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**THESIS**

**FRAGMENTATION OF DHS PUBLIC CORRUPTION  
INVESTIGATIONS: OPTIONS TO LEVERAGE  
OVERLAPPING JURISDICTION AND ENHANCE  
COLLABORATION**

by

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December 2011

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OPTIONS TO LEVERAGE OVERLAPPING JURISDICTION AND ENHANCE  
COLLABORATION**

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## **ABSTRACT**

From maintaining aviation security, to patrolling the country's borders, to granting immigration documentation, the Department of Homeland Security has tremendous responsibilities. As such, it is imperative that the Department has a robust internal investigative mechanism to prevent, deter and investigate allegations of public corruption. Currently, there are eight agencies that have authority to conduct public corruption investigations within the Department. For every allegation of corruption within the Department, there are three agencies that have concurrent jurisdiction to investigate; in some cases, four agencies have overlapping jurisdiction to investigate the same matter. To maximize efficiency of operations, avoid duplication of efforts and best serve the American public, collaboration is essential. This thesis will examine other domestic and foreign institutions that have grappled with overlapping jurisdiction and leadership issues and provide analysis as to how those lessons learned can be applied to the DHS anti-corruption community. Several policy options are provided to enhance collaborative efforts, improve information sharing and create synergy of efforts. The policy options include: recognition and utilization of an already existent megacommunity; expanding the cross-designation of agency personnel; and the formation of public corruption task forces.

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## **LIST OF ACRONYMS AND ABBREVIATIONS**

ACA	Anti-Corruption Agency
ACPO	Association of Chief Police Officers
BAE	British Aerospace
BCTF	Border Corruption Task Force
CBP	Customs and Border Protection
CBP IA	Customs and Border Protection, Internal Affairs
CGIS	Coast Guard Investigative Service
CIA	Central Intelligence Agency
DCI	Director of Central Intelligence
DHS	Department of Homeland Security
DHS OIG	Department of Homeland Security, Office of Inspector General
DOD	Department of Defense
DOJ	Department of Justice
DOJ OIG	Department of Justice, Office of Inspector General
DOJ O PR	Department of Justice, Office of Professional Responsibility
DNI	Director of National Intelligence
FBI	Federal Bureau of Investigation
GAO	Government Accountability Office
HIDTA	High Intensity Drug Trafficking Areas
IC	Intelligence Community
ICAC	Independent Commission Against Corruption
ICE	Immigration and Customs Enforcement
ICE OPR	Immigration and Customs Enforcement, Office of Professional Responsibility
IG	Inspector General
INS	Immigration and Naturalization Service
JIC	Joint Intake Center
JTTF	Joint Terrorism Task Force
LAPD	Los Angeles Police Department
MOU	Memorandum of Understanding

NCA	National Crime Agency
OIG	Office of Inspector General
OPR	Office of Professional Responsibility
PIC	Public Integrity Council
SFO	Serious Fraud Office
TSA	Transportation Security Administration
TSA IA	Transportation Security Administration, Internal Affairs
USCS	United States Customs Service
USCG	United States Coast Guard
USCIS	United States Citizenship and Immigration Services
USCIS OSI	United States Citizenship and Immigration Services, Office of Security and Integrity
USSS	United States Secret Service
USSS OPR	United States Secret Service, Office of Professional Responsibility

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# I. INTRODUCTION

## A. PROBLEM STATEMENT

The Department of Homeland Security (DHS) has approximately 180,000 employees and approximately 200,000 contractors within its ranks (O’Keefe, 2010). From maintaining aviation security, to patrolling the country’s borders, to granting legitimate immigration documentation, the DHS component agencies, employees and contractors are faced with tremendous responsibilities. The inherent leeway associated with these responsibilities tempts some employees to become corrupt; however, unlike in most other federal departments, corruption within DHS can have devastating implications. For instance, a bribe paid to a Transportation Security Administration airport screener, by a would-be terrorist to forgo a thorough examination at a screening checkpoint, could duplicate the nightmarish events of September 11, 2001. Similarly, a bribe paid to a Customs and Border Protection Officer (CBPO) or a Border Patrol Agent (BPA) to look the other way as dangerous individuals or cargo pass through into the United States could severely impact the nation’s security. For the above stated reasons, it is imperative that the Department has a robust internal investigative mechanism to prevent, deter and investigate allegations of public corruption. This thesis will explore DHS’ options in creating, implementing and maintaining such a robust internal investigative approach to public corruption.

Public corruption has been around since the inception of civic institutions and government. Accepting money, services or benefits in exchange for doing or not doing one’s governmental function is an issue that all governments grapple with. Although not as corrupt as some developing third world nations, the United States still grapples with public corruption. Carol Lam, former United States Attorney for the Southern District of California, once said, “Public corruption destroys everything it touches” (Department of Justice [DOJ], 2007). Indeed, even in today’s heightened awareness to international and domestic terrorism, public corruption still remains at the forefront of the Federal Bureau of Investigation’s (FBI) investigative priorities. FBI Director Robert Mueller has stated, “Public corruption is our top criminal priority, for the simple reason that it is different

from other crimes. Corruption does not merely strike at the heart of good government. It may strike at the security of our communities” (2008). Senator Patrick Leahy recently stressed the link between public corruption and the nation’s security:

Efforts to combat terrorism and official corruption are not mutually exclusive. A bribed customs official who allows a terrorist to smuggle a dirty bomb into our country, or a corrupt consular officer who illegally supplies U.S. entry visas to would-be terrorists, can cause grave harm to our national security. (2008)

Within DHS, there are currently seven anti-corruption agencies (ACA) charged with investigating allegations of public corruption. Some of the agencies are primarily administrative in nature, some solely focus on criminal investigations and some represent a mix of both administrative and criminal. For every allegation of public corruption within DHS, there are at least two DHS ACAs that have concurrent jurisdiction; in some cases, three ACAs have jurisdiction to investigate the same matter. In addition to the plethora of DHS ACAs, the FBI, the federal government’s largest and most well-funded law enforcement agency, also has the authority to investigate any allegation of public corruption within DHS. Recently, the FBI has set its sights on corruption along the nation’s southwest border and created Border Corruption Task Forces (BCTF). While the DHS ACAs and the FBI all share the common goal of eradication of public corruption within DHS, the presence of so many investigative agencies has resulted in overlapping jurisdictions, duplication of efforts and stovepiping of valuable intelligence and information.

A Department, like DHS, entrusted with such responsibilities needs to ensure that its employees have the highest ethical standards and ultimately remove and/or prosecute those who violate the public trust. To that end, it is imperative that the Department has a robust internal investigative mechanism to prevent, deter and investigate allegations of public corruption. The current fragmented, stovepiped investigative approach to public corruption is not optimally serving the Department or the American public to the extent it could. In deconstructing the events that led up to September 11, 2001, the 9/11 Commission stated, “The [intelligence] agencies are like a set of specialists in a hospital, each ordering tests, looking for symptoms, and prescribing medication. What is missing

is the attending physician who makes sure they work as a team” (National Commission on Terrorist Attacks upon the United States [9/11 Commission], 2004, p. 353). This thesis will explore DHS’ options in creating that “attending physician” to ensure that all those with a stake in DHS public corruption investigations are working in collaboration with one another as one team.

## **B. BACKGROUND**

The creation of DHS in 2003 represented the consolidation of 22 agencies under one umbrella organization in an effort to increase efficiency, coordinate efforts and better protect the country. As part of the establishment of the new Department, several agencies were wholly merged with others, some functions were removed from agencies and some agency functions were completely eliminated. For instance, the criminal investigative component of the Immigration and Naturalization Service (INS) was combined with the investigative arm of the United States Customs Service (USCS) and renamed Immigration and Customs Enforcement (ICE). The internal investigative agencies within the USCS (Internal Affairs) and INS (Office of Professional Responsibility) were merged and called ICE, Office of Professional Responsibility (ICE OPR). The uniform officers within the defunct INS were combined with uniform officers of the USCS and renamed Customs and Border Protection (CBP). Since the internal affairs components of both agencies were transferred to ICE OPR, the new CBP was left without an internal watchdog. Therefore, a new internal investigative entity was created and named Customs and Border Protection, Office of Internal Affairs (CBP IA). The Homeland Security Act of 2002 statutorily created the Department of Homeland Security, Office of Inspector General (DHS OIG). DHS OIG is charged with investigating fraud, waste and abuse within the Department. The agency also has the statutory authority to investigate allegations of criminal and administrative violations within the entire Department.

The Transportation Security Administration (TSA) was created in November 2001 in response to the 9/11 attacks. Initially part of the Department of Transportation, TSA became one of the 22 agencies shifted into DHS in November 2002. The TSA’s internal investigative component is TSA Internal Affairs (IA). TSA IA is charged with

investigating allegations of criminal and misconduct within the agency. After the transfer into DHS, TSA IA remained intact with the same authorities and responsibilities. The United States Citizenship and Immigration Services (USCIS) is the agency responsible for processing immigrant visa petitions, naturalization petitions and asylum petitions as well as making adjudicative decisions regarding citizenship and marriage petitions. USCIS' responsibilities were previously performed by various divisions within the INS. Before the creation of DHS, public corruption investigations of INS employees were handled by the Department of Justice, Office of Inspector General and, to a certain extent, Immigration and Naturalization Service's Office of Professional Responsibility. In 2007, USCIS created its own internal investigative unit called USCIS, Office of Security and Integrity (USCIS OSI). The mission of USCIS OSI is to enhance existing USCIS' "organization functions that focus on management integrity, individual professional integrity, and security of CIS facilities and employees" (USCIS, 2007). USCIS OSI only investigates administrative allegations within the agency, whereas DHS OIG retains ultimate responsibility to investigate more serious matters and criminal allegations. The U.S. Secret Service (USSS) and its internal investigative component, USSS-OPR, along with the U.S. Coast Guard Investigative Service (CGIS), were transferred in whole into the new Department. Both agencies' roles and responsibilities remained the same; specifically, the investigation of administrative and criminal allegations of misconduct within their respective agencies.

In addition to the seven DHS ACAs, the FBI, with its expansive authority and jurisdiction, also plays a large role in the investigation of DHS employees. With the perceived rise of violence and corruption along the southwestern border of the United States, the FBI has recently transitioned a significant portion of its investigative capital to border corruption investigations. To that end, the FBI has spearheaded the creation of BCTFs. The BCTFs combine the investigative expertise and resources of various federal, state and local law enforcement agencies in the common pursuit of corruption along the southwest border of the United States. The FBI states that BCTFs have been successful in identifying, arresting and convicting corrupt DHS employees, and others, along the southwest border.

Despite its success, BCTFs have also been the source of considerable friction. The friction involves the leadership of the BCTFs. As the BCTFs are the creations of the FBI, the FBI desires to be in control. On the other hand, as the targets of the investigations are DHS employees, the DHS ACAs want to manage the investigations of their own employees. This leadership issue has caused unnecessary investigative delays, inter-agency rivalries and misplaced focus.

In 2006, the San Diego BCTF received an allegation that CBP Officer Michael Gilliland was involved in illegalities. Surveillance, wiretaps and undercover operations garnered evidence of Gilliland's complicity in alien smuggling and bribery. Gilliland was arrested by BCTF law enforcement officers and, in February 2007, was sentenced to five years in federal prison and ordered to pay a \$200,000 fine (Becker, n.d.). In discussing the successful Gilliland investigation, a CBP IA investigator assigned to the San Diego BCTF acknowledged the difficulties with multiple agencies with overlapping jurisdictions.

This is only my personal opinion, but 9/11 changed a lot of things. After 9/11, the alphabet soup even increased. Different agencies in some sense doing the same thing? Sure. Could we merge into maybe a more streamlined agency? I would love that on a personal basis, to have one corruption agency looking at it. We are an alphabet soup. I mean, you look at the task force; you have the FBI, OPR [the Office of Professional Responsibility], CBP [Customs and Border Patrol], the Office of Inspector General (which is in essence the watchdog of the Department of Homeland Security). We have a human smuggling agent from Immigration and Customs Enforcement. I mean, we have the whole conglomerate. I wish that we would streamline it and put it back into one agency looking into the corruption, but you're not gonna' do that. Everybody wants their piece of the pie. Every agency wants to do something. So, yeah, there is some frustration, sure. (Archuleta, 2008)

When DHS was created in 2003, agency leaders foresaw problems with the Department having a multitude of internal public corruption investigatory agencies. As such, memorandums of understanding (MOU) were drawn up and agreed upon. The MOUs outlined the relationships between the agencies, delineated agency boundaries and established time frames for allegation reporting. Nevertheless, despite best intentions, the MOUs fall short in several important areas. First, in spite of the MOUs, there still

remains considerable overlapping jurisdiction within the Department. Second, the MOUs do not address or acknowledge the FBI's significant role in DHS internal investigations. The FBI is not a signatory on any of the MOUs outlining jurisdictional responsibilities or reporting requirements regarding public corruption investigations within DHS.

The FBI and DHS OIG are required to abide by the requirements set forth in the Inspector General Act of 1978 and the Homeland Security Act of 2002. Specifically, the FBI and DHS OIG are required to notify promptly each other upon the initiation of a criminal investigation of a DHS employee. The intent behind this requirement is to "deconflict" investigations at the earliest possible moment and to avoid simultaneous investigations of the same person or matter. DHS OIG strictly follows this requirement as it is part of the internal audit process as mandated by the Inspector General Act. The FBI does not strictly adhere to this notification requirement.

