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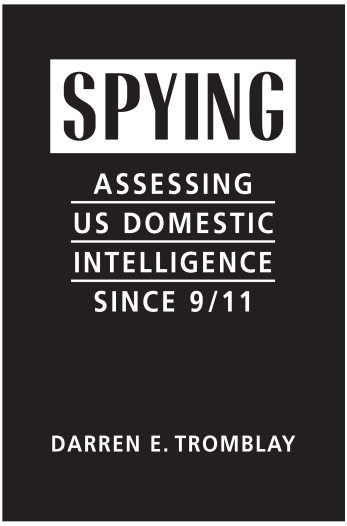
Spying: Assessing US Domestic Intelligence Since 9/11



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The US Intelligence Enterprise

Intelligence in the US domestic setting—beyond the topic of counterterrorism—has received insufficient assessment and theorization. American political discourse turns to the topic only in the wake of an intelligence failure (Pearl Harbor, the September 11 attacks, etc.) or a scandal (such as the activities unearthed by the congressional Church and Pike Committees). However, these questions of security and civil liberties are inextricably linked to ensuring that the domestically oriented intelligence enterprise is functioning effectively. This enterprise does not consist solely of—or even primarily of—the formal sixteen-member US intelligence community (plus the nonoperational Office of the Director of National Intelligence). Instead, it is an intricately interlinked network of federal and subfederal agencies.

There are a number of interdisciplinary analogies—from the fields of mechanics, biology, and even art—that can help in thinking about the organization of the domestically oriented intelligence enterprise. However, architecture is the most appropriate for this book, as it highlights what is absent from the enterprise as well as the qualities of which the enterprise is desperately in need. An architect designs with purpose—unlike for an ecosystem, which evolves with no specific objective other than the survival of its constituent elements—and architecture, once it becomes physical reality, not only houses an organization but also contributes to second-order effects such as an agency's self-perception and corporate culture.

The design of the domestically oriented intelligence enterprise should reflect the same degree of thought as the blueprints for an edifice built for the public. However, this has not been the case. Instead, the design process—to the extent that it has existed at all—for the

bureaucratic interplay of the intelligence elements within the domestic setting has been ad hoc. Agencies did not emerge from US—or in some cases state and local—government strategic planning, but instead originated as responses to identified threats or crises that had already transpired. This process has produced an intelligence enterprise that resembles an increasingly unstable pile of sediment that is unable to support US policymakers. Individual agencies are not immune from this accretion of responsibilities—the Federal Bureau of Investigation (FBI), for instance, was the only entity capable of handling most internal, national-level threats for the better part of a century and, as a result, accumulated an overly diversified portfolio of responsibilities.

Architecture as Analogy

The physical architecture, including the current state of it, that houses the two most significant domestically focused intelligence services in the United States—the FBI and the Department of Homeland Security (DHS)—is a metaphor for those agencies' respective conditions. Both agencies' headquarters are physically ill-suited to their current missions and impose constraints on the agencies' operations. More important, the facilities are inconsistent with the corporate cultures that would complement the missions of the FBI and the DHS and send unintentionally counterproductive messages to the American public, whom these agencies are supposed to serve and from whom these agencies require assistance.

FBI Headquarters

As of this writing, the FBI's headquarters building, an example of unmitigated brutalism, remains on Pennsylvania Avenue NW, between Ninth and Tenth Streets, in Washington, DC, an unfortunate choice for the headquarters of a law enforcement agency. The timing of the building's erection and opening was even worse. When the National Capital Planning Commission approved the design—developed by C.F. Murphy & Associates of Chicago—for the FBI's headquarters in 1964, there was no way to know that the Bureau was in the midst of operations such as the controversial COINTELPRO.[1] Construction started in 1967—a bad year for intelligence, thanks to the disclosures published by *Ramparts*—about domestic activities of the Central Intelligence Agency (CIA).[2] By 1974, when FBI personnel first began moving into the building, and 1975,

