DOMESTIC VIOLENT EXTREMISM AND THE INTELLIGENCE CHALLENGE

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Cover image: National Guard soldiers stand guard behind a security fence near the US Capitol after police warned that a militia group might try to attack the Capitol complex in Washington, DC, March 4, 2021. *REUTERS/Jim Urquhart/File Photo*

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INTRODUCTION

In the immediate aftermath of the attacks of September 11, 2001, amid discussion of an "intelligence failure," the United States government reformed the structure of the federal government, formed a new department dedicated to homeland security, changed the architecture of the intelligence community (IC), and created a director of national intelligence.

Now, almost twenty years later, in the wake of the storming of the Capitol building on January 6, 2021, there is yet again discussion of "intelligence failures."[1] Once again, there are calls to reform the intelligence community, both to prevent a repeat of this type of event and, more broadly, to combat "domestic terrorism," domestic violent extremism (DVE), or "racial or ethnically motivated violence" (REMV).

While in the immediate aftermath of January 6, significant media coverage was quick to label it a complete intelligence failure, this report, with the benefit of additional time to analyze the events leading up to the storming of the Capitol building, has a more nuanced conclusion.[2]

Intelligence collection did not fail. In fact, it was robust. Rather, the failure was in the analysis of the intelligence and the failure of senior government officials to issue warnings based on that intelligence.

Nevertheless, January 6 may have been a hinge moment in US history, closing the door on the post-9/11 era of jihadist threats and opening the door to a new era dominated by a threat of domestic extremism. What reforms are now necessary to move law enforcement and intelligence into a more forward-leaning stance that can better prevent and minimize the likelihood of domestic violent extremism in the months and years to come?

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1   Rachael Levy and Siobhan Hughes, "Security Officials Blame Poor Intel for Failure to Blunt Capitol Attack," *Wall Street Journal*, February 23, 2021, *https://www.wsj.com/articles/top-security-officials-to-testify-on-failure-to-blunt-capitol-attack-11614084412.*

2   Ibid.

A DIFFERENT TYPE OF THREAT: 9/11 vs. 1/6

It is worth considering how the threat the United States faced after September 11, 2001, differs from one that it faces in the wake of January 6, 2021.

Geography. The terrorist threat evolved over the course of the twenty years since September 11, when foreign nationals trained overseas and then came to the United States to hijack four airplanes. In recent years, the threat included more US homegrown violent extremists inspired by al-Qaeda and the Islamic State of Iraq and al-Sham (ISIS). However, the nature of the threat remained primarily that of a *foreign* one. Most foreign terrorist organizations were based abroad. The drivers of the ideology of jihadism were foreign to most Americans, and most terrorist attacks citing al-Qaeda and ISIS ideology occurred overseas, in the Middle East and Southwest Asia.

In 2021, the threat from domestic violent extremists, as the name suggests, is primarily a **"born in the USA,"** or homegrown threat. While the actors may have links overseas, they are uniformly US citizens, their ideologies are rooted in US history, and the political factors that serve as drivers of mobilization are derived from a US context.

Organization. Both al-Qaeda and ISIS evolved over time, but both were organizations with structure and hierarchy. Orders and inspiration came down from the top, and many plots in the West had "command and control" or "remote direction" elements to them. The organizations raised funds that were disbursed for approved operatives and operations. The geography and structure allowed the United States and its allies to designate the groups as foreign terrorist organizations (FTOs), and provided opportunities for the United States to militarily remove or decapitate leaders and other important operational terrorists in the organization. It also made it easier—legally and politically—to intercept communications and plotting between the central leadership and operatives in the United States.

There is a somewhat shared, yet unique, element common to the wide spectrum of domestic groups committed to violent extremism in the United States that makes this challenge all the more complicated. Most, if not all, of them operate using a principle of **leaderless resistance.** The spectrum of militia groups, fascist white-power groups, and followers of bizarre conspiracies, among others, do

Pro-Trump protesters storm into the US Capitol during clashes with police, during a January 6, 2021 rally to contest the certification of the 2020 U.S. presidential election results by the U.S. Congress. REUTERS/Shannon Stapleton/File Photo

Members of the far-right group Proud Boys make 'OK' hand gestures indicating "white power" as supporters of US President Donald Trump gather in front of the US Capitol Building to protest against the certification of the 2020 US presidential election results by the U.S. Congress, in Washington, U.S., January 6, 2021. REUTERS/Jim Urquhart

not operate in hierarchical organizations. Rather, they function as small groups of autonomous cells, spread around the country and only loosely connected by shared ideology and social media. This makes traditional law-enforcement techniques used to bring down hierarchical networks poorly suited to address these decentralized threats. In a sense, by being disorganized, these groups are better organized to withstand traditional law-enforcement and intelligence efforts.

Less Permissive Intelligence-Collection Environment. "Domestic intelligence collection in a democracy is always a delicate undertaking."[3] When investigating al-Qaeda, ISIS, and other overseas FTOs, law enforcement could rely on federal material-support statutes and the fact that the public and courts viewed jihadists as part of a foreign threat to enable unprecedented latitude in their investigations. In the more permissive post-9/11 environment, identifying, detecting, and containing jihadist terrorism inside the United States was an intelligence success.[4]

The US Constitution and US law give American law enforcement less latitude in monitoring domestic violent extremists that have few, if any, overseas linkages. As it is, many aspects of the Patriot Act that have domestic applications are controversial. The likelihood that the 117th Congress will pass legislation granting law enforcement wide authorities, as was done after 9/11, or declaring domestic groups to be "domestic terrorist organizations" is low. Barring something unforeseeable, there will be no "Patriot Act 2.0." Moreover, as long as domestic violent extremism is not by statute a federal crime, some will not see it on the same moral plane as international terrorism, regardless of the number of casualties.[5]

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3   Brian Michael Jenkins, "Domestic Violent Extremists Will Be Harder to Combat Than Homegrown Jihadists," *Hill,* February 1, 2021, *https://www.rand.org/blog/2021/02/domestic-violent-extremists-will-be-harder-to-combat.html*.

4   Ibid.

5   "Domestic terrorism" is defined in 18 U.S.C. § 2331(5), but carries no criminal penalties.

IS THE POST-9/11 INTELLIGENCE ARCHITECTURE EFFECTIVE AGAINST THE DOMESTIC VIOLENT-EXTREMIST THREAT?

Before considering any adjustment or reform of the intelligence architecture that was created after September 11, 2001, an assessment must be made of the current structure's adequacy and capability in facing today's changed threat environment. That means assessing whether the current structure is designed in a way to maximize "intelligence success" against the domestic violent-extremist threat and prevent surprise attacks in the homeland.

Conceptually, the three elements critical to intelligence success are

1. "collecting the dots"/acquisition: the ability to gather data, clues, and information from a variety of different types of sources that provide insights about the status and nature of the threat;

2. "connecting the dots"/analysis: the ability to synthesize the signals that have been collected and to accurately understand the situation; and

3. providing warning/acceptance: the ability of decision-makers to accept and act based on the picture that those connected dots represent.

An intelligence system's ability to complete these tasks is the criteria against which intelligence success must be measured.

In assessing how well the current IC architecture is set up to conduct these tasks, it is worthwhile to measure its success against two representative situations—first, the January 6, 2021, storming of the Capitol; and second, the rising tide of domestic violent-extremist plots that occurred during the 2016–2020 time period.