Along with the MOUs, DHS also utilizes a clearinghouse that is charged with receiving, processing, deconflicting, and distributing allegations of public corruption. The Joint Intake Center (JIC) is a CBP controlled entity located in Washington, D. C. responsible for the intake of public corruption allegations. The core concept behind the JIC is to receive allegations, reconcile possible conflict issues and then disseminate the allegation to the appropriate investigative body. As part of reconciling confliction issues, the JIC queries the various databases of DHS' internal investigative agencies to determine open investigations regarding the same person, matter or subject. The problem with the JIC is that allegations are only deconflicted at the time the investigation is initiated or received. There is not a continuing deconfliction process. This presents a problem when allegations are received that do not have an identified subject. When the subject of the investigation is later identified, no deconfliction takes place. All deconfliction efforts are completed during case initiation. The JIC is also deficient in that it does not have access to the FBI computer databases.

The current reality of seven DHS ACAs and the FBI sharing common jurisdiction has created a competitive atmosphere. Instead of the investigative agencies viewing one another as partners in the battle against public corruption, the entities often view one another as rivals and guard their respective territories. As such, developed relevant

information and intelligence is not regularly shared amongst the agencies. The DHS ACAs and the FBI maintain their own case management systems that are not readily and fully accessible to all the other agencies. Within each case management system, there exists valuable information and intelligence that, if shared, would greatly enhance the ability to “connect the dots,” see the overall picture and increase the ability to conduct comprehensive criminal and administrative investigations. One significant negative consequence of this situation has been separate agencies unknowingly investigating the same allegation or employee at the same time. Due to unique legal restrictions and regulations governing the investigation of government employees, simultaneous investigations of the same matter or employee have the potential to preclude a subsequent criminal prosecution. More importantly, simultaneous parallel investigations have the potential to hinder national security as efforts are not coordinated and intelligence is not comprehensively consolidated.

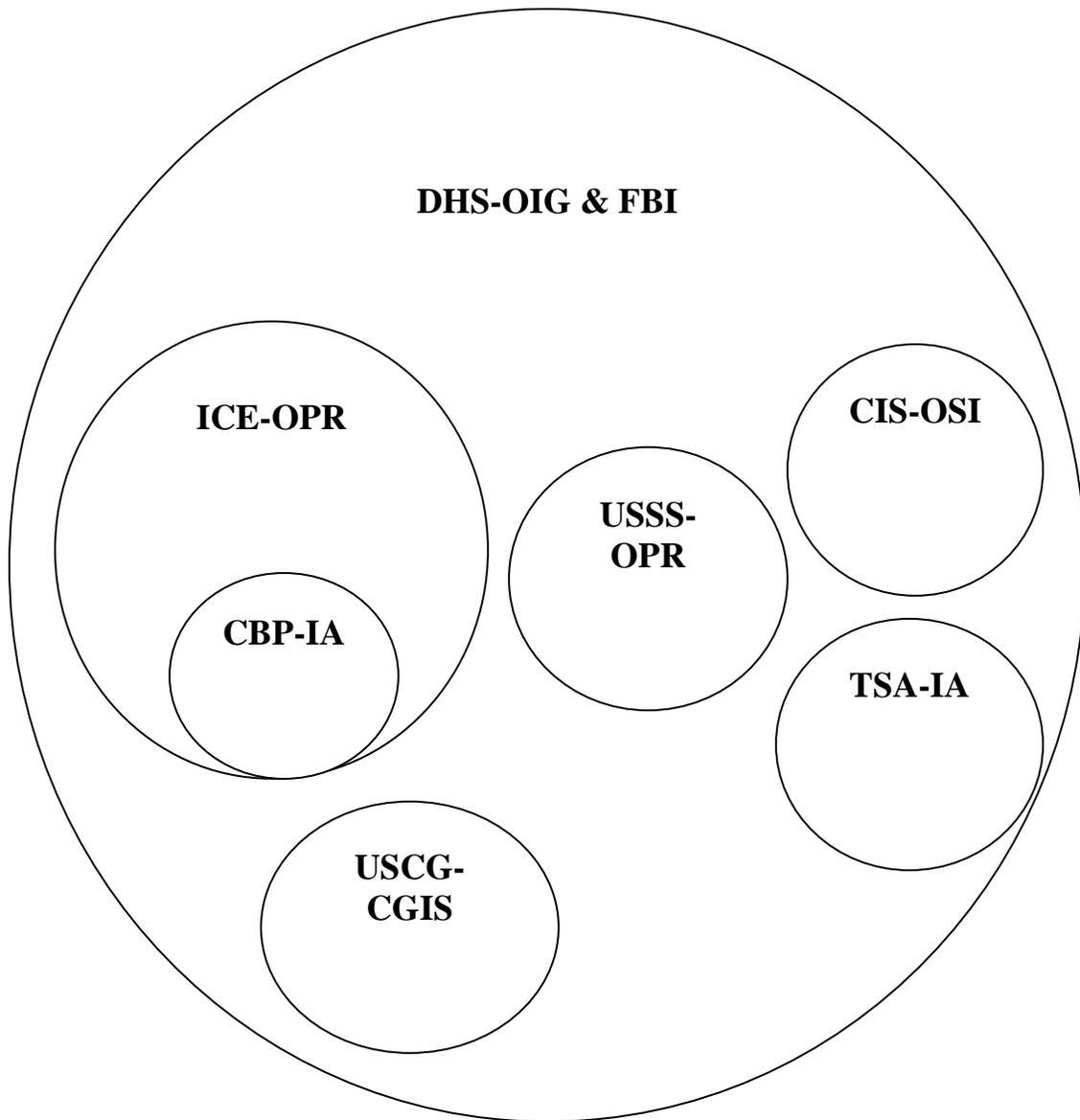


Figure 1. Illustration of Overlapping Jurisdiction amongst DHS Internal Investigative Agencies and the FBI

### C. LITERATURE REVIEW

Research has not revealed any literature regarding the systemic deficiencies and working relationships amongst those agencies involved in DHS public corruption investigations. There are some articles acknowledging and recognizing the problems

associated with overlapping jurisdictions and fragmentation; however, there is a considerable gap of scholarly research regarding overlapping jurisdiction in the internal investigative arena. This thesis exploring the working relationships amongst public corruption agencies with oversight over DHS appears to be the first research project of its kind.

Several studies have analyzed the merger of the USCS and INS and the creation of ICE and CBP. Specifically, the areas of study have been why and how the agencies were split and merged and the issue of possibly consolidating the two agencies in the future. One study stated that the creation of DHS was supposed to consolidate agencies with overlapping and complimentary missions (Carafano, 2005). Other literature suggests that instead of integration, DHS has resulted in stovepipes (U.S. Government Printing Office, 2005, p. 11). According to one DHS OIG report, the Department remains a “collection of separate components operating under a common organizational umbrella” (Heyman & Carafano, 2003, p. 2).

In 2005, James Carafano, a Heritage Foundation expert in security and homeland security, testified before the U.S. House of Representatives and indicated that it was time to reconsider the organizational structure of DHS. Carafano suggested that it was imperative to study and take immediate remedial action because, within years, bureaucracies can become entrenched (Heyman & Carafano, 2004, p. 8). Carafano stated that the split of ICE and CBP was accomplished without a compelling reason and that DHS was not optimally structured to lead the fight against terrorism (Heyman & Carafano, 2004, p. 15). He related that both ICE and CBP are responsible for immigration enforcement; however, both agencies were conducting their respective jobs separately (Heyman & Carafano, 2004, p. 15).

A 2005 Heritage Foundation study listed three criteria that should be considered when evaluating whether government agencies should be consolidated (Carafano, 2005). First, will the consolidation improve the overall management of the Department; second, will the consolidation create strong operational agencies; third, and the most important criterion, is to “envision the future” (Carafano, 2005). In other words, in five to 10 years, will the Department be optimally structured to fulfill its mission specific responsibilities?

The Heritage Foundation recommended the consolidation of CBP and ICE into agency (Carafano, 2005). Consolidation could be accomplished quickly by executive decision, without the need for legislative action (Heyman & Carafano, 2004, p. 16). The Heritage Foundation study did not specifically refer to the overlapping jurisdiction of DHS' internal investigative agencies, but it did recommend consolidating and strengthening agencies with overlapping missions (Heyman & Carafano, 2004, p. 8).

The Government Accountability Office (GAO) studied the issue of consolidating Inspector General (IG) entities (U.S. General Accounting Office, 2003, p. 13). The GAO study differed from the Heritage Foundation study in that it concentrated on consolidation as a way to enhance and pool limited resources, rather than a way to alleviate systemic and organizational deficiencies. The GAO study acknowledged the significant role IGs play in combating fraud, waste and abuse in their respective departments (U.S. General Accounting Office, 2003, p. 1). However, according to the study, the IG community faces tremendous challenges in how to best maximize limited resources to the best effect (U.S. General Accounting Office, 2003, p. 12). In an effort to achieve potential efficiencies and increased effectiveness across the federal IG community, the GAO suggested the "Congress study whether IGs should be consolidated based on related agency missions or where potential benefits to IG effectiveness can be shown" (U.S. General Accounting Office, 2003, p. 16). The GAO report focused on consolidating IGs with other federal departments based upon related agency missions. The study did express any opinions or conclusions regarding the consolidation of internal investigative agencies within a singular government department.

In July 2007, Glenn A. Fine, the Inspector General of the Department of Justice (DOJ), testified before the U.S. Senate as to how to strengthen the role of the IGs within the federal government. Fine identified many of the same issues highlighted by the aforementioned GAO study, namely the limited resources of IGs in fulfilling their missions. Fine suggested that the division of oversight jurisdiction within DOJ amongst the OIG and DOJ's various offices of professional responsibility was inefficient and duplicative (2007, p. 15).

This sentiment echoed earlier Congressional testimony of the Michael Bromwich, DOJ's first Inspector General. In 2001, Bromwich described the configuration of DOJ's internal investigative agencies as "institutional hodgepodge" (Bromwich, 2001). A DOJ OIG report concluded that, "In various cases, the OIG and OPR have conducted overlapping, duplicative investigations concerning the same set of events (Fine, 2007, p. 15). According to Bromwich, some have advocated merging DOJ OIG and DOJ OPR as a way to improve efficiency and effectiveness (Bromwich, 2001).

Former Naval Postgraduate School student Gregory Mandoli examined the efficiency of overlapping responsibilities and jurisdictions in his master's degree thesis entitled *The Sandbox Strategy*. Mandoli's central claim was that, although six of the federal government's largest law enforcement agencies had investigative experience and expertise to enhance the global war on terrorism, the current fragmented and autonomous organizational structure of the agencies precluded them from functioning at the "optimal level" (2006, p. 24). Mandoli argued that the fragmented approach to the war on terrorism had resulted in "negative characteristics," such as interagency rivalry, redundancy, data defragmentation and jurisdictional foreclosure (2006, pp. 2-3). Ultimately, Mandoli recommended the consolidation of the six federal law enforcement agencies from three separate federal departments as a way to mitigate and reduce the negative characteristics and enhance the country's global war on terrorism.

Mandoli briefly touched on the subject of merging internal investigative agencies in his proposed consolidation; however, his analysis centered principally on whether or not the consolidation would play a greater role in precluding civil rights violations by overzealous law enforcement officers (Mandoli, 2006, p. 32). Mandoli did not make a recommendation regarding the internal investigative agencies and simply stated, "Further research into this area would be beneficial" (2006, p. 32).

The issue of fragmentation and inefficiency is not just a problem effecting federal law enforcement agencies. Former Naval Postgraduate School master's degree candidate Christopher Vicino, in his thesis *Building a Better Mouse Trap*, examined the inefficiencies created by the fragmented nature of local law enforcement agencies. Vicino suggested that with nearly 18,000 separate police departments in the U.S., the

individualized, fragmented and disconnected model of policing is not the most efficient and effective way to fight terrorism (2007, pp. 5–6). Vicino suggested that under this decentralized model, individual agencies investigate crimes without the ability to detect existing crimes or schemes. In other words, the fragmented configuration of the nation’s local law enforcement entities is not optimally structured for the agencies to be able to “connect the dots” or see the overall picture. Vicino’s thesis presented several options to ameliorate the fragmented nature of local police operations: first, maintenance of the status quo with increased communication and information sharing; second, identifying and eliminating specific overlapping services among police agencies through consolidation; and third, consolidating entire police departments (2007, pp. 85–93).

Ultimately, Vicino stopped short of recommending the total consolidation of all local police departments in the United States or the establishment of a national police agency (2007). While outright consolidation would result in a unified command structure, in the end, the practicality of consolidating all local police departments in the United States is not realistic. Vicino’s thesis did not specifically address internal investigative divisions within local police departments.

There is a wealth of literature regarding inefficiency and mergers and acquisitions in the private sector/corporate sector. Despite the fact that corporations are profit based and law enforcement agencies are service oriented, several key concepts and lessons learned from the private sector are applicable to the public sector. In 1998, David Nadler, founder of Delta Consulting Group, a consulting firm specializing in executive leadership and organizational change, published a book entitled *Champions of Change, How CEOs and Their Companies are Mastering the Skills of Radical Change*. In his book, Nadler suggested that restructuring a corporation to achieve maximum efficiency can be accomplished in three fundamentally different ways: 1) by grouping components by activity; 2) by grouping by output; and, 3) by grouping by user or customer (Nadler, 1998, p. 183). Nadler explained grouping by activity as the consolidation of entities by similarities in work, defined by skill, discipline or function (1998, p. 183). Nadler recommended that the best way to avoid duplicative efforts and provide economies of scale, grouping by activity is the best course of action.

