Effectiveness of the Terrorism Early Warning (TEW) Group," M.A. Thesis, Naval Postgraduate School (September 2005) [https://hsdl.org/homsec/docs/theses/05Sep\\_Grossman.pdf](https://hsdl.org/homsec/docs/theses/05Sep_Grossman.pdf). [Accessed July 29, 2006].

## VIII. CLOSING THOUGHTS

*The essence of the American genius is that we know better than most societies how to reinvent ourselves to meet the times.*<sup>116</sup>

The above quote from the Hart-Rudman Commission is both ironic and prophetic. The commission's recommendation to create a National Homeland Security Agency to help defend against expected "attacks against American citizens on American soil," came some seven months before the 9/11-attacks.<sup>117</sup> Though the prescient recommendation and threat analysis were not acted upon in a timely manner, perhaps one benefit has been a national reluctance to turn a blind eye to change. In the GWOT Era, the U.S. has been forced to confront fallibility and acknowledge that lack of foresight and resiliency are weaknesses; that part of leadership is not becoming complacent because strength is not absolute.

The recommendations in this thesis are expressions of this spirit. In this thesis new concepts for assessing and redesigning government have been introduced. The identification and definition of performance measures, called *Negative Characteristics*, were articulated as new metrics for assessing federal law enforcement's investigative function. The concept of *Integration Evolution* was also introduced and details of its multi-phased nature were explained. This integrative scheme can be easily applied to governmental and non-governmental mergers.

These new metrics and concepts were not only identified and defined, but applied to form the central argument of this thesis, which in and of itself is not a widely discussed topic. Advocacy for the integration of the FBI, ICE, DEA, ATF, IRS-CID and USSS-Investigations is an emergent idea. It is my hope that the original data gathered for this thesis is expanded upon so that the material and pervasive presence of the *Negative Characteristics* is recognized, understood and acted on.

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<sup>116</sup> U.S. Commission on National Security/21<sup>st</sup> Century, Phase III Report (Hart-Rudman), *Road Map for National Security: Imperative for Change*, February 15, 2001, 8. <http://www.au.af.mil/au/awc/awcgate/nssg/>. [Accessed August 8, 2006].

<sup>117</sup> *Ibid*, 4.

The idea of integrating law enforcement agencies is not new, and as the events of 9/11 and Hurricane Katrina have shown, the need for law enforcement to operate in a smarter and more cohesive manner has never been more evident. However, the current configuration of major law enforcement agencies within three different executive departments, Justice, Treasury and Homeland Security produces interagency conflict, redundancy, data fragmentation, jurisdictional foreclosure, and increased civil rights violations. This diminishes the collective and singular efforts of each agency. Centralization of the Big Six's command structures will marginalize the negative byproducts brought upon by their separation. How this centralization occurs is also crucial.

Admittedly, integration of the Big Six will not eradicate all dysfunction from federal law enforcement. For example, the FBI and U.S. Coast Guard, two agencies no one has proposed to merge, are engaged in a turf battle over maritime response programs.<sup>118</sup> Yet, my argument in this thesis is that the problems and dysfunctions that are common, repeated and not surprising to persons familiar with federal law enforcement can be remedied, at least as it relates to the Big Six.

Practically speaking, the solution for America will be an American solution. The adage "think idealistically, act realistically" must be employed by policymakers when searching for the remedy to the U.S.' investigative and domestic intelligence deficits. While the topic of creating a dedicated domestic intelligence agency has been widely debated, broadly conceptualizing our national need as an all-hazards homeland defense and security mission is part of a new paradigm. The streamlining of a reconstituted FBI's mission easily comports with this new paradigm. Such efforts are essential so that the myriad constituent agencies on the local, state, and federal level can be enveloped in a meaningful way.

My father used to tell me, "leaders keep moving." I took this to mean different things depending upon the situation. At times, I interpreted it in a "when the going gets tough, the tough get going" sort of way, while at others, I thought it meant I should not

<sup>118</sup> Eric Lipton, "Report Sees Confusion Likely In a Sea Attack By Terrorists," *The New York Times*, April 4, 2006, 17. <http://select.nytimes.com/gst/abstract.html?res=F10E14F638540C778CDDAD0894DE404482>. [Accessed August 27, 2006].

become complacent after achieving some goal. In light of topics discussed in this paper, I think both interpretations are meaningful. The U.S. suffered a tragic blow on 9/11, but not a devastating blow. Even Hurricane Katrina did not affect the nation existentially. Nevertheless, as the world's single superpower we should not rest on our laurels. If our genius truly lies with our ability to adapt, let us not rest.

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