Current Domestic Intelligence Architecture
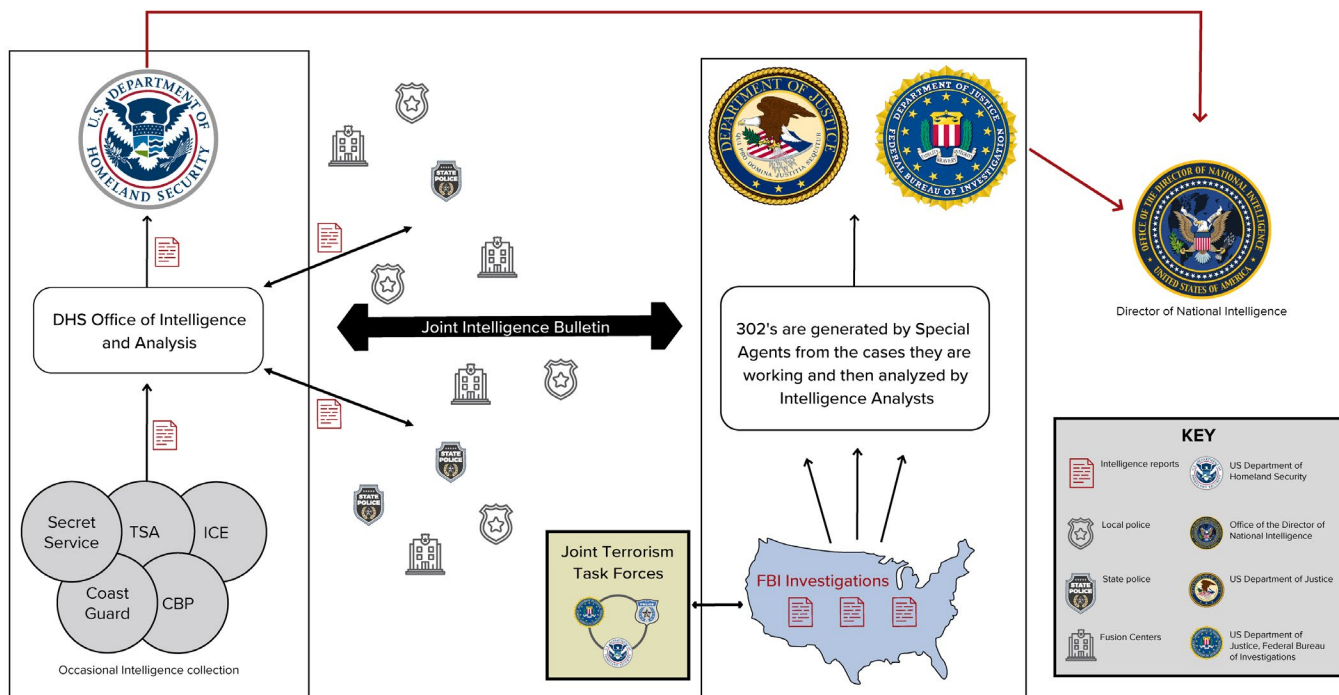
What Did 1/6/21 Demonstrate in Terms of the Effectiveness of the Current IC Architecture?

Clearly, the successful storming of the Capitol building was a monumental security failure. Was it an intelligence failure that led to the Capitol being so poorly defended? Was the fault in the process, execution, or structure of the current IC architecture?

According to the *Wall Street Journal*, "Capitol Riot Warnings Weren't Acted on as System Failed**:** The federal security apparatus retooled after 9/11 fielded intelligence on the Jan. 6 rally but didn't mobilize to prevent the violence."[6] The *New York Times* stated, "Muddled Intelligence Hampered Response to Capitol Riot."[7]

Collection

"There was no intelligence that suggested there would be a breach of the US Capitol," D.C. Police Chief Robert Contee III.[8]

"[The] entire intelligence community seems to have missed" the warning signs, noted Steven A. Sund, who resigned as Capitol Police chief after January 6 in a letter sent to congressional leaders.[9]

The two chiefs stated that accurate, advance information about the attack was not found within the intelligence pipeline. If that were true, it would potentially mean that there was a systemic failure of the intelligence community in the collection phase, when human intelligence (HUMINT) and open-source reporting gather "the dots." However, the chiefs are incorrect.

In spite of the fact that domestic violent extremists were not a high-priority collection target for law enforcement, January 6 was not a failure of intelligence collection. The dots were there, and they were collected.[10]

In fact, social media and networking activity that was in plain sight online had been blinking red for several weeks

before January 6. "In late December, the New York Police Department sent a packet of material to the US Capitol Police and the FBI [Federal Bureau of Intelligence]. It was full of what's known as raw intelligence—bits and pieces of information that turned up by scraping various social media sites."[11] While not specifically predicting that the Capitol building would be stormed, the New York Police Department (NYPD) suggested there would likely be violence when lawmakers certified the presidential election on January 6. "The NYPD sent the information to Washington under the assumption it would be folded into a formal intelligence bulletin by the FBI and the Department of Homeland Security."[12]

The Department of Homeland Security (DHS) was seeing similar signals. Kenneth T. Cuccinelli II, who was the acting deputy homeland security secretary from November 13, 2019, to January 20, 2021, told the *New York Times* that the Capitol Police had been given access to a channel that disseminated information found on social media platforms like Parler, Telegram, Twitter, and thedonald.win (though it is unclear to what channel he was referring). "It was very clear the Capitol was the focus of that," noted Cuccinelli after the attack.[13] Cuccinelli did not explain why, if this were true, the DHS Office of Intelligence and Analysis (I&A) did not provide an advance written analysis for its state and local law-enforcement partners.

6   Rachael Levy, Dan Frosch, and Sadie Gorman, "Capitol Riot Warnings Weren't Acted On as System Failed," *Wall Street Journal,* February 8, 2021, *https://www.wsj.com/articles/capitol-riot-warnings-werent-acted-on-as-system-failed-11612787596*.

7   Mark Mazzetti and Adam Goldman, "Muddled Intelligence Hampered Response to Capitol Riot," *New York Times,* February 5, 2021, *https://www.nytimes.com/2021/02/05/us/politics/capitol-riot-domestic-terrorism.html*.

8   Peter Hermann, et al., "How the U.S. Capitol Police Were Overrun in a 'Monumental' Security Failure," *Washington Post*, January 8, 2021, *https://www.washingtonpost.com/politics/capitol-police/2021/01/07/fa3114b8-5114-11eb-83e3-322644d82356_story.html*.

9   Mazzetti and Goldman, "Muddled Intelligence Hampered Response to Capitol Riot."

10   At the February 23, 2021, Senate hearing, both Contee and Sund criticized the FBI for not sharing alarming information that the bureau had already collected with each of them. Levy and Hughes, "Security Officials Blame Poor Intel for Failure to Blunt Capitol Attack."

11   Dina Temple Raston, "Why Didn't the FBI and DHS Produce a Threat Report Ahead of the Capitol Insurrection?" National Public Radio, January 13, 2021, *https://www.npr.org/2021/01/13/956359496/why-didnt-the-fbi-and-dhs-produce-a-threat-report-ahead-of-the-capitol-insurrect?t=1610642880716*.

12   Ibid.

13   Mazzetti and Goldman, "Muddled Intelligence Hampered Response to Capitol Riot."

Protesters breach the US Capitol building on January 6, 2021, after pro-Trump supporters and far-right forces rallied in Washington DC to protest Trump's election loss. Hundreds breached the US Capitol Building, approximately 13 were arrested, and five people died. (Photo by Michael Nigro/ Sipa USA)

Then there is the FBI. Numerous accounts note that Director Christopher Wray "was briefed in advance more broadly regarding online chatter about violence, as well as information from the FBI's sources about possible extremists intending to travel to the Capitol."[14] Both the HUMINT and signals-intelligence (SIGINT) collection processes were functioning in the lead-up to January 6 and, in fact, led to tactical success whereby the FBI conducted active interventions to dissuade some domestic extremists from even attending the January 6 rally.[15]

Of course, as FBI officials have noted, it is difficult to distinguish cheap talk from actual threats online (i.e., to distinguish the signals from the noise). "One of the real challenges in this space is trying to distinguish what's aspirational vs. what's

intentional," Wray noted.[16] There were, indeed, thousands of social media posts in the days before the assault about the January 6 rally. However, what is clear is that the gathering protestors saw the Capitol—and the lawmakers certifying the election results—as a specific target.[17]

> **"Every corrupt member of Congress locked in one room and surrounded by real Americans is an opportunity that will never present itself again," declared one social media post in advance of January 6.[18]**

Moreover, another FBI field office—in Norfolk, Virginia—had detected "specific threats against members of Congress, an exchange of maps of the tunnel system under the Capitol complex, and gathering places in Kentucky, Pennsylvania

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14 Carol D. Leonnig, "Capitol Police Intelligence Report Warned Three Days before Attack that 'Congress Itself' Could Be Targeted," *Washington Post*, January 15, 2021, *https://tinyurl.com/3hd489cj*.