## II. DOMESTIC MODELS

DHS is not only the only U.S. government institution to have suffered the negative consequences of several entities with overlapping jurisdiction. As mentioned in the Literature Review section, DOJ also has several investigative entities with overlapping jurisdiction. Like DHS, DOJ also has the core mission of conducting criminal investigations and protecting the homeland. Also like DHS, corruption within DOJ can pose significant national security problems to the U.S. Despite the Congressional testimony of several DOJ Inspectors General describing the built-in inefficiencies associated with overlapping jurisdiction, no corrective action has been undertaken by either the DOJ Secretary, Congress or the Executive Branch. To this day, DOJ continues to operate under the same fragmented approach to public corruption investigations.

Although DOJ's ACAs may not be optimally arranged for maximum efficiency, the system still manages to work. One of the truisms of life is that change is difficult as it creates uncertainty, and, in the case of government institutions, it can involve the relinquishment of power. That may partially explain the unwillingness to tackle DOJ's fragmented approach to public corruption. Unfortunately, often times, the catalyst for significant change is the result of a major crisis or a tragedy. The inefficiencies within DOJ have not, to date, resulted in a major catastrophe or crisis. Likewise, the inherent inefficiencies within DHS have not resulted in a crisis.

Other domestic government institutions plagued with overlapping jurisdiction have not been so fortunate. For many years, the Department of Defense (DoD) consisted of many entities operating without one true overall military leader. Although functional, the lack of a leader affected military operations in World War II. Specifically, the leadership power-sharing agreement during the Pacific Operation resulted in delays, time-consuming negotiations and military advancements by the enemy. After the war and after much negotiation, changes were made to streamline the leadership of DoD and its military components. Over time, DoD has further refined its leadership structure to

meet the evolving needs of military operations. DoD did not arrive at its current leadership structure overnight. It took several iterations before an acceptable configuration was arrived at.

Since the creation of the republic, the U.S. intelligence community (IC) has consisted of many independent intelligence agencies operating without an overall leader. Although the creation of the Central Intelligence Agency (CIA) in 1947 was intended to close the leadership gap in the IC, it ultimately failed. The lack of an independent leader overseeing, aligning and directing the entire U.S. IC was exposed by the terrorist attacks of September 11, 2001. Since that time, the IC has undergone several changes, including the establishment of a Director of National Intelligence (DNI). Creating the position of a DNI has not been an immediate panacea, as many issues still exist. The DNI presents an interesting case study in that it presumes installing an additional leadership level over a diverse, historically independent, community can successfully coordinate and lead. As of this writing, the efficacy of the DNI is unknown. Only time will tell.

The remainder of this section will focus on analyzing and the changes made by DoD and the U.S. intelligence community to increase efficiency of operations. Every organization is unique in its configuration, design, methods and operations. To that end, the challenges to increase organizational efficiency differ from organization to organization. In short, there is no one size fits all solution. DoD and the IC represent distinct alternatives that DHS public corruption stakeholders can look to and study as ways to improve efficiency.

#### **A. THE CREATION OF THE DEPARTMENT OF DEFENSE**

During World War II, specifically in the Pacific theatre, the U.S. experienced difficulties due to its fragmented military command structure. Although the U.S. was ultimately victorious in the overall war, the lack of centralized command hampered the war effort.

Save for the President there was no single authority. The process operated as a committee rather than a staff, and command was diffused and

decentralized, making decisions on strategy and theater-wide problems only available by time-consuming debates and compromises. (Barlow, 2004, p. 79)

Unlike the European theater, which was led by Supreme Allied Commander General Dwight D. Eisenhower, the Pacific theater lacked an overall leader. Historically, the Pacific had been the Navy's area of responsibility; however, during the war, the Army had deployed thousands of men to the arena to protect Australia from a possible axis invasion. Both the Navy and Army had a vested interest in the Pacific. As the war front transitioned from the European theater, the U.S. needed to resolve the leadership question in the Pacific.

Navy Admiral Chester Nimitz was appointed the Commander of the Pacific Fleet. Army General Douglas MacArthur was Commander of the United States Armed Forces in the Far East and was a national hero after the Philippine expedition. Both the Navy and the Army had reservations about the other assuming command of their troops. The Navy feared that MacArthur did not have sufficient knowledge of naval operations to lead the Navy effectively. However, MacArthur outranked any available admiral and it would have been diplomatically awkward for a subordinate to assume command of him and his troops.

It took five weeks before a decision was made regarding command and control in the Pacific. The five weeks came with a heavy price as during that time the enemy was able to capture and fortify the Admiralty Islands, Buka, Bougainville, Lae and Salamaua (Barlow, 2004, p. 77). In the end, no one person was given command of the Pacific theatre. Instead, leadership in the Pacific would be bifurcated into two theatres.

MacArthur was appointed commander in chief of the Southwest Pacific Area which included Australia, the Philippines, Solomon Islands, New Guinea, and Bismark Archipelago. Admiral Nimitz would command the remainder of the Pacific Ocean except for coastal waters off Central and South America. There would be no unified command in the Pacific, but two separate commands. (Barlow, 2004, p. 78)

Command of the Air Force in the Pacific proved to be another difficult issue. Both MacArthur and Nimitz vied for control of all Air Force operations for the inevitable

attack of Japan (Doolittle & Glines, 1991, p. 439). Ultimately, the Air Force in the Pacific theater “was to be operated as a global air force under the supervision of the Joint Chiefs of Staff” (Doolittle & Glines, 1991, p. 439). In the end, the war in the Pacific had three separate commanders: MacArthur, Nimitz and the Joint Chiefs of Staff.

The U.S. won the war in the Pacific despite the inefficiencies of the divided command structure. After the war, MacArthur expressed his displeasure with the command structure.

...of all the faulty decisions of the war, perhaps the most unexplainable one was the failure to unify the command in the Pacific...It resulted in divided effort, the waste of diffusion and duplication of force, and the consequent extension of the war with added casualties and cost. (Barlow, 2004, p. 79)

The lack of a clear leader resulted in interservice rivalries as the military branches competed for “limited supplies of ships, landing craft, and airplanes” (Barlow, 2004, p. 78). President Harry S. Truman sarcastically stated, “We must never fight another war the way we fought the last two...I have the feeling that if the Army and the Navy had fought our enemies as hard they fought each other, the war would have ended much earlier” (Stevenson, 2008, p. 14).

After the war ended, Truman set out to restructure the military’s leadership structure so as to avoid the future inefficiency of operations. Specifically, Truman aimed to end the interservice rivalries and duplication of efforts that marred military operations in the Pacific theatre. In testimony before the Senate Naval Affairs Committee, U.S. Air Force General James Doolittle voiced his support for some sort of unification of the armed forces. Doolittle stated, “What is good for the United States, as far as the armed forces are concerned, is that the activities of all services should be coordinated and each service should retain full control in its own medium and stay out of the others’ medium” (Doolittle & Glines, 1991, p. 479).

In January 1947, an agreement was reached that would “give general authority to the Secretary of Defense, but individual secretaries would administer the three departments as separate units” (Stevenson, 2008, p. 18). The legislative bill came to be

called the National Security of Act. Against very minimal opposition, both the House of Representatives and the Senate passed the legislation by voice vote. On July 26, 1947, President Truman signed the bill into law. In the end, the National Security Act of 1947 was an historical piece of legislation. It established: the National Security Council; the Central Intelligence Agency; the National Security Resources Board; the Air Force and gave each of the three military services cabinet rank; and it created the Joint Chiefs of Staff as a permanent agency (Keagle & Martin, 2007, p. 1).

Unfortunately, the passage of the National Security Act of 1947 and the consolidation of all military branches under the Department of Defense did not immediately create the synergy and coordination of efforts. While the National Security Act of 1947 placed the military branches under the civilian leadership of the Secretary of Defense, the respective branches still had separate chains of command. The newly created Joint Chiefs of Staff consisted of the Army Chief of Staff, the Chief of Naval Operations and the Air Force Chief of Staff. The chairmanship of the Joint Chiefs of Staff periodically rotated among the military leaders. This arrangement put the military Chiefs of Staff in a difficult position as they were responsible for advocating for their service while at the same time advising the President and the Secretary of Defense on what was in the best interest of the defense establishment as a whole (McGeary, 2007, pp. 113–4). The formalization of the Joint Chiefs of Staff command structure had actually unintentionally perpetuated the parochial attitudes that the National Security Act of 1947 had intended to remedy.

This leadership arrangement has been blamed for several unsuccessful military operations. Specifically, the “operational deficiencies evident during the Vietnam War, the seizure of the *Pueblo*, the Iranian hostage rescue mission, and the incursion into Grenada were the result of the failure to adequately implement the concept of unified command” (Locher, 1996, p. 15). The rotational nature of Chairman of the Joint Chiefs of Staff had resulted in a tendency to avoid controversy and disagreements. As Secretary of Defense, Richard Cheney stated that the lack of a strong Chairman had caused the Joint Chiefs of Staff to make decisions based on the “lowest common denominator of whatever the chiefs collectively could agree upon” (Locher, 1996, p. 12).

Congress recognized the deficiencies in the Joint Chiefs of Staff arrangement and, in 1986, passed the Goldwater-Nichols Act. In essence, the Goldwater-Nichols Act increased the role and power of the Chairman of the Joint Chiefs of Staff and made it a term position rather than a rotational assignment. The Goldwater-Nichols Act also made the Chairman of the Joint Chiefs of Staff the principal military advisor to the President of the United States and the Secretary of Defense instead of each service chief providing separate advice. Experts agree that after the passage of the Goldwater-Nichols Act, successful military operations have been launched, the quality of military advice has improved and the interservice rivalries have decreased.

### **1. Applicability of the DoD Model to DHS**

On the surface, the structure and configuration of DoD and DHS suggest many commonalities. Both departments represent a conglomeration of independent branches that have been united under one umbrella organization. In DoD, each military branch shares the common mission of protecting America's national security. In DHS, the Department's ACAs share the core mission of uncovering and investigating public corruption. Interestingly, the U.S. Coast Guard (USCG), one of the nation's five branches of the military, is not part of DoD. The USCG is a component of DHS. However, during wartime, at the discretion of the Executive Branch or Congress, the USCG falls under the direction of the Secretary of the Navy and, in turn, DoD and the Joint Chiefs of Staff. Similarly, despite playing a major and pivotal role in the nation's homeland security, the FBI is not part of DHS. Conversely, there is no triggering effect, such as the investigation of a DHS employee, which would place the FBI under DHS' purview.

Unlike DoD, the DHS ACAs and the FBI lack a shared leadership council to ensure coordination and collaboration of investigative efforts. The formation of such a council could potentially provide tremendous benefit such as creating unity of effort and efficiency. While not specifically referencing ACAs or anti-corruption investigations in its report, the 9/11 Commission did suggest that other federal bureaucracies emulate the Goldwater-Nichols model. According to the 9/11 Commission, "The Goldwater-Nichols

example is seen by some as having lessons applicable to lessening competition and increasing cooperation in other parts of the federal bureaucracy, particularly the law enforcement and intelligence communities” (The 9/11 Commission, 2004, p. 96).

An exact replica of the Goldwater-Nichols applied to DHS would call for the DHS anti-corruption stakeholders (the seven DHS ACAs and the FBI) to assign one high-ranking member of its organization to a leadership council. For the sake of this thesis, this hypothetical council will be referred to as the Public Integrity Council (PIC). Such a council would be responsible for coordinating and collaborating internal investigative efforts within DHS. The council would also deconflict any issues that could arise before or during an investigation. Like the Joint Chiefs of Staff, a PIC would require someone to lead the working group such as a chairman. To create buy-in from all stakeholders, a PIC could choose to have a rotational system, like the pre-1986 Joint Chiefs of Staff model. However, as DoD learned in its pre-1986 model, a rotational system does not always result in making the best decision. In fact, as DoD’s experience suggests, decisions would likely be made based upon the lowest common denominator garnering the least amount of friction or controversy.

Therefore, following the Goldwater-Nichols model, a PIC would need to have a permanent chairman selected to lead the group for a fixed term. The issue as to whom should lead a PIC would likely cause controversy and quite possibly run afoul of the law. Pursuant to the Homeland Security Act of 2002, the piece of legislation that created DHS, the DHS Inspector General is solely responsible to the DHS Secretary with respect to audits and investigations (U.S., Congress, 2002, p. 116 STAT 2221). On its face, this statutory responsibility precludes DHS OIG from reporting to any other investigatory agency. Furthermore, according to the Inspector General Act of 1978, Inspectors General were established “In order to create independent and objective units...to conduct and supervise audits and investigations...” (U.S. Congress, 2009, p. 1). Placing DHS OIG under the leadership of another investigatory agency is directly contrary to the intent and spirit of the Inspector General Act of 1978.

This leadership issue is the same issue that has plagued DHS OIG’s participation in the FBI-led BCTFs. With that said, there are only two ways in which DHS OIG could

participate in any formalized DHS anti-corruption leadership council. The first would be if the Inspector General Reform Act of 2008 and the Homeland Security Act of 2002 were amended to alter the DHS OIG's chain of command. This would require Congressional action. This is an unlikely scenario, as it would run directly contrary to the intent and mandate of inspectors general, which requires complete autonomy and independence. The DHS Secretary would also likely object to the OIG directly reporting to another entity besides himself or herself. As DHS OIG is required to report directly to Congress, it is rather unlikely that Congress would impose a layer between itself and the OIG.