when the building was formally dedicated, the United States was in the thick of a recriminations, notably those of the Church and Pike Committees, about alleged abuses by multiple intelligence services, including the FBI.[3] It was bad timing to unveil a building that consciously conjured the Big Brotherish image of a "central core of files."[4] Bare-knuckled brutalism (seven stories in front, rising to eleven stories on the opposite side)—not to mention the way the building rose ominously over Pennsylvania Avenue, the thoroughfare that tied together the elements of US government—created an ominous public image for an agency about which the American public already had a reason to be concerned.

The building—named after J. Edgar Hoover—was also inefficient. Although it comprises 2.4 million square feet, only 53 percent of it is usable, since the building's footprint includes an extensive, open, interior courtyard.[5] Despite this deficiency, the FBI's headquarters was nevertheless the most expensive—at $126 million—federal building erected up to that point.[6] The original design concept had been a "solid block type structure" of eight stories.[7] This had been modified to the current configuration in order to conform with the requirements of the National Capital Planning Commission, the Commission of Fine Arts, and the Pennsylvania Avenue Advisory Council.[8] Even the process of designing the building provides an interesting analogy for intelligence within the domestic setting. Whereas external sensibilities imposed design constraints on the Bureau, external factors including political whims and public opinion have distorted how intelligence agencies function (or fail to do so) domestically.

With the Bureau's evolution, its headquarters became ever less suited to its purpose. Building renovations occurred reactively as the FBI's mission grew.[9] The tenth floor, which originally housed 35 million fingerprint cards, has been converted into staff space, as has the area previously occupied by the crime laboratory—which relocated to Quantico.[10] Approximately 200,000 square feet of basement and cafeteria spaces were converted into offices. However, these modifications encountered impediments imposed by the building's original design. For instance, the Bureau was unable to convert some areas into open-plan spaces. Furthermore, according to the General Services Administration (GSA), new offices created from old space might not be adequately ventilated and cooled.[11] The GSA deemed the FBI's headquarters building to be functionally obsolete, and Bureau officials have admitted that the structure is so inefficient that it has hindered the agency's mission.[12] As the FBI's role grew, via aggregation of missions rather than by design,

its organizational and conceptual frameworks—just like its physical presence—ceased to accommodate what the Bureau had become.

Furthermore, as the Bureau grew and its bureaucracy became increasingly unwieldy, physical limitations led to breakdowns in communication. In 2011, the Government Accountability Office (GAO) assessed that the building's design was "a significant barrier to staff collaboration and information sharing across teams."[13] Space constraints are so severe that the FBI has been unable to physically co-locate various analysts and specialists. The building, even its most jury-rigged configuration, cannot actually contain the totality of its staff. In 2001, when the headquarters staff numbered 9,700, the Bureau had to distribute that staff across seven locations. As of 2011, the headquarters staff of 17,300 was housed in more than forty annexes.[14] The fragmentation of the headquarters presence is a metaphor for the agency's atomization of information across field offices—a problem identified but not rectified after the September 11 attacks.

The increasingly spit-and-baling-wire nature of the FBI's headquarters has only worsened with physical decay. Its interiors are characterized by peeling paint, ragged carpet, and stained light fixtures.[15] One of the Bureau's architectural features is a dry moat. There is, however, water elsewhere—notably in the basement, which is prone to flooding from the courtyard during periods of rain.[16] Employees must have been unnerved when, according to the *Washington Post,* half of the building's alarms failed to sound during a July 2015 drill.[17] Even worse, the disrepair has started to imperil the very people whom the FBI is supposed to protect. Areas of the upper-level exterior façade had deteriorated to the point that concrete could fall onto unsuspecting pedestrians. The GSA and FBI had to install netting to catch falling debris. Director James Comey actually kept in his office a large piece of concrete that had fallen from the building's Ninth Street façade.[18] A Bureau hobbled by a muddled mission and an incoherent corporate culture is—like its headquarters—endangering the people it has promised to serve.