15 Mazzetti and Goldman, "Muddled Intelligence Hampered Response to Capitol Riot."

16 Leonnig, "Capitol Police Intelligence Report Warned Three Days before Attack that 'Congress Itself' Could Be Targeted."

17 Ibid.

18 Ibid.

and South Carolina where extremists were meeting before convoying up to Washington."[19]

However, according to Senate testimony from Capitol Police Chief Sund, he never saw the FBI's Situational Intelligence Report (SIR) from Norfolk detailing specific threats for January 6. Chief Contee of the DC Metro Police noted that he at least saw the report, but that the FBI only shared it via email at 7 p.m. the night of January 5 and, in his opinion, it "would warrant a phone call or something."[20]

The FBI report from Norfolk included explicit commentary from individuals planning to attend the January 6 rally, such as

> **"Be ready to fight. Congress needs to hear glass breaking, doors being kicked in, and blood from their BLM and Pantifa [sic] slave soldiers being spilled. Get violent. Stop calling this a march, or rally, or a protest. Go there ready for war. We get our President or we die. NOTHING else will achieve this goal."[21]**

While by all accounts some of the violence of January 6 was spontaneous and chaotic, likeminded groups and individuals coordinated around a shared goal of entering the Capitol to disrupt the counting of the Electoral College ballots. However, information on what at least some protesters were planning existed prior to January 6 and was collected by numerous agencies. The collection function of the current domestic intelligence architecture did not fail in advance of January 6.

Key Finding: Sufficient information and signals were collected by the FBI, DHS, NYPD, and other law enforcement with specificity to January 6, 2021, so that intelligence collection clearly was not a failure.

Intelligence Analysis

> **"There had been signs that Wednesday's protests could turn violent. Pro-[Donald] Trump Internet forums had been full of posts promising violence. Trump had cast Congress—which was about to formalize his defeat in the 2020 election—as the target."[22]**

> **"There's no explanation that I can give for the failure to produce analytical products that would have**

predicted what was going to happen. You could see it building," said Frank Taylor, a retired Air Force brigadier general who led DHS's intelligence branch from 2014 to 2017. "And the fact that we didn't means that [DHS] failed, along with several other agencies. This was a systemic failure."[23]

Conventional wisdom in the intelligence community is that in order to prevent surprise attacks, analysts must understand and connect the dots—the available signals and warnings. The dots collected rarely provide 100-percent clarity. When there are failures in intelligence analysis (i.e., a misunderstanding of the situation), they can be caused by: a failure to connect and understand the intelligence that has been collected (sometimes because of a bias or blind spot); limited or insufficient analytic resources; a discernment problem because the ratio of noise to signal is too high; or a failure of imagination.

The Capitol Police. None of these types of analytic failures occurred within the intelligence unit of the Capitol Police. (The Capitol Police leadership is a different question.) On January 3, three days before thousands of rioters converged on the US Capitol, a twelve-page internal Capitol Police intelligence report warned of a violent scenario in which "Congress itself" could be the target and "described how thousands of enraged protesters, egged on by Trump and flanked by white supremacists and extreme militia groups, were likely to stream into Washington armed for battle. This time, the focus of their ire would be members of Congress, the report said."[24]

> **"Supporters of the current president see January 6, 2021, as the last opportunity to overturn the results of the presidential election. This sense of desperation and disappointment may lead to more of an incentive to become violent. Unlike previous post-election protests, the targets of the pro-Trump supporters are not necessarily the counter-protesters as they were previously, but rather Congress itself is the target on the 6th. Stop the Steal's propensity to attract white supremacists, militia members and others who actively promote violence, may lead to a significantly dangerous situation for law enforcement and the general public alike."[25]**

19   Temple-Raston, "Why Didn't the FBI and DHS Produce a Threat Report Ahead of the Capitol Insurrection?"

20   Levy and Hughes, "Security Officials Blame Poor Intel for Failure to Blunt Capitol Attack."

21   Ryan Bort, "An FBI Report Warned of Violence at the Capitol. Why Wasn't the Government Prepared?" *Rolling Stone*, January 12, 2021, *https://tinyurl.com/4uppx3pw*.

22   Leonnig, "Capitol Police Intelligence Report Warned Three Days before Attack that 'Congress Itself' Could Be Targeted."

23   Ibid.

24   Ibid.

25   Ibid.

Black bunting is displayed at the entrance to the US Capitol Police headquarters, following the death of Capitol Police Officer William Evans, who was killed on April 2, 2021, in a violent incident at a security checkpoint on the U.S. Capitol grounds, in Washington, DC, April 4, 2021. Evans was an 18-year veteran of the force and a member of the Capitol Police first responders unit. REUTERS/Al Drago

In spite of the prescient warning regarding the big-picture situation that would come to pass on January 6, the document does not explicitly predict or cite the Capitol itself as the target of violence.[26]

Nevertheless, this document seems to be the equivalent of a warning on December 4, 1941, that the Japanese Imperial Fleet would be just north of Hawaii on December 7, potentially with violent intent, without explicitly naming the US Navy base at Pearl Harbor as the target of violence.

More problematic from the perspective of the domestic intelligence architecture was that this internal analytic report was not shared with other law-enforcement agencies, including with the FBI, through the well-established intelligence-sharing channels.[27]

Key Finding: The Capitol Police's intelligence analysis was more than sufficient to justify additional security at the Capitol. This was not a failure of analysis.

The FBI. There were sharing problems within the FBI itself when it came to the analysis phase. As previously discussed, on January 5, the Norfolk, Virginia, FBI field office had collected intelligence and written a report stating that extremists were preparing to travel to Washington and threatening to commit violence and "war" as part of a possible assault on the Capitol. That document was reportedly shared with both the field office in Washington—in less than an hour, triggering the standing up of a command post there to respond to possible problems stemming from the rally—and the Washington, DC, Joint Terrorism Task Force (JTTF), which would have included the Capitol Police, though it is unclear if the Capitol Police representative(s)

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26   Mazzetti and Goldman, "Muddled Intelligence Hampered Response to Capitol Riot."

27   Leonnig, "Capitol Police Intelligence Report Warned Three Days before Attack that 'Congress Itself' Could Be Targeted."

The US Capitol is seen through razor wire after police warned that a militia group might try to attack the Capitol in Washington, DC, March 4, 2021. REUTERS/Joshua Roberts

saw it.[28] According to a DHS spokeswoman, the department never received the Norfolk report before the rally.[29]

Similarly, at their February 23, 2021, Senate hearing, both Chief Sund of the Capitol Police and Chief Contee of the DC Metro Police also criticized the FBI for not making a point to share and warn their respective agencies of the impending threat on January 6.[30]

Besides the singular internal FBI Norfolk report, there was no broader intelligence report written by the FBI or DHS in advance of January 6. It is unclear if the FBI felt this was not its responsibility, or if its analytic cadre did not believe it had sufficient information to write a report because the intelligence provided by the NYPD and Norfolk FBI needed to be further vetted and analyzed.[31] Local law enforcement has come to expect that standard operating procedure ahead of high-profile events would include the issuance of a joint

FBI-DHS intelligence report known as a Joint Intelligence Bulletin, which was not written because "they had no specific, credible threats about January 6."[32]

Moreover, the Norfolk SIR was not briefed to either FBI Counterterrorism Chief Jill Sanborn or Director Wray. This information came out on March 3 before a joint hearing of the Senate Rules Committee and the Senate Homeland Security Committee.[33]

Key Finding: Between the Norfolk report, the intelligence collection from other FBI investigations, and social media, there was more than adequate raw intelligence to require a more robust analytic assessment from the FBI. The lack of intelligence analysis providing an overall assessment of the situation from the FBI before January 6 was an analytic intelligence failure.

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28   Ibid.