Under the current law, DHS OIG could participate in a leadership council only if it was in control of the group. DHS OIG already has the oversight responsibility for all internal investigations within the Department. Thus, the creation of a leadership council with DHS OIG as the lead would not alter the current reporting responsibility; however, it is likely that there would be considerable resistance from the other ACAs and the FBI to the formation of a leadership council with DHS OIG as the permanent leader. Pursuant to Homeland Security Act of 2002, the DHS Under Secretary for Border and Transportation Security and the Director of the Bureau of Citizenship and Immigration Services shall be responsible for "conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee [within their respective organization]...that are not subject to investigation by the Inspector General of the Department" (U.S. Congress, 2002, pp. 116, STAT 2194 & 2199). This statutory language indicates that Congress intended there to be a line of demarcation between noncriminal investigations and allegations investigated by DHS OIG. In other words, the intention is for the individual agencies to be responsible for less serious noncriminal investigations and the OIG to conduct investigations of more serious matters. Placing all the DHS ACAs under the leadership of DHS OIG would considerably blur that line.

Additionally, it is doubtful that the FBI would willingly relinquish its vast authority to investigate allegations of DHS public corruption. Currently, the FBI has free reign to initiate and investigate any allegation of corruption anywhere in the U.S., including within DHS. As evidenced in BCTFs, the FBI has been adamant in its desire to

control and direct investigations along the southwest border. Allowing DHS OIG to be the permanent leader of a PIC would transfer leadership authority from the FBI to a PIC and thus the DHS OIG. This is highly unlikely and, most likely, in the view of the FBI, a non-starter.

The establishment of a PIC for the DHS ACAs, without including the FBI, could still potentially be beneficial. For instance, it would eliminate many of the coordination problems and information sharing gaps with the DHS ACAs. The fact that the FBI would not be part of a PIC could actually still increase coordination and information sharing between the DHS ACAs and the FBI. For example, the establishment of a DHS PIC would create a central focal point by which information could be easily accumulated and shared with the FBI. Currently, information is shared by the component DHS ACAs on an ad hoc basis. A PIC would be better able to disseminate relevant information with the FBI on a coordinated and timely basis.

On the other hand, a unified and coordinated PIC could be viewed as a powerful rival to the FBI's supremacy in personnel and resources. There is some merit in this in that it is conceivable that a PIC could feel less inclined to coordinate efforts with the FBI as it would have already achieved the benefits of force multiplication. To avoid such a situation, a potential PIC leader would have to be politically adept and not just voice the benefits of coordination and cooperation but ensure that such coordination and cooperation are carried out in a fair and equitable and timely fashion.

## **B. THE CREATION OF THE DIRECTOR OF NATIONAL INTELLIGENCE**

The National Security Act of 1947 played a pivotal role in defining the U.S.' Intelligence Community (IC). Passage of the 1947 Act installed the Director of the Central Intelligence Agency (CIA) as the leader of the entire IC. In addition to leading the CIA, the Director of Central Intelligence (DCI) was also given the broad responsibility of overseeing and guiding the other 15 intelligence agencies tasked with collecting, analyzing and disseminating intelligence. That National Security Act of 1947 also mandated that the DCI be the principal intelligence advisor to the President, other senior officials and Congress (Cumming, 2004, p. 1).

Almost immediately after the signing of the National Security Act of 1947, many argued that the DCI position, with its various responsibilities, was “unworkable” (Cumming, 2004, p. 1). Leading the CIA was a full-time job. Being required to lead the entire IC was also a full-time position. What often resulted was that the DCI, “frustrated by the challenges involved in managing the entire Intelligence Community, focused narrowly on the CIA,” which, in turn, led to an “ill-coordinated intelligence effort that poorly served the Nation” (Cumming, 2004, p. 1). By one estimate, from 1947 until 2004, there were at least 19 different recommendations by commissions, committees and panels to reorganize the management structure of the Intelligence Community (Cumming, 2004, p. 1). Many of the recommendations involved removing the DCI as the leader of the IC and replacing him with an independent leader unencumbered by ties to any of the nation’s 16 intelligence agencies.

In deconstructing the events leading up to 9/11, the 9/11 Commission found that the “divided management of national intelligence capabilities” was partly to blame for the nation’s intelligence failures (The 9/11 Commission, 2004, p. 409). The “loose confederation” of the nation’s intelligence agencies did not provide the optimal structure to gather, collect, analyze, share and disseminate actionable, timely intelligence. The 9/11 Commission suggested that the IC should be refocused to expand beyond the parochial visions of its individual agencies and see the bigger picture (The 9/11 Commission, 2004, p. 409). Intelligence expert Mark Lowenthal agreed that the IC was fragmented but suggested it was because “...they serve different clients and under various lines of authority and control. The intelligence community grew out of a set of evolving demands and without a master plan. It is highly functional and yet sometimes dysfunctional” (Lowenthal, 2006, p. 11).

In addition to highlighting its fragmented structure, the 9/11 Commission also concluded that the IC suffered from a lack of overall leadership. While acknowledging that DCI George Tenet “was clearly the leader of the CIA, the intelligence community’s confederate structure left open the question of who really was in charge of the entire U.S. intelligence effort” (The 9/11 Commission, 2004, p. 93). What the IC needed was an independent leader who could focus his or her undivided attention on the overall

community. To that end, the 9/11 Commission recommended that the DCI be replaced as the leader of the nation's IC and replaced by a "National Intelligence Director." Ideally, the National Intelligence Director would not have ties to any of the intelligence agencies and would have the sole responsibility of managing the nation's IC. In theory, this would free the IC leader from parochialism and allow him or her to see the overall intelligence picture in a clearer fashion.

In 2004, Senator Susan Collins introduced legislation that eventually became called the Intelligence Reform and Terrorism Prevention Act. The legislation proposed amending the National Security Act of 1947 by establishing the Director of National Intelligence as the head of the IC and the principal intelligence advisor to the President (U.S. Congress, 2004, pp. S. 2845–7). The new DNI position would oversee and coordinate national intelligence, but would be divorced from a base in any intelligence agency (Lowenthal, 2006, p. 28). Opponents argued that a DNI would only have a marginal impact and asserted that having a DNI before September 11 would not have significantly altered the outcome (Cumming, 2004, p. 14). Some opponents also argued that the new position would only add another layer of bureaucracy to the already burdensome bureaucracy of the IC (Cumming, 2004, p. 14).

The Intelligence Reform and Terrorism Prevention Act easily passed the House and Senate and was signed into law by the President on December 17, 2004. The DCI was relegated to exercising control over the CIA only. The DNI was allocated funds to create the Office of the Director of National Intelligence and to hire staff. The legislation did not specifically set the number of staff positions, but the DNI was given the authority to "establish permanent positions and appropriate rates of pay with respect to the staff" (U.S. Congress, 2004, pp. S. 2845–18).

As the DNI position has only been in existence for approximately six years, it may be too early to judge its ultimate success or failure. Lowenthal has stated, "How well they [DNI] work and whether they achieve the desired goals will not be entirely evident for several years" (2006, p. 31). With that said, some remain skeptical that the DNI position can deliver as intended. Some have suggested that although the DNI has been given the authority to manage all the intelligence agencies, it would be a mistake to

presume the position has the statutory authority to do so (Sims & Gerber, 2005, p. 49). Others have intimated that due to the lack of statutory authority, the DNI position has to rely heavily on creating and sustaining working relationships within the IC in order to lead the entire community successfully. On July 30, 2008, President George W. Bush issued Executive Order 13470 that was intended to redefine and enhance the authority of the DNI.

In her book, *Spying Blind*, Amy B. Zegart argued that the Intelligence Reform and Terrorism Prevention Act of 2004 has actually done more harm than good:

Instead of enhancing coordination and centralization, the 2004 legislation has triggered a scramble for turf that has left the secretary of defense with greater power, the director of national intelligence with little, and the Intelligence Community even more disjointed. (2007, p. 183)

Zegart's contention regarding the power of the Secretary of Defense is a salient one. One estimate is that approximately "80 percent of intelligence agencies and their budgets remain under the direct control of the Secretary of Defense" (Lowenthal, 2006, p. 277). Senator Collins has expressed frustration that the Department of Defense has refused to recognize that the DNI is in charge of the IC (Shane, 2006). Therefore, instead of the DNI being the most powerful person within the IC, it would appear as if the Secretary of Defense currently is. It remains to be seen how the relationship between the DNI and Department of Defense will unfold. Lowenthal is skeptical that the Department of Defense will eventually acquiesce to the DNI's authority. Lowenthal suggests, "Any additional power granted to the DNI can come only from the secretary of defense, which seems unlikely given the position that the Defense Department took during the formation of the new law. The argument over power is a zero-sum game" (Lowenthal, 2006, p. 277).

In just a couple of years, the DNI and the Office of the Director of National Intelligence has amassed a considerable bureaucracy. The 2007 Intelligence Authorization Act revealed that the DNI's budget had expanded to nearly \$1 billion and the staff had grown to 1,539 (Matthews, 2006). The expanding bureaucracy has not gone unnoticed by Congress. A report generated by the House Intelligence Committee stated

the “director of national intelligence is pursuing a path that will make the Office of the Director of National Intelligence less an intended ‘orchestration mechanism,’ and more another layer of large, unintended and unnecessary bureaucracy” (Matthews, 2006). Similarly, Representative Jane Harman said, “The concept behind intelligence reform...was to create a unified command structure...not a bureaucracy” (Zegart, 2007, p. 185).

On December 25, 2009, 23-year-old Nigerian national Umar Farouk AbdulMutallab attempted to detonate a bomb, hidden in his underwear, aboard an international flight from Amsterdam to Detroit. According to press reports, the IC had been aware of AbdulMultallab and his extremist views; however, AbdulMultallab was not on the no-fly list and was allowed to board a flight headed to the United States. Many blamed the DNI. Senator Kit Bond stated, “The problem with the Director of National Intelligence, Denny Blair, he has all of the responsibility and not enough authority. I voted against the bill [2004 Intelligence Reform Act] because he does not have the ability to control all the elements of the IC” (Bond, 2010). Similarly, former U.S. Ambassador to the United Nations John Bolton stated that the DNI had “failed in its central mission” and “should be dismantled” (Costa, 2010). Bolton suggested a major overhaul of the country’s IC community.

Firing the bureaucracy at the National Intelligence office is one way to start. I never thought having such an apparatus was a good idea. We need to do a better job at integrating intelligence, not add another layer on top of what’s already there. This administration can’t keep thinking that adding another bureaucratic fix to the mix will solve the broad problems that caused this failure. (Costa, 2010)

### **1. Applicability of the DNI Model to DHS**

Like the DoD, in an effort to ameliorate coordination and collaboration problems, the leadership structure of the IC was changed. The DoD model features a leadership council (Joint Chiefs of Staff) headed by one leader. The DNI model features the appointment of one independent leader placed in the position of coordinating the activities of underlying components. Whereas, the DoD model has been fine-tuned since 1947 to reach its current efficient state of operations, the DNI is a relatively new model.

Despite being new, there are already identifiable deficiencies with the DNI. The DNI and the Office of the DNI have come to be viewed as just another monolithic federal bureaucracy. Furthermore, some believe the DNI does not have the necessary power or authority to accomplish the mission it was created to carry out. The core idea behind the creation of the DNI was that the establishment of one unencumbered leader of the IC would be able to integrate and coordinate the IC community's activities. To date, it would appear as if the DNI has been unsuccessful.

The fact that the DNI position has not been immediately successful does not mean that the idea of installing one leader over a disjointed community is a fatally flawed concept. To dismiss the DNI leadership model summarily, due to its initial missteps, is unwise. Perhaps, over time, the DNI will work out its flaws and flourish. Perhaps the concept could work if it was tried in the right arena. Perhaps the right arena is anti-corruption efforts within DHS.

Currently, the DHS Inspector General (IG) is the statutory head of the Department's anti-corruption efforts. Pursuant to statutory authority, the DHS IG is responsible for overseeing all the anti-corruption investigations within the Department. In turn, DHS' component agencies are responsible for reporting such allegations and investigations to the DHS IG. To implement the DNI model to DHS would fundamentally alter the Department's statutory reporting and oversight responsibilities as it would require the DHS IG to report to someone other than the DHS Secretary or Congress. In order to implement a DNI type position within the Department would thus require amending portions of the Homeland Security Act. As addressed in the previous DoD discussion, requiring the DHS IG to report to another person or entity besides Congress or the DHS Secretary also runs counters to the intent and spirit of the Inspector General Act of 1978.

Assuming, for the sake of argument, the Administration or Congress favors the implementation of a DNI form of leadership for the DHS ACAs and the respective laws and reporting requirements are amended. To have the necessary authority and power to carry out its mission effectively, the new position would likely have to be implemented at the Under Secretary level. For the sake of this thesis, this position will be called the DHS

Under Secretary of Public Integrity. It would be impractical to suggest that a new Under Secretary for Public Integrity would be able to carry out this mission on his or her own without a robust staff. Like the DNI, the new Under Secretary would require a staff large enough to perform its duties effectively and efficiently. Just how large that staff needs to be is likely to be source of contention. As evidenced by the DNI experience, a vast bureaucracy and staff does not necessarily equate to effectiveness.