Department of Homeland Security

The Department of Homeland Security is a relatively young agency, having come into existence only with 2002 legislation. Nevertheless, its experience with architecture draws some unwanted comparisons. Its first headquarters complex—on Nebraska Avenue, in northwest Washington, DC—is a secondhand facility that had originally housed the

Naval Communications Annex. It is unintentionally appropriate that a department cobbled together from elements of twenty-two different agencies should have a headquarters that reflects the lack of a unique identity. (The bureaucratic justification for this location was that the campus could accommodate a headquarters operation.)[19]

If the Naval Communications Annex location sent an unflattering message, the DHS's new headquarters complex—a former mental hospital—sent a worse one. In 2013, the DHS officially opened its consolidated headquarters campus at the former site of St. Elizabeth's Hospital in southeast Washington, DC.[20] The DHS undertook this consolidation project to bring together entities—scattered across more than forty sites—into one location.[21] However, when that location is an insane asylum, it does give pause, especially when the department in question does suffer from bureaucratic multiple personality disorder. The primary occupants of the St. Elizabeth's complex will be the US Coast Guard, DHS headquarters elements, the Federal Emergency Management Agency (FEMA), the National Operations Center, the Transportation Security Administration, Customs and Border Protection, and Immigration and Customs Enforcement, as well as liaison presences from other DHS elements.[22]

Architecture of the US Intelligence Enterprise in the Domestic Setting

The domestically oriented intelligence enterprise did not develop with the benefit of a blueprint. Instead, it is an aggregation of agencies—both federal and subfederal—that developed in response to specific challenges. In addition to this organizational fragmentation, the foundation of the domestically oriented intelligence enterprise is further fractured by two competing taxonomies for organizing intelligence functions. Some entities, such as the FBI—in its Counterterrorism, Counterintelligence, and Criminal Investigative Divisions—have historically focused on threat actors, while others, including the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and the Drug Enforcement Administration (DEA), are organized around implements, rather than who uses or benefits from them. Even a single agency can be inconsistent about the concepts around which it organizes. For instance, the FBI created a Weapons of Mass Destruction Directorate (WMDD) and a Cyber Division (CyD)—both of which are ostensibly organized around implements rather than actors. Not surprisingly,

unleashing agencies working from intersecting points of view leads to collisions as intelligence collectors and analysts pull on different threads that lead to the same threats.

As agencies—and US strategic interests—have evolved, new capabilities have emerged and new gaps have become apparent. For instance, the FBI, when its history is parsed, has a lengthy history in the field of weapons of mass destruction (WMD) but did not consolidate this work into its WMD Directorate until the middle of the first decade of the twenty-first century (and may never have done so without intervention by the findings of the WMD Commission, which itself was a onetime initiative, in response to an intelligence failure). Of course, whether this expertise should have remained in the Bureau or been consolidated into the DHS is an argument for debate. Similarly, the Bureau's counterintelligence, counterterrorism, and criminal investigative missions all identified opportunities for the collection of positive foreign intelligence (the kind of information that would give US policymakers a decision-advantage, rather than just a warning). However, the FBI has yet to find a way to systematically exploit these opportunities for collection.

Evolution by aggregation, throughout the twentieth century, created an increasingly confused distribution of missions. The FBI accumulated an increasingly broad set of responsibilities. While the DHS, created after 9/11, has been roundly criticized as a hodgepodge of dissimilar organizations, the Bureau, through its growth, encountered a similar crisis of identity. Was it an intelligence service, a cop-shop, a linchpin for information sharing with law enforcement agencies, or a first responder (through entities such as the Hostage Rescue Team)? Confusion became even more acute when newer agencies such as the DEA and ATF emerged and took on issues that ran up against the Bureau's mandate. Finally, the picture became even more muddled when the CIA, which is prohibited by statute from domestic security functions, took on responsibility for the domestic collection of foreign intelligence information, through what is now known as the National Resources Division, within the Bureau's area—both geographically and conceptually—of responsibility.