29   Levy, Frosch, and Gorman, "Capitol Riot Warnings Weren't Acted On as System Failed."

30   Levy and Hughes, "Security Officials Blame Poor Intel for Failure to Blunt Capitol Attack."

31   Temple-Raston, "Why Didn't the FBI and DHS Produce a Threat Report Ahead of the Capitol Insurrection?"

32   Ibid.

33   Tia Sewell and Benjamin Wittes, "The Questions FBI Director Christopher Wray Wasn't Asked," *Lawfare*, March 5, 2021, *https://tinyurl.com/dd6xk74a*.

"Nothing significant to report."

— January 5, 2021, DHS Office of Intelligence and Analysis national summary[34]

DHS I&A. The DHS Office of Intelligence and Analysis is DHS's central analytic unit and "nerve center" for monitoring intelligence and information on online threats. Like the FBI, normal operating procedure for I&A in advance of a significant event is to produce a threat assessment to be shared with federal, state, and local law enforcement as "actionable intelligence—an early-warning system to help them prepare for incoming threats."[35] While I&A warned about the heightened potential for violence in the runup to the rally, it did not mention any specific threat for January 6.[36]

The I&A office faced a number of well-documented challenges in the months leading up to January 6 that hindered its functioning at a high level, including accusations of the politicization of analysis, targeting of journalists for intelligence collection, shifting priorities of coverage, rapid turnover of leaders, and acute sensitivities to reporting what political appointees, including the president himself, wanted or didn't want to see regarding "domestic terrorism."[37]

On the issue of politicization of analysis, one specific allegation was that

> **"White House officials discouraged use of the term 'domestic terrorism' in planning policy strategy, a former official said, and a complaint filed in September by a top I&A official said DHS leaders had pressured him to water down threat assessments of white supremacists and Russian election interference. DHS has denied 'there is any truth to the merits' of the complaint. The Trump White House has denied that Mr. Trump played down domestic terrorism."[38]**

In the wake of this and other allegations of problems within I&A, the acting chief of DHS intelligence was ousted in early September 2020, replaced by the DHS deputy general counsel. Also, the number of analysts scrutinizing social media was cut, rules for what could be culled from social media were tightened, and I&A's issuance of reports on domestic extremists to law-enforcement partners was diminished, creating a perfect storm within DHS I&A, hobbling the organization and its ability to function as a viable intelligence-analysis unit at a crucial moment in the runup to January 6.[39]

Some have speculated that another factor contributing to a lack of warning was that I&A analysts in the highly politicized environment after the November 3, 2020, election didn't issue a warning about January 6 because they had been intimidated and were reluctant to make waves that would upset political appointees higher up in DHS.[40] Reports circulated in November–December 2020 of other DHS officials being fired or transferred for political reasons.[41]

According to one former DHS official, "I&A didn't warn about January 6, because previous election certifications by Congress hadn't seen trouble, senior I&A officials lacked specific, credible intelligence, and DHS hadn't designated the event a 'national special security event.'"[42]

Nevertheless, information gleaned from social media by fusion centers around the country warning of the prospect of violence was being funneled to DHS I&A, among other federal agencies.[43] Yet, this information did not spur any sense of urgency to warn or act.

Key Finding: Regardless of the internal challenges within DHS I&A, the failure of its analytic cadre to provide a threat-assessment warning based on social media and the reporting coming in from fusion centers around the country regarding the possibility of violence on January 6 constituted an analytic intelligence failure by DHS I&A.

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34   Levy, Frosch, and Gorman, "Capitol Riot Warnings Weren't Acted On as System Failed."

35   Temple-Raston, "Why Didn't the FBI and DHS Produce a Threat Report Ahead of the Capitol Insurrection?"

36   Levy, Frosch, and Gorman, "Capitol Riot Warnings Weren't Acted On as System Failed."

37   Ibid.

38   Ibid.

39   Temple-Raston, "Why Didn't the FBI and DHS Produce a Threat Report Ahead of the Capitol Insurrection?"

40   Private conversations with former DHS officials.

41   Alex Marquardt and Geneva Sands, "Two Top Homeland Security Officials Forced to Resign by White House," CNN, November 12, 2020, *https://tinyurl.com/2xxz8z7y*.

42   Levy, Frosch, and Gorman, "Capitol Riot Warnings Weren't Acted On as System Failed."

43   Fusion centers are state-owned and operated centers that serve as focal points in states and major urban areas for the receipt, analysis, gathering, and sharing of threat-related information between state, local, tribal, and territorial (SLTT), federal, and private-sector partners at *https://www.dhs.gov/fusion-centers*. Levy, Frosch, and Gorman, "Capitol Riot Warnings Weren't Acted On as System Failed."

Warning

"If anyone is responsible for intelligence failure, traditionalists believe, it is policymakers, who too often fail to take the advice given by intelligence professionals. Columbia University Professor Richard Betts wrote that 'the principal cause of surprise is not the failure of intelligence but the unwillingness of political leaders to believe intelligence or to react to it with sufficient dispatch.'"[44]

"The issue here was not the lack of intelligence or the lack of information," Christopher Rodriguez, a Washington, DC, official who oversees the district's fusion center, said in congressional testimony on Thursday [February 4, 2021]. "The issue here was the inability, or the unwillingness, to act on the intelligence."[45]

On January 4, the heads of the fusion centers around the country convened a rare national call to discuss alarming information they were hearing about the coming Trump rally. However, with no Joint Intelligence Bulletin from the FBI and DHS, there was no guidance on what action to take.[46]

And, as previously detailed, there were a number of raw and unfinished—yet strongly suggestive—intelligence reports warning of violence on January 6 that reached decision-makers from the various analytic units of the FBI, DHS, Capitol Police, and other law-enforcement entities that were tracking threats, like the NYPD Intelligence Bureau.

Capitol Police. Former Capitol Police Chief Steven Sund excused the Capitol Police's lack of security preparedness in advance of January 6, citing the absence of an unambiguous, obvious, and precise warning of the storm that was approaching. "Perfect hindsight does not change the fact that nothing in our collective experience or our intelligence—including intelligence provided by F.B.I., Secret Service, Department of Homeland Security (D.H.S.) and D.C. Metropolitan Police (M.P.D.)—indicated that a well-coordinated, armed assault on the Capitol might occur on Jan 6."[47]

Yet, on January 3, three days before thousands of rioters converged on the US Capitol, a twelve-page internal Capitol Police intelligence report warned of a violent scenario in which "Congress itself" could be the target and "described how thousands of enraged protesters, egged on by Trump and flanked by white supremacists and extreme militia groups, were likely to stream into Washington armed for battle. This time, the focus of their ire would be members of Congress, the report said."[48]

Key Finding: Given the detailed intelligence reporting from within the Capitol Police, the Capitol Police leadership failed to heed this analysis—constituting a failure through either its inability or unwillingness to accept the intelligence findings.

FBI. As discussed above, within the FBI, Director Wray was briefed in advance broadly regarding online chatter about violence, as well as information from the FBI's sources about possible extremists intending to travel to the Capitol."[49] In addition, there was the Norfolk FBI field office SIR that was shared with both the FBI field office in Washington and the local JTTF, but only led to the standing up of a command post.[50]

Why was this the only action taken by the FBI, given the intelligence collection and reports that were making it to Director Wray?

Senator Richard Blumenthal of Connecticut asked Director Wray the same question at a hearing of the Senate Judiciary Committee on March 2, 2021. "Why didn't the FBI sound the alarm? I know there was a communication through that threat assessment. I know you've talked about the agencies that were hearing that assessment, but here we have the United States Capitol, where a key function of democracy enabling the peaceful transition of power was taking place and a threat of violence and even death to them. Why didn't you go to the Gang of Eight? Why didn't you sound the alarm in some more visible and ringing way?"[51]

Director Wray provided a detailed response, but did not directly answer the question.[52]

Key Finding: Given the detailed intelligence reporting from within the FBI, the FBI leadership had adequate reason to be concerned about violence on January 6. It failed to sufficiently warn other law-enforcement agencies like the Capitol Police and DC Metro Police, or

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44   Erik J. Dahl, *Intelligence and Surprise Attack: Failure and Success from Pearl Harbor to 9/11 and Beyond* (Washington, DC: Georgetown University Press, 2013), 9.