The establishment of an Under Secretary of Public Integrity could possibly send the wrong message regarding the integrity of DHS. While corruption within DHS is especially sinister, the creation of such a new leadership position could wrongly suggest that there is a high level of corruption within the Department. There will always be corruption in every level of government. Unfortunately, DHS is no different; however, the creation of a permanent Under Secretary of Public Integrity would be the first of its kind and could unnecessarily create trepidation regarding the integrity of DHS, its employees and its operations.

The 9/11 Commission concluded that the IC lacked a clear leader and failed to effectively share intelligence in a timely manner. The creation of the DNI ostensibly gave the IC its leader. Lowenthal has suggested that the creation of the DNI position was misplaced focus (2007, p. 279). Lowenthal insists that, instead of creating a new position, more fundamental changes regarding intelligence collection and analysis would have better served the country's war on terrorism. Lowenthal has said, "[T]he law seems largely to have created another layer without making any marked changes in how terrorism is addressed" (2007, p. 279). There is much to be said of this argument. The establishment of a DHS Under Secretary of Public Integrity, much like the DNI, may be viewed as a panacea to the Department's ills; however, as Lowenthal has argued, the underlying issue of intelligence sharing may go unaddressed (2007, p. 279). The creation of one leader overseeing an entire community does not mean the community will automatically coordinate, collaborate and share information. It simply means there is one titular leader.

As has been seen in the DNI model, the establishment of a leadership position does not, in itself, create coordination and collaboration. This will likely be the case

within DHS. The creation of an Under Secretary of Public Integrity will not automatically solve the Department's coordination and collaboration difficulties. The new Under Secretary will have to devise a system or plan by which intelligence and information is shared on a regular and consistent basis, not just at the executive levels, but at all levels. Assuming this can be accomplished, there still remains the issue of the FBI's public corruption investigative authority. The FBI is part of DOJ, not DHS. An Under Secretary within DHS will not have statutory authority over the FBI's investigative efforts. Similarly, a DHS Under Secretary will not be able to mandate that the FBI share its intelligence with DHS. There will still be a need to coordinate and collaborate with the FBI. The creation of an Under Secretary position would, however, create a centralized focal point within DHS with which the FBI could share its intelligence and information.

Judge Richard A. Posner, an expert in intelligence matters, has predicted that the DNI bureaucracy would actually hinder, not help, the efforts of the intelligence community:

When a bureaucratic layer is added on top of a group of agencies, the result is delay and loss of information from the bottom up, delay and misunderstanding of commands from the top down, turf fights for the attention of the top layer (rival agencies have a single boss for whose favor they fight), demoralization of agencies that have been demoted by the insertion of a new layer of command between them and the President and underspecialization, since the new top echelon can't be expected to be expert in all the diverse missions of the agencies below. (Gaffney, 2006)

According to Posner's theory, the creation of an Under Secretary for Public Integrity could hinder intelligence and information sharing within DHS. In order for intelligence to be effectively utilized in investigative operations, it has to share with those in the field. To that end, the establishment of an Under Secretary for Public Integrity could cause considerable investigative delays as information and intelligence is received, analyzed and disseminated downward to the respective field offices. Although the sharing of information is preferable to not, information shared in such a fashion is not

optimal. Intelligence experts suggest that “[i]nformation sharing occurs faster and more efficiently at the supervisory and line levels” (Loyka, Faggiani, & Karchmer, 2005, p. 46).

The DoD and DNI approach follow the traditional top-down leadership approach to improving a community’s efficiency and effectiveness. However, if, as Posner suggested, such an approach may tend to do more harm than good, perhaps the complete opposite approach should be explored. If information and intelligence is more efficiency shared at the supervisory and line levels, DHS should look to improve relationships at the local level. In other words, instead of installing a leader at the top in an attempt to create synergy of efforts, DHS should empower and encourage leaders at the supervisory level to improve working relationships with their anti-corruption counterparts.

The current interagency competition amongst the DHS ACAs and the FBI has been acerbated by overlapping jurisdiction. The overlapping jurisdiction has resulted in a culture of mistrust amongst the DHS anti-corruption stakeholders. Without trust, there cannot be true collaborative and cooperative working relationships. Without trust, real information sharing cannot take place. In the FBI’s *2011 National Information Sharing Strategy*, the FBI places a premium on trust as a way to promote better information sharing.

Organizational relationships are established or broken based upon the level of trust in each member of the relationship and the influence that an individual exerts within his/her respective organization. Trust usually follows from understanding, interaction, and positive personal experiences. (FBI, 2011)

In the *Sharing Strategy*, the FBI also touts task forces and joint duty assignments as a way to “promote collaboration and establish productive relationships by building rapport and trust” (FBI, 2011).

The DHS anti-corruption stakeholders could actually use the overlapping jurisdiction to their benefit. Task forces, cross designations and joint duty assignments would allow the DHS anti-corruption stakeholders to work with one another on a daily basis and form personal and professional working relationships. Such assignments are

win-win for all parties involves as they foster trust, communication and information sharing while at the same time creating force multiplication and avoiding duplication of efforts. Just recently, ICE OPR and CBP IA signed an MOU agreeing to detail CBP IA agents to ICE OPR to assist in investigations of CBP employees. Although the MOU was only recently signed, the partnership seems to be working well. Both ICE OPR and CBP IA report the arrangement has resulted better information sharing and utilization of specific agency skill sets.

### III. FOREIGN MODELS

The previous section of this thesis examined the changes two domestic institutions with overlapping jurisdictions implemented in an effort to achieve maximum efficiency of operations. This section will look beyond the borders of this country and analyze the structure and configuration of some of the most well respected foreign ACAs. Transparency International, a global organization dedicated to eradicating worldwide corruption, publishes an annual *Corruption Perceptions Index* report. The report is an aggregate indicator that combines various sources of information about corruption, making it possible to compare public sector corruption in countries around the world (Transparency International, n.d.). In 2010, out of 180 countries analyzed in the study, Hong Kong rated the thirteenth “cleanest” in the world (Transparency International, n.d.). In the same study, the United Kingdom rated the twentieth cleanest country in the world. For sake of comparison, the United States ranked twenty-second in the same study (Transparency International, n.d.).

In the forthcoming pages, two ACAs will be analyzed: Hong Kong’s Independent Commission against Corruption (ICAC) and the United Kingdom’s Serious Fraud Office (SFO). Both the ICAC and the SFO are highly respected ACAs that feature completely opposite approaches to investigations. Several years ago, Ronald K. Noble, then-Secretary General of Interpol, said, “Based upon my knowledge of the ICAC and the Police Force, I would name Hong Kong as the anti-corruption capitol of the world” (2003). Similarly, the SFO has been credited for being “responsible for the investigations and prosecution of some of the biggest frauds in British history” (Organisation for Economic Co-operation and Development, 2007, p. 97).

Examining foreign ACAs is a useful exercise as some lessons learned and best practices can be implemented by U.S. institutions; however, it is important to keep in mind that each country is unique in its laws, customs and civil liberties. What works in Hong Kong or the United Kingdom may not be appropriate or necessarily work in the United States.

## A. HONG KONG'S INDEPENDENT COMMISSION AGAINST CORRUPTION

The Hong Kong ICAC routinely receives high praise for its ability to combat corruption in the relatively small city-state of Hong Kong. A survey of anti-corruption literature also reveals that the ICAC is well regarded for its efficacy in rooting out corruption. Looking at an ACA in a communist country seems a bit paradoxical as, typically, communism and corruption go hand in hand; however, despite being under communist rule, corruption experts indicate that the ICAC is successful in its mission. While the ICAC may be the paradigm for success, it is important to put the ICAC's success in proper context. The ICAC was created and operated under British rule until 1997, when Hong Kong was turned over to the Chinese government. Since 1997, the Chinese government has allowed the ICAC to operate much in the same way it did under British rule.

In the 1960s and 70s, Hong Kong experienced tremendous population growth as well as a rapid expansion in the manufacturing industry. The government and the police force were ill equipped to deal with the influx of persons, many with money. As the population vied for goods and services, corruption increased. According to a United Nations Development Programme study, "Bribery was regarded as a necessary evil to get things done" (2005, p. 44). During this time period, the Hong Kong police were charged with investigating all allegations of corruption, including those made against civilians as well as police officers.

The catalytic event that caused Hong Kong to take a stand against corruption was 1973 incident involving the Chief Police Superintendent Peter Godber. An investigation of Godber and other senior officials revealed that they were worth millions of unexplained dollars (Vines, 1997). According to the *The Independent*, "Even after his [Godber] arrest he managed to board a plane for Singapore and return to Britain. The public was outraged and campaigned for his return to face trial" (Vines, 1997). Sir Murray MacLehose, then the governor of Hong Kong, declared that public confidence could only be restored through the establishment of an independent investigatory agency, the ICAC (Vines, 1997). In February 1974, the ICAC was established as Hong Kong's

sole anti-corruption agency. According to *The Economic Times*, “The first job of the ICAC was to complete Godber's trial. He was extradited from England, found guilty of conspiracy and taking bribes, and sentenced to four years' imprisonment” (Firodia, 2011).

The ICAC is unique in many respects. It is a stand-alone agency, independent of the civil service and answerable directly to the Hong Kong governor (Information Services Department, 2011). It has broad statutory authority to investigate all matters of corruption within law enforcement, the public sector, private industry and political elections. As far as corruption investigations go, the ICAC is the only game in town. As Hong Kong's sole anti-corruption entity, the ICAC also is charged with anti-corruption education and prevention. To that end, the ICAC makes recommendations to the government and the private sector regarding ethical best practices.

The ICAC has been conferred full police powers including the authority to obtain search and arrest warrants, investigate banking practices and detain subjects for up to 48 hours in the course of an investigation (Osborne, 2007, p. 2). The ICAC has a staff of 1,300 employees, 800 of which work in the Operations Department, the criminal investigative component of the agency (Osborne, 2007, p. 2). As the only ACA within Hong Kong, all information and intelligence is centralized in one place. Although the ICAC coordinates and collaborate with other law enforcement entities, both domestic and foreign, it remains the sole repository for all corruption intelligence and information within Hong Kong. This consolidation of anti-corruption efforts has reduced the coordination problems that arise when several agencies with overlapping jurisdiction are in the same field (Unites States Agency for International Development [USAID], 2006, p. 20). As such, the ICAC very rarely experiences conflict issues arising from overlapping jurisdictions.

Due to its success, the ICAC has become a role model for other entities desiring to create an ACA. Mirroring the ICAC's configuration, several countries have established a consolidated, centralized approach to corruption investigations. Governments in developing third world countries have increasingly turned to centralized, autonomous ACAs as a way to battle corruption. Independent ACAs have become a

trend worldwide. In the past 20 years, more than 30 countries have created some version of an ACA as a tactical weapon to combat corruption (USAID, 2006, p. 4).

Although the ICAC works in an environment such as Hong Kong's, one study warned against the notion that there is one correct "blue-print" or "best model" for the configuration of for anti-corruption efforts (Organisation for Economic Co-operation and Development, 2007, p. 7). Hong Kong is a relatively small city-state. It has only about seven million residents and is only approximately 1,100 square kilometers, which is roughly six times the size of Washington, D.C. (Central Intelligence Agency, n.d.). Attempts to apply the ICAC model in bigger or federal states have, so far, brought mixed results (Organisation for Economic Co-operation and Development, 2007, p. 25). The reason for the mixed results is that the ICAC is, "Very much a product of a particular social environment and polity—a small 'city-state' with a distinctive culture and highly efficient administrative machine operating in a society characterized by sustained high economic growth" (Meagher, 2004, p. 26). A United Nations' Office on Drugs and Crime study suggested that the ICAC has thrived due to Hong Kong's earlier status, namely the accountability of its governor to the British Parliament, in addition to its small size and great wealth (2004, p. 193).

### **1. Applicability of the Hong Kong ICAC Model to DHS**

Despite its success, there are concerns about the applicability of the ICAC model to an American government institution. A United States Agency for International Development study warned, "As experiments in other countries with the well-known model developed by HK's ICAC have shown success in one country does not mean that the same blueprint will produce positive results elsewhere" (USAID, 2006, p. 8). This is so because Hong Kong is unique for several reasons, namely its size to wealth ratio as well as its culture, laws and societal standards. Currently, Hong Kong exists under communist China rule. The citizens of communist mainland China and Hong Kong do not enjoy the rights, privileges and liberties guaranteed to U.S. citizens under the Constitution and Bill of Rights. As one example, the ICAC has expansive police powers,

including the ability to detain a person for up to 48 hours before charges are filed. In the U.S., this type of detention, in most instances, runs counter to the American notion of due process.

The ICAC model, in which a powerful, centralized ACA leads all anti-corruption efforts in a country or entity, is undoubtedly an attractive one. The consolidation of all anti-corruption units under one roof has many tangible benefits. For instance, there is no need for deconfliction of investigative efforts as all anti-corruption matters are handled in-house. There is also no need to worry about duplication of efforts as there is only one agency is charged with investigating corruption. In addition, there are no turf battles or inter-agency disagreements. Nor is there a need to share corruption intelligence and information in a timely manner. One chain of command controls that directs all anti-corruption investigative efforts is certainly much more efficient than multiple players coordinating and collaborating efforts.