Finally, the increasing incorporation of subfederal entities into developing the national-level intelligence picture has introduced additional complexities to assessing the domestically oriented intelligence enterprise. There is no argument that these entities need to be involved (and they, to varying extents, have been, and certainly well before "fusion" became the buzzword after 9/11), since they have a frontline perspective on trends that may develop into national-level problems.

However, judicious tradeoffs are necessary. The federal government, which has increasingly engaged these entities through fusion centers (DHS) and joint terrorism task forces (FBI), must ensure that it is not leveling demands that drain resources from local issues. On the other hand, the federal government should be making a serious assessment of how it might bolster subfederal agencies' capabilities to address issues that would free up federal-level resources to address problems of a national scope that federal agencies are uniquely suited to address.

After the September 11, 2001, attacks on the United States, the US government implemented sweeping reforms—which were not nearly as sweeping as they should have been. Rather than assessing the totality of the domestically focused intelligence infrastructure that had accumulated throughout the twentieth century, reformers focused on a single issue—terrorism—and proceeded to build a bureaucracy around this problem set. This approach—of attempting to solve new problems without first fixing the underlying ones—did not ameliorate the entrenched fragmentation and incongruity that had increasingly characterized the intelligence infrastructure within the domestic environment. Instead, intelligence reforms gave the American public a false sense of confidence that the government had addressed points of failure while creating a single-issue infrastructure (the National Counterterrorism Center [NCTC], the DHS, and the reorientation of nearly every agency toward a counterterrorism mission) that is ill-equipped to address nonterrorism threats or exploit opportunities for positive intelligence collection that might provide decisionmakers with a decision-advantage.

This book is organized around the evolution—intentional or otherwise—of the domestically oriented intelligence enterprise in the years following the attacks of September 11, 2001. However, policymakers were not working with a clean slate as they attempted to rectify the failures in bureaucratic structures that the al-Qaeda hijackers exploited. Instead, they had to contend with a century's worth of history. Chapter 2 provides a summary of the key themes that emerged from this history and sets the stage for discussion of whether reforms addressed underlying deficiencies that resulted from the evolution-by-aggregation approach to intelligence in the domestic setting.

In addition to entrenched bureaucratic inertia, policymakers seeking to sort out the deficiencies in domestically oriented intelligence had to navigate political realities. Chapter 3 addresses how competition between the executive and legislative branches of government, as well as between executive branch agencies seeking to protect their own turf—arguably at

a cost to national security—stymied reform efforts. Additionally, the chapter highlights the issue-oriented nature of reform. Rather than addressing the structural deficiencies of the domestically oriented intelligence enterprise, the immediacy of terrorism meant that many of the reforms to intelligence focused extensively on that topic—and left the United States vulnerable to other threats.

Chapters 4, 5, and 6 examine the implications of post-9/11 reform for the Federal Bureau of Investigation. Prior to 9/11 the Bureau was an organizationally schizophrenic entity. It had been present at the creation of the modern US intelligence community but remained culturally divided between reactive investigative and proactive intelligence mindsets. Without a strong organizational identity, the reforms in which the post-9/11 FBI engaged tended to be superficial and confusing. It was clear that the Bureau needed to show progress, but it was less clear what the end-goal of that progress should be; consequently, for nearly two decades, the Bureau pursued what often looked like change for change's sake.

Following 9/11, the US government responded—following a political standoff between the president and Congress—by creating the Department of Homeland Security. The presence of politics and bureaucratic jockeying that informed the creation of DHS meant, perhaps inevitably, that the result would be less than the sum of its parts. Chapters 7 and 8 parse the DHS's role in the domestically oriented intelligence enterprise—reaching the conclusion that the DHS is primarily a passive collector with some outliers (e.g., the Homeland Security Investigations component of Immigration and Customs Enforcement) that engage in active collection, in furtherance of solving specific cases.