45   Levy, Frosch, and Gorman, "Capitol Riot Warnings Weren't Acted On as System Failed."

46   Ibid.

47   Mazzetti and Goldman, "Muddled Intelligence Hampered Response to Capitol Riot."

48   Ibid.

49   Leonnig, "Capitol Police Intelligence Report Warned Three Days before Attack that 'Congress Itself' Could Be Targeted."

50   Ibid.

51   Sewell and Wittes, "The Questions FBI Director Christopher Wray Wasn't Asked."

52   Ibid.

elements within the US government, whether it be the attorney general's office or director of national intelligence, that could have taken action to safeguard the Capitol. This was a failure to warn by FBI leadership, despite the fact that the country was under a grave threat.

DHS. The secretary of the Department of Homeland Security has a responsibility to declare certain events "national special security events," or NSSE. "The designation, regularly used for gatherings such as political conventions, the State of the Union address and past Super Bowls, puts the US Secret Service in charge of overseeing security and coordinating the responses of different agencies."[53] However, January 6 was not declared an NSSE by Acting DHS Secretary Chad Wolf.

"Current and former DHS officials and national security experts have questioned publicly and in interviews why this wasn't done. Mr. Wolf never considered it, according to a person familiar with the matter."[54] It is unclear why this was the case.

Key Finding: Although there was minimal intelligence reporting produced within DHS that suggested violence on January 6, there was reporting coming in from fusion centers to DHS I&A, and hints of violence were discussed on social media. DHS leadership failed to act and warn of the potential for violence and did not declare an NSSE event, leaving the Capitol insufficiently protected.

January 6 Conclusion

What accounts for the failure to either see the threat or act on it at the FBI director and DHS secretary levels? In this case, it seems that the breakdown was at both the analytic level and with the decision-makers, who were aware there was smoke but saw no immediate fire requiring action. One may never know if reluctance to take any preemptive action against President Trump's supporters played a role.

Whatever the reason, the domestic side of the post-9/11 architecture failed. Collectively, the FBI, DHS I&A, and the Capitol Police had collected sufficient information to have imagined, warned about, and acted on the threat. Analytic reports that should have been written were not, intelligence was not shared entirely among the three lead agencies, and it appears there was a hesitation to speak truth to power for fear of political retribution. The result was the worst domestic intelligence surprise for the United States since 9/11.

How Has the Current IC Architecture Performed More Broadly Against Domestic Violent Extremism From 2016–2020?

Some would argue that the insurrection at Capitol Hill on January 6 was a "black swan" event.[55] If so, it is worthwhile to widen the lens and assess how the current domestic IC architecture has performed more broadly against domestic extremism in the four years leading up to January 6.

Collection

One of the most common refrains when discussing the challenge of collecting intelligence against domestic violent extremists is that, without a catchall domestic-terrorism statute, government authorities can do little to intervene preemptively without evidence of a planned violent act or other crime, suggesting that the FBI does not have sufficient authorities to investigate domestic terrorism.[56]

While there may be other reasons to consider enacting a domestic-terrorism statute, its absence is not a hindrance preventing the FBI from investigating and collecting intelligence on domestic violent extremists.

The FBI's authority to open investigations, including those using human sources (undercovers and informants) is delineated in the "Attorney General's Guidelines for Domestic FBI Operations."[57] These guidelines are ideology agnostic, and only require that "all domestic terrorism investigations be predicated based on activity intended to further a political or social goal, wholly or in part involving force, coercion, or violence, in violation of federal law."[58]

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53   Levy, Frosch, and Gorman, "Capitol Riot Warnings Weren't Acted On as System Failed."

54   Ibid.

55   Nassim Nicholas Taleb, *The Black Swan: The Impact of the Highly Improbable* (New York, NY: Random House 2007).

56   Levy, Frosch, and Gorman, "Capitol Riot Warnings Weren't Acted On as System Failed."

57   "Attorney General's Guidelines for Domestic FBI Operations," Department of Justice, 2008, *https://www.justice.gov/archive/opa/docs/guidelines.pdf*.

58   Christopher Wray, "Statement for the Record; *Worldwide Threats to the Homeland*," Statement Before the House Homeland Security Committee, September 17, 2020, *https://www.fbi.gov/news/testimony/worldwide-threats-to-the-homeland-091720*.

As noted by the *New York Times*, "More generally, the F.B.I. has a considerable record of going after violent white supremacists which the bureau still considers the most dangerous domestic terrorism threat."[59]

Because FBI authorities to investigate and, therefore, collect intelligence on domestic violent extremists are robust, in 2020, FBI agents foiled a plot by a far-right militia to kidnap the governor of Michigan.[60] The FBI also arrested numerous members of violent neo-Nazi groups, such as the Atomwaffen Division and the Base, in 2020.[61] In November 2019, the Denver JTTF arrested Richard Holzer on federal charges of attempting to obstruct religious exercise by force using explosives.[62]

In fact, FBI Director Wray noted, in congressional hearings in 2020 that

> "The FBI has roughly 1,000 domestic terrorism investigations a year, though it is a good bit north of a thousand this year. Everything from racially-motivated violent extremists to violent anarchist extremists, militia types, sovereign citizens, you name it. Of the domestic terrorism threats, we last year elevated racially-motivated violent extremism to be a national threat priority commensurate with homegrown violent extremists," Wray testified. "That's the jihadist-inspired people here and with ISIS."[63]

These investigations led to approximately one hundred and twenty arrests in 2020.[64]

Moreover, the intelligence collected was robust enough for Director Wray to accurately describe the dominant ideology among a diverse group of domestic violent extremists to be white supremacy.

> "What I can tell you is that, within the domestic terrorism bucket category as a whole, racially-motivated violent extremism is, I think, the biggest bucket within that larger group, and within the racially-motivated violent extremist bucket, people subscribing to some kind of white supremacist-type ideology is certainly the biggest chunk of that."[65]

Given this, it is difficult to argue that the FBI is prevented from doing its job by restrictions on intelligence collection under the current intelligence architecture.

As far as the Department of Homeland Security is concerned, the situation is far murkier. First and foremost, DHS is not an agency with intelligence-collection authorities beyond those that exist within its constituent organizations—the Secret Service, Customs and Border Protection, Immigration and Customs Enforcement, and the Transportation Security Administration (TSA)—and those are not particularly situated for intelligence collection against this type of threat. The Secret Service collects information on threats against those it protects. TSA would have had information on people flying to Washington, DC, for the January 6 rally, but its focus would normally have been on threats to aviation, not on what the protesters were going to do after they landed.

There is a unit within DHS I&A that collects and analyzes social media chatter, which is an absolutely essential element of understanding the domestic violent-extremist threat. However, it is unclear how robust this effort is, or how widely it disseminates any reporting on what it finds.

Lastly, there is the contribution from state and local law enforcement and fusion centers. These entities primarily have a lead-generating function, and their information flows into DHS I&A. But, ultimately, if any field investigations grow significantly, the local FBI field office or JTTF would likely take over the investigation. At that point, the intelligence collection would fall under the FBI's authorities.

Analysis

Without seeing all the analytical reports that were actually produced by the FBI or DHS, it is difficult to assess those agencies' abilities to conduct intelligence analysis on domestic violent extremists over the past few years. Leaks to the media present a selective picture at best, and often reflect someone's axes being ground. However, the statements that their respective leaders have made when testifying in front of Congress in the last few years regarding this threat serve as a reasonable proxy for gauging both agencies' abilities to analyze intelligence.

However, as was reported in the media in 2020—and as the January 6 failure demonstrated—DHS I&A analysts have operated in an environment of intimidation that constrained their ability to accurately describe the situation regarding

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59   Mazzetti and Goldman, "Muddled Intelligence Hampered Response to Capitol Riot."

60   Ibid.

61   Zolan Kanno-Youngs, "F.B.I. Director Warns of Russian Interference and White Supremacist Violence," *New York Times*, September 17, 2020, *https://www.nytimes.com/2020/09/17/us/politics/fbi-russia.html*.