Although the ICAC model is attractive for a multitude of reasons, the concept of one powerful, independent law enforcement agency solely responsible for the investigating one particular type of crime is contrary to the American style of policing. The Drug Enforcement Administration was established to lead the war on drugs; however, other local, state and federal law enforcement agencies still retain authority to conduct drug investigations. Similarly, the FBI has been denoted the lead federal agency in terrorism related cases; however, other state and local law enforcement organizations have the authority to conduct terrorism related investigations. In fact, recently the New York Police Department has successfully investigated and arrested numerous individuals on terrorism charges. According to a study conducted by Matt Holian, “Compared with other countries, the USA has a highly fragmented system of policing” (2007, p. 27). According to a Maguire and Archbold study (as cited in Holian 2007), “The USA has approximately 20,000 state and local police agencies, whereas Canada has 461, England 43, India 22 and Australia eight. Many agencies in the U.S. are small, with 81% employing fewer than 25 full-time sworn officers” (Holian, 2007, p. 27). Even the U.S. federal government features 58 separate and independent Offices of Inspector General (Council of the Inspectors General on Integrity and Efficiency, 2003).

The rationale behind the fragmented style, or American style, of policing is that each stakeholder (i.e., agency, department, city) wants to have a say in how it is policed. The establishment of an outside entity overseeing corruption investigations is antithetical to that ideal. History shows that if a community views the police as outsiders, it creates hostilities and an “us versus them” perception. When viewed as outsiders, police agencies are less likely to have positive and cooperative interactions with citizens. In recent years, in order to alleviate the adversarial attitude, police departments have begun to transition from a quasi-military style to “community oriented policing.”

Community oriented policing ostensibly thrives on individual interaction with the citizens and community. Proponents argue that community oriented policing gives citizens a say in how they are policed and it fosters greater trust and cooperation between the community and the police, while, at the same time, lowering crime rates. Interestingly enough, some who advocate giving citizens a say in how they are policed argue that police departments should not be afforded the same privilege. In 2008, Ramona Ripston, Executive Director of the Los Angeles Chapter of the American Civil Liberties Union, praised outgoing Los Angeles Police Department (LAPD) Chief William Bratton, “He believes in community policing, and he restored the confidence of the community in the LAPD” (Orlov, 2009). Ironically, five months earlier, Ripston called for sweeping changes in the LAPD’s internal investigative process in order to restore confidence in the Department.

The ACLU calls on the Police Commission to take immediate action to fix the broken system of complaint investigation by utilizing independent, civilian investigators or placing the complaint process directly under independent, civilian supervision. These models of civilian investigation process have been successfully used in other jurisdictions such as San Francisco, New York, and Seattle. Civilian involvement in investigations would lend additional credibility to the complaint process and eliminate the concern that police should be left to police themselves. (Ripston, 2008, p. 3)

The rationale behind civilian review boards is that they confer credibility to the investigative process. This was part of the reason why the ICAC was created. The ICAC restored the public’s confidence that corruption investigations would be aggressively

pursued. After the Rodney King incident and the Rampart Scandal, the Los Angeles Police Commission faced tremendous pressure to implement a civilian review process. The Los Angeles Police Commission is composed of five civilian members appointed by the mayor and approved by the city council. Although described as weak in authority, the Commission is charged with overseeing the LAPD. In 2000, the Commission formed the Rampart Independent Review Panel to study the root causes of the scandal. In its final report, the panel acknowledged the value of civilian review boards, but recommended that the LAPD not create another bureaucracy. The Rampart Independent Review Panel stated:

We are reluctant to add another layer of civilian oversight before giving these institutions a chance to work...We think the City and the Department should try to make its existing institutions of civilian oversight effective before building a new one. (2000, p. 86)

Although civilian review boards offer an objective, independent alternative, they entail the establishment of new bureaucracy requiring personnel and finances.

Another argument against the creation of an independent ACA is that it is not appropriate for every situation. One European study suggested that an independent ACA is necessary “when structural or operational deficiencies among the existing framework do not allow for effective preventive and repressive actions against corruption” (Organisation for Economic Co-operation and Development, 2007, p. 24). This is not the case with DHS anti-corruption stakeholders. While the existing structure and framework may not be optimally configured for maximum efficiency of operations, there have been successful investigations and prosecutions of DHS employees. The overriding issue facing DHS anti-corruption stakeholders is not structural or operational deficiencies; instead, it is coordination and collaboration of investigative efforts.

Currently, DHS anti-corruption investigations feature a mix of six internal or community oriented ACAs and two external or independent ACAs. Each of the ACAs plays an important and unique role in the eradication and investigation of DHS misconduct. In recognition of the benefits of community policing to an entity’s morale, the elimination of any of the internal ACAs would be detrimental to the overall DHS

anti-corruption community. The issue then becomes how to fine-tune the existing relationships of the DHS anti-corruption community to alleviate the issues created by overlapping jurisdictions. An Australian study described a blueprint in which internal and external investigative entities could peacefully exist and succeed:

An emerging profile...is for police to deal with minor 'disciplinary' matters while the external body investigates more serious matters. The rationale is that police must be given maximum responsibility for maintaining integrity—qualified by an audit process and external control of more serious investigations. The counter-argument to this is that complaints may not trust police and prefer to have their matter dealt with by an external body. (Lewis & Prenzler, 1999, p. 5)

Using this dual internal-external approach, the DHS anti-corruption community could utilize its existing structure of both the external ACAs and the internal ACAs without having to make fundamental structural changes.

Utilizing this internal-external approach to investigations would require the stakeholders to agree as to what delineates a serious and minor matter. As one European study stated, the failure to properly limit the jurisdiction of the external investigative bodies to serious corruption matters only would overburden the external agencies “with cases and in particular with ‘street corruption’ cases. One of the solutions is to limit the jurisdiction of the service to important and high-level corruption cases” (Organisation for Economic Co-operation and Development, 2007, p. 15). Delineating minor and serious offense may be contentious as the terms are subjective that also may change over time based upon patterns and intelligence. This approach to investigations seems workable as it requires no major changes to configuration or working relationships, leaves entity intact and, at least in theory, ameliorates the overlapping jurisdiction issue.

The internal-external approach seems to offer DHS the best of both worlds. The external agencies, DHS OIG and the FBI, are in a solid position to investigate allegations of serious misconduct and criminal violations without the perception of meddling by agency components. On the other hand, the six internal agencies are better suited to investigate allegations of lesser misconduct that require inside knowledge of the components' culture, regulations and standards of procedure. Creating such a line of

demarcation would ensure that serious allegations of corruption are independently investigated without the taint of political influence while, at the same, giving the various DHS component stakeholders a role in their how they are policed.

## **B. UNITED KINGDOM'S SERIOUS FRAUD OFFICE (SFO)**

Within the United Kingdom, there exists a unique ACA called the Serious Fraud Office (SFO). The SFO is not technically a law enforcement organization conferred with traditional police powers. Instead, it derives its police powers from the police officers and other law enforcement officials temporarily detailed to work a particular case under the auspices of the SFO. Similar to a task force, the SFO utilizes the talents and services of other agencies to accomplish its mission. More than anything, the SFO's innovative multi-disciplinary approach to investigations sets it apart from other ACAs.

Before the creation of the SFO, investigations into the financial collapse of major U.K. companies were done on an ad hoc basis. After the demise of a large company or corporation, the British government would appoint an investigative team, usually comprised of a well-respected British lawyer and an accountant, to determine if fraud played a part in the collapse. The concept behind the appointment was that the investigative team would conduct an extensive inquiry and then publish a report of its findings to the general public. However, if, during the course of the inquiry, the investigative team uncovered possible fraud, the investigation would stop and the matter would be immediately referred to a police agency for criminal investigation. On average, it took two years before the ad hoc investigative team published its report or assembled enough evidence to refer to the matter to the police. Thus, in the event, the matter was eventually referred to law enforcement authorities, and the alleged financial impropriety was already two years old.

To compile a legal, sound criminal case and to abide by the rules of criminal procedure, the police would often be required to repeat the same investigative steps taken by the ad hoc investigative team. This process would often take another two to three years (Kiernan, 2006, p. 92). After the conclusion of the police investigation, if evidence of fraud was uncovered, the matter would then be presented to a prosecutorial authority.

Thus it could often be the case that a criminal prosecution would not commence until six or seven years after the events in question had occurred. This often meant that trials were extremely difficult because the evidence wasn't entirely consistent and witnesses' memories of events had faded. Often these cases resulted in acquittals, either by the jury or on the instruction of the judge, which would occur because the evidence failed to reach the required standard. (Kiernan, 2006, p. 92)

The time delay between the underlying event and the finality of the situation was considerable. In 2006, Peter Kiernan, the SFO's Assistant Director said, "Not surprisingly, this system led to widespread unhappiness with the ability of investigators and prosecutors to deal with such cases" (2006, p. 92). In response to public discontent, in 1983, the British government commissioned the Fraud Trials Committee, headed by Judge Lord Roskill, to conduct a study of the ad hoc investigative approach.

After a two-year inquiry, the Fraud Trials Committee released its report in December 1985. The opening sentences of the report unequivocally condemned the U.K.'s ad hoc investigative process. The Fraud Trials Committee concluded:

The public no longer believes that the legal system in England and Wales is capable of bringing the perpetrators of serious frauds expeditiously and effectively to book. The overwhelming weight of the evidence laid before us suggests that the public is right. (Kiernan, 2006, p. 92).

The Committee made several recommendations. First, the Committee recommended that the U.K. establish a new unified organization solely responsible for detection, investigation and prosecution of serious fraud (Kiernan, 2006, p. 93). Second, the Committee recommended that lawyers work directly with the new organization and guide the investigative effort as "case controllers." The lawyers would ostensibly have oversight of the entire investigation from the onset and would continue to be responsible for any subsequent prosecution. Lastly, the Committee recommended that, for serious financial fraud prosecutions, juries should be replaced by a panel of specialists. The rationale was that subject matter specialists would be better able to comprehend the complexities of the financial transactions involved in serious fraud cases and thus more capable of making informed judgments.

Based upon the Committee's recommendations, the British Parliament passed the Criminal Justice Act of 1987 creating the SFO. The 1987 Act conferred broad statutory powers upon the SFO, including the authority to search property and "to compel persons to answer questions and produce documents" (SFO, 2011). The authority to compel an interview or produce documents can only be used if the SFO Director, or a designated member of his or her staff, "finds reasonable grounds to suspect an offence has been committed involving serious or complex fraud or corruption" (SFO, 2011). The SFO always gives written notice to the person or entity before compelling an interview or the production of documentary evidence. The failure to provide the requested documents or answer questions can result in sanctions, including prosecution. Additionally, if a witness or subject is found to have conveyed false or misleading information, he or she can also be criminally prosecuted. Other than false testimony, the compelled information is "not admissible against the maker in any subsequent proceedings..." (Kiernan, 2006, p. 94). Interestingly, the Committee's most controversial recommendation, the abolishment of lay juries in favor of specialists, was not part of the final legislation and did not become law.

Unlike the ICAC, the SFO was not established to be the U.K.'s only investigatory agency of fraud and corruption. There are several other investigatory agencies in the U.K. involved in fraud and corruption investigations; however, the SFO has been conferred a special place amongst the U.K.'s ACAs. The SFO is considered to be "the main body directing investigations and prosecuting corruption offences in the United Kingdom" (Organisation for Economic Co-operation and Development, 2007, p. 93). As its name suggests, the SFO is the U.K.'s lead investigatory agency only for serious fraud and corruption investigations. With limited staff and resources, the SFO "can only ever undertake the very top echelon of fraud cases that arise in England, Wales and Northern Ireland. Indeed, at any one time, the Serious Fraud Office will only have approximately 80–90 cases under investigation and prosecution" (Kiernan, 2006, p. 96). As of May 2007, the SFO had a total permanent staff of 311 people, including 56 lawyers and 128

civilian investigators (de Grazia, 2008, p. 56). As such, the SFO is heavily dependent on collaborative and cooperative working relationships with other entities in order to carry out its mandate effectively.

One of the key attributes of the SFO is its independence and its ostensible ability to pursue politically contentious investigations without outside influence. In 2005, Peter Kiernan, then-Assistant Director of the SFO, wrote:

The Serious Fraud Office is a non-Ministerial Government Department whose activities are subject to the superintendence of the Attorney General. This means that we are not subject to political interference in the conduct of our duties. The role of the Attorney General is somewhat difficult to define. He is responsible to Parliament for the work of the Serious Fraud Office and he is able to require the Director to explain and justify his decisions and, quite correctly, frequently does so. However, he may not affect those decisions directly or indirectly. Indeed, even in cases of great political sensitivity, no Attorney General has ever sought to do so. The independence of the Director is a central feature of his role. (2006, p. 91)

As the primary investigative agency of serious fraud and corruption in the U.K., the SFO has been granted the right of first refusal regarding such allegations. The SFO receives allegations from all sources, including domestic and foreign law enforcement agencies and the general public. While the Criminal Justice Act of 1987 conferred exclusive jurisdiction of “serious” and “complex” fraud cases upon the SFO, the act did not specifically define serious and complex. Therefore, the SFO has created its own set of criteria by which to evaluate incoming allegations. For example, the SFO examines the allegation’s monetary amount, international connection and likelihood of public concern. If determined to be sufficiently serious and complex, the SFO accepts the matter for investigation; if the allegation does not meet the criteria, the matter is referred to another U.K. anti-corruption investigatory agency for appropriate follow-up investigation.