The domestic intelligence enterprise also includes other federal agencies, both within and outside the formal sixteen-member intelligence community (plus the Office of the Director of National Intelligence). As mentioned earlier, among these are the Central Intelligence Agency and the Drug Enforcement Administration—both of which are members of the intelligence community—as well as others, such as the Bureau of Alcohol, Tobacco, Firearms, and Explosives, that are not part of the community but nonetheless have mission sets that overlap with those of community entities. Chapter 9 discusses these additional participants and the potential for redundancies, additional points of failure (due to fragmentation), and competition for turf (e.g., the rivalry between the FBI and ATF over terrorism investigations) that their involvement creates.

Chapters 10 and 11 cover efforts to create synergies between agencies through interagency collaboration. These chapters assess the complications created by a domestically oriented enterprise that exists only partially under the auspices of the Office of the Director of National Intelligence. They also shed light on the counterterrorism-centric nature of collaboration, which threatens to prevent the identification of other threats and opportunities. Finally, these chapters discuss the role that state and local agencies play in shaping—rather than simply participating in—the evolution of the domestically oriented intelligence enterprise.

The book reaches the conclusion that there is not the political will to create a new, dedicated, domestically oriented intelligence service. Therefore, policymakers should focus on conducting a net assessment of the resources available within existing agencies and moving mission sets and capabilities among existing agencies in furtherance of creating comparative advantages and eliminating redundancies. Additionally, policymakers will need to reassess the changing nature of federal-subfederal relationships as well as the role of the private sector, an increasingly significant factor, in continuing to refine the domestically oriented intelligence architecture.

The purpose of this book is to break crockery. No agency goes unscathed in this account of how the domestically oriented US intelligence enterprise has arrived at where it is. This approach owes a bit to Joseph Schumpeter. The purpose of this tome is to drive the design of a domestically oriented intelligence architecture, as opposed to reforming individual agencies within a vacuum. A primary premise is that, for multiple reasons, there is not a political willingness to create a new agency; thus, reform should focus on unpacking the missions of the domestic oriented US intelligence entities and realigning them, as necessary, to create comparative advantages across agencies. The objective of this realignment would be not only the introduction of greater efficiency and effectiveness but also the establishment of a concept for assessing future growth or retrenchment.

Notes

1. General Accounting Office, Federal Bureau of Investigation: Actions Needed to Document Security Decisions and Address Issues with Condition of Headquarters Buildings (Washington, DC, 2011); Roger K. Lewis, "A Daunting but Worthy Mission for the FBI: Soften Headquarters' Hard Edges," *Washington Post*, June 3, 2009.

2. General Accounting Office, Federal Bureau of Investigation.

3. Ibid.
4. Lewis, "A Daunting but Worthy Mission for the FBI."
5. General Accounting Office, Federal Bureau of Investigation; Jonathan O'Connell, "The FBI's Headquarters Is Falling Apart: Why Is It So Hard for America to Build a New One?" *Washington Post*, October 16, 2015.
6. O'Connell, "The FBI's Headquarters Is Falling Apart."
7. Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriations for 1976, Before a Subcommittee of the Committee on Appropriations, House of Representatives, 94th Cong., pt. 2 (1975).
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13. General Accounting Office, Federal Bureau of Investigation.
14. Ibid.
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16. General Accounting Office, Federal Bureau of Investigation.
17. Ibid.; O'Connell, "The FBI's Headquarters Is Falling Apart."
18. O'Connell, "The FBI's Headquarters Is Falling Apart."
19. "History of the Nebraska Avenue Complex," https://www.dhs.gov/history-nac.
20. "DHS Opens New Headquarters on St. Elizabeth's Campus," DHS Press Office.
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22. Ibid.