62   Wray, "Statement for the Record; Worldwide Threats to the Homeland."

63   Amy Sherman, "Fact-Check: Did the FBI Director Warn About White Supremacist Violence?" PolitiFact, October 9, 2020, *https://tinyurl.com/kkrbcyw4*.

64   Kanno-Youngs, "F.B.I. Director Warns of Russian Interference and White Supremacist Violence."

65   Ibid.

domestic violent extremists, as well as other threats. In addition, while FBI analysts are experts in supporting individual cases and investigations, their broader responsibility to assess the strategic threat landscape of domestic violent extremists, beyond the specific individuals they were tracking in advance of January 6, is unclear.

Even if FBI analysts are not obligated to provide assessments of the broader landscape, the FBI has collected enough information via investigations to enable FBI Director Wray to be able to provide some greater detail characterizing the nature of the diversity among the different domestic violent-extremist movements.

For example, in a September 2020 House Homeland Security hearing, "Wray said the FBI views QAnon, a far-right conspiracy group asserting that there is a secret battle against so-called deep state actors engaged in a global child sex trafficking ring, 'as less of an organization and more of a complex set of conspiracy theories,'" and named QAnon as a domestic terrorism threat. He added that "the left-wing anti-fascist movement known as Antifa was 'more of an ideology or a movement than an organization,' though some domestic terrorism investigations target individual extremists who self-identify with the Antifa movement."[66]

One indicator that is of significant concern regarding the FBI's analytic abilities relates to the Fiscal Year 2020 National Defense Authorization Act, which requires the FBI to provide Congress a report on the state of domestic terrorism in the United States, as well as how the FBI and the Department of Homeland Security counter it. The report was due in June 2020, and was finally released on March 1, 2021.[67] According to the FBI, it was delayed due to COVID-19.[68] The one-page executive summary of the report is quite general and, other than highlighting the threat from domestic violent extremists, does little to illuminate the FBI's analytic capabilities.

At the Department of Homeland Security, then-acting DHS Secretary Kevin McAleenan (April–November 2019)

directed the department in September 2019 to start producing annual homeland threat assessments.[69] The first of these was released in October 2020.[70]

However, the previously noted tensions and politicization within DHS interfered with its release. According to a whistleblower, Brian Murphy, the former acting head of I&A, it was Acting Secretary Chad Wolf and his deputy, Ken Cuccinelli, who "blocked the release of the annual assessment because of how portions on white supremacist extremism and Russian interference would reflect on Mr. Trump."[71]

Murphy further asserted that, in other instances, Cuccinelli "ordered Mr. Murphy to modify intelligence assessments to make the threat of white supremacy 'appear less severe' and include information on violent 'left-wing' groups and antifa, according to the complaint."[72]

Also in the summer of 2020, emails reported on the Lawfare blog had Murphy directing DHS analysts to use the term "Violent Antifa Anarchists Inspired (VAAI)" in what was interpreted as an effort to build support for the designation of Antifa as a terrorist organization."[73]

Clearly, these and other accusations regarding I&A's actions in the summer of 2020 raised serious concerns, and could taint any assessment of DHS I&A to conduct high-end, unbiased intelligence analysis during the last year of the Trump administration.

When the DHS domestic threat report was finally released in October 2020, it said that among domestic violent extremists, "racially and ethnically motivated violent extremists—specifically white supremacist extremists (WSEs)—will remain the most persistent and lethal threat in the Homeland."[74]

DHS leadership's congressional testimony provides a measure of the department's analytic ability to assess domestic violent extremism. This demonstrates at least an understanding of the threat.

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66   Ted Ruger, "FBI Director Describes Domestic Extremists in Homeland Threats Hearing," *Roll Call*, September 17, 2020, *https://www.rollcall.com/2020/09/17/fbi-director-describes-domestic-extremists-in-homeland-threats-hearing/*; Wray, "Statement for the Record; Worldwide Threats to the Homeland."

67   "(U) Domestic Violent Extremism Poses Heightened Threat in 2021," Office of the Director of National Intelligence, March 1, 2020, *https://www.dni.gov/files/ODNI/documents/assessments/UnclassSummaryofDVEAssessment-17MAR21.pdf*.

68   Jacob Shamsian, "The FBI is 4 Months Late in Delivering a Legally Mandated Report on Domestic Terror," *Business Insider*, October 26, 2020, *https://www.businessinsider.com/fbi-4-months-late-domestic-terror-report-white-supremacy-2020-10*.

69   Betsy Woodruff Swan, "DHS Draft Document: White Supremacists are Greatest Terror Threat," *Politico*, September 4, 2020, *https://www.politico.com/news/2020/09/04/white-supremacists-terror-threat-dhs-409236*.

70   "Homeland Threat Assessment," US Department of Homeland Security, October 2020, *https://tinyurl.com/shffzvs*.

71   Kanno-Youngs, "F.B.I. Director Warns of Russian Interference and White Supremacist Violence."

72   Zolan Kanno-Youngs and Nicholas Fandos, "D.H.S. Downplayed Threats From Russia and White Supremacists, Whistle-Blower Says," *New York Times*, September 9, 2020, *https://www.nytimes.com/2020/09/09/us/politics/homeland-security-russia-trump.html*.

73   Benjamin Wittes (@benjaminwittes), "Internal memo from head of DHS I&A formally changing the blame for Portland violence from 'Violent Opportunists' (VO) to Antifa," Twitter, July 26, 2020, 6:06 a.m., *https://twitter.com/benjaminwittes/status/1287343604038598656?lang=en*.

74   Swan, "DHS Draft Document: White Supremacists are Greatest Terror Threat."

More than a hundred anti-fascist activists, Black Bloc, and anarchists gathered in Salem, Oregon's State Capitol building, March 28, 2021, to oppose a group of Trump, right-wing, Proud Boy and Qanon supporters who drove to the Capitol. A few scuffles led to about 5 arrests. (Photo by John Rudoff/ Sipa USA) No Use Germany.

In congressional testimony in September 2020, Acting Secretary Wolf noted that white supremacists have become the "most persistent and lethal" internal threat to the United States. He added, "White supremacist extremists, from a lethality standpoint over the last two years, particularly when you look at 2018 and 2019, are certainly the most persistent and lethal threat when we talk about domestic violent extremists."[75]

Warning

Have government agencies (FBI and DHS) and their leadership over the past few years correctly assessed the situation as a result of collection and analysis, in order to warn the broader US government so that it can take action? The metrics to measure these criteria are, once again, the issuance of reports and congressional testimony that detail and explain the warning to mobilize government resources and action.

In terms of the FBI, in February of 2020, Director Wray noted that the FBI had elevated its assessment of the threat

posed by racially motivated violent extremists in the United States to a "national threat priority" for the 2020 fiscal year. He added that the FBI was placing the risk of violence from such groups "on the same footing" as threats posed to the country by foreign terrorist organizations, such as ISIS and its sympathizers. "Not only is the terror threat diverse—it's unrelenting," Wray said at an oversight hearing before the House Judiciary Committee.[76]

Similarly, at least two DHS secretaries tried to sound the alarm about domestic violent extremism to the wider US government and catalyze action to be taken both within DHS and across the federal government. Reportedly, DHS Secretary Kirstjen Nielsen pushed then-National Security Advisor John Bolton to make domestic terrorism a larger focus of the administration's counterterrorism strategy.[77] In addition, the subsequent acting secretary of DHS, Kevin McAleenan, made efforts to highlight the threat and get resources devoted to combating it, lobbying Congress to spend more on efforts to prevent radicalization.[78]

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75   Sherman, "Fact-Check: Did the FBI Director Warn About White Supremacist Violence?"

76   Erin Donaghue, "Racially-Motivated Violent Extremists Elevated to 'National Threat Priority,' FBI Director Says," CBS News, February 5, 2020, *https://tinyurl.com/p43c7akn.*

77   Betsy Woodruff Swann, "They Tried to Get Trump to Care About Right-Wing Terrorism. He Ignored Them," *Politico*, August 26, 2020, *https://tinyurl.com/dy3fwb2f.*

78   Ibid.

INTELLIGENCE ARCHITECTURE REFORM

"There was a series of breakdowns across multiple levels of the enterprise, and that's what's so disturbing. Twenty years after 9/11, that's the most shocking part of it," said Javed Ali, who left senior counterterrorism posts at the FBI and the National Security Council in 2018. "These are mistakes that shouldn't be happening in 2021."[79]

"The problem the authorities faced on Jan. 6 was not an inability to respond, but failure to anticipate the threat. Going forward, counterterrorism efforts should emphasize connecting the dots in the far-right extremist universe—not a simple task, given the dispersed and fast-moving nature of the threat."