Once a case is accepted for investigation, a multi-disciplinary team is formed. Each investigatory team is specifically tailored based upon the facts of the allegation and disciplines needed to investigate the matter effectively (Kiernan, 2006, p. 96). The investigative teams generally consist of stockholders, insolvency specialists, insurance

specialists, accountants and investigators from diverse backgrounds and police officers (Kiernan, 2006, p. 96). In 2006, Kiernan wrote, “We find this multi-disciplinary approach is the most effective way of working” (2006, p. 96). Kiernan went on to say:

In the 16 years of our existence, the Serious Fraud Office has developed an enviable reputation within the professions and the Judiciary, both for the quality of our investigations and prosecutions and also in respect of the innovative way in which we undertake our duties. (Kiernan, 2006, p. 95)

The multi-disciplinary approach to investigations utilized by the SFO is not the product of the Criminal Justice Act that conferred authority upon the SFO to investigate allegations of serious and complex fraud. The multi-disciplinary approach resulted when the SFO realized that it did not have the resources to carry out its missions. As such, in November 1998, the SFO Director signed an MOU with the Association of Chief Police Officers (ACPO) “so that there was clarity between the SFO and the 43 Police forces of England and Wales over a number of operational issues affecting the working relationship in conducting investigations” (SFO, 2010b, p. 2). Among other things, the “MOU covers a number of critical areas including the roles and responsibilities of each party during the course of an investigation” (SFO, 2010b, p. 2).

While the MOU lays a basic framework for collaboration in the investigation of serious fraud and corruption, interpersonal relationships still play a pivotal role. Early on in an investigation, a high-level SFO member meets with the police in the appropriate jurisdiction to discuss the case. The MOU agrees that local police agencies will assist the SFO; however, the extent of the assistance needs to be agreed to before the investigative team is formed. During the pre-investigation meeting, staffing by the local police departments is discussed. According to the *SFO Operational Handbook*, “The number of Police Officers allocated to a case may vary, depending on the case, or the resources available to the Force” (2010a). Although considered the lead investigatory agency, the SFO also discusses with the local police department how the investigation will be conducted. The *SFO Operational Handbook* states, “The exercise of specific statutory powers by Police Officers and SFO staff will, where practicable, first be discussed and agreed” (2010a).

Through its multi-disciplinary investigative approach, the SFO has been able to compensate for its lack of resources and successfully investigate and prosecute several high profile cases. Nonetheless, the SFO is not without its critics. The SFO's handling of a bribery investigation involving British Aerospace (BAE) corporation has had a significant impact on the SFO's reputation and has recently placed the SFO's future in uncertainty. In 2004, the SFO initiated an investigation into allegations that BAE agents had accepted huge payments as commission from Saudi Arabia in an arms-for-oil deal. The SFO also was investigating whether BAE, in order to secure a continued business relationship, had established a 20 million pound slush fund to provide perks for members of the Saudi royal family (Hope, 2006). After the SFO attempted to access some of the Saudi royal family's bank accounts in Switzerland, Saudi Arabia suspended negotiations (Hope, 2006).

Saudi Arabia indicated that if the SFO investigation continued, it would forego its contract with Britain and instead sign a contract with a French firm to provide fighter jets (Hope, 2006). The loss of the 10 billion pound Saudi contract and thousands of British jobs would have been a significant blow to the British economy. British newspapers reported that there was tremendous pressure on then-U.K. Prime Minister Tony Blair and Attorney General Peter Goldsmith to intervene (Hope, 2006). An anonymous source told the British newspaper *The Telegraph* that "The Attorney General can stop a prosecution if it is in the public interest. It is not the jobs, it is more about national security and international relations, and losing an ally in the Middle East in the war on terror" (Hope, 2006). Several weeks later, Goldsmith announced that the investigation of BAE involving Saudi bribery and slush funds would be abandoned due to national security reasons. The SFO was successful in a subsequent, unrelated investigation of the BAE. In 2010, the BAE reached a 30 million pound settlement with the SFO for breach of its duty to keep accounting records in Tanzania (Russell, 2010). Nevertheless, no charges were ever filed or settlements reached regarding the SFO's Saudi investigation.

The shutdown of the SFO's slush fund and bribery BAE investigation severely undermined the credibility and reputation of the organization that prided itself on being independent and immune from political sensitivities. As a result of the BAE episode and

a struggling British economy, “The SFO faces budget cuts of 25% from 2010/11 to 2014/15. Unlike many other government agencies, which saw increases in the previous years, its budget had already shrunk by 26% since 2008/09” (Stevenson, 2011). Additionally, in January 2011, the U.K. government indicated that it considered merging the SFO into a newly established National Crime Agency (NCA) (Kochan, 2011). It has been reported, “Several senior [SFO] staff have already quit the agency as a result of speculation about its future” (Stevenson, 2011). In June 2011, U.K. Home Secretary Theresa May announced that the SFO is “staying as it is” and that the new NCA will house a “coordinating board” to better direct the country’s economic investigations (Binham, 2011). As of this writing, it appears as if the SFO will survive as an agency but will lose its investigative independence.

### **1. Applicability of the SFO Model to DHS**

The DHS anti-corruption stakeholders and the U.K. anti-corruption community share several similarities. Both are populated with several ACAs with the common mission of uncovering and investigating allegations of fraud and corruption. Both utilize a referral system in which one agency has been granted the right of first refusal. One significant difference is that the U.K. and the SFO systemically approach serious fraud investigations in a multi-disciplinary approach. Every investigation of serious fraud in the U.K. is conducted by an investigative team composed of diverse talents from multiple walks of life. For the most part, investigations into DHS corruption are usually conducted by one agency.

The SFO’s multi-disciplinary, multi-agency approach to investigations partially resembles the U.S. law enforcement community’s tradition of task forces. Task forces are an assembling of law enforcement personnel from various agencies, be it federal, state or local, that have concurrent jurisdiction over a matter. Task forces are a staple in federal, state and local law enforcement and have been established to combat overarching national priorities such as terrorism, drug trafficking, organized crime and border corruption. For instance, the FBI led Joint Terrorism Task Force (JTTF) and the Drug Enforcement Administration’s High Intensity Drug Trafficking Area (HIDTA) Task

Force are two of the most prominent and successful multi-agency law enforcement endeavors in the country. In these formal task forces, participants remain members of their employing agency, but for a specific period of time, they are supervised and led by the task force. The SFO approach differs from the task force concept in that the SFO assembles its multi-disciplinary teams based upon the particularities of the case accepted for investigation. Participation in an SFO investigative team is limited to the duration of the investigation. Conversely, the composition of a task force remains the same regardless of the facts and circumstances of the investigation.

Formalized task forces require, among other things, headquarters' approval, written agreements amongst the participating agencies, the obtainment of office space, administrative staff and funding. In other words, the establishment of formal task forces is not something can be accomplished easily at the local level. There are likely numerous obstacles to the establishment of formal public corruption formal task forces compassing all entities with an interest in DHS corruption. For example, there will likely be challenges regarding who is in charge of any such task force. As previously mentioned, the leadership question has been at the heart of problems with task forces along the southwest border. Disputes as to who is in charge are likely to derail any effort to establish task forces.

Another issue that should be taken into consideration is that, based upon regional differences, there may not be a need for full participation or membership of every DHS anti-corruption stakeholder in every task force. For example, in Tucson, Arizona, border corruption is the investigative priority. The participation of the U.S. Coast Guard's CGIS is not likely needed on a Tucson based task force. Thus, the creation of similarly arranged public corruption task forces may work in one region but not in another. In such instances, it would be more appropriate to allow the field offices to compile the task forces on regionally based needs. Thus, in order to create the best multi-discipline approach, it may be best to consider an approach that offers various levels of flexibility.

The SFO model represents a novel approach in which investigative teams are specifically tailored to suit the facts of the investigation. In fact, the SFO Website proudly states that its multi-disciplinary approach has been utilized as a blueprint for

other anti-corruption endeavors. “Many overseas economic crime units have used the SFO model for their counter-fraud and corruption initiatives. The SFO’s multi-disciplinary approach is a template for other agencies in the investigation (and prosecution) of fraud and corruption offences” (SFO, n.d.). The SFO model presents an interesting approach that the DHS anti-corruption stakeholders could emulate. Like the U.K. anti-corruption community, the DHS anti-corruption stakeholders include a diverse cross-section of talents and disciplines. For instance, there are strictly administrative investigatory agencies such as CBP-IA and CIS-OSI that have intimate knowledge of their respective agencies cultures and regulations. Additionally, there are also criminal investigative agencies, such as DHS-OIG and the FBI, that are completely independent from the agencies they investigate.

In order for the DHS anti-corruption stakeholders to emulate the SFO multi-disciplinary approach to investigations, working agreements need to be agreed upon. Like the SFO, the DHS anti-corruption stakeholders could enter into formal MOUs, creating the guidelines for investigative working relationships. In theory, such an arrangement would be ideal as it would assemble the investigative agencies in a partnership in the pursuit of one common goal. Likewise, multi-disciplinary teams would create force multiplication and ameliorate the effects of overlapping jurisdiction; however, as mentioned previously in the thesis, it may be rather difficult to get the consent of all stakeholders to any such MOU. Like the difficulties experienced with the BCTFs, the sticking point would likely surround who is in charge of investigations.

The SFO has been granted statutory authority by the U.K. government to be the lead of serious fraud and corruption investigations. In regards to DHS corruption investigations, it highly likely that DHS would want to be in control of the investigation of DHS employees. Conversely, the FBI would most certainly be reluctant to cede control of its agents and resources to another department. Even the concept of DHS and FBI sharing joint control of an investigation may not be attainable. Unfortunately, in criminal investigations, control seems to be an all or nothing proposition.

Although the idea of an all-encompassing MOU involving all DHS anti-corruption stakeholders may not be unattainable at this point in time, individual DHS agencies have

entered MOUs to provide investigative assistance to one another. In January and August of 2011 respectively, CBP IA entered into MOUs with ICE OPR and DHS OIG. The MOUs state that CBP IA investigators will be assigned full-time to DHS OIG and ICE OPR to provide investigative support for cases involving CBP employees. DHS OIG and ICE OPR remain the investigative lead agencies for the case; CBP IA is simply lending support. The concept is a good one as it provides DHS OIG and ICE OPR additional resources and talents to investigate CBP cases. Also, the addition of CBP IA personnel brings expertise of CBP matters to the investigation. The MOUs are new and the working relationships are still sorting themselves out; however, initial reports suggest that the arrangements have been beneficial. On June 9, 2011, Acting DHS Inspector General Charles Edwards touted the benefits of the CBP IA and ICE OPR working relationship:

Under this arrangement, ICE OPR leverages the additional agents contributed by CBP and gains additional insight into CBP systems and processes. CBP agents participate in ICE OPR investigations of CBP employees and CBP management uses the information gained by its agents to take appropriate action against employees under investigation. (Edwards, 2011, p. 9)

CBP Commissioner Alan D. Bersin stated that his agency's MOU with DHS OIG "will facilitate more aggressive investigative actions and increase the ability to resolve unfounded allegations much quicker" (Shaw, Bransford & Roth, 2011).

CBP IA is also a signatory on an MOU with the FBI in regards to the BCTF. CBP IA's participation on the BCTF has been beneficial to both the FBI and CBP IA; however, pursuant to the MOU, CBP IA is precluded from sharing information obtained on the BCTF with its sister DHS agencies. As of this writing, CBP IA has formalized working relationships with three DHS anti-corruption stakeholders. These working relationships represent a solid first step; however, the stakeholders still need to devise a plan in which all the agencies work together and share information with one another. While CBP IA's joint participation with other agencies partially resolves the overlapping jurisdiction issue, the MOUs perpetuate and formalize the stovepiping of information and intelligence. The reason these MOUs came about was because, in all three instances, CBP IA agreed that it would allow the other agency to be the controlling or lead

investigative agency. But for the relinquishment of control, it is doubtful that MOUs would have been signed. Once again, investigative control is the controlling issue.

Through informal means, working relationships between DHS anti-corruption stakeholders have been achieved. Throughout the country, based upon personal relationships, stakeholders have come together to successfully conduct investigations. These informal working relationships usually come about on a case-by-case basis and conclude at the end of the investigation; however, these informal working relationships are piecemeal and differ region by region. The downside to these types of informal working relationships is that they are often built on personal relationships at the field office level. As such, the relationships can be severed due to operational disagreements or the departure or retirement of personnel.

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## IV. CONCLUSION AND RECOMMENDATIONS

The ultimate goal of this research project was to examine the lessons learned of other domestic and foreign institutions and apply those lessons in an attempt to improve the efficiency and efficacy of DHS' internal investigations. In the Domestic Models section of this thesis, two entities were analyzed. Both institutions were plagued with a multitude of component parts all seemingly working toward one common goal but lacking a strong leadership structure. In the case of the DoD, the nation's military branches were consolidated under a new federal department. Nearly 40 years after its creation, the DoD has seemingly settled on a strong Joint Chiefs of Staff to lead the various military branches. For years, the country's intelligence community witnessed 16 entities working separately and independently from one another. The creation of one overall leader in the form of a DNI was intended to create unity of effort and coordination amongst the agencies. The jury is still out as to the how successful the DNI, as a leadership position, will be.