— Martha Crenshaw, "I've Studied Terrorism for Over 40 Years. Let's Talk About What Comes Next," *New York Times*, February 11, 2021.[80]

A far-right militia member carries a weapon as various militia groups stage rallies at the Confederate memorial at Stone Mountain, Georgia, August 15, 2020. REUTERS/Elijah Nouvelage

79   Levy, Frosch, and Gorman, "Capitol Riot Warnings Weren't Acted On as System Failed."
80   Martha Crenshaw, "I've Studied Terrorism for Over 40 Years. Let's Talk About What Comes Next," *New York Times*, February 11, 2021, *https://www.nytimes.com/2021/02/10/opinion/capitol-terrorism-right-wing-proud-boys.html*.

A US MI5?

When there is an intelligence failure in the United States, one of the issues often raised is whether the FBI is "incapable of effective counterterrorism." The corollary question often asked is "should domestic antiterror functions should be taken from the FBI and given to a new agency modeled after Britain's MI5?"

This issue was debated in the years after 9/11, with Judge Richard Posner, a federal circuit judge and a senior lecturer at the University of Chicago Law School, one of the most articulate advocates for establishing a US MI5 domestic security service.

Besides his accusations of FBI ineffectiveness, the strongest elements of Posner's argument were that, both culturally and functionally, the FBI is not set up for intelligence collection and analysis. He wrote the following in 2007.

■ "The bureau lacks the tradition, the skills, the patience, the incentive structures, the recruitment criteria, the training methods, the languages, the cultural sensitivities and the career paths that national-security intelligence requires."

■ "The FBI is a detective bureau. Its business is not to prevent crime but to catch criminals...For prosecutors and detectives success is measured by arrests, convictions and sentences. That is fine when the object is merely to keep the crime rate within tolerable limits. But the object of counterterrorism is prevention."

■ "Detecting terrorist plots in advance so that they can be thwarted is the business of intelligence agencies. The FBI is not an intelligence agency and has a truncated conception of intelligence: gathering information that can be used to obtain a conviction."

Besides its specializing in intelligence collection and analysis, Judge Posner argues that creating a US MI5 agency would mean arrests would not be made prematurely. Posner speculates that the FBI has a tendency to make arrests prematurely—as soon as an investigation collects sufficient evidence to make prosecution possible—rather than

A heavy police force is evident at the Senate door after supporters of President Donald Trump breached security at the US Capitol, rioting through the Senate and House and delaying the certification of President-elect Joe Biden, in Washington, DC, January 6, 2021. REUTERS/Mike Theiler/File Photo

taking the approach of an intelligence agency: not making the arrest, letting the investigation run, and continuing to collect intelligence for as long as possible.

He notes, "MI5 and its counterparts in other nations are not law-enforcement agencies and do not have arrest powers. Their single-minded focus is on discovering plots against the nation."

However, as discussed previously, while strategic analysis may not be the FBI's forte, intelligence collection as a function of domestic investigations by the FBI, in the twenty years since 9/11, has proven to be robust and competent, and had a high success rate in thwarting al-Qaeda and ISIS-inspired homegrown violent extremists.

The chief critique against the creation of a new and separate domestic intelligence agency is that it would create more bureaucracy and be less efficient, because it would divide the dual roles that the FBI currently has between itself and a new federal agency that needs to be precisely coordinated. As it is, there are eighteen intelligence agencies constituting the US intelligence community.

For example, when MI5 in the United Kingdom is collecting intelligence on an individual or group utilizing human sources, a partner police agency—most often New Scotland Yard (the London Metropolitan Police)—must run a parallel investigation to that of MI5, but with a different human source, to collect sufficient evidence to enable the arrest. This is far less efficient than the US system.

Creating a new federal agency with domestic intelligence responsibilities would inevitably slow down processes and be ripe for turf wars when tactical responsibilities overlap and snag. Who would referee these disputes? To have one agency manage intelligence sources on a terrorist group and another manage sources that could appear in a court of law would require additional staffing and resources that already currently exist within the FBI.

Creating a US MI5 does not solve any problems that have been identified from either the January 6 incident at the Capitol or recent years of domestic violent-extremist investigations.

Richard A. Posner, "Time to Rethink the FBI," *Wall Street Journal*, March 19, 2007, *https://www.wsj.com/articles/SB117425948221240904*.

SUGGESTED REFORMS

Recommendation 1: Collection—Creation of a More Robust Online Social Media Analysis Unit (OSMAU) within DHS I&A

The FBI has both the authorities and resources to collect against the domestic violent-extremist threat. The bureau had demonstrated its capabilities to function at a high level between 2001 and 2020 against homegrown violent extremists, in recent years against DVEs, and even in the runup to January 6.

However, the nature of intelligence collection has changed since 9/11. Now, social media and channels like Telegram, Parler, and *mymilitia.com*, as well as platforms like Facebook, Twitter, and YouTube are rich, open-source mediums where DVEs meet, talk, and even plot. New and enhanced human resources must be devoted to mining these rich veins of intelligence, while respecting civil rights, civil liberties, and privacy.

While it seems that monitoring social media was, to some degree, a responsibility of some DHS I&A analysts or DHS's Office of Operations Coordination (OPS), DHS should create and empower a unique, new, more robust unit within I&A, the Online Social Media Analysis Unit (OSMAU), which will be devoted entirely to this function and staffed around the clock. The standards for collection should be public, transparent, and focused on the bright line between constitutionally protected speech and threats of violence. How its standards would be written will prove a very important and sensitive issue.

Leads developed by this unit via monitoring of social media would be referred to the FBI or state or local law enforcement for potential further investigation, as well as used by other parts of DHS (e.g., to support watchlisting nominations for TSA, among others).

Illustration of Parler's logo on a smartphone. (Photo by Rafael Henrique / SOPA Images/Sipa USA. March 29, 2021.

Members of the far-right group Proud Boys make 'OK' hand gestures indicating "white power", as they gather near Black Lives Matter Plaza in Washington, DC, December 12, 2020. REUTERS/Erin Scott

Recommendation 2: Analysis—Creation of the Domestic Violent Extremism Analysis Unit (DVEAU)

While Judge Posner's argument to separate criminal collection from intelligence collection in separate agencies is overly complicated and a bureaucratic nightmare, there is merit in creating a unit of intelligence analysts who are not linked to FBI case investigations and are full-spectrum strategic analysts able to see any and all DHS data, information from state and local law enforcement/fusion centers, and output from FBI investigations (called "302 documents") that relate to domestic violent extremism.

The unit would be called the Domestic Violent Extremism Analysis Unit (DVEAU). The unit would be the central repository in the federal government for systematically collecting, analyzing, and disseminating data on acts of domestic violent extremism. It would be run by a professional intelligence officer and staffed with intelligence analysts, each charged with specific responsibilities to become subject-matter experts on domestic violent-extremist groups. However, it would not itself conduct criminal investigations, nor have arrest authority.

This unit should sit inside the National Counterterrorism Center (NCTC), rather than the FBI or DHS. To place it in the FBI would risk its resources being pulled into case investigations. DHS is also a suboptimal location for this unit. Besides potentially being again subject to politicized intimidation, in the decade and a half since its inception, DHS I&A has not demonstrated a robust capacity to excel at this type of intelligence work. Consequently, the May 11, 2021 announcement by DHS Secretary Mayorkas of the restoration of a domestic terrorism branch within the Department's Office of Intelligence & Analysis (I&A) does not change the need for a more substantial unit within NCTC. However, expanding NCTC's purview to domestic terrorism (and the lines between domestic and international are already blurring), may require a legislative adjustment to the Intelligence Reform and Terrorism Prevention Act of 2004.[81]

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81   Public Law 108-458, December 17, 2004, *https://www.govinfo.gov/content/pkg/STATUTE-118/pdf/STATUTE-118-Pg3638.pdf*.

One aspect of so-called "domestic violent extremism" that is worth noting is that it is not an exclusively US-based threat. Over the past decade, a chain of DVE-linked mass-casualty attacks extended from Norway to New Zealand. Moreover, groups like the Atomwaffen, the Base, Proud Boys, and others have transnational connections to like-minded extremist groups in Europe, Australia, Canada, and Russia. As a result, another reason this should be located within the NCTC is that intelligence collected overseas by CIA, Defense Department agencies such as the National Security Agency (NSA), and the State Department would also flow into DVEAU. With the prospect of Americans potentially traveling overseas to meet, plan, and even train with overseas extremists, this international input will be critical for the DVEAU analysts who would track specific groups (e.g., the Proud Boys, Atomwaffen, and the like).

Lastly, placing the DVEAU inside the NCTC means it would naturally report up directly through NCTC's leadership to the director of national intelligence.

Recommendation 3: WARNING—Direct Report of DVEAU to Director of National Intelligence

It is difficult to ensure that top government officials accept, pay attention, and heed warnings of domestic threats. Certainly, requiring the DHS secretary, FBI director, and director of national intelligence to testify and report regularly to Congress is one way to assure they are paying attention.

Similarly, annual reports from agencies on the state of affairs of the domestic violent-extremist threat, as now required from the FBI and DHS, are also a useful tool.

However, as happened in 2020, politicization can interfere with DHS I&A reporting on the true nature of the threat that it is seeing. With that in mind, the Domestic Violent Extremism Analysis Unit, in addition to reporting to the director of the National Counterterrorism Center, should also report directly to the Office of the Director of National Intelligence (DNI) so that, if politicization occurs CUT (again in either) at DHS, ADD (NCTC), or the FBI, the intelligence has a means to get to the national head of all national intelligence—the DNI.

Recommendation 4: WARNING—Create a New Position—Deputy DNI for Warning (Domestic)

The Central Intelligence Agency (CIA) historically had a senior officer who had the role of warning officer and was responsible for "ringing the bell" when a threat emerged that needed to be brought immediately to the most senior staff of the CIA.

Based on the current IC architecture, there is no such role, either focused on domestic or foreign threats, that has the sole obligations of identifying a rapidly metastasizing domestic terrorism threat and bringing it to the DNI in order to mobilize a whole-of-government response. This deputy director of national intelligence for warning (domestic) should receive reporting from the FBI and the new DVEAU, and function as a national warning officer for domestic terrorism threats.

New Domestic Intelligence Architecture
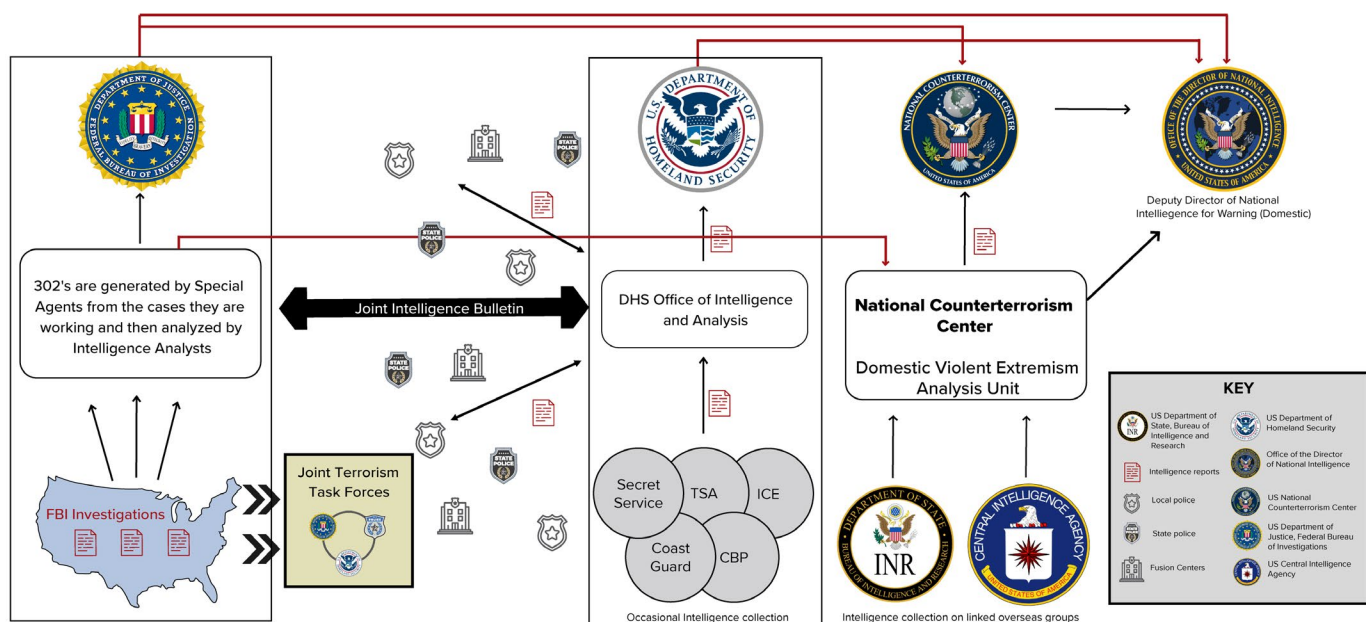
CONCLUSION

The January 6, 2021, surprise storming of the Capitol was an intelligence failure that echoed previous US intelligence failures at Pearl Harbor in 1941 and on September 11, 2001. The failure to implement adequate security precautions in Washington revealed critical gaps on the domestic side of the post 9/11 intelligence architecture. After analyzing how the current system is set up in regard to collection, analysis, and warning—specifically geared toward domestic violent extremists—it is clear this was a multi-point failure, but not the complete intelligence failure that some have described it as.

Not unlike in the aftermath of 9/11, changes must be made to the US intelligence architecture; however, now the focus must be on the domestic side of the ledger. This deep-dive analysis aimed to assess the current structure's adequacy and capability for facing the new, changed threat environment. The United States needs to change the current domestic intelligence structure in a way to maximize intelligence success against the domestic violent-extremist threat to prevent future surprise attacks in the homeland.

Intelligence collection did not fail. In fact, it was robust. Rather, the failure was in the analysis of the intelligence and the failure of senior government officials to warn and act based on that intelligence.

ABOUT THE AUTHOR

Mr. Silber is a visiting lecturer at Columbia University's School of International and Public Affairs ("SIPA") where he teaches about terrorism. He also serves on the Dean's Advisory Board at SIPA and is a member of the Council on Foreign Relations.

Mr. Silber served as Director of Intelligence Analysis at the New York City Police Department (2005-2012) where he was a principal advisor to the Deputy Commissioner of Intelligence on counterterrorism policy and analysis. He was responsible for developing and managing the Analytic and Cyber Units and supervised the research, collection and analysis for the Intelligence Division's entire portfolio of ongoing terrorism related investigations. Mr. Silber was responsible for strategic assessments of emerging and future threats to the City of New York and was involved in internal planning, development and new unit creation for the department.

Mr. Silber has presented on behalf of the NYPD at the White House, the National Security Council, the Central Intelligence Agency, the Federal Bureau of Investigation, the National Counterterrorism Center, and has testified before the U.S. Senate and House of Representatives. He also co-authored the 2007 NYPD report "Radicalization in the West: The Homegrown Threat," and is the author of The Al Qaeda Factor: Plots Against the West, published in 2012 by the University of Pennsylvania Press.

Mr. Silber received his B.A. from the University of Pennsylvania before spending nine years in corporate finance as a partner at The Carson Group and later as a principal at Evolution Capital, LLC, a boutique investment bank. Following his work in corporate finance, Mr. Silber earned his M.A. in International Relations from Columbia University.

In January 2020, Mitchell D. Silber was named the executive director of the Community Security Initiative.

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