In the Foreign Models section of this thesis, two highly successful anti-corruption investigative bodies were analyzed. Specifically, the foreign models' configuration, working relationships and structure were examined. The Honk Kong ICAC is considered the paradigm of a consolidated, powerful anti-corruption law enforcement agency. The ICAC has broad police powers and jurisdictional authority over all aspects of public corruption in the small city-state. The ICAC exists and thrives under a political and legal atmosphere that is much different from that of the United States'.

The other foreign model examined, the SFO, is a relatively small agency tasked with the large responsibility of investigating allegations of serious and major fraud within the U.K. Given the statutory right to pick and choose which allegations it investigates, the SFO utilizes a multi-disciplinary approach to its criminal investigations. Based upon the facts and circumstances of an allegation, the SFO assembles a team to meet the subject matter needs of the investigation. Through its multi-disciplinary approach, the SFO has been able to best leverage resources at its disposal to prosecute some of the biggest allegations of fraud within the United Kingdom.

DHS is a unique and relatively young federal Department. Having only been created at the end of 2002, DHS is still young enough that fundamental changes can be implemented with a minimal amount of institutional resistance. In an effort to create synergy of efforts of DHS' internal investigations, this thesis proposes four policy options. The policy options are listed in the order of ease of implementation. In other words, option one can be implemented immediately, whereas, option four will entail negotiations, agreements and statutory changes. The four policy options include: maintaining the status quo, the realization and utilization of the already existing megacommunity, expanding the cross-designation of agency personnel and the establishment of task forces.

## **A. POLICY OPTIONS**

### **1. Status Quo**

The first available option is to simply maintain the status quo. As outlined in this thesis, the current level of cooperation and collaboration amongst the DHS anti-corruption community is not what it could or should be. The inter-agency collaboration that does take place is, often times, the result of established personal relationships at the local or regional level. This has led to inconsistent cooperation and information sharing from jurisdiction to jurisdiction. This deficiency has led to several instances in which several agencies have concurrently investigated the same matter at the same time. The lack of information sharing has also resulted in situations in which confidential informants from different agencies have met with one another in monitored surveillance operations. Not only are such episodes inefficient, but they are also potentially dangerous as it creates "blue on blue" or potentially dangerous situations.

Despite the current fragmented nature of DHS' internal investigations, results are still obtained. Through the efforts of the DHS internal investigative agencies and the FBI, there have been numerous arrests and convictions of corrupt DHS employees. For instance, in 2009, "there were over 100 arrests and over 130 state and federal cases prosecuted" (Perkins, 2010). Despite the jurisdictional issues and turf battles, the system still works. To paraphrase Lowenthal, although the investigative approach is

dysfunctional, it is also, at the same time, functional (Lowenthal, 2006, p. 11). With some remedial action, the efficacy of internal DHS investigations could be greatly enhanced.

In 2011, three DHS agencies attempted to enhance efficiency of operations by entering into formalized working relationships with one another. As of this writing, it is far too early to determine if these cooperative working agreements will succeed or fail to bridge the collaboration gap. (This will be discussed in more detail in policy option three.) In conclusion, the continuation of the status quo does not make the best use of existing resources, does not enhance the timely sharing of information, does not meet the needs of the personnel in the field and does not best serve the American public.

## **2. Megacommunities**

This policy option represents a non-traditional law enforcement approach that could hold the key to enhancing the working relationships within the DHS anti-corruption community. Another benefit of this option is that does not require changes to the Homeland Security Act, Congressional action or formalized agreements. The 2008 book *Megacommunities* advanced an innovative approach to collaboratively tackle issues that reach across organizational boundaries (Gerencser, Lee, Napolitano, & Kelly, 2008, p. 71). The book argued that the key to collaborative working relationships is the recognition that others have common interests. Simply due to the presence of shared issues, it is likely that a megacommunity already exists amongst the DHS ACAs and the FBI.

The *Megacommunities* authors describe a megacommunity as an environment in which parties “deliberately join together around compelling issues of mutual importance, following a set of practices and principles that make it easier for them to achieve results without sacrificing their individual goals” (Gerencser et al., 2008, p. 53). There is no hard and fast rule as to what it means to “join together.” Each situation is unique in its own right. A megacommunity can mean many different things. No two megacommunities will or should look exactly alike. It is up to each megacommunity to determine just how to collaborate with one another. In some cases, a megacommunity

can be realized through meetings. In other situations, a megacommunity might coalesce through a series of telephone conversations or teleconferences. There is no right or wrong way to manage a megacommunity. The goal of a megacommunity is to realize that stakeholders hold a shared set of overarching principles and figure out a way to accomplish the mission.

The authors of *Megacommunities* suggest that a megacommunity is, among other things, a “mindset” (Gerencser et al., 2008, p. 80). The simple realization that other people and agencies have the same goals and missions binds a community together and presents a forum to tackle common issues. A megacommunity will assist in overcoming some of the issues facing the DHS anti-corruption community. According to *Megacommunities*, “A megacommunity is a living embodiment of an ‘us and them’ strategy, not an ‘us versus them strategy’” (Gerencser et al., 2008, p. 193). Through a series of teleconferences, meetings or luncheons, megacommunities present a viable option medium for the DHS anti-corruption stakeholders to come together in informal gatherings to build esprit de corps while, at the same time, address issues that have hampered efficiency of operations.

The acknowledgement and utilization of a DHS anti-corruption megacommunity should be a fairly simple concept to bring to fruition. This is so because a megacommunity will avoid dealing with the contentious issue as to who is in charge. Unlike a task force, in a megacommunity there is no need for there to be a traditional leader who wields control. All megacommunity participants have a say in issues. The authors of *Megacommunities* stress, “When operating within a megacommunity, it is extremely important to remember that organizations maintain their autonomy outside of the megacommunity” (Gerencser et al., 2008, p. 153). Due to statutory mandates, autonomy is an extremely important issue within the DHS anti-corruption community. To that end, a megacommunity provides an opportunity for agencies to come together to discuss salient issues while, at the same time, maintain their autonomy, independence and identity.

As mentioned in this thesis, DHS public corruption investigations vary considerably based upon regional differences. Megacommunities provide a good

opportunity to tailor megacommunity membership based upon regional distinctions. Unlike a task force, which is composed a set of identified players, megacommunities are a malleable instrument that can be fined tuned based upon facts, circumstances and priorities. Ideally, a DHS anti-corruption megacommunity would include all the DHS ACAs as well as the FBI; however, as the situation warrants, other local, state and federal law enforcement partners would be included as well. Like the SFO, a megacommunity also represents a way to expand participation beyond traditional law enforcement agencies, including a more comprehensive set of stakeholders.

For instance, to better monitor the immigration process and identify possible corruption, it may be fruitful to include immigration attorneys and consultants. To engage border happenings better, it may be beneficial to establish working relationships with the labor unions associated with the Border Patrol and CBP. One significant benefit of a megacommunity is that it not a fixed entity; participants can come and go as needed. Theoretically, regionally based megacommunities are in a better position to carve out solutions to complex local issues rather than the imposition of rules or policies promulgated at the headquarters level and then cascaded downward to the field offices.

### **3. Expanding the Cross-Designation of Agency Personnel**

Recently, CBP-IA has signed MOUs with the FBI, DHS-OIG and ICE-OPR to provide personnel to assist in CBP border corruption investigations. The cross-designation of agency personnel to assist in criminal investigations has multiple benefits. For example, it creates force multiplication by enhancing the amount of personnel assigned to an investigation. Moreover, it increases the sharing of information and intelligence between the two agencies of the MOU. It also leverages and makes use of the diverse resources, talents and skills found within the DHS anti-corruption community; however, the downside of individual MOUs between agencies is that, pursuant to the MOU, information and intelligence obtained cannot be freely exchanged unless consent is obtained from the lead agency. The stovepiping of information is already an issue

amongst the DHS anti-corruption community. Individual MOUs have the unintended consequence of specifically precluding the free exchange of investigative information and intelligence.

Nevertheless, the MOUs between CBP-IA and the FBI, DHS-OIG and ICE-OPR are a good starting point. The MOUs indicate that the agencies recognize a shared set of principles and priorities and a pledge to work together to accomplish the mission. The MOUs are relatively new and their success or failure is not yet known; however, if the working relationships are successful, the MOUs will likely enhance trust amongst the participants and could lead to the increasing the number of signatories and participating agencies in future MOUs. Conversely, if the working relationships are not successful for whatever reason, it could tend to cause the DHS anti-corruption community to discard the concept of joint working ventures and revert back to the practice of one agency per investigation.

#### **4. Task Force Approach**

The SFO's approach to investigations highly resembles the U.S. law enforcement communities' penchant for task forces. As previously mentioned, the FBI has initiated BCTFs along the southwest border of the United States. In 2009, the FBI announced that it had expanded the number of task forces focused on uncovering border corruption from six to 14 and hoped to create around 20 nationwide (Becker, 2010). The task forces are composed of personnel from the FBI, DHS components and various local and state law enforcement agencies. Despite the creation of task forces and the team approach to investigations, there still remain "turf battles" and personality conflicts amongst the various participants. The *Washington Post* reported that the problems have "delayed some investigations and threatens to undermine a host of enforcement actions..." (Becker, 2010).

One of the underlying issues centers around which DHS entity should be the focal point of information sharing with the task forces. Acting DHS Inspector General Charles K. Edwards testified before the U.S. Senate that it is the DHS OIG position that the U.S. Congress "has identified the [DHS] OIG as the focal point for criminal investigations of

employee misconduct” (Edwards, 2011, p. 9). Edwards continued that DHS Management Directive 0810.1 “requires referral of all criminal investigations against DHS employees to [DHS] OIG and prohibits any investigation, absent exigent circumstances, unless the [DHS] OIG declines the case” (2011, p. 9). In light of statutory mandates, DHS OIG Assistant Inspector General for Investigations Thomas M. Frost issued a memo to CBP Commissioner of Internal Affairs James Tomscheck demanding that CBP cease participating in task forces or sharing information with the FBI unless the activity is coordinated through DHS OIG (Becker, 2010). DHS OIG contends that “having too many investigating agencies risks intelligence leaks that can jeopardize investigators’ safety” (Becker, 2010). A case in point is the investigation of suspected alien smuggling by U.S. Border Patrol agents Raul and Fidel Villarreal. The Villarreals inexplicably fled to Mexico before they were apprehended. According to *The Washington Post*, “Investigators say too many people knew about the probe, raising suspicions that the brothers were tipped” (Becker, 2010).

Task forces are an efficient means to leverage resources of all stakeholders as they create force multiplication through the combination of resources, talents and expertise of all participating agencies. However, before DHS fully commits to the concept of public corruption task forces, the leadership issue needs to be adequately addressed. DHS should appoint one agency to be the Department’s investigatory lead in any task force. Just as the FBI is the DOJ’s lead agency within border corruption task forces, DHS should have a lead agency as well. There should be one focal point of information sharing and decision making. One leader coordinating investigative activities is far more efficient than several entities unknowingly sharing the same exact information. In the case of DHS, the agency best situated to be the leader and focal point is DHS OIG. DHS OIG has jurisdictional authority over all corruption matters within the Department. Additionally, pursuant to a DHS Management Directive, before any other DHS investigative entity can commence an investigation, DHS OIG has the right of first refusal.

In the end, task forces represent a venerable and sound law enforcement strategy to combat issues that transcend department and agency boundaries. Assistant United

States Attorney Michael Skerlos of the Southern District of California has stated that the U.S. Attorney's Office contends that "the collaborative model is the best for rooting out corruption" (Becker, 2010). Skerlos further supported the collaborative model approach, "It's dangerous for different agencies to work [separately] on the same case. It's inefficient and wholly ineffective" (Becker, 2010). Task forces may, in fact, be the best solution to ameliorate the negative consequences of overlapping jurisdiction and turf battles. However, as evidenced by recent troubles, in spite of the existence of task forces, there remain issues to be resolved. Before DHS determines that task forces provide the best way forward, careful study and analysis of the current difficulties should be undertaken.

## **B. CONCLUSION**

The people and agencies within the DHS anti-corruption community are not the cause of the issues—the problem began with and lies at the feet of lawmakers who created DHS and populated with multiple agencies that have overlapping jurisdictions and missions. These similar problems also exist within the Department of Justice anti-corruption community. Multiple players operating within the same space on the same matters is not an optimal configuration. Competition and turf battles are natural and are to be expected in such situations. The DHS anti-corruption community has the leadership to make this less than optimal situation work.

The recommendations and policy options set forth in this thesis are not intended to be immediate solutions to the current issues faced by the DHS anti-corruption community. As case studies have shown, the most productive and efficient solutions are ones that were arrived at after several iterations and years of study and debate. After all, the DoD fine-tuned its leadership structure over a period of nearly 40 years before it arrived at its current configuration. This thesis was meant to bring attention to the current state of DHS' internal investigations and to begin the conversation as to what steps can be taken to improve efficacy and efficiency. As this thesis has shown, each situation is unique and there are no one size fits all solutions.

In the end, the DHS anti-corruption community would be best served to take gradual steps initially. First and foremost, trust must be established. The recognition of the presence of a DHS anti-corruption megacommunity would be an excellent starting point. A megacommunity would assist the entities in seeing that they are partners in anti-corruption endeavors and not competitors. A megacommunity also allows participants to put faces to names and to build strong personal relationships based upon common goals and interests. This thesis has advanced four policy options; however, there are undoubtedly many more. A megacommunity would be a perfect venue in which to discuss the policy options set forth in this thesis and to formulate new options.

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